

CA DEV KUMARKOTHARI
B.Com, ACS, Grad.CMA, FCA

ca.devkumarkothari@gmail.com

CA UMA KOTHARI
BA (H), ACS, ACMA, ACA
IBC PROFESSIONAL
caumakothari@gmail.com

Note:

For easy analysis and briefing of important catchwords are highlighted in tables. In left column provisions are reproduced and in right column observations and remarks are given.

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Statutory Provisions

Direct Tax Vivad se Vishwas Act, 2020

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 17th March, 2020/Phalguna 27, 1941 (Saka)

The following Act of Parliament received the assent of the President on the 17th March, 2020, and is hereby published for general information:-

THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

NO. 3 OF 2020

[17th March, 2020.]

An Act to provide for resolution of disputed tax and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:-

<i>From the Act with highlights added for easy analysis, key words etc.</i>	<i>Observations and Remarks by CA Dev Kumar Kothari</i>
Short title. 1. This Act may be called the Direct Tax Vivad se Vishwas Act, 2020.	Only Income Tax is covered. This is really for Nizat from vivad. So name could be Income Tax Vivad se Nizat to reflect true nature.
Definitions. 2. (1) In this Act, unless the context otherwise requires,-	Though contextual clause is used, however, most of words have been given definitive meanings and language used is

	peremptory.
'(a) "appellant" means-	
(i) a person in whose case an appeal or a writ petition or special leave petition 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 the specified date ;	Pending references u/s 256 are not covered. In many cases references were dismissed due to administrative reasons. On revision/ appeal reference can be revived. Such cases are also not covered.
(ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition , on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date ;	Order of AO, CIT(A), ITAT, High Court in a WP are covered. Order on appeal and opinion on reference by High Court is not covered here, this can be a reason of dispute. AAR is not considered appellate forum so no declaration will lie.
(iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 (43 of 1961) and the Dispute Resolution Panel has not issued any direction on or before the specified date;	Pending before DRP
(iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;	On directions of DRP no order passed by AO
(v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date;"	Revision application of Assessee is pending
(b) "appellate forum" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);	CIT(A) to SC covered However, only WP is covered u.s. 2(a) (ii). Appeal u.s. 260A or reference u.s. 256 are not covered there.
(c) "declarant" means a person who files declaration under section 4;	
(d) "declaration" means the declaration filed under section 4;	
(e) "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 this Act ;	See various notifications in this regard for jurisdiction. In case of e-filing this will be available in my account.
(f) "disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 (43 of 1961) in respect of which appeal has been filed by the appellant ;	
(g) "disputed income" , in relation to an assessment year, means the whole or so much of the total income as is	Disputed income to be worked

relatable to the disputed tax;	out with disputed amount of tax for any assessment year.
<p>(h) “disputed interest” means the interest determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961), where-</p> <p>(i) such interest is not charged or chargeable on disputed tax;</p> <p>(ii) an appeal has been filed by the appellant in respect of such interest;</p>	Use of words highlighted will cause difficulty in calculations as per department and as per assessee and can pose difficulty in reconciliation. Figures can be sought from concerned authority.
<p>(i) “disputed penalty” means the penalty determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961), where-</p> <p>(i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;</p> <p>(ii) an appeal has been filed by the appellant in respect of such penalty;</p>	Do
(j) “disputed tax”, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961 (43 of 1961), as computed hereunder:-	
(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;	Reference pending before High Court and / or the Supreme Court are not covered.
(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date , the amount of tax payable by the appellant after giving effect to the order so passed;	
(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;	Case of time available for revision u.s. 264 is not covered here.
(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;	
(E) in a case where Dispute Resolution Panel has issued	

any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;	
(F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:	Cases where time is available for filing revision is not covered.
Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date , the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:	
Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder , the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax , or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.	
(k) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);	
(l) "last date" means such date as may be notified by the Central Government in the Official Gazette;	31.12.2020 and 31.03.2021 are last dates for filing declaration, and payment of tax respectively as per not. Dt.27.10.20.
(m) "prescribed" means prescribed by rules made under this Act;	
(n) "specified date" means the 31st day of January, 2020;	
(o) " 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	Highlighted phrases will cause difficulties.
(ii) disputed interest; or	
(iii) disputed penalty; or	
(iv) disputed fee,	
as determined under the provisions of the Income-tax Act.	Such determination should be by a tax authority say the AO
(2) The words and expressions used herein and not defined but defined in the Income-tax Act shall have the	Other words as per IT Act.

meanings respectively assigned to them in that Act.	

Amount payable by declarant.

<p>3. Subject to the provisions of this Act, where a declarant files ¹[under the provisions of this Act on or before such date as may be notified], a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:-</p>	
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Sl. No.	Nature of tax arrear.	Amount payable under this Act on or before the ² [31st day of December, 2020 or such later date as may be notified].	Amount payable under this Act on or after the ³ [1st day of January, 2021 or such later date as may be notified] but on or before the last date.
(aa)	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 the disputed tax.	the aggregate of the amount of disputed tax and ten per cent. of disputed tax: provided that where the ten 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 .
(bb)	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.	the aggregate of the amount of disputed tax and twenty-five per cent. of the disputed tax: provided that where the twenty-five 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.	the aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax: provided that where the thirty five 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.

(cc)	where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	twenty-five per cent. of disputed interest or disputed penalty or disputed fee.	thirty per cent. of disputed interest or disputed penalty or disputed fee:
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<p>Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:</p>	<p>In case of departmental appeal – 50Pc of amount payable in case of appeal of assessee. Here again we find that reference u/s 256 are not mentioned.</p>
<p>Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel 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 amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:</p>	<p><i>Issues pending before CIT(A) and DRP on which assessee had won case by ITAT or HC and that has not been reversed , - 50 per cent of amount will be payable .</i> {This is irrespective of pending appeal of revenue before HC or SC)</p>
<p>Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal 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), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.</p>	<p>Appeal of assessee is pending in ITAT but on the same issue High Court has decided favourably and that is not reversed, then 50% of sum payable other wise.</p> <p>HC judgment can, on the same issue, be in case of any other assessee also because that will be binding as law laid down. This aspect need to be clarified and covered</p>

NOTES:-

1. Substituted vide [THE TAXATION AND OTHER LAWS \(RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS\) ACT, 2020 dated 29-09-2020](#) before it was read as "under the provisions of this Act on or before the last date"

2. Substituted vide [THE TAXATION AND OTHER LAWS \(RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS\) ACT, 2020 dated 29-09-2020](#) before it was read as "31st day of March, 2020"

3. Substituted vide [THE TAXATION AND OTHER LAWS \(RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS\) ACT, 2020 dated 29-09-2020](#) before it was read as "1st day of April, 2020"

Filing of declaration and particulars to be furnished.	
4. (1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.	See Rule 3 of the Vivad se Viswas Rules 2020 (VSV Rules) Form 1 is for declaration.
(2) Upon the filing the declaration, any 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 from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.	Withdrawal of appeal is deemed on issue of certificate. In other words it can be said to be as a consequence.
(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.	This process is really not required. As discussed in earlier para – sub-section (3), on issue of certificate appeal stand withdrawn as a consequence. Information in this regard to the concerned appellate forum could have served purpose. I think, this can be amended by way of removal of difficulties in implementation of

	the Act.
(4) Where the declarant has initiated 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, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.	DO
(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), 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.	Form 2 vide Rule 3 of VSV Rules 2020.
<p>(6) The declaration under sub-section (1) shall be presumed never to have been made if,-</p> <p>(a) any material particular furnished in the declaration is found to be false at any stage;</p> <p>(b) the declarant violates any of the conditions referred to in this Act;</p> <p>(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),</p>	<p>In validation of declaration and certificate –</p> <p>The scope seems to be unduly wide and is not in tune with Vivad se Viswas or even Nizat.</p> <p>This can create lot of litigation due to doubts, surmises and conjecture of tax authorities due to which most of vivad arises.</p>
and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived	
(7) 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 under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.	
Time and manner of payment.	
5. (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant	Form 3 of VSV Rules. What if certificate is not issued within 15 days?

containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.	
(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.	Now after amendment within 31.03.2021
(3) Every order passed under sub-section (1), determining the amount payable under this Act, 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 or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.	
<i>Explanation.</i> -For the removal of doubts, it is hereby 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 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 issue by settling the dispute.	No conceding on issue by declarant. Not binding in other proceedings.
Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases.	
6. Subject to the provisions of section 5, 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.	Immunities
No refund of amount paid.	
7. Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances. <i>Explanation.</i> -For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under sub-section (1) of section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 3, 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.	No refund of any amount paid as per declaration. Refund of excess amount paid beforehand but without interest.
No benefit, concession or immunity to declarant.	
8. Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, 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.	Scope of benefits on any declaration is restricted to only matters covered under declaration.

Act not to apply in certain cases.	
9. The provisions of this Act shall not apply-	
(a) in respect of tax arrear, -	
(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees;	Search cases involving disputed tax exceeding Rs. five crore in any assessment year cannot be settled. If in one year less than 5 cr. It can be settled and in another where it exceeds Rs.5 Cr cannot be
(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;	Prosecution launched for any assessment year – not eligible for that year. It must be only for issues involved in prosecution and not on others.
(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;	Income/ assets located out of India – dispute cannot be settled.
(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;	Not allowed if assessment or reassessment is based on information received under DTAA and agreement between specified association.
(b) to any 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 (52 of 1974.) on or before the filing of declaration:	Detention under COFEPOSA- person cannot declare. Unless detention has been revoked before declaration in some cases.
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 sub-section (6) of section 12A, of the said Act; or	
(iv) such order of detention has not been set aside by a court of competent jurisdiction	
(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Prevention of Corruption Act, 1988 (49 of 1988), the Prevention of Money Laundering Act, 2002 (15 of 2003), the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) 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;	If prosecution has been instituted under specified enactments, the person cannot make a declaration.
(d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code (45 of 1860) 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	Persons against whom specified prosecutions has been instituted or a person who has been convicted cannot make declaration.
(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992) on or before the filing of declaration.	Notified persons under specified Act.
Power of Board to issue directions, etc.	
10. (1) The Central Board of Direct Taxes may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit: Provided that no direction or order shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.	CBDT – directions , clarifications , procedures etc.
(2) Without prejudice to the generality of the foregoing power, the said Board may, if it considers necessary or expedient so to do, for the purpose of this Act, including collection of revenue, issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines , principles or procedures to be followed by the authorities in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that it is	

necessary in the public interest so to do.	
Power to remove difficulties.	
11. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:	Removal of specified type of difficulties by the C.G.
Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.	Limitation for removal order.
(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.	
Power to make rules.	
12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.	Rules and forms
(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-	
(a) the form in which a declaration may be made, and the manner of its verification under section 4;	
(b) the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;	
(c) the form in which certificate shall be granted under sub-section (1) of section 5;	
(d) the form in which payment shall be intimated under sub-section (2) of section 5;	
(e) determination of disputed tax including the manner of set-off in respect of brought forward or carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act;	
(f) the manner of calculating the amount payable under this Act	
(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.	
(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session , for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	

AMENDMENTS:

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

Chapter I PRELIMINARY

Definitions

2. (1) In this Act, unless the context otherwise requires,-

(b) "specified Act" means-

XX

(viii) the Direct Tax **Vivad** se Vishwas Act, 2020 (3 of 2020).

Relaxation of certain provisions of specified Act

3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as-

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or

CHAPTER IV

AMENDMENTS TO THE DIRECT TAX **VIVAD** SE VISHWAS ACT

Amendment of section 3 of Act 3 of 2020.

5. In section 3 of the Direct Tax **Vivad** Se Vishwas Act, 2020,-

(a) in the opening portion, for the words, "under the provisions of this Act on or before the last date" the words "under the provisions of this Act **on or before**

such date as may be notified" shall be substituted and shall be deemed to have been substituted;

(b) in the Table,-

(i) in third column, in the heading, for the figures, letters and words "31st day of March, 2020", the figures, letters and words "31st day of December, 2020 or such later date as may be notified" shall be substituted and shall be deemed to have been substituted;

(ii) in fourth column, in the heading, for the figures, letters and words "1st day of April, 2020", the figures, letters and words "1st day of January, 2021 or such later date as may be notified" shall be substituted and shall be deemed to have been substituted;

CA DEV KUMARKOTHARI
B.Com, ACS, Grad.CMA, FCA

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MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION NO. 18/2020

New Delhi, the 18th March, 2020

The Direct Tax Vivad Se Vishwas Rules, 2020

S.O. 1129(E).-In exercise of the powers conferred by [sub-section \(2\) of section 12](#) read with [sub-sections \(1\) and \(5\) of section 4](#) and [sub-sections \(1\) and \(2\) of section 5](#) of the

[Direct Tax Vivad se Vishwas Act, 2020 \(3 of 2020\)](#), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.-

- (1) These rules may be called the Direct Tax Vivad se Vishwas Rules, 2020.
- (2) They shall come into force on the date of their notification in the Official Gazette.

From Rules	Remarks and observations
2. Definitions. -In these rules, unless the context otherwise requires, -	
(a) “Act” means the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020) ;	
(b) “dispute” means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act , or application filed under section 264 of the Income-tax Act ;	Appeals filed or to be filed (for which time is available on specified date). WP only filed cases and to be filed is not covered.
(c) “eligible search cases” means cases in which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act and the amount of disputed tax does not exceeds five crore rupees;	Search cases- tax not exceeding Rs.5 crore.
(d) “Form” means the Forms appended to these rules;	Forms 1- 5
(e) “issues covered in favour of the declarant” means issues in respect of which	
(i) an appeal or writ or special leave petition is filed or appeal or special leave petition is to be filed by the income-tax authority before the appellate forum or	
(ii) an appeal is filed or to be filed before the Commissioner (Appeals) or objections is filed or to be filed before the Dispute Resolution Panel by the declarant, on which he has already got a decision in his favour from 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), or	
(iii) an appeal is filed or to be filed by the declarant before Income Tax Appellate Tribunal 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);	
(f) “section” means section of the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020) ;	

(g) the words and expressions used in these rules and not defined but defined in the Act or Income-tax Act, 1961 shall have the same meanings respectively as assigned to them in those Acts.	
<p>3. Form of declaration and undertaking.-</p> <p>(1) The declaration under sub-section (1) of section 4 shall be made in Form-1 to the designated authority.</p> <p>(2) The undertaking referred to in sub-section (5) of section 4 shall be furnished in Form-2 along with the declaration.</p> <p>(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.</p> <p>(4) The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgement thereof.</p>	<p>Form 1 – declaration</p> <p>Form 2 – Undertaking</p> <p>Signature and verification</p> <p>Acknowledgment</p>
<p>4. Form of certificate by designated authority.- The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in Form-3.</p>	Form 3 – certificate
<p>5. Intimation of payment.- The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in Form-4.</p>	Form 4 – intimation of payment.
<p>6. Manner of furnishing.- The Form-1 and Form-2 referred to in rule 3 and Form-4 referred to in rule 5 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.</p> <p>Explanation. – For the purpose of this rule, “electronic verification code” shall have the same meaning as referred to in rule 12 of the Income-tax Rules, 1962.</p>	Electronically under digital signature (if ITR is compulsory by this method) otherwise through EVC
<p>7. Order by designated authority.-The order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in Form-5.</p>	Form 5 - order
<p>8. Laying down of procedure, formats and standards.-The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration in Form-1 under sub-rule (1) of rule 3, furnishing and verifying the undertaking in Form-2 under sub-rule (2) of rule 3, granting of certificate in Form-3 under rule 4, intimation of payment and proof of withdrawal in Form-4 under rule 5 and issuance of order in Form-5 under rule 7 and the Principal Director General of Income-</p>	Pr.DGI (Systems) or DGI (System) shall provide about procedures, formats and standard.

tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.	
9. Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced.- (1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to –	Beneficial in cases where loss is likely to lapse and there is no expectation in near future to absorb. This can also be used as a means of financing declaration.
(i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or	
(ii) carry forward the reduced amount of loss or unabsorbed depreciation	
(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:	
Provided that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation:	
Provided further that in cases other than the eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:	
Provided also that in case of eligible search cases , in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction and where the one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced exceeds the amount of loss to be carried forward before it's reduction, such excess shall be ignored:	
Provided also that in case of eligible search cases in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.	

10. Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced. -(1) Where the dispute in relation to an assessment year relates to reduction in Minimum Alternate Tax (MAT) credit to be carried forward, the declarant shall have an option to	Beneficial in cases where MAT credit is likely to lapse and also as a measure to finance declaration.
(i) include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or	
(ii) carry forward the reduced MAT credit.	
(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years:	
Provided that in cases other than the eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:	
Provided further that in case of eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which MAT credit is reduced shall be considered for reduction and where the one and one-fourth times the amount by which MAT credit is reduced exceeds the amount of MAT credit to be carried forward before it's reduction, such excess shall be ignored:	
Provided also that in case of eligible search cases in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.	
Explanation – For the purpose of this rule MAT credit means tax credit as per the provisions of section 115JAA or 115JD of the Income-tax Act .	
11. Manner of computing disputed tax in certain cases – (1) Where the dispute includes issues covered in favour of declarant , the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.	

CA DEV KUMARKOTHARI
B.Com, ACS, Grad.CMA, FCA

ca.devkumarkothari@gmail.com

CA UMA KOTHARI
BA (H), ACS, ACMA, ACA
IBC PROFESSIONAL

caumakothari@gmail.com

Note:

For easy analysis and briefing of important catchwords are highlighted by underlining and colours

Circular - Income Tax

IT(A)/1/2020-TPL

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 27th April, 2020

CORRIGENDA TO CIRCULAR NO. 9 OF 2020 DATED 22.04.2020

In the [Circular No. 9/2020 of the Government of India, Ministry of Finance, Department of Revenue \(Central Board of Direct taxes\), issued on the 22nd April, 2020](#), -

- (i) in the answer to question number 1, for the word "Bill" read the word "Act"; and
- (ii) in the answer to question numbers 26, 28, 29 and 41 for the figures, letters and word "31st March, 2020", wherever they occur, read the figures, letters and word "30th June, 2020".

[Ankur Goyal]

Under Secretary to the Govt. of India

Circular - Income Tax

Circular No. 9/2020

F. No. IT(A)/1/2020-TPL

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

Dated: 22nd April, 2020

Sub.: Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 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 \(the Bill\)](#) was introduced in the Lok Sabha on 5th Feb, 2020. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to **the Bill** were proposed. These amendments sought to widen the scope of the bill and reduce the compliance burden on taxpayers.

2. After introduction of the bill in Lok Sabha, several queries were received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government had considered these queries and had decided to clarify the same in form of answers to frequently asked questions (FAQs) vide [circular no 7 of 2020 dated 4th March 2020](#). These clarifications were, however, subject to approval and passing of the bill by the Parliament and receiving assent of the Hon'ble President of India.

3. The Bill has since been passed by the Parliament and has also received the assent of the Hon'ble President of India and has now been enacted as The [Direct Tax Vivad Se Vishwas Act, 2020](#) (**Vivad se Vishwas**). 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.

4. 55 questions contained in [circular no 7 of 2020](#) are reissued under this circular with following modifications

(i) **Vivad se Vishwas** referred to Direct Tax Vivad se Vishwas Bill, 2020 in [circular no 7](#). However, in this circular it refers to The [Direct Tax Vivad Se Vishwas Act, 2020](#);

(ii) Since clauses of the Bill have now become sections in the **Vivad Se Vishwas**, the reference to "clause" in [circular no 7](#) has been replaced with "section";

(iii) Reference to declaration form in [circular no 7](#) has been replaced with referencing of relevant form, since rules and forms have now been notified; and

(iv) Answer to question no 22 has been modified to reflect the correct intent of the law. It has now been clarified that where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under **Vivad se Vishwas**. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under **Vivad se Vishwas**, unless the prosecution is compounded before filing the declaration.

5. Section 10 and 11 of the **Vivad se Vishwas** empowers the Board or the Central Government to issue directions or orders in public interest or to remove difficulties. This circular is such direction/order issued under section 10 and section 11 of the **Vivad se Vishwas**. Thus answers to some of the questions in this circular extend the application of **Vivad se Vishwas** in public interest or to remove difficulties, under section 10 and section 11 of **Vivad se Vishwas**.

"QUESTIONS ON SCOPE/ ELIGIBILITY (Q. No. 1- 24)"

<p>Question No.</p> <p>Answer:</p>	<p>1.</p>	<p>Which appeals are covered under the <i>Vivad se Vishwas</i> ?</p> <p>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 (HC) or Supreme Court (SC) or special leave petitions (SLPs) 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 section 4 of the Bill is also covered.</p>
<p>Question No.</p> <p>Answer:</p>	<p>2</p>	<p><i>If there is no appeal pending but the case is pending in arbitration, will the taxpayer be eligible to apply under Vivad se Vishwas? If yes what will be the disputed tax?</i></p> <p>An assessee whose case is pending in arbitration is eligible to apply for settlement under <i>Vivad se Vishwas</i> even if no appeal is pending. In such case assessee should fill the relevant details applicable in his case in the declaration form. The disputed tax in this case would be the tax (including surcharge and cess) on the disputed income with reference to which the arbitration has been filed.</p>
<p>Question No.</p> <p>Answer:</p>	<p>3</p>	<p><i>Whether Vivad se Vishwas can be availed for proceedings pending before Authority of Advance Ruling (AAR)? If a writ is pending against order passed by AAR in a HC will that case be covered and how disputed tax to be calculated?</i></p> <p>Vivad se Vishwas is not available for disputes pending before AAR. However, if the order passed by AAR has determined the total income of an assessment year and writ against such order is pending in HC, the appellant would be eligible to apply for the Vivad se Vishwas. The disputed tax in that case shall be calculated as per the order of the AAR and accordingly, wherever required, consequential order shall be passed by the AO. However, if the order of AAR has not determined the total income, it would not be possible to calculate disputed tax and hence such cases would not be covered. To illustrate, if AAR has given a ruling that there exists Permanent Establishment (PE) in India but the AO has not yet determined the amount to be attributed to such PE, such cases cannot be covered since total income has not yet been determined.</p>

<p>Question No.</p> <p>Answer:</p>	4	<p><i>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?</i></p> <p>Declaration 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.</p>
<p>Question No.</p> <p>Answer:</p>	5	<p><i>What if the disputed demand including interest has been paid by the appellant while being in appeal?</i></p> <p>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.</p>
<p>Question No.</p> <p>Answer:</p>	6	<p><i>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?</i></p> <p>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.</p> <p>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.</p>
<p>Question No.</p> <p>Answer:</p>	7	<p><i>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?</i></p> <p>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 Vishwas. 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</p>

		<p>aside by the appellate authority was to be repeated by the AO.</p> <p>In such cases while filling the declaration in Form No 1, the declarant can indicate in the appropriate schedule that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).</p>
<p>Question No.</p> <p>Answer:</p>	8	<p><i>Imagine a case where an appellant desires 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?</i></p> <p>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 covering 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.</p>
<p>Question No.</p> <p>Answer:</p>	9	<p><i>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?</i></p> <p><i>Vivad se Vishwas</i> can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are outstanding.</p>
<p>Question No.</p> <p>Answer:</p>	10	<p><i>Whether 234E and 234F appeals are covered?</i></p> <p>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 <i>Vivad se Vishwas</i> shall be 25% or 30% of the disputed fee, as the case may be.</p> <p>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.</p>
<p>Question No.</p>	11.	<p><i>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></p> <p><i>(i) Whether assessee is eligible to the Vivad se Vishwas itself?</i></p> <p><i>(ii) If eligible, whether quantification of disputed tax</i></p>

Answer:		<p>can exclude/ignore non-qualifying tax arrears?</p> <p>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 any one of the issues makes the declaration invalid, no declaration can be filed.</p>
Question No. Answer:	12.	<p>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?</p> <p>The assessee would not be eligible for Vivad se Vishwas as there is no determination of income against the said notice.</p>
Question No. Answer:	13.	<p>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?</p> <p>No, such cases are not covered. Waiver applications are not appeal within the meaning of Vivad se Vishwas.</p>
Question No. Answer:	14.	<p>Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?</p> <p>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 chose to settle all issues and then only he would be eligible to file declaration.</p>
Question No. Answer:	15.	<p>Will delay in deposit of TDS/TCS be also covered under Vivad se Vish was?</p> <p>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.</p>
Question No. Answer	16.	<p>Are cases pending before DRP covered? What if the assessee has not filed objections with DRP and the AO has not yet passed the final order?</p> <p>Yes, a person who has filed his objections before the DRP under section 144C of the Act and the DRP has not issued any direction on or before the specified date as well as a person in whose case</p>

r:		<p>the DRP has issued directions but the AO has not passed the final assessment order on or before the specified date, is eligible under <i>Vivad se Vishwas</i>.</p> <p>It is further clarified that there could be a situation where the AO has passed a draft assessment order before the specified date. Assessee decides not to file objection with the DRP and is waiting for final order to be passed by the AO against which he can file appeal with Commissioner (Appeals). In this situation even if the final assessment order is not passed on or before the specified date, the assessee would be considered as the appellant and would be eligible to settle his dispute under <i>Vivad se Vishwas</i>. Disputed tax in such case would be computed based on the draft order. In the declaration in Form No 1, the declarant in this situation should indicate in the appropriate schedule that time to file objection with DRP has not expired.</p>
Question No.	17.	<p><i>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?</i></p> <p>The amendment proposed in the <i>Vivad se Vishwas</i> 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.</p>
Question No.	18.	<p><i>Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?</i></p> <p>No. Only disputes relating to income-tax are covered.</p>
Question No.	19.	<p><i>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?</i></p> <p>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 in Form No 1. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.</p>
Question No.	20.	<p><i>In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed of by CIT (Appeals) on 1st January 2020. Time to file appeal in ITAT against the order of Commissioner (Appeals) is still available</i></p>

Answer:		<p>but the appeal has not yet been filed. Will such case be eligible to avail the benefit?</p> <p>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 ease 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 declarant should indicate in the declaration Form No 1, <i>in the appropriate schedule, that time limit to file appeal in ITAT has not expired.</i></p>
Question No. Answer:	21	<p>In a case ITAT has <i>quashed the assessment order</i> based on lack of jurisdiction by the AO. The department has filed an <i>appeal in HC which is pending</i>. 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?</p> <p>The assessee in this case is <i>eligible to settle the department appeal in HC</i>. The amount payable shall be calculated <i>at half rate of 100%, 110%, 125% or 135%, as the case may be</i>, on the disputed tax that would be restored <i>if the department was to win the appeal in HC</i></p>
Question No. Answer:	22	<p>In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas? Further, where the prosecution has not been instituted but the notice has been issued, whether the assessee is eligible for Vivad se Vishwas?</p> <p><i>Where only notice</i> for initiation of prosecution has been issued without prosecution being instituted, the assessee <i>is eligible</i> to file declaration under Vivad se Vishwas. However, where the prosecution has been <i>instituted with respect to an assessment year, the assessee is not eligible</i> to file declaration for that assessment year under Vivad se Vishwas, <i>unless the prosecution is compounded before filing the declaration.</i></p>
Question No. Answer:	23	<p>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?</p> <p>Yes</p>
Question No. Answer:	24	<p>If appeal is filed before High Court and is <i>pending for admission</i> as on 31.1.2020, whether the case is eligible for Vivad se Vishwas?</p> <p>Yes</p>
“QUESTIONS RELATED TO CALCULATION (Q. No. 25- 40)”		

Question No.	25	<p>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?</p> <p>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.</p>
Question No.	26.	<p><i>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?</i></p> <p>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 ₹ 30,000 and interest under section 234B of ₹ 1,000. Assessee has paid this amount of ₹ 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of ₹ 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of ₹ 10,000 and interest on such disputed tax of ₹ 6000. Penalty has been initiated separately. Assessee has paid the demand of ₹ 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 ₹ 10,000 (at 100%) is to be paid on or before 31st March 2020. Since he has already paid ₹ 14,000, he would be entitled to refund of ₹ 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.</p>
Question No.	27.	<p><i>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?</i></p> <p>Please refer to answer to question no. 7. To illustrate, return of income was filed by the assessee. The tax on returned income was ₹ 10,000 and interest was ₹ 1,000. The amount of ₹ 11,000 was paid before filing the return. The AO made two additions of ₹ 20,000/- and ₹ 30,000/-. The tax (including surcharge and cess) on this comes to ₹ 6,240/- and ₹ 9,360/- and interest comes to ₹ 2,500 and ₹ 3,500 respectively. Commissioner (Appeals) has confirmed the two additions. ITAT confirmed the first addition (₹ 20,000/-) and set aside the second addition (₹ 30,000/-) to the file of AO for verification with a specific direction. Assessee appeals against the order of ITAT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The</p>

		<p>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. ₹ 6240/-plus ₹ 9,360/-.</p> <p>In such cases while filling the declaration in Form No 1, the declarant can indicate in the appropriate schedule that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).</p>
<p>Question No.</p> <p>Answer:</p>	<p>28.</p>	<p><i>What amount of tax is required to be paid, if an assessee wants to avail the benefit of the Vivad se Vishwas?</i></p> <p>Under the Vivad se Vishwas, declarant is required to make following payment for settling disputes:</p> <p>A. In appeals / writ / SLP / DRP objections / revision application under section 264 / arbitration filed by the assessee –</p> <p>(a) in case payment is made till 31st March, 2020-</p> <p>(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</p> <p>(ii) 25% of the disputed penalty, interest or fee where dispute relates to disputed penalty, interest or fee only.</p> <p>(b) In case payment is made after 31st March, 2020 -</p> <p>(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</p> <p>(ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.</p> <p>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.</p> <p>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.</p> <p>B. In appeals /writ / SLP filed by the Department -</p> <p>(a) In case payment is made till 31st March, 2020-</p> <p>(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax or</p> <p>(ii) 12.5% of the disputed penalty, interest or fee in case of</p>

		<p>dispute related to disputed penalty, interest or fee only.</p> <p>(b) In case payment is made after 31st March, 2020 –</p> <p>(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or</p> <p>(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.</p>
<p>Question No.</p> <p>Answer:</p>	29.	<p><i>Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under Vivad se Vishwas?</i></p> <p>The amount payable by the declarant under <i>Vivad se Vishwas</i> shall be determined by the DA under section 5. Credit for taxes paid against the disputed tax before filing declaration shall be available to the declarant. Please refer to example at question no. 26 above. If in that example <u>against disputed tax of ₹ 10,000 an amount of Rs. 8,000/- has already been paid</u>, the appellant would be required to pay only the remaining ₹ 2,000/- by 31st March 2020.</p>
<p>Question No.</p> <p>Answer:</p>	30.	<p><i>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?</i></p> <p>Answer: 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 <i>Vivad se Vishwas</i>. 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.</p>
<p>Question No.</p> <p>Answer:</p>	31.	<p><i>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)?</i></p> <p>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.</p> <p>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.</p>

		<p>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.</p> <p>If the assessee has challenged the order under section 201 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 CI3DT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 201 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.</p> <p>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.</p>
<p>Question No.</p> <p>Answer:</p>	32.	<p><i>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?</i></p> <p>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 (1A) of section 201 of the Act. If such levy of interest under sub-section (1A) 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.</p>
<p>Question No.</p> <p>Answer:</p>	33.	<p><i>Where DRP order passed on or after 1st July, 2012 and before 1st June, 2016 have given relief to assessee and Department has filed appeal, how assessed tax to be calculated?</i></p> <p>If department appeal is required to be settled, then against that appeal, the appellant is required to pay only 50% of the amount that is otherwise payable if it was his appeal.</p>
<p>Question No.</p>	34.	<p><i>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</i></p>

Answer:		<p>calculated?</p> <p>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 indicate both appeals in one declaration form (Form No 1) for that year.</p>
Question No.	35.	<p><i>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?</i></p> <p>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.</p>
Question No.	36.	<p><i>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?</i></p> <p>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.</p>
Question No.	37.	<p><i>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?</i></p> <p>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.</p>

Question No. Answer:	38.	<p>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.</p> <p>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.</p>
Question No. Answer:	39.	<p>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 ITC 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%?</p> <p>In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by HC or SC) the disputed tax shall be computed at half of normal rate of 100%, 110%, 125% or 135%, as the case may be.</p>
Question No. Answer:	40.	<p>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?</p> <p>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 declarant needs to specify in the declaration Form No 1, 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.</p>
"QUESTIONS RELATED TO PROCEDURE (Q. No. 41- 50)"		
Question No. Answer:	41.	<p>How much time shall be available for paying the taxes after filing a declaration under the Vivad se Vishwas?</p> <p>As per section 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</p>

		<p>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.</p>
<p>Question No.</p> <p>Answer:</p>	42.	<p>If <i>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?</i></p> <p>No. Any amount paid in pursuance of a declaration made under the Vivad se Vishwas shall not be refundable under any circumstances.</p>
<p>Question No.</p> <p>Answer:</p>	43.	<p>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</p> <p>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 section 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellate forum and submit proof of withdrawal with intimation of payment to the DA as per the same section. Where asscssee 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.</p>
<p>Question No.</p> <p>Answer:</p>	44.	<p>Section 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?</p> <p>As per section 5(2), the declarant shall pay the amount determined under section 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.</p>
<p>Question No.</p>	45.	<p>Will DA also pass order granting expressly, immunity from levy of interest and penalty by the AO as well as immunity</p>

Answer:		<p>from prosecution?</p> <p>As per section 6, subject to the provisions of section 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.</p>
Question No. Answer:	46.	<p>Whether DA can amend his order to rectify any patent errors?</p> <p>Yes, the DA shall be able to amend his order under section 5 to rectify any apparent errors.</p>
Question No. Answer:	47.	<p>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?</p> <p>No. As per section 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.</p> <p>WP?</p>
Question No. Answer:	48.	<p>There is no provision for withdrawal of appeal/writ/SLP by the department on settlement of dispute</p> <p>On intimation of payment to the DA by the appellant pertaining to department appeal/writ/SIT, the department shall withdraw such appeal/writ/SLP.</p>
Question No. Answer:	49.	<p>Once declaration is filed under Vivad se Vishwas, and for financial difficulties, payment is not made accordingly, will the declaration be null and void?</p> <p>Yes it would be void.</p>
Question No. Answer:	50	<p>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?</p> <p>In such cases, after getting the proof of payment of the amount payable under Vivad se Vishwas, the AO shall pass order under section 154 of the Act read with the relevant provisions of Vivad se Vishwas to create demand in case of assessee against which the amount payable shall be adjusted.</p>
“QUESTIONS RELATED TO CONSEQUENCES (Q. No. 51- 55)”		

Question No. Answer:	51	<p>Will there be immunity from prosecution?</p> <p>Yes, section 6 provides for immunity from prosecution to a declarant in relation to a tax arrears for which declaration is filed under <i>Vivad se Vishwas</i> and in whose case an order is passed by the DA that the amount payable under <i>Vivad se Vishwas</i> has been paid by the declarant.</p>
Question No. Answer:	52	<p><i>Will the result of this Vivad se Vishwas be applied to same issues pending before AO?</i></p> <p>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.</p>
Question No. Answer:	53	<p>If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?</p> <p>As per the amendment proposed in <i>Vivad se Vishwas</i>, 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.</p>
Question No. Answer:	54	<p>If the taxpayer avails Vivad se Vishwas for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?</p> <p>However, it may be noted that the provision of secondary adjustment as contained in <u>section 92CE</u> of the Act is not applicable for primary adjustment made in respect of an assessment year commencing on or before the 1st day of April 2016. That means, if there is any primary adjustment for assessment year 2016-17 or earlier assessment year, it is not subjected to secondary adjustment under <u>section 92CE</u> of the Act.</p>
Question No. Answer:	55	<p><i>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?</i></p> <p>Please refer answer to question no 52. It has been clarified in Explanation to section 5 that making a declaration under <i>Vivad se</i></p>

		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.
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On issuance of this circular, circular no 7 of 2020 dated 4th March 2020 is hereby withdrawn.

(Ankur Goyal)

Under Secretary to the Govt. of India

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Circular - Income Tax

Circular No. 18/2020

F.No. IT(A)/1/2020-TPL

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

Dated: 28th October, 2020

Subject: Clarifications in respect of the Direct Tax Vivad se Vishwas Act, 2020 - reg.

With the objective to 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, the [Direct Tax Vivad se Vishwas Act, 2020](#) (hereinafter referred to as ' **Vivad se Vishwas** ') was enacted on 17th March, 2020. The provisions of Vivad se Vishwas had been amended by the [Taxation and Other Laws \(Relaxation and Amendment of Certain Provisions\) Act, 2020](#) to provide certain relaxation in view of the COVID-19 pandemic and also to empower the Central Government to notify certain dates.

2. The Central Government vide the [notification S.O. 3847\(E\), dated 27th October, 2020](#), has **extended the date for payment without additional amount under Vivad se Vishwas from 31st December, 2020 to 31st March, 2021**. The said notification also notified the **last date for filing declaration under Vivad se Vishwas as 31st December, 2020**.
3. Under the existing provisions of [sub-section \(2\) of section 5](#) of the [Vivad se Vishwas](#), the declarant is required to pay the amount within a period of 15 days from the date of receipt of certificate from the designated authority. However, as per the aforesaid notification, a declarant who files **declaration on or before 31st December, 2020 can make payment without additional**

amount on or before 31st March, 2021. Hence, requiring payment by the declarant within a period of 15 days from the date of receipt of certificate from the designated authority may result into undue hardship for the declarant in whose case the period of 15 days expires before 31st March, 2021.

4. In order to mitigate undue hardship and remove difficulty that may be caused by the aforesaid requirement of payment within 15 days from the date of receipt of certificate from the designated authority, in exercise of powers conferred under [section 10](#) and [11](#) of [Vivad se Vishwas](#), it is hereby clarified that where a declarant files a declaration under Vivad se Vishwas on or before 31st December, 2020, the designated authority, while issuing the certificate under [sub-section \(1\) of section 5](#) of the [Vivad se Vishwas](#), shall allow the declarant to make payment without additional amount on or before 31st March, 2021.

(Ankur Goyal)

Under Secretary to the Govt. of India

CA DEV KUMARKOTHARI
B.Com, ACS, Grad.CMA, FCA

CA UMA KOTHARI
BA (H), ACS, ACMA, ACA
IBC PROFESSIONAL

ca.devkumarkothari@gmail.com

caumakothari@gmail.com

Note:

For easy analysis and briefing of important catchwords are highlighted by underlining and colours

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Circular - Income Tax

Circular No. 21 /2020

F. No. IT(A)/1/2020-TPL

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

Dated: 4th December, 2020

Sub.: Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 - reg.

With the objective to 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, the [Direct Tax Vivad se Vishwas Act, 2020](#) (hereinafter referred to as 'Vivad se Vishwas') was enacted on 17th March, 2020. The provisions of Vivad se Vishwas were amended by the [Taxation and Other Laws \(Relaxation and Amendment of Certain Provisions\) Act, 2020](#) to provide certain relaxations in view of the COVID-19 pandemic and also to empower the Central Government to notify certain dates. Towards this end, vide [notification dated 27th October, 2020](#) the date for payment without additional amount under Vivad se Vishwas was extended from 31st December, 2020 to 31st March, 2021. The last date for filing declaration under Vivad se Vishwas was also notified as 31st December, 2020. Subsequently, the Central Board of Direct Taxes issued a [circular no. 18/2020 dated 28th October, 2020](#) relaxing the time limit of 15 days prescribed in [section 5\(1\)](#) of [Vivad se Vishwas](#) for making payment of amount payable, as determined in a certificate issued by the Designated Authority.

2. In order to facilitate the taxpayers, the Board had vide [circular no. 9/2020 dated 22nd April, 2020](#) issued clarifications in form of answers to 55 frequently asked questions (FAQs) on issues related to eligibility, computation of amount payable, procedure and consequences under Vivad se Vishwas. Several representations have been received thereafter seeking further relaxation and clarifications with respect to such issues. Some of these representations have already been addressed through the aforesaid [notification dated 27th October, 2020](#) and [circular dated 28th October, 2020](#).

3. [Section 10](#) and [11](#) of the [Vivad se Vishwas](#) empowers the Board / Central Government to issue directions or orders in public interest or to remove difficulties. This circular is being issued in continuation of circular dated 22nd April, 2020 (which covered Q. no. 1 - 55) under [Section 10](#) and [11](#) of the [Vivad se Vishwas](#) to provide answers to 34 more FAQs (Q. no. 56 - 89). It may be noted that in the FAQs, [Income Tax Act, 1961](#) has been referred to as the Act, Designated Authority (under Vivad se Vishwas) has been referred to as the DA, Assessing Officer has been referred to as the AO, Commissioner (Appeals) has been referred to as CIT(A), and the Income Tax Department has been referred to as the Department.

"QUESTIONS ON SCOPE/ELIGIBILITY (Q. No. 56 - 75)"

Q. No.	56.	Appeal or arbitration is pending with appellate authority as on 31st Jan 2020 (or time for filing appeal has not expired as on 31st Jan 2020). However, subsequent to that date, and before filing of the declaration, the appeal has been disposed of by the appellate authority. Whether it is still eligible under Vivad se Vishwas? If yes, how the amount payable under Vivad se Vishwas shall be computed?
Answer:		Yes. Amount payable under Vivad se Vishwas shall be computed with reference to the position of appeal or arbitration as on 31st January, 2020.
Q. No.	57.	Whether Vivad se Vishwas can be availed in a case where the enforceability of an assessment order passed by the AO has been stayed by the High Court or Supreme Court?
Answer:		Yes, in such case assessee can file declaration under Vivad se Vishwas, whether or not the appeal has been filed against the assessment order. Writ/ Appeal pending in High Court and Supreme Court shall be required to be withdrawn by the taxpayer. Upon settlement of quantum appeal, interest and penalty, if any,

		will be waived.
Q. No.	58.	Appeal or writ against order under section u/s 263 of the Act was pending on 31st Jan, 2020 (or time to file appeal has not expired on 31st Jan, 2020). Whether Vivad se Vishwas can be availed for settling such appeal?
Answer:		If order u/s 263 of the Act contains general directions and income is not quantifiable , appeal against such order is not eligible under Vivad se Vishwas. However, if order u/s 263 of the Act contains only specific directions and income is quantifiable (and does not contain any general directions due to which income is not quantifiable), appeal against such order is eligible under Vivad se Vishwas. In such case, assessee is required to settle all the issues in the order, which are subject matter of order u/s 263 of the Act as well as issues pending in appeal (or issues in respect of which time to file appeal has not expired on. 31st Jan 2020), if any, with reference to the said order.
Q. No.	59.	Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?
Answer:		If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular , and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020. Comments Why only before the date of circular- this is not in tune with objective
Q. No.	60.	Whether cross objections filed and pending as on 31 January 2020 will also be covered by the scheme?
Answer:		Yes. However, the main appeal is also required to be settled along with cross objections.
Q. No.	61.	Whether Miscellaneous Application (MA) pending as on 31 January 2020 will also be covered by the scheme?
Answer:		If the MA pending on 31st Jan 2020 is in respect of an appeal which was dismissed in limine (before 31st Jan 2020), such MA is eligible. Disputed tax will be computed with reference to the appeal which was dismissed.
Q.No.	62.	Whether search cases where assessment was made under

		section 158BA (i.e. block assessment) of the Act are covered under Vivad se Vishwas?
Answer:		Appeal, writ or Special Leave Petition in respect of block assessment is eligible if the disputed tax does not exceed five crore rupees for the said block assessment.
Q. No.	63.	Whether Vivad se Vishwas can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC?
Answer:		No.
Q. No.	64.	Appeal against assessment order is pending (or time to file appeal against such order has not expired) on 31st Jan 2020. Assessee has also filed application for resolution of assessment order under Mutual Agreement Procedure (MAP). Whether Vivad se Vishwas can be availed?
Answer:		In a case where MAP resolution is pending or the assessee has not accepted MAP decision, the related appeal shall be eligible under Vivad se Vishwas. In such case, the declarant will be required to withdraw both MAP application and appeal.
Q. No.	65.	If AAR has ruled in favour of the taxpayer and the Department has gone in writ or appeal before the High Court/Supreme Court and the total income of the taxpayer was quantifiable on the facts of the case before AAR, is the taxpayer eligible under Vivad se Vishwas?
Answer		Yes, the taxpayer is eligible since the income is quantifiable. In such case, since the issue is covered in favour of taxpayer, only 50% of the disputed tax is payable.
Q. No.	66.	Appeal has been set aside to CIT(A) / Dispute Resolution Panel (DRP) and was pending as on 31st Jan 2020? Whether it is eligible?
Answer:		Yes. Such case can be settled under Vivad se Vishwas and the set aside issues will be deemed to be pending at the level of CIT(A) / DRP as on 31st Jan 2020. However, all issues which were either pending in appeal (whether set aside or not) or in respect of which time to file appeal has not expired on 31st Jan 2020 have to be settled.
Q. No.	67.	Whether in cases where the appellate authority has quashed the prosecution complaint or ruled in favour of taxpayer and no further appeal is filed by Department on or before filing of

		declaration are eligible?
Answer:		Yes, such cases are eligible if the time limit for filing appeal by the Department has expired and the Department has not filed appeal (with or without condonation of application).
Q. No.	68.	Whether the assessee is eligible to opt for Vivad se Vishwas if prosecution has been instituted due to a Tax Deduction at Source (TDS) default?
Answer:		If prosecution has been instituted for TDS default in a financial year on or before the date of filing of declaration, it cannot be settled under Vivad se Vishwas.
Q. No.	69.	A trust has been denied registration u/s 12AA of the Act. Whether appeal against such order is eligible for Vivad se Vishwas?
Answer:		No.
Q. No.	70.	If the assessment order has been framed in the case of a taxpayer under section 143(3) /144 of the Act based on the search executed in some other taxpayer's case, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?
Answer:		Such case is to be considered as a search case.
Q. No.	71.	Vivad se Vishwas forms do not contain a specific option to settle appeal filed against intimation u/s 143(1) of the Act. Accordingly, please clarify how to settle such appeal, which is pending as on 31st Jan 2020 (or time to file appeal has not expired on 31st Jan, 2020).
Answer:		Appeal filed against intimation u/s 143(1.) of the Act is eligible under Vivad se Vishwas if adjustment has been made under sub-clauses (iii) to (vi) of clause (a) of section 143(1) of the Act.
Q. No.	72.	Whether appeal filed under section 248 of the Act is eligible for Vivad se Vishwas?
Answer:		Yes.
Q. No.	73.	In the case of a taxpayer, prosecution has been instituted for assessment year 2012-13 with respect of an issue which is not in appeal. Will he be eligible to file declaration for issues which are in appeal for this assessment year and in respect of which prosecution has not been launched?

Answer:		The ineligibility to file declaration relates to an assessment year in respect of which prosecution has been instituted on or before the date of declaration. Since in this example, for the same assessment year (2012-13) prosecution has already been instituted, the taxpayer is not eligible to file declaration for this assessment year even on issues not relating to prosecution.
Q. No.	74.	If the prosecution is for a different assessment year and the appeal for a different one, would it debar the assessee from the benefit of this scheme?
Answer:		Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible.
Q. No.	75.	Whether cases where the taxpayer/Department has filed declaration/application under section 158A/158AA are eligible under Vivad se Vishwas?
Answer:		Yes , in such case declaration/application filed u/s 158A/158AA of the Act on or before 31st January 2020 shall be deemed to be a pending appeal as on 31st Jan 2020 for the purposes of Vivad se Vishwas.

"QUESTIONS RELATED TO COMPUTATION (Q. No. 76 - 79)"

Q. No.	76.	Whether enhancement notice issued by CIT(A) post 31st Jan 2020 is to be taken into account for computation of disputed tax?
Answer:		Enhancement notice issued by CIT(A) after 31st Jan, 2020 but before the date of issue of this circular shall be required to be taken into account for determining amount payable under Vivad se Vishwas . However, the enhancement notice issued on or after the date of this circular but on or before 31st December shall not be taken into account for determining amount payable under Vivad se Vishwas. Why? This defeat purpose.
Q. No.	77.	Whether any additional ground filed in relation to an appeal is to be considered while computing disputed tax?
Answer:		If any additional ground has been filed on or before 31st January 2020, it shall be considered for the purpose of computing disputed tax.

Q. No.	78.	In case of appeals pending against both assessment and reassessment where addition is repeated on same issue, would tax be payable twice in respect of the same issue if both appeals are settled?
Answer:		Since disputed tax in respect of repeated addition will be payable only once, both the assessment and reassessment appeals are required to be settled together . If there is a difference between tax liability in respect of such addition in assessment and reassessment, then higher of the two tax liabilities will be considered for computing disputed tax.
Q. No.	79.	In a case where assessee accepts certain additions in an order (giving rise to undisputed tax liability) and appeals against certain additions (giving rise to disputed tax liability), how the prepaid taxes will be adjusted against the disputed tax liability or undisputed tax liability?
Answer:		<p>If prepaid tax, being TDS/TCS, is clearly identifiable with the source of income, it will be adjusted against tax liability with respect to such income. Rest of the pre-paid tax, which cannot be clearly identified with the source of income, will be apportioned against the remaining tax liability.</p> <p>It should be on proportionate basis because there beign TDS does not mean that there was income in such transaction.</p>

"QUESTIONS RELATED TO CONSEQUENCES (Q. No. 80 - 87)"

Q. No.	80.	Whether appeal against penalties that are not related to quantum assessment like penalty u/s 271B, 271 BA, 271DA of the Act etc. are also waived upon settlement of appeal relating to 'disputed tax'?
Answer:		No, appeal against such penalty order is required to be settled separately.
Q.No.	81.	In respect of some loan, addition was made u/s 68 of the Act. Appeal is pending before CIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account?
Answer:		No, Vivad se Vishwas is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee.
Q. No.	82.	Whether the immunity from prosecution is only for the

		declarant or also for the Director of the company or partner of the firm with respect to the issues settled under Vivad se Vishwas?
Answer:		If an issue has been settled under Vivad se Vishwas , the immunity from prosecution with respect to that issue shall also extend to the director / partner of company / firm (being the declarant) in respect of same issue under section 278B of the Act.
Q. No.	83.	If appeal involving issue of disallowance under section 40(a) (i)/(ia) of the Act is settled under the Scheme, whether consequential relief will be available in proceedings under section 201 of the Act initiated qua the same payment/ deduction.
Answer:		No.
Q. No.	84.	<p>Tax was not deducted on an income and order under section 201 of the Act was passed in case of the deductor. The said income was also assessed in the case of the deductee. Both deductor and deductee are in appeal or arbitration, which is eligible under Vivad se Vishwas. What would be the amount payable by the deductor and the deductee with reference to the said income under Vivad se Vishwas in the following scenarios -</p> <p>(i) Where the deductor settles his appeal or arbitration and makes payment under Vivad se Vishwas?</p> <p>(ii) Where the deductee settles his appeal or arbitration and makes payment under Vivad se Vishwas?</p>
Answer:		<p>In case of (i), since the deductor has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty under Vivad se Vishwas. Deductee will not be required to pay the tax under Vivad se Vishwas with reference to said income and he will get credit for tax paid by deductor. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25% / 30%).</p> <p>In case of (ii), since the deductee has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty. Deductor will not be required to pay tax under Vivad se Vishwas with reference to non-deduction of tax on said income. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25% / 30%).</p>
Q. No.	85.	In the scenarios mentioned in Q. no. 84, what will be the

		amount of tax credit if the payment of amount on settlement of section 201 appeal is more than 100% of disputed tax for it being a search case or for the reason that the payment is made after 31st March 2021?
Answer:		Tax credit in the hands of deductee cannot be more than 100% of disputed tax, even if the payment of more than 100% of disputed tax is required to be made by the dedcutor settling his section 201 appeal.
Q. No.	86.	Answer to Q. no 31 clarifies that where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201 of the Act), he will get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia) of the Act in the year in which the tax was required to be deducted. What will happen in a situation where the same amount of TDS was recovered in subsequent year and accordingly the assessee has already claimed deduction in that year?
Answer:		There is no question of double deduction. If the assessee has already claimed deduction of the same amount under section 40(a)(i)/(ia) of the Act in subsequent year on account of payment of such sum, he shall not be entitled to again claim the deduction on the basis of the settlement under Vivad se Vishwas.
Q. No.	87.	The declarant has filed a declaration for disputed penalty. He is required to pay 25% or 30% of disputed penalty to settle the dispute. Will interest levied or leviable be waived in this case?
Answer:		Yes. Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.

"QUESTIONS RELATED TO PROCEDURE (Q. No. 88 - 89)"

Q. No.	88.	Separate orders were passed u/s 201(1) & 201(1 A) of the Act for a particular assessment year. Assessee has filed two separate appeals for principal portion u/s 201(1) of the Act and interest portion u/s 201(1A) of the Act. Can he file only one declaration under Vivad se Vishwas against 201(1) order and seek 100% waiver of interest levied u/s 201(1A)of the Act.
Answer:		Yes, once appeal against order u/s 201(1) of the Act is settled under Vivad se Vishwas , there would be 100% waiver of interest levied u/s 201(1 A) of the Act.
Q. No.	89.	Once declaration is filed by assessee u/s 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?

Answer:	Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of Vivad se Vishwas .
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(Ankit Jain)

Under Secretary to the Govt. of India

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Notification - Income Tax - Income Tax

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION NO. 85/2020

New Delhi, the 27th October, 2020

S.O. 3847(E).-In exercise of the powers conferred by [section 3](#) of the [Direct Tax Vivad se Vishwas Act, 2020 \(3 of 2020\)](#), the Central Government hereby notifies that the,—

- (a) 31st day of December, 2020 shall be the date, on or before which a declaration shall be filed to the designated authority, by the declarant, in accordance with the provisions of [section 4](#) of the [said Act](#) in respect of tax arrear;
- (b) 31st day of March, 2021 shall be the date on or before which the amount payable under the said Act shall be paid as per third column of the Table to [section 3](#) of the [said Act](#); and
- (c) 1st day of April, 2021 shall be the date on or after which the amount payable under the said Act shall be paid as per fourth column of the Table to [section 3](#) of the [said Act](#).

2. This notification shall come into force from the date of its publication in the Official Gazette.

[F. No. IT(A)/1/2020-TPL]

ANKUR GOYAL, Under Secy.