CBDT notification - schemes with respect to declaration of undisclosed income pursuant to demonetisation

**Background**

In a move to curb black money, the Reserve Bank of India (RBI) ceased the usage of INR1000 and INR500 rupee note as legal tender. 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 help ensure that defaulting taxpayers are subjected to tax at a higher rate and a stringent penalty.

Further, 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 Government has also introduced an alternative scheme namely, ‘Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016’ (PMGKY) in the Bill.

To operationalise the scheme, the Central Board of Direct Taxes (CBDT) and Department of Economic Affairs have issued notifications and press release providing the rules with respect to PMGKY, period for declaration under the scheme and procedure with respect to the ‘Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (PMGKD). The same has been summarised as follows:

**Declaration period**

- The PMGKY commenced on 17 December 2016 and shall remain open for declarations up to 31 March 2017.

**Key features of PMGKY scheme**

- Declaration under the scheme can be made by any person in respect of undisclosed income in the form of cash or deposits in an account with bank or post office or specified entity.

- Tax at the rate of 30 per cent of the undisclosed income, surcharge at the rate of 33 per cent of tax and penalty at the rate 10 per cent of such income payable. Further mandatory deposit of 25 per cent of the undisclosed income in PMGKD is required. The deposits are interest free and have a lock-in period of four years.

- The income declared under the Scheme shall not be included in the total income of the declarant under the Income-tax Act for any assessment year.

- The declarations made under the Scheme shall not be admissible as evidence under any Act (e.g. Central Excise Act, Wealth-tax Act, Companies Act, etc.). However, no immunity will be available under criminal acts mentioned in Section 199-O of the scheme.

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Rules

- A declaration of income in the form of cash or deposit in an account maintained with specified entity shall be made in Form – 1.

- The declaration shall be furnished to the Principal Commissioner or the Commissioner:
  - Electronically under digital signature or
  - Through transmission of data electronically under electronic verification code or
  - In print from

- In case of any omission or any wrong statement, a revised declaration shall be filed on or before 31 March 2017.

- The Principal commissioner or Commissioner shall issue a certificate in Form-2 within thirty days from the end of the month in which valid declaration has been furnished.

PMGKD scheme

- The scheme shall be applicable to every declarant under PMGKY.

- The deposit under this scheme shall not be less than 25 per cent of the undisclosed income and it has to be made in single payment.

- The deposit shall be held at the credit of the declarant in Bonds Ledger Account maintained with RBI.

- The deposits shall be accepted at all the authorised banks notified by government. It shall be made in multiples of rupees one hundred.

- The deposits should be made in the form of cash or draft or cheque or by electronic transfer.

- An application for deposit shall be made in Form II indicating the amount, full name, Permanent Account Number (PAN), bank account details, and address of the declarant. If the declarant does not hold a PAN, he shall apply for a PAN and provide the details of such PAN application along with acknowledgement number.

- The transferability of the Bonds Ledger Account shall be limited to nominee or to the legal heir of an Individual holder, in the event of his death. The Bonds Ledger Account shall not be tradable.

- The deposit shall not be liable for any interest.

- The Bonds Ledger Account is repayable on the expiration of four years from the date of deposit and redemption of the same is not allowed before its maturity date.

Our comments

Further to the introduction of provisions with respect to demonetisation of INR1000 and INR500 notes and alternative scheme for declaration of undisclosed income, CBDT has issued procedural clarifications to smoothen the process of declaration of undisclosed income. The Scheme for declaration has come into effect from 17 December 2017 and will remain in operation up to 31 March 2017. Once again this provides a chance to the taxpayers to come clean and declare their unaccounted income. The taxpayers having undisclosed income and not availing these scheme may face stringent penalty and other adverse consequences like prosecution, etc.

The CBDT has clarified that the declarations made under the Scheme shall not be admissible as evidence under any Act (e.g. Central Excise Act, Wealth-tax Act, Companies Act etc.). However, no immunity will be available under certain Criminal Acts.

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2 Reserve Bank of India, any banking company or co-operative bank, to which the Banking Regulation Act, 1949 applies, 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

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