

Date of class: 04/09/2020 FRIDAY

TOPIC: INTEREST & PENALTIES

The Penalty is an additional amount levied by tax authority if tax not paid on time. It is different from tax payable. Penalty is levied based on the law at the time of the offence being committed and not as it stands in financial year for which the assessment is being made.

Default in complying with provisions of or with conditions prescribed under the IT Act would attract certain penalty and in critical case prosecutions as well. The document will provide you information about the punishable offences, prosecutions and the quantum of penalties ~~that~~ that can be imposed under the law.

There are three modes built in into fiscal legislation for encouraging tax compliance.

- (a) change of intent
- (b) imposition of penalty
- (c) launching of prosecution against tax delinquents.

While changing of intent is compensating in character, the imposition of penalty

and institution of prosecution proceedings act as strong deterrents against potential tax default delinquents.

What are the defaults which may invite levy of penalty?

Chapters XVII and XXI of IT Act 1961; contain various provisions empowering an income-tax authority to levy penalty in case of certain defaults. The following defaults may invite levy of penalty:

i) When the assessee is in default or is deemed to be in default in making payment of tax, including the TDS, Advance tax and the self assessment tax (Sec 221 & Sec 201(1))

ii) Sec 273(1) — Failure to pay the Advance tax as directed by the AO or as estimated by the assessee.

- iii) Sec 271(1)(b) - Failure to comply with a notice issued under section 142(1) or 143(2) or Failure to comply with the directions issued u/s 142(e) to get the accounts audited
- iv) Sec 271(1)(c) - Concealment of particulars of income OR furnishing of inaccurate particulars of income.
- v) Sec 271(A) - Failure to maintain books of accounts and documents by persons carrying on profession or business as prescribed u/s 44AA.
- vi) Sec 271B - 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 u/s 44AB
- vii) Failure to subscribe to the eligible issue of capital (see 271B3)
- viii) Penalties for failure to deduct tax at source. (Section 271C)
- See 271D
- viii) Accepting of any loan or deposit or repayment of deposit of Rs 20000 or more otherwise than by account payee cheque or account payee draft, in

contravention of the provisions of sec 269 SS VIII(a) — Sec 271 E Repayment of loan in contravention of the conditions imposed in Sec 269 T

viii b) Sec 271 F — A failure of to file the RoI as required u/s 239(1), shall entail imposition of penalty.

B Failure to file the return as required under the proviso to Sec 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 credit card or a member of club, subject to specific conditions, are required to file the return as per proviso to sec 139(1), failing which penalty may be imposed. (Sec 271 F)

IX) Refusal to answer in contravention of legal obligation (Sec 272 A (1)(a))

X > Refusal to sign any statement made in the course of Income Tax proceedings
(See 272 A (1)(b))

XI > See 272 A (1)(c)
failure to attend or give evidence or produce book of accounts and documents in compliance with the requirements of summons ~~and~~ U/S 131 (1)

XII > See 272 (1)(d)
Failure to comply with the provisions of Sec 139 A dealing with the application for and allotment of PAN or Central Index Region Number

XIII > See 272 A (2)(a)
Failure to furnish information regarding securities

XIV > See 272 (2) b
failure to give notice of discontinuance of business or profession.

XV > See 272 (2)(c)
failure to furnish in due time ~~presented~~ return / statement information sought U/S 173 of IT Act

XVI > See 272 A (2)(c) — failure to furnish in due time prescribed return / statement.

XVII) See 272 (2)(d)

Failure to allow inspection or take copies of register of registers of companies

XVIII) See 272A (2)(e)

Failure to furnish in due time to persons of issue by charitable or religious institution

XIX) Failure to deliver in due time a copy of declaration of non deduction of tax at source u/s 197A (see 272A (2)(f))

XX) See 272A (2)(g)

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 sec 203 or 206C

~~XXI~~

See 272A(2)(h)

XXI) Failure to deduct and pay tax from salary payable to an employee as directed by the Assessing officer or TRO as required by sec 226(2)

XXII) See 272AA

Failure to allow an income tax authority to collect any information useful or relevant to the purpose of income tax A/c u/s 133B

XXIII) 272BB

Failure to comply with the provisions of sec 203a dealing with tax deduction A/c Number

△ Is the levy of penalty automatic?

No penalty, unless the income tax act is imposed concerned has been given reasonable opportunity of being heard.

△ What is the minimum & maximum penalty leviable?

The quantum of penalty leviable depends upon the nature of default. The relevant section of IT Act prescribes the minimum & maximum penalties which can be levied.

△ Can the penalty be reduced or waived?

The CIT may reduce or waive the amount of any penalty imposed or imposed, 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 AO. In certain cases of genuine hardship, the penalty levied can be reduced/waived if the assessee has co-operated in enquiry relating to the assessment and recovery of tax.

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. (see 273A)