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## EDITORIAL

# INCOME DECLARATION SCHEME

## Fifth set of FAQs

The Finance Ministry has come out with the fifth set of frequently asked questions providing clarifications for the Income Declaration Scheme.

- The FAQs provide clarification that fictitious liabilities in an audited balance-sheet can be disclosed under the scheme without linking it to the investment in any specific asset.
- Further, income declared under the scheme for an earlier assessment year can be taken into account to explain related transactions.

### Comment

As a result of FAQ no. 1 & 2 of the Circular dated 18th August, 2016 issued by CBDT, it is clear that it is not mandatory under the IDS 2016, to declare assets and the assessee can choose to declare the undisclosed income in any preceding assessment years.

Section 183(1) of the Finance act, 2016 permit declaration of undisclosed income. Section 183(2) is only optional and applies to cases "where the income chargeable to tax is declared in the form of investment in any asset, the FMV of such asset as on the date on commencement of this scheme shall be deemed to be undisclosed income for the purpose of subsection (1)" of Section 183. Accordingly it is the option of assessee to declare undisclosed income in the form of assets or income.

It may be appropriate to interpret that once income is declared, the Income so declared can be used to explain acquisition of assets, write back of fictitious liability, or to explain source of certain transactions which are being or may be questioned during assessment proceedings in terms of Section 142/143, Section 148 or Section 153A/153C.

Accordingly, once the income is so declared in any preceding AY, the proceedings under Section 142/143, Section 148 or Section 153A/153C, the assessee can explain the source of acquisition or basis of certain transactions, on the basis of such income not disclosed under IDS.

- Adverse action will not be taken against the declarant by the Financial Intelligence Unit solely on the basis of cash deposits made in banks consequent to declarations made under the scheme.
- Finally, the period of holding of assets declared under the scheme will be taken on the basis of actual date of acquisition of the asset and not June 1, 2016, as was clarified earlier.

### • Immovable property

The Finance Ministry has also clarified that under the scheme, whenever an immovable property is evidenced by a registered deed, the declarant will have the option to mention the fair market value of such property by applying the cost inflation index to the stamp duty value of the property.

### • Cash Payment allowed

- Cash payment of taxes or income disclosed allowed to be deposited in bank.
- There won't be any scrutiny of such cash payment of taxes or deposit of income.

- Valuation by registered valuers won't be questioned.

### • Capital Gains

- Entire holding period of asset to be considered to decide capital gains liability.
- Market value as on June 1, 2016 to be taxed.
- This value to be considered cost price when property sold.
- Indexation benefit only from April 1, 2016.

### • Bogus Cases

- In the case of bogus donations, entire weighted donations to be taxed.
- Fictitious loans, creditors, advances received, shares capital can be disclosed as income of any preceding AY and these liabilities can be written back as reserves.

*Circular No. 29/2016 dated 18th August, 2016*



## LATEST IN FINANCE

**1.0 Credit counsellors to be to be accredited**

The RBI would soon put in place a framework for accreditation of credit counsellors who are expected to serve as facilitators for small businesses. For bridging the information asymmetry on the MSME borrowers side, RBI is initiating a process for putting in place a framework for accreditation of credit counsellors who are expected to serve as facilitators and enablers for micro and small entrepreneurs. Since MSMEs are typically enterprises with little credit histories and with inadequate expertise in preparing financial statements, credit counsellors will assist the borrowers in preparing their project reports and also help banks make better informed credit decisions.

**2.0 Food regulator FSSAI proposes new standards for frozen products**

Food regulator FSSAI has proposed new standards for frozen vegetables and processed fruit products, including commonly used canned tomatoes, frozen peas and jams.

**3.0 SEBI raises debt MFs' exposure limit for housing finance cos**

The Securities and Exchange Board of India (SEBI) increased the additional exposure limits provided for housing finance companies (HFCs) in financial services sector from 5 per cent to 10 per cent. However, sectoral exposure in debt-oriented mutual fund scheme continues to remain at 25 per cent at sector level in the financial services sector, such securities issued by HFCs are rated AA and above and these HFCs are registered with National Housing Bank (NHB) and the total investment/ exposure in HFCs shall not exceed 25 per cent of the net assets of the scheme.

**4.0 RBI seeks to cap banks' exposure to large borrowers**

The RBI has proposed the capping of exposure of banks to each counter-party or group of connected counter-parties at 20 and 25 per cent of their eligible capital base, respectively. In exceptional cases, boards of banks can allow an extra 5 per cent (of the eligible capital base) exposure to a single borrower. There must be a

board-approved policy in this regard. RBI has separately issued comprehensive guidelines for restricting additional exposure to large borrowers whose existing borrowings are more than Rs 25000 cr.

**5.0 Fraud cover for bank clients**

The Reserve Bank of India (RBI) proposed that a customer should have zero liability in case of a third-party fraud on the account or card, provided the customer notifies the bank within three working days of receiving the communication from the bank regarding an unauthorised transaction. In case of delay in reporting, the liability should be limited to not more than Rs 5,000, RBI said.

**6.0 RBI norms for stressed assets - S4A**

S4A stands for scheme for sustainable structuring of stressed assets.

**S4A Scheme**

- Under this, banks can convert a portion of loans they are owned into equity.
- The idea is that if the company does well in the years to come, banks should benefit.
- This lowers the overall debt burden.
- Terms for remaining loan amount,(sustainable debt) can't be changed.

RBI has hinted that loan should be structured in a way that it accelerates repayment if cos make unexpected gains. The formula for assessing sustainable debt -- cash flow available from the current or immediate level of operations. The formula for assessing sustainable debt -- cash flow available from the current or immediate level of operations.

**7.0 RBI proposes Peer to Peer lending regulations**

The Reserve Bank of India (RBI) initiated steps to regulate the nascent and hitherto unregulated peer-to-peer (P2P) lending business. RBI has proposed registering P2P lending platforms as non-banking financial companies (NBFCs).The banking regulator put out a discussion paper on P2P on its website.



Online P2P lending companies work as marketplaces that bring individual borrowers and lenders together for loan transactions without the intervention of traditional financial institutions such as banks and NBFCs. RBI said it would be "prudent" to regulate the business because of "the impact it can have on traditional banking channels" and NBFCs and its "potential to disrupt the financial sector and throw up surprises". In 2015 alone, around 20 new online P2P lending companies were launched in India. At present, there are around 30 start-ups in the P2P lending business in India. The banking regulator sees a role for P2P lending, as evident in its paper, and its language seems to suggest the kind of light touch people prefer when a regulator sets out to define the rules for an emerging business.

### 8.0 Dissecting principal and interest

In the case of Jaayaswals Neco Ltd. vs Union of India held by Delhi High Court that if a court or an arbitration tribunal directs party to pay a sum with interest to the opposite party, the person who has to pay cannot insist that she would pay the principal first and then the interest.

### 9.0 Foreign investors with Permanent Residency Status

In an effort to grease the tracks for foreign investments, India has decided to grant Permanent Residency Status (PRS) to foreign investors who meet some set criteria in respect of minimum investment and employment generation.

#### Push for foreign investment :-

- Minimum investment criteria of Rs.10 crore within 18 months or Rs.25 crore within 36 months.
- Minimum employment generation of 20 resident Indians every financial year.
- PRS granted for up to 20 years.
- Multiple-entry visa without any stay stipulation for PRS holder, spouse, dependants.
- Exemption from registration requirements.
- Allowed to purchase one residential property to live in.
- Spouse/dependants can work in private sector under relaxed salary stipulation.

## INDIRECT TAXATION

### 1.0 Service tax on short-term stay quashed

The Delhi High Court struck down the 2011 finance act provision whereby service tax was imposed on provision of short term accommodation. The provision was for levy of tax on a "hotel, inn, guest house, club or camp site by whatever name called, for providing of accommodation for continuous period of less than 3 months". The petition was filed by the federation of hotels and restaurants association of India. The federation argue that parliament had no power to impose such a levy, and it was the state legislature that had the competence under the constitution. The court party partially allow the petition. It rejected the challenge to another clause in the act that levied service tax on restaurants "having the facility of air conditioning in any part of the establishment, which has license to serve alcoholic beverages, in relation to serving food or beverage, in its premises".

### 2.0 Exporters can file Cenvat refund claim within 1 year from last date of quarter in which proceeds are realized

The CESTAT, Mumbai Bench held that quarterly refund claim under rule 5 of the Cenvat Credit Rules, 2004 can be filed within 1 year from last date of quarter in which Foreign Inward Remittance Certificates (FIRC)s were received.

*Commissioner of Central Excise-I v. SG Analytics (P.) Ltd. [2016] 72 taxmann.com 180*

### 3.0 New incentives for garment exporters

#### ● Rebate of State Levies Scheme (ROSL)

In order to boost garment exports, the revenue department has started the process to operationalise the Rs 5,500-crore ROSL scheme from September 20, under which exporters will be compensated for state levies. The ROSL will provide for remission of state levies in addition to the Duty Drawback Scheme on export of garments on an average basis only.

#### ● Duty Drawback

The government has introduced duty drawback of 3.2 per cent to 4.7 per cent



(depending on the category) for exports of non-fabric inputs made from imported fabrics under special advance authorisation scheme. This will boost export of expensive apparels made from imported fabrics.

- **Provident Fund**

Special incentives has also been announced for provident fund contribution to be funded by government.

#### 4.0 **No extended period on non-payment of ST as service recipient can otherwise claim credit of reverse charge payment**

The CESTAT, Mumbai Bench held that if tax-payable is available as credit to assessee itself, it cannot be said that there is any intention to evade duty/tax and hence, **extending period of limitation cannot be invoked** and further, entire demand would be revenue neutral.

*Reliance Industries Ltd. v. Commissioner of Central Excise & Service Tax LTU, Mumbai. [2016] 72 taxmann.com 6*

## **BANKING**

### 1.0 **RBI opens up bond market**

RBI proposed to allow listed companies to lend money to banks through repo market mechanism, essentially overnight money.

The central bank also proposed allowing listed companies to lend longer tenure money to banks through the repo market mechanism. This will have an impact on interest rates, the bond market, and liquidity in the banking system.

#### **New measures:-**

- Allows banks to raise money through masala bonds
- Allows entities exposed to exchange rate risk hedge up to \$30 million.
- Pushes firms to access bond market for their funding needs beyond a limit.
- Allows FPIs to trade on NDS-OS and directly in corp bond market.
- Proposes to accept corporate bonds in repo

### 2.0 **RBI asks banks to lay down clear policy on stressed asset sale**

Amid rising NPAs, RBI asked banks to put in place clear policies for sale of stressed assets.

In order to attract a wide variety of buyers, the guidelines said the invitation for bids should preferably be publicly solicited. An open auction process, apart from attracting a larger set of borrowers, is expected to result in better price discovery.

Banks should have clear policies with regard to valuation of assets proposed to be sold... However, in the case of exposures beyond Rs.50 crores, banks shall obtain two external valuation reports.

Further, the discount rate used by banks in the valuation exercise should be spelt out in the policy.

To enhance SC/RCS' ability to aggregate debt faster, a bank offering stressed assets for sale should offer the first right of refusal to an SC/RC which has already acquired the highest and significant share of the asset by matching the highest bid.

### 3.0 **Give credit score free to individuals**

The Reserve Bank of India (RBI) directed credit information companies to provide one free full credit report, including score, once in a year to individuals whose credit history is available with them. The credit report plays an important role in the loan application process. The score works as a first impression for the lender-higher the score, better the chances of the loan being approved.

Further RBI said that the objective of providing the free credit report would not be fully met if this report includes details that figure in the full credit report that is accessed by the credit institutions while considering the request for fresh credit facilities.

### 4.0 **Large borrowers - Information database**

Central Repository of Information on Large Credits (CRILC), which became functional in FY15, ascertains that banks and non-banking financial companies (NBFCs) need to furnish credit information on borrowers, who have an aggregate fund and non-fund based exposure of Rs 5 crore and above. This centralised database allows the banking regulator as well as the lender to have access to the bad loans of corporates in the system.





## CAPITAL MARKET

### 1.0 SEBI takes measures to improve transparency in spot market price of commodities

The exchanges will have to display the spot price polling mechanism adopted for every contract on its website from September 29.

The move is aimed at maintaining the transparency of spot price polling process and dissemination of spot prices arrived at through spot price polling process.

### 2.0 Disseminate prices, SEBI tells commodity bourses

The Securities and Exchange Board of India (SEBI) asked commodity exchanges to offer price dissemination facility to subscribers through SMS on a daily basis, a move that will help bring in transparency. The exchanges can provide this service through SMS or any other electronic communication facility - instant messengers and e-mail - for all commodities to all the registers in commodities market who may opt for such option.

## DIRECT TAXATION

### 1.0 SC stays move to levy TDS on hotel room tariffs

In a breather to the hotel industry, the Supreme Court stayed the income tax department's move to levy 10% tax on room tariffs, treating them as 'rent'. Federation Of Hotel & Restaurant Associations Of India had challenged the Delhi HC judgment on the ground that Section 194-I deals with TDS with respect to payments of rent and does not apply to the hotel industry since the charges for a room in a hotel is not 'rent' in terms of explanation of the provision.

### 2.0 I-T AOs to Give Emails IDs, Phone No.s in All Notices

CBDT has directed the income-tax assessing officers (AO) to mention their email ID and telephone numbers in all the notices issued by them to the taxpayers, after several assesses complained that they were unable to communicate with taxmen over the internet in the absence of their contact details. The newly

launched paperless system of e-assessment income tax cases, which is a "high priority" and flagship programme for the CBDT does not want to leave any stone unturned in ensuring that the scheme remains a hit and its procedures easy to comply with.

### 3.0 Revised DTAA between India and Cyprus gets nod

The Union Cabinet, approved a revised Double Tax Avoidance Agreement (DTAA) between India and Cyprus that provides for source-based taxation of capital gains on transfer of shares instead of one based on residence.

### 4.0 IDS: CBDT order endorses validity of e-declarations

The CBDT has issued an order endorsing the legal validity on the e-declarations made under the ongoing domestic black money window, known as the Income Declaration Scheme (IDS).

### 5.0 India-Mauritius treaty: Now, quasi-equity likely to be taxed

Private equity (PE) investors and venture capital (VC) funds from Mauritius might have to negotiate terms to advance the dates of conversion of their instruments into equity before April 1, 2017, if they don't want to draw capital gains tax. This is so, because the government is likely to tax quasi-equity instruments, if these are converted into equity after April 1, 2017, under the revised India-Mauritius double taxation avoidance agreement (DTAA).

However, if the Quasi equity (Convertible Debentures / Convertible Preference shares) are sold before conversion even as per revised DTAA with Mauritius, no capital gain tax will arise in India for Mauritius' companies. The only change brought out by Indo-Mauritius DTAA is imposing tax on transfer of equity shares of the Indian company by the Mauritius' company, which was earlier exempt

### 6.0 Rent receipts taxable as business profits and not as house property income if letting out is business of assessee

The Supreme Court of India held that where assessee company was having house property and its business as well as Main object was to lease



out its property and to earn rent, income so earned as rent should be treated as 'business income', and not as 'income from house property'.

*Rayala Corporation (P.) Ltd. v. Assistant Commissioner of Income-tax. [2016] 72 taxmann.com 149*

#### **7.0 Losses of amalgamating co. could be set-off even if HC approved amalgamation scheme after date of filing of return**

The High Court of Gujarat held that when a scheme of amalgamation had been sanctioned by High Court same would be from appointment date; claim of carried forward unabsorbed depreciation and loss of amalgamated company would be allowed from appointed date.

*IRM Ltd. v. Deputy Commissioner of Income-tax, Circle-4. [2016] 72 taxmann.com 288*

#### **8.0 Issuance of debentures in lieu of overdue interest couldn't be held as actual payments under sec. 43B**

The High Court of Delhi held that where in lieu of interest payable to financial institutions, assessee issued non-convertible debentures to such institutions it could not claim deduction of impugned amount of interest.

*Commissioner of Income-tax, Delhi v. M.M. Aqua Technologies Ltd. [2016] 72 taxmann.com 171*

#### **9.0 Software license is a part of computer system; depreciable at 60% instead of 25%**

The ITAT Ahmedabad Bench held that Software license expenditure which are valid for long term but are part and parcel of computer system are eligible for depreciation at rate of 60 per cent in place of 25 per cent applicable for intangible asset.

*Assistant Commissioner of Income-tax, Circle-8, Ahmedabad v. Zydus Infrastructure (P.) Ltd. [2016] 72 taxmann.com 199*

#### **10.0 Valuation loss in open derivative contract is allowable**

The ITAT Mumbai Bench held that loss in open derivative contracts due to valuation on basis of mark to market values was to be allowed.

*Mili Consultants & Investment (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(3). [2016] 72 taxmann.com 141*

#### **11.0 'Loan processing fee' paid to bank would be treated as interest; not liable to sec. 194A TDS**

The ITAT Mumbai Bench held as follows:

- In terms of section 194A, TDS provisions will not apply to loan processing fees paid to any banking company to which Banking Regulations Act, 1949 applies
- Guarantee fee paid to bank is not in nature of commission or brokerage under ambit of section 194H as there exists no principal-agent relationship.

*Deputy Commissioner of Income-tax (TDS)-2(1), Mumbai v. Laqshya Media (P.) Ltd. [2016] 72 taxmann.com 119*

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## ACCOUNTANCY/AUDITING

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### **1.0 Opening doors to foreign auditors - Govt. to examine**

The MCA has, in a craftily worded letter, sought the institute's views on whether the Government should legalise the entry of foreign firms into India for taking up accounting services.

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## CORPORATE LAW

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### **1.0 SC to clarify on new arbitration ordinance**

A bench headed by Justice Dipak Mishra said that it would clarify within two weeks whether the new or the old arbitration law will apply to cases pending in the courts before commencement of the amended arbitration Act, which came into force on October 23, 2015.

Under the unamended Act, if an application for setting aside an arbitral award was filed, such arbitral award could not be enforced until the application is refused. This prevented the award-holder from enjoying the fruits of his success merely because the unsuccessful party had filed an application against the award.

However, after the amendment to Section 36, an arbitral award now becomes enforceable on expiry of three months from the date on which it is made irrespective of whether an application for setting aside the arbitral award has been filed unless the court grants stay of operation of the arbitral award.



## 2.0 Time frame for completing arbitration

Though the law sets a time limit for the arbitrator to pass an award, the period could be extended in one exceptional case, - when both parties consent to do so, the Supreme Court stated in its judgment in *Electrical Manufacturing Co vs Power Grid Corporation*.

## 3.0 Any dishonest act of CA isn't a professional misconduct if it is done in Individual capacity

The High Court of Delhi held that where a CA sold his shares but continued to receive dividends declared by the Company by cheating upon transferee, such activity could not be said done in relation to practice as CA as such act of dishonesty was done in individual capacity. Thus, disciplinary committee's proposal to remove CA's name from registers of members of ICAI for 6 months was to be set aside.

*Council of The Institute of Chartered Accountants of India v. Gurvinder Singh*. [2016] 72 taxmann.com 197

## 4.0 Pledging of PF to buy a house may be allowed

Retirement fund body EPFO may soon introduce a scheme to allow its over 4 crore subscribers to pledge their provident fund to buy low-cost houses and use the account to pay equated monthly installments.

## 5.0 Penalty imposed on appellant for its delay in circulating price sensitive info to stock exchange

Securities Appellate Tribunal, Mumbai held that where company belatedly disclosed two contracts entered into by it which constituted price sensitive information, Adjudicating Officer was justified in imposing penalty against company and its directors for violation of PIT Regulations.

*J.C. Mansukhani v. Securities & Exchange Board of India*. [2016] 72 taxmann.com 188

## 6.0 Bar on unregistered firm to initiate a suit won't apply to Arbitral proceedings and awards

The Supreme Court of India held that the Arbitral proceedings will not come under expression 'other proceedings' of section 69(3) and, therefore, ban imposed under section 69 can have no application to Arbitral proceedings as well as Arbitration Award.

*Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd.* [2016] 72 taxmann.com 128

## 7.0 HC could allow appointment of Arbitrator even if recovery proceeding before DRT had been initiated

The High Court of Calcutta held that where there was an arbitration agreement between parties,

application for appointment of arbitrator could not have been disallowed simply because bank/financial institution had filed a proceeding for recovery of debts before Debt Recovery Tribunal.

*Amrit Jal Ventures (P.) Ltd. v. Srei Infrastructure Finance Ltd.* [2016] 72 taxmann.com 249

## 8.0 SAT imposed Rs 2 crore penalty on co. as it used IPO proceeds for giving loan to its subsidiary

Securities Appellate Tribunal, Mumbai held that where appellants utilized IPO proceeds for a propose other than purpose specified in IPO and had suppressed material information from investors in giving IPO proceeds as loan to subsidiary company, appellants had violated ICDR regulations and PFUTP Regulations.

*Sandeep Baid v. Securities & Exchange Board of India, Mumbai*. [2016] 72 taxmann.com 154

## FEMA / INSURANCE

### 1.0 100% FDI in regulated financial services

- Cabinet permits foreign investment through automatic route in 'other financial services', if they are under regulators such as Sebi and RBI.
- Present regulations stipulate that FDI would be allowed on automatic route for only 18

## FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.84	0.78	0.66	0.63
SENSEX	28384	27795	26440	24900
NIFTY	8729	8570	8122	7614
CRR (%)	4	4	4	4
REPO (%)	6.50	6.50	6.50	6.50
REVERSE REPO (%)	6.00	6.00	6.00	6.00
Gold (per 10 gm)	31150	31359	30320	29131
Silver (per kg)	45524	47050	41093	36671
Crude (USD/bbl)	45.88	43.88	48.57	39.72
₹ vs USD	66.55	66.74	67.07	66.47
₹ vs Euro	75.02	74.38	75.51	75.90
₹ vs 100 Yen	65.13	65.84	63.32	61.04
₹ vs RMB	10.01	10.08	10.17	10.32
₹ vs Pound	88.59	87.04	95.12	94.04
MCX Aluminium (per kg)	104.55	109.55	105.50	101.10
MCX Copper (per kg)	311.85	321.45	303.70	308.20

\*As on September 11, 2016

(Sources: MoneyControl, NSE, BSE, RBI, MCX)



specified NBFC activities after fulfilling prescribed minimum capitalisation norms mentioned therein.

- Besides commodity broking, foreign investment would also be allowed to come into asset finance companies, depository participants and infrastructure debt funds, sources said. Minimum capital requirements would be the same as fixed by the regulators.
- At present, 18 areas under NBFCs are allowed to attract 100 per cent foreign investment. These include merchant banking, underwriting, portfolio management services, investment advisory services, financial consultancy, stock broking and asset management.

- Foreign investment can still come in to the activities not regulated by financial sector regulators, but only through the approved route. This means via the Foreign Investment Promotion Board or the Cabinet Committee on Economic Affairs.

## 2.0 Burglary without force not insured

The Supreme Court ruled last week that when an insurance policy speaks of burglary, it is theft accompanied by forcible or violent entry. Mere theft is not covered the judgement explained. It stressed that in commercial matters, terms of contracts should be read strictly, especially when there is no ambiguity in the language..

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# GST

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