

13<sup>th</sup> November, 2020

To,

1. Smt. Nirmala Sitharaman,  
Hon'ble Finance Minister,  
Government of India,  
North Block,  
Delhi 110001.
2. Shri Ajay Bhushan Prasad Pandey  
Hon'ble Revenue Secretary,  
Central Board of Direct Taxes (CBDT)  
North Block,  
Delhi 110001.
3. Shri Pramod Chandra Mody  
Chairman CBDT  
Central Board of Direct Taxes (CBDT)  
North Block,  
Delhi 110001.

Respected Madam/ Sirs,

**Ref:** The Direct Tax Vivad Se Vishwas Act, 2020 ('VSV Act').

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of -the oldest (about 94 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other laws. It has a robust membership strength of about 4000 professionals comprising of Advocates, Chartered Accountants and Tax Practitioners. It has from time to time made various representations to different Government Authorities drawing their attention to pressing issues.
2. The Government has rolled out the VSV Act in March 2020 and considering the pandemic situation, the same has been suitably extended time and again. As per the

latest Notification no. 85/2020 dated 27.10.2020, the last day to file declaration under the said Act is 31.12.2020. Further, the last date to make payment without any additional payment has been extended to 31.03.2021. To remove any inconsistency in respect of time limit to make payment i.e. 15 days from the date of receipt of Certificate in Form No. 3 u/s 5(1) of the VSV Act, the Board has issued Circular No. 18/2020 dated 28.10.2020. We highly appreciate the above proactive approach of the Government.

3. A detailed representation was made by CTC in respect of certain issues on 22.02.2020. The same is annexed to the present letter as Annexure A. Some of the issues raised in the said representation have been clarified and some have not been clarified. Further, new issues have cropped up including the technical issues. These are critical to the success of the scheme and require attention of the Board. Therefore, this representation.
4. The issues are raised by way of separate annexure viz. **Annexure B** in this regard.
5. **In light of the above discussion and the issues raised in Annexure B, considering the overall economic environment and the pandemic situation, we request your learned self to kindly look into this issue and take appropriate measures in this regard.**

We request your learned self to kindly consider the above issue on a priority basis. We look forward to your kind intervention and taking up our request for kind consideration.

Thanking you,

Sincerely,

For The Chamber of Tax Consultants

Sd/-

Shri Anish Thacker  
President

Sd/-

Shri Mahendra Sanghvi  
Chairman

Shri Apurva Shah  
Co-Chairman

Law and Representation Committee

Encl: As above



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Sr. No.	Issues	Suggestions
1.	The scheme applies to appeals filed upto specified date i.e. 31.01.2020. What about those cases where the orders have been passed and the time limit to file appeal against such orders have not expired upto 31.01.2020?	The scheme should be made applicable to all cases where the appeal is either filed upto 31.01.2020 or orders received before 31.01.2020 and time limit for filing appeal is not over.
2.	If the appeal is filed late before any appellate authority with an application for condonation of delay, will it amount to appeal pending as on 31.01.2020? As in such case, appeal has to be admitted by the appellate authority only after condoning the delay.	Clarification can be issued to the effect that appeal filed with condonation of delay will be eligible to take benefit under the scheme and such appeal can be considered as pending as on 31.01.2020.
3.	If the appellate authority being ITAT or higher authority have set aside the matter to de done afresh by the Assessing Officer, then, the original assessment order no longer survives. In such case, can one file a declaration under the scheme to settle the dispute?	Appropriate provision should be made to cover set aside cases pending before the AO and the mechanism to compute the disputed tax.
4.	In a case where the appellate authority sets aside an issue partly to the AO and partly to the CIT(A), in such case, can one file a declaration to settle the dispute for that particular assessment year?	Appropriate clarification to be issued to allow assessee to avail benefit under the scheme in such cases and the mechanism to compute the disputed tax.
5.	A).In cases where the hearing is conclude by the appellate authority but the order is	Appropriate clarification can be issued that in such cases, appeals remain pending and

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	yet to be passed as on 31.01.2020, in such case, whether a person will be eligible to apply under the scheme?	therefore, benefit under the scheme can be availed. Further, in such cases, the assessee should be directed to inform the appellate authorities to not dispose off the matters heard. Further, necessary directions to be issued to the appellate authorities to not dispose the matters in case where an application is made by the assessee in this regard.
	B). If, in the above case, the orders are passed by the appellate authorities disposing off the appeal after 31.01.2020, can an assessee claim benefit under the scheme as the appeal was pending on 31.01.2020?	Necessary clarification should be made that the assessee can claim benefit under the scheme if the order is passed by the appellate authorities after 31.01.2020, as the appeal was pending as on 31.01.2020.
6.	If an appeal has been disposed of by an appellate authority and an application has been filed for rectification of such order without any appeal pending before any higher appellate authority, whether the assessee will be eligible to apply under the scheme?	Necessary clarification in this regard should be issued to allow the assessee to apply under the scheme in this regard.
7.	Section 2(1)(a) uses the term appeal pending on the specified date. Does the scheme intend to cover writ petitions filed before the High Court/ Supreme Court and Special leave petitions filed before the Supreme Court?	Section 4(3) speaks of withdrawal of writ petitions before the High Court and Supreme Court. Thus, the scheme intends to cover even the writ petitions. Further, it is only by way of SLP that a matter is carried to the Supreme Court. Therefore, necessary amendments may be made in the Bill to include even writs and SLPs.



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<b>8.</b>	Whether a writ petition challenging any jurisdictional issue, without there being any assessment order in this regard, can be said to be covered under the scheme?	Necessary clarifications in this regard should be issued to allow the assessee to apply under the scheme. Further, appropriate mechanism to compute the disputed tax in such cases should be provided for.
<b>9.</b>	Where objections are filed by an assessee to Dispute Resolution Panel ('DRP') u/s 144C(2) of the Act against the draft assessment order passed u/s 144C(1) of the Act, whether such assessee would be eligible to claim benefit under the proposed Bill? If yes, how to compute the disputed tax amount?	Necessary amendment can be made in the Scheme to bring objections filed before DRP under the ambit of the Bill and to provide for a mechanism to compute the disputed tax in such cases.
<b>10.</b>	Assessment is made u/s. 143(3) with additions to the returned income. No appeal is filed against the said additions. Revision application is filed before the Commissioner of Income tax u/s 264 of the Act against said assessment order; can such revision application be settled under the scheme?	Necessary amendment can be made in the Scheme to include the revision application filed before the CIT u/s 264 of the Act.
<b>11.</b>	Where a show-cause notice is issued u/s 263 of the Act by the CIT, can such notice be settled under this scheme at the stage of issuance of such notice?	Necessary clarifications in this regard can be issued. The Legislature may provide for inclusion of such cases after allowing an assessee to pay tax on issues raised in the show cause notice so as to stall the litigation at this stage.
<b>12.</b>	Where an order u/s 263 has been passed by CIT/Pr. CIT and an appeal has been filed	Necessary clarification can be issued to include such appeals within the ambit of the scheme and



	by an assessee against such order before the ITAT, whether such appeal can be settled under the scheme,?	appropriate mechanism to compute the disputed tax in such cases should be provided for.
13.	Where an order u/s 263 has been passed and an appeal has been filed by an assessee against such order before the ITAT, whether such appeal can be settled under the scheme, where the order giving effect to such order u/s 263 of the Act has already been passed by the AO? And no appeal is filed against order passed u/s. 143(3) r.w.s. 263.	Necessary clarification can be issued to include such appeals within the ambit of the scheme and disputed tax can be computed based on the order giving effect
14.	Where an appeal has been filed against the order u/s 263 of the Act and an appeal has been filed against the order giving effect to such order u/s 263 of the Act, both such appeals can be settled under the scheme? If yes, then whether disputed tax amount will be computed once or twice?	Necessary clarifications can be issued to permit settlement of both the appeals under one declaration and by payment of tax as arising from the issues raised in such order u/s 263 read with the order giving effect to such order.
15.	Is there any option to settle a dispute qua a particular issue out of various issues disputed in an appeal?	Necessary clarification may be issued in this regard.
16.	Is it possible to settle only assessee's appeal and not the Department's appeal if both are in cross appeal?	Necessary clarifications may be issued in this regard.
17.	If out of the two grounds pending before CIT(A) as on 31.01.2020, one ground is rectified after 31.01.2020 but before	Necessary clarifications may be issued in this regard to allow the assessee to file on the remaining pending ground.



	declaration is filed, whether qua one pending ground assessee can file declaration.	
<b>18.</b>	<p>If there are two appeals for any particular year, then one has to settle both the appeals or only one appeal can be settled?</p> <p>Examples:</p> <ol style="list-style-type: none"><li>Appeal against intimation u/s 143(1) and against an order u/s 143(3)?</li><li>Appeal against an order u/s 143(3) and against an order u/s 154?</li><li>Appeal against an order u/s 143(3) and against an order u/s 143(3) r.w.s. 147?</li><li>Appeal against an order u/s 143(3) and against an order u/s 201 r.w.s. 201(1A)_</li></ol>	Necessary clarifications may be issued in this regard.
<b>19.</b>	<p>In case of loss, third proviso to section 2(1)(j) requires the assessee to pay tax on the loss by considering it to be income of the assessee, inspite of the fact that no tax implication arises as a result of reduction of loss. Further, once the declaration is filed, necessary consequence will be disallowance of set off loss in subsequent</p>	<p>In such cases, it may be clarified that in the year in which loss carry forward is disallowed, there shall be no tax implication, however, in the year in which it is set off, the necessary tax will have to be treated as disputed tax.</p>



	year/s, where a person will have to pay tax. In such case, there will be double jeopardy.	
20.	Does filing a declaration under the scheme amount to acceptance of the judicial view in the relevant assessment order?	Necessary clarifications may be issued in this regard that acceptance of declaration is a mere settlement and there is no judicial decision on any issue therefore will not have any impact on other assessment years/s..
21.	Clarification may be issued whether the amount of beneficial rate under phase 1 i.e. upto 31.03.2020, is available in following cases: <ul style="list-style-type: none"><li>i. Filing of declaration u/s 4(1) before 31.03.2020 and tax paid after 31.03.2020.</li><li>ii. Acceptance of declaration u/s 5(1) before 31.03.2020 and tax paid after 31.03.2020 or</li><li>iii. Part payment is made before 31.03.2020 and part after 31.03.2020 but within the stipulated time limit?</li></ul>	Necessary clarifications may be issued in this regard.
22.	A).Where an assessee has paid the entire demand including the interest whether the amount paid in excess of disputed tax be refunded? B). Similarly wherein the refunds of other years are adjusted, refunds along with	Necessary clarification may be issued in this regard that in such cases, refund shall be granted. In case where such amount is paid by way of adjustment of refund, then interest should also be granted on such refund.



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	interest will be returned to the assessee?	
<b>23.</b>	Section 4(2), 4(3), 4(4), 4(5) and 4(7) have contradictory provisions. Further, onerous liability is put on the assessee to withdraw the appeal beforehand and file order of such withdrawal along with the declaration. In case of appeals before High Court and Supreme Court, this may require moving the Court by way of motion or application etc. which may consume lot of time.	<p>Necessary clarifications may be issued in this regard that:</p> <ol style="list-style-type: none"><li>Along with the declaration an undertaking should be filed, that the assessee shall not proceed with the matter in respect of which a declaration is filed under this scheme.</li><li>The Courts should be debarred from proceeding with the matters in respect of which a declaration is filed under this scheme.</li><li>If the court passes an order, then such order shall be deemed to have never been passed.</li></ol> <p>There should be no requirement to withdraw the appeals and attach the order otherwise the declarants may not be able to claim benefit under the first phase of the scheme due to shortage of time.</p>
<b>24.</b>	There is no power to rectify any order or declaration under the scheme. There may be bonafide human error. Further, section 7 states that any amount paid under the scheme shall not be refunded.	Necessary amendment may be made to provide designated authority power to rectify mistakes apparent from record.
<b>25.</b>	In case where, no penalty is levied and quantum is settled, section 6 provides immunity. In case, where both appeals are	Necessary clarifications may be issued in this regard that even in such cases, penalty will vanish, as the settlement is for the tax amount

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	pending, then both are settled under the scheme. However, what will happen to a case where quantum appeal is covered under the scheme and against the penalty order no appeal is filed?	along with interest and penalty.
26.	Section 6 which provides for immunity prohibits only designated authority from further actions as prescribed therein. But such authority may not be jurisdictional officer.	Necessary amendment may be made to the effect that the prescribed actions u/s 6 shall not be initiated by any officer.
27.	Whether appeals in respect of block assessments are covered?	Necessary clarifications may be issued in this regard as such appeals would be old appeals and the assesseees may be willing to close such appeals. Further, necessary provisions may be made to compute disputed tax.
28.	If an appeal is pending for an assessment year and for the same year there is an assessment u/s 153A of the Act, against which also, an appeal is pending, then in such cases, whether even the appeal against the original assessment will be outside the ambit of the scheme?	Necessary clarifications may be issued in this regard to cover the original assessment and to compute disputed tax in such cases.
29.	The scheme restricts the assessee where the appeal is against the assessments u/s 153A or 153C of the Act.	Necessary amendment may be made to the effect that in such cases they will not be debarred but an increased amount be charged under the scheme.
30.	Cases where prosecution is launched before the date of declaration are outside	Necessary amendment may be made to the effect that in cases where the prosecution is

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	the ambit of such scheme.	launched merely on account of delayed payment of taxes and TDS amount they will not be debarred and in other cases a threshold limit of tax liability below Rs 100lakhs will not be debarred..
31.	Cases where prosecution is launched before the date of declaration are outside the ambit of such scheme. (other than above)	Scheme should be amended to allow the assessee to settle even prosecution cases with reasonable charges which are lower than the compounding charges.
32.	An Assessee is out of the scheme where a notice of enhancement has been issued prior to 31.01.2020,.	Necessary amendment may be made in this regard to allow such person to come under the scheme and to compute disputed tax accordingly.
33.	A person against whom prosecution has been instituted under IPC is outside the ambit of the scheme.	Necessary amendment may be made so as not to debarred as person only because some prosecution has been instituted for some petty offence and which is not connected with tax evasion and is a heinous crime where the punishment is imprisonment for 10 years or more.
34.	A person against whom prosecution has been instituted for the purpose of any civil liability is outside the ambit of the scheme.	Necessary amendment may be made to explain the meaning of this exception and to restrict its scope.
35.	Due to overall cash crunch, it may not be possible to make payment under the scheme at one go by all the declarants.	Necessary amendment may be issued so that the payment in instalments may be allowed along with interest up to certain date.
36.	The Bill is not out yet. It will take time for it to be enacted, prescription of rules etc.,	Necessary amendment may be made that Phase 1 date of 31.03.2020 be amended to 30.04.2020

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withdrawal of appeal before filing declaration. This, may lead to missing deadline of 31.03.2020.	
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Sr No.	Issues	Suggestions
1.	As per reply to Q. 25 in the Board Circular No. 9/2020 dated 22.04.2020, the Officers have been directed to pass rectification orders before adjudicating on the declarations filed. It is seen that in many cases, either the rectification applications have not been adjudicated upon or the order giving effect to the appellate/ revision orders (OGEs) are not passed. As a result, many applications are pending to be filed and now the time limit is expiring on 31.12.2020.	Instructions should be given to the Officers to immediately dispose of all the pending rectification applications and the OGEs, not later than 30.11.2020, so that a clear period of 31 days is available for the assesseees to file declaration. In case the same is not feasible due to the pandemic situation and shortage of staff, then the date for filing of declarations should be extended as pointed out in Sr. No. 2 below. Or, necessary clarifications may be issued to temporarily issue Form 3 or draft Form 3 which may be subjected to rectification post clearance of all pending rectification applications and OGEs, subject to a time frame of 6 months.
2.	The last date to file the declarations under the VSV Act is notified to be 31.12.2020. It may be noted that even the due date for uploading of Tax Audit Report in Form 3CD happens to be the same date. Further, the due date to file GST annual returns for the FY 2018-19 also happen to be the same date. Also, the due date for filing return of income is 31.01.2021. In this pandemic times, it would become difficult to meet all the deadlines at the same time, with travelling and other restrictions.	The Board may consider extending the last date for filing of declarations under the VSV Act to 28.02.2021.
3.	A declaration to settle an appeal against an intimation u/s 143(1) is not getting	There is no embargo on settlement of appeals pertaining to 143(1) intimations. Accordingly,



	accepted as, in the Form No. 1, the section under which order has been passed does not given an option of section 143(1). On raising grievance, it has been informed by the officers that such appeals cannot be settled under the VSV Act.	necessary changes be made in the online Form No. 1 as well as necessary instructions be issued to the field officers in this regard.
4.	Post amalgamation, the amalgamating company ceases to exist, however, still there may be appeals pending in respect of such amalgamating company. In such cases, the declaration should be in whose name and PAN viz. amalgamated company or amalgamating company?	Necessary clarifications may be issued in this regard.
5.	When will the refunds under the VSV Act be granted?	There is no clarity in this regard. Necessary timelines should be framed in this regard as in case of payment by the assesseees. Any refund beyond such prescribed time should be subject to interest payment.
6.	If an assessee is eligible to get refund in a particular year and he is required to make payment on settlement under the VSV Act, then whether the assessee can ask the Department Tax to adjust the refund against the payment due under the Act?	Necessary clarifications may be issued in this regard to allow settlement of refund against the payment due under this Act, otherwise it may lead to unnecessary financial difficulty for the assesseees.
7.	If an assessee files two declarations for the same assessment year under the VSV Act wherein; in one declaration he is eligible for refund and for the other he has to make payment. In such case, can the	Necessary clarifications may be issued in this regard to allow adjustment of refund and payment of balance amount, otherwise it may lead to unnecessary financial difficulty for the assesseees.

	assessee adjust the refund against the payment and pay only the balance amount?	
8.	If the appeal is filed late before any appellate authority with an application for condonation of delay, will it amount to appeal pending as on 31.01.2020? As in such case, appeal has to be admitted by the appellate authority only after condoning the delay.	Clarification can be issued to the effect that appeal filed with condonation of delay application will be eligible to take benefit under the scheme and such appeal can be considered as pending as on 31.01.2020.
9.	In some cases it has been seen that the ITAT has passed orders ex-parte in virtual mode after 31.01.2020, due to non-appearance of the assessee. In such cases, the assessee would have otherwise opted for VSV Settlement. In such cases, can an assessee claim benefit under the scheme as the appeal was pending on 31.01.2020?	Necessary clarification should be made that the assessee can claim benefit under the scheme if the order is passed by the appellate authorities after 31.01.2020, as the appeal was pending as on 31.01.2020.
10.	Cases where application in form No. 1 is made and is pending, thereafter the ITAT has passed an order ex-parte in virtual mode, which the assessee is made aware only after he makes an application before the ITAT for withdrawal of appeal to be submitted in Form No. 4	Necessary clarification should be made that the assessee can claim benefit under the scheme since the Form No. 1 was already submitted before the order was passed and the dispute was pending as on 31.01.2020. Further to clarify that no letter for withdrawal of appeal is required.
11.	If an appeal has been disposed of by an appellate authority and an application has been filed for rectification/ review of such order without any appeal pending before	Necessary clarification in this regard should be issued to allow the assessee to apply under the scheme in this regard.

	any higher appellate authority, whether the assessee will be eligible to apply under the scheme?	
12.	Whether a writ petition challenging any jurisdictional issue, without there being any assessment order in this regard, can be said to be covered under the scheme for example: writ petition challenging the notice u/s 148 of the Act?	The Board has clarified that such cases cannot come under the Scheme. It is submitted that, assesseees should be allowed to apply under the scheme as such cases fall within the definition of the term 'appellant'. Also, this would lead to the ultimate object of reducing litigation.
13.	Whether a writ petition challenging an order of the Income-tax Settlement Commission can be settled under this Scheme, if filed by the assessee or Department or both?	Necessary clarification in this regard should be issued to allow assesseees to settle such writs under the VSV Act. Further, similar clarification has been issued in case of writ pending against AAR Rulings.
14.	In case where the issue has been set aside to the AO for conducting a limited inquiry with a direction in favour of the assessee, whether in such cases, the amount payable should be 50% of the disputed tax?	Necessary clarification in this regard should be issued to allow assesseees to settle the dispute by paying 50% of the disputed tax amount.
15.	Where a show-cause notice is issued u/s 263 of the Act by the CIT, can such notice be settled under this scheme at the stage of issuance of such notice?	Necessary clarifications in this regard can be issued. The Board may provide for inclusion of such cases after allowing an assessee to pay tax on issues raised in the show cause notice so as to stall the litigation at this stage.
16.	Where an order u/s 263 has been passed by CIT/Pr. CIT and an appeal has been filed by an assessee against such order before the ITAT, whether such appeal can be settled under the scheme?	Necessary clarification can be issued to include such appeals within the ambit of the scheme and appropriate mechanism to compute the disputed tax in such cases should be provided for.



	Further, where the ITAT has adjudicated the appeal, and either the assessee or the Department has taken such matter to the higher appellate forum, whether such appeal can be settled under the scheme?	
17.	Where an appeal has been filed against the order u/s 263 of the Act and an appeal has been filed against the order giving effect to such order u/s 263 of the Act, both such appeals can be settled under the scheme? If yes, then whether disputed tax amount will be computed once or twice?	Necessary clarifications can be issued to permit settlement of both the appeals under one declaration and by payment of tax as arising from the issues raised in such order u/s 263 read with the order giving effect to such order.
18.	If out of the two grounds pending before CIT(A) as on 31.01.2020, one ground is rectified after 31.01.2020 but before declaration is filed, whether qua one pending ground only assessee can file declaration.	Necessary clarifications may be issued in this regard to allow the assessee to file the declaration only on the pending ground.
19.	Where an assessee has raised an additional ground before an appellate forum, then whether disputed tax would also include the tax in respect of such issue raised via additional ground?	Necessary clarifications may be issued in this regard that in such cases, disputed tax would also include the tax in respect of such issue raised via additional ground.
20.	Where the assessee is treated as assessee in default as a result of failure to deduct TDS, however, if he is able to demonstrate that the recipient has discharged the tax on such amount, then no further tax can be recovered from him; even in such cases,	Necessary clarifications may be issued in this regard that in such cases, the dispute may be settled on payment of 25% of the interest u/s 201(1A) and not the TDS amount.

	whether he should be asked to pay the TDS amount for settlement under the scheme?	
21.	In reply to Q. 30 of the Board Circular No. 9/2020 (supra), it has been clarified that if the deductor has paid TDS then necessary credit will be made available to the deductee as on the date of settlement of dispute and therefore, the interest as applicable shall apply to the deductee.	This clarification does not seem to be in sync with the provisions of the Income-tax Act, 1961 wherein it has been provided that the TDS credit is allowed in the year in which the income is offered to tax. Accordingly, necessary clarifications may be issued in this regard.
22.	Section 6 which provides for immunity and prohibits only designated authority from further actions as prescribed therein. But such authority may not be jurisdictional officer.	Necessary amendment may be made to the effect that the prescribed actions u/s 6 shall not be initiated by any officer.
23.	Whether appeals in respect of block assessments are covered?	Necessary clarifications may be issued in this regard, as such appeals would be old appeals and the assesseees may be willing to close such appeals. Further, necessary provisions may be made to compute disputed tax.
24.	Where an addition has been made in respect of an income in year 1 and the same is offered by the assessee in year 3. In such case, when the assessee settles the appeal for year 1, whether necessary consequential effect would be given for the income of year 3?	Necessary clarifications may be issued in this regard to give consequential effect to the additions made. Thus, it may be clarified that once an income is added in year 1 and the same is accepted by settlement under VSV Scheme, then the same income cannot be taxed twice and therefore, necessary relief may be given in the total income for year 3, by passing rectification orders.

<p><b>25.</b></p>	<p>Where an income is offered on the basis of percentage completion method based on an estimated figure and the AO in the assessment proceeding changes the estimate and increases the amount chargeable to tax. In such case, the assessee wants to settle the appeal for such year. The actual profit of entire project would be determined at the completion of such project. While computing such actual profits, whether any consequential benefit would be given to the addition made in the year and which is settled under VSV Act.</p>	<p>Necessary clarifications may be issued in this regard to give consequential effect to the additions made. Thus, it may be clarified that once an income is offered in a year on an estimated basis, then the same will have to be reduced from the actual profits which shall be derived in the year in which the project is completed as nothing more than the actual profits can be charged to tax.</p>
<p><b>26.</b></p>	<p>Any addition in the figure of closing stock, if accepted under VSV Act, will be taken as opening stock for the next year?</p>	<p>Necessary clarifications may be issued in this regard to give consequential effect to the additions made. Thus, it may be clarified that the opening stock of the next year would be closing stock of the earlier year as determined by the AO and as settled under VSV Act.</p>
<p><b>27.</b></p>	<p>The scheme debars the assessee where the appeal is against the assessments u/s 153A or 153C of the Act and made on the basis of search proceedings under the Act and disputed tax is more than Rs. 5 crore.</p>	<p>Such assessee should be allowed to apply under the VSV Act and necessary amendment may be made to the effect that in such cases they will not be debarred but an increased amount be charged under the scheme.</p>
<p><b>28.</b></p>	<p>Where an appeal is pending before ITAT and the issue is covered is favour of the assessee by an order of ITAT in his own case for other years; in such case whether</p>	<p>The proviso to section 3 only speaks of issue which is covered by the order of the High Court in assessee's own case. Thus, issues covered by the same forum before which the appeal is</p>



	the assessee would be required to pay tax @ 50% of the disputed tax?	pending is not covered by the proviso. As a result, there will be no encouragement to opt for the VSV scheme if payment is not restricted to 50% of the disputed tax. Accordingly, necessary clarifications may be issued in this regard.
29.	Where an appeal is pending before any appellate forum or AO other than the Supreme Court and High Courts and if the issue involved is a legal issue covered in favour of the assessee by the judgment of the Supreme Court or Jurisdictional High Court then whether any benefit in the nature of lower payment of tax would be granted if one opts to settle the dispute under the VSV Act?	Necessary clarifications may be issued in this regard to give benefit of payment of 50% of disputed tax in such cases.
30.	Cases where prosecution is launched before the date of declaration are outside the ambit of such scheme.	In many cases, the prosecutions have been launched prematurely without waiting for the disposal of quantum appeal by the ITAT and/or without even waiting for levy of penalty. In such cases, even if an assessee wants to settle an appeal, he is debarred. Recently, the Board has issued an instruction to the effect that prosecution can be launched u/s 276C only after the penalty is confirmed by the ITAT.  As a result, necessary amendments may be made to the effect that in cases where a prosecution is launched pre maturely i.e. before the penalty being confirmed by the ITAT, an assessee can go for settlement under VSV Scheme.

		Further, it may be clarified that where a prosecution is launched merely on account of delayed payment of taxes and TDS amount they will not be debarred and in other cases a threshold limit of tax liability of Rs 5 crore should be prescribed.
<b>31.</b>	Cases where prosecution is launched before the date of declaration are outside the ambit of such scheme. (other than above)	Scheme should be amended to allow the assessee to settle even prosecution cases with reasonable charges which are lower than the compounding charges.
<b>32.</b>	In case of disallowance of unabsorbed depreciation, as per proviso to Rule 9(2), where an assessee opts for the option of non-carry forward of the depreciation to the future years, it has been prescribed that the WDV will not be increased.	This is contrary to the provisions of the Income-tax Act, 1961. Where depreciation is disallowed the natural consequence of the same is increase in the WDV. Under the VSV Act, as per section 2(1)(j), disputed tax is to be computed as if the appeal is not going to be allowed. The natural consequent of the same would be increase in WDV. Thus, this proviso should be suitably amended.
<b>33.</b>	In case of demonetisation based additions, the tax rate itself is 60% plus surcharge. Further, interest and penalty amount is meagre. In such cases, there shall be no motivation to come under the scheme	Necessary amendments may be issued in this regard to reduce the tax rate and may be restored to the original rate u/s 115BBE of the Act i.e. 30% or a little higher rate.
<b>34.</b>	As per section 4(2), on issue of certificate under Form 3, the appeals pending before ITAT and CIT(A) shall be deemed to be withdrawn. As per section 4(3), an assessee has to withdraw the appeals	Necessary clarifications may be issued in this regard to the effect that there is no need to withdraw any appeals before CIT(A) and ITAT and that the same is deemed to be withdrawn as per section 4(2) and that the provisions of section



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	pending before the appellate forums. Thus, inconsistent provisions	4(3) applies to appellate forums other than CIT(A) and ITAT i.e. High Court and Supreme Court.
35.	Without prejudice to point number 33, provisions of section 4(3) requires withdrawal of appeals before CIT(A). However, with the onset of faceless appeals, it is not sure where, an application for withdrawal of appeal has to be made.	Necessary clarifications may be issued in this regard.