

# **INCOME DECLARATION SCHEME, 2016**

## **AN ANALYTICAL VIEW**

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### **INTRODUCTION:**

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The Income Declaration Scheme which commenced from 01/06/2016 and ending on 30/09/2016 has been introduced to give an opportunity to the assessee to pay tax on the income which was not shown in the return of income for assessment year prior to A.Y. 2017-18. It can also be seen as an opportunity to the assessee to convert black money into white money. There was a lot of confusions in the scheme but CBDT by issuing FAQ in the form of circulars has acted very quickly and swiftly to remove those confusions.

### **SALIENT FEATURES OF THIS SCHEME IN BRIEF:**

- 01) The assets declared under this scheme shall be exempted from Wealth Tax.
- 02) There will be immunity from Prosecution under Income Tax Act and Wealth Tax Act.
- 03) Immunity from Benami Transactions (Prohibition Act, 1988) is also granted for such declaration subject to such declaration.
- 04) The assets declared under this scheme shall be valued as per Fair market value of the assets as on 01/06/2016 irrespective of its date of acquisition. For determination of fair market value, the registered valuer's certificate will be required. Although the said certificate is not required to be enclosed with the declaration form. But the assets should be declared on the basis of valuation as on 01/06/2016 done by the registered valuer.
- 05) The information in respect of declaration made is confidential as in the case of return of income filed by assessee and information contained in the declaration shall not be shared with any other law enforcement agency. The information will also not be shared within the Income Tax Department for any investigation in respect of a valid declaration as there will be no enquiry in respect of income declared under this scheme.
- 06) Credit for tax deducted shall be allowed only in those cases where the related income is declared under the scheme and such TDS has not been claimed in the return of income previously.



- 07) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income for which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed income of any other previous year.
- 08) If Search/Survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, the assessee can declare such income under this scheme.
- 09) A person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142(1), 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant, the certificate issued by the Pr. Commissioner/Commissioner of Income Tax in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been closed. Therefore, in most of the cases even if the assessee desire to make declaration in case of Capital Gain from sale of Penny Shares, they cannot make declaration as notice u/s 142(1)/143(2) or 148 has already been served.
- 10) The declarant will be liable for capital gains under the Income Tax Act on sale of such asset in future. As per the current provisions of the Income Tax Act, the Capital Gain is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value, the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of fair market value for the purposes of the Scheme).
- 11) The circle rate or stamp duty value has no relevance under this scheme for the purpose of determination of Fair Market Value of the immovable property declared under this scheme.
- 12) Various Forms under the Scheme -
- a. **Form 1** - For making declaration under the scheme.
  - b. **Form 2** - Acknowledgement of Form - 1 by Jurisdictional Pr. CIT/CIT.
  - c. **Form 3** - Proof of payment of Tax and Penalty.
  - d. **Form 4** - Certificate accepting the declaration.



**13)** The tax payment schedule under the scheme is as under -

(i) a minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016; (ii) a further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017; and (iii) the balance amount to be paid on or before 30.9.2017.

**REASON FOR LACK OF INTEREST TOWARDS THE SCHEME:**

This scheme is not totally assessee friendly and in past since the Assessee have availed benefit of various schemes by converting their black money into white money by paying a reasonable amount of tax, this scheme does not give such benefit. As soon as the scheme was introduced, the assessee had made up their mind to convert their black money into white but when they knew the provisions of this scheme, they have dropped the idea or at least postponed the idea to declare undisclosed income under this scheme, inspite of historic publicity of the scheme by the Government of India. There are mainly two main reasons for lack of interest towards the scheme as under -

**1)** The high tax rate of 45% (Tax-30%, PLUS Surcharge @ 25% of Tax, PLUS Penalty @ 25% of Tax).

As regards the tax rate is concerned it is not as high as it is being criticised by the tax payers and the tax experts. The tax rate at present including surcharge and cess comes to 34% and hence there is difference of only 3.5% as tax rate and surcharge in this scheme comes to 37.5%. By charging extra 3.5% under this scheme, the Central Government is giving benefit of interest u/s 234B and 234C which certainly will be more than 3.5%. The balance 7.5% is charged in respect of penalty in place of existing penalty of 100% u/s 271(1)(c) of the Income Tax Act, 1961 for concealment of income. However, the maximum penalty u/s 271(1)(c) is 300%. Against a minimum penalty of 100%, the Government is charging only 7.5%. This is the biggest benefit. So the tax rate under this scheme is not very high looking at other aspects.

**2)** The immunity from other tax laws is not in the scheme.

The income declared under this scheme may have adverse impact under other provisions of the law such as Company Law, FEMA, VAT, Sales Tax, Service Tax, Money Laundering etc. Therefore the tax payers are having a fear for repercussion that may happen under other Acts.



## **REASON FOR INTEREST IN THE SCHEME:**

The following categories of tax payers may have interest in respect of their undisclosed income or assets under this scheme -

- 1) Those who have failed to declare any income or assets previously either mistakenly or otherwise but now willing to declare it.
- 2) Those who had acquired Jewellery and immovable property etc., out of undisclosed income and such assets were acquired long back.
- 3) Those who have massive wealth and cash and wants to buy peace and avoid litigation.

## **PRESSURE ON THE TAX EVADERS/PAYERS:**

The tax evaders/payers should look into various other aspects on the basis of which they should opt for this scheme in respect of his undisclosed income or assets. It seems that the entire Government machinery is putting their best efforts to make this scheme successful. The insertion of section 197(c), warning to tax evaders by the Hon'ble P.M. Shri Narendra Modi and officers of the department, huge volumes of data under the possession of the Income Tax Department in respect of undeclared transactions are some of the key issues to be kept in mind while taking a decision as to whether to opt for the scheme or not. The pressure has been built upon the tax payers due to certain clauses in the scheme and also stiff attitude of the Central Government as under -

- 1) The most important issue in this scheme is section 197(c) of the Finance Act, 2016 which states that irrespective of year of acquisition of any assets if it is undisclosed, it shall be deemed to be income in the year in which notice is issued and the deemed income will be determined on the fair market value of such assets in the year of issue of notice.

The section 197(c) of the Finance Act, 2016 is reproduced as under -

*“(c) where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under this Scheme,—*

*(i) such income shall be deemed to have accrued, arisen or received, as the case may be; or*



*(ii) the value of the asset acquired out of such income shall be deemed to have been acquired or made,*

*in the year in which a notice under section 142, sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and the provisions of the Income-tax Act shall apply accordingly.”*

This is the most draconian provision introduced in the Finance Act, 2016. Across the country, the tax experts are criticising this provision as it is contrary to statutory time limits prescribed in the Income Tax Act. However, a writ petition may be filed against this provision. In this connection, The CBDT has issued Circulars No. 24/2016 dated 27.06.2016 and Circular No. 27/2016 dated 14/07/2016 which clarifies that since the scheme contained in Chapter IX of The Finance Act, 2016 is a later law in time, the provisions of the scheme shall prevail over provisions of earlier law.

- 2) The Hon'ble Prime Minister of India Shri Narendra Modi has very strongly warned the tax payers in 'MAAN KI BAAT' few days back that those having undisclosed income or assets would face dire consequences if they don't come clean under this scheme.
- 3) All the officers of the department are also warning the tax payers (evaders) to face the consequences after the closure of the scheme if they don't come clean under this scheme.
- 4) The Government of India has made it their prestige issue to make this scheme successful due to which tax payers would face the consequences after the closure of the scheme.
- 5) The Central Government have collected a large number of data in respect of Share Capital, Long Term Capital Gain from Penny Shares, Tax Deducted at Source but no return filed by the assessee, non-mention of PAN on various transactions, registration details of immovable properties from registrars etc. They are planning on intimating to the assessee about such transactions so that he can come clean under this scheme by paying tax.

#### **FUTURE COURSE OF ACTION:**

The tax payers should always look at the future course of action to be taken by the department after the closure of this scheme. The tax payers are at present not thinking about the same. The Income Tax Authorities can take some of the following steps on the tax evaders after the scheme is over -



- 1) The department may conduct survey, search and seizure operations on the assessee very extensively who have undisclosed income or assets under their possession.
- 2) The tax officials can issue notice u/s 131 on the tax payers in respect of their undisclosed assets or income on the basis of data available with them.
- 3) If the tax officials finds that the assessee has not declared his undisclosed income or assets inspite of opportunity provided to him, and if such income is detected later on, a heavy penalty may be imposed on him in respect of his undisclosed income.
- 4) There are likely chances of initiation of prosecution proceedings on the tax payers if after the closure of this scheme it is found that the tax payer is still having undisclosed income or assets.

#### **ILLUSTRATIONS:**

Since the Income Tax Department is making so much publicity of this scheme, I will give only some important aspects and some illustrations to know this scheme properly and correctly.

#### **No.1:**

If a person has purchased a plot of land in the Assessment Year 2010-11 amounting to Rs.20,00,000/- but failed to show the same in his balance sheet. If it could be detected by the Income Tax Department that the said person has concealed the income of Rs.20,00,000/- before the commencement of this scheme, the said person could be liable to pay tax and interest u/s 234B and 234C of Rs.11,25,000/- (appx.). Further he could have to pay minimum penalty of Rs.6,00,000/- (appx.). The total liability would be Rs.17,25,000/- (appx.). He would also be subject to pay wealth tax and interest on the market value and also wealth tax penalty. Hence, the total liability would be close to Rs.20,00,000/- that is the cost of the asset acquired. But now under this scheme, his tax liability would be Rs.15,75,000/- (45% of 35,00,000) if the Fair market value of the said plot is taken at Rs 35,00,000/-. If the Fair Market Value is lower than Rs.35,00,000/- then the Liability would be lower.

#### **No.2:**

If the person referred in above illustration does not opt for this scheme, if the taxman comes to know about his concealed income, the tax effect will be as under -



45% tax on Rs.35,00,000/- being fair market value i.e. Rs.15,75,000/- plus there are chances of 200% penalty as per new penalty provisions which comes to Rs.31,50,000/-. Thus total tax effect would be Rs.47,25,000/- on the plot having fair market value of Rs.35,00,000/-.

### **LITIGATION IN RESPECT OF TIME BARRING PROVISION:**

Some of the experts are of the view that without making the corresponding amendment in the Income Tax Act, how the Income Tax Department can issue notice under various sections for charging tax on assets and income outside the time barring period of 6 years? In my personal view, if any undisclosed assets or income is found beyond 6 years after the closure of this scheme, the Income Tax Officials are required to issue notice u/s 143(2), 142(1) or 148 only after furnishing of Return of Income asking the assessee to submit the source of the income or assets acquired beyond 6 years and if the assessee fails to submit, the said assets or income shall be deemed to be the income of the year in which notice was issued. There is no need to issue notice for previous year preceding 6 years. Such income will be deemed to be income of the year in which notice has been issued.

### **CONCLUSION:**

It appears that the Central Government is now taking positive action and trying to solve the problems of the assessee in regard to this scheme. Although, there are certain ambiguity, it may be now hoped that the same will be solved very soon. Those who will have black money in their possession after the end of this scheme, will have to face the consequences as told by the Hon'ble Prime Minister of India, Hon'ble Finance Minister of India and other Superior Officials of the Revenue Department. It is true that this scheme is not going to solve the basic problems of the assessee in respect of undisclosed income of the assessee and excepting very few assessee, the tax payers cannot come fully clean even after declaring under this scheme because it will be very difficult for the assessee to pay tax on such huge amount as there is already liquidity crunch in the market. It has been difficult for the assessee to pay Advance Tax in time and even Self-Assessment Tax has not been paid in time in recent years. So, how the assessee can afford to pay such huge tax on undisclosed income or assets. The tax payers are not able to repay bank loans so how they can afford to pay huge tax under this scheme. The relaxation in due dates for payment of tax by CBDT may also not be of much help. At the other side, the Government has made it a prestige issue and if the scheme fails to get the required success, it will be difficult for the common assessee to have peace in life after the closure of this scheme.

