

THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

Presented by

Adv. Bharat Agarwal (Managing Partner)

Adv. Ritika Agarwal (Senior Partner)

CA Sneha R. Sarbhushan (Tax Associate)

Acelegal



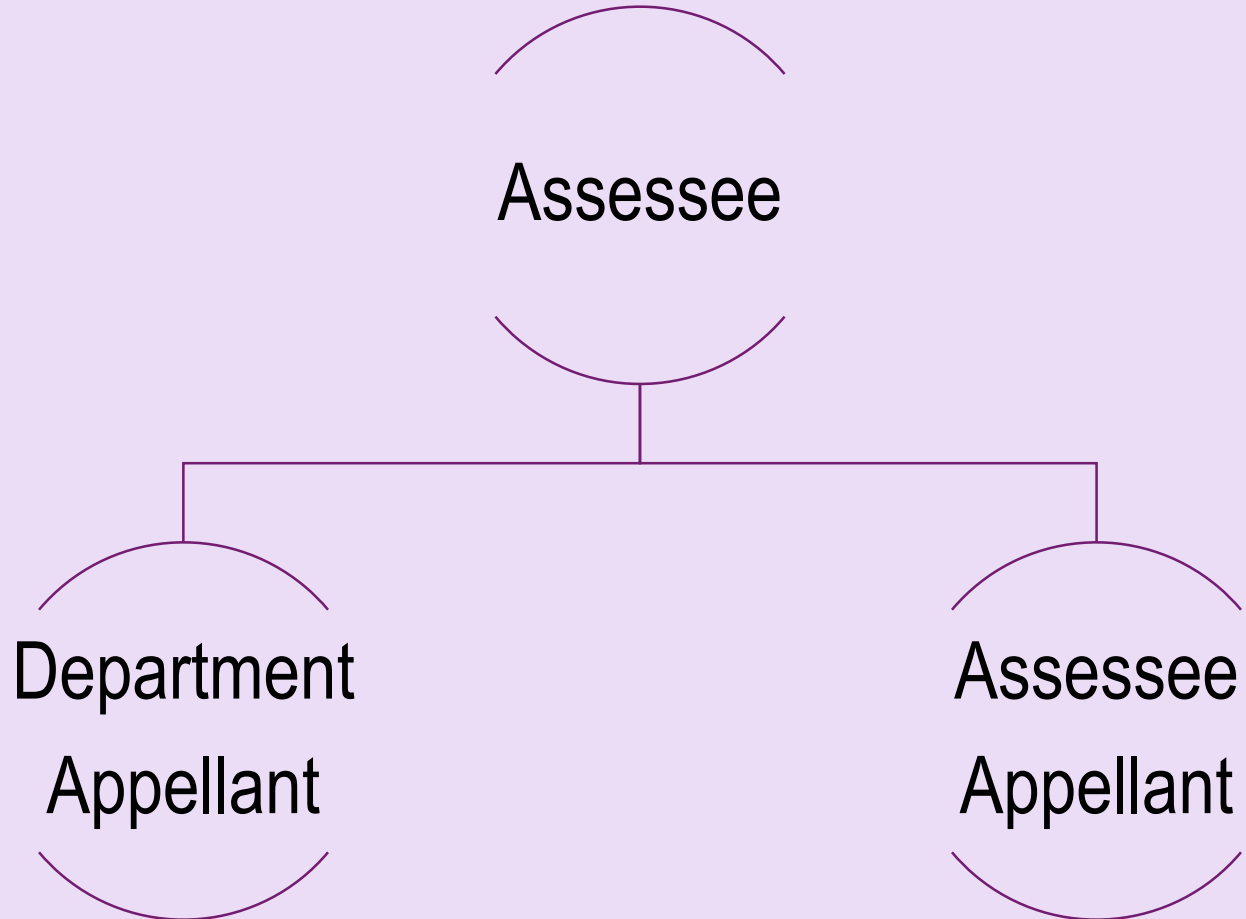
- **Purpose of the Act :**

- (1) Reduce income tax litigation

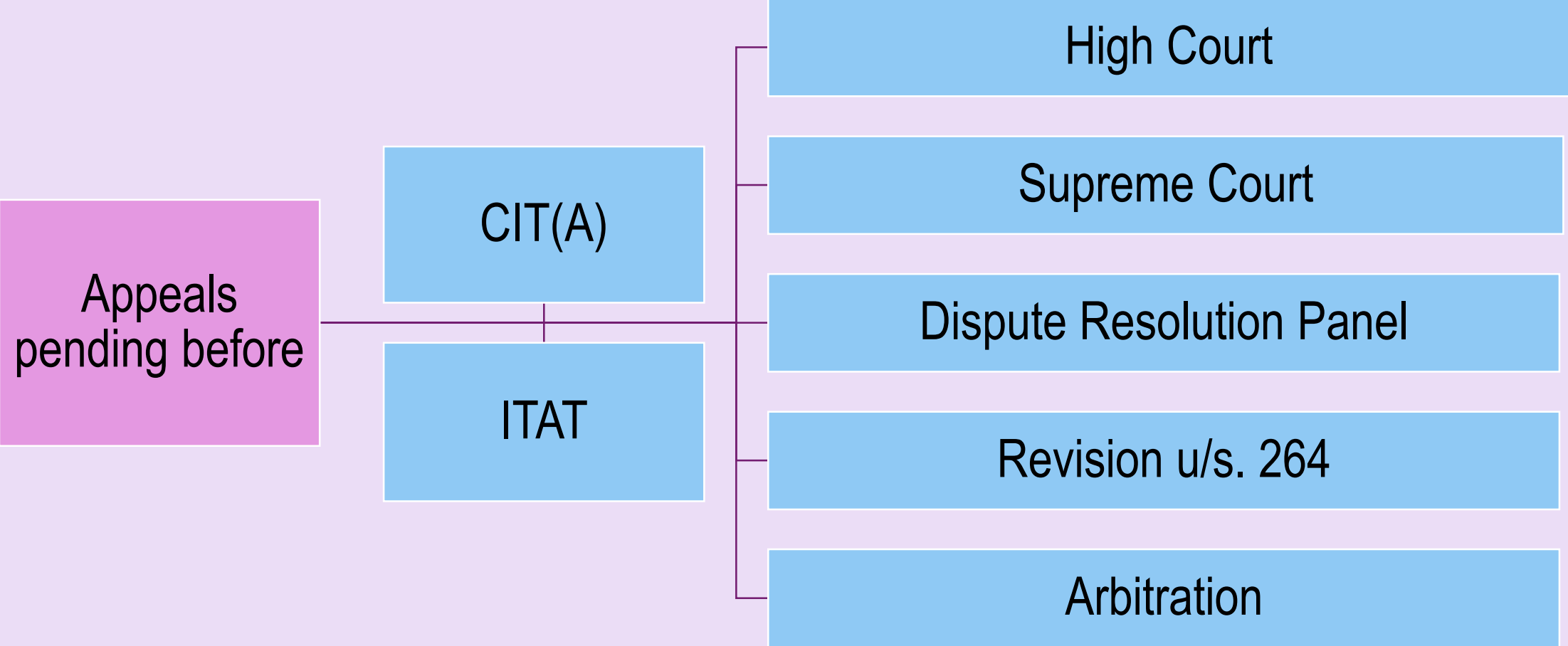
- (2) Generate timely revenue

Approx. Rs.10,00,000 crs in disputed taxes

Who can file the declaration



COVERAGE



What is covered ?

```
graph TD; A[What is covered ?] --- B[Disputed Tax]; A --- C[Disputed Interest]; A --- D[Disputed Penalty]; A --- E[Disputed Fee u/s. 234E / 234F];
```

Disputed Tax

Disputed
Interest

Disputed
Penalty

Disputed Fee
u/s. 234E /
234F

MATTERS COVERED

- Appeals pending before the appellate forum (with / without disputed tax)
- Writ Petitions pending before HC / SC
- SLPs pending before SC
- Order passed but time limit for filing appeal has not expired
- Application for revision filed u/s. 264 is pending
- Assessment made u/s. 143(3) / 144 / 153A / 153C on the basis of search initiated u/s. 132 / 132A if the amount of disputed tax is Rs.5 crores or less

- Objections filed before DRP u/s. 144C is pending
- DRP has issued direction u/s. 144(5) but AO has not passed order
- IN DRP matter – AO had passed draft assessment order
- Assessee has initiated any proceeding or given any notice for arbitration, conciliation or mediation
- Departmental appeal where ITAT has quashed the assessment order based on lack of jurisdiction by the AO
- If an Appellate Authority has set aside an order (except for de novo assessment) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction

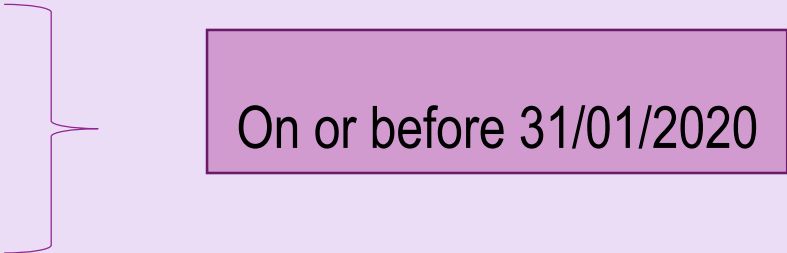
- Where only notice for initiation of prosecution issued w.r.t. tax arrears = choice to compound the offence and opt for Scheme
- Order determining income passed by AAR + WP pending in HC
- If appeal has been filed against imposition of fees u/s. 234E (default in filing financial statement)
- If appeal has been filed against imposition of fees u/s. 234F (default in filing ROI)
- Fee u/s. 234E or 234F pertains to a year in which there is disputed tax, settlement of disputed tax will not settle the disputed fee. Want to settle disputed fee = Separate application to be made.

MATTERS EXCLUDED

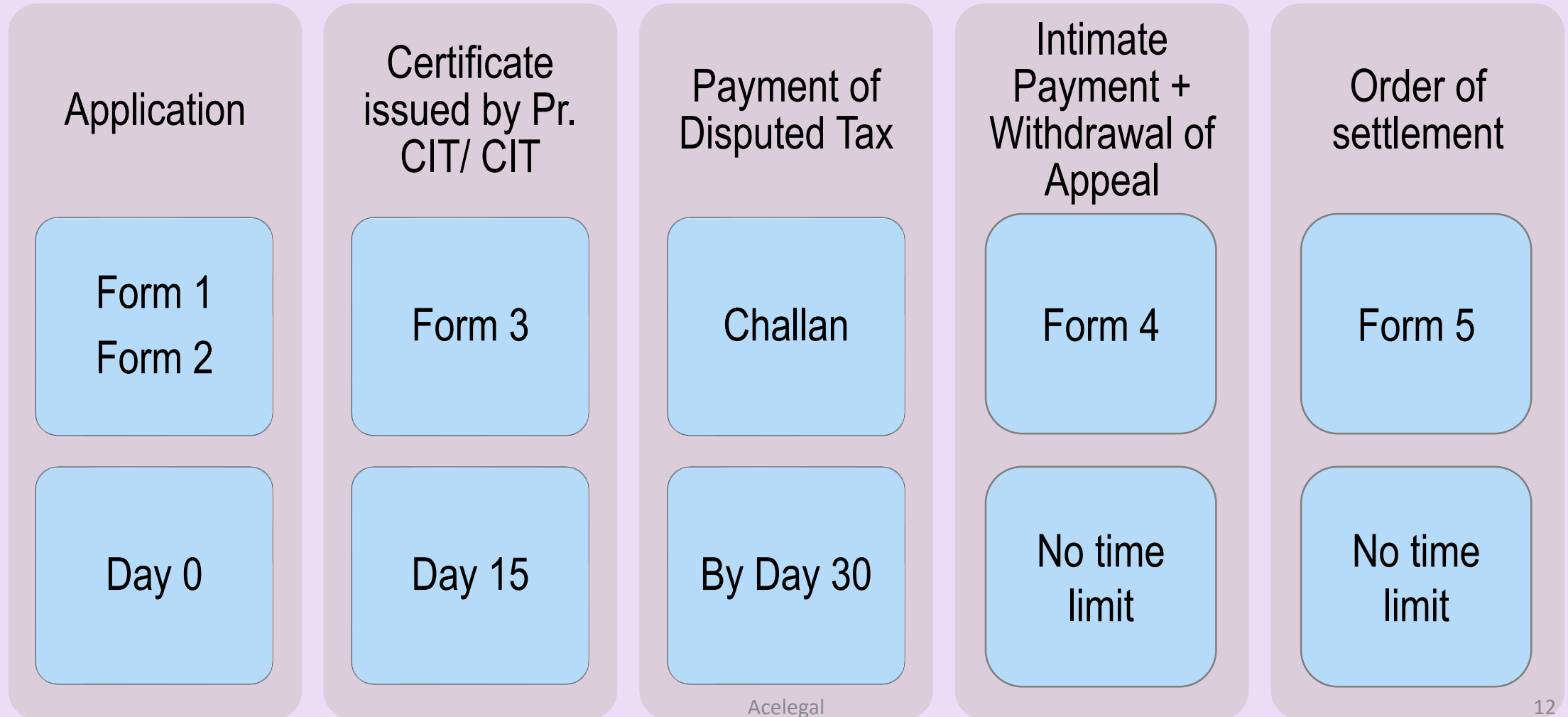
- Disputes pending before AAR
- If order of AAR has not determined total income
- Assessment made u/s. 143(3) / 144 / 153A / 153C on the basis of search initiated u/s. 132 / 132A if the amount of disputed tax exceeds Rs.5 crores
- Assessment is cancelled by Appellate Authority with a direction that assessment is to be framed de novo.
- Writ has been filed against a notice issued u/s. 148 and no assessment order has been passed

- Settlement of penalty appeal only when the quantum appeal is still pending.
- Application for waiver of interest u/s. 234A/B/C pending before the competent authority
- Wealth tax, security transaction tax, commodity transaction tax and equalisation levy

CONDITIONS FOR FILING DECLARATION

- Matters covered shall be pending
 - Time for filing appeal had not expired
- 
- On or before 31/01/2020
- With respect to one order, the assessee must chose to settle all issues (no settlement of part issues)
 - Quantum + Penal appeal for same AY on same issue = Disclose in one declaration form

PROCEDURE



- “**Disputed income**” – income disputed in appeal before the appellate forum
- “**Disputed tax**” = income-tax including surcharge and cess payable by the appellant under the provisions of the Income-tax Act, 1961.
- “Disputed tax” includes tax related to TDS and TCS which are disputed and pending in appeal.

Computation of Disputed Tax :

Cases	Disputed Tax means
Appeal / WP / SLP is pending before an appeal forum	Amount of Tax payable if such appeal was to be decided in favor of revenue
Order in appeal / WP has been passed and time for filing further appeal has not expired	Amount of tax payable after giving effect to the order so passed
Order has been passed by AO and time for filing appeal has not expired	Amount of tax payable in accordance with such order

Cases	Disputed Tax means
<p>Objection filed is pending before DRP u/s 144C as on 31/01/2020</p>	<p>Amount of tax payable if the DRP was to confirm the variations proposed in the draft order.</p>
<p>DRP has issued direction u/s 144C and the AO has not passed final order as on 31/01/2020</p>	<p>Amount of tax payable as per the assessment order to be passed by the AO</p>
<p>Application for revision under section 264 is pending as on the 31.01.2020</p>	<p>Amount of tax payable if such application for revision was rejected</p>

Cases	Amount of Disputed tax payable
Enhancement notice on or before 31/01/2020	Disputed tax to increase by the amount of tax pertaining to enhancement issues
Where rectification petition pending before AO	Disputed tax to be calculated after giving effect to the rectification order
Where both quantum and penalty appeal is pending	Details of both appeal to be given. Pay relevant percentage of disputed tax only.
Protective addition where substantive addition is settled under scheme	No tax on protective addition. AO to pass rectification order deleting Protective addition

- **Credit for taxes paid** before filing of declaration shall be available to the assessee.
- **Disputed issue in appeal** = Interest and penalty will be waived
- **Undisputed issue in appeal** = Tax, interest and penalty shall be payable

Options with Assessee :

Situation	Option
<p>Example : AY 2015-16</p> <p>Appeal pending before ITAT</p> <p>(a) Assessee's appeal – 2 issues</p> <p>(b) Departmental appeal – 1 issue</p>	<p>Settle</p> <p>(i) Assessee's appeal OR</p> <p>(ii) Departmental appeal OR</p> <p>(iii) Both</p>
<p>Where the dispute in relation to an assessment year relates to reduction of MAT credit or reduction of loss or depreciation</p>	<p>(i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and c/f MAT credit or loss or depreciation</p> <p style="text-align: center;">OR</p> <p>(ii) to c/f the reduced tax credit or loss or depreciation.</p> <p>CBDT will prescribe the manner of calculation in such cases.</p>

Example : C/f of loss

Computation of income as per assessee	Amount
Loss from Business	(Rs,200,000/-)
Income from Other Sources	Rs.50,000/-
Total Loss	(Rs.150,000)

Computation of income as per assessment order	Amount	Amount
Loss from Business	(Rs,200,000/-)	Rs.300,000/-
Add : Disallowance of expenses	Rs.500,000/-	
	<hr/>	
Income from Other Sources		Rs.50,000/-
Total income		Rs.350,000

- **Option with Assessee :**

1) Pay Tax on disallowance of expenses= Rs.500,000/-
and c/f business loss of Rs.150,000/-

OR

2) Pay tax on total business income calculated at Rs.300,000/- by AO
And don't c/f business loss

Amount of Disputed tax payable by the assessee under the Scheme

A) Where appeal is filed / to be filed by the Assessee :

Nature of tax arrear	Amount Payable (If declaration made till 30/06/2020*)	Effect
Search cases involving dispute relating to tax, interest, penalty, etc. (if the disputed tax does not exceed Rs.5 crores)	125% of Disputed Tax	Penalty and interest waive of. (However, when 25% of disputed tax exceeds the aggregate of interest and penalty, the excess shall be ignored)
Other than search cases where dispute involves tax, interest, penalty, etc.	100% of Disputed Tax	Penalty and interest waive of.

A) Where appeal is filed / to be filed by the Assessee :

Nature of tax arrear	Amount Payable (If declaration made till 30/06/2020*)	Effect
Where dispute relates only to interest, penalty or fee	25% of disputed interest, penalty or fee	Balance 75% would be waived of Immunity from prosecution
Issue where assessee got relief in earlier year (not reversed by HC / SC)	50% of disputed tax	Penalty waived of

B) Where appeal is filed by Income Tax Department :

Nature of tax arrear	Amount Payable (If declaration made till 30/06/2020*)
Appeal / WP / SLP is filed by the Department on any issue before the appellate forum	50% of Disputed Tax

*New date 30/06/2020 = Announced by the Finance Minister in a press conference on 24/03/2015

If amount paid is more than Disputed Tax = Eligible for refund

Consequences of filing declaration under the Scheme

Situation	Effect
Appeal pending before CIT(A) / ITAT	“Deemed withdrawn of appeal” from the date of certificate issued in Form 3
Appeal before the Appellate forum Writ petition before the High Court / Supreme Court	(i) Declarant to “withdraw” such appeal or WP after issuance of certificate in Form 3 by CIT / Pr. CIT
Declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof	(i) Furnish proof of withdrawal along with the intimation of payment in Form 4

Situation	Effect
After issuance of certificate, payment is not made	Declaration will be null and void
If declaration is rejected by Pr. CIT / CIT	No appeal be filed against the order of Pr. CIT / CIT before ITAT /High Court / Supreme Court
Where appeal / WP / SLP was filed by the Department	The department shall withdraw such appeal / writ / SLP on intimation of payment
Assessee settles TDS liability arising as per section section 40(a)(i)/(ia)	Expenditure allowed as deduction in the year in which the tax was required to be deducted

Situation	Effect
<u>Two Appeals pending : (Payer)</u> (i) Order u/s. 201 = non-deduction of TDS	Dispute settled under scheme
(ii) Order u/s. 143(3) = disallowance u/s. 40(a)(ia)	Effect = No tax to be paid on disallowance
(iii) Order u/s. 143(3) = contain other issues	Disputed Tax to be paid on “other issues” only
<u>Person receiving an income on which Payer does not pay TDS</u>	
(i) Person receiving income	Settles appeal w.r.t. income not subject to TDS
(ii) Payer = order passed u/s. 201 (non deduction of TDS)	Effect : Only interest u/s. 201(1A) to be paid

Situation	Effect
Impact of addition accepted in scheme in one AY on future AYs.	Revenue cannot take a stand that the additions have been accepted by the appellant for addition in future AYs



| Email: bharat@acelegal.net | | www.acelegal.net.in |

Mumbai

D-201, 2nd Floor, Tower no. 3, Vashi Station Complex, Vashi, Navi Mumbai
Tel :022-27812781 / 82

Delhi

B-27, Front Block, Sagar Apartments, 6-Tilak Marg, New Delhi – 110 001
Tel :

Adv. Ritika Agarwal (Senior Partner)
Adv. Bharat Agarwal (Managing Partner)
Associates

CA Sneha Sarbhushan
Adv. Sanjuna Sudhakaran
Adv. Salman Balbale
Adv. Girish Mhatre
Adv. Aayushi Rizwani

Adv. Akarsh Garg
Adv. Mansi Garg
Adv. Pooja Mourya
Adv. Saloni Paithankar

Disclaimer

- ***THIS PRESENTATION IS MEANT SOLELY FOR THE PURPOSE OF INFORMATION AND NOT FOR THE PURPOSE OF ADVERTISING.***
- ***ACELEGAL DO NOT INTEND TO SOLICIT CLIENTS THROUGH THIS PRESENTATION.***
- ***ACELEGAL DO NOT TAKE THE ANY RESPONSIBILITY OF DECISION TAKEN BY ANY PERSON SOLELY BASED ON THE INFORMATION PROVIDED THROUGH THIS PRESENTATION.***