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## **MANAGING BLACK MONEY THROUGH INCOME DECLARATION SCHEME 2016**

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### **Abstract**

Tax fraud and tax evasion represents a huge problem and affects each and every citizen. The problem knows no borders and can only be solved effectively with concerted, joint effort or through self regulation. One of the biggest contributing factor to the tax gap is the underreporting of income. The Budget 2016-17 has proposed to provide a limited period 'Tax Compliance Window' for domestic taxpayers to disclose undeclared income of previous years. This provision has now been incorporated in the latest Finance Bill 2016 and is referred to as The Income Declaration Scheme 2016 (TIDS-2016). This scheme provides an opportunity to all persons who have not declared income correctly in earlier years (or) who have not paid full taxes in the past to come forward and declare such undisclosed income(s) or assets. This paper focuses on various aspects of TIDS-2016.

### **Key words:**

Tax, Tax fraud and tax evasion, black money, The Income Declaration Scheme

## **Introduction**

Tax fraud and tax evasion limit the capacity of economy to raise money and implement its economic and social policies. That could mean cuts in public services and a slower economy. Moreover, tax fraud and tax evasion are fundamentally unfair. Why should you pay more tax or sacrifice your public services because someone isn't paying their fair share? Only about 1 percent of India's population paid tax on their earnings in the year 2013, according to the country's income tax data, published for the first time in 16 years. The report further states that a total of 28.7 million individuals filed income tax returns, of which 16.2 million did not pay any tax, leaving only about 12.5 million tax-paying individuals, which is just about 1 percent of the 1.23 billion population of India in the year 2013. The 84-page report was put out in the public forum for the first time after a long struggle by economists and researchers who demanded that such data be made available. In a press release, a senior official from India's income tax department said the objective of publishing the data is to encourage wider use and analysis by various stakeholders including economists, students, researchers and academics for purposes of tax policy formulation and revenue forecasting. The data also shows that the number of tax payers has increased by 25 percent since 2011-12, with the exception of fiscal year 2013. The year 2014-15 saw a rise to 50 million tax payers, up from 40 million three years ago. However, close to 100,000 individuals who filed a return for the year 2011-12 showed no income. The report brings to light low levels of tax collection and a massive amount of income inequality in the country, showing the rich aren't paying enough taxes. (<http://www.cnbc.com/2016/05/03/guess-how-many-people-pay-taxes-in-india.html>)

## **Measures to control tax evasion fraud**

India introduced electronic filing of tax returns in 2006, and the e-governance initiative has taken off rather well. With a decade of e-filing, the tax administration is improving the assessment / audit / verification of the tax returns with data obtained from elsewhere. Almost simultaneously, the filing of tax withholding returns has been made electronic. The first check is the cross verification of the income data provided by the tax payers in their returns with that in the tax withholding returns by the withholders. Electronic filing of tax returns is mandatory for all corporate tax payers and for others if they are earning income above Rs. 500,000. While e filing, they have an option to download all tax credits appearing in their name (using Permanent Account Number as the identifier), based on tax withholding returns filed by persons who have made any payments to them

## **The Income Declaration Scheme 2016**

Capability of the department to detect tax evasion has improved because of enhanced access to information and availability of technology. With the objective of "Reducing litigation and providing certainty in taxation", the Central Government has launched a Scheme called Income Declaration Scheme, 2016, whereby one time opportunity has been given to all the persons, who have not complied with the provision of the Income-tax Act whether resident or non-resident so that they would come forward and take advantage of the scheme and buy peace with the Government.

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the latest Finance Bill 2016 and is referred to as The Income Declaration Scheme 2016 (TIDS-2016). This scheme provided an opportunity to all persons who have not declared income correctly in earlier years (or) who have not paid full taxes in the past to come forward and declare such undisclosed income(s) or assets. The scheme was applicable to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or previous years.

However, foreign assets or income to which the Black Money Act 2015 applies are not eligible for declaration under this scheme. If one has failed to furnish Income Tax Return of previous years under section 139 of the Income-tax Act, such income can now be declared under this new scheme. (In case if you have received any notices under section 142(1) or 143(2) or 148 or 153A or 153C, your case may not be eligible for this scheme).

### **Salient features of Scheme**

- Scheme to apply to undisclosed income in form of assets or otherwise pertaining to FY 2015-16 or earlier years
- Fair Market value of the asset as on 01.06.2016 deemed to be the undisclosed income.
- Tax, surcharge & penalty are payable at 45% of the Income declared under the scheme.

### **Immunity**

- Assets declared exempt from Wealth Tax
- No scrutiny/enquiry under Income-Tax Act/Wealth-tax Act in respect of such declarations.
- Immunity from prosecution under Income-Tax Act/Wealth tax Act
- Immunity from Benami Transactions (Prohibition) Act, 1988 subject to certain conditions.

### **Mode of Making Declaration**

- To be filed online or
- To jurisdictional PR. Commissioner/Commissioner of Income-tax

### **Signing Authority for Declaration**

<b>Category of Declarant</b>	<b>Signing Authority for Declaration</b>
Individual	a) If the declarant is present in India – Self;
	b) If the declarant is absent from India – Self or Authorised Representative
	c) If the declarant is mentally incapacitated – By his guardian or any other person competent to act on his behalf.
H.U.F.	a) By Karta of HUF;
	b) If the Karta is absent from India or Mentally Incapacitated – By any adult member of the HUF
Firm	a) By Managing Partner of the Firm
	b) If the Managing Partner is absent from India or Mentally Incapacitated – By any

	other Partner of the Firm
Company	a) By the Managing Director of the Company;
	b) In case if the MD is unable to sign for any reason then by any other director of the Company.
Association	a) By Member of the association; or
	b) Prinipal Officer
Other Person	a) By that Person; or
	b) Other person competent to act on his behalf.

### Black Money Act v. IDS, 2016

Declaration under Black Money Act v. IDS, 2016 The Black Money Act is a declaration scheme under which all resident taxpayers can declare the undisclosed foreign income and assets. On such undisclosed income and assets the taxpayer was required to pay up to 60% as both tax and penalty under that scheme. However, the officer designated had received 6384 declarations only amounting to Rs 3,770 crores of undisclosed foreign income and assets by the end of compliance window (i.e., 30th September, 2015). Hence, one can conclude that this declaration Scheme was not successful. Now a new scheme has been designed to declare any 'undisclosed income' vide the Finance Bill, 2016 for persons who have not paid full taxes in the past and are required to pay tax, surcharge and penalty totaling to 45% of such undisclosed income declared. Though the declaration scheme under Black Money Act is closed, for academic purpose, let us compare and find out which of these schemes is beneficial.

### Important features of the scheme

The Finance Minister Mr. Arun Jaitley assured in his budget speech that there will be no scrutiny or enquiry regarding income declared under this Scheme under the Income-tax Act or the Wealth-tax Act. This scheme puts the entire onus on the declarant to ensure that he/she doesn't come under the prohibited category; for example, if the assessee declared a particular income of an A.Y. the department may enquire any Income other than a particular declared income. Same like BM act and VDIS scheme, this scheme states that the information contained in the declaration shall not be shared within the Income-tax department for any investigation in respect of a valid declaration or any other tax or law enforcement agency. The Scheme provides most attractive feature - immunity from the Benami Transaction (Prohibition) Act, 1988. This is subject to the asset existing in the name of a benamidar is transferred to the declarant (being the person who provides the consideration for such assets) latest by 30 September 2017. The Capital gains tax would not be levied on the Benamidar.

### Effect of scheme

Following continuous efforts of the Income Tax department, a real estate developer from Varachha declared Rs 20 crore under the Income Declaration Scheme (IDS). The total disclosure under the IDS scheme has touched Rs 336 crore. Prime Minister Narendra Modi, in the 21st edition of his 'Mann Ki Baat', asked people to declare their undisclosed income by September 30, making it clear that this is the last chance to avoid problems that will follow after the window of

opportunity closes. "For those having undisclosed income, the government has provided a special chance to declare it by September 30," Modi said in his monthly radio programme 'Mann Ki Baat'. Out of Rs1,100 crore disclosed under the IDS, the realtors and textile traders have disclosed Rs 90 crore as tax earned through trade in penny stocks. Penny stocks are shares with value not exceeding a few rupees.

## **Conclusion**

The scheme gives an opportunity to tax evaders to disclose their unaccounted income or assets, and come out clean by paying the applicable tax, cess and penalty totaling 45% of the undisclosed income. This will help them regularise their wealth. But IDS is also for those who may have unknowingly not paid tax on certain income or assets bought from the income. For instance, one could have missed paying capital gains tax on the money received from sale of an inherited property. The biggest advantage of the scheme is that once an assessee declares income under this, she will get immunity from penalty or prosecution proceedings under the Income-tax Act, 1961, and the Wealth-tax Act, 1957, related to such income. 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.

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