



Government introduces the Taxation Laws (Second Amendment) Bill 2016 in respect of demonetisation. Also introduces Pradhan Mantri Garib Kalyan Yojana 2016

Background

As a step forward to curb black money, bank notes of existing series of denomination of INR500 and INR1000 have been recently withdrawn by the Reserve Bank of India.

Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 (the Act) can possibly be used for concealing black money. Accordingly, the Government has introduced the Taxation Laws (Second Amendment) Bill, 2016 (the Bill) in the Parliament to amend the provisions of the Act and the Finance Act to ensure that defaulting taxpayers are subjected to tax at a higher rate and stringent penalty provision. Further the Government has also introduced an alternative Scheme namely, 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) in the Bill.

The proposed amendments in the Act and the Finance Act

Section	Proposed amendments
Section 115BBE - Tax on income in the nature of cash credits, unexplained investments, unexplained money, amount of investments, etc., not fully disclosed in the books of account, unexplained expenditure, etc., amount borrowed or repaid on hundi	<p>The taxpayer is liable to pay income-tax at the rate of 60 per cent where total income of the taxpayer includes any income in the nature of cash credits, unexplained investments, unexplained money, amount of investments, etc., not fully disclosed in the books of account, unexplained expenditure, etc., amount borrowed or repaid on hundi¹ -</p> <p>(i) Such income is reflected in the return of income; or (ii) Where total income of the taxpayer determined by the Assessing Officer (AO) includes such income.</p> <p>Further, the taxpayer is liable to pay income-tax on which the taxpayer would have been chargeable had his total income been reduced by the amount of income which is taxable at 60 per cent</p> <p>The provision is proposed to take effect from 1 April 2017</p>
Section 271AAC - Levy of penalty for cases falling under Section 115BBE of the Act	<p>Where the income determined includes any income in the nature of cash credits, unexplained investments, unexplained money, amount of investments, etc., not fully disclosed in the books of account, unexplained expenditure, etc., amount borrowed or repaid on hundi, the AO may direct the taxpayer to pay penalty, in addition to tax payable under Section 115BBE, a sum computed at the rate of 10 per cent of the tax payable</p>

¹ Section 68, 69, 69A, 69B, 69C, 69D of the Act.

	<p>under Section 115BBE of the Act.</p> <p>However, no penalty shall be levied in respect of such income where the said income has been included by the taxpayer in the return of income and the tax in accordance with the provisions of Section 115BBE(1)(i) of the Act has been paid on or before the end of the relevant previous year.</p> <p>The provision is proposed to take effect from 1 April 2017.</p>
Surcharge	In respect of income chargeable to tax under Section 115BBE(1)(i) of the Act, the advance tax computed shall be increased by surcharge at the rate of 25 per cent.
Section 271AAB - Levy of penalty where search has been initiated	<p>In a case where search has been initiated on or after 1 July 2012 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, taxpayer shall be liable to pay penalty as follows:</p> <ul style="list-style-type: none"> • At the rate of 30 per cent of undisclosed income of the specified previous year if the taxpayer: <ul style="list-style-type: none"> ➤ During the course of search, admits the undisclosed income and specifies the manner in which such income has been derived ➤ Substantiates the manner in which the undisclosed income was derived and ➤ On or before the due date pays tax, together with interest in respect of undisclosed income and furnishes the return of income for the specified previous year declaring such undisclosed income therein. • If the taxpayer is not covered by the above proposed provisions then the sum to be computed at the rate of 60 per cent of the undisclosed income of the specified previous year.

Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

In the wake of declaring specified bank notes 'as not legal tender', there have been suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy. Accordingly, the PMGKY scheme has been introduced in the Bill. The scheme is summarised as follows:

The scheme	Particulars
Declaration of undisclosed income	Any person may make a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Act for any assessment year commencing on or before 1 April 2017.
Charge of tax	The undisclosed income declared under the scheme shall be chargeable to tax at the rate of 30 per cent.
Surcharge	The amount of tax shall be increased by a surcharge to be called the Pradhan Mantri Garib Kalyan Cess. It shall be calculated at the rate of 33 per cent of such tax so as to fulfil the commitment of the Government for the welfare of the economically weaker sections of the society.

Penalty	The person making a declaration shall in addition to tax and surcharge be liable to pay penalty at the rate of 10 per cent of the undisclosed income.
Deposit of undisclosed income	The person making a declaration shall deposit an amount which shall not be less than 25 per cent of the undisclosed income in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. No interest shall be paid on the said deposit and the amount deposited shall be allowed to be withdrawn after four years from the date of deposit and shall also fulfil such other conditions as may be specified in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016.
No deduction is allowed	No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of the declaration made.
Time for payment of tax, penalty, surcharge and deposit	The tax, surcharge, and penalty payable in respect of the undisclosed income shall be paid before filing of declaration.
Specified entity	<ul style="list-style-type: none"> • The Reserve Bank of India • Any banking company or co-operative bank, to which the Banking Regulation Act, 1949 applies (including any bank or banking institution) • Any Head Post Office or Sub-Post Office; and • Any other entity as may be notified by the central government in the Official Gazette in this behalf.

Our comments

Evasion of taxes deprives the nation of critical resources which could enable the government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. The government has proposed amendment in the Act as well as in the Finance Act with respect to undisclosed income will suffer a tax of 60 per cent plus surcharge of 25 per cent of tax (i.e. 15 per cent). So the total incidence of tax would be 75 per cent. Further the AO may direct the taxpayer to pay penalty, in addition to tax at the rate 10 per cent of the tax payable.

The amendments introduced in the Lok Sabha are progressive in nature and puts to rest the uncertainty on the penalties on the amounts deposited in the bank account post the announcement of demonetisation. A new voluntary disclosure scheme for the benefit of the poor has been introduced (PMGKY) pursuant to which past years' undeclared income can be offered to tax at the rate of 30 per cent plus surcharge of 33 per cent plus penalty of 10 per cent making it effective (approximate) rate of 50 per cent. Further, 25 per cent of this amount will need to be deposited in a specified deposit scheme for 4 years interest free. This will give one more chance to the assessee to come out clean and declare the right income.

This amendment appears to be very strategic and if everything goes well, tax collections will go up substantially, further money will be raised in specified bonds for the country's investments needs. This amount is proposed to be utilised for the schemes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc., so that there is justice and equality. Further, the taxpayer would also retain 25 per cent of his undisclosed income to himself for future use.

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