

# Tax Wire



**Opportunity hardly ever  
knocks twice!**

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### Background

In light of the recent developments in the administration of the country, with the introduction of the Income Declaration scheme, 2016 and the consequent demonetization of the high denomination currency notes, the Government has been making efforts to expose the undisclosed incomes of the people to taxes and other penal provisions.

There were certain existing provisions in the Income Tax Act, 1961 like the Section 115BBE for the taxation of the unexplained credit, investment, cash and other assets at higher rates under the Act, being 30%.

After the announcement of demonetization of the high value denomination currency notes, there were a few concerns that were raised that the existing provisions of the Income Tax Act, 1961 could possibly be used to pay a nominal tax and get away.

The Taxation Laws (Second Amendment) Act, 2016 has now been passed in order to avoid extending unintended benefit to those who wanted to use the benefit of section 115BBE. Along with the above, a new penal provision under 271AAC and a new Chapter IXA for *Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016* has also been inserted.

### The Taxation Laws (Second Amendment) Act, 2016

#### ➤ Tax Rate u/s 115BBE

The Taxation Laws (Second Amendment) Act, 2016 has been passed on 15th December 2016, amending Section 115BBE to tax the unexplained credit, investment, cash and other assets at an increased rate of 60%. This is both in case where such income is disclosed in the return of income voluntarily by the tax

payer and if the tax officer determines it during any proceedings. This amendment increases the earlier rate of 30% of tax on such undisclosed incomes and investments. Further, a surcharge of 25% of the tax is also leviable on such undisclosed income, apart from the cess of 3%. This makes the total tax on such incomes at 77.25%.

#### ➤ Penalty provisions

An amendment has also been made to the penalty provisions of Section 271AAB to levy a penalty as under:

- At an increased rate of 30% from the existing 10% of the undisclosed income, in a case where search had been initiated and the tax payer admits the undisclosed income and specifies the manner in which such income has been derived, or
- In case the assessee does not admit such undisclosed income at a rate of 60% of the undisclosed income increased from the previous rate of 20%

In order to levy penalty for incomes taxed u/s 115BBE (other than cases involving search), a new **Section 271AAC** has been introduced. As per this section, a penalty of 10% maybe levied on the Tax and surcharge calculated as per Section 115BBE. This would make the total payout to about 85%.

However, no such penalty will be levied if the tax payer voluntarily declares the undisclosed income or investment in the return of income and pays 77.25% tax as mentioned above.

### Pradhan Mantri Garib Kalyan Yojana, 2016:

In addition to the above amendments and insertion of Sections, a new chapter, Chapter IXA has also been inserted through the amendments act.

The Chapter provides for the taxation and investment regime of the Pradhan Manthri Garib Kalyan Yojana, 2016 (The PMGKY for the sake of brevity) and the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (referred to as “the Deposit Scheme”).

The scheme shall be in effect from 17th December 2016 to 31st March 2017. It is an opportunity given to the people to make a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a bank chargeable to tax belonging to any year prior to the FY 2016-17. The amounts collected under this scheme are proposed to be used for the benefit of the poor of this country.

The scheme has 2 parts to it:

a. **The Taxation regime:**

The declarations under the scheme shall be subject to a tax @ 30% increased by a surcharge called as the ‘Pradhan Mantri Garib Kalyan Cess’ @ 33% on the tax and further increased by a penalty @ 10% on the undisclosed income. The undisclosed income shall be charged totally @ 50% (approximately).

b. **The Investment regime:**

The investment part of the scheme requires the declarant to deposit an amount not less than 25% of the undisclosed income in banks before filing a declaration under the PMGKY, 2016.

Below are the highlights of the deposit:

- This deposit has to be made in multiples of Rs. 100.
- This deposit shall bear no interest to the depositor.
- It shall be subject to a lock-in period of four years from the date of deposit.
- The deposit can be made in the form of cash or draft or cheque or by

electronic transfer in favour of the authorized bank accepting such deposit.

- The declarant shall receive a ‘certificate of holding the deposit’ in *Form I* as proof of investment made from the authorized bank accepting such deposit.

**The procedure for making a declaration under the scheme:**

Any person willing to declare income, in the form of cash or deposit in an account:

- Has to make a deposit of not less than 25% of the undisclosed income ***before*** making such declaration.
- He/ she shall pay the requisite taxes calculated in the manner specified in the foregoing paragraphs and furnish the declaration in Form-1, either
  - a. Electronically under digital signature; or
  - b. Through transmission of data electronically under electronic verification code; or
  - c. In print form.

The declarant shall, within 30 days from the end of the month in which the above Form-1 is furnished, receive a certificate in Form-2 from the Principal Commissioner or the Commissioner as the case may be.

**Conclusion**

The amendments made to the existing provisions and the introduction of the new provisions is therefore a step towards ensuring that the black money is subject to taxes and the revenue of the government is secured and is another opportunity provided by the Government after IDS-2016 to come clean on undeclared cash and bank deposits.

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