Income Tax Updates (Jan.2021)

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1. **Annual Circular for tax deduction at source issued for the financial year 2020-21:** The CBDT in Circular No.20 /2020 dated 3rd December, 2020 has given a detailed circular for deducting tax at source for the Financial Year 2020-21. The following are the features of the Circular.
   - Rates of income tax are given for individual taxpayers. Also, the rate of tax applicable for taxpayers when they opt for section 115BAC is mentioned.
   - In case of person having income from any other source apart from business and profession, such person is required to exercise the option in the prescribed manner along with the return of income to be furnished under section 139(1) of the Act for the previous year relevant to the assessment year. The concessional rates of tax provided under section 115BAC are subject to the condition that the total income shall be computed without specified exemptions or deductions, set off of loss and additional depreciation.
   - Surcharge on Income tax: The amount of income-tax computed shall be increased by a surcharge for the purposes of the Union, calculated, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act,—

   (*a*) having a total income (including the income by way of dividend or income under the provisions of section 111A and section 112A of the Income-tax Act) **exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent of such income-tax;**

   (*b*) having a total income (including the income by way of dividend or income under the provisions of section 111A and section 112A of the Income-tax Act) **exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent of such income-tax;**

   (*c*) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and section 112A of the Income-tax Act) **exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent of such income-tax;**

   (*d*) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and section 112A of the Income-tax Act) **exceeding five crore rupees, at the rate of thirty-seven per cent of such income-tax; and**

   (*e*) having a total income (including the income by way of dividend or income under the provisions of section 111A and section 112A) **exceeding two crore rupees, but is not covered under clauses (*c*) and (*d*), shall be applicable at the rate of fifteen per cent, of such income-tax:**

   Provided that in case where the total income includes any income by way of dividend or income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on the amount of Income-tax computed in respect of that part of income **shall not exceed fifteen per cent:**

   - No marginal relief shall be available in respect of such cess.
   - An employee intending to opt for the concessional rates of tax under section 115BAC of the Act, may intimate his employer, of such intention for each previous year and upon such intimation, the

deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act. The intimation so made to the deductor shall be only for the purpose of TDS during the previous year and cannot be modified during that year (CBDT Circular No. C1 of 2020 dated 13-4-2020)

- **Payment of tax on perquisites by employer**: An option has been given to the employer to pay the tax on non-monetary perquisites given to an employee. The employer may, at its option, make payment of the tax on such perquisites himself without making any TDS from the salary of the employee. However, the employer will have to pay the tax at the time when such tax was otherwise deductible *i.e.* at the time of payment of income chargeable under the head "salaries" to the employee.
- **Salary from more than one employer:** Section 192(2) deals with situations where an individual is working under more than one employer or has changed from one employer to another. It provides for deduction of tax at source by such employer (as the tax payer may choose) from the aggregate salary of the employee, who is or has been in receipt of salary from more than one employer. The employee is now required to furnish to the present/chosen employer details of the income under the head "Salaries" due or received from the former/other employer and also tax deducted at source therefrom, in writing and duly verified by him and by the former/other employer. The present/chosen employer will be required to deduct tax at source on the aggregate amount of salary (including salary received from the former or other employer).
- It may be noted that loss under the head "Income from house property" can be set off only up to Rs. 2.00 lakh with the income under any other head of income in view of the amendment to section 71 of the Act vide Finance Act, 2017. Hence, loss under the head "Income from house property" in excess of Rs. 2.00 lakh is to be ignored for calculating the amount of tax deduction.
- **Adjustment for Excess or Shortfall of Deduction:** The provisions of Section 192(3) allow the deductor to make adjustments for any excess or shortfall in the deduction of tax already made during the financial year, in subsequent deductions for that employee within that financial year itself.
- **Salary Paid in Foreign Currency:** For the purposed of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the "Telegraphic transfer buying rate" of such currency as on the date on which tax is required to be deducted at source (see Rule 26).
- **Deduction of Tax at Lower Rate:** If the jurisdictional TDS officer of the employer issues a certificate of No Deduction or Lower Deduction of Tax under section 197 of the Act, in response to the application filed before him in Form No 13 by the employee; then the DDO should take into account such certificate and deduct tax on the salary payable at the rates mentioned therein, (see Rule 28AA). The Unique Identification Number of the certificate is required to be reported in Quarterly Statement of TDS (Form 24Q).
- **Interest, Penalty & Prosecution for Failure to Deposit Tax Deducted:**

  If a person fails to deduct the whole or any pad of the tax at source, or, after deducting, fails to pay the whole or any part of the tax to the credit of the Central Government within the prescribed time, he shall be liable to action in accordance with the provisions of section 201 and shall he deemed to be an assessee-in-default in respect of such tax find liable for penal action u/s 221 of the Act. Further Section 201(1A) provides that such person shall be liable to pay simple interest

  (*i*) at the rate of 1% for every month or part of the month on the amount of such tax from the date on which such lax was deductible to the date on which such tax is deducted; and

  (*ii*) at the rate of one and one-half percent for every month or part of a month on the

amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

Such interest, if chargeable, is mandatory in nature and has to be paid before furnishing of quarterly statement of TDS for respective quarter.

Section 271C *inter alia* lays down that if any person fails to deduct whole or any part of tax at source or fails to pay the whole or pan of tax under the second proviso to section 194B, he shall be liable to pay, by way of penalty, a sum equal to the amount of tax not deducted or paid by him.

Further, section 276B lays down that if a person fails to pay to the credit of the Central Government within the prescribed time as above, the tax deducted at source by him or tax payable by him under the second proviso to Section 194B, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.

It may he noted that as per the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (No. 38 of 2020), in case due date for payment to Central Government after deduction of tax at source falls during the period from 20th, march, 2020 to 29th June, 2020 and such amount has not been paid within such date, but has been paid on or before the 30th June, 2020, the rate of interest on such amount for the period of delay shall be 0.75% for every month or part thereof. Further, no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

- **Matters pertaining to the TDS made in case of Non-Resident:**

  Where Non-Residents are deputed to work in India and taxes are borne by the employer, if any refund becomes due to the employee after he has already left India and has no bank account in India by the time the assessment orders are passed, the refund can be issued to the employer as the tax has been borne by it **[Circular No. 707 dated 11-7-1995]**.

  In respect of non-residents, the salary paid for services rendered in India shall be regarded as income earned in India. It has been specifically provided in the explanation to section 9(1) of the Act that any salary payable for rest period or leave period which is both preceded or succeeded by service in India and forms part of the service / contract of employment will also be regarded as income earned in India.

- Family Pension is chargeable to tax under head "Income from other sources" and not under the head "Salaries". Therefore, provisions of section 192 of the Act are not applicable. Hence, DDOs are not required to deduct TDS on family pension paid to person.

- **Deductions under Chapter VI-A of the Act** have to be considered by the employer for the purpose of computing the tax liability of the employee and the amount of tax deductible at source on salary income of employee:

  In computing the taxable income of the employee, the following deductions under Chapter VI-A of the Act is to be allowed from his gross total income:

  Deduction in respect of Life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc. (section 80C)

  Deduction in respect of contribution to certain pension funds (Section 80CCC)

  Deduction in respect of contribution to pension scheme of Central Government (Section 80CCD)

  Deduction in respect of investment made under an equity savings scheme (Section 80 CCG)

  Deduction in respect of health insurance premia paid, etc. (Section 80D)

  Deductions in respect of maintenance including medical treatment of a dependent who is a person with disability (section 80DD)

Deductions in respect of a person with disability (section 80U)

Deduction in respect of medical treatment- etc. (Section 80DDB)

Deduction in respect of interest on loan taken for higher education (Section 80E)

Deduction in respect of interest on loan for certain house property (Section 80EEA)

Deduction in respect of loan taken for purchase of an electric vehicle (Section 80EEB)

Deductions on respect of donation to certain funds, charitable institutions etc. (Section 80G)

Deductions is respect of rents paid (Section 80GG)

Deductions in respect of certain donations for scientific research or rural development (Section 80GGA)

Deduction in respect of interest on deposits in savings account (Section 80TTA)

Deduction in respect of interest of deposits in case of senior citizens (Section 80TTB)

Rebate of Rs. 12500 for individuals having total income upto Rs. 5 lakh [section 87A]

2. **Clarifications issued by way of FAQs for Vivad Se Vishwas Act,2020:** The CBDT in Circular 21 /2020 dated 4th December,2020 has issued FAQs on various issues relating to Vivad Se Vishwas Act,2020 which are given below:

QUESTIONS ON SCOPE/ELIGIBILITY (Q. *No.* 56 - 75)

Q. No. 56.	*Appeal or arbitration is pending with appellate authority as on 31st Jan 2020* (*or time for filing appeal has not expired as on 31st Jan 2020*). *However, subsequent to that date, and before filing of the declaration, the appeal has been disposed of by the appellate authority. Whether it is still eligible under Vivad se Vishwas? If yes, how the amount payable under Vivad se Vishwas shall be computed?*
Answer:	Yes. Amount payable under *Vivad se Vishwas* shall be computed with reference to the position of appeal or arbitration as on 31st January, 2020.
Q. No. 57	*Whether Vivad se Vishwas can be availed in a case where the enforceability of an assessment order passed by the AO has been stayed by the High Court or Supreme Court?*
Answer:	Yes, in such case assessee can file declaration under *Vivad se Vishwas,* whether or not the appeal has been filed against the assessment order. Writ/Appeal pending in High Court and Supreme Court shall be required to be withdrawn by the taxpayer. Upon settlement of quantum appeal, interest and penalty, if any, will be waived.
Q. No.58	*Appeal or writ against order under section u/s 263 of the Act was pending on 31st Jan, 2020* (*or time to file appeal has not expired on 31st Jan, 2020*). *Whether Vivad se Vishwas can be availed for settling such appeal?*
Answer:	If order u/s 263 of the Act contains general directions and income is not quantifiable, appeal against such order is not eligible under *Vivad se Vishwas.* However, if order u/s 263 of the Act contains only specific directions and income is quantifiable (and does not contain any general directions due to which income is not quantifiable), appeal against such order is eligible under *Vivad se Vishwas.* In such case, assessee is required to settle all the issues in the order, which are subject matter of order u/s 263 of the Act as well as issues pending in appeal (or issues in respect of which time to file appeal has not expired on 31st Jan 2020), if any, with reference to the said order.
Q. No. 59	*Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?*
Answer:	If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020.
Q. No.60	*Whether cross objections filed and pending as on 31 January 2020 will also be covered by the scheme?*
Answer:	Yes. However, the main appeal is also required to be settled along with cross objections.
Q. No. 61	*Whether Miscellaneous Application* (*MA*) *pending as on 31 January 2020 will also be covered by the scheme?*

Answer:	If the MA pending on 21st Jan 2020 is in respect of an appeal which was dismissed *in limine* (before 31st Jan 2020), such MA is eligible. Disputed tax will be computed with reference to the appeal which was dismissed.
Q. No. 62	*Whether search cases where assessment was made under section 158BA* (*i.e. block assessment*) *of the Act are covered under Vivadse Vishwas?*
Answer:	Appeal, writ or Special Leave Petition in respect of block assessment is eligible if the disputed tax does not exceed five crore rupees for the said block assessment.
Q. No. 63	*Whether Vivad se Vishwas 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?*
Answer:	No.
Q. No. 64	*Appeal against assessment order is pending* (*or time to file appeal against such order has not expired*) *on 31st Jan 2020. Assessee has also filed application for resolution of assessment order under Mutual Agreement Procedure* (*MAP*)*, Whether Vivadse Vishwas can be availed?*
Answer:	In a case where MAP resolution is pending or the assessee has not accepted MAP decision, the related appeal shall be eligible under *Vivad se Vishwas.* In such case, the declarant will be required to withdraw both MAP application and appeal.
Q. No. 65	*If AAR has ruled in favour of the taxpayer and the Department has gone in writ or appeal before the High Court/Supreme Court and the total income of the taxpayer was quantifiable on the facts of the case before AAR, is the taxpayer eligible under Vivadse Vishwas?*
Answer	Yes, the taxpayer is eligible since the income is quantifiable. In such case, since the issue is covered in favour of taxpayer, only 50% of the disputed tax is payable.
Q. No. 66	*Appeal has been set aside to CIT*(*A*)*/Dispute Resolution Panel* (*DRP*) *and was pending as on 31st Jan 2020? Whether it is eligible?*
Answer:	Yes. Such case can be settled under *Vivad se Vishwas* and the *set aside* issues will be deemed to be pending at the level of CIT(A)/DRP as on 31st Jan 2020. However, all issues which were either pending in appeal (whether *set aside* or not) or in respect of which time to file appeal has not expired on 31st Jan 2020 have to be settled.
Q. No. 67	*Whether in cases where the appellate authority has quashed the prosecution complaint or ruled in favour of taxpayer and no further appeal is filed by Department on or before filing of declaration are eligible?*
Answer:	Yes, such cases are eligible if the time limit for filing appeal by the Department has expired and the Department has not filed appeal (with or without condonation of application).
Q. No. 68	*Whether the assessee is eligible to opt for Vivadse Vishwas if prosecution has been instituted due to a Tax Deduction at Source* (*TDS*) *default?*
Answer:	If prosecution has been instituted for TDS default in a financial year on or before the date of filing of declaration, it cannot be settled under *Vivad se Vishwas.*
Q. No. 69	*A trust has been denied registration u/s 12AA of the Act. Whether appeal against such order is eligible for Vivad se Vishwas?*
Answer:	No.
Q. No. 70	*If the assessment order has been framed in the case of a taxpayer under section 143*(*3*)*/144 of the Act based on the search executed in some other taxpayer's case, whether it is to be considered as a search case or non-search case under Vivad se Vishwas?*
Answer:	Such case is to be considered as a search case.
Q. No. 71	*Vivad se Vishwas forms do not contain a specific option to settle appeal filed against intimation u/s 143*(*1*) *of the Act. Accordingly, please clarify how to settle such appeal, which is pending as on 31st Jan 2020* (*or time to file appeal has not expired on 31st Jan, 2020*).
Answer:	Appeal filed against intimation u/s 143(1.) of the Act is eligible under *Vivadse Vishwas* if adjustment has been made under sub-clauses (*iii*) to (*vi*) of clause (*a*) of section 143(1) of the Act.
Q. No. 72	*Whether appeal filed under section 248 of the Act is eligible for Vivad se Vishwas?*
Answer:	Yes.
Q. No. 73	*In the case of a taxpayer, prosecution has been instituted for assessment year 2012-13 with respect of an issue which is not in appeal. Will he be eligible to file declaration for issues which are in appeal for this assessment year and in respect of which prosecution has not been launched?*
Answer:	The ineligibility to file declaration relates to an assessment year in respect of which prosecution has been instituted on or before the date of declaration. Since in this example, for the same assessment year (2012-13) prosecution has already been instituted, the taxpayer is not eligible to file declaration for this assessment year even on issues not relating to prosecution.
Q. No. 74	*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?
Answer:	Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible.
Q. No. 75	*Whether cases where the taxpayer/Department has filed declaration/application under section 158A/158AA are eligible under Vivad se Vishwas?*
Answer:	Yes, in such case declaration/application filed u/s 158A/158AA of the Act on or before 31st January 2020 shall be deemed to be a pending appeal as on 31st Jan 2020 for the purposes of *Vivad se Vishwas.*
"QUESTIONS RELATED TO COMPUTATION (Q. No. 76 - 79)"	
Q. No. 76	*Whether enhancement notice issued by CIT(A) post 31st Jan 2020 is to be taken into account for computation of disputed tax?*
Answer:	Enhancement notice issued by CIT(A) after 31st Jan, 2020 but before the date of issue of this circular shall be required to be taken into account for determining amount payable under *Vivad se Vishwas.* However, the enhancement notice issued on or after the date of this circular but on or before 31st December shall not be taken into account for determining amount payable under *Vivad se Vishwas.*
Q. No. 77	*Whether any additional ground filed in relation to an appeal is to be considered while computing disputed tax?*
Answer:	If any additional ground has been filed on or before 31st January 2020, it shall be considered for the purpose of computing disputed tax.
Q. No. 78	*In case of appeals pending against both assessment and reassessment where addition is repeated on same issue, would tax be payable twice in respect of the same issue if both appeals are settled?*
Answer:	Since disputed tax in respect of repeated addition will be payable only once, both the assessment and reassessment appeals are required to be settled together. If there is a difference between tax liability in respect of such addition in assessment and reassessment, then higher of the two tax liabilities will be considered for computing disputed tax.
Q. No. 79	*In a case where assessee accepts certain additions in an order (giving rise to undisputed tax liability) and appeals against certain additions (giving rise to disputed tax liability), how the prepaid taxes will be adjusted against the disputed tax liability or undisputed tax liability?*
Answer:	If prepaid tax, being TDS/TCS, is clearly identifiable with the source of income, it will be adjusted against tax liability with respect to such income. Rest of the pre-paid tax, which cannot be clearly identified with the source of income, will be apportioned against the remaining tax liability.
"QUESTIONS RELATED TO CONSEQUENCES (Q. No. 80 - 87)"	
Q. No. 80	*Whether appeal against penalties that are not related to quantum assessment like penalty u/s 271B, 271BA, 271DA of the Actetc are also waived upon settlement of appeal relating to disputed tax?*
Answer:	No, appeal against such penalty order is required to be settled separately.
Q. No. 81	*In respect of some loan, addition was made u/s 68 of the Act Appeal is pending before CIT(A) and the assessee is eligible for opting Vivad se Vishwas. After making the payment of tax under Vivad se Vishwas, can the assessee make entries in his books by crediting the said loan in his capital account?*
Answer:	No, *Vivad se Vishwas* is not an amnesty scheme. It only provides an option to settle appeals on contentious issues that are neither accepted by the Department nor the assessee.
Q. No. 82	*Whether the immunity from prosecution is only for the declarant or also for the Director of the company or partner of the firm with respect to the issues settled under Vivad se Vishwas?*
Answer:	If an issue has been settled under *Vivad se Vishwas,* the immunity from prosecution with respect to that issue shall also extend to the director/partner of company/firm (being the declarant) in respect of same issue under section 278B of the Act.
Q. No. 83.	*If appeal involving issue of disallowance under section 40(a)(i)/(ia) of the Act is settled under the Scheme, whether consequential relief will be available in proceedings under section 201 of the Act initiated qua the same payment/deduction.*
Answer:	No.
Q. No. 84.	*Tax was not deducted on an income and order under section 201 of the Act was passed in case of the deductor. The said income was also assessed in the case of the deductee. Both deductor and deductee are in appeal or arbitration, which is eligible under Vivad se Vishwas. What would be the amount payable by the deductor and the deductee with reference to the said income under Vivad se Vishwas in the following scenarios —* (*i*) *Where the deductor settles his appeal or arbitration and makes payment under Vivad se Vishwas?* (*ii*) *Where the deductee settles his appeal or arbitration and makes payment under Vivad se Vishwas?*
Answer:	In case of (*i*), since the deductor has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty under Vivad se Vishwas. Deductee will not be required to pay the tax

	under Vivad se Vishwas with reference to said income and he will get credit for tax paid by deductor. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%). In case of (*ii*), since the deductee has settled his appeal (or arbitration) and paid the tax he would get waiver from interest and penalty. Deductor will not be required to pay tax under Vivad se Vishwas with reference to non-deduction of tax on said income. However, he shall be required to pay interest and penalty, if any, with reference to said income and if such interest or penalty qualifies for Vivad se Vishwas, he can settle the same by paying the applicable amount (25%/30%).
Q. No. 85.	*In the scenarios mentioned in Q. no. 84, what will be the amount of tax credit if the payment of amount on settlement of section 201 appeal is more than 100% of disputed tax for it being a search case or for the reason that the payment is made after 31st March 2021 ?*
Answer:	Tax credit in the hands of deductee cannot be more than 100% of disputed tax, even if the payment of more than 100% of disputed tax is required to be made by the dedcutor settling his section 201 appeal.
Q. No. 86.	*Answer to Q. no 31 clarifies that where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas* (*i.e. against order u/s 201 of the Act*)*, he will get consequential relief of expenditure allowance under proviso to section 40*(*a*)(*i*)*/*(*ia*) *of the Act in the year in which the tax was required to be deducted. What will happen in a situation where the same amount of TDS was recovered in subsequent year and accordingly the assessee has already claimed deduction in that year?*
Answer:	There is no question of double deduction. If the assessee has already claimed deduction of the same amount under section 40(*a*)(*i*)/(*ia*) of the Act in subsequent year on account of payment of such sum, he shall not be entitled to again claim the deduction on the basis of the settlement under Vivad se Vishwas.
Q. No. 87.	*The declarant has filed a declaration for disputed penalty. He is required to pay 25% or 30% of disputed penalty to settle the dispute. Will interest levied or leviable be waived in this case?*
Answer:	Yes. Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.
"QUESTIONS RELATED TO PROCEDURE (Q. No. 88 - 89)'	
Q. No. 88.	*Separate orders were passed u/ss. 201*(*1*) *& 201*(*1A*) *of the Act for a particular assessment year. Assessee has filed two separate appeals for principal portion u/s 201*(*1*) *of the Act and interest portion u/s 201*(*1A*) *of the Act Can he file only one declaration under Vivad se Vishwas against 201*(*1*) *order and seek 100% waiver of interest levied u/s 201*(*1A*) *of the Act.*
Answer:	Yes, once appeal against order u/s 201(1) of the Act is settled under *Vivad se Vishwas,* there would be 100% waiver of interest levied u/s 201(1A) of the Act.
Q. No. 89.	*Once declaration is filed by assessee u/s 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?*
Answer:	Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of *Vivad se Vishwas.*