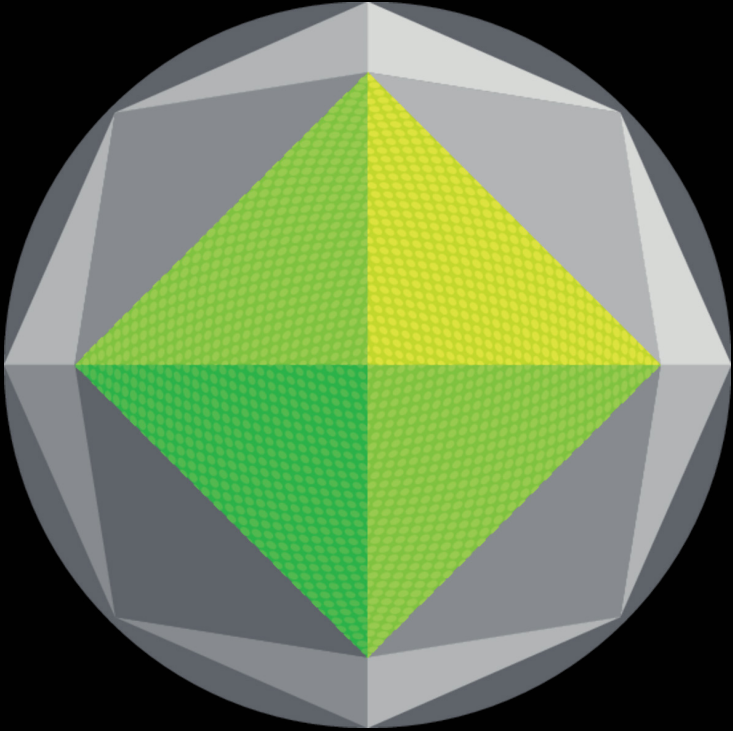


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**The Direct Tax Vivad se
Vishwas Bill, 2020**

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Background

The Direct Tax Vivad se Vishwas Bill, 2020 (VsV Bill) has been introduced by the Government of India to settle pending direct tax litigations for litigants, and enable the government to collect revenues locked up in litigation.

What disputes can be settled under the VsV Bill?

Disputes eligible for settlement	Disputes not eligible for settlement
<ul style="list-style-type: none"> • Appeals filed by— either (i) the tax assessee or (ii) the Income Tax Department (ITD) (further clarity expected in situations where appeals are filed by ITD) • Appeals pending before— (i) Supreme Court (including writ petitions) (ii) High Court (including writ petitions) (iii) Income Tax Appellate Tribunal (ITAT) or (iv) the Commissioner (appeals) (CIT(A)) (also likely to be extended to pending applications before the Dispute Resolution Panel (DRP)) • Nature of pending appeals— all appeals under the Income Tax Act, 1961, including matters involving arbitration, conciliation, or mediation (under international agreements) • Appeals pending as on— 31 January 2020 (also expected to cover cases, where the time to file appeal has not expired, as of 31 January 2020) 	<ul style="list-style-type: none"> • Tax arrears in search and seizure cases— Demands issued under search cases (section 153A/153C) are excluded (search cases with tax demands < INR 5 crore are expected to be made eligible) • Tax arrears in prosecution cases instituted before the date of filing of declaration • Tax arrears in undisclosed income cases (from an undisclosed source or undisclosed asset, both located outside India) • Tax arrears in cases of assessment or reassessment made on the basis of information received under Double Tax Avoidance Agreements • Tax arrears in cases pending with CIT(A) and a notice of demand enhancement has been issued by the CIT(A) before 31 January 2020 (it is expected that such cases will be eligible) • Other cases—(i) certain cases under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1971 (ii) where prosecution has been initiated for offences committed in cases under Prevention of Corruption Act, 1988, Prohibition of Benami Property Transactions Act, 1988, etc. (iii) person notified under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

What is the amount payable if Taxpayer opts (and is accepted) for settlement under the VsV Bill?

Where the tax arrears = disputed tax + interest + penalty

If amounts are paid before 31 March 2020, then

- 100 percent of the disputed tax

If amounts are paid on or after 1 April 2020, but on or before the last date (to be notified), then

- Lower of
 - 110 percent of the disputed tax; or
 - 100 percent of the disputed tax plus interest (charged/chargeable) plus penalty (to be levied/levied) on such disputed tax

Where the tax arrears = disputed interest, or disputed penalty, or disputed fee (i.e., arrears are only on account of interest/penalty/fee, and no tax is involved)

If amounts are paid before 31 March 2020, then

- 25 percent of disputed interest, or 25 percent of disputed penalty, or 25 percent of disputed fee

If amounts are paid on or after 1 April 2020 but on or before the last date (to be notified), then

- 30 percent of disputed interest, or 30 percent of disputed penalty, or 30 percent of disputed fee

*Amounts payable by Taxpayer, if ITD withdraws pending appeals, are not specified in the VsV Bill. The VsV Bill is expected to be amended to specify that the ITD will also withdraw the corresponding appeals, related to the Taxpayer appeals being sought, to settle. Further the percentage of tax arrears payable would be almost 50 percent of the proposed amounts, in the case of an appeal by ITD.

It is expected that in search cases where the disputed tax is less than 5 crore the amount to be paid will be disputed tax plus 25% of disputed tax (i.e. 125%) before 31st March 2020. This amount would be disputed tax plus 35% of disputed tax (i.e. 135%) after 31st March 2020. If the interest (charged/chargeable) plus penalty (to be levied/levied) on such disputed tax is less than the 25% or 35% as the case may be, the excess shall be ignored.





How is 'disputed tax' determined?

- **Disputed tax**, in relation to an assessment year, will be calculated as per the prescribed formula in the VsV Bill—the formula prescribed is essentially tax on disputed income. It also takes into account disputed income as per Minimum Alternate Tax (MAT) provisions.

It is expected to simplify the formula to compute the disputed tax based on amount of tax payable as if the issue is decided against the Taxpayer.

- Where litigation is with respect to reduction of loss claimed or of converting that loss into income, the disputed tax will be calculated notionally as if, the disputed loss is the income.

It is expected that the government will clarify that in such a situation, the Taxpayer will be given the option to either pay the disputed tax and get a right to carry forward the loss claimed, or not pay the disputed tax and lose the right to carry forward the disputed loss.

- It also considers tax determined as per the tax deduction at source/tax collection at source (TDS/TCS) provisions.



What should a Taxpayer do to opt for settlement?

- **Step 1:** Taxpayer to withdraw appeal from the appellate forums. Taxpayer to also withdraw any proceedings for arbitration, conciliation, or mediation (in case of ITD appeal before ITAT, it shall be deemed to have been withdrawn from the date on which the certificate is issued by the Designated Authority, as in step 4 below).

It is expected that the stage of withdrawal will be changed to move it alongside payment of tax, as in step 5 below.

- **Step 2:** Taxpayer to file declaration in the specified form along with proof of withdrawal of appeal.
- **Step 3:** Taxpayer to furnish an undertaking waiving his right, either direct or indirect, to seek or pursue any remedy or claim in relation to the tax arrears under any law.
- **Step 4:** Designated Authority to determine the amount payable by the Taxpayer, and issue a certificate, within 15 days.
- **Step 5:** Taxpayer to pay the amount determined by the Designated Authority within 15 days, and inform the Designated Authority of such a payment being made. Designated Authority to pass an order stating that the amount has been paid.



What sort of immunity does the Taxpayer get once the case is settled as above?

- Order passed by the Designated Authority are to be conclusive, with respect to matters mentioned therein, and such matters cannot be reopened in any other proceeding.
- Designated Authority shall not institute any proceeding with respect to an offence, penalty, or interest.
- Appellate forums/arbitrator, conciliator, or mediator are not to decide the issue in cases where an order is passed by the Designated Authority.



Observations/comments

- The VsV Bill is a right step in the direction of reducing direct tax litigations. It helps both the Taxpayer and the government. By paying the disputed tax amount, the Taxpayer will be saved from litigation, interest, penalty, and litigation costs. The government will be able to collect revenues from otherwise locked-up litigations. However, the amounts to be paid for settlement are not as attractive when compared with the Sabka Vishwas Scheme, 2019 (indirect tax settlement scheme).
- The VsV Bill does not provide clarity with respect to cases where a Taxpayer has already paid amounts (under protest) that exceed the requirement. **Clarification is expected that if the Taxpayer is to settle, the excess will be refunded to the Taxpayer, on settlement of the case.**
- With respect to pending appeals, which have mixed issues—some that the Taxpayer wants to settle and some that the Taxpayer does not want to settle (for instance, where the Taxpayer has succeeded on similar issues in the past, before appellate authorities)—**it is expected that the government may amend the VsV Bill to seek a lower amount to settle such cases (say, 50 percent of tax as against 100 percent) from the Taxpayer, to try and persuade a settlement.**
- Protection is likely to be granted, provided that the appeals withdrawn and settled under the VsV Bill should not be treated as binding precedent for other years.



To sum it up, the VsV Bill results in a win-win situation for both the government and the Taxpayer. While the VsV Bill will help in reducing the overall litigations as of date, it is equally important for the government to also chalk out a plan to reduce future litigations.



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