



Reopening of Assessment

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1. **The Finance Act 2021 made a major shift in reassessment provision.** The Finance Act has lowered the time limit for reopening of assessment to 3 years from 6 years earlier. While for cases involving income escaping assessments amounts to or likely to amount Rs 50 lakh and above, 10 years old cases can be reopened. The Second major shift in the reassessment provision was inclusion of search assessments. In, significant changes to the taxation process, among other tax measures, the FM recommended a paradigm change to the provisions relating to "Assessment in case of search or requisition viz. Section 153A to 153D". The third major change is that **"to disclose fully and truly all material facts"** is done away with. The fourth major change is incorporation of sec 148A provision which is a replica of Guidelines rendered by G K N Drive shaft decisions of Supreme Court with certain modifications in process to be followed. Lastly the fifth major change is that reopening shall now be based on *"information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment"*. *Explanation 1 to sec 148 provides meaning to the above phrase.*
2. The Chairman of Central Board of Direct Taxes (CBDT), the apex decision making body for income tax, said the rationalisation of reopening of cases

announced in Budget would bring in more certainty to taxpayers. *"What was a heavily litigated area, we have tried to rationalise it to the extent that it is no longer left to the discretion of assessing officer. It would be more of information-based attempt to reopen the cases. It would be primarily based on data analytics and risk assessment which the system throws up which would lead to reopening of the assessment,"*

3. **Now the Finance Bill 2022 vide Clause 44** proposed to insert a new proviso under the first proviso to the effect that approval to issue notice under the said section 148 shall not be required where the Assessing Officer, with the prior approval of the specified authority has passed an order under clause (d) of section 148A that it is a fit case to issue a notice under the said section.

It is also proposed to amend Explanation 1 to the said section to provide that for the purposes of the said section and section 148A of the Act, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means, —

- A. any information 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

- B. any audit objection 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; or
- C. any information received under an agreement referred to in section 90 or section 90A of the Act; or
- D. any information made available to the Assessing Officer under the scheme notified under section 135A; or
- E. any information which requires action in consequence of the order of a tribunal or a court.

It is further proposed to amend clause (ii) of Explanation 2 of the said section to omit the reference of sub-section (5) of section 133A.

It is also proposed to amend Explanation 2 to the said section to provide that 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 where 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.

These amendments except for amendment in Explanation 2 will take effect from 1st April, 2022. The amendment in Explanation 2 will take effect from 1st April, 2021.

4. The Finance Bill 2022 vide clause 45 seeks to propose amendment in section 148A : Conducting inquiry, providing

opportunity before issue of notice under section 148 :

The existing Clause (b) of the section 148A provides that an opportunity of being heard shall be provided to the assessee, with prior approval of specified authority. It is proposed to omit the requirement of approval of specified authority in clause (b).

It is further proposed to insert a new clause (d) in the proviso to the said section to provide that the provisions of the said section shall not apply in cases where the Assessing Officer has received any information under the scheme notified under section 135A, pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

5. The Finance Bill, 2022 vide clause 46 proposes to insert new Section 148B: Prior Approval For Assessment, Reassessment Or Recomputation in Certain Cases:

It is proposed to insert new section which provide that no order of assessment or reassessment or recomputation under the Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of an assessment year to which clause (i), clause (ii), clause (iii) or clause (iv) of the Explanation 2 to section 148 apply.

6. The Finance Bill, 2022 vide clause 47 proposes to amend Section 149 : Time limit for notice :

The said section 149 provides the time limit for issuance of notice under section 148 for assessment, reassessment or recomputation of income.

It is proposed to amend the clause (b) of sub-section (1) of the section 149 to provide that no notice under section 148 shall be issued for the relevant assessment year after three years but prior to ten years 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 :

- A. an asset; or
- B. expenditure in respect of a transaction or in relation to an event or occasion; or
- C. an entry or entries in the books of account, which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more.

It further proposed to insert a new sub-section (1A) in the section 149 to provide that notwithstanding anything contained in sub-section (1) of the said section, where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1) of the said section, has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1) of the said section, notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

It is also proposed to amend the first proviso to sub-section (1) of the section

149 to provide 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 a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of subsection (1) of section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

These amendments except for amendment in first proviso to subsection (1) of Section 149 will take effect from 1st April, 2022. The amendment in first proviso to subsection (1) of Section 149 will take effect from 1st April, 2021.

- 7. The scope and effect of the new provision is yet to be tested before Courts and Tribunal, however within 1 year of bringing the new scheme for reassessment the government had to bring again clarification, insertion of new explanation, proviso, sub sections etc. In spite of various guidelines laid down by courts while dealing with the erst while provisions, dept constantly preferred to disobey the same leading to quashing of the notice by Courts and Tribunal. To overcome the same and streamline the procedure for reopening assessment the earlier provisions were amended by Finance Act 2021 and now further amendment by Finance Bill 2022. To my reading of the provision finality to an assessment will not be till next 10 years. To my view this will bring more uncertainty as the sword of reopening will be hanging till 10 years now.

