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Corporate Tax

September 27, 2024

DIRECT TAX VIVAD SE VISHWAS RULES, 2024

Snapshot

Finance Act (No 2) 2024 ('the FA') has introduced new Chapter to provide for Direct Tax Vivad se Vishwas Scheme, 2024 ('the Scheme') for reducing pending tax litigation on specified date i.e. 22.07.2024. In the FA, provisions for the Scheme such as the tax payable by the declarant, filing of declaration, time and manner of payment, immunity from initiation of prosecution and penalty proceedings, exclusion from scheme, power to make rules for the Scheme are specified. In the execution of power granted in the FA, the Central Government has notified the rules for providing the provisions of the Scheme vide Notification No. G.S.R 584(E) dated 20.09.2024. The Government has notified Forms for declaration for any dispute, payment of tax, and orders by the designated authority. The Rules providing manner of computation of disputed tax in the cases where loss or unabsorbed depreciation is reduced as well as where MAT credit is reduced are also notified. The Rules are effective from 20.09.2024.

Direct Tax Vivad se Vishwas Rules 2024 ('the Rules')

Important Terminology

- 'dispute' means –
 - appeal, writ or special leave petition pending before the Appellate Forum, or
 - objections filed before the Dispute Resolution Panel (DRP) and directions not issued before specified date or
 - DRP has issued directions, and assessment is pending, or
 - Application for revision filed under section 264 of the Income-tax Act, 1961
- 'issues covered in favour of the declarant' means issues in respect of which –
 - an appeal or writ or special leave petition is filed by the income tax authority; or
 - an appeal or objection filed before the Commissioner (Appeals) or the Joint Commissioner (Appeals), or DRP by the declarant and such issue is decided in favour of the declarant by ITAT/HC (not reversed by the higher authority)
 - an appeal filed before ITAT, and such issue is decided in favour of the appellant by HC (not reversed by the SC)
- 'old appellant case'
 - an appeal filed on or before 31.01.2020 and pending before appellant authority on 22.07.2024
- 'new appellant case'
 - an appeal filed on or after 31.01.2020 but before 22.07.2024

Amount Payable by the declarant

Rules notifies that tax payable by the declarant shall be the amount as stated in section 90 of the FA which is summarized as under –

Particulars	Tax Payable (INR)	
	Declaration filed on or before 31.12.2024	Declaration on or after 01.01.2025 but on or before the last date (will be notified)
Appeal or Objection or Application for Revision u/s 264 is filed –		
• on or before 31.01.2020	110% of Disputed Tax*	120% of Disputed Tax*
• after 31.01.2020 but before 22.07.2024	100% of Disputed Tax*	110% of Disputed Tax*
Disputed Interest / Penalty / fees where Appeal or Objection or Application for revision u/s 264 is filed -		
• on or before 31.01.2020	30% of Disputed Interest / Penalty / fees	35% of Disputed Interest / Penalty / fees
• after 31.01.2024 but before 22.07.2024	25% of Disputed Interest / Penalty / fees	30% of Disputed Interest / Penalty / Fees

* Disputed tax as defined in the FA

Case	Disputed Tax
Appeal, Writ Petition or Special Leave Petition pending before appellate forum	Tax payable (tax+surcharge+cess) as if appeal or writ or petition is decided against the appellant
Objection filed before DRP, and directions not issued	Tax payable (tax+surcharge+cess) as if DRP was to confirm variation proposed in the draft order
DRP issued direction but assessment is not completed	Tax payable (tax+surcharge+cess) as per the assessment order to be passed by AO
Application for revision u/s. 264	Tax payable (tax+surcharge+cess) as if such application is not accepted

In the cases where dispute includes issues covered in favor of declarant, 'Disputed tax' is to be computed as under–

$$\frac{\text{Disputed tax on all issues} \times \text{Disputed Income in relation to issues covered in favor of declarant}}{\text{Disputed Income in relation to all issues in disputes}}$$

Prescribed Forms

Type of Forms	Particulars	To be furnished by	Content of Forms
Form 1	<p>Declaration for any dispute and undertaking to the designated authority</p> <p><i>Note 1: Separate Form 1 declaration for each order</i></p> <p><i>Note 2: Single Form 1 in case the Declarant and income-tax authority both have filed an appeal / writ / SLP in respect of same order</i></p>	Declarant	<p><u>Declaration</u></p> <ul style="list-style-type: none"> Information relating to eligibility, taxpayer, dispute, tax arrears, amount payable, payment against tax arrears Schedules to be filled in the declaration as per types of arrears (refer below) Verification – by Declarant or any authorized person specified in section 140 of the Income-tax Act, 1961 ('the Act') <p><u>Undertaking</u></p> <ul style="list-style-type: none"> To voluntarily waive all rights to seek or pursue any remedy or any claim in relation to the tax-arrear which may otherwise be available under any law in India or DTAA
Form 2	Certificate determining amount payable as full and final settlement of tax arrears	Designated Authority	<ul style="list-style-type: none"> Nature of tax arrears (disputed tax/disputed penalty/disputed interest/disputed fees), tax arrears, amount payable, amount already paid and balance amount payable by the declarant Direction to make payment within 15 days from receipt of certificate in Form 2 Non-payment within specified period shall invalidate Form 1 filed by the declarant
Form 3	Intimation of payment	Declarant	<ul style="list-style-type: none"> Details of payment pursuant to certificate in Form 2 Proof of withdrawal of appeal/writ/objection/SLP
Form 4	Order for full and final settlement of tax arrears	Designated Authority	<ul style="list-style-type: none"> Details of payment made nature and amount tax arrears Certification that immunity granted from instituting any proceedings for prosecution for any offence or from imposition of penalty

Schedules to be filled with Form 1 as per types of tax arrears

Schedules	Type of tax arrears
Declaration related to disputed tax	
Schedule I	Appeal is pending before the JCIT(A)/CIT(A)
Schedule II	Objections filed with DRP against draft assessment order and DRP has not issued any directions
Schedule III	DRP has issued directions u/s 144C and assessment is pending
Schedule IV	Appellant's appeal is pending before the ITAT
Schedule V	Department's Appeal is pending before ITAT
Schedule VI	Appellant's appeal or writ is pending before HC
Schedule VII	Department's appeal or writ is pending before HC
Schedule VIII	Appellant's appeal or writ or SLP is pending before SC
Schedule IX	Department's appeal or writ or SLP is pending before SC
Schedule X	Revision application u/s 264 is pending before PCIT/CIT
Declaration related to disputed TDS/TCS	
Schedule XI	Appeal is pending before the JCIT(A)/CIT(A)
Schedule XII	Appellant's appeal is pending before ITAT
Schedule XIII	Department's Appeal is pending before ITAT
Schedule XIV	Appellant's appeal or writ is pending before HC
Schedule XV	Department's appeal or writ is pending before HC
Schedule XVI	Appellant's appeal or writ or SLP is pending before SC
Schedule XVII	Department's appeal or writ or SLP is pending before SC
Schedule XVIII	Revision application u/s 264 is pending before PCIT/CIT
Declaration related to Disputed penalty, interest, or fees only	
Schedule XIX	Appeal is pending before the JCIT(A)/CIT(A)
Schedule XX	Appellant's appeal is pending before ITAT
Schedule XXI	Department's Appeal is pending before ITAT
Schedule XXII	Appellant's appeal or writ is pending before HC
Schedule XXIII	Department's appeal or writ is pending before HC

Schedules	Type of tax arrears
Schedule XXIV	Appellant's appeal or writ or SLP is pending before SC
Schedule XXV	Department's appeal or writ or SLP pending before SC
Schedule XXVI	Revision application u/s 264 is pending before PCIT/CIT
Declaration in case the appellant opts not to pay tax on additions having effect of reducing loss or depreciation or MAT credit carried forward	
Schedule XXVII-A	In case of loss or unabsorbed depreciation
Schedule XXVII-B	In case of MAT Credit

Manner of computation of disputed tax in cases of loss or unabsorbed depreciation or MAT credit u/s 115JAA/115JD of the Act

If dispute is relating to reduction in loss or unabsorbed depreciation or MAT credit u/s 115JAA /115JD to be carried forward under the Act, the declarant has following options to compute disputed tax –

Particulars	Option I	Option II
Cases where Loss or unabsorbed depreciation is reduced	Carry forward the entire amount of loss/unabsorbed depreciation to the subsequent years and pay the tax (including surcharge and cess) on amount by which loss or unabsorbed depreciation is reduced	Carry forward reduced loss/unabsorbed depreciation
Cases where MAT credit is reduced	Carry forward the entire amount of MAT credit to subsequent years and pay the tax (including surcharge and cess) on amount by which MAT credit to be carried forwarded is reduced	Carry forward reduced MAT credit

- The declarant can opt for Option II i.e., to carry forward reduced amount of loss/unabsorbed depreciation or MAT credit subject to following –
 - Pay tax (including surcharge and cess) along with interest (if any) as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation or MAT credit in subsequent years
 - Not to increase WDV of the block of asset by the amount of reduction in unabsorbed depreciation
- If reduction in loss/unabsorbed depreciation or MAT credit is related to 'issues covered in favor of the declarant', 50% of such loss/unabsorbed depreciation or MAT credit is to be considered while computing reduced amount of loss or unabsorbed depreciation to be carried forward.

Conclusion

The Central Government has notified Rules that includes Forms for filing declaration and issue of final order by the designated authorities which will be soon accessible through e-filing portal under tab/section 'Direct Tax Vivad se Viswas Scheme' (presently not available on e-filing portal). The government has yet to specify 'last date' for opting for the Scheme. However, opting in and filing declaration for dispute resolution on or before 31.12.2024 will be more beneficial for the declarants. This is an appropriate time to analyze the option for dispute settlement scheme as per guidelines of the FA and its corresponding Rules.

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For further analysis and discussion, you may please reach out to us.

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