

Bill No. 299 of 2016

THE TAXATION LAWS (SECOND AMENDMENT) BILL, 2016

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BILL

further to amend the Income-tax Act, 1961 and the Finance Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Taxation Laws (Second Amendment) Act, 2016. Short title and commencement.
(2) Save as otherwise provided in this Act, it shall come into force at once.

CHAPTER II

INCOME-TAX

- 43 of 1961. **2.** In the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in Amendment of section 115BBE.
10 section 115BBE, for sub-section (1), the following sub-section shall be substituted with effect from the 1st day of April, 2017, namely:—

“(1) Where the total income of an assessee,—

- 15 (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).”

Amendment of section 271AAB.

3. In the Income-tax Act, in section 271AAB,—

(I) in sub-section (I), after the words, figures and letters “the 1st day of July, 2012”, the words, brackets and figures “but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President” shall be inserted;

(II) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of thirty per cent. of the undisclosed income of the specified previous year, if the assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent. of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).”;

(III) in sub-section (2), after the words brackets and figure “in sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted.

Insertion of new section 271AAC.

4. In the Income-tax Act, after section 271AAB, the following section shall be inserted with effect from the 1st day of April, 2017, namely:—

Penalty in respect of certain income.

“271AAC. (I) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent. of the tax payable under clause (i) of sub-section (I) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished

under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

5 (2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.”.

CHAPTER III

FINANCE ACT

28 of 2016. 10

5. In the Finance Act, 2016,—

Amendment of section 2.

(a) in Chapter II, in section 2, in sub-section (9),—

(i) in the third proviso, the figures and letters "115BBE" shall be omitted;

(ii) after the sixth proviso, the following proviso shall be inserted, namely:—

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‘Provided also that in respect of any income chargeable to tax under clause (i) of sub-section (1) of section 115BBE of the Income-tax Act, the “advance tax” computed under the first proviso shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of twenty-five per cent. of such advance tax.’;

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(b) after Chapter IX, the following Chapter shall be inserted, namely:—

Insertion of new Chapter IX A.

‘CHAPTER IXA

TAXATION AND INVESTMENT REGIME FOR *PRADHAN MANTRI GARIB KALYAN YOJANA*, 2016

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199A. (1) This Scheme may be called the Taxation and Investment Regime for *Pradhan Mantri Garib Kalyan Yojana*, 2016.

Short title and commencement.

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(2) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

199B. In this Scheme, unless the context otherwise requires,—

Definitions.

(a) "declarant" means a person making the declaration under sub-section (1) of section 199C;

43 of 1961. 30

(b) "Income-tax Act" means the Income-tax Act, 1961;

(c) "*Pradhan Mantri Garib Kalyan Deposit Scheme, 2016*" (*hereinafter in this Chapter referred to as "the Deposit Scheme"*) means a scheme notified by the Central Government in consultation with the Reserve Bank of India in the Official Gazette; and

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(d) all other words and expressions used in this Scheme but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

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199C. (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017.

Declaration of undisclosed income.

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(2) No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a declaration under sub-section (1) is made.

Explanation.— For the purposes of this section, “specified entity” shall mean—

(i) the Reserve Bank of India;

(ii) any banking company or co-operative bank, to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(iii) any Head Post Office or Sub-Post Office; and

(iv) any other entity as may be notified by the Central Government in the Official Gazette in this behalf.

Charge of tax and surcharge.

199D. (1) Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed income declared under section 199C within the time specified therein shall be chargeable to tax at the rate of thirty per cent. of the undisclosed income.

(2) The amount of tax chargeable under sub-section (1) shall be increased by a surcharge, for the purposes of the Union, to be called the *Pradhan Mantri Garib Kalyan Cess* calculated at the rate of thirty-three per cent. of such tax so as to fulfil the commitment of the Government for the welfare of the economically weaker sections of the society.

Penalty.

199E. Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration under sub-section (1) of section 199C shall, in addition to tax and surcharge charged under section 199D, be liable to pay penalty at the rate of ten per cent. of the undisclosed income.

Deposit of undisclosed income.

199F. (1) Notwithstanding anything contained in the Income-tax Act or in any other law for the time being in force, the person making a declaration under sub-section (1) of section 199C, shall deposit an amount which shall not be less than twenty-five per cent. of the undisclosed income in the *Pradhan Mantri Garib Kalyan Deposit Scheme, 2016*.

(2) The deposit shall bear no interest and the amount deposited shall be allowed to be withdrawn after four years from the date of deposit and shall also fulfil such other conditions as may be specified in the *Pradhan Mantri Garib Kalyan Deposit Scheme, 2016*.

Manner of declaration.

199G. A declaration under sub-section (1) of section 199C shall be made by a person competent to verify the return of income under section 140 of the Income-tax Act, to the Principal Commissioner or the Commissioner notified in the Official Gazette for this purpose and shall be in such form and verified in such manner, as may be prescribed.

Time for payment of tax, penalty, surcharge and deposit.

199H. (1) The tax and surcharge payable under section 199D and penalty payable under section 199E in respect of the undisclosed income, shall be paid before filing of declaration under sub-section (1) of section 199C.

(2) The amount referred to in sub-section (1) of section 199F shall be deposited before the filing of declaration under sub-section (1) of section 199C.

(3) The declaration under sub-section (1) of section 199C shall be accompanied by the proof of deposit referred to in sub-section (1) of section 199F, payment of tax, surcharge and penalty.

Undisclosed income declared not to be included in total income.

199I. The amount of undisclosed income declared in accordance with section 199C shall not be included in the total income of the declarant for any assessment year under the Income-tax Act.

Undisclosed income declared not to affect finality of completed assessments.

199J. A declarant under this Scheme shall not be entitled, in respect of undisclosed income referred to in section 199C or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

199K. Any amount of tax and surcharge paid under section 199D or penalty paid under section 199E shall not be refundable. Tax, etc., not refundable.

5 199L. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under sub-section (1) of section 199C shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts mentioned in section 199-O. Declaration not admissible in evidence against declarant.

10 199M. Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts or without payment of tax and surcharge under section 199D or penalty under section 199E or without depositing the amount in the Deposit Scheme as per the provisions of section 199F, such declaration shall be void and shall be deemed never to have been made under this Scheme. Declaration by misrepresentation of facts to be void.

15 199N. The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and section 119, section 138 and section 189 of that Act shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income-tax Act. Applicability of certain provisions of Income-tax Act.

199-O. The provisions of this Scheme shall not apply—

Scheme not to apply to certain persons.

52 of 1974. (a) in relation to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

20 Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

25 (ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

30 (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

35 (iv) such order of detention has not been set aside by a court of competent jurisdiction;

45 of 1860.
61 of 1985.
37 of 1967. 40
49 of 1988.
45 of 1988.
15 of 2003. (b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of *Benami* Property Transactions Act, 1988 and the Prevention of Money-Laundering Act, 2002;

27 of 1992. (c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

45 (d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
22 of 2015.

199P. For the removal of doubts, it is hereby declared that save as otherwise expressly provided in sub-section (1) of section 199C, nothing contained in this Removal of doubts.

Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.

Power to
remove
difficulties.

199Q. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty: 5

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall be laid before each House of Parliament.

Power to make
rules.

199R. (1) The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme. 10

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of declaration and verification to be made under section 199G; 15

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Scheme shall be laid, as soon as may be after it is made 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 rule or both Houses agree that the rule should not be made, the rule 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 rule.'. 20 25

STATEMENT OF OBJECTS AND REASONS

Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) issued by the Reserve Bank of India have been ceased to be legal tender with effect from the 9th November, 2016.

2. Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.

3. In the wake of declaring specified bank notes as not legal tender, there have been representations and suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy. Thus, money coming from additional revenue as a result of the decision to ban Rs. 1000 and Rs. 500 notes can be utilised for welfare schemes for the poor.

4. Therefore, an alternative scheme namely, the 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) is proposed to be provided in the Bill. The declarant under this regime shall be required to pay tax @ 30% of the undisclosed income and penalty @ 10% of the undisclosed income. Further, a surcharge to be called 'Pradhan Mantri Garib Kalyan Cess' @ 33% of tax is also proposed to be levied. In addition to tax surcharge and penalty, the declarant shall have to deposit 25% of undisclosed income in a Deposit Scheme to be notified by the Central Government in consultation with the Reserve Bank of India under the 'Pradhan Mantri Garib Kalyan Deposit Scheme, 2016'. This amount is proposed to be utilised for the programmes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc.; so that there is justice and equality.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 26th November, 2016.

ARUN JAITLEY.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 142/33/2016-TPL, dated 26th November, 2016 from Shri Arun Jaitley, Minister of Finance and Corporate Affairs in the Ministry of Finance to Secretary-General, Lok Sabha.]

The President, have been informed of the subject-matter of the Taxation Laws (Second Amendment) Bill, 2016, recommends under clauses (1) and (3) of Article 117 read with clause (1) of Article 274 of the Constitution of India, introduction of the above Bill in Lok Sabha.

FINANCIAL MEMORANDUM

This Bill seeks to impose a higher rate of tax and levy of penalty in respect of certain incomes. It also provides for a scheme for payment of tax, penalty and surcharge on the undisclosed income and investment of certain amount of such income in the *Pradhan Mantri Garib Kalyan* Deposit Scheme. The Bill is proposed to be administered by the Central Board of Direct Taxes. Thus, no additional expenditure is contemplated on the enactment of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new section 199G, in respect of the Taxation and Investment Regime for *Pradhan Mantri Garib Kalyan Yojana*, 2016. The proposed section 199G provides that a declaration under section 199C shall be made by a person competent to verify the return of income under section 140 of the Income-tax Act, to the Principal Commissioner or the Commissioner notified in the Official Gazette for this purpose and shall be in such form and verified in such manner, as may be prescribed.

2. The matters in respect of which rules may be made or notifications may be issued in accordance with the provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill.

3. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE INCOME-TAX ACT, 1961

(43 OF 1961)

* * * * *

Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

115BBE. (1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent.; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

* * * * *

Penalty where search has been initiated.

271AAB. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of ten per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(c) a sum which shall not be less than thirty per cent. but which shall not exceed ninety per cent. of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

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EXTRACT FROM THE FINANCE ACT, 2016

(28 OF 2016)

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CHAPTER II

RATES OF INCOME-TAX

2. (1) * * * * * Income Tax.

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax shall be increased by a surcharge, for the purposes of the Union, calculated in such cases and in such manner as provided therein:

* * * * *

Provided also that in respect of any income chargeable to tax under section 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BA, 115BB, 115BBA, 115BBC, 115BBD, 115BBDA, 115BBE, 115BBF, 115E, 115JB or 115JC of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, calculated at the rate of fifteen per cent. of such "advance tax", where the total income exceeds one crore rupees;

(b) in the case of every co-operative society or firm or local authority, calculated at the rate of twelve per cent. of such "advance tax", where the total income exceeds one crore rupees;

(c) in the case of every domestic company, calculated,—

(i) at the rate of seven per cent. of such "advance tax", where the total income exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of twelve per cent. of such "advance tax", where the total income exceeds ten crore rupees;

(d) in the case of every company, other than a domestic company, calculated,—

(i) at the rate of two per cent. of such "advance tax", where the total income exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such "advance tax", where the total income exceeds ten crore rupees;

* * * * *

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds ten crore rupees, the total amount payable as "advance tax" on such income and surcharge thereon, shall not exceed the total amount payable as "advance tax" and surcharge on a total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

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further to amend the Income-tax Act, 1961 and the Finance Act, 2016.

(Shri Arun Jaitley, Minister of Finance and Corporate Affairs)

GMGIPMRND—3435LS—26.11.2016.

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