**CBDT Notification Reg Adoption Of Indexed Stamp Duty Value For Income Declaration Scheme**

The CBDT has issued a Notification dated 17th August 2016 by which Rule 3(1)(d) of the Income Declaration Scheme Rules 2016 have been amended to provide that where the acquisition of immovable property by the declarant is evidenced by a deed registered with any authority of a State Government, the fair market value of such property shall, at the option of the declarant, may be taken on the stamp duty value as increased by the same proportion as Cost Inflation Index for the year 2016-17 bears to the Cost Inflation Index for the year in which the property was registered.

Aug 18, 2016 [Income Tax](http://caclub.in/category/income-tax/), [Updates](http://caclub.in/category/updates/)

# CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 / IDS 2016 (Part 1 to 5)

The CBDT has so far issued clarifications by way of 5 separate circulars focussed on FAQs about the scope and procedure prescribed under the Income Declaration Scheme 2016.

CBDT has recently issued Circular No. 29/2016 dt. 18 Aug. 2016 for clarification of 12 more queries from stakeholders on Income Declaration Scheme 2016, whereas the CBDT had earlier also issued Circular No. 17/2016 dt. 20 May 2016 (14 FAQs – Part 1), Circular No. 24/2016 dt. 27 June 2016 (11 FAQs – Part 2), Circular No. 25/2016 dt. 30 June 2016 (11 FAQs – Part 3) and Circular No. 27/2016 dt. 14 July 2016 (7 FAQs – Part 4), for clarifications of the issues raised by stakeholders. The details are as under:

## 1. CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 (Part-1)

The CBDT has released 14 Nos. Clarifications on FAQs about the scope and procedure to be followed under the Income Declaration Scheme 2016 vide Circular 17/2016 dt. 20 May 2016.

The same are aimed at explaining the various provisions of the Scheme with respect to eligibility, nature of assets, periods of availability, kinds of immunities available under the scheme and persons excluded from its benefits. Circumstances in which the scheme shall not apply have also been clarified. These are expected to be updated from time to time based upon feedback and further queries received. The details are as under:

### Question No.1: Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the fair market value of the asset as on 01.06.2016, then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?

Answer: Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of fair market value for the purposes of the Scheme).

### Question No.2: Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?

Answer: The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

### Question No.3: As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142,143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?

Answer: The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.

### Question No.4: In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?

Answer: As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset. This is illustrated by an example as under:

Investment in acquisition of asset in previous year 2013-14 is of ₹ 500 out of which ₹ 200 relates to income assessed to tax in A.Y. 2012-13 and ₹ 300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 01.06.2016 is ₹ 1500.

The undisclosed income represented by this asset under the scheme shall be:

1500 minus (1500 X 200 /500) = ₹ 900

### Question No.5: Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?

Answer: As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.

### Question No.6: Can a person against whom a search/survey operation has been initiated file declaration under the Scheme?

Answer: (a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed income of any other previous year.

### Question No. 7: Where a search/survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?

Answer: Yes, such undisclosed income can be declared under the Scheme.

### Question No.8: What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?

Answer: As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

### Question No.9: If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?

Answer: In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

### Question No.10: If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?

Answer: It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.

### Question No.11: Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?

Answer: No. As per section 196(b) of the Finance Act, 2016, the Scheme shall not apply, inter-alia, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

### Question No.12: Whether at the time of declaration under the Scheme, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?

Answer: After the declaration is made the Principal Commissioner/ Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.

### Question No.13: Will the declarations made under the Scheme be kept confidential?

Answer: The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessees.

### Question No.14: Is it necessary to file a valuation report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?

Answer: It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.

[**CBDT Circular 17/2016 dt 20 May 2016**](http://caclub.in/wp-content/uploads/cbdt-circular-17-2016-dt-20-may-2016-faqs-clarifications-income-declaration-scheme-2016.pdf)

## 2. CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 (Part-2)

The CBDT has issued Circular No. 24/2016 dt. 27 June 2016 for Clarifications on 11 more FAQs of the stakeholders, as under:

**Question No.1: If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?**

Answer: In case of part payment, the entire declaration made under the Scheme shall be invalid. The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016.

**Question No.2: In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/conversion, then whether a declaration is to be filed in the name of amalgamated entity/LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?**

Answer: Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/conversion takes place.

**Question No.3: Whether the Scheme is open only to residents or to non-residents also?**

Answer: The Scheme is available to every person, whether resident or nonresident.

**Question No.4: If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?**

Answer: As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.

**Question No.5: Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?**

Answer: No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.

**Question No.6: As per Circular No.17 of 2016, question No.14, it is not mandatory to attach the valuation report. But Form-1 states “attach valuation report”. How to interpret?**

Answer: It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/ Commissioner in order to ascertain the correctness of the value of the asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/Commissioner.

**Question No.7: Is it mandatory to furnish PAN in the Form of declaration?**

Answer: Yes, PAN is the unique identifier for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.

**Question No.8: If any proceeding is pending before the Settlement Commission, can a person be considered eligible for the Scheme?**

Answer: No, a person shall not be eligible for the Scheme in respect of assessment years for which proceeding is pending with Settlement Commission.

**Question No.9: Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?**

Answer: Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.

**Question No.10: Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?**

Answer: Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued are eligible for the Scheme.

**Question No.11: If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?**

Answer: As clarified vide Explanatory Circular No. 17 dated 20.5.2016 , a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant the certificate issued by the Pr. Commissioner/Commissioner in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been closed.

[**CBDT Circular No. 24/2016 dt 27 June 2016**](http://caclub.in/wp-content/uploads/cbdt-circular-24-2016-dt-27-june-2016-clarifications-ids-2016.pdf)

## 3. CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 (Part-3)

CBDT has issued Circular No. 25/2016 dt. 30 June 2016 (11 FAQs) for clarifications of further queries from stakeholders.

This circular inter-alia provides clarifications on issues such as confidentiality of information disclosed in the declaration, allowability of TDS credit against declared income, enquiry in respect source of income and payment of tax and initiation of enquiry against third parties on the basis of information furnished in the declaration.

An issue regarding the advantage of declaring undisclosed income and assets under the Scheme vis-à-vis declaration of the same as current income for Assessment Year 2017-18 was also raised. In this regard it has been clarified that declaration of undisclosed income and assets as current income for Assessment Year 2017-18 would attract prosecution for false verification and also cannot explain acquisition of undisclosed assets in the past years. Attention of taxpayers has also been drawn to the comprehensive data-mining programme launched by the Department which will provide pin-pointed information about transactions undertaken by the taxpayer and the year to which the same relate. Details are as under:

**Question No.1: Will the information contained in the declaration be shared with other law enforcement agencies?**

Answer: No; the information contained in the declaration shall not be shared with any other law enforcement agency. The information will also not be shared within the Income Tax Department for any investigation in respect of a valid declaration.

**Question No.2: Whether immunity will be provided under other economic laws including Service Tax, VAT, Companies Act, SEBI Act & regulations etc.?**

Answer: The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. Immunity from Benami Transactions (Prohibition) Act is subject to the condition that the property will be transferred to the declarant (being the person who provided the consideration for the property) latest by 30th September, 2017. However, as mentioned in response to Question No.1 above, the information contained in the declaration made under the Scheme will not be shared with any other tax or law enforcement agency.

**Question No.3: Where the value of immovable property determined under Rule 3 of the IDS Rules is lower than the value adopted or assessed/assessable by stamp valuation authority referred in section 50C or section 43CA of the Income-tax Act, whether value of such property is to be declared as per Rule 3 of the IDS Rules, or as per section 50C/43CA?**

Answer: The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower that the value adopted or assessed/assessable by stamp valuation authority.

**Question No.4: Whether credit for tax deducted, if any, in respect of income declared shall be allowed?**

Answer: Yes; credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.

**Question No.5: Where a valid declaration is made after making valuation as per the provisions of the Scheme read with IDS Rules and tax, surcharge & penalty as specified in the Scheme have been paid, whether the department will make any enquiry in respect of sources of income, payment of tax, surcharge and penalty?**

Answer: No.

**Question No.6: What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1?**

Answer: The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all. In the column meant for nature of undisclosed income one has to write the nomenclature such as ‘immovable property’, ‘moveable property’, ‘gold’, ‘jewellery’ or ‘cash’ etc. This will enable the taxpayer to establish the link between the income declared under the scheme and the claim, if any, made in respect of such undisclosed income in the return of income filed subsequently or during any assessment proceedings.

**Question No.7: In case the value of immovable property is evidenced by registered deed, whether the value as per registered deed or the market value as on 01.06.2016 is to be declared?**

Answer: As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1st June, 2016.

**Question No.8: In case a declaration relating to investment in undisclosed asset is made under the Scheme, whether any investigation will be initiated against the seller in respect of such declaration?**

Answer: No.

**Question No.9: What are the advantages of the Scheme as against declaring the past undisclosed income as current income in the return of income to be filed for Assessment Year 2017-18? How will the Department identify the year in which the undisclosed income was earned.**

Answer: In this regard, the following points may be noted:

1. Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.

2. If anyone attempts to disclose past undisclosed income in the current year, he will have to explain the source of income and substantiate the manner of earning the said income. In case of disclosure under the Scheme, there is no need to explain the source of income.

3. Declaration of past undisclosed income in the current year cannot explain assets acquired in the past or provide any immunity in respect of the same.

4. The Income-tax Department is in receipt of large volume of information from various sources such as registrars of property, banks, financial institutions, stock exchanges, tax deductors etc. The Department has launched a comprehensive data-mining and compliance management programme in the form of ‘Project Insight’ which will generate a large volume of reliable information about financial transactions undertaken by taxpayers and the relevant year in which the transaction was undertaken.

**Question No.10: In a case the declarant earned undisclosed income of Rs. 90 lakh in previous year 2010-11. Out of the same, he acquired an immovable property in the previous year 2011-12 for Rs.50 lakh, made personal expenditure to the extent of Rs.20 lakh and balance Rs.20 lakh is left with him as cash in hand on 01.06.2016. The fair market value of the immovable property as on 01.06.2016 is Rs.80 lakh. What is the amount to be declared under the Scheme?**

Answer: The declarant in this case has to declare the following:

(i) Rs. 80 lakh being fair market value of the immovable property as on 01.06.2016

(ii) Rs. 20 lakh being the cash in hand as on 01.06.2016

(iii) Rs. 20 lakh being the balance of undisclosed income [Rs. 90 lakh – (Rs.50 lakh + Rs. 20 lakh)] which is not represented in the form of investment in any asset.

Thus the total undisclosed income to be declared in this case will be Rs. 1.20 crore.

**Question No.11: A person invested his undisclosed income in a house property in the previous year 2010-11 which has not been let out. The person also owned another house property from disclosed sources, which has been claimed as self-occupied property for the purposes of computation of income under the head income from house property. In case the person declares the undisclosed house property at its fair market value on 01.06.2016, whether any action will be taken for bringing the annual value of the undisclosed property to tax as income from house property by deeming it to be let property as provided under section 23(4)(b) of the Income-tax Act for the earlier previous years?**

Answer: No. However, where the house property was let-out during the relevant period, the actual rent received or receivable will be required to be declared under the Scheme in addition to the fair market value of the house property as on 01.06.2016.

[**CBDT Circular No. 25/2016 dt 30 June 2016**](http://caclub.in/wp-content/uploads/cbdt-circular-25-2016-dt-30-june-2016-faqs-ids2016-part3.pdf)

## 4. CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 (Part-4) Effective rate of tax isn’t reduced to 31%

CBDT has issued Circular No. 27/2016 dt. 14 July 2016 for clarifications of 7 further queries from stakeholders on Income Declaration Scheme 2016, including the fact that effective rate of tax isn’t reduced to 31% under the Scheme.

This circular provides clarifications on issues such as revision of declaration, chargeability of capital gain and TDS on transfer of property from benamidar to beneficial owner etc. Besides, it explains whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31%. Details are as under:

**Question No.1: Can a declaration made under the Scheme be revised before the date of closure of the Scheme i.e. 30.09.2016?**

Answer: It is expected that the declarations made under the Scheme are filed correctly. However, a revised declaration can be filed on or before the date of closure of the Scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed.

**Question No.2: If an undisclosed income represented in the form of an asset or otherwise pertains to a year falling beyond the time limit allowed under section 149 of the Income-tax Act, 1961 and the said undisclosed income is not declared under the Scheme, then as per the provisions of section 197(c) of the Finance Act, 2016, the said undisclosed income shall be treated as the income of the year in which a notice under section 148 of the Income-tax Act has been issued. The said provision is inconsistent with the existing time lines provided under the Income-tax Act for reopening a case. Please clarify?**

Answer: Question No. 4 of Circular No. 24 of 2016 may be referred where the tax treatment of such income has been clarified. Since the Scheme contained in Chapter IX of the Finance Act, 2016 is a later law in time, the provisions of the Scheme shall prevail over the provisions of earlier laws.

**Question No.3: The declaration made in respect of cash, investment etc. under the Scheme would result in increase in capital in the Balance Sheet in extra ordinary manner. Whether such cases of the declarants would be selected for scrutiny under the CASS for this reason?**

Answer: The cases of the declarant shall not be selected for scrutiny under the CASS only on the ground that there is increase in capital in the balance sheet as a result of the declaration made under the Scheme.

**Question No.4: In a case where the declarant gets the benami asset transferred in his name without payment of any monetary consideration to the benamidar, whether capital gains would be chargeable in the hands of benamidar consequent upon such transfer and whether the tax at source @ 1% would be deducted in such case?**

Answer: In this case the consideration for acquisition of benami property has already been paid by the beneficial owner and the fair market value of the property has been declared by the beneficial owner under the Scheme. Since, the transfer of property from benamidar to beneficial owner is only to regularize and there will be no involvement of monetary consideration for transfer of immovable property by the benamidar in the name of the declarant, the question of capital gains in the hands of benamidar and deduction of tax at source thereon shall not arise.

**Question No.5: Under what provision can a declarant be sure that the information contained in a valid declaration shall not be shared with any other law enforcement agency and also shall not be shared within the income-tax department for investigation?**

Answer: Section 195 of the Act provides that provisions of section 138 of the Income-tax Act shall apply in relation to the proceedings under the Scheme. Vide notification S.O. 2322(E) dated 06.07.2016, an order has been passed by the Central Government directing that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Scheme.

**Question No.6: With reference to question No. 5 issued vide Circular No. 25 of 2016, wherein it has been stated that the department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty, it may be clarified that whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31 per cent?**

Answer: It is clarified that the intent of the clarification issued vide question No.5 of Circular No. 25 of 2016 was limited to conduct of enquiry by the Department. It in no way intends to modify or alter the rate of tax, surcharge and penalty payable under the Scheme which have been clearly specified in the Scheme itself. Sections 184 & 185 of the Finance Act, 2016 unambiguously provide for payment of tax, surcharge and penalty at the rate of 45 per cent of undisclosed income. This is illustrated by the following example —

In a case a person declares Rs. 100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of Rs.45 lakh (30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of 45 lakh utilized for payment of tax, surcharge & penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect the entire undisclosed income of Rs.145 lakh, the declarant has to declare undisclosed income of Rs.145 lakh (Rs.100 lakh being the undisclosed income represented by immovable property and Rs.45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to Rs.65.25 lakh i.e., 45 per cent of Rs.145 lakh.

**Question No.7: Whether there is any time limit for the declarant under the Scheme to file Form-3?**

Answer: As per section 187(2) of the Finance Act, 2016, the time limit for filing Form-3 is same as the time limit notified for payment of tax, surcharge and penalty under the Scheme.

[**CBDT Circular No. 27/2016 dt 14 July 2016**](http://caclub.in/wp-content/uploads/cbdt-circular-27-2016-dt-14-july-2016-faqs-part-4-ids-2016.pdf)

## 5. CBDT’s FAQs / Clarifications on the Income Declaration Scheme, 2016 (Part-5)

The CBDT has issued Circular No. 29/2016 dt. 18 Aug. 2016 for clarifications of 12 more further queries from stakeholders on Income Declaration Scheme 2016. The details are as under:

**Question No.1: In certain cases, the undisclosed income might be reflected in creditors or other liability which may be fictitious. Whether in such cases, the assessee can disclose only such fictitious liability as it may not be possible to link it to any specific asset or investment?**

Answer: In a situation where loans, creditors, advances received, share capital, payables etc. are disclosed in the audited balance sheet but are fictitious in nature, and such liabilities cannot be directly linked to acquisition of a particular asset in the balance sheet, then such fictitious liabilities can be disclosed under the Scheme as such without linking the same with the investment in any specific asset. However, in cases where there is a direct link between the fictitious liability and the asset acquired then the amount to be declared shall be the fair market value of the acquired asset as on 01.06.2016.

**Question No.2: Whether the amount declared under the Scheme for an earlier assessment year can be taken into account to explain the transaction(s) in the assessment proceedings for subsequent assessment year(s)?**

Answer: As per section 189 of the Finance Act, 2016, any declaration made under the Scheme shall not affect finality of completed assessments. However, in an assessment proceeding before the Assessing Officer for an assessment year subsequent to the year for which the income is declared under the Scheme, the income declared for an earlier assessment year can be taken into account to explain the transactions provided there is a nexus between the income declared and the transactions of the subsequent assessment year.

**Question No.3: Whether the valuation report of assets declared under the Scheme shall be called for by the department for any enquiry at any time?**

Answer: The valuation report from a registered valuer shall not be questioned by the department. However, the valuer is expected to furnish a true and correct valuation report in accordance with the accepted principles of valuation. In case of any misrepresentation, appropriate action as per law shall be taken against the registered valuer.

**Question No.4: Though the fair market value as on 1st June, 2016 is taxed under IDS, and such amount will be treated as cost of acquisition at the time of future sale of concerned asset, whether such treatment shall affect the character of the asset as long term or short term?**

Answer: The issue was earlier considered and it was clarified vide Circular No.17 dated 20.05.2016 that in such cases period of holding shall be deemed to begin from 01.06.2016 as the asset has been revalued on such date. However, considering the representation received from various stakeholders and the fact that this may lead to complications in calculation of capital gain at the time of sale of asset which was partly funded from undisclosed income now declared under the Scheme, the matter has been reconsidered. Accordingly, in supersession to the earlier clarification as referred above, it is clarified that the period of holding of asset declared under the Scheme shall be based on the actual date of acquisition of such asset. However, the indexation benefit in respect of the amount declared under the Scheme shall be available from 01.06.2016 only. The said situation is illustrated as below:-

Suppose Mr. ‘A’ purchased a house on 01.10.2011 for Rs.10 lakh and declares fair market value of the same as on 01.06.2016 under the Scheme at Rs.20 lakh. If the said house is sold on 01.10.2017 for Rs.30 lakh, the holding period for the house for purposes of computation of capital gain shall be six years i.e. from 01.10.2011 to 01.10.2017. As the holding period exceeds three years, the gains arising from such transfer shall be treated as long term capital gain. Further, the indexation benefit in this case shall be available on Rs.20 lakh from 01.06.2016 to 01.10.2017.

**Question No.5: What will be the value of immovable property to be declared under the Scheme in a case where the cost of immovable property is only partly evidenced by a registered deed and partly otherwise?**

Answer: In such a case, the option of calculating the fair market value of the immovable property based on applying the cost inflation index to stamp duty value shall be available only in respect of that part of the property the cost of which is evidenced by a registered deed. With regard to the remaining part the fair market value of the property shall be determined based on the provisions of rule 3(1)(d) of the Rules without taking into effect the proviso to the said rule. The said situation is illustrated as below:-

Suppose, Mr. ‘X’ purchased a piece of land in year 2004-05 for Rs.10 lakh, however the stamp duty value was Rs.15 lakh. Thereafter, in the period 2005-06 to 2007-08, Mr. ‘X’ constructed a two storeyed house on the said land. The amount to be declared in respect of the said property shall be (A + B) where A= Value of land (if the assessee opts for valuation on the basis of indexation) shall be Rs.15 lakh x cost inflation index of 2016-17 cost inflation index of 2004-05 B= Fair market value of the house (excluding value of the land) as on 01.06.2016 as determined by the registered valuer or the cost of construction whichever is higher.

**Question No.6: A declarant has already filed a declaration under the Scheme determining the value of immovable property on the basis of Income Declaration Scheme Rules, 2016 prior to their amendment vide the Income Declaration Scheme (Third Amendment) Rule notified vide CBDT Notification No. 74 dated 17.8.2016. In such a case whether the declarant can revise the declaration based on such amended rules?**

Answer: Yes, the declarant can revise the fair market value of immovable property declared in the declaration already filed on account of the amended provisions of the Income Declaration Scheme Rules, 2016 even in a case where such revision may result in downward revision of the declared amount in respect of the immovable property.

**Question No.7: Whether the payment of amount payable under the Scheme can be made in cash to the Banks? Further, whether the amount disclosed under the Scheme can be deposited in the bank account in cash?**

Answer: Reserve Bank of India (RBI) has been requested to issue instructions to banks to allow payment of tax under the Scheme in cash. RBI has also been requested to instruct the banks to allow deposit of cash over the counter in accordance with its existing master circular No. DBOD No.Leg.BC.21/09.07.006/2014-15 dated 01.07.2014.

**Question No.8: Whether the information of cash deposits made in bank as a consequent to declaration made under the Scheme shall be picked up by FIU or reported to the income-tax department?**

Answer: It is clarified that no adverse action shall be taken against the declarant by FIU or the income-tax department solely on the basis of the information regarding cash deposit made consequent to the declaration under the Scheme.

**Question No.9: In case a trust or institution registered under section 12A of the Income-tax Act files declaration under the Scheme, whether the registration under section 12A shall be cancelled on the basis of such declaration?**

Answer: No, the registration under section 12A of the Income-tax Act shall not be cancelled solely on the basis of the information furnished in the declaration filed under the Scheme.

**Question No.10: Where a person has claimed weighted deduction, say 175%, on account of making bogus donation then what should be the amount of declaration under the Scheme?**

Answer: The declarant has to declare the amount of weighted deduction claimed in respect of bogus donation i.e. 175% of the bogus donation in this case.

**Question No.11: In a case where the return of income has not been filed for an assessment year but the time limit for filing the same has not expired under section 139 of the Income-tax Act, whether the declaration under the Scheme can be filed for such assessment year?**

Answer: The declaration for the assessment year for which the return of income has not been filed can be made under the Scheme even though the time limit for filing the return under section 139 of the Income-tax Act has not expired.

**Question No.12: In answer (b) to question No.6 of Circular No.17 of 2016 dated 20.05.2016, it has been stated that “person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted”. Please clarify?**

Answer: The clause (b) of answer 6 may be read as “In case of survey operation, the person is barred for making a declaration under the Scheme in respect of the previous year in which the survey was conducted. The person is, however, eligible to make declaration in respect of an undisclosed income of any other previous year”.

[**CBDT Circular No. 29/2016 dt 18 Aug. 2016**](http://caclub.in/wp-content/uploads/cbdt-circular-29-2016-dt-18-aug-2016.pdf)