

EY Tax Alert

CBDT issues Frequently Asked Questions in relation to Direct Tax Vivad Se Vishwas Scheme, 2024

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Executive summary

This Tax Alert summarizes Circular No. 12/2024 dated 15 October 2024 (VSV Circular 2.0) issued by the Central Board of Direct Taxes¹ (CBDT) which contains answers to 35 questions on the operation of Direct Tax Vivad Se Vishwas Scheme, 2024 (VSV 2.0).

¹ Apex administrative body for direct taxes in India

Background

- ▶ The Finance (No. 2) Act, 2024 enacted the Direct Tax Vivad Se Vishwas Scheme, 2024² (VSV 2.0) on similar lines of Direct Tax Vivad Se Vishwas Act, 2020 (VSV 1.0)³. VSV 2.0 provides an opportunity to taxpayers to settle tax disputes pending as on 22 July 2024 (i.e., specified date) at various appellate forums⁴, in relation to tax, interest, penalty or fees payable under the Indian Tax Laws (ITL).
- ▶ Taxpayers can settle their disputes by filing a declaration in the prescribed form to the Designated Authority (DA). Upon receipt of the declaration, the DA shall, within 15 days from the date of receipt of the declaration, grant a certificate to the taxpayer specifying amount payable to settle the dispute. After taxpayer pays such amount within 15 days from the date of receipt of the certificate and intimates DA about such payment, DA shall pass an order stating that the taxpayer has paid the amount, marking the conclusion of the dispute. Once the disputed tax is settled under VSV 2.0, the taxpayer will enjoy complete waiver and immunity from interest, penalty and prosecution in relation to tax arrears which are the subject matter of the settlement.
- ▶ Recently, the CBDT issued a Notification⁵ notifying the "Direct Tax Vivad se Vishwas Rules, 2024 (VSV Rules 2.0)" in relation to VSV 2.0.
- ▶ Similar to VSV 1.0, VSV 2.0 also grants a general power to the Government of India (GOI) to issue directions or instructions for the purpose of VSV 2.0 in public interest. In deference thereto, CBDT has issued the present VSV Circular 2.0.

The VSV Circular 2.0:

A. Clarifications on scope/eligibility for VSV 2.0:

- ▶ **Cases eligible to opt for VSV 2.0:**
 - Appeals which are pending for admission as of the specified date before a High Court (HC) or Supreme Court (SC) [FAQ 27]
 - Cross objections which are filed and pending as of the specified date [FAQ 28]
 - Disputes in relation to withholding/collection of tax [FAQ 19]
 - Disputes in relation to interest on delay in depositing taxes which are withheld/collected [FAQ 19]
- ▶ **Cases ineligible to opt for VSV 2.0:**
 - **Appeals disposed off after the specified date [FAQ 8]:** Appeals which were pending as of the specified date, but which are disposed off subsequently, and are not pending as of the date of the declaration.
 - Miscellaneous Application filed and pending as of the specified date [FAQ 29]
 - **Set-aside assessments [FAQ 24]:** Cases where the appellate authority has set aside any issue to the tax authority, wholly or partially, which are pending before the tax authority as of the specified date.
 - Cases where enforceability of an assessment order passed by the tax authority has been stayed by HC or SC [FAQ 30]
 - A writ petition filed before the HC against a notice issued for reassessment where no assessment order has been passed consequent to such notice, since the income is yet to be determined [FAQ 26].
 - **Orders are passed as of the specified date but time limit to file an appeal has not expired [FAQ 9]:** Unlike VSV 1.0, VSV 2.0 does not envisage settlement of cases where an assessment order is passed by the tax authority or an appellate order is passed by the lower appellate authority, but the time limit for an appeal against such assessment or appellate order has not expired as on the specified date.
 - **Search cases [FAQ 6]:** While VSV 2.0 disqualifies tax arrears which relate to assessments made on the basis of a search⁶,

² Refer our alert titled "Key highlights of Vivad Se Vishwas Scheme, 2024" dated 24 July 2024.

³ Refer our tax alerts titled: (a) "Key amendments proposed in the Vivad se Vishwas Scheme 2020" dated 22 February 2020 (b) "Key highlights of amended Vivad se Vishwas Bill 2020" dated 25 February 2020 (c) "CBDT issues Frequently Asked Questions in relation to Vivad Se Vishwas Bill, 2020" dated 6 March 2020 (d) "Central Government notified rules and forms for settlement under the Direct Tax Vivad se Vishwas Act, 2020" dated 20 March 2020 (e) "CBDT issues Revised Frequently Asked Questions in relation to Vivad Se Vishwas Act, 2020" dated 22 April 2020 (f) "Clarification on date of payment for disputed tax under VSV post Notification no. 85 of 2020" dated 28 October 2020 (g) "CBDT notifies sunset date for filing declaration under Vivad Se Vishwas Act and extends due date for payment of disputed tax" dated 28 October 2020; (h) "CBDT issues second round of Frequently Asked Questions in relation to "Direct Tax - Vivad Se Vishwas Act 2020" dated 5 December 2020;

⁴ First Appellate Authority (FAA), Dispute Resolution Panel (DRP), Tribunal, High Court, Supreme Court.

⁵ Refer our alert titled "Central Government notifies commencement date of Direct Tax Vivad Se Vishwas Scheme, 2024 (VSV 2.0) and rules and forms for settlement" dated 24 September 2024.

⁶ Assessment framed under section 153A/153C on the basis of search initiated under section 132/132A of the ITL
EY Tax Alert

FAQ 6 further considers the following non-search taxpayers as ineligible for VSV 2.0:

- Where the tax authority is satisfied that any money, bullion, jewelry or other valuable article or thing which has been seized or requisitioned in case of any other person, belongs to the taxpayer
- Where the tax authority is satisfied that any books of account or documents which has been seized or requisitioned in case of any other person, pertains to the taxpayer
- Appeal contesting denial of registration (which confers tax exemption) to a charitable trust [FAQ 23]
- Pending application for waiver of interest⁷ [FAQ 15]
- **Disputes other than relating to ITL [FAQ 13]:** Disputes relating to laws other than the ITL, such as wealth tax, securities transactions tax, commodity transaction tax, equalization levy etc.

► **Appeal-wise settlement permitted [FAQ 25, 31]:** The taxpayer can opt to settle its own appeal or the tax authority's appeal or both. Furthermore, in relation to appeals against regular assessment orders⁸ and reassessment orders⁹ for the same tax year which are pending at different appellate forums, the taxpayer can opt to settle one or both.

► **Independent settlement of penalty appeal while continuing litigation on quantum appeal for same tax year is not permitted [FAQ 11]:** Litigation on a penalty appeal (relating to a quantum appeal which is pending) cannot be settled independent of the quantum appeal. If, however, the taxpayer opts to settle quantum appeal, the taxpayer is required to give details of both quantum appeal and penalty appeal in one declaration form and make payment only in relation to disputed tax.

► **Tax year which contains any of the disqualified tax arrears is ineligible [FAQ 10]:** The parent legislation of VSV 2.0 states that VSV 2.0 cannot be availed, in respect of tax arrear relating to:

- Tax year in respect of prosecution has been instituted
- Any undisclosed income from a source located outside India or undisclosed asset located outside India
- An assessment/reassessment made basis information received pursuant to tax information exchange agreements

FAQ 7 states that VSV 2.0 does not envisage issue-wise settlement of dispute, and that the appeal has to be settled in full. Thus, FAQ 7 states that, an appeal which involves any issue pertaining to non-qualifying tax arrear as aforesaid, is ineligible in its entirety.

► **Choice to settle some of the roll-back years under VSV 2.0 [FAQ 7]:** ITL allows the taxpayers to enter into advance pricing agreement (APA) with tax authorities in respect of their international transaction for a maximum period of five future years with the objective of determining the arm's length price (ALP) or to specify the manner in which the ALP is to be determined. ITL also allows the taxpayer to choose to roll-back the agreement reached in the APA to a maximum of four years prior to the first year of the APA period, to resolve similar transfer pricing (TP) issues faced in four prior years that are open for examination or in litigation. As per Circular No. 10 of 2015 dated 10 June 2015, the taxpayer needs to mandatorily roll-back for all the four prior years, or not roll-back the APA at all. As an exception, the prior years where the international transaction had not occurred, or the taxpayer has not furnished its return on or before the due date, are illustratively ineligible for the roll-back and can be excluded from the roll-back application. FAQ 7 of VSV Circular 2.0 suggests that, where the taxpayer is evaluating to file an application for roll-back of the APA, the taxpayer can choose to settle any of the four prior years under VSV 2.0 for which appeals are pending. In case the taxpayer settles so, the taxpayer can apply for roll-back of the APA for the balance years which are not settled under VSV 2.0. However, language of FAQ 7 is ambiguous and merits a further clarification.

B. Clarifications in relation to computation of disputed tax

► **Increase disputed tax by enhancement proposed by FAA [FAQ 16]:** Unlike VSV 1.0, while settling appeal pending before FAA, the parent legislation of VSV 2.0 does not specifically provide for payment of disputed tax which pertains to an enhancement proposed by FAA. However, the FAQ requires such proposed enhancement to be considered in determining amount payable by taxpayer to settle the appeal. A suitable provision is also made in format of declaration.

► **Consequential relief upon settlement of appeal for tax deduction or collection at source:** If the payer settles the appeal in respect of tax deduction or collection at source under VSV 2.0:

- Credit of taxes paid by payer is to be allowed to the payee but as on the date of settlement of the dispute by the payer. Consequently, the payee is liable to interest, if any, for short payment of advance tax. [FAQ 20]
- The payer shall be entitled to consequential relief of deduction of expenditure (in respect of which the payer failed to comply with the tax withholding provisions) in the year in which tax was required to be withheld, as against the year in which tax is deposited (as provided in ITL). If, however, taxpayer has already claimed such deduction in the past under the ITL in the year in which tax was deposited, deduction in

⁷ Interest levied under sections 234A/234B/234C of the ITL

⁸ Appeal against assessment order passed under section 143(3) of the ITL pending before the Tribunal

⁹ Appeal against reassessment order passed under section 147 of the ITL pending before the FAA

the year in which tax was required to be withheld will not be available.

Further, in addition to settlement of appeal for tax deduction, where the payer proposes to also settle appeal contesting the disallowance of expenditure in the hands of the payer in the tax year in which failure to withhold tax took place, no payment is required to settle the issue pertaining to disallowance of expenditure - payment would be required to settle the other issues, if any. [FAQ 22]

- ▶ **Consequential relief to the payer upon settlement of the payee's dispute [FAQ 21]:** If the payee settles its own dispute with reference to assessment of an income which was not subjected to withholding tax by the payer, such payer would not be required to pay the tax amount under default. However, such payer would be required to pay interest for default in withholding of tax. Dispute in respect of such interest, if eligible for VSV 2.0, can be settled separately by the payer.
- ▶ **Substantive and protective additions [FAQ 12]:** If substantive addition as also protective addition have been made (in the hands of the same taxpayer for different tax years, or in the hands of different taxpayers), and the substantive addition is eligible for settlement, the taxpayer can choose to settle either the substantive addition or the protective addition. Thereupon, the tax authority shall pass a rectification order deleting the protective addition or substantive addition, as the case may be, which is not settled.
- ▶ **Disputed tax for settlement of issue covered in favor of the taxpayer by SC [FAQ 32]:** If the taxpayer has got a decision in its favor from the SC on any issue for a particular tax year, while settling pending appeals of other tax years which involve the same issue, disputed tax is required to be calculated on other issues only which are not covered by such SC decision. In other words, no payment is required for tax arrear in respect of issue which is settled by SC in favor of the taxpayer in a different tax year.
- ▶ **Waiver of interest and penalty only in relation to disputes settled under VSV 2.0 [FAQ 33]:** Waiver of interest and penalty under VSV 2.0 is only in respect of issues which are disputed in appeal and for which declaration is filed under VSV 2.0. There is no waiver from interest and penalty in relation to undisputed issues against which no appeal was filed.
- ▶ **No adjustment of refunds due against amount payable under VSV 2.0 [FAQ 17]:** The taxpayer is not entitled to adjust refunds due in a different tax year, while determining amount payable under VSV 2.0. Thus, refunds due for year 1 cannot be adjusted while determining amount payable by the taxpayer for settling appeal of year 2.
- ▶ The taxpayer is not entitled to refund of any amount paid in pursuance of declaration under VSV 2.0. [FAQ 18]

C. Clarifications related to procedural compliance and consequences of settlement under VSV 2.0:

- ▶ **Immunity from prosecution extended to directors and partners in case of declaration filed by company or partnership firm [FAQ 35]:** In case of a declarant who is a company or partnership firm who settles an issue under VSV 2.0, benefit of immunity from prosecution in respect of such issue is also extended to directors and partners of such declarant.
- ▶ **Proof of withdrawal of appeal is sufficient [FAQ 14]:** The parent legislation of VSV 2.0 states that, on receipt of certificate from the DA determining the amount payable by the taxpayer to settle the dispute, the taxpayer is required to withdraw its appeal or writ pending before the HC or SC in respect of tax arrear and furnish proof of such withdrawal along with intimation of payment to the DA. Only thereafter, DA shall pass an order to conclude the dispute. Reckoning practical challenge to secure formal withdrawal of appeal in a short period, FAQ states that filing a proof of request made for withdrawal of its appeal which is under process will be sufficient.
- ▶ Failure on the part of the taxpayer to make payment of amount determined by the DA within 15 days on account of financial difficulties would void the declaration. [FAQ 34]

Comments

As a welcome measure, while VSV Circular 1.0 required settlement of substantive addition only, VSV Circular 2.0 gives a choice to the taxpayer to settle either the substantive addition or the protective addition.

As part of VSV 1.0, the CBDT had, through issuance of Circular No. 9/2020 and Circular No. 21/2020 (VSV Circular 1.0), significantly broadened the scope of disputes which could be settled under VSV 1.0. The stakeholders had expected that VSV Circular 2.0 would be along the same lines. Contrary to such expectations, VSV Circular 2.0 narrows down scope significantly, as compared to VSV Circular 1.0. VSV Circular 1.0 enabled settlement of following cases, which are ineligible under VSV Circular 2.0:

- Where the appellate authority has set aside any issue to the tax authority for giving proper opportunity of hearing to the taxpayer or to carry out fresh examination of the issue with specific direction ^[10];
- Where enforceability of assessment order is stayed by HC or SC ^[11];
- Miscellaneous Application pending as on specified date ^[12].

^[10] FAQ 7 of Circular No. 9/2020

^[11] FAQ 57 of Circular No. 21/2020

^[12] FAQ 61 of Circular No. 21/2020

Additionally, while VSV Circular 1.0 allowed settlement of appeal pending as of the specified date has been disposed off as of the date of the declaration, VSV Circular 2.0 creates ambiguity in this behalf. Perhaps, taxpayers can suggest that such cases are still eligible for settlement, where a dispute subsists on account of the taxpayer or the tax authority having filed a further appeal to higher appellate forum before the date of the declaration.

Some aspects of VSV Circular 2.0 are conflicting with judicial precedents rendered in the context of VSV 1.0. For instance, courts^[13] have held that disqualification in respect of tax arrear relating to undisclosed income does not disqualify the entire tax year, and the taxpayer can settle other issues which are unconnected to undisclosed income. Contrarily, FAQ 10 of VSV Circular 2.0 states that the entire appeal for such tax year is ineligible.

Unlike VSV 1.0, while settling appeal pending before FAA, the parent legislation of VSV 2.0 does not require payment of disputed tax pertaining to enhancement proposed by FAA. However, FAQ 16 of VSV Circular 2.0 as also the format of Form 1 prescribed under VSV Rules 2.0 require such enhancement to be considered in determining amount payable by taxpayer to settle the appeal. It is likely to give rise to litigation.

FAQ 26 of VSV Circular 2.0 clarifies that writ filed against a notice issued for reassessment, where no reassessment order has been passed consequent to such notice, is not eligible for VSV 2.0 since the income is yet to be determined. However, where reassessment order has been passed as on the date of the declaration post SC decision in case of Union of India and Others v. Rajeev Bansal^[14], question may arise whether such dispute can be settled as the disputed tax is determinable.

Similarly, issue may also arise on eligibility for cases where writ filed against a notice issued for reassessment with respect to a specific issue of income/expenditure which is pending as on specified date where income may be easily determinable.

[13] *Macrotech Developers Ltd. v. PCIT* (2021) 280 Taxman 37 (Bombay HC); *Pragati Pre Fab India (P) Ltd. v. PCIT & Ors.* (2024) 460 ITR 387 (Bombay HC)

[14] Refer our alert titled "Supreme Court upholds validity of almost 90,000 reassessment notices issued during COVID-19 times and grants big relief to tax department" dated 8 October 2024.

The following key aspects clarified as part of VSV Circular 1.0 are yet to be clarified in VSV Circular 2.0:

- Where appeal, as also rectification application, is pending as of the specified date on the same issue, the "disputed tax" is to be calculated after giving effect to the rectification order passed by the tax authority^[15];
- VSV 1.0 could be availed for settlement of belated appeal filed after the specified date, once delay was condoned by appellate forum before date of filing declaration^[16] ;
- VSV 1.0 could be availed for additional ground filed on or before the specified date^[17];
- VSV 1.0 could be availed where notice for initiation of prosecution has been issued without prosecution being instituted^[18].

[15] FAQ 25 of Circular No. 9/2020

[16] FAQ 59 of Circular No. 21/2020

[17] FAQ 77 of Circular No. 21/2020

[18] FAQ 22 of Circular No. 9/2020

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