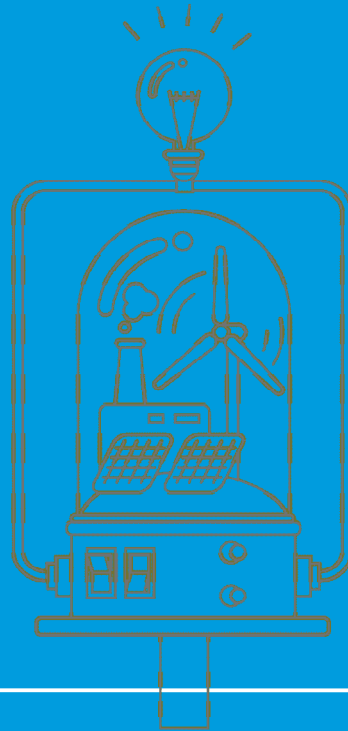


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## NEWSFLASH ON THE NEW TAXATION WINDOW TO DECLARE UNDISCLOSED INCOME IN THE FORM OF CASH DEPOSITS

- *Key Aspects of the Taxation Laws (Second Amendment) Bill, 2016*
- *Overview of Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016*

## 1.0 Introduction

- 1.1 With effect from 9th November, 2016, bank notes of existing series of denomination of the value of Rs. 500 and Rs. 1000 ceased to be legal tender as part of the monetization plan of the government directed to curb black money in the economy. However, concerns were raised that the existing provisions of Income-tax Act, 1961 ('IT Act') does not provide for stringent provisions to tax and penalize undisclosed income in the form of cash deposits.
- 1.2 In this backdrop, the government has proposed a scheme called - '**Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016**' (PMGKY) as Chapter IX A of the Finance Act 2016. The purchase of the PMGKY scheme is to provide a new window for taxpayers to declare and pay tax on undisclosed cash deposits in the form of income for the period upto Financial year 2015-16.
- 1.3 Further, amendment has also been proposed in the Income Tax Act by way of Taxation Laws (Second Amendment) Bill, 2016 ('the Bill') to provide for tax treatment of undisclosed income primarily resulting from the monetization drive. The bill has been passed by the Lok Sabha on 29 November 2016.
- 1.4 The purpose of this newsflash is to highlights the significant changes proposed in / brought by way of:

Sr. No.	Proposed Changes	Proposed Changes by way of	Remarks
1)	Taxation And Investment Regime For Pradhan Mantri Garib Kalyan Yojana, 2016	Introduction of Chapter IX A of the Finance Act 2016	New Chapter Introduced. Limited Compliance Window for income of period upto 31 March 2016 (Refer para 2.0)
2)	Taxation Laws (Second Amendment) Bill, 2016	Amendment to Income Tax Act 1961 to provide for Penal provisions	Amendments in Sections 115BBE. Insertion of Section 271AAB (Refer para 3.0)

## 2.0 Salient features of the scheme "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016"

### 2.1 Overview of the Proposed "Tax" and "Deposit" - How much to pay?

In respect of undisclosed income in the form of cash & bank deposit for period upto Financial Year ended 31 March 2016 (i.e. upto Assessment year 2016-17), a declarant is required to pay:

Ref	Nature	Rate (%)
<b>A</b>	<b>Income Tax</b>	
i.	<b>Tax</b>	@30% of income declared
ii.	<b>Surcharge</b> (also referred to as, Pradhan Mantri Garib Kalyan Cess)	@33% of tax (i.e. appx 10%)
iii.	<b>Penalty</b>	@10% of income declared
	<b>Total</b>	@50% of income (approx.)
<b>B</b>	<b>Deposit</b>	
	Additionally, a declarant is required to <b>deposit 25% of declared income</b> to be deposited in interest free Deposit Scheme (referred to as Pradhan Mantri Garib Kalyan Deposit Scheme, 2016) for 4 years from the date of deposit.	
	<b>For ease of reference, illustration is provided in para 4.0</b>	

## 2.2 Who cannot make a declaration?

- Every person i.e. individual, HUF, company, firm, etc., irrespective of their residential status can make a declaration.
- Person has to make declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with bank /post office, chargeable to tax under the Income-tax Act for **any assessment year commencing on or before the 1st day of April, 2017.**

## 2.3 Who cannot make a declaration?

In the following cases, the benefit of the scheme is not available:

- Undisclosed foreign income and foreign assets
- Person notified under Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992
- 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
- Cases covered under Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money- Laundering Act

Note: It may be pointed out that there is no bar on person who has received notices under section 142(1)/143(2)/148/153A/153C and the proceeding was pending before the AO or in case of person against whom a search/survey operation has been initiated, to make a declaration under this scheme.

## 2.4 When to make a declaration?

The scheme shall come into force on the **date notified** by the Central Government by notification in the Official Gazette. The scheme shall be valid for **limited period to be notified.**

## 2.5 Scheme does not apply to income in the form of any assets, other than cash

The scheme envisages income only in the form of cash or deposit in an account. Therefore, person having undisclosed income in the form of assets other than cash e.g. building, jewellery, cannot make declaration under this scheme.

## 2.6 No deduction for expenditure / set off of losses allowed

- Normally, under the IT Act, while computing the income, one is required to take into account all the eligible expenditures, deductions and set-off of allowable losses.
- However, under this scheme, declarant shall not be allowed to claim any deduction of any expenditure in relation to income offered under this scheme. Further, it puts a restriction on "set-off of any loss".

## 2.7 When to make payment of tax, penalty, surcharge and deposit?

- Tax, surcharge and penalty shall be **paid before filing of declaration.**
- Even, the deposit (for a period of 4 years) shall be made before filing of declaration. Declaration has to be accompanied by the proof of deposit, payment of tax, surcharge and penalty. Unlike Income Declaration Scheme, 2016 introduced earlier, this scheme does not provide for payment in installments.

## 2.8 How to apply under this scheme?

A declaration shall be made to the notified Principal Commissioner or the Commissioner. The **detailed procedure and forms shall be prescribed by the Central Government.**

## 2.9 Secrecy of Information

Under this scheme, there is a specific reference to section 138 of the IT Act, in section 199N of the scheme. Thus, under this scheme the information contained in the declaration will be kept confidential.

## 2.10 Immunity is to be granted to the declarant only

Section 199P of the Finance Act, 2016, clarifies 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". Thus, the benefit is restricted to the declarant only and any person other than declarant cannot claim the benefit. For instance, if where an employee makes a declaration of undisclosed salary income under the head 'Salaries', action may be taken against the employer for making default in deducting tax at source (TDS) as employer is not protected.

## 2.11 No Refund of taxes paid under the Scheme

Section 199K of the Finance Act, 2016 states that tax, surcharge and penalty paid under the scheme shall not be refundable.

## 2.12 Extension of Due date for filing the declaration and making payment possible under this scheme

In the context of the VDIS 1997, the Supreme Court in the case of *Hemalatha Gargya v. CIT*—held that given the wording of the Scheme and the fact that the Scheme does not form part of the IT Act at all, it is doubtful whether the Board could have empowered the Commissioner to extend the time fixed for payment of tax and interest by invoking section 119(2)(b) of the IT Act. However, under the present scheme, this matter has been put beyond doubt by importing section 119 into the scheme (section 199N of the scheme).

## 2.13 Will disclosure made by the declarant be subject to examination?

The scheme does not expressly require the Principal Commissioner or the Commissioner to make any enquiry/verification while issuing acknowledgement and certificate of declaration, though under section 199G it says that it shall **be verified in such manner as may be prescribed.**

## 2.14 No Double Taxation

Section 199-I of the scheme makes it clear that in future years, if the assessee claims before the Assessing Officer that he had made certain disclosures under this scheme and then Assessing Officer shall reduce amount of undisclosed income declared under this scheme from the total income of the declarant for any tax year.

## 2.15 Bar on re-opening of settled cases

A declarant under this Scheme shall not be entitled, in respect of undisclosed income 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, 1957, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

## 2.16 Declaration to be void in certain cases

In the following cases, the declaration shall be treated as void:

- Declaration made by misrepresentation or suppression of facts or
- Declaration made without payment of tax , surcharge or penalty or without depositing the amount in the Deposit Scheme,

## 2.17 Declaration not admissible in evidence against declarant

Declaration made under this scheme shall not be admissible in evidence against the declarant for the purpose of any proceeding under any Act, other than the following specified Acts:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974,
- Indian Penal Code,
- Narcotic Drugs and Psychotropic Substances Act, 1985,
- Unlawful Activities (Prevention) Act, 1967,
- Prevention of Corruption Act, 1988,
- Prohibition of *Benami* Property Transactions Act, 1988
- Prevention of Money-Laundering Act, 2002
- Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992
- Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

## 3.0 Taxation Laws (Second Amendment) Bill, 2016 – Amendment to Income Tax Act 1961 to provide for Higher Taxation & Stringent Penal provisions w.e.f. 1 April 2016 (AY 2017-18)

- 3.1 Non declaration of undisclosed income under the Scheme will render such undisclosed income liable to tax at a higher rate and stringent penalty provision, changes have been proposed in section 115BBE, Section 271AAC and section 271AAB.
- 3.2 The tax and penal provisions shall also be applicable in all other cases of unexplained money, credits, investments, expenditures, etc.
- 3.3 Provisions for taxation & penalty of unexplained credit, investment, cash and other assets

EXISTING PROVISIONS	PROPOSED PROVISIONS	
	Applicability	Rates
<p><u>TAX (Section 115BBE)</u></p> <p>Flat rate of tax @30% + surcharge + cess</p> <p>(No expense, deductions, set-off is allowed)</p> <p>Penal provisions contained in section 270A / 271(1)(c)</p>	<p>Applicable when assessee voluntarily offers undisclosed income in return of income and pays taxes before the end of the financial year;</p> <p>or</p> <p>Such income is determined by the Assessing Officer during the assessment proceedings.</p>	<p><u>TAX (Section 115BBE)</u></p> <ul style="list-style-type: none"> <li>– Flat rate @ 60% of income</li> <li>– Surcharge @25% of tax, i.e. 15% of income</li> <li>– <b>Total incidence of tax = 75%*</b></li> </ul> <p><i>*Cess to be considered separately @ 3% (No expense, deductions, set-off is allowed)</i></p>
	<p>If Assessing Officer determines income referred to in section 115BBE, penalty may be levied by him.</p>	<p><u>PENALTY (Section 271AAC)</u></p> <p>If Assessing Officer determines income referred to in section 115BBE, penalty @10% of tax payable in addition to tax (including surcharge) of 75% may be levied.</p>

### 3.4 Penalty for search cases

EXISTING PROVISIONS	PROPOSED PROVISIONS
<u>Penalty (271AAB)</u> (i) 10% of income, if admitted, returned and taxes are paid (ii) 20% of income, if not admitted but returned and taxes are paid (iii) 60% of income in any other case	<u>Penalty (271AAB)</u> (i) 30% of income, if admitted, returned and taxes are paid (ii) 60% of income in any other case

### 4.0 Indicative Illustration of the Tax & Penal Implication

Sr no.	Particulars	For financial year upto FY 2015-16	Under section 115BBE		Under section 115BBE (in Search matters)	
		Under the PMGKY Scheme	If income disclosed & taxes paid by assessee before the end of the financial year	If found by the AO during assessment proceedings	If admitted, returned and taxes are paid by Assessee	In other cases
	<b>Amount of Income (in Rs.)</b>	<b>100000</b>	<b>100000</b>	<b>100000</b>	<b>100000</b>	<b>100000</b>
1)	Tax on above	30000	60000	60000	60000	60000
2)	Surcharge	9900	15000	15000	15000	15000
3)	Cess	0	2250	2250	2250	2250
4)	Penalty	10000	0	10000	30000	60000
5)	Net Tax Outflow	<b>49900</b>	<b>77250</b>	<b>87250</b>	<b>107250</b>	<b>137250</b>
6)	Total Amount in hand	<b>50100</b>	<b>22750</b>	<b>12750</b>	<b>(7250)</b>	<b>(37250)</b>
7)	Amount blocked in Deposit Scheme	25000	0	0	0	0
8)	<b>Net Amount in hand (Current Balance) (Note 1)</b>	<b>25100</b>	<b>22750</b>	<b>12750</b>	<b>(7250)</b>	<b>(37250)</b>
9)	<b>Immunity under other laws</b>	<b>Immunity available*</b>	<b>No Immunity</b>	<b>No Immunity</b>	<b>No Immunity</b>	<b>No Immunity</b>
<b>Note 1: The negative balance reflects actual outflow from out of pocket, in case where penalty is levied by the AO, based on specific facts of the case</b> *Subject to certain exceptions						

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This newsflash is general in nature. In this newsflash, we have summarised the contents of Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' and the Taxation Laws (Second Amendment) Bill, 2016 which was passed in Lok Sabha on 29 November 2016. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

1 December 2016