

# Filing of Returns – Timelines, Penalties, Mistakes and Rectification of Mistake under IT Act – Part -1

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## What is Assessment Procedure ?

- Every Person, who is earning, which is chargeable to tax, has to furnish his return of income to the Income Tax Department. ... The process of examination of the return by the Income Tax Department .
- Is called "Assessment"

- Assessment simply means determination of Tax
- It is Procedure for determining of Tax Liability and **Recovery of Tax**
- This is determined as per Taxation law existing in that particular Assessment Year



**How Much did you earn ?**

20th May 2021

**File your ROI**

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**Checking your ITR by Dept**

## Various Sections under which ITR is filled

- ➡ 139 (1) - Normal Return
- ➡ 139 (3) – Return of Loss
- ➡ 139 (4) – Belated Return
- ➡ 139 (5) – Revised Return
- ➡ 142(1) – Directions by AO to file the Return of Income
- ➡ 148 – Re-assessment of Income U/s 147
- ➡ 153 A/C – Assessment under Search and requisition - Now covered under sec.147



## Who can file return of income

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- ❑ **Section 139(1) requires that every person,—**
    - ❖ **being a company or a firm; or**
    - ❖ **being a person other than a company or a firm, if**
      - **(i) his total income or**
      - **(ii) the total income of any other person in respect of which he is assessable under the Income-tax Act,**  
**during the previous year, exceeded the maximum amount which is not chargeable to income-tax.**
- shall, furnish a return of his income or the income of such other person.**

## Who can file return of Income

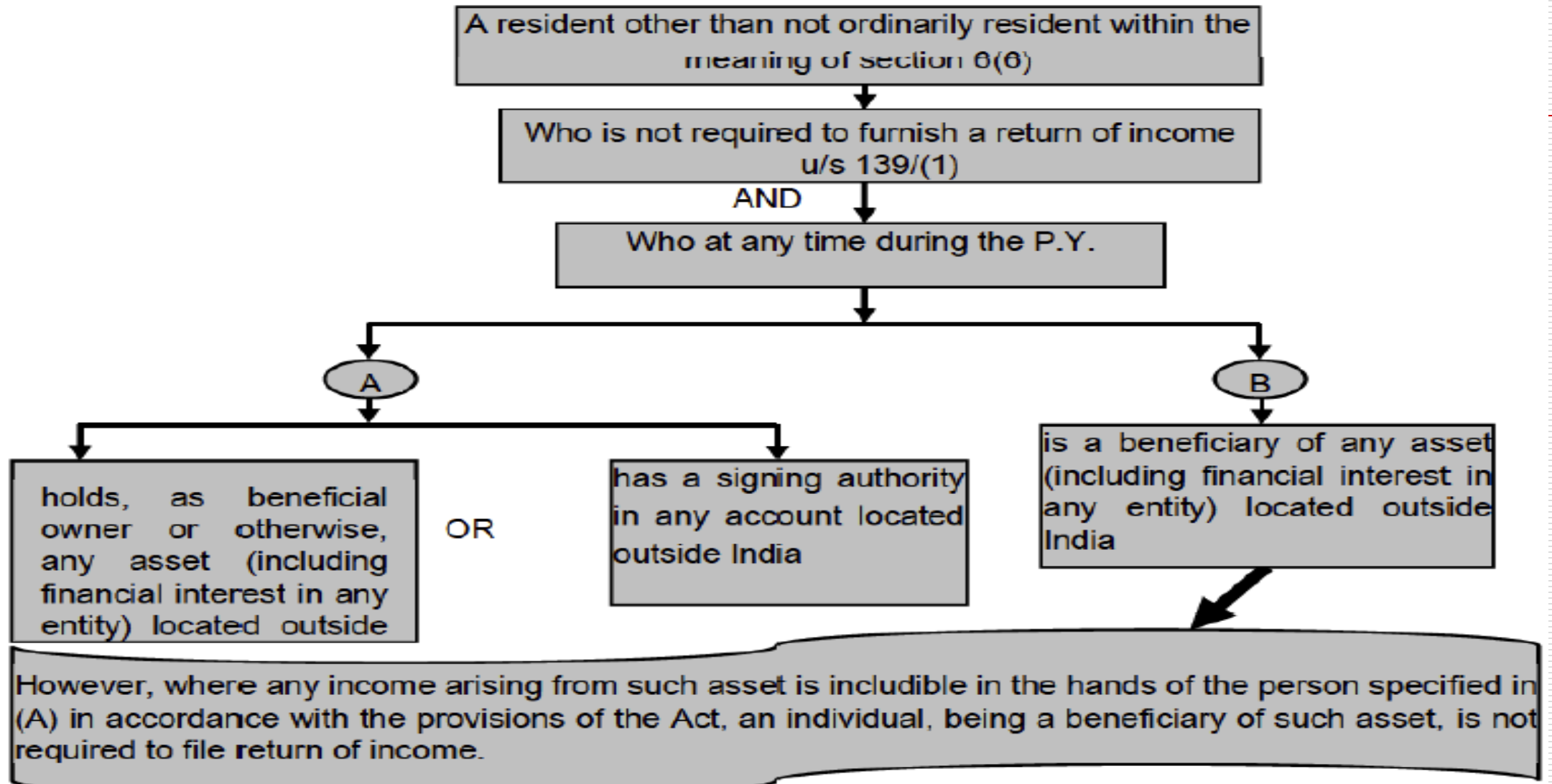
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<b>Section</b>	<b>Different Situations</b>
<b>139(1)(a)</b>	<b>A company/firm is required to submit its return of income (regardless of the quantum of income or loss).</b>
<b>139(1)(b)</b>	<b>A person (other than an individual/ HUF/company/firm) is required to submit his/its return of income, if income exceeds exemption Limit.</b>
<b>139(1)(b), read with fifth proviso</b>	<b>Individual/HUF is required to submit his/its return of income, if income [without claiming deduction under sections 10A, 10B, 10BA, 80C to 80U and under section 10(38)] exceeds the amount of exemption limit.</b>

## Who can file return of Income

Section	Different Situations
139(4A)	A person in receipt of income derived from property held under a trust for charitable or religious purposes is required to submit return of income if its income (without giving exemption under section 11 or 12) exceeds exemption Limit.
139(4B)	Chief executive officer of every political party is required to submit income-tax return if income of the political party (without giving exemption under section 13A) exceeds exemption limit.
139(4C)	If total income (without claiming any exemption given below) of the assessee (who is qualified to claim exemption under section 10 / 23) exceeds the exemption limit -
139(4D)	Any university/college/other institution referred to in section 35(1)(ii)/ (iii) is required to submit return of income (return has to be submitted whether there is income or loss. Such return has to be submitted even if it is not required by any other provision)
139(4E)/(4F)	These sub-sections cover submission of return by business trust/investment fund.

**Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)**



# Sources of Income in case Company

□ Meaning of “beneficial owner” and “beneficiary” in respect of an asset for the purpose of section 139:

**Beneficial Owner**



An individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

**Beneficiary**



An individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person, other than such beneficiary.



## Mandatory Filing of return – 139(4C)

	<b>Institution/Association etc.</b>	<b>Applicable section</b>
(a)	Research association	10(21)
(b)	News agency	10(22B)
(c)	Association or institution	10(23A)
(d)	Fund for the welfare of employees or their dependents	10(23AAA)
(e)	Institution	10(23B)
(f)	Fund or institution	10(23C)(iv)
(g)	Trust or institution	10(23C)(v)
(h)	University or other educational institution	10(23C)(vi)/(iiiad)
(i)	Hospital or other medical institution	10(23C)(via)/(iii ae)
(j)	Mutual Fund	10(23D)
(k)	Securitisation Trust	10(23DA)
(l)	Investor Protection Fund	10(23EC)/(ED)
(m)	Core Settlement Guarantee Fund	10(23EE)
(n)	Venture Capital Company/Venture Capital Fund	10(23FB)
(o)	Trade Union	10(24)(b)
(p)	Board or Authority as referred	10(29A)
(q)	Body or Authority or Board or Trust	10(46)
(r)	Infrastructure Debt Fund	10(47)

## Mandatory filing of return in certain cases

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**With effect from Assessment Year 2020-21,**

- ☐ **Every person, who is not required to furnish return of income under any other provision of section 139(1), to file return of income if during the previous year he:**
  - ❖ *1. Has deposited an amount (or aggregate of amount) in excess of Rs. 1 crore in one or more current account maintained with a bank or a co-operative bank.*
  - ❖ *2. Has incurred aggregate expenditure in excess of Rs. 2 lakh for himself or any other person for travel to a foreign country.*
  - ❖ *3. Has incurred aggregate expenditure in excess of Rs. 1 lakh towards payment of electricity bill.*
  - ❖ *4. Fulfils such other conditions as may be prescribed.*

# MODE OF FILING

Paper Return

Electronic Return with Digital Signature

Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V

Transmitting the data electronically in the return under electronic verification code

## ITR Forms

## Subject

**IT.R-1 (i.e,  
SAHAJ)**

For an individual who is resident and ordinarily resident (total income does not exceed Rs. 50 lakh) having income from salary/one house property (not being brought forward loss or loss to be carried forward)/income from other sources (not being loss and not being winning from lottery/income from race horses)

<b>ITR-2</b>	For an individual/HUF where the total income does not include income under the head business or profession
<b>ITR-3</b>	For an individual/HUF having income under the head business or profession
<b>ITR-4 - SUGAM</b>	For an individual/HUF/firm (other than LLP) deriving business income and such income is computed in accordance with special provisions referred to in section 44AD, 44ADA or 44AE
<b>ITR-5</b>	For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable)
<b>ITR-6</b>	For companies other than companies claiming exemption under section 11
<b>ITR-7</b>	For persons including companies required to furnish return under section 139(4A)/(4B)/(4C)/(4D)
<b>ITR-V</b>	Where the data of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4 and ITR-5 transmitted electronically without digital signature

### **Interest under section 234A**

For the above purpose, interest payable under section 234A shall be computed on the amount of tax on the total income as declared in the return, as reduced by the amount of-

- (i) advance tax paid, if any;
- (ii) any tax deducted or collected at source;
- (iii) *any relief of tax claimed under section 89;***
- (iv) relief of tax claimed under section 90 or 90A;
- (v) deduction of tax claimed under section 91;
- (vi) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

### **Interest under section 234B**

Interest payable under section 234B shall be computed on the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.

For this purpose, “assessed tax” means the tax on total income declared in the return as reduced by –

- (i) the amount of tax deducted or collected at source;
- (ii) ***any relief of tax claimed under section 89;***
- (iii) relief of tax claimed under section 90 or 90A
- (iv) deduction of tax claimed under section 91
- (v) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD [Sub-section (1B)].

## When a return of loss should be filed [Sec. 139(3)]

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- ❑ losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1) -
  - ❖ a. Business loss (speculative or otherwise);
  - ❖ b. Capital loss;
  - ❖ c. Loss from the activity of owning and maintaining race horses
  - ❖ d. Loss from business specified u/s 35AD
- ❑ Notes:
  - ❖ a. Loss declared in belated return cannot be carried forward.
  - ❖ b. Delay in filing the return of loss may be condoned in certain cases
  - ❖ c. Unabsorbed depreciation u/s 32 and loss under the head “Income from house property” can be carried forward

## Belated Return – 139(4)

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- ❑ If an assessee fails to file return within the time limit allowed u/s 139(1) or within the time allowed under a notice issued u/s 142(1), he can file a belated return.
- ❑ Time limit: Assessee may file such return -
  - ❖ • before the end of the relevant assessment year; or
  - ❖ • before the completion of assessment (u/s 144),- whichever is earlier.
- ❑ However, if an assessee files a belated return, he would be liable to fee u/s 234F and interest u/s 234A.



## Revised Return of Income – 139(5) / Defective Return – 139(9)

- If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return

**Time limit:** Assessee may file the revised return -

- • by 31<sup>st</sup> December of the AY or completion of regular assessment whichever is earlier (amended in FA 2021) – (Up to amendment before the end of the relevant AY)

**Notes :** (a) **Replacement of original return:** Once a revised return is filed, it replaces the earlier return. (b) **Revision of revised return:** A revised return can again be revised

- ❖ (c) **Revision of belated return:** A belated return u/s 139(4) can be revised.
- ❖ (d) **Revision of loss return:** A loss return can be revised
- ❖ (e) **Return filed pursuant to notice u/s 142(1) cannot be revised.**

- **When a return is termed defective U/S 139(9)**

- ❖ • The return is furnished without paying self-assessment tax along with interest, if any.
- ❖ • The annexure, statements and columns in the return of income have been duly filled in.
- ❖ • The return is accompanied by the different documents

## Person authorised to verify the return – Section 140

Assessee	Case	Verified by
Individual	In general	Individual himself
	Where the individual concerned is absent from India	Individual himself or by the duly authorized person of such individual
	Where the individual is mentally incapacitated	Guardian of such individual or any other person competent to act on his behalf
	Where by any other reason it is not possible for the individual to verify the return.	Any person duly authorised by him
	<b>Note:</b> When return is verified by any authorised person in that case the return should be accompanied with power of attorney.	
HUF	In general	Karta
	Where the 'karta' is absent from India or is mentally incapacitated	Any adult member of the family.
Firm	In general	Managing partner
	If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any adult partner

29th May 2021

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## Person authorised to verify the return – Section 140

Limited liability partnership	In general	Designated partner
	If due to any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such	Any partner
Local authority	Principal Officer	
Political party	Chief Executive Officer	
Company	In general	Managing Director (MD)
	If due to any reason it is not possible for MD to verify or where there is no MD	Any director

## Person authorised to verify the return – Section 140

	Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016	Insolvency professional appointed by such Adjudicating Authority
	Non-resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.
	Company in process of winding up	Liquidator of the company
	Where the management of the company has been taken over by the Central or State Government.	Principal officer
Any other association	Any member or principal officer	
Any other person	Such person or any other person competent to act on its behalf.	

A return should be filed on or before the following due date (of respective assessment year):

Assessee	Due date
• Where the assessee is required to furnish a report in Form 3CEB u/s 92E pertaining to international transaction(s)	30 <sup>th</sup> November
• Where the assessee is a company not having international transaction(s)	<b>31<sup>st</sup> Oct</b>
• <i>Any other assessee</i>	
– Where accounts of the assessee are required to be audited under any law	<b>31<sup>st</sup> Oct</b>
– Where the assessee is a <span style="background-color: #cccccc;">      </span> partner in a firm and the accounts of the firm are required to be audited under any law	<b>31<sup>st</sup> Oct</b>
– In any other case	31 <sup>st</sup> July

<b>Particulars</b>	<b>Due Date</b>	<b>Extended to (As per <u>Circular No. 9/2021 dated 20.05.2021</u>)</b>	<b>Further Extended (As per <u>Circular No. 17/2021 dated 09.09.2021</u>)</b>
<b>Furnishing of Return of Income for the Assessment Year 2021-22 (Non-Auditable Assessee)</b>	<b>31<sup>st</sup> July, 2021</b>	<b>30<sup>th</sup> September, 2021</b>	<b>31<sup>st</sup> December, 2021</b>
<b>Furnishing of Return of Income for the Assessment Year 2021-22 (Auditable Assessee)</b>	<b>31<sup>st</sup> October, 2021</b>	<b>30<sup>th</sup> November, 2021</b>	<b>15<sup>th</sup> February, 2022</b>
<b>Furnishing of Audit Report for the Financial Year 2020-21</b>	<b>30<sup>th</sup> September, 2021</b>	<b>31<sup>st</sup> October, 2021</b>	<b>15<sup>th</sup> January, 2022</b>
<b>Furnishing of Transfer Pricing Report U/s 92E for the Financial Year 2020-21</b>	<b>31<sup>st</sup> October, 2021</b>	<b>30<sup>th</sup> November, 2021</b>	<b>31<sup>st</sup> January, 2022</b>

<b>Particulars</b>	<b>Due Date</b>	<b>Extended to (As per <u>Circular No. 9/2021 dated 20.05.2021</u>)</b>	<b>Further Extended (As per <u>Circular No. 17/2021 dated 09.09.2021</u>)</b>
<b>Furnishing of Return of Income in case of Transfer Pricing</b>	<b>30<sup>th</sup> November, 2021</b>	<b>31<sup>st</sup> December, 2021</b>	<b>28<sup>th</sup> February, 2022</b>
<b>Furnishing of belated/revised Return of Income for the Assessment Year 2021-22</b>	<b>31<sup>st</sup> December, 2021</b>	<b>31<sup>st</sup> January, 2022</b>	<b>31<sup>st</sup> March, 2022</b>

## Extension of date of filing return of Income and Clarification issued.

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- ❑ **Clarification 1:** Circular No. 09/2021 and 17/2021 shall not apply to **Explanation 1 to section 234A of Income Tax Act, 1961** for furnishing of Return of Income U/s 139 (1) of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of Sec 139 (1) exceeds one lakh rupees.
  
- ❑ **Clarification 2:** Tax paid U/s 140A of the Act within the due date (without extension under Circular No. 9/2021 dated 20.05.2021 and 17/2021 dated 09.09.2021) provided in that Act, shall be deemed to be the advance tax.





**Assessee / Tax Payer**



**IT - DEPARTMENT**

## Various Sections of Assessment under Income Tax Act



140 (A) - Self Assessment



143 (1)- Summary Assessment



143 (3) - Regular Assessment

→ Limited Scrutiny  
→ Complete Scrutiny



144 – Best Judgement



147 - Re- Assessment



153 (A)/ 153(C) Block Assessment – From  
01.04.2021 covered under Section 147

## Common mistakes made while filing ITR

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### ☐ **Filing ITR using Incorrect Tax Form**

- ❖ **Choosing the wrong ITR form may lead the return to be treated as defective or make the ITR Invalid altogether.**

### ☐ **Mentioning incorrect personal or correspondence details**

- ❖ **Taxpayer should be vigilant in quoting PAN, Aadhaar and address details.**
- ❖ **Attention should be given at the time of mentioning the mail id & contact number.**
- ❖ **You need to ensure that the details tally with those given in your PAN.**
- ❖ **ITR – V sent on email, Income Tax Notices on the address given in the last ITR, if you do not provide the correct address then the same will be served on the incorrect address by way of Chaspa and will pass the ex-party orders.**
- ❖ **Reminder Text for E-Verification and Intimation text will be sent on the mobile number which is given in the ITR.**

## Common mistakes made while filing ITR

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- ❑ **Correct Bank Account Number and IFSC code so as to receive the speedy refund by the Income Tax Department.**
- ❖ **Filing incorrect and incomplete bank details**
- ❖ **The Income Tax Department transfers all income tax refunds directly to the bank account.**
- ❖ **Refunds are not processed for incorrect personal details like name, bank account number, IFSC code and address.**
- ❖ **Report about the details of all the bank accounts held by him during the year.**

## Common mistakes made while filing ITR

- ❑ **Not reporting interest income from Saving bank accounts, Fixed deposits etc.**
- ❖ Interest of SB & FDR to be reported under the head- 'Income from other sources' in the tax returns.
- ❖ Exemption up to Rs.10,000/- u/s 80TTA by all assessee except senior citizens or a super senior citizen AND senior citizens or a super senior citizen up to Rs. 50,000 under section 80 TTB from the total interest income earned in a financial year should claim a deduction
- ❖ Interest to be reported accrual basis and after reconciliation in 26AS.
- ❖ Interest credited into the taxpayer's account can be checked by him using the FDR statement.
- ❖ In case of fixed deposits, when TDS is deducted for interest credited by the bank, the same can be claimed in ITR, when it comes in the taxpayer's form-26AS statement.

## Common mistakes made while filing ITR

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### ❑ Not reporting income of last job

- ❖ If an individual has switched jobs in a FY then the same must be reported while filing ITR along with income from current job.
- ❖ A discrepancy will be shown in the TDS certificate and form 26AS, if any of the income is left unreported.
- ❖ In the new format of Form 16, a separate row is given where the income from another employer needs to be mentioned, if any.

## Common mistakes made while filing ITR

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### ☐ **Not reconciling Form 26AS statement**

- ❖ **Form 26AS provides an insight into the TDS deducted and deposited to the IT department Details about the TCS collected and taxes which are being paid during the financial year against the PAN number.**
- ❖ **Incomes included in Form 26AS must be reported, as these details are already there with the tax department.**
- ❖ **A mismatch in Form 26AS and Form 16 may also lead to issue of notice and / or lesser refunds received by the taxpayer.**

## Common mistakes made while filing ITR

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### ❑ Not checking the bank statements

- ❖ All incomes received during a particular year are required to be mentioned in income tax return, hence one should always check his/ her bank statement to consider the amount of any gift received, any interest received or any other income received.
- ❖ ITR forms require mentioning the number of all operative bank accounts, it becomes imperative to mention the exact incomes received accurately.

## Common mistakes made while filing ITR

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### ❑ Not mentioning exempted income

- ❖ Taxpayer needs to report all his income, whether exempt from tax or not. (dividend, insurance maturity amount, investment of long term capital gain etc)
- ❖ Even if it is mandatory for a taxpayer to file Income tax returns if his gross income exceeds thresh hold limit not mentioning about the same would invite notices from the income tax department.

### ❑ Not reporting interest received on income tax refunds

- ❖ Interest received on Income Tax refunds can be traced from Form 26AS and should be reported as income from other sources while filing your Income Tax Return.



## Common mistakes made while filing ITR

### ☐ Failure to E-Verify ITR V

- ❖ It is compulsory to verify ITR – V offline within 120 days of filing and send to CPC Bangalore using post or e-verify using Aadhaar OTP, EVC etc.
- ❖ Without verification of ITR V, your tax return will not be considered as filed & notice stating your return as “Invalid” will be sent by the department.
- ❖ All penalties and non filing fees will be applicable on non-filing of ITR.

### ☐ Not clubbing incomes

- ❖ Where the taxpayer is required to club the income of his minor child or spouse with his own income and pay taxes accordingly (Ref section 60 to 64) subject to deduction of amount exempted.
- ❖ Example: In case an FD is made in the name of a child, the interest income received should be reported to the income tax department by the Parent

## Common mistakes made while filing ITR

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### ❑ Late Filing of income tax return

- ❖ Delay in ITR filing, certain rights are deprived.
- ❖ Losses cannot be carried forward to the next year.
- ❖ Late filing fees will be applicable.
- ❖ Extra Interest will also be payable in case of tax liability.
- ❖ Refund procedure also gets delayed.

## Common mistakes made while filing ITR

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- ❑ **Not keeping evidence of deductions claimed in income tax return**
- ❖ **For all expenses/ investments claimed as deduction under Chapter VIA (Children Tuition fees, LIC, PPF, Medical Insurance Policy etc.), maintenance of records/ evidences/ proofs of expenses/ investments is required.**
- ❖ **Claiming deduction without adequate evidence in hand can lead to disallowance of such deductions and increase in tax liability at the time of scrutiny assessment.**
- ❖ **So, either have evidence for a particular expense/ investment, or else don't claim deduction of it.**
- ❖ **Keep the record for up to 6 years after the end of the year in which the return is filed.**

## Common mistakes made while filing ITR

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- ❑ **Failure to account for more than two property**
- ❖ If an individual owns multiple house properties, then any two of his house property will be considered as self occupied, as per their choice and the remaining will be considered as 'deemed to be let out'.
- ❖ This means that when a person owns three properties, any one of the property, even if remains vacant for the entire year and does not provide any financial gains to the taxpayer, shall still be considered to be taxable.
- ❖ The taxpayers potential to earn gains shall be considered and tax will be levied on the annual value calculated as per the provision of law.
- ❑ **Details of property in the schedule HP of the return to be provided**
- ❖ Net taxable loss or income should not be mentioned

## Common mistakes made while filing ITR

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### ❑ Non-filing of income tax returns

- ❖ A person is mandatorily required to file income tax return even if his income is below the taxable limit in case he owns any assets abroad.
- ❖ Example: If you've pursued education from abroad, then it's a must to open a bank account in that country. Many times it so happens that, the students come back to India & withdraw money from the foreign bank account but don't close it. In case if such a bank account is still not closed, then the individual will not be able to file ITR 1, rather he will be asked to use ITR 2 and furnish the complete details of such bank accounts. So, one should make sure that all such bank accounts are closed timely.
- ❖ These types of special disclosures are mandatory & any non-disclosure may bring notice from the Income Tax Department.

## Common mistakes made while filing ITR

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### ❑ Not Paying Advance Tax/ Self-Assessment Tax

- ❖ Except salary ( actual tax deducted) all other cases rate of TDS specified is deducted on payment / credit to the account of the payee, where as the income is taxable at appropriate rate.
- ❖ Example: TDS is deducted on the Salaried Income and Interest income received from the Bank. However, at times, it happens that the taxpayer falls in the 30% tax bracket and TDS on interest income is deducted at the rate of 10% or not deducted at all. So in such a case tax needs to be calculated which is payable additionally and needs to pay as a advance tax. Also, in case of Rental income, assess the tax liability and advance tax needs to be paid as per the provisions of the law. Self-Assessment tax is paid at the time of filing of return. And all the details of self assessment tax paid and advance tax paid need to be entered in the Income Tax Return filed.

## Common mistakes made while filing ITR

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- ❑ **Not reporting capital gains on switching units of mutual funds**
- ❖ Profit earned on such transfers of capital assets are left unreported as they are not routed through the bank account of the taxpayer.
- ❖ As switching or shifting from a particular scheme to another may result in profit or loss, therefore it is advisable to report the same in the Income Tax Return.
- ❖ In case of immovable property exceeding certain value the stamp duty value of transferred asset registered is reported as AIR to income tax department. So non reporting or mis reporting will attract penalty and notice from dept.

## Common mistakes made while filing ITR

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### ☐ **Submitting Fake Invoices/ giving wrong disclosure**

- ❖ Fake bills mainly related to the deductions in accordance with Section 80C / 80D etc such as LIC receipts or medical bills or rent receipts etc.
- ❖ Fake invoices / rent receipts to claim HRA (House Rent Allowance) should not be submitted.
- ❖ These false bills can easily be tracked down by the Income Tax department by checking the bank details or by cross enquiring from the vendor / landlord etc.

### ☐ **Not linking PAN with Bank Accounts**

- ❖ It is important to link PAN with your Bank Account Number because in case there is a refund, the same gets credited to your bank account. Your bank account details need to be validated on the income tax website so as to get the refund.



## Common mistakes made while filing ITR

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### ☐ **Not submitting Requisite Forms**

- ❖ **To claim certain exemptions benefits, the taxpayer needs to file some forms before the filing of returns.**
- ❖ **Example: if you have received salary arrears in the financial year and need some relief for the increased tax liability under section 89(1), then form no 10E needs to be filed.**
- ❖ **When a taxpayer wants to claim foreign tax relief then filing Form 67 is required.**
- ❖ **Failure to fill these forms will result in the individual not being able to claim the relief. This will also increase the chances of receipt of tax notice.**

## Common mistakes made while filing ITR

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### ❑ Not Determining correct Residential Status

- ❖ Incorrect determination of one's residential status is one of the most common tax filing mistakes. The residential status has two parameters 60 days and 182 days. The first thing the taxpayer needs to do is get the residential status right, as this determines the scope of income that will be taxable in India. For instance in case of a resident person, all their income including foreign income is taxed in India. However, in case of non-resident, only their income accruing or arising or deemed to be arising in India is taxed.

## Common mistakes made while filing ITR

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### ❑ Not claiming correct deductions

- ❖ Some donations are 100% allowed but others are only 50% allowed. Same like certain returns on investments are tax free while others are taxable. Hence such deduction should be claimed with caution to avoid scrutiny from the income tax department.

### ❑ Why is it important to avoid mistakes while filing ITR?

- ❖ if a taxpayer file the income tax return in a wrong form, i.e if an individual files ITR using a form which is not applicable to him then the tax officer, while processing the ITR form, may consider the return so filed as a defective return under the provision of section 139(9) of the Income Tax Act and send the notice u/s 139(9) as defective return notice.

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# **PENALTIES RELATED TO RETURNS OF INCOME**

## 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.

# Self-Assessment Tax Payable- Section 140A

Find out income-tax, surcharge and health and education cess as per return of income		XXXX
<i>Add:</i> Interest and fee—		
Interest under section 234A for late submissions of return of income*	XXXX	
Interest under section 234B for non-payment or short payment of advance tax*	XXXX	
Interest under section 234C for non-payment or short payment of different instalments of advance tax*	XXXX	
Fee under section 234F for late submission of return of income	XXXX	XXXX
Total tax, interest and fee		XXXX
<i>Less:</i> Advance tax, tax deducted at source, tax collected at source, MAT credit under section 115JAA, alternate minimum tax credit under section 115JD and relief under section 90/90A/91A		XXXX
Self-assessment tax payable under section 140A		XXXX



## Late Fee for filing Return of Income

\*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.

### *Note:*

The Finance Act, 2021 has revised the fee for default in furnishing return of income. W.e.f., Assessment Year 2021-22, fee for default in furnishing return of income shall be Rs. 5,000 if return has been furnished after the due date prescribed under section 139(1). However, it shall be Rs. 1,000 if the total income of an assessee does not exceed Rs. 5 lakh.

## **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.



## 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

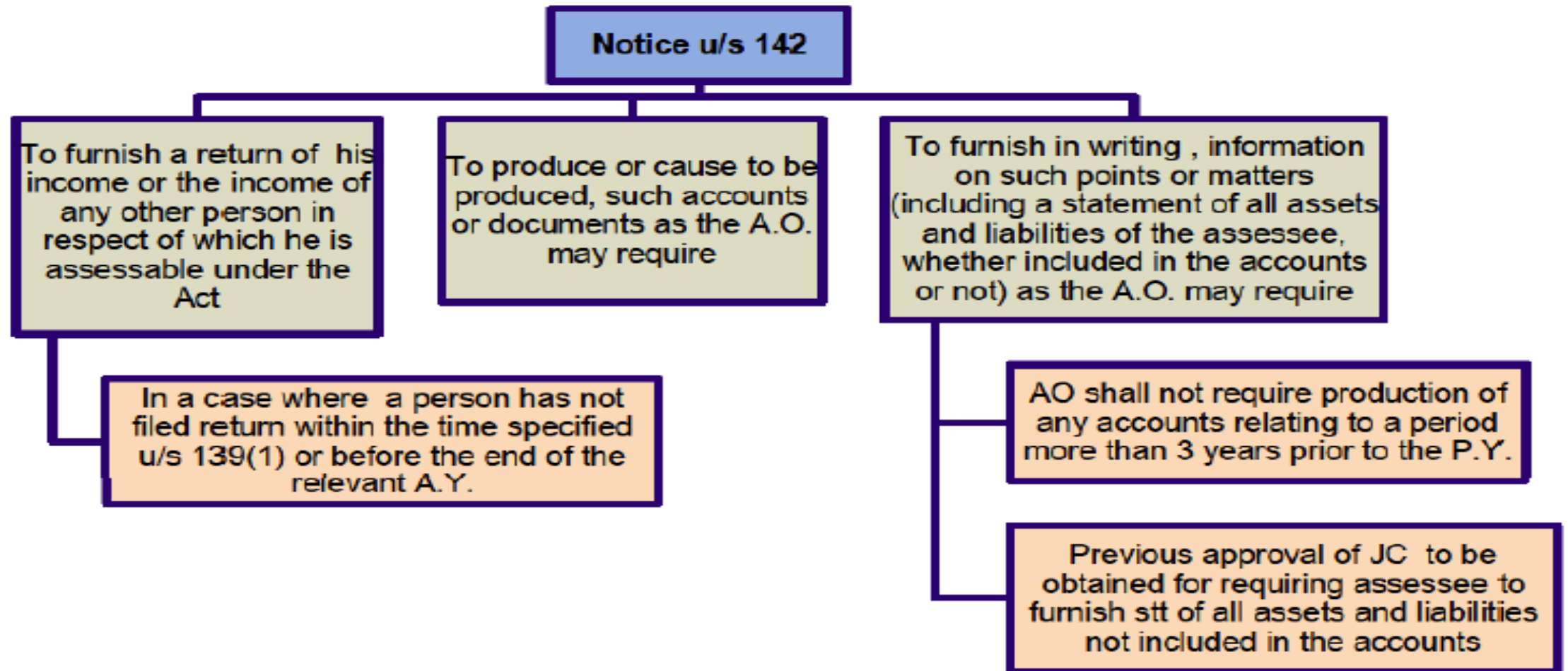
- to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require or
- to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

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

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.



**Note** - It may be noted that the time-limit for completion of assessment under section 153(1) is 21 months/18 months/12 months, as the case may be, from the end of the assessment year in which the income was first assessable. Therefore, since assessment has to be completed within the said period, it appears that notice under section 142(1) should also be issued within that period.



## 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.

## Example: Misreporting of Income

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- ❑ 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.**

## 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.

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

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:

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.

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

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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.

## **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.



## **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 electricity 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)**

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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.

## 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.

## Immunity From Penalty And Other Proceedings

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- ❑ Section 273A(4) confers powers on the Principal Commissioner or Commissioner to either waive or reduce any penalty payable by the assessee under this Act or to stay or compound any proceedings for recovery of amount.
- ❑ The immunity under this section can be granted only if the authority is satisfied that
  - ❖ 1. Genuine hardship is caused to the assessee
  - ❖ 2. The taxpayer has co-operated in any inquiry relating to the assessment or any proceeding with regards to the recovery of any amount due from him.
- ❑ If the penalty amount exceeds Rs. 1,00,000 then prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required



# Q&A

