

INCOME DECLARATION SCHEME 2016

NANUBHAI DESAI & CO.



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INCOME DECLARATION SCHEME 2016

The Income Declaration Scheme, 2016 (the Scheme) has been introduced as Chapter IX of the Finance Act, 2016. As per Circular No. 16/2016, the President gave consent to the scheme on 14-5-2016. The scheme comes into effect from 1-6-2016 and the declaration can be made on or before 30-9-2016 (as per Notification No. 32/2016 dated 19/05/2016). The scheme comprises sections 181 to 199 of Finance Act, 2016. A minimum amount of 25% of the tax, surcharge and penalty aggregating 45% of the undisclosed income needs to be paid by 30th November, 2016. It provides an opportunity to persons who have not paid their full taxes or have not filed their tax returns in the past to come clean by declaring their undisclosed incomes. Where any disclosure is made under the Scheme and applicable tax and penalty are paid, no scrutiny or inquiry shall be undertaken in respect of such declarations. Further, declarants will be provided immunity from penalty/ prosecution proceedings under the Income-tax Act, 1961 (the Act) or/ and the Wealth-tax Act, 1957 (the Wealth-tax Act).

SCOPE OF THE SCHEME

The declaration under the Scheme can be made in respect of any undisclosed income or asset in the form of investment in India which was acquired from income chargeable to tax under the Income-tax Act, 1961 (The Act) for any assessment year prior to the A.Y. 2017-18 for which the declarant:-

- i) Failed to furnish a return under section 139 of the Act, or
- ii) Failed to disclose such income in a return furnished before the date of commencement of the Scheme, or
- iii) Such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Where income chargeable to tax is declared in the form of an investment in any asset, the fair market value of such asset as on 1st June, 2016, and not its cost, shall be deemed to be the undisclosed income. The fair market value of different assets is to be computed in accordance with the procedure laid down in Rule 3 of the Income Declaration Scheme Rules – 2016, also involving valuation by registered valuers. The Scheme is also applicable to a non-resident where his income liable to tax under the Indian income tax law has escaped assessment. It can be made only by a non-filer, a stop filer or an existing taxpayer for the assessment year(s) for which no assessment or reassessment proceedings are pending.

No declaration can be made in respect of any undisclosed income chargeable to tax under the Act for which:-

- A notice under sections 142, 143(2), 148, 153A or 153C of the Act has been issued and served upon the person on or before 31 May 2016 in respect of such assessment year for which the proceeding is pending before the tax officer
- A search has been conducted under section 132 or a requisition has been made under section 132A or a survey has been carried out under section 133A in a previous year, and the time for issuance of a notice under section 143 (2), section 153A or section 153C for the relevant assessment year has not expired. However, in case the assessment is completed but certain income was neither disclosed nor assessed then such assessed income can be disclosed under the Scheme.
- Cases covered under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.
- Proceeding for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Corruption Act are pending
- A person is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act or a person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, subject to the conditions specified in the Scheme.

RATE OF TAX, SURCHARGE AND PENALTY

Tax	30 percent of the value of undisclosed income
Surcharge i.e. Krishi Kalyan Cess	25% of Tax = 7.5% of Undisclosed Income [184(2)]
Penalty	25% of Tax = 7.5% of Undisclosed Income [185]
Total	45% of Undisclosed Income

This special rate of tax, surcharge and penalty specified in the Scheme will override any rate or rates specified under the provisions of the Income tax Act or the annual Finance Acts.

TIME LIMITS FOR DECLARATION AND MAKING PAYMENT

- The declaration is to be filed by the declarant up to 30 September 2016 with the jurisdictional PCIT/ CIT in paper form or through online in the e-filing website of the Income tax department using the digital signature of the declarant or through electronic verification code.
- The Central Government has further notified 30th September, 2016 as the last date for making a declaration under the Scheme.
- The payment schedule is as follows:

Tax, Surcharge and Penalty	Payment Date
Minimum amount of 25%	30th November, 2016
Further amount of 25%	31st March, 2017
Balance amount	30th September, 2017

- Upon receipt of declaration from the declarant, the PCIT/ CIT shall issue the acknowledgment in Form No - 2 to the declarant within 15 days from the end of the month in which the declaration has been made.
- Proof of payment of tax (including Krishi Kalyan Cess) and penalty shall be furnished by the declarant to such PCIT/ CIT in Form No - 3.
- The PCIT/ CIT shall grant a certificate in Form No - 4 to the declarant within 15 days of the submission of Form No - 3.
- Forms can be obtained from below link:
http://incometaxindia.gov.in/Documents/notification33_2016.pdf

FORM FOR DECLARATION AND PROCEDURE

- Rule 4 of The Income Declaration Scheme Rules, 2016, provides that a declaration u/s. 183 of FA, 2016 is required to be made in Form 1.
- The table below mentions the persons who are authorized to sign the said form:

SR No	Status of the declarant	Declaration to be signed by
1	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2	HUF	Karta; where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director
4	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5	Any other Association	Any member of the association or the principal officer
6	Any other Person	That person or by some other person competent to act on his behalf.

- The declaration may be filed online on the e-filing website of the Income tax Department using the digital signature of the declarant or through electronic verification code or in paper form before the jurisdictional Principal CIT/CIT.
- The Pr Commissioner/ Commissioner will enquire whether any proceedings u/s 142(1) /143(2)/ /148/153A/153C is pending for the assessment year for which declaration is filed. Apart from this there will be no enquiry conducted at the time of declaration.
- Also as per provision of sec.193 of FA, 2016, declaration made by misrepresentation or suppression of facts shall be void and treated as never been filed. This provision suggests that there could be inquiries made in respect of the declaration.
- Within 15 days from the end of the month of filing declaration in Form 1, the Pr. Commissioner/ Commissioner shall issue acknowledgement in Form 2 to the declarant.

- The declaration made in Form 1 can be filed without payment of tax, surcharge and penalty as per the sub-rule (4) to Rule 4 of The Income Declaration Scheme, 2016. Once the declaration filed is acknowledged in Form 2, the declarant can thereafter make payment of tax, surcharge and penalty, which payment can be made till 30-11-2016.
- Once the payment is made, the declarant has to submit the proof of payment to Pr. Commissioner / Commissioner in Form 3.
- Within 15 days of submission of proof of payment of tax, surcharge and penalty, Pr. Commissioner/ Commissioner shall grant certificate in Form 4 to the declarant.

CIRCUMSTANCES WHERE DECLARATION SHALL BE INVALID

- If the declarant fails to pay the entire amount of tax, surcharge and penalty, within the specified date, i.e., 30/11/2016
- Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income tax Act, including penalties and prosecution, shall become applicable.

Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

BENEFITS OF A VALID DECLARATION

- The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income tax Act for any assessment year;
- The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income tax Act and the Wealth Tax Act;
- Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30th September, 2017;
- The value of asset declared in the declaration shall not be chargeable to Wealth tax for any assessment year or years.

- Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim reassessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

INFORMATION REQUIRED TO BE GIVEN IN FORM 1 IF UNDISCLOSED INCOME IS IN FORM OF INVESTMENT IN ASSETS

Sr. No.	Nature of Asset	Information to be provided in Form 1
1	Immovable Property	Nature (Land/Building), Address, name in which held, Date of Acquisition, Total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be provided
2	Jewellery	a) Purity, Weight, Value of Gold b) Carat, Cut, Color, Clarity, Value of Diamond (of 1 carat or more) c) Value of Diamond (Less than 1 carat) and other precious stones d) Value of other precious metals to be provided
3	Artistic work	Nature, Name under which held, Date of Acquisition, Total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be provided
4	Quoted Shares & Securities	Name of Issuer, Number of Shares, Type of Security, Recognized Stock Exchange where quoted, Name under which held, Date of Acquisition, Total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be provided
5	Unquoted Equity Shares	Name of Issuer, Number of Shares, Type of Security, Name under which held, Date of Acquisition, Total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be Provided
6	Unquoted Shares other than Equity Shares	Name of Issuer, Number of Shares, Type of Security, Name under which held, Date of Acquisition, Total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be provided
7	Any other asset	Description of Asset, Name under which held, Date of Acquisition, total Acquisition Cost, Value as per Regd. Valuer on 1-6-2016 along with report and FMV as per Rule 3 to be provided

DETERMINATION OF FAIR MARKET VALUE (FMV) FOR THE PURPOSE OF DECLARATION

Rule 3 of The Income Declaration Scheme Rules, 2016 provides for the manner of computing the FMV of assets declared under the Scheme. The same is as under-

Sr. No.	Nature of Asset	Method of computing FMV
1	Value of Bullion, Jewellery or Precious Stone	Higher of i) Cost of Acquisition and ii) The price such bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market as on the 1st day of June, 2016, on the basis of the valuation report obtained by the declarant from a registered valuer
2	Valuation of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred to an artistic work)	Higher of i) Cost of Acquisition and ii) The price such artistic work shall ordinarily fetch if sold in the open market as on the 1st day of June, 2016, on the basis of the valuation report obtained by the declarant from a registered valuer
3	FMV of an immovable Property	Higher of i) Cost of Acquisition and ii) The price such property shall ordinarily fetch if sold open market as on the 1st day of June, 2016, on the basis of the valuation report obtained by the declarant from a registered valuer.
4	Quoted Shares and Securities	Higher of i) Cost of Acquisition and ii) The price determined by taking If share is traded on 1-6-2016, Avg of Lowest and Highest price on 1-6-2016 on recognized stock exchange (RSE) If share is not traded on 1-6-2016, Avg of Lowest and Highest price on date immediately preceding 1-6-2016, when shares are traded on RSE
5	Unquoted Equity Shares	Net Worth x Paid up Value of Equity Share capital Total amount of paid up equity share capital as shown in the balance-sheet. Net Worth = Value of [Asset – Liabilities], wherein Assets = [FMV of Bullion, Jewellery, Precious Stone + FMV of Artistic Work + FMV of Shares & Securities + FMV of Immoveable Property] determined as per Rule 3 + Book Value of Other Asset

6	Unquoted Shares and Securities other than Equity Shares	Higher of i) Cost of Acquisition and ii) The price that the share or security shall ordinarily fetch if sold in the open market on the 1st day of June, 2016, on the basis of the valuation report obtained by the declarant from a registered valuer
7	Value of other Assets	Higher of i) Cost of Acquisition or the amount invested and ii) The price the asset would fetch if sold in the open market as on the 1st day of June, 2016,

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- Review the relevant information and documents and undertake compilation of necessary information and documents for the purposes of making the declaration.
- We could highlight the applicability of the relevant provisions of Income Disclosure Scheme 2016 as well as provisions of Chapter IX.
- We can suggest on the course of action that you should follow for necessary compliance of the provisions of Income Disclosure Scheme 2016.
- We can advise and assist on appropriate supporting documents that should be secured by the Client/your Group/you.
- We can assist in preparing and finalizing, forwarding/filing the necessary form of declaration.
- We can also advise on the necessity of filing revised form of declaration.
- We can advise and assist in making payment of tax/penalty as prescribed under Chapter IX of Income Disclosure Scheme 2016.
- We can assist in securing necessary confirmation from the tax office in pursuant to the declaration made.
- We carry out quality assurance procedures on all work performed by our staff and partners.