

Income Declaration Scheme, 2016 - CBDT revises time schedule for making payment and issues further clarifications

July 15, 2016

In brief

The Income Declaration Scheme, 2016 (the Scheme), which provides a one-time opportunity to taxpayers to come clean by declaring their undisclosed income or assets in India, is already open. The Central Board of Direct Taxes (CBDT) has already issued three sets of FAQs to address queries raised by the general public. Please refer to our earlier news alerts dated [1 July 2016](#), [29 June 2016](#) and [25 May 2016](#).

In line with our expectation, the CBDT has now issued a fourth set of clarifications in the form of FAQs¹ regarding the Scheme.

In detail

Below is a summary of the fourth set of FAQs¹ released by CBDT

SL No.	FAQs	Answers/Clarifications
1	Can a declaration made under the Scheme be revised before the date of closure of the Scheme i.e. 30 September 2016?	Yes, provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed.
2	In reference to the question no. 4 of circular no 24/ 2016, if an undisclosed income represented in the form of an asset or otherwise pertains to a year falling beyond time limit allowed under section 149 of the Income-tax Act, 1961 (the Act), and this undisclosed income is not declared under the Scheme, then as per the Scheme, 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. Is this provision inconsistent with existing timelines provided under the Act for reopening?	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.

¹ Circular No. 25/2016 dated June 30, 2016

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3	The declaration made in respect of cash, investment etc. under the Scheme would result in increase in capital in the Balance Sheet in an extraordinary manner. Would such cases of declarants be selected for scrutiny under the CASS for this reason?	No.
4	In a case where the declarant gets the <i>benami</i> asset transferred in his name without payment of any monetary consideration to the <i>benamidar</i> , would capital gains be chargeable in the hands of the <i>benamidar</i> consequent upon such transfer, and would tax at source @ 1% be required to be deducted in such a case?	Since the consideration for acquisition of the 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, the question of capital gains in the hands of <i>benamidar</i> and deduction of tax at source thereon will not arise.
5	Under what provision can a declarant be sure that the information contained in a valid declaration will not be shared with any other law enforcement agency, and will also not be shared within the income-tax department for investigation?	<i>Vide</i> 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 document or record or any information or computerised data or part thereof as comes into his possession during discharge of official duties, in respect of a valid declaration made under the Scheme.
6	In Question 5 of Circular No 25/ 2016, it has been stated that the department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty. Clarification is sought as to whether a payment under the Scheme can be made out of undisclosed income without including it in the income declared?	It is clarified that the intent of the clarification issued was limited to conduct of enquiries by the Department. It in no way intends to modify or alter the rate of tax, surcharge and penalty payable under the Scheme; the declarant will not get immunity for income utilised for making payment under the Scheme.
7	Is there any time limit for the declarant under the Scheme to file Form-3?	The time limit for filing Form-3 is the same as the time limit notified for payment of tax, surcharge and penalty under the Scheme.
8	Is immunity from initiation of prosecution available to Directors of a company or the partners of a firm in respect of the undisclosed income declared under the Scheme by the company or partnership firm, as the case may be?	Yes
9	Can a person having undisclosed income in the form of an investment in immovable property in the name of his spouse declare fair market value of the property in his own name, if the funds for acquisition of the property were provided by such person?	Yes
10	In case a share is listed on more than one recognised stock exchange, and the quoted price of the share as on 01 June 2016 on the recognised stock exchanges is different, then what shall be the quoted share price for determining the fair market value?	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 June 2016.

Relaxation of making payment under the scheme

CBDT has issued a Press Release dated July 14 2016, relaxing the schedule of payments under the Scheme. The revised payment schedule is as below:

On or before Nov 30, 2016:
a minimum amount of 25 % of total tax, surcharge and penalty payable

On or before Mar 31, 2017 :
a minimum amount of 50 % of total tax, surcharge and penalty payable

On or before Sep 30, 2017:
100% of the total tax, surcharge and penalty payable

The takeaways

Providing an option for paying the dues in instalments is a welcome step, as this will enable the declarants to arrange funds to discharge their liability.

FAQ no. 2 is a significant clarification which provides that any undisclosed income or asset can be questioned by the Income tax department even though the same may be falling beyond the time limit allowed under section 149 i.e. 6 years. Therefore, it is important for taxpayers to review their situation if they have any undisclosed income or assets in the past. This is the only opportunity to come clean by making disclosure under the Scheme.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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