
## Guide To Income Declaration Scheme, 2016 And Direct Tax Dispute Resolution Scheme, 2016

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**From the Editor-in-Chief**

**Income Declaration Scheme 2016 and Direct Tax Dispute Resolution Scheme, 2016 –**

**Assessees must take advantage of these schemes – Tax administration must interact with tax associations/bodies and tax professionals to achieve the desired objectives of these schemes, rather than spending honest taxpayer money on advertisement of the schemes**

The Finance Act, 2016 has introduced two schemes viz., the Income Declaration Scheme, 2016 and Direct Tax Dispute Resolution Scheme, 2016. The purpose behind introduction of these schemes is laudable. Their success depends upon the confidence that the Government is able to inspire among tax consultants who are the first points of contact for any assessee's tax issues and grievances.

Till date, though more than 16 schemes have been introduced from time-to-time, it is for the first time that the Honourable Prime Minister of India has assured the declarant of the Income Declaration Scheme of complete confidentiality. The Honourable Finance Minister is also interacting with tax professionals and making a sincere attempt to make the schemes successful. We as tax professionals will have to play a proactive role to advise the assessees by explaining the advantages of these schemes.

One of the advantages of the Income Declaration Scheme is possible regularisation of properties in Benami name. There is no liability of interest or penalty under the direct taxes in addition to peace of mind for assessees. The Government has shown a positive mindset by issuing clarifications from time-to-time. Even for the payment of tax, installments have been granted. We hope the assessee will be able to take advantage of the schemes.

Towards better understanding of these schemes, the Federation has requested experts to share their knowledge so that the tax practitioners can advise assessees properly on these issues. The learned authors have explained the salient features of the schemes wherein they have answered 60 FAQs. All the FAQs, text of the schemes and questions and answers by the CBDT are also posted on www.itatonline.org.

I am of the opinion that spending taxpayers' money on advertisement of these schemes may not earn the confidence of the assessees, who would rely on the advice of the tax consultants alone. If tax administration interacts with tax bodies/associations and tax professionals to spread awareness about these schemes, this would in turn go a long way in making these schemes a success.

**Dr. K. Shivaram**
*Editor-in-Chief*

# Article by CA P. N. Shah on Income Declaration Scheme, 2016

CA P. N. Shah

## 1 Background

In his Budget Speech on 29th February, 2016, the Finance Minister has listed 9 objectives for his tax proposals. One of the objectives relates to "Reducing litigation and providing certainty in taxation". Paras 159 to 161 of the Budget Speech deal with Income Declaration Scheme announced by him and read as under:

> *"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.*
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> *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 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 Krishi Kalyan Surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1st June to 30th 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".*

In Chapter IX (Sections 178 to 196) of the Finance Act, 2016 (Act), "The Income Declaration Scheme, 2016", has been announced. The provisions of this scheme are discussed in this article.

## 2. The Scheme

This scheme is akin to a Voluntary Disclosure Scheme. The scheme has come into force on 1st June, 2016. The declaration for undisclosed domestic income or assets can be made in the prescribed Form No. 1 within 4 months i.e., on or before 30th September, 2016. The tax at the rate of 30% of the disclosed income will be payable with surcharge called Krishi Kalyan Surcharge at 7.5% and penalty at 7.5%. Hence total amount payable will be 45% of the income declared by the assessee under the scheme. This tax, surcharge and penalty will be payable on or before 30th November, 2016.

## 3. Who can make declaration under the scheme

Any Individual, HUF, AOP, BOI, Firm, LLP or company can make a declaration of undisclosed income or assets during the specified period (1-6-2016 to 30-9-2016). However, Section 193 of the Finance Act, provides that following persons cannot make the declaration under the scheme.

(i) 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.

(ii) Any person in respect of whom prosecution has been launched for an 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.

(iii) Any person who is notified u/s. 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

(iv) The scheme is not applicable 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.

(v) Declaration cannot be made in relation to any undisclosed income chargeable to tax under the Income-tax Act for any previous year relevant to Assessment Year A. Y. 2016-17 or earlier years where -

(a) Notice u/s. 142, 143(2), 148, 153A or 153C of the Income tax Act has been issued and the assessment for that year is pending.

(b) Search u/s. 132 or requisition u/s 132A or survey u/s. 133A of the Income-tax Act has been made in the previous year and notices u/s. 143(2), 153A or 153 C have not been issued and the time limit for issue of such notices has not expired.

(c) Information has been received by the competent authority under an agreement entered into by the Government u/s. 90 or 90A of the Income-tax Act in respect of such undisclosed asset.

**4. Which income or assets can be declared**

Section 180 of the Finance Act provides that every eligible person can make declaration under the Scheme in respect of the undisclosed income earned in any year prior to 1-4-2016. For this purpose income which can be disclosed will be as under.

(i) Income for which the person has failed to furnish return of income u/s. 139 of the Income-tax Act.

(ii) Income which the person has failed to disclose in the return filed before 1-6-2016.

(iii) Income which has escaped assessment by reason of the failure on the part of the person to disclose the same.

(iv) Where such undisclosed income is held in the form of investment in any asset, the fair market value of such asset as at 1-6-2016 shall be deemed to be the undisclosed income. CBDT has issued the Income Declaration Scheme Rules, 2016. Rule 3 of these Rules provides for the method for determining the Fair Market Value of such assets.

(v) No deduction for any expenditure or allowance shall be allowed against the income which is disclosed under the scheme.

**5. Manner of declaration**

(i) The declaration under the scheme is to be made in Form No. 1 prescribed by Rule 4 of the above Rules electronically. The same is to be submitted to the Principal Commissioner of Income-tax or the Commissioner of Income Tax who is authorised to receive the same. He has to issue an acknowledgement in Form No.

2 within 15 days from the end of the month in which declaration is filed. The declaration is to be signed by the authorised person as provided in Section 183 of the Finance Act. A person who has made a declaration under the scheme cannot make another declaration of his income or income of any other person. If such second declaration is made it will be considered as void. It is also provided that if a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

(ii) As stated earlier, the tax (including surcharge and penalty) of 45% of the income declared is to be paid on or before 30-11-2016. The proof of such payment is to be furnished to the concerned Commissioner in Form No. 3. Thereafter the CIT will have to give a certificate in Form No. 4 to the declarant within 15 days of submission of Form No. 3 in respect of the Income declared. If this payment is not made, the declaration will be considered as void. In this case, if any tax is deposited, the same will not be refunded. If the declaration is considered as void, the amount declared by the person will be deemed to be income of the declarant and will be added to the other income of the declarant and assessed under the Income-tax Act in the year in which such declaration is made. If the declarant has paid the tax, surcharge and penalty due as per the declaration before the due date, the income so disclosed will not be added to the income of any year. There will be no scrutiny or enquiry regarding such income under the Income- tax Act or the Wealth-tax Act.

(iii) The declarant shall not be entitled to reopen any assessment or reassessment made under the Income-tax Act or Wealth- tax Act or claim any set off or relief in any appeal, reference or other proceedings in relation such assessment or reassessment. In other words, declaration under the scheme shall not affect the finality of any completed assessments.

## 6. Immunity

(i) The scheme provides for immunity from proceedings under other Acts as under:

a) Provisions of Benami Transactions (Prohibition) Act, 1988, shall not apply in respect of the assets declared even if such assets exist in the name of 'Binamidar'. This is subject to the condition that the Binamidar transfers the asset to the declarant on or before 30th September, 2017.

b) No Wealth tax shall be payable under the Wealth-tax Act in respect of any undisclosed cash, bank deposits, bullion, jewellery, investments or any other asset declared under the scheme.

c) No prosecution will be launched against the declarant under the Scheme in respect of any income/ asset declared under the Income tax or Wealth-tax Acts.

(ii) It is also provided that nothing contained in the declaration made under the Scheme shall be admissible in evidence against the declarant under any other law for the purpose of any proceedings relating to imposition of penalty or for the purposes of prosecution under the Income-tax Act or Wealth-tax Act.

(iii) It may be noted that no immunity is provided in the scheme from proceedings under the Foreign Exchange Management Act, Money Laundering Act, Indian Penal Code, Central Excise Act, Customs Act, Service Tax provisions, VAT provisions or other Acts.

## 7. Determination of market value of the assets

As stated earlier, CBDT has prescribed "Income Declaration Scheme Rules, 2016" on 19.5.2016. Rule 3 deals with determination of Fair Market Value of the asset declared in Form No.1. Broadly stated this Rule provides as under:

**(i) Value of bullion, jewellery or precious stone, archaeological collections, drawings, paintings, sculptures or any work of art**

Its cost of acquisition or the price which such asset will ordinarily fetch if sold in the open market as on 1-6-2016, whichever is higher. This should be determined on the basis of the valuation report obtained by the declarant from a Registered Valuer.

**(ii) Value of quoted shares or securities** Cost of acquisition or the average of the lowest and highest price quoted on the recognized Stock Exchange as on 1-6-2016 whichever is higher

**(iii) Value of unquoted equity shares and securities**

Cost of acquisition or the value as on 1-6-2016 as per the formula given in Rule 3, whichever is higher.

**(iv) Value of unquoted shares and securities (other than equity shares)**

Cost of acquisition or value as on 1-6-2016 as determined by a registered valuer whichever is higher.

**(v) Immovable property**

cost of acquisition or market value as on 1-6-2016 as determined by a Registered valuer. In circular No. 25/2016 dated 30-6-2016 it is clarified that market value determined by a registered valuer will be considered even if such value is lower than the value on 1-6-2016 as per Stamp Duty Valuation (Ready Recokner Value) as provided in section 50C.

**(vi) Share in partnership**

Share in Partnership is to be determined as per the formula given in the Rule.

**(vii) Any other asset**

For any other asset, the cost of acquisition or the price which the asset will fetch is sold in the open market on 1-6-2016 whichever is higher.

## 8. Some claritifcations by CBDT

CBDT has issued certain clarifications about the contents of the above Scheme in various Circulars. Some of the clarifications made are as under:

### 8.1 Circular No.7of 2016 dated 20.05.2016.

(i) If any person declares any asset under the Scheme and pays tax at the rate of 45% on the market value as at 1-6-2016, he will be liable to pay capital gains tax when he sells that asset at a later date. For this purpose, the market value on 1.6.2016 declared by him will be treated as cost of acquisition of the asset for computing capital gain. The period of holding will be computed from 1-6-2016.

(ii) It is clarified that an assessee in whose case notice u/s. 142(1), 143(2), 148, 153A or 153C is issued for any year on or before 31-5-2016 will be not be able to take advantage of this scheme for the year for which such notice is issued. He can make the declaration for other years. If such notice is issued on or after 1.6.2016, declaration under the scheme can be made even for the year for which such notice is issued. It is further clarified in Circular No: 24/2016 that such notices issued on or after 1-6-2016 shall be deemed to have been closed after the declarant furnishes the Certificate in Form No.4 certifying that the declaration is accepted by the CIT and the declarant has paid the taxes due under the scheme.

(iii) If the assessee has acquired an asset partly from declared income and partly from undisclosed income, the declaration can be made by ascertaining the proportionate amount of undisclosed

income as under:

If the asset is acquired in F.Y. 2013-14 for Rs 500 out of which Rs 200 is from declared income and Rs 300 is from undisclosed income, the declaration in Form No.1 can be made for Rs 900 as under:

If the Fair Market Value of the asset on 1-6-2016 is Rs 1,500 the amount to be declared will be Rs 1,500 – (1,500 – 200) = Rs 900

500

(iv) If any appeal for any assessment year is pending, the assessee cannot declare the income which is covered by the matter in dispute in appeal. However, he can declare any other income for that year which is not declared by him earlier and which is not subject matter in appeal.

(v) It is not mandatory to file valuation report about Fair Market Value of the asset declared in Form No. 1. However, the declarant should get such report from the registered valuer before making the declaration. If the declarant wants to file this report with Form No. 1, facility for uploading the same will be available. It is further clarified in Circular No. 24/2016 that the CIT in order to ascertain the correctness of the value of the asset may require the declarant to file this report before issuing acknowledgement in Form No. 2.

(vi) A person in whose case search/ survey operation is initiated cannot file declaration for undisclosed income for the year covered by the years for which such action is initiated. He can, however, file declaration for undisclosed income of other years. If assessments are made for the years for which search/survey his made, the assesse can declare any undisclosed income which has not been assessed in this year.

(vii) Declaration under the scheme cannot be made in respect of undisclosed income earned or asset acquired from monies earned through corruption.

(ix) After the declaration is made, the CIT can only make inquiry to ascertain whether action u/s. 142(1)/143(2)/148/153A/153C is pending for any of the years. Apart from this no other enquiry will be made. It is further clarified in Circular No. 25/2016 that if a valid declaration is made and tax (45%) is paid, department will not make any enquiry about the source of such income or payment of tax, including surcharge and penalty.

### 8.2 Circular No. 24/2016 dated 27-6-2016

(i) If only part payment of tax, surcharge and penalty due as per the declaration is made on or before 30-11-2016, the declaration will treated as invalid.

(ii) The scheme is open to Residents as well as Non-Residents in respect of undisclosed domestic Income.

(iii) If undisclosed income for A.Y. 2001-02 (or any year for which the assessment is barred by limitation of time) is not declared under the scheme but is later on detected by the A.O., u/s. 197(c) of the Finance Act, such income will be deemed to be the income of the year in which notice u/ss. 148, 153A or 153C is issued by the A.O. Further, if such income is represented by an asset, Section 197(c) provides that such asset will be deemed to have been acquired in the year in which such notice is issued and tax will be payable on market value as determined under Rule 3 of IDS Rules. It may be noted that this is a dangerous provision and can be used by the Department against those who fail to take advantage of the scheme and do not declare undisclosed income or asset before 30.9.2016 under the scheme.

(iv) Declarant has to provide his PAN in the Form No. 1

(v) No declaration under the Scheme can be made for the years in respect of which the matter is pending before the Settlement Commission.

(vi) If summons u/s. 131(1A) or 133(6) is issued by the A.O. for any year, the declarant can take

advantage of the scheme for that year if no notice u/ss. 142/143(2)/153A/153C is issued for that year.

### 8.3 Circular No. 25/2016 dated 30-6-2016

(i) It is clarified that the information contained in the declaration shall not be shared with any other law enforcement agency. In particular, it is clarified that:

  (a) This information will not be shared with I.T. Department for any investigation.

  (b) Although there is no immunity under other economic laws, this information will not be shared with Service Tax, VAT, Excise, Customs, Registrar of Companies, SEBI and other regulatory bodies.

(ii) Credit for TDS from undisclosed income will be allowed if it has not been claimed or allowed in any assessment made for any assessment year.

(iii) In Form No. 1 "Nature of Undisclosed Income" is to be stated. It is clarified that "Source of Income" is not be stated under this head. The declarant has to state the nature of the "Asset" (i.e. Jewellery, Cash, Immovable or Movable property) in which the undisclosed income is invested in this column.

(iv) Under Rule 3 of IDS Rules, cost of the undisclosed asset or its market value on 1.6.2016, whichever is higher, is to be disclosed.

(v) If any undisclosed asset is declared by the declarant, no investigation will be initiated against the person who has sold that asset to the declarant.

(vi) In Answer to Q. 9 in the circular it has been clarified that any undisclosed income of earlier years should not be disclosed in the Return of Income for A.Y. 2017-18 or any subsequent year as income of that year. Adverse consequences of such action in the case of the tax-payer have been explained in this Answer.

(vii) If a person has utilised part of the undisclosed income for personal expenses, he should disclose the entire undisclosed income and not the balance after deducting the amount used for personal expenses.

(viii) If a person has invested his undisclosed income in a house property which has not been let out, he will have to declare market value of the property on 1-6-2016. He need not disclose notional rent income u/s 23(4)(b) of the Income-tax Act for the earlier years.

(ix) By a separate order dated 6-7-2016 the Central Government has issued a direction u/s 138 of the Income tax Act that "No public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under " the Income Declaration Scheme, 2016". This Notification appears to have been issued to ensure that clarification in (i) above becomes legally binding on all public servants.

### 8.4 Circular No:27 of 2016 dated 14-7-2016

(i) It is possible for a declarant to file a revised declaration before 30-9-2016 provided that the undisclosed income in the revised declaration is not less than the undisclosed income declared in the earlier declaration filed by the declarant.

(ii) The declaration under the scheme in respect of cash, investment etc. will result in increase in capital in the Balance Sheet. It is clarified that such cases shall not be selected for scrutiny under the CASS only on the ground that there is increase in capital as a result of the declaration under the Scheme.

(iii) Under Section 190 of the Finance Act, 2016, it is provided that if an asset transferred to a Binamidar has been declared under the scheme, the declarant will get immunity only if

the Binamidar transfers the property to the declarant on or before 30-9-2017. It is clarified that no capital gains tax will be payable by the Binamidar on such transfer of property to declarant and question of deduction of tax at source will not arise.

(iv) There was some confusion about the answer given to question No. 5 in Circular No. 25/2016 about the enquiry which the Department may make about the source of money from which tax, surcharge and penalty is paid under the scheme. It has now been clarified that the amount utilised for payment of tax, surcharge and penalty under this Scheme should be paid from declared wealth. This has been explained by an illustration as under:

"In a case a person declares ` 100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of ` 45 lakh (` 30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of ` 45 lakh utilised for payment of tax, surcharge and penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect of the entire undisclosed income of ` 145 lakh, the declarant has to declare undisclosed income of ` 145 lakh (` 100 lakh being the undisclosed income represented by immovable property and ` 45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to ` 66.25 lakh i.e. 45 per cent of ` 145 lakh".

(v) If the declaration is made by a Company or a Firm immunity will be available to the Directors, and Partners in respect of the undisclosed income declared under the Scheme by the Company/Partnership Firm. It may, however, be noted that no immunity is provided to the Directors under the Companies Act in respect of income declared by the Company under the Scheme.

(vi) If a person having undisclosed income in the form of an investment in the immovable property in the name of his spouse, it is possible for the person who has made actual investment to declare the fair market value of such property on 1-6-2016 under the Scheme.

(vii) It is now clarified that in respect of the fair market value of the quoted shares and securities as on 1-6-2016 the quoted price of the share or security shall be computed with reference to the price quoted on the recognized stock exchange in which the highest volume of trading has been recorded as on 1-6-2016.

(viii) By separate press release dated 14-7-2016 the Central Government has now clarified that, although the last date for payment of tax, surcharge and penalty under the Scheme is 30-11-2016, it will be possible for the declarant to pay the amount of tax, surcharge and penalty in three instalments as under:-

(a) 25% of the amount payable to be paid by 30-11-2016

(b) 25% of the amount payable to be paid by 31-3-2017

(c) The balance to be paid on or before 30-9-2017.

**9. To sump up**

(i) Section 195 of the Finance Act provides that if any difficulty arises in giving effect to the provisions of the scheme, the Central Government can pass an order to remove such difficulty. Such order cannot be passed after the expiry of 2 years i.e. after 31-5-2018. Section 196 of the said Act authorises the Government to notify the Rules for carrying out the provisions of the scheme and also prescribe the Form for making the declaration under the scheme.

(ii) It may be noted that the Government had issued Voluntary Disclosure Schemes under the

Income-tax and Wealth-tax Acts in the past. It is reported that the response to these schemes was as under:

| VDS – Scheme | No. of Declarants | Income/wealth declared (` in | Tax collected |
|---|---|---|---|
| 1951 | 20,912 | 70.20 | 10.89 |
| 1965 | 2,001 | 52.18 | 30.80 |
| VDS(2) 1965 | 1,14,226 | 145.00 | 19.45 |
| 1976 | 2,58,992 | 1,090. | 753.77 |
| 1997 | 4,70,000 | 3,300. | 1,010. |

(iii) After the 1997 VDIS Scheme, the matter was agitated in the Supreme Court on the question whether such VDIS Scheme is fair to honest taxpayers. At that time Government had assured the Supreme Court that in future such Schemes for voluntary disclosure will not be announced.

(iv) However, last year an Amnesty Scheme under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, was announced. Under this Scheme it is reported that 644 persons declared income of about ` 4,164 Cr., and paid tax of about Rs 2,428.40 Cr.

(vi) In the Budget for 2016, in order to give one time opportunity to persons to declare undisclosed domestic income and assets, this disclosure scheme has been announced. In the Declaration Form No.1 the declarent has to specify the amount of undisclosed income, nature of the income and the year in which it was earned. He has also to give details of assets and market value of assets as on 1-6-2016, which will have to be supported by valuer's certificate. Further, provision in the scheme that an assessee, in whose case notice u/ss. 142(1), 143(2), 148, 153A or 153C is issued for any year, and assessment is pending, cannot declare undisclosed income of that year will be a great impediment in the success of the scheme. Further, there is no immunity from proceedings under the Indirect Tax Laws, Companies Act, Stamp Act, and other Economic Laws. This will be an impediment in the success of the scheme.

(vi) It appears that the scheme is announced by the Government with all good intentions. It is advisable for the persons who have not complied with the provisions of the Income-tax Act should come forward and take advantage of the scheme and buy peace. Let us hope that the scheme gets adequate response.

## Speech of the finance minister explaining the Income Declaration Scheme, 2016

**The Finance Minister explained the Income Declaration Scheme, 2016 in his budget speech for 2016-17 in specific section for reducing litigation and providing certainty in taxation. (2016) 381 ITR 9 (St.)(35)**

"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.

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 Krishi Kalyan surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1st June to 30th September, 2016 with an option to pay amount due within two months of declaration.

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 book."

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## Notes on clauses on Finance Bill, 2016 (2016) 381 ITR 169 (St.)(236)

**Income Declaration Scheme**

Clauses 178 to 196 of the Bill seeks to insert a new Chapter IX relating to Income Declaration Scheme, 2016. The said Scheme, *inter alia,* provides for declaration of undisclosed income by any person. The Scheme shall be in operation from the 1st day of June, 2016 till a date to be notified by the Central Government in the Official Gazette. The proposed Chapter, *inter alia,* provides for levying a tax of thirty per cent on the undisclosed income declared in the Scheme, a surcharge at the rate of twenty-five per cent of such tax as Krishi Kalyan Cess; and penalty at the rate of twenty- five per cent of tax; procedure and manner of filing the declaration under the said Scheme; undisclosed income declared under the said Scheme not be included in the total income or affect finality of completed assessments; income declared under the said Scheme shall not be refundable; exemption from wealth-tax in respect of assets specified in declaration; power to remove difficulty by the Central Government and power of Central Board of Direct Taxes with the approval of the Central Government to make rules for the purposes of the said Scheme.

**Circular No. 16 of 2016**

**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 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.

**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 per cent of the value of such undisclosed income as increased by surcharge at the rate of 25 per cent 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 any time 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 30-9-2016. 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 authorised to sign the said form:

| Sl. | Status of the | 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 |
| 2. | HUF | Karta; where the karta 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 |
| 5. | Any other | Any member of the association or the principal officer. |
| 6. | Any other | That person or by some other person competent to act on |

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 reassessment 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.

2

**Circular No.17 of 2016**

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

Dated 20th 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 totalling 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 1-6-2016, 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 1-6-2016 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 sections 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 sections 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 sections 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 sections 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.

***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 ` 500 out of which ` 200 relates to income assessed to tax in A.Y. 2012-13 and ` 300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 1-6-2016 is ` 1500.

The undisclosed income represented by this asset under the scheme shall be:

$$1500 \text{ minus } \left(\frac{1500 \times 200}{500}\right) = ` \ 900$$

***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 reopen 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 sections 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 sections 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 assessees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessees.

***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.

2

## Circular No.19/2016

**F.No I87 / 10 / 20 16.ITA.I**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Direct Taxes (Income-Tax)**

New Delhi, the 25th May, 2016

Income Declaration Scheme, 2016, introduced *vide* Finance Act, 2016 (28 of 20l6), 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 Comrnissioner 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.

2

## Circular No. 24 of 2016

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

Dated 27th 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 totalling 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 20th 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 sections 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 sections 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 sections 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 sections 142, 143(2) or 148 shall be deemed to have been closed.

2

**Circular No.25 of 2016**

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

Dated 30th 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 totalling 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 20th May, 2016 and Circular No. 24 of 2016 dated 27th 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 30th 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 that 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 movable 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', 'movable 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 ` 90 lakh in previous year 2010-11. Out of the same, he acquired an immovable property in the previous year 2011-12 for ` 50 lakh, made personal expenditure to the extent of ` 20 lakh and balance ` 20 lakh is left with him as cash in hand on 1-6-2016. The fair market value of the immovable property as on 1-6-2016 is ` 80 lakh. What is the amount to be declared under***

***the Scheme?***

**Answer:** The declarant in this case has to declare the following:

(i) ` 80 lakh being fair market value of the immovable property as on 1-6-2016

(ii) ` 20 lakh being the cash in hand as on 1-6-2016

(iii) ` 20 lakh being the balance of undisclosed income [` 90 lakh – (` 50 lakh + ` 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 ` 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 1-6-2016, 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 1-6-2016.

2

## Circular No. 27 of 2016

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

Dated 14th day of July, 2016

**Clarifications on the Income Declaration Scheme, 2016**

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued three sets of FAQs *vide* Circular Nos. 17, 24 & 25 of 2016. In order to address further queries received from the public relating to the Scheme, following clarifications are issued.:

***Question No. 1 : Can a declaration made under the Scheme be revised before the date of closure of the Scheme i.e. 30-9-2016?***

**Answer:** It is expected that the declarations made under the Scheme are filed correctly. However, a revised declaration can be filed on or before the date of closure of the Scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed.

***Question No. 2 : If an undisclosed income represented in the form of an asset or otherwise pertains to a year falling beyond the time limit allowed under section 149 of the Income-tax Act, 1961 and the said undisclosed income is not declared under the Scheme, then as per the provisions of section 197(c) of the Finance Act, 2016, the said undisclosed income shall be treated as the income of the year in which a notice under section 148 of the Income-tax Act has been issued. The said provision is inconsistent with the existing timelines provided under the Income-tax Act for reopening a case. Please clarify?***

**Answer:** Question No. 4 of Circular No. 24 of 2016 may be referred where the tax treatment of such income has been clarified. Since the Scheme contained in Chapter IX of the Finance Act, 2016 is a later law in time, the provisions of the Scheme shall prevail over the provisions of earlier laws.

***Question No. 3 : The declaration made in respect of cash, investment etc. under the Scheme would result in increase in capital in the Balance Sheet in extraordinary manner. Whether such cases of the declarants would be selected for scrutiny under the CASS for this reason?***

**Answer:** The cases of the declarant shall not be selected for scrutiny under the CASS only on the ground that there is increase in capital in the balance sheet as a result of the declaration made under the Scheme.

***Question No. 4 : In a case where the declarant gets the benami asset transferred in his name without payment of any monetary consideration to the benamidar, whether capital gains would be chargeable in the hands of benamidar consequent upon such transfer and whether the tax at source @ 1% would be deducted in such case?***

**Answer:** In this case the consideration for acquisition of benami property has already been paid by the beneficial owner and the fair market value of the property has been declared by the beneficial owner under the Scheme. Since, the transfer of property from benamidar to beneficial owner is only to regularize and there will be no involvement of monetary consideration for transfer of immovable property by the benamidar in the name of the declarant, the question of capital gains in the hands of benamidar and deduction of tax at source thereon shall not arise.

***Question No. 5 : Under what provision can a declarant be sure that the information contained in a valid declaration shall not be shared with any other law enforcement agency and also shall not be shared within the income-tax department for investigation?***

**Answer:** Section 195 of the Act provides that provisions of section 138 of the Income- tax Act shall apply in relation to the proceedings under the Scheme. *Vide* notification S.O. 2322(E) dated 06.07.2016, an order has been passed by the Central Government directing that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Scheme.

***Question No. 6: With reference to question No. 5 issued* vide *Circular No. 25 of 2016, wherein it has been stated that the Department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty, it may be clarified that whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31 per cent?***

**Answer:** It is clarified that the intent of the clarification issued *vide* question No. 5 of Circular No. 25 of 2016 was limited to conduct of enquiry by the Department. It in no way intends to modify or alter the rate of tax, surcharge and penalty payable under the Scheme which have been clearly specified in the Scheme itself. Sections 184 & 185 of the Finance Act, 2016 unambiguously provide for payment of tax, surcharge and penalty at the rate of 45 per cent of undisclosed income. This is illustrated by the following example —

In case a person declares ` 100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of

` 45 lakh (30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of 45 lakh utilized for payment of tax, surcharge & penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect the entire undisclosed income of ` 145 lakh, the declarant has to declare undisclosed income of ` 145 lakh (` 100 lakh being the undisclosed income represented by immovable property and ` 45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to ` 65.25 lakh i.e., 45 per cent of ` 145 lakh.

***Question No. 7 : Whether there is any time limit for the declarant under the Scheme to file Form-3?***

**Answer:** As per section 187(2) of the Finance Act, 2016, the time limit for filing Form-3 is same as the time limit notified for payment of tax, surcharge and penalty under the Scheme.

***Question No.8: Whether immunity from initiation of prosecution would be available to the Directors of the company or the partners of the firm in respect of the undisclosed income declared under the Scheme by the company or partnership firm, as the case may be?***

**Answer:** Yes, immunity to the directors or the partners, as the case may be, shall be available in respect of the undisclosed income declared under the Scheme by the company or partnership firm.

***Question No. 9 : Whether a person having undisclosed income in the form of an investment in immovable property in the name of his spouse can declare the fair market value of the property in his own name if the funds for acquisition of the said property were provided by such person?***

**Answer:** Yes.

***Question No. 10 : Rule 3(1)(c)(I) of the Income Declaration Scheme Rules, 2016 provides for manner of determination of fair market value of quoted shares and securities. In this context, it may be clarified that if a share is listed on more than one recognised stock exchange and the quoted price of the share as on 01.06.2016 on the recognised stock exchanges is different, then what shall be the quoted share price for determining the fair market value of such share under the Scheme?***

**Answer:** In such a case the quoted price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share as on 01.06.2016.

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## Press Release

**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Direct**
**Taxes New Delhi, 14th**
**July, 2016**

PRESS RELEASE

**Sub : The Income Declaration Scheme 2016 – Relaxation of time schedule for making payments under the Scheme**

During the course of meetings and seminars held in different parts of the country, various stakeholders have expressed concern that the time period available under the Scheme up to 30th November, 2016 for making payment of tax, surcharge and penalty is very short, especially where funds in liquid form are not readily available with the declarants. It has also been mentioned that for making payment by 30-11-2016, the declarants may have to opt for distress sale of the assets.

Taking into consideration the practical difficulties of the stakeholders, the Government has decided
to revise the time schedule for making payments under the Scheme as under:

(i) A minimum amount of 25% of the tax, surcharge and penalty to be paid by 30-11-2016;

(ii) A further amount of 25% of the tax, surcharge and penalty to be paid by 31-3-2017; and

(iii) The balance amount to be paid on or before 30-9-2017.

A Notification to this effect shall be issued shortly.

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

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**Answers to 44 questions by N.M. Ranka Sr. Advocate, Dr. K. Shivaram Sr. Advocate, S.R. Wadhwa Advocate, CA. Harish N. Motiwalla, CA. Pradip N. Kapasi and CA. Chetan A. Karia**

**Advantages and disadvantages of the IDS**

*Q1. Any plus points to the assessees who are declaring under the above scheme and also any minus points for the same.?*

**Ans.** The Advantages of this scheme have been set out by para 9 of the CBDT Circular No. 16/2016 dated 20-5-2016. In addition to the same the total liability is restricted to 45% of the undisclosed Income. There is also no liability for interest u/s. 234A, 234B & 234C of Income-tax Act. In addition to the tangible benefits, the assessees shall also be able to buy peace. The Revenue's ability to detect undisclosed income has been greatly enhanced by rapid advancements in Technology, this scheme will enable the assessees to wipe their slate clean. The CBDT Circular No. 25 of 2016 dated 30th June 2016 clarifies at Question No. 4 about the cases where TDS credit shall be made available to the declarant. Hence, TDS credit shall be given if the credit of tax has not already been claimed in the return of Income filed for any assessment year. As per the press release dated 14th July 2016, the assessees can pay the taxes and penalties in installments. i.e. (i) a minimum amount of 25% of the tax surcharge and penalty to be paid by 30-11-2016; (ii) a further amount of 25 % of the tax surcharge and penalty to be paid by 31-3.2017 (iii) the balance amount to be paid on or before 30-9-2017. From time-to-time the CBDT has issued number of clarifications on the IDS (Circular Nos 16, 17, 24, 25, & 27) (www.itatonline.org). [KS]

**S. 182 : Declarant- Legal heirs**

*Q2. The word declarant is not defined in the Scheme.*

*Issue: Whether legal heirs of a person can make a declaration and how it shall bind the other legal heirs? And*

*Can a declaration be made on behalf of a dissolved Firm and how it shall bind the other erstwhile partners?*

**Ans.** With regard to the three issues raised by you under the Income Declaration Scheme, 2016, my views are as under:

(i) The Income Declaration Scheme, 2016 is contained in Chapter-IX of the Finance Act, 2016 (Ss. 181 to 199). The word 'declarant' is defined in section 182A of the Finance Act, 2016 to mean a person making the declaration under sub-section (1) of section 183. You are right that the word person is not defined in the Scheme. However, section 182(c) of the Finance Act, 2016 states that all other words and expressions used in the Scheme, that are not defined, will have the same meaning as defined in the Income-tax Act, 1961. In the Income-tax Act, the 'person' has been defined in an inclusive way to include an individual, HUF, a company, a firm etc. Thus, the word 'declarant' has, in my opinion, to be read with the definition of the word 'person' given in section 2(31) of the Income-tax Act, 1961.

(ii) In regard to the second issue, in my opinion, the legal heir of a person can make a declaration because of the use of the word 'person' in section 183(1) of the Finance Act, 2016 to be read with the definition of the word 'person' given in the Income-tax Act, 1961 and made applicable by section 182(c). Besides, there is the Chapter XV (S. 159 to 180A) of the Income-tax Act, 1961, which imposes liability in special cases and section 159 thereof imposes liability on legal representative of the deceased. The right of a legal representative to recover tax paid is governed by section 162 of the

Income-tax Act. This section entitles him to recover the tax paid by him from the other legal representatives of the deceased assessee.

(iii) The declaration made on behalf of dissolved firms shall bind the erstwhile partners because of their liability u/ss. 187 to 189, more particularly sub-section (3) of section 189 of the Income-tax Act. Sub-section (3) of section 189 specifically provides that "every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum". In this connection, your attention in also invited to section 195 of the Finance Act, 2016 which makes the provision of Chapter XV under the Income-tax Act relating to the liability in special cases applicable to the Income Declaration Scheme, 2016. [SRW]

**S. 183 : Declaration of undisclosed income-tax deduction at source**

Q.3. *If TDS takes care of the entire tax liability on the income but return is not filed, should one opt for the scheme.*

**Ans.** Yes, he can opt for the scheme if the income is not included in the return where filed. If not filed, he can opt for the scheme provided the time for filing the return is over. The CBDT Circular No. 25 of 2016 dated 30th June 2016 clarifies at Question No. 4 about the cases where TDS credit shall be made available to the declarant.

Hence, TDS credit shall be given if the credit of tax has not already been claimed in the Return of Income filed for any assessment year. If there is a time to file a return u/s. 139(5), then the assessee can opt to file return of income under that section. Once TDS has been deducted on full income, then, there is no question of undisclosed income. In *DCIT v. Harishkumar J. Gupta (2013) 215 Taxman 41 (Guj.)(HC)* dealing with section 158BB the Court has held that when tax was deducted the said income cannot be treated as undisclosed income. [KS]

**S. 183 : Declaration of undisclosed income – Income of minor**

Q.4. *Assessee's minor child had taxable income that was not clubbed in the hands of parents. There was no return of income filed on behalf of the minor. Now that the minor is of legal age can he (the child) disclose the income in his own hand and pay the tax?*

**Ans.** From assessment year 1993-94 onwards, a minor's income is includable in the hands of parents. Though after attaining as the income by legal fiction is to be deemed to be the Income of the parent, it is advisable to have it declared in the hands on the parents in order to avoid litigation and to get immunity. One can refer the Circular No. 754 of 1997 dt. 10-6-1997 (1997) 226 ITR 8 (ST) Pg 9. Q. No 3 which reads as under "Minor can declare his undisclosed income of 1992-93 or earlier assessment years. From Assessment year 1993-94, his income is includable 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." In case the parents are not disclosing the major son may avail the advantages of the IDS . [KS]

**S. 183 : Declaration of undisclosed income – Minor, lady members**

Q.5. *Assessee who is minor / lady, has jewellery which has been received as gift, which is*

*not disclosed, can they take benefit of the IDS-2016.?*

**Ans.** There is no bar on minors or lady members making declaration under IDS. However, one should refer to judgment of Supreme Court in *Jamnaprasad Kanhaiyalal v. CIT (1981) 130 ITR 244 (SC)* before planning further utilisation of such income. Further, under section 64(1A), income of minors is assessable in hands of either parent except in 2 circumstances mentioned in proviso thereto. Therefore, despite the declaration by minor, the same amount may again be assessed in hands of parent except where parent is able to prove that income declared by minor is of the nature described in proviso to section 64(1A). [CAK]

**S. 183 : Declaration of undisclosed income – Long term capital gains**

*Q.6. A earned LTCG on sale of an immovable property in 2012-13.*

Not declared in it. Now he wants to declare the same under IDS. Sale consideration is less than circle rate.Whether tax is payable on actual sale value or on circle rate?

**Ans.** From the query it is not clear whether immovable property purchased was earlier declared. [HNM]

**S. 183 : Declaration of undisclosed income – Foreign Currency**

*Q.7. Undisclosed income is in the form of foreign currency over and above limit fixed by RBI. It is not disclosed to RBI. Will assessee get relief from FEMA if it is disclosed in IDS ?*

**Ans.** S.192 of the Finance Act, 2016, provides that the declaration made under the scheme shall not be admissible in evidence for the purpose of prosecution under the Income-tax Act or the Wealth-tax Act. S. 190 provides relief for certain cases in which the provisions of the Benami Transactions (Prohibition) Act shall not apply to declarations. The Finance Act, 2016 by itself does not explicitly offer a shield against application of provisions of FEMA laws to an assessee making a declaration under the said scheme. If the foreign currency was acquired from the undisclosed income earned in India, it may be advisable to opt of IDS. However, if the foreign currency was acquired from the foreign assets which was not disclosed in the return of income, the Undisclosed Foreign Income & Assets and Imposition of Tax Act, 2015 may be applicable to the said Income, then according to S.196(d), this scheme itself shall not apply. [KS]

**S. 183 : Declaration of undisclosed income – Non-resident**

*Q.8.* Whether a non-resident can file the declaration under the Income declaration scheme?

**Ans.** As per section 183(1), any person can make a declaration of undisclosed income subject to certain exceptions. The word 'person' shall have the meaning assigned to it under section 2(31) of the Income-tax Act, 1961. The scheme can be availed by all non-residents, such as Non-Resident Indians, Foreign Citizens, Foreign Companies, overseas Trusts, etc. Even the agent of a non-resident assessee u/s. 163 of the Act, can take advantage of the IDIS. [KS]

**S. 183 : Declaration of undisclosed income – Valuation**

*Q.9. Where a valid declaration is made after making valuation as per provision 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 inquiry in respect of sources of income?.*

**Ans.** No. [HNM]

**S. 183 : Declaration of undisclosed income – Appeal pending before ITAT**

*Q.10. I have a case pending before ITAT. Can I avail the benefit of this scheme simply by paying 45% tax amount and buy peace ?*

**Ans.** No. The CBDT *vide* Circular No. 17 of 2016, dated 20-5-2016 has answered this query as under:

*Q.10. Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?*

**Ans.** As per section 189 of the Finance Act, 2016, the declarant is not entitled to reopen 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. [HNM]

**S. 183 : Declaration of undisclosed income – Valuation of land**

*Q.11. I have a land whose DLC rates as per Government is 6000/- per sq. mtr. whereas the market rate of which is 3000/- per sq. mtr. on which amount the declarant has to pay the tax?*

**Ans.** The value of property for the purpose of declaration would be as on June 1, 2016 and same has to be determined as per Rule 3 of the IDS Rules. One may refer question No. 1 and Question No. 4 of Circular No. 17/2016 dt. 20-5-2016. [HNM]

**S. 183 : Declaration on undisclosed income – Loans – Share application**

*Q.12. In cases of loans, share application disclosure is made by lender or shared applicant under this scheme the borrower or company will be entitle to get immunity from again disclosing the same as was available under various VDS Schemes?*

**Ans.** It is noticed that in the case of the querist, the declaration is made by the share applicant or the lender under the Scheme and therefore he alone is the person who is entitled to the immunities under the Scheme in respect of such a declaration. S. 197(a), for removal of doubts, declares that nothing contained in the Scheme shall confer any benefit, concession or immunity on any person other than the declarant. As such the company or the borrower, does not enjoy any immunity under the Scheme on account of the declaration made by the applicant or lender. The company or the borrower would therefore be subjected to compliance of S. 68 and also the burden put there under. [PNK]

**S. 183 : Declaration of undisclosed income – Purchase sales and stock register**

*Q.13. In Form No.1 how one will disclose suspected purchases, sales in case stock register is maintained. It is settled by various pronouncements that on Gross Profit is to be disclose but rate of GP will with nature and type of trade hence it is necessary to know from the department the rate of GP acceptable to them to avoid further question regarding GP rate adopted by Assessing officer in the above matter during various proceedings including reassessment subsequent to closure of Declaration Scheme. Further as the Form No.1 as well as Form No.4 (Certificate to be issued by the CIT) does not contain disclosures/ particular of transactions how in these type one will satisfy the various Income Tax Authorities in various income tax proceedings including reassessments, revision, search & survey. Whether assessee will be able to capitalise the same if yes what will be nature of assets to be disclosed is it Cash.Whether the assessee will disclose suspected loans taken before six years and interest thereon since beginning even if pertains to year before 2010 i.e. more than six years.*

*How to disclose the suspected squared loan transactions. Whether assessee will be entitled to capitalise the said loan and interest paid there on in cash?*

**Ans.** IDS 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 to 45% of such undisclosed income declared. Thus, this is an opportunity to person to declare undisclosed income which had remained to declare.

It is debated whether any proceedings can be taken beyond six years. According to me provisions of section 197(c), cannot override the provisions of the Income-tax Act. [HNM]

*Editorial: Refer answer of Shri N. M. Ranka Q. No. 23 wherein he has opined that the provision of section 194(c) may not be constitutionally valid.*

**S. 183 : Declaration of undisclosed income – Below taxable income**

*Q14. We are senior citizens and a couple having PAN cards but did not file IT returns as our annual income is below taxable limit.*

*Please advise what we should do?*

**Ans.** It is not undisclosed income and therefore it is not necessary to file declaration under this Scheme. If any time you receive any notice from the Department, you have to show that the income was from the disclosed source but not liable to tax as it was below the taxable limit. [HNM]

**S. 183 :Declaration of undisclosed income – Manner of disclosure**

*Q15. What is the manner to disclose gross receipt by any contractor or a trader who has unaccounted sales / contract receipt etc. till 31-3-2015 and he has already filed return along with tax audit report for transactions recorded in books.*

*Say one of traders / contractor has cash receipt of*
*` 10 crore in the period 2011-2015 and corresponding expenses to earn that gross receipt.*

*Whether the said person can file net income @ 5-10% (Say. 8%) of total gross receipt. Does he require to give the name of contractee also?*

*Is there any implication of VAT/Work Contract Tax or service tax for this declaration?*

**Ans.** The IDS 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 totalling in all to 45% of such undisclosed income declared. Thus, this is an opportunity to persons to declare undisclosed income which had remained to declare. The Scheme 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 totalling in all to 45% of such undisclosed income declared. Thus, this is an opportunity to persons to declare undisclosed income which had remained to declare.

As per answers to question nos. 1 & 2 of Circular No. 25 of 2016 dated June 30, 2016, no information would be shared either within Income-tax Department for any investigation in respect of valid declaration or any other law enforcing agency. [HNM]

*Editorial : Refer Circular No. 27 of 2016 dt. 14th July, 2016 Answer to Question No. 5. Board once again clarified that no information will be shared and notification was issued to all public servants.*

**S. 183 : Declaration of undisclosed income – Capital gains – Indexation**

*Q.16. Whether a person declaring capital gains under the Scheme is entitled to get benefit of deduction of indexed cost?*

**Ans.** Thus you have to disclose, undisclosed income which may be from any source. [HNM]

**S. 183 : Declaration of undisclosed income – Stock – VAT – Excise**

*Q.17. If undeclared income is disclosed in shape of stocks in hand, whether there may be repercussion from other related department like Excise & VAT?*

**Ans.** *Vide* answer to question Nos.1 & 2 of Circular No. 25 of 2016 dated June 30, 2016 the Board has clarified that the information under IDS shall not be shared within the Income tax Department for any investigation in respect of a valid declaration. Further the information contained in the declaration shall not be shared with any other tax or law enforcement agency. [HNM]

*Editorial : Refer Circular No. 27 of 2016 dt. 14th July, 2016 Answer to Question No. 5. Board once again clarified that no information will be shared and notification was issued to all public servants.*

**S. 183 : Declaration of undisclosed income – Purchase of land was not shown**

*Q.18. I have filed first time the balance sheet details in F.Y. 2014-15. Before it was a salaried return only & paid taxes accordingly.At the time of disclosing b/s items I have not shown land which was purchased in 2011 just an accounting error as at that time I have paid taxes on my salary income. My return for F.Y. 2014-15 is assessed u/s. 143(1). Can I file a revise return just to disclose the land or can I adjust it through capital a/c. My land is sold in the current F.Y. 2016-17?*

**Ans.** If at the time of sale you can prove purchase of land from your bank account or disclosed sources, then, it is not necessary to revise the return of Financial Year 2011-12. Further, you cannot file revise return for that financial year as time for filing revise return is over under section 139(5). Whatever amount you receive on sale of land you can credit the amount in the profit and loss account and also pay the capital gain tax on the sale of said land. [HNM]

**S. 183. Declaration of undisclosed income – Heads of income**

*Q.19. Tax is paid under different heads like 100, 200, 300 and 400 under the Income-tax Act. under which head is the IDS Tax to be paid?*

**Ans.** Under the head self-assessment tax
(300) and details of payment be mentioned in "others". [HNM]

**S. 183(4) : Declaration-Deduction of expenditure.**

*Q.20. S. 183(4) of Finance Act, 2016 provides that no deduction of any expenditure or allowance in respect of undisclosed income, declared under the scheme, shall be allowed.*

*Issue: It is difficult to accept that any expenditure shall not be allowed. The amount to be declared is income and not receipt. Income is always understood as gross receipt as reduced by expenditure incurred to earn the receipt. Therefore, the outgoings need to be allowed from gross receipts.*

**Ans.** The Income Disclosure Scheme, 2016 is for "… declaration in respect of any income chargeable to tax under the Income Tax Act for any assessment year …" as per section 183(1). What is to be declared is income chargeable to tax and not gross receipts.

The Scheme provides no procedure for assessment or verification of income offered to tax

and except for verification as to whether notices have been issued, no other verification shall be carried out by the department of income declared.

If sum due is paid within time and all conditions are satisfied, no proceedings shall be initiated merely because of and on the basis of valid declaration made under Income Disclosure Scheme.

Therefore, a declaration shall be accepted as made in respect of quantification of income and no verification will be carried out.

The issue of quantification of undisclosed income would arise only when the declarant makes claim for immunity in accordance with section 188 of the Act. Under section 188 the declarant is entitled to claim exemption from taxation of income declared in any assessment proceedings initiated after filing of the declaration. It is only in a valid assessment proceedings initiated after filing of declaration, the department can compute undisclosed income as per the provisions of the Act. In such assessment, assessee would be entitled to claim exemption to the extent of income declared.

In view of above discussion, the declarant may evaluate the option that it only makes declaration of net income without furnishing any working of gross receipts and expenses against such gross receipts. It may, if so advised, keep a copy of such working in its internal record to use it, if and when, occasion arises to claim immunity u/s. 188. [CAK]

**S. 184 : Charge of tax and surcharge – Payment of tax**

*Q21. In Question No. 5 of the FAQ dated 30-6-2016 vide Circular No. 25 of 2016 that the source of Income or tax paid shall not be made by the Department. In that case, if the amount of disclosure is made for ` 100 crore and a tax of ` 45 crore is made from sources unknown, whether the tax paid will not be considered for Income purpose and the entire ` 100 crore will be converted into legitimate money? Would be happy to have a clear clarification on this to avoid any hurdles later on after the disclosure is made or taxes are paid*.

**Ans.** The querist appears to be a very wealthy person as is evident from the question involving billions of rupees. S. 188 provides that the income, declared under the Scheme, shall not be included in the total income of the declarant.
S. 189 provides that a declarant shall not be entitled to claim any relief, in any proceeding, in respect of the declared income or any amount of tax and surcharge paid thereon. Further
S. 192 provides that nothing contained in the declaration made shall be admissible in the evidence for the purpose of imposition of penalty or prosecution under the Income Tax Act. The Scheme apparently does not require a declarant to disclose the source or nature of the income declared. The annexure to Form 1 however, requires the disclosure of the nature of undisclosed income.

The CBDT in Circular No. 25 dated 30th June, 2016 while answering question No. 5 has given a one word reply "No" to a question, the relevant part of, which reads as "Whether the Department will make an enquiry in respect of sources of income, payment of tax, surcharge and penalty." It appears that it is this reply that has tempted the querist and many others, including newspapers like Economic Times to canvass the possibility of paying tax out of the undisclosed sources without declaring the same under the Scheme and without paying any tax thereon, either under the Scheme and also under the Act. This view in my considered opinion is fraught with danger and does not appear to be supported by the provisions of the Act. First of all, the immunity under the Scheme is made available to an income declared under the Scheme and in respect of which the payment of tax, surcharge and penalty is made by the specified date. Obviously, on this account no immunity from inclusion in the total income for the amount of tax, etc. paid out of undisclosed sources, is available to declarant. Secondly, no relief is possible in any proceeding in respect of the declared income or the tax paid thereon, other than the relief of non-inclusion in the total income of the amount declared. Thirdly, the contents of declaration, by itself will not be admissible against the declarant for imposition of penalty or prosecution under the Income Tax Act and Wealth-tax Act. It is

possible, therefore; that the declaration, by itself, cannot be used in evidence for imposition of penalty on the undisclosed and undeclared facts, etc. but the facts of the declarations does save the declarant from payment of tax and interest on amount of taxes paid out of undisclosed sources under the Act. However nothing will save the declarant, even for penalty, in cases where the Income-tax Department is able to establish the evasion of tax, independent of the declaration. Fourthly, the declaration is expected to be true and correct in respect of the entire undisclosed income of the Declarant. In view of the above, it appears that the querist or the media is not in any manner supported by the provisions of law in their stand on not paying tax on the tax, etc. under the Scheme.

Answer to Q.5 perhaps confirms that no inquiry would be made relating to the source of income as also taxes, etc., PROVIDED the taxes thereon have been paid under the Scheme. The querist, if not satisfied, should seek an express clarification from the CBDT before an undesired adventure.

*Editorial: CBDT clarified the issue vide Circular No. 27 of 2016 dt. 14th July, 2016 Q. No. 6.*

**S. 186 : Manner of declaration.**

Q22. *In Form No.1 how one will disclose suspected purchases, sales in case stock register is maintained. It is settled by various pronouncement that on gross profit is to be disclosed but rate of GP will with nature and type of trade hence it is necessary to know from the department the rate of GP acceptable to them to avoid further question regarding GP rate adopted by Assessing Officer in the above matter during various proceedings including reassessment subsequent to closure of Declaration Scheme. Further as the Form No. 1 as well as Form No. 4 (Certificate to be issued by the CIT) does not contain disclosures/ particular of transactions how in these type one will satisfy the various Income-tax Authorities in income tax proceedings including reassessments, revision, search & survey. Whether assessee will be able to capitalise the same if yes, what will be nature of assets to be disclosed is in cash.*

*Whether the assessee will to disclose suspected loans taken before six years and interest thereon since beginning even if pertains to year before 2010 i.e. more than six years.*

*How to disclose the suspected squared loan transactions. Whether assessee will be entitled to capitalise the said loan and interest paid thereon in cash?*

**Ans.** The Income Disclosure Scheme is for "… declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year …" as per section 183(1). However, the scheme provides no procedure for assessment or verification of income offered to tax and except for verification as to whether notices have been issued, no other verification shall be carried out by the department of income declared. Therefore, a declaration shall be accepted as made in respect of quantification of income and no verification will be carried out at the stage of declaration under IDS.

The issue of quantification of undisclosed income would arise only in assessment proceedings for verification of issues of bogus purchases and/or loans. Under section 188 the declarant is entitled to claim exemption from taxation of income declared in any assessment proceedings initiated after filing of the declaration. In such assessment, assessee would be entitled to claim exemption to the extent of income declared.

The declarant may therefore evaluate the option that it makes declaration of income in respective years in which it expects the issues to arise. It may, if so advised, prepare a fair computation of income on the issues and keep a copy of such working in its internal record to use it, if and when, occasion arises to claim immunity u/s. 188.The declarant can contend in the declaration that it earned income in a particular year and that the same is now lying in form of an asset is thinks appropriate. [CAK]

**S. 186 : Manner of Declaration**

Q23. *Where Return of Income for A.Y. 2015-16/A.Y. 2016-17 are not filed, can the assessee declare any income under the head "Other Sources" without disclosing source thereof?*

*It appears that he will have to pay at the normal applicable rate and provisions of Section 115BBE may not apply in view of voluntary declaration in the Return.*

*Assuming provisions of Section 115BBE are applicable, such income will suffer tax at 30% only as against 45% under IDS.*

*Is it correct ?*

2. In an answer to Q. No. 4 (CBDT Circular No. 24/2016 dt. 27-6-2016) it is stated that 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 sections 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 *sections 148/153A/153C is issued and the value shall be determined in accordance with Rule 3 of the Rules.*

*Is it legally correct when no notice u/s. 148 can be issued after the expiry of six years from the end of the relevant assessment year? (S.149(1)(b)*

3. *An assessee might not have maintained any books of account and made investment more than 10 years ago from his funds/borrowed funds.*

*Similarly even if books are maintained one might have debited the amount invested to his capital account, in the year of investment.*

*Now he may not have any evidence to prove that the investment was made out of declared sources of income.*

*Query*

*Can such investment be presumed to have been made out of 'undisclosed income' even when department has no material/evidence to tax it as undisclosed income?*

*Incidentally in cases where income is declared on presumptive basis law does not require maintenance of books of account. Similarly person is not required to preserve accounts after a prescribed period under Income Tax/Company Law?*

**Ans.** S.197 states for the removal of doubts, it is hereby declared that – "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".

It means that if an asset has been acquired prior to 1-6-2016, from any income, no declaration is respect of such income by which the impugned asset has been acquired is filed, a notice u/ss. 142 or 143(2) or 148 or 153A or 153C of the Income-tax Act is issued; such undisclosed income shall be deemed to have accrued, arisen or received in the year in which such notice is issued and the value of such acquired asset as computed u/r. 3 of the Income Declaration Scheme Rules, 2016 i.e., 1-6-2016, shall be assessed in the year in which such notice is issued.

Section 69 of the Income-tax Act, 1961 dealing with unexplained investments states that where in the financial year immediately preceding the assessment year the assessee has made investments from unexplained sources, the value of the investments may be deemed to be the income of such financial year. Assuming an asset is proved to have been acquired in the financial year 2000-01, the asset is undeclared, source of investment is not satisfactorily explained, such income so invested in the asset, would be deemed to be income of the said financial year and assessed to tax, interest and penalty in the Assessment Year 2001-02. Section 197 also says the provisions of the Income-tax Act shall apply accordingly. It also does not start with "Notwithstanding any other provision of the Income-tax Act, 1961."

Thus if the income in respect of such asset is assessable u/s. 69 in the Assessment Year 2001-02, in my view it cannot be assessed u/s. 197(c) during the assessment year in which it has surfaced and notice is issued. Assuming the above-said asset is established to have been acquired in Financial Year 2000-01, and there is acceptable evidence therefore, but surfaced on 1-7-2016 and notice is issued for the Assessment Year 2017-18, it cannot be assessed in the Assessment Year 2017-18. Such an action would be contrary to section 69 of the Income-tax Act. Addition would be illegal, against the parent act and unsustainable. Provision contained u/s. 197(c) is not in accord with the Income-tax Act and it has no over-riding clause; but only to remove the doubt. The Finance Act, 2016 cannot legislate contrary to Section 69.

It is sub-servient to the Act and not above the Income-tax Act. Parliament if wanted to legislate differently, it should have amended existing Section 69 read with Section 148 of the 1961 Act. Such provision is unconstitutional, not harmonious, makes Section 69 otiose or nugatory and would be liable to be struck down or read down, if challenged.

In case of escaped/re-assessment a notice u/s. 148 read with sections 147 within the time limit of six years specified u/s. 149(1))(b) is a condition precedent and a jurisdictional factor. Hence notice u/s. 148 cannot be issued for the Assessment Year 2017-18 when asset has been proved to be acquired in the Financial Year 2000-01. Such notice shall be without jurisdiction and void. Such assessment would be liable to be annulled.

If the assessee can satisfactorily prove by documentary evidence that the investment was made before 10 years, even if sources remain not satisfactorily explained, such investment cannot be taxed, as explained hereinabove u/s. 197(c) of the Finance Act, 2016. It would not accrue, arise or received in later year.

The Central Board of Direct Taxes has issued answer to Question No. 4 of Circular No. 24 of 2016 and again reiterated its view in the answer to Question No. 2 of Circular No. 27 of 2016. It says : "the Scheme is a later law in time, the provisions of the Scheme shall prevail over the provisions of earlier laws". It does not appear to be correct. (NMR)

**S. 186 : Manner of Declaration- Undisclosed investment in shares.**

*Q24. Can a person give declaration of for undisclosed investment in share capital, already in the name of some paper company having no credentials?*

*Suppose a company has shareholders seems to be paper transaction, can someone/or a Pvt. Ltd. company give declaration for the BENAMI TRANSACTION held in the form of share capital.*

*The declaration will be in the name of Pvt. Ltd. company (share capital) or in the name of person filing declaration.*

*Also immunity to the person filing declaration or to the company?*

**Ans.** It is assumed that the so called paper company is in existence and is registered with the Registrar of Companies. Share capital has been subscribed by the applicant and is suspected by the Revenue. In such circumstances the share applicant or any other person

can declare. If declarant is any other person than the earlier share applicant, the earlier share applicant shall be a benamidar for the present declarant and the share certificate shall have to be transferred in the name of the declarant by 30-9-2017.

The declaration shall be by the real shareholder, immunity shall be to the declarant as well as to the Company in view of Circular No. 142/08/2016 – TPL dated 30-6-2016 (Answers to Q.1 & Q.2 & Q.5 & Q.8). [NMR]

**S. 186 : Manner of Declaration – Revision of Declaration**

Q25. *S.186(3) provides that a declaration once made u/s. 183(1) can neither be revised nor another declaration can be made in respect of that declarant.*

*Issue: A declarant after making a declaration and before payment of tax, surcharge and penalty and before 30-9-2016, if notices a mistake in the declaration or the declaration is not verified in the proper manner should not be debarred from revising the declaration. Powers vested u/s. 198 should be exercised?*

**Ans.** First of all, there is nothing in S. 186(3) which prohibits the revision of a declaration. It is true that there are no expressed provisions similar to S. 139(5) of IT Act that specifically provides for filing of revised return of income. In our considered opinion, any mistake in the declaration can be rectified or in the alternative the declaration itself can be revised as long as it is not expressly prohibited by the Scheme. The expressed provision of S. 139(5) is mainly for the purpose of providing the limitation of time for which, a person could have revised the return at any point of time till the date of assessment.

Secondly, an incomplete declaration could never be considered as a valid declaration in first place and as such the question revising it should not arise at all. Any new declaration complete in all manner, can alone be treated as a declaration provided it is filed within the time permissible under the Scheme.

Thirdly, S. 186(3) in no manner restricts the rectification for revision of a declaration. It simply prohibits filing of any other declaration. It should mean that a person is prohibited from filing another declaration once a valid declaration is already filed.

Fourthly, the Central Government is empowered *vide* S. 198 to issue an order to remove any difficulty in giving effect to the Scheme as long as it is not inconsistent with the Scheme. Permitting expressly a person to file a revised declaration cannot be inconsistent with the scheme. [PNK]

*Editorial : Circular No. 27 of 2016 dt. 14th July, 2016 Reads as under. Q. No. 1. Can a declaration made under the Scheme be revised before the date of closure of the Scheme i.e. 30-9-2016? Ans : It is expected that the declaration made under the Scheme are filed correctly. However, a revised declaration can be filed on or before the date of closure of the Scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed.*

**S. 186 : Time for payment of tax – Challan**

Q26. In accordance with S. 187 read with Notification dated 19-5-2016, the amount as specified by the Commissioner, after receipt of intimation from the Principal Commissioner / Commissioner is to be paid.

*Issue: As no separate Challan is specified, Challan 280 may be used. In such a case a separate Challan may be required for each assessment year. In order to avoid any confusion it is desirable that a separate Challan is specified.*

**Ans.** As per section 186(3) of the Finance Act, 2016 a declarant can file only one declaration for all the assessment years in respect of his / it undisclosed income in Form 1, hence he has to make payment of tax, surcharge and penalty under one Challan bearing ITNS 280. In type of payment it should show as “self assessment tax” and in details of

payment he should show the total amount in column "others". As per note No. 5 at the back of the challan first assessment year is to be mentioned. [HNM ]

*Editorial: As per Circular No. 27 of 2016 dt. 14th day of July, 2016, Ans. to Q. No. 1 a revised declaration can be filed under certain circumstances.*

**S. 187 : Time for payment of tax**

*Q.27. Whether the Principal Commissioner or Commissioner has the power to extend the time for payment of tax?*

**Ans.** In *Hemlata Gorgya v. CIT (2003) 259 ITR 1 (SC),* interpreting the Sec. 66 & 67 of VDIS, 1997, the Hon'ble Apex Court held that the words 'shall' means that the provision is mandatory. While referring to an earlier Judgment in *Maqbool Ahmed v. Onkar Pratap Narain Singh AIR 1935 PC 85, 86* it observed that "It is well-settled that when consequences of the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory".

As the language used in IDS is similar and has also prescribed that the consequences of non- compliance of the payment of tax, surcharge & penalty in respect of the declaration made u/s. 183 on or before the specified date are that the declaration shall be deemed never to have been made. Hence, the Principal Commissioner or Commissioner has no power to extend the time for payment of tax in IDS. Recent press release says that the payment of the tax can be made by installments and clarification will be issued in due course. [KS]

**S. 187(3) : Time for payment of tax – Challan**

*Q.28. S.187(3) read with Notification provides that if the amount intimated by the Principal Commissioner / Commissioner is not paid by 30-11-2016 and proof of payment is not filed, the declaration filed shall be treated as never have been filed.*

*Issue: In absence of a specified Challan, as the declarant may be paying the amounts through separate Challan for each year and Challan for any year is inadvertently not filed in time, the declarant should be asked to produce the Challan. In any case the information of payment would also be available with the Department. ?*

**Ans.** Sub-section (1) of section 187 makes it mandatory to make payment of sum due by appointed date. Sub-section (2) requires the declarant to file proof of such payment within specified date. The consequence of treating declaration not having filed is applicable only if payment is not made within time specified and not to filing of proof. Therefore, the issue raised in the query is not emerging from the provisions of the Act.

In view of seriousness of the consequences, the declarant may consider to be more vigilante, responsible and careful about maintenance of poof of payment and filing it within time. It has been informed by member (L & C) CBDT that a new Challan No. 286 is being notified soon. [CAK]

**S. 187(1), (2) : Time for payment of tax**

*Q.29.* The proof of payment is to be filed with the Principal Commissioner or Commissioner on or before *30-11-2016 in Form No. 3 appended to the Income Declaration Scheme Rules, 2016.*

*Issue: The tax, surcharge and penalty payable under the Scheme would generally be paid close to the last date. In some cases the Challan for payment may not be readily available for any technical reason, though the payment can be established from other record/evidence. The Principal Commissioner / Commissioner should be empowered to grant further reasonable time to produce the Challan. ?*

**Ans.** S. 187(2) states that not only the tax is to be deposited on or before the date notified u/s. 187(1)( [which is 30-11-2016] but also the intimation in this regard is also to be submitted to the PCIT on or before the said date. As per Form 3 a declarant has to submit proof of payment to the Principal Commissioner / Commissioner mentioning BSR Code of Bank, date of deposit, serial number of Challan and amount. In view of this it is necessary to make the full payment to bank much before the last date, so the aforesaid particulars could be furnished before November 30, 2016. As per the press release the payment can be made in installments. [HNM]

**S. 190 : Benami transactions.**

*Q.30. S.190 grants exemption from the provisions of Benami Transactions (Prohibition) Act, 1988, if the property is transferred in name of beneficial owner by 30-9-2017.*

*Issue: If for any unavoidable reason or on account of some pending litigation, the property cannot be transferred by 30-9-2017, the exemption shall not be available. The Principal Commissioner / Commissioner should be authorised to grant further time in genuine cases?*

**Ans.** The Income Declaration Scheme, 2016, operative from 1-6-2016, with exit date 30-9-2016, entitles a person to own investments held in benami name of other persons and provides an opportunity to declare benami investments, pay tax, interest and penalty and safeguard such investments. As holding an investment benami's name is an offence and such investments are liable to confiscation, the scheme by Section 190 of the Finance Act, 2016 grants immunity from the provisions of the Benami Transactions (Prohibition) Act, 1988. However, an additional condition has been put requiring the asset existing in the name of a benamidar be transferred to the declarant, or his legal representative, within the period notified by the Central Government. The Central Government has notified the last date for transfer as 30-9-2017. On account of this second condition, on non-fulfilment, the declaration would be ineffective and inoperative. The immunity would not be available. The word used is "shall" and hence condition is mandatory.

Suggestion : It is a harsh condition. For many reasons beyond the control of the declarant, the transfer may not fructify by the specified date. For unforeseen circumstances there may be delay. It is advisable that power be conferred on the PCIT / CIT, to condone the delay and grant immunity. Federation is advised to make representation to the Government to confer requisite power for condonation after recording of reasons. If immunity is not granted, it would be justiciable by writ jurisdiction.

Form Nos. 1 as well as 4 shall be required to be modified. In the verification in clause (i) the factum of condonation power shall have to be specified. [NMR].

**S.190 : Benami – Purchase of Kisan Vikas Patra**

*Q.31. I have purchased Kisan Vikas Patra in the name of my brother-in-law in FY 2013-14 for ` 20 lakhs.*

*The investments belongs to me and I want to take the benefit of IDS, 2016. The scheme provides the transfer of Benami property within six months but as per postal rules the KVP cannot be transferred before maturity.*

**Ans.** The Scheme requires transfer of benami property by 30-9-2017, not within 6 months. The querist should convince the Kisan Vikas authorities that it is only a change of name and not a transfer by sale, gift or otherwise. The name – holder must apply for change of name duly supported by declaration of the brother-in- law and the declarant along with the evidence of declaration and tax payment. (NMR)

**S. 190 : Benami property**

*Q.32. Assessee discloses the Benami property and pays the tax. After paying the tax, he lodges the document for registration. Registering authority values the property higher than the declared value, what will be consequences under section 50C of the Act? Unless tax is deducted the registering authority may not register, what will be the consequences, when the information is received by the income tax department based on the registered document in the case real owner and benamidar. If it is flat in Housing Society whether the Society can insist for payment of transfer fees for transferring the flat in the name of real owner?*

**Ans.** S. 190 provides that the provisions of the Benami Transactions (Prohibitions) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset. In other words such a property would not be confiscated under the said Act, even if it is found to be held in the name of the Benamidar, provided it is declared under the Scheme. This exemption from the said Act is subject to a condition that the asset in question is transferred to the declarant or his legal representative within the notified period which period is now notified to be 30th day of September, 2017.

The querist is concerned with his liability, to deduct tax at source u/s. 194-IA, at the time when the property in question is "transferred" to the Declarant. In my considered opinion, the Declarant is not required to deduct any tax at source at the time of the said transfer by the Benamidar, simply, for the reason that he is not responsible for paying any sum by way of consideration for the said 'transfer' to the said Benamidar. He is neither required to credit the account of the Benamidar nor required to make any payment to him for the transfer. In this view of the matter, the registering authority shall not obstruct the registration and the Income Tax Department would have no hesitation in accepting the reality behind the transaction. For the same reasons, the society cannot insist for payment of the transfer fees, however it is a matter unrelated to taxation of income. [PNK ]

*Editorial. Refer Circular No. 27 of 2016 dt. 14th day of July , 2016 Q. No. 4. In a case where the declarant gets the benami asset transferred in his name without payment of any monetary consideration to the benamidar, whether capital gains would be chargeable in the hands of benamidar consequent upon such transfer and whether the tax at source @ 1% would be deducted in such case?.*

**Ans.** In this case the consideration for acquisition of benami property has already been paid by the beneficial owner and the fair market value of the property has been declared by the beneficial owner under the scheme. Since, the transfer of property from the benamidar to beneficial owner is only regularise and there will be no involvement of monetary consideration for transfer of immovable property by the benamidar in the name of declarant, the question of capital gains in the hands of benamidar and deduction of tax at source therein shall not apply.

**S. 191 : Refund of tax paid**

*Q.33. If the tax was paid beyond prescribed period due to which the declaration is rejected, can he get back the amount of tax paid?*

**Ans.** Circular No. 16 of 2016 dated. 20-5-2016, explanatory notes on provision of the IDS, 2016, in para 8(b) states that "Any tax, surcharge or penalty paid in pursuance of the declaration

shall, however, not be refundable under any circumstances", The language used in section 191 of the Finance Act 2016, is similar to the language used in S. 69 in the VDIS, 1997.

In *Sajan Enterprises v. CIT (2006) 282 ITR 636 (Bom.)(HC),* relying on *Hemlata Gorgya v. CIT (2003) 259 ITR 1 (SC)* held that, where entire tax liability was not paid within a period

of three months as contemplated under VDIS, declarant was not entitled to get benefit of scheme and in such case, amount paid by assessee beyond period of 90 days under the scheme was to refund to the petitioner. Similar view was taken in *R. Ranganatha Reddiar v. ITO (2005) 194 CTR 479 (Ker) (HC).* The Hon'ble Apex Court had directed the Revenue authorities "to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the Scheme to the concerned assessees in accordance with law". Applying this ratio in a case where the declaration is rejected due to delay in payment of tax, the assessee may be able to claim the refund by approaching the Court by way of Writ Petition. [KS]

**S. 192 : Immunity – Prevention of Money Laundering Act**

*Q.34. Can provisions of the Prevention of Money Laundering Act be launched against an assessee who makes a declaration under the Income Declaration Scheme, 2016?*

**Ans**. S.192 of the Finance provides that the declaration made under the scheme shall not be admissible in evidence for the purpose of prosecution under the Income-tax Act or the Wealth-tax Act. S. 191 provides relief for certain cases in which the provisions of the Benami Transactions (Prohibition) Act shall not apply to declarations. Though the Finance Act, 2016 by itself does not offer a shield against prosecution under Anti-Money Laundering Laws to an assessee making a declaration under the said scheme, a wilful attempt to evade tax under the Income-tax Act is not a scheduled offence under the PMLA Act. In contrast, wilful attempt to evade tax (S.51) under the Undisclosed Foreign Income & Assets (imposition of Tax) Act is a scheduled offence and can give rise to proceedings under the PMLA Act. It is also pertinent to note that though the wilful attempt to evade tax under the Income-tax Act is not a scheduled offence; any disclosure of income or property as defined u/s. 2(u) of the PMLA Act could attract the provisions of the Act. While CBDT Circular No. 13 of 2015, dated 6-7-2015 clarifies that with respect to the tax compliance provisions under Chapter VI of the Undisclosed Foreign Income & Assets (Imposition of Tax) Act, declaration made under Sec. 59 of the Act shall not attract the provisions of Sec. 51 of the Act, no such clarification has been made for the Income Declaration Scheme, 2016.

The Income Declaration Scheme, 2016 does not have a specific secrecy clause, as was the case with the VDIS Scheme of 1997. However, Q. 13 of CBDT Circular 17 of 2016, dated 20-5-2016 clarifies that the disclosure of information in respect of assessees shall be kept confidential as the scheme incorporates the provisions of S. 138 of the Act and shall be granted the same privileges of confidentiality as that enjoyed by a return of income, hence eliminating the need of a separate provision. Circular No. 27 of 2016 dt. 14th day of July, 2016, CBDT once again clarified as under Q. No. 5. Under what provision can a declarant be sure that the information contained in a valid declaration shall not be shared with in the Income-tax department for investigation

? Ans. Section 195 of the Act provides that provisions of section 138 of the Income-tax Act shall apply in relation to the proceedings under the scheme. *Vide* Notification S.O. 2322E dated 6-7-2016, an order has been passed by the Central Government directing that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the scheme.

Therefore considering the assurance given by the Honourable Prime Minister of India and Hon'ble Finance Minister ,the assesses need not worry about the confidentiality of the information other Govt. agencies will not be able to get any information in respect of IDS. [KS]

**S. 192 : Declaration not admissible in evidence against declarant**

*Q.35. It is understood that the information shall not be used for any other purpose.*

*Issue: The declarant needs to be assured in categorical terms that the information shall not be used for any other purpose. In view of Circular No. 143/8/2016 – TPL dated 30-6-2016 it appears confidentiality has been assured and would be maintained.*

**Ans.** S.192 of the Finance Act, 2016 is reproduced :

"192. Declaration not admissible in evidence against declarant. 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, (27 of 1957)".

It simply grants immunity from penalty in any other law. It says the contents of the declaration shall not be admissible in evidence. It is vague. It is not clear that it shall be inadmissible in evidence under all other laws for any purpose whatsoever.

Central Board of Direct Taxes has issued a Circular No. 16 of 2016 dated 20th May, 2016 (2016 384-ITR144 (St.) by way of explanatory notes on the provisions. Para 9 (b) says "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." (Page 148 St.)

Circular No. 17 of 2016 dated 20th May, 2016 (2016 384-ITR-148 (St.) has been issued by way of clarification. Question No. 13 with its answer is extracted hereunder :-

*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 assessees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessees. (Page 152 – 153 St.)

It says the information is confidential and at par with the return of income. It says shield is Section 138 of the I.T. Act. Supreme Court has construed the provisions of Section 138 in *Dangiram PindiLal v. Trilok Chand Jain (1992) 194- ITR-228* and has held that in compliance to order of the Court the records and documents would be required to be sent to the Court. [NMR]

*Editorial: Refer Circular No. 27 of 2016 dt. 14th day of July, 2016, CBDT once again clarified in response to Q. No. 5.*

**S. 194 : Exemption from Wealth-tax**

*Q.36. Undisclosed income held in the form of cash, bank deposits, bullion, investment in shares or any other assets, specified in the declaration shall not be liable to Wealth Tax, if no return has been filed or it is not included in the return of Net Wealth.*

*However, if the asset, declared in the return, is undervalued, the declarant shall have immunity to the extent of income declared under the scheme, for acquisition of the asset.*

*The partners of a firm shall also get immunity in respect of income disclosed by the firm.*

*Issue: In Circular No. 16 dated 20-5-2016, it is stated that the value of assets declared in the declaration shall not be chargeable to Wealth Tax. The liability under wealth tax therefore needs to be further clarified. Apparently the circular grants total exemption from wealth tax and seems to be beyond the provision of the Scheme.*

**Ans.** S. 194 of FA, 2016 grants an exemption from payment of wealth tax in respect of the assets declared under section 183 of the Finance Act, 2016 or which has not been shown in return of wealth furnished. In addition, the said s. 194 also grants exemption from

payment of wealth tax in respect of that balance part of asset declared under section 183 of the Finance Act, 2016 or which has not been shown in return of wealth furnished.

No immunity is required in respect of the first part of the asset that has been partially disclosed and shown in return of wealth that has already been furnished by the assessee, declarant. It is the balance part that was not disclosed which gets immunity on declaration under the scheme. The other part shown in the return needs no immunity under the scheme.

Circular No. 16 dt. 20-5-2016 simply confirms that the part declared and shown in return of wealth together with the remaining balance part declared under the scheme collectively enjoys the complete exemption from the wealth tax. Accordingly, in our considered view, the circular does not grant any additional exemption and is not beyond the scope of provisions of scheme. [PNK]

**S. 196 : Scheme does not apply to certain persons – Initiation of prosecution**

*Q.37. FIR (First Information Report) is filed under the Code of Criminal Procedure 1973 (CrPC), can the assessee avail the benefits of the IDIS scheme?*

**Ans.** The Hon'ble Uttaranchal High Court in the case of *CIT v. Meena Goyal (Smt.) (2011) 334 ITR 428 (Uttaranchal)(HC)* held that prosecution gets initiated when summons is issued by Court on the report made by the investigating officer, therefore, the benefit of Scheme cannot be denied to a person against whom only FIR is filed. As the wordings of 196(b) of IDIS are identical to 78(b) of VDIS 1997, the ratio may hold good even for interpretation of IDIS, 2016. [KS]

**Scheme not to apply to certain perso – Recovery of cash by police**

*Q.38. Police recovered cash from a car and the person in car explained that cash was given by X, whose identity and address he gave, and cash was collected at the instance of A. Information was given by police to IT department and warrant u/s. 132A was issued against A. Statement of A was recorded and he explained that cash belonged to B. who gave it to him for purchasing property on behalf of B. Whether B can file declaration under Income Declaration Scheme?*

**Ans.** Case of the Declarant is covered by S. 196, clause (e) which prohibits the declarations of an undisclosed income, under the Scheme, in cases where a notice has been issued under one of the provisions specified in sub-cl. (i) or where a requisition has been made u/s. 132A of the Act under sub-cl.(ii). No notice has been served on the Declarant and as such sub-cl.(i) does not apply to him. His case is covered by sub-cl.(ii) inasmuch as a requisition is made u/s. 132A on A. The condition, contained in sub-cl. (ii) of cl. (e) of S. 196, is not related to or *qua* any specific person and therefore whether requisition is made on A or B is not relevant for application of sub cl. (ii). However, the latter part of the said sub clause (ii) provides for a cumulative condition to be present before debarring a person from obtaining the benefits under the Scheme. This latter part of the sub clause (ii) requires that a notice under one of the specified provisions has not been issued and the time for issue of notice u/s. 143(2) or u/s. 153A or 153C, should not have expired. The Declarant can proceed with the declaration once the time for issue of the specified notice has expired and the notice has not been issued; till such time he is prohibited from filing the declaration under the scheme. Accordingly in my considered opinion, once the time for issue of notice has expired, B is not debarred from making a declaration under the Scheme for the cash confiscated by the police from an associated person. The issue that may remain open is whether he can claim that if no notice is served by 31-5-2016, it can be deemed the time for issue of notice has expired and he should be permitted to file a declaration. Debatable and doubtful; better to seek clarification from the Board. [PNK]

**S. 197(c) : Chargeability of undisclosed income**

*Q.39. As per the IDS the undisclosed income not declared under the scheme will be taxed in the year in which notice is issued. If notice for A.Y. 2014-15 is issued in the F.Y. 2016-17, then in which year will the undisclosed income detected be taxed – A.Y. 2014- 15, or A.Y. 2017-18 i.e. the year in which the notice is issued ?*

**Ans.** Answer to Question No. 8 of Circular No. 17 of 2016 dated May 20, 2016 the CBDT has clarified that 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 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 u/ss. 142 / 143(2) / 148 / 153A/ 153C issued by the A.O. and the provisions of Income tax Act shall apply accordingly. [See also answer to Question No. 4 of Circular No. 24 of 2016 dated June 27, 2016]. (HNM)

**S. 197 : Removal of doubts – Maintenance of records**

*Q.40.* As the provisions of Income-tax Act, 1961 the assessee is required to maintain records for six years only and also not required to file personal balance sheet, statement of affairs and also particulars assets and liabilities in the Income tax returns except in case of certain persons having income above certain income from the notified assessment year. In view of the above provision if the assessee has not kept any records beyond six years then how the assessee will satisfy the various income authorities during assessment, search survey and other proceedings regarding whether it is disclose or undisclosed assets/ income since 1961 so as to not enable them to evoke the section 197(c) of declaration scheme.

**Ans.** S.197(c), for removal of doubts, declares that an income for the period up to 31st May, 2016 shall be deemed to be of the year in which a notice u/ss. 142, 143(2), 148, 153A or 153C is issued by the A.O. This has further been confirmed in reply to Q. 8 of the Circular No. 17 dated 20th May, 2016 issued by the CBDT. Accordingly irrespective of the actual year of the income an undeclared income would be deemed to be the income of the year in which the prescribed notice is issued. The provision of
S. 197(c) has an audacious effect of overriding not only the relevant provisions for issue of notice but also the provisions of sections 3, 4 and 5 and several other provisions of the Income-tax Act, 1961. Apparently, such an over sweeping and overriding effect of S. 197(c) of the Finance Act, 2016 over the Income-tax Act, 1961 would not be upheld by the Courts unless this deeming provision is incorporated in the Income-tax Act, 1961. Again S. 197(c) is for removal of doubts and therefore is a clarificatory provision. Obviously, it is beyond reason that a provision in the garb of clarification seeks to write altogether a new law. In any case, S. 197(c) even where found to be legitimate, by the Courts, cannot convert a case of 'no income' into a case of 'deemed income'. It only authorises the
A.O. to shift the year of taxation but does not discharge him from proving that an income that was taxable has remained to be taxed and that such an income pertained to a period prior to 1st June, 2016. [PNK]

*Editorial: Refer the answer of Shri N.M. Ranka to Q. No 23 wherein he has opined that the interpretation of Board may not be constitutionally valid.*

**General – Assurance whether binding on revenue**

*Q.41. Whether assurance given by the Hon'ble Finance Minister and answers given by the Department on IDIS, 2016 is binding on revenue?*

**Ans.** Yes. In *J.B. Boda & Co. v. CBDT (1997) 223 ITR 271 (SC),* the Court held that the Finance Ministers speech is relevant for interpretation a provision. In *Allied Motors (P) Ltd v. CIT (1977) 224 ITR 677 (SC),* the Court held that the budget speech of Finance Minister and memorandum explaining the

Finance Bill as also the Department circular showing the departmental understanding are relevant in considering a provision. In *Kerala State Industrial Development Corp. Ltd. v. CIT(2003) 259 ITR 51 (SC).* [KS]

**General – Clarifications is binding on revenue**

***Q.42.*** *Whether interpretation and clarification given by the CBDT on IDS is binding on the revenue ?*

**Ans.** S.119(1) of the Income-tax Act, 1961, specifically empowers the CBDT to issue general circulars for the general administration of the Act and such instructions issued are binding on the Officers of the Department. In *Navnit Lal C. Javeri v. AAC (1965) 56 ITR 198 (SC), Ellerman Lines Ltd. v. CIT (1971) 82 ITR 913 (SC)* and *K.P. Varghese v. CIT (1981) 131 ITR 597 (SC)* the Supreme Court laid down that the circulars are binding on the revenue authorities and they are bound to follow them. Even though the circulars were not strictly accordance with law, still the Supreme Court held that such circulars are binding. In *UOI v. Azadi Bachao Andolan (2013) 263 ITR 706 (SC),* Supreme Court held that a circular which does not specifically state that it was under section 119 has still to be treated as one so issued. In *Spentex Industries Ltd. v. CCE (2016) 1 SCC 780 (SC),* the Apex Court held that Central Board of Direct Taxes and Government are bound by their own interpretation. However the assessee can challenge the correctness of Circulars in appellate proceedings *(CIT v. Hero Cycles Pvt. Ltd. (1997) 228 ITR 463 (SC), Commissioner of Customs v. Indian Oil Corporation Ltd. (2004) 267 ITR 272 (SC)(277).* [KS]

**General-Constitutional validity.**

*Q.43. Are the Income Declaration Scheme, 2016 & The Direct Tax Dispute Resolution Scheme, 2016 constitutionally valid?*

**Ans.** The Income Declaration Scheme, 2016 & Direct Tax Dispute Resolution Scheme, 2016 follow a path set by the schemes that came before it. The courts have on multiple occasions held that the provisions of these prior schemes are constitutionally valid. The Hon'ble Bombay High Court in the case of *All India Federation of Tax Practitioners v. UOI [1997] 228 ITR 68 (Bom.) (HC)* as upheld by the Hon'ble Apex Court in *All India Federation of Tax Practitioners v. UOI [1998] 231 ITR 24 (SC)* upheld the constitutional validity of the 'Voluntary Disclosure of Income Scheme' (Sec. 64 of the Finance Act, 1997) observing that the provisions of the VDIS scheme were not arbitrary and were not violative of Article 14 of the Constitution of India. In a similar vein, the Hon'ble Delhi High Court in the case of *All India Federation of Tax Practitioners v. UOI [1991] 236 ITR 1 (Delhi)* upheld the constitutional validity of the 'Kar Vivad Samadhan Scheme'(Sec. 87 of the Finance (No. 2) Act,1998). As the objects and the schemes as envisaged by the Income Declaration Scheme, 2016 and Direct Tax Dispute Resolution Scheme, 2016 are similar to those that were laid out in 'Voluntary Disclosure of Income Scheme' and the 'Kar Vivad Samadhan Scheme' the Schemes can be said to be constitutionally valid. [KS]

**General – Constitutional validity.**

*Q.44. Can the scheme as per Section 202 (I) be said to be discriminatory inasmuch as it levies penalty in the cases where the disputed tax exceeds Ten Lakh Rupees but not where the disputed tax is less than Ten Lakh Rupees?*

**Ans.** In S. 88(a) of KVSS, 1998, there was no discrimination w.r.t. the amount payable between the same type of assessee. However, in the case of DTDR, 2016, Sec 202 (I) prescribes a levy of penalty on all tax arrears where the disputed tax amount is above ` 10 lakh. There is no corresponding levy of penalty of any sort made on assesses where the disputed tax arrears are below ` 10 lakh. This is a case where the same type of assesses are being artificially divided, not based on merit but upon the quantum of tax

arrears, potentially leading to a situation where a two different assesses would be treated as different class of assessee not on merits of the matter but only upon the quantum of tax arrears.

The Hon'ble Delhi High Court in the case of *All India Federation of Tax Practitioners v. UOI (1999) 236 ITR 1 (Delhi) (HC)* held that the proviso to Sec. 92 (KVSS 1998) was *ultra vires* Article 14 of the Constitution of India as it results into creating two artificial classes between the same class of assessees. Aggrieved appellants may have to approach their Jurisdictional High court in order to claim relief. [KS]

2

## Comparison of VDIS, 1976, VDIS 1997 and Income Declaration Scheme 2016 By CA Chetan A. Karia

| Sr. No. | VDS, 1976 | VDIS, 1997 as compared to VDS, 1976 | IDS 2016 as compared to VDIS, 1997 |
|---|---|---|---|
| 1. | General: The Scheme can be divided into three parts: Search cases, Income disclosure and wealth disclosure and separate immunities and procedures were prescribed for each of the three class of declarations. | General: The VDIS, 1997 only provides for declaration of Income. Though in the original Finance Bill, 1997 as proposed and moved in the Parliament on 28-12-1997, clause 63 of the Finance Bill, 1997 provided for disclosure of Wealth, the same was dropped at the time of passing of | General: IDS, 2016 is the same as VDIS,1997 in most aspects. |
| 2. | Section 3: Provisions are similar except for following points:<br>a) Flat rates of tax are prescribed only for companies. For all other persons, progressive tax rate on the basis of income disclosed is prescribed.<br>b) 5% of income declared had to be invested in specified securities.<br>c) All persons whose books, etc. seized during search u/s. 132 disqualified from making declaration | Section 64: It provides for declaration to be made and taxes to be paid and also the income which can be disclosed and assessment years for which disclosure can be made. The provisions are similar except for the following points:<br>a) Flat rates of tax on income disclosed is prescribed.<br>b) No provision for investment in any securities.<br>c) Only persons against whom search initiated u/s. 132 barred from | Sections 183, 184 & 185: Provisions relating to declaration of income. As compared to VDIS, 1997 following changes have been made:<br>a) If declaration of income is in form of assets, market value of such asset as on date of commencement of scheme being 1-6-2016 to be declared as income.<br>b) In addition to flat rate of tax @ 30%, cess @ 25% of tax is to be paid.<br>c) Also penalty @ 25% of tax is also levied. |

| Sr. No. | VDS, 1976 | VDIS, 1997 as compared to VDS, 1976 | IDS 2016 as compared to VDIS, 1997 |
|---|---|---|---|
| | in previous year in which seizure took place and all earlier years. There was no necessity that search must have been initiated against such person. If some books, etc. of such person seized even in search against some other person, the relevant years were denied immunity.<br>d) No such disqualification.<br>e) No such disqualification. | immunity in respect of previous year in which search initiated and all earlier years. Even persons against whom notice u/s. 158BC r. w. s. 158BD issued not disqualified from making declaration.<br>d) A person disqualified from making declaration in respect of previous years in which requisition u/s. 132A made and all earlier previous years.<br>e) A person | d) Effectively amount payable would be 45% of income declared.<br>e) On issue of disqualification, scheme is different as discussed in context of section 196. Under VDIS, 1997 disqualification relating to search and seizure cases was provided in section 64 and disqualifications relating to Prevention of Corruption Act etc. were provided u/s. 78 Under IDS all |
| 3. | Section 4: The provisions are similar. | Section 65: It provides for form in which declaration to be furnished and the authority to whom it is to be filed. It also provides for the person who has to sign the declaration. Sub-section (3) provides that a person | Section 186: The provisions are the same. |

| | | | |
|---|---|---|---|
| 4. | Sections 5,6 and 7: They provide for time for payment of tax, extension of time, payment of interest, investment in securities and recovery in case of non- payment.<br>a) Sub-section (1) of section 5: Taxes shall be paid before furnishing declaration. | Section 66 and section 67: It provides for payment of tax on income declared and interest payable if payment delayed.<br>a) Section 66: Taxes shall be paid before furnishing declaration.<br>b) Sub-section (1) of section 67: If tax not paid before | Section 187: It provides that amount payable under the scheme shall be paid on or before the specified date and proof of payment shall be furnished to the CIT. Following are the difference as compared to the earlier scheme: |

| Sr. No. | VDS, 1976 | VDIS, 1997 as compared to VDS, 1976 | IDS 2016 as compared to VDIS, 1997 |
|---|---|---|---|
| | b) Income-tax Act, 1961<br>c) Excess Profits Tax, 1940.<br>d) Business Profits Tax, 1947<br>e) Super Profits Tax Act, 1963 or<br>f) Companies (Profits) Surtax Act, 1964 | tax will issue certificate on application being made. | |
| 6. | Section 9: Provisions are similar. | Section 69: Declarant not entitled to claim relief or set off in respect of completed | Section 189: Provisions are the same. |
| 7. | Section 10: Provisions are similar. | Section 70: Taxes paid in pursuance of declaration not | Section 191: Provisions are the same. |

| | | | |
|---|---|---|---|
| 8. | Section 11: Declaration not admissible as evidence against declarant in penalty or prosecution proceedings under:<br>a) All Acts mentioned in section 8(1)<br>b) W.T. Act, 1957 | Section 71: Declaration not admissible as evidence against declarant in penalty or prosecution proceedings under:<br>a) I.T. Act, 1961<br>b) W.T. Act, 1957<br>c) FERA, 1973 | Section 192: Same immunity but only in respect of Income- tax Act, 1961 and Wealth-tax Act 1957. |
| 9. | Section 12: Provisions are similar except that details of investment in specified securities also to be treated as | Section 72: The declaration to be treated as confidential except to officers employed in execution | No similar provision in the Act. |
| 10. | Section 13: Provisions are similar except clause (iii) of section 73(1) of VDIS, 1997 regarding jewellery and | Section 73: Assets acquired out of income declared is exempt from Wealth tax subject to certain conditions. | Section 194: Provisions are the same. |
| 11. | Section 14: A person disqualified u/s. 3 from making declaration due to seizure of books, etc. u/s. 132 could make declaration u/s. 14 under which limited immunities were provided. | No such provision. | No such provision. |

| Sr. No. | VDS, 1976 | VDIS, 1997 as compared to VDS, 1976 | IDS 2016 as compared to VDIS, 1997 |
|---|---|---|---|
| 12. | Section 15: A person could make declaration in respect of wealth underassessed or escaped assessment.<br>The scheme primarly related to declaration of wealth acquired out of income disclosed in regular course. Limited | No such provision though in Finance Bill, 1997 as proposed originally, clause 63 provided for similar wealth declaration. | No such provision. |

| | | | |
|---|---|---|---|
| 13. | Section 16: Immunity was provided from certain provisions of Gold Control Act and Customs Act, 1962 if income declared u/s. 3 or wealth declared u/s. 15 represented gold | No such provision. | No such provision. |
| 14. | Section 17: Provisions are similar. | Section 74: Provisions of Ch. XV and section 189 of I.T. Act and Chapter 5 of W.T. Act to | Section 195: Provisions are the same. |
| 15. | Section 18: Provisions are similar. | Section 75: Immunity under the scheme not available to person other | Clause (a) of section 197: Provisions are the same. |
| 16. | Section 19 : Provisions are similar. | Section 76 : Power to Central Government to remove difficulties. | Section 198: Provisions are the same. |
| 17. | Section 20: Provisions are similar. | Section 77: Power to make rules given to Central Board of Direct | Section 199: Provisions are the same. |
| 18. | Section 21: Similar provisions except that only persons against whom COFEPOSA detention order made denied the benefit of the scheme. | Section 78 : It provides that provision of scheme shall not be available to certain persons and in respect of prosecution of certain offences. | Section 196: Clauses (a), (b) and (c) of section 196 are same as in earlier scheme.<br>a) Clause (d) provides that scheme shall not apply to undisclosed foreign income or asset liable to tax under Black Money (Undisclosed Foreign Income Assets) and Imposition of Tax Act, 2015. |

| **Sr. No.** | **VDS, 1976** | **VDIS, 1997 as compared to VDS, 1976** | **IDS 2016 as compared to VDIS, 1997** |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | | | b) Clause (e) provides for disqualification similar to, but broader than, disqualification provided by section 64(2) of VDIS, 1997. Declaration cannot be made for year for which notice u/s. 142 or 143(2) or 148 or 153A or 153C has been issued. Declaration cannot be made where search u/s. 132 or requisition u/s. 132A or survey u/s. 133A has been carried out for assessment which notice u/s. |
| 19 | No such immunity | No such immunity | Section 190: Immunity has been provided from provisions of Benami Transactions (Prohibition) Act, 1988 in case investment in asset is declared and |
| 20 | No similar provision | No similar provision | Section 193: Where a declaration is made by representation or suppression of facts, the declaration shall be void and deemed to be |
| 21 | No similar provision | No similar provision | Section 197: Three clauses to section 197 provide as follows:<br>a) Clause (a) provides that benefit of the scheme shall not be available to person other than the declarant. |

| Sr. No. | VDS, 1976 | VDIS, 1997 as compared to VDS, 1976 | IDS 2016 as compared to VDIS, 1997 |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | | | b) Clause (b) provides that where amount due under the scheme is not paid than income disclosed shall be treated as income of the previous year in which declaration is filed.<br>c) Where any undisclosed income or asset has accrued or arisen prior to commencement of the scheme and declaration is not made, then it shall be treated as income of |
| The above note is merely intended to provide a comparison between provisions of three different schemes and should not be read as a treatise on any specific scheme. It is for academic discussion only. | | | |

# Direct tax Dispute tax Settlement Scheme - 2016

CA P. N. Shah & CA Arti Shah

The Finance Minister has, in his Budget Speech on 29th February 2016, stated that the tax litigation in our country is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the taxpayer and administrative cost of the Government. He has also stated that there are over 3 lakh tax cases pending with the commissioner of Income- tax (Appeals) with disputed amount of tax of about 5.5 lakh crores. In order to reduce these appeals before the first Appellate Authority he has announced a new scheme called "Direct Tax Dispute Resolution Scheme – 2016" Two separate Schemes are announced in this Budget, one for settlement of disputed taxes under Income-tax and wealth tax Act and the other for disputed taxes under Indirect Tax Laws.

1.1 In paras 163 to 165 of his Budget Speech, the Finance Minister has given the outline of Dispute Resolution Schemes and stated as under:

*"163. A taxpayer who has an appeal pending as of today before the Commissioner (Appeals) can settle his case by paying the disputed tax and interest up to the date of assessment. No penalty in respect of Income-tax cases with disputed tax up to ` 10 lakh will be levied. Cases with disputed tax exceeding*

*` 10 lakh will be subjected to only 25% of the minimum of the imposable penalty for both direct and indirect taxes. Any pending appeal against a penalty order can also be settled by paying 25% of the minimum of the imposable penalty. Certain categories of persons including those who are charged with criminal offences under specific Acts are proposed to be barred from availing this scheme.*

*164. I had in my Budget speech of July, 2014 assured that this Government would not retrospectively create a fresh tax liability. I had also hoped then that the cases pending in various Courts and other legal fora relating to certain retrospective amendments undertaken to the Income tax Act, 1961, through the Finance Act, 2012 will soon reach their logical conclusion. I would like to reiterate that we are committed to provide a stable and predictable taxation regime. We will not resort to such amendments in future. I had also announced constitution of a High Level Committee which would oversee any fresh case where the assessing officer proposes to assess or reassess the income in respect of indirect transfers by applying the retrospective amendment. In order to allay any fears of tax adventurism, this Committee will now be chaired by the Revenue Secretary and consist of Chairman, CBDT and an expert from outside. This Committee will effectively oversee the implementation of the assurances.*

*165. In order to give an opportunity to the past cases which are ongoing under the retrospective amendment, I propose a one-time scheme of Dispute Resolution for them, in which, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc., under BIPA, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived".*

1.2 In chapter X of the Finance Act, 2016 (Act), Sections 200 to 211 provide for "The Direct Tax Dispute Resolution Scheme – 2016". Similarly, Chapter XI (Sections 212 to 218) of the Act provides for "The Indirect Tax Dispute Resolution Scheme – 2016". In this article the provisions of the Direct Tax Dispute Resolution Scheme are discussed.

## 2. The Scheme

21 The Direct Tax Dispute Resolution Scheme 2016 (Scheme) has come into force on 1st June, 2016. This scheme enables all assessees whose assessments under the Income-tax Act or the Wealth-tax Act have been completed for any assessment year and whose appeals

are pending before the Commissioners of Income tax (Appeals) as on 29-2-2016 to settle the tax dispute. The scheme also applies to those assessees in whose cases any disputed additions are made as a result of retrospective amendments made in the Income-tax or Wealth- tax Act and whose appeals are pending before the CIT(A), ITA Tribunal, High Court, Supreme Court or before any other authority.

2.2 Section 202 of the Act provides that the assessee who wants to settle the tax dispute pending before the concerned appellate authority as on 29-2- 2016, can make a declaration in the prescribed Form No. 1 (in duplicate) on or after 1-6-2016 but before 31-12-2016. In the case of an assessee in whose case the assessment or reassessment is made in the normal course and not due to any retrospective amendment, and the appeal is pending before CIT(A) as on 29-2-2016, the tax dispute can be settled as under:

(i) If the disputed tax does not exceed ` 10 lakh for the relevant assessment year, the assessee can settle the same on payment of such tax and interest due up to the date of assessment or reassessment.

(ii) If the disputed tax exceeds ` 10 lakh for the relevant assessment year, the dispute can be settled on payment of such tax with penalty leviable of 25% leviable and interest up to the date of assessment or reassessment. It is difficult to understand why minimum penalty is required to be paid when the disputed addition may not be for concealment or inaccurate furnishing of particulars of income.

(iii) In the case of appeal against the levy of penalty, the assessee can settle the dispute by payment of 25% of minimum penalty leviable on the income as finally determined.

2.3 In a case where the disputed tax demand relates to addition made in the assessment or reassessment order made as a result of any retrospective amendment in the Income-tax or Wealth-tax Acts, the dispute can be settled at the level of any appellate proceedings (i.e. CIT(A), ITA Tribunal, High Court, Supreme Court or any other Authority) by payment of disputed tax. No interest or penalty will be payable in such a case.

## 3. Procedure for declaration

3.1 The declaration for settlement of disputed tax for which appeal is pending before CIT(A) is to be filed in Form No. 1 in duplicate. Once this declaration is filed for settlement of a tax dispute for a particular year, the appeal pending before the CIT(A) for that year will be treated as withdrawn.

3.2 In a case where the tax dispute is in respect of any addition made as a result of retrospective amendment, the assessee can file the declaration in Form No. 1 in duplicate with the designated authority. The assessee will have to withdraw the pending appeal for that year before CIT(A), ITA Tribunal, High Court, Supreme Court or other Authority after obtaining leave of the Court or Authority whereever required. If any proceedings for the disputed tax are initiated for arbitration, conciliation or mediation or under an agreement entered into by India with any other country for protection of Investment or otherwise, the assessee will have to withdraw the same. Proof of withdrawal of such appeal or such other proceedings will have to be furnished by the assessee with the declaration in Form No. 1. Further, the declarant will have to furnish an undertaking in Form No. 2 waiving his right to seek or pursue any remedy or any claim for the disputed tax under any agreement.

3.3 It is also provided that if (i) any material particulars furnished by the declarant are found to be false at any stage, (ii) the declarant violates any of the conditions of the scheme or (iii) the declarant acts in a manner which is not in accordance with the undertaking given by him as stated above, the declaration made under the scheme will be considered as void. In this event all proceedings including appeals, will be deemed to be revived.

## 4. Payment of Disputed Tax

4.1 On receipt of the declaration from the assessee the Designated Authority will determine the amount payable by the declarant under the scheme within 60 days. He will have to issue a certificate in Form No. 3 giving particulars of tax, interest, penalty etc., payable by the declarant.

4.2 The declarant will have to pay the amount determined by the Designated Authority within 30 days of the receipt of the Certificate. It may be noted that there is no provision whereby the Designated Authority can extend the date for payment of tax, interest or penalty. He will have to send the intimation in Form No. 4 about the payment and produce proof of payment of the above amount. Upon receipt of this intimation and proof of payment, the Designated Authority will have to pass an order in Form No. 5 that the declarant has paid the disputed tax under the scheme. Once this order is passed it will be conclusive about the settlement of disputed tax and such matter cannot be re-opened in any proceedings under the Income-tax or Wealth-tax Acts or under any other law or agreement.

4.3 Once this order is passed, the Designated Authority shall grant immunity to the declarant as under:

(i) Immunity from instituting any proceedings for offence under the Income-tax or Wealth tax Acts.

(ii) Immunity from imposition or waiver of any penalty or interest under the Income -tax or Wealth-tax Acts. In other words, the difference between interest or penalty chargeable under the normal provisions of the Income-tax or Wealth-tax Act and the interest or penalty charged under the scheme cannot be recovered from the declarant.

4.4 It is also provided that any amount of tax, interest or penalty paid under the scheme will not be refundable under any circumstances.

## 5. Who cannot make declaration

5.1 Section 208 of the Act provides that in the following cases declaration under the Scheme for settlement of disputed taxes cannot be made.

(i) In relation to assessment year for which assessment or reassessment under Section 153A or 153C of the Income-tax Act or Section 37A or 37B of the Wealth-tax Act is made.

(ii) In relation to assessment year for which assessment or reassessment has been made after a survey has been conducted under Section 133A of the Income-tax Act or 38A of the Wealth-tax Act and the disputed tax has a bearing to findings in such survey.

(iii) In relation to assessment year in respect to which prosecution has been instituted on or before the date of making the declaration under the scheme.

(iv) If the disputed tax relates to undisclosed income from any source located outside India or undisclosed asset located outside India.

(v) In relation to assessment year where assessment or reassessment is made on the basis of information received by the Government under the Agreements under Section 90 or 90A of the Income-tax Act.

(vi) Declaration cannot be made by following persons.

(a) If an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(b) If prosecution has been initiated under the Indian Penal Code, The Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Corruption Act, 1988 or for purposes of enforcement of any civil liability.

(vii) Declaration cannot be made by a person who is notified under Section 3 of the Special Court (Trial or Offences Relating to Transactions in Securities) Act, 1992.

## 6. To Sum Up

6.1 The Act authorises the Central Government to issue directions or orders to the authorities for the proper administration of the scheme. The Act also provides that if any difficulty arises in giving effect to any of the provisions of the scheme, the Central Government can pass an order to remove such difficulty. Such order cannot be passed after expiry of 2 years i.e., after 31-5-

2018. Central Government is also authorised to notify the Rules for carrying out the provisions of the scheme and also prescribe the Forms for making declaration, for certificate to be granted by the Designated Authority and for such other matters for which the rules are required to be made under the scheme. Accordingly, the Government has notified "The Direct Tax Dispute Resolution Scheme Rules, 2016" on 26-5-2016.

6.2 This is probably for the first time when such a unique scheme has been introduced for reducing litigation. The only objection that can be raised is with regard to levy of penalty when the disputed tax is more than ` 10 lakh. There is no logic in levying such a penalty. Even if the assessee is not successful in the appeal before CIT(A), his liability will be for payment of disputed tax and interest. Penalty is not automatic. The disputed addition or disallowance may be due to interpretation of some provision in the tax law for which no penalty is leviable. Therefore, in case where disputed tax is more than ` 10 lakh, the assessee will not like to take benefit of the scheme and to that extent litigation will not be reduced. It may be noted that u/s. 214 of the Act, in the scheme for resolution of Disputes under Indirect Taxes, the provision is that the declarant has to pay tax due along with interest due and "penalty equivalent to 25% of penalty imposed in the impugned order". Under the Income-tax Act or the Wealth-tax Act Penalty proceedings are separate and separate order is passed for levy of penalty. Therefore, it is suggested that the provision for levy of minimum notional penalty at 25% in a case where disputed tax is more than ` 10 lakh should be deleted.

6.3 As stated earlier, section 202 of the Act provides that declaration can be filed for settlement of disputed taxes only in respect of an appeal pending before CIT(A). There is no reason for restricting this benefit to appeal pending before the first appellate authority. It is suggested that the scheme should have been made applicable to appeals filed by the assessee before ITA Tribunal, High Court or the Supreme Court which are pending on 29-2-2016. If this provision had been extended to all such appeals, pending litigation before all such judicial authorities will get reduced.

6.4 Further, Section 208 provides that an assessee in whose case assessment order is passed u/s. 153A/153C of the Income-tax Act or 37A / 37B of the Wealth-tax Act or order is passed after survey u/s. 133A of the Income-tax Act or 38A of the Wealth-tax Act cannot make a declaration under the scheme. This provision will also be an impediment for the success of the scheme.

6.5 The provision in Section 202 of the Act relating to settlement of disputed taxes levied due to retrospective amendment in the Income-tax and Wealth-tax Acts is very fair and reasonable. In such cases only tax is payable and no interest or penalty is payable. This provision is made with a view to settle the disputed taxes levied due to retrospective amendment made in section 9 by the Finance Act, 2012. This related to taxation as a result of acquisition of interest by a non-resident in a company owning assets in India. (Cases like VODAFONE, CAIRN and others). However, there are some other sections such as sections 14A, 37, 40 etc., where retrospective amendments have been made. It will be possible to take advantage of the scheme if appeals on these issues are pending before any Appellate Authority or Court as on 29-2-2016.

6.6 It may be noted that last year the CBDT had made one attempt to reduce the tax litigation by issue of Circular No. 21/2015 dated 10-12- 2015 whereby appeals filed by the Income tax Department where disputed tax was below certain level were withdrawn with retrospective effect. This year the Government has issued this scheme whereby assessees can settle the demand for disputed taxes and thus reduce the tax litigation. From these efforts, one can conclude that the efforts on the part of the Government to settle tax disputes and reduce tax litigation to that extent are commendable.

2

## Speech of the Finance Minister explaining the Direct Tax Dispute Resolution Scheme, 2016

**The Finance Minister explained the Direct Tax Dispute Resolution Scheme, 2016 in his budget speech for 2016-17 in specific section for Reducing litigation and providing certainty in taxation. (2016) 381 ITR 9 (St.)(36-37)**

162. Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the taxpayers and administrative cost for the Government. There are about 3 lakh tax cases pending with the first Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS).

163. A taxpayer who has an appeal pending as of today before the Commissioner (Appeals) can settle his case by paying the disputed tax and interest up to the date of assessment. No penalty in respect of Income-tax cases with disputed tax up to ` 10 lakh will be levied. Cases with disputed tax exceeding ` 10 lakh will be subjected to only 25% of the minimum of the imposable penalty for both direct and indirect taxes. Any pending appeal against a penalty order can also be settled by paying 25% of the minimum of the imposable penalty. Certain categories of persons including those who are charged with criminal offences under specific Acts are proposed to be barred from availing this scheme.

164. I had in my Budget speech of July, 2014 assured that this Government would not retrospectively create a fresh tax liability. I had also hoped then that the cases pending in various courts and other legal fora relating to certain retrospective amendments undertaken to the Income-tax Act, 1961, through the Finance Act, 2012 will soon reach their logical conclusion. I would like to reiterate that we are committed to provide a stable and predictable taxation regime. We will not resort to such amendments in future. I had also announced constitution of a High Level Committee which would oversee any fresh case where the Assessing Officer proposes to assess or reassess the income in respect of indirect transfers by applying the retrospective amendment. In order to allay any fears of tax adventurism, this Committee will now be chaired by the Revenue Secretary and consist of Chairman, CBDT and an expert from outside. This Committee will effectively oversee the implementation of the assurances.

165. In order to give an opportunity to the past cases which are ongoing under the retrospective amendment, I propose a one-time scheme of Dispute Resolution for them, in which, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc. under BIPA, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived.

Levy of heavy penalty for concealment of income has over the years resulted in large number of disputes despite a number of decisions of the Apex Court on interpretation of statutory provisions and principles guiding imposition of penalty. At present the Income Tax Officer has discretion to levy penalty at the rate of 100% to 300% of tax sought to be evaded. I propose to modify the entire scheme of penalty by providing different categories of misdemeanour with graded penalty and thereby substantially reducing the discretionary power of the tax officers. The penalty rates will now be 50% of tax in case of underreporting of income and 200% of tax where there is misreporting of facts. Remission of penalty is also proposed in certain circumstances where taxes are paid and appeal is not filed.

## Notes on clauses on the Direct Tax Dispute Resolution Scheme, 2016

**The Finance Minister explained the Direct Tax Dispute Resolution Scheme, 2016 in the Notes on Clauses on Finance Bill, 2016. (2016) 381 ITR 169 (St.) (236) Clauses 197 to 208 of the Bill seeks to insert a new Chapter X in the Finance Bill, 2016 which deals with the Direct Tax Dispute Resolution Scheme, 2016.**

The Scheme is proposed to come in force from 1st June, 2016 and be open for declaration made up
to a date to be notified by the Central Government in the Official Gazette.

The new Chapter, *inter alia,* provides—

(a) The definition of certain expressions relating to "declarant", "designated authority", "disputed income", "disputed tax", "disputed wealth", "specified tax" and "tax arrear";

(b) The proviso relating to the declaration of tax payable under this Scheme by the declarant;

(c) The provisions relating to the particulars to be furnished in the form of declaration;

(d) The provisions relating to the time and manner of payment;

(e) The provisions relating to granting of immunity from initiation of proceedings in respect of
an offence and imposition of penalty in certain cases;

(f) The provisions relating to no refund of amount paid under the Scheme;

(g) The provisions relating to other benefit, concession or immunity not to apply in other proceedings;

(h) The provisions relating to non-applicability of the Tax Dispute Resolution Scheme, 2016 in
certain cases;

(i) The provisions relating to the power of the Central Government to issue directions; and

(j) The provisions relating to the power to remove difficulties in giving effect to the provisions
of the Direct Tax Dispute Resolution Scheme, 2016.

2

## Direct Tax Dispute Resolution Scheme, 2016: Answers to 16 questions on by N.M. Ranka Sr. Advocate, Dr. K. Shivaram Sr. Advocate, S.R. Wadhwa Advocate, CA. Harish N. Motiwalla, CA. Pradip N. Kapasi and CA. Chetan A. Karia

**S. 201 : Appeal – Partial basis**

*Q1 My query is whether an assessee can go to Direct Tax Dispute Resolution Scheme on partial basis? Viz. if appeal is pending before CIT(A), wherein assessee has pressed four grounds. Out of those four grounds, he wants to sort out two grounds through Direct Tax Dispute Resolution Scheme, 2016, and for remaining two he wants continue his appeal as per statutory provision, Can he go "Direct Tax Dispute Resolution Scheme" on partially basis?. It is seen that many assessment orders are framed with multiple addition/ disallowance, wherein, some of addition/disallowances are purely on guess work or on surmises, on which no one lie would like to pay tax forget about the penalty?*

**Ans.** No. The assessee cannot go and apply for the Direct Tax Dispute Resolution Scheme on partial basis. The declarant shall be required to close all disputes in appeal for the relevant year, otherwise the object is not achieved and there would be problem for computation of tax and other sum payable. Section 201(1)(c) defines "disputed income", to mean the whole or so much of the total income as is relatable to the disputed tax. "Disputed tax" has been defined in Section 201(1)(d). "Tax arrear" has been defined in 201(1)(h). Section 202 also supports the above view. [NMR ]

**Ss. 201, 202 : Appeal set aside by Tribunal**

*Q2 My case in quantum addition was decided ex- parte by CIT(A) which was restored back to CIT(A) by ITAT in the month of February, 2016. My question is whether the case restored will be treated as pending before CIT(A) for the purpose of DTDR Scheme.*

**Ans.** Yes. you are eligible since technically the ITAT has restored the appeal in the hands of CIT(A) [HNM]

**S. 201, 203 : Department appeal**

*Q3 Whether a respondent in the case of a Departmental Appeal can take advantage of the Direct Tax Dispute Resolution Scheme, 2016?*

**Ans.** The Hon'ble Delhi High Court in the case of *All India Federation of Tax Practitioners v. UOI [1991] 236 ITR 1 (Delhi)* while upholding the constitutional validity of the 'Kar Vivad Samadhan Scheme' proceeded to read down the proviso to Sec. 92 of the Finance (No. 2) Act, 1998 holding that there is no reason for denying the benefit of the scheme to the assessee who has succeeded at one stage of litigation if the revenue has chosen to continue with the said litigation. The Hon'ble Delhi High Court struck down the proviso to Sec. 92 of the Finance (No. 2) Act, 1998 as being violative of Article 14 while holding that the rest of the scheme was *intra vires* the Constitution subject to reading down the definition of 'tax arrears' as made by it. However, Sec. 203 (2) provides for declaration in respect of tax arrears only before Commissioner of Income-tax (Appeals) or Commissioner of Wealth-tax (Appeals) and hence limits the scope of the scheme. Explanation may be sought from the CBDT or a writ petition may be filed in the Jurisdictional High Court by any such respondent in a Departmental Appeal desirous of taking advantage of this scheme. [KS]

**S. 201 : Settlement Commission**

*Q4 Matter was pending before the Settlement Commission, the matter was Abated for no payment of tax and the matter was set aside . The matter has gone back to the CIT(A). Can the assessee avail the benefit.*

**Ans.** Irrespective of how the appeal is pending before CIT(A) and the past history of litigation, once appeal is pending before CIT(A) on 29-2- 2016 and the proceedings is not the one barred by section 208 of Finance Act, 2016, an application can be filed under Direct Tax Dispute Resolution Scheme. [CAK]

**S. 201 : Appeal – Fee for furnishing statements u/s 234E**

*Q.5 Whether appeal against fee under section 234E is eligible for Dispute Resolution Scheme?*

**Ans.** As per definitions under DTDRS S. 201(1)(d) read as under :

"(d) "disputed tax" means the tax determined under the Income-tax Act, or the Wealth-tax Act, which is disputed by the assessee or the declarant, as the case may be."

The Hon'ble Bombay High Court in *Rashmikant Kundalia v. UOI (2015) 373 ITR 268* – while dealing with the Constitutional validity of the Provision of S. 234E as held that the fee levied u/s. 234E is neither punitive nor in the nature of tax. Fees charged for extra services by the revenue.

Therefore the assessee may not be able to get the advantages of the DTRS.

**S. 201 : Appeal – Penalty u/s. 271D for failure to comply with the provisions of section 269 SS**

*Q.6 A penalty order u/s. 271D has been imposed on the assessee against which appeal is pending. Can the assessee apply for resolution under the direct tax dispute scheme ?*

**Ans.** Penalty has been imposed u/s. 271D for default u/s. 269SS, is in arrear and appeal is pending before the Commissioner of Income-tax (Appeals). The querist can avail of the Direct Tax Dispute Resolution Scheme, 2016 and make a declaration on or after 1-6-2016 u/s. 202 to the designated authority. The declarant would be required to pay 25% of the minimum penalty leviable u/s. 271D of the Act. It is a condition precedent that he has paid tax and interest payable on the total income finally determined. (NMR)

**S. 201 : Appeal – Penalty was paid and appeal is pending.**

*Q.7 Can an assessee who has paid penalty amount in full and filed appeal before CIT(A) can file application under DTDRS and claim refund?*

**Ans.** As per S. 201(1)(d) of DTDRS "disputed tax" means the tax determined under the Income-tax Act, or the Wealth-tax Act, which is disputed by the assessee or the declarant, as the case may be;

Whereas S. 87(f) KVSS 1998 reads as under:

"disputed tax" means the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under section 88.

Therefore the assessee can avail the benefit of the Scheme. He may have to make application to the Assessing Officer to refund the amount paid under protest when the appeal is pending. [KS]

**S. 202, 203 : Delayed appeal**

*Q.8 Can an appellant in the case of a Delayed Appeal take advantage of the Direct Tax Dispute Resolution Scheme, 2016?*

**Ans.** The language of S. 203 in case of 'Specified tax' explicitly states that "Where the declaration is in respect of specified tax and the declarant has filed any appeal…". This wording

of the Section clearly implies that the appeal needs to be filed. However, there is no express requirement of such an appeal to be admitted. Therefore, in the case of an Appeal (or other relevant proceedings as per the scheme) the appeal merely needs to be filed. Hence, even an appeal with a condonation of delay application that is pending can be said to be eligible for this scheme.

However, in the case of pending arrears, the S. 202(1) states "in case of pending appeal related to tax arrear being…". The department as per Circular Samadhan: 4/98, dated 28-10-1998 in the In the 'Kar Vivad Samadhan Scheme' (which as per Sec. 98(i) (c) restricted the application of that scheme to cases where an appeal, reference or writ petition was pending ) had clarified that in cases involving delay in appeals filed before the CIT(A) or CEGAT, the proof of condonation of delay must be furnished. However, the Hon'ble Gujarat High Court in the case of *Shatrushailya Digvijayasingh Jadeja v. CIT [2003] 259 ITR 149 (Guj.)* as affirmed by the Hon'ble Supreme Court in *Shatrushailya Digvijayasingh Jadeja v. CIT [2005] 277 ITR 435 (SC)* while referring to the case of *Raja Kulkarni v. State of Bombay AIR 1954 SC 73* held that the word 'appeal pending' would mean that an appeal should be pending and that there was no need to introduce qualifications that it should be valid or competent. The Hon'ble Gujarat High Court went on to hold that the revision applications were to be held as 'pending' even before condonation of delay. Hence, though it is good law as per the Hon'ble Supreme Court that condonation of delay would not be necessary to show an appeal as 'pending'; it would be in the assessees best interest to get delay in filing of appeal condoned right at the outset before the CIT(A). [KS]

**Ss. 202, 203 : Appeal against, protective assessment**

*Q.9 The assessment was made on protective basis and the appeal is pending, can the assessee take advantages of DTDRS ?*

**Ans.** Interpreting the provisions relating to KVSS, 1998, in *S. Jaganathan v. ACIT (2014) 266 ITR 305(Karn.)(HC),* the Court held that there should be factual arrears that could be demanded legally; where there was only protective assessment and protective demand the assessee's declaration / application was rightly rejected. According to me the same interpretation will be applicable in respect of DTDRS. [KS]

**Ss. 202, 203, 208 : Appeal against undisclosed income of any other person, u/s. 158BD**

*Q.10 Appeal against the order u/s 158BD is pending before the First Appellate Authority. Can the appellant avail the scheme since only orders u/s. 153/153A are beyond the scope of the scheme.*

**Ans.** Query is not clear. However, if appeal is pending, the Income Declaration Scheme would be inapplicable. If action has been taken u/s. 158BD, the assessment order has to be passed u/s. 158BC. Section 208(a)(i) prohibits applicability of the Dispute Resolution Scheme relating to an assessment year in respect of which an assessment has been made u/s. 153A or 153C of the Act. It does not prohibit in respect of appeal against Order u/s. 158BC. (NMR)

**S. 202, 203 : Appeal – Enhancement**

*Q.11 I have filed DRS application. However, the CIT(A) has now issued a notice post filing the application under DRS to enhance the income. While the enhancement proceedings and the outcome stand abated once the DRS is accepted by way of order by designated authority ?*

**Ans.** Once Scheme became operative on 1-6-2016; valid declaration having been filed & pending, the CIT(A) would be unjustified in issuing enhancement notice. The declarant should approach the Principal Chief Commissioner of Income-tax/Central Board of Direct Taxes to intervene. Once the DRS is accepted and order is issued by the designated authority, the notice should abate and would be inoperative and void. Such an act of the

Commissioner of Income-Tax (Appeals) is not in accord with fairness and good conscience. It is against law, justice and equity. [NMR ]

**S. 202 : Appeal – Penalty.**

*Q.12 In case of dispute relating to penalty, the scheme requires payment of 25% of the amount of penalty. If a person has already paid 50% of penalty after filing appeal, the issue is:*

- *Does he get refund of excess paid or*
- *Does he need to pay 25% in addition to what is paid or*
- *He neither gets refund nor required to pay anything ?*

**Ans.** Declarant having paid 50% of the penalty would not be entitled for refund of excess paid. However, the declarant need not pay further amount of 25% of minimum penalty as he has already paid in excess. He should not be penalised for being a good citizen paying in excess then specified in the Scheme. Section 202(1)(b) requires payment of 25% of the minimum penalty leviable only. Form No. 1 Part A-3(d), (e), (f) and (g) also supports this view. (NMR)

**S. 202 : Appeal pending before ITAT**

*Q.13 As an Appellant, have an appeal pending before ITAT. Can I use this scheme to settle the case finally to buy peace?*

**Ans.** As per section 202 of the Finance Act provide that the assessee who wants to settle the tax dispute pending before the concerned appellate authority as on 29-2-2016, can make a declaration in the prescribed Form on or after 1-6-2016 but before 31-12-2016. In the case of an assessee in whose case the assessment or reassessment is made in the normal course and not due to any retrospective amendment, and the appeal is pending before CIT(A) as on 29-2-2016, the tax dispute can be settled.

Similarly in a case where the disputed tax demand relates to addition made in the assessment or reassessment order made as a result of any retrospective amendment in the Income-tax or Wealth-tax Act, the dispute can be settled at the level of any appellate proceedings (i.e. CIT(A), ITA Tribunal, High Court etc.) by payment of disputed tax. No interest or penalty will be payable in such a case. Hence, if the appeal before the Tribunal is not of the specified tax as define u/s. 201(1)(g) the assessee may not be able to take advantages of the DTDRS. [KS.)

**S. 205 : Immunity under Sales-tax Act**

*Q.14 Can an assessee claim immunity under Sales-tax Act in respect of dispute settled under DTDRS?*

**Ans.** In *Master Cables Pvt Ltd v. State of Kerala (2007) 296 ITR 8 (SC),* interpreting the provisions of KVSS the Apex Court held that the finality of order under section 90(3) and immunity under section 91 thereof cannot be availed in proceedings under Sales Tax law of the State. The same interpretation will also hold good for DTDRS. [KS]

**S. 208 : Survey – Penalty**

*Q.15 Assessee has made disclosure in the course of survey. On this AO levied the penalty u/s. 271(1)(c) which is pending before CIT(A) on 28-2-2016. Can assessee withdraw the appeal and submit the application under Dispute Resolution Scheme, 2016?*

**Ans.** As tax arrear, being penalty, arises out of assessment made in pursuant of survey u/s. 133A, the applicant is barred by section 208(a)(ii) from making a declaration.(CAK)

**S. 208 : Discharge by competent court**

*Q.16 Where the prosecution is launched against and subsequently the accused is discharged by*

*the Competent Court, can he take advantage of IDIS or DTDR, 2016?*

**Ans.** Dealing with FAQ on KVSS Q. No. 33 of circular Samadhan 3 /98 dated 7-10-1998 (1998)
233 ITR 121 (ST) (125), clarifies that where the prosecution has been launched for any particular year but the assessee has been since then discharged by the competent court, declaration can be made under the Scheme. If the same interpretation of the language of the statute is to be taken given the similarities of the wording in the case 208(c) of DTDR and 95(iii) of KVSS, 1998, if the assessee is discharged by the competent court he can take advantages of the DTDR.

S. 227 of the CrPC states that upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and prosecution, if the Judge considers that there is not sufficient ground for proceedings against the accused, he shall discharge the accused. If the accused is discharged, there is no prosecution pending against the accused and hence it follows that he may take advantage of both IDIS & DTDR, 2016. [KS]

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# Comparison of Kar VivaD Samadhan Scheme, 1998 and Direct tax Dispute Resolution Scheme, 2016

Neelam C. Jadhav *Advocate*

| Sr. No. | KVSS, 1998 (Finance (No 2 of 1998 (Chapter IV [Ss. 86 to 98 ]<br>**S. 86: Commencement – On 1-9-1998 and shall remain effective till 31-12-1998.** | DTDRS, 2016, Finance Act, 2016 [Chapter X [Ss. 200 to 211]<br>**S.200: Commencement – 1st June, 2016, the declaration can be made on or before 31 st day of December, 2016** |
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| 1. | S.87: Definitions<br>87(a). "Declarant" means a person making a declaration under section 88.<br>87(b). "Designated authority" means – (i) where the tax arrear is under any direct enactment an officer, not below the rank of Commissioner of Income-tax and notified by the Chief Commissioner for the purposes of this scheme.<br>87(e). "Disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax. | S. 201: Definitions.<br>201(a). "Declarant" means a person making declaration under section 202.<br>S.201(b). "Designated authority" means an officer not below the rank of Commissioner of Income-tax and notified by the Principal Commissioner for the purposes of this Scheme.<br>201(c). "Disputed income" in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax. |
| | 87(f). "Disputed tax" means total tax determined and payable, in respect of assessment year under any direct tax enactment but which remains unpaid as on the date of making declaration under section 88.<br>87(g). "Disputed wealth" in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax; | 201(d). "Disputed tax" means the tax determined under the Income-tax Act, or the Wealth-tax Act, which is disputed by the assessee or the declarant, as the case may be;<br>201( e ). "Disputed wealth" in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax. |

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| | 87(h). "Direct tax enactment" means the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Income-tax Act, 1961 (43 of 1961), or the Interest-tax Act, 1974 (45 of 1974) or the Expenditure-tax Act, 1987 (35 of 1986). | 201(f). "Income-tax Act" means the Income –tax Act, 1961 (43 of 1961). |
| | "87(h). "direct tax enactment" means the Wealth Tax Act, 1957 (27 of 1957) or the Git Tax Act, 1958 (18 of 1958), or the Income – tax Act, 1961(43 of 1961) or the Interest-tax Act,1974 (45 of 1974), or the Expenditure – tax Act, 1987 (35 of 1987) | 201(g) "Specified tax" means a tax – (i) the determination of which is in consequence of or validated by any amendment made to the Income-tax Act or the Wealth-tax Act with retrospective effect and relates to a period prior to the date on which the Act amending the Income-tax Act or the Wealth-tax Act , as the case may be, received the assent of the President; and<br>(ii) A dispute in respect of such tax is pending as on the 29th of February, 2016 |
| | 87(j) Deals with the "indirect tax enactment" | Separate Chapter for Indirect enactment. |
| | 87(m). "Tax arrears" means in relation to direct tax enactment, amount of tax, penalty or interest determined on or before 03/03/1998, under that enactment in respect of an assessment year modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration.<br>87(h). "Direct tax enactment" means the Wealth Tax Act, 1957 (27 of 1957)<br>87(n). Undefined terms expression of Direct tax enactments will apply.<br>87(m). "Tax arrear"<br>means- | 201(h). "Tax arrear" means, the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016;<br>201(i): "Wealth-tax Act" means the Wealth-tax Act, 1957 (27 of 1957)<br>201(2): All other words and expressions which are not defined the provisions of the Income – tax Act, or the Wealth-tax Act will apply. |

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| 2. | 88. Settlement of tax payable.<br>88(a) : Where tax arrear is payable under the Income-tax Act,1961 (43 of 1961) – | 202. Declaration of tax payable.<br>202(i). In case of pending appeal related to tax arrear being |

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| | (i) In the case of a declarant being a company or firm at the rate of 35% of disputed income;<br>(ii) In the case of a declarant being a person other than the company or firm at the rate of 30% of disputed income.;<br>(iii) In case tax arrear includes the income- tax, interest payable or penalty levied at the rate of 35% of disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the persons referred to in clause (ii); .<br>(iv) in case tax arrears comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;.<br>(v) Where tax arrear includes tax interest or penalty determined on the basis of search and seizure u/ss. 132 & 132A, for company or firm at the rate of 45% of disputed income. Other than company or firm then at the rate of 40%,<br>Tax arrears payable under Wealth Tax Act, then 1% of the disputed wealth.<br>Tax arrears include wealth tax, interest or penalty then at the rate | (a) Tax and interest –<br>(i) In a case where the disputed tax does not exceed ten lakh rupees, the whole of the disputed tax and interest on disputed tax till the date of assessment or reassessment, as the case may be ; or<br>(ii) in any other case, the whole of the disputed tax, twenty-five per cent of the minimum penalty leviable and the interest on disputed tax till the date of assessment or reassessment, as the case may be;<br>(b) Penalty, twenty-five per cent of the minimum penalty leviable and the tax and interest payable on the total income finally determined.<br>In case of specified tax, the amount of such tax so determined. |

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| 3. | 89: Particulars to be furnished in declaration: In Form and shall be verified in such a manner as may be prescribed. | 203. Particulars to be furnished : Declaration is in respect of tax arrears, consequent to such declaration, appeal in respect of the disputed income, disputed wealth and tax arrears pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals), as the case may be, shall be deemed to have been withdrawn. |

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| | | Declaration is in respect of specified tax and the declarant has filed any appeal before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court or any writ petition before the High Court or the Supreme Court against any order in respect of the specified tax, he shall withdraw such appeal or writ petition with the leave of the court wherever required and furnish proof of such withdrawal along with the declaration referred to in sub-section (1). |

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| 4. | 90: Time and manner of payment of tax arrears:<br><br>Within sixty days from the date of receipts of declaration, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of scheme and grant certificate of tax arrears and sum payable after such determination towards full and final settlement of tax arrears. The declarant shall pay sum determined by the designated authority within thirty days of the passing of an order by designated authority. | 204 : Time and manner of payment.-<br><br>Within a period of sixty days from the date of receipt of the declaration, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed, to the declarant setting forth therein the particulars of the tax arrear or the specified tax, as the case may be, and the sum payable after such determination. The declarant shall pay the sum determined by the designated authority as per the certificate granted under clause (a) of sub-section (1) within thirty days of the date of receipt of the certificate and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon pass an order stating that the declarant has paid the sum. |
| 5. | 91: Immunity from prosecution and imposition of penalty in certain cases: grant immunity from instituting prosecution for any offence under any direct tax enactment, or indirect tax enactments, or from the imposition of penalty under any of such enactment, in respect of matters covered in the declaration u/s. 88. | 205: Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases:<br><br>(a) Immunity from instituting any proceedings in respect of an offence under the Income-tax Act or the Wealth-tax Act, as the case may be; or<br><br>(b) Immunity from imposition or waiver, as the case may be, of penalty under the Income-tax Act or the Wealth-tax Act, as the case may be, in respect of, — specified tax covered, tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty. |

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| | | (c) Waiver of interest – specified tax covered, tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty. |

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| 6. | 92 : Appellate Authority not to proceed in certain cases:<br>Relating to disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrears specified in section. In case appeal is filed by the department of Central Government in respect of issue relating to same issue except where tax arrears comprises only penalty, fines or interest)<br>93. No refund of amount paid under the Scheme.<br>Any amount paid in pursuance of a declaration made under section 88 shall not be refundable under any circumstances. | 203(6): No appellate authority or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the specified tax mentioned in the declaration and in respect of which an order had been made under sub-section (1) of section 204 by the designated authority or the payment of the sum determined under that section.<br>206. No refund of amount paid under Scheme.<br>Any amount paid in pursuance of a declaration made under section 202 shall not be refundable under any circumstances. |
| 7. | 94. Removal of doubts.<br>For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 90, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in which the declaration has been made . | 207. No other benefit, concession or immunity<br>to declarant.<br>Save as otherwise expressly provided in sub- section (3) of section 204 and section 205, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in which the declaration has been made. |

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| 8. | 95 : Scheme not to apply in certain cases : tax arrear under any direct tax enactment, where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 91 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment, where an order has been passed by the Settlement Commission under any direct tax enactment for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;, no appeal or reference or writ petition is pending | 208 : Scheme not to apply in certain cases : tax arrear or specified tax, relating to an assessment year in respect of which an assessment has been made under section 153A or 153C, assessment or reassessment for any of the assessment years, in consequence of search initiated u/s. 37A, requisition made under section 37B, prosecution has been instituted on or before the date of filing of declaration under section 202, any undisclosed income from a source located outside India or undisclosed asset located outside India, information received under an agreement referred to in section 90 or section 90A, of the Income-tax Act , if it relates to any tax arrear; |

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| | before any appellate authority or High Court or the Supreme Court or no application for revision is pending before the Commissioner;<br><br>(iii) To any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1960), The Foreign Exchange Regulation Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), , the Terrorists and Disruptive Activities (Prevention) Act, 1987 (28 of 1987) the Prevention of Corruption Act, 1988 (49 of 1988) or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;<br><br>(iv) Detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974),<br><br>(v) Any person notified under sub-section (2) of section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ( 27 of 1992) | (b) Detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974),<br><br>(c) To any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code (45 of 1960), the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Prevention of Corruption Act, 1988 (49 of 1988) or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.<br><br>(d) Any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992). |
| 9. | 96. Power of Central Government to issue | 209. Power of Central Government to issue |
| 10. | 97. Power to remove difficulties. | 210. Power to remove difficulties. |
| 11. | 98. Power to make rules. | 211. Power to make rules. |

# InDirect Tax Dispute Tax Settlement Scheme - 2016

CA Arti Shah

## 1. Introduction

THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 for indirect tax disputes has been introduced by Sections 212 to 218 of the Finance Act, 2016. The scheme is new to the indirect tax laws and an attempt is made to reduce pending litigation under the Indirect Tax Laws in a peaceful manner. The scheme is optional and provides relief to those litigants who want to buy peace of mind. The scheme has come into force from 1st June, 2016.

## 2. Rationale behind the proposed scheme

The rationale behind the scheme as also stated in the beginning is resolving the litigation pending before the First Appellate Authorities under the Central Excise, Customs and Service tax in a peaceful manner. The rationale behind the legislation of the scheme can be very well understood from Para 162 of the speech of Finance Minister as follows:

> "Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the taxpayers and administrative cost for the Government. There are about 3 lakh tax cases pending with the First Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS)."

**3. Disputes covered by the scheme** The scheme covers the disputes pending under Central Excise Act, 1944, Customs Act, 1962 and Chapter V of the Finance Act, 1994 (i.e. service tax) before the Commissioner (Appeals) as an appeal against the impugned order as on 1st day of March, 2016. It is not applicable to the appeals filed after 1st March, 2016 before Commissioner (Appeals). The scheme also does not cover the appeals pending before Tribunal or High Court or Supreme Court.

## 4. Disputes not covered by the scheme

The scheme provides that it shall not be applicable in the following cases:

(a) The impugned order is in respect of search and seizure proceeding;

(b) Prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016;

(c) The impugned order is in respect of narcotic drugs or other prohibited goods;

(d) Impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or

(e) Any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

under the scheme. The said Form No. 1 shall be signed by the person making such declaration or by any person competent to act on his behalf.

(ii) The designated authority on receipt of such declaration shall issue acknowledgement within seven days in Form No. 2.

(iii) The declarant shall submit a copy of such declaration in Form No. 1 and the acknowledgement thereof in Form No 2 within fifteen days to the concerned Commissioner (Appeals) before whom the appeal in respect of which the declaration has been made is pending.

(iv) On receipt of such declaration and acknowledgement, Commissioner (Appeals) shall not proceed with the appeal in respect of which such declaration has been made for a period of sixty days.

(v) The declarant shall then pay tax due along with the interest thereon at the rate as provided in the Act and penalty equivalent to twenty-five per cent of the penalty imposed in the impugned order, within fifteen days of the receipt of acknowledgement in Form No. 2.

(vi) The declarant shall then intimate the designated authority in Form No. 3 within seven days of making such payment giving the details of payment made along with the proof thereof.

(vii) On receipt of the proof of payment of tax, interest and penalty, the designated authority shall, within fifteen days of the receipt of such proof, pass an order of discharge of dues in Form No. 4.

**5. Procedure of making declaration under the scheme**

(i) A person shall make a declaration in duplicate to the designated authority on or before 31st day of December, 2016 in Form No. 1 in respect of the amount payable

(viii)

The declarant shall intimate the concerned Commissioner (Appeals) along with the copy of the Order of discharge of dues issued by the designated Authority in Form No. 4 before the expiry of the period of sixty days.

(ix) On receipt of the information along with the copy of the Order of discharge of dues issued by the designated Authority in Form No. 4, Commissioner (Appeals) shall remove the Appeal from the list of pending Appeals with him. He shall then intimate the declarant of the same within seven days of the receipt of information.

**6. Consequences of order passed under the scheme**

The scheme clearly provides that any amount paid in pursuance of the declaration shall not be refunded. It also provides that the Order passed under the scheme in pursuance of the declaration filed by a person shall not be deemed to be an Order on merits and has no binding effect. In other words the Order passed under the scheme will not become a precedent for other cases.

**7. Immunity from other proceedings of the acts**

Section 216 of the Finance Act provides under a non-abstante clause that once an Order

is passed under the scheme, as stated above, by the Designated Authority then the appeal pending before the Commissioner (Appeals) shall stand disposed of and the declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme. Such declaration shall become conclusive upon the issuance of an Order under subsection (4) of section 214 of the Finance Act and no matter relating to the impugned Order shall be reopened thereafter in any proceedings under the Act before any authority or court.

8. **Other important aspects of the scheme**

(i) In case when one or more appeals are pending with Commissioner(Appeals) then the declarant shall have to file separate declaration for each pending appeals.

(ii) In case when one or more appeals are pending with Commissioner(Appeals) then the declarant can file declaration in respect of one or more appeal only and the rest appeals may be decided on merits.

(iii) The amount of tax/interest/penalty payable under the Scheme cannot be adjusted against the Cenvat credit available if any. It must be paid in cash by way of challan only.

(iv) In event that if the declaration filed by the declarant is rejected by the designated Authority, the amounts paid under the Scheme by the declarant can be adjusted against the existing demands pending before the Commissioner(Appeals).

**8. General**

The scheme is a step towards reducing litigation still pending at the initial level before the first appellate authorities. However, it would have been better if the scheme would have been made applicable to appeals pending before other higher authorities also. Let us hope that the rationale of the Hon. Finance Minister behind the introduction of this scheme to reduce litigation and establish a tax friendly is fulfilled.

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# Disclosure Schemes (1951 to 2016)

Neelam C. Jadhav
*Advocate*

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| **I.** | **1951** | | | |
| | – | Press Note dated 18-5-1951 | | |
| | (1) | (a) Voluntary Disclosure Scheme, 1951 popularly known as "Tyagi Scheme" | | |
| | | (b) Concession Scheme for payment of arrears of tax. | | |
| | | | **Year** | **ITR/Statute** |
| II. | 1965 | | | |
| | (1) | Finance Bill (No. 1) 1965 (VDS) | (1965) | 55 ITR 53 |
| | (2) | Notes on clauses | (1965) | 55 ITR 102 (115) |
| | (3) | Memorandum explaining provisions, 1965 (VDS) | (1965) | 55 ITR 131 |
| | (4) | Budget Speech | (1965) | 55 ITR 120 (128) |
| | (5) | Finance Act, (No. 1) 1965 – Section 68 of Finance Bill No. 1 | (1965) | 56 ITR 25 (56) |
| III. | 1965 | | | |
| (1) | | Memorandum Explaining the Finance Bill (No. 2) | (1965) | 55 ITR 131 |
| (2) | | Budget Speech Finance Bill (No. 2) 1965 | (1965) | 57 ITR 62 |
| (3) | | Finance Act, 1965 (1965) (Clause 24) (Voluntary Disclosure Scheme) | (1965) | 58 ITR 1 (7) |
| IV. | | National Defence Gold Bonds, 1980 (issued in 1965) | (1965) | 58 ITR 61 |
| V. | 1975 | | | |
| | (1) | Voluntary Disclosure of Income and Wealth Ordinance 1975 (8-10-1975) | (1975) | 101 ITR 36 |
| | (2) | Voluntary Disclosure of Income and Wealth Ordinance, 1975 (Press Note) 8-10-1975 | (1975) | 101 ITR 84 |
| | (3) | Circular No. 180 dated 15-10-1975 Voluntary Disclosure of Income and Wealth Ordinance, 1975 – Explanatory notes on the Provisions of. | (1975) | 101 ITR 88 |
| | (4) | Voluntary Disclosure of Income & Wealth tax Rules, Notification No. S.O. 597(E) dated. 8-10-1975 | (1975) | 101 ITR 99 |
| | (5) | Voluntary Disclosure of Income & Wealth Act, 1976 | (1976) | 102 ITR 49 |
| | (6) | Voluntary Disclosure of Income & Wealth (Amendment) Ordinance, 1975 (No. 23 of 1975) dtd. 29-9-1975 | (1976) | 102 ITR 1 |

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| | (7) | Circular No. 181 dated 25-10-1975<br>The Voluntary Disclosure of Income and Wealth Ordinance, 1975 – Clarification regarding (Questions & Answers) | (1977) | 109 ITR 109 |
| | (8) | Circular No. 183 dated 11-11-1975,<br>The Voluntary Disclosure of Income and Wealth Ordinance, 1975 - Clarification regarding (Question & Answers) | (1977) | 109 ITR 112 |
| | (9) | Circular No. 184 dated 14-11-75<br>Voluntary Disclosure of Income and Wealth Ordinance, 1978 – Clarification Regarding | (1977) | 109 ITR 115 |
| VI. | 1981 | | | |
| | (1) | Special Bearer Bonds (Immunity and Exceptions) Ordinance, (1981)<br>(No. 1 of 1981) | (1981) | 127 ITR 55 |
| | (2) | The Special Bearer Bonds (Immunity and Exemptions) Ordinance, 1981 - Press note Act 1981 (assent on 27-3-1981) | (1981) | 127 ITR 69 |
| | (3) | The Special Bearer Bonds (immunity and Exemptions) Act, 1981 – (No.7 of 1981) | (1981) | 129 ITR 30 |
| | (4) | Special Bearer Bonds (Immunities and Exemptions) Bill 1981 (Bill No. 26 of 1981) | (1981) | 128 ITR 185 |
| | (5) | Special Bearer Bonds, 1991 Sale of Bonds (1981) | (1981) | 128 ITR 114 |
| | (6) | Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 | (1981) | 128 ITR 113 |
| | (7) | Special Bearer Bonds (Immunities and exemptions) Act, (1981) - Clarification Regarding | (1982) | 134 ITR 162 |
| VII. | 1985 | | | |
| | (1) | Amnesty Scheme, 1985 | | |
| | | i) Cir. 423 Dt. 26-6-1985 | (1985) | 155 ITR 45 |
| | | ii) Cir. 432 Dt. 20-9-1985 | (1985) | 156 ITR 162 |
| | | iii) Cir. 439 Dt. 15-11-1985 | (1985) | 156 ITR 163 |
| | | iv) Cir. 440 Dt. 15-11/1985 | (1985) | 156 ITR 164 |
| | | v) Cir. 441 Dt. 15-11-1985 | (1985) | 156 ITR 165 |
| | | vi) Cir. 451 Dt. 17-2-1986 | (1986) | 158 ITR 135 |
| | | vii) Cir. 453 Dt. 4-4-1986 | (1986) | 159 ITR 9 |
| | | viii) Cir. 472 Dt. 15-10-1986 | (1986) | 162 ITR 17 |
| | | ix) Cir. 474 Dt. 11-11-1986<br>(Extension of Period – Amnesty Scheme under the Income-tax Act and Wealth Tax Act.) | (1986) | 162 ITR 57 |
| VIII. | 1986 | | | |
| | (1) | FERA Amnesty Scheme, 1986 | (1986) | 162 ITR 5 |
| | | | (1986) | 164 ITR 145 |
| IX. | 1991 | | | |
| | (1) | Finance Bill 1991-1992<br>(Speech of Hon'ble Finance Minister) | (1991) | 190 ITR 89 |

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| | (2) | Remittances of Foreign Exchange and investment In Foreign Exchange Bonds (Immunities and Exemption) Act, 1991 (assent on 18-9-1991)<br>Remittance in Foreign Exchange (Immunities) Scheme, 1991 framed under the above Act.<br>Remittance of Foreign Exchange and Investment<br>In Foreign Exchange Bonds (Immunities and Exemptions) Bill 1991 | (1991)<br>(1991)<br>(1991) | 191 ITR 308<br>191 ITR 312<br>191 ITR 79 |
| X. | 1991 | | | |
| | (1) | The Voluntary Deposits (Immunities and Exemptions) Act, 1991 (National Housing Bank) (assent on 20-9-91) | (1991) | 191 ITR 157 |
| | (2) | National Housing Bank (Voluntary Deposit) Scheme, 1991 | (1991) | 191 ITR 160 |
| | (3) | India Development Bonds Scheme, 1991 | (1991) | 191 ITR 314 |
| | (4) | Circular No. 611 dt. 30-9-1991 on the Remittances In Foreign Exchange (Immunities) Scheme, 1991 and India Development Bond Schemes, 1991 | (1991) | 191 ITR 319 |
| | (5) | Voluntary Deposits (Immunities & Exemptions) Bill, 1991 | (1991) | 191 ITR 157 |
| | (6) | Press Note - The Remittance in Foreign Exchange (Immunities) Scheme 1991 and India Development Bond Scheme, 1991 | (1991) | 191 ITR 322 |
| | (7) | India Development Bonds (Amendment) Scheme 1991 | (1992) | 191 ITR 14 |
| | (8) | Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunity and Exemptions) Act, 1991 : Notification under section 2(b), explanation No. 800 E dt. 27-11/1991 | (1992) | 193 ITR 85 |

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| | (9) | Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunity and Exemptions) Act, 1991 : Notification under section 5(b), explanation No. 801E dt. 27-11-1991 | (1992) | 193 ITR 85 |
| | (10) | Remittance in Foreign Exchange (Immunities) Scheme, 1991, Notification 69 E dt. 30-1-1992 | (1992) | 196 ITR 21 |
| | (11) | India Development Bonds (Amendment) Scheme 1992, Notification No. 70 (E) dt. 30-1-1992 | (1992) | 196 ITR 21 |
| XI. | 1993 | | | |
| | (1) | Gold Bonds (Immunities and Exemptions) Ordinance, 1993 | (1993) | 200 ITR 169 |
| | (2) | Gold Bonds, Scheme, 1993 | (1993) | 200 ITR 186 |
| | (3) | Gold Bonds, (Immunities and Exemptions) Bill, 1993 | (1993) | 200 ITR 205 |
| | (4) | Gold Bonds (Immunities & Exemptions) Act, 1993 on 2-4-1993 | (1993) | 203 ITR 47 |

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| | (5) | Gold Bonds Scheme, 1993: Restriction on gold Bond Renewal (Ministry of Finance dt. 27-11-1997) | (1997) | 228 ITR 188 |
| XII. | 1997 VDIS | | | |
| | (1) | Finance Bill & Speech, 1997 | (1997) | 224 ITR 9(21) |
| | (2) | Notes on Clauses | (1997) | 224 ITR 84(106) |
| | (3) | Memorandum Explaining provisions | (1997) | 224 ITR 114(140) |
| | (4) | Finance Act, 1997 | (1997) | 225 ITR 113 |
| | (5) | Notification No. SO 435 (E) dt. 9-6-1997 for Commencement of VDIS | (1997) | 226 ITR 1 |
| | (6) | Notification No. SO 436 (E) dt. 9-6-1997 for VDIS, 1997 Rules | (1997) | 226 ITR 1 |
| | (7) | Form of Declaration of VDIS 1997 | (1997) | 226 ITR 2 |
| | (8) | Explanatory Notes on provisions relating to VDIS, 1997 (Circular No. 753 dt. 10-6-1997) | (1997) | 226 ITR 4 |
| | (9) | Clarification on VDIS, 1997 (question & answers) (Cir. No. 754 dt. 16--6-1997) | (1997) | 226 ITR 8 |
| | (10) | Certificate u/s. 68(2) of VDIS 1997 (to be Granted by ITO) | (1997) | 226 ITR 16 |
| | (11) | Clarification on VDIS, 1997 (Circular No. 755 dt. 18-6-1997) | (1997) | 226 ITR 33 |
| | (12) | Minutes of Assocham Meeting with CBDT dt. 23-7-1997 | (1997) | 93 Taxman 162 (Mag) |
| | (13) | Clarification for circular No.755 dated 25-7-1997 (CBDT Press Note dt. 8-8-1997) – Jewellery Valuation Affidavit | (1997) | 227 ITR 5 |

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| | (14) | Pune Chief Commissioner's letter dt. 15-7-1997 | (1997) | I.T. Review Oct. 1997<br>26 Taxman – Yearly Tax Digest. 1998, 5.27 |
| | (15) | Press Release issued by Chief CIT, Mum. dt. 13-8-1997 | (1997) | I.T.Review Oct. 1997<br>27 Taxman - Yearly Tax Digest, 98 5.75 |
| | (16) | Press Release issued by Chief CIT, Mum. dt. 27-8-1997 | (1997) | I.T.Review Oct, 1997<br>28 Taxman - Yearly Tax Digest, 1998 5.75 |
| | (17) | Press Release issued by Chief CIT, Mum. dt. 29-8-1997 | (1997) | I.T.Review Oct.,<br>97 28 Taxman – Yearly Tax Digest, 1998 5.75 |

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| | (18) | Letter No. F. No. 266/Form (-) VDIS/97-98 dt. 12-12-1997 issued by Chief CIT, Mumbai Deduction of undisclosed salary by the Employees Act. (1997) against the employer. | | Taxman – Yearly Tax Digest, 1998 5.101 |
| | (19) | Clarification from Chief CIT Pune dt. 15-7-1997, No. PN/CC/VDIS/97-98 | | Taxman – Yearly Tax Digest, 98 5.101 |
| | (20) | Press Release issued by Chief CIT, Mum. dt. 12-9-1997 (1997) | | I.T. Review Oct., 1997, 30<br>Taxman – Yearly Tax Digest, 98 5.75 |
| | (21) | Press Release issued by Chief CIT, Mum. dt. 3-10-1997 (Utensils) | (1997) | I.T. Review Oct, 1997<br>37 Taxman – Yearly Tax Digest, 98 5.75 |
| | (22) | Press Release issued by Chief CIT, Mum. dt. 10-10-1997 - (Loose Diamonds) | (1997) | I.T. Review Oct, 97 38 |
| | (23) | All India Federation of Tax Practitioners vs. Union of India (Constitutional Validity Appeal) | (1997) | 228 ITR 68 (Bom.) |
| | (24) | Clarification issued by Chief CIT, Mumbai 22-10-1997 (Interest) | | I.T. Review Oct., 1997, 41 |

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| | (25) | Clarification issued by Chief CIT, Mumbai 29-10-1997 (Valuation of Loose Diamonds) Depreciate Press Release | | I.T. Review Oct, 1997 42 |
| | (26) | Clarification issued by Chief CIT, Mumbai, 31-10-1997 (Lease) | | I.T. Review Oct, 1997 43 |
| | (27) | Clarification issued by RBI dt. 5-11-1997 FERA | | I.T. Review Oct, 1997, 44 |
| | (28) | Clarification issued by CCIT dt. 13-11-1997 (Provides) | (1997) | I.T. Review Oct., 1997, 48 Yearly Tax Digest 1997, 599 & 100 |
| | (29) | All India Federation of Tax Practitioners vs. Union of India | (1998) | 231 ITR 24 |
| | (30) | Clarification regarding definition – Jewellery dt. 3-12-1997 | (1997) | 228 ITR 187 |
| | (31) | Sales tax immunity Clarification by State of Gujarat, Circular No. CST No. 1097 - 1379 dt. 6-11-1997 | | (Yearly Tax Digest) (1997) 5.102 & 103 |
| XIII. | (1) | Kar Vivad Samadhan Scheme, 1998 | (1998) | 233 ITR 36 |
| | (2) | Kar Vivad Samadhan Scheme clarification Circular No. F/149/145/98-TPL dt. 3-9-1998 (Questions and Answers) | (1998) | 233 ITR 50 |
| | (3) | Kar Vivad Samadhan Scheme Clarifications (Questions and Answers) | (1998) | 233 ITR 121 |
| | (4) | Kar Vivad Samadhan Scheme on Enlarging the Scope of Scheme to Departmental Appeals | (1998) | 234 ITR 62 |

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| | (5) | Kar Vivad Samadhan Scheme, 1998 Commissioner of Income Tax, Notified as designated authority | (1998) | 234 ITR 111 |
| | (6) | Kar Vivad Scheme, 1998 Determination of Disputed Income | (1998) | 234 ITR 111 |
| | (7) | Kar Vivad Samadhan Scheme, 1998 Function and Jurisdiction of Commissioner | (1999) | 236 ITR 189 |
| | (8) | Kar Vivad Samadhan Scheme, 1998 No Proceedings against co. notices | (1999) | 235 ITR 22 |
| | (9) | Kar Vivad Samadhan Scheme, 1998 (Removal of Difficulties Order) | (1999) | 235 ITR 90 |
| | (10) | Kar Vivad Samadhan Scheme 1998 Partner & Registered Firms exempt from Payment of further tax on shared income in pre 1993-94 | (1999) | 235 ITR 23 |
| | (11) | All India Federation of Tax Practitioners vs. Union of India. (Constitutional validity of Kar Vivad Scheme) | (1999) | 236 ITR 1 (Del.) |
| | (12) | Dept. Appeals - allowed to be covered under Kar Vivad Scheme (Enlargement of the scope of the Scheme to deposit appeals) | (1999) | 234 ITR 62 |

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| XIV | (1) | Black Money (Undisclosed Foreign Income and Assets) and imposition Tax Act, 2015 | | |
| | (2) | The undisclosed Foreign Income and Assets (Imposition of tax) Bill, 2015<br><br>Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (No. 22 of 2015) | | (2015) 375 ITR 1 (St) |
| | (3) | Notification No .G.S.R. 529 (E) dt.02/07/2015 – Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 | | (2015) 375 ITR 107 (St.) |
| | (4) | 12 of 2015 dt.2-07-2015 – 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 Tax Act, 2015 | | (2015) 375 ITR 97 (St.) |
| | (5) | 13 of 2015 dt-6-07-2015 – Clarifications on tax Compliance for undisclosed foreign income and assets | | (2015) 375 ITR 128 (St.) |
| | (6) | 15 of 2015 dt.03-9-2015- Clarifications on tax compliance for undisclosed foreign income and assets | | (2015) 377 ITR 83(ST) |
| | (7) | Orders: Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act (Removal of difficulties) Order, 2015 [Notification No 56/2015/F. No.133/33/2015–TPL]-9 | | (2015) 376 ITR 14 (St.) |

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| | (8) | Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015: Powers and functions of Additional Commissioners and Joint Commissioner under Act -Notification No. S.O. 2299( E ), dated 24 th August, 2015 | | (2015) 378 ITR 13 (St) |
| | (9) | Press Notes/Releases Black money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015- dt 21-09-2015-Persons holding Undisclosed foreign assets are advised to file their declarations well in time as provided under the compliance window of the new Black Money Act; One time Compliance opportunity will end on 30th September, 2015; information contained in the declaration will be kept confidential; process of filing declaration is simple and can be filed on line also; fears of harassment of the declarants expressed in certain for a are totally un founded. | | (2015) 378 ITR 8 (St.) |

| **XV.** | **2016 – IDS - 2016 (Finance Act)** | | | |
|---|---|---|---|---|
| | (1) | Finance Minister budget speech | (2016) | 381 ITR 9 (St.)(35) |
| | (2) | Notes on Clauses | (2016) | 381 ITR 169 (St.) (236) |
| | (3) | The Income Declaration Scheme, 2016 (Finance Act, 2016) | | |
| | (4) | Income Declaration Scheme Rules, 2016, Notification | (2016) | 384 ITR 188 (St.) |
| | (5) | Notification No. 32/2016, F.No.142/8/2016-TPL dtd.19th May, 2016 | | |
| | (6) | Notification No. 33/2016 (F.No.142/8/2016-TPL), dtd. 19th May, 2016 | | |
| | (7) | Circular No. 16 of 2016 dtd.20th May, 2016 - Explanatory Notes On Provisions Of The Income Declaration Scheme, 2016 | (2016) | 384 ITR 14 (St.) |
| | (8) | Circular No.17 of 2016 dtd.20th May, 2016 - Clarifications on the Income Declaration Scheme, 2016 | (2016) | 384 ITR 148 (St.) |
| | (9) | Circular No.19/2016 dtd. 25th May, 2016 - Principal Commissioner or the Commissioner who exercises jurisdiction over the declarant. | (2016) | 384 ITR 153(St.) |
| | (10) | Circular No. 24 of 2016 dtd. 27th June, 2016 - Clarifications on the Income Declaration Scheme, 2016 | | |
| | (11) | Circular No. 25 of 2016 dtd.30th June, 2016 - Clarifications on the Income Declaration Scheme, 2016 | | |
| | (12) | Circular No. 27 of 2016 dt.14th July, 2016 - | | |
| | (13) | Press Release dt.14th July, 2016 - Time Schedule for making payment under the scheme | | |

| XVI. | DTRS – 2016 (Finance Act, 2016) | | | |
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| | (1) | The Finance Minister budget speech | (2016) | 381 ITR 9 (St.)(36-37) |
| | (2) | Notes on Clauses | (2016) | 381 ITR 169 (St.) (236) |
| | (3) | The Direct Tax Dispute Resolution Scheme, Finance Act, 2016 | | |
| | (4) | The Direct Tax Dispute Resolution Scheme Rules, 2016 - 26th May, 2016 | (2016) | 384 ITR 183 (ST.) |
| | (5) | Notification No.34/2016, F.No.142/11/2016-TPL - 26th May, 2016 | | |
| | (6) | Notification No.35/2016, F.No.142/11/2016-TPL - 26th May, 2016 | | |