

## New Procedure of Income Tax Assessments

### Introduction

During the Budget of Financial Year 2021, our Hon'ble Finance Minister brought a remarkable reform in the Schemes of Income Tax Assessments i.e Assessment under section 147 and the Income Tax Assessments pursuant to a search and seizure. Earlier under section 148, the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment for any assessment year, and cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases. The Budget 2021-22 proposes a completely new procedure of assessment of such cases. In nutshell, the provisions of Income Escaping assessment has been amended and Section 153A and 153C shall not apply to search or requisition cases initiated or made or conducted, on or after 1st April, 2021. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

### Section 148 :Issue of notice where income has escaped assessment

Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

### Income chargeable to tax has escaped assessment

Explanation 1.— For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.— For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or

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documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

### **Trigger Point**

<b>Under the existing provisions</b>	the Assessing Officer <b>has reason to believe that any income chargeable to tax</b> has escaped assessment for any assessment year, he may reopen the case and assess or reassess or recompute
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<p><b>Under New Provisions</b></p>	<p>Any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.</p> <p>A final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.</p>
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**148A.** The Assessing Officer shall, before issuing any notice under section 148,—

- (a) **conduct any enquiry**, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) **provide an opportunity of being heard to the assessee**, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, **being not less than seven days and but not exceeding thirty days from the date** on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) **consider the reply of assessee furnished**, if any, in response to the show-cause notice referred to in clause (b);
- (d) **decide, on the basis of material available** on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

**Provided** that the provisions of this section shall not apply in a case where,

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April 2021; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other

valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

The **newly inserted section 148A** of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee.

After considering his reply, the Assessing Officer shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.

The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority.

However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

**Revised time for issue of notice u/s 148**

149. Time limit for notice.—(1) No notice under section 148 shall be issued for the relevant assessment year,—

- (a) **if three years** have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) **if three years, but not more than ten years,** have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount **to fifty lakh rupees or more for that year:**

**Provided** that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

**Provided further** that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

**Provided also** that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

**Provided also** that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.].

#### **Sanction for issue of notice.**

#### **151. Specified authority for the purposes of section 148 and section 148A shall be,—**

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]

#### **Salient Features of New Procedure**

The salient features of new procedure are as under:-

- (i) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).
- (ii) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.
- (iii) The provisions of section 153A and section 153C, of the Act are applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- (iv) Assessments or reassessments or re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.
- (v) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. **The flagging would largely be done by the computer based system.**
- (vi) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.



(vii) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

(viii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee.

(ix) After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.

(x) The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

(xi) The time limitation for issuance of notice under section 148 of the Act is provided under section 149 of the Act and is as below:

**Scenario**

**Time Limit under section 149**

<b>In Normal Cases</b>	3 Year from the end of relevant assessment year.
<b>Specific Cases</b> <b>If the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs. 50 Lakh or more for that year</b>	10 Year from the end of relevant assessment year.

a. Another restriction has been provided that the **notice under section 148 of the Act** cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment. ‘

b. Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.

c. It is also proposed that for the purposes of computing the period of **limitation for issue of section 148** notice, the time or extended **time allowed to the assessee in providing opportunity of being heard** or period during which such proceedings before issuance of notice under section 148 are stayed **by an order or injunction of any court, shall be excluded**. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of

a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

(xii) The *specified authority for approving enquiries*, passing order *under section 148A* of the Act and for issuance of notice under *section 148* of the Act

<i>Time Limit</i>	<i>Approval Authority</i>
If 3 years or less than 3 years have elapsed from the end of the relevant assessment year	Principal Commissioner of Income-tax (PCIT) or Principal Director of Income-tax (PDIT) or Commissioner of Income-tax (CIT) or Director of Income-tax (DIT)
If more than 3 years have elapsed from the end of the relevant assessment year	PCIT or PDIT, or where there is no PCIT or PDIT, CCIT or DGIT

(xiii) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that **the procedure prescribed in section 148A was not followed before issuing such notice for such income.**

These amendments will take effect from 1st April, 2021.