

TAX FLASH NEWS

5 March 2020

Lok Sabha passes 'The Direct Tax Vivad se Vishwas Bill, 2020' with certain amendments

The Finance Minister announced a new Dispute Resolution Scheme (Vivad se Vishwas Scheme) in her Budget Speech for 2020-21 with a view to reduce litigation. Following this, on 5 February 2020, the government introduced the 'Direct Tax Vivad se Vishwas Bill, 2020' (the Bill) in the Lok Sabha.

Under the Scheme, in case of pending appeals, a taxpayer is given an option of resolving the dispute by only paying the amount of the disputed tax (if payment is made before 31 March 2020). The taxpayer will be entitled to a full waiver of interest and penalty in such cases. If payments are made after 31 March 2020 the taxpayer will have to pay 110 per cent of the disputed tax.

On 4 March 2020, the Lok Sabha has passed the Bill with certain amendments (the amended Bill). The amendments widen the scope of the Scheme to cover more cases like revision applications, arbitration, DRP appeals, search cases (below 5 crore recovery), etc. It also include rationalisation of the amount of disputed tax to be paid under the Scheme as also timing of withdrawal of appeals, clarification that making a declaration under the Scheme does not amount to agreeing to a tax position, provision for refund of excess taxes paid under the Income-tax Act, 1961 (the Act), etc. Key amendments to the Bill are summarised as follows:

Expanded scope of eligibility to make a declaration

Under the Bill, the declaration could have been made by taxpayers or the government in respect of appeals which are pending with the Commissioner (Appeals) [CIT(A)], Income tax Appellate Tribunal (the Tribunal), High Court or Supreme Court as on the 31 January 2020.

The amended Bill now covers the following cases or proceedings which are pending as on 31 January 2020.

- Cases where an appeal or a writ petition or special leave petition (SLP) has been filed either by him or by the income-tax authority or by both, before an appellate forum.
- Cases where an order has been passed by the Assessing Officer (AO), or an order has been passed by the CIT(A) or the Tribunal in an appeal, or by the High Court in a writ petition, on or before 31 January 2020 and the time for filing any appeal or SLP against such order by that person has not expired as on such date.
- Cases which are pending before the Dispute Resolution Panel (DRP) and DRP has not issued any direction on or before 31 January 2020.
- Cases where DRP has issued direction and the AO has not passed any order on or before 31 January 2020.
- Cases where revision applications are pending as on 31 January 2020.
- Cases where assessment is made pursuant to search and seizure proceedings under the Act and where the disputed tax amount is below INR 5 crore for the relevant tax year under such proceedings.

Cases of enhancement by CIT(A) has been removed from the list of exclusions of the amended Bills. As a result, such cases are also eligible to avail the Scheme.

Under the Bill, there was a restriction to avail the Scheme by a taxpayer in respect of whom prosecution has been instituted under the Indian Penal Code (IPC) or for the purpose of enforcement of any civil liability on or before filing a declaration under the Scheme. The amendments to the Bill provide that the disqualification under these cases will apply to a taxpayer only if prosecution under the IPC or enforcement of civil liability has been initiated by the tax authority or who has been convicted of an offence under the IPC consequent to prosecution initiated by the tax department.

Disputed tax

The Bill had provided for a formula-based approach for the computation of 'disputed tax' to be paid under the Scheme.

The amendments to the Bill remove such formula-based computation of disputed tax. As per the amended definition, the disputed tax needs to be computed as follows:

Type of cases	Amount payable under the Scheme including surcharge and cess
Appeal, writ petition or SLP pending before any appellate forum as on 31 January 2020	Amount of tax payable if such appeal or writ petition or SLP was to be decided against him
Order in an appeal/writ petition is passed by the appellate forum on or before 31 January 2020 and the time for filing appeal or SLP against such order has not expired as on that date	Amount of tax payable after giving effect to such order
Order is passed by the AO on or before 31 January 2020 and the time for filing appeal against such order has not expired as on that date	Amount of tax payable in accordance with such order
Where objections are pending before DRP as on 31 January 2020	Amount of tax payable if DRP was to confirm the variation proposed in the draft order
Where DRP has issued directions, but AO has not passed the final order on or before 31 January 2020	Amount of tax payable as per the assessment order to be passed by the AO

Revision petition filed under Section 264 is pending as on 31 January 2020	Amount of tax payable if such application was to be rejected
Where CIT(A) has issued an enhancement notice under Section 251 on or before 31 January 2020	Disputed tax amount shall be increased by an amount of tax payable in respect of the enhancement proposed

In a case where dispute relates to reduction of Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) credit or any loss or depreciation computed thereunder, the taxpayer shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

Amount payable by the declarant

The Bill had provided for settlement of a dispute by paying 100 per cent of the disputed tax or 25 per cent of the disputed interest or penalty, as the case may be, regardless of the fact that the dispute relates to the taxpayer's appeal or the tax department's appeal. However, if the taxpayer opts for the Scheme after 31 March 2020, he would be paying 110 per cent of the disputed tax or 30 per cent of the disputed interest or penalty.

Further to the above, the amendments to the Bill provide that the amounts payable by the declarant in search cases are as follows:

Nature of tax arrear	Amount payable up to 31 March 2020	Amount payable from 1 April 2020 upto the last date of the Scheme
Where the tax arrears include the tax, interest or penalty determined on the basis of search operations	125 per cent of the disputed tax If amount of 25 per cent of disputed tax is more than the aggregate of interest and penalty, such excess shall be ignored.	135 per cent of disputed tax If amount of 35 per cent of disputed tax is more than the aggregate of interest and penalty, such excess shall be ignored.

- Where an appeal/writ/SLP is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be 50 per cent of such amount calculated on such issue in such manner to be prescribed.
- Where an appeal is filed before the CIT(A) or objections is filed before DRP on any issue on which the taxpayer has already got a decision in his favour from the Tribunal or High Court (where the decision on such issue is not reversed by the higher authority or the Court), the amount payable shall be 50 per cent of the payable amount calculated as specified.
- Where an appeal is filed on any issue before the Tribunal on which the taxpayer has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by Supreme Court), the amount payable shall be 50 per cent of the payable amount calculated as specified.

Withdrawal of appeal and furnishing of a proof

As per the Bill, a taxpayer who makes a declaration under the Scheme was required to withdraw its appeal/writ before the HC or SC, as well as any claim made under arbitration, conciliation or mediation proceedings and submit a proof of such withdrawal at the time of filing a declaration under the Scheme. The amendments to the Bill provide that such proof, along with the proof of payment of disputed tax, would need to be furnished along with the intimation of payment, i.e. before issuance of the final certificate of settlement of dispute by the designated authority under the Scheme.

No conceding of 'tax position' while opting for settlement under the Scheme

The amendments to the Bill clarify that making a declaration under the Scheme shall not amount to conceding the tax position and it shall not be lawful for the tax authority or the declarant being a party in appeal or writ petition or SLP to contend that the declarant or the tax authority, as the case may be, has agreed in the decision on the disputed issue by settling the dispute. In other words a declaration made under the Scheme cannot be considered as setting any precedence for the taxpayer or the tax authority in relation to the issues covered under the declaration.

Refund of excess amount

Under the Bill, there was no specific provision for a taxpayer to claim refund of amount paid under the Act in excess of the amount payable under the Scheme. The amendments to the Bill provide that where the declarant had, paid any amount under the Act in respect of his tax arrears which exceeds the amount

payable under the Scheme, he shall be entitled to a refund of such excess amount. However, such excess amount will be refunded without any interest.

Rules to provide for the manner of set-off of loss/depreciation

CBDT shall make Rules to provide the manner of determination of disputed tax including the manner of set-off in respect of brought forward or carry forward of MAT/AMT tax credit or of loss or allowance of depreciation under the provisions of the Act.

Our comments

After the Bill was introduced in the Lok Sabha, several representations were made by various stakeholders. Based on such representations, the Bill has been amended and passed by the Lok Sabha on 4 March 2020. The amended Bill seeks to resolve various concerns raised by taxpayers such as the scope of the Scheme has been expanded to cover a person who has filed his objections before the DRP, revision application, in whose case appeal is pending or the time for filing any appeal has not been expired, etc. Further the formula based approach to determine the 'disputed tax' was complex. The same has now been removed and a simple calculation of 'disputed tax' has been provided.

The Scheme is now applicable to search cases if the amount of disputed tax does not exceed INR 5 crore. Amendments also provide the manner of determination of disputed tax including the manner of set-off in respect of brought forward or carry forward MAT/AMT tax credit or of loss or allowance of depreciation under the provisions of the Act. The cases of enhancement by CIT(A) has been removed from the list of exclusions of the Scheme. Further the declarant is now eligible to a refund of excess amount of taxes paid.

The amended Bill reduces the disputed amount of tax by half for those declarant who got favourable orders on the issue in appeal or where appeal is filed by the income-tax authority, etc.

Considering the short period of time available to file the declaration under the Scheme, the taxpayers should analyse these amendments and the Scheme vis-à-vis facts of their disputed cases for considering the Scheme.

Recently, the Supreme Court in the case of INTEC Corporation allowed the taxpayer to withdraw the SLP and take benefit of the Scheme.

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Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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