

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

Dated: 20th 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 14th 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 1st 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 1st June, 2016 but before a date to be notified by the Central Government. The Central Government has further notified 30th September, 2016 as the last date for making a declaration under the Scheme and 30th 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 31st 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 31st 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 30th 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.