

## **Dealing With TDS? Know About Some Offences, Penalties**

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If you are an employer, whether in private or public sector, you have many more responsibilities under the Income Tax Act with regard to Tax Deducted at Source (TDS). Certain formalities under the law need to be followed strictly and failure to complete them in time invites penalties. Knowledge about them is certainly going to your advantage. Some of the penalties for failure to do certain formalities are produced below:

#### ***Failure to apply for TAN***

If a person liable to deduct tax at source on any of the specified payments fails to apply for a TDS Account

Number (TAN), he shall be liable to pay penalty extending up to Rs. 10,000 (Rs. 5,000 up to 31.05.2001).

#### ***Failure to quote TAN in challans***

Also, if a person fails to quote TAN in challans, certificates and statements, he shall be liable to pay penalty which may extend up to Rs. 10,000 (Rs. 5,000 up to 31.05.2001).

#### ***Failure to Deduct TDS***

If a person fails to deduct TDS as required under any of the provisions of the Act, then:

- (a) The person responsible for deduction is treated as 'assessee In default'.
- (b) He shall be liable to pay by way of penalty a sum equal to the amount which he failed to deduct.
- (c) He shall be liable to pay simple interest @ 15% p.a. on amount of tax liable to be deducted.

#### ***Failure to Deposit TDS***

*If a person, after deducting TDS, fails to deposit the same, then ;*

- (a) The person responsible for deduction is treated as 'assessee In default'.*
- (b) He shall be liable to pay by way of penalty a sum equal to the amount which he failed to deposit.
- (c) He shall be liable to pay simple interest @ 15%p.a. till the date of actual deposit in the government treasury.
- (d) Rigorous punishment for a term which shall not be less than three month buy may extend up to seven years
- (e) Amount of tax deducted together with interest for delayed payment shall be charged upon all the assets of the person.

#### ***Failure to issue TDS Certificate***

Failure to issue TDS certificate attracts penalty of Rs. 100 per day for the period of default. However, the amount of penalty shall not exceed the amount of tax deductible at source.

#### ***Failure to submit Declaration in Form 15F/H u/s 197A***

If the payer fails to submit a copy of declaration of non deduction of TDS u/s 197 A furnished by the

payee, to the CIT, then the payer shall be liable to a penalty of Rs. 100 per day of default, subject to a fails to pay tax, then he shall be maximum of the amount of liable to pay simple interest at tax deductible at source. 15% p.a. on the amount of

### ***Failure to submit TDS Return***

Failure to submit TDS return attracts penalty of Rs. 100 per day for the period of default subject to a maximum penalty equivalent to, the amount of TDS

### ***Interest Liability***

If any person, i.e. the principal officer or company does not deduct or, after deducting, falls to pay tax, then he shall be liable to pay simple interest at 15% p.a. on the amount of such tax. The interest shall be calculated from the date on which such tax was deductible to the date on which such tax is actually paid.

- (i) Mandatory nature : Imposition of interest is mandatory and payment of tax subsequently by recipient is not relevant.
- (ii) Waiver of interest : Payment of interest is mandatory. This is not the penal provision. Therefore, question of waiver of interest does not arise whether the default was unintentional or otherwise.
- (iii) Opportunity of being heard: Opportunity of being heard is necessary before levy of interest.
- (iv) Time limit: Proceedings u/s 201(1A) are expected to be finalised before the assessment is complete.

### ***Penalty Procedure***

- (a) Penalty shall not be imposed unless the assessee has been heard or has been given opportunity of being heard.
- (b) Penalty shall not be imposed if assessee proves that there was reasonable cause for failure.
- (c) For non deduction of tax, penalty proceedings can be initiated under Section 221 and/or 271 C. However, the quantum of penalty under both the sections together cannot exceed the tax in arrears.
- (d) Penalty proceedings in respect of above defaults have to be completed within six months from the end of the month in which penalty proceedings were initiated.
- (e) For initiation of penalty proceedings there is no specific time limit. Prosecution

If a person fails to pay to the credit of the Central Government the tax deducted at source by him, then in addition to penalties, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and fine.

#### **(i) Important Points to be Noted:**

- (a) Assessee can be prosecuted for delayed payment as well as non- payment of tax deducted;
- (b) There is no escape from prosecution even if tax is deposited before initiation or during the prosecution proceedings;  
The tax deducted at source has to be deposited within the stipulated period. The offence is complete on the due date on which the amount should have been deposited but is not deposited. Late deposit will not absolve the accused. The fact that income-tax authorities charged interest on such late deposit and did not impose penalty will not absolve the accused from liability for prosecution.
- (c) Responsibility to deposit tax deducted at source is an absolute liability.

(ii) Scope of Prosecution: Prosecution is confined to cases of failure to pay tax deducted at source within prescribed time limit. Prosecution proceedings cannot be initiated in case of failure to deduct tax at source or failure to furnish return/declaration or failure to issue TDS certificate.

If the assessee did not lack in bonafides & acted diligently then he can be absolved of prosecution.

(iii) Continuing Offence: Failure to deposit the tax deducted at source is a Continuing offence and would terminate only when the deposit of tax deducted at source is made.