



## Offences liable to prosecution

Apart from levy of penalty for various defaults by the taxpayer, the Income-tax Law also contains provisions for launching prosecution for offences committed by the taxpayer. In this part you can gain knowledge about offences in respect of which prosecutions can be launched under the Income-tax Law. For provisions relating to punishment corresponding to the offences, refer tutorial on “Prosecutions and punishment under the Income-tax Law”.

### 1. Removing, parting or otherwise dealing with seized assets

Section 132 empowers the tax authorities to initiate search proceedings at the premises of the taxpayer. During the course of search the tax authorities are also empowered to seize money, bullion, jewellery or other valuable article or thing found from the taxpayer. Generally, the seized money, bullion etc. is taken by the tax authorities in their custody (i.e., in the custody of the Government) but if it is not possible or practicable for the tax authorities to take physical possession of the same or to remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature.

In such a case, second proviso to section 132(1) empowers the tax authorities to seize the asset by keeping the asset at the place of the taxpayer only. In such case, the asset will be seized by the tax authorities without physically taking the assets with them. For this purpose, the authorised officer would serve an order on the owner or the person who is in immediate possession or control of the asset that he shall not remove, part with or otherwise deal with the asset, except with the previous permission of such authorised officer. This action of the authorised officer shall be deemed to be a seizure of such valuable article or thing under the Income-tax Act.

Many times, during the course of search it may not be practicable to seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to section 132(1) (as discussed above). In such cases, as per section 132(3), the tax authorities may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer. Such officer may take such steps as may be necessary for ensuring compliance with the provisions of section 132(3).

Contravening above discussed provision shall attract prosecution under section 275A.

### 2. Failure to provide necessary facility to inspect books of account or other documents tax authorities conducting search

In a case where a search is conducted by the tax authorities, the tax authorities as per Section 132(1)(iib) may require any person who is found to be in possession or control of any books of account or other



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documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of [section 2](#) of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents. Person who fails to provide such facility shall be punishable with rigorous imprisonment and fine under section 275B.

### **3. Removal, concealment, transfer or delivery of property to prevent tax recovery**

If a taxpayer fails to discharge his tax liability, then the tax authority can recover the tax dues from him by attaching his movable and immovable property. If the taxpayer fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being attached for recovery of tax, then prosecution proceedings shall be initiated under section 276.

### **4. Failure by the liquidator of a company**

As per section 178(1) every person:

- (a) who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise; or
- (b) who has been appointed the receiver of any assets of a company,

shall, within 30 days after he has become such liquidator give notice of his appointment to the tax authority who is entitled to assess the income of the company.

As per section 178(3) the liquidator:-

- (a) shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer in this regard; and
- (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Nothing contained above shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law for priority payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.

Section 276A provides for prosecution in the case of failure to give notice or setting aside the sum in compliance with the above provisions of sections 178(1)/178(3) as well as prosecution in case the liquidator parts with any of the assets of the company or the properties in his hands in contravention of the provision of section 178(3).



## **5. Failure to pay TDS or DDT to the credit of the Government**

If a person fails to pay to the credit of the Central Government: (i) the tax deducted by him (i.e., TDS) or (ii) the dividend distribution tax (DDT) as per section 115-O(2) or (iii) tax in respect of winning from lottery or crossword puzzle as per section 194B, then such person shall be punishable with rigorous imprisonment and with fine under section 276B.

## **6. Failure to pay the tax collected under the provisions of section 206C**

Section 206C governs the provisions relating to collection of tax at source. If a person fails to pay the tax collected by him to the credit of the Government, then he shall be prosecuted as per section 276BB.

## **7. Wilful attempt to evade tax, penalty or interest**

If a person makes wilful attempt to evade tax, penalty or interest then prosecution proceedings shall be launched against such person under section 276C.

## **8. Wilful failure to furnish return of income**

If a person makes wilful default in furnishing of return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A then he shall be prosecuted under section 276CC.

However, the taxpayer shall not be prosecuted under this section for failure to furnish in due time the return of income under section 139(1), if:

- (a) the return is furnished by him before the expiry of the assessment year; or
- (b) the tax payable by him on the total income determined on regular assessment, as reduced by advance tax and TDS, if any, does not exceed Rs. 3,000.

## **9. Wilful failure to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A)**

Section 142(1) deals with the general provisions relating to an inquiry before assessment. 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 and 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.

Section 142(2A) deals with special audit. As per section 142(2A) if the conditions justifying special audit given in section 142(2A) are satisfied, the Assessing Officer may direct the taxpayer to get his accounts audited or re-audited from a chartered accountant as nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.



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Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A). **10.**

**Delivery of false statement**

If a taxpayer makes statement in any verification under the Act or under any rules made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe it to be true, he shall be prosecuted under section 277. **11. Enable any other person to evade any tax, penalty or interest**

If any person (hereafter referred to as the first person) wilfully and with an intent to enable any other person (hereafter referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe it to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person under the Act, then the first person shall be prosecuted under section 277A. **12. Abetment of false return, account, etc.**

if a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be prosecuted under section 278. **13. Disclosure of particulars by public servants**

Section 138(1) deals with disclosure of information by the tax authorities to other officer, authority, etc. Section 138(2) relates to restriction on declaring of information by the public servant. Section 280 provides for prosecution in the case of disclosure of information by the public servant in contravention of section 138(2).

However, no prosecution shall be instituted against a public servant as discussed above except with the previous sanction of the Central Government.

**14. Second and subsequent offences under sections 276B, 276C(1), 276CC, 277 or 278**

The provisions of sections 276B, 276C(1), 276CC, 277 or 278 have already been discussed. Section 278A provides for prosecution in the case of second or subsequent offence under those sections. **15.**

**Punishment in case of offence by a company**

As per section 278B, where an offence under the Income-tax Act has been committed by a company (\*), then every person who, at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.



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However if such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then he shall not be deemed to be guilty of the offence.

Where an offence under the Income-tax Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Where an offence under the Income-tax Act has been committed by a person, being a company, such company shall be punished with fine and every person referred to above or the director, manager, secretary or other officer of the company referred to above, shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

(\*) For the purposes of this section:

(a) "company" means a body corporate, and includes :-

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director" in relation to :-

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof

#### **16. Punishment in case of offence by Hindu Undivided Family**

As per section 278C, where an offence under the Income-tax Act has been committed by a Hindu Undivided Family, the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, the karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Where an offence has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.





### *MCQ on Offences liable to prosecution*

**Q1.** Contravening an order passed by the tax authorities in respect of dealing with seized assets may attract prosecution and can result in imprisonment and fine.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

Section 132 empowers the tax authorities to initiate search proceedings at the premises of the taxpayer. During the course of search the tax authorities are also empowered to seize money, bullion, jewellery or other valuable article or thing found from the taxpayer. Generally, the seized money, bullion etc. is taken by the tax authorities in their custody (i.e., in the custody of the Government) but if it is not possible or practicable for the tax authorities to take physical possession of the same or to remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature.

In such a case, second proviso to section 132(1) empowers the tax authorities to seize the asset by keeping the asset at the place of the taxpayer only. In such case, the asset will be seized by the tax authorities without physically taking the assets with them. For this purpose, the authorised officer would serve an order on the owner or the person who is in immediate possession or control of the asset that he shall not remove, part with or otherwise deal with the asset, except with the previous permission of such authorised officer. This action of the authorised officer shall be deemed to be a seizure of such valuable article or thing under the Income-tax Act.

Many times, during the course of search it may not be practicable to seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to section 132(1) (as discussed above). In such cases, as per section 132(3), the tax authorities may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer. Such officer may take such steps as may be necessary for ensuring compliance with the provisions of section 132(3).

Contravening above discussed provision shall attract prosecution under section 275A.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q2.** No prosecution proceeding will be launched against taxpayer if he has not provided necessary facility to inspect books of account or other documents to tax authorities conducting search..

- (a) True (b) False





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**Correct answer : (b)**

**Justification of correct answer :**

In a case where a search is conducted by the tax authorities, the tax authorities as per Section 132(1)(iib) may require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of [section 2](#) of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents.. Person who fails to provide such facility shall be punishable with rigorous imprisonment and fine under section 275B.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q3.** If the taxpayer, fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein (which can be attached, to recover his tax dues), intending thereby to prevent that property or interest therein from being attached for recovery of tax, then prosecution proceedings shall be initiated against such person under section \_\_\_\_\_.

- (a) Section 275A
- (b) Section 276B
- (c) Section 276
- (d) Section 277

**Correct answer : (c)**

**Justification of correct answer :**

If a taxpayer fails to discharge his tax liability, then the tax authority can recover the tax dues from him by attaching his movable and immovable property. If the taxpayer fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein , intending thereby to prevent that property or interest therein from being attached for recovery of tax, then prosecution proceedings shall be initiated under section 276.

Thus, option (c) is the correct option.

**Q4.** As per section 178(3), the \_\_\_\_\_ of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.

- |                          |                |
|--------------------------|----------------|
| (a) Managing Director    | (b) Manager    |
| (c) Chartered Accountant | (d) Liquidator |

**Correct answer : (d)**

**Justification of correct answer :**

As per section 178(3), the liquidator of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.





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Thus, option (d) is the correct option.

**Q5.** There are no prosecution proceedings under the Income-tax Act for failure to pay to the credit of Central Government a dividend distribution tax (DDT) as per section 115-O(2).

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

If a person fails to pay to the credit of the Central Government: (i) the tax deducted by him (i.e., TDS) or (ii) the dividend distribution tax (DDT) as per section 115-O(2) or (iii) tax in respect of winning from lottery or crossword puzzle as per section 194B, then such person shall be prosecuted under section 276B.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q6.** Prosecution can be launched and the taxpayer can be punished for wilful failure to furnish return of income under section 139(1).

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

If a person makes wilful default in furnishing of return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A then he shall be prosecuted under section 276CC.

However, the taxpayer shall not be prosecuted under this section for failure to furnish in due time the return of income under section 139(1), if:

- (a) the return is furnished by him before the expiry of the assessment year; or
- (b) the tax payable by him on the total income determined on regular assessment, as reduced by advance tax and TDS, if any, does not exceed Rs. 3,000.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q7.** Prosecution can be launched and the taxpayer can be punished if he commits wilful failure to produce before the tax authorities the accounts and documents as demanded under section \_\_\_\_\_.

- (a) 154 (b) 147  
(c) 143(1) (d) 142(1)

**Correct answer : (d)**

**Justification of correct answer :**

Section 142(1) deals with the general provisions relating to an inquiry before assessment. Under section 142(1), the Assessing Officer can issue notice asking the taxpayer to file the return of income, if he has





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not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and 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.

Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1)

Thus, option (d) is the correct option.

**Q8.**As per section \_\_\_\_\_, the tax authorities can direct the taxpayer to get his accounts audited from a Chartered Accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

- (a) 153A (b) 148  
(c) 142(2A) (d) 139

**Correct answer : (c)**

**Justification of correct answer :**

As per section 142(2A), the Assessing Officer may direct the taxpayer to get his accounts audited or re-audited from a chartered accountant as nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.

Thus, option (c) is the correct option.

**Q9.**No prosecution proceedings can be launched against a person who abates or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income which is false and which he either knows to be false or does not believe to be true or to commit an offence under section 276C(1).

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be prosecuted under section 278. Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q10.**Prosecution against a public servant is to be instituted with previous sanction of \_\_\_\_\_ under section 280(2).

- (a) Central Government (b) State Government  
(c) Chief Commissioner (d) Assistant Commissioner



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**Correct answer : (a)**

**Justification of correct answer :**

Prosecution can be launched against a public servant for disclosure of particulars by him in contravention of section 138(2) which can result in imprisonment and fine [prosecution to be instituted with previous sanction of Central Government under section 280(2)].

Thus, option (a) is the correct option.

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