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**NEWSFLASH: FOURTH SET OF CLARIFICATIONS ON
THE INCOME DECLARATION SCHEME, 2016**

(CBDT Circular no. 29 of 2016 dated 18 August 2016)

Background

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued three sets of FAQs vide Circular Nos. 17, 24, 25 & 27 of 2016. In order to address further queries received from the public relating to the Scheme, following clarifications are issued

Q1 *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*

A1 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.

Q2 *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)?*

A2 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.

Q3 *Whether the valuation report of assets declared under the Scheme shall be called for by the department for any enquiry at any time?*

A3 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.

Q4 *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?*

A4 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.

Q5 *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?*

A5 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 $\frac{\text{cost inflation index of 2016-17}}{\text{cost inflation index of 2004-05}}$

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.

Q6 *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?*

A6 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.

Q7 *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?*

A7 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.

Q8 *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?*

A8 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.

Q9 *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?*

A9 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.

Q10 *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?*

A10 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.

Q11 *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?*

A11 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.

Q12 *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?*

A12 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”.

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This newsflash is general in nature. In this newsflash, we have summarised the CBDT circular no. 29 of 2016 dated 18 August 2016 and the Clarification (FAQs) published by Ministry of Finance in relation to Income Declaration Scheme, 2016. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the respective circulars and notifications and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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