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**NEWSFLASH – KEY ASPECTS OF TAXATION AND
INVESTMENT REGIME FOR PRADHAN MANTRI GARIB
KALYAN YOJANA, 2016**

1.0 Introduction

- 1.1 Post demonetization of the currency on 8 November, 2016, a scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' ('the Scheme) was introduced by the Taxation Laws (Second Amendment) Act, 2016 which came into force on 15 December 2016.
- 1.2 The Scheme provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 50% of such undisclosed income declared. Besides, the declarant is required to mandatorily deposit 25% of the undisclosed income in Pradhan Mantri Garib Kalyan Deposit Scheme, 2016.
- 1.3 The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016 ('the Rules') have been notified. Further, a separate notification has been issued for Pradhan Mantri Garib Kalyan Deposit Scheme, 2016.

2.0 Key features of the Scheme

2.1 Who can make a declaration

Every person i.e. individual, HUF, company, firm, etc., irrespective of their residential status can make a declaration.

Declaration can be made in respect of **undisclosed income in the form of cash or deposits in an account with bank or post office.**

2.2 Who cannot make a declaration

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

- Undisclosed foreign income and foreign assets chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;
- Person notified under Special Courts (Trial of Offenses 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: 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 a case of a person against whom a search/survey operation has been initiated, to make a declaration under this scheme.

2.3 When to make declaration

The Scheme came into effect on 17 December, 2016 and will be ending on 31st March 2017. Thus, declarant has time till 31st March 2017 to declare his undisclosed income.

2.4 How much to pay to get the immunity

Under the scheme, a declarant shall be required to pay tax @ 30% of the undisclosed income, and penalty @10% of the undisclosed income. Further, a surcharge to be called 'Pradhan Mantri Garib Kalyan Cess' @33% of tax is also to be levied. In addition to tax, surcharge and penalty (totaling to approximately 50%), the declarant shall have to deposit 25% of undisclosed income in a Deposit

2.5 When to make payment for tax, surcharge, penalty and deposit

Payment for tax, penalty, surcharge and deposit shall be made before the filing of a declaration under this Scheme. Proof of such payment and deposit has to be attached with the declaration in Form-1.

2.6 Can undisclosed income in the form of any assets, other than cash / deposit be declared

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

2.7 Whether deduction for expenditure / set off of losses allowed

Usually, under the Income Tax 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 the 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".

2.8 Will declarations made under the Scheme be kept confidential

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.

2.9 Whether immunity to be granted to the declarant only

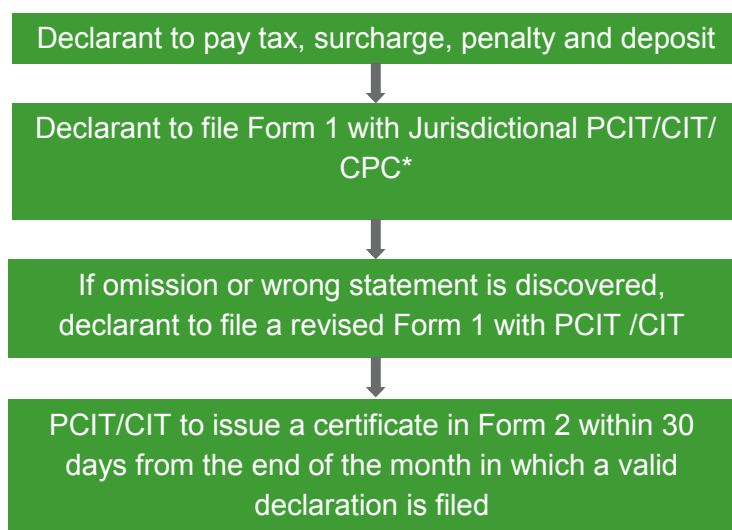
Section 199P of the Finance Act, 2016, clarifies that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on "any person other than the person making the declaration". Thus, the benefit is restricted to the declarant only and any person other than declarant 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 an employer is not protected.

2.10 Whether Refund of taxes paid under the Scheme possible

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

2.11 How to apply under this scheme

The procedure under the scheme is depicted in the following diagram:



*Principal Commissioner of Income-tax (PCIT), Commissioner of Income Tax (CIT), Centralized Processing Centre, Bengaluru (CPC)

2.12 How to file a declaration Form-1?

This Form can be filed with Jurisdictional PCIT /CIT/ Centralized Processing Centre, Bengaluru in any of the following ways:

- (i) by furnishing the return in a paper form;
- (ii) by furnishing the return electronically under digital signature;
- (iii) by transmitting the data in the return electronically under electronic verification code

2.13 Can declarant claim relief / set off by re-opening of settled cases

A declarant 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

2.14 When declaration may become void

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 Pradhan Mantri Garib Kalyan Deposit Scheme

2.15 Under which Acts or laws, declarant to get the immunity

Declarations made under the Scheme shall not be admissible as evidence under any Act (e.g. Central Excise Act, Wealth-tax Act, Companies Act etc.). However, no immunity will be available under the following 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

2.16 Whether old notes of Rs. 500 and Rs. 1000 be utilized to make payment of tax, surcharge, penalty and deposit under this scheme

With the old bank notes of Rs.500 and Rs.1000 denomination, payments towards tax, penalty, cess/surcharge and deposit under the Pradhan Mantri Garib Kalyan Yojana (PMGKY) 2016 is possible upto 30 December 2016. Further, there shall not be any limit on the quantity or value of the specified bank notes that can be tendered for payment and deposit made under this Scheme.

2.17 Can a declaration made under the Scheme be revised

If any person, having furnished a declaration discovers any omission or any wrong statement therein, he may furnish a revised declaration on or before 31.03.2017

2.18 Whether declarant required to report source of his income

No. Declarant is not required to provide the source of income in Declaration Form -1.

2.19 What is the procedure of making deposit under Pradhan Mantri Garib Kalyan Deposit Scheme?

- An application for the deposit under this Scheme shall be made in Form II.
- Deposit shall be 25% of the undisclosed income to be declared.
- Deposit shall be made in a single payment **before** filing declaration
- Deposits shall be in multiples of Rs. 100
- Deposit shall be made in the form of cash or draft or cheque or by electronic transfer and shall be drawn in favour of the authorised bank accepting such deposit.
- A certificate of holding the deposit shall be issued to declarant in Form I
- Deposit shall be held at the credit of the declarant in Bonds Ledger Account maintained with Reserve Bank of India
- Deposit shall not bear any interest and has a lock in period of 4 years.

2.20 What are the implications of non-declaration under this Scheme

Non declaration of undisclosed cash or deposit in accounts under the Scheme will render such undisclosed income liable to tax, surcharge and cess totaling to 77.25% of such income, if declared in the return of income. In case the same is not shown in the return of income a further penalty @10% of tax shall also be levied followed by prosecution. It may be noted that the provisions for levy of penalty for misreporting of income @200% of tax payable under section 270A of the Income-tax Act have not been amended and shall continue to apply with respect to cases falling under the said section. The Taxation Laws (Second Amendment) Act, 2016 has also amended the penalty provisions in respect of search and seizure cases. The existing slab for penalty of 10%, 20% & 60% of income levied under section 271AAB has been rationalised to 30% of income, if the income is admitted and taxes are paid. Otherwise a penalty @60% of income shall be levied.



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This newsflash is general in nature. In this newsflash, we have summarized the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016, Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 and Pradhan Mantri Garib Kalyan Yojana Rules, 2016, issued by the Government of India on 16 December 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.

20 December 2016