

# **Income Declaration Scheme, 2016**

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## **THE INCOME DECLARATION SCHEME, 2016**

### **SALIENT FEATURES**

- The Finance Minister, in his budget speech proposed a limited period Compliance Window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions.
- The Income declaration scheme, 2016 is one of the schemes introduced by the Finance Bill 2016.
- The scheme provides for declaration by any person of his undisclosed income by paying tax at 30 %, surcharge at 7.5% and penalty at 7.5% which is a total of 45% of the undisclosed income.
- The surcharge levied at 7.5% of undisclosed income will be called KrishiKalyan surcharge to be used for agriculture and rural economy.
- A declaration under the scheme may be made in respect of any undisclosed income (i.e. any income chargeable to Income-tax in respect of undisclosed income of any financial year upto 2015-16 for which the declarant had, either failed to furnish a return u/s 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the scheme or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.)
- Any income in the Form of Investment in any asset located in India may be declared under the Scheme provided such asset is acquired from such undisclosed income. In such cases, the fair market value of such asset as on 1.06.2016 computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 shall be deemed to be the undisclosed income.
- There will be no scrutiny or enquiry regarding income declared in these declarations under the Income Tax Act or the Wealth Tax Act and the declarants will have immunity from prosecution. Immunity

from Benami Transaction (Prohibition) Act, 1988 is also provided subject to certain conditions.

- The scheme shall remain in force for a period of four months from 1st June 2016 and remain open till 30th September 2016.
- The declaration under the scheme shall be made in Form 1 as prescribed under Rule 4 of the Income Declaration Scheme Rules, 2016.
- The declaration shall be furnished:
  - Electronically under digital signature
  - Through transmission of data in the form electronically under electronic verification code; or
  - in print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.
- After such declaration has been furnished, the jurisdictional Principal CIT/CIT will issue an acknowledgement in Form 2 to the declarant within 15 days from the end of the month in which declaration under Form 1 is made.
- The declarant shall furnish proof of payment made in respect of tax, surcharge and penalty to the jurisdictional Principal CIT/CIT in Form 3 after which the said authority shall issue a certificate in Form 4 of the accepted declaration within 15 days of submission of proof of payment of tax, surcharge and penalty by the declarant.
- As per the provisions of the Scheme, no declaration can be made in respect of any undisclosed income chargeable to tax under the Income-tax Act for assessment year 2016-17 or any earlier assessment year in the following cases:
  - where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer;
  - where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under section 143(2) for the assessment year relevant to such previous year or a

notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired;

- where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.
  - in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- The following person shall also not be eligible for making a declaration under the scheme:
- A person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to the conditions specified in the Scheme.
  - A person in respect of whom proceedings for prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988 are pending;
  - any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992
- A declaration shall be void and shall be deemed to have never been made if:
- The declarant fails to pay tax, surcharge and penalty before 30<sup>th</sup> November, 2016
  - Where the declaration is made by misrepresentation or suppression of facts of information.

- An invalid declaration would invite stringent consequences of penalty and prosecution under the Act, in addition to taxes and any taxes paid under the scheme becomes non-refundable.
- Where a valid declaration has been made, the following consequences will follow:
  - The amount of undisclosed income declared shall not be included in the total income of the declarant for any assessment year under the Income-tax Act;
  - Nothing contained in any declaration shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957;
  - Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the *benamidar* shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30<sup>th</sup> September, 2017;
  - The value of asset declared in the declaration shall not be chargeable to wealth-tax for any assessment year or years.
  - Declaration of undisclosed income will not affect the finality of completed assessments. A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

## **Scheme presented as Frequently Asked Questions- ICAI**

- **Contributed by CA. G. Sekar**

### **1. How was the Scheme introduced?**

The Scheme was introduced through the Finance Act, 2016 by a new Chapter IX of the Act.

### **2. When will the Scheme come into force?**

The Scheme shall come into force w.e.f. June 1, 2016.

### **3. Who are the persons eligible to declare Income under the Scheme?**

The following persons as defined under section 2(31) of the Income-tax Act, 1961 are eligible to declare Income under the Scheme:

- (a) An Individual,
- (b) A Hindu Undivided Family,
- (c) A Company,
- (d) A Firm,
- (e) An Association of Persons/ a Body of Individuals, whether incorporated or not,
- (f) A Local Authority and every Artificial Juridical Person

### **4. What period of Income can be declared under the Scheme?**

The eligible person may make declaration of any Income chargeable to tax under the Income-tax Act, 1961 for any Assessment Year upto Assessment Year 2016-17.

### **5. What is the last date for filing declaration?**

Last date for filing declaration is September 30, 2016.

## **6. Who is a “declarant”?**

Declarant is the person making the declaration under section 183(1) of the Finance Act, 2016 pertaining to the Income Declaration Scheme, 2016.

## **7. What are the conditions to be satisfied by the Declarant for making declaration under the Scheme?**

The following are the conditions to be satisfied by the Declarant for making Declaration under the Scheme –

- (a) The declarant has failed to furnish Return of Income under section 139 of the Income-tax Act, 1961,
- (b) The declarant has failed to disclose Income chargeable to tax in a Return of Income furnished by him under the Income-tax Act, 1961 before the date of commencement of this Scheme,
- (c) The declarant had Income chargeable to tax which has escaped assessment by reason of the omission / failure on the part of such person to furnish a return under the Income-tax Act, 1961 or to disclose fully and truly all material facts necessary for the assessment or otherwise.

## **8. To whom the Declaration shall be filed?**

The Declaration shall be made to the Principal Commissioner / Commissioner.

## **9. Under what form the Declaration shall be made?**

The Declaration shall be made in Form 1 prescribed under The Income Declaration Scheme Rules, 2016.

## **10. Who are the persons not eligible to make the Declaration?**

The following persons are not eligible to make the declaration under the Scheme –

- (1) Person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

(a) such an order of detention , being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board, or

(b) such Detention Order, being an order to which section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under section 9(3), or on the report of the Advisory Board under section 8, read with section 9(2) of the said Act, or

(c) such Detention Order, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under section 12A(3), or on the basis of the report of the Advisory Board under section 8, read with section 12A(6), of the said Act, or

(d) such Detention Order has not been set aside by a Court of competent jurisdiction.

2. Any person in relation to prosecution for any offence punishable under Chapter IX/ XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988.

3. Person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

4. Any person in relation to any Undisclosed Foreign Income and Asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

5. Any person in relation to any Undisclosed Income chargeable to tax under the Income-tax Act for any Assessment Year upto 2016-2017 for which —



(a) Notice under section 142 / 143(2) / 148 / 153A / 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer, or

(b) Search has been conducted under section 132 or requisition has been made under section 132A or Survey has been carried out under section 133A of the Income-tax Act in a previous year and a Notice under section 143(2) for the assessment year relevant to such previous year or a Notice under section 153A / 153C for Assessment Year relevant to any previous year prior to such Previous Year has not been issued and the time for issuance of such notice has not expired, or

(c) Any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 / 90A of the Income-tax Act in respect of such Undisclosed Asset.

#### 11. How to determine the total Undisclosed Income?

Particulars	Amount
1. Value of Immovable Property	XXXX
2. Value of Jewellery	XXXX
3. Value of Artistic Work	XXXX
4. Value of Quoted Shares and Securities	XXXX
5. Value of unquoted Equity Shares	XXXX
6. Value of unquoted Shares and Securities other than Equity Shares	XXXX
7. Value of any other Assets	XXXX
8. Total Value of the Assets declared –	XXXX
<b>Less:</b>	
(a) Any of the asset acquired above out of the Income already assessed under the Income-tax Act,	(XXXX)
(b) Value of Investment made in the Asset during the Previous Year relevant to the Assessment Year for which a Notice under section 142 / 143(2) / 148/ 153A / 153C of the Income-tax Act is issued.	(XXXX)
	XXXX
<b>Add:</b> Undisclosed Income not kept in the form of investment in Assets.	
<b>Total Undisclosed Income</b>	XXXXX

#### 12. How the tax payable is computed?

<b>Description</b>	<b>Value</b>
30% of Declared Income (A)	XXX
<b>Add:</b> Surcharge (KrishiKalyan Cess) @ 25% of (A) [Section 184] (7.5% of Declared Income)	XXX
<b>Total Tax</b>	<b>XXX</b>
<b>Add:</b> Penalty @ 25% of (A) [ Section 185] (7.5% of Declared Income)	XXX
<b>Total Sum Payable</b>	<b>XXX</b>

**13.How to disclose the above income? Whether it has to be disclosed year-wise or as a consolidated sum?**

As per Annexure to Form 1, the amount of Undisclosed Income pertaining to each Assessment Year has to be disclosed separately for each one of the following source –

- (a) House Property,
- (b) Business Income,
- (c) Professional Income,
- (d) Commission Income,
- (e) Interest Income etc.

**14.How to determine the value of Immovable property and what are the details to be furnished in relation to the property?**

- (a) Nature of Property (land/Building/Flat etc.),
- (b) Address of the property,
- (c) Name(s) under which held,
- (d) Date of acquisition,
- (e) Total acquisition cost,
- (f) Value as estimated by the Registered Valuer on 1st June, 2016,
- (g) Value to be adopted = Higher of (e) or (f)

**15. How to determine the value of Bullion, Jewellery or Precious Stones and what are the details to be furnished?**

- (a) Details of Bullion, Jewellery or Precious Stones,
- (b) Date of Acquisition,
- (c) Cost of Acquisition,
- (d) Value of above Bullion, Jewellery or Precious Stones on the basis of Valuation Report by the Registered Valuer as on June 1, 2016,
- (e) Value to be adopted = Higher of (c) or (d)

**16. How to determine the value of Archaeological Collections, Drawings, Paintings, Sculptures or any work of art (Artistic Work) and what are the details to be furnished?**

- (a) Nature of artistic work,
- (b) Name(s) under which held,
- (c) Date of acquisition,
- (d) Cost of acquisition,
- (e) Value of artistic work as estimated by the Registered Valuer,
- (f) Value to be adopted = Higher of (d) or (e)

**17. How to determine the value of Quoted Shares and Securities and what are the details to be furnished?**

- (a) Description of Security/Share -
  - Name of Issuer,
  - Number of Securities/Shares,
  - Type of Security/Share,
- (b) Recognised Exchange where quoted,

(c) Name(s) under which held,

(d) Date(s) of acquisition,

(e) Cost of acquisition,

(f) Value as determined under Rule 3(1)(c)(I)(ii) i.e., Price determined by taking –

<b>Situation</b>	<b>Price</b>
If the Shares and Securities are traded on a Recognised Stock Exchange as on the June 1, 2016	Average of the lowest and highest price as on June 1, 2016
If the Shares and Securities are not traded on a Recognised Stock Exchange as on the June 1, 2016	Average of the lowest and highest price on a Recognised Stock Exchange on a date immediately preceding June 1, 2016 when they were traded

(g) Value to be adopted = Higher of (e) or (f)

**18. How to determine the value of Unquoted Shares and Securities and what are the details to be furnished?**

(a) Description of Security/Share -

- Name of Issuer,
- Number of Securities/Shares,
- Type of Security/Share,

(b) Name(s) under which held,

(c) Date(s) of acquisition,

(d) Cost of acquisition,

(e) Value as determined under Rule 3(1)(c)(II)(ii) i.e.,–

<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
Book value of all the Assets in the Balance		

Sheet (other than Bullion, Jewellery, Precious Stone, Artistic Work, Shares, Securities and Immovable Property)	XXX	
<b>Add:</b> Fair Market Value of Bullion, Jewellery, Precious Stone, Artistic Work, Shares, Securities and Immovable Property as determined under this rule	XXX (XXX)	
<b>Less:</b> Income-tax paid <b>less</b> amount of Income-tax refund	(XXX)	
<b>Less:</b> Unamortised amount of Deferred Expenditure which does not represent the value of any asset;		
<b>ASSETS</b>	<b>NET (A)</b>	<b>XXX</b>
Book Value of Liabilities shown in the Balance Sheet	XXX (XXX)	
<b>Less:</b> Paid-Up Capital in respect of Equity Shares	(XXX)	
Amount set apart for payment of Dividends on Preference Shares and Equity Shares	(XXX)	
Reserves and surplus, by whatever name called, even if the resulting figure is negative, except those set apart towards Depreciation	(XXX)	
Excess Provision for Taxation (i.e. excess provision over the tax payable on Book Profits), - other than Income Tax paid less income Tax Refund	(XXX) (XXX)	
Provision for meeting Unascertained Liabilities		
Contingent Liabilities (except Arrears of Dividends on Cumulative Preference Shares)		
<b>NET (L)</b>	<b>LIABILITIES</b>	<b>XXX</b>
<b>Total Paid-up Equity Share Capital as shown in the Balance Sheet (PE)</b>		<b>XXX</b>
<b>Paid-up Value of Equity Shares (i.e. Value of Shares transferred) (PV)</b>		<b>XXX</b>
<b>Fair Market Value of Unquoted Equity Shares [(A – L) X PV]/PE</b>		<b>XXX</b>

(f) Value to be adopted = Higher of (d) or (e)

**19. How to determine the value of Unquoted Shares and Securities (other than Equity Share in a Company) and what are the details to be furnished?**

(a) Description of Security/Share -

- Name of Issuer,
- Number of Securities/Shares,
- Type of Security/Share,

(b) Name(s) under which held,

(c) Date(s) of acquisition,

(d) Cost of acquisition,

(e) Price that the Share/Security shall ordinarily fetch if sold in the Open Market on June 1, 2016 on the basis of the valuation report obtained by the Declarant from a Registered Valuer,

(f) Value to be adopted = Higher of (d) or (e)

**20. How to determine the value of Interest of a person in a Partnership Firm / Association of Person / Limited Liability Partnership?**

Net Asset of the Firm / Association of Persons / Limited Liability Partnership on June 1, 2016 shall be determined as per Rule 3(1)(c)(II)(ii). [ **Refer FAQ. 18, Point No. (e)**]

Items	Manner of Allocation
To the extent of Capital Amount	In the Proportion of Capital Contribution
Any Surplus	In the Dissolution Ratio of Assets in the event of dissolution as per agreement
If such Agreement is not present	In the Profit Sharing Ratio

Total of the amount so allocated to a Partner/Member shall be treated as the Value of the Interest of that Partner / Member in the Partnership / Association

**21. How to determine the value of any other Asset and what are the details to be furnished?**

- (a) Description of Asset
- (b) Name(s) under which held
- (c) Date of Acquisition/ Investment
- (d) Cost of Acquisition/ Investment
- (e) Price that the Asset would ordinarily fetch if sold in Open Market on June 1, 2016
- (f) Value to be adopted = Higher of (d) or (e)

**22. What is Quoted Share or Security?**

"Quoted Share or Security" in relation to Share or Security means a Share or Security quoted on any Recognized Stock Exchange with regularity from time to time, where the Quotations of such Shares or Securities are based on current transaction made in the ordinary course of business.

**23. What is Unquoted Share and Security?**

"Unquoted Share and Security" in relation to Share or Security means Share or Security which is not a quoted Share or Security.

**24. What is Balance Sheet?**

<b>Situation</b>	<b>Meaning</b>
If the Balance Sheet has been audited by the Auditor of the Company appointed under the Companies Act, 2013	Such Balance Sheet (including the Notes annexed thereto and forming part of the Accounts) as on March 31, 2016
If the Balance Sheet has not been audited by the Auditor of the Company appointed under the Companies Act, 2013	Balance Sheet (including the Notes annexed thereto and forming part of the Accounts) which has been approved and

	adopted in the Annual General Meeting of the Shareholders of the Company
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**25. In what manner the Declaration will be furnished?**

The Declaration shall be furnished –

- (a) electronically under Digital Signature, OR
- (b) through transmission of data in the form electronically under electronic verification code, OR
- (c) in print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.

**26. Whether the Declarant is entitled for any Acknowledgement?**

The Principal Commissioner or the Commissioner shall issue an Acknowledgement in Form-2 to the declarant within 15 days from the end of the month in which the declaration under section 183 of the Finance Act, 2016 has been furnished.

**27. How the Declarant shall pay the Tax, Surcharge and Penalties?**

The declarant shall pay the tax, surcharge and penalty in the prescribed form and the proof of payment of tax, surcharge and penalty made pursuant to the acknowledgement issued by the Principal Commissioner / Commissioner shall be furnished by the declarant to the such Principal Commissioner / Commissioner in Form 3.

**28. Whether the Declarant will receive any Certificate / Order under the Scheme?**

The Principal Commissioner or the Commissioner shall grant a Certificate in Form-4 to the declarant within 15 days of the submission of proof of payment of Tax, Surcharge along with Penalty by the declarant in respect of the income so declared.

**29. Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the Fair Market Value of the asset as on**



**June 1, 2016, then will the Declarant be liable for Capital Gains on sale of such asset in the future? If yes, then how will the Capital Gains in such case be computed?**

Yes, 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 gains 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).

**30. Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year, will he be ineligible from making a declaration under the Scheme?**

The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

**31. As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?**

The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.

**32. In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from**

**income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?**

As Rule 3(2) of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with Rule 3(1) as reduced by an amount which bears to the value of the asset as on June 1, 2016, the same proportion as the assessed income bears to the total cost of the asset.

- 33. Investment in acquisition of asset in previous year 2013-14 is of Rs.500 out of which Rs.200 relates to income assessed to tax in Assessment Year 2012-13 and Rs. 300 is from Undisclosed Income pertaining to Previous Year 2013-14. The fair market value of the asset as on June 1, 2016 is Rs.1500. What is the Undisclosed Income represented by this asset?**

Undisclosed Income represented by this asset =  $1500 - [1500 \times 200/500]$  = Rs 900

- 34. Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?**

Under section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.

- 35. Can a person against whom a search/ survey operation has been initiated file declaration under the Scheme?**

(a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is

prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in 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.

**36. Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?**

Yes, such undisclosed income can be declared under the Scheme.

**37. What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?**

Under section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

**38. If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?**

In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

**39. If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?**

It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.

**40. Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?**

No. Under section 196(b) of the Finance Act, 2016, the Scheme shall not apply, inter-alia, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

**41. Whether at the time of declaration under the Scheme, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?**

After the declaration is made the Principal Commissioner/Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.

**42. Will the declarations made under the Scheme be kept confidential?**

The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessee. Therefore, the information in respect of declaration

made is confidential as in the case of return of income filed by assessees.

**43. Is it necessary to file a valuation report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?**

It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.

**44. Who can sign the Declaration?**

<b>Declarant</b>	<b>To be signed by</b>
<b>Individual</b>	<p>a. by the individual himself,</p> <p>b. where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf,</p> <p>c. where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf.</p>
<b>HUF</b>	<p>a. by the karta,</p> <p>b. where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.</p>
<b>Company</b>	<p>a. by the managing director,</p> <p>b. where for any unavoidable reason such managing director is not able to sign the declaration, or where there is no managing director, by any director thereof.</p>
<b>Firm</b>	<p>a. by the managing partner,</p> <p>b. where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor.</p>

<b>Any Association</b>	a. by any member of the association or b. the principal officer thereof
<b>Any Other Person</b>	by that person or by some person competent to act on his behalf

**45. Whether a person can file more than one Declaration?**

Any person, who has made a declaration under section 183(1) in respect of his income or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration. If any such other declaration was subsequently made, it shall be treated as void.

**46. When the Declaration will be treated as void?**

Notwithstanding anything contained in the Income Declaration Scheme, 2016 where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under the Scheme.

**47. What are the consequences of non-payment of tax, surcharge and penalty?**

(a) If the declarant fails to pay the tax, surcharge and penalty, it shall be deemed that the declaration never to have been made under this Scheme.

(b) If any declaration has been made, but no Tax, Surcharge and Penalty has been paid within the time, the Undisclosed Income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

**48. Whether the Undisclosed Income is chargeable to Tax?**

The amount of undisclosed income declared shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax, surcharge and the penalty. However, if any declaration has been made, but no Tax, Surcharge and Penalty has been paid within the time, the Undisclosed Income shall be chargeable to tax under the

Income-tax Act in the previous year in which such declaration is made.

**49. Whether the Tax or Penalty or Surcharge paid under the Scheme is refundable?**

No. Any amount of Tax / Penalty / Surcharge paid under the Scheme shall not be refundable.

**50. Whether the Undisclosed Income declared affect the finality of the completed Assessment?**

A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

**51. Whether the Declaration made shall be used as evidence against the declarant for the purpose of any proceeding?**

No. The declaration made under this scheme shall not be used as evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957.

**52. Under what circumstance the Declaration will be treated as invalid / void?**

In the following situations, a declaration shall be void and shall be deemed never to have been made:-

(a) If the Declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date i.e November 30, 2016,

(b) Where the declaration has been made by misrepresentation or suppression of facts or information.

**53. What is the due date for making payment of Tax / Surcharge and Penalty under the Scheme?**



The due date for making payment of Tax / Surcharge and Penalty under the Scheme is November 30, 2016.

**54. What are the benefit / effect of a valid declaration?**

Where a valid declaration has been made, the following consequences will follow:

- (a) The amount of undisclosed income declared shall not be included in the total income of the Declarant under the Income-tax Act for any assessment year;
- (b) The contents of the declaration shall not be admissible in evidence against the Declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act;
- (c) Immunity from Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declaration subject to the condition that the benamidar shall transfer to the Declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30<sup>th</sup> September, 2017;
- (d) The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years;
- (e) Declaration of undisclosed income will not affect the finality of completed assessments. The Declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

**55. Immunity has been provided from the Benami Transactions (Prohibition) Act, 1988 in respect of the declaration of undisclosed income made in the form of investment in any asset subject to specified condition. What benefits will accrue to the Declarant in this regard?**

The Benami Transactions (Prohibition) Amendment Bill, 2015 which will replace the Benami Transaction (Prohibition) Act, 1988 proposes to expand definition of Benami Transaction, which presently means transaction in which property is transferred to



one person for consideration paid or provided by another person to further include transactions where transactions are made in fictitious name; where the owner is not aware of or denies knowledge of ownership of property or where person providing the consideration for the property is not traceable. Consequences of property considered as benami includes confiscation of benami property, benamidar being prohibited from retransfer of benami property to beneficial owner and retransfer will be considered as void. Offence would be non-bailable and subject to imprisonment from 1 year to 7 years with fine upto 25% of fair market value of the property. Thus, under present scheme Declarant will be immuned from the proposed prosecution provisions in the Benami Transactions (Prohibition) Act, 1988 as and when the Benami Transactions (Prohibition) Amendment Bill, 2015 is enacted. Further the declarant may avail the benefit of transfer of property to the owner without confiscation which would not be permitted subsequently.

**56. The Income Declaration Scheme, 2016 provides that the scheme shall not apply to in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Which income and asset is referred to in the said Act?**

As per Section 4(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—

(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;

(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and

(c) the value of an undisclosed asset located outside India.

**57. Whether minor child is required to declare his undisclosed income under the Scheme or is it to be declared by his parent in whose hands it is taxable?**

Minor can declare his undisclosed income of Assessment year 1992-93 or earlier assessment years. From Assessment year 1993-94, section 64 (1A) was introduced in IT Act, 1961 and minor income is includible in the parents' income and he is not obliged to file a return himself. Only parents can declare the minor's income for assessment year 1993-94 or later.

**58. Can a declaration be filed on behalf of an entity not in existence?**

A declaration under the scheme can be submitted on behalf of a person not in existence. An entity not in existence is liable to assessment through another person eg: a liquidator for a company in liquidation and a legal heir for a deceased individual. The other persons are also 'person' under the Act and since the Scheme can be availed of by any person under the Act, a declaration can be filed on behalf of an entity not in existence. For facility of ready reference a declaration can be filed on behalf of a deceased individual, partitioned HUF, company in liquidation, a dissolved Firm, a firm converted into a company, a dissolved private trust.

**59. If the beneficial owner of a property makes a declaration of income in respect of a property held benami, whether he would get immunity under the Benami Transactions (Prohibition) Act, 1988?**

Section 190 of the Finance Act, 2016 provides that the provisions of the Benami Transactions (Prohibition) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset, if the asset existing in the name of a *benamidar* transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government (i.e. on or before 30-9-2017). The immunity from Benami Transactions (Prohibition) Act, 1988 shall apply if the following conditions are satisfied:

- Declaration in respect of the property is made by the beneficial owner-i.e. the person who provided consideration for purchase of the property
- The benamidar in whose name the property stands transfers the property to the declarant who provided the consideration within the period notified by the Central Govt.

If the above conditions are not fulfilled, then there will be no immunity under the said Act.

**60. Immunity has been granted under the Scheme under section 192 of the Finance Act, 2016 only from penalty and prosecution, but immunity from interest under sections 234A, 234B and 234C has not been mentioned. Therefore, whether the declarant be liable to pay any interest under the provisions of section 234A or 234B or 234C of the Income-tax Act, 1961 in respect of the tax on undisclosed income?**

The section 185 of the Finance Act, 2016 begins with non-obstante clause in and the total liability of declarant is fixed at 45% (30% tax, 7.5% surcharge and 7.5% penalty) of the undisclosed income declared by him. Therefore, no interest is payable under section 234A or 234B or 234C of the Income-tax Act, 1961.

# Income Declaration Scheme, 2016





## *Income Declaration Scheme, 2016*

- Hon'ble Finance Minister announced the scheme in his budget speech and mentioned-

*"I propose a limited period compliance window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions"*

## *Salient Features*

- The scheme provides for declaration by any person, his undisclosed income by paying tax, surcharge and penalty on the declared income as specified in Chapter IX.
- The scheme shall commence from 1st June, 2016 and will remain open till the date to be notified by the Government. Vide Press Release dated 14<sup>th</sup> May, 2016, the Ministry of Finance has notified that the Scheme shall remain open upto 30<sup>th</sup> September, 2016 and tax, surcharge and the penalty must be paid latest by 30<sup>th</sup> November, 2016. Declaration can be filed online or with the jurisdictional Prin. Commissioner of Income tax.
- The scheme shall be applicable in respect of undisclosed income of any year up to the F.Y. 2015-16.
- Amount payable in respect of declared income as under-
- Tax @ 30% of declared income, Krishi Kalyan Cess @25% of Tax and Penalty @ 25% of tax
- The total amount payable thus will be 45% of the income declared



## *Declaration of Undisclosed Income-*

- As per Section 183(1) of the scheme the following incomes can be declared-
  1. Any income chargeable to tax which has not been declared by a person by filing return of income
  2. Any income chargeable to tax which has not been disclosed in the return of income furnished by the person before the date of commencement of the scheme.
  3. Any income chargeable to tax which has escaped assessment as such person omitted or failed to furnish a return or to disclose truly and fully all material facts necessary for assessment or otherwise

## *Declaration of Undisclosed Income-*

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- a) Declaration under the Scheme Form No. 1
- b) Jur Prin. CIT to issue acknowledgement Form No. 2
- c) Proof of payment of tax, surcharge, penalty Form No 3
- d) Certificate of acceptance of declaration to be issued within 15 days of submission of proof of payment Form No 4



## *Cases not eligible to declare income under this Chapter*

1. Undisclosed income is chargeable for any A.Y. for which notice has been issued u/s. 142 or 143(2) or 148 or 153A or 153C and the proceedings are pending before the A.O.
2. Search or survey has been conducted on the person and the time for issuance of notice under the Act has not expired
3. Information is received under an agreement with foreign countries in respect of such undisclosed assets
4. Cases covered under the Black Money(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
5. Persons notified under the Special Courts Act, 1992

# *Cases not eligible to declare income under this Chapter*

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6. Cases covered under The Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988

Section 189 of the Chapter provides that undisclosed income declared under this scheme shall not affect the finality of completed assessments and as such completed assessments shall not be reopened under the Income tax Act or Wealth Tax Act.



# *Valuation of Assets*

- Section 183(2) of the Chapter provides that where the income chargeable to tax is declared in the form of investment in any assets, the FMV of such asset as on the date of commencement of this scheme shall be deemed to be the undisclosed income and the FMV as on 1<sup>st</sup> June, 2016 shall be computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 .
- This means that the unrealized appreciation in value of the asset from the date of its acquisition till the date of commencement of scheme will get taxed under the scheme.
- No deduction in respect of any expenditure or allowance shall be granted against the income in respect of which declaration is made.
- Another issue- What shall be the cost of acquisition for computing capital gain when the asset is sold in future? What shall be the period of holding of such asset?

## *Valuation of Assets*

- Vide its Circular No 17 of 2016 dated 20<sup>th</sup> May, 2016, the CBDT has clarified that on subsequent sale of the capital asset declared under this scheme, the fair value on 1<sup>st</sup> June, 2016 shall be the Cost of Acquisition and the period of holding shall commence from the date of determination of fair market value for the purposes of the scheme.



## *Benefit of Indexation and the Rate of Tax*

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- Cost of Acquisition of Cap. Asset Rs. 5,00,000 on 1/4/1981
- Fair Value on 1/6/2016 Rs. 50,00,000
- Tax payable under the scheme @ 45% on Rs. 50,00,000 – Rs. 22,50,000
- Cost of Acquisition on subsequent sale- Rs. 50,00,000
- Cost Inflation Index for 1981-82- 100 and for 2016-17 around 1100
- Indexation benefit would be lost.

# *Payment of Tax, Surcharge and Penalty*

- Payment of tax, surcharge and penalty shall be paid on or before a date to be notified by the C.G. in the O.G. The proof of such payment is required to be filed with the Principal CIT/CIT before whom the declaration is made.
- If the declarant fails to make payment by the date notified, the declaration shall be deemed to have never been made under this scheme.
- The declaration under this scheme can be filed by a person **only once**.
- Section 188 provides that the income declared under the scheme shall not be included in the income of any A.Y., if the declarant pays the tax, surcharge and penalty by the specified date.



## *Payment of Tax, Surcharge and Penalty*

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- If taxes are not paid by the declarant by the notified date, the income declared under the scheme shall be included in the income of the declarant of the A.Y. in which it is declared.
- Further, there is no provision to revise the declaration. if there is an error in making the declaration and lesser amount of tax is paid due to error in declaration, then the declaration shall be deemed to be invalid and the entire declared amount including the error shall be treated as "income" of the declarant.

## *Miscellaneous*

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- It is provided that where the declaration is made by misrepresentation or suppression of facts, such declaration shall be treated as void.
- No benefit, concession or immunity shall be available under the scheme to any person other than the person making the declaration.
- Where in respect of any income which accrued or arose or was received or any asset was acquired out of such income and no declaration under the scheme is made, such income shall be deemed to have accrued or received or asset shall be deemed to have been acquired in the year in which notice u/s. 142, 143(2) or 148 or 153A or 153C is issued by the A. O. and the provisions of the Act shall apply accordingly.



# *Immunity*

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- Assets declared under the scheme shall be exempt from wealth tax. If the asset belongs to a firm, the share of the partner shall be exempt.
- Immunity from penalty and prosecution under The Income tax Act and The Wealth tax Act.
- Immunity from the provisions of Benami Transactions (Prohibition) Act, 1988, if the asset existing in the name of a benamidar is transferred to the declarant who paid the consideration for such asset or to his legal representative within the period notified by the C.G..

# *Clarifications on the Income Declaration Scheme, 2016*

- The CBDT has vide circular No. 17/ 2016 dated 20<sup>th</sup> May, 2016 and circular No. 24/2016 dated 27<sup>th</sup> June, 2016 clarified certain points in the form of question and answers.



# Clarifications on the Income Declaration Scheme, 2016

**Ques. 1.** Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?

**Ans. 1.** The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 2 .** As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?

**Ans. 2.** The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 3.** If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?

**Ans. 3.** As clarified in Ques. 2 above, a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 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 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.



# Clarifications on the Income Declaration Scheme, 2016

**Ques. 4.** In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?

**Ans. 4.** As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset. This is illustrated by an example as under:

Investment in acquisition of asset in previous year 2013-14 is of Rs.500 out of which Rs.200 relates to income assessed to tax in A.Y. 2012-13 and Rs.300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 01.06.2016 is Rs.1500. The undisclosed income represented by this asset under the scheme shall be:

$$1500 \text{ minus } (1500 * 200 / 500) = \text{Rs. } 900$$

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 5** Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?

**Ans. 5** As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 6.** Can a person against whom a search/ survey operation has been initiated file declaration under the Scheme?

**Ans. 6.** (a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in 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.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 7.** Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?

**Ans. 7.** Yes, such undisclosed income can be declared under the Scheme.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 8.** What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?

**Ans. 8.** As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 9.** If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?

**Ans. 9.** In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 10.** If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?

**Ans. 10.** It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 11.** Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?

**Ans. 11.** No. As per section 196(b) of the Finance Act, 2016, the Scheme shall not apply, *inter-alia*, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 12.** Whether at the time of declaration under the Scheme, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?

**Ans. 12.** After the declaration is made the Principal Commissioner/ Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 13.** Will the declarations made under the Scheme be kept confidential?

**Ans. 13.** The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessee. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessee.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 14.** Is it necessary to file a valuation report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?

**Ans. 14.** It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 15.** As per question No.14, it is not mandatory to attach the valuation report. But Form-1 states "attach valuation report". How to interpret?

**Ans. 15.** It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/ Commissioner in order to ascertain the correctness of the value of the asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/Commissioner.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 16.** If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?

**Ans. 16.** In case of part payment, the entire declaration made under the Scheme shall be **invalid**. The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 17.** In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/conversion, then whether a declaration is to be filed in the name of amalgamated entity/LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?

**Ans. 17.** Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/conversion takes place.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 18.** Whether the Scheme is open only to residents or to non-residents also?

**Ans. 18.** The Scheme is available to every person, whether resident or non resident.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 19.** If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?

**Ans. 19.** As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 20.** Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?

**Ans. 20.** No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 21.** Is it mandatory to furnish PAN in the Form of declaration?

**Ans. 21.** Yes, PAN is the unique identifier for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.

## Clarifications on the Income Declaration Scheme, 2016

**Ques. 22.** If any proceeding is pending before the Settlement Commission, can a person be considered eligible for the Scheme?

**Ans. 22.** No, a person shall not be eligible for the Scheme **in respect of assessment years** for which proceeding is pending with Settlement Commission.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 23.** Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?

**Ans. 23.** Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.



## Clarifications on the Income Declaration Scheme, 2016

**Ques. 24.** Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?

**Ans. 24.** Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued **are eligible for the Scheme.**

# *Importance of making declaration under the Scheme*

## **Concealment Penalty– a paradigm shift**

The Scheme provides immunity from penalty and prosecution proceedings under the both the Act and the Wealth Tax Act, 1957. Any undisclosed income is not declared under the Scheme, then by virtue of the provisions of section 197(c) of the Finance Act, 2016, the undisclosed income may be deemed to be income of any previous year relevant to assessment year beginning on or after 1 April 2017, and taxed in that year. In such a case, the same may be regarded as misreported income leading to levy of non-discretionary penalty of 200% of the tax on the misreported income under the new penalty provision in section 270A of the Act. This would be significantly higher than penalties that may be levied under section 271(1) (c).



# *Importance of making declaration under the Scheme*

## **Information available with the Revenue**

Income-tax department is now gathering information, about undisclosed incomes and assets through increasing use of technology, mandatory reporting of various cash transactions, enhanced scope of reporting of transactions and assets, expanding the scope of tax deduction and tax collections at source, information exchange agreements with various countries, and jurisdictions, and information collected is used by the department for interacting with other governing departments to obtain data regarding unaccounted money. Considering the forgoing and the stringent consequences of detection of undisclosed incomes and assets, such persons would be well advised to declare their undisclosed income under the Scheme.



# *Importance of making declaration under the Scheme*

## **Only Timing difference in payment of tax**

Generally, the undisclosed income of prior years, unless spent, would be existing in the form of some assets. When such undisclosed assets are sold, the taxpayer would any case be liable to pay tax on the gains arising from the sale. Further, the Fair Market Value of the undisclosed assets declared shall be considered as the cost of acquisition of the undisclosed assets. Thus, instead of paying tax in future on sale of the asset, the declarant will be required to pay the tax today, which is only a timing difference.



# *Importance of making declaration under the Scheme*

## **Immunity from Benami Transactions (Prohibition) Act, 1988**

- Any person entering into any benami transactions is punishable with imprisonment for a term which may extend to three years or fine or both. All properties held benami shall be subject to acquisition without any amount payable for the acquisition of benami property.
- However, if such benami property is declared under the Scheme then the immunity shall be available from the provisions of the Benami Transactions (Prohibition) Act, 1988 subject to the condition that the benamidar shall transfer such property, on or before 30 September, 2017, to the declarant or his legal representative.
- It is to be noted that the Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in the Lok Sabha on 13th May, 2015. The said Bill has more stringent prosecution and penalty proceedings as compared to the current Benami Transactions (Prohibition) Act, 1988. Hence, if the person does not take benefit of the Scheme and the Bill becomes an Act, the person would be subject to more stringent provisions of law.





Thank  
you



## **Budget 2016-2017**

### **Speech of**

Arun Jaitley

*Minister of Finance*

**February 29, 2016**

### **(Relevant Excerpt)**

#### **Reducing litigation and providing certainty in taxation**

**159.** We are moving towards a lower tax regime with non-litigious approach. Thus, while compliant taxpayers can expect a supportive interface with the department, tax evasion will be countered strongly. Capability of the tax department to detect tax evasion has improved because of enhanced access to information and availability of technology driven analytical tools to process such information. I want to give an opportunity to the earlier non-compliant to move to the category of compliant.

**160.** I propose a limited period Compliance Window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. There will be no scrutiny or enquiry regarding income declared in these declarations under the Income Tax Act or the Wealth Tax Act and the declarants will have immunity from prosecution. Immunity from Benami Transaction (Prohibition) Act, 1988 is also proposed subject to certain conditions. The surcharge levied at 7.5% of undisclosed income will be called KrishiKalyan surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1<sup>st</sup> June to 30<sup>th</sup> September, 2016 with an option to pay amount due within two months of declaration.

**161.** Our Government is fully committed to remove black money from the economy. Having given one opportunity for evaded income to be declared once, we would then like to focus all our resources for bringing people with black money to books.

**Explanatory Memorandum  
[Relevant Excerpt]**

**The Income Declaration Scheme, 2016**

An opportunity is proposed to be provided to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

The scheme is proposed to be brought into effect from 1<sup>st</sup> June 2016 and will remain open up to the date to be notified by the Central Government in the official gazette. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year upto 2015-16.

Tax is proposed to be charged at the rate of thirty per cent on the declared income as increased by surcharge at the rate of twenty five per cent of tax payable (to be called the KrishiKalyan cess). A penalty at the rate of twenty five per cent of tax payable is also proposed to be levied on undisclosed income declared under the scheme.

It is proposed that following cases shall not be eligible for the scheme:

- where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
- where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- where information is received under an agreement with foreign countries regarding such income,
- cases covered under the Black Money Act, 2015, or
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

It is proposed that payment of tax, surcharge and penalty may be made on or before a date to be notified by the Central Government in the Official Gazette and non-payment up to the date so notified shall render the declaration made under the scheme void.

It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It



is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to certain conditions.

It is proposed to provide that where a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme. In cases where any declaration has been made but no tax and penalty referred to the scheme has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

In cases 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 the Scheme such income shall be deemed to have accrued, arisen or received, or 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, section 143(2) 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.

It is further proposed that if any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force and such order be laid before each House of Parliament.

It is proposed that the Central Board of Direct Taxes under the control of Central Government be provided the power to make rules, by notification in the Official Gazette, for carrying out the provisions of this Scheme and

such rules made be laid before each House of Parliament in the manner provided in the scheme.

*[Clause 178 to 196]*

**Finance Act 2016 (No. 28 of 2016)**

**CHAPTER IX**

**THE INCOME DECLARATION SCHEME, 2016-**

**Short title and commencement**

181. (1) This Scheme may be called the Income Declaration Scheme, 2016.

(2) It shall come into force on the 1st day of June, 2016.

**Definitions**

182. In this Scheme, unless the context otherwise requires,—

(a)"declarant" means a person making the declaration under sub-section (1) of section 183;

(b)"Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

(c)all other words and expressions used herein but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

**Declaration of undisclosed income**

183 . (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017—

(a)for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b)which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;

(c)which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the



date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of sub-section (1).

(3) The fair market value of any asset shall be determined in such manner, as may be prescribed.

(4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made.

### **Charge of tax and surcharge**

184 . (1) Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed income declared under section 183 within the time specified therein shall be chargeable to tax at the rate of thirty per cent of such undisclosed income.

(2) The amount of tax chargeable under sub-section (1) shall be increased by a surcharge, for the purposes of the Union, to be called the KrishiKalyan Cess on tax calculated at the rate of twenty-five per cent of such tax so as to fulfil the commitment of the Government for the welfare of the farmers.

### **Penalty**

185. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration of undisclosed income shall, in addition to tax and surcharge under section 184, be liable to penalty at the rate of twenty-five per cent of such tax.

### **Manner of declaration**

186. (1) A declaration under section 183 shall be made to the Principal Commissioner or the Commissioner and shall be in such form and be verified in such manner, as may be prescribed.

(2) The declaration shall be signed,—

(a) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) where the declarant is a Hindu undivided family, by the Karta, and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c)where the declarant is a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof;

(d)where the declarant is a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor;

(e)where the declarant is any other association, by any member of the association or the principal officer thereof; and

(f)where the declarant is any other person, by that person or by some other person competent to act on his behalf.

(3) Any person, who has made a declaration under sub-section (1) of section 183 in respect of his income or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration, under that sub-section in respect of his income or the income of such other person, and any such other declaration, if made, shall be void.

### **Time for payment of tax**

187. (1) The tax and surcharge payable under section 184 and penalty payable under section 185 in respect of the undisclosed income, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

(2) The declarant shall file the proof of payment of tax, surcharge and penalty on or before the date notified under sub-section (1), with the Principal Commissioner or the Commissioner, as the case may be, before whom the declaration under section 183 was made.

(3) If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the date specified under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Scheme.

Undisclosed income declared not to be included in total income.

188. The amount of undisclosed income declared in accordance with section 183 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax and surcharge referred to in section 184 and the

penalty referred to in section 185, by the date specified under sub-section (1) of section 187.

Undisclosed income declared not to affect finality of completed assessments.

189. A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 (27 of 1957), or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

Undisclosed income declared not to be treated as benami transaction in certain cases.

190. The provisions of the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset, if the asset existing in the name of abenamidar is transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government.

### **Tax in respect of voluntarily disclosed income not refundable**

191. Any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable.

### **Declaration not admissible in evidence against declarant**

192. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 185, or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957 (27 of 1957).

### **Declaration by misrepresentation of facts to be void**

193. Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Scheme.

### **Exemption from wealth-tax in respect of assets specified in declaration**



194. (1) Where the undisclosed income is represented by cash (including bank deposits), bullion, investment in shares or any other assets specified in the declaration made under section 183—

(a) in respect of which the declarant has failed to furnish a return under section 14 of the Wealth-tax Act, 1957 (27 of 1957), for the assessment year commencing on or before the 1st day of April, 2015; or

(b) which have not been shown in the return of net wealth furnished by him for the said assessment year or years; or

(c) which have been understated in value in the return of net wealth furnished by him for the said assessment year or years,

then, notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), or any rules made thereunder,—

- (i) wealth-tax shall not be payable by the declarant in respect of the assets referred to in clause (a) or clause (b) and such assets shall not be included in his net wealth for the said assessment year or years;
- (ii) the amount by which the value of the assets referred to in clause (c) has been understated in the return of net wealth for the said assessment year or years, to the extent such amount does not exceed the voluntarily disclosed income utilised for acquiring such assets, shall not be taken into account in computing the net wealth of the declarant for the said assessment year or years.

Explanation.—Where a declaration under section 183 is made by a firm, the assets referred to in sub-clause (i) or, as the case may be, the amount referred to in sub-clause (ii) shall not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm.

(2) The provisions of sub-section (1) shall not apply unless the conditions specified in sub-sections (1) and (2) of section 187 are fulfilled by the declarant.

### **Applicability of certain provisions of Income-tax Act and of Chapter V of Wealth-tax Act**

195. The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 119, section 138 and section 189 of that Act or the provisions of Chapter V of the Wealth-tax Act, 1957 (27 of 1957) relating to liability in respect of assessment in special cases

shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income-tax Act or, as the case may be, the Wealth-tax Act, 1957.

### **Scheme not to apply to certain persons**

196. The provisions of this Scheme shall not apply—

(a) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that—

- (i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
  - (ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or
  - (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or
  - (iv) such order of detention has not been set aside by a court of competent jurisdiction;
- (b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) and the Prevention of Corruption Act, 1988 (49 of 1988);
- (c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992);
- (d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(e) in relation to any undisclosed income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2017—

- (i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer; or
- (ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under sub-section (2) of section 143 for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired; or
- (iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.

### **Removal of doubts**

197. For the removal of doubts, it is hereby declared that—

- a) save as otherwise expressly provided in sub-section (1) of section 183, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme;
- b) where any declaration has been made under section 183 but no tax, surcharge and penalty referred to in section 184 and section 185 has been paid within the time specified under section 187, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made;
- 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.

### **Power to remove difficulties**

198. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme shall come into force.

(2) Every order made under this section shall be laid before each House of Parliament.

### **Power to make rules**

199. (1) The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for the form in which a declaration may be made under section 183 and the manner in which the same may be verified.

(3) Every rule made under this Scheme shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**PRESS RELEASE**

**New Delhi, 14<sup>th</sup> May, 2016**

**Subject: The Income Declaration Scheme 2016 to open from 1<sup>st</sup> June 2016.**

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act 2016 provides an opportunity to all persons who have not declared income correctly in earlier years to come forward and declare such undisclosed income(s).

Under the Scheme, such income as declared by the eligible persons, would be taxed at the rate of 30% plus a '*Krishi Kalyan Cess*' of 25% on the taxes payable and a penalty at the rate of 25% of the taxes payable, thereby totalling to 45% of the income declared under the scheme.

The scheme shall remain in force for a period of 4 months from **1<sup>st</sup> June, 2016 to 30<sup>th</sup> September, 2016** for filing of declarations and payments towards taxes, surcharge & penalty must be made latest by **30<sup>th</sup> November, 2016**. Declarations can be filed online or with the jurisdictional Pr. Commissioners of Income-tax across the country.

- The scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier.
- Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1<sup>st</sup> June 2016 shall be deemed to be the undisclosed income under the Scheme. However, foreign assets or income to which the Black Money Act 2015 applies are not eligible for declaration under this scheme.
- Assets specified in the declaration shall be exempt from Wealth tax.
- No Scrutiny and enquiry under the Income-tax Act or the Wealth tax Act shall be undertaken in respect of such declarations.
- Immunity from prosecution under the Income-tax Act and Wealth Tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner within the period specified in the Rules.
- Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation or suppression of facts shall render the declaration void.
- The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016.
- Non declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income tax Department. Other penal consequences will also follow accordingly.

The full text of the Scheme is available on the departmental website [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) for viewing. The relevant rules and forms for the same are to be notified shortly.

**(Meenakshi J Goswami)  
Commissioner of Income Tax  
(Media and Technical Policy)  
Official Spokesperson, CBDT.**

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,  
SUB-SECTION (ii)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

New Delhi, the 19<sup>th</sup> May, 2016

### NOTIFICATION

**S.O. 1830(E)**- In exercise of the powers conferred by section 183, section 187 and section 190 of the Finance Act, 2016 (28 of 2016), the Central Government hereby appoints -

- (i) the 30<sup>th</sup> day of September, 2016 as the date on or before which a person may make a declaration under sub-section (1) of section 183;
- (ii) the 30<sup>th</sup> day of November, 2016 as the date on or before which the tax and surcharge is payable under section 184, and the penalty is payable under section 185 in respect of the undisclosed income;
- (iii) the 30<sup>th</sup> day of September, 2017 as the date on or before which the benamidar shall transfer to the declarant, being the person who provides the consideration for such asset, or his legal representative.

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[Notification No. 32/2016, F.No.142/8/2016-TPL

(Ekta Jain)  
Deputy Secretary to the Government of India



TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,  
SUB-SECTION (ii)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

New Delhi, the 19<sup>th</sup> May, 2016

### **The Income Declaration Scheme Rules, 2016**

#### **NOTIFICATION**

**S.O. 1831(E)**- In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 199 of the Finance Act, 2016 (28 of 2016), the Central Board of Direct Taxes, subject to the control of the Central Government hereby makes the following rules for carrying out the provisions of Chapter IX of the said Act relating to the Income Declaration Scheme, 2016 namely :—

#### **1. Short title and commencement.**

- (1) These rules may be called the Income Declaration Scheme Rules, 2016.
- (2) They shall come into force on the 1<sup>st</sup> day of June, 2016.

#### **2. Definitions.**

- (1) In these rules, unless the context otherwise requires, —
  - (a) “Act” means the Finance Act, 2016 (28 of 2016);
  - (b) “Form” means a form appended to these rules;
  - (c) “recognised stock exchange” shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
  - (d) “registered valuer” means a person registered as a valuer under section 34AB of the Wealth-tax Act, 1957 (27 of 1957);
  - (e) “section” means a section of the Act.
- (2) Words and expressions used and not defined in these rules but defined in the Act, or the Income-tax Act, 1961 (43 of 1961) or the rules made thereunder, shall have the meanings respectively assigned to them in those Acts and rules.

#### **3. Determination of Fair market value**

- (1) The fair market value of the asset shall be determined in the following manner, namely: —
  - (a) the value of bullion, jewellery or precious stone shall be the higher of —
    - (I) its cost of acquisition; and
    - (II) the price such bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market as on the 1<sup>st</sup> day of June, 2016, on the basis of the valuation report obtained by the declarant from a registered valuer;
  - (b) the valuation of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred to as artistic work) shall be the higher of —
    - (I) its cost of acquisition; and

- (II) the price such artistic work shall ordinarily fetch if sold in the open market as on the 1<sup>st</sup> day of June, 2016 on the basis of the valuation report obtained by the declarant from a registered valuer;
- (c) the value of shares and securities of –
- (I) quoted share and securities shall be the higher of –
- (i) its cost of acquisition; and
  - (ii) the price determined by taking –
    - (A) the average of the lowest and highest price of such shares and securities quoted on a recognised stock exchange as on the 1<sup>st</sup> day of June, 2016; or
    - (B) the average of the lowest and highest price of such shares and securities on a recognised stock exchange on a date immediately preceding the 1<sup>st</sup> day of June, 2016 when such shares and securities were traded on a recognised stock exchange, where on the 1<sup>st</sup> day of June, 2016 there is no trading in such shares and securities on a recognised stock exchange;
- (II) unquoted equity shares shall be the higher of –
- (i) its cost of acquisition; and
  - (ii) the value, on the 1<sup>st</sup> day of June, 2016, of such equity shares as determined in the following manner, namely: –

$$\text{the fair market value of unquoted equity shares} = \frac{(A+B - L) \times (PV),}{(PE)}$$

where,

- A = book value of all the assets in the balance sheet (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by, - (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;
- B= fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;
- L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely: –
- (i) the paid-up capital in respect of equity shares;
  - (ii) the amount set apart for payment of dividends on preference shares and equity shares;
  - (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
  - (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV= the paid up value of such equity share;

(III) unquoted share and security other than equity share in a company shall be the higher of,—

(i) its cost of acquisition; and

(ii) the price that the share or security shall ordinarily fetch if sold in the open market on the 1<sup>st</sup> day of June, 2016, , on the basis of the valuation report obtained by the declarant from a registered valuer;

(d) the fair market value of an immovable property shall be higher of—

(I) its cost of acquisition; and

(II) the price that the property shall ordinarily fetch if sold in the open market on the 1<sup>st</sup> day of June, 2016 on the basis of the valuation report obtained by the declarant from a registered valuer;

(e) value of an interest of a person in a partnership firm or in an association of persons or a limited liability partnership of which he is a member shall be determined in the manner as specified in clause (f);

(f) The net asset of the firm, association of persons or limited liability partnership on the 1<sup>st</sup> day of June, 2016 shall first be determined and the portion of the net asset of the firm, association of persons or limited liability partnership as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the net asset shall be allocated among the partners or members in accordance with the agreement of partnership or association or limited liability partnership for distribution of assets in the event of dissolution of the firm, association or limited liability partnership, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.

*Explanation.*— For the purposes of this clause the net asset of the firm, association of persons or limited liability partnership shall be  $(A + B - L)$ , which shall be determined in the manner provided in sub-clause (II) of clause (c);

(g) valuation of any other asset shall be higher of—

(I) its cost of acquisition or the amount invested; and

(II) the price that the asset would fetch if sold in the open market on the 1<sup>st</sup> day of June, 2016.

*Explanation*— For the purposes of this rule,—

(a) “quoted share or security” in relation to share or security means a share or security quoted on any recognized stock exchange with regularity from



time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

- (b) “unquoted share and security” in relation to share or security means share or security which is not a quoted share or security;
- (c) “balance sheet” in relation to any company means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as on 31<sup>st</sup> day of March, 2016, which has been audited by the auditor of the company appointed under the Companies Act, 2013 (18 of 2013) and where the balance sheet as on 31<sup>st</sup> day of March, 2016 is not audited, the balance sheet (including the notes annexed thereto and forming part of the accounts) which has been approved and adopted in the annual general meeting of the shareholders of the company.

(2) Where investment in any asset is partly from an income which has been assessed to tax prior to assessment year 2017-18, the fair market value of the asset determined in accordance with sub-rule (1) shall be reduced by an amount which bears to the value of the asset as on the 1<sup>st</sup> day of June, 2016, the same proportion as the assessed income bears to the total cost of the asset.

#### **4. Declaration of income or income in the form of investment in any asset.**

(1) A declaration of income or income in the form of investment in any asset under section 183 shall be made in Form-1.

(2) The declaration shall be furnished:-

- (a) electronically under digital signature; or
- (b) through transmission of data in the form electronically under electronic verification code; or
- (c) in print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.

(3) The Principal Commissioner or the Commissioner shall issue an acknowledgement in Form-2 to the declarant within fifteen days from the end of the month in which the declaration under section 183 has been furnished.

(4) The proof of payment of tax, surcharge and penalty made pursuant to the acknowledgement issued by the Principal Commissioner or the Commissioner shall be furnished by the declarant to the such Principal Commissioner or Commissioner in Form 3.

(5) The Principal Commissioner or the Commissioner shall grant a certificate in Form-4 to the declarant within fifteen days of the submission of proof of payment of tax, surcharge along with penalty by the declarant under section 187 of the Act in respect of the income so declared.

(6) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the form in the manner specified in sub-rule(2).

*Explanation.* – For the purposes of this rule “electronic verification code” means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

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[Notification No. 33/2016, F.No.142/8/2016-TPL

(Ekta Jain)  
Deputy Secretary to the Government of India

**F.No.370142/8/2016-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)**

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**Dated: 20<sup>th</sup> May, 2016**

**EXPLANATORY NOTES ON PROVISIONS OF THE INCOME DECLARATION  
SCHEME, 2016 AS PROVIDED IN CHAPTER IX OF THE FINANCE ACT, 2016**

**Introduction**

The Income Declaration Scheme, 2016 (referred to here as 'the Scheme') is contained in the Finance Act, 2016, which received the assent of the President on the 14<sup>th</sup> of May 2016.

2. The Scheme provides an opportunity to persons who have paid not full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

**Scope of the Scheme**

3. A declaration under the aforesaid Scheme may be made in respect of any income or income in the form of investment in any asset located in India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2017-18 for which the declarant had, *either* failed to furnish a return under section 139 of the Income-tax Act, *or* failed to disclose such income in a return furnished before the date of commencement of the Scheme, *or* such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on 1<sup>st</sup> June, 2016 computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 shall be deemed to be the undisclosed income.



### **Rate of tax, surcharge and penalty**

4. The person making a declaration under the Scheme would be liable to pay tax at the rate of 30 percent of the value of such undisclosed income as increased by surcharge at the rate of 25 percent of such tax. In addition, he would also be liable to pay penalty at the rate of 25 percent of such tax. Therefore, the declarant would be liable to pay a total of 45 percent of the value of the undisclosed income declared by him. This special rate of tax, surcharge and penalty specified in the Scheme will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

### **Time limits for declaration and making payment**

5. A declaration under the Scheme can be made anytime on or after 1<sup>st</sup> June, 2016 but before a date to be notified by the Central Government. The Central Government has further notified 30<sup>th</sup> September, 2016 as the last date for making a declaration under the Scheme and 30<sup>th</sup> November, 2016 as the last date by which the tax, surcharge and penalty mentioned in para 4 above shall be paid. Accordingly, a declaration under the Scheme in Form 1 as prescribed in the Rules may be made at any time before 30.09.2016. After such declaration has been furnished, the jurisdictional Principal CIT/ CIT will issue an acknowledgment in Form-2 to the declarant within 15 days from the end of the month in which the declaration under Form-1 is made. The declarant shall not be liable for any adverse consequences under the Scheme in respect of, any income which has been duly declared but has been found ineligible for declaration. However, such information may be used under the provisions of the Income-tax Act. The declarant shall furnish proof of payment made in respect of tax, surcharge and penalty to the jurisdictional Principal CIT/CIT in Form-3 after which the said authority shall issue a certificate in Form-4 of the accepted declaration within 15 days of submission of proof of payment by the declarant.

### **Form for declaration**

6. As per the Scheme, declaration is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 1 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

Sl.	Status of the declarant	Declaration to be signed by
1.	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2.	HUF	<i>Karta</i> ; where the <i>karta</i> is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3.	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
4.	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5.	Any other association	Any member of the association or the principal officer.
6.	Any other person	That person or by some other person competent to act on his behalf.

The declaration may be filed online on the e-filing website of the Income-tax Department using the digital signature of the declarant or through electronic verification code or in paper form before the jurisdictional Principal CIT/CIT.

#### **Declaration not eligible in certain cases**

7. As per the provisions of the Scheme, no declaration can be made in respect of any undisclosed income chargeable to tax under the Income-tax Act for assessment year 2016-17 or any earlier assessment year in the following cases –

(i) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under the Scheme, it is clarified that the person will not be eligible under the Scheme if any notice referred above has been served upon the person on or before 31<sup>st</sup> May, 2016 i.e. before the date of commencement of this Scheme.

In the form of declaration (Form 1) the declarant will verify that no such notice has been received by him on or before 31<sup>st</sup> May, 2016.

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 1) the declarant will also verify that these facts do not prevail in his case.

(iii) cases covered under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under the Scheme.

A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act or a person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, subject to the conditions specified in the Scheme, shall also not be eligible for making a declaration under the Scheme.

#### **Circumstances where declaration shall be invalid**

8. In the following situations, a declaration shall be void and shall be deemed never to have been made:-

- (a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, i.e., 30.11.2016;
- (b) Where the declaration has been made by misrepresentation or suppression of facts or information.



Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.

Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

#### **Effect of valid declaration**

9. Where a valid declaration as detailed above has been made, the following consequences will follow:

- (a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- (b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act;
- (c) Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30<sup>th</sup> September, 2017;
- (d) The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years.
- (e) Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

(Ekta Jain)

Deputy Secretary to the Government of India

#### Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).

3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**PRESS RELEASE**

**New Delhi, 20<sup>th</sup> May, 2016.**

**Subject: The Income Declaration Scheme 2016- FAQs -reg.**

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act, 2016 is to come into force from the 1<sup>st</sup> of June, 2016. The complete text of the Scheme is available on the website of the Ministry of Finance as part of the Finance Bill 2016.

The first of the Tax Payer Education series of Frequently Asked Questions (FAQs) specifying details of the scheme and clarifying eligibility available under the same has been uploaded on the official website of the Income Tax Department [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) for viewing.

The above are aimed at explaining the various provisions of the Scheme with respect to eligibility, nature of assets, periods of availability, kinds of immunities available under the scheme and persons excluded from its benefits. Circumstances in which the scheme shall not apply have also been clarified.

These are expected to be updated from time to time based upon feedback and further queries received.

**(Meenakshi J Goswami)  
Commissioner of Income Tax  
(Media and Technical Policy)  
Official Spokesperson, CBDT.**



F.No.142/8/2016-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)

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Dated 20<sup>th</sup> of May, 2016

Clarifications on the Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all the 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows.-

**Question No.1:** *Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the fair market value of the asset as on 01.06.2016, then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?*

**Answer:** Yes, 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 gains 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).

**Question No.2:** *Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?*

**Answer:** The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

**Question No.3:** *As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?*

**Answer:** The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31<sup>st</sup> day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.

**Question No.4:** *In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?*

**Answer:** As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset. This is illustrated by an example as under:

Investment in acquisition of asset in previous year 2013-14 is of Rs.500 out of which Rs.200 relates to income assessed to tax in A.Y. 2012-13 and Rs.300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 01.06.2016 is Rs.1500. The undisclosed income represented by this asset under the scheme shall be:

$$1500 \text{ minus } (1500 \times \frac{200}{500}) = \text{Rs.}900$$

**Question No.5:** *Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?*

**Answer:** As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.

**Question No.6:** *Can a person against whom a search/ survey operation has been initiated file declaration under the Scheme?*

**Answer:** (a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in 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.

**Question No. 7:** *Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?*

**Answer:** Yes, such undisclosed income can be declared under the Scheme.

**Question No.8:** *What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?*



**Answer:** As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

**Question No.9:** *If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?*

**Answer:** In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

**Question No.10:** *If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?*

**Answer:** It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.

**Question No.11:** *Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?*

**Answer:** No. As per section 196(b) of the Finance Act, 2016, the Scheme shall not apply, *inter-alia*, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration

shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

**Question No.12:** *Whether at the time of declaration under the Scheme, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?*

**Answer:** After the declaration is made the Principal Commissioner/Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.

**Question No.13:** *Will the declarations made under the Scheme be kept confidential?*

**Answer:** The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessee. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessee.

**Question No.14:** *Is it necessary to file a valuation report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?*

**Answer:** It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.

(Ekta Jain)  
Deputy Secretary to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.

5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.



F.No 187/10/2016.ITA.I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(Income-Tax)

New Delhi, the 25<sup>th</sup> May, 2016

Income Declaration Scheme, 2016, introduced vide Finance Act, 2016 (28 of 2016), provides an opportunity to persons who have not paid full taxes in the past to come forward and declare their undisclosed income. Rule 4 of the Income Declaration Scheme Rules, 2016 provides that a declaration of income or income in the form of investment in any asset u/s 183 shall be made in the prescribed manner to the Principal Commissioner or the Commissioner who exercises jurisdiction over the declarant.

2. It is, therefore, clarified that the jurisdictional Principal Commissioner or the Commissioner, as the case may be, who exercises jurisdiction u/s 120 of the Income-tax Act, 1961, as notified by CBDT from time to time over such declarant, shall be the Principal Commissioner or the Commissioner as referred to in section 186 of the Income Declaration Scheme 2016 to whom declaration under 183 of that Scheme is to be made.

**Note:** Notifications of the Government of India, Central Board of Direct Taxes, pertaining to the jurisdiction u/s 120 of the Income-tax Act, 1961 - Published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii)- S.O. 2752 (E ) dated 22.10.2014, S.O. 2754 (E ) dated 22.10.2014, S.O. 2814 (E ) dated 03.11.2014, S.O. 2885 (E ) dated 12.11.2014, S.O. 3244 (E ) dated 19.12.2014, S.O. 2911 (E ) dated 13.11.2014, S.O. 2922 (E ) dated 15.11.2014, S.O. 2915 (E ) dated 13.11.2014, S.O. 3911 (E ) dated 16.12.2014, S.O. 355 (E ) dated 05.02.2015, S.O. 2812 (E ) dated 13.10.2015.

*sd/-*  
**DEEPSHIKHA SHARMA**

Director to the Government of India

1. The Chairperson and Members, CBDT.
2. All Joint Secretaries/CsIT, CBDT.
3. OSD to Revenue Secretary
4. All Principal Commissioners of Income-Tax & all Directors General of Income-Tax with the request to bring to notice of all officers.
5. The Pr. DGIT (Training), NADT, Nagpur
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
8. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per mailing list.
9. Comptroller and Auditor General of India.
10. ADG-4 (Systems) for uploading on ITD website.
- ✓ 11. Data Base Cell for uploading on [www. irsofficeronline.gov.in](http://www.irsofficeronline.gov.in)
12. The Guard File.

*Deepshikha*  
**DEEPSHIKHA SHARMA**

Director to the Government of India

F.No.142/8/2016-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)

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Dated 27<sup>th</sup> of June, 2016

Clarifications on the Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In this regard, Circular No. 17 of 2016 dated 20<sup>th</sup> May, 2016 issued by the Board provided clarifications to 14 queries. Subsequently, further queries have been received from the public about various provisions of the Scheme. The Board has considered the same and the following clarifications are issued.-

**Question No.1:** *If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?*

**Answer:** In case of part payment, the entire declaration made under the Scheme shall be **invalid**. The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016.

**Question No.2:** *In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/conversion, then whether a declaration is to be filed in the name of amalgamated entity/LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?*

**Answer:** Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such

erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/conversion takes place.

**Question No.3:** *Whether the Scheme is open only to residents or to non-residents also?*

**Answer:** The Scheme is available to every person, whether resident or non-resident.

**Question No.4:** *If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?*

**Answer:** As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.

**Question No.5:** *Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?*

**Answer:** No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.

**Question No.6:** *As per Circular No.17 of 2016, question No.14, it is not mandatory to attach the valuation report. But Form-1 states "attach valuation report". How to interpret?*

**Answer:** It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/Commissioner in order to ascertain the correctness of the value of the



asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/Commissioner.

**Question No.7:** *Is it mandatory to furnish PAN in the Form of declaration?*

**Answer:** Yes, PAN is the unique identifier for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.

**Question No.8:** *If any proceeding is pending before the Settlement Commission, can a person be considered eligible for the Scheme?*

**Answer:** No, a person shall not be eligible for the Scheme **in respect of assessment years** for which proceeding is pending with Settlement Commission.

**Question No.9:** *Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?*

**Answer:** Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.

**Question No.10:** *Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?*

**Answer:** Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued **are eligible for the Scheme.**

**Question No.11:** *If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?*

**Answer:** As clarified vide Explanatory Circular No. 17 dated 20.5.2016 , a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 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 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.

(Dr. T.S. Mapwal)  
Under Secretary to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.

F.No.142/8/2016-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)

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Dated 30<sup>th</sup> of June, 2016

Clarifications on the Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the IDS Rules') have been notified. In this regard, Circular No. 17 of 2016 dated 20<sup>th</sup> May, 2016 and Circular No. 24 of 2016 dated 27<sup>th</sup> June, 2016 issued by the Board provided clarifications to 14 and 11 queries respectively. Subsequently, further queries have been received from the public about various provisions of the Scheme. The Board has considered the same and the following clarifications are issued.-

*Question No.1: Will the information contained in the declaration be shared with other law enforcement agencies?*

**Answer:** No; the 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.

*Question No.2: Whether immunity will be provided under other economic laws including Service Tax, VAT, Companies Act, SEBI Act & regulations etc.?*

**Answer:** The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. Immunity from Benami Transactions (Prohibition) Act is subject to the condition that the property will be transferred to the declarant (being the person who provided the consideration for the property) latest by 30<sup>th</sup> September, 2017. However, as mentioned in response to Question No.1 above, the information contained in the declaration



made under the Scheme will not be shared with any other tax or law enforcement agency.

**Question No.3:** *Where the value of immovable property determined under Rule 3 of the IDS Rules is lower than the value adopted or assessed/assessable by stamp valuation authority referred in section 50C or section 43CA of the Income-tax Act, whether value of such property is to be declared as per Rule 3 of the IDS Rules, or as per section 50C/43CA?*

**Answer:** The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower than the value adopted or assessed/assessable by stamp valuation authority.

**Question No.4:** *Whether credit for tax deducted, if any, in respect of income declared shall be allowed?*

**Answer:** Yes; credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.

**Question No.5:** *Where a valid declaration is made after making valuation as per the provisions of the Scheme read with IDS Rules and tax, surcharge & penalty as specified in the Scheme have been paid, whether the department will make any enquiry in respect of sources of income, payment of tax, surcharge and penalty?*

**Answer:** No.

**Question No.6:** *What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1?*

**Answer:** The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all. In the column meant for nature of undisclosed income one has to write the nomenclature such as 'immovable property', 'moveable property', 'gold', 'jewellery' or 'cash' etc. This will enable the taxpayer to establish the link between the income declared under the scheme and

the claim, if any, made in respect of such undisclosed income in the return of income filed subsequently or during any assessment proceedings.

*Question No.7: In case the value of immovable property is evidenced by registered deed, whether the value as per registered deed or the market value as on 01.06.2016 is to be declared?*

**Answer:** As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1st June, 2016.

*Question No.8: In case a declaration relating to investment in undisclosed asset is made under the Scheme, whether any investigation will be initiated against the seller in respect of such declaration?*

**Answer:** No.

*Question No.9: What are the advantages of the Scheme as against declaring the past undisclosed income as current income in the return of income to be filed for Assessment Year 2017-18? How will the Department identify the year in which the undisclosed income was earned.*

**Answer:** In this regard, the following points may be noted:

- Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.
- If anyone attempts to disclose past undisclosed income in the current year, he will have to explain the source of income and substantiate the manner of earning the said income. In case of disclosure under the Scheme, there is no need to explain the source of income.

- Declaration of past undisclosed income in the current year cannot explain assets acquired in the past or provide any immunity in respect of the same.
- The Income-tax Department is in receipt of large volume of information from various sources such as registrars of property, banks, financial institutions, stock exchanges, tax deductors etc. The Department has launched a comprehensive data-mining and compliance management programme in the form of 'Project Insight' which will generate a large volume of reliable information about financial transactions undertaken by taxpayers and the relevant year in which the transaction was undertaken.

*Question No.10: In a case the declarant earned undisclosed income of Rs. 90 lakh in previous year 2010-11. Out of the same, he acquired an immovable property in the previous year 2011-12 for Rs.50 lakh, made personal expenditure to the extent of Rs.20 lakh and balance Rs.20 lakh is left with him as cash in hand on 01.06.2016. The fair market value of the immovable property as on 01.06.2016 is Rs.80 lakh. What is the amount to be declared under the Scheme?*

**Answer:**

The declarant in this case has to declare the following:

- (i) Rs. 80 lakh being fair market value of the immovable property as on 01.06.2016
- (ii) Rs. 20 lakh being the cash in hand as on 01.06.2016
- (iii) Rs. 20 lakh being the balance of undisclosed income [Rs. 90 lakh – (Rs.50 lakh + Rs. 20 lakh)] which is not represented in the form of investment in any asset.

Thus the total undisclosed income to be declared in this case will be Rs. 1.20 crore.

*Question No.11: A person invested his undisclosed income in a house property in the previous year 2010-11 which has not been let out. The person also owned another house property from disclosed sources, which has been claimed as self-occupied property for the purposes of computation of income under the head income from house property. In case the person declares the undisclosed house property at its fair market value on 01.06.2016, whether any action will be taken for bringing the annual value of the undisclosed property to tax as income from house property by deeming it to be let property as*



*provided under section 23(4)(b) of the Income-tax Act for the earlier previous years?*

Answer: No. However, where the house property was let-out during the relevant period, the actual rent received or receivable will be required to be declared under the Scheme in addition to the fair market value of the house property as on 01.06.2016.

(Dr. T.S. Mapwal)  
Under Secretary to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**New Delhi, 30<sup>th</sup> June, 2016.**

**PRESS RELEASE**

**Subject: Issue of further clarifications (FAQs) under Income Declaration Scheme, 2016.**

The Income Declaration Scheme, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare their undisclosed income and assets. The Scheme came into effect on 1<sup>st</sup> June, 2016. Declarations under the Scheme may be filed upto 30<sup>th</sup> September, 2016. Vide Circular No. 17 dated 20<sup>th</sup> May and Circular No. 24 dated 27<sup>th</sup> June, 2016 the Board has issued clarifications in the form of FAQs.

The CBDT has since received further queries from stakeholders seeking clarifications about various provisions of the Scheme. The issues raised have been examined and a further set of eleven FAQs have been issued today vide Circular No.25 of 2016. The circular inter alia provides clarifications on issues such as confidentiality of information disclosed in the declaration, allowability of TDS credit against declared income, enquiry in respect source of income and payment of tax and initiation of enquiry against third parties on the basis of information furnished in the declaration.

An issue regarding the advantage of declaring undisclosed income and assets under the Scheme vis-à-vis declaration of the same as current income for Assessment Year 2017-18 was also raised. In this regard it has been clarified that declaration of undisclosed income and assets as current income for Assessment Year 2017-18 would attract prosecution for false verification and also cannot explain acquisition of undisclosed assets in the past years. Attention of taxpayers has also been drawn to the comprehensive data-mining programme launched by the Department which will provide pin-pointed information about transactions undertaken by the taxpayer and the year to which the same relate.

The full text of the circular is available on the departmental website [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in).

**(Meenakshi J Goswami)  
Commissioner of Income Tax  
(Media and Technical Policy)  
Official Spokesperson, CBDT.**



## **Form for Income Disclosure - Form 1 - User Manual**



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## Introduction

As per Income Declaration Scheme, 2016, the declaration of undisclosed income is to be filed using Form for Income Disclosure - Form 1.

As per Notification No. 33/2016, the other Forms accompanying Form for Income Disclosure - Form 1 are Form 2, Form 3 and Form 4.

Form 2 is an acknowledgement issued to the declarant by the jurisdictional Principal Commissioner or Commissioner.

Form 3 shall be furnished by the declarant to the jurisdictional Principal Commissioner or Commissioner for the proof of payment of tax, surcharge and penalty made after receiving Form-2.

Form 4 is a certificate granted by the jurisdictional Principal Commissioner or Commissioner after submission of Form 3.

**Note: In e-Filing portal, only Form for Income Disclosure - Form 1 is available for e-Filing.**

## Pre-Requisites for Uploading Form for Income Disclosure - Form 1

- To upload Form for Income Disclosure - Form 1, user should have a valid PAN and should be registered in e-Filing portal.
- A valid XML file should be generated using the JAVA Utility available under downloads. The JAVA utility of Form for Income Disclosure - Form 1 can be downloaded from the path **Downloads → Forms (Other than ITR) → Form for Income Disclosure - Form 1**.
- A valid XML can be generated by following the process, **Extract the JAVA Utility** of Form for Income Disclosure - Form 1 → Right click and **Open the JAR file** of Form for Income Disclosure - Form 1 → Fill all the Mandatory fields → Click on **"Generate XML"**.
- Valid DSC should be registered in e-Filing portal for uploading Form for Income Disclosure - Form 1.

## Upload Form for Income Disclosure - Form 1



To Upload Form for Income Disclosure - Form 1, the steps are as below:

**Step 1:** In e-Filing Homepage, Click on "**Login Here**"

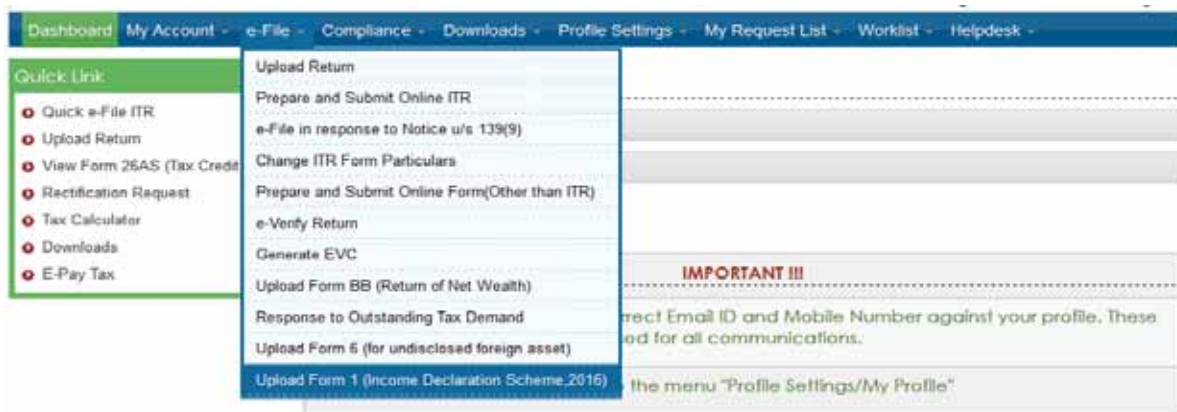


**Step 2:** Enter **User ID** (PAN), Password, DOB/DOI and Captcha. Click **Login**.

## Login

User ID *	<input type="text" value="PANPA1234N"/>
Password *	<input type="password" value="....."/>
Date of Birth/Incorporation (DD/MM/YYYY) *	<input type="text" value="01/01/1990"/> 
<input type="button" value="Login"/> <a href="#">Forgot Password?</a>	
<a href="#">New Users? Register Now</a>   <a href="#">Resend Activation Link</a>	
 <a href="#">e-Filing Login Through NetBanking</a>	

**Step 3:** Post login, go to e-File → Upload Form for Income Disclosure - Form 1 (Income Declaration Scheme, 2016).



**Step 4: "Upload XML file":** In the upload page, attach a valid XML file generated using the JAVA utility of Form for Income Disclosure - Form 1.


**Step 5: "Attach the Valuation Report":** Valuation Report, if any, can be attached. This is not mandatory.

**Step 6: "Attach the Signature file":** Upload the signature file generated using DSC Management Utility for the uploaded XML file. For further details on generating Signature file [click here](#). Navigate to Step by Step Guide for Uploading XML.

**Step 7:** Click on "Submit" button.



### Upload Form 1 (Income Declaration Scheme)

PAN	<input type="text" value="PERCA8001A"/>
Form Name *	<input type="text" value="FORM 1"/>
Attach the Form 1 XML file *	<input type="button" value="Browse..."/> No file selected.
Attach scanned valuation report in PDF/ZIP format	<input type="button" value="Browse..."/> No file selected.
<a href="#">Click here to download the DSC Utility</a> ?	
<div> <b>Steps to Generate Signature File :</b><ul style="list-style-type: none"><li>• Download the "ITD e-Filing DSC Management Utility".</li><li>• Generate the signature file. Follow the instructions in the Utility.</li><li>• Attach the generated signature file.</li></ul><p><b>Note:</b> The generated signature file is valid only for one transaction.</p></div>	
Attach the Signature file *	<input type="button" value="Browse..."/> No file selected.
<input type="button" value="Submit"/> <input type="button" value="Cancel"/>	

#### Note:

- The facility to upload Form for Income Disclosure - Form 1 using DSC is now available on e-Filing portal.
- Upload of Form for Income Disclosure - Form 1 using EVC will be available shortly.

Once the Form for Income Disclosure - Form 1 is uploaded, success message will be displayed on the screen. A confirmation mail is sent to the registered email id.

### Form 1 (Income Declaration Scheme) Filed Successfully

FORM1 has been filed and the Transaction ID is: 1000525915

An e-mail confirming the successful submission of your Form along with the Receipt number has been sent to demo@mail.com and demo@mail.com

#### View e-Filed Form for Income Disclosure - Form 1

To View the e-Filed Form for Income Disclosure - Form 1, the steps are as below:

**Step 1:** Login to e-Filing, Go to My Account → View Form for Income Disclosure - Form 1 (Income Declaration Scheme, 2016).

Dashboard - My Account - e-File - Compliance - Downloads - Profile Settings - My Request List - Worklist - Helpdesk -

**Quick Link:**

- Quick e-File
- Upload Return
- View Form
- Rectification
- Tax Calculation
- Downloads
- E-Pay Tax

View Form 26AS (Tax Credit)

e-Filed Returns/Forms

Refund/Demand Status

Refund Re-issue Request

Rectification Request

Rectification Status

Request for Intimation u/s 143(1)/154

Register as Legal Heir

Add CA

List/Dis-engage CA

Register as Person Competent to Verify

Engage/Dis-engage ERI

Tax Credit Mismatch

Email Communications

Manage ITDREIN

View Form 15CA

View Form 6 (for undisclosed foreign asset)

Register as Liquidator

View Form 1 (Income Declaration Scheme, 2015)

**IMPORTANT !!!**

You have the correct Email ID and Mobile Number against your profile. These will be used for all communications.

If you are not sure, please go to the menu "Profile Settings/My Profile"

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The national portal of India

Ministry of Finance, Government of India. All Rights Reserved  
1024 x 768 resolution | Site Last Updated on 22/05/2015

Site owned by  
Income Tax Department

**Step 2:** The uploaded Form for Income Disclosure - Form 1 details are displayed under "View Form for Income Disclosure - Form 1". Click on the "Receipt No." to see the details of Form for Income Disclosure - Form 1 uploaded for future reference.

[View Form 1](#)

PAN	Form	Filing Date	Filing Type	Receipt No.	Status
AQZPK2300C	Form 1	01/06/2016	Original	100278031010616	Successfully e-Filed

**Step 3:** The Filing Type of the uploaded Form for Income Disclosure - Form 1 can be viewed. And the uploaded XML file, PDF and Receipt can be downloaded.

**Details Of Receipt Number - 100278031010616**

<b>PAN</b>	AQZPK2300C	<b>Form</b>	Form 1
<b>Filing Type</b>	Original	<b>Receipt Number</b>	100278031010616

Date	Status	Download
01/06/2016	Successfully e-Filed	XML Form Receipt

FORM OF DECLARATION UNDER SECTION 183 OF THE FINANCE ACT, 2016, IN RESPECT OF THE INCOME  
DECLARATION SCHEME, 2016

THE INCOME DECLARATION SCHEME RULES, 2016

**Form 1**

[See rule 4(1)]

To,

The Principal Commissioner/Commissioner

.....

Sir/ Madam,

I hereby make a declaration under section 183 of the Finance Act, 2016. I give below the necessary particulars:-

1. Name of the declarant .....
2. Address: Office.....  
.....  
E-mail.....Telephone No.....  
Residence.....  
.....  
E-mail.....Telephone No.....
3. Permanent Account Number (PAN) .....  
(In case PAN is not held, please apply for PAN and quote here)
4. Status of the declarant  
(a) Whether individual, HUF, firm, company etc. ....  
(b) Whether Resident/Non-Resident/Not ordinarily resident .....
5. Details relating to assessment years for which the declaration is being made:

Assessment year	Whether return of income filed (Yes/No)	If column (2) is Yes, furnish the income returned/ assessed	Assessing Officer (ward/ circle) if return filed in paper form
(1)	(2)	(3)	(4)

6. Statement of undisclosed income as per Annexure
7. Total amount of declaration of undisclosed income Rs.....
8. Tax payable thereon (@ 30% of item 7) Rs.....
9. Surcharge payable thereon (@ 25% of item 8) Rs.....
10. Penalty payable thereon (@25% of item 8) Rs.....



Rs.....

[illegible]

.....

## VERIFICATION

(Full name in block letters)

(name of father/husband)

(a) the information given in this declaration is correct and complete to the best of my knowledge and belief;

- (b) in addition to my own income in respect of the assessment year(s) for which the declaration is made, income of other persons in respect of which I am chargeable to tax and income accruing or arising from the assets held by me through any other person for which I had failed to furnish a return under section 139 of the Income-tax Act, 1961/which I had failed to disclose in a return of income furnished by me before the commencement of the Scheme/which has otherwise escaped assessment, has also been disclosed in this declaration;
- (c) the income of any other person in respect of which I am not chargeable to tax has not been included in this declaration;
- (d) the provisions of clause (a) of section 196 of the Finance Act, 2016 in respect of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 are not applicable to me;
- (e) the provision clause (b) of section 196 of the Finance Act, 2016 in respect of Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988 are not applicable to me;
- (f) the undersigned has not been notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;
- (g) the income declared is not chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;
- (h) the income declared is not chargeable to tax under the Income-tax Act for any previous year relevant to assessment year,-
  - (i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been received in respect of such assessment year and the proceeding is pending before the Assessing Officer;
  - (ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under sub-section (2) of section 143 of the said Act for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been received and the time for issuance of such notice has not expired.
- (i) the undisclosed income declared in the form of investment in benami property and existing in the name of benamidar shall be transferred in the name of the real owner on or before 30<sup>th</sup> September, 2017, failing which immunity under Benami Transactions (Prohibition) Act, 1988 shall not be available.

(Designation)

.....

(Signature)

Date.....

\*Score out whichever is not applicable.

STATEMENT OF UNDISCLOSED INCOME

Description of undisclosed income and income declared in the form of investment in assets (use separate sheet in case of multiple assets in the same category)

## I. Total undisclosed income

S.No.	Assessment year to which the undisclosed income pertains	Amount of undisclosed income (in Rs.)	Nature of undisclosed income
<b>Total</b> (to be taken to item 7 of the Form)			

II. Whether any part of income referred in (I) above is in form of investment in asset Yes No

III. If reply to (II) above is Yes, furnish description of undisclosed income declared in the form of investment in assets (*Use separate sheet in case of multiple assets in the same category*)

## 1. Immovable property (attach valuation report)

- (i) Nature of property (land/building/flat etc.) \_\_\_\_\_
- (ii) Address of the property \_\_\_\_\_
- (iii) Name(s) under which held \_\_\_\_\_
- (iv) Date of acquisition \_\_\_\_\_
- (v) Total acquisition cost \_\_\_\_\_
- (vi) Value as estimated by the registered valuer on  
1<sup>st</sup> June, 2016 \_\_\_\_\_
- (vii) Fair Market value as per Rule 3 \_\_\_\_\_

## 2. Jewellery (attach valuation report)

- (a) Gold
  - (I) Purity \_\_\_\_\_, Weight \_\_\_\_\_, Value \_\_\_\_\_
  - (II) Purity \_\_\_\_\_, Weight \_\_\_\_\_, Value \_\_\_\_\_
- (b) Diamond (1 carat or more)
  - (I) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_
  - (II) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_
- (c) Diamond (less than 1 carat) and other precious stones Value \_\_\_\_\_
- (d) Other precious metals Value \_\_\_\_\_

## 3. Artistic work (attach valuation report)

- (i) Nature of artistic work \_\_\_\_\_
- (ii) Name(s) under which held \_\_\_\_\_
- (iii) Date of acquisition \_\_\_\_\_
- (iv) Cost of acquisition \_\_\_\_\_
- (v) Value of artistic work as estimated by the  
registered valuer \_\_\_\_\_
- (vi) Fair Market value as per Rule 3 \_\_\_\_\_

4. Shares and securities

(a) Quoted shares and securities [Rule 3(1)(c)(I)]

- (i) Description of security/ share
- (A) Name of issuer \_\_\_\_\_
- (B) Number of securities/shares \_\_\_\_\_
- (C) Type of security/ share \_\_\_\_\_
- (ii) Recognised exchange where quoted \_\_\_\_\_
- (iii) Name(s) under which held \_\_\_\_\_
- (iv) Cost of acquisition \_\_\_\_\_
- (v) Date(s) of acquisition \_\_\_\_\_
- (vi) Value as determined under Rule 3(1)(c)(I)(ii) \_\_\_\_\_
- (vii) Fair Market value as per Rule 3 \_\_\_\_\_

(b) Unquoted equity share [Rule 3(1)(c)(II)] (attach valuation report)

- (i) Description of share
- (A) Name of issuer \_\_\_\_\_
- (B) Number of shares \_\_\_\_\_
- (C) Type of share \_\_\_\_\_
- (ii) Name(s) under which held \_\_\_\_\_
- (iii) Cost of acquisition \_\_\_\_\_
- (iv) Date(s) of acquisition \_\_\_\_\_
- (v) Value as determined under Rule 3(1)(c)(II)(ii) \_\_\_\_\_
- (vi) Fair Market value as per Rule 3 \_\_\_\_\_

(c) Unquoted shares and securities other than equity shares in a company [Rule 3(1)(c)(III)] (attach valuation report)

- (i) Description of share/ security
- (A) Name of issuer \_\_\_\_\_
- (B) Number of securities/shares \_\_\_\_\_
- (C) Type of security/ share \_\_\_\_\_
- (ii) Name(s) under which held \_\_\_\_\_
- (iii) Cost of acquisition \_\_\_\_\_
- (iv) Date(s) of acquisition \_\_\_\_\_
- (v) Value as determined under Rule 3(1)(c)(III)(ii) \_\_\_\_\_
- (vi) Fair Market value as per Rule 3 \_\_\_\_\_

5. Any other asset

- (i) Description of asset \_\_\_\_\_
- (ii) Name(s) under which held \_\_\_\_\_
- (iii) Cost of acquisition/ investment \_\_\_\_\_
- (iv) Date of acquisition/ investment \_\_\_\_\_
- (v) Value as determined under Rule 3(1)(g)(II) \_\_\_\_\_
- (vi) Fair market value as per Rule 3 \_\_\_\_\_

6. Total value of all the assets declared \_\_\_\_\_



7. Deduction as per rule 4 of the Income Declaration Scheme Rules, 2016 \_\_\_\_\_  
(where part of asset acquired from income already assessed under  
the Income-tax Act) (to be provided in respect of each asset separately)
8. Deduction on account of investment made in the asset during the  
previous year relevant to the assessment year for which a notice  
u/s 142/143(2)/148/153A/153C of the Income-tax Act is issued \_\_\_\_\_
9. Total undisclosed income declared in the form of investment in asset  
(6-7-8) \_\_\_\_\_

IV. (1) Whether the undisclosed income referred in (I) above had ever been 

Yes	No
-----	----

  
credited in a bank account

(2) If Yes, details of such bank accounts

Name and address of Bank	IFSC Code	Account holder name(s)	Account Number	Balance in the Account as on 01.06.2016 (if any)

.....  
(Signature)

.....  
(Name)

Place.....

Date.....

#### NOTES:

1. If the total amount of tax, surcharge and penalty payable is not paid before 30<sup>th</sup> November 2016, the declaration will be treated as void and shall be deemed never to have been made.
2. If the declaration is made by misrepresentation or suppression of facts it shall be void and shall be deemed never to have been made.
3. If space provided is insufficient, separate enclosure may be used for the purpose.
4. In the last column of Table at Point (I) relating to nature of undisclosed income, specify the type of income viz. house property income, business income, professional income, commission income, interest income etc.

ACKNOWLEDGEMENT OF DECLARATION UNDER SECTION 183 OF THE FINANCE ACT, 2016 IN  
RESPECT OF THE INCOME DECLARATION SCHEME, 2016

THE INCOME DECLARATION SCHEME RULES, 2016

Form 2  
[See rule 4(3)]

Whereas Mr./Mrs./M/s ..... (hereinafter referred to as the declarant) has filed a declaration under section 183 of the Finance Act, 2016;

And whereas the said declaration has been received on ..... ;

Now, therefore after consideration of relevant material, I hereby determine the following amount payable by you with respect to the declaration made under the scheme:

Sl. No.	Assessment year	Undisclosed income as declared in Form 1	Undisclosed income eligible for the scheme	Amount payable			Reasons (in case of difference in amounts in Column (3) and (4))
(1)	(2)	(3)	(4)	(5)			(6)
				Tax	Surcharge	Penalty	
Total							

The declarant is hereby directed to make the payment of sum payable as per column (5) above on or before the 30<sup>th</sup> day of November, 2016.

In case of non-payment of amount payable upto the 30<sup>th</sup> day of November, 2016, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made.

Place .....  
Date .....

.....  
Name, signature and seal of Designated Authority

IN RESPECT OF THE INCOME DECLARATION SCHEME, 2016

THE INCOME DECLARATION SCHEME RULES, 2016

Form 3  
[See rule 4(4)]

To,

The Principal Commissioner/Commissioner

.....

Sir/Madam,

Pursuant to the acknowledgement received from you in Form-2 vide certificate F.No.\_\_\_\_\_ dated \_\_\_\_\_, the detail of payments made are as under:

[illegible]

**Attach proof of payment as detailed above**

Place: .....

.....

Signature

Date: .....

.....

Designation

.....

Address

.....

PAN



**CERTIFICATE OF DECLARATION UNDER SECTION 183 OF THE FINANCE ACT, 2016 IN RESPECT OF  
THE INCOME DECLARATION SCHEME, 2016**

**THE INCOME DECLARATION SCHEME RULES, 2016**

Form 4  
[See rule 4(5)]

Office of the Principal Commissioner/Commissioner of Income-tax,

.....

.....

This is to acknowledge that a declaration under section 183 of the Finance Act, 2016 has been accepted in respect of the following:

- 1) Name and address of the declarant: .....
- .....
- .....
- 2) Son/Daughter/Wife of .....
- 3) PAN .....
- 4) Receipt No. and date of filing the Declaration: .....
- 5) Details of Declaration as per the acknowledgment issued in Form-2

S.No.	Assessment year	Amount of undisclosed income declared and accepted	Description of assets where undisclosed income declared in the form of investment in asset

- 6) Tax payable on the undisclosed income declared & accepted Rs. ....
- 7) Surcharge payable on the undisclosed income declared & accepted Rs. ....
- 8) Penalty payable on the undisclosed income declared & accepted Rs. ....
- 9) Total Amount payable (6) + (7) + (8) Rs. ....

10) Details of tax paid

Sl	BSR Code of Bank	Date of Deposit (DD/MM/YYYY)	Serial Number of Challan	Amount (Rs)
(1)	(2)	(3)	(4)	(5)
i				
ii				

- 11) The declarant shall furnish a proof of transfer of benami property in the name of the real owner on or before 30.09.2017 failing which the immunity from Benami Transactions (Prohibition) Act, 1988 shall not be available.

Date: .....

.....

(Principal Commissioner/Commissioner of Income-tax)

NOTE: No certificate will be issued unless the total amount of tax, surcharge and penalty payable has been paid

## **Relevant Section of Wealth- Tax Act, 1957**

(ea) “assets”, in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means—

(i) any building or land appurtenant thereto (hereinafter referred to as “house”), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in-trade;

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes;]

(ii) motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade);

(iii) jewellery, bullion and furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals: Provided that where any of the said assets is used by the assessee as stock-in-trade, such asset shall be deemed as excluded from the assets specified in this sub-clause;

(iv) yachts, boats and aircrafts (other than those used by the assessee for commercial purposes);

(v) urban land;

(vi) cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

[ Explanation 1 ].—For the purposes of this clause,—[ Explanation 2 .—For the removal of doubts, it is hereby declared that “Jewellery” does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.]

(a) “jewellery” includes—

(i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones and whether or not worked or sewn into any wearing apparel;

(ii) precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel;

(b) “urban land” means land situate—

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or

(ii) in any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette, but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him [or any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him]



### **Relevant Provisions of COFEPOSA, 1974**

**8.** Advisory boards. For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7), of Article 22 of the Constitution,-

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of Article 22 of the Constitution;

(b) save as otherwise provided in section 9, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of Article 22 of the Constitution;

(c) the advisory board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from, the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desired to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

**9. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.**

(1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the [31st day of July, 1999], may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of Article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by the Government, is satisfied that such person

- (a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or
- (b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or
- (c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling, and makes a declaration to that effect within five weeks of the detention of such person.

Explanation 1 in this sub-section, "area highly vulnerable to smuggling" means

- (i) the Indian customs waters contiguous to the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman, Diu and Pondicherry;
- (ii) the inland area fifty kilometres in width from the coast of India falling within the territories of the States of Goa, Gujarat, territories of Daman, Diu and Pondicherry;
- (iii) the inland area fifty kilometres in width from the India-Pakistan border in the States of Gujarat, Jammu and Kashmir, Punjab and Rajasthan;
- (iv) the customs airport of Delhi; and
- (v) such further or other Indian customs waters, or inland area not exceeding one hundred kilometres in width from any other coast or border of India, or such other customs station, as the Central Government may, having regard to the vulnerability of such waters, area or customs station, as the case may be, to smuggling, by notification in the Official Gazette, specify in this behalf.

**Explanation 2** (1) For the purposes of Explanation 1, "customs airport" and "customs station" shall have the same meaning as in clauses (10) and (13) of section 2 of the Customs Act, 1962 (52 of 1962), respectively.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 8 shall have effect subject to the following modifications, namely:-

(i) in clause (b), for the words "shall, within five weeks", the words, "shall, within four months and two weeks" shall be substituted;

(ii) in clause (c),-

(1) for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;

(2) for the words "eleven weeks", the words "five months and three weeks" shall be substituted;

(iii) in clause (f), for the words "for the detention", as both the places where they occur, the words "for the continued detention" shall be substituted.

## **12A. Special provisions for dealing with emergency**

(1) Notwithstanding anything contained in this Act or any rules of natural Justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of Article 352 of the Constitution on the 3rd day of December 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twenty-four months from the 25th day of June, 1975, whichever period is the shortest.

(2) When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975, the Central Government or the State Government or, as the case may be, the office making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamations referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned:

Provided that where such declaration is made by an officer, it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it

appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, that Government may revoke the declaration.

(4) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that subsection is in force, and, accordingly, such period shall not be taken into account for the purpose of sub-section (3) of section 3.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made thereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing-

(i) the periods specified in clauses (b) and (c) of section 8;

(ii) the periods of "one year" and "five weeks" specified in sub-section (1), the period of "one year" specified in sub-section (2)(i), and the period of "six months" specified in subsection (3) of section 9.



## **Relevant Provisions of Black Money Act, 2015**

### **Definitions**

(11) “undisclosed asset located outside India” means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;

(12) “undisclosed foreign income and asset” means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5;

## **CHAPTER II**

### **BASIS OF CHARGE**

#### **Charge of Tax**

3. (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent. of such undisclosed income and asset: Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer

(2) For the purposes of this section, “value of an undisclosed asset” means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

#### **Scope of total undisclosed foreign income and asset**

4. (1) Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—

(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;

(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and

(c) the value of an undisclosed asset located outside India.

(2) Notwithstanding anything contained in sub-section (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.

(3) The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

## **CHAPTER VI**

### **TAX COMPLIANCE FOR UNDISCLOSED FOREIGN INCOME AND ASSETS**

59. Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016—

- (a) for which he has failed to furnish a return under section 139 of the Income-tax Act;
- (b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act;
- (c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise

### **Charge of Tax**

60. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed asset located outside India and declared under section 59 within the time specified therein shall be chargeable to tax at the rate of thirty per cent. of value of such undisclosed asset on the date of commencement of this Act.

### **Penalty**

61. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration of undisclosed asset located outside India shall, in addition to tax charged under section 60, be liable to penalty at the rate of one hundred per cent. of such tax

### **Manner of declaration**

62. (1) A declaration under section 59 shall be made to the Principal Commissioner or the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed

(2) The declaration shall be signed,—

(i) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(ii) where the declarant is a Hindu undivided family, by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(iii) where the declarant is a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof;

(iv) where the declarant is a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor;

(v) where the declarant is any other association, by any member of the association or the principal officer thereof; and

(vi) where the declarant is any other person, by that person or by some other person competent to act on his behalf.

(3) Any person, who has made a declaration under sub-section (1) in respect of his asset or as a representative assessee in respect of the asset of any other person, shall not be entitled to make any other declaration, under that sub-section in respect of his asset or the asset of such other person, and any such other declaration, if made, shall be deemed to be void.

#### **Time for payment of tax.**

63. (1) The tax payable under section 60 and penalty payable under section 61 in respect of the undisclosed asset located outside India, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

(2) The declarant shall file the proof of payment of tax and penalty on or before the date notified under sub-section (1), with the Principal Commissioner or the Commissioner before whom the declaration under section 59 was made.

(3) If the declarant fails to pay the tax in respect of the declaration made under section 59 on or before the date notified under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Chapter.

**Undisclosed foreign asset declared not to be included in total income.**

64. The amount of undisclosed investment in an asset located outside India declared in accordance with section 59 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax referred to in section 60 and the penalty referred to in section 61 by the date notified under sub-section (1) of section 63.

**Undisclosed foreign asset declared not to affect finality of completed assessments.**

65. The declarant shall not be entitled, in respect of undisclosed asset located outside India declared or any amount of tax paid thereon, to reopen any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

**Tax in respect of voluntarily disclosed asset not refundable.**

66. Any amount of tax paid under section 60 or penalty paid under section 61 in pursuance of a declaration made under section 59 shall not be refundable.

**Declaration not admissible in evidence against declarant.**

67. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 59 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 61, or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957 or the Foreign Exchange Management Act, 1999 or the Companies Act, 2013 or the Customs Act, 1962 .

**Declaration by misrepresentation of facts to be void.**

68. Notwithstanding anything contained in this Chapter, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Chapter.

**Exemption from wealth tax in respect of assets specified in declaration.**

69. (1) Where the undisclosed asset located outside India is represented by cash (including bank deposits), bullion or any other assets specified in the declaration made under section 59—



(a) in respect of which the declarant has failed to furnish a return under section 14 of the Wealth-tax Act, 1957 for the assessment year commencing on or before the 1st day of April, 2015; or

(b) which have not been shown in the return of net wealth furnished by him for the said assessment year or years; or

(c) which have been understated in value in the return of net wealth furnished by him for the said assessment year or years, then, notwithstanding anything contained in the Wealth-tax Act, 1957 or any rules made thereunder,—

I. wealth-tax shall not be payable by the declarant in respect of the assets referred to in clause (a) or clause (b) and such assets shall not be included in his net wealth for the said assessment year or years;

II. the amount by which the value of the assets referred to in clause (c) has been understated in the return of net wealth for the said assessment year or years, to the extent such amount does not exceed the voluntarily disclosed income utilised for acquiring such assets, shall not be taken into account in computing the net wealth of the declarant for the said assessment year or years.

Explanation.—Where a declaration under section 59 is made by a firm, the assets referred to in clause (I) or, as the case may be, the amount referred to in clause (II) shall not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm.

(2) The provisions of sub-section (1) shall not apply unless the conditions specified in sub-sections (1) and (2) of section 63 are fulfilled by the declarant.

### **Applicability of certain provisions of Income-tax Act and of Chapter V of Wealth-tax Act.**

70. The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 189 of that Act or of Chapter V of the Wealth-tax Act, 1957 relating to liability to assessment in special cases shall, so far as may be, apply in relation to proceedings under this Chapter as they apply in relation to proceedings under the Income-tax Act or, as the case may be, the Wealth-tax Act.

### **Chapter not to apply to certain persons.**

71. The provisions of this Chapter shall not apply—

(a) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988;

(c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

(d) in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2016—

(i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer; or

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been

carried out under section 133A of the Income-tax Act in a previous year and a notice under subsection (2) of section 143 for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired; or

**(iii)** where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.

Explanation.—For the purpose of this sub-clause asset shall include a bank account whether having any balance or not.

### **Removal of doubts.**

72. For the removal of doubts, it is hereby declared that—

(a) save as otherwise expressly provided in the Explanation to sub-section (1) of section 69, nothing contained in this Chapter shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Chapter;

(b) where any declaration has been made under section 59 but no tax and penalty has been paid within the time specified under section 60 and section 61, the value of such asset shall be chargeable to tax under this Act in the previous year in which such declaration is made;

(c) where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly

**F. No. 142/18/2015-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)**

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Dated 2<sup>nd</sup> of July, 2015

**EXPLANATORY NOTES ON PROVISIONS RELATING TO TAX COMPLIANCE FOR  
UNDISCLOSED FOREIGN INCOME AND ASSETS AS PROVIDED IN CHAPTER VI  
OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND  
IMPOSITION OF TAX ACT, 2015**

**Introduction**

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 (referred to here as 'the Act') as passed by the Parliament received the assent of the President on the 26<sup>th</sup> of May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad. It, *inter alia*, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or asset.

2. Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. This circular explains the substance of the provisions of the compliance window provided for in the said Chapter VI of the Act.

**Scope of compliance window**

3. A declaration under the aforesaid chapter can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.



4. A declaration under the aforesaid Chapter may be made in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2016-17 for which he had, *either* failed to furnish a return under section 139 of the Income-tax Act, *or* failed to disclose such income in a return furnished before the date of commencement of the Act, *or* such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

#### Rate of tax and penalty

5. The person making a declaration under the provisions of the chapter would be liable to pay tax at the rate of 30 percent of the value of such undisclosed asset. In addition, he would also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act). Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

#### **Time limits for declaration and making payment**

6. A declaration under the Act can be made anytime on or after the date of commencement of the Act but before a date to be notified by the Central Government. As regards the commencement of the Act, section 1 provides that the Act shall come into force on the 1<sup>st</sup> of April, 2016. However, section 3 which specifies the charge of tax, lays down that tax shall be charged for every assessment year commencing on or after the 1<sup>st</sup> day of April, 2016. Hence, under the Act, tax is also chargeable for assessment year 2016-17 for which the relevant previous year is 2015-16. In exercise of its power to remove difficulties under section 86 of the Act, the Central Government by an order has clarified that the Act shall come in to force on 1<sup>st</sup> July, 2015. Accordingly, the compliance provisions under

Chapter VI shall also come into force with effect from the date of commencement of the Act i.e. 1<sup>st</sup> of July, 2015.

7. The Central Government has further notified 30<sup>th</sup> September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31<sup>st</sup> December, 2015 as the last date by which the tax and penalty mentioned in para 5 above shall be paid. Accordingly, a declaration under Chapter VI in Form 6 as prescribed in the Rules may be made at any time before 30.09.2015. After such declaration has been furnished, the designated Principal CIT/ CIT will issue an intimation in the proforma annexed to the Circular to the declarant by 31.10.15 whether any information in respect of the declared asset had been received by the Competent Authority on or before 30<sup>th</sup> June 2015, under an agreement entered into by the Central Government under section 90 or 90A of the Income-tax Act. Where any such information had been received, the declarant shall file a revised declaration in Form 6 excluding such asset. The declarant shall not be liable for any consequences under the Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Income-tax Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal Commissioner /Commissioner i.e. if a declarant has received the intimation on 10<sup>th</sup> October 2015, he can file a revised declaration on or before 25<sup>th</sup> October, 2015. However, in all cases, the declarant is required to pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015. After the intimation of payment by the declarant, the Principal CIT/CIT will issue an acknowledgement in Form 7 of the accepted declaration within 15 days of such intimation of payment by the declarant.

#### **Form for declaration**

8. As per the Act, declaration under the chapter is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 6 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

Sl.	Status of the declarant	Declaration to be signed by
1.	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2.	HUF	<i>Karta</i> ; where the <i>karta</i> is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3.	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
4.	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5.	Any other association	Any member of the association or the principal officer.
6.	Any other person	That person or by some other person competent to act on his behalf.

The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

#### **Declaration not eligible in certain cases**

9. As per the provisions of section 71 of the Act no declaration under the compliance window can be made in respect of any undisclosed foreign asset which has been acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year in the following cases –

- (i) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any notice referred above has been served

upon the person on or before 30<sup>th</sup> June 2015 i.e. before the date of commencement of this Act.

In the form of declaration (Form 6) the declarant will verify that no such notice has been received by him on or before 30<sup>th</sup> June 2015.

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 6) the declarant will also verify that these facts do not prevail in his case.

(iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any information referred above has been received by the competent authority on or before 30<sup>th</sup> June 2015 i.e. before the date of commencement of this Act.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under Chapter VI.

#### **Circumstances where declaration shall be invalid**

10. In the following situations, a declaration shall be void and shall be deemed never to have been made:-



- (a) If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;
- (b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Act, including penalties and prosecutions, shall apply accordingly.

Any tax or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

### **Effect of valid declaration**

11. Where a valid declaration as detailed above has been made, the following consequences will follow:

- (a) The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- (b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
- (c) The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
- (d) Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.



(Gaurav Kanaujia)  
Director to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. Media Co-ordinator and Official spokesperson of CBDT.
7. Web manager for posting on the departmental website.

**Intimation to the declarant in respect of declaration made under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015**

Office of the Principal Commissioner/Commissioner of Income-tax,

.....  
.....

To,

(Name and address of the declarant)

With reference to your declaration filed under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015 on \_\_\_\_\_ (date) vide receipt number \_\_\_\_\_, the following may be informed,-

- (1) \*The competent authority has received an information, on or before 30<sup>th</sup> June 2015, under an agreement entered into by central Government under section 90 or section 90A of the Income-tax Act in respect of the following asset declared:-

(a) \_\_\_\_\_

(b) \_\_\_\_\_

In view of provisions of section 71(d)(iii), these assets are not eligible for declaration under section 59 of the Act.

- (2) \*As item (1) is applicable to the declaration filed by you, a revised declaration, if applicable, may be filed within 15 days of the receipt of this intimation.
- (3) \*Items (1) above is not applicable to the declaration and you are eligible for declaration under section 59 of the Act on the total fair market value of Rs. \_\_\_\_\_.

Date: .....

.....  
(Principal Commissioner/Commissioner of Income-tax)

\* Strike out if not applicable

**F. No. 142/18/2015-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)**

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Dated 6<sup>th</sup> of July, 2015

**Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets**

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act') has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows:-

**Question No.1:**     *If firm has undisclosed foreign assets, can the partner file declaration in respect of such asset?*

**Answer:**             The declaration can be made by the firm which shall be signed by the person specified in sub-section (2) of section 62 of the Act. The partner cannot make a declaration in his name. However, the partner may file a declaration in respect of an undisclosed asset held by him.

**Question No.2:**     *Where a company has undisclosed foreign assets, can it file a declaration under Chapter VI of the Act? If yes, then whether immunity would be granted to Directors of the company?*

**Answer:**             Yes, the company can file a declaration under Chapter VI of the Act. The Directors of the company shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of declaration made in the name of the company.

**Question No.3:**     *Whether immunity in respect of declaration made under the scheme is provided in respect of Acts other than those mentioned in section 67 of the Act?*



**Answer:** Section 67 provides immunity from prosecution under the five Acts viz. the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act. It does not provide immunity from prosecution under any other Act. For example- if the undisclosed asset has been acquired out of the proceeds of sale of protected animals the person will not be eligible for immunity under the Wildlife (Protection) Act, 1972.

**Question No.4:** *Whether the person making the declaration will be provided immunity from the Prevention of Money Laundering Act, 2002?*

**Answer:** The offence under the PMLA arises while laundering money generated from the process or activity connected with the offences specified in the schedule to the PMLA. Therefore, the primary requirement under PMLA is commission of a scheduled offence. With the enactment of the Act, the offence of wilful attempt to evade tax under section 51 of the Act has become a scheduled offence under PMLA. However, where a declaration of an asset has been duly made under section 59 of the Act the provisions of section 51 will not be applicable in respect of that asset. Therefore, PMLA will not be applicable in respect of the scheduled offence of wilful attempt to evade tax under section 51 of the Act in respect of assets for which declaration is made under section 59 of the Act.

**Question No.5:** *Where an undisclosed foreign asset is declared under Chapter VI of the Act and tax and penalty is paid on its fair market value then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?*

**Answer:** Yes, 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 gains 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 said fair market value and the period of holding shall start from the date of declaration of such asset under Chapter VI of the Act.

**Question No.6:** *Where a notice under section 142/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from voluntary declaration under section 59 of the Act?*

**Answer:** The person will only be ineligible from declaration of those foreign assets which have been acquired during the year for which a notice under section 142/ 143(2)/ 148/ 153A/ 153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare other foreign assets which have been acquired during other years for which no notice under above referred sections have been issued.

**Question No.7:** *As per section 71(d)(i), declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?*

**Answer:** The declarant will not be eligible for declaration under Chapter VI of the Act where an undisclosed asset has been acquired during any previous year relevant to any assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 30<sup>th</sup> day of June, 2015. The declarant is required to file a declaration regarding receipt of any such notice in Form 6.

**Question No. 8:** *Where an undisclosed foreign asset has been acquired partly during a previous year relevant to the assessment year which is pending for assessment and partly during other years not pending for assessment then whether such asset is eligible for declaration under Chapter VI of the Act?*

**Answer:** In the case where proceedings are pending before an Assessing Officer in pursuance of a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act served on or before 30-06-2015, the declarant may declare the undisclosed asset under Chapter VI of the Act. However, while computing the amount of declaration the investment made in the asset during the previous year relevant to the assessment year for which such notice is issued needs to be deducted

from the fair market value of the asset for which the person shall provide a computation alongwith the declaration. Further, such investment which is deducted from the fair market value shall be assessable in the assessment of the relevant assessment year pending under the Income-tax Act and the person shall inform the Assessing Officer the investment made during the relevant year in such asset.

Also to clarify, where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act is issued on or after 30-06-2015, the declarant shall be eligible to declare full value of asset even if such asset (or part of such asset) is acquired in the previous year relevant to the assessment year for which such notice is issued.

**Question No.9:** *Can a declaration be made of undisclosed foreign assets which have been assessed to tax and the case is pending before an Appellate Authority?*

**Answer:** As per section 65 of the Act, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of those assets. However, he can voluntarily declare other undisclosed foreign assets which have been acquired or made from income not disclosed and consequently not assessed under the Income-tax Act.

**Question No.10:** *Can a person against whom a search/ survey operation has been initiated file voluntary declaration under Chapter VI of the Act?*

**Answer:** (a) The person is not eligible to make a declaration under Chapter VI if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed foreign asset acquired in any previous year in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under Chapter VI in respect of an undisclosed asset acquired in the previous year in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed asset acquired in any other previous year.

**Question No. 11:** *Where a search/ survey operation was conducted and the assessment has been completed but the undisclosed foreign asset was not taxed, then whether such asset can be declared under Chapter VI of the Act?*

**Answer:** Yes, such undisclosed asset can be declared under Chapter VI of the Act.

**Question No.12:** *Whether a person is barred from voluntary declaration under Chapter VI of the Act if any information has been received by the Government under DTAA?*

**Answer:** As per section 71(d)(iii), the person cannot make a declaration of an undisclosed foreign asset where the Central Government has received an information in respect of such asset under the DTAA. The person is entitled for voluntary declaration in respect of other undisclosed foreign assets for which no information has been received.

**Question No.13:** *How would the person know that the Government has received information of an undisclosed foreign asset held by him which will make the declaration ineligible?*

**Answer:** The person may not know that the Government has information about undisclosed foreign asset held by him if the same has not been communicated to him in any enquiry/proceeding under the Income-tax Act. After the person has filed a declaration, which is to be filed latest by 30<sup>th</sup> September, 2015, he will be issued intimation by the Principal Commissioner/Commissioner by 31<sup>th</sup> October, 2015, whether any information has been received by the Government and consequently whether he is eligible to make the payment on the declaration made. If no information has been received up to 30<sup>th</sup> June, 2015 by the Government in respect of such asset the person will be allowed a time upto 31<sup>st</sup> December, 2015 for payment of tax and penalty in respect of the declared asset.

There may be a case where person makes declaration in respect of 5 assets whereas the Government has information about only 1 asset. In such situation the person will be eligible to declare the balance 4 assets under Chapter VI of the Act. In such case the declarant, on receipt of intimation by the Principal Commissioner/Commissioner, shall revise the declaration made within 15 days of such receipt of



intimation to exclude the asset which is not eligible for declaration. Tax and penalty on the eligible assets under the Act shall be payable in respect of the revised declaration by 31<sup>st</sup> of December, 2015. In respect of the ineligible assets provisions of the Income-tax Act shall apply. (Please also see answer to question no. 15)

**Question No.14:** *What are the consequences if no declaration under Chapter VI of the Act is made in respect of undisclosed foreign assets acquired prior to the commencement of the Act?*

**Answer:** As per section 72(c), where any asset has been acquired prior to the commencement of the Act and no declaration under Chapter VI of the Act is made then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the Assessing Officer and the provisions of the Act shall apply accordingly.

India is expected to start receiving information through Automatic Exchange of Information (AEOI) route under FATCA from USA later in the year 2015. Further, under the multilateral agreement India will start receiving information from other countries under AEOI route from 2017 onwards. As at 18<sup>th</sup> March 2015, 58 jurisdictions (including India) have committed to share information under AEOI by 2017 and 36 jurisdictions have committed to share by 2018, including jurisdictions which have beneficial tax regime. The multilateral agreement is expected to cover all the countries in the near future. The information under the AEOI will include information of controlling persons (beneficial owners) of the asset. The possibility of discovery of an undisclosed asset may arise at any time in the future; say for example, information of an immovable property can be unearthed if any utility bills/property tax or even gardener's/caretaker's salary has been paid through an existing or closed bank account. Therefore, if any information of an undisclosed foreign asset acquired earlier, say in the year 1975, for \$ 100,000 comes to the notice of an Assessing Officer later, say in the year 2020, when its value becomes, say, \$ 5 Million, the liability under the Act amounting to 120 percent of the fair market value of the asset on the valuation date may arise in the year 2020, besides prosecution and other consequences. In this case if the valuation date is in the year 2020 the amount of tax and penalty under the Act will be \$ 6 Million.

**Question No.15:** *If a declaration of undisclosed foreign asset is made under Chapter VI of the Act and the same was found ineligible due to the reason that*

*Government had prior information under DTAA then will the person be liable for consequences under the Act?*

**Answer:** In respect of such assets which have been duly declared in good faith under the tax compliance but not found eligible, he shall not be hit by section 72(c) of the Act and no action lies in respect of such assets under the Act. However, such information may be used for the purpose of the Income-tax Act.

**Question No.16:** *In respect of the undisclosed foreign assets referred to in answer to question No. 15 above, where the proceedings under the Income-tax Act are initiated, can the options of settlement commission etc. under the Income-tax Act be availed in respect of such assets?*

**Answer:** All the provisions of the Income-tax Act shall be applicable in respect of those assets.

**Question No.17:** *A person has some undisclosed foreign assets. If he declares those assets in the Income-tax Return for assessment year 2015-16 or say 2014-15 (in belated return) then should he need to declare those assets in the voluntary tax compliance under Chapter VI of the Act?*

**Answer:** As per the Act, the undisclosed foreign asset means an asset which is unaccounted/ the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of computation of total income in the Income-tax Return and consequently does not get taxed, mere reporting of a foreign asset in Schedule FA of the Return does not mean that the source of investment in the asset has been explained. The foreign asset is liable to be taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under Chapter VI of the Act in respect of all those foreign assets which are unaccounted/ the source of investment in such asset is not fully explainable.

**Question No.18:** *A person holds certain foreign assets which are fully explained and acquired out of tax paid income. However, he has not reported these assets in Schedule FA of the Income-tax Return in the past. Should he declare such assets under Chapter VI of the Act?*

**Answer:** Since, these assets are fully explained they are not treated as undisclosed foreign assets and should not be declared under Chapter

VI of the Act. However, if these assets are not reported in Schedule FA of the Income-tax Return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs. 10 lakhs under section 43 of the Act. The penalty is, however, not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to Rs. 5 lakhs at any time during the previous year.

**Question No.19:** *A person has a foreign bank account in which undisclosed income has been deposited over several years. He has spent the money in the account over these years and now it has a balance of only \$500. Does he need to pay tax on this \$500 under the declaration?*

**Answer:** Section 59 of the Act provides for declaration of an undisclosed asset and not income. In this case the Bank account is an undisclosed asset which may be declared. Tax on undisclosed asset is required to be paid on its fair market value. In case of a bank account the fair market value is the sum of all the deposits made in the account computed in accordance with Rule 3(1)(e). Therefore, tax and penalty needs to be paid on such fair market value and not on the balance as on date.

**Question No. 20:** *A person held a foreign bank account for a limited period between 1994-95 and 1997-98 which was unexplained. Since such account was closed in 1997-98 does he need to declare the same under Chapter VI of the Act?*

**Answer:** Section 59 of the Act provides that the declaration may be made of any undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Income-tax Act. Since the investment in the bank account was unexplained and was from untaxed income the same may be declared under Chapter VI of the Act. The consequences of non-declaration may arise under the Act at any time in the future when the information of such account comes to the notice of the Assessing Officer.

**Question No.21:** *A person inherited a house property in 2003-04 from his father who is no more. Such property was acquired from unexplained sources of investment. The property was sold by the person in 2011-12. Does he need to declare such property under Chapter VI of the Act and if yes*

*then, what will be the fair market value of such property for the purpose of declaration?*

**Answer:** Since the property was from unexplained sources of investment the same may be declared under Chapter VI of the Act. However, the declaration in this case needs be made by the person who inherited the property in the capacity of legal representative of his father. The fair market value of the property in his case shall be higher of its cost of acquisition and the sale price as per Rule 3(2) of the Rules.

**Question No.22:** *A person acquired a house property in a foreign country during the year 2000-01 from unexplained sources of income. The property was sold in 2007-08 and the proceeds were deposited in a foreign bank account. Does he need to declare both the assets under Chapter VI of the Act and pay tax on both the assets?*

**Answer:** The declaration may be made in respect of both the house property and the bank account at their fair market value. The fair market value of the house property shall be higher of its cost and the sale price, less amount deposited in bank account. If the cost price of the house property is higher the declarant will be required to pay tax and penalty on (cost price – sale price) of the house. If the sale price of the house property is higher the fair market value of the house property shall be nil as full amount was deposited in the bank account. The fair market value of the bank account shall be as determined under Rule 3(1)(e) and tax and penalty shall be paid on this amount. (Please also refer to the illustration under Rule 3(3) for computation of fair market value.)

Further, it is advisable to declare all the undisclosed foreign assets even if the fair market value as computed in accordance with Rule 3 comes to nil. This may avoid initiation of any inquiry under the Act in the future in case such asset comes to the notice of the Assessing Officer.

**Question No.23:** *A person is a non-resident. However, he was a resident of India earlier and had acquired foreign assets out of income chargeable to tax in India which was not declared in the return of income or no return was filed in respect of that income. Can that person file a declaration under Chapter VI of the Act?*



**Answer:** Section 59 provides that a declaration may be made by any person of an undisclosed foreign asset acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year 2016-17. Since the person was a resident in the year in which he had acquired foreign assets (which were undisclosed) out of income chargeable to tax in India, he is eligible to file a declaration under section 59 in respect of those assets under Chapter VI of the Act.

**Question No.24:** *A person is a resident now. However, he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under Chapter VI of the Act?*

**Answer:** No. Those assets do not fall under the definition of undisclosed assets under the Act.

**Question No. 25:** *If a person has 3 undisclosed foreign assets and declares only 2 of those under Chapter VI of the Act, then will he get immunity from the Act in respect of the 2 assets declared?*

**Answer:** It is expected that one should declare all his undisclosed foreign assets. However, in such a case the person will get immunity under the provisions of the Act in respect of the two assets declared under Chapter VI of the Act and no immunity will be available in respect of the third asset which is not declared.

**Question No. 26:** *A resident earned income outside India which has been deposited in his foreign bank account. The income was charged to tax in the foreign country when it was earned but the same was not declared in the return of income in India and consequently not taxed in India. Does he need to disclose such income under Chapter VI of the Act? Will he get credit of foreign tax paid?*

**Answer:** Declaration under Chapter VI is to be made of an undisclosed foreign asset. In this case, the person being a resident of India, the foreign bank account needs to be declared under Chapter VI as it is an undisclosed asset and acquired from income chargeable to tax in India. The fair market value of the bank account shall be determined as per Rule 3(1)(e). No credit of foreign taxes paid shall be allowable in India as section 84 of the Act does not provide for application of

sections 90(1)(a)/90(1)(b)/ 90A(1)(a)/ 90A(1)(b) of the Income-tax Act (relating to credit of foreign tax paid) to the Act. Further, section 73 of the Act does not allow agreement with foreign country for the purpose of granting relief in respect of tax chargeable under the Act.

**Question No. 27:** *Can a person declare under Chapter VI his undisclosed foreign assets which have been acquired from money earned through corruption?*

**Answer:** No. As per section 71(b) of the Act, Chapter VI shall not apply, *inter-alia*, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such asset cannot be made under Chapter VI. However, if such a declaration is made and in an event it is found that the asset represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 68 of the Act. If a declaration is held as void, the provisions of the Act shall apply in respect of such asset as they apply in relation to any other undisclosed foreign asset.

**Question No. 28:** *If a foreign asset has been acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/exempt income (tax paid income) then whether that foreign asset will be treated as undisclosed? Whether declaration under Chapter VI needs to be made in respect of such asset? If yes, what amount should be disclosed?*

**Answer:** As per section 5 of the Act, in computing the value of an undisclosed foreign asset any income which has been assessed to tax under the Income-tax Act from which that asset is acquired shall be reduced from the value of the undisclosed foreign asset. Only part of the investment in such foreign asset is undisclosed (unexplained) hence declaration of such foreign asset may be made under Chapter VI of the Act. The amount of declaration shall be the fair market value of such asset as on 1<sup>st</sup> July, 2015 as reduced by the amount computed in accordance with section 5 of the Act.

**Question No. 29:** *Whether for the purpose of declaration, the undisclosed foreign asset should be held by the declarant on the date of declaration?*

**Answer:** No, there is no such requirement. The declaration may be made if the foreign asset was acquired out of undisclosed income even if the same

has been disposed off and is not held by the declarant on the date of declaration.

**Question No. 30:** *Whether at the time of declaration under Chapter VI, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?*

**Answer:** After the declaration is made the Principal Commissioner/Commissioner will enquire whether any information has been received by the competent authority in respect of the asset declared. Apart from this no other enquiry will be conducted by him at the time of declaration.

**Question No. 31:** *A person is a beneficiary in a foreign asset. Is he eligible for declaration under section 59 of the Act?*

**Answer:** As far as ownership is concerned, as per section 2(11) of the Act “undisclosed asset located outside India” means an asset held by the person in his name or in respect of which he is a beneficial owner. The definition of “beneficial owner” and “beneficiary” is provided in *Explanation 4* and *Explanation 5* to section 139(1) of the Income-tax Act, respectively (which is at variance with the determination of beneficial ownership provided under Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005). Therefore, for the purpose of the Act “beneficial owner” in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. Further, “beneficiary” in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary. Therefore, as per the Act the beneficial owner is eligible for declaration under section 59 of the Act.

There may be a case where a person is listed as a beneficiary in a foreign asset, however, if he has provided consideration for the asset, directly or indirectly, he will be covered under the definition of beneficial owner for the purposes of the Act.

**Question No. 32:** *A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Whether such asset is required to be declared under Chapter VI of the Act?*

Answer: If the person, while he was a non-resident in India, acquired or made a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the Act.

However, if income was accrued or received in India while he was non-resident, such income is chargeable to tax in India. If such income was not disclosed in the return of income and the foreign asset was acquired from such income then the asset becomes undisclosed foreign asset and the person may declare such asset under Chapter VI of the Act.



(Gaurav Kanaujia)

Director to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
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6. Media Co-ordinator and Official spokesperson of CBDT.
7. Web manager for posting on the departmental website.



F. No. 142/18/2015-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)

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Dated 3<sup>rd</sup> September, 2015

**Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets**

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act') has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (hereinafter referred to as 'the Rules') have been notified. In this regard, circular No. 13 of 2015 dated 6<sup>th</sup> July, 2015 issued by the Board provided clarifications to 32 queries. Subsequently, further queries have been received from the public about the tax compliance provisions under Chapter VI of the Act. The Board has considered the same and the following clarifications are issued.-

**Question No.1:** *A person, while being a non-resident, earned foreign income, not chargeable to tax in India, (exempt income) which was deposited in a foreign bank account. The person became resident in India in F.Y. 2013-14 and since then only interest is being credited to the account. Such income including interest income has not been offered to tax in India. In such case what should be the disclosure under the tax compliance?*

**Answer:** As stated the person was non-resident for the year F.Y. 2012-13 and earlier years, and the foreign income for such years was not chargeable to tax in India. For the F.Y. 2013-14 and subsequent years, while he is resident in India, the person's global income is taxable in India. Accordingly, the declaration of foreign bank account in this case, which has been made partially out of undisclosed income chargeable to tax, may be made. In this case, the value of undisclosed foreign bank account shall be computed as per rule 3(1)(e) of the Rules and a deduction as per section 5 of the Act shall be allowable. Therefore, the value of such account shall be the sum of all credits in the bank account as reduced by income not chargeable to tax in India (exempt

income), which has been credited into such account. In this case, exempt income would be the foreign income deposited in the bank account upto the F.Y. 2012-13. Therefore, in effect the value of bank account in this case would be the sum of interest credits into the account since 01.04.2013.

**Question No.2:** *A person was a non-resident from F.Y. 1996-97 to 2010-11 during which he was employed in a foreign country. The person received salary which was taxable in the foreign country and credited into a foreign bank account. The person also received contributions to his pension account from his employer. The person became a resident in India in F.Y. 2011-12. Whether the person is required to declare his pension account under the tax compliance?*

**Answer:** As stated, the salary and pension received before F.Y. 2011-12 was not chargeable to tax in India. However, on or after 01.04.2011 when the person became resident in India any accretion to the pension account (in the form of interest, dividend, capital gain or any other sum) is chargeable to tax in India. Therefore, declaration of such account may be made under Chapter VI of the Act. The value of such account shall be the accretions to the account since 01.04.2011.

Further, the details of such account are required to be reported in Schedule FA of the return of income and from assessment year 2016-17 onwards non-declaration of such account may attract penalty under the Act.

**Question No.3:** *A person was employed in a foreign country during the F.Y. 1996-97 to 2010-11 in which he received salary which was taxable in the foreign country. From F.Y. 2011-12 onwards he is receiving pension from his ex-employer. The person became a resident in India from F.Y. 2014-15 onwards. The salary and pension was deposited in his foreign bank account. Due taxes have been deducted on the salary and pension by the ex-employer in the foreign country. No taxes have been paid in India on pension received. Whether the person is required to disclose such bank account and if yes, what should be its valuation?*



**Answer:** As stated the person was non-resident upto the F.Y. 2013-14 and the salary and pension received for services rendered outside India was not chargeable to tax in India. However, from F.Y. 2014-15 onwards, the pension received is chargeable to tax in India. In this case, the person may declare his foreign bank account under Chapter VI of the Act. The valuation for the purpose of declaration shall be the sum of credits into the account from 01.04.2014 onwards. The person is not entitled for any credit of taxes paid, if any, in the foreign country.

**Question No.4:** *A private trust was created outside India by a settlor out of undisclosed income chargeable to tax in India. The trust has set up a company holding 100% shares. What are the options for declaration under Chapter VI of the Act in such case?*

**Answer:** In this case, the settlor is the beneficial owner of the assets held under the trust. Therefore, declaration under Chapter VI of the Act may be made by such settlor in the capacity of a beneficial owner in respect of the assets of the trust. Alternatively, the trustee of the trust holding assets on behalf of beneficiaries may make the declaration of the assets of the trust in the capacity of a representative assessee. The trustee is eligible for declaration even where he is a non-resident. In respect of the assets declared under Chapter VI of the Act, immunity shall be available to the settlor, trustee and the beneficiary.

Further, where the settlor of the trust has passed away, the beneficiary of the trust may make a declaration in respect of his share in the assets of the trust. In case the beneficiary is a minor, his guardian may file the declaration on behalf of the minor.

The assets of the trust shall be valued as per the Rule 3(1)(g) as in the case of AOP. In this case first the valuation of shares of the company is to be made as per rule 3(1)(c) and then the value of net assets of the trust shall be determined.

Where the assets of the trust have been declared under Chapter VI of the Act and tax alongwith penalty has been paid, the value of the asset so declared shall not be chargeable to tax in the event of distribution of such assets to the beneficiaries.

**Question No.5:** *A person has a foreign bank account since year 2000 made out of undisclosed income chargeable to tax in India. However, he does not have the bank statement prior to year 2011. The bank has also not provided the bank statement to him despite all attempts made by him. In such case how will the value of the account be computed for the purpose of declaration under Chapter VI of the Act?*

**Answer:** For the purpose of declaration under Chapter VI of the Act, the person may compute the value of the bank account for which the statement is available as per rule 3 of the Rules. For the period prior to year 2011 for which the statement is not available, the person may compute the value for such period on best estimate basis. However, he has to furnish a certificate of the bank or any other evidence to the effect that the details are not available with or obtainable from the bank. Further, in such case, later if it is found that the value of the bank account is different from what has been declared, the immunity under the Act shall be available only upto the extent of declaration made under Chapter VI of the Act. Moreover, any excess payment of tax under the declaration on the basis of determination of the value of asset on a higher side shall not be refundable.

It may also be mentioned that in an event it is found that the person has filed a declaration of a foreign bank account on an estimate basis despite the fact that he had a bank statement and the value of such declaration is lower than the value as per the bank account, it will amount to misrepresentation of facts under section 68 of the Act and such declaration shall be void.

**Question No.6:** *A person was a resident in India as well as a foreign country in F.Y. 2011-12. However, after applying the provisions of the Double Taxation Avoidance Agreement (DTAA) under the tie breaker rules the person became resident of the foreign country. Whether such person needs to file a declaration under Chapter VI of the Act in respect of assets acquired/ made out of foreign income earned during F.Y. 2011-12 in which he was non-resident in India as per the DTAA?*

**Answer:** As per section 59 of the Act, a declaration may be made in respect of any undisclosed asset located outside India and



acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year beginning on 01.04.2016. In this case, since the foreign income of F.Y. 2011-12 was not chargeable to tax in India under the Income-tax Act as the assessee was a non-resident as per DTAA, the same is not required to be declared under Chapter VI of the Act.

**Question No.7:** *A person has a foreign bank account made out of undisclosed income chargeable to tax in India. Over a past several years, the person invested in securities which were funded from such account. Some of the securities were sold and the proceeds were deposited into the same account. Some expenditure has also been made from the bank account. What would be the declaration in such case under Chapter VI of the Act?*

**Answer:** In this case, the valuation of bank account (BA1) and securities (say, S1, S2 etc.) is to be made separately and it is to be computed as per rule 3(1)(e), 3(2) and 3(3) of the Rules. The valuation of the assets in such case will be as per the illustration below.-

Bank Statement of BA1		USD
Debit	Credit	Balance
	By clearing/transfer 10,000	10,000
To clearing/transfer 4000 (purchase of 1000 shares of S1)		6000
To clearing/transfer 5000 (purchase of 500 bonds of S2)		1000
	By clearing/transfer 2500 (sale of 500 shares of S1)	3500
To clearing/transfer 3000 (purchase of 100 shares of S3)		500
	By clearing/transfer 50 (interest on bonds)	550
	By clearing/transfer 7000 (sale of 500 bonds of S2)	7550
To clearing/transfer 4000 (purchase of 400 shares of S4)		3550
	By clearing/transfer 3000 (sale of 400 shares of S4)	6550
To credit card 1000 (payment of credit card bill)		5550

To clearing/transfer 500 (purchase from store)		5000
To clearing/transfer 1500 (transfer to other bank account BA2)		3500
To Bank Charges 10		3490

Valuation of assets for the purpose of declaration shall be as follows.-

Value of 500 shares of S1 = (higher of 2000 and 2500) - 2500  
sold [amount deposited in the bank  
account; refer rule 3(3)] = Nil

Value of 500 shares of S1 = Fair market value of 500 shares of  
held as on valuation S1 as on valuation date i.e.  
date 01.07.2015

Value of 500 bonds of S2 = (Higher of 5000 and 7000) - 7000  
sold [amount deposited in bank  
account; refer rule 3(3)] = Nil

Value of 100 shares of S3 = Fair market value of 100 shares of  
held as on valuation S3 as on valuation date i.e.  
date 01.07.2015

Value of 400 shares of S4 = (Higher of 4000 and 3000) - 3000  
sold [amount deposited in bank account (new  
asset); refer rule 3(3)] = 1000

Value<sup>^</sup> of bank account = {10000 + 2500 + 50 + 7000 + 3000}  
(BA1) - {4000 + 5000 + 3000 + 4000}  
[acquisition of new asset; refer rule 3(3)]  
- 1500\* [transferred to another bank  
account BA2 (new asset); refer rule 3(3)]  
= 5050

<sup>^</sup>The reduction from the gross deposits in the bank account is available in respect of those withdrawals which have been made for acquisition of a new asset or deposit in another bank account as that new asset/bank account is being separately declared under Chapter VI of the Act.



\*The amount of 1500 USD transferred to bank account (BA2) shall be considered (while adding credits) in the valuation of BA2.

**Question No.8:** *A person holds an undisclosed brokerage account in a foreign country which holds within itself shares, mutual funds as well as cash. The shares and mutual funds in the brokerage account have had multiple trades over a period of time. Further, dividend and interest has been credited to the account. Whether the brokerage account can be declared as one asset under Chapter VI of the Act or separate disclosure in respect of shares, mutual funds and cash is required to be made?*

**Answer:** The rules read with the Act provides for different computational mechanism for valuing shares, mutual funds and cash holding in a bank account. Therefore, a composite valuation of brokerage account cannot be made and separate valuation of shares, mutual funds and cash holding is required to be made. Further, the declaration shall consist of different assets with different valuations. The valuation of such assets shall be similar to what has been explained in answer to Question No. 7.

**Question No.9:** *A person has declared an undisclosed foreign bank account after computing its value as per the Rules. At the time of declaration, will the declarant be expected to explain the basis of working of the value of the account or required to explain the details of entries in the account?*

**Answer:** While filing the declaration in respect of a bank account, the declarant is expected to provide a broad computation where the value of the account is different from the sum of all credits in the account. For example - if the person has purchased 50 shares over past several years out of funds in the account which is represented by debits to the account, the person is expected to provide a computation in the declaration showing the amount of reduction in respect of cost of such 50 shares from the value of account as per rule 3(3) of the Rules as mentioned in Form 6. Further, he has to compute the value of shares. Apart from this, the declarant will not be required to explain the details of entries in the account at the time of declaration.

**Question No.10:** *A resident has an immovable property in a foreign country out of which rental income is received. As per the DTAA, the taxation right on such rental income is exclusively with such foreign country in which the property is situated. The rentals were deposited in an undisclosed foreign bank account. For the purpose of declaration under Chapter VI of the Act, will the value of the bank account include such rental income deposited in the account?*

**Answer:** If the DTAA entered with any country provides that the rental income 'shall' be taxed only in the country in which the property is situated, then the taxation right in this respect will exclusively be with that country. In such case where property is outside India, the rental income is not chargeable to tax in India as per the Income-tax Act read with DTAA. Thus while working the value of undisclosed foreign bank account the deduction of rental income (in this case it is exempt income) will be made from the value of foreign bank account computed as per rule 3 of the Rules.

**Question No.11:** *A person has an undisclosed property situated outside India in the name of his spouse. The funds for acquisition of the property were provided by such person. In this case, whether the person can make a declaration under Chapter VI of the Act in his own name?*

**Answer:** In this case, the person is treated as a beneficial owner of the property and he may file a declaration of the undisclosed asset in his name, being a beneficial owner. The immunity in respect of the asset declared shall be available to both the person and his spouse.

**Question No.12:** *Where a partner of partnership firm files a declaration in respect of undisclosed foreign assets held by the firm, then whether immunity would be available to partners of the firm?*

**Answer:** Yes, the partners of the partnership firm shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of the declaration made in the name of the partnership firm.



**Question No.13:** *An undisclosed foreign asset was acquired in F.Y. 2012-13 relating to A.Y. 2013-14. The assessment order for A.Y. 2013-14 has been passed on 10<sup>th</sup> August, 2015 in which such undisclosed foreign asset was not examined and consequently went untaxed. Can a declaration of such asset be made under Chapter VI of the Act?*

**Answer:** Yes, declaration of such undisclosed foreign asset can be made under the Chapter VI of the Act.

**Question No.14:** *Will the declarations made under Chapter VI of the Act be kept confidential?*

**Answer:** The Act incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assesseees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assesseees.

**Question No.15:** *A person received salary in a foreign country from his employer who is a resident in India. The salary was deposited in a foreign bank account and was chargeable to tax in India. If a declaration of the foreign bank account is made by the person, which includes salary deposited in the account, will the employer be liable for consequences under the Income-tax Act for non-deduction of tax at source on the salary paid by the employee?*

**Answer:** Where the employee has declared an undisclosed asset made out of income received from his employer, the employer shall not be deemed to be an assessee in default under section 201(1) of the Income-tax Act for non-deduction of TDS on such income. However, the employer shall be liable for other consequences under the provisions of the Income-tax Act, such as payment of interest under the provisions of section 201(1A) of the Income-tax Act from the date on which the tax was deductible on such income upto the date of payment of tax by the declarant. Penalty under section 271C of the Income-tax Act will also be attracted unless he proves that there was a reasonable cause for such failure as per the provisions of section 273B of that Act.

**Question No.16:** *A person (say, A) has an undisclosed foreign bank account made out of income chargeable to tax in India. From such account he has transferred money to his spouse's/child's (say, B) account from time to time. There are no independent credits into the spouse's account except for such transfers. Whether in this case both the person and the spouse need to declare the undisclosed foreign bank account under Chapter VI of the Act?*

**Answer:** In a case where there is only transfer of money from the account of the individual to his spouse or child and there are no independent credits in the account of the spouse or child and the individual has declared the undisclosed foreign bank account under Chapter VI of the Act, the spouse and the child are not required to make any separate declaration in respect of the account in their names. However, if the transfer of money is made as a consideration for supply of goods, services etc. and tax has not been paid on such income by the spouse/child, the bank account with such balance needs to be declared by the spouse/child. Besides, any accretion to the account of the spouse/child in the nature of interest etc. may also be required to be declared by the spouse/child.

**Question No.17:** *In respect of undisclosed foreign asset declared under Chapter VI of the Act, is it mandatory to include such asset in the books of account of the person?*

**Answer:** It is expected/required that the declarant will show the asset so declared in his books of accounts and if he is not required to maintain books of account, he shall maintain the record of such asset. Further, if he continues to hold such asset he shall be required to report such asset in schedule FA of the return of income.

**Question No.18:** *As per rule 3(1)(e), for the purpose of valuation of bank account, any deposit made from the proceeds of any withdrawal from the account shall not be taken into consideration while computing the value of the account. Does this mean that only redeposit of cash withdrawn is covered for this purpose or it would cover withdrawal used for funding cost of investment where proceeds are subsequently deposited on sale of investments?*



**Answer:** The proviso to rule 3(1)(e) in respect of valuation of bank account covers only amount withdrawn in cash and redeposited into the same bank account. In case amount is transferred from first bank account and deposited into second bank account then provisions of rule 3(3) shall apply and the value of first bank account shall be reduced by the amount deposited in the second bank account and the value of second bank account shall be in accordance with rule 3(1)(e).

**Question No.19:** *Is it necessary to file a valuation report of an undisclosed foreign asset along with the declaration under Chapter VI of the Act?*

**Answer:** It is not mandatory to file the valuation report of the undisclosed foreign asset along with the declaration. However, the declarant should have either the valuation report or any other document for arriving at the value of the asset. While e-filing the declaration on the departmental website a facility for uploading the documents is available.

**Question No.20:** *If a query has been sent by the competent authority in respect of a foreign asset of a person to a Government of any country or territory outside India but no information has been received upto 30.06.2015 can such asset be declared under Chapter VI of the Act?*

**Answer:** Such asset shall not be hit by section 71(d)(iii) of the Act and can be declared if other provisions contained in section 71 are not applicable.

**Question No.21:** *What shall be the exchange rate for the purpose of conversion of foreign currency into Indian currency?*

**Answer:** As per rule 3(4) of the Rules, the value of the undisclosed foreign asset may be determined in the foreign currency in accordance with rule 3 of the Rules and the same is to be converted into Indian currency as per the reference rate of RBI for 01.07.2015.

**Question No.22:** *A person maintains an e-wallet/virtual card account online on a website hosted in a foreign country which was initially funded by income chargeable to tax in India on which tax has*

*not been paid. The person plays online games/ poker through the funds lying in the e-wallet/virtual card and has earned some money which was credited to the e-wallet/virtual card account. Can a declaration be made in respect of e-wallet/virtual card? If yes, what shall be the valuation of the e-wallet/virtual card?*

**Answer:** The e-wallet/virtual card account is similar to a bank account where inward and outward cash movement takes place from the account. Therefore, the valuation and declaration of an e-wallet account may be made as in the case of a bank account.

**Question No.23:** *Where a public limited company makes a disclosure under Chapter VI of the Act then whether the Directors of the company be granted immunity against prosecution launched by shareholders under the SEBI Act/ Regulations or Indian Penal Code (IPC)?*

**Answer:** The Act does not provide immunity against offence punishable under the SEBI Act/Regulations or under IPC.

**Question No. 24** A person acquired an immovable property in a foreign country for USD 50,000 out of which investment of USD 10,000 was made out of his own undisclosed income chargeable to tax in India and balance USD 40,000 was made out of loan acquired from a bank. The fair market value of the property as on 01-07-2015 is USD 100,000. Whether the property can be declared under Chapter VI of the Act and if yes, what would be the value of declaration in such case?

**Answer:** The property was partially acquired from undisclosed income and partially from amount not chargeable to tax. The property can be declared under Chapter VI of the Act and in such case while computing the value of the undisclosed asset, deduction as per section 5(2) of the Act in respect of income not chargeable to tax shall be available from the fair market value of the property. The value of such immovable property shall be,-

FMV as on 01-07-15:	USD 100,000
Deduction under section 5(2):	USD(100,000 × $\frac{40,000}{50,000}$ )=USD 80,000



Value of the undisclosed  
asset to be declared  
under Chapter VI :           USD (100,000 -80,000) = USD 20,000

Since the declaration is in respect of 20% of the value of the property, the declarant shall be issued an acknowledgement in Form 7 only in respect of such portion of the immovable property.

Further, in such case it may be ensured that the mortgage payments to the bank have not been/are not being paid out of undisclosed income chargeable to tax in India. However, if the mortgage payments are made out of a foreign bank account made out of undisclosed income chargeable to tax in India then such account is also required to be declared under Chapter VI of the Act.

**Question No. 25:**   A person has an undisclosed foreign asset, being a bank account in joint names, say A and B. Should the disclosure of such account is to be made by both A and B or anyone can make the declaration?

**Answer:**           Where the funds in the bank account have been contributed only by A the disclosure is to be made by A. However, where the funds have been contributed by both A and B independently, the declaration is to be made by both A and B in respect of the funds contributed by them into the bank account.

**Question No.26:**   As per answer to question no. 23 of Circular No. 13 dated 06-07-2015, a person being a non-resident can file a declaration under Chapter VI of the Act in respect of asset acquired out of income chargeable to tax earned when he was resident in India in the past. However, para 3 of the Explanatory Circular No. 12 dated 02-07-2015 states that a declaration may be filed by a person, being a resident in India. Are these positions contradictory?

**Answer:**           Para 3 of the Explanatory Circular No. 12 dated 02-07-2015 provides that a resident may file a declaration under Chapter VI of the Act. It does not say that a non-resident who was earlier resident in India cannot file a declaration in respect of asset

acquired out of income chargeable to tax in India earned when he was a resident. Answer to question no. 23 of Circular No. 13 dated 06-07-2015 says that a person may make a declaration under section 59 of the Act in respect of an undisclosed foreign asset acquired by him in the year in which he was resident in India. Thus a specific situation has been dealt in answer to question no. 23 of Circular No. 13 dated 06-07-2015 which answers the query clearly.

**Question No.27:** A person acquired an immovable house property in the year 2012-13 located outside India out of undisclosed income chargeable to tax in India. A notice under section 143(2) for assessment year 2013-14 (relevant to previous year 2012-13) has been issued prior to 30-06-2015 and the assessment proceeding is pending before the assessing officer. As clarified in Question No. 8 of Circular dated 06-07-15 the assessee is not eligible for declaration under Chapter VI of the Act in respect of this asset, however, he shall inform the assessing officer about the acquisition of such asset in the assessment proceedings and the same shall be assessable under the provisions of the Income-tax Act. Whether the provisions of section 72(c) of the Act will apply in this case and the Assessing Officer may proceed to assess the undisclosed asset under the Act?

**Answer:** Section 72(c) is applicable where any undisclosed foreign asset has been acquired prior to commencement of the Act and no declaration in respect of such asset has been made. In such case the same shall be assessable under the Act. In the present case since scrutiny proceedings under the Income-tax Act are pending, the person is not eligible to declare such asset under Chapter VI of the Act. Therefore, it is hereby clarified that where the undisclosed foreign asset has been acquired during the previous year for which scrutiny assessment proceedings are pending as on 30-06-2015 and the assessing officer has been informed during the assessment proceedings about the investment made in such undisclosed foreign asset, the same shall be assessable under the provisions of the Income-tax Act. However, where the assessing officer has not been informed in the pending scrutiny assessment proceedings under the Income-tax Act about such undisclosed foreign asset and it is not



assessed under that Act, the same shall be liable for assessment under the provisions of the new Act when it comes to the notice of the Assessing Officer.

  
(R. Lakshminarayanan)

Under Secretary to the Government of India

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1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax - with a request to circulate amongst all officers in their regions/ charges.
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