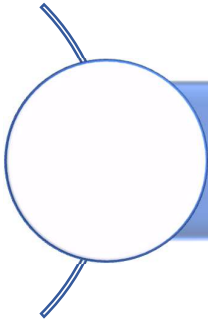




***WEBINAR ON
THE DIRECT TAX
VIVAD SE VISHWAS
ACT, 2020***

By: CA Parikshit Aggarwal

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PART - A

THE PRESENTATION

AN OVERVIEW



Presented by: CA. Parikshit Aggarwal

INTRODUCTION TO THE SCHEME IN INDIA

Important dates	Particulars
05.02.2020	Introduced in Lok Sabha
04.03.2020	Passed by Lok Sabha with amendments
13.03.2020	Passed by Rajya Sabha with amendments
17.03.2020	Assent of Hon'ble President received
18.03.2020	DTVSVS Rules, 2020 setting out procedures and giving out <i>relevant forms</i> notified
19.03.2020	<i>Systems and procedures</i> for e-filing notified by DGIT(Systems)
24.03.2020	Press Release for extension of due date
22.04.2020	Clarifications in form of FAQs issued vide Circular no. 7 on 04.03.2020 as superseded by Circular No. 9/2020 dtd. 22.04.2020.

SIMILAR SCHEMES in the PAST

1975

Voluntary Disclosure Scheme was introduced.

1998

KVSS was introduced on 01.09.1998

2013

Voluntary Compliance Encouragement Scheme, 2013 introduced as a part of The Finance Act, 2013

2016

Direct Tax Dispute Resolution Scheme, 2016 introduced on 01.06.2016

2019

SVLDRS, 2019 came into force on 01.09.2019.

OBJECTIVES OF THE SCHEME

1. To Reduce Litigations.

Interesting Fact: As on 30th November 2019 for direct taxes, approx. 4,83,000 cases pending and amount stuck in litigation is approx. Rs. 9.32 lakh crore.

2. To generate timely revenue.

3. To save time, energy and resources of tax payer as well as Government of India.

WHO CAN OPT FOR THE SCHEME?

Every person who qualifies under the definition of ***"APPELLANT"*** can file a declaration and opt for the scheme

IMPORTANT DEFINITIONS

“Appellant” means—

- (i) a **person** in whose case an **Appeal/WP/SLP** has been **filed** either **by him or by the Income-tax authority** or by both, before an appellate forum and such appeal or petition **is pending as on 31.01.2020**;
- (ii) **order has been passed on or before 31.01.2020** by any authority **and** time for filing **appeal /SLP has not expired as on that date**;
- (iii) a person who has filed his **objections before the Dispute Resolution Panel and DRP has not issued** any direction on or before 31.01.2020;
- (iv) WHERE the **DRP has issued direction and the Assessing Officer has not passed any order** on or before the 31.01.2020;
- (v) a person who has filed an application for revision u/S 264 **and such application is pending as on 31.01.2020**

“Appellant forum” means SC or HC or ITAT or CIT(A).

IMPORTANT DEFINITIONS

“DISPUTED FEE” means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;

“DISPUTED INTEREST” means the interest determined in any case under the provisions of the Income-tax Act, 1961, where:

- (a) such interest is not charged or chargeable on disputed tax;
- b) an appeal has been filed by the appellant in respect of such interest;

“DISPUTED PENALTY” means the penalty determined in any case under the provisions of the Income-tax Act, 1961, 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;

IMPORTANT DEFINITIONS

“Disputed tax”, means *the Income-tax, including surcharge and cess* (payable by the appellant under the provisions of ACT for an AY/FY computed as under:—

- i) where any appeal/WP/SLP is pending on 31.01.2020 : *the amount of tax payable if appeal/ WP/ SLP was to be decided against him;*
- ii) where an **order has been passed** VIZ. APPEALABLE on or before 31.01.2020, **and** the **time for filing appeal /SLP has not expired** --- *the amount of tax payable AS PER order so passed*
- iii) where **objection filed pending** before DRP as on 31.01.2020 ---- *amount of tax payable if DRP confirm variation proposed;*
- iv) where Dispute Resolution Panel has issued any direction on or before 31.01.2020 ---- *amount of tax payable order to be passed by AO;*
- v) where an application for revision U/S 264 is pending ON 31.01.2020 --- *amount of tax payable if app'n was not to be accepted;*

NOTE: Enhancement BY CIT (A) U/S 251 on or before 31.01.2020 --- disputed tax shall be increased by the amount of tax ENHANCED:

AMOUNT PAYABLE BY DECLARANT (AS PER SECTION 3) IF APPEAL IS BY THE ASSESSEE

S. No.	Nature of tax arrear (Disputed tax liability)	Amount payable on or before 31.03.2020 (Now 30.06.2020)	Amount payable on or after 30.06.2020 up to the last day of the Scheme
1.	Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax	100% of the disputed tax, i.e., without taking into consideration interest and Penalty	110% of the disputed tax
2.	Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax, as determined under section 132 or 132A	125% of the disputed tax, i.e., without taking into consideration interest and Penalty	135% of the disputed tax
3.	Tax arrear relates to disputed interest or disputed penalty or disputed fee	25% of the disputed interest or disputed penalty or disputed fee	30% of the disputed liability

In case of Sr. no. 1 and 2 above, the excess amount, in respect of interest charged or chargeable or penalty levied or leviable ON DISPUTED TAX, over 10, 25 and 35 percent respectively of the disputed tax, is to be ignored.

AMOUNT PAYABLE BY DECLARANT (AS PER SECTION 3) IF APPEAL IS BY THE DEPARTMENT

Sr. No.	Nature of tax arrear (Disputed tax liability)	Amount payable on or before 31.03.2020 (Now 30.06.2020)	Amount payable on or after 30.06.2020 up to the last day of the Scheme
1.	Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax	50% of the disputed tax, i.e., without taking Into consideration interest and Penalty	55% of the disputed tax
2.	Tax arrear is aggregate of disputed tax, interest chargeable or charged on such arrears and penalty leviable or levied on such tax, as determined under section 132 or 132A	62.5% of the disputed tax, i.e., without taking Into consideration interest and Penalty	67.50% of the disputed tax
3.	Tax arrear relates to disputed interest or disputed penalty or disputed fee	12.50% of the disputed interest or disputed penalty or disputed fee	15% of the disputed liability

In case of Sr. no. 1 and 2 above, the excess amount, in respect of interest charged or chargeable or penalty levied or leviable ON THE DISPUTED TAX, over 5, 12.5 and 17.5 per cent respectively of the disputed tax, is to be ignored.

INELIGIBILITIES/EXCLUSIONS UNDER THE SCHEME (SEC – 9)

1. Tax arrear arising in respect of any assessment year wherein *assessment has been made u/S 143(3) /144 /153A or 153C of the Act; based on any search initiated under section 132 or 132A*, if the amount of disputed tax exceeds *rupees five crores PER A.Y.*
2. Cases in which *prosecution under the Income Tax Act, 1961* has been instituted on or before the date of declaration.
3. Tax arrear in respect of cases relating to *undisclosed income* arising from a source or *undisclosed asset located outside India* in section 90 or 90A.
4. Person AGAINST WHOM an *order of detention* has been made under the provisions of *COFEPOSA, 1974* on or before the filing of declaration, subject to certain conditions provided in the Scheme.
5. In respect of which prosecution has been instituted for any offences under *IPC, the Unlawful Activities (Prevention) Act, 1967, NDPS Act, 1985, PC Act, 1988, PMLA Act, 2002, COFEPOSA Act, 1974, Prohibition of Benami Property Transactions Act, 1988 and Special Court Trial in Securities Act, 1992.*

REFUND PROVISION UNDER THE SCHEME (SEC – 7)

Explanation to section 7 provides, that only if any **amount has been paid** under normal tax proceedings **before filing declaration** under the Scheme ***the payment exceeding the amount payable as per section 3 (table) shall be refunded.***

Point to be noted:

- Sec 7 provides that any amount paid in pursuance of declaration made under the Scheme, ***no amount shall be refunded under any circumstances except the above.***
- Any **refund paid will not be entitled to any interest u/s 244A**

OTHER IMPORTANT PROVISIONS OF THE ACT

Immunity : Sec 6 clearly states that the designated authority cannot initiate any proceeding in respect to tax arrear /impose or levy any penalty/charge any interest in respect of any tax arrear.

Time with designated authority : Within **15 days** from the date of receipt of the declaration, **by order**, determine the amount payable by the declarant & grant a certificate to the declarant containing particulars of the tax arrear & the amount payable after such determination, in **Form No. 3**.

Time with the declarant for Payment: Declarant shall pay the above determined amount within **15 days** of date of receipt of the certificate & **intimate** the details of such payment to the designated authority in **Form No. 4**.

Explanation to Sec 5 : Making a declaration under this Act shall not amount to conceding the tax position & it shall not be lawful for the income-tax authority or the declarant being a party in Appeal /WP / SLP to contend that the declarant or the income-tax authority, as the case may be, **has acquiesced (accepted)** in the decision **on the disputed issue** by settling the dispute.

Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced (DTVSVS Rules, 2020)

Where the dispute relates to reduction in loss or unabsorbed depreciation to be c/f under the Act, the declarant shall have an **option** to –

i) include **tax + surcharge + cess payable** on the amount by which loss or unabsorbed depreciation is reduced **in the disputed tax** & carry forward the loss or unabsorbed depreciation **ignoring** reduction in loss or unabsorbed depreciation

OR

ii) **carry forward the reduced** amount of loss or unabsorbed depreciation.

Points to be noted:

1. WDV of the block of asset on the last day of the year, shall not be increased by the amount of reduction in unabsorbed depreciation.
2. If the declarant exercises the option as per clause (ii) above, he shall be liable to pay tax + surcharge + cess + interest, in subsequent years:

Contd...

MANNER OF COMPUTING DISPUTED TAX IN CASES WHERE LOSS OR UNABSORBED DEPRECIATION IS REDUCED (DTVSVS RULES, 2020)

3. If issues covered are in favour of declarant/department is appellant:

A) In cases **other than the eligible search cases**, in computing the reduced amount of loss or unabsorbed depreciation to be c/f in clause (ii) of sub-rule (1) :-- **50 percent of amount by which loss or unabsorbed depreciation** is reduced shall be considered for reduction.

B) In **eligible search cases**, in computing the reduced amount of loss or unabsorbed depreciation to be c/f in clause (ii) of sub-rule (1) :-- **62.5 percent of amount by which loss or unabsorbed depreciation** is reduced shall be considered for reduction.

4. If the assessee is appellant:

A) In cases **other than the eligible search cases**, in computing the reduced amount of loss or unabsorbed depreciation to be c/f in clause (ii) of sub-rule (1) :-- **100 percent of amount by which loss or unabsorbed depreciation** is reduced shall be considered for reduction.

B) In **eligible search cases**, in computing the reduced amount of loss or unabsorbed depreciation to be c/f in clause (ii) of sub-rule (1) :-- **125 percent of amount by which loss or unabsorbed depreciation** is reduced shall be considered for reduction.)

PREScribed FORMS

FORM – 1 TO BE FILED BY DECLARANT

Declaration form for the Scheme u/s 4(1) of VSV Act, 2020.



FORM – 2 TO BE FILED BY DECLARANT ALONGWITH FORM - 1

Undertaking for waiving his right to seek /pursue any remedy or claim in relation to the tax arrear under statute or under any agreement of India with any country or territory outside India whether for protection of investment or otherwise.



FORM – 3 TO BE ISSUED BY DA

Certificate determining the amount payable **within 15 days** from the date declaration is received.



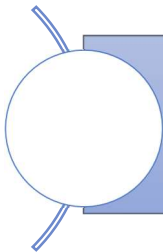
FORM – 4 TO BE FURNISHED BY DECLARANT

Detail of *payments to be made* **within 15 days** from the date of receipt of Form – 3 alongwith *proof of withdrawal of appeal* .

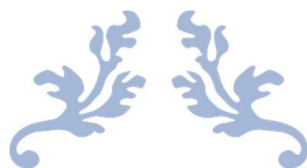


FORM – 5 TO BE PASSED BY DA

NO TIME LIMIT of passing order of the designated authority for **full and final settlement of Tax Arrears**.



PART-B



CBDT RELEVANT FAQs OF VSVS, 2020

Circular No. 7/2020 as superseded by Circular No. 9/2020 dated



Clarifications on provisions of the Direct Tax Vivad se Vishwas Bill, 2020 — reg.

During the Union Budget, 2020 presentation, the 'Vivad se Vishwas' Scheme was announced to provide for dispute resolution in respect of pending income tax litigation. Pursuant to Budget announcement., the Direct Tax Vivad se Vishwas Bill, 2020 (Vivad se Vishwas) was introduced in the Lok Sabha on 5th Feb, 2020. The objective of Vivad se Vishwas is to inter alia—reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to Vivad se Vishwas have been proposed, these amendments seek to widen the scope of Vivad se Vishwas and reduce the compliance burden on taxpayers.

2. After introduction of Vivad se Vishwas in Lok Sabha, several queries have been received from tile stakeholders seeking clarifications in respect of various provisions contained therein. Government has considered these queries and decided to clarify the same in form of answers to frequently asked questions (F.A.Q.s). **These clarifications are, however, subject to approval and passing of Vivad se Vishwas by the Parliament and receiving assent of the Hon'ble President of India.**

“QUESTIONS ON SCOPE/ ELIGIBILITY (Q. No. 1 — 24)”

1. Which appeals are covered under the Vivad se Vishwas?

Appeals pending before the appellate forum [Commissioner (Appeals), Income Tax Appellate Tribunal (ITAT), High Court or Supreme Court, and writ petitions pending before High Court (HQ or Supreme Court (SC) or special leave petitions (Sl.,Ps) pending before SC as on the 31st day of January, 2020 (specified date) are covered. **Cases where the order has been passed but the time limit for filing appeal under the Income-tax Act, 1961 (the Act) against the order has not expired as on the specified date are also covered.** Similarly, cases where objections filed by the assessee against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given the directions but the Assessing Officer (AO) has not yet passed the final order on or before the specified date are also covered. Cases where revision application under section 264 of the Act is pending before the Principal Commissioner or Commissioner are covered as well. Further, where a declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation as referred to in clause 4 of the Bill is also covered.

4. An appeal has been filed against the interest levied on assessed tax; however, there is no dispute against the amount of assessed tax. Can the benefit of the Vivad se Vishwas be availed?

Declarations covering disputed interest (where there is no dispute on tax corresponding to such interest) are eligible under Vivad se Vishwas. It may be clarified that if there is a dispute on tax amount, and a declaration is filed

for the disputed tax, the full amount of interest levied or leviable related to the disputed tax shall be waived.

5. What if the disputed demand including interest has been paid by the appellant while being in appeal?

Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under Vivad se Vishwas, the appellant will be entitled to refund without interest under section 244A of the Act.

6. Can the benefit of the Vivad se Vishwas be availed, if a search and seizure action by the Income-tax Department has been initiated against a taxpayer?

Case where the tax arrears relate to an assessment made under section 143(3) or section 144 or section 153A or section 153C of the Act on the basis of search initiated under section 132 or section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year.

Thus, if there are 7 assessments of an assessee relating to search & seizure, out of which in 4 assessments, disputed tax is five crore rupees or less in each year and in remaining 3 assessments, disputed tax is more than five crore rupees in each year, declaration can be filed for 4 assessments where disputed tax is five crore rupees or less in each year.

7. If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the Vivad se Vishwas with respect to such additions?

If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail Vivad se Vis/mas. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax (including surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).

8. Imagine a case where an appellant desire to settle concealment penalty appeal pending before CIT(A), while continuing to litigate quantum appeal that has travelled to higher appellate forum. Considering these are two independent and different appeals, whether appellant can settle one to exclusion of others? If yes, whether settlement of penalty appeal will have any impact on quantum appeal?

If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form giving details of both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.

9. Is there any necessity that to qualify under the Vivad se Vishwas, the appellant should have tax demand in arrears as on the date of filing declaration?

Vivad se Vishwas can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are Outstanding.

10. Whether 234E and 234F appeals are covered?

If appeal has been filed against imposition of fees under sections 234E or 234F of the Act, the appellant would be eligible to file declaration for disputed fee and amount payable under **Vivad se Vishwas** shall be 25% or 30% of the disputed fee, as the case may be.

If the fee imposed under section 234E or 234F pertains to a year in which there is disputed tax, the settlement of disputed tax will not settle the disputed fee. If assessee wants to settle disputed fee, he will need to settle it separately by paying 25% or 30% of the disputed fee, as the case may be.

11. In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating to assessment made in respect of undisclosed foreign income):

(i) Whether assessee is eligible to the Vivad se Vishwas itself?

(ii) If eligible, whether quantification of disputed tax can exclude/ignore non-qualifying tax arrears?

If the tax arrears include tax on issues that are excluded from the *Vivad se*

Vishwas, such cases are not eligible to file declaration under *Vivad se Vishwas*. There is no provision under ***Vivad se Vishwas*** to settle part of a pending dispute in relation to an appeal or writ or SLP for an assessment year. For one pending appeal, all the issues are required to be settled and if anyone of the issues makes the declaration invalid, no declaration can be filed.

12. If a writ has been filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice, will such case be eligible to file declaration under Vivad se Vishwas?

The assessee would not be eligible for ***Vivad se Vishwas*** as there is no determination of income against the said notice.

13. With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31 Jan 2020? Will such cases be covered under Vivad se Vishwas?

No, such cases are not covered. Waiver applications are not appeal within the meaning of *Vivad se Vishwas*.

14. Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?

Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must

choose to settle all issues and then only he would be eligible to file declaration.

15. Will delay in deposit of TDS/TCS be also covered under *Vivad se Vishwas*?

The disputed tax includes tax related to tax deducted at source (TDS) and tax collection at source (TCS) which are disputed and pending in appeal. However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under *Vivad se Vishwas*.

17. If CIT(Appeals) has given an enhancement notice, can the appellant avail the *Vivad se Vishwas* after including proposed enhanced income in the total assessed income?

The amendment proposed in the *Vivad se Vishwas* allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31st January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.

18. Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalization levy covered?

No. Only disputes relating to income-tax are covered.

19. The assessment order under section 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under Vivad se Vishwas?

The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals

20. In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT (Appeals) on 5th January 2020. Time to file appeal in ITAT against the order of Commissioner (Appeals) is still available but the appeal has not yet been filed. Will such case be eligible to avail the benefit?

Yes, the appellant in this case would also be eligible to avail the benefit of **Vivad se Vishwas**. In this case, the terms of availing *Vivad se Vishwas* in case of disputed penalty /interest/fee are similar to terms in case of disputed tax. Thus, if the time to file appeal has not expired as on specified date, the appellant is eligible to avail benefit of *Vivad se Vishwas*. In this case the appellant should indicate in the declaration form that time limit to file appeal in ITAT has not expired.

21. In a case ITAT has quashed the assessment order based on lack of jurisdiction by the AO. The department has filed an appeal in HC which is pending. Is the assessee eligible to settle this dispute

under Vivad se Vishwas and if yes how disputed tax be calculated as there is no assessment order?

The assessee in this case is eligible to settle the department appeal in HC. The amount payable shall be calculated at half rate of 100%, 110%, 125% or 135%, as the case may be, on the disputed tax that would be restored if the department was to win the appeal in HC.

22. In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas?

No. However, where only notice for initiation of prosecution has been issued with reference to tax arrears, the taxpayer has a choice to compound the offence and opt for ***Vivad se Vishwas***.

23. If the due date of filing appeal is after 31.1.2020 the appeal has not been filed, will such case be eligible for Vivad se Vishwas?

Yes

24. If appeal is filed before High Court and is pending for admission as on 31.1.2020, whether the case is eligible for Vivad se Vishwas?

Yes

25. In a case appeal or arbitration is pending on the specified date, but

a rectification is also pending with the AO which if accepted will reduce the total assessed income. Will the calculation of disputed tax be calculated on rectified total assessed income?

The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.

26. Refer to question number 5. How will disputed tax be calculated in a case where disputed demand including interest has been paid by the assessee while being in appeal?

Please refer to answer to question no. 5. To illustrate, consider a non-search case where an assessee is In appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs. 30,000 and interest under section 234B of Rs.1,000. Assessee has paid this amount of Rs. 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs. 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs. 10,000 and interest on such disputed tax of Rs.6000. Penalty has been initiated separately.

Assessee has paid the demand of Rs. 14,000 during pendency of appeal; however

interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs 10,000 (at 100%) is to be paid on or before 31" March 2020. Since he has already paid Rs. 14,000, he would be

entitled to refund of Rs. 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.

27. Refer to question no 7. How will disputed tax be computed in a case where assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO?

Please refer to answer to question no. 7. To illustrate, return of income was filed by the assessee. The tax on returned income was Rs 10,000 and interest was Rs 1,000. The amount of Rs 11,000 was paid before filing the return. The AO made two additions of Rs 20,000/- and Rs 30,000/-. The tax (including surcharge and cess) on this comes to Rs 6,240/- and Rs 9,360/- and interest comes to Rs.2,500 and Rs.3,500 respectively. Commissioner (Appeals) has confirmed the two additions.

ITAT confirmed the first addition (Rs 20,000/-) and set aside the second addition (Rs 30,000/-) to the file of AO for verification with a specific direction. Assessee appeals against the order of IT AT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The assessee can avail the **Vivad se Vishwas** if declaration covers both the additions. In this case the disputed tax would be the sum of disputed tax on both the additions i.e. Rs. 6240/- plus Rs. 9,360/-.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).

28. What amount of tax is required to be paid, if an assessee wants to avail the benefit of the Vivad se Vishwas?

Under the **Vivad se Vishwas**, declarant is required to make following payment for settling disputes:

A. In appeals / writ / SLP / DRP objections / revision application under section 264 / arbitration filed by the assessee –

(a) In case payment is made till 31st March, 2020-

- (i) 100% of the disputed tax (125% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty levied or leviable), or
- (ii) 25% of the disputed penalty, interest or fee where dispute relates to disputed penalty, interest or fee only.

(b) In case payment is made after 31st March, 2020 –

- (i) 110% of the disputed tax (135% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty), or
- (ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

However, if in an appeal before Commissioner(Appeals) or in objections pending before DRP, there is an issue on which the appellant has got favourable decision from ITAT (not reversed by HC or SC) or from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

Similarly, if in an appeal before ITAT, there is an issue on which the appellant has got favourable decision from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

B. In appeals /writ/SLP filed by the Department –

(a) In case payment is made till 31 “March, 2020-

(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax or

(ii) 12.5% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

(b) In case payment is made after 31“ March, 2020 –

(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or

(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

30. Where assessee settles TDS appeal or withdraws arbitration (against order U/S 201) as deductor of TDS, will credit of such tax be allowed to deductee?

In such cases, the deductee shall be allowed to claim credit of taxes in respect of which the deductor has availed of dispute resolution under **Vivad se Vishwas**. However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply.

31. Where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e. against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section

40(a)(i)/(ia)?

In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) in the year in which the tax was required to be deducted.

To illustrate, let us assume that there are two appeals pending; one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143 (3) of the Act for disallowance under section 40(a)(i)/(ia) of the Act. The disallowance under section 40 is with respect to same issue on which order under section 201 has been issued. If the dispute is settled with respect to order under section 201, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i)/(ia) of the Act, in accordance with the provision of section 40(a)(i)/(ia) of the Act.

In case, in the order under section 143(3) there are other issues as well, and the appellant wants to settle the dispute with respect to order under section 143(3) as well, then the disallowance under section 40(a)(i)/(ia) of the Act relating to the issue on which he has already settled liability under section 201 would be ignored for calculating disputed tax.

If the assessee has challenged the order under section 20 I on merits and has won in the Supreme Court or the order of any appellate authority below Supreme Court on this issue in favour of the assessee has not been challenged by the Department on merit (not because appeal was not filed on account of monetary limit for filing of appeal as per applicable CBDT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 20 I and is part of disputed income as per order under section 143(3) in his case, such disallowance

would be ignored for calculating disputed tax, in accordance with the proviso to section 40(a)(i)/(ia) of the Act.

It is clarified that if the assessee has made payment against the addition representing section 40(a)(i)/(ia) disallowance, the assessee shall not be entitled to interest under section 244A of the Act on amount refundable, if any, under **Vivad se Vishwas**,

It is further clarified that if the assessee wish to settle disallowance under section 40(a)(i)/(ia) in a search case on the basis of settlement of the dispute under section 201, he shall be required to pay higher amount as applicable for search cases for settling dispute in respect of that TDS default under section 201.

32. When assessee settles his own appeal or arbitration under Vivad se Vishwas, will consequential relief be available to the deductor in default from liability determined under TDS order U/S 201?

When an assessee (being a person receiving an income) settles his own appeal or arbitration under **Vivad se Vishwas** and such appeal or arbitration is with reference to assessment of an income which was not subjected to TDS by the payer of such income (deductor in default) and an order under section 201 of the Act has been passed against such deductor in default, then such deductor in default would not be required to pay the corresponding TDS amount. However, he would be required to pay the interest under sub-section (IA) of section 201 of the Act. If such levy of interest under sub-section (IA) of section 201 qualifies for **Vivad se Vishwas**, the deductor in default can settle this dispute at 25% or 30% of the disputed interest, as the case may be, by filing up the relevant schedule of disputed interest.

34. Appeals against assessment order and against penalty order are filed separately on same issue. Hence there are separate appeals for both. In such a case how disputed tax to be calculated?

Please see question no. 8. Further, it is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order **(with penalty appeal automatically covered)**, he is required to give details of both appeals in one declaration form for that year. However, in the annexure he is required to fill only the schedule relating to disputed tax.

35. If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered? Similarly, if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas?

If the substantive addition is eligible to be covered under **Vivad se Vishwas**, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee.

36. In a case ITAT has passed order giving relief on two issues and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department will file appeal or not?

The **Vivad se Vishwas** allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. **Vivad se Vishwas** also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.

37. There is no provision for 50% concession in appeal pending in HC on an issue where the assessee has got relief on that issue from the SC?

If the appellant has got decision in his favour from SC on an issue, there is no dispute now with regard to that issue and he need not settle that issue. If that issue is part of the multiple issues, the disputed tax may be calculated on other issues considering nil tax on this issue.

38. Addition was made u/s 143(3) on two issues whereas appeal filed only for one addition. Whether interest and penalty be waived for both additions.

Under **Vivad se Vishwas**, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest and penalty shall be payable,

39. DRP has issued directions confirming all the proposed additions in the draft order and the AO has passed the order accordingly. The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year. The time limit to file appeal in ITAT is still available. The taxpayer is eligible for Vivad se Vishwas treating the situation as taxpayer's deemed appeal in ITAT. In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?

In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by He or SC) the disputed tax shall be computed at half of normal rate of 100%, 110%, 125% or 135%, as the case maybe.

40. Where there are two appeals filed for an assessment year– one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?

The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year.

For different assessment years separate declarations have to be filed. So, the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

41. How much time shall be available for paying the taxes after filing a declaration under the Vivad se Vishwas?

As per clause 5 of **Vivad se Vishwas**, the DA shall determine the amount payable by the declarant within fifteen days from the date of receipt of the declaration and grant a certificate to the declarant containing particulars of the tax-arrear and the amount payable after such determination. The declarant shall pay the amount so determined within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form.

Thereafter, the DA shall pass an order stating that the declarant has paid the amount. It may be clarified that 15 days is outer limit. The DAs shall be instructed to grant a certificate at an early date enabling the appellant to pay the amount on or before 31st March, 2020 so that he can take benefit of reduced payment to settle the dispute.

42. If taxes are paid after availing the benefits of the Vivad se Vishwas and later the taxpayer decides to take refund of these taxes paid, would it be possible?

No, Any amount paid in pursuance of a declaration made under the **Vivad se Vishwas** shall not be refundable under any circumstances.

43. Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the Vivad se Vishwas by DA at the stage of determination of amount payable under

section 5(1) or, amount determined by DA is at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payable, then whether the appeals are automatically reinstated or a separate application needs to be filed for reinstating the appeal before the appellate authorities

Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA under clause 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellant forum and submit proof of withdrawal with intimation of payment to the DA as per the same clause. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed.

Similarly, in case of arbitration, conciliation or mediation, proof of withdrawal of arbitration/conciliation/mediation is to be enclosed along with intimation of payment to the DA.

44. Clause 5(2) requires declarant to pay amount determined by DA within 15 days of receipt of certificate from DA. Clarification is required on whether declarant is to also intimate DA about fact of having made payment pursuant to declaration within the period of 15 days?

As per clause 5(2), the declarant shall pay the amount determined under clause 5(1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form and thereupon the DA shall pass an order stating that the declarant has paid the amount.

45. Will DA also pass order granting expressly, immunity from levy of interest and penalty by the AO as well as immunity from prosecution?

As per clause 6, subject to the provisions of clause 5, the DA 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 arrears. This shall be reiterated in the order under section 5(2) passed by DA.

46. Whether DA can amend his order to rectify any patent errors?

Yes, the DA shall be able to amend his order under clause 5 to rectify any apparent errors.

47. Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before ITAT, High Court or Supreme Court?

No. As per clause 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

49. Once declaration is filed under Vivad se Vishwas, and for financial difficulties, payment is not made accordingly, will the declaration be null and void?

Yes, it would be void.

50. Where the demand in case of an assessee has been reduced partly or fully by giving appeal effect to the order of appellate forum, how would the amount payable under Vivad se Vishwas be adjusted?

In such cases, after getting the proof of payment of the amount payable under **Vivad se Vishwas**, the AO shall pass order under the relevant provisions of **Vivad se Vishwas** to create demand in case of assessee against which the amount payable shall be adjusted.}

51. Will there be immunity from prosecution?

Yes, clause 6 provides for immunity from prosecution to a declarant in relation to a tax arrears for which declaration is filed under **Vivad se Vishwas** and in whose case an order is passed by the DA that the amount payable under **Vivad se Vishwas** has been paid by the declarant.

52. Will the result of this Vivad se Vishwas be applied to same issues pending before AO?

No, only the issues covered in the declaration are settled in the dispute without any prejudice to same issues pending in other cases. It has been clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

53. If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?

As per the amendment proposed in **Vivad se Vishwas**, in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and carry forward the MAT credit or loss or depreciation or (ii) to carry forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases.

55. The appellant has settled the dispute under Vivad se Vishwas in an assessment year. Whether it is open for Revenue to take a stand that the additions have been accepted by the appellant and hence he cannot dispute it in future assessment years?

Please refer answer to question no 52. It has been clarified in Explanation to clause 5 that making a declaration under **Vivad se Vishwas** shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.