

VSV 2024 and Revised Compounding Guidelines 2024

November 2024



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Background



A composite background image featuring a person's hands typing on a calculator, overlaid with a blue-tinted bar chart and a line graph. The scene is set in a dimly lit office with blurred lights in the background.

Setting the context

Vivad Se Vishwas Scheme 2024

- Finance Act 2024 introduced the Direct Tax Vivad Se Vishwas Scheme, 2024 (“VSV 2024”) which is effective from **01 October 2024**
- Aims to resolve pending direct tax litigations as of **22 July 2024**
- Similar scheme was introduced vide the Vivad Se Vishwas Act 2020 (“VSV 2020”) for settling pending tax litigations. As per explanatory memorandum to Finance Bill 2024, VSV 2020 received encouraging response from taxpayers garnering substantial revenue

Revised Compounding Guidelines 2024

- Revised guidelines for compounding of offences under the Income-tax Act, 1961 (“Act”) are introduced with effect from **17 October 2024**
- Applicable to new applications as well as to applications currently pending for disposal
- Revised guidelines aim to:
 - reduce complexities arising out of existing multiple guidelines
 - simplify the compounding procedure
 - lower the compounding charges



Vivad Se Vishwas Scheme 2024

Litigation statistics

As per press release dated 09 August 2021, under the VSV 2020

Number of cases settled	1,32,353
Disputed tax settled	INR 99,756 crore
Payments against disputed taxes	INR 53,684 crore

Post VSV 2020 scenario

Cases pending prior to VSV 2020 ¹	4,83,000
Cases settled under VSV 2020	1,32,353
Cases filed during the period from AY 2020-21 to 2023-24 ²	4,87,701
Cases pending before CIT(A) as on 1 January 2024 ²	3,61,748
Cases pending before ITAT as on 31 January 2024 ³	20,266
Cases pending before High Court as on 31 January 2024 ³	37,436
Cases pending before Supreme Court as on 31 January 2024 ³	5,544

¹https://www.business-standard.com/economy/news/finance-ministry-notifies-direct-tax-vivad-se-vishwas-scheme-2024-124092001239_1.html

²<https://taxguru.in/income-tax/income-tax-appeals-pending-cit-a-rti-reply-2024.html>

³ ::PDICAI::

As per the explanatory memorandum to Finance Bill 2024 the pendency of litigation at various levels has been on the rise due to larger number of cases going for appeal than the number of disposals

Keeping in view the success of VSV 2020 and the mounting pendency of appeals the VSV 2024 has been introduced

Mechanics of VSV 2024 (1/2)

Key features

- Taxpayers to settle appeals (filed either by the taxpayer or the Department) relating to tax arrears (including interest and penalty levied in respect, thereof) that are **pending as on 22 July 2024**
- Grants complete immunity from prosecution and relief from payment of interest and penalty
- The entire appeal will need to be settled if the taxpayer wishes to avail the scheme for any issue which is related to the appeal and cherry-picking of issues would not be allowed
- Opting for VSV 2024 will not set any precedence. Neither the Department nor the taxpayer can claim in any other proceedings that the taxpayer or Department has conceded its tax position by settling the dispute
- Where the issue involved is reduction of losses, the taxpayer will have the option to either accept the reduced loss (and not pay any amount) or pay notional tax on amount by which loss has been reduced and carry forward the full loss. The same principle is also applied for MAT/ AMT credit and depreciation

Eligible appellant - appeal pending as on 22 July 2024

- Appeal pending before:
 - Commissioner (Appeals) or Joint Commissioner (Appeals)
 - Dispute Resolution Panel (DRP)
 - Income Tax Appellate Tribunal
 - High Court (HC)
 - Supreme Court (SC)
- Writ Petition/ Special Leave Petition pending before HC/ SC
- Pending assessments after issuance of DRP's directions
- Revision proceedings under section 264 of the Act

Ineligible cases

All AYs are disqualified

- Prosecution **initiated** by an income-tax authority under Bhartiya Nyaya Sanhita, 2023 (BNS) or for the purpose of enforcement of any civil liability under any law for the time being in force
- Prosecution **instituted** under Unlawful Activities (Prevention) Act, 1967, Narcotic Drugs and Psychotropic Substances Act, 1985, Prohibition of Benami Property Transactions Act, 1988, Prevention of Corruption Act, 1988, PMLA, 2002
- **Convicted** of any offence punishable under above acts
- A person in respect of whom 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 notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

Only specific AY is disqualified

- Prosecution **instituted** under the Act
- Assessment or reassessment made on the basis of search

Only specific tax arrear is disqualified

- Any undisclosed income from a source located outside India or undisclosed asset located outside India
- Relating to an assessment or reassessment made on the basis of information received under tax information exchange agreements

Payment under VSV 2024

Nature of tax arrears	Appeal filing period	If scheme availed on or before 31 December 2024	If scheme availed on or after 1 January 2025
Tax, interest and penalty	After 31 January 2020 but on or before 22 July 2024	Disputed tax	Disputed tax + 10% of disputed tax
	On or before 31 January 2020 - same appellate authority	Disputed tax + 10% of disputed tax	Disputed tax + 20% of disputed tax
Interest or penalty or fee	After 31 January 2020 but on or before 22 July 2024	25% of disputed interest or penalty or fee	30% of disputed interest or penalty or fee
	On or before 31 January 2020 - same appellate authority	30% of disputed interest or penalty or fee	35% of disputed interest or penalty or fee

In the following cases, the amount **payable shall be 50% of the amount** mentioned in the table above:

- Where appeal/ writ has been filed by the Department
- Appeal pending before JCIT(A), CIT(A) and DRP and issue is favourably covered by ITAT/ HC/ SC decision in own case (which has not been reversed by the higher forum)
- Appeal pending before ITAT and issue is favourably covered by HC decision in own case (which has not been reversed by the higher forum)

Forms under VSV 2024

Forms notified on 20 September 2024

Form number	Timeline
Form 1 (filing declaration and undertaking)	<ul style="list-style-type: none">Filed before 31 December 2024 - lower threshold to applyFiled after 01 January 2025 - higher threshold to apply
Form 2 (certificate by Designated Authority)	Shall be issued with 15 days of filing Form 1
Form 3 (Intimation of payment)	Make payment and file within 15 days of receipt of Form 2
Form 4 (Final order of settlement)	Upon receipt of Form 3

- Form 1 and Form 3 shall be furnished electronically by the taxpayer
- Form 1 shall be filed separately for each dispute provided that where appellant and the tax authority, both have filed an appeal in respect of the same order, single Form 1 shall be filed
- Form 3 is to be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim

Key discussion on FAQ - Circular No. 12/2024 dated 15 October 2024 (1/2)

Clarifications on scope/ eligibility for VSV 2024

Cases eligible

- Appeals which are pending for admission as of 22 July 2024 before HC or SC [FAQ 27]
- Cross objections which are filed and pending as of 22 July 2024 [FAQ 28]
- Disputes in relation to withholding/collection of tax [FAQ 19]
- Disputes in relation to interest on delay in depositing taxes which are withheld/collected [FAQ 19]

Ineligible cases

- Appeals disposed off after the specified date and not pending as on date of declaration [FAQ 8]
- Miscellaneous Application filed and pending as of 22 July 2024 [FAQ 29]
- Cases where the appellate authority has set aside any issue to the tax authority, wholly or partially, which are pending before the tax authority as of 22 July 2024 [FAQ 24]
- Cases where enforceability of an assessment order passed by the tax authority has been stayed by HC or SC [FAQ 30]
- A writ petition filed before the HC against a notice issued for reassessment where no assessment order has been passed consequent to such notice, since the income is yet to be determined [FAQ 26]
- Orders are passed as of the specified date but time limit to file an appeal has not expired [FAQ 9]
- Appeal contesting denial of registration (which confers tax exemption) to a charitable trust [FAQ 23]
- Pending application for waiver of interest [FAQ 15]
- Disputes relating to other direct taxes - wealth tax, STT, CTT and EL [FAQ 13]

Key discussion on FAQ - Circular No. 12/2024 dated 15 October 2024 (2/2)

Clarifications in relation to computation of disputed tax and procedural compliance

Consequential relief upon settlement of appeal for tax deduction or collection at source	<p>If the payer settles the appeal in respect of tax deduction or collection at source under VSV 2.0:</p> <ul style="list-style-type: none">▪ Credit of taxes paid by payer is to be allowed to the payee but as on the date of settlement of the dispute by the payer. Consequently, the payee is liable to interest, if any, for short payment of advance tax. [FAQ 20]▪ The payer shall be entitled to consequential relief of deduction of expenditure in the year in which tax was required to be withheld, as against the year in which tax is deposited (as provided in Act) [FAQ 22]
Consequential relief to the payer upon settlement of payee's dispute	<ul style="list-style-type: none">▪ If the payee settles its own dispute with reference to assessment of an income which was not subjected to withholding tax by the payer, such payer would not be required to pay the tax amount under default. However, such payer would be required to pay interest for default in withholding of tax. [FAQ 21]
Disputed tax for settlement of issue covered in favour of the taxpayer by SC	<ul style="list-style-type: none">▪ If the taxpayer has got a decision in its favour from the SC on any issue for a particular tax year, while settling pending appeals of other tax years which involve the same issue, disputed tax is required to be calculated on other issues only which are not covered by such SC decision. In other words, no payment is required for tax arrear in respect of issue which is settled by SC in favour of the taxpayer in a different tax year [FAQ 32]
Procedural clarification	<ul style="list-style-type: none">▪ Immunity from prosecution extended to directors and partners in case of declaration under VSV 2024 is filed by company or partnership firm [FAQ 35]

Who could be apt candidates?

Cases eligible for VSV 2020 Scheme, where appeals were pending as on 31 January 2020

Can reconsider availing VSV 2024 Scheme considering mounting interest cost and any adverse judicial developments

Reversal of favourable decisions by higher appellate authorities

Favourable cases which were overturned subsequently by Supreme Court:

- Payer/payee who had sought a reduced rate of dividend tax/ reduced scope of royalty/ FTS based on MFN Clause [Nestle SA (2023) 231 DTR 113 (SC)]
- Disallowance of employee's contribution to PF on account of deposit beyond due date [Checkmate Services (2022) 218 DTR 401 (SC)]

Cases covered by adverse retrospective amendment

Finance Act 2022 made a retrospective amendment that cess paid under the Act shall not be allowed as a deduction to the taxpayer and such taxpayer has not availed of voluntary facility in Section 155(18)

Appeals kept alive by the taxpayer due to apprehension of penalty or prosecution

- The case may not be strong on merits
- Inadequate documentation to substantiate the stand

Mixed appeal grounds

When certain grounds have lower chance of success as compared to other grounds - It is important to evaluate the overall tax, interest, and penalty exposure

Points for consideration (1/2)

Scenario 1

Search conducted in the premises of third party. Basis the search, there was addition done in the on-going reassessment proceedings which was not initiated due to search. Against this reassessment order appeal is pending before ITAT as on 22 July 2024

Will the assessee be eligible to settle the issue under the 2024 Scheme?

Scenario 2

Whether an issue already settled under the VSV 2024 can subsequently be revived by way of revision proceedings under section 263 or reassessment under section 147 of the Act?

Scenario 3

Before the Tribunal three disallowances have been contested out of which the Tribunal has deleted one disallowance but sustained the other two disallowances. Aggrieved, both the Department and the Assessee are in appeal before the High Court which is pending as on 22 July 2024.

Can the assessee choose to settle the Department appeal under the VSV 2024 and continue litigating the assessee appeal?

Scenario 4

Assessee is in appeal before the CIT(A) as on 22 July 2024. Subsequently, the rectification application filed against the assessment order under section 143(3) of the Act was disposed off which reduced the tax impact for which the Assessee is in appeal. Assessee intends to opt for VSV 2024.

Would the disputed tax be calculated after giving effect to the rectification order passed before filing of declaration?

Points for consideration (2/2)

Scenario 5

Refund granted to assessee on favourable CIT(A) order along with interest u/s 244A. Dept filed appeal before ITAT. Assessee wants to settle Department appeal in VSV 2024. Whether interest u/s 244A to be included while computing disputed tax ?

Scenario 6

In case of the assessee for AY 2020-21, DRP's directions were issued wherein relief was granted in respect of proposed transfer pricing adjustment to the tune of INR 100 crore but disallowance under section 14A of the Act to the tune of INR 2 crore was upheld (the assessee did not earn any exempt income during the year). Consequently, the assessing officer passed the final assessment order on 23 July 2024.

Should such appeal be settled under VSV 2024?


Scenario 7

Appeal has been filed before the ITAT against an order under section 263 of the Act which is pending as on 22 July 2024. The assessment order (pursuant to order u/s 263) is also not yet passed as on 22 July 2024.

Can the assessee opt for VSV 2024 to settle the pending appeal?

Scenario 8

Whether appeal against intimation order under section 143(1) of the Act is eligible to be settled under the VSV 2024 Scheme?



Revised Compounding Guidelines 2024

Revised Compounding Guidelines w.e.f. 17 October 2024

What is compounding?

- Compounding of an offence is an option available under the Income-tax Act 1961, in case specified defaults are made and prosecution is to be initiated/ prosecution proceeding is launched
- The process involves the taxpayer making an application to the competent authority and requesting compounding by paying the prescribed compounding charges
- If the competent authority accepts the application, the offence may be compounded, and the taxpayer is relieved from facing prosecution for that offence

Scope of the revised guidelines

- All applications post 17 October 2024
- Applications filed under the earlier guidelines and are pending for disposal
- Cases where compounding charges have been determined/ intimated but not paid, the compounding charges would be required to be re-determined as per the revised guidelines
- Applications rejected under earlier guidelines on account of curable defects. Credit for the payment already made shall be given against the compounding charges to be paid under the revised guidelines

Compounding application fee

Single compounding application (where application is filed for a particular year)	Consolidated compounding application (where application is filed for multiple years)
INR 25,000	INR 50,000
Non-refundable but adjusted against the compounding charges decided by the Authorities	

Offences that can be compounded

1

Failure to pay tax deducted at source or tax collected at source

2

Failure to furnish return of income

3

Failure to comply with notices issued under various sections of the Act

4

Failure to comply with specified sections of the Act

5

Failure to maintain, or retain books of account, documents, etc, as required by the Act/ Rule

6

Wilful attempt to evade taxes

Key changes (1/5)

1

Elimination of the categorization of offences

2

No limit on number of occasions for filing applications

3

Fresh application upon curing of defects

4

Removal of time limit for filing application - 36 months from the date of filing of complaint

5

Now allows compounding of offence related to search and seizure (section 275A and 275B)

Compounding charges:

- Section 275A: Contravention to Prohibitory Order passed by the authorized officer during the search and seizure action
- Section 275B: Failure to afford the authorized officer the necessary facility to inspect such books of account or other documents during the search and seizure action

Higher of:

- 10 % of the highest of total income declared or assessed, in the last 7 financial years including year of search; or
- INR 5 crore

Key changes (2/5)

6

Payment of compounding charges by either company or co-accused allowed

7

No interest chargeable on delayed payment of compounding charges

8

Rationalization of compounding rates

Compounding of offence related to TDS / TCS (section 276B / 276BB)

Particulars	As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
First Offence - Suo Moto	2% per month of the amount of tax in default	1.5% per month of the amount of tax in default
First Offence - Notice received from tax authority	3% per month of the amount of tax in default	
Subsequent offence	5% per month of the amount of tax in default	1.2 times, 1.4 times, 1.6 times, and so on of 1.5%
The Compounding charge shall not exceed the TDS amount in default		

Key changes (3/5)

Compounding of offence of wilful attempt to evade tax (section 276C(1))

Particulars	As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
Tax sought to be evaded (evasion of interest and penalty may be consequential)	<ul style="list-style-type: none"> Tax evaded exceeds INR 25 lakh: 150% of such tax amount Other cases 125% of the tax attempted to be evaded 	125% of tax amount sought to be evaded or tax on under-reported income, as the case may be
Only penalty sought to be evaded	100% of such penalty	

Compounding of offence of wilful attempt to evade payment of taxes (section 276C(2))

As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
3% per month of the amount of tax, interest and penalty, the payment of which was sought to be evaded	1.5% per month of the amount of tax, interest and penalty, the payment of which was sought to be evaded
Compounding charge shall not exceed tax, interest and penalty, the payment of which was sought to be evaded	

Compounding charges for co-accused (section 278B / 278C)

As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
10% of the compounding fee of the main offence	Removed as per press release dated 17 October 2024

Key changes (4/5)

Compounding of offence related to failure to furnish return of income (section 276CC / 276CCC)

As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
Different compounding rates for various instances	<ul style="list-style-type: none">▪ Search or survey action Higher of:<ul style="list-style-type: none">▪ 30% of the amount of tax sought to be evaded or the amount of tax on under-reported income; or▪ INR 10 lakhs• Other case Higher of:<ul style="list-style-type: none">▪ 15% of the amount of tax sought to be evaded or the amount of tax on under-reported income; or▪ INR 5 lakhs

Compounding of offence related to failure to produce accounts and documents (section 276D)

As per Guidelines dated 16 September 2022	As per Revised Guidelines dated 17 October 2024
Higher of: <ul style="list-style-type: none">▪ compounding fee decided by tax authority basis the nature and magnitude of the offence, loss of revenue directly or indirectly attributable to such offence; or▪ INR 1 lakh	Higher of: <ul style="list-style-type: none">▪ Higher of:<ul style="list-style-type: none">▪ 10% of returned income; or▪ 10% of assessed income of the assessment year pertaining to the offence; or▪ INR 5 lakh

Key changes (5/5)

Compounding of offence related to making false statement in verification or abetment of false return (section 277 / 278)

As per Guidelines dated 16 September 2022

- Higher of:
- compounding fee decided by tax authority basis the amount of tax which would have been evaded owing to such offence; or
 - INR 1 lakh

As per Revised Guidelines dated 17 October 2024

- Offence committed under section 277
50% of the amount of tax which would have been evaded due to such offence
- Offence committed under section 278
50% of the amount of tax which would have been evaded due to such offence

No separate compounding charge shall be levied if prosecution on same set of facts under another provisions

Recommendary time period for disposal of application

Particulars	Time period
Application is not found acceptable	Dispose within 2 months from end of the month in which application is received
Application is acceptable	Send intimation within 2 months from end of the month in which application is received
Payment of compounding charges	<ul style="list-style-type: none">▪ 1 month from end of the month in which intimation received. Extension can be allowed to 6 months.▪ Extension beyond 6 months upto 12 months - Approval of Pr. CCIT of region▪ Extension beyond 12 months upto 24 months - Approval from CBDT▪ No extension beyond 24 months

Prosecution complaint filed to be furnished to accused within 15 days of filing complaint



Questions?

Annexures



Key comparison between VSV 2024 and VSV 2020

VSV 2024 is not applicable in certain cases:	VSV 2020 was not a static Scheme - The scheme has been updated from time to time
<ul style="list-style-type: none"> ▪ If time to file appeal has not expired on date of filing declaration ▪ Cases where time limit for an appeal against such assessment or appellate order has not expired as on 22 July 2024 ▪ Intent appears to resolve the cases where appeal has been filed and not resolve the cases where appeal can be filed 	<p>CBDT expanded the 2020 Scheme to include:</p> <ul style="list-style-type: none"> ▪ Set-aside cases by appellate authorities ▪ Revision cases where the disputed tax is quantifiable ▪ Settlement of appeals pending under MAP ▪ Cross objections filed against the main appeal ▪ Miscellaneous Application pending as on 31 January 2020
<p>Proceedings for arbitration, conciliation or mediation</p>	<ul style="list-style-type: none"> ▪ Initially restricted appeals pending as of 31 January 2020 ▪ Expanded to include belated appeals if the filing period expired on or before 31 January 2020, with certain conditions
<p>Search cases are not at all eligible for 2024 Scheme</p>	<p>Small search cases where disputed tax did not exceed INR 5 crores</p>
<p>Writ/SLP filed against Settlement Commissioner order - ambiguous if scheme permits settlement of such cases</p>	<p>Specifically, not covered under VSV 2020</p>