

F. No. 370142/22/2024 -TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Dated: 16th December, 2024

Sub.: Guidance Note 2/2024 on provisions of the Direct Tax *Vivad se Vishwas* Scheme, 2024 – reg.

The Direct Tax *Vivad Se Vishwas* Scheme, 2024 (hereinafter referred as 'DTVSV Scheme, 2024' or 'Scheme') has been enacted vide Chapter IV of Finance (No.2) Act, 2024 to provide for dispute resolution in respect of pending income tax litigation. The objective of the Scheme is to, *inter alia*, reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

2. The commencement date of the said Scheme has already been notified as 1.10.2024. Further, Rules and Forms for enabling the Scheme have also been notified on 20.09.2024. After enactment of the DTVSV Scheme, 2024, several queries were received from the stake-holders seeking guidance in respect of various provisions contained therein.

3. Accordingly, under Section 97 of the DTVSV Scheme, 2024 which empowers the Board to issue directions or instructions in public interest, Guidance Note 1/2024 in the form of answers to the frequently asked questions (FAQs) was issued vide circular no. 12 of 2024 dated 15.10.2024. However, several other queries have been received from the stake-holders for the clarification. Thus, Guidance Note 2/2024 in the form of answers to the frequently asked questions (FAQs) is hereby issued to provide further clarification. This will be helpful for the tax-payers for creating better awareness and understanding with respect to the provisions of the Scheme.

4. In the present Guidance Note 2/2024, FAQ No. 8 of the Guidance Note 1/2024 has been modified and incorporated as FAQ No. 36. Thus, FAQ No. 8 of the Guidance Note 1/2024 shall be considered as omitted.

S. No.	Issue	Comments
Eligibility of cases		
36.	Suppose a taxpayer is eligible to apply for DTVSV Scheme, 2024 as his appeal is pending as on 22.7.2024. But subsequently, before the taxpayer could file declaration under the DTVSV Scheme, 2024, his appeal has been disposed off on merits or dismissed as withdrawn for the purposes of the Scheme. Can such a taxpayer still file declaration under the Scheme?	Yes, such cases are eligible for settlement under the Scheme as appeal was pending as on 22.7.2024. Disputed tax will be calculated in the same manner as if the appeal pending on 22.7.2024 is yet to be disposed off.

37.	Suppose a taxpayer has filed a declaration in Form-1. After the declaration, the appeal has been disposed off by the concerned authority. Whether such a case is eligible for settlement?	Yes, such a case is eligible for settlement.
38.	Time limit for filing of appeal has expired before 22 nd July 2024 but an appeal alongwith application for condonation of delay has been filed after 22 nd July, 2024. Whether the taxpayer can opt for the Scheme in such a case?	No. Appeal has to be pending as on 22 nd of July, 2024 for a taxpayer to opt for the Scheme. Thus, where an appeal alongwith application for condonation is filed after 22 nd July, 2024, it does not tantamount to pendency of appeal as on 22 nd July, 2024. Accordingly, such cases shall not be eligible.
39.	Suppose an appeal has been filed before 22 nd July, 2024 with an application for condonation of delay which is also filed before 22 nd July, 2024. This appeal has been admitted by allowing condonation of delay prior to the date of filing of declaration under the Scheme. Whether such a taxpayer can opt for the Scheme?	Yes. In such cases where the appeal as well as condonation application have been filed on or before 22 nd July, 2024. On admission of condonation application, such cases convert into an appeal pending on 22 nd of July, 2024. Therefore, the taxpayer can opt for settlement under the Scheme in such cases.
40.	In the case of a search action carried out before 1.4.2021, assessments of previous years other than search year, have been made under section 153A or 153C of the Income-tax Act, 1961 ('the Act'), and assessment for the year of search has been made under section 143(3) of the Act. Whether any of these assessment order can be covered under the DTVSV Scheme, 2024?	No. Such cases are specifically barred under section 96(a)(i) of the of the DTVSV Scheme, 2024.
41.	Whether appeal filed against intimation u/s 143(1) of the Act and pending as on 22 nd July, 2024 is eligible for DTVSV Scheme, 2024?	Yes. Any appeal filed against intimation u/s 143(1) of the Act and pending as on 22 nd July, 2024 is eligible for settlement under the Scheme.
42.	Section 248 of the IT Act relates to appeal by a person denying liability to deduct tax in certain cases. As per the provisions of this section, no appeal can be filed where tax is paid to the credit of the Central government on or after 1.4.2022. Whether appeal filed prior to 1.4.2022 under section 248 of the Act is eligible for DTVSV Scheme, 2024?	Yes.

43.	Where information has been received under an agreement referred to in section 90 or section 90A of the Act; however, such information has not been 'used' for making additions in assessment/ reassessment order. In such cases, whether the assessee can opt for DTVSV Scheme, 2024?	Yes. Section 96 of the DTVSV Scheme, 2024 clearly states that the Scheme shall not apply where tax arrears relate to assessment or reassessment made on the basis of information received under section 90 or section 90A of the Act. Accordingly, where information received u/s section 90 or section 90A has not been used for making additions in assessment/ re-assessment order, assesses can opt for the Scheme for such orders.
44.	Where review petitions are pending before High Courts or Supreme Courts, whether those cases be eligible for settlement under DTVSV Scheme, 2024?	No. Pendency of review petition does not tantamount to pendency of an appeal. Therefore, even if a review petition is pending as on 22 nd July, 2024, it will not amount to pendency of an appeal.
45.	Whether DTVSV Scheme, 2024 can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC?	No
46.	Whether cases where the taxpayer or the Department has filed declaration/application under section 158A/158AA/158AB are eligible under DTVSV Scheme, 2024?	Yes. In such cases, where declaration/application has been filed u/s 158A/158AA/158AB of the Act on or before 22 nd July, 2024, the taxpayer can opt for settlement under the Scheme provided that if there is any appeal relating to the relevant year, it is also settled.
<u>Set-aside appeal:</u>		
47.	Appeal has been set aside to ITAT/CIT(A)/DRP and was pending on 22.07.2024. Whether, in such cases the assessee can opt for the Scheme?	Refer FAQ No. 24 of Guidance Note 1/2024. It was mentioned therein that- <i>"According to the Scheme, an appeal which is pending as on 22.7.2024 shall be eligible for settlement. A set-aside matter to the AO is not an appeal pending as such. Therefore, set-aside matters to the AO, whether fully set-aside or partially set-aside are not covered under the Scheme."</i> However, where an appeal has been set-aside fully to ITAT/CIT(A)/DRP, such appeals will be eligible for settlement. Also, where an appeal has been partially set-aside to ITAT/CIT(A)/DRP, all the issues which have been set-aside will form a separate appeal and shall be eligible for settlement as such and disputed tax will be computed as if pending at the level to which it is set-aside.
<u>Prosecution</u>		
48.	Where the prosecution proceedings have not yet been filed before a court of law,	Yes. Reference may be made to section 96 of the DTVSV Scheme, 2024. As per the provisions of section 96(a)(ii) of the said Scheme, the Scheme shall not apply in respect

	whether the assessee is eligible for the Scheme?	of tax arrears relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Accordingly, where the prosecution proceedings have not yet been filed before a court of law, the taxpayer can opt for the Scheme.
49.	If the prosecution is for a different assessment year and the appeal for a different one, would it debar the assessee from the benefit of this scheme?	No. Section 96(a)(ii) prohibits such cases relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Thus, prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year, if it is otherwise eligible.
Computation of Amount payable		
50.	The DTVSV Scheme, 2024 provides for the different rates where declaration is filed on or before 31.12.2024 and where it is filed on or after 1.1.2025. Please clarify whether payment of disputed amount is also required to be made before 31.12.2024 for applicability of the lower rate?	Reference may be made to the provisions of the Scheme read with DTVSV Rules, 2024. As per Rule 3 of the DTVSV Rules, 2024, the amount payable is linked to the date of filing of declaration. Accordingly, where declaration is filed on or before 31.12.2024, the amount payable by the declarant shall be as mentioned in column (3) of the Table specified in section 90 of the Finance (No.2) Act, 2024. However, where a declaration is filed on or after 1.1.2025, the amount payable by the declarant shall be as mentioned in column (4) of the said Table. The payment of disputed amount is required to be made as per section 92(2) of the DTVSV Scheme i.e. within 15 days of the date of receipt of certificate in Form No. 2.
51.	Whether any additional ground filed in relation to an appeal is to be considered while computing disputed tax?	If any additional ground has been filed on or before 22 nd July, 2024, it shall be considered for the purpose of computing disputed tax.
Disputed Penalty		
52.	Suppose penalty has been levied after the taxpayer has filed a declaration for the settlement of the associated quantum appeal. In such a case, whether on settlement of tax arrears of the quantum appeal, penalty in relation to such tax arrears would be waived off?	Reference may be made to the definition of tax arrears in section 89(1)(o) of the Scheme. Interest chargeable or charged and penalty leviable or levied are included in tax arrears. However, the settlement for quantum appeal is made as a percentage of disputed tax, where disputed tax means income-tax including surcharge and cess. Thus, penalty leviable or levied are not included in disputed tax for settlement of quantum appeal. Accordingly, on settlement of quantum appeal, the Designated Authority will grant immunity from penalty leviable or levied in respect of tax arrears settled under the Scheme.
53.	Suppose in a case, the additions made in assessment have reached finality. There is no quantum appeal pending as on 22 nd July, 2024. However, penalty appeal is pending as on 22 nd July, 2024	Penalties which are unrelated to quantum additions are clearly eligible for settlement where an appeal in respect of such penalty is pending as on 22 nd July, 2024. These penalties are unrelated to quantum additions and therefore can be settled independently of quantum appeals.

	which relates to the additions made in the said assessment order. Can a penalty appeal be settled independent of quantum appeal?	Further, where the additions made in an assessment have reached finality and thus there is no quantum appeal pending as on 22 nd July, 2024, there is no disputed income or disputed tax as on the specified date i.e. 22 nd July, 2024. Therefore, such penalty can be settled separately under the Scheme as per Sl. No. (c) & (d) of the Table in section 90 of the Scheme.
54.	Whether appeal against penalties that are not related to quantum assessment like penalty u/s 271B, 271BA, 271DA of the Act etc. are also waived upon settlement of appeal relating to disputed tax?	No, appeal against such penalty order is required to be settled separately.
APA/MAP cases		
55.	In case of APA/MAP, can the Scheme be opted for settling disputes pertaining to non-APA/MAP adjustments?	The Scheme envisages settling dispute in full. The Scheme does not envisage settling issues in part. Therefore, whatever issues are there in a pending appeal are to be settled in full whether they pertain to APA/MAP adjustments or otherwise.
Taxes paid before filing Declaration		
56.	Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under DTVSV Scheme, 2024?	Yes. Credit for taxes paid against the disputed tax before filing declaration shall be available to the declarant.
57.	In such cases where Appeal is pending as on 22 nd July, 2024 but disputed tax demands have been already fully paid before filing of declaration. Are such cases eligible to avail DTVSV Scheme, 2024?	Yes. Reference may be made to section 94 of the DTVSV Scheme, 2024. The situation mentioned is clearly covered in section 94(2) of the Scheme. Accordingly, such cases shall be eligible for the Scheme.
TDS related queries		
58.	In such cases where deductee has settled his appeal, whether TDS deductor would be relieved from its liability u/s 201(1) of the Act. Further, whether TDS deductor would be allowed to claim expense deduction u/s 40(a) of the Act?	Where a deductee has settled his tax liability, the deductor is relieved from his liability other than interest payable. However, consequential relief for expense deduction u/s 40(a) of the Act shall be available to such deductor.
59.	Whether appeals filed before the Appellate Authority against intimation passed u/s 200A of the Act (regarding intimation on processing of TDS returns) can be settled under DTVSV Scheme, 2024?	Yes, if appeal in respect of intimation u/s 200A is pending as on 22 nd July, 2024.

Miscellaneous		
60.	Whether Designated Authority can amend his order to rectify any patent errors?	Yes, the Designated Authority shall be able to amend his order under section 92 to rectify any apparent errors.
61.	Where appeal is pending in respect of primary assessee which is a foreign entity not having adequate business presence in India. Whether such foreign entity can file declaration and settle its dispute through its representative assessee having presence in India?	Yes. With proper authorisation, a representative assessee can opt for settlement under the Scheme. Even in the case of deceased tax-payer, the legal representative may also opt for settlement under the Scheme.
62.	If the taxpayer avails DTVSV Scheme, 2024 for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?	Yes, secondary adjustment under section 92CE will be applicable. However, it may be noted that the provision of secondary adjustment as contained in section 92CE of the Act is not applicable for primary adjustment made in respect of an assessment year commencing on or before the 1 st day of April 2016. That means, if there is any primary adjustment for assessment year 2016-17 or earlier assessment year, it is not subjected to secondary adjustment under section 92CE of the Act.


16.12.2024

(Surbendu Thakur)

Under Secretary to the Govt. of India

Copy to:

1. PS to FM/ OSD to FM/ PS to MoS(F)/ OSD to MoS(F)
2. OSD to Secretary (Revenue)
3. Chairman, CBDT & All Members, CBDT
4. All Pr. DGsIT/ Pr. CCsIT
5. All Joint Secretaries/CsIT/ Directors/ Deputy Secretaries/ Under Secretaries of CBDT
6. The C&AG of India
7. The JS & Legal Adviser, Ministry of Law & Justice, New Delhi
8. CIT (M&TP), Official Spokesperson of CBDT
9. Web Manager, ADG(S)-4, O/o Pr. DGIT (Systems) for uploading on official website.
10. JCIT (Database Cell) for uploading on www.irsofficeronline.gov.in