In this issue:

India:
Income Declaration Scheme, 2016 (IDS) – Government issues rules, explanatory notes, and FAQs

Overview

The Government of India had announced the Income Declaration Scheme, 2016 (IDS) in the Finance Bill, 2016 and it is now effective from 1 June 2016. The intention behind the introduction of this scheme is to provide an opportunity to the taxpayers to voluntarily declare any undisclosed income (on which tax was not paid) and assets located in India acquired from such income by paying prescribed tax, surcharge, and penalty.

The compliance window for IDS is from 1 June 2016 to 30 September 2016.

This NewsFlash summarizes the key provisions of the recently notified rules, timelines, clarificatory explanatory notes, and Frequently Asked Questions (FAQs).

Highlights

Scope of the IDS: Taxpayers can declare their undisclosed income and Indian assets acquired from such income if the income was earned on or before 31 March 2016.

Nondisclosure could be on account of not filing the tax return or failure to declare income in the tax return or due to nondisclosure of full and true material facts before the tax authorities.

Applicable tax, surcharge, and penalty: The taxpayer is required to pay a total of 45% of the value of undisclosed income or asset comprising tax at 30%, surcharge and penalty of 7.5% each (as per prescribed valuation mechanism).

No deduction of any expenditure or allowance will be allowed against the income being declared under the IDS.

Situations where declaration cannot be filed: Declaration cannot be filed by a taxpayer in the following cases:

- A notice for tax audit has been issued on or before 31 May 2016, and proceedings are pending before the tax authorities; or
- Time limit for issuing the notice for relevant tax year has not expired in a case where survey/search operation has been conducted or books, etc., have been requested by the tax authorities; or
- The case is covered under the Black Money Act[1], 2015; or
- There are pending prosecution proceedings against the taxpayer under specified offences.

Declaration considered void: Declaration will be considered void if the requisite tax along with surcharge and penalty is not paid by the taxpayer within the specified timelines (discussed below) or where the declaration has been made by misrepresentation or suppression of facts/information. In such a case, any amount paid under IDS is not refundable, and other penalty and prosecution proceedings under the ITA shall apply.

Benefits of a valid declaration under IDS: Taxpayer can come clean by voluntarily declaring undisclosed income and assets and such taxpayer would be entitled to the following:

- Exemption from payment of wealth tax on the disclosed assets,
- No adverse consequences under the Income Tax Act (ITA) and Wealth Tax Act (WTA), 1957[2],
- Immunity from prosecution proceedings under Benami Transactions (Prohibitions) Act (BTPA) subject to fulfilment of certain conditions, and
- No impact on tax audits already completed.

Timelines and process: Declaration can be made electronically under digital signature or through electronic transmission of data using Electronic Verification Code (EVC)[3] to verify the declaration filed or in paper form before the tax authorities.

Timelines for making a declaration and action by tax authorities are summarized below:

Particulars	**Timelines**
Date from which declaration can be made	1 June 2016
Last date for making declaration	30 September 2016
Last date for paying tax, surcharge, and penalty	30 November 2016
Issue of acknowledgement to the declarant	Within 15 days of the end of the month in which declaration is made

Valuation Rules: The Government has prescribed the valuation mechanism for different types of assets to arrive at the Fair Market Value (FMV) of the asset declared under IDS.

Clarifications in the form of FAQs: Some of the clarifications are outlined below:

- FMV of the asset declared under the IDS will be considered as the cost of acquisition while computing the capital gains at the time of sale of such asset. However, period of holding to determine short-term/long-term nature (this determines the applicable tax rate of the asset) will commence from the date of determination of FMV under the IDS.
- Declaration is not possible in cases where undisclosed income for a particular tax year has been assessed to tax under ITA and the matter is pending before the appellate authorities. However, other undisclosed income not assessed under ITA for the same tax year, can be disclosed under the IDS.
- A person will get immunity from penalty and prosecution proceedings under ITA, WTA, and BTPA in respect of undisclosed income or assets declared under the IDS. No immunity is available for undisclosed income which has not been declared.
- Undisclosed income declared in good faith, but not eligible for declaration, may be assessed under the normal provisions of the ITA.
- Declarations made will be kept confidential and the same will not be disclosed in public domain.

Deloitte's view

IDS is a step taken by the Government to allow taxpayers a final chance to declare undisclosed income earned in India or assets acquired from such income (other than cases covered under BMA) to become compliant. Immunity from penalty and prosecution under ITA, WTA, and BTPA, in respect of declared income or assets under the IDS may incentivise taxpayers who are considering making a declaration. The Government has already secured considerable data from various third-party sources, such as banks, financial institutions, registrars for property transactions, withholding tax, etc., about the financial transactions of taxpayers, which is intended to track defaulting taxpayers. Hence, it is advisable for taxpayers to review their past filings, identify any past non-compliances, and take advantage of the window by making appropriate declaration under the IDS until September 2016. The employers of inbound and outbound assignee population to and from India, may also wish to educate their expatriates about the one-time compliance window.

— Divya Baweja (Delhi)
Partner
Deloitte India
dbaweja@deloitte.com

Tapati Ghose (Bangalore)
Partner
Deloitte India
taghose@deloitte.com

Saraswathi Kasturirangan (Bangalore)
Director
Deloitte India
skasturirangan@deloitte.com

Sudhakar Sethuraman (Chennai)
Partner
Deloitte India
susethuraman@deloitte.com

Poorva Prakash (Delhi)
Director
Deloitte India
poorvaprakash@deloitte.com

Alok Agrawal (Mumbai)
Senior Director
Deloitte India
alokagrawal@deloitte.com

Homi Mistry (Mumbai)
Partner
Deloitte India
homistry@deloitte.com

The Netherlands:
Work permit requirement reinstated for Japanese nationals

Changes to note

Background: According to a judgement from the Dutch Supreme Court ("Raad van State") of December 24 2014, Japanese nationals were granted free access to the Dutch labour market. Based on a most-favoured national clause in the Treaty between the Netherlands and Japan (1912) in relation with a Dutch-Swiss Treaty (1875), the Dutch Supreme Court concluded that Japanese nationals were to have the same treatment as Swiss nationals. As a consequence, Japanese nationals were granted a special status that exempted them from the requirement to have a work permit to work legally in the Netherlands.

New work permit requirement for Japanese nationals per October 1, 2016: Recently, the Dutch government published an interpretative declaration of the Dutch-Swiss Treaty drawn up between the Dutch and Swiss government. In this declaration, both countries state that entry, stay, and access to the labour market of the Netherlands and Switzerland is subject to national law. Consequently, Japanese nationals will again require a Dutch work permit to work legally in the Netherlands.

The Ministry of Security and Justice agreed to include a transitional period until the end of September 2016. Japanese nationals who currently hold a residence permit that authorizes them to work in the Netherlands (as stated on the back of their residence permit card: "Arbeid vrij toegestaan, TWV niet vereist") will keep their residence permit and this status until the expiration date.

As of 1 October 2016, Japanese nationals require either a work permit, a combined residence permit and work permit (GVVA), an orientation year permit, or a Highly Skilled Migrant permit to work legally in the Dutch labour market.

Deloitte's view

Reinstated work permit requirement for Japanese nationals per 1 October 2016: This new policy has a significant impact for employers who would like to hire Japanese nationals in the Netherlands as of October 1, 2016. In order to ensure a legal employment status or a work permit, a combined work and residence permit or a Highly Skilled Migrant residence permit needs to be applied for. Employers will have to take into account longer processing times before a Japanese national can start his work activities in the Netherlands.

Residence permit applications filed before October 1, 2016, will still be granted without the requirement of a work permit.

— Gwen Keller (Amsterdam)
Deloitte The Netherlands
Senior Manager
gkeller@deloitte.nl

Simme de Groot (Amsterdam)
Deloitte The Netherlands
Analyst
sdegroot@deloitte.nl

Veerle Beelen (Amsterdam)
Deloitte The Netherlands
Analyst
vbeelen@deloitte.nl

Global Rewards Updates:
Denmark: Reintroduction of tax advantaged treatment for employee share plans

Background

On 12 May 2016, the Danish Parliament passed a bill reintroducing tax advantages for employee share plans (section 7P of the Danish Tax Assessment Act). This provision is similar to a previous tax rule, known as "section 7H", which was abolished in 2012.

The new provision, which will be effective from 1 July 2016, applies to shares, conditional share awards, stock options and warrants (i.e. rights to receive newly issued shares) granted to employees under an employee share plan. Similar to the previous rule, under the new provision employees will be able to agree with their employer to receive tax efficient awards up to a total value of 10% of their annual salary, if certain conditions are met.

These changes will also impact employer corporate tax deductions and payroll tax obligations.

Provisions of section 7P

Currently, income tax is due at marginal rates of up to 56% on shares acquired through an employee share plan. The tax point depends on the type of award under consideration – it would generally be exercise for stock options and warrants, and vest for conditional share awards.

Under section 7P, the tax point will be deferred to the date the underlying shares are sold by the individual. Any gains from the sale of shares would be taxed as share income at a rate of 27% up to DKK 50,600 for individuals (approximately USD 7,600) and 42% for amounts exceeding this threshold. The threshold is doubled for spouses filing together.

In order for section 7P to apply, the following conditions must be met:

- Both the employee and the employer must enter into an agreement for section 7P to apply and such agreement must generally be made before the award is granted.
- The agreement must specifically identify the nature of the award (e.g. whether it consists of shares, conditional share awards, stock options or warrants; the company whose shares underlie the award; the terms for receiving the award etc.).
- The value (using Black Scholes for options/warrants) of an award cannot exceed 10% of the employee's annual salary as at the time when the section 7P agreement is entered into.
- The award must be provided by the employing company or a related group company.
- The award must provide a right to shares, stock options or warrants in the employing company or a group company.
- The underlying shares must be ordinary shares.
- Stock options and warrants must not be capable of being transferred.
- All awards must give the employee a right to receive shares.
- Regardless of award, shares must actually be delivered (e.g. the same day sale of non-listed shares may be deemed to be cash settled).

Where a section 7P agreement has been entered into, the employer will be required to report the grant of all awards and the subsequent vesting (conditional share awards)/exercise (stock options or warrants) to the Danish tax authorities.

Internationally mobile employees

The new legislation will have an impact on employees who are subject to the exit tax charge rules when permanently departing Denmark. Generally an exit tax charge would not occur where the value of shares held by an individual does not exceed DKK 100,000 (approximately USD 15,000) or if they have been tax resident in Denmark for less than seven of the past 10 tax years. However, under the new rules an individual will be subject to the exit tax charge on all shares they hold in a particular company if any of those shares was acquired by them under a section 7P agreement.

Employer tax impact

Employers who enter into section 7P agreements will no longer be able to claim a corporate tax deduction in relation to the costs of the awards. However, employers who are generally subject to Danish payroll tax ("lønsumsafgift") will no longer be liable to pay this on awards where a section 7P agreement has been made. This is on the basis that the awards are deemed to be share income as opposed to salary income.

Deloitte's view

The reintroduction of preferential tax treatment for employee share plans is a welcome change.

Although section 7P will result in corporate tax deductions not being available, this may not be of much concern to companies that have limited income, tax loss carry forwards or major R&D costs. Section 7P agreements may also be favourable where the main objective of an employee incentive plan is for employees to retain shares after vesting (as there will be no requirement to sell shares to cover taxes).

As section 7P will take effect from 1 July 2016, employers granting any awards from this date may wish to consider the advantages and disadvantages of entering into section 7P agreements ahead of this date.

— Mark I. Miller (San Jose)
Principal
Deloitte Tax LLP
mamiller@deloitte.com

Rive Rutke (Chicago)
Director
Deloitte Tax LLP
rrutke@deloitte.com

Peter Simeonidis (New York)
Principal
Deloitte Tax LLP
psimeonidis@deloitte.com

Sean Trotman (New York)
Principal
Deloitte Tax LLP
strotman@deloitte.com