

SECOND INCOME DISCLOSURE SCHEME - 2016

[CA P N SHAH]

I. BACKGROUND:

1.1 On 8th November, 2016, the Central Government demonetized ₹500/1000 Currency Notes (Old Notes). New Currency Notes of ₹500/2000 have been issued to replace the old Currency Notes. Old Currency Notes of ₹500/1000 could be deposited in the bank account of the person holding such old notes between 10th November to 30th December, 2016. Once the old notes are deposited in the Bank Account of the person he will have to explain the source of such deposit to the Income tax Authorities during the course of his assessment proceedings. The Government has recognized in its public announcements that an Individual or HUF may be holding some such old notes out of their savings and kept them for household needs. Therefore, a public assurance has been given that the Income tax Department will not inquire about the source of such deposits if the total deposit during the above period is less than ₹2.5 lakhs.

1.2 It is recognized that large cash in the form of Old Notes is kept by some persons out of their unaccounted income and they should pay tax at higher rates and should also pay penalty when they make such unaccounted income official by depositing such cash in their Bank Accounts. To achieve this objective the Finance Minister introduced "The Taxation (Second Amendment) Bill, 2016" in the Lok Sabha on 28th November, 2016. This Bill has now been passed by the Parliament, without any discussion. It has received the assent of the President on 15th December, 2016 and has come into force on that date. The Amendment Act amends some of the provisions of the Income tax Act and the Finance Act, 2016. The above amendments provide the Second Income Disclosure Scheme in the form of "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna, 2016". In this Article some of the important amendments by this Act and the Second Income Disclosure Scheme are discussed.

2. The Second Disclosure Scheme:

2.1 First Disclosure Scheme:

The Finance Act, 2016 enacted on 14/5/2016, contained "The Income Declaration Scheme, 2016". This Scheme allowed any person to declare his undisclosed income (Indian assets, including cash) of earlier years during the period 1/6/2016 to 30/09/2016. Under this Scheme the declarant was required to file declaration about valuation of undisclosed Indian assets and pay tax of 45% (including surcharge and penalty) in instalments. It is stated that assets worth about 67000 Crores were disclosed under this scheme before 30/09/2016.

2.2 Second Income Disclosure Scheme:

In order to give one more opportunity to persons holding old currency notes the present scheme to declare their undisclosed income held in cash is introduced. Sections 199A to 199R are inserted in the Finance Act, 2016. These Sections provide for a new Scheme called "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna, 2016". The provisions of this Scheme are on the same lines as the earlier Income Declaration Scheme, 2016, which ended on 30/09/2016. The Scheme has come into force on 17th December, 2016 and will come to an end on 31st March, 2017. Some of the important provisions of the Scheme are discussed below:-

2.3 Declaration under the Scheme:

(i) Under Section 199C any person may make a declaration in the prescribed Form No.1 during the period 17-12-2016 to 31-3-2017 as notified by Notifications dated 16.12.2016. This declaration is to be made for any undisclosed income held in the form of cash or deposit in any account maintained with a specified entity. Thus the benefit of this Scheme can be taken by an Individual, HUF, Firm, AOP, Company or any person whether Resident or Non-Resident.

(ii) The income chargeable to tax under the Income tax can be declared under the Scheme if it relates to F.Y:2016-17 and earlier years. The above declaration can be made in respect of the above undisclosed income which is held in cash or deposit in a specified entity as under

- (a) Reserve Bank of India
- (b) Any Scheduled Bank (including Co-operative Bank)
- (c) Any Post Office
- (d) Any other Entity notified by the Central Government.

No deduction will be allowed for any expenditure, allowance, loss etc from such income.

(iii) The amount of Undisclosed Income declared in accordance with the Scheme shall not be included in the income of the declarant for any assessment year. In other words, immunity is given under the Income tax Act and the Wealth Tax Act. In the Press Note issued by the Government on 16.12.2016 it is clarified that the above declaration shall not be admissible as evidence in any proceedings under the Income tax Act, Wealth tax Act, Central Excise Act, Companies Act, etc. However, no immunity will be available under any criminal proceedings under the Indian Penal Code, Prevention of Corruption Act, prohibition of Benami Property Transactions Act etc., as mentioned in Section 199.0 of the Finance Act, 2016.

2.4 Tax Payable on such Income:

Sections 199D and 199E provide for payment of tax, cess, penalty etc. It is provided that the person making the Declaration u/s 199C shall have to pay tax, cess and penalty i.e 49.90% of the income declared under the Scheme as under:

- (i) 30% of Undisclosed income by way of tax
- (ii) 33% of above tax (i.e. 9.9%) by way of Pradhan Mantri Garib Kalyan Cess.
- (iii) 10% of undisclosed income by way of Penalty

2.5 Interest Free Deposit:

The declarant under the Scheme has also to deposit 25% of the undisclosed income in the “Pradhan Mantri Garib Kalyan Deposit Scheme, 2016” as provided in Section 199F. This deposit will be for 4 years and no interest shall be paid to the declarant on this deposit.

2.6 Time for payment of Tax and Deposit (Section 199H)

The above Tax, Cess and Penalty is to be paid before filing the Declaration u/s 199C. Similarly, the above Interest Free Deposit is to be made before filing the Declaration u/s 199C. The Declaration along with proof of payment of tax etc. and proof of deposit is to be filed before 31st March, 2017. Any amount of tax, cess or penalty paid under the scheme is not refundable.

2.7 By a Notification dated 16.12.2016, the CBDT has notified the “Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016”. These Rules have come into force on 16.12.2016. Briefly stated, these Rules provide as under:

- (i) The declaration of undisclosed income for F.Y. 2016-17 and earlier years held in the form of cash or deposit with the specified entity stated in Para 2.3 above can be made in Form No.1 during the period. 17.12.2016 to 31.3.2017.
- (ii) It may be noted that in Form No.1 the declarant has to give particulars of Name, Address, PAN, Income declared, the details of such income held in cash or deposit with specified entity, Tax, cess and penalty payable, date of such payment, details of Interest free Deposit of 25% of declared income made u/s 199 F etc.
- (iii) The above tax, cess and penalty is to be paid and Interest Free Deposit is to be made before filing the declaration in Form No.1.

- (iv) The Declaration is to be furnished to the designated Principal CIT or CIT electronically or in print form physically
- (v) If the declarant finds any mistake in the declaration filed earlier, there is a provision to file a revised declaration on or before 31.3.2017.
- (vi) The Principal CIT or CIT will have to issue a certificate in Form No.2 within 30 days from the end of the month in which valid declaration is filed.

2.8 From the above, it is evident that under this scheme a person can make declaration about the undisclosed income held in cash or deposits with specified entities. The declaration cannot be made if the declarant is holding such income in any other form such as jewellery, ornaments, or immovable properties etc. This undisclosed income may be relating to any year i.e. F.Y. 2016-17 or earlier years. Therefore, the Scheme does not refer to only cash in the form of ₹500/- and ₹1000/- notes deposited in the Bank Account between the period 10.11.2016 to 30.12.2016. Such income may have been deposited in the bank or with other specified entity prior to 10.11.2016 or even between 31.12.2016 to 31.03.2017. Hence, if a person has earned income in F.Y. 2015-16 or any earlier year, which has been held in cash or deposited in the bank, but not disclosed in the Income tax Return, he can make a declaration under this Second Income Disclosure Scheme on or before 31.3.2017. He will have to pay 49.90% by way of tax, Cess and penalty and make interest free deposit of 25% of such income for 4 years.

2.9 By another Notification dated 16.12.2016, the Central Government has issued the "Pradhan Mantri Garib Kalyan Deposit Scheme, 2016". This scheme has come into force on 17.12.2016 and is valid upto 31.3.2017. Briefly stated, this scheme provides as under:

- (i) The Scheme applies to persons making declaration of undisclosed income under the Second Income Disclosure

Scheme. Under this Scheme 25% of undisclosed income is required to be deposited in the interest free deposit for 4 years.

- (ii) This deposit is to be made with the Authorised Bank in Form No.II giving particulars of Name, Address, PAN., etc in cash, cheque or by electronic transfer drawn in favour of Authorised Bank. The amount is to be deposited in multiples of ₹100/-.
- (iii) The above deposit is to be made before the declaration of undisclosed income under section 199C of the Finance Act, 2016 is filed.
- (iv) The certificate of holding of Deposit will be issued to the declarant in Form No.1 as holder of Bond Ledger Account with R.B.I.
- (v) Bond Holder can appoint one or more Nominees to receive the refund in the event of his death in Form No.III. Such nomination can be cancelled in Form No.IV and another nominee can be appointed.
- (vi) No interest is payable on the above deposit. The Bond issued by the RBI for the above Deposit is not transferable and cannot be traded in the market. In view of this the declarant may not be able to take a loan against the mortgage of this Bond.
- (vii) The amount of the deposit under the scheme will be refunded by RBI after 4 years on the date of maturity.

2.10 Persons who cannot make a Declaration under the Scheme:

Section 199-O provides that the following persons cannot make the Declaration under the above 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. Certain exceptions are provided in Section 199-O (a).

- (ii) Any person in respect of whom prosecution for an offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotics Drugs and Psychotropic Substances Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money Laundering Act, 2002 has been launched.
- (iii) Any person notified u/s 3 of the Special Court (Trial of Offence Relating to Transactions in Securities) Act, 1992.
- (iv) The Scheme is not applicable 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.

2.11 Other Procedural Provisions:

Sections 199G, 199J, 199L, 199M, 199N, 199P to 199R deal with certain procedural matters as under:-

- (i) Person who can sign the declaration (Section 199G)
- (ii) Undisclosed Income declared under the Scheme not to affect any concluded assessments (Section 199J)
- (iii) Declaration not admissible as evidence in other proceedings (Section 199L)
- (iv) Declaration will be treated as void if it is made by misrepresentation of facts (Section 199M)
- (v) Provisions of Chapter XV, Sections 119, 138 and 189 of the Income tax Act to apply to proceedings under the Scheme (Section 199N).
- (vi) Benefit, concession, immunity etc. under the Scheme available to declarant only (Section 199P).
- (vii) Central Government will have power to remove difficulties under the Scheme within 2 years (Section 199Q).

(viii) Power to make Rules for administration of the Scheme given to Central Government (Section 199R).

3. Some Clarifications by CBDT:

By a circular dated 18.1.2017 CBDT has issued some clarifications about the above Scheme. Some of the important clarifications are as under:

- (i) Where a notice under section 142(1), 143(2), 148, 153A or 153C of the Income tax Act is issued by the ITO for any year, the assessee can make a declaration under the scheme for that year.
- (ii) A person against whom a search or survey operation is initiated will be eligible to file a declaration under the Scheme in respect of undisclosed income represented in the form of cash or deposits with Banks, Post Office etc.
- (iii) Undisclosed income utilized for repayment of an overdraft, cash credit or loan account maintained with a bank can be declared under this scheme.
- (iv) Cash seized in any search and seizure action by the department can be adjusted against payment of tax, surcharge and penalty (i.e. 49.9%) payable under the scheme. For this purpose the person from whom cash is seized will have to make application to the department. However, this seized amount of cash cannot be adjusted against the Deposit of 25% to be made under the Pradhan Mantri Garib Kalyan Deposit Scheme.
- (v) If Mr. "A" has given advance in cash out of undisclosed income for purchase of goods (other than immovable property) or services to Mr. B, who has deposited the money in his Bank Account, and later on "B" has returned the money as goods are not supplied or services are not rendered, Mr. "A" can declare the undisclosed income under the scheme.

4. Taxation of unexplained Cash Credits, Investments etc. (Section 115BBE)

4.1 Section 115BBE of the Income tax Act deals with Rate of tax on income referred to in sections (i) 68 – Cash Credits, (ii) 69 – Unexplained Investments, (iii) 69A – Unexplained Money, bullion, jewellery or other valuable articles, (iv) 69B- Amount of Investments, jewellery etc. not fully disclosed, (v) 69C – Unexplained Expenditure and (vi) 69D – Amount borrowed or repaid on a Hundi in cash. This section was inserted by the Finance Act, 2012 w.e.f 1/4/2013. The Section provides that the rate of tax payable on addition made by the Assessing Officer (AO) under the above sections, if no satisfactory explanation for the above deposits/investments/expenditure etc. is furnished by the assessee, will be at a flat rate of 30% plus applicable surcharge and education cess. No deduction for any expenditure or allowance is allowable against such amount treated as income.

4.2 This section is now amended w.e.f 1/4/2017 (A/Y:2017-18) as under:-

(i) It is now provided that in respect of income referred to in Sections 68, 69, 69A, 69B, 69C or 69D which is offered for tax by the assessee in the Return of Income filed u/s 139 the rate of tax on such income will be 60% plus applicable surcharge and education cess.

(ii) Further, in respect of the income referred to in Sections 68, 69, 69A, 69B, 69C or 69D is not offered for tax but is found by the AO and added to the income of the assessee by the AO the rate of tax will be 60% plus applicable surcharge and education cess.

4.3 Section 2(9) of the Finance Act, 2016 dealing with Surcharge on Tax has also been amended w.e.f. A/Y: 2017-18. In the existing Section 2(9) it is provided that surcharge on tax on income added by the AO under Sections 68, 69, 69A, 69B, 69C or 69D will be payable at 15% of the tax if total income of an Individual, HUF, AOP, BOI, Firm etc. exceeds ₹ One Crore. In the case of Domestic Company the rate of surcharge is 7% of Tax if the total income is between ₹1 to 10 Cr. If total income of such a company is more than ₹10 Cr. the surcharge is 12% of the tax. For foreign companies the surcharge is 2% (where total income is between ₹1 Cr. and ₹10 Cr) and 5% (where total income is more than ₹10 Cr.)

4.4 By an amendment made in Section 2(9) of the Finance Act the rate of surcharge will now be 25% in respect of tax payable u/s 115BBE irrespective of the quantum of total income for A/Y:2017-18. This will mean that any income in the nature of cash credit, unexplained investments, unexplained expenditure etc. which is offered for taxation u/s 139 or which is added to declared income by the AO u/s 68, 69, 69A to 69D will now be taxable in the case of Individual, HUF, AOP, Firm, Company etc. at the rate of 60% (instead of 30% earlier) plus surcharge on tax at 25% of tax (i.e. 15%) even if the total income is less than ₹1 Crore. Besides the above, education cess at 3% of tax will also be payable.

4.5 It may be noted that if an Individual, HUF, AOP, Firm, Company etc. deposits old ₹500/1000 notes in his Bank A/c between 10/11/2016 and 30/12/2016 and he is not able to give satisfactory explanation for the source, he will have to pay tax at 75% (60%+15%) plus Education Cess even if this income is shown in the Return u/s 139 for A/Y:2017-18 and the total income of the assessee is less than ₹1 Crore. It is unfortunate that this Amendment Act nowhere provides that if the old notes deposited in the Bank during the above period are of the value below ₹2.5 lakhs, no tax will be payable. This means that the announcements by the Prime Minister, Finance Minister and others representing the Government that no enquiry will be made in respect of deposits upto ₹2.50 lacs have not been honoured by the Government while enacting this Amendment Act. If the Government desires to honour its commitment in this regard, CBDT should now issue instructions to its officers that no addition u/s 68, 69, 69A to 69D will be made if old notes worth ₹2.5 lakhs or less are deposited by an Individual or HUF in the Bank during the above specified period.

5. Penalty in Search Cases (Section 271AAB):

5.1 Section 271AAB was inserted in the Income tax Act by the Finance Act, 2012 w.e.f 1/7/2012. Under this section penalty is leviable at the rate ranging from 10% to 90% of undisclosed income in cases where Search is initiated u/s 132 on or after 1/7/2012. By amendment of this section it is provided that the existing provisions of Section 271AAB (1) for levy of Penalty will apply only in respect of Search u/s 132 initiated between 1/7/2012 and 15/12/2016.

5.2 New Sub-Section (1A) is added in section 271AAB w.e.f. 15/12/2016 to provide for levy of penalty at 30% of undisclosed income in cases where Search is initiated on or after 15/12/2016.

For this purpose the conditions are as under:

- (i) The assessee admits such income u/s 132(4) and specifies the manner in which it was earned.
- (ii) The assessee substantiates the manner in which such income was earned.
- (iii) The assessee files the return including such income and pays tax and interest due before the specified date.

5.3 If the assessee does not comply with the above conditions the rate of penalty is 60% of undisclosed income. It may be noted that prior to this amendment the rates of penalty were 10% to 90% under specified circumstances.

6. Penalty on Cash Credits, Unexplained Investments etc. (New Section 271AAC)

6.1 New Section 271AAC is inserted by this Amendment Act w.e.f. 1/4/2017 (A/Y:2017-18). This section provides for levy of penalty in respect of income from cash credits, Unexplained Investments, Unexplained Expenditure etc. added by the A.O u/s 68, 69, 69A to 69D. This penalty is to be computed at the rate of 10% of the tax payable u/s 115BBE(1)(i). Since the tax payable u/s 115BBE(1)(i) is 60% of the income added by the AO under section 68, 69, 69A to 69D, the Penalty payable under this section will be 6% of the income added by the AO under the above sections. Thus the tax (including Surcharge, Education Cess and penalty) in such cases will be 83.25% (77.25%+6%).

6.2 It may be noted that no penalty under this new section will be payable if the assessee has declared the income referred to in sections 68, 69, 69A to 69D in his return of income u/s 139 and paid the tax due u/s 115BBE before the end of the relevant accounting year. In other words, if an assessee wants to declare the amount of old notes deposited in the bank during the specified

period in his return of income u/s 139 for A/Y:2017-18, he should pay the tax at 75% (including Surcharge) and education cess on or before 31/3/2017. In this case the above penalty will not be levied.

6.3 It is also provided that in the above cases no penalty u/s 270A will be levied on the basis of under reported income. It is also provided that the procedure u/s 274 for levy of penalty and time limit u/s 275 will apply to levy of penalty u/s 271AAC.

7. To Sum Up:

7.1 We should congratulate the Government for the bold step taken to demonetize old high value currency notes. This is a right step to deal with the problem of black money, corruption, fake currency in circulation etc. In the beginning persons with small holdings have faced some difficulty in converting the old currency into new one. Taking into consideration the long term benefits which will accrue after the present conversion scheme is implemented, such difficulty in the initial period is worth suffering.

7.2 The Government recognized that the existing Income tax Act did not permit tax authorities to levy any penalty on persons who would convert large amount of black money through banking channel. Therefore, the present Amendment Act to amend the Income tax Act and the Finance Act has been passed. However, small income earners who had some high value notes kept at home out of their savings to meet expenditure in emergency cannot be considered as holding their unaccounted income. The Government had promised that if such persons deposit in their Bank Account amount upto ₹2.50 lakhs no enquiry will be made by the tax Department. This promise has not been honoured while passing this Amendment Act. It is, therefore, necessary that the CBDT issues a Circular to the officers not to raise any doubt if an assessee gives an explanation that amount upto ₹2.5 lakhs is deposited out of household savings.

7.3 The Second Income Disclosure Scheme is welcome. Persons holding unaccounted money in cash will take advantage of this scheme as the tax rate is 49.9% and 25% of the amount is blocked for 4 years in Interest Free Bonds. However, persons who decide to offer such amount in their Return of

Income for the current year will be at a disadvantage as they will have to pay tax, surcharge and education cess u/s 115BBE at 77.25% of such income.

7.4 It may be noted that under the First Income Disclosure Scheme announced in May, 2016, immunity was granted from proceedings under the provisions of (i) Benami Transactions (Prohibition) Act, 1988, (ii) Foreign Exchange Management Act, (iii) Money Laundering Act, (iv) Indian Penal Code etc. There was also an assurance that the secrecy will be maintained about the contents of the Declaration under the Scheme. It is unfortunate that the present Scheme does not provide for such immunity or secrecy. Therefore, the assesseees will have to be very careful while making the Declaration under the Scheme.

7.5 It appears that the Second Income Disclosure Scheme as announced by the Government is with all good intentions. It is advisable for the persons who hold unaccounted money in cash to come forward and take advantage of the Scheme and buy peace. Let us hope that this Scheme gets the desired response.

7.6 The amendment in Section 115BBE punishes those assesseees in whose cases additions are made for cash credits, unexplained investments, unexplained expenses etc. Tax rate is now increased from 30% to 60%. Further, there will be additional burden of 15% surcharge and 6% penalty. Such cases have no relationship with demonetization of high value currency. It is difficult to understand the reason for which such additional burden is put on such assesseees.