

Indian government proposes to introduce new income disclosure scheme post-demonetisation by paying 50% of income disclosed thereunder, and amending existing provisions to eliminate loopholes

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In brief

On 28 November 2016, the Finance Minister of India introduced the Taxation Laws (Second Amendment) Bill 2016 in the Lower House of Parliament, and proposed another Income Disclosure Scheme (the Pradhan Mantri Garib Kalyan Yojna 2016) to declare undisclosed income in the form of cash or deposit in an account maintained by a person with a specified entity. Under the proposed scheme, a person can clear up past transgressions by paying a total of 49.9% of the income disclosed under the Scheme (30% tax, 33% of the tax as Pradhan Mantri Garib Kalyan Cess, and 10% of the income disclosed as penalty). Further, at least 25% of the undisclosed income has to be deposited in a specified deposit scheme (the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016) with a lock-in period of 4 years, bearing no interest.

The Government has also proposed amendments in the existing provisions of the Income-tax act, 1961 (the Act) related to tax on unexplained cash credits, investments, money, expenditure, etc., and introduced higher tax rates and penalties to deal with such cases. If a person does not avail the proposed disclosure window, he/ she will be governed by the amended provisions and will end up by paying 75% of any income found to be undisclosed (60% tax plus 25% surcharge on tax). Further, a penalty at 10% of tax payable shall also be levied if the person fails to report such undisclosed income in the income tax return, or pay the tax on or before the end of the previous year.

In detail

Pradhan Mantri Garib Kalyan Yojna 2016 (the scheme)

The salient features of the proposed scheme are summarised below:

- The scheme shall come into force with effect from a date to be notified by the Government.

A person can make a declaration in respect of any income in the form of cash or deposit in an account maintained with a specified entity (i.e., Reserve Bank of India, any banking company or co-operative bank, post office or other entity notified by the central government) for any assessment year (AY) prior to AY 2017-18.

- A total of 49.9% of the undisclosed income has to be paid before filing the declaration under the scheme, comprising of 30% tax, 33% of tax as surcharge, and 10% of income disclosed as penalty.
- Declarant also has to deposit at least 25% of the undisclosed income in the Pradhan Mantri Garib

- Kalyan Deposit Scheme, 2016, bearing no interest and with a lock-in period of 4 years
- Any undisclosed income declared under the scheme shall not be included in the total income for any AY.
- The declarant will not be entitled to re-open any assessment or reassessment made under the Act, or under the Wealth Tax Act, 1957, in respect of the declaration, or claim any set-off or relief in any appeal or other proceeding in relation to any such assessment or reassessment.
- The declaration shall be treated as void if the payment is made by misrepresentations or suppression of facts, or if the required tax, cess and penalty is not paid

- No proceeding shall be admissible in respect of the declaration as per the proposed scheme under any law, subject to exceptions
- The scheme is not available in respect of declarations in the following cases:
 1. Order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;
 2. Prosecution proceedings under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, and

- the Prevention of Money-Laundering Act, 2002.
- 3. A person notified under section 3 of the Special Court Act, 1992.
- 4. Undisclosed foreign income or asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

Proposed amendments in the existing provisions of the Act.

In case the taxpayer does not avail the last opportunity provided under the proposed Scheme, the other related provisions of the Act will be applicable, subject to the proposed amendments, as tabulated below:

Particulars	Existing provisions	Proposed provisions
Amendment in section 115BBE (Tax on income in respect of unexplained cash credit/ income, investment, expenditure etc.)	Tax @ 30 % payable	Tax @ 60 % plus surcharge @ 25 % (effective tax rate will be 75 %)
Insertion of new section 271AAC (Penalty on unexplained cash credit/ investment/money/ expenses etc. as provided under section 115BBE)	Not applicable	Penalty @ 10 % levied where tax authorities determine income under section 115BBE. However no such penalty shall be levied in case income has been reported in the Return of Income & accepted by the tax authorities and required tax has been paid before end of relevant previous year.
Amendment in section 271AAB related to Search & Seizure cases # (increase in the rate of penalty)	<ol style="list-style-type: none"> 1. 10% of the undisclosed income if the income is admitted, required tax has been paid, and return of income has been filed. 2. 20% of the undisclosed income if the income is not admitted but required tax has been paid and return of income has been filed. 3. 30% to 90% of the undisclosed income in all other cases. 	<ol style="list-style-type: none"> 1. 30% of the undisclosed income, if the income is admitted, required tax has been paid, and return of income has been filed. 2. 60% for all other cases.

to be applicable once the proposed amendment gets Presidential assent.

Note: The proposed amendments shall be effective from 01 April, 2017 (i.e. AY 2017-18)

The takeaways

The proposed scheme provides yet another opportunity to those who missed using the earlier window, to come clean by paying tax, cess and penalty of 49.9% and keeping 25% of the undisclosed income in the specified interest-free deposit scheme. Earlier, the government came out with the Income

Declaration Scheme, 2016 (already closed on Sep 30, 2016) wherein those having domestic undisclosed income were provided an opportunity to come clean by paying 45% of tax and penalty on such undisclosed income.

Simultaneously, the existing provisions relating to levy of tax and penalty have been amended,

whereby such undisclosed income would get taxed at a significant higher rate of 75 % to deter the accumulation of black money.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greems Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10,
Banjara Hills,
Hyderabad – 500034
Telangana
+91-40 44246000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091
West Bengal
+91-033 2357 9101/4400 1111

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

For more information

Contact us at
pwctr.knowledgemanagement@in.pwc.com

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