

## PENALTIES UNDER THE INCOME-TAX ACT

### Introduction

Under the Income-tax Act, penalties are levied for various defaults committed by the taxpayer. Some of the penalties are mandatory and a few are at the discretion of the tax authorities. In this part, you can gain knowledge about the provisions relating to various penalties leviable under the Income-tax Act.

### Penalty for default in making payment of Self Assessment Tax

As per section 140A(1) any tax due (after allowing credit for TDS, advance tax, etc.) along with interest and fee\* should be paid before filing the return of income. Tax paid as per section 140A(1) is called 'self assessment tax'.

As per section 140A(3), if a person fails to pay either wholly or partly self assessment tax or, interest, or fee\* then he will be treated as assessee in default in respect of unpaid amount. As per section 221(1), if a taxpayer is treated as an assessee in default, then he shall be held liable to pay penalty of such amount as the Assessing Officer may impose and in the case of a continuing default, such further amount or amounts as the assessing officer may, from time to time, direct. However, the total amount of penalty cannot exceed the amount of tax in arrears.

Before charging penalty under section 221(1), the tax authority shall give the taxpayer a reasonable opportunity of being heard. No penalty is levied if the taxpayer proves to the satisfaction of the tax authorities that the default was for good and sufficient reason.

Note: An assessee shall not cease to be liable to any penalty under section 221(1) merely by reason of the fact that he paid the tax before the levy of such penalty.

\*W.e.f. assessment year 2018-19, if assessee failed to furnish return of income within due date as prescribed under section 139(1) then as per section 234F, he will be required to pay fee of:-

- a) Rs. 5000 if return is furnished on or before 31 December of assessment year.
- b) Rs. 10,000 in any other case.

However, if total income of the person does not exceeds Rs. 5 lakh then fee payable shall be Rs. 1000.

### Penalty for default in making payment of Tax

As per section 220(1), when a demand notice under section 156 has been issued to the taxpayer for payment of tax (other than notice for payment of advance tax), then such amount shall be paid within a period of 30 days of the service of the notice at the place and to the person mentioned in the notice. In certain cases, the above period of 30 days can be reduced by the tax authorities with the previous approval of designated authorities. If the taxpayer makes default in payment of any tax due from him, then apart from other penal provisions, he is treated as an assessee in default.

As per section 221(1), if a taxpayer is treated as an assessee in default, then he shall be liable to pay penalty of such an amount as the Assessing Officer may impose. However, penalty cannot exceed the amount of tax in arrears. Thus, penalty under section 221(1) is a general penalty and can be levied in all the cases in which the taxpayer is treated as an assessee in default.

Before charging penalty as discussed above, the tax authorities shall give the taxpayer a reasonable opportunity of being heard. No penalty is levied if the taxpayer proves to the satisfaction of the tax authorities that the default was for good and sufficient reason.

Note: An assessee shall not cease to be liable to any penalty under section 221(1) merely by reason of the fact that he paid the tax before the levy of such penalty.

### **Late filing fees for delay in filing the TDS/TCS statement**

As per section 200(3) every person liable to deduct tax at source is liable to file the statement in respect of tax deducted by him i.e. TDS return. Further, as per proviso to section 206C(3) every person liable to collect tax at source has to furnish statement in respect of tax collected by him i.e. TCS return. Section 234E provides for levy of late filing fees for the delay in filing TDS/TCS return.

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 however shall not exceed the amount of TDS/TCS. TDS/TCS return cannot be filed (after prescribed due date) without payment of late filing fees as discussed above.

### **Fee for default in furnishing return of income**

W.e.f. assessment year 2018-19, if assessee who is required to furnish return of income under section 139 failed to furnish return of income within due date as prescribed under section 139(1) then as per section 234F, he will be required to pay fee of:-

- a) Rs. 5000 if return is furnished on or before 31 December of assessment year.
- b) Rs. 10,000 in any other case.

However, if total income of the person does not exceeds Rs. 5 lakh then fee payable shall be Rs. 1000.

### **Penalty for failure to comply with notice issued under section 142(1) or 143(2) or direction for audit under section 142(2A)**

Penalty under section 272A is levied if a taxpayer fails to comply with notice issued to him under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A). Before understanding the penalty provisions of section 272A we shall take a brief overview of provisions of section 142(1), 142(2A) and section 143(2).

Under section 142(1), the Assessing Officer can issue notice asking the taxpayer

- to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require or



- to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

Section 142(2A) deals with special audit. As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied, then the Assessing Officer can direct the taxpayer to get his accounts audited or re-audited from a chartered accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Section 143(2) deals with the provisions relating to the issuance of notice before conducting a scrutiny assessment under section 143(3).

If the taxpayer fails to comply with notice issued to him under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A), then as per section 272A he shall be liable for a penalty of Rs. 10,000 for each failure.

### Penalty for underreporting and misreporting of income

Many times a taxpayer may try to reduce his tax liability by underreporting or misreporting of income. In such a case, by virtue of Section 270A, the taxpayer will be held liable for penalty. The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However, in a case where under-reporting of income results from misreporting of income, the taxpayer shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income.

### Underreporting of income

A person shall be considered to have under-reported his income in the following cases:

Cases	Income assessed under normal Provisions	Income assessed under MAT/AMT Provisions
Return of Income is filed	Income assessed is greater than the income determined in the return processed u/s. 143(1)(a)	The deemed total income assessed or reassessed as per the provisions of sec. 115JB/115JC, is greater than the deemed total income determined in the return processed under sec 143(1)(a)
No Return of Income is filed or return is filed for the first time under section 148.	The income assessed is greater than the <u>maximum exemption limit</u>	The deemed total income assessed as per the provisions of sec. 115JB/115JC, is greater than the <u>maximum exemption limit</u> .
Case of Reassessment	The income reassessed is greater than the income assessed or reassessed immediately before such reassessment	The deemed total income reassessed as per the provisions of sec. 115JB /115JC, is greater than the deemed total income assessed

		or reassessed immediately before such reassessment.
Loss Assessed	The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

### Misreporting of Income

The following cases will be considered as misreporting of income:

1. Misrepresentation or suppression of facts;
2. Failure to record investments in the books of account;
3. Claim of expenditure not substantiated by any evidence;
4. Recording of any false entry in the books of account;
5. Failure to record any receipt in books of account having a bearing on total income; and
6. Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

If a closely held company issues its shares at a price higher than its fair market value (FMV) then it shall be liable to pay tax on difference between the FMV and issue price of the shares as per section 56(2)(viib) of the Income-tax Act. Such tax is called as ‘Angel Tax’ in common parlance. However, the Department for Promotion of Industry and Internal Trade (DPIIT) has issued a Notification No. 127(E), dated 19-02-2019 whereby an eligible start-up shall be exempted from levy of Angel tax if it satisfies the conditions mentioned in such notification.

With a view to ensure compliance to the conditions specified in the notification, the Finance (No. 2) Act, 2019 reiterates that in case of failure to comply with the conditions specified in the notification, the consideration received from issue of shares as exceeding the fair market value of such shares, shall be deemed to be income of the company chargeable to tax for the previous year in which such failure takes place. Further, it shall be deemed that the company has misreported the said income and, consequently, a penalty of an amount equal to 200% of tax payable on the underreported income (i.e., difference between issue price and fair market value of shares) shall be levied as per section 270A.

### Computation of under-reported Income

The amount of under-reported income shall be computed as under:

1. Where income is assessed for the first time and return of income was furnished by the assessee, the difference between the amount of income assessed and the amount of income determined after processing of return under Section 143(1) shall be considered as underreported income.
2. Where income is assessed for the first time and no return of income was furnished by the assessee or return was furnished by the assessee for the first time under section 148, the difference between the amount of income assessed and the basic exemption limit applicable in case of the assessee shall be considered as underreported income.
3. Where income is not assessed for the first time, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order shall be considered as underreported income.
4. If an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.
5. Where income assessed as per the provisions of Minimum Alternate Tax (MAT) or Alternate Minimum Tax (AMT), underreported income shall be computed as per the following formulae:

(A — B) + (C — D) where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income.

If the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

#### **Penalty for failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA**

For the purpose of Income-tax Act, a taxpayer is required to maintain the books of account as provided in section 44AA. If the taxpayer fails to maintain books of account as per the provisions of section 44AA, then he shall be liable to pay penalty under section 271A. Penalty under section 271A is Rs. 25,000.

#### **Penalty for failure to keep and maintain information and document etc. in respect of international transaction or specified domestic transaction**



Section 92D provides that every person entering into an international transaction or specified domestic transaction shall keep and maintain such information and documents as may be prescribed in this regard under rule 10D. Further a person, being a constituent entity of an international group, shall also keep and maintain such information and documents in respect of an international group as may be prescribed. The Income-tax Authority may require the taxpayer to produce these documents. On such demand by the Income-tax Authority, the taxpayer has to provide these documents within a period of 30 days or such extended period as may be allowed by the tax authorities. These documents should be maintained for a period of 8 years from the end of the relevant assessment year.

The provisions relating to penalty for failure to keep and maintain information and documents in respect of international transaction or specified domestic transaction are given in section 271AA. Penalty under section 271AA is attracted in the case of any of the following failures:

- 1) If a person fails to keep and maintain information and documents in respect of international transaction or specified domestic transaction as provided in section 92D read with rule 10D.
- 2) If a person fails to report the international transaction or specified domestic transaction which he is required to do so.
- 3) If a person maintains or furnishes an incorrect information or document in respect of international transaction or specified domestic transaction.

Penalty will be a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by the taxpayer.

If any person, being a constituent entity of international group fails to furnish information and documents in respect of international group [as referred to in Section 92D], it may be liable to pay penalty of Rs 5,00,000.

#### **Penalty in case of search**

To unearth the undisclosed income, tax authorities generally conduct search at the premises of the taxpayer. Section 132 provides the circumstances in which the tax authorities can initiate a search. If a search has been initiated and any undisclosed income is unearthed in the search, then penalty can be levied under section 271AAB.

The quantum of penalty under section 271AAB shall be as follows:

- 1) Where search has been initiated on or after 1-7-2012 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the president (i.e., 16-12-2016) -
  - a) 10% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income

- b) 20% of undisclosed income of the specified previous year if assessee does not admit the undisclosed income, and on or before the specified date declare such income in the return of income furnished for the specified previous year and pays the tax, together with interest thereon;
  - c) 60% of undisclosed income of the specified previous year if it is not covered by (a) or (b) above
- 2) Where search has been initiated on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the president (i.e., 16-12-2016)-
- a) 30% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income
  - b) 60% of undisclosed income of the specified previous year if it is not covered by above provisions

### **Penalty for 'false entry' in the books of account**

The Finance Act 2020 has introduced a new section 271AAD under the Act to provide for a levy of penalty on a person, if during any proceedings under the Act, it is found that in the books of accounts maintained by him there is:

- a) A false entry; or
- b) Any entry relevant for computation of total income of such person has been omitted to evade tax liability.

The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry.

It is also provided that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amount of such false entries or omitted entry.

For the purpose of section 271AAD, the false entries to include use or intention to use:

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence;
- b) Invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

### **Consequences of default in submission of statement/certificate prescribed under section 35/Section 80G**

The Finance Act, 2020 has amended section 35 of the Income-tax Act to provide that deduction available under this section shall be available to the research association, university, college or other institution or the company only if the assessee delivers a statement of donations, as prescribed by the board, and also furnishes certificate of the amount of donation to the donors.

Similar amendment has also been made in Section 80G to provide that entities receiving donation shall be required to file a statement of the donation received and shall issue a certificate to donor.

In order to ensure compliance with the provision, the Finance Act, 2020 has inserted a new section 234G which provides for levy of fee of Rs. 200 per day if taxpayer fails to submit such statement or certificate within prescribed time. However, the fee shall not exceed the amount in respect of which the failure has occurred. Such fees shall be paid before submitting such statement or before furnishing of certificate, as the case may be.

Consequently, a new section 271K has been inserted in the Act which empowers the Assessing Officer to levy a penalty of Rs. 10,000 to Rs. 1 lakh, if assessee fails to furnish the statement or fails to furnish a certificate.

### **Faceless e-penalty**

With an objective to eliminate the human interface in such cases also, an e-penalty scheme is to be launched on the lines of e-assessment scheme.

Section 274 of the Income-tax Act prescribes procedure for imposing penalty on the assessee. The Finance Act, 2020 has inserted a new sub-section 2(A) to section 274 to authorize the Central Government to notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by:

- a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent it is feasible technologically;
- b) optimising utilisation of the resources through economies of scale and functional specialisation;



- c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more tax authorities.

Necessary directions in this regard may be made by the Central Government by 31-03- 2022. The directions may specify that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations.

#### **Penalty in case of income from undisclosed sources**

The Assessing Officer may make addition to the income of an assessee under section 68, section 69, section 69A, section 69B, section 69C or section 69D if assessee fails to explain the nature and source of his income.

Section 271AAC of the Income-tax Act (inserted with effect from Assessment Year 2017-18 vide Taxation Laws (Second Amendment) Act, 2016) empowers AO to levy penalty at the rate of 10% of the tax payable under section 115BBE if any addition is made under section 68, section 69, section 69A, section 69B, section 69C, section 69D. However, no penalty shall be levied if such income is disclosed in the return of income and tax on such income is paid under Section 115BBE on or before the end of the relevant previous year.

#### **Failure to get accounts audited or furnish a report of audit as required under section 44AB**

Section 44AB prescribes when the accounts of the taxpayer are to be audited. If a taxpayer, in spite of the requirement of section 44AB, fails to get his accounts audited, then he can be held liable for penalty under section 271B. Penalty under section 271B will be levied for failure to get the accounts audited or failure to furnish a report of audit as required under section 44AB. Penalty shall be one-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, whichever is less.

#### **Penalty for failure to furnish a report from an accountant as required by section 92E**

Section 92E provides that every person entering into an international transaction or specified domestic transaction shall obtain a report from a chartered accountant in the prescribed form and shall furnish the same on or before the date prescribed in this regard. If a taxpayer fails to do so, then he shall be liable to pay penalty under section 271BA. Penalty under section 271BA for failure to furnish a report from a chartered accountant as required by section 92E is Rs. 1,00,000.

#### **Penalty for failure to deduct tax at source, wholly or partly or failure to pay wholly or partly tax under section 115-O(2)**

If a person who is required to deduct tax at source as required by or under the provisions of chapter XVII-B fails to deduct the tax, then he can be held liable to pay penalty under section 271C.

Section 115-O provides that a company has to pay dividend distribution tax on the dividends distributed by it. If the company fails to pay the dividend distribution tax, then it can be held liable to pay penalty under section 271C.

Penalty under section 271C shall be levied of an amount equal to tax not deducted (in case of TDS) or tax not paid (in case of dividend distribution tax).

#### **Penalty for failure to pay tax in respect of winning from lottery or crossword puzzle**

The section 194B provides that the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding [ten thousand rupees], shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

Second proviso to section 194B provides that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

If any person fails to pay whole or part of the tax as required under second proviso to section 194B than, such person shall be liable to pay penalty under section 271C of an amount equal to tax not paid.

#### **Penalty for failure to collect tax at source**

Similar to the provisions of tax deducted at source, section 206C provides certain items in respect of which tax is to be collected at source by the person receiving payment in respect of certain specified items. If the person required to collect tax at source fails to collect the tax, then he shall be liable to pay penalty under section 271CA. Penalty shall be levied of an amount equal to tax not collected.

#### **Taking or accepting certain loans or deposits or specified sum in contravention of provisions of section 269SS**

Section 269SS provides that no person shall take or accept loan or deposit or specified sum exceeding Rs. 20,000 by any mode other than account payee cheque or account payee demand draft or use of electricity clearing system through a bank account or through such other electronic modes as may be prescribed.

Specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Contravention of the provisions of section 269SS will attract penalty under section 271D. Penalty under section 271D shall be levied of an amount equal to loan or deposit taken or accepted.

#### **Penalty on receipt of an amount of Rs. 2 lakh or more in cash**

Section 269ST (as inserted by the Finance Act, 2017 with effect from 1/4/2017) provides that no person shall receive an amount of Rs. 2,00,000 or more,—

- (a) in aggregate from a person in a day;

- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, or through such other electronic mode as may be prescribed.

However, the said restriction shall not apply to Government, any banking company, post office savings bank, co-operative bank or a person notified by the Central Government.

Section 271DA provides for levy of penalty on a person who receives a sum in contravention of the provisions of section 269ST. The penalty shall be equal to the amount of such receipt. However, the penalty shall not be levied if the person proves that there were good and sufficient reasons for such contravention.

#### **Penalty for not providing facility for accepting payment through prescribed electronic modes of payment**

The Finance (No. 2) Act, 2019 has inserted a new Section 269SU in Income-tax Act with effect from November 1, 2019. The section provides that every person engaged in business should mandatorily provide the facility for accepting payment through prescribed electronic mode, if the gross receipts from such business exceeds Rs. 50 crore during the immediately preceding previous year.

Consequential penal provisions have been inserted in Section 271DB, which provides for penalty of Rs. 5,000 rupees for every day of default in case the person does not accept payment through notified digital modes. The section also provides for immunity from penalty in case person proves that there is a good and sufficient reasons for such default.

#### **Repaying loans or deposits or specified advance in contravention of provisions of section 269T**

Section 269T provides that no person shall repay any loan or deposit **or specified advance** exceeding Rs. 20,000 by any mode other than account payee cheque or account payee demand draft in the name of the person who has made the loan or deposit or paid the specified advance or by use of electronic clearing system through a bank account or through such other electronic mode as may be.

“Specified advance” means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not transfer takes place.

Contravention of the provisions of section 269T will attract penalty under section 271E. Penalty under section 271E shall be a sum equal to loan or deposit or specified advance so repaid.

#### **Failure to furnish statement of financial transaction or reportable account (previously called as ‘Annual Information Return (AIR)’ as required under section 285BA(1)**

Non-furnishing of statement of financial transaction or reportable account will attract penalty under section 271FA. Penalty shall be levied of Rs. 500 per day of default.

However, section 285BA(5) empower the tax authorities to issue a notice to the person directing him to file the statement within a period not exceeding 30 days from the date of service of such notice and in such a case person shall furnish the statement within the time specified in the notice. If person fails to file the statement within the specified time, then a penalty of Rs. 1,000 per day shall be levied from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

#### **Penalty for furnishing inaccurate statement of financial transaction or reportable account**

As per section 271FAA, if a person who is required to furnish statement of financial transaction or reportable account under section 285BA, provides inaccurate information in the statement, and where:

- a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed\* under section 285BA(7) or is deliberate on the part of that person;
- b) the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;
- c) the person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days as specified under section 285BA(6), then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

#### **Penalty for failure to furnish statement or information or document by an eligible investment fund.**

A new section 9A has been inserted by Finance Act, 2015 to provide that fund management activity carried out by an eligible offshore investment fund through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India (subject to certain conditions)

One of the condition is that every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfilment of the specified conditions or any information or document which may be prescribed. Failure to comply with this condition shall result in penalty of Rs. 5,00,000

#### **Failure to furnish any information or document as required by section 92D(3)**

As per section 92D(3) the tax authorities may, in the course of any proceeding under the Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document (as provided in section 92D read with rule 10D). Such information or document is to be produced within a period of 30 days from the date of receipt of a notice issued in this regard (the period can be

extended for further 30 days by the tax authorities). Failure to comply with these provisions shall attract penalty under section 271G.

As per section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as discussed above, then the tax authorities may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of the international transaction or specified domestic transaction for each such failure.

### **Penalty Section 271GB for failure to furnish report or for furnishing inaccurate report under Section 286**

If any reporting entity fails to furnish report [as referred to in Section 286(2)] in respect of international group, then it would be liable to penalty of –

- a) Rs 5,000 for every day for which failure continues, if the period of failure does not exceed one month; or
- b) Rs 15,000 for every day for which the failure continues beyond the period of one month.

Where a reporting entity provides inaccurate information in the report [as referred to in Section 286(2)], then it is liable to pay penalty of Rs 5,00,000, subject to satisfaction of conditions.

### **Penalty for failure to furnish information or document under section 285A**

A new section 285A has been inserted by Finance Act, 2015 to provide for a reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity.

The Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity.

In case of any failure on the part of Indian concern, it shall pay by way of penalty-

- (a) a sum equal to 2% of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and
- (b) a sum of Rs. 5,000 in any other case.

### **Penalty for failure to file the TDS/TCS return**

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



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 has 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 :

- 1) The tax deducted/collected at source is paid to the credit of the Government.
- 2) Late filing fees and interest (if any) is paid to the credit of the Government.
- 3) The TDS/TCS 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 the delay in filing of TDS/TCS return and not for filing incorrect TDS/TCS return.

#### **Penalty on professionals for furnishing incorrect information in statutory report or certificate**

The thrust of the Government in recent past is on voluntary compliance. Certification of various reports and certificates by a qualified professional has been provided in the Act to ensure that the information furnished by an assessee under the provisions of the Act is correct. Various provisions exist under the Act to penalise the defaulting assessee in case of furnishing incorrect information. However, there exist no penal provision for levy of penalty for furnishing incorrect information by the person who is responsible for certifying the same.

In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, a new section 271J is inserted under Income-tax Act w.e.f 1/4/2017 so as to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10,000 for each such report or certificate by way of penalty.

#### **Penalty for failure to furnish information or furnishing inaccurate information under section 195**

As per section 195(6) of the Act, any person responsible for paying to a non-resident (not being a company) or to a foreign company, any sum (whether or not chargeable to tax), shall furnish the information relating to payment of such sum in Form 15CA and 15CB.

In case of any failure in this regard a penalty of Rs. 1,00,000 shall be leviable.

#### **Failure to co-operate with the tax authorities**

Many times the tax authorities requires any information from a person, in such a case, the tax authorities may request such person to answer questions raised by them or may require the person to sign the statements or may issue him a summon for his attendance.

Failure to comply with these directions or notices can attract penalty under section 272A(1) Tax authorities also issues notice under Section 142(1)/Section 143(2) or issues direction for special audit under Section 142(2A). In other words, penalty under section 272A(1) shall be levied if a person refused or fails to:

- Answer questions
- Sign statement
- Attend office to give evidence or produce books of account, etc., in compliance with summons under section 131(1)
- Comply with notice under Section 142(1)/Section 143(2) or fails to comply with direction issued under Section 142(2A)

Penalty leviable under section 272A(1) is Rs. 10,000 for each failure/default.

### **Penalty under section 272A(2)**

Penalty under section 272A(2) is levied in respect of following defaults :

1. Failure to furnish requisite information in respect of securities as required under section 94(6). As per section 94(6) the tax authorities can issue notice asking the taxpayer to furnish the particulars of securities owned by him during the year.
2. Failure to give notice of discontinuance of business or profession as required under section 176(3) (within 15 days of discontinuance of business or profession).
3. Failure to furnish in due time returns, statements or certificates, deliver declaration, allow inspection, etc., under sections 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206C, 206C(1A) and 285B.
4. Failure to deduct and pay tax under section 226(2).
5. Failure to file a copy of the prescribed statement within the time specified in section 200(3) or the proviso to section 206C(3) (up to 1-7-2012).
6. Failure to file the prescribed statement within the time specified in section 206A(1). Section 206A(1) deals with filing of quarterly return by banks, co-operative society, etc. in respect of payment of interest to residents without deduction of tax.
7. Failure to deliver or cause to be delivered a statement under Section 200(2A) or Section 206C(3A) within prescribed time. With effect from 01/06/2015, it has been mandatory for an office of the Government paying TDS or TCS, as the case may be, without production of a challan to deliver to the prescribed authority, a statement in such form and manner as may be prescribed.

Penalty in above cases shall be levied at Rs. 100 per day for every day during which the default continues. In respect of penalty for failure, in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and for default under section

200(2A), 200(3), 206, 206C, 206C(3) and 206C(3A), the quantum of penalty shall not exceed the amount of tax deductible or collectible.

### **Penalty for failure to comply with provisions of section 133B**

Section 133B empowers the tax authorities to enter the place of business of the taxpayer to collect information required by the authorities which will be useful under the Act. If the taxpayer fails to comply with the provisions of section 133B, then penalty shall be levied under section 272AA(1) upto Rs. 1,000.

### **Penalty for not providing facility for accepting payment through prescribed electronic modes of payment**

The Finance (No. 2) Act, 2019 has inserted a new Section 269SU in Income-tax Act with effect from November 1, 2019. The section provides that every person engaged in business should mandatorily provide the facility for accepting payment through prescribed electronic mode, if the gross receipts from such business exceeds Rs. 50 crore during the immediately preceding previous year.

Consequential penal provisions have been inserted in Section 271DB, which provides for penalty of Rs. 5,000 rupees for every day of default in case the person does not accept payment through notified digital modes. The section also provides for immunity from penalty in case person proves that there is a good and sufficient reasons for such default.

### **Failure to comply with provisions relating to Tax Deduction Account Number or Tax Collection Account Number**

As per section 203A, every person deducting tax at source or collecting tax at source has to obtain the Tax Deduction Account Number or Tax Collection Account Number (as the case may be).

Section 203A(2) provides that the deductor or collector of tax at source should quote his Tax Deduction Account Number or Tax Collection Account Number (as the case may be) in the challans, certificates, statement and other documents relating to TDS/TCS. Section 272BB(1) provides for penalty for failure to obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be) and section 272BB(1A) provides for penalty for quoting incorrect Tax Deduction Account Number or Tax Collection Account Number (as the case may be). Penalty under section 272BB is Rs. 10,000.

### **Relaxation from penalty**

Apart from designing penalty provisions, the Income-tax Act also contains provisions for granting relief from penalty in genuine / deserving cases. Relief can be granted in the following manner:

1. Under section 273A(4) the Principal Commissioner or Commissioner of Income-tax has power to waive or reduce any 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.



2. Apart from shelter of section 273A(4) as discussed earlier, section 273B also provides relief from penalty in genuine cases. As per section 273B, no penalty shall be levied under section 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, 271J, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1) or 273(2)(b) or (c), if the taxpayer proves that there was reasonable cause for such failure.

INCOME TAX DEPARTMENT





## MCQ ON PENALTIES UNDER THE INCOME-TAX ACT

**Q1.** As per section 140A(1) any tax due (after allowing credit for TDS, advance tax, etc.) along with interest under section 234A, 234B and 234C (if any) and fee should be paid before filing the return of income. Tax paid as per section 140A(1) is called.\_\_\_\_\_.

- (a) Advance tax (b) Self assessment tax  
(c) Tax paid at source (d) Corporate tax

**Correct answer : (b)**

**Justification of correct answer :**

As per section 140A(1) any tax due (after allowing credit for TDS, advance tax, etc.) along with interest under section 234A, 234B and 234C (if any) and fee should be paid before filing the return of income. Tax paid as per section 140A(1) is called 'self assessment tax'.

Thus, option (b) is the correct option.

**Q2.** Section 234E provides for levy of late filing fees for the delay in filing of \_\_\_\_\_

- (a) Return of income (b) TDS return  
(c) TCS return (d) TDS/TCS return

**Correct answer : (d)**

**Justification of correct answer :**

Section 234E provides for levy of late filing fees for the delay in filing TDS/TCS return.

Thus, option (d) is the correct option.

**Q3.** If the taxpayer fails to maintain books of account as per the provisions of section 44AA, then he shall be liable to pay penalty under section \_\_\_\_\_ of Rs. 25,000.

- (a) 271B (b) 271A  
(c) 271AA (d) 271AB

**Correct answer : (b)**

**Justification of correct answer :**

If the taxpayer fails to maintain books of account as per the provisions of section 44AA, then he shall be liable to pay penalty under section 271A. Penalty under section 271A is Rs. 25,000.

Thus, option (b) is the correct option.

**Q4.** If a taxpayer, in spite of the requirement of section 44AB, fails to get his accounts audited, then he shall be liable for penalty under section 271B of one-half per cent of total sales, turnover or gross receipts, etc., or \_\_\_\_\_, whichever is less.

- (a) Rs. 2,00,000 (b) Rs. 1,50,000  
(c) Rs. 1,00,000 (d) Rs. 50,000

**Correct answer : (b)**



**Justification of correct answer :**

Section 44AB prescribes when the accounts of the taxpayer are to be audited. If a taxpayer, in spite of the requirement of section 44AB, fails to get his accounts audited, then he shall pay penalty under section 271B. Penalty under section 271B will be levied for failure to get the accounts audited or failure to furnish a report of audit as required under section 44AB. Penalty will be one-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, whichever is less.

Thus, option (b) is the correct option.

**Q5.** Section 269SS provides that no person shall take or accept loan or deposit or specified sum exceeding Rs. 50,000 by any mode other than account payee cheque or account payee demand draft or by use of electricity clearing system through a bank account or through such other electronic mode as may be prescribed. Contravention of the provisions of section 269SS will attract penalty under section 271D of an amount equal to loan or deposit taken or accepted or specified sum.

(a) True

(b) False

**Correct answer : (b)**

**Justification of correct answer :**

Section 269SS provides that no person shall take or accept loan or deposit or specified sum exceeding Rs. **20,000** by any mode other than account payee cheque or account payee demand draft or by use of electricity clearing system through a bank account or through such other electronic mode as may be prescribed. Contravention of the provisions of section 269SS will attract penalty under section 271D. Penalty under section 271D shall be levied of an amount equal to loan or deposit taken or accepted or specified sum.

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

**Q6.** Penalty under section 271FA shall be levied for failure to file statement of financial transaction or reportable account (previously called as Annual Information Return). Penalty under section 271FA is Rs. \_\_\_\_\_ for every day during which the failure continues.

(a) 500

(b) 250

(c) 100

(d) 50

**Correct answer : (a)**

**Justification of correct answer :**

Penalty under section 271FA shall be levied for failure to file statement of financial transaction or reportable account. Penalty under section 271FA is Rs. 500 for every day during which the failure continues.

Thus, option (a) is the correct option.



**Q 7.** What is the rate of penalty for underreporting of income under Section 270A?

- (a) 100% (b) 200%  
(c) 300% (d) 50%

**Correct answer : (d)**

**Justification of correct answer :**

The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However, in a case where under-reporting of income results from misreporting of income, the taxpayer shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income.

**Q8.** As per section 271H, where a person fails to file the statement of tax deducted/collected at source *i.e.* TDS/TCS return on or before the due dates prescribed in this regard, then he shall be liable to pay penalty under section 271H. Minimum penalty can be levied of Rs. 10,000 which can go upto Rs. \_\_\_\_\_.

- (a) 1,00,000 (b) 2,00,000  
(c) 3,00,000 (d) 3,00,000

**Correct answer : (a)**

**Justification of correct answer :**

As per section 271H, where a person fails to file the statement of tax deducted/collected at source *i.e.* TDS/TCS return on or before the due dates prescribed in this regard, then he shall be liable 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 fee prescribed under section 234E.

Thus, option (a) is the correct option.

**Q9.** 272B provides penalty in case of default by the taxpayer in complying with the provisions of section 139A or knowingly quoting incorrect PAN or Aadhaar Number in any document referred to in section 139A(5)(c) or intimates incorrect PAN or Aadhaar Number for the purpose of section 139A(5A)/(5C). Penalty under section 272B is Rs. \_\_\_\_\_ for each default.

- (a) 1,00,000 (b) 50,000  
(c) 50,000 (d) 10,000

**Correct answer : (d)**

**Justification of correct answer :**

Section 272B provides for penalty in case of default in complying with the provisions relating to PAN, *i.e.*, failure to obtain, quote, or authenticate PAN. The amount of penalty shall be Rs. 10000 for each default.

As the Finance (No. 2) Act, 2019 as provided for interchangeability of Aadhaar with PAN, Consequential amendments have been made in the penal provisions of Section 272B so as to levy a penalty of Rs. 10,000 for each default in the following cases:

- a) If assessee fails to quote or intimate his PAN or Aadhaar or quotes or intimates invalid PAN or Aadhaar.

- b) If assessee fails to quote or authenticate his PAN or Aadhaar in specified transactions.
- c) If receiver (i.e., banks, financial institution, etc.) of documents in respect of specified transactions fails to ensure that the PAN or Aadhaar are duly quoted and authenticated.

Thus, option (d) is the correct option.

**Q10.**Section 272BB(1A) provides for penalty for quoting incorrect Tax Deduction Account Number or Tax Collection Account Number (as the case may be). Penalty under section 272BB is Rs.\_\_\_\_\_.

- (a) 75,000
- (b) 50,000
- (c) 10,000
- (d) 5,000

**Correct answer : (c)**

**Justification of correct answer :**

Section 203A(2) provides that the deductor or collector of tax at source should quote his Tax Deduction Account Number or Tax Collection Account Number (as the case may be) in the challans, certificates, statement and other documents relating to TDS/TCS. Section 272BB(1) provides for penalty for failure to obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be) and section 272BB(1A) provides for penalty for quoting incorrect Tax Deduction Account Number or Tax Collection Account Number (as the case may be). Penalty under section 272BB is Rs. 10,000.

Thus, option (c) is the correct option.

**Note:** The CBDT vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31-03-2020 has extended all respective due dates, falling during the period from 20-03-2020 to 29-06-2020, till June 30, 2020.

The benefit of extended due date shall not be available in respect of payment of tax. However, any delay in payment of tax which is due for payment from 20-03-2020 to 29-06-2020 shall attract interest at the lower rate of 0.75% for every month or part thereof if same is paid after the due date but on or before 30-06-2020.