

# TAX FLASH NEWS

23 April 2020



## CBDT issues FAQs on the 'Vivad se Vishwas Scheme' with certain modifications

### Background

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. In February 2020, the government introduced the 'Direct Tax Vivad se Vishwas Bill, 2020' (the Bill) in the Lok Sabha. Subsequently, the Direct Tax Vivad Se Vishwas Act, 2020 was passed by the Parliament and received presidential assent.

The Central Board of Direct Taxes (CBDT) had issued a Circular<sup>1</sup> providing clarifications on various Frequently Asked Questions (FAQs). Recently, CBDT has issued another Circular<sup>2</sup> making certain modifications in the aforesaid FAQs. The key modifications are as follows:

### Prosecution cases

To reflect the correct intent of the law, FAQ no 22 has been modified. It has been clarified that where only notice for initiation of prosecution has been issued without prosecution being instituted, the taxpayer is eligible to file declaration under the Scheme. However, where the prosecution has been instituted with respect to an assessment year, the taxpayer is not eligible to file declaration for that assessment year under the Scheme, unless the prosecution is compounded before filing the declaration.

### Disallowance in search cases

In FAQ no. 31, it was clarified that if the taxpayer wishes to settle the disallowance under Section 40(a)(i)/(ia)<sup>3</sup> in a search case on the basis of settlement of dispute under Section 201 of the Income-tax Act, 1961 (the Act), the taxpayer shall be required to pay

higher amount as applicable for search cases for settling dispute in respect of that TDS default under Section 201 of the Act.

This paragraph has been removed from FAQ no. 31.

### Rectification order

FAQ no 50 has been modified to clarify that where demand in the case of a taxpayer has been reduced partly or fully by giving effect to the order of appellate forum, in such cases after getting the proof of payment of the amount payable under the Scheme, the tax officer shall pass a rectification order<sup>4</sup> read with the relevant provisions of the Scheme to create demand in case of taxpayer against which the amount payable shall be adjusted.

### Our comments

The revised circular provides clarity on some of the issues relating to the Scheme. It has been clarified that the taxpayer is eligible to avail the Scheme where only notice for initiation of prosecution has been issued without prosecution being instituted. Further the taxpayer is not eligible to file a declaration only for a particular assessment year for which the prosecution has been instituted, unless the prosecution is compounded before filing the declaration. It has also been clarified that where demand has been reduced partly or fully by giving effect to the order of appellate forum, the tax office shall pass a rectification order and create demand against which the amount payable shall be adjusted.

<sup>1</sup> Circular No. 7 of 2020, 4 March 2020

<sup>2</sup> CBDT Circular No. 9/2020, dated 22 April 2020

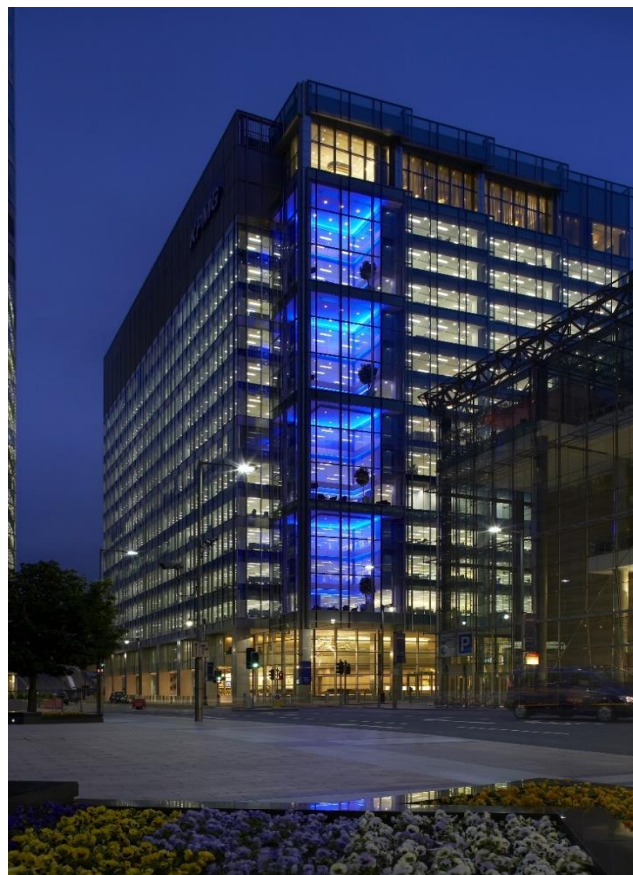
<sup>3</sup> Disallowance of expenditure for TDS default

<sup>4</sup> Under Section 154 of the Act

It is important to note that in view of Covid-19 outbreak in India, in March 2020, the President promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 whereby the time limit for making payment to avail the Scheme, without any additional amount has been extended from 31 March to 30 June 2020.

Even though the ordinance has extended the time limit to 30 June 2020, the revised Circular inadvertently refers to 31 March 2020 as the time limit for making payment to avail the Scheme without any additional amount.

In view of this extended time limits, taxpayers should immediately evaluate the pending litigation with the tax department and other relevant aspects to avail the benefit of the Scheme.



## home.kpmg/in/socialmedia

### 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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