



WESTERN INDIA REGIONAL COUNCIL OF ICAI

Direct Tax Vivad Se Vishwas Act, 2020

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4 May 2020



Backdrop





Backdrop

4.83 Lakh cases of Direct Tax disputes pending at various Appellate Forums

Total whopping sum of **INR 9.32 lakh crore** of dues are pending at various such forums

Vivad se Vishwas Act, 2020 is a sort of amnesty scheme which provides relief in interest and penalty, if tax is paid on or before **30 June 2020**

The Scheme inspired by success of Sabka Vishwas Scheme for settlement of indirect tax cases (1.89 lakh cases settled).



- Significant tax dues locked up in disputes

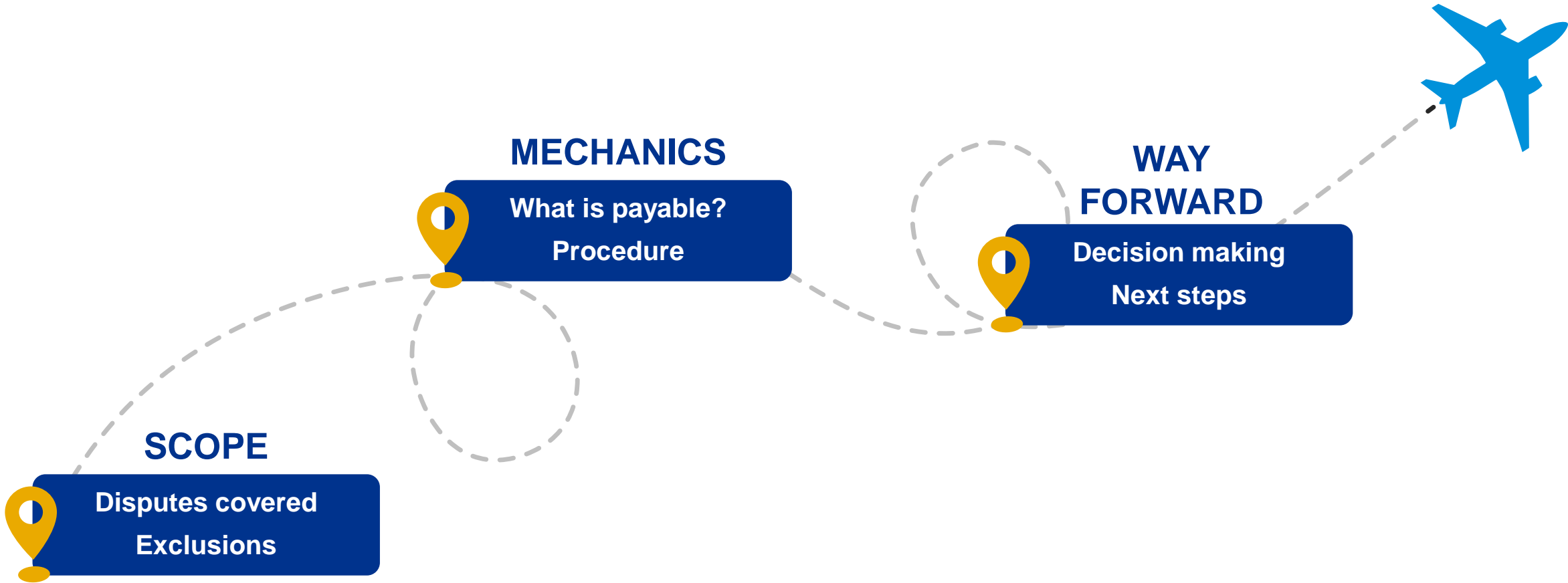
- Budget Speech of 2020-21: 4,83,000 cases pending in various appellate forums
- Pendency as on 31 March 2018 (Source - CAG Report 9 of 2019)

Forum	Number of cases pending	Tax amount in litigation (INR in crore)
CIT(A)	304,000	518,647
ITAT	37,353	234,999
HC	39,066	196,053
SC	6,224	11,773
Total	386,643	961,472

- Slowdown in direct tax collections in FY 2019-20

Particulars	INR (in crores)
Budget estimate	13,22,200
Revised Budget Estimates (www.indiabudget.nic.in)	11,57,500
Actuals until January 2020 (per media reports)	7,26,000

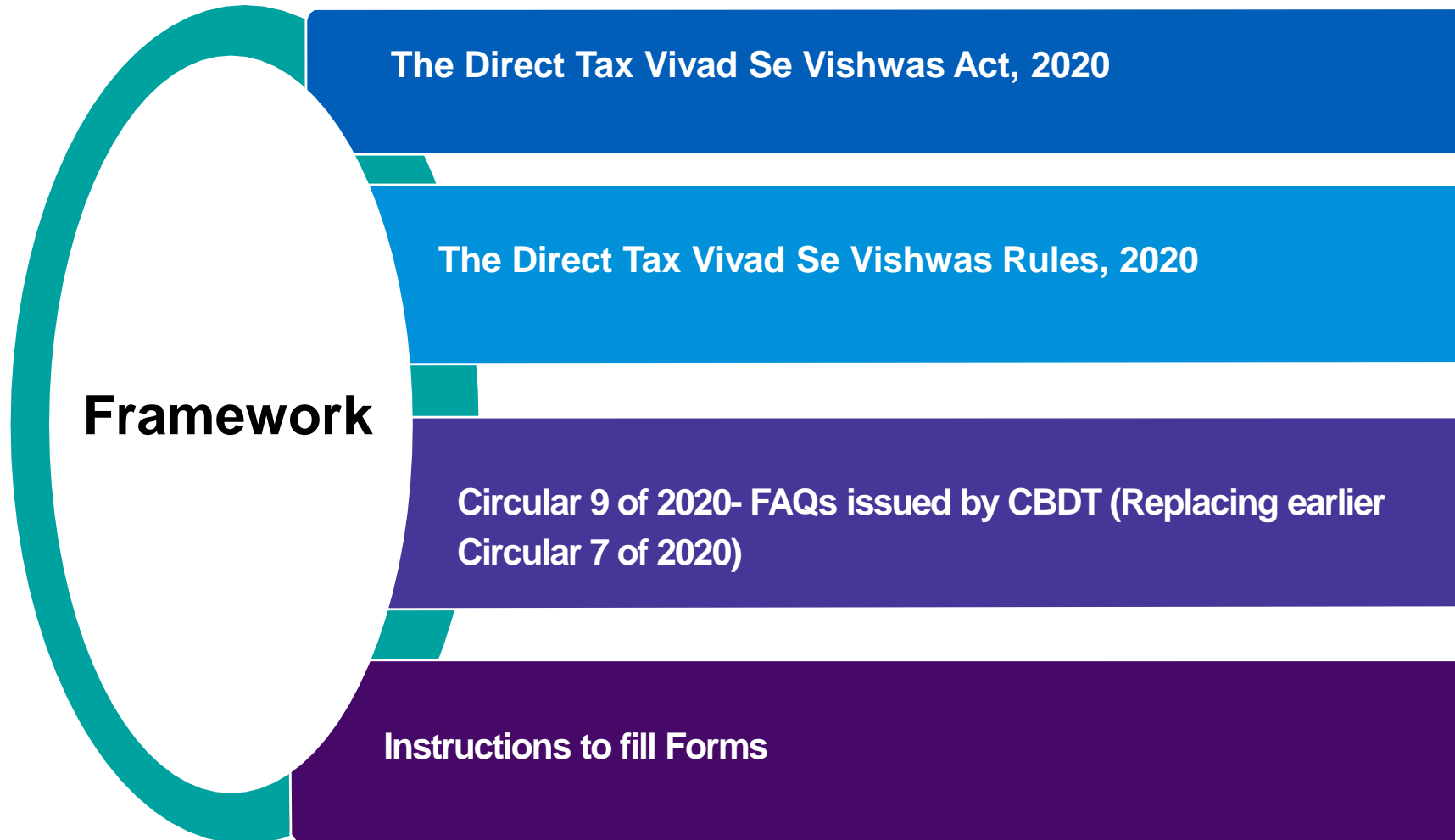
A Walkthrough of the Scheme



Direct Tax Vivad Se Vishwas Act, 2020



Framework of the Scheme



Direct Tax Vivad Se Vishwas Act, 2020- Framework



Section	Provisions of the Act
1 – 2	Short Title and Definitions
3	Amount Payable by the Declarant
4	Filing of declaration and particulars to be furnished
5	Time and manner of payment
6	Immunity from initiation of proceedings in respect of offence and penalty
7	No refund of amount paid
8	No benefit, concession or immunity to declarant
9	Act not to apply in certain cases
10	Power of Board to issue directions etc.
11	Power to remove difficulties
12	Power to make rules

Direct Tax Vivad Se Vishwas Rules, 2020- Framework



Sr. / Rule No.	Provisions of the Rules
1 – 2	Short Title and Definitions
3	Form of declaration and undertaking- Form-1 (Declaration) and Form-2 (Undertaking)
4	Form of certificate by designated authority- Form-3
5	Intimation of payment- Form-4
6	Manner of furnishing
7	Order by designated authority- Form-5
8	Laying down of procedure, formats and standards
9	Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced
10	Manner of computing disputed tax where MAT credit is reduced
11	Manner of computing disputed tax in certain cases
	Forms- Form-1 to Form-5

Eligibility for the Scheme



Disputes Covered



Pending as on
31 January
2020



Appeals before SC, HC, ITAT or CIT(A)



SLP and Writ petitions before SC or HCs



Orders where time limit for filing an appeal has not expired



Cases before DRP or before AO, after DRP directions



Revision applications before Commissioner u/s 264

Search cases where the disputed demand is less than INR 5 Crore also eligible- The limit of INR 5 crore will be computed year wise

Non-Applicability / Exclusions



Non-applicability of scheme



Search and requisition u/s 153A / 153C assessment where amount of **disputed tax exceeds INR 5 crores**



When prosecution has been instituted



Assessment relates to undisclosed income / undisclosed asset located outside India



Assessment/ reassessment made on the basis of information received under an agreement u/s 90/90A

Non-Applicability / Exclusions



Non-applicability of scheme



Order of detention made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (subject to proviso as specified in the scheme)



Prosecution has been instituted / person has been convicted of offences under specified Acts



Person notified under the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992

FAQs on Applicability



Sr. No.	Particulars	Eligibility
1	No appeal pending but the case is pending in Arbitration	Eligible for the scheme. Disputed tax in this case would be the tax (including surcharge and cess) on the disputed income with reference to which the arbitration has been filed
2	Proceedings pending before AAR	Not Eligible
3	An appeal filed against interest levied on assessed tax. But there is no dispute against the amount of assessed tax	Eligible. If there is dispute on tax amount, and declaration is filed, then full amount of interest and penalty shall be waived off.
4	What if the disputed demand including interest has been paid by the appellant while being in appeal?	Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under Vivad se Vishwas, the appellant will be entitled to refund without interest under section 244A of the Act

FAQs on Applicability



Sr. No.	Particulars	Eligibility
5	If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO	<p>Eligible (except where assessment is cancelled with a direction that assessment is to be framed de novo)</p> <p>However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax (including surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO</p>
6	Where an appellant desires to settle concealment penalty appeal pending before CIT(A), while continuing to litigate quantum appeal that has travelled to higher appellate forum	<p>If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form giving details of both disputed tax appeal and penalty appeal.</p> <p>However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending</p>

FAQs on Applicability



Sr. No.	Particulars	Eligibility
7	Is there any necessity that to qualify under the Vivad se Vishwas, the appellant should have tax demand in arrears as on the date of filing declaration	Vivad se Vishwas can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are outstanding
8	Whether sections 234E and 234F appeals are covered	Eligible. Amount payable shall be 25 percent or 30 percent of the disputed fee, as the case may be
9	Where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating to assessment made in respect of undisclosed foreign income)	Not eligible as there is no provision to settle part of a pending dispute. For one pending appeal, all the issues are required to be settled and if any one of the issues makes the declaration invalid, no declaration can be filed.
10	If a writ has been filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice	Not eligible as there is no determination of income against the said notice.

FAQs on Applicability



Sr. No.	Particulars	Eligibility
11	With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31st Jan. 2020	Not Eligible as no appeal pending
12	Will delay in deposit of TDS/TCS be also covered	<p>The disputed tax includes tax related to TDS and TCS which are disputed and pending in appeal.</p> <p>However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under the scheme.</p>
13	<p>Are cases pending before DRP covered?</p> <p>What if the assessee has not filed objections with DRP and the AO has not yet passed the final order?</p>	<p>Eligible.</p> <p>Even cases where the assessee decides not to file objection and is waiting for final order to file appeal before CIT(A) are covered even if final order is not passed. Disputed tax will be based on draft order</p>

FAQs on Applicability



Sr. No.	Particulars	Eligibility
14	If CIT(A) has given an enhancement notice, can the appellant avail the Vivad se Vishwas	<p>The revised provisions in the scheme allows the declaration even in cases where CIT(A) has issued enhancement notice on or before 31st January, 2020.</p> <p>However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.</p>
15	Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered	No, only disputes relating to income-tax are covered.
16	<p>The assessment order under section 143(3) of the Act was passed in the case of an assessee for AY 2015-16. The said assessment order is pending with ITAT.</p> <p>Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (A) Could both or one of the orders be settled under Vivad se Vishwas</p>	<p>The appellant in this case has an option to settle either of the two appeals or both appeals for the same AY.</p> <p>If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.</p>

FAQs on Applicability

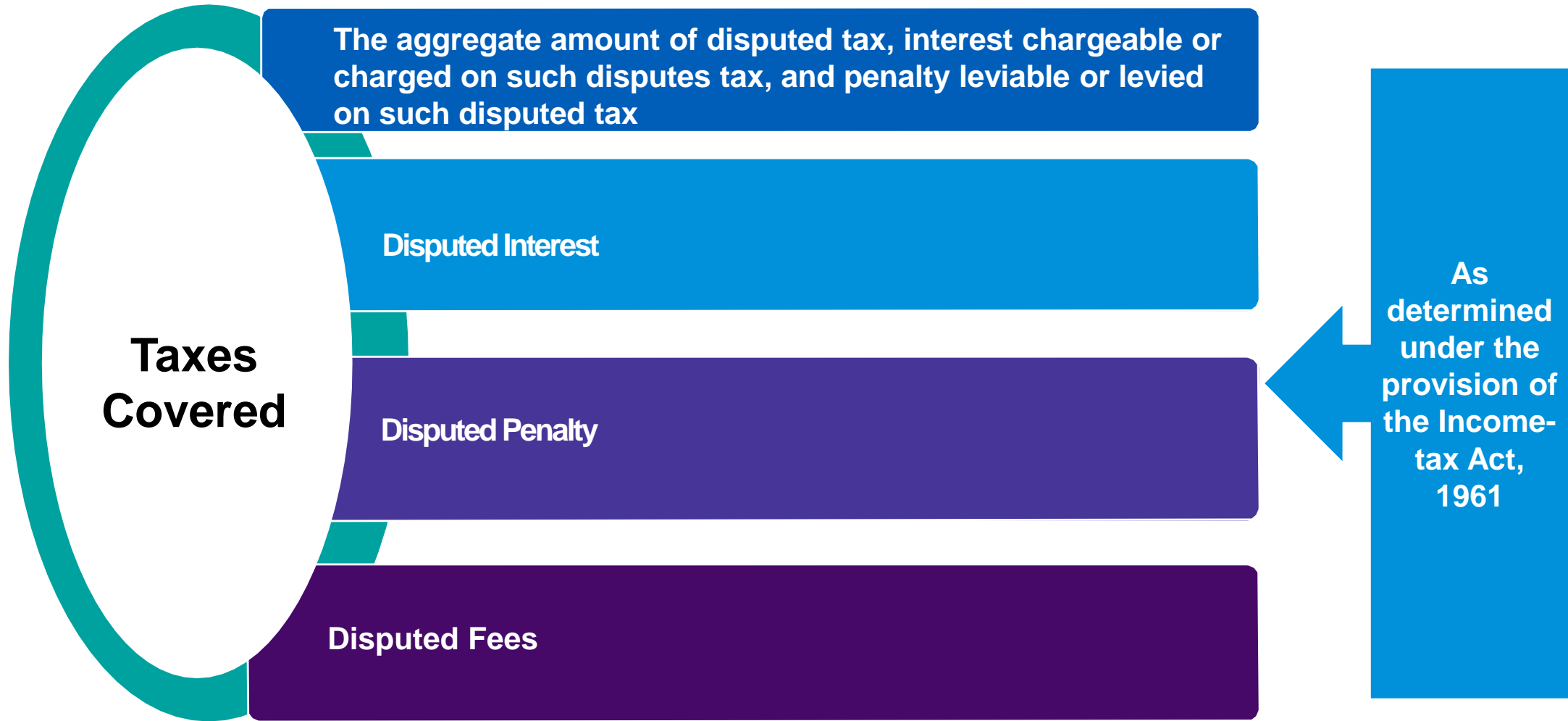


Sr. No.	Particulars	Eligibility
17	<p>In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT(A) on 5th January 2020.</p> <p>Time to file appeal in ITAT against the order of Commissioner (Appeals) is still available, but the appeal has not yet been filed</p>	<p>Eligible.</p> <p>In this case the appellant should indicate in the declaration form that time limit to file appeal in ITAT has not expired</p>
18	<p>In a case ITAT has quashed the assessment order based on lack of jurisdiction by the AO.</p> <p>The department has filed an appeal in HC which is pending. Is the assessee eligible to settle this dispute under Vivad se Vishwas and if yes how disputed tax be calculated as there is no assessment order</p>	<p>Eligible.</p> <p>The amount payable shall be calculated at half rate of 100%, 110%, 125% or 135%, as the case may be, on the disputed tax that would be restored if the department was to win the appeal in HC.</p>
19	<p>In the case of an assessee prosecution has been instituted and is pending in court</p>	<p>Where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under VsV. However, where prosecution has been instituted with respect to an AY, the assessee is not eligible to file declaration for that AY, unless the prosecution is compounded before filing declaration.</p>

Taxes Covered and Amount Payable



Taxes Covered



Amount Payable- Section 3



Particulars	Payment made upto 30 June 2020		Payment made after 30 June 2020	
	Disputed Tax	Interest, Penalty and Fee	Disputed Tax	Interest, Penalty and Fee
<i>Appeals filed by Department or the Department has lost an issue</i>				
Cases other than search cases	50%	Nil	55%	Nil
Search cases (disputed tax below Rs. 5 crores)	62.5%	Nil	67.5%	Nil
Where dispute relates to only interest, penalty or fee	NA	12.5%	NA	15%
<i>Appeals filed by the assessee</i>				
Cases other than search cases	100%	Nil	110%	Nil
Search cases (disputed tax below Rs. 5 crores)	125%	Nil	135%	Nil
Where dispute relates to only interest, penalty or fee	NA	25%	NA	30%

What is Disputed Tax- Section 2(1)(j)



Scenario		Disputed tax – Amount of tax payable (including surcharge and cess):
Where an appeal, writ petition or SLP is pending before an appellate forum	➔	If such appeal, writ petition or SLP was to be decided against the taxpayer
Where an order in an appeal / writ has been passed and the time for filing an appeal or SLP has not expired	➔	After giving effect to the order so passed
Where an order has been passed by the AO and the time for filing appeal against such order has not expired	➔	In accordance with such order
Where Objections are pending before the DRP	➔	If DRP was to confirm the variation proposed in the draft order
Where the DRP has issued directions and AO has not passed an order	➔	As per the assessment order to be passed by the AO
Where an application for revision u/s 264 is pending	➔	As if such application was not accepted
CIT(A) has issued notice of enhancement u/s 251	➔	To be increased by tax pertaining to issues for which notice of enhancement is issued

Disputed Tax in specific situations- Second Proviso



- If dispute is in relation to reduction of MAT credit or AMT credit or loss / depreciation

Option I

- Pay the disputed tax in relation to the amount of MAT credit / AMT credit or loss / depreciation
- Carry forward the higher amount of MAT credit / AMT credit or loss / depreciation on which taxes paid

Option II

- No payment of tax
- Carry forward the reduced amount of MAT credit / AMT credit or loss / depreciation

Rule 9 and Rule 10 prescribed

Rule 9 and Rule 10 - Reduction in MAT Credit or loss or depreciation



Opt to pay tax under the scheme	Matter relating to reduction of Loss / Unabsorbed Depreciation / MAT Credit	<i>If issue not covered in favour of declarant If issue not covered in favour of declarant by high authority</i>	<i>If issue covered in favour of declarant</i>
Non-Search Cases			
No	Loss / Unabsorbed Depreciation	Reduce 100% of disputed income from the brought forward loss and carry forward the reduced amount of loss / unabsorbed depreciation	Reduce only 50% of disputed income from the brought forward loss and carry forward the reduced amount of loss / unabsorbed depreciation
	MAT Credit	Reduce 100% of the tax on disputed income from the brought forward MAT credit and carry forward reduced MAT credit	Reduce only 50% of tax on disputed income from the brought forward MAT credit and carry forward the reduced MAT credit

Rule 9 and Rule 10 - Reduction in MAT Credit or loss or depreciation



Opt to pay tax under the scheme	Matter relating to reduction of Loss / Unabsorbed Depreciation / MAT Credit	<i>If issue not covered in favour of declarant If issue not covered in favour of declarant by high authority</i>	<i>If issue covered in favour of declarant</i>
Search Cases			
No	Loss / Unabsorbed Depreciation	Reduce 125% of disputed income from the brought forward loss / unabsorbed depreciation and carry forward the reduced amount of loss / unabsorbed depreciation	Reduce 62.5% of disputed income from the brought forward loss / unabsorbed depreciation and carry forward the reduced amount of loss / unabsorbed depreciation
	MAT Credit	Reduce 125% of tax on disputed income from the brought forward MAT credit and carry forward the reduced MAT credit. If 125% of tax on disputed income exceeds the brought forward MAT credit, then excess shall be ignored and the assessee will not have to pay tax on such excess amount.	Reduce 62.5% of tax on disputed income from the brought forward MAT credit and carry forward the reduced MAT credit

Rule 9 and Rule 10 - Reduction in MAT Credit or loss or depreciation



Opt to pay tax under the scheme	Matter relating to reduction of Loss / Unabsorbed Depreciation / MAT Credit	<i>If issue not covered in favour of declarant If issue not covered in favour of declarant by high authority</i>	<i>If issue covered in favour of declarant</i>
Non-Search Cases			
Yes	Loss / Unabsorbed Depreciation	Pay tax including surcharge and cess payable on the amount by which loss / unabsorbed depreciation is reduced and carry forward the loss / unabsorbed depreciation by ignoring such amount of reduction in loss / unabsorbed depreciation	Pay 50% tax including surcharge and cess payable on the amount by which loss / unabsorbed depreciation is reduced and carry forward the loss / unabsorbed depreciation by ignoring such amount of reduction in loss / unabsorbed depreciation
	MAT Credit	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	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

Rule 9 and Rule 10 - Reduction in MAT Credit or loss or depreciation



Opt to pay tax under the scheme	Matter relating to reduction of Loss / Unabsorbed Depreciation / MAT Credit	<i>If issue not covered in favour of declarant If issue not covered in favour of declarant by high authority</i>	<i>If issue covered in favour of declarant</i>
Search Cases			
Yes	Loss / Unabsorbed Depreciation	Pay 125% tax including surcharge and cess payable on the amount by which loss / unabsorbed depreciation is reduced and carry forward the loss / unabsorbed depreciation by ignoring such amount of reduction in loss / unabsorbed depreciation	Pay 62.5% tax including surcharge and cess payable on the amount by which loss / unabsorbed depreciation is reduced and carry forward the loss / unabsorbed depreciation by ignoring such amount of reduction in loss / unabsorbed depreciation
	MAT Credit	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	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

Case Studies and Examples



Case Study 1- Disputed demand includes interest



Sr. No.	Particulars	Amount in INR
1	Tax on Returned Income paid	300,000
2	Interest under section 234B paid	10,000
3	Total Tax and interest paid as per RoI (1) + (2)	310,000
4	Additional Demand raised- Disputed Tax	100,000
5	Additional Demand raised- Interest on Disputed Tax	60,000
6	Total Additional Demand (4) + (5)	160,000
7	Demand paid during pendency of appeal	140,000

Amount payable => INR 100,000 (100% of Disputed Tax)

Refund Receivable => INR 40,000 (without interest under section 244A)

Case Study 2- Matter Set Aside to the AO



Sr. No.	Particulars	Amount in INR
1	Tax on Returned Income paid	100,000
2	Interest under section 234B paid	10,000
3	Total Tax and interest paid as per RoI (1) + (2)	110,000
4	Additional Demand raised- Disputed Tax- Ground 1	62,400
5	Additional Demand raised- Disputed Tax- Ground 2	93,600
6	Total Disputed Tax (4) + (5)	156,000
7	Interest on Disputed Tax (25,000 + 35,000)	60,000
8	Total Additional Demand (6) + (7)	216,000

CIT(A) and ITAT confirmed the addition

ITAT set aside the matter to AO

Disputed Tax will be the total sum of disputed tax on both the grounds i.e. INR 156,000.

In such cases while filling the declaration form, appellant can indicate that with respect to the set aside issues the appeal is pending with the CIT(A)

FAQs on Calculations



Sr. No.	Particulars	Answer / Reply from CBDT
1	<p>In a case appeal or arbitration is pending on the specified date, but a rectification is also pending with the AO which if accepted will reduce the total assessed income.</p> <p>Will the calculation of disputed tax be calculated on rectified total assessed income</p>	<p>The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification.</p> <p>The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.</p>
2	<p>Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under the scheme</p>	<p>Yes. For example, against disputed tax of Rs. 10,000/- if an amount of Rs. 8,000/- has already been paid, the appellant would be required to pay only the remaining Rs. 2,000/- by 30 June 2020</p>
3	<p>Where assessee settles TDS appeal or withdraws arbitration (against order u/s 201) as deductor of TDS, will credit of such tax be allowed to deductee</p>	<p>The deductee <u>shall be allowed to claim credit of taxes</u> in respect of which the deductor has availed of dispute resolution under Vivad se Vishwas.</p> <p>However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply</p>

FAQs on Calculations



Sr. No.	Particulars	Answer / Reply from CBDT
4	Where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia) in assessment u/s 143(3)	The deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) <u>in the year in which the tax was required to be deducted</u>
5	When assessee settles his own appeal or arbitration under Vivad se Vishwas, will consequential relief be available to the deductor in default from liability determined under TDS order u/s 201	<p>When an assessee (being a person receiving an income) settles his own appeal or arbitration under Vivad se Vishwas and such appeal or arbitration is with reference to assessment of an income which was not subjected to TDS by the payer of such income (deductor in default) and an order under section 201 of the Act has been passed against such deductor in default, then such deductor in default would not be required to pay the corresponding TDS amount.</p> <p>However, he would be required to pay the interest under sub-section (1A) of section 201 of the Act. If such levy of interest under section 201(1A) qualifies for Vivad se Vishwas, the deductor in default can settle this dispute at 25% or 30% of the disputed interest, as the case may be.</p>

FAQs on Calculations



Sr. No.	Particulars	Answer / Reply from CBDT
6	<p>Appeals against assessment order and against penalty order are filed separately on same issue.</p> <p>Hence there are separate appeals for both. In such a case how disputed tax to be calculated</p>	<p>It is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order (with penalty appeal automatically covered), he is required to give details of both appeals in one declaration form for that year.</p> <p>However, in the annexure he is required to fill only the schedule relating to disputed tax</p>
7	<p>If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered?</p> <p>Similarly if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas?</p>	<p>If the substantive addition is eligible to be covered under Vivad se Vishwas, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee</p>

FAQs on Calculations



Sr. No.	Particulars	Answer / Reply from CBDT
8	<p>In a case ITAT has passed order giving relief on two issues and confirming three issues.</p> <p>Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him.</p> <p>What about the other two issues as the taxpayer is not sure if the department will file appeal or not</p>	<p>The Vivad se Vishwas allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. Vivad se Vishwas also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both.</p> <p>Thus, in a given situation the appellant has a choice; he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both.</p> <p>If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.</p>
9	<p>There is no provision for 50% concession in appeal pending in HC on an issue where the assessee has got relief on that issue from the SC</p>	<p>If the appellant has got decision in his favour from SC on an issue, there is no dispute now with regard to that issue and he need not settle that issue.</p> <p>If that issue is part of the multiple issues, the disputed tax may be calculated on other issues considering nil tax on this issue.</p>

FAQs on Calculations



Sr. No.	Particulars	Answer / Reply from CBDT
10	<p>Addition was made u/s 143(3) on two issues whereas appeal filed only for one addition.</p> <p>Whether interest and penalty be waived for both additions</p>	<p>Under Vivad se Vishwas, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed.</p> <p>Hence, for the undisputed issue, the tax, interest and penalty shall be payable</p>
11	<p>DRP has issued directions confirming all the proposed additions in the draft order and the AO has passed the order accordingly.</p> <p>The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year.</p> <p>The time limit to file appeal in ITAT is still available. The taxpayer is eligible for Vivad se Vishwas treating the situation as taxpayer's deemed appeal in ITAT.</p> <p>In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?</p>	<p>In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by HC or SC) the disputed tax shall be computed at half of normal rate of 100%, 110%, 125% or 135%, as the case may be.</p>

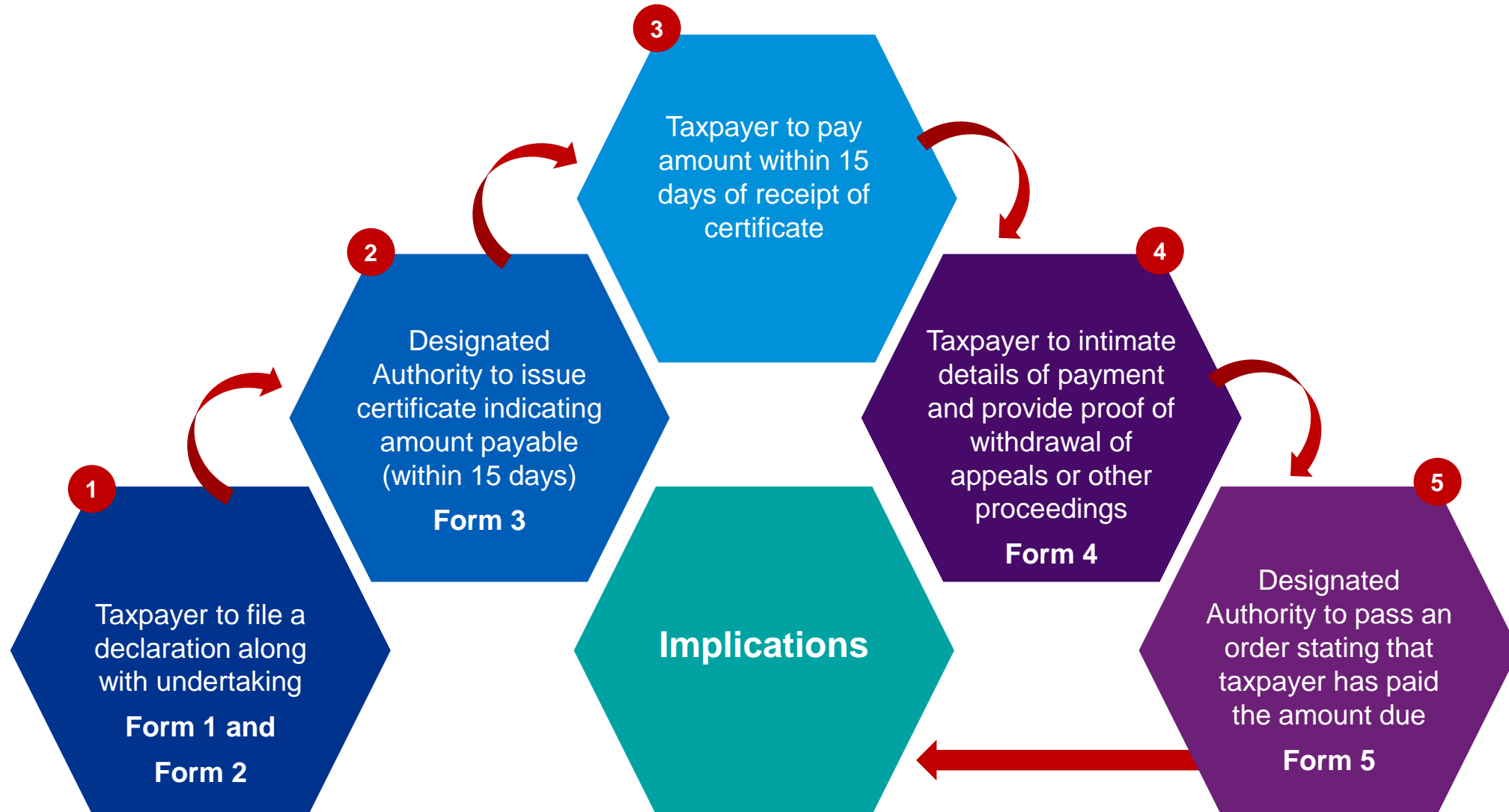
FAQs on Calculations



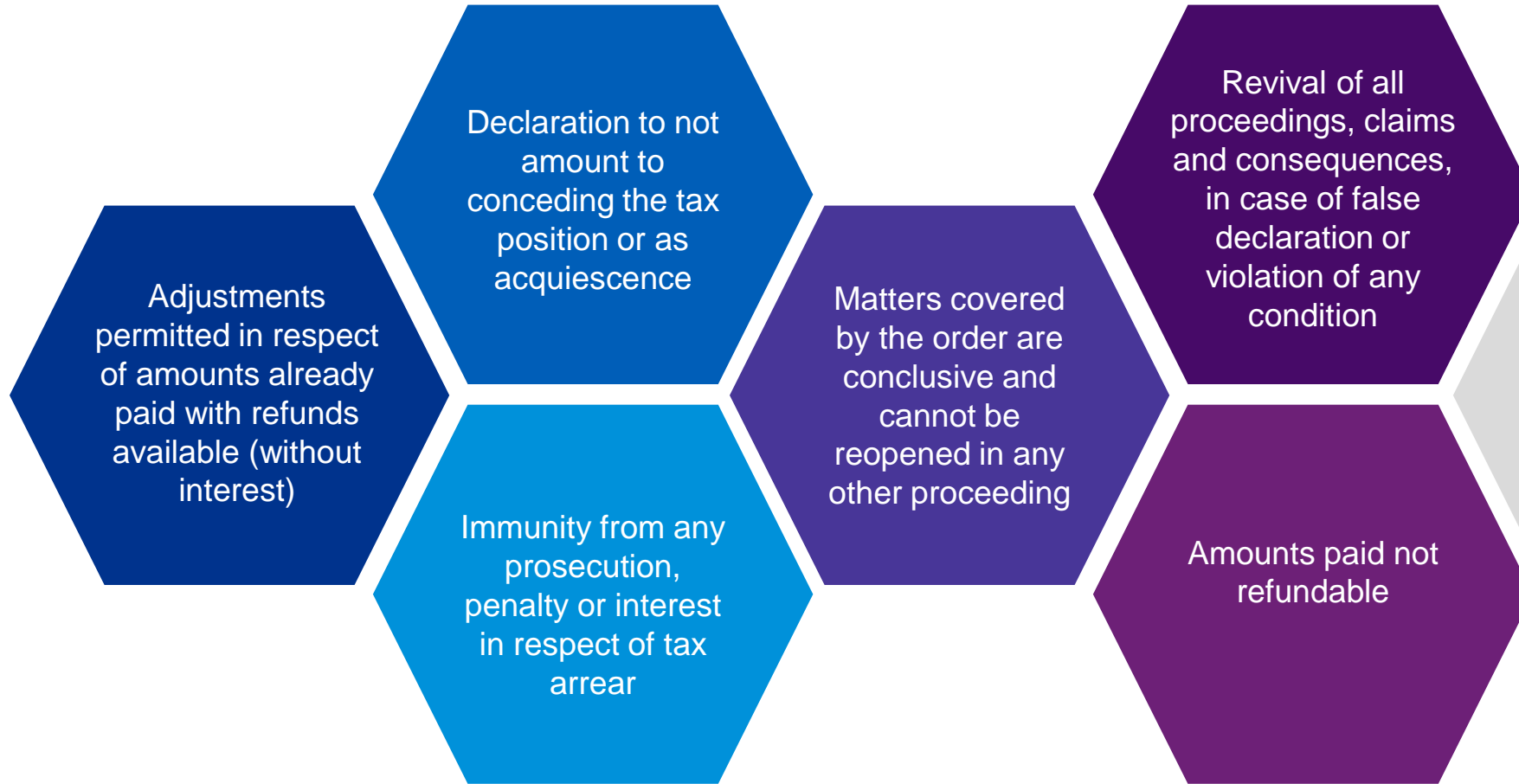
Sr. No.	Particulars	Answer / Reply from CBDT
12	<p>Where there are two appeals filed for an assessment year one by the appellant and one by the tax department, whether the appellant can opt for only one appeal?</p> <p>If yes, how would the disputed tax be computed</p>	<p>The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both.</p> <p>Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year.</p> <p>For different assessment years separate declarations have to be filed.</p> <p>So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year.</p> <p>The computation of tax payable would be worked out accordingly.</p>

Procedure and Implications

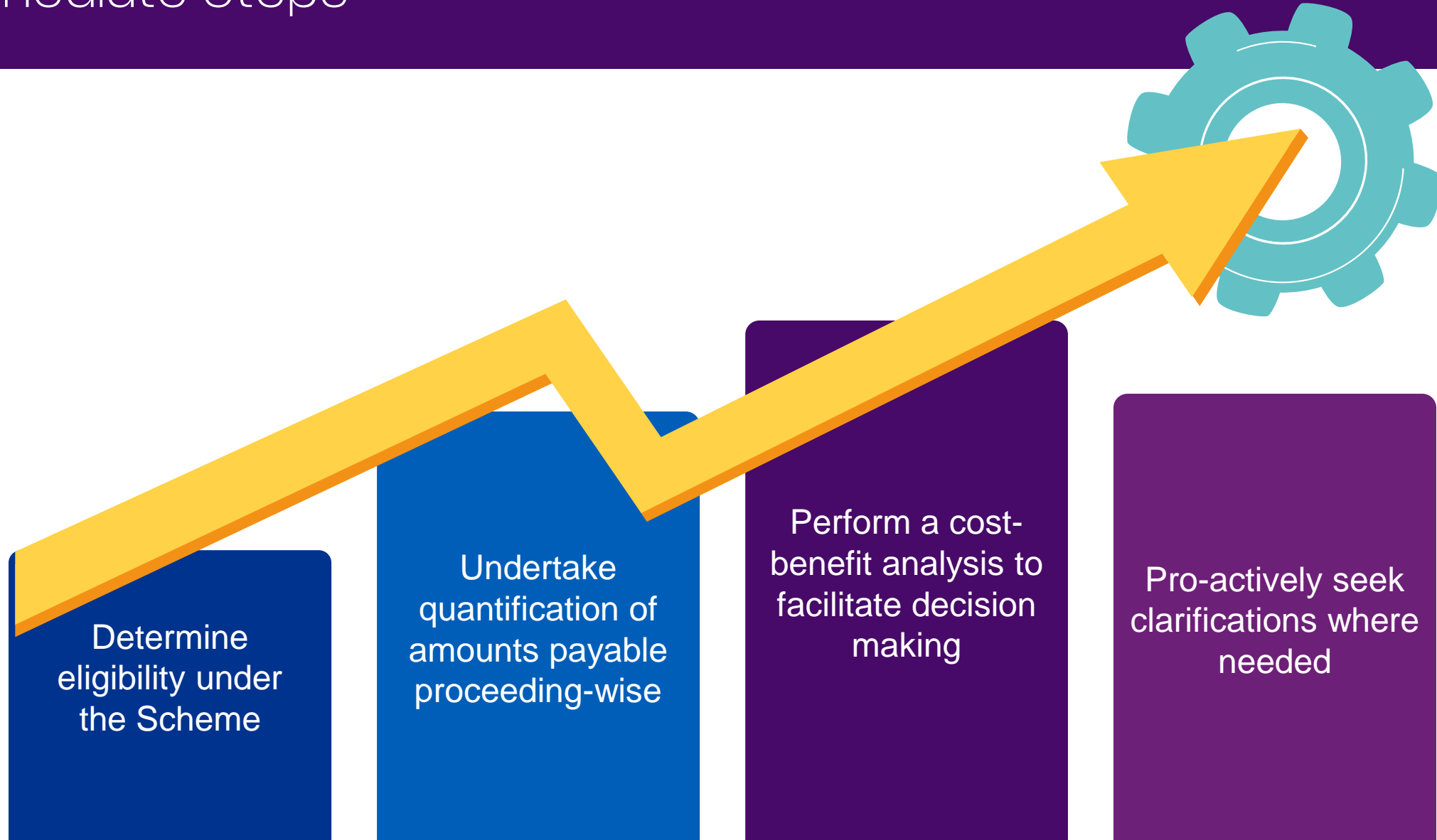




Implications



Immediate Steps



Questions and Answers



Questions



Answers

THANK YOU

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