



Grant Thornton

An instinct for growth™



Vivad se **Vishwas**

# Vivad se Vishwas Scheme

## Settling direct tax disputes

18 March 2020



# Executive summary

# Executive summary



## 01

### Cases covered by the Vivad se Vishwas Scheme

- Cases pending before following forums as on 31 January 2020 are covered
  - Supreme Court (SC), High Court (HC), Income Tax Appellate Tribunal (ITAT) and Commissioner (Appeals) [CIT(A)]
  - Dispute Resolution Panel (DRP) or where directions have been issued by the DRP but no final assessment order has been passed
  - Revision petition under Section 264 pending before the commissioner
- Orders where time limit for filing of appeal by the taxpayer has not expired as on 31 January 2020.

## 02

### Coverage of the scheme

- The scheme covers cases in respect of:
  - disputed tax + interest + penalty
  - disputed interest or penalty or fee
- Disputed tax means income tax, including surcharge and cess.

## 03

### Amount payable under the scheme

- For search cases: **125%** (135% if payment made after 31 March 2020) of disputed tax
- For other than search cases: **100%** (110% if payment made after 31 March 2020) of disputed tax
- For interest, penalty and fee cases: **25%** (30% if payment made after 31 March 2020) of disputed amount
- In case of departmental appeal or where department has lost an issue: Above amount to be **reduced by 50%**

## 04

### Other important points

- Application to be filed before the Designated Authority (DA). Order of the DA conclusive on the matters stated therein
- Proof of withdrawal of pending appeals to be submitted along with proof of payment
- Immunity from penalty and prosecution for cases settled under the scheme

# A closer look at the scheme

# What the scheme covers



## Pending appeal as on 31 January 2020

- Taxpayer can opt for the scheme in case there is an appeal pending before following appellate forums as on 31 January 2020:
  - SC
  - HC
  - ITAT or
  - CIT(A).
- Cases where time limit for filing an appeal by the taxpayer before the above appellate forum has not elapsed as on 31 January 2020

## Other cases pending as on 31 January 2020

- Cases pending before the DRP
- Cases where DRP has issued directions but final assessment order has not been passed
- Revision application under Section 264 pending before the CIT

# What the scheme covers



Appeal can be in respect of:

- disputed tax + interest + penalty
- disputed interest
- disputed penalty
- disputed fee

Disputed tax means income, tax including surcharge and cess.



# What the scheme doesn't cover

The scheme shall not be available in respect of tax arrears relating to:

- Assessment Year (AY) in respect of which prosecution has been instituted on or before the date of filing of declaration under this scheme
- AY where assessment is made pursuant to search and seizure and where disputed tax exceeds INR 50 million in the year.
- Any undisclosed income from a source located outside India or undisclosed asset located outside India
- An assessment or reassessment made on the basis of information received under any tax treaty





# Who cannot avail the scheme



## Person against whom order of detention has been made

Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, on or before the filing of declaration subject to certain conditions.



## Person notified on or before the filing of declaration

Person notified under the Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.



## Person convicted or prosecution instituted before filing of declaration

Under the Unlawful Activities (Prevention) Act 1967, Narcotic Drugs and Psychotropic Substances Act, 1985, Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, Prohibition of Benami Property Transactions Act, 1988.



## Person convicted or prosecution initiated

By an income-tax authority for offence punishable under the Indian Penal Code or for the purpose of enforcement of any civil liability on or before the filing of declaration.

# Amount payable



Nature of tax arrear	Appeal filed by	Amount paid by 31 March 2020	Amount paid on or after 1 April 2020**
Search cases involving dispute relating to tax, interest, penalty, etc.	Taxpayer	125% of disputed tax	135% of disputed tax
	Taxpayer* or department	62.5% of disputed tax	67.5% of disputed tax
Other than search cases where dispute involves tax, interest, penalty etc.	Taxpayer	100% of disputed tax	110% of disputed tax
	Taxpayer* or department	50% of disputed tax	55% of disputed tax
Dispute relates to only interest, penalty or fee	Taxpayer	25% of disputed amount	30% of disputed amount
	Taxpayer* or department	12.5% of disputed amount	15% of disputed amount

\* Appeal filed before CIT(A), DRP or ITAT on **an issue** for which taxpayer has obtained a favourable order in earlier years from higher appellate forum and such order has **not been** reversed subsequently by HC or SC.

\*\* The excess amount payable after 31 March 2020 shall be limited to the extent of interest and penalty applicable on the disputed tax

# Computation of disputed tax



## 01

### Appeal pending as on 31 January 2020

Where any appeal, writ petition or special leave petition (SLP) is pending as on 31 January 2020, disputed tax is the amount of tax that is payable **by the appellant**, if such appeal or writ petition or SLP was to be decided against him.

## 02

### Time limit for filing an appeal has not expired on 31 January 2020

- Where order is passed by CIT(A), ITAT or HC and the time for challenging the order has not expired, disputed tax is the amount of tax payable **after giving effect to the order** so passed.
- Assessment order has been passed and time for filing appeal against assessment order has not expired, disputed tax is the amount of tax payable in accordance with the **assessment order**.

## 03

### Revision application pending as on 31 January 2020

Where revision application under the Section 264 is pending, the disputed tax is the amount of tax payable **if such revision application was not to be accepted**

## 04

### DRP cases pending as on 31 January 2020

- Where objection filed before the DRP, disputed tax is the amount of tax payable if the **DRP was to confirm the variation proposed** in the draft assessment order
- Where DRP has issued directions and the tax officer has not passed final assessment order by 31 January 2020, disputed tax is the amount of tax payable **as per the assessment order** to be passed

# Aspects to be kept in mind while computing disputed tax



## Option to taxpayer

Where dispute relates to reduction of tax credit\* or any loss or depreciation, the taxpayer shall have an **option** either to:

- include the tax related to such tax credit or loss or depreciation in the amount of disputed tax, or
- carry forward the reduced tax credit or loss or depreciation.

\* Minimum Alternate Tax (MAT) credit or section 115D credit.

*Section 115D contains special provisions for computation of income of a non-resident. It appears that the Scheme has inadvertently mentioned section 115D.*



## Notice of enhancement issued by CIT(A)

Where CIT(A) has issued notice of enhancement on or before 31 January 2020, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.



# Computation of disputed penalty and disputed interest



## Disputed penalty

Penalty determined in any case where -

- such penalty is not levied or leviable in respect of disputed income or disputed tax
- an appeal has been filed in respect of the such penalty



## Disputed interest

Interest determined in any case where -

- such interest is either not charged or chargeable on disputed tax
- an appeal has been filed in respect of the such interest



# Filing of declaration

## Declaration to be filed before the DA

- The taxpayer is required to file a declaration with the DA\*.
- The declaration shall be presumed to have never been made in following situations:
  - any material particular furnished in the declaration is found to be false at any stage
  - the declarant violates any of the conditions referred to in the scheme
  - the declarant acts in any manner which is not in accordance with the undertaking given by him

In such cases, all proceedings and claims that were withdrawn shall be deemed to have been revived.



\* Designated authority has been defined to mean an officer not below the rank of commissioner of income-tax notified by the principal chief commissioner.

# Time and manner of payment



## Determination of amount payable

The DA shall, within 15 days from the date of receipt of the declaration, determine the amount payable and grant a certificate to the taxpayer containing particulars of the tax arrears and the amount payable.

## Payment of amount

- The taxpayer shall pay the amount within 15 days of the date of receipt of the certificate and intimate the details of such payment to the designated authority.
- The authority shall pass an order stating that the taxpayer has paid the amount.

**Any amount paid under the scheme shall not be refundable. However, if payment already made is in excess of the amount payable under the scheme, such excess shall be refundable without interest**



# Other formalities



## Withdrawal of appeal

- Any appeal pending before the CIT(A) or ITAT shall be deemed to be withdrawn from the date of issue of certificate by the designated authority
- The taxpayer shall withdraw its appeal or any writ petition filed before the HC or SC after the issuance of certificate by the designated authority
- The taxpayer shall withdraw its claim in proceedings for arbitration, conciliation or mediation

The proof of withdrawal (as applicable) shall be furnished along with intimation of payment to the designated authority



## Undertaking for waiver of rights by the taxpayer

The taxpayer shall furnish an undertaking, waiving his rights, whether direct or indirect, to pursue any remedy in relation to the tax arrear which may otherwise be available to him under any law or agreement.

# Other aspects



- Every order determining the amount payable under this scheme, would be conclusive as to the matters stated therein.
- Matters not covered by such order can be reopened in any other proceedings.
- The scheme **confers immunity from prosecution, penalty and interest** in respect of proceedings for which the declaration has been made.
- It has been clarified that making a declaration under scheme shall not amount to **conceding the tax position.**



# CBDT clarification

Issued vide Circular no 7 of 2020 dated 4 March 2020

## Cases pending before AAR

The scheme is not available for disputes pending before the Authority for Advance Rulings (AARs). However, if the AAR has passed an order determining the total income and writ against such order is pending before the HC, the taxpayer would be eligible for the scheme. In such cases, the disputed tax will be calculated according to the order of the AAR.

## Cases involving non-qualifying tax arrears

If tax arrears include tax on issues that are not eligible under the scheme, like assessment made in respect of undisclosed foreign income, such cases are not covered under the scheme in entirety.

## Cases relating to imposition of fee

Appeal against imposition of fee for default in furnishing statement of taxes withheld/collected and furnishing of income-tax return can be settled under the scheme. Where appeal against imposition of fee pertains to a year in which there is disputed tax, settlement of disputed tax will not automatically settle disputed fee.

## DRP cases

Where a taxpayer decides not to file objections before the DRP against the draft assessment order but rather file an appeal with the CIT(A) and where, in such case, the final assessment order has not been passed by the tax officer by 31 January 2020, taxpayer can settle the dispute.

## Search and seizure cases

In search and seizure cases, the scheme can be opted for those assessment year(s) in which the disputed tax is INR 50 million or less.

## Simultaneous pendency of quantum appeal and penalty

Where both quantum appeal (covering disputed tax) and appeal against penalty on such disputed tax are pending, both disputed tax and penalty needs to be settled. However, in such case, only relevant percentage of disputed tax would be payable.

## Departmental appeal before HC against assessment quashed by the ITAT

Where ITAT has quashed the assessment order based on lack of jurisdiction and departmental appeal against the said order is pending in HC, taxpayer can settle the dispute. In such cases, half the amount otherwise payable under the scheme on the disputed tax that would be restored, shall be paid, if the department was to win the appeal in HC.

## Part appeal decided against the taxpayer

Of the five issues in appeal, the appellate forum decided two issues in favour of the taxpayer and three against. The taxpayer can opt for the scheme on the three issues decided against him. However, in such cases, department would be free to file appeal on the remaining two issues (on which the taxpayer has got relief) if the time limit for filing the appeal has not elapsed.

## Cases relating to interest liability

- The scheme can be availed even when only the interest liability is under dispute. In case the scheme is availed for dispute of the tax amount, the interest liability on such disputed tax is waived
- Application for waiver of interest cannot be settled under the scheme
- Case relating to interest liability on account of delay in deposit of taxes withheld/collected can also be settled under the scheme, even if there is no dispute pending on account of taxes withheld/collected

## Cases relating to re-assessment of income

- Writ petition filed against reassessment notice under the Section 148, cannot be settled under the scheme as there is no determination of income against the said notice
- In case of multiple appeals pending before the different appellate forums for the same assessment year in relation to normal scrutiny proceedings and re-assessment proceedings, the taxpayer can avail the benefit of the scheme to settle either of the two appeals or both the appeals

## Arbitration, conciliation or mediation

Following cases are eligible for the scheme:

- Proceedings for arbitration, conciliation or mediation has been initiated or notice has been given
- Case is pending in arbitration even if no appeal is pending. In such a case, disputed tax would be the tax on the disputed income with reference to which arbitration has been filed

## Assessment set-aside

The taxpayer would be eligible for the scheme in a case where the appellate authority has set-aside an order to the file of the tax officer (except where assessment is cancelled with a direction that assessment be framed afresh) to carry out fresh examination with specific direction. However, the taxpayer would be required to settle the entire appeal, including the issues which have not been set-aside.

In such a case, the disputed tax shall be a tax which would have been payable had the addition in respect of which the order was set aside was to be repeated by the tax officer.

## Others

- Declaration is to be filed for settlement of all the disputed tax issues covered by an order.
- The scheme can be availed of irrespective of whether the tax arrears have been paid partly or fully or are outstanding.
- Where appeal is pending for admission before HC, such case is eligible for the scheme.
- Where only notice for initiation of prosecution has been issued with reference to tax arrears, taxpayer can choose to compound the offence and opt for the scheme.
- Disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy are not covered under the Scheme.

## TDS related case

- Where a taxpayer has received two orders for non-deduction of TDS under section 143(3) and 201, then tax on disallowance under Section 40(a)(i)/(ia) for the purpose of 143(3) shall be ignored for computing disputed tax in the following situations:
  - Taxpayer settles order under Section 201. In such a case, the taxpayer shall get consequential relief of the allowable expenditure under Section 40(a)(i)/(ia) in the year in which tax was required to be deducted
  - Taxpayer settles both orders under Section 201 and order under 143(3)
  - Where a taxpayer challenged the order under Section 201 on merits and won either at SC or any lower appellate forum and such order was not challenged by the department on merits.
- Where a taxpayer wishes to settle disallowance under Section 40(a)(i)/(ia) in a search case on the basis of settlement of dispute under Section 201, he can do so by paying the higher amount applicable for search cases.
- Where a taxpayer settles his appeal on an income on which TDS was not deducted and an order under section 201 has already been passed against the deductor, then he shall not be required to pay corresponding TDS amount. However, he shall continue to be liable for interest on default.
- Credit for taxes settled by the taxpayer as a deductor will be available to the deductee as on the date of settlement of dispute. Therefore, interest as applicable to the deductee shall apply.



## Rectification application under Section 154 pending

In case where appeal or arbitration and a rectification application under Section 154 is pending, as on 31 January 2020, the disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.

### Others

- If taxpayer has received favourable SC ruling in earlier years on an issue, such issue shall be excluded while calculating the disputed tax.
- On settlement of substantive addition covered under the scheme, the tax officer shall pass a rectification order deleting the protective addition relating to the same issue.



## Payment of taxes

- To avail maximum benefit, payment under the scheme is to be made by 31 March 2020.
- If payment is not made due to any reasons (including financial difficulties), declaration filed shall be void.
- Any amount paid in pursuance of declaration made under the scheme shall not be refundable.

## Withdrawal of appeals:

- **By taxpayer:** Where taxpayer has made a request for withdrawal of appeal and such request is under process, proof of such request shall be submitted along with the proof of payment. In case of arbitration, conciliation or mediation, proof of withdrawal is to be submitted along with proof of payment.
- **By department:** On intimation of proof of payment, the department shall also withdraw appeal/writ/SLP filed by it.

## Order by the DA

- The DA can amend its order to rectify any apparent errors.
- Order passed by the DA cannot be challenged.



## Secondary adjustment

- Secondary adjustment shall be applicable on transfer pricing settlement made under the scheme.
- However, since the concept of secondary adjustment was introduced from AY 2017-18, no secondary adjustment is to be carried out for primary adjustment which have been settled for AY 2016-17 or earlier years.

# Contact us

## NEW DELHI

National Office  
Outer Circle, L 41  
Connaught Circus  
New Delhi 110001  
T +91 11 4278 7070

## NEW DELHI

6th floor, Worldmark 2,  
Aerocity  
New Delhi - 110037  
T +91 11 4952 7400

## AHMEDABAD

7th Floor, Heritage  
Chambers,  
Nr. Azad Society,  
Nehru Nagar,  
Ahmedabad - 380015

## BENGALURU

5th Floor, 65/2, Block A,  
Bagmane Tridib, Bagmane Tech  
Park, C V Raman Nagar,  
Bengaluru – 560093  
T+91 80 4243 0700

## CHANDIGARH

B-406A, 4th Floor,  
L&T Elante Office Building,  
Industrial Area Phase I  
Chandigarh 160002  
T +91 172 4338 000

## CHENNAI

7th Floor, Prestige Polygon  
471, Anna Salai,  
Teynampet  
Chennai 600018  
T +91 44 4294 0000

## DEHRADUN

Suite 2211, 2nd floor  
Building 2000, Michigan Avenue  
Doon Express Business Park  
Subhash Nagar, Dehradun -  
248002 T +91 135 2646 500

## GURGAON

21st Floor, DLF Square  
Jacaranda Marg, DLF  
Phase II  
Gurgaon 122002  
T +91 124 462 8000

## HYDERABAD

7th Floor, Block III,  
White House  
Kundan Bagh, Begumpet  
Hyderabad 500016  
T +91 40 6630 8200

## KOCHI

6th Floor, Modayil Centre point  
Warriam road junction,  
M.G.Road  
Kochi 682016  
T +91 484 406 4541

## KOLKATA

10C Hungerford Street  
5th Floor  
Kolkata 700017  
T +91 33 4050 8000

## MUMBAI

16th Floor, Tower II  
Indiabulls Finance Centre  
SB Marg, Prabhadevi (W)  
Mumbai 400013  
T +91 22 6626 2600

## MUMBAI

Kaledonia, 1st Floor, C  
Wing (Opposite J&J office)  
Sahar Road, Andheri East,  
Mumbai -400 069

## NOIDA

Plot No. 19A, 7th Floor  
Sector – 16A  
Noida 201301  
T +91 120 4855 900

## PUNE

3rd Floor, Unit No 309 to 312,  
West Wing, Nyati Unitree,  
Nagar Road, Yerwada  
Pune- 411006  
T +91 20 6744 8800

For more information or for any queries, write to us at [contact@in.gt.com](mailto:contact@in.gt.com)



Follow us @GrantThorntonIN

© 2020 Grant Thornton India LLP. All rights reserved.

"Grant Thornton in India" means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Limited or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.