

ADVANCE TAX

SECTION 4: TAX PAYABLE BY AN ASSESSES SHALL BE PAID IN ADVANCE

Who is liable to pay advance tax (Section 208)	When the advance tax-payable by any person for the assessment year Immediately following the financial year is Rs.5,000 or more.	
Amount of Advance Tax payable	Tax on Total Income Less: Rebate and relief Add: Surcharge Less: Tax deducted at source and Tax collected at source.	
Due Date of Installment in a relevant previous year	Amount payable by Corporate Assesses	Amount payable by Non-Corporate Assesses
On or before June 15	15% of Advance tax payable	Not Applicable
On or before September 15	45% of Advance tax payable	30% of Advance tax payable
On or before December 15	75% of Advance tax payable	60% of Advance tax payable
On or before March 15	100% of Advance tax payable	100% of Advance tax payable

NOTE:

- Any amount paid by way of advance tax on or before 31st March of the relevant previous year shall also be treated as advance tax paid during the financial year ending on that day.
- If the due date of payment of advance tax is a banking holiday, the Assessee can make the payment on the next immediately following working day. In such cases, no interest shall be leviable u/s 234B or 234C.

COLLECTION OF TAX

PROCEDURE FOR PAYMENT OF TAX UNDER A DEMAND NOTICE ISSUED U/S 156

- Due date for payment of tax [Section 220(1)]:** Any amount of tax other than advance tax specified as payable in a notice of demand u/s 156 shall be paid within 30 days.
- Reduction of time limit:** If the Assessing Officer has any reason to believe that it would be detrimental to revenue if the full period of 30 days as aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum is to be paid within any period less than 30 days.
- Extension of time limit:** The Assessing Officer may extend the time on the basis of an application made by the Assessee to pay the tax demanded u/s 156(1) or allow payments by installments subject to conditions as he may think fit to impose.

CIRCUMSTANCES OF ASSESSEE BE TREATED AS DEEMED TO BE IN DEFAULT

- Assessee deemed to be in default [Section 220 (4)]:** The Assessee shall be deemed to be in default if the amount specified in the notice u/s 156 is not paid within the time allowed or within such extended time u/s 220(3).
- Amount of default [Section 220(5)]** Where the payment is allowed by instalments, the amount of default shall be the amount outstanding. All the other instalments shall be deemed to be in default on the same date as the instalment actually in default.
- Circumstances under which the Assessee is not deemed to be in default:**
 - If the Assessee presents an appeal to the CIT (Appeals), the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose, treat the Assessee as not being in default as long as the appeal is not disposed of. **[Section 220(6)]**

- (b) Where the income of an Assessee arising in India is assessed in a Country where the laws prohibit or restrict the remittance of money to India, such an Assessee shall not be treated as Assessee in default in respect of tax due on the income which cannot be brought into India. **[Section 220(7)]**
- (c) Where the demand in dispute has arisen because the Assessing Officer has adopted an interpretation of law in respect of which there are conflicting High Court decisions and the Department has not accepted the interpretation of the Court, the Assessee shall not be deemed in default. **[Circular No.530/6-3-1989]**
- (d) Where the demand in dispute relates to issues which are decided earlier in the Assessee's favour by an appellate authority / Court in his own case (say, for preceding assessment years), the Assessee shall not be deemed to be in default to the extent of tax liability relatable to such disputed points. **[Circular No.530/6-3-1989]**

CONSEQUENCES OF NON-PAYMENT OR DELAY IN PAYMENT AT TAX AS DEMANDED BY NOTICE U/S 156

Interest for belated **payment** of tax: **[Section 220(2)]**

1. Interest: If the amount demanded as per notice u/s 156 is not paid within the period specified in that notice, the Assessee shall be liable to pay a simple interest @ 1 % per month or part of a month.
2. **Period of Interest:** The period of interest shall be from the day immediately following the end of the period mentioned in the notice ending with the day on which the amount is paid,
3. **Penalty: [Section 221]**
 - (a) Where the Assessee is in default or deemed to be in default in making payment of tax, the Assessing Officer may direct the Assessee to pay a penalty not exceeding the amount of tax in arrears,
 - (b) Penalty may be levied even if the tax is paid belatedly but before the levy of such penalty.
4. **Opportunity to Assessee:** The Assessee shall be given a reasonable opportunity of being heard.
5. **No penalty:** In case the Assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied.
6. **Refund of penalty:** In case the amount of tax was wholly reduced in any final order, then the penalty levied shall be cancelled and amount of penalty paid shall be refunded.

RECOVERY OF TAX

CERTIFICATE OF RECOVERY U/S 222(1)

1. **Certificate of Recovery (Section 222(1)):** When an Assessee is in default or deemed to be in default in payment of tax, the Tax Recovery Officer may draw up a statement under his signature in Form No.57 specifying the amount of arrears due from the Assessee. Such a statement is called Certificate.
2. The Assessee cannot dispute the correctness of any certificate drawn up by the TRO on any ground. **[Section 224]**
3. It is lawful on the part of the TRO to cancel the certificate for any reason he thinks necessary so to do or to correct any clerical or arithmetical mistake therein. **[Section 224]**

MODES OF RECOVERY OF TAX UNDER THE PROVISIONS OF THE ACT, BY THE TAX RECOVERY OFFICER

1. **Modes of Recovery of tax [Section 222]:** In accordance with the rules laid down in the Second Schedule, the amount specified in the certificate may be recovered by any one or more of the following modes -
 - (a) Attachment and sale of the Assessee's movable property,
 - (b) Attachment and sale of the Assessee's immovable property,

- (c) Arrest of the Assessee and his detention in prison,
 - (d) Appointing a receiver for the management of the Assessee's movable and immovable properties.
2. **Movable and immovable property includes** any property which has been transferred directly or indirectly by the Assessee to his spouse or minor child or son's wife or son's minor child for inadequate consideration and the same is held by such persons.
 3. **Property held by major:** Any movable property or immovable property transferred to the minor child or son's minor child shall be treated as the Assessee's property even after the minor attains majority.
 4. The Tax Recovery Officer may take action u/s 222(1) for recovery of tax arrears even though any other proceedings for recovery of arrears have been taken,

OTHER MODES OF RECOVERY [Section 226]:

1. **Applicability:** Section 226 is applicable in the following situations:
 - (a) No certificate u/s 222 has been drawn by the Assessing Officer
 - (b) Where a certificate has been drawn u/s 226, the Tax Recovery Officer, without any Prejudice to the modes of recovery specified in Section 222, can recover by any one or more of the other modes u/s 226.
2. **Modes of Recovery:**

Mode	Tax arrears due from	Arrears of tax to be deducted by	payment Of sum deducted	Other Provisions
Attachment Of Salary [Section 226(2)]	Salaried employee	Person paying salary to such person	To the credit of Central Government	Not applicable where the salary is exempt from attachment under the Code of Civil Procedure
Garnishee Order (Section 226(3)]	Any Assessee	Any Person from whom money is due or may become due to the Assessee or any person who holds any money for the Assessee jointly with any other person	To the credit of Central Government	Refer Pt.3 Below
Recovery from money belonging to Assessee lying in Courts custody [Section 226(4)]	Assessee whose money is in Courts custody	Court	To the AO or TRO to the extent of liability	—
Recovery of arrears of tax of tax by distraint and sale [Section 226(5)]	Any Assessee	Not Applicable	Not Applicable	It should be authorized by the CIT/CCIT by general or special order. The distraint or sale shall be made in the manner as that for an attachment and sale of movable Property attachable by actual seizure

3. Other Provisions for issue of Garnishee order;

- (a) **Notice:** The copy of the notice issued by the Assessing Officer or the TRO is to be forwarded to the Assessee at his last known address. In case of joint holders, the copy has to be sent to all the joint holders.
- (b) **Compliance:** Every person to whom a notice is issued by the Assessing officer is bound to comply with such notice.
- (c) **Garnishee order has no effect** if the person against whom the garnishee order is issued, holds no money for or on account of the defaulting Assessee or if he has no liability to pay any sum to the Assessee.
- (d) **Liability for false particulars:** But if later discovered that the person's statement in this regard was false in any material particulars, he will be personally liable to the extent of his own liability to the Assessee so discharged, or to the extent of the Assessee's liability for any sum due under the Act, whichever is less.
- (e) **Amendment of Garnishee order:** The garnishee order may be amended or revoked at any time or from time to time by the Assessing Officer or TRO. Alternatively, the Assessing Officer may extend the time for making any payment under the garnishee order.
- (f) **Discharge of liability:** A receipt for any amount paid in compliance with the garnishee order shall be granted to the person so paying, by the Assessing Officer or the TRO. Such a person is fully discharged from his liability to the Assessee to the extent of the amount so paid.
- (g) **Failure to discharge liability:** Where the person who is served with a garnishee order fails to make payment in pursuance thereof he shall be deemed to be an assessee in default. Proceedings can be initiated for the realization of the amount in the manner laid down u/s 222 to 225.
- (h) **Non-compliance of Garnishee order;** If any person discharges any liability to the Assessee after the receipt of garnishee order, he shall be personally liable to the Assessing Officer or TRO to the extent of his own liability to the Assessee so discharged or to the extent of the Assessee's liability for any sum due under this Act, whichever is less.
- (i) **Validity of subsequent claims:** Any claim arising in respect of the property after the date of the notice shall be void against the demand in the notice.

PROCLAMATION MADE UNDER THE ACT:

Clause 39 and 50 to the Second Schedule:

1. Proclamation shall be made by the beat of drum or other customary mode:
 - (a) In the case of property attached by actual seizure In the village in which the property was seized If the property is seized in a city or town, in the locality in which it was seized At such other places as the Tax Recovery Officer may direct.
 - (b) In the case of property attached otherwise than by actual seizure, in such places as the Tax Recovery Officer may direct.
2. A copy of the proclamation shall be affixed on the notice board of the office of the Tax Recovery Officer and at a conspicuous part of the property.

WHO IS COMPETENT TO TAKE ACTION U/S 222? [SECTION 223]

1. The Tax Recovery Officer within whose jurisdiction the Assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situated.
2. The Tax Recovery Officer within whose jurisdiction the Assessee resides or any movable or immovable property of the Assessee is situated.

WHO HAS THE POWER TO ASSIGN JURISDICTION OF TAX RECOVERY OFFICERS?

The jurisdiction of Tax Recovery Officer is assigned under the order or directions issued by the Board or by the Chief Commissioner or Commissioner who is authorized in this behalf by the Board in pursuance of Sec. 120.

UNDER WHAT CIRCUMSTANCES CAN MORE THAN ONE TAX RECOVERY OFFICER EXERCISE JURISDICTION?

1. Conditions to be satisfied:

- (a) The Assessee has property within the jurisdiction of more than one Tax Recovery Officer.
- (b) The Tax Recovery Officer by whom the certificate is drawn up -
 - is not able to recover the entire amount by sale of the property within his jurisdiction, or
 - is of the opinion that for speedy recovery of arrears amount under this Chapter, it is necessary to do so.

2. Procedure:

- (a) The TRO may send a certificate or copy of the certificate certified in Form No.57 to the Officer under whose jurisdiction the Assessee resides or has property.
- (b) The Tax Recovery Officer in the other jurisdiction shall also proceed to recover the amount as if the certificate had been drawn up by him.

UNDER WHAT CIRCUMSTANCES CAN THE TRO STAY THE RECOVERY PROCEEDINGS? [SECTION 225]

1. **Grant of Time:** The TRO can grant time for payment of any tax. In such case, he shall **stay the** proceedings of recovery of such tax until the expiry of the time so granted.
2. **Pendency of Appeal:** The order giving rise to a demand of tax for which the certificate has been drawn up is modified in appeal or other proceedings under this Act and the demand is reduced by that order but the order is the subject matter of further proceedings under this Act, then the TRO shall stay the recovery of such part of the amount as pertains to the said reduction for the period for which the appeal/other proceedings remain pending.
3. **Amendment / Cancellation:** When the subject matter of such appeal and other proceedings become final and conclusive, the tax officer shall amend or cancel the certificate.

VALIDITY AS WELL AS CONSEQUENCES OF THE ALIENATION OF ASSETS OF A BUSINESS BY AN ASSESSEE DURING THE PENDENCY OF A PROCEEDING UNDER THE INCOME-TAX ACT [SECTION 281]

1. **Alienation of assets:** No assessee shall make a sale or mortgage or gift or exchange or any other mode of transfer of any asset in favour of any other person.
2. **Meaning of asset:** Asset means Land, Building, Plant and machineries, Shares and Securities, Fixed Deposits in Bank other than stock-in-trade.
3. The charge created or the transfer made shall be void against any claim in respect of tax or any other sum payable.
4. **Applicability:**
 - (a) During the pendency of any proceedings or
 - (b) After the completion of proceedings but before service of notice under Rule 2 of Second Schedule and
 - (c) The tax payable exceeds Rs.5,000 and
 - (d) The value of the asset charged or transferred exceeds Rs.10,000.

5. **Exceptions:**

- (a) The transfer is made for adequate consideration and without any notice of proceedings or pendency of Lax.
- (b) The previous permission of Assessing Officer is obtained.
- (c) The tax payable does not exceed Rs.5,000 and the value of the asset does not exceed Rs. 10,000.

WHEN DOES THE ASSESSING OFFICER RESORT TO A PROVISIONAL ATTACHMENT? [SECTION 281B]

1. Applicability:

- (a) During the pendency of any proceeding for the assessment or reassessment of income which has escaped assessment.
 - (b) The Assessing Officer is of the opinion that for the purpose of protecting the interest of the revenue, it is necessary to do so.
- 2. Procedure **for provisional** attachment: Prior permission of CCIT / CIT / DGIT / DIT shall be obtained in writing.
 - 3. The order of attachment shall be in writing in the manner provided in the Second Schedule.
 - 4. The attachment shall be valid for a period of six months from the date of the order and it may be extended with the prior approval of CCIT / CIT / DGIT / DIT after recording the reasons in writing.
 - 5. The aggregate period of extension shall not exceed two years.