

TAX FLASH NEWS

5 February 2020



The Direct Tax Vivad se Vishwas Bill, 2020 introduced in the Lok Sabha

The Finance Minister announced a new Dispute Resolution Scheme (Vivad se Vishwas Scheme) in the Budget 2020 to reduce litigation. Today, the government has introduced the Direct Tax Vivad se Vishwas Bill, 2020¹ (the Bill) in the Lok Sabha. The salient features of the Bill are as follows:

- The provisions of the Bill shall be applicable to appeals filed by taxpayers or the government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31 January 2020 irrespective of whether demand in such cases is pending or has been paid.
- The pending appeal may be against disputed tax interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source.
- In appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31 March 2020 and for the payments made after the 31 March 2020 but on or before the date notified by government, the amount payable shall be increased by 10 per cent. of disputed tax.
- In appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before

the 31 March 2020. If payment is made after the 31 March 2020 but on or before the date notified by government, the amount payable shall be increased to 30 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be.

- The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the government.

Disputed tax

- (a) The disputed tax has been defined to mean tax determined under the Income-tax Act, 1961 (the Act) in accordance with the following formula:

$$(A - B) + (C - D)$$

A	An amount of tax on the total income assessed as per the provisions of the Act other than the Minimum Alternate Tax (MAT) ² /Alternate Minimum Tax (AMT) ³ provisions
B	An amount of tax that would have been chargeable had the total income assessed as per the general provisions minus the amount of income in respect of which appeal has been filed by the taxpayer
C	An amount of tax on the total income assessed as per MAT/AMT provisions
D	An amount of tax that would have been chargeable had the total income assessed as per MAT/AMT provisions minus the amount of income in respect of which appeal has been filed by the taxpayer

¹ Source – Taxsutra.com

² Section 115JB

³ Section 115JC

Where the amount of income in respect of which appeal has been filed by the taxpayer is considered under MAT/AMT provisions and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

In a case where the MAT/AMT provisions are not applicable, the item (C – D) in the formula shall be ignored.

In a case where the amount of income, in respect of which appeal has been filed by the taxpayer, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the specified formula with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the taxpayer had such income been the total income.

(b) Tax determined under TDS/TCS provisions⁴ in respect of which appeal has been filed by the appellant.

Tax arrear

Tax arrear has been defined to mean:

- The aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax, or
- Disputed interest, or
- Disputed penalty, or
- Disputed fee

as determined under the provisions of Act.

Amount payable by declarant

Sr No.	Nature of tax arrear	Amount payable on or before 31 March 2020	Amount payable on or after 1 April 2020 but or before the last date
1	Where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax	Amount of disputed tax	The aggregate of the amount of disputed tax and 10 per cent of such disputed tax. However, where the 10 per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.

Sr No.	Nature of tax arrear	Amount payable on or before 31 March 2020	Amount payable on or after 1 April 2020 but or before the last date
2	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	25 per cent of disputed interest or disputed penalty or disputed fee	30 per cent of disputed interest or disputed penalty or disputed fee.

Filing of declaration and particulars to be furnished

The declaration shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

Upon the filing the declaration, any appeal pending before the Income-tax Appellate Tribunal (the Tribunal) or Commissioner of Income-tax (Appeals) [CIT(A)], in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate is issued by the designated authority.

The declarant shall withdraw any appeal filed before the appellate forum or any writ petition before the High Court or the Supreme Court in respect of tax arrear and furnish proof of such withdrawal along with the declaration filed with designated authority

Prior to making the declaration, the declarant shall withdraw the claim, if any, initiated in any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise. The declarant shall furnish proof thereof along with the declaration.

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.

The declaration shall be presumed never to have been made if:

- Any material particular furnished in the declaration is found to be false at any stage
- The declarant violates any of the conditions referred to in these provisions

⁴ Section 200A or Section 201 or Section 206C(6A) or Section 206CB of the Act

- The declarant acts in any manner which is not in accordance with the undertaking given by him

In such cases, all the proceedings and claims which were withdrawn and all the consequences under the Act against the declarant shall be deemed to have been revived.

- No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made by the designated authority or the payment of sum determined under relevant provisions.

Time and manner of payment

The designated authority shall, within a period of 15 days from the date of receipt of the declaration, determine the amount payable by the declarant and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination.

The declarant within 15 days of the date of receipt of the certificate shall pay the amount determined above and intimate the details of such payment to the designated authority. Subsequently, the designated authority shall pass an order stating that the declarant has paid the amount.

The matter covered by the order determining the amount payable under the provision shall not be reopened in any other proceeding under the Act or under any other law or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India

Immunity from initiation of proceedings

The designated authority shall not institute any proceeding in respect of an offence or impose or levy any penalty; or charge any interest under the Act in respect of tax arrear.

Refund

Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.

No benefit, concession or immunity to declarant

Nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

Non-applicability of provisions in certain cases

The provisions shall not apply in following cases:

- In respect of tax arrears –

- Where an assessment has been made in the case of search or requisition or assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned⁵.
- Where prosecution has been instituted on or before the date of filing of declaration
- Any undisclosed income from a source located outside India or undisclosed asset located outside India
- Relating to an assessment or reassessment made on the basis of information received under an agreement⁶ if it relates to any tax arrear
- Relating to an appeal before the CIT(A) in respect of which notice of enhancement⁷ has been issued on or before the specified date

- The person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration subject to specified provisions.
- To any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts
- To any person notified under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

⁵ Under Section 153A/Section 153C of the Act

⁶ Agreement referred to in Section 90 or Section 90A of the Act

⁷ Under Section 251 of the Act

Rules

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. Such rules may provide to the following forms:

- In which a declaration may be made, and the manner of its verification
- In which declarant shall furnish undertaking
- In which certificate shall be granted
- In which payment shall be intimated

Our comments

Over the years, the pendency of appeals filed by taxpayers as well as government has increased. As a result, a huge amount of disputed tax is locked-up in these appeals. Tax disputes consume time, energy and resources both on the part of the government as well as taxpayers. Accordingly, the Bill has been introduced in the Lok Sabha to reduce such litigation.

There could be certain practical difficulties in availing this scheme for e.g. the Bill provides that if appeal /writ is pending before the High Court/Supreme Court, the same should be withdrawn and the declarant has to furnish the proof of such withdrawal along with the specified declaration. Considering the limited time frame, it could be challenging for the taxpayer to obtain such proof of withdrawal expeditiously. Further it would be interesting to analyse whether the taxpayer can avail the scheme only for some of the grounds of appeal.

It would be apt if government will issue FAQs clarifying various aspects of the scheme along with illustrations.



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