

The Compulsory Deposit Scheme (Income Tax Payers) Act, 1974

UNION OF INDIA

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An Act to provide, in the interest of national economic development, for compulsory deposit by certain classes of income- tax payers and for the framing of a scheme in relation thereto, and for matters connected therewith of incidental thereto. BE it enacted by Parliament in the Twenty- fifth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Compulsory Deposit Scheme (Income- tax Payers) Act, 1974 .(2) It extends to the whole of India.(3) It shall be deemed to have come into force on the 17th day of July, 1974 .

2. Definitions.

In this Act, unless the context otherwise requires, -(a) " compulsory deposit" means compulsory deposit under this Act;(b) " deposit" means a deposit of money;(c) " depositor" means a person who is liable to, make a compulsory deposit;(d) " Income- tax Act" means the Income- tax Act, 1961 ; (43 of 1961 .)(dd) " Income- tax Officer" has the same meaning as in clause (25) of section 2 of the Income- tax Act, and includes an Inspecting Assistant Commissioner who exercises or performs the powers or functions conferred on, or assigned to, him under section 125 or section 125A of the said Act;](e) all other words and expression herein but not defined and defined in the Income- tax Act shall have the meanings, respectively, assigned to them in that Act.

3. Persons liable to make compulsory deposits.

(1) Subject to the provisions of this Act, the persons specified in sub- section (2) shall be liable to make compulsory deposits for the assessment year commencing on the 1st day of April, 1975 and

every subsequent assessment year (not being an assessment year commencing on or after the 1st day of April, 1986].(2)The persons referred to in sub- section (1) are the following namely:-(a)every person, being-(i)an individual, who is a citizen of India;(ii)a Hindu undivided family;(iii)a trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), (6 of 1913 .) if the income in respect of which the trustee is liable to income- tax as a representative assessee or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown; and(b)every person who is assessable under the Income- tax Act in respect of the total income of an individual, or a Hindu undivided family or a trustee specified in clause (a).(3)Notwithstanding anything contained in sub- section (1),-(a)an individual specified in sub- clause (i) of clause (a) of sub- section (2), or(b)any person specified in clause (b) of sub- section (2) who is assessable under the Income- tax Act in respect of the total income of the individual aforesaid, shall not be liable to make any compulsory deposit for any assessment year where, in either case, such individual is more than[sixty- five years] 8 of age on the first day of the financial year immediately preceding that assessment year".

4. Requirement as to compulsory deposit.

(1)Where, in relation to an assessment year referred to in subsection (1) of section 3, the current income of any person, being an individual or a Hindu undivided family or a trustee specified in clause (a) of sub- section (2) of that section, exceeds fifteen thousand rupees, such person, or if any other person is assessable under the Income- tax Act in respect of the total income of such person, the person so assessable, shall make, in accordance with and subject to the provisions of this Act and any scheme framed thereunder, a compulsory deposit,-(i)for the assessment year commencing on the 1st day of April 1975 and the assessment year commencing on the 1st day of April, 1976 , at the rates specified in Paragraph A of the Schedule.(ii)for the assessment year commencing on the 1st day of April, 1977 and the assessment year commencing on the 1st day of April 1978 , at the rates specified in Paragraph B of the Schedule;(iii)for the assessment year commencing on the 1st day of April, 1979 , the assessment year commencing on the 1st day of April, 1980 , and the assessment year commencing on the 1st day of April, 1981 , at the rates specified in Paragraph C of the Schedule; and(iv)for the assessment year commencing on the 1st day of April, 1982 , at the rates specified in Paragraph D of the Schedule."](2)Where, in the case of any person specified in sub- section (2) of section 3, a deduction is required to be made under the Additional Emoluments (Compulsory Deposit) Ordinance, 1974 , (8 of 1974 .) the amount of the compulsory deposit which such person is liable to make under this Act for any assessment year shall be reduced by the amount deducted under that Ordinance during the financial year immediately preceding that assessment year; and where such deduction is equal to or exceeds the amount of such compulsory deposit, it shall not be necessary for such person to make a compulsory deposit for that assessment year.Explanation.-- When any Central Act repeals and replaces (with or without any modification) the Additional Emoluments (Compulsory Deposit) Ordinance, 1974 , (8 of 1974 .) the references to the said Ordinance in this sub- section shall be construed as references to such Central Act.(3)For the purposes of this section, " current income", in relation to an assessment year, means,-in a case where a statement is sent by the person Al clause (a) of sub- section (1) of section 209A of the Income- tax

Act in the financial year immediately preceding that assessment year or where the Income- tax Officer has made an order under sub- section (1) or sub- section (3) of section 210 of that Act requiring the person to pay advance tax during the financial year immediately preceding that assessment year and the person has not sent an estimate under section 209A or, as the case may be, section 212 of that Act](i) if the total income of the latest previous year in respect of which the person has been assessed by way of regular assessment forms the basis of computation of advance tax payable by him. such total income[exclusive of capital gains and income referred to in sub- clause (ix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] as increased by the net agricultural income if any, which has been taken into account for the purposes of charging income- tax for the assessment year relevant to that previous year; or(ii)if the total income of the previous year on the basis of which income- tax has been paid by the person under section 140A of the Income- tax Act forms the basis of computation of advance tax, such total income[exclusive of capital gains and income referred to in sub- clause (ix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] as increased by the net agricultural income, if any, returned by the person in the return of income for the assessment year relevant to that previous year;(b)in a case where an estimate is sent by the person under section 209A or section 212 of the Income- tax Act the total income[exclusive of capital gains and income referred to in sub- clause (ix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] as estimated by him of the period which would be the previous year for that assessment created by the net agricultural income, if any, of that estimated by him;(c)in any other case, if the total income of the person, as estimated by him, of the period which would be the previous year for that assessment year exceeds the maximum amount not chargeable to income- tax in his case, such total income[exclusive of capital gains and income referred to in sub- clause (ix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] as increased by the net agricultural income, if any, of that period, as estimated by him. Explanation.- In this sub- section,, net agricultural income" means the net agricultural income as defined in the- Finance Act of the relevant year.

5. Time for making compulsory deposit. A depositor shall make the compulsory deposit for an assessment year referred to in sub- section(1) of section 3,-

(a)in a case where such depositor is required to pay advance tax under the Income- tax Act in the financial year immediately preceding that assessment year, at any time (in one sum or in instalments of his choice) before the expiry of the date on which the last instalment of advance tax is payable by him in accordance with the provisions of section 211 or sub- section (4) of section 209A] or, as the case may be, sub- section (3A) of section 212 of that Act;(b)in any other case, at any time (in one sum or in instalments of his choice) before the end of the financial year immediately preceding that assessment year.

6. Order by Income- tax Officer for compulsory deposit in certain cases.

(1)If, in relation to an assessment year referred to in sub- section (1) of section 3, the correct income

of a person falling under clause (c) of sub- section (3) of section 4 exceeds fifteen thousand rupees and such person has failed to make the compulsory deposit for that assessment year, the Income- tax Officer shall, by order in writing, direct that such person shall make the compulsory deposit with reference to his correct income.(2)For the purposes of this section," correct income" of a person, in relation to an assessment year, means-(i)in a case where the person has furnished the return of income under section 139 of the Income- tax Act, the total income[exclusive of capital gains and income referred to in sub- clause fix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] returned by him, as increased by the net agricultural income, if any, returned by him:(ii)in a case where the person has failed to furnish the return of income under section 139 of the Income- tax Act and assessment is made under section 144 of that Act, the total income[exclusive of capital gains and income referred to in sub- clause (ix) of clause (24) of section 2 and in clause (c) of section 115C] of the Income- tax Act] determined on assessment, as increased by the net agricultural income, if any, determined on assessment.Explanation.- In this sub- section," net agricultural income" has the meaning assigned to it in the Explanation to sub- section (3) of section 4.

7. Compulsory deposit to carry simple interest.

(1)Every compulsory deposit made by or recovered from a depositor shall carry simple interest at a rate equal to the bank deposit rate.Explanation.- In this sub- section," bank deposit rate" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 . (10 of 1949 .)(2)The interest shall be calculated in such manner as may be specified in the scheme framed under section 19,(3)For the purposes of the deduction under section 80L of the Income- tax Act, interest received on a compulsory deposit shall be deemed to be interest received on a deposit with a banking company to which the Banking Regulation Act, 1949 , applies.

7A. For the purposes of exemption under section 5 of the Wealth- tax Act, 1957 , the amount of compulsory deposit shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949 (10 of 1949 .) applies."]

8. Repayment compulsory deposit.

(1)The amount of compulsory deposit made by or recovered from a depositor in any financial year shall be repayable in five equal annual instalments commencing from the expiry of two years from the end of that financial year, together with the interest due on the whole or, as the case may be, part of the amount of the compulsory deposit which has remained unpaid:Provided that no depositor shall be entitled to withdraw before the expiry of the financial year 1985 - 86 any amount which, in accordance with the foregoing provisions of this sub- section, is repayable or payable during that financial year and the provisions of sub- section (2) shall apply in relation to such amount as they

apply in relation to any amount referred to in that sub- section:"[Provided further that] nothing in this section shall prevent earlier repayment of the deposit or any instalment thereof together with the interest due in any case in which the Income- tax Officer is satisfied that extreme hardship will be caused unless such repayment is made.(1A)Notwithstanding anything contained in sub- section (1),-(a)the amount of compulsory deposit made by or recovered from an individual; or(b)the amount of compulsory deposit made by or recovered from any person who is assessable under the Income- tax Act in respect of the total income of an individual on behalf of such individual, shall, to the extent it has remained unpaid, be repayable, together with interest thereon,-(i)Where such individual has attained the age of sixty- five years before the 1st day of April, 1983 , on the 1st day of June, 1983 ; and(ii)in any other case, on the first day of the financial year immediately succeeding the financial year in which such individual attained sixty- five years of age".(2)Where any amount has become repayable or payable under sub- section (1), or sub- section (1A)," the depositor may, at his option, not withdraw such amount after it has become so repayable or payable, and if he does so, such amount shall carry interest for the period it is not withdrawn as if it were a compulsory deposit, and the provisions of this Act shall, so far as may be, apply in relation to such amount or interest thereon as they apply in relation to a compulsory deposit or as the case may be, interest on such deposit.

9. Intimation regarding compulsory deposit.

Every depositor shall send to the Income- tax Officer, along with the return of income for the assessment year for which he is liable to make a compulsory deposit, proof of the fact of such deposit having been made.

10. Penalty for failure to make compulsory deposit.

(1)If, in relation to an assessment year referred to in sub- section (1) of section 3, any person who is liable to make a compulsory deposit [being a person falling under clause (a) or clause (b) of subsection (3) of section 4]-(a)has without reasonable cause failed to make] the compulsory deposit within the time allowed under section 5, or(b)has made the compulsory deposit within such time but the deposit so made falls short of the requisite amount and there is no reasonable cause for making such short payment"]¹ the Income- tax Officer may], by order in writing, direct that such person shall pay, by way of penalty, a sum-i) which, in the case referred to in clause (a), shall be equal to twenty- five per cent. of the compulsory deposit which he is liable to make; and(ii)which, in the case referred to in clause (b), shall be equal to twenty- five per cent. of the amount by which the compulsory deposit made by him falls short of the requisite amount.(2)If, in relation to an assessment year referred to in sub- section (1) of section 3, the correct income of a person falling under clause (c) of sub- section (3) of section 4, exceeds fifteen thousand rupees and such person-(a)has, without reasonable cause, failed to make"] the compulsory deposit within the time allowed under section 5, or(b)has made the compulsory deposit within such time on the basis of his own estimate but the deposit so made falls short of] seventy- five per cent. of the compulsory deposit which he would have been liable to make on the basis of his correct income and there is no reasonable cause for making such short payment"]the Income- tax Officer may"] by order in writing, direct that such person shall pay by way of penalty a sum-(i)which, in the case referred to in

clause (a), shall be equal to twenty- five per cent. of the compulsory deposit calculated with reference to his correct income; and(ii)which, in the case referred to in clause (b), shall be equal to twenty- five per cent. of the amount by which the compulsory deposit made by him falls short of the compulsory deposit calculated with reference to his correct income.Explanation,- In this sub-section, " correct income" has the meaning assigned to it in sub- section (2) of section 6.(3)No order imposing a penalty under this section shall be made against any person unless such person has been heard or has been given a reasonable opportunity of being heard.

11. Authorities.

(1)Every Director of Inspection, Commissioner of Income- tax Commissioner of income- tax (Appealo)], Appellate Assistant Commissioner of Income- tax, Inspecting Assistant Commissioner of Income- tax, Income- tax Officer and Inspector of Income- tax, shall have the like powers and perform the like functions under this Act as he has and performs under the Income- tax Act, and for the exercise of his powers and the performance of his functions, his jurisdiction under this Act shall be the same as he has under the Income- tax Act and for this purpose compulsory deposit under this Act shall be deemed to be tax chargeable under that Act.(2)All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board: Provided that no such orders, instructions or directions shall be issued-(a) so as to require any authority referred to in sub- section (1) to dispose of a particular case in a particular manner: or(b)so as to interfere with the discretion of the Commissioner (Appeals) or the Appellate Assistant Commissioner"] in the exercise of his appellate functions.(3)Every Income- tax Officer employed in the execution of this Act shall observe and follow the orders, instructions and directions, issued guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.

12. Appeals and revision.

(1)Subject to the provisions of sub- section (2), any depositor"] aggrieved by any order of the Income- tax Officer under section 10, may Appeal to the Appellate Assistant Commissioner and the provisions of the Income- tax Act relating to appeals, reference and revision shall, so far as may be, Apply in relation as they apply in relation to an order of the Income- tax sing a penalty under section 221 of that Act.(2)Where an order referred to in sub- section (1) is made by an Inspecting Assistant Commissioner in exercise of the powers or functions conferred on or assigned to him under section 125 or section 125A of the Income- tax Act, the provisions of that sub- section shall have effect as if for the words" Appellate Assistant Commissioner", the words and brackets" Commissioner (Appeals)" were substituted."12 (1) Where any order imposing a penalty under section 10 made by the Income- tax Officer before the date on which the Finance (No. 2) Act, 1980 received the assent of the President (such order being hereafter in this section referred to as pre- amendment penalty order) has not been made the subject matter any subsequent proceeding by way of appeal or revision under this Act, then, the depositor aggrieved by such order may, if the considers that no such penalty would have been levied if the amendments made to section 10 by the Finance (No. 2) Act, 1980 had been in force on the date of passing of such order, make an application to the Income- tax Officer for a special review.(2)Where a pre- amendment penalty order has been made the subject

matter of any subsequent proceeding by way of an appeal or revision under this Act, the depositor aggrieved by the order passed in any such proceeding or as the case may be the last of such proceedings may, if he considers that no such penalty would have been levied if the amendments made to section 10 by the Finance (No. 2) Act, 1980 had been in force on the date of passing of the pre- amendment penalty order, make an application to the authority which passed the order in such proceeding or, as the case may be, the last of such proceedings for a special review.(3)The application referred to in sub- section (1) or sub- section (2) shall be presented before the 1st day of January, 1981 : Provided that the Income- tax Officer or the other authority to whom an application for special review is made may admit such application after the said date if he or it is satisfied that the depositor had sufficient cause for not presenting it before the said date.(4)The income- tax Officer or other authority to whom the application for special review is made under sub- section (1) or sub- section (2), may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order as he or it thinks fit.(5)The provisions of section 12 shall, so far as may be, apply in relation to an order passed under sub- section (4) as they apply in relation to a pre- amendment penalty order or, as the case may be, an order passed by any other authority under that section.(6)The special review under this section shall be in addition to and not in derogation of any other remedy which an aggrieved depositor may have under this Act. Explanation.- For the purposes of this section, " authority" includes the Appellate Tribunal.]

13. Rectification of mistakes.

(1)With a view to rectifying any mistake apparent from the record, the Income- tax Officer, the Appellate Assistant Commissioner, the Commissioner (Appeals) the Commissioner and the appellate Tribunal may, of his, or its, own motion or on an application by the depositor in this behalf, amend any order passed by him or it in any proceeding under this Act, within four years from the end of the financial year in which such order was passed"](2)An amendment which has the effect of enhancing the compulsory deposit or any penalty imposed under this Act shall not be made under this section unless the authority concerned has given notice to the depositor of its intention so to do and has allowed the depositor a reasonable opportunity of being heard.(3)Where an amendment is made- under this section, the order shall be passed in writing by the authority concerned.(4)Where any such amendment has the effect of enhancing the compulsory deposit or the penalty imposed under this Act, the Income- tax Officer shall serve on the depositor a notice specifying the sum which has to be deposited or paid.

14. Collection and recovery of compulsory deposit and penalty.

(1)When, in consequence of any order passed under this Act, any compulsory deposit or penalty has to be made or paid, the income- tax Officer shall serve upon the depositor a notice specifying the sum which has to be deposited or paid.(2)The sum specified in a notice under sub- section (1) shall be deposited or, as the case may be, paid within thirty- five days of the service of the notice at the place and with or to the person mentioned in the notice: Provided that on an application made by the depositor before the expiry of the said period of thirty- five days, the Income- tax Officer may extend the time for making the deposit or payment or allow the deposit or payment to be made by instalments subject to such conditions as he may think fit to impose in the circumstances of the

case.(3)If a depositor fails to make the compulsory deposit within the time allowed under section 5, or if he fails to deposit or, as the case may be, pay the amount which he is required to deposit or pay by notice under sub- section (1) within the time allowed under sub- section (2) (whether fixed originally or on extension), at the place and with or to the person mentioned in the said notice, the depositor shall be deemed to be in default.(4)Any arrear of compulsory deposit and any penalty imposed under this Act shall be recoverable in the manner provided in Chapter XVII- D of the Income- tax Act for recovery of arrears of tax and for this purpose the provisions of that Chapter shall apply as if references to the assessee therein were references to the depositor.

15. Rounding off.

(1)The amount of the current income, correct income and compulsory deposit shall be rounded off to the nearest multiple of ten rupees and, for this purpose, any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five. the amount shall be reduced to the next lower amount which is a multiple of ten.Explanation.- In this sub- section," current income" and" correct income" have the meanings respectively assigned to them in sub- section (3) of section 4 and sub- section (2) of section 6.(2)The amount of penalty payable under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

16. Applicability of Chapter XV of Income- tax Act.

The provisions of Chapter XV of the Income- tax Act relating to liability in special cases shall, so far as may be, apply in relation to com- pulsory deposits and penalties impassable under this Act as they apply in relation to income- tax payable and penalties impassable under that Act.

17. Protection against attachment.

(1)The amount of compulsory deposit and interest thereon standing to the credit of any depositor shall not be liable to attachment under a decree or order of any court in respect of any debt or liability incurred by the depositor.(2)The amount of compulsory deposit and interest thereon standing to the credit of a depositor at the time of his death and payable to his nominee shall vest in the nominee and shall be free from debt or other liability incurred by the deceased or incurred by the nominee before the death of the depositor.

18. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Government or against any officer of the Government for anything which is in good faith done or intended to be done under this Act or any scheme framed thereunder.

19. Compulsory Deposit Scheme.

(1)The Central Government shall, by notification in the Official Gazette, frame a scheme or schemes, to be called Compulsory Deposit (Income- tax Payers) Scheme or Schemes, in relation to compulsory deposits.(2)A scheme framed under sub- section (1) may provide for-(a) the manner in which compulsory deposits shall be made;(b)the documents to be issued to persons by whom deposits have been made as evidence of such deposits;(c)the authority or authorities by or through whom the deposits may be collected;(d)the nomination of any person to receive the amount standing to the credit of a depositor in the event of his death or in cancellation or change of such nomination;(e)the issue of duplicate of any document issued as evidence of any deposit in the event of loss or destruction of the original and the fee (not exceeding two rupees) on the payment of which such duplicate may be issued;(f)any other matter which may be necessary or Proper for the effective implementation of the scheme.(3)The Central Government may, by notification in the Official Gazette, add to, amend or vary any scheme framed under sub- section (1).(4)A scheme framed under sub- section (1) or a notification issued, under sub- section (3) may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the scheme or notification.(5)Any scheme framed under sub- section (1) or any notification issued under sub- section (3) shall have effect notwithstanding anything contained in any law for the time being in force (other than this Act) or any instrument having effect by virtue of any law other than this Act.(6)Every scheme framed under sub- section (1) and every notification issued under sub- section (3) shall be laid, as soon as may be, after it is framed or issued before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or notification or both Houses agree that the scheme or notification should not be framed or issued, the scheme or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme or notification.

20. Power to remove difficulties.

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent With the provisions of this Act, remove the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

21. Repeal and saving.

(1)The Compulsory Deposit Scheme (Income- tax Payers) Ordinance, 1974 , (10 of 1974 .) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.