

CHAPTER IX of FINANCE BILL 2016.

THE INCOME DECLARATION SCHEME, 2016

- A. **Applicability:** This scheme shall come into force on the 1st day of June, 2016. [Sec. 178]
- B. **Definitions.[Sec. 179]**
1. "Declarant" means a person making the declaration under sub-section (1) of section 180,
 2. "Income-tax Act" means the Income-tax Act, 1961
- [Note: All other words and expressions will be as defined in the Income-tax Act.]
- C. **Person Eligible for this Scheme [Sec. 180]:**
1. Any person as defined u/s 2(31) of the Income Tax Act.
 2. The Eligible person may make declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year upto AY 2016-17
- D. **Conditions for making declaration [Sec. 180]:**
1. for which he has failed to furnish a return under section 139 of the Income-tax Act,
 2. which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme,
 3. which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.
- E. **Authority to whom declaration should be made [Sec. 183]:** Principal Commissioner or the Commissioner.
- F. **Form of Declaration:** It shall be in the prescribed form and in the prescribed manner.
- G. **Persons not eligible to make declaration [Sec. 193]:**
- (a) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: Provided that—
 - (i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board, or
 - (ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act, or
 - (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act, or
 - (iv) such order of detention has not been set aside by a court of competent jurisdiction,
 - (b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988,

- (c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992,
- (d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015,
- (e) in relation to any undisclosed income chargeable to tax under the Income-tax Act for any assessment year upto 2016-17 for which –
 - (i) a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer, or
 - (ii) a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under sub-section (2) of section 143 for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired, or
 - (iii) Any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.

H. Value of Undisclosed Income Kept in the form of any Asset [Sec. 180]:

1. The income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income.
2. The fair market value of any asset shall be determined in such manner, as may be prescribed.
3. No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration is made.

I. Computation of Tax Payable –

Description	Value
30% of Declared Income [Sec. 181(1)]	XXX
Add: Surcharge (Krishi Kalyan Cess) 25% of the above (7.5% of Declared Income) [Sec. 181(2)]	XXX
Total Tax	XXX
Add: Penalty 25% of above Tax [Sec. 182] (7.5% of Declared Income)	XXX
Total Sum Payable	XXX

J. Signatories for Declaration [Sec. 183]:

Declarant	To be signed by
Individual	a. by the individual himself, b. where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf, c. where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf,
HUF	a. by the <i>Karta</i> , b. where the <i>Karta</i> is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family,
Company	a. by the managing director, or b. where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof,
Firm	a. by the managing partner thereof, or b. where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor,
Any Other Association	a. by any member of the association or b. the principal officer thereof
Any Other Person	a. by that person or by some other person competent to act on his behalf.

- K. **More than One Declaration [Sec. 183(3)]:** Any person, who has made a declaration u/s 180 (I) in respect of his income or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration. If any such other declaration was subsequently made, shall be treated as void.
- L. **Declaration Treated as Void [Sec. 190]:** Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Scheme.
- M. **Time for payment of tax, Surcharge & Penalty [Sec. 184]:**
1. The tax, Surcharge and Penalty shall be on or before a date to be notified by the Central Government in the Official Gazette.
 2. The proof of payment of tax, surcharge and penalty shall be filed with the Principal Commissioner or the Commissioner
 3. If the declarant fails to pay the tax, surcharge and penalty, it shall be deemed never to have been made under this Scheme.
 4. Any amount of tax, and paid under section 181 or penalty paid shall not be refundable. [Sec. 188]
 5. If any declaration has been made, but no tax, surcharge and penalty referred to in section 181 and section 182 has been paid within the time specified under section 184, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made. [Sec. 194(b)]
- N. **Undisclosed income declared not to be included in Total Income [Sec. 185]:**
- The amount of undisclosed income declared shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, if the declarant makes the payment of tax and surcharge and Penalty.
- O. **No Right to Re-open Completed Assessment or Reassessment [Sec. 186]:**
- A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.
- P. **Immunity from Wealth Tax [Sec. 191]**
- Where the undisclosed income is represented by cash (including bank deposits), bullion, investment in shares or any other assets –
- (a) in respect of which the declarant has failed to furnish Wealth Tax return upto Assessment year 2015-16 or
 - (b) which have not been shown in the return of net wealth furnished by him for the said assessment year or years, or
 - (c) which have been understated in value in the return of net wealth furnished by him for the said assessment year or years, then, the immunity / Exemptions are granted as under –
 - (i) wealth-tax shall not be payable by the declarant in respect of the assets referred to in clause (a) or clause (b) and such assets shall not be included in his net wealth for the said assessment year or years,
 - (ii) the amount by which the value of the assets referred to in clause (c) has been understated in the return of net wealth for the said assessment year or years, to the extent such amount does not exceed the voluntarily disclosed income utilised for acquiring such assets, shall not be taken into account in computing the net wealth of the declarant for the said assessment year or years.

Notes:

1. For declaration made by a firm, the assets declared by the Firm shall not be taken into account in computing the net wealth of any partner of the firm as the case may be, or in determining the value of the interest of any partner in the firm.
2. The immunity benefit of Wealth tax is available only on proof of Payment of Tax, Surcharge and Penalty is filled with Principal Commissioner or the Commissioner.

Q. Declaration shall not be used as Evidence [Sec. 189]:

The declaration Made under this scheme shall not be used as evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, or for the purposes of any prosecution under the Income–tax Act or the Wealth–tax Act.

R. Treatment of Income where No declaration is Filed [Sec. 194(c)]:

Any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under this Scheme,—

- (i) such income shall be deemed to have accrued, arisen or received, as the case may be, or
- (ii) the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, sub–section (2) of section 143 or section 148 or section 153A or section 153C of the Income–tax Act is issued by the Assessing Officer, and the provisions of the Income–tax Act shall apply accordingly.

S. Powers of Board [Sec. 196]

1. The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.
2. Without prejudice to the generality of the foregoing power, such rules may provide for the form in which a declaration may be made under section 180 and the manner in which the same may be verified.
3. Every rule made under this Scheme shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

T. Powers of Central Government [Sec. 195]:

1. If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:
2. No such order shall be made after the expiry of a period of 2 years from the date on which the provisions of this Scheme shall come into force. Order made under this section shall be laid before each House of Parliament.

U. Save Clause [Sec. 194(a)]:

Save as otherwise expressly provided in sub–section (1) of section 180, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme,

V. Applicability of Other Acts: [Sec. 192]

The provisions of Chapter XV of the Income–tax Act relating to liability in special cases and of section 189 of that Act or the provisions of Chapter V of the Wealth–tax Act, 1957 relating to liability in respect of assessment in special cases shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income–tax Act or, as the case may be, the Wealth–tax Act, 1957.

W. Undisclosed income declared not to be treated as Benami transaction in certain cases.[Sec.187]

The provisions of the Benami Transactions (Prohibition) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset, if the asset existing in the name of a *benamidar* is transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government.