



President Vice President  
Vijay U Bhatt Jayant P Gokhale

Hon. Jt. Secretaries Hon Treasurer Imm. Past President  
Mehul R Sheth | Neha R Gada Vitang N Shah Haresh P Kenia

24 January 2025

To,  
Shri Ravi Agarwal,  
Chairman,  
Central Board of Direct Taxes,  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi

**Sub: The Direct Tax Vivad Se Vishwas Scheme, 2024 - Suggestions for further clarifications**

Respected Sir,

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members spread across Pan India. The Chamber is on the cusp of its Centenary year which will be commencing from July 2025. Many senior tax professionals who regularly appear before ITAT, High Courts and the Supreme Court are its Past Presidents. The Chamber has been regularly making representations before various government agencies.

The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws.

At the outset, we wish to express our sincere gratitude for issuing clarifications vide Circular No. 12/ 2024 dated 12-10-2024 and also Circular No. 19/2024 dated 16-12-2024 in connection to the Direct Tax Vivad se Vishwas Scheme 2024. We appreciate the constant efforts to enhance the tax administration process. In this context, we would like to present our humble suggestions and recommendations that we believe could help further alleviate some of the challenges faced by taxpayers under the 'The Direct Tax Vivad Se Vishwas Scheme, 2024' ('VsV 2.0') introduced as part of the Finance (No. 2) Act, 2024

As you are aware, VsV 2.0 Scheme allows taxpayers to settle their income tax disputes pending as on 22<sup>nd</sup> July 2024, subject to the eligibility criteria and payment of tax amount as mentioned in the scheme. Declarations under the scheme are to be filed by 31<sup>st</sup> January 2025. After this date, taxpayers will be required to pay additional amount for late filing. In this context, we are highlighting some issues and offering further suggestions (refer **Annexure 1**) that we believe,



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if clarified by the CBDT, could help resolving challenges faced by taxpayers under VsV 2.0 and make the scheme more attractive.

We request CBDT to kindly consider these suggestions and issue clarifications by way of additional guidance/ FAQs.

We at the Chamber, always advocate timely compliance by the taxpayers and firmly believe that it is in the interest of not just the taxpayers but also the country as a whole to do compliance in time and also pay the taxes in time. However, we also believe that it is the duty of the regulator to provide the suitable mechanism and clarity in achieving the above objective and therefore we are making this request for your kind consideration.

Thanking you.

Yours sincerely,

For **THE CHAMBER OF TAX CONSULTANTS**

Sd/-

**Vijay Bhatt**  
**President**

Sd/-

**Ketan Vajani**  
**Chairman**  
**Law and Representation Committee**

Sd/-

**Apurva Shah**  
**Co-Chairman**

## Annexure 1

- (i) **Secondary Adjustment on settlement of Transfer Pricing disputes:** FAQ No. 62 issued vide Circular No. 19/2024 dated 16-12-2024 states that secondary adjustment would be applicable for settlement of cases under VsV scheme. The provisions of section 92CE of the Income Tax Act, 1961 ('the Act') stipulates that from AY 2017-18 onwards, a secondary adjustment shall be made in respect of primary adjustment exceeding one crore rupees subject to satisfaction of certain conditions. For secondary adjustment to be applicable, primary adjustment has to fall within one of the five clauses as stated in section 92CE(1) of the Act.

Going through the construct of section 92CE of the Act, it envisages situations where the taxpayer makes or agrees with the TP adjustment. Where the adjustment made is challenged before the appellate authorities, it cannot be said that the taxpayer has accepted the TP adjustment. Further, it is also relevant to highlight that as per section 92(4) of the VsV 2.0 scheme, making a declaration under the scheme shall not amount to conceding of a tax position by the declarant. Thus, settlement under the VsV 2.0 should not be treated as an 'acceptance' as required under section 92CE of the Act and hence secondary adjustment should not be applicable in such a situation. We accordingly humbly submit that the response to FAQ No. 62 by circular No. 19/2024 is contrary to the provisions of the Income-tax Act and also section 92(4) of the Finance (No.2) Act, 2024.

Suggestion : It is requested to reconsider the position and withdraw FAQ No. 62 issued vide Circular No. 19/2024.

- (ii) **Pending Rectification Applications:** Accurate computation of disputed tax is crucial for resolving cases under VsV 2.0.

Suggestion: Field officers should be instructed to promptly address rectification applications from taxpayers who wish to settle their appeals under VsV 2.0. Alternatively, if rectification applications are still pending, it should be clarified that taxpayers can proceed with VsV 2.0 on the assumption that their rectifications will be approved. The designated authority can then calculate the disputed taxes under VsV 2.0, taking into account the pending rectification applications. We also suggest that the utility for the Form – 1 to be filed should permit alteration of the tax amount so as to achieve this object.

- (iii) **Disputed tax for appeals against 143(3) order which also includes additions made in 143(1) intimations:** When taxpayers challenge adjustments made in a Section 143(1) intimation separately before an appellate forum, as well as part of an appeal against a Section 143(3) order, they may choose to use the VsV scheme to settle only the appeal against the Section 143(3) assessment order. In such cases, the disputed tax should be calculated solely on the disallowances or additions made in the Section 143(3) assessment order, excluding adjustments made under Section 143(1) intimation. The appeal under Section 143(1) can continue on its merits and should not be withdrawn. This approach is

supported by FAQ No. 41, which treats an appeal against an intimation under section 143(1) as a separate appeal eligible for settlement under the scheme.

Suggestion: It should be clarified that, the disputed tax should be computed only on the disallowances or additions made in the Section 143(3) assessment order, and not on adjustments made under Section 143(1) of the Act. Appeal against 143(1) intimation can be separately settled by the taxpayer at their discretion.

- (iv) **Additional payment post 31.01.2025 to be linked with the amount payable post credit of taxes already paid:** As per the scheme, payment of 100% disputed tax/interest/penalty/fee is required in Form 1 is filed on or before 31.01.2025. Additional payments are required when declaration is made on or after 01.02.2025. This provision does not factor the taxes paid against the disputed tax/interest/penalty/fee. The requirement of additional payment, for filings done on or after 01.02.2025 ought to be limited to the amount of disputed tax/interest/penalty/fee payable post credit of taxes already paid; rather than on the total disputed tax/interest/penalty/fee.

Suggestion: It may be clarified that additional payment shall be in respect of disputed tax/interest/penalty/fee in arrears post credit of taxes already paid up to 22.07.2024

- (v) **Determination of disputed tax in case of reassessment / 263 revision:** As per FAQs cases wherein disputed tax is not determinable e.g. where a writ petition is filed against the 148 notice, such cases are not eligible under the scheme. There may be situations wherein subsequently assessment orders are passed in pursuance to 148 notice / 263 order and income is determined in that order.

Suggestion: It may be clarified that in cases where subsequently assessment order in consequence of 148 notice / 263 order is available as on the date of declaration, such cases would be eligible and disputed tax can be computed basis the consequential orders.

- (vi) **Consequential effect of settlement under VsV 2.0:** There are cases wherein settlement under VsV would have an impact in other years. For e.g., Year 1 – Revenue expenditure claimed by the taxpayer is disallowed and treated as capital. Settlement under VsV for Year 1 would have an impact on in Year 2 as depreciation should be allowed in the Year 1 as well as the subsequent years.

Suggestion: It may be clarified that the field officers pass order giving effect / rectification orders to the VsV settlement for giving consequential impacts and the timeline of 4 years under Section 154 be relaxed and a definite time frame say 6 months from the settlement order date be set to pass such consequential orders. Further, in case there are multiple years being settled under VsV, while computing the disputed tax for subsequent years, consequential impact because of Year 1 settlement may be considered for purpose of calculation.

- (vii) **Granting consequential impact of change in the amount of brought forward loss/MAT credit which is utilized in the year for which the dispute is settled under VSV 2.0:**

The facts and issue are explained below:

- During a preceding assessment year ('Year 1') certain additions were made by the Assessing officer resulting in a reduction of the carried forward losses/ MAT credit. The taxpayer's appeal against the assessment order is pending before the appellate authority and thus, the matter is sub judice.
- For a subsequent year ('Year 2'), the taxpayer filed its return of income and utilized brought forward losses/ MAT credit (of Year 1) without considering the impact (of lower assessed loss/MAT credit for Year 1) of the assessment for Year 1. Thereafter, the return of income for Year 2 was selected for scrutiny assessment, in which the Assessing officer made certain additions. Also, with respect to utilization of brought forward losses/ MAT credit, the Assessing Officer has restricted such utilization to the reduced amount of losses/ MAT credit (as determined in the assessment for Year 1). The taxpayer's appeal against the assessment order for Year 2 is also pending for disposal.
- In case the taxpayer opts to settle the dispute for Year 2 under VSV 2.0, the impact of utilization of brought forward losses/ MAT credit will need to be considered for determining the amount payable under section 90 of the Finance (No.2) Act, 2024 ('FA 2024'). It is possible that for determining such amount, the Designated Authority may consider the amount of brought forward losses / MAT credit basis the assessment order for Year 1, even though the matter for Year 1 is sub-judice. Further, with a view to complete the VsV 2.0 process, the taxpayer will be required to agree with the amount determined by the Designated Authority and make the payment as determined.
- Subsequent to the settlement of Year 2 under VSV 2.0, taxpayer's appeal for Year 1 would be adjudicated by the appellate authority and the additions made by the Assessing Officer could be wholly/ partly deleted, i.e., the amount of loss/ MAT credit available for utilization stands increased vis-à-vis the amount determined by the Assessing Officer during the assessment for Year 1.
- Illustration for Brought Forward Loss impact:

Particulars	Amount (INR)	
	Year 1	Year 2
<b>A. Return of Income ('RoI')</b>		
Income under the head PGBP	(100)	150
Less: Brought Forward Loss	-	(100)
Total Income/ (Loss)	(100)	50
Tax payable @ 25% (assumed tax rate) – (1)	-	12.5
<b>B. Assessment Proceedings</b>		
Income under the head PGBP [as per RoI]	(100)	150
Add: Additions by the AO under PGBP	30	20
Less: Brought Forward Loss [as per AO order]	-	(70)
Assessed Income/ (Loss)	(70)	100
Tax payable @ 25% (assumed tax rate) – (2)	-	25
Appeal filed against AO order	Yes	Yes
<b>C. VSV Proceedings</b>		
Whether VSV opted?	No	Yes

Particulars	Amount (INR)	
	Year 1	Year 2
Amount payable as per Form 2 [(2) minus (1)]	NA	12.5
Amount paid by taxpayer to complete VSV settlement	NA	12.5

Now, post settlement of Year 2 under VSV, the appeal for Year 1 is adjudicated, and the additions are deleted. Consequently, for Year 1, the assessed loss is INR 100 (same as returned loss). However, for computation of amount payable under VSV for Year 2, the brought forward loss set-off is restricted to INR 70. Accordingly, the taxpayer has ended up paying more under VSV, due to the brought forward loss set-off having been restricted. Ideally, under VSV, the taxpayer should have paid tax on additions made during Year 2, i.e., INR 5 (25% tax on additions of INR 20), whereas in actual taxpayer paid INR 12.5.

- In such a scenario, the amount paid by the taxpayer for Year 2 under VSV 2.0 will become excessive, and thus, such excess amount should be refunded to the taxpayer. As the refund is arising pursuant to proceedings for Year 1, giving effect to such proceedings in the subsequent computation of amount already paid for Year 2 under VSV 2.0, should not be restricted under section 94(1) of FA 2024.
- A reverse situation is also possible that the amount of losses/ MAT credit carried forward from Year 1 is further reduced vis-à-vis the assessment order for Year 1 – due to income enhancement by appellate authorities, etc – in this case, the amount paid by the taxpayer for Year 2 under VSV 2.0 will be short-paid, and thus, such shortfall may be recovered from the taxpayer.
- Also, until the assessment proceedings for Year 1 attain finality, it is possible that the amount of brought forward losses/ MAT credit for Year 2, will need to be adjusted basis time to time outcomes of the appeal proceedings.

Suggestion: We request an appropriate clarification for cases (referred to in the example above), where the taxpayer makes payment for settlement of a dispute after utilizing the brought forward losses/ MAT credit (of non-VsV years) and such brought forward losses/ MAT credit are adjusted subsequently due to appeal proceedings for the non-VSV years. It would be helpful if the CBDT clarifies that in such scenarios the Department will be required to give effect to the proceedings (for non-VSV years) and grant refund of the excess taxes paid or recover the taxes which are determined to be short-paid, as the case may be. Also, the timelines for issuing the order-giving effect for Year 2, will need to be aligned with the outcome of appeal proceedings for Year 1.

- (viii) Rectification of Form 2: We request that clarification be made that in cases where there is a mistake in Form No. 2 issued by the Pr. C.I.T, appropriate rectification be made by Pr. C.I.T on receipt of the rectification application by the applicant. **Guidance for filing up forms**: In addition to the above, it is suggested that guidance be issued for filing up forms as was done in VsV 1.0