Bombay Chartered Accountants' Society

THE CHAMBER OF TAX CONSULTANTS

Chartered Accountants Association, Ahmedabad *A Passion to Perform*

30th July, 2016

Mr Hasmukh Adhia
Hon. Revenue Secretary
Ministry of Finance
New Delhi

Dear Sir

Sub: **Certain issues under IDS 2016**

We write to you on behalf of members of our respective organisations and also on behalf of the citizens of India at large.

There are certain important issues that are likely to affect the success of the Income Declaration Scheme, 2016 on which the Government of India has pinned a lot of hopes for unearthing and bringing into the economy. We therefore place before you these issues and request that an early resolution of the same be notified.

We also take this opportunity to thank you for taking immediate action on our earlier joint representation dated 11th July regarding the effective tax rate under the IDS. The clarification issued in pursuance of our representation is very clear and has set at rest the unnecessary controversy created by media reports on the matter.

1. Eligibility

As per section 196 of the Finance Act, 2016, an assessee in whose case, a notice u/s. 143(2) has been issued for Assessment Year 2016-17 or earlier (and such proceeding is pending before the Assessing Officer) is not eligible for making a declaration under the Scheme.

Now, recently, several tax payers have received notices for "limited scrutiny". Such tax payers will be prevented from making a declaration under the Scheme for the relevant year.

Similarly, in some cases, mere issuance of a notice under section 142(1)(i) requiring the person to furnish his return of income shall debar that person from making the declaration for the relevant year in view of Section 196(e)(i). In such case, the proceeding shall be considered to be pending before the AO even if the return has already been furnished in response to such notice. In such cases, the AO may or may not proceed to make the assessment thereafter.

It is therefore suggested that an exception be made for such tax payers and they should not be considered to be ineligible for making a declaration under the Scheme provided all other conditions are met. In absence of this, the assessees may desist from making a declaration for

other years as well for the fear that adverse inference may be drawn for the year in which declaration could not be made.

2. Valuers for valuing the assets

Section 183 read with Rule 3 requires a declarant under the Scheme to get the assets valued by a registered valuer. As per Rule 2, a "registered valuer" means a person registered as a valuer under section 34AB of the Wealth-tax Act, 1957. The list of registered valuers for various assets has been published on the website of the income-tax department.

In this connection, the following observations may kindly be noted:

a) Instead of referring to the definition of valuer under the Wealth-tax Act, it would have been more convenient (from the point of view of tax payers) to refer to the definition contained in Rule 11U read with Rule 11UA of the Income-tax Rules, 1962. This would have broadened the options available to tax payers to obtain valuation reports.
b) It appears that the list of valuers published on the website as mentioned above contains several mistakes in terms of addresses as well as names of persons who have since retired or died.
c) There are many assets for which registered valuers are not available.

3. Set off of losses:

The provision under the earlier Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 corresponding to Section 183(4) restricted set off of losses. Since such set off is not expressly prohibited under the Scheme, does it mean that the set off of losses is permissible? In that case, the losses declared in the regular returns may be not be available for set off in view of the provisions of Section 189. The issue is relevant if the person had carried on undisclosed business over past several years and in few years he has incurred the losses.

A suitable clarification may be issued in this regard to remove doubts.

4. Period of holding of asset

The period of holding of the asset is required to be determined from 1st June, 2016 as per the amendment to the Act. However, there is no clarity about the year from which the benefit of indexation can be taken in case of such assets in future when the asset is actually transferred. The issue that arises is whether it will be available right from the year in which the asset was originally acquired irrespective of the fact that FMV as on 1st June, 2016 is required to be considered as its cost as per Section 49(5)?

In a case where an asset was acquired in the past partly out of declared income and partly out of undisclosed income and the assessee declares the difference between FMV and the undervalued cost under the Scheme, what will be the date of acquisition, period of holding and how will the indexation be done when the asset is sold?

Suitable clarifications may be issued in the matter.

5. Assets held as stock in trade

It appears that the provisions of Section 183(2) are applicable irrespective of the form in which the asset has been held by the declarant i.e. held as stock-in-trade or used for the purpose of business and entitled for depreciation.

If stock-in-trade is declared at its FMV as on 1st June, 2016 then how would the subsequent income arising on its sale be determined? It may be noted that Section 49(5) of the Income-tax Act does not apply to stock-in-trade.

If the asset which is otherwise used for the purpose of business of the assessee is declared under the Scheme at its FMV then whether the depreciation will be allowed thereafter under Section 32 (addition to the block of asset is allowed only in the year of acquisition)? If yes, whether on the actual cost or on the FMV declared? In case of a depreciable asset which was undervalued and now declaration under the Scheme is made on FMV basis, how will the w.d.v of the block of asset adjusted?

Suitable clarifications may kindly be issued in the above matters permitting addition to the w.d.v. of the relevant block of assets. A suitable amendment to section 43 (definition of cost") would ideally take care of such instances.

6. Implications for an employer whose employee makes a declaration under the Scheme

In the context of the One Time Compliance Window under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the following views were expressed in FAQ No. 15:

Q. A person received salary/ in a foreign country from his employer who is a resident in India. The salary was deposited in a foreign bank account and was chargeable to tax in India. If a declaration of the foreign bank account is made by the person, which includes salary deposited in the account, will the employer be liable for consequences under the Income-tax Act for non-deduction of tax at source on the salary paid by the employee?

A. Where the employee has declared an undisclosed asset made out of income received from his employer, the employer shall not be deemed to be an assessee in default under section 201(1) of the Income-tax Act for non-deduction of TDS on such income. However, the employer shall be liable for other consequences under the provisions of the Income-tax Act, such as payment of interest under the provisions of section 201(1A) of the Income-tax Act from the date on which the tax was deductible on such income upto the date of payment of tax by the declarant. Penalty under section 271C of the Income-tax Act will also be attracted unless he proves that there was a reasonable cause for such failure as per the provisions of section 273B of that Act.

Now, section 188 provides that the income declared under the Scheme shall not be included in the total income of the declarant. If the income is no longer includible in the total income of the declarant then why should the payer of that income be liable for any consequences for non-deduction of tax at source? Is there any difference between income not includible in the total income and income not chargeable to tax? Can it be said that charge of tax under Section 4 of the Income-tax Act has not yet been removed but only it has been excluded from the total income and hence such consequences may arise in the hands of the payer?

7. Exemption from Wealth-tax

The exemption from wealth-tax has been provided in respect of the assets specified in the declaration. One issue that needs to be clarified is whether the exemption is available irrespective of the fact that the entire market value of the asset has not been taxed under the Scheme? Such a situation may arise when an asset has been acquired from income earned in several years and in respect of one or more of such years, a declaration cannot be made under the Scheme on account of some disqualification. In such cases, while making the declaration, the value of the asset would need to be reduced by the amount proportionate to the income earned in the years for which the declaration has not been made under the Scheme.

In the interest of the tax paying community and in the larger interest of the nation, we earnestly request you to kindly issue a clarification on this issue at the earliest. Upon receipt of the same, we shall give it extensive publicity amongst our members as well as amongst the tax paying community.

Assuring you and the Government of India our fullest support in the massive nation building exercise that is in progress,

We remain

Yours sincerely

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