

# Vivad se Vishwas: Rules and Forms prescribed

March 20, 2020

## In brief

The Government of India has notified<sup>1</sup> the Direct Tax Vivad se Vishwas Rules, 2020 (the Rules) on 18 March 2020. The Rules *inter alia* prescribe the manner of computing the amount payable under different scenarios, and the forms to implement the provisions of the Direct Tax Vivad se Vishwas Act, 2020 (the Act).

## In detail

### Pre-cursor

The Act was enacted on 17 March 2020 with the objective of *inter alia* reducing pending income-tax litigation and generating timely tax revenue.<sup>2</sup> The Act empowers the Central Government to notify the Rules in order to carry out its provisions. In the exercise of such power, the Rules were notified on 18 March 2020.

The key provisions of the Rules are summarised below.

### Key definitions

#### Dispute means

- Appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the taxpayer or the

income-tax authority before any appellate forum; or

- Arbitration, conciliation or mediation initiated or given notice thereof; or
- Objections filed or to be filed before the Dispute Resolution Panel (DRP); or
- Application for revision filed under section 264 of the Income-tax Act, 1961.

#### Issues covered in favour of the taxpayer means issues for which

- An appeal is filed/ to be filed by the income-tax authority.
- An appeal or objection is filed/ to be filed before the Commissioner of Income-tax (Appeals) or the DRP by

the taxpayer, and such issue is covered in the taxpayer's own case in its favour by the order of the Income-tax Appellate Tribunal (Tribunal) [not reversed by the High Court or the Supreme Court] or the High Court (not reversed by the Supreme Court).

- An appeal is filed/ to be filed before the Tribunal by the taxpayer, and such issue is covered in the taxpayer's own case in its favour by the order of the High Court (not reversed by the Supreme Court).

### Prescribed forms

The formats and manner of implementing the provisions of the Act notified by the Rules are tabulated as follows:

| Type     | Nature                                      | To be furnished by | Key contents of the form  |
|----------|---|--------------------|---|
| Form - 1 | Declaration before the designated authority | Taxpayer           | <ul style="list-style-type: none"> <li>• Information/ details relating to taxpayer, dispute, taxes already paid, etc.</li> <li>• Schedules to be filled based on type of</li> </ul> |

<sup>1</sup> Notification No.18/2020, F. No. IT(A)/1/2020-TPL dated 18 March 2020

<sup>2</sup> Click [here](#) to refer to our news alert dated 9 March 2020, capturing the salient features of the Act

| Type     | Nature   | To be furnished by   | Key contents of the form   |
|----------|--|----------------------|--|
|          |  |                      | tax arrears and/ or option opted by the taxpayer, viz.: <ul style="list-style-type: none"> <li>– Schedule A – disputed tax cases where taxpayer opts to pay tax (11 combinations).</li> <li>– Schedule B – disputed tax deducted/ collected at source cases (9 combinations).</li> <li>– Schedule C – disputed penalty, interest, fee cases (9 combinations).</li> <li>– Schedule D – disputed tax cases where taxpayer opts to carry forward reduced amount of loss or depreciation or minimum alternate tax (MAT) credit.</li> </ul> |
| Form - 2 | Undertaking  | Taxpayer             | Undertaking to voluntarily waive all the rights to seek or pursue any remedy or any claim in relation to the dispute for which the declaration is being filed.   |
| Form - 3 | Certificate determining amount payable to settle the dispute | Designated Authority | Nature and amount of tax arrears, amount already paid and balance amount payable by the taxpayer to settle the dispute.  |
| Form - 4 | Intimation of payment made                                   | Taxpayer             | <ul style="list-style-type: none"> <li>• Detail of payments made pursuant to the certificate issued in Form 3.</li> <li>• Proof of withdrawal of the relevant dispute.</li> </ul>  |
| Form - 5 | Order for full and final settlement of disputes              | Designated Authority | Details of the dispute settled by the taxpayer along with the details of payments made.  |

**Manner of computing disputed tax in cases where MAT credit or loss or unabsorbed depreciation is reduced**

In cases involving the reduction of tax credit under sections 115JAA or 115JD of the Income-tax Act, 1961 or reduction of loss/ depreciation, the following options are available to the taxpayer in the manner prescribed below:

- To include the amount of tax

related to such credit/ loss/ depreciation in the amount of disputed tax and carry forward the entire loss or unabsorbed depreciation; or

- To carry forward the reduced amount of tax credit/ loss/ depreciation, subject to the following:
  - The taxpayer would have to pay taxes payable (along with interest), if any, in subsequent years

because of carrying forward the reduced tax credit/ loss/ depreciation.

- The written down value of the block of assets would not be increased by the amount of reduction in unabsorbed depreciation.
- The carry forward of the reduced amount of tax credit/ loss/ depreciation would be computed as follows:

| Nature of dispute   | Amount of tax credit/ loss/ depreciation to be reduced by   |
|---|---|
| Issues covered in favour of the taxpayer                                | 50% of such tax credit/ loss/ depreciation  |
| Eligible search cases   | 125% of such tax credit/ loss/ depreciation (to the extent such amount does not exceed amount of tax credit/ loss/ depreciation to be carried forward before its reduction) |
| Eligible search cases, wherein the issues covered in favour of taxpayer | 62.5% of such tax credit/ loss/ depreciation  |

|                        |   |
|------------------------|---|
| In all the other cases | 100% of such tax credit/ loss/ depreciation |
|------------------------|---|

***Manner of computing disputed tax in cases where issues covered in favour of the taxpayer***

In such cases, the disputed tax on such issues would be computed as per the following formula:

- Disputed tax on all issues multiplied by disputed income in respect of issues covered in favour of the taxpayer, divided by the disputed income in relation to all issues.

***Procedure<sup>3</sup> for making declarations in Forms 1 and 2***

- Forms 1 and 2 are to be filed/ viewed online on the e-filing portal of the income-tax department, under the link “Vivad se Vishwas” tab.

- Forms 1 and 2 have to be filed in conjunction as a single submission and are to be verified by the person who is entitled to verify income-tax returns under section 140 of the Income-tax Act, 1961.
- Forms 1 and 2 have to be filed under digital signature (if the return of income is required to be filed using digital signature) or through electronic verification code.
- Forms 1 and 2 are to be filed year-wise.
- A revised Form 1 can be filed as per the functionality.

***The takeaways***

The Rules have been notified and

online functionality has been made effective, within a span of two days of the enactment of the Act. The forms are comprehensive and cover a range of possible combinations to assist taxpayers. The last date for settling disputes under the Act has not been prescribed yet. However, the timeline to avail the maximum benefit while settling disputes under the Act remains 31 March 2020. Accordingly, taxpayers would have to act fast to make the most of this dispute resolution scheme.

***Let’s talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

<sup>3</sup> As per the Notification No. 12 of 2020 dated 19 March 2020

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