

TAX FLASH NEWS

20 March 2020

Government notifies rules and forms relating to 'Vivad se Vishwas' Scheme

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. Subsequently, Central Board of Direct Taxes (CBDT) has issued a Circular clarifying the provisions of the Bill in the form of Frequently Asked Questions (FAQs). On 17 March 2020, the Bill has received Presidential assent and it becomes the Direct Tax Vivad Se Vishwas Act, 2020.

On 18 March 2020, the government has notified¹ Rules and Forms relating to the scheme. The Rules are summarised as follows:

- **Form of declaration and undertaking** - The declaration under the scheme shall be made in Form 1 to the designated authority. The undertaking² shall be furnished in Form-2 along with the declaration. The declaration and the undertaking shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf³.
- **Form of certificate by designated authority** - The designated authority shall grant a certificate electronically in Form-3.

¹ Notification No. 18/2020, dated 18 March 2020

² As per the provision of Section 4(5) of Vivad se Vishwas Act, the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

³ In accordance with Section 140 of the Income-tax Act, 1961

- **Intimation of payment** - The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in Form-4.
- **Manner of furnishing** - Form-1, Form-2 and Form-4 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.
- **Order by the designated authority** - The order by the designated authority in respect of amount payable by the declarant shall be in Form-5.

Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced

Where the dispute in relation to an Assessment Year (AY) relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, 1961 (the Act), the declarant shall have two options:

- Include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or
- Carry forward the reduced amount of loss or unabsorbed depreciation

Where the declarant exercises second option, he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years subject to certain following conditions:

- The written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation.
- In cases other than the eligible search cases⁴, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward as per second option, one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.
- In case of eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward as per second option, one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction. Where the one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced exceeds the amount of loss to be carried forward before its reduction, such excess shall be ignored.
- In case of eligible search cases in computing the reduced amount of loss or unabsorbed depreciation to be carried forward as per second option, five-eighth of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced

Where the dispute relates to reduction in MAT credit to be carried forward, the declarant shall have similar two options as mentioned above with respect to loss or unabsorbed depreciation and similar conditions will apply to the MAT credit cases.

⁴ Eligible search cases means cases in which an assessment has been made under Section 143(3) or Section 144 or Section 153A or Section 153C of the Income-tax Act on the basis of search initiated under Section 132 or Section 132A of the Income-tax Act and the amount of disputed tax does not exceed five crore rupees

Manner of computing disputed tax in certain cases

Where the dispute includes issues covered in favour of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.

Our comments

The Scheme provides an opportunity to taxpayers to settle their disputes by paying due taxes with complete waiver of interest and penalty until 31 March 2020. It would also allow dispute settlement with some additional payment after 31 March.

In order to make the process simpler, the government has notified rules and forms relating to the scheme. The forms are to be filed electronically under digital signature/electronic verification code which would help the taxpayer to file forms in a hassle free manner.

Further online submission of Form 1 and 2 has been enabled on e-filing website of the tax department. The government has also notified⁵ procedure for making declaration in Form 1 and Furnishing undertaking in Form 2.

² Notification No. 12, dated 19 March 2020

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