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LAW OFFICES INDIA

DIRECT TAX UPDATE
DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024

(SHALL BE EFFECTIVE FROM 1ST OCTOBER, 2024)

DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024

About the Scheme:

- The **Direct Tax Vivad se Vishwas Scheme, 2024** ("the Scheme") has been introduced vide the Finance (No. 2) Act, 2024.
- The main objective of the said Scheme is to reduce the pending litigation in income tax matters.
- The Scheme allows taxpayers involved in ongoing direct tax litigation before various authorities, such as the Commissioner of Income Taxes (Appeals), ("**CIT(A)**"), Income Tax Appellate Tribunals, ("**ITAT**"), High Courts, and the Supreme Court, to settle their disputed tax litigation by paying requisite amount to the government without incurring any additional interest or penalties, provided the payment is made within the designated time frame.
- The Scheme shall be enforced from **1st October, 2024** allowing the declarant in their pending disputes and file for settlement.

Who can file a declaration under the Scheme?

- A person in whose case an appeal or a writ petition or special leave petition has been filed either by him or the income-tax authority or both, before an appellate forum and such appeal or petition is pending as on the specified date¹; or
- A person who has filed objections to the draft assessment order before the Dispute Resolution Panel ("**DRP**") under Section 144C of the Income-tax Act, 1961 ("**Act**") and where the DRP has not issued any directions to the Assessing Officer ("**AO**") on or before the specified date;
- A person in whose case the DRP has issued direction under Section 144C(5) of the Act and the AO has not completed the assessment under section 144C(13) of the Act on or before the specified date.
- A person who has filed an application for revision under Section 264 of the Act, and that application is still pending as of the specified date.

¹ Specified date under the Scheme is 22nd July, 2024.

Important definitions under the Scheme:

- **‘Declarant’** means a person who files a declaration under Section 91;
- **‘Designated Authority’** means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of the Scheme.
- **‘Disputed fee’** means the fee determined under the Act in respect of which appeal has been filed by the appellant.
- **‘Disputed income’** in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;
- **‘Disputed interest’** means the interest determined in any case under the Act, where i) such interest is not charged or chargeable on disputed tax; ii) an appeal has been filed by the appellant in respect of such interest;
- **‘Disputed penalty’** means the penalty determined in any case under the Act, where i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be; ii) an appeal has been filed by the appellant in respect of such penalty;
- **‘Disputed tax’** in relation to an assessment year or financial year, as the case may be, means the income tax including surcharge and cess payable by the appellant under the provisions of the Act and as computed under the Scheme;
- **‘Last date’** means such date as may be notified by the Central Government in the Official Gazette;
- **‘Tax arrear’** means i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or ii) disputed interest; or iii) disputed penalty; or iv) disputed fee.

Declaration and particulars to be furnished before the Designated Authority (under Section 90 of the Scheme):

- Subject to the provisions of the Scheme, where a declarant files under the provisions of the Scheme on or before the last date, a declaration to the Designated Authority in respect of tax arrear, then, notwithstanding anything contained in the Act or any other law for the time being in force, the amount payable by the declarant under the Scheme shall be as mentioned in the below table:



Nature of Tax Arrear / appeal Proceedings (appeal includes appeal, writ petition, or Special Leave Petition)	Amount payable Under the Scheme on or Before 31 st December, 2024	Amount Payable Under the Scheme After 1 st January, 2025, but on or Before the Last Date (as may be notified)
Appeal filed after January 31, 2020, but before July 22, 2024	100% of the disputed tax	110% of the disputed tax
Appeal filed before January 31, 2020, and still pending at the same appellate forum	110% of the disputed tax	120% of the disputed tax
Appeal filed after January 31, 2020, but before July 22, 2024, and which is related to disputed interest, penalty, or fee	25% of the disputed interest/penalty/fee	30% of the disputed interest/penalty/fee
Appeal filed before January 31, 2020, and still pending at the same appellate forum related to disputed interest, penalty, or fee	30% of the disputed interest/penalty/fee	35% of the disputed interest/penalty/fee

- **Note** – Provided in the following situations, only 50% of the amount specified in the above table is required to avail the VSV Scheme, 2024:
 - When the pending case has been filed by the income-tax authorities.
 - When an appeal or objection has been filed before the CIT(A), ITAT, or DRP, and the taxpayer has received a favourable order on any issue pending in that appeal or objection from a higher Appellate Forum (and this decision has not been reversed).

Filing of declaration and manner of payment to avail benefit under the Scheme:

- The declarant must submit a declaration providing the required details to the Designated Authority in **Form-1**. The "Designated Authority" refers to a tax officer not below the rank of CIT, as notified by the Principal Chief CIT.
- The Designated Authority shall issue the aforesaid certificate **within 15 days** of receiving the declaration.
- Thereafter, the Designated Authority shall issue a certificate in **Form-2**, by determining the amount payable.



- Pursuant to issuance of certificate by Designated Authority, the declarant shall furnish the proof of withdrawal of appeal, objection, application, writ petition to the designated authority in **Form-3**.
- The declarant must pay the determined amount **within 15 days** of receiving the certificate and notify the Designated Authority of the payment.
- The Designated Authority shall pass an order stating that the declarant has paid the determined amount in **Form-4**.

It is important to note that:

- In case of non-payment of amount payable within the aforesaid period, the declaration under Form-1 shall be treated void.
- Additionally, the declarant must provide an undertaking waiving their right to pursue any further remedy related to the tax arrears.
- Upon filing the declaration, any appeal pending before ITAT or CIT(A) or JCIT (A), in respect of 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 a certificate regarding the same is issued by the Designated Authority.
- Every order passed by the Designated Authority, determining the amount payable under the Scheme, shall be conclusive as the matters stated therein and no matter covered by such order shall be re-opened in any other proceeding under the Act or under any other law for the time being in force.
- Making a declaration under the Scheme shall not amount to conceding the tax position and it shall not be lawful for the income tax authority or the declarant being a party in appeal or writ petition or Special Leave Petition to contend that the declarant or the income tax authority, as the case may be, has acquiesced in the decision on the disputed issued by settling the dispute.
- Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.
- Where the declarant had, before filing the declaration, paid any amount under the Act 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 Act.

- Nothing contained in the Scheme 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.

The Scheme will not apply in the following situations:

- When the assessment is based on a search initiated under section 132 or 132A of the Act.
- If prosecution under the Act or any other specified act has been initiated before the taxpayer files a declaration.
- In cases of undisclosed income from a source or undisclosed assets located outside India.
- When assessment or reassessment is based on information received under a Double Taxation Avoidance Agreement.
- If an order of detention has been issued under the Foreign Exchange and Prevention of Smuggling Activities Act, 1974, before the declaration is filed, and the order has not been revoked or set aside under specified circumstances.
- When the taxpayer has been notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, before filing the declaration.



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