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India tax litigation settlement - The Direct Tax Vivad-Se-Vishwas Scheme, 2024

Panel Discussion

26 September 2024

Today's panel



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VSV 2.0 Background and Overview

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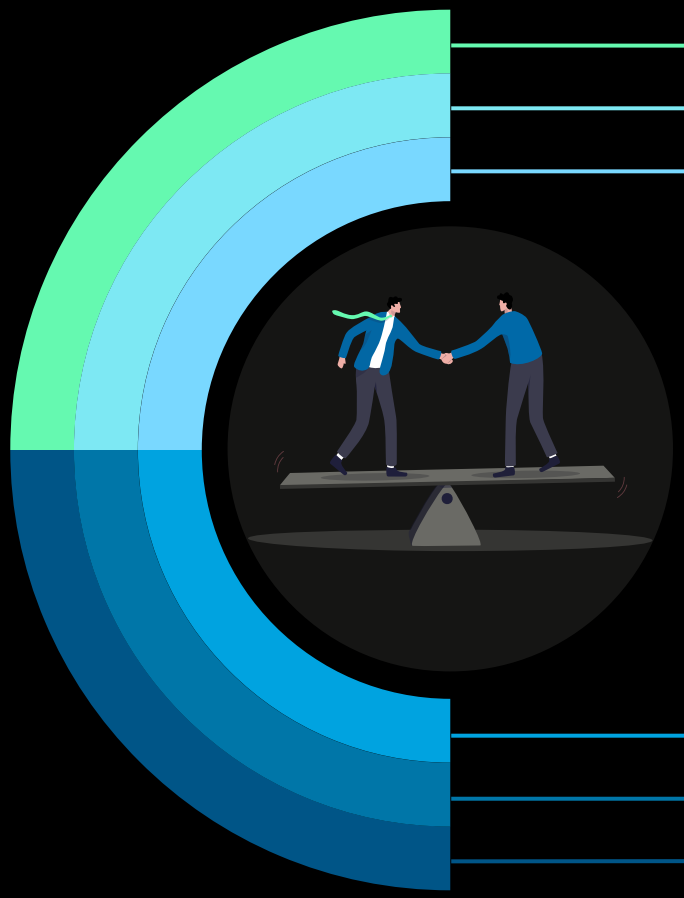
VSV 2.0 Background and Overview



- Pendency before CIT(A) was around 5.44 lacs appeals at the start of this year
- Whereas pendency before ITAT was 20,266, High Courts 37,436, and Supreme Court 5,544 cases

Tax certainty and reducing litigation are focus areas for the Government

- With the above objective, monetary thresholds for revenue appeals are increased
- ITAT – Rs. 60 Lacs, High Court – Rs. 2 Crores, Supreme Court – Rs. 5 Crores
- SC had recently disposed 500 cases having low tax effect – huge relief for litigants

Success of VSV 1.0 has given the Government confidence to attract taxpayers for the settlement option

Scope of VSV 2.0 is limited as compared to VSV 1.0

Majority guidance will come in shape of FAQs and Circulars that will be issued by the CBDT

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Appeals covered, amounts payable and salient features

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Applicability

Eligible Cases

1. **Appeals** or Writ Petitions or Special Leave Petition **pending** as **on 22 July 24**
2. Where objections are filed with the Dispute Resolution Panel and **directions are not issued as on 22 July 24**
3. Dispute Resolution Panel has issued its direction, but **final assessment order is not passed as on 22 July 24**
4. **Sec. 264** application **pending on 22 July 24**

Ought to have been included

1. Cases where orders are passed and appeal is not filed, **but time to file an appeal has not elapsed** on 22 July 24
2. Cases that are **remanded back to** the file of the **Assessing Officer**, except de-novo adjudication

Excluded Appeals/Petition

1. Arising from assessment or reassessment **based on search** initiated under Section 132 or Section 132A
2. Relating to AYs where **prosecution** has been initiated
3. Relating to **undisclosed asset outside India**
4. Arising from assessment or reassessment based on information received as per **Sec. 90 and 90A**

Excluded Persons

1. Order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
2. Prosecution has been instituted or conviction has taken place under certain Acts
3. Prosecution by Income-tax authorities for offences punishable by BNS, 2023, or enforcement of civil liability or convicted of any such offence

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Amounts payable

Nature of tax arrears	Declaration filed on or before 31 December 2024	Declaration filed from 1 January 2025 till end date which will be notified
a. aggregate amount of disputed tax, interest on such disputed tax and penalty levied or leviable on such disputed tax:		
i. Appeal filed after 31 January 2020 but on or before 22 July 2024	100 % of disputed tax	110% of disputed tax
ii. Appeal pending at the same forum on or before 31 January 2020	110% of disputed tax	120% of disputed tax
b. disputed interest, disputed penalty, disputed fee:		
i. Appeal filed after 31 January 2020 but on or before 22 July 2024	25% of disputed tax	30% of disputed tax
ii. Appeal pending at the same forum on or before 31 January 2020	30% of disputed tax	35% of disputed tax

Amount payable would be reduced to 50% in the following cases:

- Where the taxpayers appeal relates to an issue which has been decided in his favor by a higher appellate forum, i.e., ITAT, HC or SC
- Appeal has been filed by tax authorities

No interest shall be granted on refunds arising from VSV 2.0

In cases where the dispute relates to the reduction of MAT/AMT credit or loss/depreciation, an option will be available to include the amount of tax related to such tax credit/loss/depreciation in the disputed taxes or carry forward the reduced MAT/AMT credit or loss/depreciation

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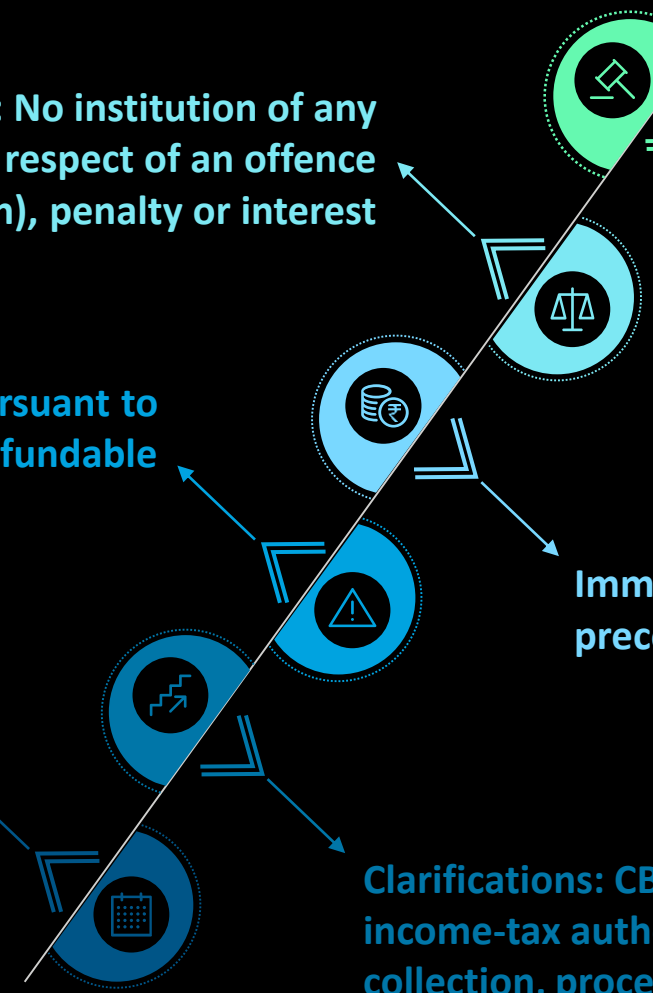
Salient features



Immunity #2: No institution of any proceedings in respect of an offence (prosecution), penalty or interest

Immunity #1: Order passed by the designated authority to be conclusive as to matters mentioned therein and such matters cannot be reopened in any other proceedings

Caution: The amount paid pursuant to declaration is not refundable

Immunity #3: Settlement cannot be treated as a precedent

End date: Will be notified by the Government in the due course.

Clarifications: CBDT may issue directions or orders to income-tax authorities as it may deem fit – matters of collection, procedure to be followed as necessary in the public interest, remove difficulties

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VSV 2.0 Rules and forms

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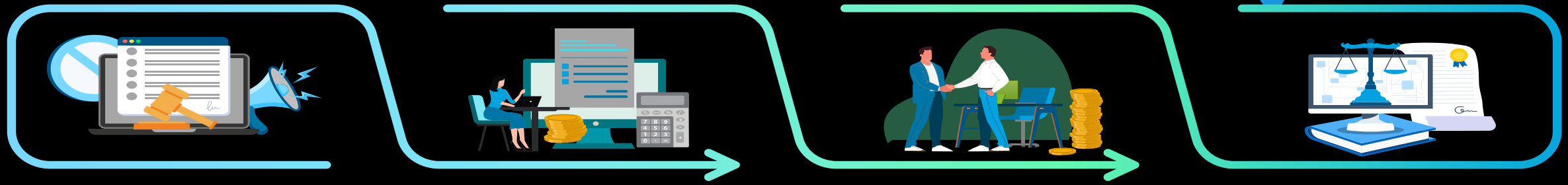
VSV 2.0 Rules

Steps for availing VsV 2.0



Step 1

Filing declaration in Form 1, giving details of dispute along with an undertaking waiving right to pursue any remedy

Step 2

The Designated Authority to issue certificate within 15 days from receipt of declaration in Form 2 determining the amount payable

Step 3

The Declarant to file an intimation in Form 3 within 15 days of date of receipt of certificate giving details of payment along with proof of withdrawal of appeal

Step 4

The designated authority to issue order in Form 4 for full and final settlement

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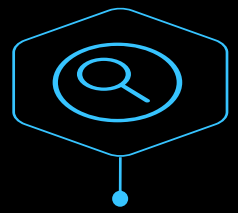
Manner of computation of disputed tax

Manner of computing disputed tax in cases where loss or unabsorbed is reduced:



Option 1

Include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced and carry forward losses / unabsorbed depreciation ignoring the reduction



Option 2

Carry forward the reduced amount of loss or unabsorbed depreciation

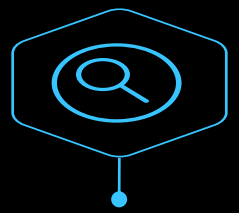
Where option 2 is exercised, the declarant would be liable to pay tax, surcharge, cess and interest, if any as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years.

Manner of computing disputed tax in cases where loss or unabsorbed is reduced:



Option 1

Include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction



Option 2

Carry forward the reduced MAT credit

Where option 2 is exercised, the declarant would be liable to pay tax, surcharge, cess and interest, if any as a consequence of carrying forward the reduced MAT credit in subsequent years.

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Practical Considerations for VSV 2.0

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Practical Considerations for VSV 2.0



Fin 48 Rules

Cases where taxpayers have made provisions pursuant to Fin 48 rules thus resulting in no significant shocks to business accounts

Mergers and Acquisitions (M&A)

Lends certainty to target entities currently being evaluated for M&A related activity

Response to Tax Department

VsV analysis required to equip CEOs/CFOs who may be invited by Tax department for discussion on VsV

Focus on Business Aspects

Allows tax teams to focus on business tax planning by freeing up time involved in litigation

Audit clearance & reporting

Clearance of outstanding litigation results in faster audit clearances and reduced reporting requirements

Analysis for listed entities

In case of listed entities, Company Board may request for evaluation of VsV scheme

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Practical Considerations for VSV 2.0

Benefits of VSV 2.0

- Avoids protracted litigation
- Provides certainty from a tax and financial disclosure perspective
- Significant savings in litigation costs
- Waiver of interest and penalty
- Utilization of losses or MAT credit already lapsed/likely to lapse
- Settlement under scheme will not be viewed as a precedence for future cases
- Trust building measure between taxpayer and tax department



Caution points of VSV 2.0

- No option for partially availing the scheme i.e., option to only settle some grounds and pursue litigation for others
- Results in cash outflow in near future and likely to cause diversion of cash resources away from budgeted expenses
- Does not provide relief from double taxation. If that is the objective, then taxpayers may opt for APA or MAP in such cases
- Secondary adjustment impact

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Non-tax considerations for opting VSV 2.0

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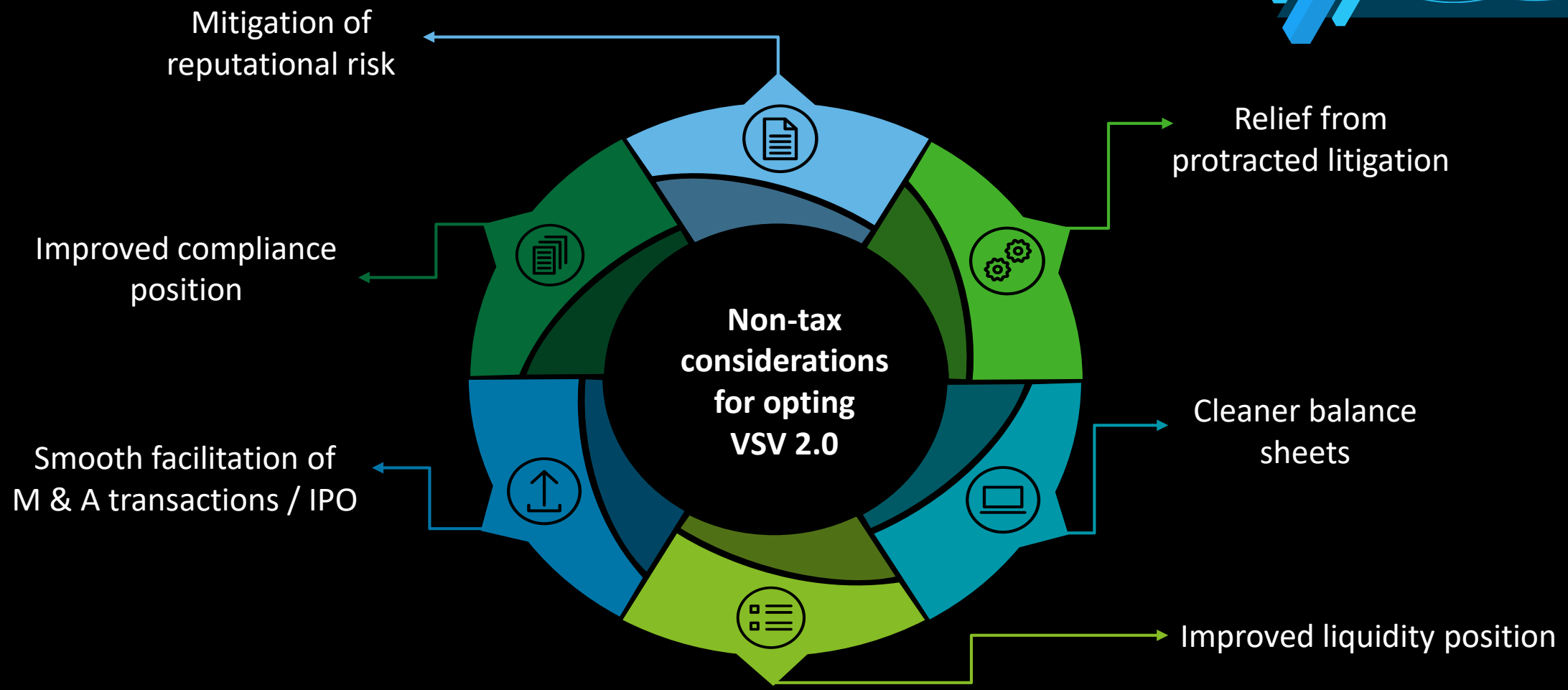
Non-tax considerations for opting VSV 2.0



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Clarification sought and suggestions

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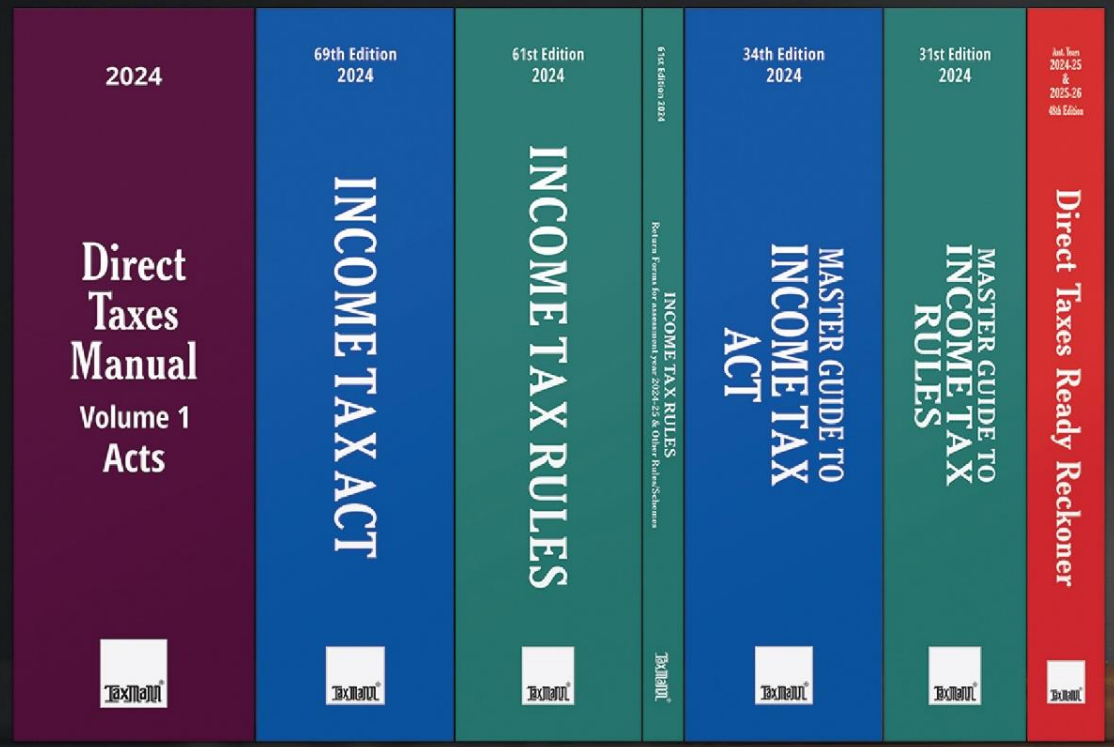

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