

Income tax department slaps notices on foreign investors with no earnings

By Sugata Ghosh, ET Bureau | Last Updated: Jul 05, 2026, 11:52:00 PM IST

Synopsis

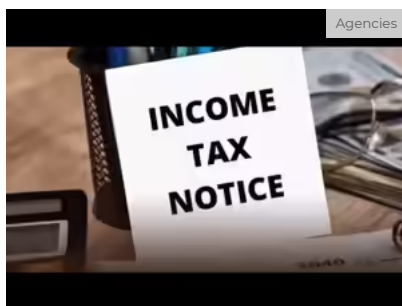
Foreign investors are receiving unexpected tax notices in India, even for transactions where no profit or dividend was earned. The tax department is initiating reassessment proceedings, questioning the absence of income tax returns for share purchases. Experts highlight that such notices, potentially triggered by remittance data, may be misapplied to transactions that didn't generate income, causing confusion and compliance burdens for overseas entities.



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Mumbai: At a time when the central government and the central bank are luring foreign funds, the taxman has its own story to chase - shooting occasional missives that never fail to surprise. The latest is a flurry of notices to foreign investors who are suspected to have dodged tax even though they have earned nothing.

In recent weeks, different offshore investors - companies, investment vehicles, fund houses, as well as some foreign portfolio investors - many of whom have only bought either listed or unlisted shares but neither booked profits nor received dividends, received notices under Section 148 of the Income tax (I-T) Act, persons aware of the matter told ET.

Such notices are I-T department's communique for initiating 'reassessment proceedings': reopening old books when there are reasons to believe that some past income has escaped tax.

"What's striking is that several notices relate to purchase transactions, and not exits. Here, a non-resident merely acquired Indian shares and has not earned any income from the transaction. It's probably triggered by the absence of I-T Return by these investors along with information from remittance documents. This is difficult to justify: a share purchase by a non-resident does not, by itself, result in income and there was no obligation to file ITR. A reassessment regime meant to tax escaped income should not be used to question a transaction which produced no income in the first place," said Aditi Goyal, partner at Trilegal, a law firm. However, there may be cases where the department thinks unlisted stocks were acquired below fair value or there was fund round-tripping.



Such notices initiate reassessment proceedings where income is suspected to have escaped tax

INFO SOUGHT

Many investors were asked why no ITR was filed. They have to share TDS documents (for capital gain tax deducted before paying seller), valuation report, share certificate, and board minutes mentioning them as purchaser, and copies of 15 CA/CB forms (submitted for outward remittance and also filed by purchaser when seller is non-resident).

Investors need 'permanent account number' (PAN) for stock demat account, but opinions vary on mandatory ITR filing if there's no income. A strict reading of the law requires all local and foreign companies to do so, but some differentiate between foreign investors with no earnings and those availing treaty benefits to avoid tax.

These weren't system-driven notices: senior I-T officers approve Section 148 notices and are preceded by 148A notices giving assessee a chance to explain. Since the department wasn't convinced, 148A notices were escalated to 148 notices which can be issued up to 5 years 3 months from the end of the assessment year if escaped income is ₹50 lakh or more. The current notices pertain to FYs '19-20, '20-21 and '21-22.

"A reassessment notice opens the door to wider scrutiny. Once initiated, the department can examine not only issues that triggered the reopening but also other transactions. Taxpayers must respond comprehensively to any preliminary enquiry by providing complete documentation on transactions involved, valuation reports, fund source, and reasons for non-filing of returns, where applicable. This may help to avoid reassessment," said Ashish Mehta, partner at the law firm Khaitan & Co.

Some foreign investors don't file returns to hold back information on significant shareholders and directors. "Sometimes, the notices, designed for genuine income escapement, may have been triggered by Form 15CA/CB data, without considering the transaction year. A transaction that has already

become time-barred should not ordinarily be reopened merely because it was reported next year. This causes uncertainty and raises compliance burden," said chartered accountant Ashish Karundia.

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