

Clarity with respect to time limit for re-assessment proceedings

Background:

1. One of the key proposals announced in the Finance Bill, 2021 is with respect to reduction in time limits for re-opening of assessment proceedings and to bring search cases within the proposed new procedure.
2. In this regard, the Finance Bill, 2021 proposes to revise the time limit under section 149 of the Act for issuance of notice under section 148 of the Act. It is now proposed that no notice under section 148 of the Act shall be issued after –
 - 3 years from the end of relevant assessment year (AY) to be reassessed (except for below case);
 - 10 years from the end of AY to be reassessed where assessing officer has books/ documents/ evidence in possession which reveal* taxable income, which is represented in the form of an asset*, escaping assessment of minimum INR 5 million [section 149(1)(b) of the Act].

*Further, the scope of the term 'asset' and meaning of the term 'reveal' in the proposed section 149(1)(b) of the Act is very broad and has not been defined.

3. Based on the Budget speech of the Hon'ble Finance Minister and the Explanatory Memorandum to Finance Bill, 2021 the intent of the amendment appears to apply the extended period of 10 years for the reassessment proceedings only in respect of search cases and not in all cases. This is further evidenced by the pre-amendment regime of search proceedings (of section 153A to section 153D of the Act) being subsumed into the proposed provisions relating to reassessment proceeding,
4. This is a welcome move and would certainly go a long way towards the Government's stated objective of less litigation and increasing the ease of doing business in India. However, the wording of the provisions in the Finance Bill, 2021 can be read to mean that the 10 years' time limit is not restricted to search cases. This has concerned many foreign investors; though the intent of the Government clearly seems to restrict this application to search cases. If left unclarified, this would materially increase the uncertainty faced by the taxpayers with respect to their Indian business / investments.

Recommendations

5. We strongly recommend that the Government clarify this issue prior to enactment of the Finance Bill, 2021 to meet the stated objective. This could be done by inserting a proviso to section 149(1) to clarify that the 10 years limit would only apply to search cases.

6. Additionally, clarity is required in respect of the relevance of the term 'income chargeable to tax in the form of an asset' to trigger the 10-year time limit. We recommend that it be clarified that "asset" for purposes of section 149(1) shall not include any property or item related to income which has been disclosed by the assessee along with the return of income or during the assessment proceedings under section 143(2) of the Act.
7. Similarly, the scope of information under section 149(1)(b) to be 'revealed' should certainly be external to what has already been disclosed by the taxpayer.

Accordingly, it is recommended that it be clarified that books of accounts or other documents or evidence shall not include any information which has been disclosed by the assessee along with the return of income or during the assessment proceedings under section 143(2) of the Act.