



## AMENDMENTS TO PROVISIONS OF INCOME ESCAPING ASSESSMENT & SEARCH ASSESSMENTS WITH REVISED TIME FOR ISSUE OF NOTICE - UNION BUDGET 2021

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**U**nder the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re-compute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

In 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. These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases. 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. The salient features of new procedure are as under:-

- (i) The provisions of section 153A and section 153C, of the Act are proposed to be made 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 31<sup>st</sup> March 2021.
- (ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31<sup>st</sup> March 2021, shall be under the new procedure.
- (iii) 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).
- (iv) 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.

- (iv) 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.
- (v) 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.
- (vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1<sup>st</sup> 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.
- (vii) **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. 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. 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.
- (viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:
  - in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.
  - in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;
  - 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 1<sup>st</sup> 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.
  - 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 31<sup>st</sup> 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.
  - 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.

***Note: The time limit to re-open income tax assessment cases has been reduced to 3 years from 6 years. Also, in case of serious tax evasion, the assessment can be reopened until 10 years, only when concealment of income is more than 50 lakh.***

- (x) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —
- (a) 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;
  - (b) 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.
- (x) 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 1<sup>st</sup> April, 2021.

Text of the Relevant Clause of the [Finance Bill 2021](#) is reproduced below:

**1. Clause 35** of the Bill seeks to amend section 147 of the Income-tax Act relating to income escaping assessment.

It is proposed to substitute the said section so as to provide that if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing officer may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for such assessment year.

This amendment will take effect from 1<sup>st</sup> April, 2021.

**2. Clause 36** of the Bill seeks to amend section 148 of the Income-tax Act relating to issue of notice where income has escaped assessment.

It is proposed to substitute the said section so as to provide that 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 order passed 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 the said 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 prior approval of the specified authority to issue such notice has been obtained by the Assessing Officer. The proposed Explanation 1 to the said section provides for the purposes of the said section and section 148A, that information which suggests that the income chargeable to tax has escaped assessment means 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 or 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. The proposed Explanation 2 provides that 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) survey is conducted under section 133A in the case of the assessee; or (iii) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned 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 documents, seized or requisitioned 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 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. The proposed Explanation 3 provides that the “specified authority” shall mean the specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

**3. Clause 37** of the Bill seeks to insert a new section 148A in the Income-tax Act relating to Conducting inquiry, providing opportunity before issue of notice under section 148.

It is proposed to insert a new section 148A, which seeks to provide that 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 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 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); and (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 sub-section shall not apply in a case, where 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 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 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, relates to, the assessee. Explanation 3 to the said section provides that “Specified authority” shall mean specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

**4. Clause 38** of the Bill seeks to amend section 149 of the Income-tax Act relating to time limit for notice.

It is proposed to substitute the said section so as to provide that 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 accounts 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 prescribed under the provisions of clause (b), as they stood immediately before the commencement of the Finance Act, 2021. Further, the provisions of this section shall not apply to cases 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 and 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 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 and also where immediately after the exclusion of such period, 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 in sub-section (1) shall be deemed to be extended accordingly.

This amendment will take effect from 1st April, 2021.

**5. Clause 39** of the Bill seeks to substitute of a new section for section 151 relating to sanction for issue of notice.

It is proposed to substitute the said section so as to provide that for the purpose of section 148, specified authority shall be (i) Principal Commissioner of Income-tax or Principal Director of Income-tax or Commissioner of Income-tax or Director of Income-tax, if three years or less than three years have elapsed from the end of the relevant assessment year; (ii) Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, or where there is no Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, Chief Commissioner of Income-tax or Director General of Income-tax, if more than three years have elapsed from the end of the relevant assessment year.

This amendment will take effect from 1st April, 2021.

**6. Clause 40** of the Bill seeks to amend section 151A of the Income-tax Act relating to faceless assessment of income escaping assessment.

It is proposed to amend the said section so as to provide that conducting of enquiries or issuing show-cause notice or passing order under section 148A (before issuance of notice under section 148) in the scheme to be notified as specified under the said section.

This amendment will take effect from 1st April, 2021.

**7. Clause 42** of the Bill seeks to amend section 153A of the Income-tax Act relating to assessment in case of search or requisition.

It is proposed to amend the said section so as to provide that the search or requisition shall only apply where search or requisition is made on or before 31st March, 2021. Consequently, assessments under section 153A and 153C shall not be made in respect of a search or requisition made on or after 1st April, 2021.

This amendment will take effect from 1st April, 2021.

**8. Clause 43** of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

It is proposed to amend the said section so as to insert sub-section (3) therein to provide that nothing contained in the said section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1st day of April, 2021.

This amendment will take effect from 1st April, 2021.