

Update on
new category of persons
who are obliged to file return of income
under
“7th” proviso of section 139(1)
of the Income Tax Act, 1961
from assessment year 2020-21

1. The Finance (No. 2) Act, 2019 had inserted 7th proviso in section 139(1) of the Income Tax Act, 1961 {*hereinafter referred to as the Act*} w.e.f. 1.4.2020, which is applicable from assessment year 2020-21.

2. The proviso reads as follows:

Provided also that a **person** referred to in clause (b), who is **not** required to furnish a return under this sub-section, **and** who during the previous year —

- (i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; **or**
- (ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; **or**
- (iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; **or**
- (iv) fulfils such other conditions as may be prescribed,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

3. The above proviso **does not apply** to following persons as referred to in clause (a) of section 139(1) of the Act:

- (i) a company;
- (ii) a firm (including LLP)

4. The above proviso **applies** to following persons as referred to in clause (b) of section 139(1) of the Act {*hereinafter referred to as the specified persons*}:

“being a person **other than** a **company or a firm**, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year **exceeded** the maximum amount which is not chargeable to income-tax”

5. The above proviso further provides that it will **apply** to such specified persons who are **not** required to furnish return u/s 139(1).

6. It means that the specified persons who are otherwise required to furnish return of income **shall not be required** to furnish return of income under above mentioned 7th proviso.

7. As per **6th proviso of section 139(1)** following specified persons are required to furnish return of income:

“Provided also that every person, being an individual **or** a Hindu undivided family **or** an association of persons **or** a body of individuals, whether incorporated or not, **or** an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, **without giving effect** to the provisions of clause (38) of section 10 **or** section 10A **or** section 10B **or** section 10BA **or** section 54 **or** section 54B **or** section 54D **or** section 54EC **or** section 54F **or** section 54G **or** section 54GA **or** section 54GB **or** Chapter VI-A **exceeded** the maximum amount which is **not** chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed”

8. As per **4th and 5th proviso of section 139(1)** following specified persons are required to furnish return of income:

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

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed:

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act.”

9. It means that if a specified person is **not** covered by 4th & 5th proviso **and** 6th proviso of section 139(1), he **may** fall in 7th proviso as inserted by the Finance (No. 2) Act, 2019 *w.e.f.* assessment year 2019-20.

10. There are **four situations** under which a specified person **shall** be required to furnish his return of income under 7th proviso of section 139(1), which are being analysed in the later part of this write up.
11. These four situations are mutually exclusive. Therefore, if any of these applies to the specified person, he shall be required to furnish the return of income.

During the previous year
has deposited an amount or aggregate of the amounts
exceeding one crore rupees
in one or more current accounts
maintained with a banking company or a co-operative bank

12. **Clause (i) of the 7th proviso** provides that a specified person shall be obliged to file his return of income if during the previous year such person has deposited an amount **or** aggregate of the amounts exceeding one crore rupees in one **or** more current accounts maintained with a banking company **or** a co-operative bank.
13. The issues related to this provision are being discussed hereunder.

Threshold of amount

- (i) has deposited **an amount exceeding** Rs. 1 crore during the previous year in one **or** more current accounts maintained with **a** banking company **or a** co-operative bank; **or**
- (ii) has deposited **aggregate of the amounts exceeding** Rs. 1 crore during the previous year in one or more current accounts maintained with **a** banking company **or** a co-operative bank.

Mode of deposit

- (iii) The clause (i) does not mention the mode of deposit, *i.e.* cash or cheque or bank draft or any electronic mode *etc.*
- (iv) It means that the threshold may be composite of all above modes.

Nature of account

- (v) such deposit is made in **“current account”**.

How many current accounts

- (vi) such deposit is made in **one** current account; **or**

- (vii) such deposit is made in **more than one** current account

Account is to be maintained with

- (viii) such account is maintained with **a** banking company; **or**
(ix) such account is maintained with **a** co-operative bank

Account is to be maintained by whom

- (x) such current account is required to be **maintained** with **a** banking company **or** **a** co-operative bank.
- (xi) The clause (i) does not specify by whom it is required to be maintained.
- (xii) The Act as well as section 139(1) as well as 7th proviso of section 139(1) does **not** define the word **“maintain”**.
- (xiii) However, if a person is obliged to furnish **“his”** return of income due to deposit or deposits exceeding Rs. 1 crore in a previous year in any current account, it is **“he”** who is **accountable** for everything in this respect.
- (xiv) A person can be accountable **only** for such account which is **maintained** by him, because **“he”** is the person who or under whose instructions any amount can be deposited in such account **or** **“he”** is the person who or under whose instructions any amount can be withdrawn, paid or transferred from such account. Therefore, the word ***maintain or maintained*** signifies exercising proprietary rights of depositing and withdrawing money and all actions relating to such account.
- (xv) It may be clarified that a person **cannot** be accountable for any account which is not maintained by him **or** which is maintained by anyone else.

What is banking company

- (xvi) As per *Explanation* 6(a) to section 139(1) **“banking company”** shall have the meaning assigned to it in clause (i) of the *Explanation* to section 269SS.
- (xvii) As per clause (i) of *Explanation* to section 269SS **“banking company”** means **a** company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies **and** including any bank **or** banking institution referred to in section 51 of that Act.

What is co-operative bank

- (xviii) As per *Explanation* 6(b) to section 139(1) **“co-operative bank”** shall have the meaning assigned to it in clause (ii) of the *Explanation* to section 269SS.
- (xix) As per clause (ii) of *Explanation* to section 269SS **“co-operative bank”** shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949).

What is the significance of word “a” before banking company and co-operative bank

- (xx) The use of word **“a”** before *banking company* as well as *co-operative bank* means all branches of a company, wherever located, which is a banking company in terms of the Banking Regulation Act 1949 **and** all branches of a co-operative institution which is a co-operative bank in terms of Part V of the Banking Regulation Act, 1949.
- (xxi) It also means all branches of **“a” bank** referred to in section 51 of the Banking Regulation Act 1949, wherever located.
- (xxii) It also means all branches of **“a” banking institution** referred to in section 51 of the Banking Regulation Act 1949, wherever located.

Illustrations

Q 1 A specified person maintains one current account in a Connaught place branch of Allahabad Bank and another current account in a Preet Vihar branch of Allahabad Bank, and he deposits Rs. 60 Lakh each in both the accounts in the previous year 2019-20, whether he will be obliged to furnish his return of income under the provisions of 7th proviso of section 139(1) of the Act.

Ans. **Yes.** The threshold of Rs. 1 crore is applicable on deposit in **“a”** banking company. In this illustration both the branches of Allahabad Bank and Allahabad Bank is **“a”** banking company.

Q 2 A specified person maintains one current account in a branch of Allahabad Bank and another current account in a branch of Syndicate Bank, and he deposits Rs. 60 Lakh each in both the accounts in the previous year 2019-20, whether he will be obliged to furnish his return of income under the provisions of 7th proviso of section 139(1) of the Act.

Ans. No. The threshold of Rs. 1 crore is applicable on deposit in “a” banking company. In this illustration branch of Allahabad Bank and branch of Syndicate Bank are the branches of two different banking companies.

Conclusion

It means that if a specified person deposits by whatever mode or in any form an amount or aggregate of amounts exceeding Rs. 1 crore in a previous year in one or more current accounts maintained by him in one or more than one branches of a banking company **or** in one or more than one branches of a co-operative society **or** in one or more than one branches of a bank referred to in section 51 of the Banking Regulation Act, 1949 **or** in one or more than one branches of a banking institution referred to in section 51 of the Banking Regulation Act, 1949 **or** in one or more than one branches of a co-operative society, he shall be obliged to furnish his return of income from assessment year 2020-21, irrespective of the fact that he is not required to furnish return of income under any other provisions of section 139(1) of the Act.

During the previous year
has incurred expenditure
of an amount or aggregate of the amounts
exceeding two lakh rupees
for himself or any other person
for travel to a foreign country

14. **Clause (ii) of the 7th proviso** provides that a specified person shall be obliged to file his return of income if during the previous year such person has incurred expenditure of an amount **or** aggregate of the amounts **exceeding** two lakh rupees for himself **or** any other person for travel to “a” foreign country
15. The issues related to this provision are being discussed hereunder.

Threshold of amount

- (i) has incurred **an amount exceeding Rs. 2 lakh** during the previous year for himself **or** for any other person for travel to a foreign country; **or**
- (ii) has incurred **aggregate of the amounts exceeding Rs. 2 lakh** during the previous year for himself **or** for any other person for travel to a foreign country.

The threshold relates to incurring of foreign travel expense

16. The threshold of **Rs. 2 Lakh** relates to expenditure incurred for **travel to “a” foreign country**.
17. Therefore, this clause shall apply when an amount of aggregate amount has been **incurred** on foreign travel.
18. Further, the threshold relates to incurring of such expense. The word **“incur”** or **“incurred”** is not defined in the Act **or** in the section **or** in the proviso.
19. Section 43(2) of the Act, for the purpose of computation of income from business or profession u/s 29 defines the word **“paid”** for the purpose of section 28 to 41 of the Act as follows:

“paid” means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head “Profits and gains of business or profession”.
20. In the above definition the word **“incurred”** has been used besides the expression “actually paid”. It means that “incurring an expense” does not necessarily mean that the expense has actually been paid.
21. **“Incurred”** refers to **becoming liable or** subject to an **obligation**, be it a claim, a loss, an expense, or another legal obligation. In other words, there has to be a real legal obligation or liability, not a theoretical or expected obligation or liability.
22. In fact there are two type of expenses. One is incurred expense and the other is paid expense. In fact the **“paid expense”** emanate from **“incurred expense”**. When an incurred expense is paid off, it becomes paid expense.

Expense incurred for whom

23. Such expense may be incurred **for himself or for any other person**.
24. It means that if the specified person incurs such expense for any other person, which exceeds Rs. 2 lakh in previous year, he shall be obliged to furnish return of income under 7th proviso of section 139(1).

Nature of expense

25. The provision says if expense is incurred for **travel** to a foreign country.
26. Therefore, the expenses should have been incurred in relation **travel** and should **travel** should be to a foreign country.
27. The word **“travel”** is not defined in the Act **or** in the section **or** in the proviso.

28. Travel expenses are:

- (i) the expenses which are associated with traveling;
- (ii) travel expenses include fare by whatever mode, *i.e.* air, water, road, as the case may be, and lodging, transport services, cost of meals and tips, use of communications devices *etc.*

Travel where

29. The section requires that travel should to **“a”** foreign country.

30. Again, the expression **“foreign country”** is not defined in the Act **or** under the section **or** in the proviso.

31. Even the word **“foreign”** is not defined under following Acts which regulates “foreign” activities and “foreign” transactions:

- (i) Foreign Exchange Management Act, 1999
- (ii) Foreign Contribution (Regulation) Act, 2010
- (iii) Foreigners Act, 1946

32. **“Foreign country”** means a State of which a person is **not a citizen**.

- It is the geographical area of which a parson is not a native.
- It is a sovereign and political area which is not governed by the constitution of the State of which such person is a citizen or native.
- This may be supported by the definition of “foreigner” as per section 2(a) of the Foreigners Act, 1946, according to which “foreigner” means a person who is not a citizen of India.
- It means that if a person is “citizen” of India, he is not a “foreigner”.
- It also means that if a “citizen” of India is within the geographical territory of India, he being in India is not in any “foreign country”.
- Conversely it means that if a “citizen” of India is not within the geographical territory of India, he being outside India is in a “foreign country”.

Significance of word “a” before foreign country

33. The **Memorandum** explaining the proposed provisions of the Finance (No. 2) Act, 2019 explains that currently, a person other than a company or a firm is required to furnish the return of income only if his total income exceeds the maximum amount not chargeable to tax, subject to certain exceptions.
34. The **Memorandum** further clarifies that therefore, a person entering into **certain high value transactions** is not necessarily required to furnish his return of income. In order to ensure that persons who enter into ***certain high value transactions do furnish their return of income***, it is proposed to amend section 139 of the Act so as to provide that a person shall be mandatorily required to file his return of income, if during the previous year, he has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country.
35. Therefore, the emphasis is not on “a” foreign country, but on high value transaction in relation to travel to foreign country. **Here, “a” should be read a plural.**
36. In this regards the provisions of section 13(2) of the General Clauses Act will come to aid, according to which *“in all Central Acts and Regulations, unless there is anything repugnant to the subject of context, words in the singular shall include the plural, and vice versa”*.
37. The provisions of clause (ii) nowhere provide that it will not apply if travel relates to more than one foreign country. Therefore, in accordance with the above provision, **“a foreign country”** will be read as **“one or more foreign countries”**.

Whether the threshold of Rs. 2 lakh relate to each travel?

38. **No.** The threshold of Rs. 2 Lakh relates to aggregate expenditure in previous year, whether it is for one foreign tour **or** for more than one foreign tour, **or** whether it is for different persons in different tours.

Himself includes herself

39. As per the provisions of section 13(1) of the General Clauses Act *“in all Central Acts and Regulations, unless there is anything repugnant to the subject of context, words importing the masculine gender shall be taken to include females”*.
40. The provisions of clause (ii) nowhere provide that it will not apply to females. Therefore, in accordance with the above provision, **“for himself”** will include **“for herself”**.

Significance of previous year

41. Clause (ii) reads as follows:

*“if **during the previous year** such person has incurred expenditure of an amount **or** aggregate of the amounts exceeding two lakh rupees for himself **or** any other person for travel to a foreign country.”*

42. The expression “**during the previous year**” has been used *before* the expression “has incurred expenditure”. It means that the requirement for furnishing the return of income is incurring such expenditure during the previous year **and not** undertaking travel to foreign country during the previous year.

43. If the legislatures intended to invoke the requirement of furnishing of return of income on undertaking the travel to foreign country during the previous year, the provision would have been worded as follows:

*“if such person has incurred expenditure of an amount **or** aggregate of the amounts exceeding two lakh rupees for himself **or** any other person for travel to a foreign country **during the previous year**.”*

44. Further, as per the Memorandum explaining the provisions it is clear that the legislatures wanted to bring in main stream the high value transactions relating to foreign travel and not just the event of foreign travel.

Conclusion

It means that if a specified person incurs expenditure exceeding Rs. 2 lakh in a previous year, whether is actually paid or not, for foreign travel for himself / herself or any other person, he shall be obliged to furnish his / her return of income from assessment year 2020-21, irrespective of the fact that he is not required to furnish return of income under any other provisions of section 139(1) of the Act. It is not necessary that the travel must have been undertaken in such previous year. The requirement is of incurring such expenditure during the previous year.

During the previous year
has incurred expenditure
of an amount or aggregate of the amounts
exceeding one lakh rupees
towards consumption of electricity

45. **Clause (iii) of the 7th proviso** provides that a specified person shall be obliged to file his return of income if during the previous year he has incurred expenditure of an amount **or** aggregate of the amounts *exceeding* one lakh rupees towards consumption of electricity;

46. The issues related to this provision are being discussed hereunder.

Threshold of amount

- (i) has incurred **an amount exceeding Rs. 1 lakh** during the previous year towards consumption of electricity **or**
- (ii) has incurred **aggregate of the amounts exceeding Rs. 1 lakh** during the previous towards consumption of electricity.

The threshold relates to incurring expenditure towards consumption of electricity

- 47. The threshold of **Rs. 1 Lakh** relates to expenditure incurred towards consumption of electricity.
- 48. Therefore, this clause shall apply when an amount of aggregate amount has been **incurred** towards consumption of electricity. The law in respect of incurred has already been explained in relation to clause (ii) above. It may be reiterated that “incurring of expenditure towards consumption of electricity” means making oneself liable for the obligation to pay for such expense, irrespective of the fact that it is paid or not.

Fulfil such other conditions as may be prescribed

- 49. **Clause (iv) of the 7th proviso** provides that a specified person shall be obliged to file his return of income if during the previous year he fulfils such other conditions as may be **prescribed**.
- 50. As per **section 2(33)** of the Act, **“prescribed”** means prescribed by rules made this Act.
- 51. Section 295(1) empowers the Central Board of Direct Taxes (Board) to make rules for carrying out the purpose of this Act. Therefore, Board may prescribe any other requirement by issuing a notification under clause (iv) of the 7th proviso of section 139(1) of the Act.

Changes made in the ITR forms for AY 2020-21

- 52. ITR Forms for the assessment year required following disclosure in this regards.

ITR 1 (SAHAJ)
{Assessment year 2020-21}

Part A General Information
{Options before selection}

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		(Select)
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?		
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?		
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?		

Part A General Information
{If option "No" is selected}

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		No
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?		
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?		
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?		

Part A General Information
{If option "Yes" is selected}

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		Yes
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?	(Select)	
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?	(Select)	
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?	(Select)	

Part A General Information*{If option "Yes" is selected only for clause (i)}*

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		Yes
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?	Yes	
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?	No	
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?	No	

Part A General Information*{If option "Yes" is selected only for clause (ii)}*

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		Yes
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?	No	
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?	Yes	
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?	No	

Part A General Information*{If option "Yes" is selected only for clause (iii)}*

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		Yes
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?	No	
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?	No	
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?	Yes	

Part A General Information

{If option "Yes" is selected for all the clauses}

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]		Yes
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year?	Yes	
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person?	Yes	
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year?	Yes	

53. Similar are the requirements in ITR-2 and ITR-4 (SUGAM).

Disclaimer

This document has been prepared for academic use only to share with fellow professionals and all concerned the scope of the provisions of 7th proviso of section 139(1) Income Tax Act, 1961 as inserted by the Finance (No. 2) Act, 2019 w.e.f assessment year 2020-21. Though every effort has been made to avoid errors or omissions in this document yet any error or omission may creep in. Therefore, it is notified that I shall not be responsible for any damage or loss to any one, of any kind, in any manner there from. I shall also not be liable or responsible for any loss or damage to any one in any matter due to difference of opinion or interpretation in respect of the text. On the contrary it is suggested that to avoid any doubt the user should cross check the correct law and the contents with the said amended Income Tax Act, 1961 and related gazetted materials.



By CA. Rajiv Kumar Jain
9810288997
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