



Tax Flash News



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CBDT issues additional guidance on Direct Tax Vivad Se Vishwas Scheme 2024

Background



The Finance (No. 2) Act, 2024 introduced the Direct Tax Vivad Se Vishwas Scheme, 2024 (the Scheme), offering taxpayers a chance to resolve tax disputes pending as of 22 July 2024 (the specified date) across various appellate forums. This scheme covers disputes related to tax, interest, penalty, or fees under the Income-tax Act, 1961 ('the Act').

The Central Board of Direct Taxes (CBDT) issued a circular¹ on 15 October 2024 which addressed 35 questions regarding the implementation of the Scheme.

Recently, the CBDT issued another Circular² extending the FAQs from No. 36 to No. 62. FAQ No. 8 from the earlier circular has been revised and included as FAQ No. 36 in the latest circular.

This note contains a summary of the significant points in the latest circular.

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¹ Circular No. 12 dated 15 October 2024

² Circular No. 19 dated 16 December 2024

Summary of the Circular



1. Eligibility of Cases

Appeals pending as of the specified date are eligible for the Scheme, even if the appeal is later disposed of or withdrawn (whether before or after filing of declaration by the taxpayer). As per the earlier circular, appeals which were pending as of the specified date, but are disposed-off subsequently are not eligible for the Scheme.

In a case where the prescribed time limit for filing an appeal has expired, appeals filed after the specified date are not eligible. However, the conclusion is different where both the appeal and condonation application were filed before the specified date and the appeal has been admitted.

Other cases eligible for the Scheme (subject to fulfilment of other conditions)

- (a) Appeals against intimation under section 143(1) of the Act.
- (b) Appeals filed under section 248³ of the Act.

³ Section 248 of the Act relates to appeal by a person denying liability to deduct tax in certain cases. Such appeal can only be filed prior to 1 April 2022.

- (c) Cases where information received under section 90 or 90A was not used for making additions in assessment/reassessment orders.
- (d) Cases with declarations/applications filed under section 158A/158AA/158AB on or before the specified date, provided related appeals for the relevant year are also settled.
- (e) Appeals/ issues set aside to the Tribunal/ CIT(A)/DRP and pending as of the specified date. However, matters set-aside to the AO are not covered.

Cases not eligible for the Scheme

- (a) Search action cases before 1 April 2021: Where assessment was made under sections 153A or 153C for years other than the search year, and under section 143(3) for the search year.
- (b) Review petitions pending before High Courts or the Supreme Court.
- (c) Proceedings pending before the Income Tax Settlement Commission (ITSC) or where a writ has been filed against an ITSC order.

2. Prosecution proceedings

If prosecution proceedings have not been filed before a court, the taxpayer can opt for the Scheme. Prosecution in one assessment year does not affect eligibility for other years.

3. Computation of Amount Payable

The amount payable is linked to the date of filing the declaration. Lower rates apply if the declaration is filed on or before 31 December 2024.

The payment of disputed amount is required to be made within 15 days of the date of receipt of the certificate issued by the Designated Authority (in Form No. 2).

Additional grounds filed by the specified date are considered in computing the disputed tax.

4. Disputed Penalty

If the quantum appeal is settled under the Scheme, any penalties related to that dispute will be waived off.

The following penalty appeals can be settled separately:

- Appeal against penalties unrelated to quantum additions pending as of the specified date. Where the additions made in an assessment have reached finality and no quantum appeal is pending as of the specified date, such penalty can be settled separately.
- Appeals against penalties unrelated to quantum assessment, such as penalties under sections 271B, 271BA, 271DA of the Act. These are not automatically waived upon settlement of an appeal relating to disputed tax.

5. APA/MAP Cases

The Scheme does not allow for partial resolution of issues. Consequently, all matters within a pending appeal must be resolved completely, regardless of whether they involve APA/MAP adjustments or other concerns.

6. Taxes paid before filing declaration

Credit for taxes paid against disputed tax before filing the declaration is available.

7. TDS related queries

If a deductee settles their appeal, the TDS deductor is relieved from liability except for interest.

Additionally, the deductor will receive consequential relief for expense deduction.

Appeals against intimation on processing of TDS returns under section 200A can be settled provided pending as of the specified date.

8. Miscellaneous

The Designated Authority can amend orders to rectify any apparent errors.

Foreign entities can settle disputes through a representative in India.

Similarly, the legal representative of a deceased taxpayer can opt for the settlement under the Scheme.

Secondary adjustments⁴ apply separately for the transfer pricing adjustments made for AY 2017-18 and onwards.

⁴ Section 92CE of the Act

Our comments



The instant circular provides guidance on various scenarios under the Direct Tax Vivad se Vishwas Scheme, 2024, clarifying aspects related to eligibility, computation, and procedures.

However, some positions in the circular lead to different conclusions compared to the Direct Tax Vivad Se Vishwas Act, 2020.

For example, the current circular states that review petitions pending before the High Courts or the Supreme Court are not eligible for the Scheme. In contrast, the Delhi High Court recently ruled that a review petition pending as of 31 January 2020, qualifies as a 'pending proceeding' under the DTVSV Act, 2020.

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