



## **LATE FILING FEES AND PENALTY FOR FAILURE TO FURNISH/DELAY IN FURNISHING THE TDS/TCS STATEMENTS**

Before understanding the penalty provisions for failure to furnish the statement of Tax Deducted at Source or statement of Tax Collected at Source (i.e. commonly known as TDS/TCS return) we shall first have a look at the few basic duties of a person liable to deduct/collect tax at source and due dates for filing of TDS/TCS return.

### **Duties of the person liable to deduct/collect tax at source**

- He shall obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be) and quote the same in all the documents pertaining to TDS/TCS.
- He shall deduct/collect the tax at source at the applicable rate.
- He shall pay the tax deducted/collected by him to the credit of the Government.
- He shall file the periodic TDS/TCS statements, i.e., TDS/TCS return.
- He shall issue the TDS/TCS certificate in respect of tax deducted/collected by him.

### **Due Dates for filing of TDS/TCS return**

The due dates for filing of TDS/TCS return for different quarters of Financial Year 2018-19 are as follows:

Financial Year 2018-19

<b>Quarter ending</b>	<b>Due date for filing of TDS return (Both for Government and other Deductor)</b>	<b>Due date for filing of TCS return</b>
30 <sup>th</sup> June 2018	31 <sup>st</sup> July 2018	15 <sup>th</sup> July 2018
30 <sup>th</sup> September 2018	31 <sup>st</sup> October 2018	15 <sup>th</sup> October 2018
31 <sup>st</sup> December 2018	31 <sup>st</sup> January 2019	15 <sup>th</sup> January 2019
31 <sup>st</sup> March 2019	31 <sup>st</sup> May 2019	15 <sup>th</sup> May 2019

### **Basic provisions**

A person who fails to file the TDS/TCS return or does not file the TDS/TCS return by the due dates prescribed in this regard has to pay late filing fees as provided under section 234E and apart from late filing fees he shall be liable to pay penalty under section 271H. In this part you can gain knowledge about the provisions of section 234E and section 271H.



### Late filing fees under section 234E

As per section 234E, where a person fails to file the TDS/TCS return on or before the due date prescribed in this regard, then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. The amount of late fees shall not exceed the amount of TDS.

TDS/TCS return cannot be filed without payment of late filing fees as discussed above. In other words, the late filing fees shall be deposited before filing the TDS return. It should be noted that Rs. 200 per day is not penalty but it is a late filing fee.

### Illustration

The quarterly statement of TDS i.e. TDS return for the first quarter of the year 2017-18 is filed by Mr. Kapoor on 4-4-2018. Tax deducted at source during the quarter amounted to Rs. 8,40,000. What will be the amount of late filing fees to be paid by him for delay in filing the TDS return?

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The due date for filing of TDS return for the first quarter of the year 2017-18 i.e. April 2017 to June 2017 is 31st July, 2017. The return is filed on 4th April, 2018, thus there is a delay of 247 days as computed below:

<i>Particulars</i>	<i>Days</i>
August 2017	31
September 2017	30
October 2017	31
November 2017	30
December 2017	31
January 2018	31
February 2018	28
March 2018	31
April 2018	4
<i>Total</i>	247

From the above computation it can be observed that there is a delay of 247 days. Late filing fees under section 234E will be charged at Rs. 200 per day, thus for 247 days the late filing fees will come to Rs. 49,400.

### Illustration

The quarterly statement of TDS i.e. TDS return for the second quarter of the year 2017-18 is filed by Essem Ltd. on 4-4-2018. Tax deducted at source during the quarter amounted to Rs. 8,400. What will be the amount of late filing fees to be paid by the company for delay in filing the TDS return?





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The due date of filing the TDS return for the second quarter of the year 2017-18 i.e. July 2017 to September 2017 is 31st October, 2017. The return is filed on 4th April, 2018, thus there is a delay of 155 days as computed below:

<i>Particulars</i>	<i>Days</i>
November 2017	30
December 2017	31
January 2018	31
February 2018	28
March 2018	31
April 2018	<u>4</u>
<i>Total</i>	155

From the above computation it can be observed that there is a delay of 155 days. Late filing fees under section 234E will be charged at Rs. 200 per day, thus for 155 days the late filing fees will come to Rs. 31,000. However, the late filing fees cannot exceed the amount of tax deducted at source. TDS for the quarter is Rs. 8,400 and hence late filing fees shall be Rs. 8,400.

### Illustration

The quarterly statement of tax collected at source i.e. TCS return for the first quarter of the year 2017-18 is filed by Mr. Krunal on 4-8-2017. Tax collected at source during the quarter amounted to Rs. 84,000. What will be the amount of late filing fees to be paid by him for delay in filing the TCS return?

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In case of Non-Government deductor, the due date of filing the TCS return for the first quarter of the year 2017-18 i.e. April 2017 to June 2017 is 15th July, 2017. The return is filed on 4th August, 2017, thus there is a delay of 20 days as computed below:

<i>Particulars</i>	<i>Days</i>
July 2017	16
August 2017	<u>4</u>
<i>Total</i>	20

From the above computation it can be observed that there is a delay of 20 days. Late filing fees under section 234E will be charged at Rs. 200 per day, thus for 20 days the late filing fees will come to Rs. 4,000.



### Illustration

The quarterly statement of tax collected at source i.e. TCS return for the second quarter of the year 2017-18 is filed by Mr. Raja on 4-12-2017. Tax collected at source during the quarter amounted to Rs. 2,520. What will be the amount of late filing fees to be paid by him for delay in filing the TCS return?

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The due date of filing the TCS return for the second quarter of the year 2017-18 i.e. July 2017 to September 2017 is 15th October, 2017. The return is filed on 4th December, 2017, thus there is a delay of 50 days as computed below:

<i>Particulars</i>	<i>Days</i>
October 2017	16
November 2017	30
December 2017	4
<i>Total</i>	50

From the above computation it can be observed that there is a delay of 50 days. Late filing fees under section 234E will be charged at Rs. 200 per day, thus for 50 days the late filing fees will come to Rs. 10,000. However, the late filing fees cannot exceed the amount of tax collected at source. TCS during the quarter amounts to Rs. 2,520 and hence, late filing fees shall be Rs. 2,520.

### Illustration

The quarterly statement of Tax deducted at source i.e. TDS return for the last quarter of the year 2017-18 is not filed by Mr. Raj till 31st May, 2018. Can he file the TDS return of last quarter of the year 2017-18 after 31st May, 2018 without payment of any late filing fees?

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The due date of filing the TDS return for the last quarter of the year 2017-18 i.e. January 2018 to March 2018 is 31st May, 2018. The return is not filed till 31st May, 2018 and hence late filing fees under section 234E of Rs. 200 per day of default will be levied. TDS return cannot be filed without payment of late filing fees as discussed above. In other words, the late filing fees shall be deposited before filing the TDS return. Hence, in this case, Mr. Raj cannot file the TDS return without payment of late filing fees of Rs. 200 per day.

### Computation of fee under Section 234E at the time of processing of TDS/TCS statement

Section 200A of the Income-tax Act provides for processing of TDS statements for determining the amount payable or refundable to the deductor. Provisions of Section 200A has been amended by the Finance Act, 2015 so as to enable computation of fee payable under section 234E at the time of processing of TDS statements.





As the mechanism of TCS statement is similar to TDS statement, a new section 206CB has been inserted by Finance Act, 2015 to provide for processing of TCS statements on the lines of existing provisions for processing of TDS statement contained in section 200A of the Income-Tax Act. The new section 206CB also provides for mechanism for computation of fee payable under section 234E at the time of processing of TCS statement.

### **Penalty under section 271H**

As per section 271H, where a person fails to file the statement of tax deducted/collect at source i.e. TDS/TCS return on or before the due dates prescribed in this regard, then assessing officer may direct such person to pay penalty under section 271H. Minimum penalty can be levied of Rs. 10,000 which can go upto Rs. 1,00,000. Penalty under section 271H will be in addition to late filing fees prescribed under section 234E.

Apart from delay in filing of TDS/TCS return, section 271H also covers cases of filing incorrect TDS/TCS return. Penalty under section 271H can also be levied if the deductor/collector files an incorrect TDS/TCS return. In other words, minimum penalty of Rs. 10,000 and maximum penalty of upto Rs. 1,00,000 can be levied if the deductor/collector files an incorrect TDS/TCS return.

No penalty will be levied under section 271H for the failure to file the TDS/TCS return, if the person proves that after paying tax deducted/collected by him, along with the late-filing fee and interest (if any), to the credit of the Central Government, he had filed the TDS/TCS return before the expiry of a period of one year from the due date of filing the TDS/TCS return. In other words, no penalty under section 271H will be levied in case of delay in filing the TDS/TCS return if following conditions are satisfied:

- The tax deducted/collected at source is paid to the credit of the Government.
- Late filing fees and interest (if any) is paid to the credit of the Government.
- The TDS/TCD return is filed before the expiry of a period of one year from the due date specified in this behalf.

It should be noted that the above relaxation is applicable only in case of penalty levied under section 271H for delay in filing the TDS/TCS return and not in case of filing incorrect TDS/TCS statement.

Apart from above relaxation, in following two cases the taxpayer can get relief from penalty under section 271H:

- Under section 273A(4) the Principal Commissioner of Income-tax or Commissioner of Income-tax has power to waive or reduce the penalty levied under the Income-tax Act. Penalty can be waived or reduced by the Commissioner of Income-tax if the conditions specified in section 273A(4) in this regard are satisfied.
- Apart from shelter of section 273A(4), section 273B also provides immunity from penalty in genuine cases. As per section 273B, penalty under section 271H will not be levied if the taxpayer proves that there was a reasonable cause for failure.



### Illustration

The quarterly statement of tax deducted at source i.e. TDS return for the first quarter of the year 2017-18 is filed by Mr. Krunal on 4-4-2018. Tax deducted at source during the quarter amounted to Rs. 84,000. Before filing the TDS return he has paid the TDS, interest and late filing fees to the credit of the Government. Will he be liable to penalty under section 271H for delay in filing the TDS return?

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Penalty under section 271H can be levied for delay in filing the TDS return. In this case, the due date of filing the TDS return for the first quarter of the year 2017-18 i.e. April 2017 to June 2017 is 31st July, 2017. The return is filed on 4th April, 2018, thus there is a delay of 247 days (i.e. less than a year). As per section 271H(3) no penalty under section 271H will be levied in case of delay in filing the TDS/TCS return if following conditions are satisfied :

- The tax deducted/collected at source is paid to the credit of the Government.
- Late filing fees and interest (if any) is paid to the credit of the Government.
- The TDS/TCD return is filed before the expiry of a period of one year from the due date specified in this behalf.

In the present case, all the aforesaid conditions are satisfied because the delay in filing the TDS return is of less than 1 year and interest and late filing fees are paid before filing the TDS return, thus penalty under section 271H will not be levied.

The same provision as discussed above will apply in case of delay in filing the statement of tax collected at source i.e. TCS return.

### Illustration

The quarterly statement of tax deducted at source i.e. TDS return for the first quarter of the year 2017-18 is filed by Mr. Rahul on 20-8-2018. Tax deducted at source during the quarter amounted to Rs. 1,84,000. Before filing the TDS return he has paid the TDS, interest and late filing fees to the credit of the Government. Will he be liable to penalty under section 271H for delay in filing the TDS return?

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Penalty under section 271H can be levied for delay in filing the TDS return. The due date of filing the TDS return for the first quarter of the year 2017-18 i.e. April 2017 to June 2017 is 31st July, 2017. The return is filed on 20th Aug., 2018, thus there is a delay of 385 days (i.e. more than a year). As per section 271H(3) no penalty under section 271H will be levied in case of delay in filing the TDS/TCS return if following conditions are satisfied :

- The tax deducted/collected at source is paid to the credit of the Government.
- Late filing fees and interest (if any) is paid to the credit of the Government.
- The TDS/TCD return is filed before the expiry of a period of one year from the due date specified in this behalf.





In the above case, the delay is of more than 1 year and hence the above immunity will not be available. Thus, the Assessing Officer can levy penalty under section 271H. Minimum penalty of Rs. 10,000 and maximum penalty of Rs. 1,00,000 can be levied by the Assessing Officer. However, Mr. Rahul has following two remedies to get relief from penalty:

- He can apply to Principal Commissioner of Income-tax or Commissioner of Income-tax under section 273A(4) to seek relief from penalty.
- He can seek relief under section 273B by proving that there was a reasonable cause for failure.

The same provision as discussed above will apply in case of delay in filing the statement of tax collected at source i.e. TCS return.

### Illustration

The quarterly statement of tax deducted at source i.e. TDS return for the first quarter of the year 2017-18 is filed by Mr. Sharma on 10-7-2017. The particulars of the tax deducted at source as mentioned in TDS return are incorrect. Will he be liable to pay penalty under section 271H for delay in filing the TDS return and for furnishing the inaccurate particulars in the return?

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Penalty under section 271H can be levied for following defaults:

- (1) Delay in filing the TDS/TCS quarterly statement i.e. TDS/TCS quarterly return.
- (2) Furnishing incorrect TDS/TCS quarterly statement i.e. TDS/TCS quarterly return.

In the present case Mr. Sharma has filed an incorrect TDS return and hence he shall be held liable to pay penalty under section 271H. Minimum penalty of Rs. 10,000 and maximum penalty of upto Rs. 1,00,000 can be levied. Mr. Sharma will have no remedy under Section 271H(3) to claim relief from penalty for furnishing of inaccurate particulars in the return. However, the taxpayer can seek relief in the following way:

- He can apply to Principal Commissioner of Income-tax or Commissioner of Income-tax under section 273A(4) to grant relief from penalty.
- He can seek relief under section 273B by proving that there was a reasonable cause for failure.

The same provision as discussed above will apply in case of delay in filing the statement of tax collected at source i.e. TCS return.





## **MCQ ON LATE FILING FEES AND PENALTY FOR FAILURE TO FURNISH/DELAY IN FURNISHING THE TDS/TCS STATEMENTS**

**Q1.**As per section \_\_\_\_\_, a person who fails to file the TDS/TCS return on or before the due date prescribed in this regard is liable to pay a specific amount as late filing fees.

- (a) 234E (b) 271C  
(c) 271H (d) 234A

**Correct answer : (a)**

**Justification of correct answer :**

As per section 234E, a person who fails to file the TDS/TCS return on or before the due date prescribed in this regard is liable to pay a specific amount as late filing fees.

Thus, option (a) is the correct option.

**Q2.**As per section 234E, late filing fees will be levied at Rs. 200 for every day during which the failure continues. However, the amount of late filing fees shall not exceed the amount of TDS/TCS.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

As per section 234E, where a person fails to file the TDS/TCS return on or before the due date prescribed in this regard, then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. The amount of late fees shall not exceed the amount of TDS/TCS.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q3.**TDS/TCS return can be filed without payment of late filing fees.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

TDS/TCS return cannot be filed without payment of late filing fees. In other words, the late filing fees shall be deposited before filing the TDS/TCS return.

Thus, the statement given in the question is false and hence, option (b) is the correct option.







**Q4.** If a person fails to file the statement of tax deducted/collect at source *i.e.* TDS/TCS return on or before the due dates prescribed in this regard, then he can be held liable to pay penalty under section \_\_\_\_\_.

- (a) 234A (b) 271C  
(c) 271H (d) 234E

**Correct answer : (c)**

**Justification of correct answer :**

As per section 271H, where a person fails to file the statement of tax deducted/collect at source *i.e.* TDS/TCS return on or before the due dates prescribed in this regard, then he can be held liable to pay penalty under section 271H.

Thus, option (c) is the correct option.

**Q5.** As per section 271H, minimum penalty can be levied of \_\_\_\_\_ which can go upto \_\_\_\_\_.

- (a) Rs. 5,000, Rs. 10,000 (b) Rs. 10,000, Rs. 20,000  
(c) Rs. 10,000, Rs. 50,000 (d) Rs. 10,000, Rs. 1,00,000

**Correct answer : (d)**

**Justification of correct answer :**

As per section 271H, minimum penalty can be levied of Rs. 10,000 which can go upto Rs. 1,00,000.

Thus, option (d) is the correct option.

**Q6.** If a person pays late filing fees as per section 234E, then he cannot be held liable to pay penalty under section 271H.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Penalty under section 271H will be in addition to late filing fees prescribed under section 234E. In other words, where a person fails to file the statement of tax deducted/collect at source *i.e.* TDS/TCS return on or before the due dates prescribed in this regard, then he can be held liable to pay late fees as per section 234E as well as to pay penalty under section 271H.

Thus, the statement given in the question is false and hence, option (b) is the correct option.





**Q7.** Apart from delay in filing of TDS/TCS return, section 271H also covers cases of \_\_\_\_\_.

- (a) Failure to deduct tax at source
- (b) Failure to collect tax at source
- (c) Filing incorrect TDS/TCS return
- (d) Failure to comply with the provisions of section 269T

**Correct answer : (c)**

**Justification of correct answer :**

Apart from delay in filing of TDS/TCS return, section 271H also covers cases of filing incorrect TDS/TCS return. In other words, minimum penalty of Rs. 10,000 and maximum penalty of upto Rs. 1,00,000 can be levied if the deductor/collector does not file a TDS/TCS return or files an incorrect TDS/TCS return.

Thus, option (c) is the correct option.

**Q8.** No penalty will be levied under section 271H for the failure to file the TDS/TCS return, if the person proves that after paying tax deducted/collected by him, along with the fee and interest (if any), to the credit of the Central Government, he had filed the TDS/TCS return before the expiry of a period of \_\_\_\_\_ from the due date of filing the TDS/TCS return.

- (a) 6 months
- (b) 1 year
- (c) 2 years
- (d) 5 years

**Correct answer : (b)**

**Justification of correct answer :**

No penalty will be levied under section 271H for the failure to file the TDS/TCS return, if the person proves that after paying tax deducted/collected by him, along with the fee and interest (if any), to the credit of the Central Government, he had filed the TDS/TCS return before the expiry of a period of one year from the due date of filing the TDS/TCS return.

Thus, option (b) is the correct option.

**Q9.** Under section \_\_\_\_\_ the Principal Commissioner of Income-tax or Commissioner of Income-tax has power to waive or reduce the penalty levied under the Income-tax Act.

- (a) 273A(4)
- (b) 273B
- (c) 271C
- (d) 271H

**Correct answer : (a)**

**Justification of correct answer :**





Under section 273A(4) the Principal Commissioner of Income-tax or Commissioner of Income-tax has power to waive or reduce the penalty levied under the Income-tax Act. Penalty can be waived or reduced by the Commissioner of Income-tax if the conditions specified in section 273A(4) in this regard are satisfied.

Thus, option (a) is the correct option.

**Q10.** As per section 273B, penalty under section 271H will not be levied if the taxpayer proves that there was a reasonable cause for failure.

(a) True

(b) False

**Correct answer : (a)**

**Justification of correct answer :**

Apart from shelter of section 273A(4), section 273B also provides relief from penalty in genuine cases. As per section 273B, penalty under section 271H will not be levied if the taxpayer proves that there was a reasonable cause for failure.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

INCOME TAX DEPARTMENT

