

# Direct Tax – Vivad Se Vishwas Act, 2020

## Introduction:

- ▶ Bill Introduced of 5<sup>th</sup> February
- ▶ Got Assent of the Hon'ble President on 17<sup>th</sup> March, 2020
- ▶ Act contains **12 Sections**
- ▶ Government to unlock amount locked in various litigation (approx. 4.83 lakh cases at various authority & Rs. 9.82 Lakh crore). As on 30<sup>th</sup> Nov, 2019.
- ▶ Assessee to get benefit from litigation cost also immunity from penalty & Prosecution.

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## Objective:

- ▶ Resolution of pending Income Tax Dispute & Resolution.
- ▶ Generate Timely Revenue for Government
- ▶ Pay disputed tax and get waiver from Interest and Penalty against the disputed tax.
- ▶ Immunity from Prosecution.

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## Important Terms:

### Section 2 - Definitions

1. Appellant – fulfils the prescribed criteria and files a valid application for Declaration.
2. Appellate Forum – Supreme Court, High Court, ITAT, Commissioner (Appeals).

*Exclusion: Proceedings before Settlement Commission and Authority for Advance Ruling.*

3. Disputed Tax- Tax which is subject matter of Appeal (It includes surcharge & cess)

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## Important Terms:

4. Specified Date – 31<sup>st</sup> January, 2020
5. **Last date of Declaration – 31<sup>st</sup> January, 2021 (extended date)**
6. Disputed Interest – Interest does not relate to disputed tax & appeal against the same has been filed by the appellant.
7. Disputed Penalty – Penalty does not relate to disputed tax & appeal against the same has been filed by the appellant.

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## Important Terms:

### 7. Tax Arrear:

- a. Dispute Tax and interest and penalty levied or leviable on such disputed tax.
- b. disputed interest
- c. disputed penalty
- d. Disputed TDS & TCS

As determined under Income Tax Act.

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## **Eligibility:**

### [Section 2 - Appellant](#)

1. Appeal/ writ filed on or before 31<sup>st</sup> Jan, 20.
2. Order against which time for filing appeal not expired on 31<sup>st</sup> Jan, 20.
3. Pending cases before DRP (Dispute Resolution Panel) on 31<sup>st</sup> Jan, 20.
4. DRP issued direction on or before 31<sup>st</sup> Jan, 20 but no order passed.
5. Revision u/s 264 filed on or before 31<sup>st</sup> Jan, 20 and are pending.
6. Search Case dispute demand < 5 crore in a year.
7. Appeal / writ filed by tax payer/ department.

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## **Eligibility:**

8. Disputes where payment already made also eligible.
9. Arbitration case in India or Abroad.

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## **Disputes Covered:**

1. Disputed Tax
2. Disputed Penalty
3. Disputed Interest
4. Disputed Fee
5. Disputed TDS or TCS

*Disputed Tax shall include tax on enhancement notice*



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## Amount Payable by Declarant:

### Section-3

Payment Date	Appeal, writ, SLP, arbitration relates to disputed tax	Appeal, writ, SLP, arbitration relates only to disputed penalty or interest or fee
On or before 31st March, 2021	1. 100% of the disputed tax 2. 125% in search cases <b>waiver of interest penalty</b>	25% of the disputed penalty or interest or fee
From 1st April, 2021 to last date to be notified	1. 110 % of the disputed tax 2. 135% in search cases. <b>waiver of interest penalty</b>	30 % of the disputed penalty or interest or fee

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## Payment Schedule:

- ✓ If an issue in taxpayers pending appeal is already decided in taxpayers favour by an appellate forum

Or

- ✓ if department has filed appeal on an issue

*Amount payable is 50% of the aforesaid amount.*

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## Exclusions: [Section - 9](#)

- i. Search Case Disputed tax > 5 crore in a year.
- ii. Prosecution already instituted, under Income Tax or IPC filed by department.
- iii. Case pertaining to undisclosed foreign Income and Asset
- iv. Cases completed on the basis of information received from foreign jurisdiction.
- v. Cases under
  - ▶ Narcotic Drugs and Psychotropic Substances Act
  - ▶ Special Courts Act
  - ▶ The Unlawful Activities (Prevention) Act, 1967
  - ▶ The Prevention of Corruption Act
  - ▶ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
  - ▶ Prevention of Money Laundering Act 2002
  - ▶ Prohibition of Benami Property Transaction Act, 2016

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Declaration filing:

## [Section - 4](#)

- ✓ Declarant to file declaration before designated authority in such form as may be prescribed.
- ✓ Deemed that appeal filed has been withdrawn from said date by the declarant. Certificate is issued by designated authority.
- ✓ Declarant to withdraw appeal or writ petition with leave of court.
- ✓ Declarant to furnish proof along with declaration regarding withdrawal of any proceeding/ arbitration/ conciliation.
- ✓ Undertaking from declarant to waive future rights to legal recourse against tax arrear covered in this scheme.

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## Designated Authority:

- Officer not below the rank of Commissioner of Income Tax notified by Principle Chief Commissioner
- To determine the amount payable by declarant – within 15 days of declaration received (*Section 5 – Time & Manner of Payment*)
- Grant certificate for details of tax arrear and amount payable. (*Section – 5*)
- Pass order for amount paid – Once the said amount is received. (*Section – 5*)
- All such orders shall be conclusive to the matter stated therein. (*Sec.– 5*)

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Payment by Declarant:

- Pay the determined amount within 15 days of receipt of certificate.
- Intimate payment details to designated officer

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## Withdrawal of Appeal:

- Post filing of declaration and fulfilment of conditions appeals/ writs/ objections of taxpayers & department in respect of disputed income, disputed interest or disputed penalty or disputed fees pending before the Commissioner Appeals, DRP, ITAT, High Court or Supreme Court shall be withdrawn.
- A certificate to the effect shall be furnished to the tax payer.

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Refund of Excess Amount:

[Section – 7 No refund on amount paid](#)

- ✓ If amount paid before filing declaration exceeds amount payable under scheme.
- ✓ Excess Amount is refunded

*Any amount paid in pursuance of a declaration made shall not be refundable under any circumstances.*

*No Interest payable on such refund.*



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Other:

- ▶ Filing of declaration will not set any precedence.
- ▶ Neither Department nor tax payer can claim in any other proceedings that they have conceded the tax position by settling the dispute.
- ▶ 5 crore limit should be reckoned for single year.
- ▶ If more than one issue. File declaration for all issues.
- ▶ AO has reduced the returned loss by making addition of income/ disallowing expenditure
  - a. Pay tax and carry forward the loss as usual, or
  - b. Carry Forward the reduced amount of loss for future year by not making any payment.
- ▶ Same proposition would apply for reduction in MAT credit.

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Other:

- ▶ Dispute settlement under Transfer Pricing adjustment would not have any effect on the secondary adjustment as both are independent provisions.

*Taxpayer to repatriate fund to India in respect of settled transfer pricing adjustments.*

# Direct Tax – Vivad Se Vishwas Rules, 2020

<b>Form</b>	<b>User</b>	<b>Purpose</b>	<b>Rule</b>
Form -1	Appellant	Declaration Filing	Rule - 3
Form -2	Appellant	Undertaking to waive right to legal recourse	Rule - 3
Form -3	Designated Authority	Certificate for amount payable (tax arrear)	Rule - 4
Form -4	Appellant	1. Details of Payment 2. Withdrawal of All cases.	Rule - 5
Form -5	Designated Authority	Order by Designated Authority	Rule - 7