# JIGnyasa

Vol. IV | No. 2 | December 2022

Your Quarterly Companion on Tax & Allied Topics

**Learning Today**
**Leading Tomorrow...**

HEAVEN BE OUR GUIDE
Estd. 1926
ज्ञानं परमं बलम्

The Chamber of
Tax Consultants

Mumbai | Delhi

www.ctconline.org

**THE CHAMBER OF TAX CONSULTANTS**
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787/2209 0423/2200 2455 • E-Mail: office@ctconline.org
Website : www.ctconline.org

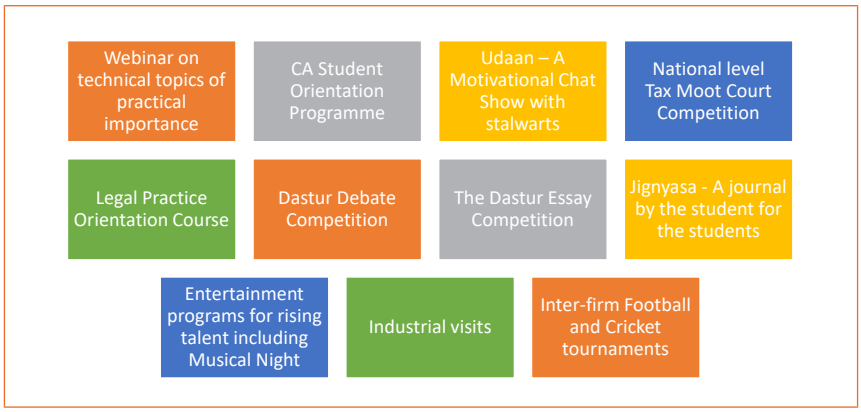


***READER'S SUGGESTIONS AND VIEWS***

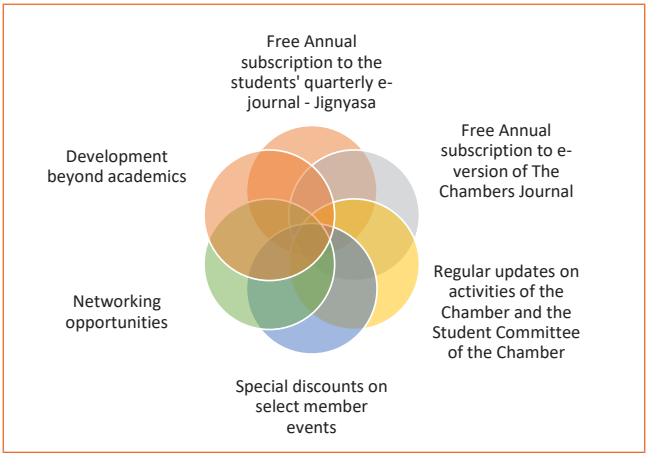
We invite the suggestions and views from readers for improvement of ***Jignyasa***.
Kindly send your suggestions to jou@ctconline.org

# Become a Student Member of The Chamber of Tax Consultants

**What are the initiatives/programs organised by the Chamber for Students?**




**What are the benefits of becoming a student member of the Chamber?**




**Who can become a Student Member?**

Any person, who:

- ✓ has completed 18 years of age;
- ✓ is not otherwise eligible to be a member of the Chamber;
- ✓ is pursuing his/her education as a student and has enrolled as a student of Law, Chartered Accountancy, Cost and Management Accountancy, Company Secretary, Chartered Financial Analysts, Business Management or Management Accountancy or Masters in Commerce or such other course approved for this purpose by the Managing Council shall be eligible to be a Student Member.

**What are the fees for becoming a Student Member?**

The fees for becoming a student member is merely Rs. 590/- [Rs. 500/- + Rs. 90 (GST @ 18%)]

**How can one enroll as a Student Member?**

You may download the membership form using the below mentioned link
Link : https://rb.gy/rw3xde

You can also get in touch with the Chamber's office at:
Address : 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020
Email : office@ctconline.org

For any queries, you can also get in touch with Mr. Hitesh Shah (Manager) at:
Mobile : 7977258507

# POLICY FOR CONTRIBUTION OF ARTICLES FOR JIGNYASA

**Who can contribute?**

The Student Members of The Chamber of Tax Consultants shall be allowed to contribute articles to the students' e-journal ***"Jignyasa"***

**For which columns shall contributions be accepted?**

Every issue of Jignyasa shall have the following four columns for contributions from students:

1. Information Technology
2. Current topics related to the profession
3. SOP on subjects that are related to upcoming due dates
4. A general topic that is relevant to the student members of the Chamber

**What is the selection process of the article for publishing?**

The selection of the articles to be published shall be based on the following parameters:

1. The topics should be relevant to the Students Members of the Chamber covering the various areas of practice.
2. The Article to be published should be original and must adhere to strict originality guidelines of the Chamber. A declaration to this effect should be submitted to the Chamber.
3. Subjects related to current topics or subjects which are related to the due dates falling in the next quarter shall be given preference.

**What are the technical requirements for the article?**

1. The article should contain an executive summary of around 100 words.
2. The list of references should be submitted at the end of the article.
3. A photograph of the author should be provided along with the article.
4. The article should be shared only in word format. No other format shall be accepted.

5. There is no specific restriction on the number of words for the article, but preference shall be given to a well written, the most technically correct, complete and concise article.

**What is the review process?**

The student is advised to approach a member of the Chamber to be his/her mentor for the article. If the interested student cannot find a mentor, the committee shall help him/her approach the members.

Each article shall then be forwarded to an expert for vetting and verification.

The article post vetting and verification shall be forwarded to the author with suggestive changes. Once approved by the author, the amended article shall be forwarded for publishing.

The articles received which are not published in the current issue of Jignyasa shall be parked in the Chamber's locker for the next issue.

Articles that are not found suitable for publication, communication to the Author of the article shall be made to that effect.

# INDEX



## *Invitation to STUDENT MEMBERS to contribute articles for Jignyasa*

The Student Committee of the Chamber invites the **Student Members** to contribute articles for the e-journal for Students – **Jignyasa**. The objective of the committee is to make a major section of the journal - for the students by the students. The students can contribute articles on latest updates in the tax and allied laws, Standard Operating Procedures that can be used for the upcoming due dates, current scenarios in various industries or any other topic. You can send through your article in word format on jou@ctconline.org along with your name, firm name/college name and a photograph. From among the articles received, the ones approved by the committee shall be published.

# President and Chairman Message

Dear Students,

Greetings!

I hope this message finds you in good health. As Chairman of the Student Committee of The Chamber of Tax Consultants, I am delighted to address you all through the pages of our esteemed quarterly e-journal, Jignyasa.

In this edition, I would like to emphasize the significant role that technology plays in the fields of accountancy and law, and the imperative for us, as aspiring professionals, to stay updated with the latest technological advancements.

The world is witnessing an unprecedented wave of technological transformation, and it is our responsibility as students pursuing careers in law and accountancy to harness the power of technology for our professional growth. With each passing day, technology continues to revolutionize various aspects of our lives, and the fields of accountancy and law are no exception.

In the realm of accountancy, technology has introduced numerous tools and software that have streamlined and automated traditional accounting processes. From cloud-based accounting systems to data analytics tools, technology has empowered accountants to become more efficient, accurate, and proactive in their work. Embracing these advancements enables us to provide better financial insights, enhance decision-making processes, and contribute to the growth and success of the organizations and clients we serve.

Likewise, the field of law has also witnessed a transformational impact from technology. From electronic case management systems to legal research databases, technology has revolutionized the way legal professionals access, analyze, and present information. The advent of artificial intelligence (AI) has further expanded the possibilities, with AI-powered tools being used for legal research, contract analysis, and even predictive analytics. By incorporating technology into the legal practice, we can deliver more comprehensive and efficient services to our clients and ensure that justice is served swiftly.

Considering the dynamic nature of the Indian business and legal landscape, it is vital for you, as students, to adapt and equip yourselves with the latest technological skills.

By actively embracing technology, you not only enhance your employability but also position yourselves as indispensable assets to the organizations you join. The demand for professionals who possess a blend of legal and technological acumen is growing rapidly, and you must rise to the occasion.

To ensure that our members remain at the forefront of technological advancements, the Student Committee of CTC is committed to organizing a series of workshops, seminars, and training sessions focused on technology-related topics. We will invite industry experts and thought leaders to share their insights and experiences, enabling us to develop a deep understanding of the applications of technology in our fields. Furthermore, we will establish partnerships with technology providers and educational institutions to provide access to cutting-edge tools and resources, allowing our members to gain hands-on experience and expertise.

Additionally, I encourage all of you to leverage the power of networking and collaboration. The Student Committee through Jignyasa provides platforms for sharing knowledge and discussing technological advancements. Engaging in meaningful discussions, sharing ideas, and collaborating with peers will undoubtedly broaden our horizons and accelerate our learning curve.

In conclusion, dear student members, the journey towards a successful career in law and accountancy in India demands that we embrace technology wholeheartedly. By staying updated, adapting to technological advancements, and fostering a spirit of continuous learning, we will unlock new opportunities and chart a path towards excellence.

Let us remember that we you are the torchbearers of the future. Let everyone of you become the catalysts of change, leveraging technology to redefine the boundaries of our professions. Together, you can shape a future where technology and human expertise work hand in hand to create an empowered and efficient ecosystem.

I must also thank all the Students, Moderators and the Editors for the Article contributions for this edition of Jignyasa.

Wishing you all the very best in your academic pursuits and future endeavors.

With warm regards,

**CA Parag Ved**
*President*

**CA Vitang Shah**
Chairman
*Student Committee*

# FORTHCOMING PROGRAMMES

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THE CHAMBER OF TAX CONSULTANTS

## THE DASTUR ESSAY COMPETITION 2023

**For Students of Law & Accountancy**

**REGISTRATION CLOSES ON 15th April, 2023**

**SUBMISSION DEADLINE 30th April, 2023**

## Objectives

The objectives of the Competition are to cultivate good reading and writing communication skills coupled with encouraging "passion for writing" and "creativity", a quality which every human being possesses, which is possibly hidden and may be unknown to the individual himself.

The Dastur Essay Competition gives a platform to the young professionals to showcase their characteristics that illuminate the good students and potentially great writers. This Essay Competition invites students to explore a wide range of challenging and interesting questions beyond the confines of the college curriculum.

### Cash Prizes Awarded


₹ 10,000/-


₹ 7,500/-


₹ 5,000/-

**Student committe**

**Chairman:** Vitang Shah

**Vice Chairpersons:** Charmi G. Shah, Niyati Mankad

**Ex-officio:** Parag Ved, Haresh Kenia

**Convenors:** Charmi A. Shah, Viral Shah

**Adivisor:** Ajay Singh

## The Dastur Essay Competition

The Chamber is one of the oldest professional organisations founded in 1926. The Chamber has been organising the Dastur Essay Competition since 2012 for Law Students and Articled Trainees pursuing CA, CS and ICWA Courses, where essays on current topics are invited and then the same are judged by senior professionals with prizes and certificates being awarded to meritorious essays.

We, at The Chamber believe that young students are the future leaders of our nation. They have the strength to bring ideas to life. Writing, a dying art today, is an important tool for encouraging the young fresh minds with novel ideas, to express themselves on topics of professional interest and get recognised by a professional forum, with around 4,000 members, through publication of the top three essays in 'The Chamber's Journal'.

Hence, by participating in the Twelfth Dastur Essay Competition of The Chamber, we request the budding professionals to be passionate about expressing themselves through their words and to take this opportunity to get the creative ideas flowing and allow the author within, to blossom.

**Topics for the Twelfth Dastur Essay Competition are:**

1. Do Indian Labour Laws require to be reformed and, if so, how?
2. After 75 years of Independence, what should be India's vision for the next 75 years?
3. To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?

**For Rules & Regulations and Enrolment, please visit our website www.ctconline.org**
**For queries pls mails us on ctcessay@gmail.com or contact on 022- 22001787/ 22090423/ 22002455**

# FORTHCOMING PROGRAMMES

**THE CHAMBER OF TAX CONSULTANTS**
3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai 400 020
Tel.: 2200 1787 / 2209 0423 / 2200 2455
E-mail : ctcdebatecompetition@gmail.com | Visit us at: www.ctconline.org

**H. R. College of Commerce and Economics**
Vidyasagar Principal K.M Kundnani Chowk,
123 Dinshaw Vaccha Road,
Churchgate, Mumbai 400 020

## The 6th Dastur Debate Competition

**Wednesday, 25th & Saturday, 28th January, 2023**
**Venue: Virtual e-Platform**

**The Chamber of Tax Consultants** in association with **H. R. College of Commerce and Economics** is pleased to announce its Sixth Debate Competition.

### Objectives

Debate is the art of dialectic, that puts questioning, reasoning, critical thinking and logic at the heart of the trivium. These are all essential attributes of a great education and to be able to do them well can help ensure that young people perform well academically and, indeed, socially. The young students are the future of our nation. They have the potential to bring new ideas before society. The objective behind organising The 6th Dastur Debate Competition is to ignite students' thought process and bring before us mint fresh thoughts.

The Debate Competition will be organised on e-platform which will enable a wider reach and participation from colleges/firms across India.

**Details of the Debate Competition are as under:**

| | |
|---|---|
| **Each Team consist of** | Two participants (Colleges/Law firms/CA firms/Individual* are eligible to send their teams) |
| **Eligibility of participants** | a. A student below 24 years of age AND<br>b. A student studying in law/commerce college and not possessing any professional qualification such as CA, LLB, CS, ICWA etc.<br>Note : CA/CS Articled Assistants are allowed to participate. |

***Individual should enroll as an Independent Team**

**Enrolment is restricted on a First-Come-First-Served-Basis.** Interested students may send their enrolment along with participation details on ctcdebatecompetition@gmail.com or before Saturday, 20th January, 2023

### Awards

- Trophies & Certificates & Prize Vouchers shall be awarded to the winning team, first and second runner up teams.
- Trophy & Certificate will also be presented to the Best and 2nd Best Speaker.
- Physical Certificate of Participation will be presented to each of the participants.

1st Prize worth ₹ 7,500/-
2nd Prize worth ₹ 5,000/-
3rd Prize worth ₹ 2,500/-

The pre-event will be organised on **Monday, 23rd January, 2023 to** brief participants about the event and to assign the topics at **12 noon** on a virtual e-platform.

**For Rules & Regulations please visit our website www.ctconline.org**
**or call on CTC Office : 2200 1787 / 2209 0423 / 2200 2455**
**or HR College : Ms. Trisha Dutta - 7738907722 / Ms. Tanya Mulchandani - 8080429927**

# FORTHCOMING PROGRAMMES

## The Chamber of Tax Consultants

• 3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai-400 020
• Tel.: 2200 1787 / 2209 0423 / 2200 2455
• E-mail : office@ctconline.org • Visit us at : www.ctconline.org

| Student Committee | | |
|---|---|---|
| **Chairman** | : | Vitang Shah |
| **Vice Chairpersons** | : | Charmi G. Shah, Niyati Mankad |
| **Convenors** | : | Charmi A. Shah, Viral Shah |
| **Advisor** | : | Ajay Singh |

## 6TH THE DASTUR NATIONAL MOOT COURT COMPETITION, 2023

### May 27th & June 10th, 2023

The Chamber of Tax Consultants in association with The Government Law College, Mumbai are pleased to announce the Sixth Edition of 6th The Dastur National Moot Court Competition, 2023.

**OBJECTIVES:**

The objective of the Tax Moot Court Competition is to provide students from all over India with an opportunity to get an exposure to a tax moot problem, improve their oratory and intellectual skills, provide them with an opportunity to appear before the Hon'ble Members of the Hon'ble Income Tax Appellate Tribunal (ITAT) and the Hon'ble Judges of the Hon'ble Bombay High Court and to motivate students to specialise in taxation

**FORMAT AND SCHEDULE OF THE MOOT:**

| | |
|---|---|
| **Number of teams** | • Limited number of teams shall participate<br>• Each Team shall comprise Three Students – Two Speakers and One Researcher.<br>• Teams from outside Mumbai shall be provided accommodation on 9th & 10th June, 2023 (2 Nights). |
| **Sessions / Oral Rounds** | **27th May, 2023** – Preliminary Rounds & Quarter Final Round (On-Line)<br>**10th June, 2023** – Semi-Final Round & the Final Round (Off-Line) |
| **Details of Moot Problem** | This year, the Moot Proposition is based on new-age technology driven transactions such as online gaming, crypto currency, etc. as well as fundamental concepts of residential status, assessment jurisdiction and capital receipts. |
| **Opening of registration:** | 6th April, 2023 *(Registrations shall be accepted on first-come-first served basis)* |
| **Registration Fees** | ₹ 2,000/- per team *(inclusive of GST)* |
| **NEFT Details for Payment** | **NAME OF ACCOUNT** : THE CHAMBER OF TAX CONSULTANTS<br>**NAME OF BANK** : IDBI BANK<br>**BRANCH NAME** : NANA CHOWK, MUMBAI-400 007<br>**ACCOUNT TYPE** : SAVING<br>**ACCOUNT NUMBER** : 0166104000060738<br>**IFS CODE** : IBKL0000166 |
| **Note** | Once the payment process is done, share the transaction UTR number to events@ctconline.org for invoice generating purposes |
| **Last date for** | **Registration** – 21st April, 2023 and must be done through an e-mail to taxmootglc@gmail.com<br>**Submission of soft copies of Memorials** – 12th May, 2023<br>**Submission of hard copies of Memorials** – 2nd June, 2023 |

- Trophies and/or prizes shall be awarded to the Winning Team, 1st Runner up
- Team, Best Speaker and 1st Runner up Speaker and Best Memorial.

| Winning Team | 1st Runner up Team | Best Speaker | 1st Runner up Speaker | Best Memorial |
|---|---|---|---|---|
| ₹ 12,000/- | ₹ 8,000/- | ₹ 5,000/- | ₹ 2,500/- | ₹ 5,000 |

For Rules and Regulations please visit our **website** www.ctconline.org
or **call on** 2200 0423 / 2200 1287 / 2200 2455 **Mobile** : 9004945579

# Digital Personal Data Protection Bill, 2022: The Demon in its Silence

Anushka Pawar

Ananya Gupta
*Advocate*

In today's era, digitization, technology and globalisation have made a profound influence on individuals from all walks of life. Presently, in India there are approximately 760 million active internet users and the number is expected to be 1.2 billion in upcoming years. India is the world's most connected democracy and one of the nations with highest per capita data consumers and producers. Social media dictates one's identity and dignity in the eyes of the public in the world that we live in. An individual's behaviour and how other people react to them are influenced by the gathering and retaining of all of their past information. As a result, in the past few years, India has witnessed several data breaches, ranging from minor incidents to mass leakages. Since technology is constantly evolving at frantic speed, our laws should also evolve as well. Thus, protecting and safeguarding this so-called 'Digital Nagrik' dignity by ensuring their right to personal freedom and privacy in a reasonable manner promotes the overall growth and the development of the person.

New technological advances have permitted more invasions into privacy. Biometrics, transactional surveillance, and work responsibilities are all ubiquitous in today's culture. Wearable gadgets and social media platforms include a wealth of sensitive personal information. Then the question arises, whether the privacy of these billion users is safeguarded? Will this privacy-lite iteration meet the requirements of a digital India? The answer still remains silent. Surprisingly, the Indian legislation lacks direction on these new developments. The Constitution of India recognizes a fundamental right to privacy. This constitutional right casts a long shadow on Indian law and influences policy and judicial reviews and acts as a check on legislative and executive actions. For a long time, India has attempted to develop a comprehensive and non-controversial privacy law. The current legislative framework, which largely regulates privacy under the Privacy Act, 2000 and IT Regulations 2011, practically, fails to keep up with technological developments and the rising demand for a strong data protection law. As a result, the necessity to implement an uncompromised privacy and data protection law in India is undeniable. Data protection and privacy are frequently subject to independent supervision or regulatory frameworks to ensure compliance with privacy and data protection law, along with the protection of individual rights.

The first draft of the law, the Personal Data Protection Bill, 2018, was proposed by the Hon'ble (Retd) Justice Srikrishna's Committee set up by the Ministry of Electronics and Information Technology (MeitY) with the mandate of setting out a data protection law for India. The government made revisions to this draft and introduced it as the Personal Data Protection Bill, 2019 (PDP Bill, 2019) in the Lok Sabha in 2019. This PDP Bill, 2019 was then referred to the joint committee of both the Houses of Parliament. Due to

delays caused by the pandemic, the Joint Committee on the PDP Bill, 2019 (JPC) submitted its report on the PDP Bill 2019 after two years in December, 2021. The report was accompanied by a new draft bill, namely, the Data Protection Bill, 2021 that incorporated the recommendations of the JPC[1]. However, in August 2022, citing the report of the JPC and the "extensive changes" that the JPC had made to the 2019 Bill, the Union Government withdrew the Personal Data Protection Bill, 2019 from the Parliament, after nearly 4 years on presentation of the said Bill. The final draft of the Digital Personal Data Protection Bill 2022[2], introduced by The Ministry of Electronics and Information Technology (MeitY) on November 18, 2022 was the fourth iteration of its draft. The delays in the Bill had been severely criticised by various stakeholders, who had pinpointed that it was a matter of grave concern that India, one of the world's largest Internet markets, did not have a basic framework to protect people's privacy.

A closer look at the Digital Personal Data Protection Bill, 2022 (DPDP Bill 2022) provisions reveal some significant flaws in the proposed legal framework like a demon in its silence. At the beginning of the draft DPDP Bill skips 'Right to Privacy' in the preamble. Also, it is not in line with the observations made by the Hon'ble Supreme Court in the case of Puttaswamy[3], where the Hon'ble Apex Court has specifically recognised/reaffirmed Right to Privacy as a fundamental right and that held that the law must be necessary, proportionate, and reasonable.

Secondly, there is ignorance of offline consumers and their rights. Section 4(3)(b) of the (DPDP Bill 2022) states that the Act shall not apply to offline personal data. This will create a discriminatory effect in terms of the privacy of the offline consumers. The bill fails to include both online and offline personal data within its ambit . The absence of non-inclusion of offline personal data will have an impact on the privacy rights of a prospective consumer who provides personal data in the offline market.

Thirdly, the DPDP Bill 2022 doesn't regulate interception or monitoring in the first place but it may be viewing surveillance through a narrow lens, which would mean invading privacy of the individual. The DPDP Bill 2022 has been questioned for opening the door to widespread data surveillance by the government. Section 18(2)(a) talks about how the Centre can process user data in the interest of national security, friendly relations with other countries, maintenance of public order or preventing incitement to any 'cognisable offence' relating to any of these. Further, Section 18(4) allows the government to store the principal's data indefinitely, as the provisions of Section 9(6) do not apply to any instrumentality of the government. This means that government agencies, under certain circumstances, would be able to endlessly store a user's data clearly invading the privacy of the individual and breaching the constitutional right of the said individual. Also, it grants the government broad power to exempt any of its agencies from compliance with provisions of the DPDP Bill 2022. For e.g.: Government agencies can any time ask for whatever personal data, keep it as long as they want, use it as they deem fit, and share it with anyone in the name of "sovereignty and integrity

1. Trishee Goyal, A first look at the new data protection Bill, November 23, 2022, https://www.thehindu.com/sci-tech/technology/a-first-look-at-the-new-data-protection-bill/article66162209.ece
2. https://www.meity.gov.in/content/digital-personal-data-protection-bill-2022
3. *Justice KS Puttaswamy and Anr.* v. *Union of India and Ors.* (2017) 10 SSC 1.

of India, security of the state, friendly relations with foreign states, maintenance of public order or preventing incitement to any cognizable offence relating to any of these."

**What privacy can exist in such conditions?**

The sub-sections are vaguely defined and are open to interpretation and therefore, raising chances of being misused.

Further, the DPDP Bill 2022 is almost skeletal in form and leaves most of the concrete details to be worked out through the rule-making power of the executive. So, Chapter 5 of the DPDP Bill, 2022 lays down the compliance framework for its provisions. The establishment of the Data Protection Board of India, which will administer the implementation of the Act, including carrying out investigations when there is lawlessness and imposing appropriate penalties. The composition of the Board and the rules of its functioning, however, are set to be instructed by the central government. If this is the case, there is unlikely to be any legitimate recourse in case of misuse of personal data by the government. For e.g., normally, if an institution/board is to be established, a bill specifies who is qualified to be a member, chairman and secretary. Nothing like this is mentioned in the DPDP Bill 2022 and the provisions under Section 19 and 20 clearly put a question mark on the Independence of Data Protection Board. Hence, the overriding power of the Central Government will make the Data Protection board a puppet of the government.

Furthermore, the Right to Information Act, 2005 ("RTI Act") is one of the most efficient and robust laws in India that ensures transparency and accountability. Section 30(2) of DPDP Bill 2022 suggests a potentially dangerous and unwarranted amendment to Section 8.1(j) of the RTI Act. Section 8.1(j) of the RTI Act is one of the exceptions given to the citizens of India where they cannot be provided information under the Act. It states that any information which has no relation to the public interest or which causes an unwarranted invasion of the privacy of an individual shall not be disclosed. This provision may be abused by the Government to aid those who are corrupt. Lastly, the DPDP Bill 2022 moves away from restorative to retributive justice, leaving India's "Digital Nagriks" stranded. Section- 25 of the DPDP Bill 2022 proposes monetary fines, which will merely fill the government's treasury and offer no compensation to those who would be seriously affected. Section 43A of the Information Technology Act, 2000 which offers damages to impacted users in the case of a data breach, will be replaced with a penal provision through Section 25 of DPDP Bill 2022. It also presents a basic framework for processing children's data and leaves out the specific details to be prescribed at a later stage. Despite this uncertainty, several concerns and questions arise, which the government should look into. For e.g. A 17-year-old would have to ask for their parents' consent just like a 5-year-old for sharing their personal data if the government does not prescribe any remedies. Thus, instead of safeguarding youngsters from the harms of the internet, these restrictions may adversely impact their learning capabilities and growth in crucial teenage years. Moreover, the several popular activists who have demanded to reduce the upper age limit used to define a child from 18 years to 16 years or 13 years have also been ignored by the government.

The DPDP Bill 2022 is a progressive indicator even though the implementation of data protection law is still on hold. However, the responsibility of the government to protect personal data would only be partially fulfilled. There is no methodology in place to ensure

accountability of those Government agencies or data fiduciaries who are exempt from the DPDP Bill 2022 provisions, particularly given the concerns about digital surveillance by officials. Undoubtedly, the government must implement a codified data protection regime as soon as possible. The bill encompasses the shortcomings described above. However, the DPDP Bill in its current form requires careful refinement to fill some of the gaps mentioned above.

Considering all of the above, DPDP Bill 2022 in its current form once again fails to provide both procedural and substantive justice to India's "Digital Nagriks" and also, the focus of the Government on its own interest rather than on data owners' privacy. It seems that the Government views its version of the DPDP Bill 2022 as only one of the pieces of its larger Data Protection policy for the entire digital economy. The Government's effort to come out with effective robust data protection legislation remains unfulfilled. Taken as a whole, in the opinion of the author, this DPDP Bill 2022 presents an inadequate and problematic legal framework for data protection in India. Therefore, looking forward to having a comprehensive legal framework that clearly identifies the need, purpose, safeguards, privacy and rights, strengthen the nation's security framework, protect non-personal data and to have Independence of Data Protection Authority Board which ensures accountability, transparency and efficiency in its working and other imperative provisions. It is hoped that the government takes constructive criticism on board, and modifies the Bill to bring it on par with globally accepted best principles on data protection privacy.

■■■

# Basic Tenets of PMLA: Contravene the Right against Self-incrimination

Ruhika Sawant

Aditya Ajgaonkar
*Advocate*

This article seeks to analyse whether the concerned provisions of the PMLA are violative of the fundamental right against self-incrimination and the basic tenets of the Indian Evidence Act, 1872, in light of the recent judicial pronouncements on the issue.

Article 20(3) of the Indian Constitution states, *"No person accused of any offence shall be compelled to be a witness against himself."* The said fundamental right confers protection against 'testimonial compulsion' to a person accused of an offence. A mere witness cannot invoke the enforcement of this right, since there should be a legal accusation against the person. It is known that the Cr.P.C. has separate provisions for summoning of the accused under Section 41A and for witnesses under Section 160. The same distinction is absent under the PMLA. Hence, a person being summoned under the Prevention of Money Laundering Act, 2002 (PMLA), is not aware of the capacity they are being summoned in.

Further, what is even more reproachable is the fact that the ED claims the non-application of Chapter XII of the Cr.P.C, which deals with provisions relating to information and procedure for investigation, and recording statement. It does not register an FIR and keeps the Enforcement Case Information Report (ECIR) as an internal document, without any disclosure of its contents relating to recordings made, inquiry, or procedure followed, leading to non-conformity to the fundamental principles of transparency and openness in legal proceedings against the person accused.

## Testimonial Compulsion

Section 50(3) states that all persons so summoned, shall be bound to make statements and produce any documents as required. It was observed in ***Chief Enforcement Officer vs. D. Uttamchand Jain***[1] that the statement given before the Enforcement Officer is admissible evidence.

1. *Chief Enforcement Officer, Enforcement Directorate, Government of India* vs. *S. D. Uttamchand Jain,* MANU/TN/3881/2010

This observation was made in the light of Section 50(1), which states that the Director, under the Act, has been vested with the same powers as that of a civil court, and sub-section (4) of the provision, which delineates that every proceeding, under sub-sections (2) and (3) of Section 50, shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (IPC). The term 'judicial proceeding' has been defined in Section 2(i) of the Cr.P.C. to include *"any proceeding in the course of which evidence is or may be legally taken on oath."*

Therefore, Section 50 binds all persons appearing before the Enforcement Directorate (ED), to make statements and produce any documents required, and penalises not making a statement, when the accused person may merely be exercising their fundamental right of silence, hence the aforesaid provision threatens their rights under Art. 20(3).

**Gross violation of right of silence**

Further, Section 63(2)(a) of the PMLA, 2002 penalises any person who refuses to answer any question put to them by the ED. Clause (c) of the provision makes failure on the part of any person summoned to attend or produce any documents, punishable. Such penalty, as stipulated may extend to ten thousand rupees for 'each' default or failure. Given the exhaustive 'inquiry' administered by the ED and a person exercising their right of silence, in order to safeguard themselves against incrimination, one can only speculate upon the hefty sanctions such persons may face, upon every question they leave unanswered.

The impact of such an imposition could be that upon making arrears in payment of such fine or penalty for a period exceeding six months, the authority under the Act can recover the amount in the manner as prescribed in Schedule II of the Income Tax Act, 1961.

For a person accused of an offence of money laundering, the said offence must be related to or connected to a scheduled offence, under the PMLA, i.e., an offence under the Act cannot be a stand-alone one. As was held in ***Nandini Satpathy vs. P.L. Dani and Ors.***[2], that 'to be witness against oneself is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows from the tendency to be exposed to a criminal charge'. It is contended that a person, who is also accused of another offence, other than those specified under this Act, being summoned in a proceeding by the Enforcement Directorate, is highly likely to be inquired in a manner, resulting in their inculpation; refusal to make statements being punishable under the Act.

**Absence of Formal Accusation**

It was held in ***M.P. Sharma & Ors vs. Satish Chandra, District Magistrate & Ors.***[3] that a 'formal accusation' relating to the commission of an offence is a pre-requisite condition for the applicability of Article 20(3). Since the necessity of a formal accusation can only be fulfilled by filing an FIR or submission of a complaint against the concerned person, in order to make them an accused, such a condition would make enforcement of the

2. *Nandini Satpathy* vs. *P.L. Dani and Ors.,* AIR 1978 SC 1025
3. *M.P. Sharma & Ors.* vs. *Satish Chandra, District Magistrate & Ors,* (1954) SCR 1077

fundamental right against self-incrimination almost unattainable to a person accused, due non-existence of a provision regarding the same, in the Act.

## Conclusion

The aforementioned provisions of the Prevention of Money Laundering Act, 2002, namely Section 50(3) which causes testimonial compulsion for a person summoned by the authorities under the Act, and sub-section (4) which states that every proceeding under this section shall be a judicial proceeding, makes the statements recorded in course of inquiry being admissible in evidence. This leads to grave injustice being meted out against the person accused under the Act, since refusing to answer or make a statement is punishable under Section 63 of the Act, whereas the other end of the spectrum would lead to self-incrimination of the person. This transgression is further aggravated by the Enforcement Directorate not compiling with the laws under Cr.P.C. relating to information of offence to the person accused and procedure of investigation to be followed, since the ECIR is treated as an internal document, leaving the person accused nescient of the allegations against them.

The Hon'ble Supreme Court in the recent judgement of ***Vijay Madanlal Choudhary vs Union of India***[4], left similar contentions made by the Appellants challenging certain provisions of the PMLA, unanswered. Hence, it is of utmost urgency that the said provisions be brought to question and be reviewed for the vires they delegate.

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4. *Vijay Madanlal Choudhary and Ors.* vs.. *Union of India (UOI) and Ors.,* MANU/SC/0924/2022

# Demystifying The Connundrum Of Airdropping In The Crypto-World: A Direct Tax Perspective

Sneha Vaitheeswaran

The advent of the metaverse, the increasing usage of cryptocurrency and the development of a blockchain based economy has ushered in a new era of taxation in the digital world and a common feature in the crypto-asset market is the airdropping of cryptocurrency. In this regard, the Income Tax Act, 1961 (hereinafter **'IT Act'**) was specifically amended to establish a framework for addressing the tax liability on transactions involving cryptocurrency. The Finance Act, 2022 inserted Section 115BBH in the IT Act in order to provide for the taxing of income arising from the transfer of virtual digital assets (hereinafter **'VDA's'**) and stipulates that such income shall be subject to tax at the rate of 30%. However, it is pertinent to note that the provision only provides for the transfer of VDA's as the taxable event. In this context, a question arises as to whether the airdropping of cryptocurrency would amount to "transfer of VDA" u/s. 115BBH of the IT Act and accordingly, what shall be the tax consequences in the hands of transferor as well as transferee. Therefore, it is necessary to analyze the tax implications of the same.

One of the modes of acquisition of cryptocurrency is facilitated by a process called "airdrop" which is undertaken with a view of increasing awareness of a particular token. Airdropping cryptocurrency is a novel mechanism for the distribution or generation of cryptocurrency and tokens directly to the wallets of cryptocurrency holders[1]. It helps in raising liquidity in the early stages of new token projects[2] and is usually done for free or without compensation. Thus, owing to the lack of consideration involved, units of cryptocurrency acquired through the process of airdrop should ideally be tax neutral as it has no underlying value and cannot fall within the ambit of business income. In the event of airdrop of cryptocurrency, the difficulty in determining the consideration is emphasized by the voluntary, rather ad-hoc nature of the transaction[3]. Resultantly, one may argue that it is erroneous to regard the initial

1. Allen, Darcy and Berg, Chris and Lane, Aaron M., *Why airdrop cryptocurrency tokens?* (October 21, 2022). http://dx.doi.org/10.2139/ssrn.4254360
2. OECD, '*Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues*' October, 2020. https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf
3. Vidhi, Centre for Legal Policy, 'Taxing crypto currencies. The concept, the challenges, and the required change' https://vidhilegalpolicy.in/wp-content/uploads/2022/05/20220527_WP_Taxing-Cryptocurrencies_VCLP.pdf

acquisition of cryptocurrencies through the airdropping mechanism as a taxable event in light of the lack of consideration. However, it is pertinent to note that the OECD[4] has observed that the disposal of a virtual currency may also give rise to a taxable event. It has been stated that "*disposals may occur in exchange for consideration – e.g. through exchanges for fiat currency, another virtual currency or digital asset, or for a good or service – or in a situation without a reciprocal exchange of value, or sans contre partie – e.g. via gift, inheritance, loss or theft.*" Thus, it can be inferred that gifts of virtual currency may be regarded as taxable events and such gifts include instances of airdrop.

Taxability in the hands of the owner is to be tested against the analysis of the word "transfer" as the taxable event for VDA's under Section 115BBH arises only at the time of "transfer". Additionally, the definition of "transfer" as contained in Section 2(47) of the IT Act shall equally apply for the purposes of Section 115BBH[5]. At this juncture, the question that arises is whether "transfer" Section 2(47) of the IT Act can be interpreted in a manner to include the creation or initial acquisition of VDA's through the process of airdrop. Section 2(47) provides for an inclusive definition of transfer and stipulates that the transfer of capital assets arise when any right in respect of a capital asset is extinguished and such a right is transferred to another through relinquishment or if there is a sale or exchange of the asset[6].

In the instant case, airdropping cannot be considered a sale or exchange owing to the absence of consideration. However, the airdrop of cryptocurrency may fall within the ambit of relinquishment as the owner ceases to own the concerned asset through some act on his part. The Supreme Court in ***CIT vs. Rasiklal Maneklal***[7] has held that relinquishment takes place when the owner withdraws himself from the property and abandons his rights over the same in favour of the holder.

Equating this principle to the mechanism of airdropping, it may be contended that the parting of cryptocurrency by the owner and subsequent abandonment of rights in favour of the holder would amount to relinquishment. However, this is debatable as in the absence of consideration, there cannot be a tax on the transfer of VDA's in the hands of the transferor. Airdropping is only an alternative token distribution[8] mechanism which solely provides for the primary creation of tokens and the same cannot be equated to transfer. Accordingly, it is possible for a view to emerge that the airdropping transaction can tantamount to gift owing to the lack of consideration involved. While the OECD treats gifts as a taxable event, under the Indian income tax regime, if airdropping of cryptocurrency is to be considered as a gift, it would be taxable only in the hands of the recipient.

Thus, the airdropping of cryptocurrency can fall within the purview of 'income from other sources' under Section 56 of the

4. Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues by OECD (2020), page 27.
5. Sub-section (3) to Section 115BBH – *"For the purposes of this section, the word "transfer" as defined in clause (47) of section 2, shall apply to any virtual digital asset, whether capital asset or not."*
6. *Sanjeev Lal vs. Commissioner of Income Tax, (2015) 5 SCC 775.*
7. *Commissioner of Income Tax vs. Rasiklal Maneklal (1989) 2 SCC 454.*
8. Apolline Blandin, Ann Sofie Cloots, Hatim Hussain, Michel Rauchs, Rasheed Saleuddin, Jason Grant Allen, Bryan Zhang, Katherine Cloud, '*GLOBAL CRYPTOASSET REGULATORY LANDSCAPE STUDY*', Cambridge Centre for Alternative Finance. https://www.jbs.cam.ac.uk/wp-content/uploads/2020/08/2019-04-ccaf-global-cryptoasset-regulatory-landscape-study.pdf

IT Act. Section 56(2)(x)(c) provides that any income derived from property, other than immovable property, the aggregate fair market value of which exceeds fifty thousand rupees; shall be chargeable to income tax when received without consideration. Additionally, as per the Explanation to Section 56(2)(x) inserted by the Finance Act, 2022, the expression "property" is to include "virtual digital assets". Accordingly, a plausible approach would be to regard the airdropping of cryptocurrency as chargeable under the head 'income from other sources' in the hands of the recipient in situations wherein its fair market value exceeds fifty thousand rupees. However, it must be acknowledged that a key challenge in taxing under the aforementioned charging provision would be in ascertaining the fair market value of cryptocurrency in a highly volatile crypto market and ecosystem.

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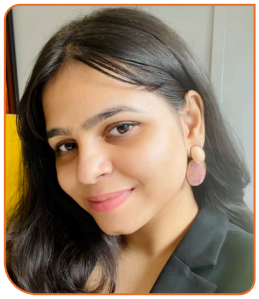
# Assessment & Reassessment Procedure under Income Tax Act



*Nitesh Khandelwal* *Niveditaa Soni*

As per the provisions of The Income Tax Act, 1961 ('The Act') if a Taxpayer meets certain conditions, he/she/it is mandatorily required to file Income tax return ('ITR'). Once ITR is e filed on the e filing portal[1] of the income tax, the return maybe processed under section 143(1) of the Act or if the return is found to be defective on account of inconsistent or incomplete information in the return or in the schedules or for any other reason as maybe specified, the Assessing officer ('AO') may intimate the defect to the assessee and give him an opportunity to rectify the defect *vide* issuing notice u/s 139(9) of the Act. An assessee can either agree with the defect in response to the notice issued u/s 139(9) of the Act in 15 days from date of issuance of such notice or may file a Revised Return in normal course at any time [before three months prior to the end] of the relevant assessment year or before the completion of the assessment, whichever is earlier or such other timelines as may be prescribed. If the time to file Revised Return has elapsed and the Assessee agrees with the defect, then the Assessee has to agree to the defect mentioned in the Defective Return and file a Return in response to the Defective Return Notice. Post resolution of the issues raised in notice issued u/s 139(9) of the Act, the Return gets processed u/s 143(1) of the Act and an Intimation order u/s 143(1) of the Act is issued With effect from(w.e.f.) AY 2021-22, timeline for issuing such Intimation Order u/s. 143(1) of the Act is 9 months from the end of Financial Year in which the return of income has been filed. Prior to AY 2021-22, the time limit was one year from the end of the Financial Year in which the Return of Income has been filed. An Intimation order under section 143(1) of the Act can be passed without issuing Show Cause Notice (SCN) u/s 143(1)(a) of the Act only when the ITR is processed without any adjustment.

"""No adjustment can be made without giving the Taxpayer an opportunity to reply to the proposed adjustment.

The taxpayer is required to furnish his response to the proposed adjustments within 30 days of issue of such Intimation, and if no reply is filed by the taxpayer,

1. E filing portal is single window access to the income tax related services for taxpayers and other stakeholders.

then adjustment proposed in such intimation shall be made

The taxpayer can file appropriate response in the e-filing portal (under e-proceeding tab). The taxpayer can either:

i. Agree with the proposed adjustment or

ii. Disagree with the proposed adjustment by providing reasons for the disagreement (Maximum 500 Characters)

If an assessee receives an Intimation order u/s 143(1) of the Act, having certain adjustments, the assessee has the following options which can be done individually or cumulatively as well

a) Online rectification request on the e-filing portal within 4 years from the end of the financial year in which the Intimation Order u/s 143(1) of the Act was passed

b) Rectification Application u/s 154 of the Act before the Jurisdictional AO within 4 years from the end of the financial year in which the Intimation Order u/s 143(1) of the Act was passed

c) Appeal before the Commissioner of Income Tax (Appeals) in Form 35 within 30 days of receipt of the Intimation Order u/s 143(1) of the Act

d) Revision proceedings u/s 264 of the Act within one year from the date on which Intimation Order u/s 143(1) of the Act was communicated to the Assessee.

The Return of income filed by assessee can also be selected for a detailed scrutiny of the return of income to be carried out u/s 143(3) of the Act to confirm the correctness and genuineness of various claims, deductions, etc., made by the taxpayer in the return of income. In order to carry out such scrutiny assessment u/s 143(3) of the act, the AO has to issue a notice u/s 143(2) of the Act. The said notice u/s 143(2) of the Act should be served within a period of three months from the end of the financial year in which the return is filed.

The AO then has to issue a Notice u/s 142(1) of the Act asking the Assessee to furnish the various detailed as required, by particular date. On receipt of the Notice u/s 142(1) of the Act, the assessee has to provide all the details as and when required by the AO in response to the 142(1) Notices The AO basis the details provided by the assessee, shall pass an order in writing assessing the total income or loss of the assessee and determine the sum if any payable/refundable to the assessee in the view of above assessment. However, before making any adjustment, the AO shall provide the assessee with a SCN and an opportunity to present his case.

In the Union Budget 2019, the Finance Minister proposed the introduction of a scheme of faceless assessment (section 144B of the Act). The Scheme seeks to eliminate the human interface between the taxpayer and the income tax department. The scheme lays down the procedure to carry out a faceless assessment through electronic mode. The Scheme was further amended by Finance Act, 2022.

Under the Scheme, the assessment or reassessment proceedings under Section 143(3), Section 144, or Section 147 of the Act shall be conducted electronically in "e-proceeding" facility through assessee's registered credentials on the e filing portal.

For the purpose of the scheme, CBDT has been empowered to setup the following centres and units:

a) *National Faceless Assessment Centre (NFAC)*- the point of co-ordination between the Assessee and the Assessment Unit as well as between all the units inter-se.

b) *Assessment Units* - call for details from the Assessee

c) *Verification Units* - conduct enquiry & verify details provided by the Assessee, on request from the Assessment unit

d) *Technical Units* - provide technical assistance like determination of arm's length price, Valuation of Property, withdrawal of registration etc, on request of the Assessment Unit

e) *Review Units* - for review of income or loss determination proposal forwarded by NFAC

Section 153(1) of the Act provides for time limit within which the assessing officer is required to pass assessment order u/s. 143(3) or 144 of the Act, which is as tabulated below:

| In respect of an order relating to | Time Limit |
|---|---|
| AY 22-23 and onwards | 12 months from the end of the assessment year in which the income was first assessable |
| i.e., Time limit to conclude assessment proceeding for AY 2022-23 is 31.03.2024. | |
| If reference is made to Transfer Pricing Officer for any AY | The time limit specified in section 153(1), 153(2) and 153(3) of the Act shall be extended by a period of 12 months |
| If return is furnished u/s 139(8A) | 9 months from the end of the financial year in which such return was furnished |

The AO, can also proceed for making assessment under section 144 of the Act i.e. best judgment assessment in the following cases:

- If the taxpayer fails to file the return of income as required within the due date prescribed under section 139(1) or a belated return under section 139(4) or a revised return under section 139(5) or an updated return u/s 139(8A) of the Act or
- If the taxpayer fails to comply with all the terms of a notice issued under section 142(1).

  ***Note***: Section 142(1) of the Act deals with the general provisions relating to an inquiry before assessment. Under section 142(1) of the Act, the AO can issue notice asking the taxpayer to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.
- If the taxpayer fails to comply with the directions issued under section 142(2A) of the Act.

  ***Note***: Section 142(2A) of the Act deals with special audit. As per section 142(2A) of the Act, if the conditions justifying special audit as given in section 142(2A) of the Act are satisfied, then the AO will direct the taxpayer to get his accounts audited from a chartered accountant nominated by the principal chief commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.

- If after filing the return of income, the taxpayer fails to comply with all the terms of a notice issued under section 143(2) of the Act, i.e., notice for scrutiny assessment.

From the above criterias, it can be observed that best judgment assessment is resorted in cases where the return of income is not filed by the taxpayer or there is not adequate co-operation by the taxpayer on various matters.

Reassessment Proceeding u/s 147 of the Act Reassessment is like a second opportunity provided to the AO to assess income that has escaped assessment beyond the time limit of assessment created for the advantage of the Revenue rather than the assessee, with the goal of collecting tax on such evaded income. Nonetheless, several protections are included into the Act to prevent the Revenue from abusing its authority and to protect assessee from excessive harassment. The power of reassessment is to be used are exceptionally and, the same have been contended over and over again before various forums and still remains a subject matter of dispute leading to plethora of judgements at various forums with analysis and explanation of provisions and sections falling within the scope of Re-assessment proceedings

Finance Act, 2021 has revamped the entire procedure of re-opening assessments with an aim to reduce litigations. The provisions of existing sections 147, 148, 149 and 151 have been amended and a new section 148A has also been inserted in the Act.

The new provisions relating to re-assessment are as follows:

If any income of an assessee has escaped assessment for any assessment year, the AO may, subject to Sections 148 to 153, assess or reassess such income or recompute the loss and also any other income which has escaped assessment and which comes to his notice subsequently in the course of the re-assessment proceedings. Further, before issuing notice under Section 148 AO is obliged to follow the procedure as may be prescribed in Section 148A and prior approval of specified authority is also required to be obtained before issuing such notice by AO. Such notices should be served on the assessee along with a copy of the order passed under clause (d) of section 148A requiring assessee to furnish his Return of Income. No such prior approval for issuing notice u/s 148 is required if the AO has passed an order under Section 148A(d) with the prior approval of the specified authority stating that the income is escaping assessment and it is a fit case to issue a Notice u/s 148 of the Act.

No Notice u/s 148 of the Act can be issued, unless the Assessing Officer has 'information which suggests that the income chargeable to tax has escaped assessment'.

*Explanation 1* to section 148 of the Act provides the definition of the information with the AO which suggests that income chargeable to tax has escaped assessment, to mean:

- Information flagged in the case of the assessee for the relevant assessment year in accordance with risk management strategy formulated by the Board from time to time;
- Any audit objection raised to the effect that assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of the Act
- information received under any Treaty
- information received under faceless collection of information scheme u/s 135A of the Act
- information which requires action is consequence of order passed by Income Tax Appellate Tribunal and High Court.

Further in the following cases, the Assessing officer shall be deemed to have information which suggests that income chargeable to has escaped assessment:

- search is initiated u/s 132 of the Act in the case of the assessee on or after April 1, 2021;
- Books of accounts, other documents or any assets are requisitioned u/s 132A of the Act in the case of the assessee on or after April 1, 2021;
- A survey is conducted u/s 133A of the Act (other than under sub section 2A) in the case of the assessee on or after April 1, 2021;
- The AO is satisfied that any money, bullion, jewellery or other valuable article or thing seized or requisitioned in case of any other person on or after April 1, 2021 belongs to the assessee;
- the AO is satisfied that any books of account or documents seized or requisitioned in case of any other person or any information contained therein on or after April 1, 2021 pertain to or relate to the assessee

The AO shall be required to follow the procedure as laid down in Section 148A of the Act before issuing a notice under new Section 148 of the Act in cases other than search, survey or requisition:

- *Conducting Inquiry* - The AO shall conduct an enquiry, if required, with the prior approval of specified authority, concerning the information which suggests that income chargeable
- *Granting an opportunity of being heard* - The AO shall provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than 7 days but not exceeding 30 days from the date on which such notice is issued, or such time, as may be extended by him based on an application in this behalf, as to why a notice under new Section 148 of the Act should not be issued based on information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of an enquiry conducted, if any.
- *Consider Reply of assessee* - The AO shall consider the reply furnished by the assessee if any, in response to the show-cause notice issued by AO.
- *Passing an Order* - The AO shall decide, based on material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under new Section 148 of the Act, by passing an order, with the prior approval of specified authority, within 1 month from the end of the month in which the reply of the assessee is received by him, or where no such reply is furnished, within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires.

***Note***: The above provision shall not apply in the cases where:

- Search is initiated u/s 132 of the Act in the case of the assessee on or after April 1, 2021;
- Books of accounts, other documents or any assets are requisitioned u/s 132A of the Act in the case of the assessee on or after April 1, 2021;
- The AO is satisfied that any money, bullion, jewellery or other valuable article or thing seized u/s 132 of the Actor requisitioned u/s 132 A of the Act in case of any person on or after April 1, 2021 belongs to the assessee;
- the AO is satisfied that any books of account or documents seized u/s 132 of the Act or requisitioned u/s 132A of the Act in case of any other person or

any information contained therein on or after April 1, 2021 pertain or relate to the assessee.

- The AO has received any information under the faceless collection of information scheme u/s 135A of the Act.

Approval of higher authorities has to be obtained in Search, Survey and Requisition Cases before issue of the Notice u/s 148 of the Act. The Finance Act, 2022 has inserted a new Section 148B, w.e.f., Assessment Year 2022-23, to provide that no order of assessment or reassessment or recomputation under the Act shall be passed by an AO below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 (i.e. deemed information cases) apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director. The above mentioned four clauses of Explanation 2 to section 148 provide cases of deemed information. If situations, circumstances, or actions as described in these 4 clauses exist, then it will be a case of deemed information, and the provisions of Section 148B of the Act will have to be kept in mind before passing any order of assessment or recomputation under the Act.

Section 149 of the Act provides for the time limit for Issuance of Notice u/s 148 of the Act. The time limit for issuance of notice under section 148 of the Act is as under:

| S. No | Particulars | Time Limit |
|---|---|---|
| 1 | The AO 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 an asset, expenditure in respect of transaction or in relation to an event or occasion or an entry or entries in the books of accounts which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more | After 3 years but within 10 years from the end of the relevant assessment year |
| 2 | Any other case | Within 3 years from the end of the relevant assessment year |

Further notice under section 148 of the Act cannot 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 sections 148, 153A, 153C couldn't have been issued at that time on account of being beyond the time limit specified under the provisions section 149(1)(b) or section 153A or section 153C, as it stood immediately before the amendment by the Finance Act, 2021.

Further, to compute the period of limitation for issuance of notice under new section 148, the time or extended time allowed to the assessee in providing an opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the AO for passing an order, u/s 148A(d) of the Act about fitness of a case for issue of 148 notice, is less than 7 days, the remaining time shall be extended to 7 days.

Section 149(1A) introduced vide the Finance Act, 2022, w.e.f., Assessment Year 2022-23, provides that if income chargeable to tax, represented in the form of asset or expenditure in respect of transaction, event or occasion, is spread over more than 1 year and the aggregate of the income chargeable to tax in all these years is Rs. 50 lakhs or more, then AO gets jurisdiction to issue a notice under Section 148 for all those years. Further with effect from 01-11-2020, new Section 151A was inserted to provide Central Government to make a scheme for the Purpose of:

- Assessment, Re-assessment or Re-computation u/s 147 of the Act
- issuance of Notice u/s 148 of the Act for conducting assessment u/s 147 of the Act
- Conducting of enquiries or issuance of show cause notice or passing an order u/s 148A of the Act
- Sanction u/s 151 of the Act for the issue of Notice u/s 148 of the Act

The Central Government has thereafter notified the e- Assessment of Income Escaping Assessment Scheme, 2022. The Scheme is applicable w.e.f. 29.03.2022.

The Scheme provides that assessment, Re-assessment or recomputation u/s 147 of the Act and issuance of Notice u/s 148 of the Act shall be done:

a) Through automated allocation, in accordance with the risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of a notice

b) In a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or re- assessments of total Income or Loss of assess.

Thus, re- opening assessment proceeding u/s 147 of the Act has also been brought within the preview of Faceless Assessment Scheme.

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# The Chamber of Tax Consultants

Estd. 1926

## Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur,** Senior Advocate on 30th January, 2008.

**The Chamber of Tax Consultants**

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