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**NEWSFLASH: THIRD SET OF CLARIFICATIONS ON THE
INCOME DECLARATION SCHEME, 2016**

(CBDT Circular no. 25 of 2016 dated 30 June 2016)

Background

The Income Declaration Scheme, 2016 (the Scheme) incorporated as Chapter IX of the Finance Act, 2016 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 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (the IDS Rules) have been notified. In this regard, Circular No. 17 of 2016 dated 20 May 2016 and Circular No. 24 of 2016 dated 27 June, 2016 issued by the Board provided clarifications to 14 and 11 queries respectively. Subsequently, further queries have been received from the public about various provisions of the Scheme. The Board has considered the same and the following clarifications are issued.

Q1 Will the information contained in the declaration be shared with other law enforcement agencies?

A1 No; the information contained in the declaration shall not be shared with any other law enforcement agency. The information will also not be shared within the Income Tax Department for any investigation in respect of a valid declaration.

Q2 Whether immunity will be provided under other economic laws including Service Tax, VAT, Companies Act, SEBI Act & regulations etc.?

A2 The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. Immunity from Benami Transactions (Prohibition) Act is subject to the condition that the property will be transferred to the declarant (being the person who provided the consideration for the property) latest by 30th September, 2017. However, as mentioned in response to Question No.1 above, the information contained in the declaration made under the Scheme will not be shared with any other tax or law enforcement agency.

Q3 Where the value of immovable property determined under Rule 3 of the IDS Rules is lower than the value adopted or assessed/assessable by stamp valuation authority referred in section 50C or section 43CA of the Income-tax Act, whether value of such property is to be declared as per Rule 3 of the IDS Rules, or as per section 50C/43CA?

A3 The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower than the value adopted or assessed / assessable by stamp valuation authority.

Q4 Whether credit for tax deducted, if any, in respect of income declared shall be allowed?

A4 Yes; credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.

Q5 Where a valid declaration is made after making valuation as per the provisions of the Scheme read with IDS Rules and tax, surcharge & penalty as specified in the Scheme have been paid, whether the department will make any enquiry in respect of sources of income, payment of tax, surcharge and penalty?

A5 No.

Q6 What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1?

A6 The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all. In the column meant for nature of undisclosed income one has to write the nomenclature such as 'immovable property', 'moveable property', 'gold', 'jewellery' or 'cash' etc. This will enable the taxpayer to establish the link between the income declared under the scheme and the claim, if any, made in respect of such undisclosed income in the return of income filed subsequently or during any assessment proceedings.

Q7 *In case the value of immovable property is evidenced by registered deed, whether the value as per registered deed or the market value as on 01.06.2016 is to be declared?*

A7 As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1 June, 2016.

Q8 *In case a declaration relating to investment in undisclosed asset is made under the Scheme, whether any investigation will be initiated against the seller in respect of such declaration?*

A8 No.

Q9 *What are the advantages of the Scheme as against declaring the past undisclosed income as current income in the return of income to be filed for Assessment Year 2017-18? How will the Department identify the year in which the undisclosed income was earned?*

A9 In this regard, the following points may be noted:

- ♦ Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.
- ♦ If anyone attempts to disclose past undisclosed income in the current year, he will have to explain the source of income and substantiate the manner of earning the said income. In case of disclosure under the Scheme, there is no need to explain the source of income.
- ♦ Declaration of past undisclosed income in the current year cannot explain assets acquired in the past or provide any immunity in respect of the same.
- ♦ The Income-tax Department is in receipt of large volume of information from various sources such as registrars of property, banks, financial institutions, stock exchanges, tax deductors etc. The Department has launched a comprehensive data-mining and compliance management programme in the form of 'Project Insight' which will generate a large volume of reliable information about financial transactions undertaken by taxpayers and the relevant year in which the transaction was undertaken.

Q10 *In a case the declarant earned undisclosed income of Rs. 90 lakh in previous year 2010-11. Out of the same, he acquired an immovable property in the previous year 2011-12 for Rs.50 lakh, made personal expenditure to the extent of Rs.20 lakh and balance Rs.20 lakh is left with him as cash in hand on 01.06.2016. The fair market value of the immovable property as on 01.06.2016 is Rs.80 lakh. What is the amount to be declared under the Scheme?*

A10 The declarant in this case has to declare the following:

- i) Rs. 80 lakh being fair market value of the immovable property as on 01.06.2016
- ii) Rs. 20 lakh being the cash in hand as on 01.06.2016
- iii) Rs. 20 lakh being the balance of undisclosed income [Rs. 90 lakh – (Rs.50 lakh + Rs. 20 lakh)] which is not represented in the form of investment in any asset.

Thus the total undisclosed income to be declared in this case will be Rs. 1.20 crore.

Q11 *A person invested his undisclosed income in a house property in the previous year 2010-11 which has not been let out. The person also owned another house property from disclosed sources, which has been claimed as self-occupied property for the purposes of computation of income under the head income from house property. In case the person declares the undisclosed house property at its fair market value on 01.06.2016, whether any action will be taken for bringing the annual value of the undisclosed property to tax as income from house property by deeming it to be let property as provided under section 23(4)(b) of the Income-tax Act for the earlier previous years?*

A11 No. However, where the house property was let-out during the relevant period, the actual rent received or receivable will be required to be declared under the Scheme in addition to the fair market value of the house property as on 1 June 2016.

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This newsflash is general in nature. In this newsflash, we have summarised the CBDT circular no. 25 of 2016 dated 30 June 2016 and the Clarification (FAQs) published by Ministry of Finance in relation to Income Declaration Scheme, 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 respective circulars and notifications 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.

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