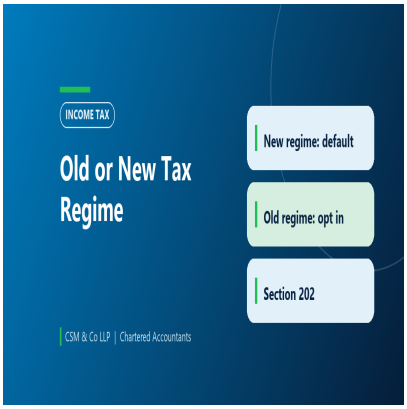


Old or New Tax Regime: How and When to Choose It in Your Return (Section 202, Tax Year 2026-27)

Description

Last updated: 16 August 2026 · Written and reviewed by CA Meet Dhrangadhariya, CSM & Co LLP

Quick summary

- The new regime in section 202(1) applies to individuals and HUFs by default. To use the old regime you must exercise an option under section 202(4).
- A person with no business or professional income exercises the option with the return furnished under section 263(1) for that tax year, so the choice can be made afresh each year.
- A person with business or professional income must exercise it on or before the due date; once exercised it continues, and it can be withdrawn only once.
- The option rides on the return filed by the due date; do not assume a belated return can opt out of the new regime.
- Your employer's TDS follows the regime you tell it, but the return decides the final regime.

For tax year 2026-27, an individual is taxed under the **new regime** unless he chooses otherwise. The choice is made in the return, and the rules on how and when depend on whether you have business income. This post sets out section 202 of the Income-tax Act, 2025.

The default and the option

- **Section 202(1)** states the slabs of the new regime: nil up to ?4,00,000, then 5%, 10%, 15%, 20%, 25% and 30% above ?24,00,000, and it applies to an individual, a HUF, an association of persons (other than a co-operative society), a body of individuals and an artificial juridical person, **unless the person exercises the option in section 202(4)**.
- **Section 202(4)** says that section 202(1) does not apply to a person who has exercised an option, in the prescribed manner, for the tax year. That person is taxed under the old slabs, with the old regime deductions and exemptions. Form 125 uses the same words: "opting out of the new tax regime under section 202".

When to exercise the option (section 202(4))

Your income	When and how
No income from business or profession (for example a salaried person, pensioner or investor)	Along with the return of income furnished under section 263(1) for the tax year. The option applies to that year, so you can choose again next year
Income from business or profession	On or before the due date for furnishing the return under section 263(1). Once exercised it applies to later tax years. It may be withdrawn **only once** for a tax year other than the year of the first exercise; after that you can **never** exercise it again, unless you cease to have business or professional income, in which case the option for persons without such income is open

What the new regime does not allow (section 202(2))

If you stay in the new regime, your total income is computed **without**:

- **Exemptions in Schedule III** at serial numbers 5, 6, 7, 8, 11 and 17 (this includes the HRA exemption at serial 11), and serial numbers 12 and 13 other than those prescribed;
- **Professional tax** under section 19(1) Table serial 1;
- Interest under section 22(1)(b) on **self-occupied** houses (section 21(6));
- **Chapter VIII deductions**, except the employer's contribution to the notified pension scheme (section 124(1) and (2)), section 125(2) and section 146;
- certain business deductions (sections 33(8), 45(3), 46, 47(1)(a), 48 and 49);
- set-off of **house property loss against other heads**, and set-off of carried-forward losses or depreciation attributable to these deductions; and
- any exemption or deduction for allowances or perquisites provided under any other law.

The **standard deduction** of ?75,000 under section 19(1) and the retirement exemptions such as gratuity and leave encashment remain available.

The late return trap

The option is exercised "along with the return of income to be furnished under section 263(1)". A belated return is furnished under section 263(4). Advisers read this to mean that a person who files after the due date cannot opt out of the new regime for that year. We have not found a ruling or circular that says otherwise, so **file on time if you want the old regime**.

Your employer and the regime

At the start of the year, tell your employer which regime to use for TDS. You may change your mind before the return; the employer's deduction is only an estimate. At filing, you choose the regime that gives you the lower tax, on the evidence of your HRA, home loan, section 123 and other claims (Form 124 evidence, Rule 205).

Any excess TDS comes back as refund.

How to decide

1. Add up your actual **old regime deductions**: standard deduction ?50,000, HRA exemption, section 123, own NPS, health insurance, home loan interest and others.
2. Compare with the break-even for your salary in our post on saving tax by salary level. For example, at a salary of ?20 lakh the old regime needs roughly ?7.6 lakh of total deductions to match the new regime.
3. If the old regime is better, **exercise the option in the return** and file by the due date.
4. If you have business income, remember that the choice can be changed only once, and plan with a professional.

Frequently asked questions

Which regime applies if I do nothing?

The new regime in section 202(1) applies by default to an individual, HUF, AOP, BOI or artificial juridical person. To be taxed under the old regime you must exercise the option under section 202(4).

When must a salaried person choose the regime?

A person who has no income from business or profession exercises the option along with the return furnished under section 263(1) for that tax year (section 202(4)(b)). The choice is for the tax year, so it can differ from year to year.

What if I have business or professional income?

The option must be exercised on or before the due date for the return. Once exercised it applies to later tax years. It can be withdrawn only once, for a year other than the year it was exercised, and after that you can never opt out of the new regime again, unless you stop having business or professional income, when the salaried-type option becomes available (section 202(4)(a)).

Can I change the regime in a revised return?

The option is tied to the return furnished under section 263(1) for the year. The Act does not say that it can be exercised or changed through a revised or belated return. If you filed on time and made a different choice, take advice before relying on a revised return to change it.

What if I file late?

The section ties the option to the return under section 263(1). A belated return is furnished under section 263(4), so you should assume the new regime applies. Check with a professional before you claim old regime deductions in a belated return.

Does my employer’s choice bind me?

No. The employer deducts TDS on the regime you declare to it, but you decide the final regime when you file the return, and any excess TDS comes back as a refund.

Official sources

- Income Tax Department: Income-tax Act, 2025 (sections 202, 263)
- Income Tax Department: Income-tax Rules, 2026 (Rule 205, Form 124)

Disclaimer

This article is for general informational purposes only and should not be considered professional advice. Please consult a qualified expert for advice tailored to your specific situation. The author and website owner are not liable for any errors or actions based on this content.

Date
20/11/2026
Date Created
22/06/2026
Author
meetsoni