

# EY Tax Alert

**Scope of Direct Tax Vivad Se Vishwas Scheme, 2024 expanded to cover cases where orders had been passed on or before 22 July 2024 where time to file an appeal had not expired**

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

## Executive summary

This Tax Alert summarizes Order No. 8/2025 dated 20 January 2025 (Order) issued by the Central Board of Direct Taxes<sup>1</sup> (CBDT) to expand the scope of Direct Tax Vivad Se Vishwas Scheme, 2024 (VSV 2.0) to include appeals filed in a timely manner after 22 July 2024, in respect of orders passed on or before 22 July 2024 for which the time to file an appeal had not expired as on 22 July 2024. In such cases, disputed tax is calculated based on such appeal.

<sup>1</sup> Apex administrative body for direct taxes in India



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## Background

- ▶ The Finance (No. 2) Act, 2024 enacted VSV 2.0<sup>2</sup> on similar lines as Direct Tax Vivad Se Vishwas Act, 2020 (VSV 1.0)<sup>3</sup>. VSV 2.0 provides an opportunity to taxpayers to settle tax disputes pending as on 22 July 2024 (i.e., specified date) at various appellate forums<sup>4</sup> in relation to tax, interest, penalty or fees payable under the Indian Tax Laws (ITL).
- ▶ Taxpayers can settle their disputes by filing a declaration in the prescribed form to the designated authority (DA). Where declaration is filed on or before 31 January 2025, settlement is possible without payment of additional amount. Where declaration is filed on or after 1 February 2025, but before the sunset date (to be notified), settlement will require payment of additional amount. Once the disputed tax is settled under VSV 2.0, taxpayers will enjoy complete waiver and immunity from interest, penalty and prosecution in relation to tax arrears which are the subject matter of the settlement.
- ▶ Hitherto, unlike VSV 1.0, VSV 2.0 did not envisage settlement of cases where an assessment order was passed by the tax authority or an appellate order was passed by an appellate authority, but the time limit for an appeal against such assessment or appellate order had not expired as on 22 July 2024.
- ▶ Recently, the Delhi High Court (HC)<sup>5</sup> expressed *prima facie* concerns that VSV 2.0 discriminates between taxpayers based on the timing of filing an appeal. For instance, consider two taxpayers A and B, in whose case the assessment order along with the notice of demand was served on 30 June 2024. The due date to file an appeal to Commissioner of Income Tax (Appeals) would be 30 July 2024 for both these taxpayers. Taxpayer A who filed an appeal within the time limit on 22 July 2024 would have been eligible to avail VSV 2.0, but Taxpayer B who filed an appeal within the time limit on 30 July 2024, but post 22 July 2024, would be ineligible to avail VSV 2.0 since no appeal was pending as on 22 July 2024. The HC directed the CBDT to consider whether it is apt to cover cases where the time limit to prefer appeal has not expired as on 22 July 2024.
- ▶ Similar to VSV 1.0, VSV 2.0 also grants a general power to the Government of India to issue orders to remove difficulties arising in giving effect to the provisions of VSV 2.0. Pursuant to these powers, this Order has expanded the scope of VSV 2.0 to

remove difficulty caused on account of the aforesaid discrimination.

## Order

Appeals filed after 22 July 2024 shall, for the purposes of VSV 2.0, be considered as appeals pending as on 22 July 2024, if such appeals:

- ▶ Are in respect of orders passed on or before 22 July 2024 for which the time to file an appeal was available as on 22 July 2024.
- ▶ Were filed within the stipulated time as applicable for filing such appeal.
- ▶ Were filed without any application for condonation of delay.

Disputed tax would be calculated at the tax payable by the taxpayer if such appeal was to be decided against the taxpayer. All the other provisions of VSV 2.0 (including VSV Rules 2.0) shall apply accordingly.

<sup>2</sup> Refer our tax alert titled "Key highlights of Vivad Se Vishwas Scheme, 2024" dated 24 July 2024

<sup>3</sup> Refer our tax alerts titled: (a) "Key amendments proposed in the Vivad se Vishwas Scheme 2020" dated 22 February 2020 (b) "Key highlights of amended Vivad se Vishwas Bill 2020" dated 25 February 2020 (c) "CBDT issues Frequently Asked Questions in relation to Vivad Se Vishwas Bill, 2020" dated 6 March 2020 (d) "Central Government notified rules and forms for settlement under the Direct Tax Vivad se Vishwas Act, 2020" dated 20 March 2020 (e) "CBDT issues Revised Frequently Asked Questions in relation to Vivad Se Vishwas Act, 2020" dated 22 April 2020 (f) "Clarification on date of payment for disputed tax under VSV post Notification no. 85 of 2020" dated 28 October 2020 (g) "CBDT notifies sunset date for filing declaration under Vivad Se Vishwas Act and extends due date for payment of disputed tax" dated 28 October 2020; (h) "CBDT issues second round of Frequently Asked Questions in relation to "Direct Tax - Vivad Se Vishwas Act 2020" dated 5 December 2020

<sup>4</sup> Commissioner of Income Tax (Appeals), Dispute Resolution Panel, Income Tax Appellate Tribunal, High Court and Supreme Court

<sup>5</sup> Naveen Kumar Aggarwal v. CBDT (WP No. (C) 17014/2024; order dated 9 December 2024).

## Comments

This Order is a very welcome step by the CBDT in significantly expanding the scope of VSV 2.0. As a result, all appellate orders, assessment orders, orders imposing interest or penalty passed by 22 July 2024 and, against which appeals have been filed in a timely manner by the taxpayer or the tax authority after 22 July 2024, are now eligible for settlement under VSV 2.0. As the last date to file a declaration without additional amount is 31 January 2025, taxpayers may have to act swiftly in filing a declaration in such cases.

VSV 2.0 enables settlement based on an appeal which has been filed in a timely manner by the taxpayer or the tax authority after the specified date - those issues which are not disputed in such appeal are not entitled to settlement.

The effective date of the Order is unclear. Since the Order removes the difficulty, it is arguably retrospective and may require the DA to now reconsider declarations for settlement of the aforesaid appeals which may have been rejected earlier. Alternatively, taxpayers advisedly may file a fresh declaration.

The Order, however, does not consider a case where appeal is filed after 22 July 2024 against an intimation processing the return of income or the return of tax deducted or collected at source, where time to file appeal was available as on 22 July 2024.

The Order only covers appeals filed after 22 July 2024. Where the first appellate authority passed an order on or before 22 July 2024 and after 22 July 2024, an appeal was filed in a timely manner by the taxpayer, and a cross objection was filed by the tax authority, the cross objection shall also arguably qualify for settlement, as the ITL considers such cross objection as if it were an appeal presented within the due date.

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