

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

Dated: 20th May, 2016

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

Introduction

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

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

Scope of the Scheme

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

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

Rate of tax, surcharge and penalty

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

Time limits for declaration and making payment

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

Form for declaration

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

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

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

Declaration not eligible in certain cases

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

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

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

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

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

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

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

Circumstances where declaration shall be invalid

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

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

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

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

Effect of valid declaration

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

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

(Ekta Jain)

Deputy Secretary to the Government of India

Copy to:-

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

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

**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 totaling in all the 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows.-

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

Answer: Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of fair market value for the purposes of the Scheme).

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

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

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

Answer: The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 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 Rs.500 out of which Rs.200 relates to income assessed to tax in A.Y. 2012-13 and Rs.300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 01.06.2016 is Rs.1500. The undisclosed income represented by this asset under the scheme shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Ekta Jain)
Deputy Secretary to the Government of India

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