

# DEWAN P.N. CHOPRA & Co.



DPNC BULLETIN

The Taxation Laws (Second Amendment) Act, 2016

## The Taxation Laws (Second Amendment) Act<sup>1</sup>, 2016

The Taxation Laws (Second Amendment) Act, 2016 has come into force on 15th December, 2016. The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (the Scheme) introduced vide the said Act shall commence on 17th December, 2016 and shall remain open for declarations up to 31st March, 2017. The rules in this regard have been notified vide Notification No.116 dated 16th December, 2016<sup>2</sup>.

### The salient features of the scheme in brief are–

**Declaration** - Any person may make a declaration in respect of undisclosed income in the form of cash/deposit in any bank/post office account or specified entity chargeable to tax under the Income-tax Act for any assessment year commencing before 1 April 2017-18 .

**Tax rate** - Tax, surcharge and penalty will be calculated as follows –

<b>Tax</b>	30% of undisclosed income declared in the Scheme
<b>Surcharge</b>	33% of tax ( <i>i.e.</i> , 9.9% of undisclosed income declared.
<b>Penalty</b>	10% of undisclosed income declared.
<b>Effective rate</b>	49.9% of undisclosed income declared

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<sup>1</sup><http://www.incometaxindia.gov.in/Documents/PM%20Garib%20Kalyan%20Yojna/Taxation-Laws-Second-Amendment-Act-2016.pdf>

<sup>2</sup>[https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF\\_News/notification1162016.pdf](https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/notification1162016.pdf)

**Deposit of undisclosed income** - The person making above declaration shall deposit 25 per cent of undisclosed income in the Scheme. The deposit will not generate any interest. Amount deposited in the deposit account can be withdrawn only after 4 years from the date of deposit.

**No deduction allowed** - No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income so declared.

**Time for payment of tax** - Tax, surcharge and penalty (i.e., 49.9 per cent) shall be paid before submitting the above declaration and the declaration shall be accompanied by proof of deposit of tax, surcharge and penalty.

**Benefits available to a person making declaration** - If the above conditions are satisfied, the undisclosed income will not be included in total income of the declarant for any assessment year. Nothing contained in any declaration shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act (other than the Acts given below).

Please note that, a declarant shall not be entitled to re-open any assessment/reassessment made under the Income-tax Act/Wealth-tax Act, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment/reassessment.

**Scheme not applicable to certain persons** - The aforesaid deposit scheme shall not apply –

- In relation 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.
- 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, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money-Laundering Act, 2002.
- To any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- 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.

**Tax on income referred to in sections 68 to 69D [Sec. 115BBE]**

1. From the assessment year 2017-18 onwards, tax under section 115BBE shall be calculated at the rate of 60 per cent (+ surcharge @ 25 per cent of tax + education cess). The effective rate comes to 77.25 per cent. This rate shall be applicable in both of the following two cases

**Case 1** - Where the total income of an assessee includes any income referred to in sections 68 to 69D and reflected in the return of income furnished under section 139.

**Case 2** - Where the total income of an assessee determined by the Assessing Officer includes any income referred to in sections 68 to 69D, if such income is not covered by Case 1. However, in this case, the Assessing Officer shall impose a penalty u/s 27AAC @ 10 per cent of tax payable under section 115BBE(1)(i). In other words, penalty will be equivalent to 6 per cent of unexplained/undisclosed income. The aggregate amount of tax and penalty would become 83.25 per cent of unexplained/undisclosed income in case 2.

### **Penalty in search cases [Sec. 271AAB]**

The Taxation Laws (Second Amendment) Act, 2016 has also amended the penalty provisions in respect of search and seizure cases where search is initiated on or after 15th December 2016. As per new provisions penalty of 30% of income shall be levied, if the income is admitted and taxes are paid. Otherwise a penalty @60% of income shall be levied.

### **DISCLAIMER**

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*For details please see relevant provisions of Acts & Rules referred to above. This note in brief, is not substitute for the readers or any person's independent evaluations and analysis.*

