



NEW SCHEME UNDER SECTION 147 FOR RE-ASSESSMENT

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SECTION 147 OF THE INCOME-TAX ACT, 1961 (ITA) DEMYSTIFIED

The Finance Act, 2021 has completely replaced the provisions of assessment and reassessment under Section 147 of the ITA.

In order to set the context, let's first gain clarity on the terms: assessment and escaping assessment.

Every earning individual is required to file the return to the income tax department if the earning is chargeable to tax. **The tax authorities examine your income tax return (ITR). This process of examining the return of income is referred to as assessment.**

TYPES OF ASSESSMENT

Further, assessments are of various types, **self-assessment**, **preliminary assessment**, **regular assessment**, and **special assessment**.

- Any income or earnings during a particular year are assessed by the taxpayer (**self-assessment**) in the immediately following year referred to as the assessment year.
- For instance, anything you earned in the financial year (FY) 2020-21 is assessed in the assessment year (AY) 2021-22.
- After self-assessment, the taxpayer will **compute the tax liability and will have to pay** that amount and file ITR.
- Thereafter, the income tax department (ITD) conducts **preliminary checking** of returns for any arithmetical errors, incorrect claims, etc., which is a fully - computerised process.
- At this stage, there is **no detailed scrutiny** on ITR filed.

- Now, **regular assessment** has been sub-divided into **scrutiny assessment**, under **Section 143(3)** and **best judgement assessment**, under **Section 144**.
- Also, **special assessment** had two categories: **income escaping assessment**, under **Section 147** and **assessment in consequence of search**, under **Sections 153A to 153C**.
- It may so happen that a few heads of income may escape assessment during initial assessment proceedings. In such a scenario, and if the assessing officer (AO) finds that some income that is actually chargeable to tax has not been assessed, the **AO can re-open the cases to reassess the individual's ITRs under Section 147 of the ITA**.
- The AO is likely to assess/reassess such income, recompute the loss/depreciation allowance or any other allowance/deduction for the assessment year (AY), as per the provisions of Sections 148 to 153.
- **Re-assessment can be done multiple times** provided other conditions laid down in **Section 147** have been satisfied.

Now, **any income** in the hands of the assessee, **which has not been subject to the income tax**, **shall mean that it has escaped assessment**.

The income can be said to be escaped assessment **if the losses have been overreported** by the taxpayer.

For example, an individual **earned Rs 24 lakh** in AY 2021-22, which is chargeable to tax. However, when the return of income was filed, the said individual had **declared Rs 20 lakh**. In this case, the income of **Rs 4 lakh has escaped assessment**.

Similarly, a businessman **earned Rs 40 lakh** in a particular financial year, **but failed to file the income tax return**. The complete amount of **Rs 40 lakh has escaped assessment**.

The Income Tax Act, 1961, empowers the Assessing Officer (AO) to reassess income **that may have escaped assessment ("IEA") under Sections 147 and 148**. While this aims to ensure tax fairness, it can also lead to litigation due to ambiguities and complexities in the provisions.

FINANCE ACT, 2021: AMENDMENTS INTRODUCED

The Finance Act, 2021 has substituted the existing Sections 147 to 149 with new Sections 147, 148, 148A and 149 of the ITA. Also, it has removed Sections 153A to 153C and merged all of them under Section 147.

The Finance Act, 2021 has inserted Section 148A, wherein the AO must first conduct an inquiry and provide an opportunity to the taxpayer of being heard before issuing a notice.

It is only after considering the reply of the assessee, the AO should then decide, based on the material facts available, whether reassessment provisions should be invoked or not.

Earlier, the AO could reopen reassessments if it had 'reason to believe' that the income had escaped assessment. Then subject to provisions of Sections 148 to 153, he/she may assess such income or any other income which comes to his notice, subsequent to the course of proceedings of Section 147.

However, the AO while reopening reassessments will take into consideration information rather than relying on best judgement, the government has specified this now. The moto is any subjectivity and discretion in the hands of an AO has been removed.

For the purpose of Section 147 and Section 148, the information with the AO, which suggests that the income chargeable to tax has escaped assessment, means:

- Any information flagged in the case of an assessee for the relevant assessment year AY, in accordance with the rules (**risk management strategy**) **formulated by the Central Board of Direct Tax (CBDT) from time to time.**
- In cases where the AO shall be deemed to have information, which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where:
 - **Search:** A search is initiated under Section 132 or books of accounts, other documents or any assets under Section 132A on or after April 1, 2021 in the case of assessee
 - **Survey:** A survey is conducted under Section 133A, other than under sub-section (2A) or sub-section (5) on or after April 1, 2021 in the case of the assessee
 - **Seizure:** The AO is satisfied with the prior approval of the Principal Chief Commissioner of Income-tax (PCIT) if any money, bullion, jewellery or other valuable article or thing being seized or requisitioned under Section 132A in case of any person, on or after April 1, 2021, belongs to the assessee

Other Related Provisions

- For search, survey, and requisition cases, the **3-year restriction** on reopening assessments before the search/survey year is proposed to be removed retrospectively.
- The **10-year time limit for IEA based on INR 50 lakhs or more** is proposed to extend to cases where income is represented by expenditure or book entries.

The AO will comply with the provisions of Section 148A before issuing a notice to the assessee under Section 148. **Section 148A requires that the assessing officer shall give an opportunity to the assessee to reply why notice for income escaping assessment under Section 147 should not be issued.**

An AO may also assess or reassess the income in respect of any issues, which has escaped assessment, and such issue comes to his/her notice **subsequently in the course of proceedings under Section 147.**



Thank You!

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HOW TO REPLY ASSESSMENT & REASSESSMENT NOTICE U/S 148?

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SECTION 148 : NOTICE UNDER ASSESSMENT OR REASSESSMENT

As per Section 147 of the Income Tax Act, 1961, the Income Tax Department has the **power to reassess an individual's previously filed income tax returns**. The Assessing Officer could pick your income tax return for reassessment subject to some pre-defined criteria by sending a notice under section 148 for Income Escaping Assessment.

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- **WHO CAN ISSUE A NOTICE UNDER SECTION 148**
- **DUTIES AND RIGHTS OF THE ASSESSEE AFTER THE RECEIPT OF NOTICE UNDER SECTION 148**
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WHAT IS SECTION 148?

Section 148 of the Income Tax Act 1961 gives authority to the Assessing Officer to send notice to a taxpayer whose income has not been properly assessed.

This implies that if the Assessing Officer suspects that a taxpayer has not disclosed complete income or has provided an inaccurate representation of it, officers can commence proceedings under this section.

Section 148 Notice is a notice issued by the income tax officer to reassess the taxpayer's income tax return (ITR) if they disagree with the taxpayer's assessment and believe that some income has not been properly assessed.

Finance Act 2022 introduced Section 148A, which requires the assessing officer to conduct an inquiry and give the taxpayer an opportunity to explain their case before issuing a notice under Section 148.

The assessing officer **must issue a notice** to the taxpayer under Section 148A(b), **providing information and adverse material suggesting that income has escaped assessment.** The taxpayer can respond with their own material and evidence.

(same) In the 2021 budget, the government introduced **Section 148A** in the Income Tax Act. If the income tax officer has information that the taxpayer has undisclosed income for a specific assessment year, **the officer must give the taxpayer a chance to provide an explanation before issuing a notice.** The taxpayer has the right to be heard by the officer.

The assessing officer must allow the taxpayer **at least seven days but no more than 30 days** to provide their explanation.

After considering the taxpayer's response, **the income tax officer will decide whether to issue a notice for reassessment or Not.** If the officer decides to reopen the case, they **must provide a copy of the order and a notice under Section 148 to the taxpayer.**

Normally, a notice cannot be issued if three years have passed since the end of the relevant assessment year.

However, if there is evidence of tax evasion of at least Rs 50 lakh, a notice can be issued beyond three years but within 10 years from the end of the relevant assessment year.

Before conducting any inquiries, providing opportunities to the taxpayer, or making any orders, the income tax officer must obtain the approval of the specified (Higher) authority.

The assessing officer must provide the taxpayer with all the material and information relied upon, along with the notice under Section 148A or the Show Cause Notice. There must be supporting material to allege that income has escaped assessment. A simple assertion (assumption) is not enough to validate the issuance of a notice under Section 148A.

It is must, The assessing officer is required to consider the taxpayer's reply to the notice referred to in Clause (b) of Section 148A, which is the Show Cause Notice.

If the taxpayer requests a personal hearing, cross-examination of a third party, or a statement from a third party, the assessing officer must provide it with the approval of the specified authority.

(same) Any notice issued under Section 148 after that date without following the procedure under Section 148A (i.e., without giving an opportunity to be heard) would be invalid and against the provisions of the Income Tax Act. The courts have consistently emphasized that the procedure outlined in Section 148A must be strictly followed in accordance with the legislative intent of introducing the new provisions.

After receiving the order and notice under Section 148, the taxpayer needs to file the income tax return (if not filed before) for the relevant assessment year within the prescribed time mentioned in the notice and undergo the reassessment process.

TIME LIMIT TO ISSUE A NOTICE UNDER SECTION 148

No notice under Section 148 will be issued for the relevant assessment year after:

- a) Normal time limit: 3 years from the end of the relevant assessment year.
- b) Specified time limit: If 3 have passed but not 10 years from the end of the relevant assessment year and the Assessing Officer has evidence of income amounting to Rs 50 lakhs or more that has not been taxed.

The Assessing Officer will issue a notice in both the cases if -

- The taxpayer has filed their returns under Section 139.
- The taxpayer failed to file their returns after receiving a notice under Section 142 or Section 148(1).

REPLYING TO NOTICE UNDER SECTION 148

The key thing to bear in mind is to **not to take the notice lightly**. In case you receive the notice under section 148, please follow the below-mentioned pointers:

- Firstly, check the notice for reasons to believe which are recorded by the assessing officer for issuing the notice under section 148. **If the notice doesn't include the reasons, then you could request the assessing officer** to send a copy of the recorded reasons.
- **You will need to respond to the notice within the given time frame, which is usually 30 days.** You can respond to the notice either **by filing a return or by providing a written reply** to the Assessing Officer **along with all the details and proofs.**
- **In case you're satisfied with 'reasons to believe'** which was recorded by the assessing officer, **file the return at the earliest.** In the case already filed, send the copy to the assessing officer.

- In case you're filing the income tax return in response to notice issued under section 148, ensure that you file it after performing proper due diligence that you declare all your income and expenses carefully. In case you miss reporting any of your income correctly then it could result in unnecessary penalties.
- If you believe that the notice served is not valid or reasons provided by the assessing officer for opening assessment under section 147 aren't valid, then you could challenge the validity of such notice before the assessing officer or higher authorities.
- In case you win your case, the Court would halt your assessment proceedings.
- However, in case the decision doesn't go in your favour, then the assessing officer will proceed with the reassessment.

WHAT HAPPENS IF YOU DO **NOT RESPOND** TO SECTION 148?

If you don't respond to a notice under Section 148, the Assessing Officer has the authority to carry out the assessment using the information at hand.

Basically, they can make an estimate of your income and evaluate it to the best of their judgment.

In case you disagree with their assessment, you have the option to file an appeal with either the Commissioner of Income Tax (Appeals) or the Income Tax Appellate Tribunal.

WHO CAN ISSUE A NOTICE UNDER SECTION 148

Section 151(1) of the Income Tax Act, 1961 contains the provisions for issue of notice:

- No notice would be issued by an Assessing Officer under section 148, after expiry of four years from the end of relevant AY (assessment year), unless Principal Chief Commissioner or Principal Commissioner or Chief Commissioner or Commissioner is satisfied, on reasons recorded by the AO, that it's a fit case for issuing such notice.
- In cases other than the one mentioned above, no notice would be issued by an Assessing Officer under section 148, where AO is below the rank of a Joint Commissioner unless Joint Commissioner is satisfied, on reasons recorded by such AO, that it's a fit case for issuing such notice.
- For the purposes of above (1) and (2), Principal Chief Commissioner or the Principal Commissioner or the Chief Commissioner or the Joint Commissioner or the Commissioner, depending on the case, being satisfied on reasons recorded by AO about the fitness of the case for issuing notice under section 148 of the Income Tax Act, need not issue the notice by himself.

DUTIES AND RIGHTS OF THE ASSESSEE AFTER THE RECEIPT OF NOTICE UNDER SECTION 148

1. The assessee has the right to request a copy of the notice, **which outlines the reasons** behind the Assessing Officer's decision to issue the notice under Section 148.
2. If assessee agrees with AO, **The assessee must fulfill the duty of filing tax returns** for any income considered as "Income Escaping" for the relevant assessment year.
3. If the assessee finds the reasons provided in the copy **unsatisfactory or baseless**, they have the **right to file an objection** challenging the validity of the notice.
4. It is essential for the assessee to **provide valid reasons while raising objections** and questioning the lawfulness of the notice issued under Section 148.

5. In case the Assessing Officer dismisses the assessee's claims, the assessee still retains the right to request the provision of separate reasons for the dismissal.
6. The assessee also has the option to file a writ petition with the appropriate High Court, challenging the legality and validity of the notice issued under Section 148. This can be done even before the assessment or re-assessment is concluded.
7. Even after the assessment is completed and the matter is under appeal, the assessee still has the right to file a writ petition with the relevant High Court, questioning the legality and validity of the notice under Section 148.

REOPENING OF INCOME TAX ASSESSMENT CASES

As part of the Union Budget 2021, a decision has been made to reduce the time limit for reopening income tax assessment cases. Previously set at six years, it will now be shortened to three years.

However, in situations involving significant tax evasion, assessments may be reopened for a period of up to ten years, but only if the concealed income exceeds Rs. 50 lakh.

Officer to provide reasons for rejecting the assessee's objections.

THINGS TO CONSIDER WHILE REPLYING TO A NOTICE UNDER SECTION 148

When responding to a notice issued under Section 148 of the Income Tax Act, 1961, it is important to consider the following factors:

1. **Begin by understanding the reasons** that prompted the Assessing Officer (AO) to send the notice. If the reasons are not provided in the notice, individuals have the right to request a copy of the same.
2. If the reasons provided in the notice are found to be **justifiable**, **it is crucial to promptly file tax returns to avoid any potential legal complications**. If tax returns have already been filed under Section 148, individuals should ensure to submit a copy of the returns to the AO.
3. Exercise caution and diligence while filing income tax returns. Any omission or incorrect reporting of expenses or income could result in legal penalties. **It is important to ensure that all relevant information is accurately reported.**

4. Familiarize yourself with the provisions outlined in Section 148 of the Income Tax Act to prevent any legal complexities. However, it is advisable for individuals to get their income assessed each assessment year in order to remain tax compliant and avoid any inconveniences.

By considering these factors, individuals can appropriately respond to a notice issued under Section 148 and effectively navigate the income tax assessment process.

CONCLUSION

Section 148 of the Income Tax Act 1961 plays a significant role in ensuring proper assessment of taxpayers whose income has not been appropriately evaluated. It is vital to take any notice received under this section seriously and respond promptly by providing accurate and complete information about your income and expenses. Failing to respond within the specified timeframe may lead to an assessment based on the Assessing Officer's discretion, which may not be favorable to you. Therefore, it is important to comply with the requirements and cooperate with the authorities to ensure a fair and lawful assessment of your tax liabilities.

FAQs

Is it possible to issue a notice under Section 148 for an assessment year **after ten years?**

No, a notice under Section 148 can only be issued within three years or ten years based on the amount of escaped income, from the end of the relevant assessment year.

What is the specified timeframe for responding to a notice under Section 148?

The time limit for responding to a notice under Section 148 is **typically 30 days**, or a shorter period as mentioned in the notice.

Can a notice under Section 148 be issued **if the taxpayer has already submitted a return?**

Yes, it is possible to issue a notice under Section 148 even if the taxpayer has already filed an ITR.

What happens if the Assessing Officer conducts a **best judgement assessment**?

If the Assessing Officer conducts a best judgement assessment, they will estimate your income and expenses using the available information. In case you disagree with the assessment, **you have the option to file an appeal with the Commissioner of Income Tax (Appeals) / the Income Tax Appellate Tribunal.**

What is the **penalty** under Section 148?

Section 148 does not specify a specific penalty, as it relates to the issuance of a notice for reassessment. However, if you fail to respond to a notice issued under Section 148, the Assessing Officer may **impose penalties under Section 271(1)(b) for concealing income or Section 271(1)(c) for furnishing inaccurate particulars of income.** Therefore, it is crucial to respond to a notice under Section 148 and provide precise information regarding your income and expenses to prevent penalties or legal complications.



Thank You!

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