

# TAXATION TIMES

September 2022



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## Introduction

Hon. Finance Minister Mrs. Nirmala Sitharaman in her Annual Budget Speech introduced the concept of Updated Income Tax Return. The underlying objective for introduction of "Updated Return" is to galvanise extra resources to the exchequer by permitting the taxpayers to file a return which is updated. In this edition of the Taxation Times, we take note of further information which may come to the notice of the taxpayers and prompting them to file the an "Updated Return" with attendant conditions and extended time limits.

Here's what we have for you in this edition:

1. An article encompassing the brief provisions of Updated Income Tax Return (ITR U);
2. Case Laws from various courts & jurisdictions;
3. Tax Compliance Calendar – October 2022;
4. Circulars & Notifications – September 2022

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at [info@uja.in](mailto:info@uja.in)

Happy Reading!  
Best Regards,  
UJA Tax Team



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# Updated Return - Boon or Bane for Taxpayers?

Through the Budget 2022 on 1st February 2022, the Government of India introduced the concept of Updated Income Tax Return under section 139(8A) of the Income Tax Act, 1961;

The Central Board of Direct Tax (CBDT) released a Notification No. 48/2022 dated 29th April, 2022<sup>1</sup>, which notified a Rule 12AC for furnishing Updated Income Tax Return in Form ITRU as per the provisions of Section 139(8A) of the Income Tax Act.

The concept of Updated Income Tax Return was introduced by the Government to enable taxpayers to declare their missed-out Income and payment of additional taxes.

With the advancements in automation, technology, and artificial intelligence, Government receives a wide range of information that has led to the belief that taxpayers should be given additional time to voluntarily furnish a correct updated return of Income Tax. Provision to furnish such correct updated return which is likely to reduce the potential litigation has been introduced by a new section 139(8A) in the Union Budget 2022.

**Let us understand the provisions related to Updated Income Tax Return through following points:-**

## 1. Who is not eligible to file ITR-U?

- a. If an updated return is a return of a loss;
- b. In case an updated return results in lower tax liability;
- c. In case an updated return results in or increasing the refund;
- d. In case of a search initiated against the assessee;
- e. Where books of account or assets etc. are requisitioned in case of the assessee;
- f. In case survey conducted against the assessee;
- g. Where documents or assets seized or requisitioned in case of any other person belong to the assessee;

- h. In case an updated return has already been filed;
- i. In case assessment is pending or completed;
- j. In case AO has information about the assessee under specified Acts;
- k. In case AO has information about the assessee under DTAA or TIEA;
- l. In case any prosecution proceeding is initiated; or
- m. In case of a person or class of persons as notified by the CBDT.

## 2. From which assessment year ('AY') the ITR-U is applicable?

The provisions related to updated income tax return are applicable from AY 2020-2021 onwards.

## 3. Is there any fee or penalty levied upon taxpayer furnishing updated return?

No penalty or fee is levied upon a taxpayer who intends to furnish an updated return; however, he is required to pay an additional tax under Section 140B.

The additional tax shall be equal to 25% of the aggregate of tax and interest payable by a person on the filing of the updated return, where such a return is furnished after the expiry of the due date of filing of belated or revised return but before completion of a period of 12 months from the end of the relevant AY.

Where the updated return is furnished after the expiry of 12 months from the end of the relevant AY but before completion of the period of 24 months from the end of the relevant AY, the additional tax payable shall be 50% of the aggregate of tax and interest payable.

Further, a fee under Section 234F shall be charged if such person didn't furnish a return of income for that AY for which he is furnishing an updated return.

#### 4. Computation of Tax Payable with Updated Return

The below table shows the order of Computation of Total Tax Liability (including additional taxes and penalty for filing an updated return.

	Particulars	Amount
	Total Tax on Income	xxx
Less	Advance Tax	(xxx)
Less	TDS (Tax deducted at source)	(xxx)
Less	TCS (Tax collected at source)	(xxx)
Less	Self-Assessment Tax	(xxx)
Less	Relief u/s 89/90/90A/91	(xxx)
	<b>Basic Tax Payable</b>	(xxx)
Add	Interest u/s 234A, 234 B, 234C	xxx
	<b>Tax Payable</b>	xxx
Add	Additional Tax (25% or 50% depending whether the updated return was filed within 12 months or 24 months respectively )	xxx
	<b>Total Tax Payable</b>	xxx

#### 5. Updated Return V/s Revised Return

Let us understand key points of differences between updated return and revised return

- a. A taxpayer can file an Updated ITR even if an original or belated ITR has not been filed. However, the taxpayer cannot file a Revised ITR if an original or belated ITR has not been filed.
- b. The taxpayer can file an Updated ITR only if there is an additional tax liability. In the case of a Revised ITR, there is no such restriction.
- c. The taxpayer need not pay any penalty for filing a Revised ITR. However, the taxpayer must pay a penalty in form of an Additional Tax of 25% to 50% as per Section 140B for filing an Updated ITR.
- d. Updated ITR can be filed only if there is an additional tax liability and not if there is a reduction in tax liability or an increase in the refund or claiming a loss. Revised ITR can be filed for multiple reasons such as claiming a loss, increasing refund, reduction or increase in tax liability, etc.
- e. The taxpayer can file a Revised Return multiple times while he/she can file Updated ITR only once.

#### Conclusion

The finance minister raised the hopes of taxpayers while introducing the Updated Return in her Budget speech. However, as the old saying goes, 'all that glitters is not gold. The taxpayers have to carefully evaluate the pros and cons of filing an Updated Return, on a case-to-case basis, to ensure they get value in return.

<sup>1</sup><https://incometaxindia.gov.in/communications/notification/notification-48-2022.pdf>

## Case Laws

1

### Principal Commissioner of Income Tax V/s Khyati Realtors (P) Ltd (Civil Appeal No. 5804 of 2022)

**Section:** 36(1)(vii) of the Income Tax Act, 1961

**Facts:** The assessee is a private limited company engaged in the business of real estate development business, trading in transferable development rights (TDR) and finance. The assessee company filed its return of income for the relevant assessment year; which was selected for scrutiny and a notice under section 143(2) was issued. During the assessment proceedings the Ld. AO disallowed the amount written off as bad debts.

Aggrieved by the assessment order passed by the Ld. AO, the assessee company filed an appeal before Ld. CIT(A) which in turn upholds the assessment order

The assessee company had preferred an appeal before the Hon. ITAT against the order passed by the Ld. CIT(A). Hon. ITAT passed an order favoring the assessee company.

Aggrieved by the order passed by the Hon. ITAT the Income Tax Department filed an appeal before Hon. Bombay High Court refused to entertain the appeal citing there is no question of law.

Finally, the Income Tax Department filed an appeal before the Hon. Supreme Court of India.

**Issue:** Whether amounts written off as bad debts allowed as a deduction?

**Held:** Hon. Supreme Court analyzed sections 36 and 37 of the Income Tax Act and held that amount paid by the assessee company to a party and written off as irrecoverable is deductible as bad debts written off u/s 36(1)(vii) only if the assessee company proves that it was lent by it in the ordinary course of its money-lending business. Mention of lending as an object in the assessee company's Memorandum of Association will not

prove that amount paid by it to a party was money lent by it ordinary course of its money-lending business. Assessee company's accounts will have to show that it was an advance made by it to the party in the ordinary course of its business. The assessee company will have to establish that amount paid to the party was money lent by the assessee company in the ordinary course of its money-lending business by establishing the duration of the advance, the terms, and conditions applicable to it, interest payable, etc.

**In Favour of:** The Revenue

2

### Lifestyle International (P) Ltd. V/s Assistant Commissioner of Income Tax [2022] 141 taxmann.com 559 (Bangalore - Trib.)

**Section:** 194C and 194I of the Income Tax Act, 1961

**Facts:** The assessee had taken a property on lease. As per the terms of the lease deed it was required to pay rent and common area maintenance (CAM) charges. During the relevant previous year, the assessee company on payments of CAM charges deducted tax at source under section 194C @ 2 percent.

The Assessing Officer took the view that the CAM charges were directly relatable to and were part of the rental activity and, therefore, these payments would fall under the purview of section 194-I and not of section 194C calling for a deduction at the rate of 10 percent instead of 2 percent.

Aggrieved by the assessment order passed by the Ld. AO, the assessee company filed an appeal before Ld. CIT(A) which in turn upholds the assessment order.

The assessee company had preferred an appeal before the Hon. ITAT against the order passed by the Ld. CIT(A)

**Held:** The Hon. ITAT held that where the assessee company had taken a property on lease and as per lease deed it was required to pay rent and common area maintenance charges (CAM charges) since CAM charges were in nature of contractual payments towards electricity, water supply, etc., same would be subjected to deduction of tax at source under section 194C @ 2 percent.

**In Favour of:** The Assessee

**3** **Jasbir Singh Kaberwal V/s Assistant  
Director of Income-Tax (ITA  
No.1787/Mum/2021)**

**Section:** 143(1) of the Income Tax Act, 1961

**Facts:** Assessee filed the return of income for the relevant assessment year without disallowing the employees' contribution to Provident Fund and ESIC under section 36(1)(va) of the Income Tax Act, 1961, and the same was reported by the tax auditor in Form 3CD.

An intimation under section 143(1) was received for the relevant assessment year and Ld. CPC Bengaluru disallowed the said amount under section 36(1)(va); against the intimation received the assessee filed an appeal before CIT(A).

The Ld. CIT(A) from National Faceless Appeal Centre (NFAC) has upheld the intimation and passed the order by confirming the additions.

Aggrieved by the order passed by the Ld. CIT(A) the assessee filed an appeal before Hon. ITAT.

**Held:** Section 143(1)(a)(iv) specifically provides for an adjustment in respect of the "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return". It does proceed on the basis that when a tax auditor indicates a disallowance in the tax audit report, for this indication alone,

the expense must be disallowed while processing under section 143(1) by the CPC. It is nevertheless important to bear in mind the fact that a tax audit

report is prepared by an independent professional. The fact that the tax auditor is appointed by the assessee himself does not dilute the independence of the tax auditor.

The fact remains that the tax auditor is a third party, and his opinions cannot bind the auditee (assessee) in any manner. These are mere opinions and at best these opinions flag the issues which are required to be considered by the stakeholders. On such fine point of law, as the nuances about how Hon'ble Courts have interpreted the legal provisions of the Income Tax Act in one way or the other, these audit reports are inherently even less relevant - more so when the related audit report requires reporting of a factual position rather than express an opinion about legal implication of that position.

The adjustments under section 143(1)(a)(iv) in respect of "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return" is to be read as, for example, subject to the rider "except in a situation in which the audit report has taken a stand contrary to the law laid down by Hon'ble Courts above"

**In Favour Of:** The Assessee.



**4**

**Sonakshi Sinha V/s Commissioner of  
Income Tax (Appeals)**

**Section:** Section 90 read with rule 128 of the Income Tax Act, 1961

**Facts:** Assessee is an individual who is an actor acting in films and provides services for the promotion and marketing of brands of goods, services, and events. The assessee filed her return of income for the relevant assessment year claiming relief under section 90 of the Income Tax Act, 1961.

The case was selected for the scrutiny assessment and the Ld. AO disallowed the foreign tax credit claimed by the assessee citing the reasons that Form 67 was not filed by the assessee before the due date.

Aggrieved by the order of the Ld. AO the assessee had preferred an appeal before the CIT(A) who further upheld the order passed by the Ld. AO.

Aggrieved by the order of the Ld. CIT(A) the assessee preferred an appeal before Hon. ITAT.

**Held:** Hon. ITAT held that one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by the assessee before the filing of the returns and that this requirement cannot be treated as mandatory, rather it is a directory in nature. This is because Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67. It is well settled that while laying down a particular procedure if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also does not prescribe a timeline for filing such a declaration on or before the due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if the

prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. the assessee is eligible for a foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income.

**In Favour Of :** The Assessee.



## Circulars & Notifications September 2022

### A. Circulars:

Additional Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961.

<https://incometaxindia.gov.in/communications/circular/circular-no-18-2022.pdf>

CBDT issues revised guidelines for Compounding of Offences under Income-tax Act

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1102/Press-Release-CBDT-issues-Revised-Guidelines-for-compounding-of-offences-dated-17.09.2022.pdf>

### B. Notifications:

Statement to be furnished under section 285B of the Income-tax Act, 1961 by a person carrying on production of a cinematograph film or engaged in specified activity or both

[https://incometaxindia.gov.in/communications/notification/notification\\_no\\_109\\_2022.pdf](https://incometaxindia.gov.in/communications/notification/notification_no_109_2022.pdf)

CBDT notifies Form ITR-A for filing of modified return by successor entity

<https://incometaxindia.gov.in/communications/notification/notification-no-110-2022.pdf>

### C. Press Release:

Gross Direct Tax collections for the Financial Year (FY) 2022-23 register a growth of 30%

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1860359>

## Tax Compliances for October 2022

**7 October 2022**

Due date for deposit of Tax deducted/collected for the month of September, 2022.

**30 October 2022**

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M for the month of September, 2022

**15 October 2022**

Due date for issue of TDS Certificate for tax deducted under section 194-IB, section 194IA and section 194M in the month of August, 2022

Quarterly statement of TCS deposited for the quarter ending September 30, 2022

Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2022

**31 October 2022**

Quarterly statement of TDS deposited for the quarter ending September, 2022

**31 October 2022**

Due date for filing of return of income for the assessment year 2022-23 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies

Audit report under section 44AB for the assessment year 2022-23 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E

Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.

## Tax News from around the World



### EU nations commit to global minimum tax...

<https://economictimes.indiatimes.com/news/international/world-news/eu-nations-commit-to-global-minimum-tax-/articleshow/94106144.cms>

### China to extend tax relief for small firms, support equipment upgrades

<https://www.reuters.com/article/china-economy/china-to-extend-tax-relief-for-small-firms-support-equipment-upgrades-idUSKBN2QF15D>

### Five big EU states to implement minimum corporate tax if no EU deal

<https://www.reuters.com/markets/europe/five-big-eu-states-implement-minimum-corporate-tax-if-no-eu-deal-2022-09-09/>

### Low UK corporation tax has failed to boost investment – report

<https://www.reuters.com/world/uk/low-uk-corporation-tax-has-failed-boost-investment-report-2022-09-19/>

### German tax revenues fall in August for first time this year

<https://www.reuters.com/markets/europe/german-tax-revenues-fall-august-first-time-this-year-2022-09-22/>

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