

Direct Tax Vivad Se Vishwas Scheme 2024 : Salient Features

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Direct Tax Vivad se Vishwas Scheme, 2024 (DTVsV Scheme, 2024) is a scheme notified by the Government of India on 20th September, 2024 to resolve pending appeals in case of income tax disputes. The DTVsV Scheme, 2024 was enacted vide Finance (No. 2) Act, 2024. The said scheme shall come into effect from 01.10.2024. It is similar to the Direct Tax Vivad Se Vishwas Scheme, 2020, The salient features of the 2024 scheme are as under:

1. Disputes which can be settled: Under the scheme following disputes can be settled —

- (a) Quantum appeal including TDS appeal (by the assessee or department) pending before CIT(A), JCIT(A), ITAT, High Court or Supreme Court or writ petition or SLP pending before High Court or Supreme Court as on 22.07.2024 or cases where the time limit of filing appeal has not expired on 22.07.2024
- (b) Appeal (by the assessee or by the department) in relation to fees, interest and penalty pending before CIT(A), JCIT(A), ITAT, High Court or Supreme Court as on 22.07.2024 or cases where the time limit of filing appeal, in such a case, has not expired on 22.07.2024.
- (c) Where an objection before DRP is filed and DRP has not issued any direction on or before 22.07.2024.
- (d) Where a direction is issued by DRP u/s 144C(5) but the A.O has not passed the final assessment order u/s 144C(13).
- (e) Revision petition pending before CIT u/s 264 on 22.07.2024.

2. Disputes have been specifically excluded: The following disputes have been specifically excluded from the scheme:

- (a) In respect of tax arrear relating to an Assessment Year in respect of which an assessment has been made under section 143(3), 144, 147, 153A or 153C on the basis of search-initiated u/s 132 or 132A, then VSV cannot be opted for the said assessment year.
- (b) In respect of tax arrear relating to an Assessment Year in respect of which prosecution has been instituted on or before date of filing declaration.
- (c) Tax arrears relating to undisclosed income from a source located outside India or undisclosed asset located outside India.
- (d) Tax arrears relating to assessment or reassessment made on the basis of information received under agreement referred to in section 90 or section 90A.
- (e) Assessee in respect of whom there is any detention order under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) provided that—
 - (i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

- (ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or
 - (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8 read with sec 12A(6), of the said Act; or
 - (iv) such order of detention has not been set aside by a court of competent jurisdiction;
- f) Any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, 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.
 - g) Any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income- tax authority;
 - h) Assessee notified u/s 3 of Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992;

3. Tax payable to settle the dispute

- Where assessee desires to settle quantum appeal (other than search case) i.e. disputed tax, he will be required to pay entire disputed tax (including surcharge and cess). However if the declarant is an appellant on or before 31.1.2020 at the same appellate forum in respect of the tax arrear, then 110% of the dispute tax (including surcharge and cess) will be required to be paid. On payment of such tax (including surcharge and cess), the interest and penalty will be waived provided the payment is made on or before 31.12.2024.
- In case the payment is made after 31.12.2024 the assessee shall be required to make an additional payment of 10% of the disputed tax. But in case the appeal is pending on or before 31.1.2020, the additional tax payable will be 20% instead of 10%.
- However, if the appeal is filed by Department or the Department has lost an issue, assessee is required to pay 50% of disputed tax (including surcharge and cess) if payment is made before 31.12.2024 and if payment is made after 31.12.2024, 55% of the disputed tax is to be paid. On payment of the disputed tax, interest and penalty would be waived.
- Where the assessee desires to settle appeals relating to interest, fees or penalty he will be required to pay 25% of interest, fees or penalty, as the case may be, provided the payment is made on or before 31.12.2024. However, if the declarant is an appellant on or before 31.1.2020 at the same appellate forum in respect of the interest, fee or penalty arrear, 30% of the interest, fees or penalty, as the case may be, shall be payable.

- In case the payment is made after 31.12.2024, the assessee shall be required to pay 30% of the interest, fees or penalty as the case may be, in place of 25%. But in case the appeal is pending on or before 31.1.2020, the additional interest, fee or penalty payable will be 35% instead of 30%. On payment of interest, fees or penalty, the balance fees, interest or penalty as the case may be, shall be waived.
 - Where the appeal is filed before CIT(A) or JCIT(A) or objections are filed before DRP by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the assessee is required to pay only 50% of the tax determined as per above calculation. Where the appeal is filed before the ITAT on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), then also the assessee is required to pay only 50% of the tax determined as per above calculation.
4. **Rules and Forms notified under Direct Tax Vivad se Vishwas Scheme:** The Rules and Forms for enabling the scheme have been notified vide **Notification No. 104/2024 dated 20.09.2024**. Four separate Forms have been notified for the purposes of the Scheme. These are as follows:
- Form-1: Form for filing declaration and Undertaking by the declarant
 - Form-2: Form for Certificate to be issued by Designated Authority
 - Form-3: Form for Intimation of payment by the declarant
 - Form-4: Order for Full and Final Settlement of tax arrears by Designated Authority

The Scheme provides that Form-1 shall be filed separately for each dispute provided that where appellant and the income-tax authority, both have filed an appeal in respect of the same order, single Form-1 shall be filed in such case.

- 5. **Online declaration:** In order to opt for the scheme, the assessee is required to make an online declaration in the prescribed Form, as mentioned hereinafter, to the designated authority. The Scheme provides that Form 1 and Form 3 shall be furnished electronically by the declarant on the e-filing portal of Income Tax Department i.e. www.incometax.gov.in.
- 6. **Declarant is also required to furnish an undertaking:** The declarant is also required to furnish an undertaking in the prescribed form and manner waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrears for which declaration under the scheme is filed, 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.
- 7. **The designated authority shall, determine the amount payable by the declarant within 15 days:** 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 in the prescribed form.
- 8. **The appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals) shall be deemed to have been withdrawn:** From date on which certificate is issued by designated Authority, the appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), 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.

- 9. Declarant is required to pay the amount determined within 15 days of the date of receipt of the certificate:** The declarant is required to pay the amount determined within 15 days of the date of receipt of the certificate by him and intimate the details of such payment to the designated authority in the prescribed form along with the proof of withdrawal of appeal/writ before High Court or Supreme Court. The department shall also withdraw the appeal/writ before the issuance of final certificate for settling dispute. On receipt of intimation of payment in prescribed form, the designated authority shall pass an order stating that the declarant has paid the amount.
- 10.** 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 Income-tax Act in respect of tax arrear which has been settled under the scheme. However, declarant shall not be conferred any benefit, concession or immunity in any proceedings other than mentioned above.
- 11. Amount paid in pursuance of a declaration made under the scheme shall not be refundable but amount paid before filing the declaration in respect of his tax arrear in excess of amount payable under the scheme shall be refundable :** Any amount paid in pursuance of a declaration made under the scheme shall not be refundable under any circumstances. However, where the assessee had, before filing the declaration paid any amount in respect of his tax arrear which exceeds the amount payable under the scheme, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act.
- 12. Order determining the amount payable shall be conclusive:** The order determining the amount payable shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force.
- 13. No appellate forum shall proceed to decide any issue relating to the tax arrear:** Where an order for the declaration has been made under the scheme, no appellate forum shall proceed to decide any issue relating to the tax arrear forming part of the order.
- 14. Declaration will not set any precedence:** The Scheme provides that filing of declaration will not set any precedence and it cannot be claimed in any other proceedings that the assessee or the Department has conceded its tax position by settling the dispute.
- 15. Declaration shall be presumed to be non-est in certain cases:** The declaration shall be presumed to be non-est (never to have been made) in the undermentioned cases -

 - (a) any material particular furnished in the declaration is found to be false at any stage;
 - (b) the declarant violates any of the conditions referred under this scheme;
 - (c) the declarant acts in any manner which is not in accordance with the undertaking given by him.

In such circumstances, all the proceedings and claims which were withdrawn under the scheme and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived in above cases.

(Adv. Narayan Jain and CA Dilip Loyalka are authors of famous books “How to Handle Income Tax Problems” and Income Tax Pleading & Practice. They are Life members of AIFTP)