



INCOME TAX

INCOME DECLARATION SCHEME – TIME FRAME EXTENDED TO MAKE PAYMENTS

Income Declaration Scheme 2016 is a window where taxpayers should provide and declare income correctly of the previous years.

The scheme was available for 4 months from 1st June, 2016 to 30th September, 2016. To declare and make payments towards taxes, surcharge & penalty was to be made latest by 30th November, 2016. After considering the difficulties of various stakeholders opting for this scheme, the Government has decided to revise the time schedule for making payments under the Scheme as under:

- (i) A minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016
- (ii) A further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017
- (iii) The balance amount to be paid on or before 30.9.2017.

The declarations should be filed online or with the jurisdictional Pr. Commissioners of Income-tax across the country.

SPECIAL FEATURE

TREATMENT OF CAPITAL GAINS FOR CHARITABLE TRUSTS AND SOCIETIES

BACKGROUND

1 The definition of income under section 2(24) includes Capital Gains and therefore for the purposes of section 11, Capital Gains should form part of the income and consequently it should be treated at par with any other income under section 11. Section 11(1A), which deals with treatment of Capital Gains, was not there during the inception of the Act. In the absence of any provision related with capital gains, all Charitable or Religious Organisations were required to apply the Capital Gains for charitable purposes under the provisions of section 11(1)(a). The requirement of utilising capital gains on fulfillment of the objects of the organisation resulted in depletion of the corpus. Necessity was felt to allow an option to the Charitable and Religious Organisations, whereby they can re-invest the sale proceeds from Capital Assets in new Capital Assets, so that, in the long run, the corpus would remain intact. The concerns of Charitable Organisations were recognised in Circular No. 2-P(LXX-5), dt. 15-05-1963. In this circular, it was stated that when the capital assets, so that forming part of the corpus are transferred with a view to acquire further capital assets for the use and benefit of the Trust, the amount of Capital Gains should be regarded as having been applied for religious and charitable purposes within the meaning of section 11(1). Further, CBDT Circular No. 52, dt. 30-12-1970, clarified that the intent of the legislature was not in favour of imposing tax liabilities in cases where the Capital Gains as well as the consideration is applied for acquisition of new Capital Assets. The Charitable Organisations were afforded an advantage in getting an option of claiming benefits of re-investment with regard to Capital Gains.

INSERTION OF SECTION 11(1A)

2 The Finance (No.2) Act, 1971, inserted sub-section (1A) in section 11 regarding the treatment

of Capital Gains. It provided that the Capital Gains will be deemed to have been utilised for the purposes of section 11(1)(a), if the net consideration received is re-invested in another capital asset. The insertion of section 11(1A) seemed to be the logical outcome of the two circulars issued earlier, as discussed above. More so, because the newly inserted sub-section (1A) in 1971 was made retrospectively effective from 01-04-1962 i.e. the date of commencement of the Act.

THE PROVISIONS RELATED WITH CAPITAL GAINS

3 Section 11(1A) first caters to two main situations, viz.

- (i) where the capital asset is property held under a Trust wholly for charitable or religious purposes;
- (ii) where the capital asset is held under a Trust in part only for such purposes

Within these main situations, the provision also caters to the following sub-situations:

- (i) where the whole of the net consideration is utilised in acquiring the new capital asset;
- (ii) where only a part of the net consideration is utilised for acquiring the new capital asset.

In respect of each of these sub-situations under the main situations, the section spells out the quantum of income which will be

QUANTUM OF GAINS DEEMED TO HAVE BEEN APPLIED

4 The computation will depend upon whether the property is wholly held under the Trust or partially held under the Trust.

Continued...

EDITORS NOTE

We thank all of you for the encouraging feedback.

We are happy to share with you our third issue of the SV insight containing useful, valuable information and action points for the month. We do hope that you find the contents useful and informative.

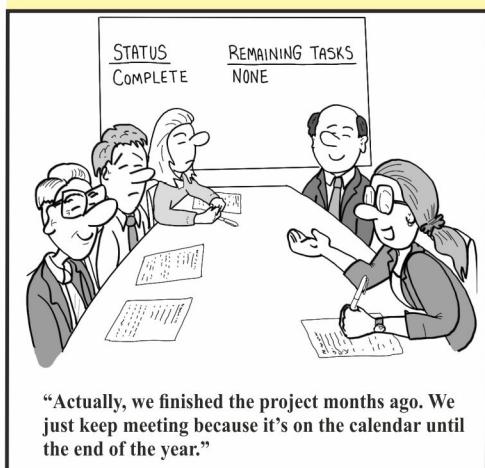
We welcome suggestions from you for improving the scope and nature of content in order to make it more relevant and useful.

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TAX DUE DATES FOR AUGUST 2016

Sl. No	Particulars	Due Date
1	Service Tax Payment	05-Aug-2016 06-Aug-2016
2	Central Excise Payment	05-Aug-2016 06-Aug-2016
3	TDS / TCS Payment/Remittance	07-Aug-2016
4	Central Excise Monthly Return	10-Aug-2016
5	STPI Monthly Returns	10-Aug-2016
6	CST Payment	20-Aug-2016
7	VAT Payment	20-Aug-2016
8	VAT Return	20-Aug-2016
9	PT Payment	20-Aug-2016
10	ESIC Payment	21-Aug-2016
11	ESIC Return	21-Aug-2016
12	PF Payment	15-Aug-2016
13	PF Return	25-Aug-2016





5 Where property is wholly held under the trust : Under clause (a) of sub-section (1A), Capital Gains arising from transfer of Capital Assets shall be deemed to have been applied for charitable or religious purposes as indicated in the chart given below:

Situation	The quantum of capital gains deemed to have been applied for charitable or religious purpose
Whole of net consideration is utilised in acquiring the new capital asset	The whole of capital gains
Only a part of the net consideration is utilised in acquiring the new capital asset	Capital gains equal to excess of utilised amount over cost of the transferred asset. [In effect, capital gains minus shortfall in reinvestment.]

Illustration : 1 - Showing treatment of capital gains

The following illustration clarifies the treatment of capital gains under section 11(1A).

Cost of the Asset	Rs. 40,000/-
Sale Proceeds/Net consideration	Rs. 1,00,000/-
Re-investment in Capital Assets (i)	Rs. 80,000/-
(ii)	Rs. 1,00,000/-

The computation of capital gain deemed to have been applied for the purposes of section 11(1)(a) is as under :

	(i)	(ii)
(i) Net consideration	1,00,000	1,00,000
(ii) Cost of the Asset	40,000	40,000
(iii) Capital gains	60,000	60,000
(iv) Investment in New Asset	80,000	1,00,000
(v) Shortfall in re-investment (i) - (iv)	20,000	Nil
(vi) Capital gains deemed to have been applied for charitable purposes (iii) - (v)	40,000	60,000

CAN CAPITAL GAINS BE APPLIED FOR CHARITABLE PURPOSES

7 The Capital Gains can also be applied for charitable purposes. It is at the discretion of the organisation to apply the Capital Gains for charitable purposes or towards purchase of a new Capital Asset. The definition of income under section 2(24), includes Capital Gains and therefore, income for the purposes of section 11(1)(a) includes Capital Gains. The historical background under which section 11(1A) was enacted and the statute as it existed before 01-04-1971 provides ample testimony to the fact that capital gains form a part of the income available for application under section 11(1)(a). Circular No.2-P(LXX-5), dt. 15-05-1963 and Circular No. 72, dt. 06-01-1972 discussed the problems faced by the organisations and the gradual erosion of the corpus, prior to the insertion of section (1A). The purpose behind insertion of section (1A) was to provide an option to the assessee, in order to keep its corpus intact. This option did not imply withdrawal of exemption of Capital Gains under section 11(1)(a). An organisation, therefore can utilise the Capital Gains for charitable purposes under section 11(1)(a). The portion of Capital Gains which was not considered as deemed to have been applied for charitable purposes under section 11(1A), can also be applied for charitable purposes under section 11(1)(a).

OVERALL SUMMARY

8 To Sum up the discussion :

i) 'Income', as defined under section 2(24), includes Capital Gains,. Therefore, for the purposes of section 11(1)(a), Capital Gains are also considered as a part of the income.

6 Where property is partly held under the trust - As per clause (b) of section 11(1A), when Capital Gain is derived out of property partly held for charitable or religious purposes, then appropriate fraction of the net consideration is required to be re-invested in new capital assets. Here, it may be noted that income from Trust property partly held for religious or charitable purposes is eligible for exemption under section 11(1)(b) provided such Trust was created before the commencement of the Act.

Situation	The quantum of capital gains deemed to have been applied for charitable or religious purpose
Whole of net consideration is utilised in acquiring the new capital asset	The whole of capital gains
Only a part of the net consideration is utilised in acquiring the new capital asset	Capital gains equal to excess of appropriate fraction of utilised amount over appropriate fraction of cost of transferred asset.

Illustration : 2 - Showing treatment of capital gains

The following illustration clarifies the treatment of Capital Gains under section 11(1A). [It has been assumed that 50% of the income from the asset was used for charitable purposes]

Cost of the Asset	Rs. 40,000/-
Sale Proceeds/Net consideration	Rs. 1,00,000/-
Re-investment in Capital Assets (i)	Rs. 80,000/-
(ii)	Rs. 1,00,000/-

The computation of capital gain deemed to have been applied for the purposes of section 11(1)(b) is as under :

	(i)	(ii)
(i)	Net consideration	1,00,000
(ii)	Cost of the Asset	40,000
(iii)	Capital gains	60,000
(iv)	Investment in New Asset	80,000
(v)	Appropriate fraction of (ii)	20,000
(vi)	Appropriate fraction of (iii)	30,000
(vii)	Appropriate fraction of (iv)	40,000
(viii)	Capital gains deemed to have been applied for charitable purposes (vii) - (v)	20,000
		30,000

ii) Since, Capital Gains are also considered as a part of the income, therefore, they can be applied for charitable or religious purposes.

iii) But, if Capital gains are also applied for charitable and religious purposes, then it will amount to depletion of the Corpus of the organisation. In order to overcome this disadvantage, the Income tax act has provided another option under section 11(1A),by virtue of which Capital Gains can be re-invested in another Capital Asset without losing exemptions.

iv) Under section 11(1A), if the entire amount of net consideration is invested in another Capital Asset then, the entire Capital Gain will be deemed to have been applied for Charitable or Religious purposes.

v) Under section 11(1A), if a part of the entire amount of net consideration is invested in another Capital Asset then, the appropriate fraction of the Capital Gain will be deemed to have been applied for charitable or Religious Purposes.

vi) The Capital Gain have to be re-invested in another Capital Asset in the same year, unless the assessee exercises the option available under explanation to section 11(1), to apply the income in subsequent year.

vii) Investment in fixed deposit is considered as an investment in Capital Asset. The CBDT instruction no. 883, dated 24.09.1975, specifies that, such fixed deposits should be for 6 months or more. But , various High Courts have held that, such 6 months time limit is legally not valid. The nature of asset is important and not the time frame.



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FEMA

LIBERALISED REMMITANCE SCHEME OF RBI FOR RESIDENT INDIVIDUALS:

Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

If an individual remits any amount under LRS in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 by the amount so remitted.

There are no restrictions on the frequency of remittances under LRS. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 2,50,000.

Once a remittance is made for an amount up to USD 2,50,000 during the financial year, a resident individual would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

RBI GUIDELINES ON RESIDENT FOREIGN CURRENCY (DOMESTIC) ACCOUNT:

Eligibility

- Resident individual can open Resident Foreign Currency (Domestic) Account.
- Account in the name of minor can be opened by legal/natural guardian.

Permissible currencies for opening Resident Foreign Currency (Domestic) Account:

- Pound Sterling (GBP).
- US Dollar (USD).
- Japanese Yen and (JPY).
- EURO (EUR).

RBI Guidelines:

According to RBI, resident individuals who have acquired foreign currency in the form of currency notes, bank notes and travellers cheques through any of the following sources are permitted to open such an account:

- While on a visit to any place outside India by way of payment received for services not arising from any business or anything done in India.
- From any person not residing in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation.
- Honorarium or gift while on a visit to any place outside India.
- Unspent amount of foreign exchange acquired from an authorized person for travel abroad
- Gift from a close relative.
- Earnings through export of goods / services, or as royalty, honorarium or by any other lawful means.
- Disinvestment proceeds received by a resident account-holder on conversion of shares held to ADRs / GDRs under the Sponsored ADR / GDR Scheme approved by the Foreign Investment Promotion Board of the Government of India.
- Earnings received as the proceeds of life insurance policy claims/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

RBI eases rules for business entities to raise funds via ECBs

The Reserve Bank has allowed firms in manufacturing, hospitals, infrastructure, hotels and the software sector to raise foreign capital from foreign/indirect equity holders without its approval.

As per the current ECB policy, ECBs from direct foreign equity holders (FEHs) are considered both under the automatic and the approval routes. ECBs from indirect equity holders and group companies and ECBs from direct FEH for general corporate purposes are, however, considered under the approval route. Besides, any request for change of the ECB lender in case of FEH requires RBI's approval.

"As a measure of simplification of the existing procedure, it has been decided to delegate powers to banks to approve proposals for raising ECB by companies belonging to manufacturing, infrastructure, hotels, hospitals and software sectors from indirect equity holders and group companies under automatic route.

Raising ECB for companies in miscellaneous services from direct/indirect equity holders and group companies are also allowed to raise funds through this facility.

Miscellaneous services are like training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector.

Trading business, logistics services, financial services and consultancy services are, however, not covered under the facility.

ECB proposals involving change of lender when the ECB is from FEH, direct/indirect equity holders and Group Company is also covered under this arrangement.

THE HARDEST THING IN THE WORLD TO UNDERSTAND IS THE INCOME-TAX...

THIS IS TOO DIFFICULT FOR A MATHEMATICIAN... IT TAKES A PHILOSOPHER. - Albert Einstein



CASE LAWS INCOME TAX

When Income computed U/s 11 of the Income Tax Act 1961, the provisions of Section 40(a)(ia) and 43(B) are not applicable.

ITO Vs Mother Theresa Educational Society AY 2009-10 date of order 31-03-2016. ITAT-VIZAK.

Sec 40(a)(ia)----Non deduction of TDS

Sec 43(3)-----On Actual Payments on Taxes, Bonus, Interest, etc on actual payments

In Order to claim depreciation on vehicles, registration of vehicles under the MV Act is not essential

- Mangal Singh Palsania Vs ACIT ITAT-JAIPUR AY 2008-09 Order dated 31-03-2016

Interest paid on borrowings for purchase of house-Sec 24 & Sec 48 of the Income Tax-Conflicting decisions by Chennai & Bangalore Bench of ITAT

Deduction in computing capital gains, interest is allowable – ACIT Vs Ramabrahman 57 SOT 130 (Chennai) AY 2007-08

Deduction in computing Capital gain the interest is not allowable- Captain BL Vs Lingaraju case. (Bangalore)

DISTRIBUTION OF CENVAT CREDIT BY INPUT SERVICE DISTRIBUTOR (ISD) – NOW SIMPLIFIED

To whom & how ISD can distribute its Credit?

Rule 7 of Cenvat Credit Rules, 2004 is completely written down vide Notification No. 13/2016 C.E (N.T) dated 1st,March 2016 to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units.

Before amendment ISD used to distribute Cenvat credit in respect of input service credit only to manufacturing units and output service provider.

Old rule 7 provided that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units.

It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, inter alia, the following conditions and manner:-

- Credit attributable to a service used by a particular unit shall be distributed only that unit.
- Credit attributable to service used by more than one unit but not to all units shall be distributed on Pro rata basis of the turnover during the relevant period of such units to the total turnover of all units on which credit is attributable and which are operational in the current year.
- Credit attributable to service used by all the units shall be distributed on Pro rata basis of the turnover during the relevant period of all the units to the total turnover of all units and which are operational in the current year.

Concept of Outsourced manufacturing units:

Concept of outsourced manufacturing units under Rule 7 of Cenvat Credit Rules, 2004 was introduced in 1st,March 2016 vide Notification No. 13/2016 C.E (N.T).

Outsourced manufacturing units are basically Job worker as defined in Rule 10 of Central Excise Valuation Rules, 2000.

Credit of service tax paid available with the input service distributor, as on the 31st of March,2016 shall not be transferred to any outsourced manufacturing units i.e. ISD can only transfer credit received after 31st of March,2016. from on or 1st April,2016.

Outsourced manufacturing unit shall maintain separate account for input service credit received from each ISD and shall use for payment of duty on goods manufactured for concerned ISD.

Concept of distribution of credit of inputs by warehouse of manufacturer:

A new Rule 7B is being inserted in Cenvat Credit Rules, 2004 vide Notification No. 13/2016 C.E (N.T) dated 1st,March 2016 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs.

Rule 6 of CCR,2004 relating to reversal of credit shall apply to units and not to ISD.

Prior to amendment i.e. 1st March,2016 there was ambiguity whether provision of reversal w.r.t Rule 6 is applicable to ISD or not? The ambiguity is now removed by amending Rule 7 of Cenvat Credit Rules, 2004. Provision of Rule 7 is now more clear with respect to rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply only to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.

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