VOLUNTARY DISCLOSURE SCHEME
[CA P N SHAH]

1 BACK GROUND

In his Budget Speech on 29\textsuperscript{th} February, 2016, the Finance Minister has listed 9 objectives for his tax proposals. One of the objectives relates to “Reducing litigation and providing certainty in taxation”. Para 159 to 161 of the Budget Speech deal with Income Declaration Scheme announced by him and read as under:

“159. We are moving towards a lower tax regime with non-litigious approach. Thus, while compliant taxpayers can expect a supportive interface with the department, tax evasion will be countered strongly. Capability of the tax department to detect tax evasion has improved because of enhanced access to information and availability of technology driven analytical tools to process such information. I want to give an opportunity to the earlier non-compliant to move to the category of compliant.

160. I propose a limited period Compliance Window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions by paying tax at 30\%, and surcharge at 7.5\% and penalty at 7.5\%, which is total of 45\% of the undisclosed income. There will be no scrutiny or enquiry regarding income declared in these declarations under the Income Tax Act or the Wealth Tax Act and the declarants will have immunity from prosecution. Immunity from Benami Transaction (Prohibition) Act, 1988 is also proposed subject to certain conditions. The surcharge levied at 7.5\% of undisclosed income will be called Krishi Kalyan Surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1\textsuperscript{st} June to 30\textsuperscript{th} September, 2016 with an option to pay amount due within two months of declaration.”
161. Our Government is fully committed to remove black money from the economy. Having given one opportunity for evaded income to be declared once, we would then like to focus all our resources for bringing people with black money to books”.

In Chapter IX (Sections 178 to 196) of the Finance Act, 2016 (Act), “The Income Declaration Scheme, 2016”, has been announced. The provisions of this scheme are discussed in this article.

2. **THE SCHEME:**

   This scheme is akin to a Voluntary Disclosure Scheme. The scheme has come into force on 1st June, 2016. The declaration for undisclosed domestic income or assets can be made in the prescribed Form No.1 within 4 months i.e on or before 30th September, 2016. The tax at the rate of 30% of the disclosed income will be payable with surcharge called Krishi Kalyan Surcharge at 7.5% and penalty at 7.5%. Hence total amount payable will be 45% of the income declared by the assessee under the scheme. This tax, surcharge and penalty will be payable on or before 30th November, 2016.

3. **WHO CAN MAKE DECLARATION UNDER THE SCHEME:**

   Any Individual, HUF, AOP, BOI, Firm, LLP or company can make a declaration of undisclosed income or assets during the specified period (1.6.2016 to 30.09.2016). However, Section 193 of the Finance Act, Provides that following persons cannot make the declaration under the scheme.

   (i) Any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

   (ii) Any person in respect of whom prosecution has been launched for an offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act 1967 and the Prevention of Corruption Act, 1988.

   (iii) Any person who is notified u/s 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
(iv) The scheme is not applicable in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(v) Declaration cannot be made in relation to any undisclosed income chargeable to tax under the Income tax Act for any previous year relevant to Assessment Year A.Y. 2016-17 or earlier years where -

(a) Notice u/s 142, 143(2), 148, 153A or 153C of the Income tax Act has been issued and the assessment for that year is pending.

(b) Search u/s 132 or requisition u/s 132A or survey u/s 133A of the Income tax Act has been made in the previous year and notices u/s 143(2), 153A or 153 C have not been issued and the time limit for issue of such notices has not expired.

(c) Information has been received by the competent authority under an agreement entered into by the Government u/s 90 or 90A of the Income tax Act in respect of such undisclosed asset.

4. WHICH INCOME OR ASSETS CAN BE DECLARED:

Section 180 of the Finance Act provides that every eligible person can make declaration under the Scheme in respect of the undisclosed income earned in any year prior to 1.4.2016. For this purpose income which can be disclosed will be as under.

(i) Income for which the person has failed to furnish return of income u/s 139 of the Income tax Act.

(ii) Income which the person has failed to disclose in the return filed before 1.6.2016.

(iii) Income which has escaped assessment by reason of the failure on the part of the person to disclose the same.
(iv) Where such undisclosed income is held in the form of investment in any asset, the fair market value of such asset as at 1.6.2016 shall be deemed to be the undisclosed income. CBDT has issued the Income Declaration Scheme Rules, 2016. Rule 3 of these Rules provides for the method for determining the Fair Market value of such assets.

(v) No deduction for any expenditure or allowance shall be allowed against the income which is disclosed under the Scheme.

5. **MANNER OF DECLARATION:**

   (i) The declaration under the Scheme is to be made in Form No.1 prescribed by Rule 4 of the above Rules electronically. The same is to be submitted to the Principal Commissioner of Income tax or the Commissioner of Income tax who is authorized to receive the same. He has to issue an acknowledgement in Form No. 2 within 15 days from the end of the month in which declaration is filed. The declaration is to be signed by the authorized person as provided in Section 183 of the Finance Act. A person who has made a declaration under the scheme cannot make another declaration of his income or income of any other person. If such second declaration is made it will be considered as void. It is also provided that if a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

   (ii) As stated earlier, the tax (including Surcharge and penalty) of 45% of the income declared is to be paid on or before 30-11-2016. The proof of such payment is to be furnished to the concerned Commissioner in Form No.3. Thereafter the CIT will have to give a certificate in Form No.4 to the declarant within 15 days of submission of Form No.3 in respect of the Income declared. If this payment is not made, the declaration will be considered as void. In this case, if any tax is deposited, the same will not be refunded. If the declaration is considered as void, the amount declared by the person will be deemed to be income of the declarant and will be added to the other income of the declarant and assessed under the Income tax Act in the year in which such declaration is made. If the declarant has paid the tax, Surcharge and penalty due as per the declaration before the due date, the income so disclosed will not be added to the
income of any year. There will be no scrutiny or enquiry regarding such income under the Income tax or the Wealth tax Act.

(iii) The declarant shall not be entitled to reopen any assessment or reassessment made under the Income tax or wealth tax Act or claim any set off or relief in any appeal, reference or other proceedings in relation such assessment or reassessment. In other words, declaration under the scheme shall not affect the finality of any completed assessments.

6. **IMMUNITY:**

(i) The scheme provides for immunity from proceedings under other Acts as under:

a) Provisions of Benami Transactions (Prohibition) Act, 1988, shall not apply in respect of the assets declared even if such assets exist in the name of ‘Binamidar’. This is subject to the condition that the Binamidar transfers the asset to the declarant on or before 30th September, 2017.

b) No Wealth tax shall be payable under the Wealth tax Act in respect of any undisclosed cash, Bank Deposits, bullion, jewellery, investments or any other asset declared under the scheme.

c) No prosecution will be launched against the declarant under the Scheme in respect of any income/asset declared under the Income tax or Wealth tax Act.

(ii) It is also provided that nothing contained in the declaration made under the Scheme shall be admissible in evidence against the declarant under any other law for the purpose of any proceedings relating to imposition of penalty or for the purposes of prosecution under the Income tax or wealth tax Act.

(iii) It may be noted that no immunity is provided in the scheme from proceedings under the Foreign Exchange Management Act, Money laundering Act, Indian Penal Code, Central Excise Act, Customs Act, Service Tax provisions, VAT provisions or other Acts.
7. **DETERMINATION OF MARKET VALUE OF THE ASSETS:**

As stated earlier, CBDT has prescribed “Income Declaration scheme Rules, 2016” on 19.5.2016. Rule 3 deals with determination of Fair Market Value of the asset declared in Form No.1. Broadly stated this Rule provides as under.

(i) **VALUE OF BULLION, JEWELLERY OR PRECIOUS STONE, ARCHEOLOGICAL COLLECTIONS, DRAWINGS, PAINTINGS, SCULPTURES OR ANY WORK OF ART:**

Its cost of acquisition or the price which such asset will ordinarily fetch if sold in the open market as on 1.6.2016, whichever is higher. This should be determined on the basis of the valuation report obtained by the declarant from a Registered Valuer.

(ii) **VALUE OF QUOTED SHARES OR SECURITIES:**

Cost of acquisition or the average of the lowest and highest price quoted on the recognized Stock Exchange as on 1-6-2016 whichever is higher.

(iii) **VALUE OF UNQUOTED EQUITY SHARES AND SECURITIES:**

Cost of acquisition or the value as on 1.6.2016 as per the formula given in Rule 3, whichever is higher.

(iv) **VALUE OF UNQUOTED SHARES AND SECURITIES (OTHER THAN EQUITY SHARES):**

Cost of acquisition or value as on 1.6.2016 as determined by a registered valuer whichever is higher.

(v) **IMMOVABLE PROPERTY:**

Cost of acquisition or market value as on 1.6.2016 as determined by a Registered valuer. In circular No.25/2016 dated 30.6.2016 it is clarified that market value determined by a registered valuer will be considered even if such
value is lower than the value on 1.6.2016 as per Stamp Duty Valuation (Ready Recokner Value) as provided in section 50C.

(vi) **SHARE IN PARTNERSHIP:**
Share in Partnership is to be determined as per the formula given in the Rule.

(vii) **ANY OTHER ASSET:**
For any other asset, the cost of acquisition or the price which the asset will fetch is sold in the open market on 1.6.2016 whichever is higher.

8. **SOME CLARIFICATIONS BY CBDT.**
CBDT has issued certain clarifications about the contents of the above Scheme in various Circulars. Some of the clarifications made are as under:

8.1 *Circular No. 7 of 2016 dated 20.05.2016.*

(i) If any person declares any asset under the Scheme and pays tax at the rate of 45% on the market value as at 1.6.2016, he will be liable to pay capital Gains tax when he sells that asset at a later date. For this purpose, the market value on 1.6.2016 declared by him will be treated as cost of acquisition of the asset for computing capital gain. The period of holding will be computed from 1.6.2016.

(ii) It is clarified that an assessee in whose case notice u/s 142(1), 143(2), 148, 153A or 153C is issued for any year on or before 31.5.2016 will be not be able to take advantage of this scheme for the year for which such notice is issued. He can make the declaration for other years. If such notice is issued on or after 1.6.2016, declaration under the scheme can be made even for the year for which such notice is issued. It is further clarified in Circular No: 24/2016 that such notices issued on or after 1.6.2016 shall be deemed to have been closed after the declarant furnishes the Certificate in Form No.4 certifying that the declaration is accepted by the CIT and the declarant has paid the taxes due under the scheme.
(iii) If the assessee has acquired an asset partly from declared income and partly from undisclosed income, the declaration can be made by ascertaining the proportionate amount of undisclosed income as under:

If the asset is acquired in F.Y. 2013-14 for ₹500 out of which ₹200 is from declared income and ₹300 is from undisclosed income, the declaration in Form No.1 can be made for ₹900 as under:

If the Fair Market Value of the asset on 1.6.2016 is ₹1500 the amount to be declared will be ₹ 1500 – (1500 – 200 ) = ₹900

(iv) If any appeal for any assessment year is pending, the assessee cannot declare the income which is covered by the matter in dispute in appeal. However, he can declare any other income for that year which is not declared by him earlier and which is not subject matter in appeal.

(v) It is not mandatory to file valuation report about Fair Market Value of the asset declared in Form No.1. However, the declarant should get such report from the registered valuer before making the declaration. If the declarant wants to file this report with Form No.1, facility for uploading the same will be available. It is further clarified in circular No:24/2016 that the CIT in order to ascertain the correctness of the value of the asset may require the declarant to file this report before issuing acknowledgement in Form No.2.

(vi) A person in whose case search / survey operation is initiated cannot file declaration for undisclosed income for the year covered by the years for which such action is initiated. He can, however, file declaration for undisclosed income of other years. If assessments are made for the years for which search / survey his made, the assessee can declare any undisclosed income which has not been assessed in this year.

(vii) Declaration under the Scheme cannot be made in respect of undisclosed income earned or asset acquired from monies earned through corruption.
(ix) After the declaration is made, the CIT can only make inquiry to ascertain whether action u/s 142(1)/143(2)/148/ 153A/153C is pending for any of the years. Apart from this no other enquiry will be made. It is further clarified in circular No:25/2016 that if a valid declaration is made and tax (45%) is paid, department will not make any enquiry about the source of such income or payment of tax, including surcharge and penalty.

8.2 Circular No.24/2016 dated 27.6.2016

(i) If only part payment of tax, surcharge and penalty due as per the declaration is made on or before 30.11.2016, the declaration will treated as invalid.

(ii) The scheme is open to Residents as well as Non-Residents in respect of undisclosed domestic Income.

(iii) If undisclosed income for A.Y. 2001-02 (or any year for which the assessment is barred by limitation of time) is not declared under the Scheme but is later on detected by the A.O., u/s 197(c) of the Finance Act, such income will be deemed to be the income of the year in which notice u/s 148, 153A or 153C is issued by the A.O. Further, if such income is represented by an Asset, Section 197(c) provides that such asset will be deemed to have been acquired in the year in which such notice is issued and tax will be payable on market value as determined under Rule 3 of IDS Rules. It may be noted that this is a dangerous provision and can be used by the Department against those who fail to take advantage of the scheme and do not declare undisclosed income or asset before 30.9.2016 under the scheme.

(iv) Declarant has to provide his PAN in the Form No.1

(v) No declaration under the Scheme can be made for the years in respect of which the matter is pending before the Settlement Commission.

(vi) If summons u/s 131(1A) or 133(6) is issued by the A.O. for any year, the declarant can take advantage of the scheme for that year if no notice u/s 142/143(2)/153A/153C is issued for that year.
8.3 **Circular No. 25/2016 dated 30.06.2016**

(i) It is clarified that the information contained in the declaration shall not be shared with any other law enforcement agency. In particular, it is clarified that:

(a) This information will not be shared with I.T. Department for any investigation.

(b) Although there is no immunity under other economic laws, this information will not be shared with Service Tax, VAT, Excise, Customs, Registrar of Companies, SEBI and other regulatory bodies.

(ii) Credit for TDS from undisclosed income will be allowed if it has not been claimed or allowed in any assessment made for any assessment year.

(iii) In Form No.1 “Nature of Undisclosed Income” is to be stated. It is clarified that “Source of Income” is not be stated under this head. The declarant has to state the nature of the “Asset” (i.e. Jewellery, Cash, Immovable or movable property) in which the undisclosed income is invested in this column.

(iv) Under Rule 3 of IDS Rules, Cost of the undisclosed Asset or its market value on 1.6.2016, whichever is higher, is to be disclosed.

(v) If any undisclosed asset is declared by the declarant, no investigation will be initiated against the person who has sold that asset to the declarant.

(vi) In Answer to Q.9 in the circular it has been clarified that any undisclosed income of earlier years should not be disclosed in the Return of Income for A.Y. 2017-18 or any subsequent year as income of that year. Adverse consequences of such action in the case of the tax payer have been explained in this Answer.

(vii) If a person has utilized part of the undisclosed income for personal expenses, he should disclose the entire undisclosed income and not the balance after deducting the amount used for personal expenses.
(viii) If a person has invested his undisclosed income in a house property which has not been let out, he will have to declare market value of the property on 1.6.2016. He need not disclose notional rent income u/s 23(4)(b) of the Income tax Act for the earlier years.

(ix) By a separate order dated 6/7/2016 the Central Government has issued a direction u/s 138 of the Income tax Act that “No public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under “ the Income Declaration Scheme, 2016”. This Notification appears to have been issued to ensure that clarification in (i) above becomes legally binding on all public servants.

8.4 Circular No:27 of 2016 dated 14/7/2016:

(i) It is possible for a declarant to file a revised declaration before 30/9/2016 provided that the undisclosed income in the revised declaration is not less than the undisclosed income declared in the earlier declaration filed by the declarant.

(ii) The declaration under the scheme in respect of cash, investment etc. will result in increase in capital in the Balance Sheet. It is clarified that such cases shall not be selected for scrutiny under the CASS only on the ground that there is increase in capital as a result of the declaration under the Scheme.

(iii) Under Section 190 of the Finance Act, 2016, it is provided that if an asset transferred to a Binamidar has been declared under the scheme, the declarant will get immunity only if the Binamidar transfers the property to the declarant on or before 30/9/2017. It is clarified that no capital gains tax will be payable by the Binamidar on such transfer of property to declarant and question of deduction of tax at source will not arise.
(iv) There was some confusion about the answer given to question No: 5 in Circular No: 25/2016 about the enquiry which the Department may make about the source of money from which tax, surcharge and penalty is paid under the scheme. It has now been clarified that the amount utilized for payment of tax, surcharge and penalty under this Scheme should be paid from declared wealth. This has been explained by an illustration as under:

"In a case a person declares ₹100 lac as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of ₹45 lac (₹30 lac + 7.5 lac + 7.5 lac) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of ₹45 lac utilized for payment of tax, surcharge and penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect of the entire undisclosed income of ₹145 lac, the declarant has to declare undisclosed income of ₹145 lac (₹100 lac being the undisclosed income represented by immovable property and ₹45 lac being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to ₹66.25 lac i.e. 45 per cent of ₹145 lac”.

(v) If the declaration is made by a Company or a Firm immunity will be available to the Directors, and Partners in respect of the undisclosed income declared under the Scheme by the Company/Partnership Firm. It may, however, be noted that no immunity is provided to the Directors under the Companies Act in respect of income declared by the Company under the Scheme.

(vi) If a person having undisclosed income in the form of an investment in the immovable property in the name of his spouse, it is possible for the person who has made actual investment to declare the fair market value of such property on 1/6/2016 under the Scheme.

(vii) It is now clarified that in respect of the fair market value of the quoted shares and securities as on 1/6/2016 the quoted price of the share or security shall be computed with reference to the price quoted on the recognized stock
exchange in which the highest volume of trading has been recorded as on 1/6/2016.

(viii) By separate press release dated 14/7/2016 the Central Government has now clarified that, although the last date for payment of tax, surcharge and penalty under the Scheme is 30/11/2016, it will be possible for the declarant to pay the amount of tax, surcharge and penalty in three instalments as under:

(a) 25% of the amount payable to be paid by 30/11/2016
(b) 25% of the amount payable to be paid by 31/3/2017
(c) The balance to be paid on or before 30/09/2017.

9. **TO SUM UP:**

(i) Section 195 of the Finance Act provides that if any difficulty arises in giving effect to the provisions of the Scheme, the Central Government can pass an order to remove such difficulty. Such order cannot be passed after the expiry of 2 years i.e. after 31.5.2018. Section 196 of the said Act authorizes the Government to notify the Rules for carrying out the provisions of the scheme and also prescribe the Form for making the declaration under the scheme.

(ii) It may be noted that the Government had issued Voluntary Disclosure Schemes under the Income tax and wealth tax Act in the past. It is reported that the response to these schemes was as under:

<table>
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<tr>
<th>VDS - Scheme</th>
<th>No. of Declarants</th>
<th>Income / wealth declared (₹ in Crs.)</th>
<th>Tax collected (₹ in Crs.)</th>
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<td>20,912</td>
<td>70.20</td>
<td>10.89</td>
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<tr>
<td>1965</td>
<td>2,001</td>
<td>52.18</td>
<td>30.80</td>
</tr>
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<td>VDS(2)1965</td>
<td>1,14,226</td>
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<td>19.45</td>
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<td>1976</td>
<td>2,58,992</td>
<td>1,090.72</td>
<td>753.77</td>
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<td>1997</td>
<td>4,70,000</td>
<td>3,300.00</td>
<td>1,010.00</td>
</tr>
</tbody>
</table>

(iii) After the 1997 VDIS Scheme, the matter was agitated in the Supreme Court on the question whether such VDIS Scheme is fair to honest tax payers. At that time Government had assured the Supreme Court that in future such Schemes for voluntary Disclosure will not be announced.
(iv) However, last year an Amnesty Scheme under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, was announced. Under this Scheme it is reported that 644 persons declared income of about ₹4,164 Cr., and paid tax of about ₹2,428.40 Cr.

(vi) In the Budget for 2016, in order to give one time opportunity to persons to declare undisclosed domestic income and assets, this disclosure scheme has been announced. In the Declaration From No.1 the declarant has to specify the amount of undisclosed income, nature of the income and the year in which it was earned. He has also to give details of assets and market value of assets as on 1.6.2016, which will have to be supported by valuer’s certificate. Further, provision in the scheme that an assessee, in whose case notice u/s 142(1), 143(2), 148, 153A or 153C is issued for any year, and assessment is pending, cannot declare undisclosed income of that year will be a great impediment in the success of the scheme. Further, there is no immunity from proceedings under the Indirect Tax Laws, Companies Act, Stamp Act, and other Economic Laws. This will be an impediment in the success of the scheme.

(vi) It appears that the scheme is announced by the Government with all good intentions. It is advisable for the persons who have not complied with the provisions of the Income tax Act should come forward and take advantage of the scheme and buy peace. Let us hope that the scheme gets adequate response.