

EY Tax Alert

Key highlights of Vivad Se Vishwas Scheme, 2024

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 the key features of the proposed Direct Tax Vivad Se Vishwas Scheme, 2024 (2024 Scheme) in the Finance (No. 2) Bill, 2024 (FB 2024) as part of Union Budget 2024 announced by the Hon'ble Finance Minister on 23 July 2024.

The 2024 Scheme enables settlement of disputes pending as on 22 July 2024 under Income-tax Laws¹ (ITL). It draws flavor from the previous Direct Tax Vivad Se Vishwas Act, 2020 (2020 Scheme) in the applicability, procedure and manner of settlement of dispute. The date from which the taxpayers can begin to settle their disputes as well as the sunset date, are yet to be notified.

The 2024 Scheme can be availed by taxpayers in various cases such as; Where (i) appeals/writ petition/special leave petition (SLP) relating to disputed tax, interest, penalty or fee is pending before the appellate authorities/High Court (HC) /Supreme Court (SC) ; (ii) objections are filed before the Dispute Resolution Panel and the DRP is yet to issue directions, (iii) DRP has issued directions, however, the tax authority is yet to pass an assessment order in conformity with such directions, (iv) revision application is filed by the taxpayer before the Commissioner.

In terms of the 2024 scheme, a taxpayer may settle its eligible disputes by making payment of the amounts as determined by the Designated Authority (DA)² as per the 2024 Scheme.

¹ Income-tax Act, 1961 r.w. Income-tax Rules, 1962

² An officer not below the rank of a Commissioner of Income-tax as notified by the Principal Commissioner of Income-tax.



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Background

- ▶ Considering success of the previous 2020 Scheme and the mounting pendency of litigation at various levels of appellate forums, Finance Bill (No. 2) 2024 proposes a similar Vivad Se Vishwas Scheme, 2024 (2024 Scheme).

- ▶ It also covers a pending application for revision filed by taxpayer before Commissioner, and a pending assessment after issue of directions by DRP.
- ▶ It also covers disputes relating to taxes determined under the provisions relating to Tax Deducted at Source (TDS) and Tax Collected at Source (TCS).

Eligible disputes

- ▶ The 2020 Scheme covered disputes pending as on 31 January 2020. The 2024 Scheme is patterned on similar lines, and covers disputes (appeals/writs/SLPs) pending as on 22 July 2024, whether filed by taxpayer or tax authority, before:
 - Commissioner (Appeals) or Joint Commissioner (Appeals),
 - Dispute Resolution Panel (DRP),
 - Income Tax Appellate Tribunal,
 - High Court,
 - Supreme Court.

Amount payable to settle dispute

Particulars	Taxpayer settles before 31 December 2024	Taxpayer settles after 31 December 2024
Cases involving disputed tax, interest and penalty		
• Disputes eligible for settlement under 2020 Scheme, which remain pending at the same appellate forum as on 22 July 2024	110% of the disputed tax	120% of the disputed tax
• All other eligible disputes	100% of the disputed tax	110% of the disputed tax
Cases involving disputed penalty or interest or fee		
• Disputes eligible for settlement under 2020 Scheme, which remain pending at the same appellate forum as on 22 July 2024	30% of disputed penalty, interest or fee	35% of disputed penalty, interest or fee
• All other eligible disputes	25% of the disputed penalty, interest or fee	30% of the disputed penalty, interest or fee

Where an appeal or writ or SLP is filed by the tax authority on any issue is to be settled, amount payable shall be 50% of the amount in the above table, calculated on such issue, in the prescribed manner.

Where an appeal or objections filed by the taxpayer is to be settled, if the taxpayer has already got a decision on any issue in its favor by the appellate authority or the HC and the same has not been reversed by any higher authority or court, it is proposed that the amount payable shall be reduced to 50% of the amount in the above table.

It is proposed to authorize the government to make rules for specifying the manner of computing amount payable as above.

Calculation of disputed tax

Particulars	Disputed tax (inclusive of surcharge and cess, but excluding interest)
Where appeal/writ/SLP is pending before any appellate forum as on 22 July 2024	Tax payable if such appeal/writ/SLP was to be decided against the taxpayer
Where objections are pending before DRP as on 22 July 2024	Tax payable if DRP was to confirm variation proposed in the draft order
Where DRP has issued directions but tax authority has not completed the assessment on or before 22 July 2024	Tax payable as per the assessment order to be passed by the tax authority in conformity with the directions of the DRP
Where an application for revision filed by the taxpayer is pending as on 22 July 2024	Tax payable if such application was not to be accepted

Where settlement results in reduction of Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) credit or losses or depreciation, the taxpayer can opt for either of the following:

- Include tax related to reduction of MAT/AMT credit or loss or depreciation in the disputed tax; or
- Carry forward the reduced MAT/AMT credit or loss or depreciation (as may be prescribed) without payment of disputed tax

Procedural aspects

- ▶ It is proposed that the start and end date of the 2024 Scheme shall be notified.
- ▶ It is proposed that:
 - ▶ A taxpayer wishing to settle its dispute is required to file a declaration to the DA in the prescribed manner.
 - ▶ Within 15 days from receipt of declaration, the DA shall grant a certificate to the taxpayer determining the amount payable by it. The taxpayer is required to pay such amount within 15 days from receipt of such certificate.
 - ▶ A taxpayer is required to withdraw its appeal/writ/SLP before the HC or SC and furnish proof of such withdrawal along with proof of payment to the DA. Upon filing such declaration, appeal pending before Commissioner (Appeals) or Joint Commissioner (Appeals), or Income Tax Appellate Tribunal is deemed to have been withdrawn from the date of issuance of DA's certificate. The taxpayer is also required to furnish an undertaking in the prescribed manner, waiving its right to seek remedy or any claim in relation to the issues settled.
 - ▶ Thereafter, DA shall pass an order to conclude the dispute, and no matter covered by such order shall be reopened in any other proceeding under the ITL or any other law.
- ▶ The declaration is invalid if any material particular in the declaration is found to be false; or the declarant violates any conditions in the 2024 Scheme; or the declarant acts in any manner which is not in accordance with the undertaking as aforesaid.
- ▶ It is proposed that DA shall not institute any proceeding in respect of an offence, or impose or levy any penalty, or charge any interest in respect of the disputed tax, interest, penalty, or fee. Other than this, a settlement does not confer any benefit, concession, or immunity on the taxpayer in any other proceedings unrelated to the declaration.
- ▶ It is proposed that a settlement of the disputed issues cannot be considered as setting any precedence for the taxpayer or the tax authority.
- ▶ It is proposed that amount paid under the 2024 Scheme shall not be refundable under any circumstances. It is further proposed to refund the amount paid under the ITL which exceeds the amount payable under the 2024 Scheme, without any interest.

Ineligible persons/disputes

- ▶ In respect of disputed tax, interest, penalty, or fee relating to:
 - ▶ Tax year in respect of which an assessment or reassessment has been made on the basis of search
 - ▶ Tax year in respect of prosecution has been instituted
 - ▶ Any undisclosed income from a source located outside India or undisclosed asset located outside India
 - ▶ An assessment/reassessment made basis information received pursuant to tax information exchange agreements
- ▶ A person in respect of whom a detention order is passed under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and such detention order is not revoked or set aside by a higher authority
- ▶ A person in respect of whom prosecution has been instituted or he has been convicted under the provisions of 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
- ▶ A 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
- ▶ A person who has been convicted of any offence punishable under Bharatiya Nyaya Sanhita, 2023
- ▶ A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

Comments

The 2024 Scheme is a welcome measure and provides a one-time opportunity to settle pending disputes which may facilitate ease of doing business. Settlement of litigation involving disputed tax provides complete relief from interest, penalty, and prosecution. Settlement of litigation involving disputed interest, penalty and fee is possible after payment of the normative amounts determined under the 2024 Scheme.

Significantly, the 2024 Scheme permits settlement of those disputes which were not settled under the 2020 Scheme, with a marginally higher payment.

Unlike the 2020 Scheme, the 2024 Scheme does not envisage settlement of (a) proceedings for arbitration, conciliation or mediation under any law or international agreement and (b) cases where an assessment order is passed by the tax authority, or an appellate order is passed by the lower appellate authority, but the time limit for an appeal against such assessment or appellate order has not expired as on 22 July 2024. It could have perhaps been worthwhile to also cover such cases too.

The 2020 Scheme was expanded after its enactment through Circulars of the Central Board of Direct Taxes (CBDT) to cover settlement of cases where taxpayer has filed application for resolution under Mutual Agreement Procedure. It would be a welcome step if the 2024 Scheme is also extended to such cases.

Notably, the 2024 Scheme only covers pending appeals, writs and SLPs. A pendency of review petition before the Supreme Court may not be covered in the 2024 Scheme.

A writ/SLP arising out of an order of Settlement Commission could not be settled under the 2020 Scheme. It is ambiguous if the 2024 Scheme permits settlement of such cases.

Unlike the 2020 Scheme, the 2024 Scheme does not require increase of disputed tax by an amount of enhancement proposed by the Commissioner (Appeals), which is a welcome step.

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