

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. 30.09.2016?*

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 time lines 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 extra ordinary 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 a case a person declares Rs. 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 Rs.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 Rs.145 lakh, the declarant has to declare undisclosed income of Rs.145 lakh (Rs.100 lakh being the undisclosed income represented by immovable property and Rs.45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to Rs.65.25 lakh i.e., 45 per cent of Rs.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.

(Dr. T.S. Mapwal)
Under Secretary to the Government of India

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