

## Finance Bill, 2016- Windows for Income Declaration and Dispute Resolution



*One time schemes proposed by the Finance Bill 2016, for declaration of past undisclosed income and for settlement of pending appeals, are good opportunities for assesseees to clean up the past act and move forward. While the Income Disclosure Scheme allows declaration of past undisclosed income on payment of tax, surcharge and nominal penalty, the Dispute Resolution Scheme provides for settlement of pending disputes which have resulted from the normal course of assessments or due to retrospective amendments in the Act.*

Apart from numerous amendments in the Income-tax Act ("the Act"), Finance Bill 2016 has proposed three one-time schemes, one for the declaration of undisclosed income and second for settlement of tax disputes under the direct tax and the indirect tax. In his budget speech, Hon'ble Finance Minister announced that:

*"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."* (para 160)

*"Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being ₹5.5 lakh crore. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS)." (para 162)*



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In terms of these announcements, following three schemes have been proposed by the Finance Bill, 2016:

1. The Income Declaration Scheme, 2016 (IDS 2016) - introduced via Chapter IX of Finance Bill, 2016.
2. The Direct Tax Dispute Resolution Scheme, 2016 (DTDRS 2016) - introduced via Chapter X of Finance Bill, 2016.
3. The Indirect Tax Dispute Resolution Scheme, 2016 (IDTDRS 2016) - introduced via Chapter XI of Finance Bill 2016.

Following is a detailed analysis of proposals related with first two schemes:

### **(A) The Income Declaration Scheme, 2016**

The scheme provides for declaration by any person of his undisclosed income by paying tax, surcharge and penalty on such declared income. Clauses 178 to 196 of Chapter IX of the Finance Bill, 2016 give the mechanism of the scheme.

### **Basics of the Scheme**

#### **Period of Scheme**

The scheme is proposed to come into force from 1<sup>st</sup> June 2016 and remain open till the date to be notified

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by the Central Government. Hon'ble Finance Minister has mentioned in his budget speech the period upto 30<sup>th</sup> September 2016.

## Applicable Year

The scheme shall be applicable in respect of undisclosed income of any financial year upto 2015-16.

## Amount Payable

Following tax, surcharge and penalty shall be payable in respect of income declared under this scheme:

- Tax @30% of declared income.
- Surcharge (to be called Krishi Kalyan Cess) @ 25% of tax i.e. 7.5% of declared income.
- Penalty @ 25% of tax i.e. 7.5% of declared income.

Thus, the total amount payable shall be 45% of declared income.

## Declaration for Undisclosed Income

As per the clause 180(1) of the Scheme, a person may make declaration for following income:

- |  |   |
|--|---|
| <b>a. No return case</b>                 | Any income which was chargeable to tax but for which he has failed to furnish a return under Section 139 of the Income-tax Act.   |
| <b>b. Income not disclosed in return</b> | Any income which was chargeable to tax but which he has failed to disclose in a return of income furnished under the Income-tax Act before the date of commencement of this Scheme.   |
| <b>c. Income escaped assessment</b>      | Any income which was chargeable to tax but which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise. |

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

## Cases Not Covered

Clause 193 of the Scheme disqualifies following cases for the purposes of the Scheme:

**A very important feature of this scheme is how the value of undisclosed asset shall be calculated for levy of tax, surcharge and penalty. In this regard, clause 180(2) proposes that where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income. The method of determination of fair market value of different assets shall be prescribed separately.**

- A. *Pending Matters under the Income-tax Act*
  1. Where undisclosed income is chargeable for any assessment year for which notices have been issued under Section 142 or 143(2) or 148 or 153A or 153C and the proceeding is pending before the AO.
  2. Where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired.
  3. Where information is received under an agreement with foreign countries in respect of such undisclosed assets.
- B. *Cases Covered Under Other Acts*
  1. Cases covered under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
  2. Persons notified under Special Court Act, 1992
  3. Cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

Further, as proposed in clause 186, undisclosed income declared under this Scheme shall not affect finality of completed assessments and accordingly, a declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth Tax Act, or claim any set off or relief in any appeal or other proceeding in relation to any such assessment or reassessment.

## Valuation of Assets

A very important feature of this scheme is how the value of undisclosed asset shall be calculated for levy of tax, surcharge and penalty.

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In this regard, clause 180(2) proposes that where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset *as on the date of commencement of this Scheme* shall be deemed to be the undisclosed income. The method of determination of fair market value of different assets shall be prescribed separately.

This requirement shall have a significant bearing on determination of liability of the declarant under the Scheme. It essentially means that the appreciation in value of asset, from the date of its purchase till the date of commencement of Scheme, though unrealised, shall also get taxed under the Scheme.

For example: A plot of land had been purchased in the month of January 2011 for ₹50,00,000 from undisclosed income. The FMV of said plot as on 01/06/2016 is ₹1,20,00,000. Apart from taxing original undeclared income of ₹50,00,000, the scheme shall impose a 45% levy on unrealised appreciation of ₹70,00,000 also.

Another important issue that arises from this provision is that when assets disclosed under the Scheme shall be ultimately sold off, for computation of capital gains, what shall be taken as the cost of acquisition of these assets and from which date holding period shall be counted?

Principal of fairness demands that for computation of capital gains, cost of acquisition should be taken as fair market value calculated for this Scheme (since upto this amount, assessee has paid tax under the Scheme, so any appreciation beyond this amount only should be taxed further). However, if the cost of acquisition is taken as current FMV, the another issue would be, whether assessee would be allowed to calculate its holding period from the date of actual acquisition and take corresponding indexation benefit. The law makers should make the intent of law clear on this aspect by bringing a suitable clarification in the Income-tax Act.

## Payment

Payment of tax, surcharge and penalty is required to be made on or before a date to be notified by the Central Government in the Official Gazette (as mentioned in the Budget speech, the amount shall be payable within two months from the declaration). Upto the same date, the proof of payment is required to be filed with Pr. C.I.T./C.I.T. before whom the declaration has been made

If the declarant fails to pay the tax, surcharge and penalty up to the specified date, the declaration

shall be deemed never to have been made under this Scheme.

Clause 185 specifies that the amount of undisclosed income in this Scheme shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax, surcharge and penalty by the specified date.

It has been further provided in clause 194(b), by way of removal of doubts, that in cases where any declaration has been made but no tax, surcharge and penalty referred to in the Scheme has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

## Exemptions/Immunity

1. Assets specified in declaration shall be exempt from wealth tax. Where these assets belong to a firm, the corresponding share in the hands of partner shall be exempt.
2. Nothing contained in any declaration made under this Scheme shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, or for the purposes of prosecution under the Income-tax Act or the Wealth Tax Act.
3. The provisions of the Benami Transactions (Prohibition) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset, if the asset existing in the name of a benamidar is transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government.

## Other Matters

- It is proposed to provide that where a declaration under the Scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.
- Clause 194 (a) declares for removal of doubt that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.
- For removal of doubts, clause 194 (c) declares

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that in cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme, such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under Section 142, Section 143(2) or Section 148 or Section 153A or Section 153C of the Income-tax Act is issued by the assessing officer and the provisions of the Income-tax Act shall apply accordingly.

## (B) The Direct Tax Dispute Resolution Scheme (DTDRS), 2016

This Scheme provides for settling of pending tax disputes by paying tax, interest and some penalty in certain cases. Clause 197 to 208 of the Chapter X of the Finance Bill, 2016 give the mechanism of this Scheme.

The salient features of the proposed Scheme are as under:

### Operational Period

The Scheme shall be operational from 1<sup>st</sup> June 2016 to the date to be notified by the Central Government.

### Applicability of Scheme

The Scheme is applicable for two types of disputes:

1. Tax Arrears – Defined to mean
  - o the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth Tax Act
  - o in respect of which appeal is pending before the C.I.T. (A) as on the 29<sup>th</sup> February, 2016.

*The pending appeal could be against an assessment order or a penalty order.*

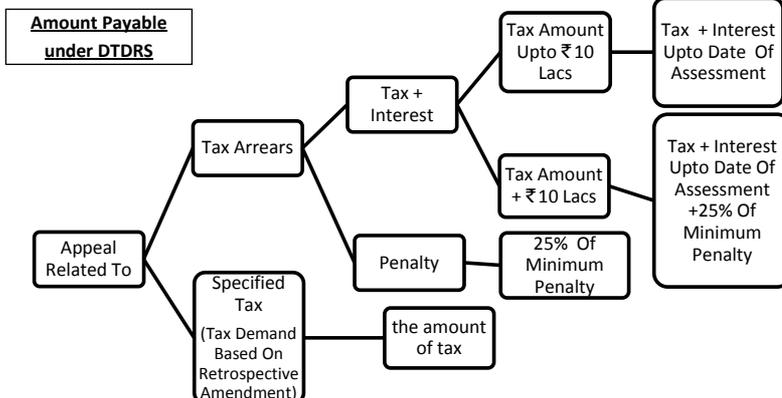
2. Specified Tax – Defined to mean
  - o tax determined/validated by a retrospective amendment in law,
  - o and which relates with a period prior to the date on which amending Act got the assent of President of India.

- o and in respect of which a dispute is pending as on 29<sup>th</sup> February, 2016.

What is important to note is that in respect of “specified tax”, the dispute might be pending at any level (as mentioned by Hon’ble FM in his budget speech, the dispute might be any case lying in any Court or Tribunal or any proceeding for arbitration, mediation, etc. under BIPA). However in case of “tax arrears, the scheme is applicable for only those cases which are pending with CIT(A) as on 29-02-2016. Any matter pending at other forum, for example, ITAT, High Court, Supreme Court, is not covered by this Scheme.

### Amount Payable

1. In case of tax arrears (other than specified tax-related with retrospective amendment)
  - Tax at the applicable rate plus interest up to the date of assessment shall be payable. However, in case of disputed tax exceeding ₹10,00,000 lakh, 25% of the minimum penalty leviable shall also be required to be paid.
    - ☞ *The limit of ₹10,00,000 for penalty liability is to be seen only with reference to tax amount. If tax and interest combined is more than 10,00,000 but tax amount alone is ₹10,00,000 or less, penalty is not payable.*
  - In case of pending appeal against a penalty order, 25% of minimum penalty leviable shall be payable along with the tax and interest payable on account of assessment or reassessment.
2. In case of specified tax – only tax related with retrospective amendment is payable. No interest and penalty is required to be paid in this case.



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## Modalities

1. A declaration under the Scheme is to be made to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed.
2. The designated authority shall within 60 days from the date of receipt of the declaration, determine the amount payable by the declarant.
3. The declarant shall pay such sum within 30 days of the passing such order and furnish proof of payment of such sum. Any amount paid in pursuance of a declaration shall not be refundable under any circumstances.
4. Consequent to such declaration in case of tax arrears, appeal in respect of the disputed income, disputed wealth and tax arrears pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

## Modalities: Specified Tax

1. In case of specified tax, for availing the benefit of the Scheme, declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration. Further, if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.
2. The person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form, waiving the right to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to him under any law, in equity, by statute or under any agreement entered into by India with a foreign country.
3. No appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax mentioned in the declaration and in respect of which an

order has been made by the designated authority or in respect of which the payment of the sum is determined.

## Immunity

1. The declarant under the Scheme shall get immunity from imposition of penalty and waiver of interest under the Income-tax Act or the Wealth Tax Act, which is in excess of penalty and interest payable under this Scheme.
2. The declarant under the Scheme shall also get immunity from institution of any proceeding for prosecution for any offence under the Income-tax Act or the Wealth Tax Act.

## Non-Applicability of the Scheme

In the following cases, a person shall not be eligible for the scheme:-

- (i) Assessment in search or survey cases where the declaration is in respect of tax arrears.
- (ii) Cases where prosecution has been initiated before 29.02.2016.
- (iii) Cases relating to undisclosed foreign income and assets.
- (iv) Cases based on information received under Double Taxation Avoidance Agreement under Section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.
- (v) Person notified under Special Courts Act, 1992.
- (vi) Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

## Conclusion

Both the Schemes have been introduced with the idea to clear the past issues and make a fresh start. In case of income declaration scheme, it is continuation of opportunity given last year in respect of foreign undisclosed assets. As has been mentioned by Hon'ble Finance Minister in his budget speech that the Government is fully committed to remove black money from the economy. Having given one opportunity for evaded income to be declared once, Government would then like to focus all resources for bringing people with black money to books. Thus, it is a good opportunity for people with past mistakes to come forward and get their affairs cleaned up. In case of dispute resolution scheme also, lot many appeals which have been filed mainly to avoid levy of penalty can now be withdrawn resulting in de-clogging of system. ■

  
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