

## **MEMORANDUM SUBMITTED TO SHRI VIRENDRA SINGH,I.R.S., PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX (BIHAR AND JHARKHAND) ON “VIVAD SE VISHWAS TAK SCHEME, 2020”**

The Government of India has announced to bring a scheme wherein disputes related to income-tax matters can be resolved out of statutory channel of appeals/dispute resolution mechanism. The requisite legislation is underway and is expected to be enacted very shortly. The Bill has been passed by the Lok Sabha on 04.03.2020 with some amendments and the same is being introduced in Rajya Sabha. The Bill is likely to be passed by the Rajya Sabha also that too without further amendments.

The text of the Bill (as passed by the Lok Sabha) is now available in the public domain and is a subject matter of intense discussion

People, at large, have many expectations from this Scheme and they are hopeful to get rid of very old and long pending disputes by resorting to make an application in Government, more specifically the Income-tax Department, is also willing to provide the taxpayers much awaited relief provided they fit in the contours of the Scheme. However, there are certain issues which are genuinely creating apprehension in the minds of prospective beneficiaries. These concerns need to be addressed and a clarification from the Government's side will help in clearing the air and shall be highly appreciated. Some of such concerns are being listed as under for your kind and sympathetic consideration.

1. The timeline of 31.03.2020 appears to be difficult to be adhered to by the taxpayers. The Bill has been passed by the Lok Sabha only. It is yet to be passed by the Rajya Sabha (Likely to be introduced today, i.e., on 06.03.2020). After that the same will be assented by the President and notified in the gazette. By that time it will be 10th of March. After that Rules will be framed and notified. Even if first declaration is filed on 16th of March, it will not be possible to get a certificate under section 55 (1) and pay the tax by 31.03.2020 because designated authority has been given fifteen days' time to issue the certificate. (Section-3)
2. Second and third proviso to section 3 contemplate situation wherein the subject matter of a pending appeal is covered by the judgment of a higher forum which has not been reversed by the High Court or Supreme Court, as the case may be. But the mechanism to come to such conclusion has not been provided. In other words, who will be the authority. to decide that the appellant's case is covered by the judgment.

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3. In case of matters pending before HC/SC, declarants will be at a loss because it will not be very easy to get an order of withdrawal by these Courts and file such order with proof of making payment by 31.03.2020 or even after that because payment has to be made within next fifteen days of issue of certificate under section 5(1) by the designated authority. More time should be given to file order of withdrawal obtained from HC/SC.
4. The procedure that will be followed in cases where appeal has been filed by any Income-tax authority as to filing of declaration, waiver of rights, etc. has not been prescribed.
5. The manner in which amount payable in cases where any income-tax Authority has filed an appeal will be calculated will be prescribed in Rules whereas in case of appeal filed by the assessee, it will be done in the manner prescribed in the Act itself. This creates disparity between two classes of declarants. Also, absence of settled procedure of calculation of amount payable is creating apprehension in the minds of prospective declarants.
6. The determination of amount payable will be the prerogative of the designated authority. If there is a difference of opinion between the declarant and the designated authority, there is no provision for resolution thereof. A mechanism for redressal of grievance requires to be put in place.
7. There are cases wherein total demand, disputed tax as well but the litigation as disputed interest, has been deposited is on. In these cases whether:
  1. Amount deposited will be adjusted against (3) amount determined to be payable by the declarant because no express provision 103 such adjustment has been made. Adjustment between two heads of account will require some process to be adopted. Section 5 (2) provides payment by the declarant after issue of certificate. In such a situation, how payments made in past, that too before the Act comes into effect, will be taken into consideration.
8. Section 6 envisages situations wherein the cases withdrawn will be restored. But case permitted to be withdrawn by HC/sc will not be automatically restored nor will be allowed to be restored. In such a situation, a declarant's interest will be jeopardised
  - he will lose the right as well as opportunity to contest;
  - he will end up paying disputed tax as well as interest which otherwise would have been restricted to disputed tax only. Some safeguard is required to be put in place in this regard.

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**Date : 06-03-2020**

**Place : Patna**