



## GES Alert

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Income Declaration Scheme 2016 (IDS) – Government issues Rules, Explanatory Notes and FAQs

**Issue no: GES/16/2016**

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# Background

- The Finance Act 2016 has received Presidential assent on 14 May 2016, and the Income Disclosure Scheme, 2016 ('IDS') is now effective from 1 June 2016.
- The IDS has been introduced to provide the taxpayers with an opportunity to come clean and declare any undisclosed income (on which tax was not paid) and assets acquired from such income by paying prescribed tax, surcharge and penalty.
- Similar to the one-time tax compliance scheme under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('BMA'), IDS is a step taken by the Indian Government to allow a short window of opportunity to declare undisclosed income and assets.
- Recently, the Indian Government has also issued the following notifications / circulars in connection with the IDS:
  - The Income Declaration Scheme Rules, 2016 ('Rules') <sup>1</sup>
  - Timelines under IDS<sup>2</sup>
  - Explanatory Notes on provisions relating to IDS<sup>3</sup>.
  - Frequently Asked Questions ('FAQs') on IDS<sup>4</sup>
- This Alert summarises the key provisions of the IDS as enacted in Finance Act 2016, recently notified Rules, timelines, clarificatory explanatory notes and FAQs.

## Key features of IDS

- Declaration of any income chargeable to tax under the Income-tax Act, 1961 ('ITA') or asset located in India acquired from such income may be made by any taxpayer under the IDS, if the income was earned prior to 31 March 2016, and:
  - There was a failure to furnish a tax return or to disclose such income where a tax return was furnished; or

<sup>1</sup> Notification No. 33/2016, F.No.142/8/2016-TPL dated 19 May 2016

<sup>2</sup> Notification No. 32/2016, F.No.142/8/2016-TPL dated 19 May 2016

<sup>3</sup> Circular No. 16 of 2016 dated 20 May 2016

<sup>4</sup> Circular No. 17 of 2016 dated 20 May 2016

- Income had escaped assessment on account of omission or failure to file a tax return or non-disclosure of full and true material facts.
- Under the IDS, the declarant is required to pay a total of 45% of the value of undisclosed income or asset. This comprises of tax at 30%, surcharge and penalty 7.5% each (as per prescribed valuation mechanism)
- No deduction of any expenditure or allowance is to be allowed against the income in respect of which declaration is made under the IDS.
- A person is not eligible to make a declaration in the following cases:
  - Where a notice for assessment/ re-assessment (including cases of search or requisition of books, etc.) has been issued on or before 31 May 2016 and the proceedings are pending before the Assessing Officer.
  - Where a survey / search operation has been conducted or books, etc. have been requisitioned and the time for issuing a notice for the relevant AY has not been expired.
  - Cases covered under the BMA
  - Person against whom prosecution proceedings are pending under various offences viz. corruption, drugs, smuggling, and other specified offences.
- Further, the declaration shall be void and be deemed never to have been made where the entire amount of tax, surcharge and penalty is not paid by the declarant within the prescribed time limit or declaration is made by misrepresentation or suppression of facts or information.
- Where declaration is void, all provisions of the ITA including penalty and prosecution shall apply.
- Any tax, surcharge and penalty paid under IDS is not refundable.
- Once a declaration is validly made under IDS:
  - There would be no adverse consequences under the ITA and Wealth-tax Act, 1957 ('WTA').
  - Immunity from any penal or prosecution proceedings under the Benami Transactions (Prohibition) Act, 1988 ('BTPA') will be available in respect of the assets declared under IDS, where the Benamidar (person in whose name the asset is registered as owner) transfers such asset to the declarant (true beneficial owner of the asset) or his legal representative on or before the prescribed time limit.
  - The finality of completed assessments will not be affected. The declarant will also not be entitled for re-assessment or revision of any order or benefit or set off or relief in any appeal or proceedings under the ITA.

# Timelines and process

- Timelines for actions to be taken for making a declaration, along with the relevant forms to be used by declarant and tax authorities under IDS are summarized below:

Action required	Form No.	Timelines
Date from which declarations can be made	1	1 June 2016
Last date for making declaration	1	30 September 2016
Last date for paying tax, surcharge and penalty	NA	30 November 2016
Issue of acknowledgement to the declarant	2	Within 15 days from end of the month in which declaration is made
Furnishing of proof of payment to the jurisdictional Principal Commissioner / Commissioner ('Authority')	3	No timeline specified
Authority to issue certificate for accepted declaration	4	Within 15 days of submission of proof of payment by the declarant
Transferring an asset by a benamidar to the declarant or his legal representative	NA	On or before 30 September 2017

- Declaration can be furnished:
  - Electronically under digital signature; or
  - Through electronic transmission of data using Electronic Verification Code ('EVC') to verify the declaration filed; or
  - In paper form before the Authority who has the jurisdiction over the declarant.
- Declaration can be verified using the same EVC mechanism available to electronically verify the tax return.

# Valuation Rules

- Fair Market Value of the asset declared under IDS is determined as follows:

Sl. No.	Type of Asset	Valuation Mechanism
1	Bullion, jewellery or precious stone	Higher of : <ul style="list-style-type: none"> <li>• Cost of acquisition; and</li> <li>• The price such asset shall ordinarily fetch if sold in the open market as on 1 June 2016, based on the valuation report from a registered valuer *</li> </ul>
2	Immovable property	
3	Archaeological collections, drawings, paintings, sculptures or any work of art	
4	Unquoted share and security other than equity share in a company	
5	Quoted shares and securities **	Higher of: <ul style="list-style-type: none"> <li>• Cost of acquisition: and</li> <li>• Price determined by taking average of the lowest and highest price on a recognized stock exchange as on:               <ul style="list-style-type: none"> <li>– 1 June 2016; or</li> <li>– where there is no trading on 1 June 2016, date immediately preceding 1 June 2016</li> </ul> </li> </ul>
6	Unquoted equity shares and member's interest in a partnership firm / association of persons or a limited liability partnership	To be computed using the prescribed formula, largely based on prescribed Net Asset Value (NAV) principles. Certain assets to be valued as per valuation rules prescribed under IDS while computing NAV
7	Any other asset	Higher of : <ul style="list-style-type: none"> <li>• Cost of acquisition or the amount invested: and</li> <li>• Price the asset shall ordinarily fetch if sold in the open market as on 1 June 2016</li> </ul>

\* Registered valuer refers to a valuer recognized under the erstwhile Wealth-tax Act, 1957

\*\* Quoted share or security means a share or security quoted in recognized stock exchange (a stock exchange recognized under Securities Contract Regulations Act, 1956) with regularity, where quotations are based on current transactions made in ordinary course of business.

- Where investment in any asset was made partly from income already assessed to tax in the years upto 31 March 2016, the value to be reported under the IDS would need to be worked out after allowing a proportionate deduction for the income assessed to tax as compared to the cost of asset. For example, undisclosed income represented in the form of such asset will be determined as follows:  $FMV - (FMV \times AI / COA)$ ; where 'FMV' is the fair market value of the asset as on 1 June 2016; 'AI' is the income assessed to tax and 'COA' is the total cost of the asset.

## Clarification in the form of FAQs

- Once a declaration is validly accepted under the IDS for any asset, such declared FMV of that asset will be considered as the cost of acquisition while calculating the capital gains on sale of such asset at a later date. However, the period of holding to determine the short-term/ long-term nature of asset will commence from the date of determination of FMV under IDS.
- A person will not be eligible to make a declaration for any assessment year ('AY'), where a notice of assessment/ re-assessment (including cases of search or requisition of books, etc.) has been issued on him and the proceeding is pending before the Assessing Officer. However, declaration may be made for other years where no notice is issued under the above referred sections.
- Declaration is not possible in cases where undisclosed income is assessed to tax under ITA and matter is pending before any Appellate Authority. However, he can declare other undisclosed income which has not been assessed under the ITA for the said assessment year.
- Declaration cannot be filed in respect of AYs where time for issuance of notice in search/ seizure cases has not expired and no notice has been issued. However, the person is eligible to file a declaration for a prior AY.
- Declaration is also not permissible in respect of undisclosed income for the year in which

survey was conducted by the tax authorities. Declaration in respect of income for other years can be made.

- Where a search or survey was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then such unassessed income can be declared under IDS.
- Where any undisclosed income/ asset is not declared under IDS, such income/ asset shall be deemed to have been earned/ received/ acquired in the year in which the tax authorities issue notice for assessment/ re-assessment (including cases of search or requisition of books, etc.), etc., and the provisions of ITA shall apply accordingly.
- However, undisclosed income declared in good faith, but not eligible for a declaration, may be assessed under the normal provisions of the ITA in the respective year of earning the income.
- A person will get immunity from penalty or prosecution proceedings under the ITA, WTA and BTPA in respect of the undisclosed income or assets declared under IDS; no immunity is available in respect of the non-declared undisclosed income.
- Undisclosed income acquired from money through corruption or from other offences under prescribed laws cannot be declared under the IDS. Declaration of such income or assets acquired from such income if made, shall be considered void and provisions of the ITA as applicable for any other undisclosed income will trigger.
- The Authority processing the declaration will not conduct any enquiry at the time of filing a declaration, except where any assessment or other proceedings (including cases of search or requisition of books, etc.) are pending for the AY for which declaration is made.
- Declarations made will be kept as confidential as in the case of return of income filed, and the same would not be disclosed in public domain.
- It is clarified that the valuation report obtained from a registered valuer need not be filed along with the declaration, but needs to be kept handy before filing the declaration. A facility for uploading documents will be available at the time of e-filing the declaration.

# Comments

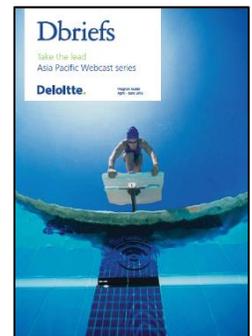
The timelines, valuation rules, forms, procedures and clarifications in the form of FAQs clarify the operational aspects of the IDS. It clearly shows the Government's intent to allow declarations for past undisclosed income or assets in India and allows taxpayers to secure immunity in respect of the declared income or assets under the ITA, WTA and BPTA. It is a step by the Government to allow a last chance for the taxpayers to review their affairs and become compliant, before strict action is initiated for non-compliant cases. It is now well-known that 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. Therefore, 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 IDS until September 2016.

## Upcoming Dbriefs – Register

**India / Mauritius Treaty Amended by Protocol : What's the Impact for Investment into India?**

**Wednesday, 8 June, 2:00 – 3:00 PM HKT (GMT +8)**

In an historic development, the India / Mauritius Double Tax Treaty, which has stood the test of time and survived several controversies, has been amended by a protocol. What are the changes and what will be their impact? Gain insights into how these amendments will impact investment and business activities in India and the way forward.



Register

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