

What's New

News Flash

Vivad Se Vishwas - Direct Tax Dispute Resolution Scheme 2020 tabled in the Parliament

In line with the announcement made in the budget speech by the Finance Minister on 1 February 2020, the Government tabled "The Direct Tax Vivad se Vishwas Bill, 2020¹" (the Scheme) on 5 February 2020 before the Parliament. Once the Bill is passed by both the Houses of Parliament and is given assent by the President of India, it shall come into effect.

The Scheme aims to provide resolution mechanism for pending direct tax disputes across various appellate forums viz. Commissioner of Income-tax (Appeals), Income Tax Appellate Tribunal, the High Court and the Supreme Court of India. The Scheme also seems to include writ petitions under its ambit.

Some salient features of the Scheme are as under:

1. All direct tax appeals (i.e. related to disputed tax, interest, penalty or fee) pending as on 31 January 2020 are eligible for resolution under this Scheme subject to certain exceptions prescribed such as search and seizure cases, matters where prosecutions have been initiated etc. Thus, a situation where a notice has been issued/order has been passed in respect of any matter but the same has not been appealed against, it would not be eligible for a resolution under this Scheme. Further, cases where objections have been filed before the Dispute Resolution Panel (against the draft order) would also not get covered under the Scheme.
2. The resolution needs to be applied on an order by order basis, and not on issue basis. Hence, to pursue this Scheme, the taxpayer will have to give up its right of litigation in respect of all the issues under dispute in respect of that appeal.
3. Where the appeal relates to disputed tax, the Scheme provides for complete waiver of interest, penalties as well as prosecution where 100% of the disputed tax is paid by 31 March 2020. In case the appeal relates to disputed interest, penalty, fee - 25% of the disputed interest, penalty, fee needs to be paid where the same is deposited before 31 March 2020. The disputed tax needs to be calculated as per the formula prescribed. Please refer to the table below for various situations:

| Type of disputes | Amount payable on or before 31 March 2020 | Amount payable on or after 1 April 2020 but before the last date [last date to be notified] |
|---|---|---|
| Where the 'tax arrears' is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax or penalty leviable or levied on such disputed tax | 100% of the disputed tax | 110% of the disputed tax [If 10% of disputed tax exceeds total disputed interest and penalty, such excess to be ignored] |
| Where the tax arrears are related to disputed interest or disputed penalty or disputed fee | 25% of the disputed penalty/interest/fees | 30% of the disputed penalty/interest/fees |

4. As per the provision, the amount of disputed tax which must be paid to avail the Scheme, will also include the imputed tax on the reduction of loss resulting from the dispute.
5. The taxpayer is required to withdraw the appeal from the appellate forums and is required to file proof of such withdrawal along with the declaration. Once the declaration is filed, within a period of 15 days, the designated authority is required to issue a certificate determining the amount payable by the taxpayer. The taxpayer is required to pay the amount specified within 15 days from the date of receipt of the certificate. Such amount has to be deposited by 31 March 2020 to avail benefits of lower tax outflows.

PwC comments

Taxpayers would need to undertake an exercise to determine whether they should take benefit of the Scheme by considering various parameters viz. merits of the issues involved, quantum involved, cost of litigation and repetition of issues across multiple years etc. Further, in cases where both the merit and penalty appeals are pending, the

determination of amount payable in such cases need to be evaluated. Considering that a very short duration that has been provided for availing benefits of lower tax outflows, taxpayers will need to start the aforesaid feasibility exercise without waiting for the enactment of the Scheme.

¹ Bill No. 29 of 2020

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