CERTIFICATE COURSE ON FILING OF RETURNS

Today's Content – Consequences of Not Filing ITR and other non-compliances

Why there are consequences for non-compliance?

The need for penal provisions in Indian laws arises from the necessity to maintain order, ensure justice, deter misconduct, and uphold societal and governmental integrity. Without penalties, laws would lack enforceability, and violations would go unchecked, undermining the very fabric of governance and civil society.

Interest payable under Income Tax Act

Sections 234A, 234B, and 234C of Income Tax Act, 1961 deal with different scenarios where interest is charged on tax liabilities in India. Taxpayers need careful planning to pay taxes and file their returns on time. One must pay hefty fines if one fails to comply with the tax rules and misses the due dates for tax payment and filing. The penalties are calculated as interest on your outstanding tax amount based on Section 234 of the Income Tax Act, 1961.

Key Takeaways

- Failure to meet tax return deadlines leads to interest penalties under Section 234A of Income Tax Act 1961.
- Taxpayers with a tax liability of ₹10,000 or more in a financial year must pay advance tax in quarterly installments.
- Taxpayers can pay advance tax in four installments, and failure to do so attracts penalty interest under Section 234C.
- To avoid penalty payments, you must file returns on time, meeting the specified deadlines to avoid penalties under Sections 234A, 234B, and 234.

Section 234A of Income Tax Act applies to the late filing of income tax returns. The interest rate of 1% per month or part of a month on the outstanding tax amount is applied. Section 234B applies to default in payment of advance tax installments and comes with an interest rate of 1% per month or part of a month on the outstanding advance tax installment. Section 234C applies to the failure to pay tax liability even after assessment by the Income Tax Department. It imposes a tax at the interest rate of 12% per annum on the outstanding tax liability.

Types of Interests Imposed Under Section 234

The Income Tax Act, Section 234, deals with different interest charges levied for late filing or late payment of taxes. Here's a breakdown of the three main types of interest imposed under this section:

Section 234A of Income Tax Act

Each year, the Income Tax Act sets specific deadlines for filing tax returns (Section 139). Failing to meet these deadlines has serious repercussions, including potential interest penalties under Section 234. In addition, you will have to pay an interest of 1% or part of the month on the unpaid tax amount. The interest will be levied for the period from the due date for filing your return until the date when you file it.

Interest Rates Under Section 234A

The interest rate under Section 234A of Income Tax Act applies to delays in filing your income tax return. Incentives are assessed under Section 234A for late filing of an income tax return. On the unpaid tax balance, interest is charged at a rate of 1% per month or a fraction thereof. For each month or fraction of a month that your tax return is late, the taxpayer is responsible for paying a simple interest charge of 1%.

Duration of Interest Levy

You start accumulating interest under Section 234A if you do not file your income tax return by the due date. This interest keeps adding up every day until you finally file your return. If you have not filed your return at all, the interest keeps accruing until the Income Tax Department completes your tax assessment under Section 144.

For example, you fail to file the tax return and have to pay ₹1,00,000 as tax. You pay and submit your ITR three months after the stipulated date. The 1% simple interest for those three months on the due amount of ₹1,00,000 will be:

1,00,000 X 3% = ₹3,000

Hence, you will have to pay ₹1,03,000.

Section 234B of Income Tax Act

234B section restricts the penalty imposed in case of delays in paying advance tax. Advance tax involves paying your payable tax amount in quarterly installments on due dates defined by the income tax department. You must pay advance tax if your tax liability in a financial year amounts to ₹10,000 or more.

Taxpayers who need to pay advance tax include business owners, salaried employees, and self-employed professionals. However, taxpayers opting for tax calculation on income from businesses having 8% turnover on a presumptive basis are exempt from paying advance tax.

What is the Meaning of Advance Tax?

Advance tax means the income tax that is paid in advance instead of paying a lump sum amount at the end of the financial year. It is also known as the "pay-as-you-earn" scheme, as the tax is paid as and when the income is earned. This system is designed to ensure a continuous flow of revenue to the government and to spread out the tax burden for taxpayers over the year.

Interest Rates Under Section 234B

Section 234B imposes interest of 1% per month or a fraction thereof for failure to pay advance tax. Simple interest is the nature of interest. Put another way, the taxpayer is responsible for paying simple interest at a rate of 1% per month or a fraction for failing to pay advance tax. Interest under this section applies if your payable tax amount after paying TDS exceeds ₹10,000, but you did not pay any advance tax. The advance tax you paid is less than 90% of your 'assessed tax.'

In either of these cases, you have to pay 1% interest on your assessed tax amount, rounded off to the nearest hundred, less the advance tax you already paid.

For example, if your total tax liability for the current financial year amounts to ₹2,00,000 after all deductions and exemptions. The following scenarios will arise:

Scenario A:

TDS of ₹1,20,000 was deducted from this sum:

Your assessed tax is ₹(2,00,000 –1,20,000) = ₹80,000.

Hence, you had to pay at least 90% of this balance amount of ₹80,000 as advance tax, which equals ₹72,000.

But you paid only ₹50,000 within the last payment date and the remaining ₹30,000 five months after the deadline.

Therefore, as per Section 234B, you must pay penalty interest on your assessed tax amount of ₹80,000 minus the ₹50,000 advance tax you paid.

Hence, your penalty equals to ₹(80,000 – 50,000) X 1% X 5 = ₹1,500.

Scenario B:

You paid no advance tax at all:

Your penalty would be ₹80,000 X1% X 5 = ₹4,000.

Scenario C:

No TDS has been deducted, and you failed to pay any advance tax as well:

You must pay ₹2,00,000 X 1% X 5 = ₹10,000.

Scenario D:

Your income was not subject to TDS, therefore

Your payable tax is ₹2,00,000.

90% of this amount is ₹1,80,000. Therefore, the advance tax you paid, ₹50,000, is less than this sum.

Therefore,

1% interest applies to ₹2,00,000 (assessed total tax) – ₹50,000 (advance tax paid) = ₹1,50,000.

Hence, in this case,

penalty = ₹1,50,000 X 1% X 5 = ₹7,500.

Duration of Interest Levy for Section 234B

Interest under section 234B is assessed beginning on the first day of the assessment year (often on April 1) and continuing until the date on which section 143(1) income is determined or until a regular assessment is conducted. Interest is charged on the differential amount from the first day of the assessment year until the date of assessment or re-computation if the income is increased due to the assessment or re-computation.

Section 234C of Income Tax Act and Interest Rates Under it

The tax authorities try to relax the income tax burden through various tax reliefs and facilities. One such facility is the convenience of paying advance tax in four installments spread over the financial year. However, if you default, you will have to pay penalty interest on the deferred payment under Section 234C.

Interest is assessed under section 234C at 1% per month or a fraction of a month for failure to pay advance tax installments on time. If an individual's advance tax installments are not paid in full or are paid late, the taxpayer is responsible for paying simple interest at a rate of 1% per month or a fraction thereof.

Duration of Interest Levy

If the final installment is not paid in full, interest under section 234C is assessed for a month, and if the first, second, and third installments are not paid in full, interest is assessed for three months.

The tax department has assigned the following schedule for the payment of advance tax:

Due Date	Advance Tax Payable for all Taxpayers Other than Assesses Opting for Presumptive Income Under Section 44AD	Advance Tax Payable for Taxpayers Opting for the Presumptive Income Scheme Under Section 44AD
June 15	Up to 15% of the total amount payable	NIL
September 15	Up to 45% of the total amount payable	NIL
December 15	Up to 75% of the total amount payable	NIL
March 15	Up to 100% of the total amount owed	100% advance tax payable

Situations Where Section 234C is Applicable

If you default, the penalty interest you must pay is 1% of the outstanding advance tax amount. The interest is calculated from the respective cut-off dates for every financial quarter until you pay the due amount.

Interest calculation under Section 234C for taxpayers not opting for the Section 44AD presumptive income scheme:

Outstanding Amount	Rate of Interest Chargeable Per Month (Simple Interest)	Period of Interest	Amount on which Interest is Levied
Less than 15% of the tax payable	1%	From the 1st day after 15th June until the date of payment	15% of the tax payable LESS any advance tax already paid before 15th June
More than 15% but less than 75% of the tax payable	1%	From the 1st day after 15th September until the date of payment	75% of the tax payable LESS any advance tax already paid before 15th September
More than 75% of the tax payable	1%	From the 1st day after 15th December until the date of payment	Remaining tax payable (100% - any advance tax already paid)

For example, suppose you must pay ₹2,00,000 in advance tax. It is payable in four installments, as described in the table above. But you pay only part of the actual amounts due per installment. Then, the penalty charged will be as follows:

Payment Due Date	Advance Tax Payable	Actual Tax Paid	Deficit (Cumulative)	Penalty Applicable (Cumulative)
June 15	30,000	10,000	20,000	@1% X 3 X 20,000 = 600
September 15	90,000	50,000	40,000	@1% X 3 X 40,000=1,200
December 15	1,50,000	70,000	80,000	@1% X 3 X 80,000=2,400
March 15	2,00,000	1,00,000	1,00,000	1% X 1 X 1,00,000=1,000

Therefore, the total interest payable is ₹5,200. However, you need not pay any penalty if any deficit crops up due to an incorrect estimation of capital gains or speculative income from the lottery, gambling, etc.

How to Avoid Penalty Payments?

To avoid penalty payments for sections 234A, 234B, and 234C of Income Tax Act, here are some key steps:

For Section 234A

- File your return on time: This is the most crucial step. Know your due date based on your income and filing category (individual, company, etc.). Aim to file before the deadline to avoid any interest charges.

- Revised return if needed: If you discover errors after filing, submit a revised return before the assessment is completed. This can help minimize interest if there's any outstanding tax liability.

For section 234B

- Pay advance tax in full: If your tax liability for the year is expected to be ₹10,000 or more, you must pay advance tax in installments throughout the financial year. Ensure you pay the complete advance tax amount or at least 90% of your estimated tax liability to avoid interest charges under this section.

- Track your tax liability: Throughout the year, estimate your total tax liability for the financial year. This will help you determine the required advance tax installments. Consulting a tax advisor can be helpful for accurate estimations.

For Section 234C

- Avoid deferment: This option attracts higher interest rates than regular advance tax. Use it only if absolutely necessary.

- Pay deferred amount promptly: If you have opted for deferred payment, ensure you pay the remaining advance tax and applicable interest by the stipulated date (1st October).

Fee for default in furnishing return of income

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 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.

Loss of Carry Forward of Losses

The **carry forward of losses** under the Income Tax Act, 1961, is strictly regulated by filing timelines. If the Income Tax Return (ITR) is not filed on time, the ability to carry forward certain types of losses may be lost. Here's a detailed explanation:

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1. Types of Losses and Carry Forward Rules

The treatment of losses depends on the nature of the loss:

a. Losses That Can Be Carried Forward Only If ITR Is Filed on Time

- **Loss from Business or Profession**: Includes both speculative and non-speculative losses. If the ITR is not filed within the due date, these losses cannot be carried forward.
- **Loss under the Head "Capital Gains"**: Short-term and long-term capital losses can be carried forward only if the return is filed on time.
- **Loss from "Owning and Maintaining Race Horses"**: The loss is allowed to be carried forward only if the ITR is filed on time.

b. Losses That Can Be Carried Forward Even If ITR Is Filed Late

- **Loss under the Head "Income from House Property"**: This can be carried forward even if the ITR is filed after the due date (up to 8 subsequent years).
- **Unabsorbed Depreciation**: Not considered a "loss" in the strict sense and can be carried forward without filing the ITR on time.

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2. Implications of Late Filing on Losses

- If the ITR is filed after the due date, losses in categories requiring timely filing will **lapse** and cannot be set off in subsequent years.
- The taxpayer loses the potential tax-saving benefit of setting off losses against future income.

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3. Exceptions

- Losses can still be carried forward in cases where the delay in filing the return is due to a **genuine and reasonable cause**, subject to approval by the tax authorities or appellate body.
- **Revised Returns**: If the original return was filed on time, losses can still be carried forward if the return is revised later.

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4. Relevant Sections

- **Section 139(1)**: Mandates filing of the return by the due date to carry forward certain losses.
- **Section 80**: Specifies the conditions for carrying forward and set off of losses.

Summing it Up

Taxpayers must embrace diligence to avoid the pitfalls of Sections 234A, 234B, and 234C. Timely filing, full tax payments, and adherence to prescribed advance tax schedules are essential. Filing revised returns when necessary and avoiding unnecessary deferment can safeguard against penalties. As taxpayers navigate these complexities, sticking to these key steps becomes not just a necessity but vital for fiscal responsibility.

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.

What is Under Reporting of Income Under Section 270A?

Under-reporting income occurs when a person discloses a smaller amount than their actual income. This can happen for various reasons, such as poor record-keeping or factual mistakes in calculating income.

The following are considered to be under-reporting of income under the Income-tax Act:

Failure to file or disclose any income or part of income in the books of account or return of income.

A Return of Income has been filed, and the Income assessed by the Income Tax (IT) department is higher than the income disclosed under the ITR.

No return of income has been filed, and the income assessed by the IT department is more than the Basic Exemption limit.

If the income exceeds the income declared or computed under the special tax sections (like 115JB or 115JC), then it would be considered as computed by the IT department.

A person would be considered to be under reported his income if the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

However, what needs to be noted is that even careless mistakes or gaps in reporting of income may attract penalty under Section 270A, thereby giving importance for careful and accurate income disclosure.

What is Misreporting of Income Under Section 270A?

Misreporting of income includes giving wrong or faulty information related to the type, source or measurement of income. This can consist of falsifying income details, claiming benefits or breaks that are not legally permitted, or giving false information about the income sources.

Misreporting of income can occur in the following situations:

Misrepresenting the type or source of income, such as treating business income as stock returns or vice versa.

Providing wrong or missing information related to income measurement, such as understating costs or taxes.

Claiming expenditure for which there is no proof or evidence.

Failing to record any receipt in the books of account having an effect on total income.

Not reporting any international or certain domestic transactions as required by the Income Tax Act.

Penalty Under Section 270A of the Income Tax Act

If the Assessing Officer confirms that a person has underreported or misreported their income and a penalty under Section 270A of the Income Tax Act is to be charged. The penalty will be charged as follows:

For under-reporting income: The penalty will be equal to 50% of the tax due on the under-reported income.

For misreporting of income: The penalty will be equal to 200% of the tax due on the misreported income.

It is important to remember that the penalty under Section 270A will be in addition to the tax due on under-reported or misreported income.

The penalty for misreporting earnings (200%) applies when you deliberately provide false or misleading records. Intentional deceit is seen as a more serious offence than simple non-disclosure or unintended mistakes.

Wilful attempt to evade tax, etc.

276C. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

(*i*) in a case where the amount sought to be evaded exceeds [75][twenty-five] hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(*ii*) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to [76][two] years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to [76][two] years and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(*i*) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(*ii*) makes or causes to be made any false entry or statement in such books of account or other documents; or

(*iii*) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or (*iv*) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]


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