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Panel Discussion on Finance Act 2022

Updated Return and Notable Amendments in the Scheme of Re-Assessment

Direct Tax Committee of ICAI

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Introduction

- Finance Bill, 2022 was tabled by the Hon'ble Finance Minister Madam Nirmala Sitharaman on February 1, 2022.
- The Bill having received the Presidential Assent was finally enacted on March 31, 2022, with the 39 amendments brought in vide the Notice of Amendments to Finance Bill 2022 dated on March 23, 2022.
- The Finance Act 2022 sought to bring in notable changes to the Income Tax Act, 1961 (**Act**), viz; simplification of procedures, promotion of voluntary compliance, reduced litigation, fair Faceless Assessment Scheme, scheme of Updated Return, modification in Reassessment procedures and widening the powers of the Assessing Officer (**AO**), etc.
- Finance Act, 2022 introduces a brand-new scheme of **“Updated Return”** to foster voluntary tax compliance and further encourage the citizens towards better tax compliance, by inserting a new subsection 8A to Section 139 of the Act.
- Post Finance Act, 2021 brought significant changes to the scheme of reassessment, Finance Act 2022 has now again introduced amendments to the said scheme with the objective to assess serious tax fraud situations and provide certainty in the procedures & encourage ease of doing business.

Updated Return

An Overview

- Unveiling the scheme of **Updated Return**, a new subsection 8A is inserted in Section 139 of the Act dealing with voluntary filing of Income Tax Return.
- Any person may furnish an updated return of his income or the income of any other person for which he is assessable for the previous year to the Assessment Year (**AY**).
- Updated Return can be filed regardless of the fact whether the assessee had earlier furnished a return or not.
- Any omissions and errors in the return filed originally can be corrected by the assessee by furnishing an updated return.
- The amendment takes effect from April 01, 2022, i.e., AY 2022-23 onwards. Section 139(8A) provides that the assessee may update the return for the previous year relevant to such AY at any time within 24 months from the end of the relevant AY.
- Therefore, for AY 2022-23, the return for AY 2020-21 (Financial Year (**FY**) 2019-20) and AY 2021-22 (FY 2020-21) may be updated.

Updated Return- Key Considerations

Certain Situations of filing Updated Return

- An updated Return stands defective unless it has been furnished with the proof of payment of tax.
- Updated Return filed before the completion of 12 months from the end of the relevant Assessment Year (**AY**), an additional tax of 25% has to be paid. (Section 140B vide Finance Act 2022)
- Updated Return filed after 12 months but before the completion of 24 months from the end of the relevant AY, an additional tax of 50% has to be paid.
- The option of filing updated return is envisioned to be exercised within 24 months from the completion of AY.

Updated Return Ineligible Situations

- The updated return is in the nature of loss, or the purported updated return decreases the tax liability of the assessee, or it results in a refund, or the updated return increases the value of the refund due on the basis of the return furnished under Section 139(1), (4) or (5) of the Act.

[However, vide the ***Notice of Amendments to Finance Bill 2022, dated March 23, 2022***, ‘fourth’ proviso to Section 139 (8A) has been inserted which provides that where a taxpayer has filed a return of loss under Section 139(3) of the Act, furnishing updated return would also be allowed to such taxpayer, provided that such updated return ends up being a return of income and not of loss.]

- Updated Return has already been filed for the relevant AY.
- Assessment or re-assessment or re-computation or revisional proceeding is/ are pending or has/have been completed for the relevant AY.
- Specified person in specified circumstances like ongoing assessment, search and seizure, information under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (**BMA**), or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act or the Prevention of Money Laundering Act, 2002 or the Prohibition of Benami Property Transactions Act, 1988, Double Taxation Avoidance Agreement (**DTAA**) or Tax Information Exchange Agreement (**TIEA**) and the same has been communicated to such person before the filing of updated return; and other such factors enumerated in the Finance Bill 2022.

Updated Return Ineligible Situations (Contd...)

Second proviso of Section 139 (8A) provides that in the following specified situations, a person is not permitted to elect the option of filing an updated return:

- Search has been commenced under Section 132 of the Act or books of account
- Survey has been conducted against such person under Section 133A of the Act.
- Notice has been issued that any money or valuable article belonging to another person has been seized or requisitioned under Section 132 or section 132A of the Act.
- Notice has been issued to the effect that any books of account or document(s), seized or requisitioned under Section 132 or Section 132A of the Act in the case of any other person, pertain(s) to, or any other information contained therein, relate to, such person.

The above provision is applicable for the assessment year relevant to the previous year in which search is initiated, or survey is conducted, or requisition is made and two assessment years preceding such assessment year.

However, vide the ***Notice of Amendments dated March 23, 2022***, the words “two assessment years” have been changed with words “any assessment year”, which would suggest that the person cannot file an updated return for any prior AYs.

Updated Return

Some Takeaways

- Is the scheme in contradiction with the bare provisions of “Revised Return” as it stands under Section 139(5) of the Act- How to interpret both the scheme(s) in harmony.
- A plausible alternative could have been to amend the scheme of Section 139(5) of the Act to include the option of filing the revised return and prescribing additional fees according to the overall additional income admitted in the said return.
- In cases where unreported income leads to a reduced income, the imposition of burdensome additional tax and interest (prescribed under Section 140B of the Act) is detrimental to the taxpayers.
- Once assessment proceedings are initiated, the taxpayer is not allowed to file an updated return, even if one considers to do so by paying additional tax.
- Lack of clarity whether the tax authority would propose to make adjustments in the income disclosed in the updated return, also need clarity on allowance of additional tax available for set off against the final tax or not, and/or whether cess and surcharge will be levied on the additional tax payable.
- No provision for revising updated return if there is a mistake or error in calculating additional income/ additional tax.



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Notable Amendments in the Scheme of Re-Assessment

Notable Amendments in the Scheme of Re-Assessment

- Finance Act 2022 has brought in some amendments to the reassessment proceedings with the objective to assess serious tax fraud cases, provide certainty in the procedures and encourage the ease of doing business.
- Finance Act 2021 had earlier reduced the time during which the reassessment proceedings could be conducted, i.e., from 6 years to 3 years after the end of the AY.
- Finance Act 2022 has now again proposed an amendment to Section 149 of the Act allowing the initiation process of reassessment to be beyond 3 years and up to 10 years after the completion of the relevant AY.
 - This is applicable only in cases where AO possesses books of accounts, documents or such other evidence pointing towards certain income, which is presented in the form of assets has escaped assessment and the same is likely to amount to INR 50 Lacs or more.

Notable Amendments in the Scheme of Re-Assessment

- The Finance Act 2022 has removed the requirement of procuring approval of specified authority before the issuance of notice to the assessee and/or before providing an opportunity of hearing to the assessee (vide amendment sought in Section 148 and Section 148A of the Act), thereby widening the horizon of power of AO.
- Amendment in Section 148 of the Act has also provided an exhaustive definition to the term “information” basis which AO takes action against the assessee. In Explanation 1 of Section 148 of the Act, following have been added as “information”.
 - Any audit objection
 - Information under Section 90 or 90A
 - Information under Section 135A
 - Any direction of Court or/and Tribunal
- The term “flagged” stands omitted from Section 148(i) of the Act.
- The following instances have been added as deemed information to Explanation 2 of Section 148 of the Act
 - Survey under Section 133A(5)
 - Search or requisition or survey is deemed information for ten years in place of erstwhile three years.

Notable Amendments in Re-Assessment

Key Considerations

- Omission of the term “flagged” now expands the scope of the provision laid out in Section 148(i) of the Act.
- It would mean that every information collated, without filtering as per the Risk Management Strategy (**RMS**) could be used to initiate reassessments which now increases the subjectivity of the procedure.
- Substitution of “any final audit objection of Comptroller and Auditor General of India (**CAG**)” with “**any audit objection**” now includes audit by CAG as well as the internal audit by Income Tax departments (Revenue Audit), regardless of the fact whether it is acceptable to the AO or not.
- The inclusion of Revenue Audits widens the gamut of proceedings and lead to a substantial increase in litigation.
- “**Information**” in Section 148 of the Act, on the basis of which AO takes action against the is to now include any information received from foreign jurisdiction authorities, or any information made available to the AO under the scheme notified under Section 135A, or any information which requires action in consequence of the order of a Tribunal or Court.
- Such addition to the meaning of “**information**” would enjoin the tax authorities to reopen the cases where reported transactions are inconsistent with the information available with the department or any conflicting decision of the Tribunal or Court.
- It is interesting to note that this also covers the decisions in the cases of any other taxpayer, apart from the assessee’s own case, which could also be used to initiate such proceedings.

Notable Amendments in Re-Assessment

Key Considerations (Cont...)

- Considering the heavy reliance on various databases for opening assessment proceedings, it would be incumbent that such information is substantiated with some corroborative evidence suggesting income escaping assessment.
- Widening the “audit objection” under Section 149 of the Act could lead to the unnecessary opening of proceedings, since in several instances audit objections are not based on cogent reasoning. Prior to initiating such proceedings against the assessee, the tax authorities ought to appreciate the merits of the case, otherwise, it could very well swell the incidence of litigation.

Notable Amendments in the Scheme of Re-Assessment

- Clause (b) of Section 149(1) is substituted to suggest that notice under Section 148 can be issued after three years but not more than ten years, if escaped income is or more than INR 50 Lacs, represented in the form of
 - an asset;
 - expenditure in respect of a transaction or in relation to an event or occasion; or
 - an entry or entries in the books of account.

And relatable to more than one particular year.

- Proviso 1 to Section 149 has been substituted to connote that the notice under Section 148, 153A, or Section 153C cannot be issued at any time in a case for the relevant AY beginning on or before April 1, 2021, if such notice could have been issued at that time, for being beyond the time limit specified in the respective Sections.

Notable Amendments in the Scheme of Re-Assessment

Sub section 1A has been inserted in Section 149 of the Act, which *inter alia* provides:

“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), 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 subsection (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”

The above amendment would mean that if the escaped income of INR 50 Lacs or more, in the form of asset or expenditure in respect of a transaction or entry(ies) in the books of account, and the investment in such asset or expenditure is made in several AYs, notice for reopening of assessment would be issued for every such AY.

Time Limit of Completion of Assessment

- The Finance Act, (with the amendments proposed) has increased the time limit for completion of assessment for the assessment year 2020-21 from 12 months to 18 months. The revised time limit for completion of assessment under Section 143(3) and Section 144 shall be as under. The amendment extends the time limit for completion of assessment ending 31.03.2022 to 30.09.2022. It is worth noting that this extension is only for AY 2020-2021.

Assessment Year	Time for completion of assessment
2021-2022 and onwards	Within 9 months from the end of the AY in which income was first assessable
2020-2021	Within 18 months from the end of AY in which income was first assessable
2019-2020	Within 12 months from the end of the AY in which income was first assessable
2018-2019	Within 18 months from the end of the AY in which the income was first assessable
Up to AY 2017-2018	Within 21 months from the end of the AY in which income was first assessable

- Section 153 of the Act (*limitation for completing assessment*) has been amended vide Finance Act 2022 to suggest that assessment on updated return filed under Section 139 (8A) can be completed within 9 months from the end of the FY in which updated return was filed. [Insertion of sub section 1A to Section 153]



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