

# Pradhan Mantri Garib Kalyan Yojana, 2016 and FAQs

February 16, 2017

## In brief

The Taxation Laws (Second Amendment) Act, 2016 and the Pradhan Mantri Garib Kalyan Deposit (PMGKD) Scheme, 2016 (the scheme), earlier proposed on 29 November, 2016, became effective on 17 December, 2016 and will be in force until 31 March, 2017. This scheme is another opportunity given by Government of India (GOI) to come clean by declaring any undisclosed income in the form of cash or deposit in an account maintained with specified entities by a person. (Refer our alert on 29 November, 2016 for background of the scheme proposed by GOI).

Based on the scheme, any person can declare undisclosed income by paying tax at the rate of 49.9% (i.e., tax at 30% of income, surcharge at 33% of tax, penalty at 10% of income) of the declared undisclosed income. Also, it is mandatory to make a deposit of at least 25% of the declared undisclosed income, yielding no interest, with a lock-in period of four years. Due to lack of clarity in some provisions, the Central Board of Direct Taxes (*vide* Circular No. 2 of 2017 dated 18 January, 2017) has answered queries in the form of 12 Frequently Asked Questions (FAQs).

## In detail

### Salient features

A quick recap of the salient features of the scheme are provided below:

- Any person willing to declare their undisclosed income in the form of cash or deposits in the account with bank or post office or specified entity can opt for this scheme.
- On the declared undisclosed income, tax at 30% of income, surcharge at 33% of tax, penalty at 10% of income is payable by such person, totalling to 49.9% of the income declared.
- In addition to 49.9% tax liability, at least 25% of the declared income has to be mandatorily deposited in the PMGKD Scheme, 2016, where the deposits will be

held by the declarant in the form of Bonds Ledger Account maintained with Reserve Bank of India.

- This deposit scheme has a lock-in period of four years, and the scheme shall not pay interest on the amount deposited.
- The taxes, surcharge and penalty need to be paid before filing the declaration in Form-1 under the scheme, and proof of payment has to accompany the declaration.
- The amount of undisclosed income declared under this scheme shall not be included in the total income of the declarant under the Income-tax Act, 1961 (the Act) for any assessment year (AY).
- The declarations made under the scheme shall not be admissible as evidence under

any Act (e.g., Companies Act, Wealth-tax Act, Central Excise Act, etc.). However, no immunity will be available under Criminal Acts mentioned in section 199-O of the scheme.

### Summary of FAQs notified on 18 January, 2017

1. The scheme shall apply to the undisclosed income deposited in accounts maintained in a bank or post office (PO) like savings account, current account, recurring deposit account, fixed deposit account, public provident fund account, senior citizen saving scheme account, monthly income scheme account, and Jan Dhan Yojana account as per section 199C of the Scheme. Only Banks and POs are specified entities as of now.

2. The scheme is not available for declaration of income which is represented in the form of any asset other than cash, and deposits like jewellery, stock or immovable property.
3. A declaration under this scheme can be filed in respect of inter-bank transfers for deposits made in an account maintained with a specified entity by any mode such as cash, cheque, RTGS, NEFT or any other electronic transfer system.
4. This scheme can be availed by any person to whom below notices under any of the following provisions of the Act have been issued for any AY.
  - 142(1) – Inquiry before assessment;
  - 143(2) – Assessment;
  - 148 – Issue of notice where income has escaped assessment;
  - 153A – Assessment in case of search or requisition;
  - 153C – Assessment of income of any other person.
5. The scheme can be availed by any person against whom a search/ survey operation has been initiated, and cash seized during search/ survey can also be declared.
6. Any advance taxes paid, taxes withheld or taxes collected at source (TCS) on the declared undisclosed income under this scheme shall not be given credit against the taxes to be paid at the rate of 49.9%.
7. The scheme shall not apply to undisclosed income in the form of deposits in foreign bank account, as that is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
8. The scheme can be availed on the deposits made in bank accounts prior to the financial year (FY) 2016-17 also.
9. The scheme can be availed on cash deposits made in an account during the period 01 April, 2016 to 15 December, 2016 (i.e., prior to effective date of this scheme). The same shall attract tax at the rate of 49.9% on the declared undisclosed income. Also, amended provisions of section 115BBE (i.e., tax at the rate of 77.25% on income in respect of unexplained cash credit/ income, investment, expenditure, etc.) of the Act shall apply if not declared under this scheme before 31 March, 2017.
10. The scheme can also be availed for the undisclosed income deposited or repaid against an overdraft account/ cash credit account/ any loan account maintained with a bank or any specified entity.
11. Cash seized by the Department during search/ seizure operation and deposited in the Public Deposit Account may be allowed to be adjusted for making payment of tax at the rate of 49.9% under the scheme, on the request of a person from whom the cash is seized. However, the amount shall not be allowed to be adjusted for making at least 25% deposit under PMGKD scheme.
12. Any person (i.e., buyer) can declare an amount under this scheme which is received back from the seller earlier paid for procurement of goods (other than immovable property) or services. However, no penalty under section 271D (i.e., penalty for failure to comply with the provisions of section 299SS) or 271E (i.e., penalty for failure to comply with the provisions of section 269T) of the Act shall be attracted on such transaction in case of the seller.

### ***The takeaways***

The FAQs have said that only Banks and POs are considered as ‘specified entity’ as of now. This scheme can be availed for undisclosed cash deposits maintained in any account with a specified entity made during FY 2016-17 or earlier. Tax withheld, TCS and advance tax paid on the declared undisclosed income shall not be given credit against taxes payable under this scheme. In case the scheme is not availed to declare undisclosed income, then such person shall be liable to pay tax, surcharge, cess totalling to 77.25% of the income. In addition, penalty at 10% of tax shall be levied, followed by prosecution. Also, any person can avail this scheme where a notice is issued under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Act for any AY. The cash seized by the Department during search/ seizure operation shall not be allowed to be adjusted for making at least 25% deposit under PMGKD scheme.

In order to curb the parallel economy, the GOI began by giving an option under the Income Declaration Scheme, which got over in September 2016, followed by de-monetisation. This probably could be the final opportunity to come clean for those who are still holding on to black money in the form of cash and deposits.

### ***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

### Hyderabad

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

### Gurgaon

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

### Bengaluru

4th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bengaluru – 560 008  
Karnataka  
+91-80 4079 7000

### Kolkata

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

### Pune

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

### Chennai

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

### Mumbai

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

### For more information

Contact us at  
[pwctr.knowledgemanagement@in.pwc.com](mailto:pwctr.knowledgemanagement@in.pwc.com)

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