

Direct Tax Vivad Se Vishwas Scheme, 2024



Background

The Finance Minister presented the full year Union Budget for 2024-25 on 23 July 2024. As a measure to address the rising number of pending litigation cases at various levels, it has been now proposed to introduce Direct Tax Vivad Se Vishwas Scheme (DTVSV), 2024 with an objective of providing a mechanism for dispute resolution, which shall also apply to pending Transfer pricing Appeals.

The Vivad Se Vishwas Act, 2020, which dealt with appeals pending as of January 31, 2020, was an initiative which received widespread support from taxpayers and contributed significantly to government revenue. However, litigation backlogs have continued to increase, with more appeals being filed than resolved. In light of the success of VSV 2020 and the rising number of appeals pending, the introduction of DTVSV 2024 aims to establish a framework for settling disputed issues, thereby reducing litigation while minimizing the financial burden on the taxpayer.

The alert covers the key aspects of the DTVSV 2024 notification



Notification

As promised in the Union Budget for 2024-25, the notification for Direct Tax Vivad Se Vishwas Scheme was released on September 19, 2024 providing a detailed explanation which covers definitions, eligibility amount payable, forms, filing process. The Direct Tax *Vivad Se Vishwas* Scheme will come into force on 01 October 2024 however the last date to file the scheme is yet to be notified. The Scheme provides for lesser settlement amounts for a 'new appellant' in comparison to an 'old appellant'. The Scheme also provides for lesser settlement amounts for taxpayers who file declaration on or before 31.12.2024 in comparison to those who file thereafter.

1. Eligibility

A taxpayer is eligible to apply to the scheme if,

- An appeal, writ petition, or special leave petition is pending before CIT(A), ITAT, High Court, or Supreme Court, whether filed by the taxpayer, the income tax authority, or both.

- The taxpayer has submitted objections to the Dispute Resolution Panel (DRP), and no directions have been issued by the DRP before the specified date.
- The DRP has provided directions under section 144C(5) of the Income-tax Act, but the Assessing Officer has not finalized the assessment under section 144C(13) by the specified date.
- The taxpayer has submitted an application for revision under section 264 of the Income-tax Act, and it remains unresolved as of the specified date.

The specified date as per the notification is July 22,2024.

2. Amount payable by the applicant

In line with the provisions of this Scheme, when a taxpayer submits a declaration regarding tax arrears to the designated authority under section 91 by the specified deadline, the amount the taxpayer is required to pay under this Scheme is as specified in the table below, irrespective of any provisions in the Income-tax Act or other prevailing laws.

Timing	Nature of Tax arrear	Amount payable under this Scheme on or before the 31st day of December, 2024.	Amount payable under this Scheme on or after the 1st day of January, 2025 but on or before the last date.
Appeal filed after the 31/01/2020 but on or before 22 July 2024	Where the # Tax arrear is the aggregate amount of disputed tax # Interest chargeable or charged on such disputed tax # Penalty leviable or levied on such disputed tax	Amount of the disputed tax.	The aggregate of the amount of disputed tax and 10% of disputed tax.
Appeal filed after the 31/01/2020 but on or before 22 July 2024	Where the # Tax arrear relates to disputed interest or disputed penalty or disputed fee	25% of disputed interest or disputed penalty or disputed fee.	30 % of disputed interest or disputed penalty or disputed fee.
Appeal filed before 31/01/2020	Where the # Tax arrear is the aggregate amount of disputed tax # Interest chargeable or charged on such disputed tax	The aggregate of the amount of disputed tax and 10% of disputed tax.	The aggregate of the amount of disputed tax and 25% of disputed tax.

	# Penalty leviable or levied on such disputed tax		
Appeal filed before 31/01/2020	Where the # Tax arrear relates to disputed interest or disputed penalty or disputed fee	30% of disputed interest or disputed penalty or disputed fee	35% of disputed interest or disputed penalty or disputed fee:

If an appeal, writ petition, or special leave petition is filed by the income-tax authority regarding any disputed issue before the appellate forum, the amount payable by the tax payer/appellant shall be **half of the amount** listed in the Table above, calculated for that issue, as prescribed.

Further, if the tax payer/appellant files an appeal before the Commissioner (Appeals), Joint Commissioner (Appeals), or the Dispute Resolution Panel regarding an issue on which they have already received a favorable decision from the Income Tax Appellate Tribunal or the High Court (and this decision has not been overturned by the High Court or Supreme Court, respectively), or if the taxpayer files an appeal before the Income Tax Appellate Tribunal on an issue where they have already received a favorable decision from the High Court (not overturned by the Supreme Court), the amount payable shall be **half of the amount** listed in the Table above, calculated for that issue, as prescribed.

3. Disputed Tax

The term "disputed tax" for an assessment or financial year refers to the income tax, including surcharge and cess owed by the tax payer/appellant under the Income-tax Act, is as per below:

- (A) If an appeal, writ petition, or special leave petition is pending before the appellate forum as of the specified date, the disputed tax is the amount that would be payable by the appellant if the decision were made against them.
- (B) If an objection filed by the appellant is pending before the Dispute Resolution Panel (DRP) under section 144C of the Income-tax Act on the specified date, the disputed tax is the amount payable if the DRP were to confirm the variations proposed in the draft order.
- (C) If the DRP has already issued directions under subsection (5) of section 144C, but the Assessing Officer has not completed the assessment under subsection (13) by the specified date, the disputed tax is the amount the appellant would owe based on the upcoming assessment order from the Assessing Officer.
- (D) If a revision application under section 264 of the Income-tax Act is pending as of the specified date, the disputed tax is the amount that would be owed if the application were denied.

Additionally, if the dispute relates to the reduction of tax credit under section 115JAA or 115JD, or to any loss or depreciation calculated under those sections, the appellant can either include the amount related to the tax credit, loss, or depreciation in the disputed tax amount, or choose to carry forward the reduced tax credit, loss, or depreciation as prescribed.

4. Filing of declaration and particulars to be furnished

A Tax payer must file a declaration under section 90 with the designated authority in the prescribed form and manner. Upon submission, any pending appeals concerning disputed income, interest, penalties, fees, or tax arrears before the Income Tax Appellate Tribunal, Commissioner (Appeals), or Joint Commissioner (Appeals) will be deemed withdrawn from the date the certificate under section 92(1) is issued. If the declarant has filed an appeal or writ petition in any appellate forum, High Court, or Supreme Court regarding the tax arrear, they must withdraw it, with court permission if necessary, after receiving the section 92(1) certificate, and provide proof of withdrawal along with payment confirmation to the designated authority.

Additionally, the declarant must provide an undertaking waiving any direct or indirect rights to pursue legal remedies or claims related to the tax arrear, as prescribed. The declaration will be considered void if: (a) any false information is provided; (b) the declarant breaches any conditions of the Scheme; or (c) the declarant violates the undertaking given under 91(4). In such cases, all withdrawn proceedings and claims will be reinstated. Furthermore, no appellate forum can decide on any issue related to the tax arrear once an order or payment under section 92(1) has been made

5. Timing and Manner of Payment

The designated authority must determine the amount payable by the declarant within fifteen days of receiving the declaration, formalizing this in an order that includes details of the tax arrear and the amount payable in the prescribed format. The declarant is required to pay this amount within fifteen days of receiving the certificate and must notify the designated authority of the payment in the prescribed form; upon receipt of this notification, the designated authority will issue an order confirming the payment. Any order issued under this provision will be conclusive regarding the matters it addresses, preventing them from being revisited in any other proceedings under the Income-tax Act or other applicable laws. Additionally, submitting a declaration under this Scheme does not imply acceptance of the tax position, so it is not permissible for either the income-tax authority or the declarant, involved in an appeal, writ petition, or special leave petition, to argue that either party has acquiesced to the decision on the disputed issue by opting to settle the dispute.

6. Non applicability of Scheme in certain cases.

The provision of this scheme does not apply to the following cases

1. In respect to Tax arrear
 - a. relating to an assessment year in respect of which an assessment has been made on the basis of search initiated under section 132 or section 132A of the Income-tax Act
 - b. relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration
 - c. relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;
 - d. relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act,

2. Any person in respect of whom an 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 the date of filing of declaration with certain provision to be considered
3. Any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of *Benami* Property Transactions Act, 1988, the Prevention of Corruption Act, 1988, the Prevention of Money-laundering Act, 2002, has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;
4. Any person in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force
5. Any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the date of filing of declaration.

7. Conclusion

Given the lengthy nature of tax appellate process, which can take 12 to 15 years to conclude, and the fact that taxpayers remain liable for interest charges even when delays are beyond their control, the accumulated interest can sometimes equal or exceed the disputed tax amount. Consequently, this scheme offers taxpayers a chance to re-evaluate their ongoing disputes and provides a pathway to lower their overall financial burden.

The nuances between the VSV and DTVSV schemes are notable. Under VSV, a separate declaration was required for each tax year, allowing a single declaration to resolve both an assessment order and a reassessment order appeal for the same year. However, DTVSV mandates filing a separate declaration for each order. The DTVSV Scheme offers lower settlement amounts for a 'new appellant' compared to an 'old appellant.' Additionally, taxpayers who submit declarations on or before 31st December 2024 benefit from reduced settlement amounts, compared to those who file later. This 2024 DTVSV scheme is a positive step from a tax administration perspective, as it will expedite the resolution of tax disputes and help minimize litigation. Moreover, it provides taxpayers with an opportunity to settle dues and conclude disputes efficiently.

About us



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