

# Notice of Demand and Rectification of Mistake under Income Tax Act

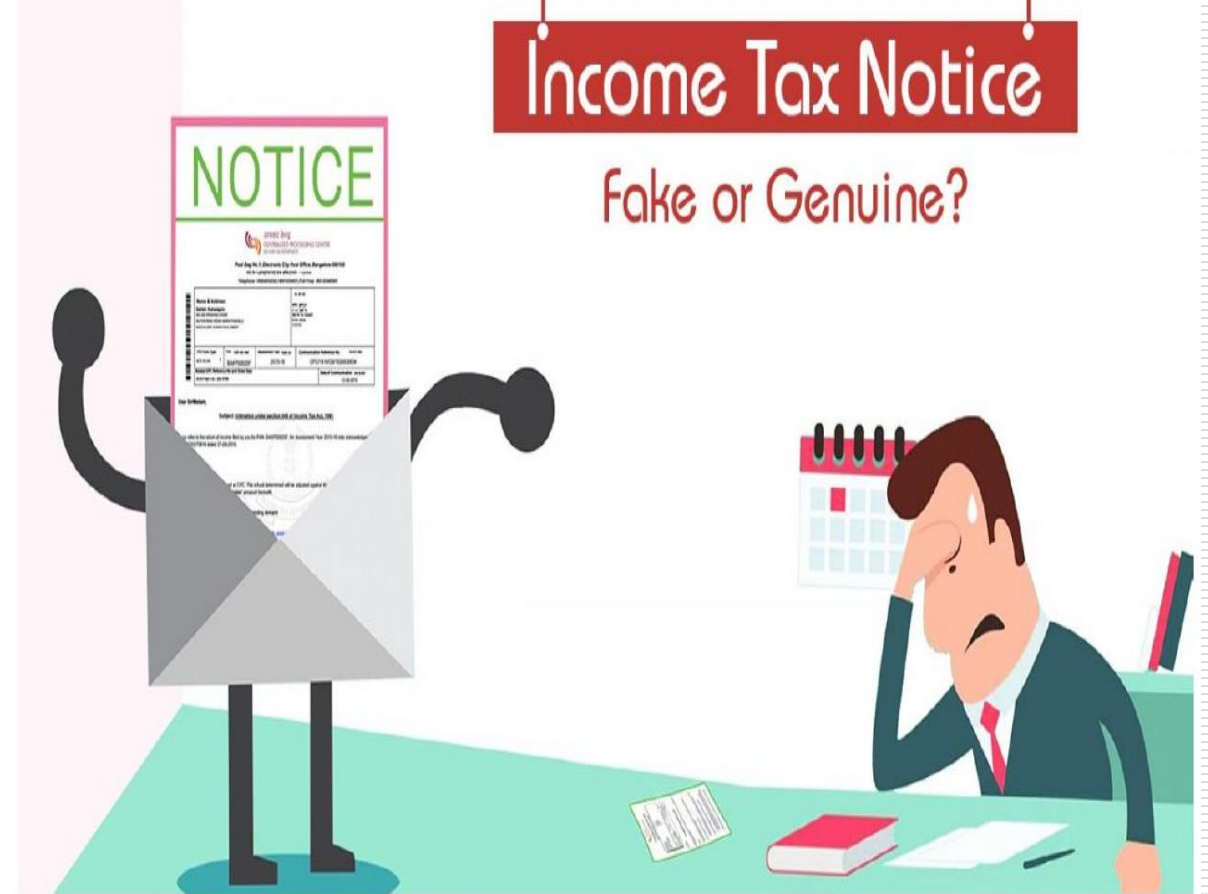
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## Income Tax Notices in India - Meaning & Types

An income tax notice is a written letter from the Income Tax Department to a taxpayer informing him of a problem with his tax account. The notification might be given for a variety of reasons, including filing or not submitting his or her income tax return, issuing an assessment, or requesting specific information. When the Income Tax Department sends a notice, the taxpayer must respond to the notification and work with the tax authorities to resolve the issue.

### : What exactly is an income-tax notice?

The Income-tax Department processes an individual's / assessee's (also known as a taxpayer's) income-tax return when it is filed. If a mistake, inaccuracy, or inconsistency is discovered in the income-tax return filed, the Assessee is notified by way of an income-tax notice. The Income-tax Department issues a variety of income-tax notices, which you can read about in the question below.

## Typical Reasons for Receiving an IT Notice

- A quick reminder to file your tax returns
- Randomly scrutinize
- Inconsistency in your tax returns
- Errors in TDS Amount Deducted
- Errors in TDS Amount Deducted
- Requesting documentation proof
- Transactions of high value that do not match income.
- Transfer of property on behalf of the wife or children
- High Gift Transaction Number
- Non-payment of the entire tax amount before the due date
- Return of income tax not filed or filed after the date of the due date
- Asset not divulged.
- Foreign income not disclosed
- Family Member Investments

## Few sections unde which Notices issued

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- ☐ Notice under Section 142(1) – Inquiry before assessment
- ☐ Notice under Section 143(2) – Scrutiny Notice
- ☐ Notice under Section 143(1) – Letter of Intimation
- ☐ Notice under Section 148 – Income escaping assessment
- ☐ Notice under Section 156- Notice of Demand
- ☐ Notice under Section 139(9) – Defective Return
- ☐ Notice under Section 245 – Set off of refunds against tax remaining payable

## Notice under Section 142(1) – Inquiry before assessment

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- ❑ **It** is usually served to call upon documents and details from the tax payers, and to take a particular case under assessment.
- ❑ The basic purpose is to inquire the details of the assessee before making assessment under the Act. It can be related to ‘Preliminary Investigation’ before starting the assessment.
- ❑ By serving a notice u/s 142(1) the assessing officer, may call upon the assessee:-
  - ❖ To furnish a return of income in respect of which he is assessable, where he has not filed his return of income within the normal time allowed.
  - ❖ It may include return in respect of his own income or income of other person for which he is liable to be assessable. Example- In case of legal guardian/ deceased person.
  - ❖ To produce accounts or documents which the AO may require for the purpose of making an assessment.
  - ❖ To furnish in writing any information on matters including statement of the assessee. For Example- statement of assets and liabilities of the assessee on a particular date.

## Notice under Section 142(1) – Inquiry before assessment

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- ❑ The AO may or may not start assessment after compliance with this notice, dependent upon the facts of assessee. If AO is satisfied with the produced documents or return, he may not start with the assessment process.
- ❑ Compliance with this notice u/s 142(1) is mandatory even if the tax payer is of the opinion that the accounts/documents requested are irrelevant.
- ❖ If assessee do not comply with the provisions of this section:
  - ❖ It may result in Best Judgement Assessment u/s 144, or
  - ❖ Penalised under Sec 271(1)(b) i.e. Rs 10,000 for each failure, or
  - ❖ Prosecution under Sec 276D which may extend upto 1 year and with fine.

## Notice under Section 143(2) – Scrutiny Notice

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- ❑ This notice is basically sent after notice u/s 142(1) has already been sent. It means AO was not satisfied with the produced documents or may be AO has not received any documents.
- ❑ If you get Notice under Section 143(2) it means your return has been selected for detailed scrutiny by your Assessing Officer.
- ❑ No notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.
- ❑ Where the assessee has not furnished his return of income, then notice under Section 143(2) cannot be issued to him and also scrutiny assessment cannot be done. In such case, direct Best Judgement Assessment under Section 144 is done by the AO.
- ❑ The AO can reduce the income below the returned income and can assess the loss higher than the returned loss under Scrutiny Assessment as per Sec 143(3).

## Notice under Section 143(2) – Scrutiny Notice

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❑ The notice might ask you to produce documents in support of deductions, exemptions, allowances, reliefs other claim of loss you have made and provide proof of all sources of income.

❑ Section 143(2) enables the Assessing Officer to make a regular assessment after a detailed inquiry. If assessee do not comply with the provisions of this section:

❖ It may result in Best Judgement Assessment u/s 144, or

❖ Penalised under Sec 271(1)(b) i.e. Rs10,000 for each failure, or

❖ [Prosecution under Sec 276D](#) which may extend upto 1 year and with fine.



## Notice under Section 143(1) – Letter Intimation

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- When the return is processed by the department then the intimation under sec. 143(1) is issued by CPC reflecting any of the three situations:
  - ❖ If there is more tax liability to be paid, need to be paid within 30 days of receiving the demand. If any additional refund is determined.
  - ❖ If the return filed matches with the assessment of AO and no action is required.
- Income is computed by the AO after making the following adjustments to the total income – Any arithmetical error.
  - ❖ An incorrect claim.
  - ❖ Disallowance of incorrectly loss or expenses. Any income not included.
  - ❖ No intimation under this sub section shall be sent after the expiry of one year from the end of the financial year in which the return made.

## How to reply to notice received under section 143(1):

□ If details provided by the taxpayer and as verified by the Income Tax department match. Then the notice will serve as final assessment of the return with nothing to be done on part of the taxpayer and the department. Just a printout of the same shall be taken and kept along with the income tax file. Take a printout of the same and file it with your income tax papers.

□ If you are getting Refund, wait for the cheque or transfer into your account.

□ If there is a tax demand then this intimation becomes Notice of Demand under section 156. The notice says “In case of Demand, this intimation may be treated as Notice of demand u/s 156 of the Income Tax Act, 1956. Accordingly, you are requested to pay the entire Demand within 30 days of receipt of this intimation”.

□ For example, if Income as disclosed by taxpayer is Rs 6,00,000 and tax duly deposited on same but the department computes his income as Rs 6,50,000, then tax on Rs 50,000 needs to be paid. The taxpayer will have to pay such tax or if he thinks that the demand is wrong then he must prove his case and file rectification.

## Notice under Section 139(9)– Defective Return –

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- ❑ Return can be considered as defective by the Assessing officer. The defect can be are as follows: –
  - ❖ Wrong ITR filed.
  - ❖ Missing Information.
  - ❖ Incomplete Return.
- ❑ If the AO consider the return as defective return, then he will intimate the same and gave the opportunity to rectify the defect within 15 days from the date of such intimation.
- ❑ If the defect is not rectified within the given period, then the return will be considered as invalid return and it will be deemed that no return has been filed.

## **Notice under Section 245 – Set off of refunds against tax remaining payable**

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- ❑ Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.
- ❑ Notice under Section 245 is more of intimation letter and less of demand notice.
- ❑ Under this notice, the AO intimates the effect of the adjustments made with the amount due to assessee. It indicates the adjusted amount which can be either merely intimation or demand notice of lesser amount still payable after the

## Notice under Section 156 – Notice of Demand –

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- ❑ Where any tax, interest, penalty, fine or any other sum is payable in respect of any order passed, then the AO serve the notice u/s 156 to the assessee specifying the sum so payable.
- ❑ Assessee can deposit the amount payable within 30 day from the date of Income tax notice. There is no time limit to serve this notice.
- ❑ In case of delay in payment of tax, the assessee shall be deemed to be in default and liable to pay simple interest u/s 220(2) @1% for every month or part thereof and further penalty u/s 221(1) may be imposed.

## **Income Notice U/s 133(6) authority to conduct investigations**

- According to the Section 133(6) of the Income Tax Act provides the assessing officers the authority to conduct investigations. Demanding data that is relevant to any Income Tax Act proceedings is element of the investigative power. As parts of "Operation Clean Money," the investigation power now includes the ability to make enquiries about and confirm cash payments.
- In circumstances when there are no outstanding income tax or other obligations, the assessing authorities are empowered to issue a notice for general information for the purpose of inquiry. This post explains Section 133(6) of the Income Tax Act.

## Section 147: Initiation and completion of Assessment of income escaping assessment

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- ❑ AO can make the re-assessment of an income escaping assessment if the following conditions are satisfied:
  - ❖ (a) Any income chargeable to tax has escaped assessment for any assessment year; and
  - ❖ (b) The assessing officer follows the provisions of sections 148 to 153.
- ❑ **Income Escaping Assessment:** recompute the loss or income or the depreciation allowance or any other allowance or deduction for such assessment year. It is imperative to note that the
- ❑ **Note:** AO can assess or reassess all those incomes which have escaped assessment and which come to his notice subsequently in the course of such proceeding notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS ESCAPED ASSESSMENT?

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- *[Explanation 1 to Section 148] -In cases other than search, survey or requisition*

### Deemed to be Escaped Assessment

**(a) 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;**

**(b) any final objection raised by the CAG 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.**



## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

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❑ *In search, survey or requisition cases [Explanation 2 to Section 148]*

### Deemed to be Escaped Assessment

❖ 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 AO 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.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

### *Which information can be flagged by CBDT?*

- ❖ The information for the relevant AY shall be flagged as per the 'Risk Management Strategy (RMS)' formulated by the CBDT.
- ❖ Flagging of “information” would largely be done by the computer-based system on basis of pre-defined algorithms which may not be made public.
- ❖ Which 'information' can be flagged.: Whether it should be collected from the third parties only or it can be due to the retrospective amendment in the law or court rulings.
- ❖ Oxford Dictionary-, 'Information' means facts told, heard or discovered about somebody/something. The Law Lexicon: the term 'information' as the act or process of informing, communication or reception of knowledge.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

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- ❑ The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment.
  - ❑ CIT v. A. Raman & Co. [1968] 67ITR11 (SC): the expression 'information' means 'instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment'.
  - ❑ Maharaj Kumar Kamal Singh v. CIT [1959] 35 ITR 1 (SC): the word 'information' includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

- ❑ **Conclusions: the expression 'information' shall** mean the particulars obtained from the third parties or due to change in the facts or subsequent court's rulings or the correct interpretation of a provision given by the Board for Advance Ruling. Based on such particulars, the re-assessment can be initiated by the AO provided such information is flagged in the RMS by the CBDT.
- ❑ **Section 150:** AO authorizes to issue a notice for re-assessment at any time to give effect to any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court.
- ❑ **Such Notice can be issued only if the CBDT takes cognizance of such case** and flag the information in the RMS of all those assesseees who have to be issued a notice u/s 148.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

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- ☐ AO has to follow the process of Section 148A before issuing a notice under Section 150 *read with* Section 148.
- ☐ In such a case, the assessing officer can issue a notice even beyond the time limit of 3 years / 10 years proposed in new Section 149.

(For Serious Tax Evasion cases, where evidence of concealment of Income is more than Rs. 50 Lacs, notice can be issued beyond 3 years but not beyond 10 years.)

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

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### ❑ *Formulation of Risk Management Strategy by the CBDT*

❖ CBDT does the risk analysis based on the data gathered from various sources

➤ (i)SFT - collected from the third parties u/s - 285BA (Statement of Financial Transaction or Reportable Account) or (ii)the information received from other law enforcement agencies or (iii) the foreign countries.

❖ *Parashuram Pottery Works Co. Ltd. [1977] 106 ITR 1 (SC)* - that there must be a finality in all legal proceedings and reopening is not permitted unless a case falls strictly within four corners of the law providing for reopening of assessment.

❖ AO has no power to review, he has the power to reassess and the reassessment has to be based on the fulfilment of certain pre-conditions.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

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### ☐ Final Objection raised by CAG

- ❖ It is intriguing to note that the CAG is not enlisted as an authority in section 116 of the Income-tax Act.
- ❖ It is settled law that initiation of reassessment proceedings only based on the audit objections, be it an internal audit of the dept. or of the CAG, is legally invalid.
- ❖ Various court rulings suggest that a case cannot be reopened based on the comments of a third party like audit or some other Assessing Officer.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

*Which information can be flagged by CBDT?*

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### ❑ *Final Objection raised by CAG*

❖ **FIS Global Business Solutions India (P.) Ltd [2019] 104 taxmann.com 169 (SC)** dismissed an SLP against the decision of the Delhi High Court that the audit objection being only information, reassessment notice based on said audit objection is not sustainable.

❖ Since the audit report merely gives an opinion and does not give any new or fresh material before the AO, the reopening of assessment merely on basis of audit objection could not be sustained.



## PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

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### ☐ Conducting Inquiry:

**Before issue of Notice, AO shall conduct enquiries, if required.**

- ❖ **Prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment**
- ❖ **AO cannot conduct an enquiry on any information which has not been obtained through RMS of the CBDT or the objection raised by the CAG.**

## PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

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### ☐ Granting an opportunity of being heard

- ❖ AO shall provide an opportunity of being heard to the Assessee (prior approval of specified authority),
- ❖ Notice to Show Cause to be issued to Assessee within time not being less than 7 days but not exceeding 30 days from the date on which such notice is issued (may be extended).

## PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

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### ☐ **Pass an order:**

- ❖ **Material available on record & reply of the assessee, the AO shall decide, whether or not it is a fit case to issue a notice under new Sec. 148.**
- ❖ **AO shall pass Order within 1 month from end of the month in which the reply of the assessee is received / where no such reply is furnished, within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires.**
- ❖ **Serve a copy of such order along with such notice on the assessee.**
- ❖ **Copy of the order passed by the AO under Section 148A shall be supplied along with the copy of the notice issued u/s 148.**

## PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

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### ☐ Action of the Assessee on receipt of Notice:

❖ If the Assessee does not agree with the order passed by the AO u/s 148A, he cannot file an appeal against such order with the CIT(A) or the ITAT. ( Only can challenge this by filing a Writ in the High Court).

### ❖ Other Provisions

❖ In the case of a survey, the AO has to follow the procedure laid down in Section 148A before issuing a notice u/s 148.

❖ AO shall follow the following procedure before issuing a notice under new Section 148.

## REVISED TIME LIMITS FOR ISSUE OF NOTICE [Section 149]

Particulars	Time Limit New Provisions
In general	No notice shall be issued if 3 years have elapsed from the end of the relevant assessment year.
Where the Assessing Officer has evidence in his possession which reveals that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to Rs. 50 lakhs or more.	Notice can be issued beyond a period of 3 years but not beyond the period of 10 years from the end of the relevant assessment year.

## How to Compute Period of Limitation for issue of Notice:

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- ❑ Time or extended time allowed to the assessee in providing an opportunity of being heard or period during which such proceedings before issuance of notice u/s 148 are stayed by an order or injunction of any court, shall be excluded.
- ❑ If after excluding such period, time available to the AO for passing an order, about the fitness of a case for the issue of notice u/s 148, is less than 7 days, the remaining time shall be extended to 7 days.

## How to Compute Period of Limitation for issue of Notice:

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□ Where search or requisition is initiated or made on or before 31<sup>st</sup> March 2021:

❖ the assessment or reassessment or re-computation shall be continued as per the existing provision of Section 153A, 153B, 153C and 153D, and the aforesaid time limitation shall not apply to such cases.

□ **Clarification :** Notice under new section 148 cannot be issued at any time in a case for the relevant AY 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 of 6 years.

## **PRIOR APPROVAL OF SPECIFIED AUTHORITIES [SECTION 151]**

<b><i>Time Limit</i></b>	<b><i>Specified Authority</i></b>
<b>If 3 years or less than 3 years have elapsed from the end of the relevant assessment year</b>	<b>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)</b>
<b>If more than 3 years have elapsed from the end of the relevant assessment year</b>	<b>PCIT or PDIT, or where there is no PCIT or PDIT, CCIT or DGIT</b>



## MANNER OF CONDUCTING ASSESSMENT PROCEEDINGS [SECTION 151A]

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- ❑ **All of the following procedures shall be conducted in a faceless manner:**
  - ❖ **(a) Assessment, reassessment or re-computation under Section 147;**
  - ❖ **(b) Issuance of notice under Section 148;**
  - ❖ **(c) Conducting of enquiries or issuance of show-cause notice or passing of an order u/s 148A;**
  - ❖ **(d) Sanction for issue of such notice under Section 151.**

## **MANNER OF CONDUCTING ASSESSMENT PROCEEDINGS [SECTION 151A]**

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- ☐ **All of the following procedures shall be conducted in a faceless manner:**
  - ❖ **Central Govt. will bring a scheme to carry out the re-assessment proceedings in a faceless manner.**
  - ❖ **Reassessment u/s 147 must be completed within 12 months from the end of the financial year in which notice was served. (extended by 12 months if reference is made to the TPO).**
  - ❖ **Rate of taxation [Sec. 152(1)]: tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.**

## COMPARISON OF NEW SCHEME & OLD SCHEME OF RE-ASSESSMENT

Basis	Old Scheme		New Scheme	
Issue of notice u/s 148	AO has reasons to believe that income has escaped assessment.		AO which suggests that income has escaped assessment.	
Procedure before issuing a notice (In non-search or non-requisition cases)	Record reasons to believe that the income has escaped assessment		Follow the process laid down in Section 148A, namely: (a) Conduct an Inquiry; (b) Grant an opportunity of being heard to the assessee; (c) Consider reply of the assessee; (d) Pass an Order.	
Authority for issuing notice	Up to 4 years	JCIT	Up to 3 years	PCIT or PDIT or CIT or DIT ( after 3 Yrs where no PCIT/PDIT then DIT or CIT)
	After 4 years	PCCIT or CCIT or PCIT or CIT	After 3 years	
Issue of Notice Time-limit	4 to 16 Years		3 to 10 years	
Time-limit to complete assessment	12 months from the end of the financial year in which notice was served. To be extended by 12 months if reference is made to the Transfer Pricing Officer.		No Change	

## **Can I get more than an Assessment Year Income Tax Notice?**

Yes, for the same valuation year, you can receive more than one revenue tax notice. For instance, the intimation 143(1) on your income tax has been requested and you filed a correction for it. If you do, however, refuse to do so, you will receive a second Revenue Tax Advisory/Order 154, which requires further clarification from the income tax department.

## **If I don't know an income tax notice, what could happen?**

We recommend that you should not neglect any income-tax notices. Ignoring any notices of income tax may result in the 1961 Income Tax Act penalty and prosecution.

## **What are my chances of receiving a notification from the Income Tax department?**

The Income Tax Department sends notices to less than 1% of all taxpayers. You are notified of income tax if:

1. You must file your return on income tax and have not submitted the same return.
2. There is an error in your return
3. Wrong TDS credit is taken the return you have filed.
3. The Assessing Officer shall request any documents or details.
4. Any other situation considered fit by the evaluating officer

### **: How long is the notice of income tax received from me normally taken?**

No specific deadline for the resolution of any income tax notice issued is established by the income tax department. It would be fully dependent on different circumstances such as the Income Tax Department processing time, the assesses response time, and so on.

### **: I am currently living outside of India; how should I approach the Income-Tax Department in this situation?**

Filing a rectification of an income-tax return and responding to an income-tax notification are now both done online and can be done from anywhere in the world. If you are unable to appear in person at an Income-tax office, you can appoint someone to act as your representative in India and ask that person to appear before the assessing officer with all of your required documentation.

# Q&A

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