

The Direct Tax Vivad Se Vishwas Scheme Finance Bill 2020

Presented by CA Nitin Bhuta

Disclaimer

- All views stated are my personal views they are not binding n WIRC /ICAI. My personal views may be correct/ incorrect as they are expressed based on my understanding of the subject.
- All members/listeners are requested to go through tax law provision/s on their own and advise their clients accordingly as each situations is peculiar in itself.
- All Illustrations provided are imaginary and any resemblance to any situations is purely co-incidental and without any intentions to disclose private and confidential information.

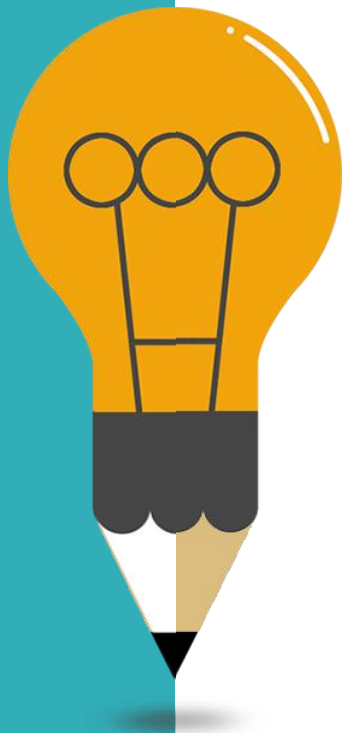


H - Happy

ECG
E- Enjoy
C-Celebration
G - Goodness



Presentation Coverage



01

Objective

02

Definitions

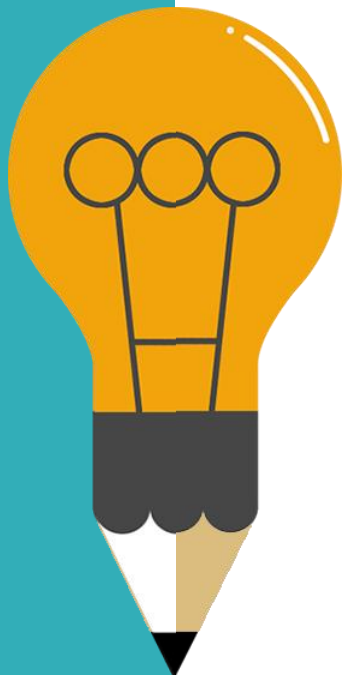
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Applicability

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Non Applicability

Presentation Coverage



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**Taxes /Interest Payable under the scheme
(before 31.03.2020)**

06

**Taxes /Interest Payable under the scheme
after 1.4.2020 but upto 30.06.2020**

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Approval and Rejections of the Applications

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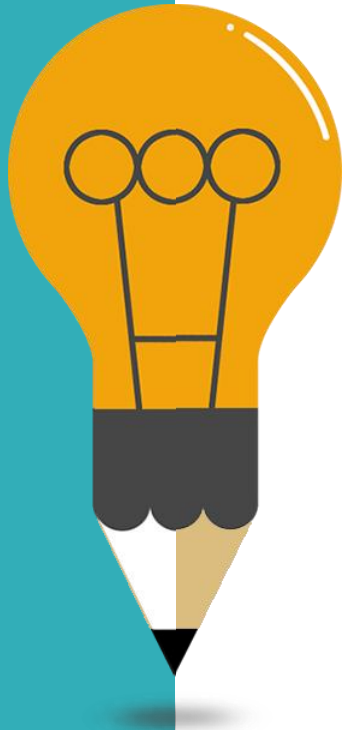
Conclusions



Vivad Se Vishwas Scheme

Objective

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Objective

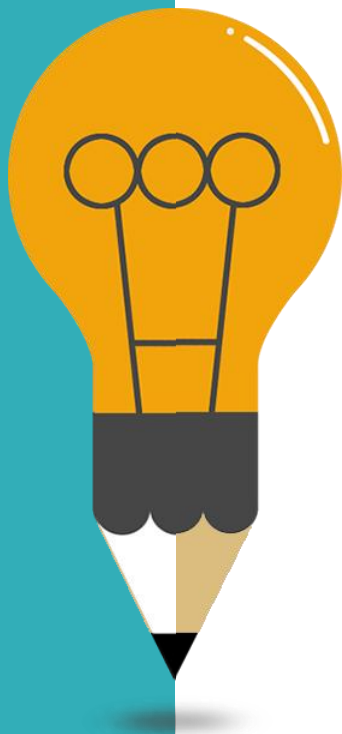
- Intention was to resolve the disputed tax dues filed at all various adjudication levels due to pendency of appeals at various appellate levels in India.
- If application is filed and accepted then it would provide immunity from levy interest and penalties under the provisions of the Income Tax Act.
- It is kind of Amnesty scheme.



Vivad Se Vishwas Scheme

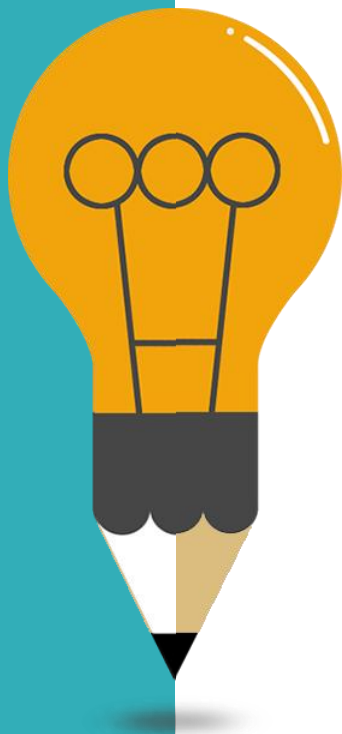
Definitions

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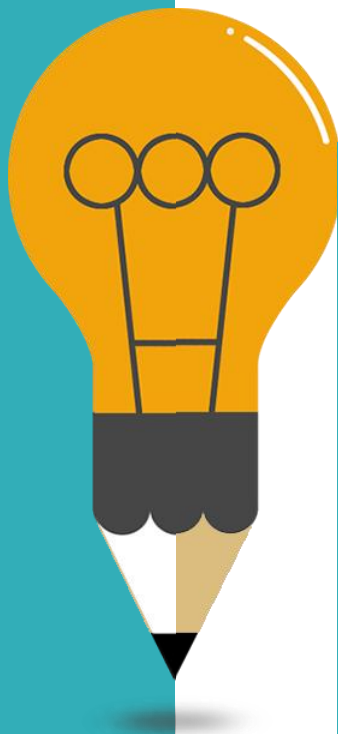
Definitions

- Section 2(1) (a) "**appellant**" means the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on the specified date;
- Section 2(1) (b) "**appellate forum**" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);
- Section 2(1) (c) "**declarant**" means a person who files declaration under section 4;
- Section 2(1) (d) ; "**declaration**" means the declaration filed under section 4;



Definitions

- Section 2(1) (e) "**designated authority**" means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act;
- Section 2(1) (f) "**disputed fee**" means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;
- Section 2(1) (g) "**disputed income**", in relation to an assessment year, means the whole or so much of the total income as is attributable to the disputed tax;



Definitions

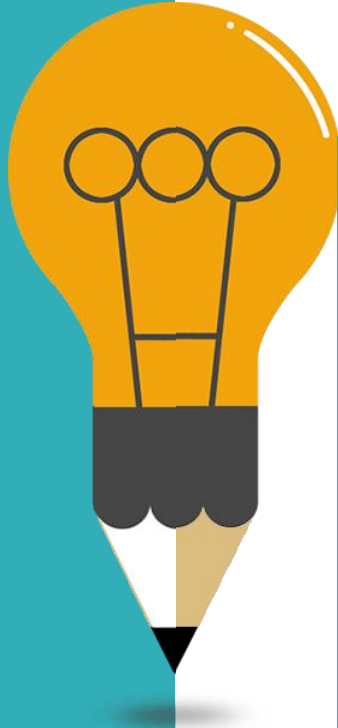
•Section 2(1) (h) "**disputed interest**" means the interest determined in any case under the provisions of the Income-tax Act, 1961, where —

- (i) such interest is not charged or chargeable on disputed tax;
- (ii) an appeal has been filed by the appellant in respect of such interest;

•Section 2(1) (i) "**disputed penalty**" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where —

- (i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;
- (ii) an appeal has been filed by the appellant in respect of such penalty;

Definitions



•Section 2(1) (j) "**disputed tax**" in relation to an assessment year, means—

(i) tax determined under the Income-tax Act, 1961 in accordance with the following formula—

$(A - B) + (C - D)$ where,

Disputed Tax - $(A - B) + (C - D)$

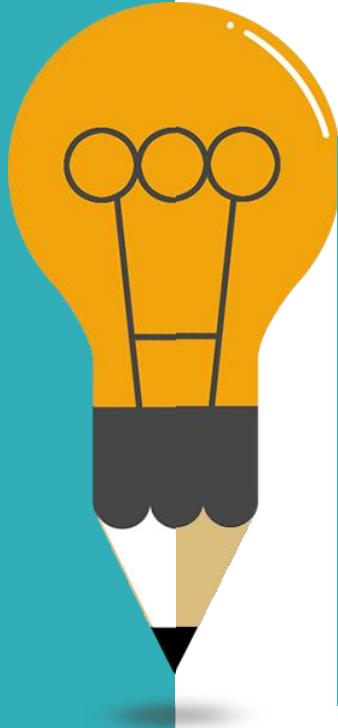
A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961 other than the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 (herein after called general provisions);

B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;

C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;

D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant:

Definitions



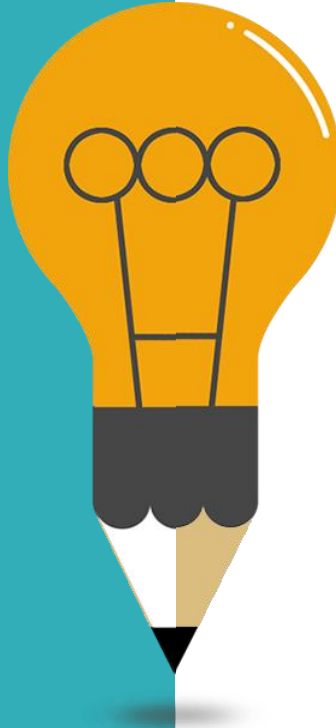
Section 2(1) (j) "**disputed tax** " (contd) – **Provisos**

Provided that where the amount of income in respect of which appeal has been filed by the appellant is considered under the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

Provided further that in a case where the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 are not applicable, the item (C – D) in the formula shall be ignored:

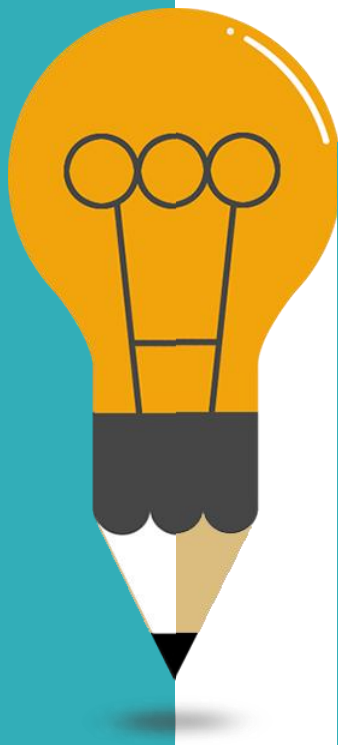
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Definitions



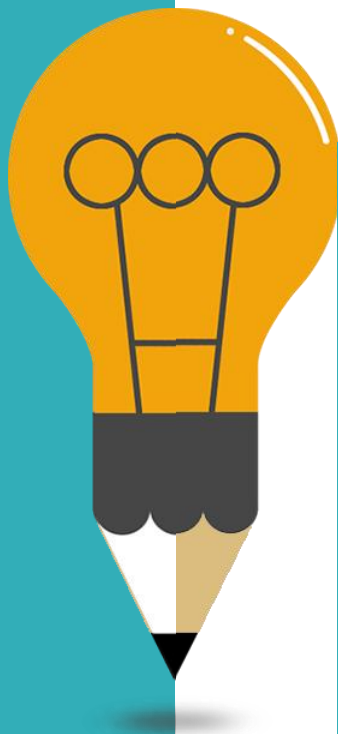
Section 2(1) (j) "**disputed tax** " (contd) – **Provisos**

Provided also that in a case where the amount of income, in respect of which appeal has been filed by the appellant, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined in accordance with the formula specified in sub-clause (i) with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income;



Definitions

- Section 2(1) (j) "**disputed tax**" in relation to an assessment year, means—
 - (ii) tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.
- Section 2(1) (k) "Income-tax Act" means the Income-tax Act, 1961;
- Section 2(1) (l) "last date" means such date as may be notified by the Central Government in the Official Gazette; (as of now 30.06.2020)



Definitions

- Section 2(1) (m) "prescribed" means prescribed by rules made under this Act;
- Section 2(1) (n)"specified date" means the 31st day of January, 2020

Section 2(1) (o)“tax arrear" means,—

- (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
- (ii) disputed interest; or
- (iii) disputed penalty; or
- (iv) disputed fee, as determined under the provisions of the Income-tax Act;



Vivad Se Vishwas Scheme

Applicability

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Applicability of the Schema

CIT (Appeals) – First Appeal

ITAT - Second Appellate Level

High Court (Including Writ)

Supreme Court
(Including Writ)



Vivad Se Vishwas Scheme Non Applicability

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Non Applicability of the scheme

Search and Seizure
Cases u/s 153A

Appeals - Foreign
Undisclosed
Income /Asset

Appeals to AY -
Prosecution initiated

Appeals –
Assessment /
Reassessment –
MAP/EOI –
Foreign Jurisdictions

Appeals Pending
before DRP or
Revisions proceedings
u/s 263

Appeal - Pending
before CIT (A) in relation
to enhancement issued
u/s 251

Order of detention under the
Conservation of Foreign Exc
hange and Prevention of
Smuggling Activities Act,
1974

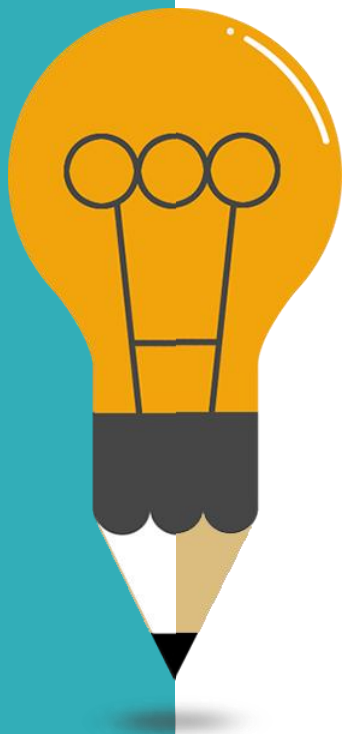
Prosecution under IPC
and Other specified Act

Notified persons u/s 3 -
Special Court (Trial of Offenc
es Relating to Transactions i
n Securities) Act, 1992



Vivad Se Vishwas Scheme

**Taxes /Interest Payable under the
scheme (before 31.03.2020)**



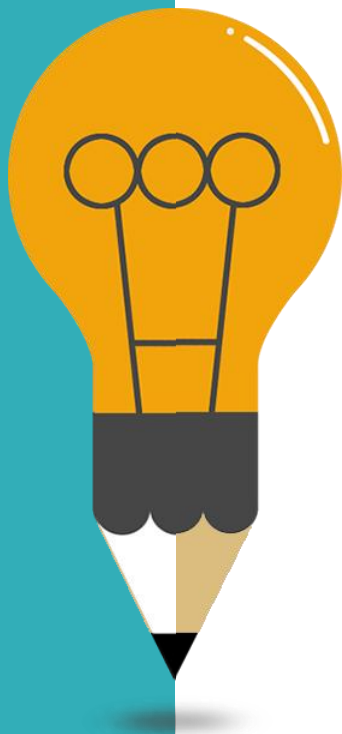
Matters under considerations	Before 31.03.2020
Appeals involving Disputed Tax (Section 2(1) (j))	100% of Disputed Tax to be paid
Appeals involving Disputed Penalty Interest and Fee (Section 2(1) (f) (g) and (h))	25% of Disputed Interest/ Penalty/Fees to be paid.



Vivad Se Vishwas Scheme

**Taxes /Interest Payable under the
scheme (After 31.03.2020)**

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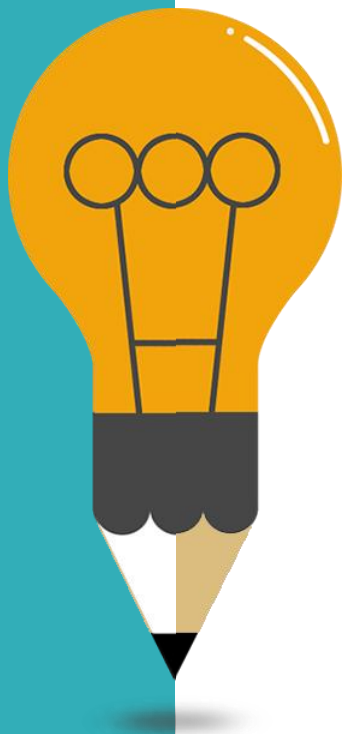
Matters under considerations	After 31.03.2020 but before 30.06.2020
Appeals involving Disputed Tax (Section 2(1) (j))	110% of Disputed Tax to be paid (additional 10% not to exceed in terest/ penalty on such disputed Tax to be paid)
Appeals involving Disputed Penalty Interest and Fee (Section 2(1) (f) (g) and (h))	30% of Disputed Interest/ Penalty/Fees to be paid.



Vivad Se Vishwas Scheme

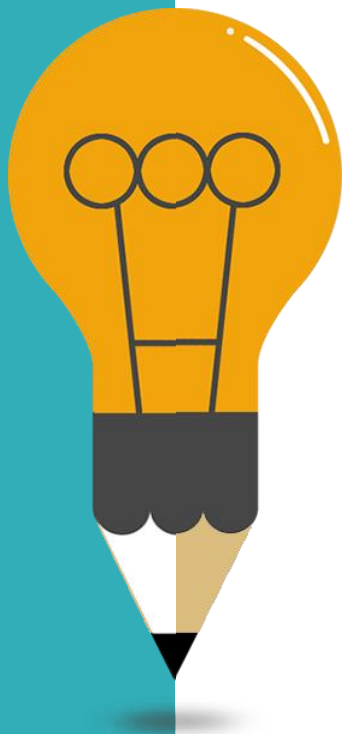
Approval and Rejections of the Applications

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Matters before CIT (A)/ITAT

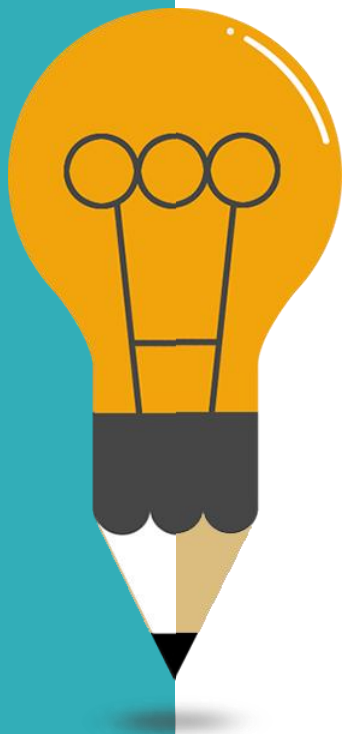
- Section 4(1) -The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed
- Section 4(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority. **(Thus there is no need to apply for withdrawals of such appeal by the applicant for First and second level of appellate authorities)**



Matters Before HC/SC

- Section 4(3) - Where the declarant has filed any appeal before The appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required and **furnish proof of such withdrawal along with the declaration referred to in sub-section (1).** (Thus proof of withdrawals at Third and Fourth level is a must to be attached along with declarations filed under the scheme)

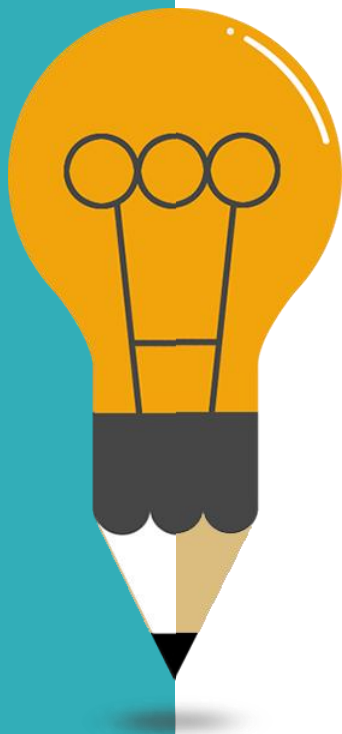
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Arbitration/Conciliations or Mediations

- Section 4(4) - Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice prior to making the declaration and furnish proof thereof along with the declaration referred to in sub-section (1). **(thus if above proceedings are initiated only outside India then only Such proceedings shall qualify for the same else no)**

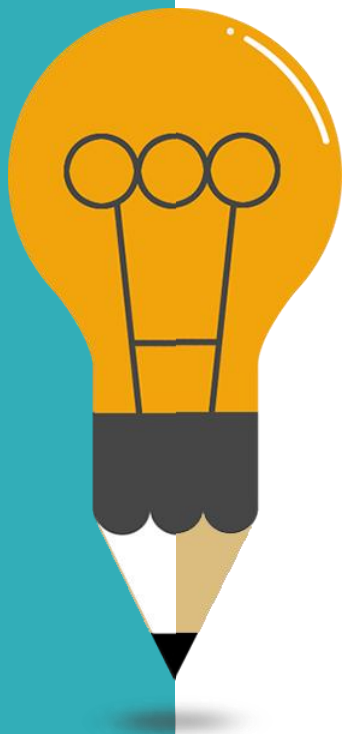
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No Remedy or No claim in future

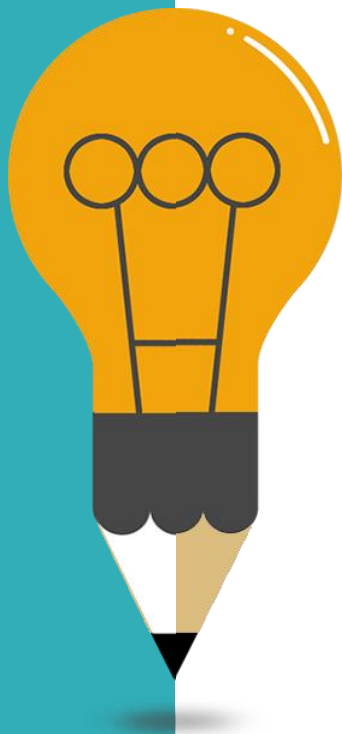
- Section 4(5) - Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

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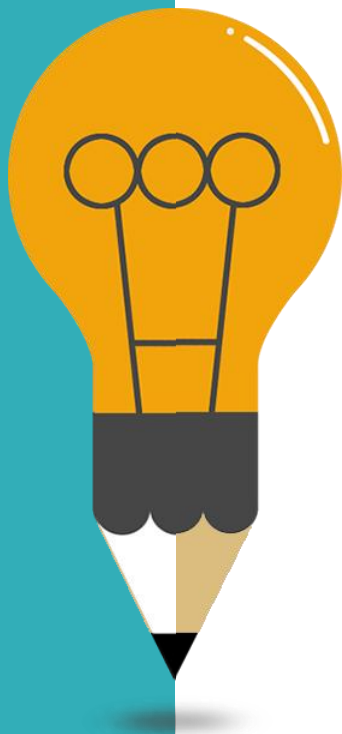
Consequences of False or Incorrect declarations

- Section 4(6) - The declaration under sub-section (1) shall be presumed never to have been made if,—
 - (a) any material particular furnished in the declaration is found to be false at any stage;
 - (b) the declarant violates any of the conditions referred to in this Act;
 - (c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5), and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.



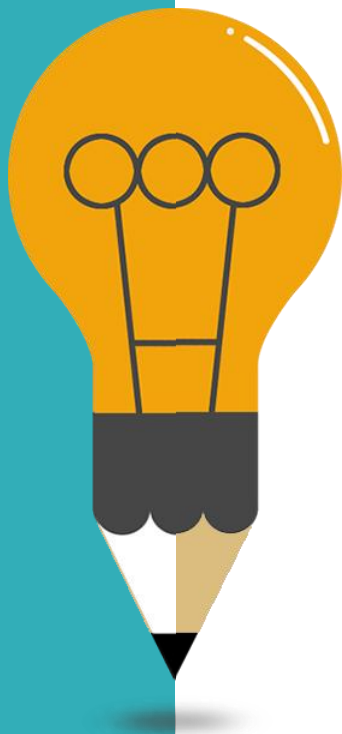
No Further Actions after Passing of an Order u/s 5(1)

- Section 4(7) - No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.



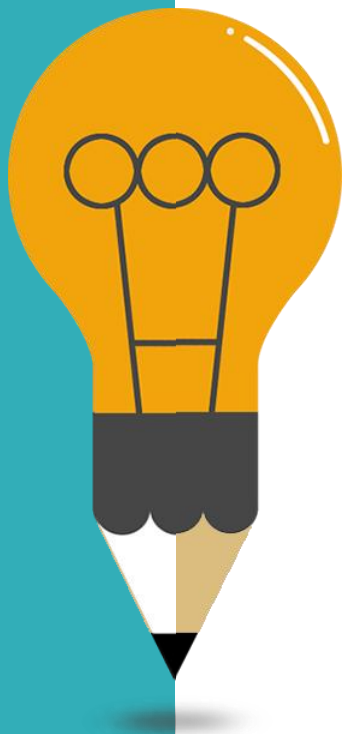
Time and Manner of Payment – Section 5

- Section 5(1) - The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the **provisions** of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.



Time and Manner of Payment – Section 5

- Section 5(2) - The **declarant shall pay the amount**
- **determined** under sub-section (1) within **fifteen days of the date of receipt** of the certificate and **intimate the details of such payment** to the designated authority in the prescribed form and **thereupon the designated authority shall pass an order stating that the declarant has paid the amount.** (if order is passed on 30.03.2020 and paid on 10.04.2020 (will it qualify for non payment of additional 10% after 1.4.2020 – clarification Desirable from Govt.)



Time and Manner of Payment – Section 5

- Section 5(3) - Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.



Vivad Se Vishwas Scheme

Conclusions

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Vivad Se Vishwas Scheme

Conclusions

01

Cut off date 31.01.2020

Cases concluded up to 31.01.2020 would be eligible for.

02

Verify Eligibility

Check first whether eligible if yes then decide whether to apply and if not drop the idea..

03

Decision Making

Considering the Merits of dispute and decide as to whether opt or opt out of the scheme

04

Compute Dues Payable

Determine outgo and organize funds availability

05

File Declarations

File True and correct declarations before the designated authorities by determining

06

Order and Payment of Dues

On Receipt of order pay the dues as applicable and notify Designated authority and obtain order in writing.

Vivad Se Vishwas Scheme

Conclusions

07

Immunity

With payment of dues and receipt of order , all matters are deemed to be concluded under Income Tax Law only

08

No further inquiry

All disputes are deemed to be concluded once in for all

09

Non Refundable

Amounts paid under scheme is non refundable under any circumstances

10

No declarations to be filed

No declaration should be filed under scheme in case of situations which are not eligible

11

Consult CA/Advisor

Please consult with your CA/Advisor before filing any declarations without fail.

12

Happy and Peaceful closure

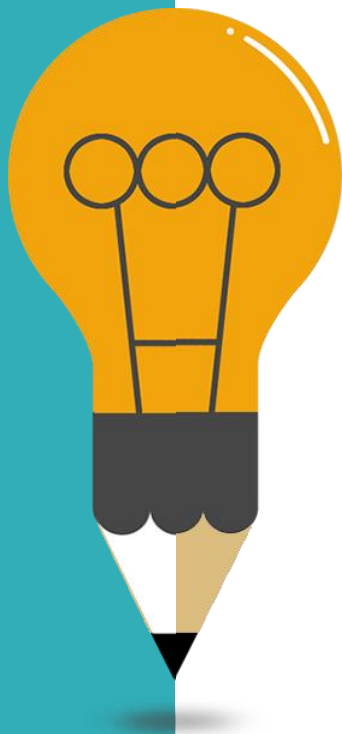
Once dues are paid and matter concluded enjoy peaceful sleep.



Vivad Se Vishwas Scheme

Food for Thoughts

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Food for Thoughts ?

- At the time of filing of declarations if declarant is genuinely not aware about any proceedings initiated under any other law so in such scenario will such declaration filed would be termed is incorrect ?
- If Tax is deposited by Assessee for getting stay whether same would be adjusted disputed tax/interest/penalty/fes payable under the scheme ?
- Whether applications filed u/s 264 would be eligible?
- Where rectification proceedings are rejected why they should not eligible for?
- Whether assessment orders received u/s 143 in respect of assessment/ reassessment proceedings would be eligible for the scheme?
- Why demands raised under sections of the Act which are not appealed why they should not be eligible for ?

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SURROUND YOURSELF WITH PEOPLE WHO TALK ABOUT VISION AND IDEAS NOT PEOPLE

Appreciated all of You.



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Nitin Bhuta & Co.





Thank you

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