

EY Tax Alert

CBDT notifies income-tax return forms (ITR) for tax year 2022-23

Executive summary

This Tax Alert summarizes the key amendments made to the Income Tax Return (ITR) forms for tax year 2022-23, vide Notifications No. 4 and 5 of 2023 dated 10 and 14 February 2023 (Notifications) issued by the Central Board of Direct Taxes (CBDT)¹.

The amendments made in the new tax return forms are largely consequential to the amendments made in the provisions of Income Tax Laws (ITL) by Finance Act (FA) 2022, such as introduction of scheme for taxing income from transfer of virtual digital asset (VDA), filing of modified return pursuant to scheme of business re-organization, alternate regime of taxation introduced for individuals and Hindu Undivided family (HUF).

Further, the provisions or disclosures which are redundant and no longer relevant for the current tax year 2022-23, have been eliminated from the tax return forms, such as investment-linked deduction on new plant and machinery for undertakings located in backward area, removal of profit-linked deduction for those undertakings where the time to set up and claim profit-linked deduction has expired etc. Accordingly, the recently notified ITR forms have been amended to embrace the new changes introduced under the ITL and to do away with the redundant requirements.

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¹ Apex administrative body for direct taxes in India

Background

- ▶ The CBDT, vide the Notifications, has amended Rule 12, as also notified the ITR forms, for all categories of taxpayers for tax year 2022-23 [assessment year (AY) 2023-24]. However, the instructions for filing the ITR forms are awaited. Refer Annexure 1 which explains the applicability of the ITR forms to various categories of taxpayers.
- ▶ This Tax Alert summarizes the key changes in the ITR forms as compared to the immediately preceding tax year 2021-22.

Key changes in ITR Form

▶ Common amendment made in different ITR forms:

- ▶ **Additional reporting requirement for taxpayers engaged in business or profession and choosing for alternate regime of taxation [ITR 3, 4]:** The provisions of ITR provide for an option to the individual and HUF taxpayers to opt for an alternate regime of taxation. Under the regime, the taxpayer, an individual or HUF engaged in business or profession, is required to exercise option to fall under alternate regime. The option once exercised is irrevocable until business/profession ceases. The option can be withdrawn only once in subsequent years and if opted out in any year, such individual cannot again opt in till business/profession ceases. The tax return forms notified for tax year 2022-23 prescribe that the taxpayers are required to provide the detail as under:

- Whether the taxpayer has opted for paying tax under the alternate regime in earlier tax year. If the taxpayer has exercised the option, then date of filing form for exercising the option and acknowledgement number are required to be furnished.
- Whether the taxpayer has opted out of alternate tax regime in any tax year. If the taxpayer has opted out, then date of filing form for exercising the option and acknowledgement number are required to be furnished.
- The form also requires taxpayer to furnish the option for alternate tax regime wherein it has options like "Opting in now", "Not opting", "Continue to opt" and "Opt out". In current tax year, additional option has been inserted wherein taxpayer can choose "Not eligible to opt in". The form requires taxpayer to choose "Opting in now", if it is opting for alternate tax

regime for the first time in the current year. Additionally, taxpayer is required to furnish date of filing of form exercising the option to opt-in or opt-out and the acknowledgement number.

▶ Requirement to report income from virtual digital asset (VDA) under specific schedule and corresponding changes in computation of business income and capital gains [ITR 2, 3, 5, 6, 7]:

- The provisions for taxing income arising from transfer of VDA were introduced by FA 2022. It provides for taxing income arising from transfer of VDA at 30% wherein income is computed by reducing only cost of acquisition. It prohibits set-off of any loss arising under any other provisions of the ITR against income from VDA as well as prohibits set-off and carry forward of loss arising from transfer of VDA against any other income.
- A new schedule has been introduced requiring the taxpayer to report, date of acquisition, date of transfer, head of income (i.e., business or capital gains) under which income is classified, cost of acquisition (in case of gift or otherwise) and consideration earned for computing the income from transfer of VDA.
- Corresponding changes are made under schedules relating to business income, capital gains and income with special rates of taxes in order to incorporate and report income from transfer of VDA under respective schedule. Under capital gains schedule, income from transfer of VDA should be reported quarterly.

▶ Requirement to report income on which relief of deferral of tax was claimed on income from overseas retirement benefit account [ITR 2, 3]:

- The provisions of ITR provide for taxation of income from overseas retirement fund basis Income-tax rules². The tax deferral provisions are applicable only to a resident individual taxpayer and not to non-resident taxpayers. The tax return forms for tax year provide for reporting of income earned in the retirement benefit account maintained in a notified country/other than a notified country as well as reporting of quarterly break-up of

² Rule 21AAA of Income Tax Rules, 1962 inserted vide Notification No. 24 and 25/2022 [F. No. 370142/7/2022-TPL]; Refer our alert titled, "CBDT notifies rule and countries

for deferral of taxation of income from retirement benefit account services" dated 6 April 2022.

income earned in such retirement benefit account. Additionally, the tax return forms also provide for reporting of taxation relief claimed in respect of such income.

- The new tax return forms now include a specific row item under “Salary” and “Income from other sources” schedules for disclosing such income from overseas retirement benefit account in respect of which relief is claimed in past years.
- It appears that the amendment is pursuant to claw-back provisions of ITL which provide that income from overseas retirement benefit account on which tax relief is claimed in the past tax years shall become taxable in the year in which individual becomes non-resident.

▶ **Modification of schedule on tax collected at source (TCS) to enable taxpayer to claim taxes collected in name of other persons [ITR 2,3,5,6,7]:**

- The new tax return form has modified the schedule which enable taxpayer to claim credit for tax collected at source. The schedule has been modified to furnish, TCS credit related to other person, Permanent Account Number (PAN) of other person whose TCS is being claimed and TCS of other person pertaining to current tax year and claimed in current year.

▶ **Additional reporting requirement to disclose turnover and income from Intra-day trading [ITR 3,5]:**

- The new tax return form contains additional requirement to report turnover from intra-day trading and income from intra-day trading which is transferred to Profit or Loss account under Trading account for the year 2022-23. Such income from intra-day trading is included in computation of speculative business income. It appears that such modification is made in order to align ITR 3 and 5 with ITR 6 which has similar requirement.

▶ **Requirement to disclose status as Foreign Institutional Investor (FII) or Foreign Portfolio Investor (FPI) [ITR 2, 3]:**

- The new tax return form requires taxpayer to disclose whether it is registered as FII or FPI with Securities Exchange Board of India and its registration number.

▶ **Filing of return for reporting under specific provisions of ITL in case of third-party search assessment [ITR 1, 2, 3, 4, 5, 6, 7]:**

- Prior to Finance Act 2021(FA 2021), filing of income tax return by a person on whom search action is initiated or by a person (i.e., third party) whose information or evidences about income escaped tax is found in search proceedings on another person³ was governed by special provisions under ITL.
- Post FA 2021, the provisions of ITL provide for a revamped procedure for reassessment and search assessment taking place post 1 April 2021. Consequently, special provisions governing search related matters were made confined to search initiated up to 31 Mar 2021. In case of search initiated post 1 April 2021 assessment shall be carried out only under revamped reassessment provisions of ITL. Consequently, the tax return forms notified for tax year 2021-22 obliterated the reference of filing return of income under erstwhile search assessment scheme.
- In case of search affected third party, it was possible that search was initiated on the original taxpayer prior to 31 March 2021 but search proceedings in case of third party is initiated on or after 1 April 2021. The omission in ITR form of the reference to file tax return under search assessment scheme for tax years 2021-22 leads to issue in case of such search affected third party.
- Addressing the issue, the new tax return forms have re-introduced the reference to filing return of income by third party in case of search affected third party.

³ The provision of ITL empowers tax authority to assess or reassess income of a taxpayer, if information in relation to such person is unearthed in search proceedings of other taxpayer

- ▶ **Changes in ITR-1 (Sahaj) [For resident Individuals having total income up to INR 5m, having income from salaries, one house property, other sources, and agricultural income up to INR5,000]**
 - ▶ The provisions of ITR require a person including individuals to file return of income even when the income of the person is not taxable as it is below the threshold limit if the person has deposited an amount or aggregate of the amounts exceeding INR 100Mn in current account maintained with any banking company or co-operative bank.
 - ▶ A current account is generally maintained for person engaged in business or profession. ITR-1 form is applicable to taxpayers who do not have any income from business or profession. Hence, the reference of deposit of amount exceeding INR 100Mn in current account is omitted in ITR-1 as it was redundant. ITR-1 Form cannot be filed by an individual who does not have any taxable income but is filing the income tax return form because of depositing more than INR 100Mn in one or more current accounts.
- ▶ **Changes in ITR-5 [For taxpayers other than individual, HUF, company as well as person furnishing ITR-7]:**
 - ▶ The new tax return forms also provide for additional reporting of PAN of incoming and outgoing member in case of change in constitution of partners/ members of firm, Association of Persons (AOP), Body of Individuals (BOI). It also requires reporting of remuneration paid or payable to retiring partner in case of firm which hitherto was not captured in ITR form. The Schedule Part A-GEN in ITR captured only details of remuneration paid to partners/members as on 31 March 2023 or date of dissolution.
- ▶ **Changes in ITR-6 [For company taxpayers, other than companies claiming exemption of any income from property held for charitable or religious purposes]:**
 - ▶ FA 2022 introduced a provision which enabled successor company to file modified return of income pursuant to order passed by an High Court or Tribunal or adjudicating authority approving business re-organization. The modified return is required to be filed within six months from the end of the month in which order is issued. On 19 September 2022, the CBDT issued a notification⁴ specifying the manner and details for filing modified return. Consequentially, the new tax return form is modified to enable the successors to file revised return after giving effect to order of the High Court or Tribunal or adjudicating authority.
- ▶ **Changes in ITR-7 [For taxpayers being charitable trusts and other institutions, political parties, etc.]:**
 - ▶ There have been several amendments in the provisions applicable to charitable institutions by FA 2022. The modifications made to ITR-7 are pursuant to such amendments.

⁴ Notification No. 110/2022

Comments

CBDT has released ITR forms for tax year 2022-23 on 10 February 2023. ITR forms have been notified well in advance this year. This is a welcome move as it will help the taxpayers and software developers to align the ITR forms with their system and it will also ease the compliances. This may help taxpayers to be well prepared on the disclosures and reporting requirements in the tax return forms.

The new ITR Forms cover modifications which are consequential to the amendments made in the provisions of the ITR such as introduction of the regime for taxing income from VDA, modified return of income to be filed by successor in business re-organization. Further, the ITR Forms have been fine tuned to remove the reporting requirements consequent to redundant provisions which are outlined like certain investment allowance, profit-linked deductions, concessional rate applicable in hands of domestic company on dividend declared by specified foreign company.

It may be imperative to note that there are certain amendments made in the ITR Forms which may require the support of instructions, clarifications or e-utility of the CDBT, such as categories of income on which surcharge rate of 10% to 15% applies.

The present Notifications specify that the amendments made vide the Notifications shall be effective from 1 April 2023.

In Budget 2023, Finance Minister clarified her intention to simplify the ITR form filing process by rolling-out a next-generation Common ITR Form for the convenience of the taxpayers, and her plans to strengthen the grievance redressal mechanism. CDBT, vide a Press Release dated 1st November 2022, released a draft Common ITR Form for public consultation. As per the said Press Release, it is proposed to introduce a common ITR by merging all the existing returns of income, except ITR-7 (meant for charitable trusts, institutions and political parties) and continuing the current ITR-1 and ITR-4. The draft Common ITR forms are at the proposal stage and separate ITR form applicable to different taxpayers shall be applicable for current tax year.

Annexure 1: Applicability of ITR forms to various category of taxpayers

Form	Category of taxpayers	Applicability/ sources of income covered
<p>ITR-1 (Sahaj)</p>	<p>Individuals (resident and ordinarily resident)</p>	<p>Who can file ITR-1</p> <ul style="list-style-type: none"> • Has income from salaries or family pension, or • Income from one house property, or • Income from other sources <p>Who cannot file ITR-1</p> <ul style="list-style-type: none"> • Who has an asset or signing authority in any account outside India or earns income from any source outside India, or • Who has claimed double taxation avoidance agreement (DTAA) relief and/or unilateral double tax relief, or • Has agricultural income above INR5,000, or • Has total income above INR5M, or • Has dividend income exceeding INR1M attracting super rich dividend tax levy, or • Has unexplained credits or investment taxable at 60% under the provisions of the ITR, or • Has capital gains or business income, or • Income from more than one house property or has brought forward loss or loss to be carried forward under the house property head, or • Income from lotteries or horse races or loss under the other sources head, or • Who has claimed deduction of expenses under income from other sources head. However, person who has claimed deduction under other sources head against family pension income can file ITR-1, or • Who is director in any company, or • Who held any unlisted equity share at any time during the tax year, or • Who is assessable for income on which tax has been deducted in another taxpayer's name, or • In whose case a 2% withholding tax has been deducted on cash withdrawals exceeding INR 10M (reduced to INR 2M in certain case) made during a tax year, or • In whose case tax deduction/payment has been deferred in respect perquisite income accrued due to ESOPs allotted/ transferred by employer, being an eligible start-up. • Who have deposited sum in excess of INR 1 crore in banking company or co-operative bank during the year
<p>ITR-2</p>	<p>Individuals and HUFs</p>	<ul style="list-style-type: none"> • Has income from salaries, or • Income from house property, or • Capital gains, or • Income from other sources

Form	Category of taxpayers	Applicability/ sources of income covered
ITR-3	Individuals and HUFs	<ul style="list-style-type: none"> Has income from business or profession
ITR-4 Sugam	Individuals and HUFs who are resident and ordinarily resident, firms [other than limited liability partnerships (LLPs)] which are resident	<p>When to file ITR-4 Sugam</p> <ul style="list-style-type: none"> In case of profits and gains from business and profession to which presumptive tax provisions apply(except in following cases) <p>Who cannot file ITR-4 Sugam</p> <ul style="list-style-type: none"> Who has an asset or signing authority in any account outside India or has income from any source outside India, or Who is a director in any company Who held any unlisted equity share at any time during the tax year Has total income above INR 5M, or Income from more than one house property or Has brought forward loss or loss to be carried forward under any head of income, or Who is assessable for income on which tax has been deducted in another taxpayer's name, or Who has claimed DTAA relief and/or unilateral double tax relief, or Has agricultural income above INR 5,000 or Has dividend income exceeding INR 1M attracting super rich dividend tax levy, or Has unexplained credits or investment taxable at 60% under the provisions of the ITL, or In whose case tax deduction/payment has been deferred in respect perquisite income accrued due to ESOPs allotted/ transferred by employer, being an eligible start-up.
ITR-5	For firms/ Limited Liability Partnerships (LLPs) /Association of Persons (AOPs)/ business trusts/investment funds	<ul style="list-style-type: none"> Income from house property Capital gains Profits and gains from business and profession Income from other sources
ITR-6	Companies other than those filing ITR-7	<ul style="list-style-type: none"> Income from house property Capital gains Profits and gains from business and profession Income from other sources
ITR-7	Persons to furnish return of income in circumstances specifically provided for under the ITL viz., charitable trusts and other institutions, political parties, etc.	<ul style="list-style-type: none"> Income from house property Capital gains Profits and gains from business and profession Income from other sources

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