

F. No. IT(A)/1/2020-TPL
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

Dated: 4th December, 2020

Sub.: Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 – reg.

With the objective to reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process, the Direct Tax *Vivad se Vishwas* Act, 2020 (hereinafter referred to as '*Vivad se Vishwas*') was enacted on 17th March, 2020. The provisions of *Vivad se Vishwas* were amended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to provide certain relaxations in view of the COVID-19 pandemic and also to empower the Central Government to notify certain dates. Towards this end, *vide* notification dated 27th October, 2020 the date for payment without additional amount under *Vivad se Vishwas* was extended from 31st December, 2020 to 31st March, 2021. The last date for filing declaration under *Vivad se Vishwas* was also notified as 31st December, 2020. Subsequently, the Central Board of Direct Taxes issued a circular no. 18/2020 dated 28th October, 2020 relaxing the time limit of 15 days prescribed in section 5(1) of *Vivad se Vishwas* for making payment of amount payable, as determined in a certificate issued by the Designated Authority.

2. In order to facilitate the taxpayers, the Board had *vide* circular no. 9/2020 dated 22nd April, 2020 issued clarifications in form of answers to 55 frequently asked questions (FAQs) on issues related to eligibility, computation of amount payable, procedure and consequences under *Vivad se Vishwas*. Several representations have been received thereafter seeking further relaxation and clarifications with respect to such issues. Some of these representations have already been addressed through the aforesaid notification dated 27th October, 2020 and circular dated 28th October, 2020.

3. Section 10 and 11 of the *Vivad se Vishwas* empowers the Board / Central Government to issue directions or orders in public interest or to remove difficulties. This circular is being issued in continuation of circular dated 22nd April, 2020 (which covered Q. no. 1 – 55) under section 10 and 11 of the *Vivad se Vishwas* to provide answers to 34 more FAQs (Q. no. 56 – 89). It may be noted that in the FAQs, Income Tax Act, 1961 has been referred to as the Act, Designated Authority (under *Vivad se Vishwas*) has been referred to as the DA, Assessing Officer has been referred to as the AO, Commissioner (Appeals) has been referred to as CIT(A), and the Income Tax Department has been referred to as the Department.

“QUESTIONS ON SCOPE/ELIGIBILITY (Q. No. 56 - 75)”

Q. No.	56.	<i>Appeal or arbitration is pending with appellate authority as on 31st Jan 2020 (or time for filing appeal has not expired as on 31st Jan 2020). However,</i>
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Answer:		<i>subsequent to that date, and before filing of the declaration, the appeal has been disposed of by the appellate authority. Whether it is still eligible under Vivad se Vishwas? If yes, how the amount payable under Vivad se Vishwas shall be computed?</i>
Answer:		Yes. Amount payable under <i>Vivad se Vishwas</i> shall be computed with reference to the position of appeal or arbitration as on 31 st January, 2020.
Q. No.	57.	<i>Whether Vivad se Vishwas can be availed in a case where the enforceability of an assessment order passed by the AO has been stayed by the High Court or Supreme Court?</i>
Answer:		Yes, in such case assessee can file declaration under <i>Vivad se Vishwas</i> , whether or not the appeal has been filed against the assessment order. Writ/ Appeal pending in High Court and Supreme Court shall be required to be withdrawn by the taxpayer. Upon settlement of quantum appeal, interest and penalty, if any, will be waived.
Q. No.	58.	<i>Appeal or writ against order under section u/s 263 of the Act was pending on 31st Jan, 2020 (or time to file appeal has not expired on 31st Jan, 2020). Whether Vivad se Vishwas can be availed for settling such appeal?</i>
Answer:		If order u/s 263 of the Act contains general directions and income is not quantifiable, appeal against such order is not eligible under <i>Vivad se Vishwas</i> . However, if order u/s 263 of the Act contains only specific directions and income is quantifiable (and does not contain any general directions due to which income is not quantifiable), appeal against such order is eligible under <i>Vivad se Vishwas</i> . In such case, assessee is required to settle all the issues in the order, which are subject matter of order u/s 263 of the Act as well as issues pending in appeal (or issues in respect of which time to file appeal has not expired on 31 st Jan 2020), if any, with reference to the said order.
Q. No.	59.	<i>Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?</i>
Answer:		If the time limit for filing appeal expired during the period from 1 st April 2019 to 31 st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31 st Jan 2020.
Q. No.	60.	<i>Whether cross objections filed and pending as on 31 January 2020 will also be covered by the scheme?</i>
Answer:		Yes. However, the main appeal is also required to be settled along with cross objections.

Q. No.	61.	<i>Whether Miscellaneous Application (MA) pending as on 31 January 2020 will also be covered by the scheme?</i>
Answer:		If the MA pending on 31 st Jan 2020 is in respect of an appeal which was dismissed <i>in limine</i> (before 31 st Jan 2020), such MA is eligible. Disputed tax will be computed with reference to the appeal which was dismissed.
Q. No.	62.	<i>Whether search cases where assessment was made under section 158BA (i.e. block assessment) of the Act are covered under Vivad se Vishwas?</i>
Answer:		Appeal, writ or Special Leave Petition in respect of block assessment is eligible if the disputed tax does not exceed five crore rupees for the said block assessment.
Q. No.	63.	<i>Whether Vivad se Vishwas can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC?</i>
Answer:		No.
Q. No.	64.	<i>Appeal against assessment order is pending (or time to file appeal against such order has not expired) on 31st Jan 2020. Assessee has also filed application for resolution of assessment order under Mutual Agreement Procedure (MAP). Whether Vivad se Vishwas can be availed?</i>
Answer:		In a case where MAP resolution is pending or the assessee has not accepted MAP decision, the related appeal shall be eligible under <i>Vivad se Vishwas</i> . In such case, the declarant will be required to withdraw both MAP application and appeal.
Q. No.	65.	<i>If AAR has ruled in favour of the taxpayer and the Department has gone in writ or appeal before the High Court/Supreme Court and the total income of the taxpayer was quantifiable on the facts of the case before AAR, is the taxpayer eligible under Vivad se Vishwas?</i>
Answer		Yes, the taxpayer is eligible since the income is quantifiable. In such case, since the issue is covered in favour of taxpayer, only 50% of the disputed tax is payable.
Q. No.	66.	<i>Appeal has been set aside to CIT(A) / Dispute Resolution Panel (DRP) and was pending as on 31st Jan 2020? Whether it is eligible?</i>
Answer:		Yes. Such case can be settled under <i>Vivad se Vishwas</i> and the set aside issues will be deemed to be pending at the level of CIT(A) / DRP as on 31 st Jan 2020. However, all issues which were either pending in appeal (whether set aside or not) or in respect of which time to file appeal has not expired on 31 st Jan 2020 have to be settled.

Q. No.	67.	<i>Whether in cases where the appellate authority has quashed the prosecution complaint or ruled in favour of taxpayer and no further appeal is filed by Department on or before filing of declaration are eligible?</i>
Answer:		Yes, such cases are eligible if the time limit for filing appeal by the Department has expired and the Department has not filed appeal (with or without condonation of application).
Q. No.	68.	<i>Whether the assessee is eligible to opt for Vivad se Vishwas if prosecution has been instituted due to a Tax Deduction at Source (TDS) default?</i>
Answer:		If prosecution has been instituted for TDS default in a financial year on or before the date of filing of declaration, it cannot be settled under <i>Vivad se Vishwas</i> .
Q. No.	69.	<i>A trust has been denied registration u/s 12AA of the Act. Whether appeal against such order is eligible for Vivad se Vishwas?</i>
Answer:		No.
Q. No.	70.	<i>If the assessment order has been framed in the case of a taxpayer under section 143(3) / 144 of the Act based on the search executed in some other taxpayer's case, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?</i>
Answer:		Such case is to be considered as a search case.
Q. No.	71.	<i>Vivad se Vishwas forms do not contain a specific option to settle appeal filed against intimation u/s 143(1) of the Act. Accordingly, please clarify how to settle such appeal, which is pending as on 31st Jan 2020 (or time to file appeal has not expired on 31st Jan, 2020).</i>
Answer:		Appeal filed against intimation u/s 143(1) of the Act is eligible under <i>Vivad se Vishwas</i> if adjustment has been made under sub-clauses (iii) to (vi) of clause (a) of section 143(1) of the Act.
Q. No.	72.	<i>Whether appeal filed under section 248 of the Act is eligible for Vivad se Vishwas?</i>
Answer:		Yes.
Q. No.	73.	<i>In the case of a taxpayer, prosecution has been instituted for assessment year 2012-13 with respect of an issue which is not in appeal. Will he be eligible to file declaration for issues which are in appeal for this assessment year and in respect of which prosecution has not been launched?</i>
Answer:		The ineligibility to file declaration relates to an assessment year in respect of which prosecution has been instituted on or before the date of declaration. Since in this example, for the same assessment year (2012-13) prosecution has already been instituted, the taxpayer is not eligible to file declaration for this assessment year even on issues not relating to prosecution.

Q. No.	74.	<i>If the prosecution is for a different assessment year and the appeal for a different one, would it debar the assessee from the benefit of this scheme?</i>
Answer:		Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible.
Q. No.	75.	<i>Whether cases where the taxpayer/Department has filed declaration/application under section 158A/158AA are eligible under Vivad se Vishwas?</i>
Answer:		Yes, in such case declaration/application filed u/s 158A/158AA of the Act on or before 31 st January 2020 shall be deemed to be a pending appeal as on 31 st Jan 2020 for the purposes of <i>Vivad se Vishwas</i> .

“QUESTIONS RELATED TO COMPUTATION (Q. No. 76 - 79)”

Q. No.	76.	<i>Whether enhancement notice issued by CIT(A) post 31st Jan 2020 is to be taken into account for computation of disputed tax?</i>
Answer:		Enhancement notice issued by CIT(A) after 31 st Jan, 2020 but before the date of issue of this circular shall be required to be taken into account for determining amount payable under <i>Vivad se Vishwas</i> . However, the enhancement notice issued on or after the date of this circular but on or before 31 st December shall not be taken into account for determining amount payable under <i>Vivad se Vishwas</i> .
Q. No.	77.	<i>Whether any additional ground filed in relation to an appeal is to be considered while computing disputed tax?</i>
Answer:		If any additional ground has been filed on or before 31 st January 2020, it shall be considered for the purpose of computing disputed tax.
Q. No.	78.	<i>In case of appeals pending against both assessment and reassessment where addition is repeated on same issue, would tax be payable twice in respect of the same issue if both appeals are settled?</i>
Answer:		Since disputed tax in respect of repeated addition will be payable only once, both the assessment and reassessment appeals are required to be settled together. If there is a difference between tax liability in respect of such addition in assessment and reassessment, then higher of the two tax liabilities will be considered for computing disputed tax.
Q. No.	79.	<i>In a case where assessee accepts certain additions in an order (giving rise to undisputed tax liability) and appeals against certain additions (giving rise to disputed tax liability), how the prepaid taxes will be adjusted against the disputed tax liability or undisputed tax liability?</i>

Answer:	If prepaid tax, being TDS/TCS, is clearly identifiable with the source of income, it will be adjusted against tax liability with respect to such income. Rest of the pre-paid tax, which cannot be clearly identified with the source of income, will be apportioned against the remaining tax liability.
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“QUESTIONS RELATED TO CONSEQUENCES (Q. No. 80 - 87)”

Q. No.	80.	<i>Whether appeal against penalties that are not related to quantum assessment like penalty u/s 271B, 271BA, 271DA of the Act etc. are also waived upon settlement of appeal relating to 'disputed tax'?</i>
Answer:		No, appeal against such penalty order is required to be settled separately.
Q. No.	81.	<i>In respect of some loan, addition was made u/s 68 of the Act. Appeal is pending before CIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account?</i>
Answer:		No, <i>Vivad se Vishwas</i> is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee.
Q. No.	82.	<i>Whether the immunity from prosecution is only for the declarant or also for the Director of the company or partner of the firm with respect to the issues settled under Vivad se Vishwas?</i>
Answer:		If an issue has been settled under <i>Vivad se Vishwas</i> , the immunity from prosecution with respect to that issue shall also extend to the director / partner of company / firm (being the declarant) in respect of same issue under section 278B of the Act.
Q. No.	83.	<i>If appeal involving issue of disallowance under section 40(a)(i)/(ia) of the Act is settled under the Scheme, whether consequential relief will be available in proceedings under section 201 of the Act initiated qua the same payment/deduction.</i>
Answer:		No.
Q. No.	84.	<i>Tax was not deducted on an income and order under section 201 of the Act was passed in case of the deductor. The said income was also assessed in the case of the deductee. Both deductor and deductee are in appeal or arbitration, which is eligible under Vivad se Vishwas. What would be the amount payable by the deductor and the deductee with reference to the said income under Vivad se Vishwas in the following scenarios —</i> <i>(i) Where the deductor settles his appeal or arbitration and makes payment under Vivad se Vishwas?</i> <i>(ii) Where the deductee settles his appeal or arbitration and makes payment under Vivad se Vishwas?</i>

Answer:		<p>In case of (i), since the deductor has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty under Vivad se Vishwas. Deductee will not be required to pay the tax under Vivad se Vishwas with reference to said income and he will get credit for tax paid by deductor. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%).</p> <p>In case of (ii), since the deductee has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty. Deductor will not be required to pay tax under Vivad se Vishwas with reference to non-deduction of tax on said income. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%).</p>
Q. No.	85.	<p><i>In the scenarios mentioned in Q. no. 84, what will be the amount of tax credit if the payment of amount on settlement of section 201 appeal is more than 100% of disputed tax for it being a search case or for the reason that the payment is made after 31st March 2021?</i></p>
Answer:		<p>Tax credit in the hands of deductee cannot be more than 100% of disputed tax, even if the payment of more than 100% of disputed tax is required to be made by the deductor settling his section 201 appeal.</p>
Q. No.	86.	<p><i>Answer to Q. no 31 clarifies that where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201 of the Act), he will get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia) of the Act in the year in which the tax was required to be deducted. What will happen in a situation where the same amount of TDS was recovered in subsequent year and accordingly the assessee has already claimed deduction in that year?</i></p>
Answer:		<p>There is no question of double deduction. If the assessee has already claimed deduction of the same amount under section 40(a)(i)/(ia) of the Act in subsequent year on account of payment of such sum, he shall not be entitled to again claim the deduction on the basis of the settlement under Vivad se Vishwas.</p>
Q. No.	87.	<p><i>The declarant has filed a declaration for disputed penalty. He is required to pay 25% or 30% of disputed penalty to settle the dispute. Will interest levied or leviable be waived in this case?</i></p>
Answer:		<p>Yes. Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.</p>

"QUESTIONS RELATED TO PROCEDURE (Q. No. 88 - 89)"

Q. No.	88.	<i>Separate orders were passed u/s 201(1) & 201(1A) of the Act for a particular assessment year. Assessee has filed two separate appeals for principal portion u/s 201(1) of the Act and interest portion u/s 201(1A) of the Act. Can he file only one declaration under Vivad se Vishwas against 201(1) order and seek 100% waiver of interest levied u/s 201(1A) of the Act.</i>
Answer:		Yes, once appeal against order u/s 201(1) of the Act is settled under <i>Vivad se Vishwas</i> , there would be 100% waiver of interest levied u/s 201(1A) of the Act.
Q. No.	89.	<i>Once declaration is filed by assessee u/s 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?</i>
Answer:		Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of <i>Vivad se Vishwas</i> .

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04.12.2020
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