

As per existing law, the assessee is required to file the return if he has any asset in his name outside India. Government found that certain assesses were holding asset outside India, not in their names but they were beneficial owners of such assets i.e, assets were held in name of other persons but assessee was beneficial owner of such assets **Benami Holder** such assessee were not required to file the return of income since assets outside India were not in their names.

Finance Act, 2015 has deleted the fourth proviso and added new fourth proviso and fifth proviso to section 139(1) which provides as under.

Fourth proviso to Section 139(1)

Provided also that a person, being a **resident other than not ordinarily resident** in India within the meaning of section 6, who is not required to furnish a return under this sub-section and who at **any time** during the previous year :

- a) Holds, as a **beneficial owner** or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or
- b) is a **beneficiary** of any asset (including any financial interest in any entity) located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for

the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Analysis of Amendment :

- Fourth proviso applies to every resident assessee
- However, an Individual / HUF who is beneficial who is a resident but not ordinarily resident is not required to file the return of income under the Fourth proviso to section 139(1) even if holds as beneficial owner of any asset located outside India or is beneficiary of any asset outside India or has financial interest in any entity located outside India or is a signing authority in any bank account located outside India.
- Amendment has also been made in section 147 to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

➤ Section 139(4A) Charitable and Religious trusts or Institutions

If total income exceeds exemption limit (before giving exemption under 11 and 12.

➤ Section 139(4B) Political Parties

If total income **exceeds** exemption limit (before giving **exemption** u/s 13A

➤ Section 139(4C) Hospitals, medical institutions, schools, colleges and other specified institutions referred u/s 10, Authority covered u/s 10(46) and Infrastructure debt fund u/s 10(47)

If total income **exceeds** exemption limit (before giving **exemption** u/s 10.

➤ Section 139(4D) University, College & Institutions referred to in sec. 35(1)(iii)

If the institution is **not required** to furnish return under **any other provision** of Act.

➤ Due date in all above cases as per Sec. 139(1)

Company

Audit requirement under Income tax Act or any other law ~~working~~ partner of firm whose audit is compulsory &

Spouse of the partner where Sec 5A applies.

31st OCTOBER

[REDACTED] of the assessment year

Assessee who is required to further report of transfer pricing.

30 November of the Assessment Year

Other Assessee

31 July of the Assessment Year

➤ Section 139(3) Read with Sec. 80: Loss Return

Losses under head PGIBP and Capital Gain can be carried forward **only if** loss of return is filed **within due date** specified u/s 139(1)

FOCUS AREA

- Loss can be set off **even** if ROI is filed late
- Loss under head **House property and unabsorbed depreciation** can be carried forward **even if** return is filed late
- Loss of **earlier year** in which return filed on due date **can be** carried forward.

➤ Section 139(4) Belated Return

If ROI not filed within time allowed u/s 139(1) then it may be furnished:

3 Month prior to end of relevant A.Y. **'OR'** Before completion of Assessment

[ie 31/12/22]

Whichever is **Earlier**

CHAPTER RETURN OF INCOME & Adv. Tax

Section 139: Due date for filing of ITR is amended as under-

- a. Date of filing Audit Report delinked from date of filing return.
- b. For audit cases due date is changed as 31st Oct of relevant Assessment Year.
- c. Earlier, the due date for filing ITR of only the Working partner was that of same for audit cases. But now, it is amended and made as due date for filing of ITR of partners (i.e., both the sleeping and working partner) will be that of audit cases (i.e. 31st Oct of relevant Assessment year).

Section 139AA QUOTING OF AADHAAR NUMBER

1. Every person who has been allotted PAN as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to **Principal Director General/ Principal Director of Income Tax (System)** by 31st March, 2021.
2. **The provisions of this section shall not apply to the following persons**
 - i. Residing in the States of Assam, Jammu and Kashmir and Meghalaya
 - ii. Non-resident as per income tax Act
 - iii. Of the age of 80 years or more at any time during the relevant PY
 - iv. Not a citizen of India

Who do not possess Aadhaar Number or the Enrolment ID.

Rule 114AAA: Manner of Making PAN INOPERATIVE

Where a person, who has been allotted the permanent account number as on the 1st day of July, 2017 and is required to intimate his Aadhaar number under sub-section (2) of section 139AA, **has failed to intimate the same on or before the 31st day of March, 2020**, the permanent account number of such person shall become inoperative immediately, then:

- **it shall be deemed that he has not furnished, intimated or quoted the permanent account number, as the case may be, in accordance with the provisions of the Act, and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number.**
- **Where the person has intimated his Aadhaar number after the 31st day of March, 2020, his permanent account number shall become operative**

Section 139A: Permanent Account Number (PAN)

If the assessee does not have PAN but has Aadhaar number, then he can quote Aadhaar number where is a requirement to quote PAN. In such case PAN will be automatically allotted to him. It shall be deemed that he has applied for PAN. He is not required to apply for PAN or submit any documents for getting PAN

➤ Section 139(5) Revised Return

If assessee discovers any omission or wrong statement in ROI filed under **section 139(1)** or belated return u/s 139(4) then it may furnished:

3 Month prior end of **(OR)** **Before** completion of relevant A.Y assessment.

[i.e 31/12/22]

↓
Whichever is **Earlier**

Note-1 Belated return **can be revised.**

Revised return **substitutes the original return** can be revised again.

➤ Section 139(9) Defective Return

A return is said to be defective if any of the **following condition is not satisfied.**

- a.) The annexure statement
- b.) Proof of TDS, Advance Tax
- c.) Trading and Profit & Loss A/c.
- d.) Audit report
- e.) Statement of income computation.

If AO considers **return is defective**, AO may initiate the defect and assessee should be given an opportunity to rectify the defect within the period of 15 days, else return shall be treated as invalid.

Remarks

➤ Section 139B Tax Return Preparer

1. The **CBDT** may frame a scheme providing specified persons to furnish their **ROI through a TRP** authorized to act such under the scheme.
2. This scheme is **not applicable** for a company or in case of compulsory audit.
3. The following are **not authorized act as TRP**.
 - Officer of Schedule Bank
 - a Legal Practitioner
 - a Chartered Accountant

➤ Section -140A : Self - Assessment

In simple words, the payment required to be made u/s 140A along with ROI shall be as under :-

Income tax on the returned income	A
Add : Interest u/s 234A, 234B, 234C	B
Less : Relief u/s 89/90/90A/91	C
Less : MAT Credit u/s 115JAA/ AMT u/s 115JD	D
Less : TDS/TCS	E
Less : Advance Tax	F
Amount to be paid by self.	A+B-C-D-E-F
-assessment u/s 140A	

NOTE: If amount paid by assessee u/s 140A is less than the amount required to be paid u/s 140A, then the amount so paid shall be first adjusted

towards the interest aforesaid and balance towards tax. If assessee fails to pay tax or interest, then assessee shall be deemed as assessee in default and is liable to pay interest u/s 220 and penalty u/s 221.

•> Section 142(1) Notice of Return

If assessee has **not furnished** the return of income within the time prescribed **u/s 139(1)** then the AO may issue a notice requiring him to furnish the ROI within time specified in notice u/s 142(1)(i). The notice u/s 142(1)(i) **can be issued even after the end of the relevant A.Y.** AO can issue notice u/s 142(1)(ii) requiring **furnishing of books** of accounts by assessee for maximum **3 years**. Notice of such section can be issued whether the assessee has filed ROI or not.

•> Section 142(2A) Direction for Special Audit

If at any stage of the proceedings before him, the **Assessing Officer** having **regard of:**

- a) the nature & complexity of the accounts, or
- b) doubts about the correctness of accounts, or
- c) Volume of the accounts, or
- d) multiplicity of transactions in accounts, or
- e) Specialized nature of business activity of the assessee.

AND

the interest of the revenue.

is of opinion that it is necessary so to do with the previous approval of the Chief commissioner or the Commissioner, direct assessee to get his accounts audited by an accountant and furnish report. **SCN** shall be given by AO. If AO issues direction without issuing **SCN**, assessee file Writ petition in HC and HC- quash such direction.

The direction - issued only when the case is pending before AO in an assessment/reassessment. The direction can be given even if accounts of assessee have been audited under Income Tax and other law.