

PENALTIES

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PENALTIES AND PROSECUTIONS

As number of tax payers is increasing, the tax administration has necessity to rely more and more on voluntary compliance of tax laws by the assesses and therefore appropriate penal and prosecution provision, which impose additional monetary burden on those who happen to go astray either inadvertently or by design, form a necessary complement to this approach.

- **There are three modes built in the fiscal legislation for encouraging tax compliance:**
 - (a) Charge of Interest**
 - (b) imposition of penalty**
 - (c) launching of prosecution against tax delinquents. While charging of interest is compensatory on character, the imposition of penalty and institution of prosecution proceedings act as strong deterrents against potential tax delinquents.**



WHAT ARE THE DEFAULTS WHICH MAY INVITE LEVY OF PENALTY?

- **When the assessee is in default or is deemed to be in default in making payment of tax, including the tax deducted at source, advance tax and the self assessment tax.**
- **(ii) Failure to pay the advance tax as directed by the Assessing Officer or as estimated by the assessee. [Section 273(1)]**
- **(iii) Failure to comply with a notice issued under section 142(1) or 143(2) or failure to comply with the direction issued under section 142(2A) to get the accounts audited. [Section 271(1)(b)]**
- **(iv) Concealment of particulars of income or furnishing of inaccurate particulars of income. [Section 271(1)(c)]**

- (v) Failure to maintain books of accounts and documents by persons carrying on profession or business as prescribed under section 44AA. [Section 271A]
- (vi) Failure to get the accounts audited in prescribed circumstances or failure to obtain the prescribed audit report within prescribed time period of failure to furnish the audit report along with the return, as required under section 44AB. [Section 271B]
- (vii) Failure to subscribe to the eligible issue of capital [Section 271BB]
- (viiia) Penalty for failure to deduct tax at source. [Section 271C]
- (viii) Accepting of any loan or deposit or repayment of deposit of Rs.20,000 or more otherwise than by account payee cheque or account payee draft, in contravention of the provisions of Section 269SS. [Section 271D]
- (viiia) Repayment of loan in contravention of the conditions imposed in section 269T. [Section 271E]

- (viii**b**) **A** Failure of file the return of income as required under Section 239 (1), shall entail imposition of penalty. [Section 271F]
- **B**. Failure to file the return as required under the proviso to Section 139(1), in the event of assessee fulfilling the prescribed conditions, i.e., certain persons in occupation of immovable property or owner of motor vehicle or subscriber to telephone, one who incurred expenditure on foreign travel, the holder of the credit card or a member of a club, subject to specific conditions, are required to file the return as per proviso to Section 139(1), failing which penalty may be imposed. (Proviso to Section 271F)
- (ix) Refusal to answer in contravention of legal obligation. [Section 272A(1)(a)]
- (x) Refusal to sign any statement made in the course of income-tax proceedings. [Section 272A(1)(b)]
- (xi) Failure to attend or give evidence or produce books of accounts and documents in compliance with the requirements of summons under section 131(1). [Section 272A(1)(c)]

- (xii) Failure to comply with the provisions of section 139A dealing with the application for an allotment of Permanent Account Number or General Index Register Number. [Section 272A(1)(d)]
- (xiii) Failure to furnish information regarding securities. [Section 272A(2)(a)]
- (xiv) Failure to give notice of discontinuance of business or profession. [Section 272A(2)(b)]
- (xv) Failure to furnish in due time information sought under section 133 of Income-tax Act. [Section 272A(2)(c)]
- (xvi) Failure to furnish in due time prescribed returns/statements. [Section 272A(2)(c)]
- (xvii) Failure to allow inspection or take copies of registers of registers of companies. [Section 272A(2)(d)]
- (xviii) Failure to furnish in due time the return of income by charitable or religious institutions. [Section 272A(2)(e)]

- (xix) Failure to deliver in due time a copy of declaration of non-deduction of tax at source u/s.197A. [Section 272A(2)(f)]
- (xx) Failure to furnish a certificate of tax deducted at source to the person on whose behalf tax has been deducted or collected as required by Section 203 or Section 206C. [Section 272A(2)(g)]
- (xxi) Failure to deduct and pay tax from salary payable to an employee as directed by the Assessing Officer or the Tax Recovery Officer as required by Section 226(2). [Section 272A(2)(h)]
- (xxii) Failure to allow an Income-tax Authority to collect any information useful or relevant to the purposes of Income-tax Act u/s.133B. [Section 272AA)]
- (xxiii) Failure to comply with the provisions of section 203a dealing with tax Deduction Account Number [Section 272BB]

WHAT IS THE MINIMUM AND MAXIMUM PENALTY LEVIABLE?

- o **The quantum of penalty leviable depends upon the nature of default. The relevant section of Income-tax Act prescribe the minimum and maximum penalties which can be levied.**

CAN THE PENALTY BE REDUCED OR WAIVED?

- **The Commissioner of Income-tax may reduce or waive the amount of any penalty imposed or imposable, if prescribed conditions are satisfied. The assessee should voluntarily and in good faith make full and true disclosure of income prior to the detection of concealment by the Assessing Officer. In certain cases of genuine hardship, the penalty levied can be reduced/waived if the assessee has co-operated in any enquiry relating to the assessment and recovery of taxes. The waiver/reduction of penalties is discretionary and dependent upon satisfaction or prescribed conditions. No assessee can, a matter of right, claim waiver or reduction of penalty imposed or imposable upon him. [Section 273A]**

THANK