



Vivad Se Vishwas Scheme – 2020

Based on “The Direct Tax Vivad Se Vishwas Bill, 2020” (VSVB-2020) – 1 Feb 2020



Felix Advisory

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Background

Measure to reduce litigation in direct tax

- Several measures has been taken by government to reduce tax litigations like the ***Sabka Vishwas Scheme*** under indirect taxes which settled around 1,89,000 cases and fetched around INR 39,000 Crores.
- The number of appeals filed is much higher than the number of appeals that are disposed which has lead to the pendency of appeals filed by taxpayers as well as Government.

To increase direct tax collection

- Disputed direct tax arrear is INR 9.32 Lakh Crores as on November 30th, 2019 and actual tax collection of FY 2018-19 was INR 11.37 Lakh Crores, the disputed tax arrear construe nearly one year direct tax collection.

To save time, cost and energy

- By opting such dispute resolution scheme the taxpayer will be able to deploy the time, energy and resources saved towards their business activities.

Inclusions in Scheme (Conditions apply*)

<i>Pendency till</i>	Appeals filed till 31 st January 2020
<i>Filed By</i>	Taxpayers or the income tax authority or both
<i>Pending before</i>	CIT (Appeals), ITAT, High Court or Supreme Court
<i>Demand</i>	Whether demand in such cases is pending or has been paid.
<i>Coverage area</i>	For disputed tax, interest or penalty in relation to an assessment or reassessment order
<i>Coverage area</i>	Including appeals against disputed interest, penalty or fee where there is no disputed tax.
<i>TDS/ TCS cases</i>	Appeals against the tax determined on defaults in respect of TDS or TCS.

Exclusions from Scheme

- 1 • Amount of tax arrears determined in search assessments
- 2 • For assessment year in respect of which prosecution has been initiated on or before the date of filling the declaration under the scheme
- 3 • Cases of undisclosed income or assets from source located outside India
- 4 • Cases of assessment or reassessment made on the basis of information received pursuant to any tax treaty
- 5 • For appeals before CIT (Appeals) in respect of which notice of enhancement of income has been issued on or before January 31st, 2020

Exclusions from Scheme

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- Person against whom the order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before filing of declaration (subject to certain conditions)

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- Prosecution has been initiated against the person on or before filing the declaration under
 - Indian Penal Code,
 - The Unlawful Activities (Prevention) Act, 1967,
 - The Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Corruption Act, 1988,
 - The Prevention of Money Laundering Act, 2002,
 - The Prohibition of Benami Property Transactions Act, 1988 or
 - under any act for the enforcement of any civil liability

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- Persons notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration

Benefits under Scheme

Nature of Tax Arrear	Amount payable by 31 March 2020	Amount payable from 1 April 2020 but before the last date of the Scheme
<p>Tax arrears, is the aggregate of:</p> <ul style="list-style-type: none"> • amount of disputed tax • interest chargeable or charged on such disputed tax • penalty leviable or levied on such disputed tax 	100% of disputed tax*	<p>100% of disputed tax + 10%</p> <p>10% shall be limited to interest and penalty levied or leviable</p>
Tax arrear relates to disputed interest or disputed penalty or disputed fee	25% of disputed amount	30% of disputed amount

Matters stated in the orders passed will not be reopened in any proceeding under the Income tax Act, 1961 or under any other law.

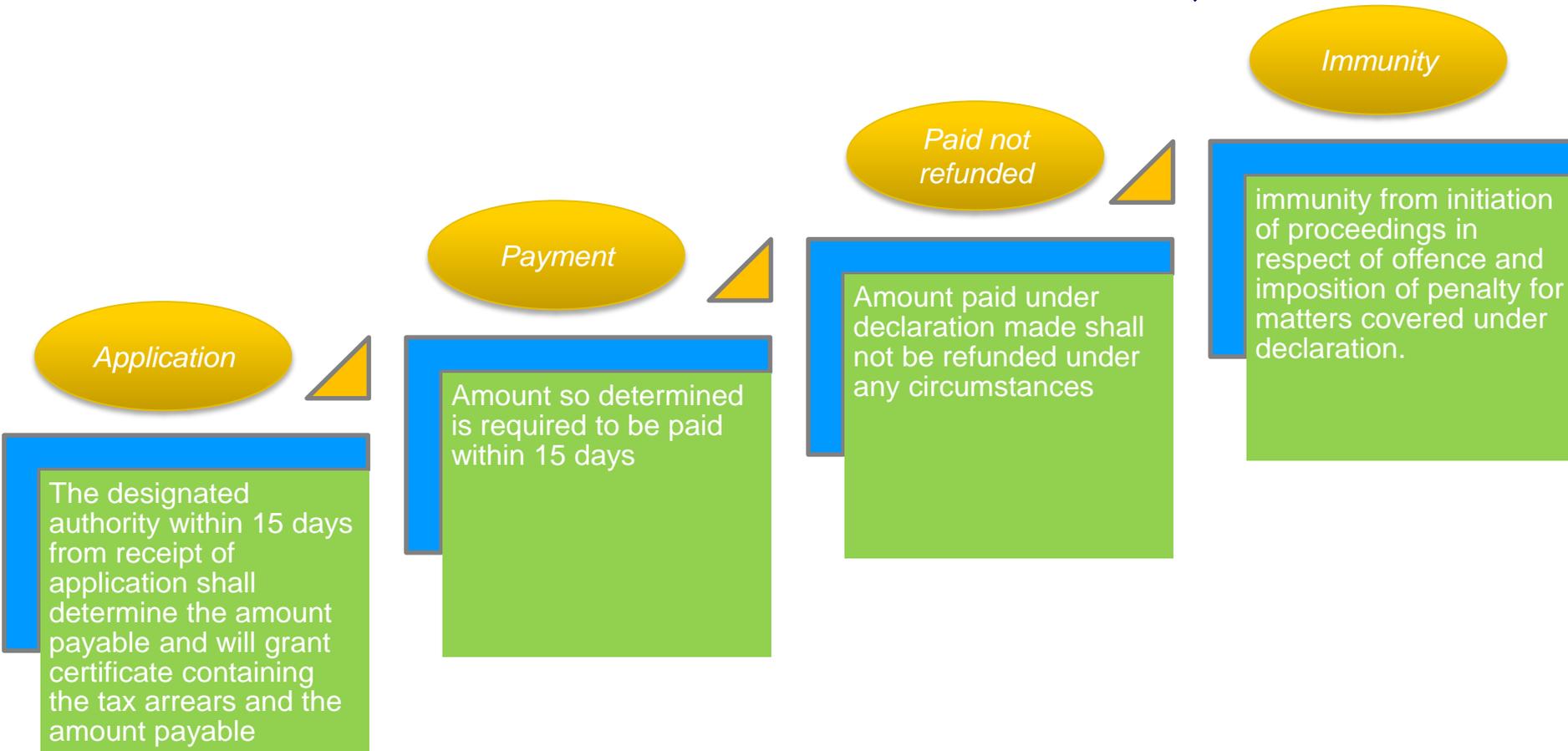
Benefits under Scheme

Computation of Disputed Tax:

- For assessment cases disputed tax is calculated using the formula $(A - B) + (C - D)$ where,
 - A = Tax on total income assessed applying provisions of the Income Tax Act, 1961 other than contained under section 115JB or 115JC (called general provisions)
 - B = Tax on total income assessed as per general provisions reduced by the amount of income against which appeal has been filed
 - C = Tax on total income assessed under section 115JB or 115JC
 - D = Tax on total income assessed under section 115JB or 115JC reduced by the amount of income against which appeal has been filedIf amount of income against which appeal has been filed in 'B' and 'D' are same, then such amount will not be considered in 'D'.
- Tax determined under section 200A or 201 or 206C(6A) or 206CB of the Income tax Act, 1961 against which appeal has been filed.

Disputed tax = Tax on addition/ disallowances/ relief made against which appeal has been filed.

Application under the Scheme



Other conditions under the Scheme



Any appeal pending before ITAT or CIT (Appeals) in respect of any disputed amount shall be deemed to have been withdrawn from the date on which certificate is issued by designated authority



Proof of withdrawal of appeal is required to be submitted if any appeal or writ is filed by the declarant



If the process for arbitration, conciliation or mediation has been initiated then such application is required to be withdrawn



Applicant is required to waive his right, remedy or any claim in relation to the amount of tax for which application is made



Application shall be deemed to have never been made if any material submitted is found to be false, violates any conditions referred in the bill or act in manner not consistent with the undertaking given and all proceedings under the Income tax act shall be deemed to have been revived

Felix's takeaways

- Dispute resolutions (DRP) and other similar dispute cases in direct taxes may also be covered in view of intent of scheme, Special exclusions under section 9, Section 4(5), 4(7), 5(1) and 11(1) of the VSVB-2020
- International arbitration cases shall also be covered
- Refund/ adjustment of demand paid other than VSVB may be possible, however required clarification.
- Huge relief to taxpayers where the amount of interest and penalty is much higher than tax (Cases under section 148)
- Hopefully Penny stock, cash deposits, unexplained credits/ investment (In India), share premium cases shall be resolved.

The above shall have more clarity once rules are notified.

**The above views are personal*

Thank You

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