



## **The Income Declaration Scheme, 2016**



### **Shashwat Tulsian, Partner**

*"The main point of inclination towards this scheme is the 'declarant' can be resident or non-resident includes domestic or foreign undisclosed income and assets. IDS, 2016 is to a certain extent beneficial to both Government and declarants of the unaccounted income whether sourced in India or outside India."*

*I am a Qualified Chartered Accountant, Lawyer and Company Secretary. As a result, I have a unique ability to manage multi-disciplinary projects and to navigate complex challenges. I have helped work on more than 5000 such projects for multinationals over the last few years.*



### **Nisha Kulthia, Partner**

*I am a Qualified Chartered Accountant, Company Secretary. I like to think strategically and i'm driven to help businesses solving there financial and taxation needs. I also like to add value to research on economy and industry Analysis and its impact on business.*

# overview



- Last year, the Indian Government introduced a scheme for voluntary declaration of undisclosed foreign income and assets for resident taxpayers under the Black Money Act1 . (scheme under Black Money Act is closed now)
- A similar scheme is proposed by the Finance Bill, 2016 referred as 'Income Declaration Scheme, 2016' ('IDS, 2016')

Scheme is effective from: 1 st June, 2016

Declarations may be filed upto: From June 1st, 2016 to 30th September, 2016

Tax, surcharge and penalty to be paid by: 30th November, 2016

## Who Can Make a Declaration?

All 'persons', such as individuals, HUFs, companies, firms, association of persons (AOP) etc., are eligible to make declaration under the Scheme.

**Declarant** Person making the declaration under this scheme. **(Assesse or his authorized representative as the case may be.)**

## The impact of above provisions in monetary terms is explained below

Particulars	Declaration under Black Money Act (now closed)	Sections 271 & 276C	Section 270A	IDS, 2016
Applicable	<ul style="list-style-type: none"> <li>All <b>resident</b> taxpayers can declare</li> <li>Undisclosed foreign income and assets</li> </ul>		Proposed that with effect from 1st April, 2017 penalty shall be levied under the newly inserted Section 270A	<ul style="list-style-type: none"> <li>Resident or <b>non-resident</b></li> <li>Income whether sourced in India or outside India</li> </ul>
Basic Tax Rate	60% as both tax and penalty	30% (assuming a company)	30% (assuming a company)	30%
Surcharge		7%	7%	25% of 30%
Education Cess		3%	3%	
Penalty		100%-300%	50%-200%	25% of 30%
Prosecution	Immunity from Prosecution granted	Yes, but compoundable	No / Yes	Immunity from Prosecution granted

The impact of above provisions in monetary terms is explained below

Particulars	Sections 271 & 276C		Section 270A		IDS, 2016	
Tax evaded income		1,000,000		1,000,000		1,000,000
Basic Tax Rate	30% (assuming a company)	300,000	30% (assuming a company)	300,000	30%	300,000
Basic Tax Rate	7%	21,000	7%	21,000	25% of 30%	75,000
Education Cess	3%	9,630	3%	9,630		
<b>Total tax payable</b>		330,630		<b>330,630</b>		375,000
Penalty	100%-300%	330,630-991,890	50%-200%	165,315 -661,260	25% of 30%	75,000
Total liability		<b>661,260-1,322,520</b>		<b>495,945 -991,890</b>		<b>450,000</b>
		<b>Stringent</b>	Less beneficial		Most beneficial in the History of Indian Taxation	

# Scope & Coverage of Scheme

- Declaration can be made in respect of—
- any undisclosed **income**
- investment in any **asset** representing undisclosed income relating to any financial year upto 2015-16

## Declaration when void

- Misrepresentation or suppression of facts
- Non-payment of tax, surcharge and penalty by 30.11.2016.

## Scheme does not apply if

- Notice has been issued under section 142(1)/143(2)/148/153A/153C of I-T Act (debarred only for AY for which notice is issued i.e. free to declare undisclosed income for other years for which no notice under the sections has been issued.)
- Search/Survey have been conducted (debarred for affected years only)
- Income sought to be declared is chargeable under the Black Money Act, 2015
- COFEPOSA detainees, persons notified under Special Courts Act (1992), cases of prosecution under NDPS Act, Prevention of Corruption Act, and certain offences under Indian Penal Code

**Note:** However, one should note that the immunity from prosecution granted is only under Income-tax Act and Wealth-tax Act, but not under Foreign Exchange Management Act.

## Fair Market Value

- Rule 3 of IDS Rules prescribe the method of determining fair market value of assets, including
  - bullion, jewellery or precious stone – archaeological collections
  - drawings, paintings, sculptures or any work of art
  - shares & securities (quoted & unquoted)
  - immovable property
  - interest in a partnership firm
  - any other asset
- Fair market value of asset as on 01.06.2016 (determined as per Rule 3) to be declared
- Report of Registered Valuer to be obtained

**Note:** Where undisclosed income invested in any asset is declared under the Scheme & tax, surcharge and penalty are duly paid on its fair market value as on 01.06.2016 then, any capital gains arising upon its sale in future will be computed by adopting such fair market value as on 01.06.2016 as the cost of acquisition and the period of holding shall also start from that date



## Benefits of Declaration

1. No Wealth Tax on assets declared
2. No scrutiny or enquiry under Income-tax Act and Wealth Tax Act in respect of declaration
3. Immunity from prosecution under Income Tax Act and Wealth Tax Act in respect of declaration
4. Immunity from Benami Transactions (Prohibition) Act, subject to transfer of assets by the benamidar to the real owner before 30.09.2017





## Effect of Non-declaration

- Undisclosed income and the value of any asset acquired **out of such income** in any year upto FY 2015-16 which is not declared under the Scheme will be brought to tax in the year in which notice is issued by the Departme

And

- All consequences including, interest, penalty & prosecution under I-T Act will follow accordingly.

# Forms

Form 1 – Declaration form (to be filed by declarant by 30th Sep, 2016)

Form 2 – Acknowledgment of declaration (to be issued by PCIT/CIT within 15 days from the end of the month in which declaration is filed)

Form 3 – Intimation of payment of tax, surcharge & penalty (to be furnished by declarant to PCIT/CIT by 30th Nov, 2016).

Form 4 – Certificate of declaration (to be granted by PCIT/CIT within 15 days from the date of intimation of payment).

## About RTC

R.Tulsian and Co. LLP is a full services multinational chartered accountancy and legal services firm having its head quarters in India. We have a multinational presence with clients in USA, Europe and Australia. We also have a strong PAN India presence in important strategic locations including Kolkata, New Delhi, Bangalore, Mumbai and Gujarat, North East India, among other places.

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