

FEBRUARY, 2020

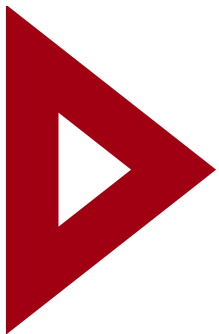


VIVAD SE VISHWAS

A LIFETIME OPPORTUNITY TO SETTLE LITIGATION(S)



Legal intelligence Series



MUMBAI | AHMEDABAD | NEW DELHI | KOLKATA

INTRODUCTION

The Finance Minister Ms. Nirmala Sitharaman during her maiden budget, presented on 1st February, 2020, declared an amnesty scheme namely “Vivad Se Vishwas” – A Dispute Resolution Scheme 2020” (hereinafter referred to as “the Proposed Scheme”).

The Proposed Scheme aims to settle the unresolved issues pertaining to Direct Tax regime, i.e. Income Tax Act, 1961. The FM during her speech said that

*“Currently there are **4,83,000 direct tax cases pending** in various appellate forums i.e. CIT, ITAT, High Court and Apex Court. Sabka Vikas Scheme introduced in indirect tax in last budget has resulted into the settlement of **1,89,000 Cases.**”*

“This year, I propose to bring a scheme similar to the indirect tax Sabka Vikas for reducing litigation even in the direct tax”

The cut out date for the applicability of the Proposed Scheme is pendency of appeals as on **31st January 2020**.

The pendency can be before Commissioner of Income Tax (Appeals), Income Tax Appellate Tribunal, High Courts and Supreme Court.

Includes

- a. Appeal where demand is pending or has been paid,
- b. Appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax and,
- c. Appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source.

Nature of Tax arrears

1. Disputed tax plus consequential interest and penalty

a. If the Amount of Disputed tax paid *on or before 31st March, 2020*

Relief

Payment for the tax arrears would be only Amount of Disputed tax.

b. If Amount of Disputed tax paid *after 1st April, 2020 but on or before 30th June, 2020*.

Relief

Payment shall be the amount of disputed tax plus 10% of disputed tax.

2. Disputed Interest /Penalty/ Fee

a. If the Amount paid *on or before 31st March, 2020*

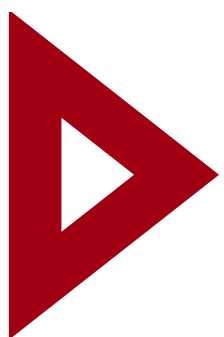
Relief

Payment shall be 25% of disputed interest or Penalty or Fee.

b. If the Amount if payable *after 1st April, 2020 but on or before 30th June, 2020.*

Relief

Payment shall be 30% of disputed interest or Penalty or Fee.



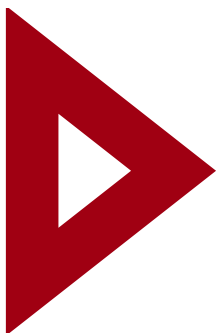
The following persons are **not eligible** :

- i. In respect of **tax arrears** relating to
 - a. AY where assessment has been made under *Section 153A or Section 153C of the Act.*
 - b. AY where *prosecution has been instituted.*
 - c. Any undisclosed income from a *source or asset outside India.*
 - d. An assessment or reassessment made on the basis of *information received under an Agreement* referred to in Section 90/90A of the Income Tax Act, 1961.
 - e. An appeal before the CIT (A) in which *notice of enhancement* under Section 251 of the Income Tax Act, 1961 has been issued on or before the specified date i.e. 30.01.2020.

- ii. To any person in respect of whom **order of detention has been made** under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration subject to certain exception and conditions.

- iii. To any person in respect of whom **prosecution for any offence has been instituted** on or before filing the declaration of the person who is convicted under the provisions of Indian Penal Code, 1860; the Unlawful Activities (Preventions) Act, 1967; the Narcotics Drug and Psychotropic Substance Act, 1985; the Prevention of Corruption Act, 1988; the Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988 or in respect to any proceedings for enforcement of civil liability etc.

- iv. To **any person notified** under Section 3 of the Special Court (Trail of Offences Relating to transaction in Securities) Act, 1992



DECLARATION

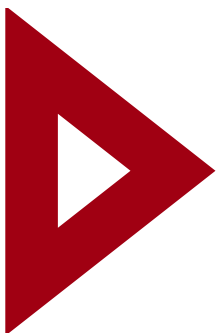
Any person who wishes to opt for the Proposed Scheme may **file a declaration** in a prescribed manner on or before the last date, as will be notified, to the Designated Authority (DA).

POST DECLARATION

Upon filing the declaration:

a. **Within 15 days** from the receipt of declaration, the designated authority shall determine the amount payable and grant a *certificate under Section 5(1) of Income Tax Act, 1961 containing the details of tax arrears and amount payable.*

b. *The amount so determined under the certificate shall be paid (Non-refundable) within 15 days of receipt of the certificate* and intimate to the Designated Authority who shall thereafter pass an order under Section 5(2) of Income Tax Act, 1961.



On passing of the order under Section 5(2) of Income tax Act, 1961, matters stated therein shall be concluded and shall not be reopened in any other proceedings under IT Act or under any other law.

No proceedings shall be instituted in respect of an offence or no penalty or interest shall be imposed or levied under IT Act, in respect of such tax arrears.

DEEMED WITHDRAWAL

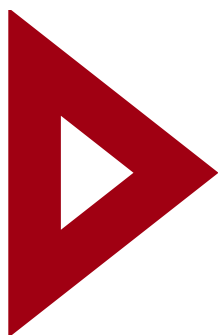
Any appeal pending before ITAT or CIT(A) shall be deemed to be automatically withdrawn from the date when certificate under Section 5(1) of IT Act is issued by Designated Authority.

WITHDRAWAL OF WRIT OR APPEAL

Where any writ petition or appeal or reference is pending before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for their withdrawal.

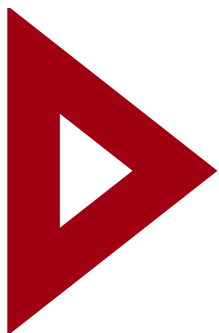
WITHDRAWAL OF CLAIM

Where any proceedings for arbitration, conciliation or mediation has been initiated or a notice thereof has been given in view of any law or agreement entered into by India with any other country or territory outside India including for the protection of investment, the declarant shall file an application for withdrawal of the claim.



The benefits under the Proposed Scheme is summarised as under:

- i. The relief under the Scheme varies from 40% to 70% of the tax dues for cases other than voluntary disclosure cases, depending on the amount of tax dues involved.*
- ii. The scheme also provides relief from payment of interest and penalty.*
- iii. The person discharged under the scheme shall also not be liable for prosecution.*
- iv. Amount declared under the Scheme is to be only paid in cash.*
- v. Within 15 days of receipt of declaration the order would be passed for the payment of dues.*
- vi. Amount thus paid shall not be refundable under any circumstance(s).*
- vii. Every discharge certificate issued under section 5(1) with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein.*
- viii. No matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.*
- ix. In a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false or there is violation of any conditions specified under the Act or if declarant comply with the undertaking of wavier of rights given by him, all the proceedings or claim withdrawn earlier shall be revived under the IT Act.*



The Proposed Scheme has been developed on the sidelines of previous schemes under indirect & direct taxes.

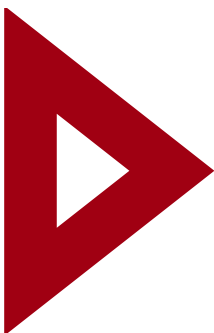
The proposed Scheme has been introduced due to logical reasons as below:

- a. generate revenue at one go;
- b. history analysis of average winning chances of Revenue in cases up to Supreme Court;
- c. dire need to create better infrastructure including Judges, Courts, etc., to tackle IT cases; and
- d. clearing entire backlog which has involvement of cost of Government towards various intrinsic and extrinsic factors.

Simultaneously, it will also clean the old baggage of cases in various High Courts & Supreme Court of India.

This is a one time chance for various tax payers to opt for it especially who were in dilemma as to whether in the outcome of the pending litigation, they will win or lose the cases involving high and huge stakes.

Anandaday Misshra



ABOUT US

AMLEGALS is a multi-specialised law firm. We would love to hear your views, queries, feedback, comments on chaitali.sadayet@amlegals.com or siddharth.kakka@amlegals.com.

AHMEDABAD

201 - 203, WestFace, Opp. Baghban Party Plot,
Zydu Hospital Road, Thaltej, Ahmedabad – 380 054,
Gujarat, India.
+91 - 84485 48549 | +91-83478 53565 | +91- 84605 48996
www.amlegals.com | info@amlegals.com

MUMBAI

1207, Dalamal Tower, Nariman Point, Mumbai – 400 021,
Maharashtra, India.
+91 - 84485 48549 | +91-88511 67622 | +91-22-6666 6265
www.amlegals.com | mumbai@amlegals.com

KOLKATA

3rd floor, Surabhi Building,
8/1/2 Loudon Street, Beside Birla High School for Girls,
Kolkata- 700017, West Bengal, India
+91-9999764317 | +91-84485 48549
www.amlegals.com | kolkata@amlegals.com

NEW DELHI | JAIPUR | PUNE

© Copyright **AMLEGALS**.

Disclaimer: The information contained in this document is intended for informational purposes only and does not constitute legal opinion, advice or any advertisement. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.

