

ERGO

Analysing developments impacting business

DIRECT TAX DISPUTES RESOLUTION BILL INTRODUCED IN THE PARLIAMENT

6 February 2020

Introduction

While presenting the Government's Budget for financial year 2020-21, Hon'ble Finance Minister of India (Hon'ble FM) in her budget speech had announced that government will come out with a tax dispute resolution scheme (Vivad Se Vishwas) wherein taxpayers will get complete waiver of interest and penalty by paying only the disputed taxes within prescribed time. To that effect, the government has introduced 'The Direct Tax Vivad Se Vishwas Bill, 2020' (Scheme) in the Parliament on 5 February 2020. The Scheme aims for a swift resolution of direct tax litigation pending before various appellate forums (Supreme Court or High Court or Income Tax Appellate Tribunal (ITAT) or Commissioner of Income Tax (Appeals) (CIT(A)) that currently involves disputed direct tax amount of over INR 9 lakh crores.

Highlights of the Scheme

➤ Scope of the Scheme

Any appeal (whether filed by taxpayers or by income-tax department) pending before Supreme Court or High Court or ITAT or CIT(A), as on 31 January 2020 is eligible for resolution under this Scheme.

➤ What needs to be paid to avail the Scheme

To avail the benefit under this Scheme, taxpayer is required to make a declaration in a form to be prescribed (Declaration) before the designated authority i.e. designated Commissioner of Income Tax (Designated CIT) and is required to pay the following amount:

Nature of tax demand	Amount payable under the Scheme on or before 31 March 2020	Amount payable under the Scheme after 31 March 2020 but on or before the last date of the Scheme
Tax demand raised pursuant	Amount of disputed tax. Taxpayer will get complete	<u>Lower of the following:</u> 110% of the disputed tax

to any assessment order	waiver from interest or penalty leviable or levied	OR Disputed tax, <i>plus</i> applicable interest, penalty
Disputed interest / disputed penalty / disputed fee	25% of the disputed interest / disputed penalty / disputed fee	30% of the disputed interest / disputed penalty / disputed fee

➤ **What immunity is granted upon opting the Scheme**

Taxpayer will get immunity from penalty, interest and prosecution in respect of the tax arrears for which the Declaration is made.

➤ **Who / what is not eligible for the Scheme:**

- Following tax disputes would not be eligible for the Scheme:
 - Appeals against assessment orders passed pursuant to 'search' action
 - Appeals against assessment orders involving undisclosed foreign income and foreign assets
 - Appeals against assessments or reassessment orders made pursuant to 'Exchange of information' received from foreign jurisdictions
 - Appeals pending before CIT(A) where 'notice of enhancement' has been issued on or before 31 January 2020
 - Appeals where 'prosecution' has been instituted on or before the date of filing of Declaration.
- Taxpayers in respect of whom prosecution for any offence punishable under the Indian Penal Code; Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988 etc has been instituted on or before the filing of Declaration are also not eligible for the Scheme.

Time and manner of tax payment

- ✓ Designated CIT will pass order within 15 days from the date of receipt of a Declaration (Order) determining the amount payable by the taxpayer.
- ✓ Taxpayer needs to pay the sum determined in the Order within 15 days from its receipt. Thereafter, Designated CIT will pass an order acknowledging payment of tax / interest / penalty, as the case may be.

Some other relevant aspects

- ✓ Any amount paid under this Scheme will not be refundable.
- ✓ Any appeal pending before ITAT or CIT(A) will be deemed to have been withdrawn from the date on which Order is passed. Notably, in respect of appeals / writ petitions which were filed by the taxpayer, the taxpayer will have

to withdraw its appeal or writ petition and furnish proof of such withdrawal along with its Declaration that needs to be filed under this Scheme.

- ✓ A taxpayer who has initiated any proceedings for arbitration/ conciliation/ mediation (Claim) is also entitled to avail the benefit under this Scheme if it withdraws the Claim and furnishes proof of such withdrawal along with its Declaration.

Comments

Tax litigation not only results in financial costs but also consumes a precious amount of a Taxpayer's time and energy. This Scheme is a welcome step towards tax disputes resolution. Taxpayers opting for this scheme will be given immunity from penalty, prosecution etc. While it is clearly a positive step, some aspects require clarification – for instance, whether interest already paid (by way of adjustment against pending tax refunds of earlier years) by a taxpayer will be refunded if the taxpayer opts for this Scheme?

The Hon'ble FM in her budget speech indicated that the Scheme would remain open till 30 June 2020. Given that the Scheme has a limited time frame, taxpayers will have to quickly evaluate whether they would like to consider the Scheme, depending upon the merits of their pending tax disputes and other relevant considerations. Further, given the fact that the payment can only be made once the Order is passed by the Designated CIT determining the amount payable under this Scheme, taxpayers who opt for the Scheme should keep this in mind and consider filing declaration as early as possible so that the Designated CIT gets sufficient time in passing the Order and the amount so determined can be paid by 31 March 2020 as the Scheme provides for additional payment of taxes if payment is made after 31 March 2020.

- *Sanjay Sanghvi (Partner), Raghav Kumar Bajaj (Principal Associate) and Ujjval Gangwal (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2020 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com