

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Pradhan Mantri Garib Kalyan Yojana (PMGKY) 2016 introduced; Changes in taxation of undisclosed income proposed

The government of India recently announced demonetization of 500 and 1000 rupee currency notes. This is a significant step aimed at curbing black money. Representations were received by the Government to provide another opportunity to persons with undisclosed income to pay taxes and come clean. Accordingly, the Government has now introduced "The Taxation Laws (Second Amendment) Bill, 2016" ('the Amendment Bill') to amend the provisions relating to taxation of undisclosed income under the Income-tax Act, 1961 ('IT Act') and launch a new income disclosure scheme to be known as Pradhan Mantri Garib Kalyan Yojana, 2016 ('PMGKY').

Additionally, it was imperative to revisit the existing provisions of the IT Act with a view to plug loopholes and prevent misuse of the existing provisions.

Key proposals are:

- The rate of tax for cash credits, unexplained investments/money, investments not fully disclosed in books, unexplained expenditure amount borrowed reflected in the income tax return furnished or determined by the assessing officer is proposed to be increased to 60 per cent¹.
- Surcharge of 25 per cent on tax to be applicable for income chargeable under above provision.

- The existing penalty provisions² to be applicable only for search cases initiated prior to the Amendment Bill receiving Presidential assent. Penalty of 30 / 60 per cent levied on undisclosed income in respect of search cases initiated after the Presidential assent for the Amendment Bill³.
- The proposal envisages a penalty levy at 10% of tax on income chargeable under section 115BBE which is not the subject matter of a search. However, such penalty is not to be levied when the taxpayer has included this income in the return of income and paid applicable taxes on or before the end of the relevant previous year. The section also provides that no further penalty will be levied for under reporting and misreporting of income (under section 270A of the IT Act).
- Taxation and Investment Regime for PMGKY 2016:
 - New scheme proposed to enable persons to disclose hitherto unaccounted / undisclosed income in the form of cash or deposit in an account maintained with specified entity.
 - The scheme to come into force on the date of notification in the Official Gazette – to be in force till the specified date.

1 Section 115BBE of the IT Act

2 Penalty in a case where search has been initiated under section 132 of the IT Act on or after 1 July 2012, would vary between 10 to 60 percent of the undisclosed income based on whether the taxpayer admits the undisclosed income and meets specified conditions or not [Section 271AAB of the IT Act]

3 Where the taxpayer admits undisclosed income, specifies the manner in which such income has been derived, pays taxes together with interest and furnishes the return of income for the specified year declaring such income – penalty is proposed at the rate of 30 per cent of the undisclosed income. If the taxpayer does not meet the conditions specified above, then penalty is proposed to be levied at the rate of 60 per cent of the undisclosed income.

2. Salient features of PMGKY

- Declaration permissible by any person for any assessment year commencing on or before 1 April, 2017;
- No deduction allowed for any expenditure or allowance or set-off of loss against the declared income;
- Specified entity means Reserve Bank of India, banking company or co-operative bank, Head Post Office or Sub-Post Office and any other entity as may be notified by the Central Government;
- Impact of disclosure will be as follows:
 - ① Tax at 30 per cent of the undisclosed income;
 - ② Surcharge in the form of Pradhan Mantri Garib Kalyan Cess applicable at 33 per cent of tax;
 - ③ Penalty due at 10 per cent of the undisclosed income;
 - ④ 25 per cent of undisclosed income to be deposited in interest free Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 with a lock in period of 4 years.
- Declaration to be filed together with proof for payment of tax, penalty and deposit;
- Undisclosed income declared under PMGKY not to impact completed assessments of the declarant;
- Information provided in the declaration not admissible as evidence against the declarant except under specified scenarios under the following legislations:
 - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;
 - Indian Penal Code;
 - Narcotic Drugs and Psychotropic Substances Act, 1985;
 - The Unlawful Activities (Prevention) Act, 1967;
 - Prevention of Corruption Act, 1988;
 - The Prohibition of Benami Property Transactions Act, 1988;
 - The Prevention of Money-Laundering Act, 2002;
 - Special Court (Trial of offences Relating to Transactions in Securities) Act, 1992;
 - Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

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Contacts

Deloitte Tohmatsu Tax Co.

India Practice

Hiroyuki Hayashi, Partner

hiroyuki.hayashi@tohatsu.co.jp

Pawankumar Kulkarni, Manager

pawankumar.kulkarni@tohatsu.co.jp

Issued by

Deloitte Tohmatsu Tax Co.

Tokyo Office

Shin-Tokyo Building 5F, 3-3-1 Marunouchi, Chiyodaku, Tokyo 100-8305, Japan

Tel : +81 3 6213 3800

email : tax.cs@tohatsu.co.jp

Corporate Info. : www.deloitte.com/jp/en/tax

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