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SERIES 517

# Penalty/Fine on Late filing of e-form alongwith additional Fees

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It's a common question amongst many professionals that *"If company files e-form after due date whether there are any consequences except additional fees?"*

**In this editorial, author will strive to answer the following:**

- Whether Additional Fees is fine or Penalty?
- Provisions dealing with late filing of e-form.
- Consequences on late filing of e-forms except additional fees.

## i) Many people having doubt whether 'Additional Fees' paid on filing of e-form is penalty or fine?

As per Rule 12 of The Companies (The Registered offices and Fees) Rules, 2014.

Additional fees is only a fees paid by Company for filing of form. it is neither Fine nor Penalty.

**<u>Example: Section 92- Annual Return</u>**

Sub section 4: States about filing of Annual Return and additional fees in case of non filing with in prescribed period of 60 days from AGM.

Sub Section 5: States about fine in case of company fails to file annual return within time prescribed under sub section 4.

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Therefore, one can opine that for the same form (Annual Return - MGT-7), the Company is paying additional fees on one hand and fine on the other, in case of not filing within prescribed period.

Therefore, the Additional fees is neither fine nor penalty.

## Provisions dealt with Late filing of e-form

As per Companies Act, 2013, every company has to file many e-forms with ROC. Some as annual compliance and some as transaction based. Every form has its separate section, additional fees and Penalty/ fine. E.g

| S. No. | Section | e-form | Additional Fees | Penalty/ Fine |
|---|---|---|---|---|
| 1. | 92 | MGT-7 | 100 per day | Company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees |
| 2. | 137 | AOC-4 | 100 per day | The company shall be 9[8[6[liable to a penalty]]] of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees,<br><br>All the directors of the company, shall be 9[8[7[shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees |
| 3. | Rule 16 | DPT-3 | 2 Times<br>4 Times<br>6 Times<br>10 Times<br>12 Times | The company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a |

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| | | | | further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues. |
| 4. | 90 | BEN-2 | 2 Times<br>4 Times<br>6 Times<br>10 Times<br>12 Times | company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. |
| 5. | 117 | MGT-14 | 2 Times<br>4 Times<br>6 Times<br>10 Times<br>12 Times | company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees<br><br>every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees. |
| 6. | *450 | MSME-1 | NIL | company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues |

***However, if under any section penalty/ fine is not mentioned then fine/ penalty shall be levied as per section 450 of Companies Act, 2013.**

As everyone knows MCA has introduced section 454 under Companies Act, in respect of e-adjudication of Penalties. Therefore, in any section which provide penalty under Companies Act, 2013, ROC can issue notice for adjudication.

## ➢ CONSEQUENCES FOR LATE FILING OF E-FORMS

As mentioned above:

- Additional fees neither Penalty nor Fine. It is just a fees paid to ROC for late filing of form.
- Every section in which companies are filing e-forms prescribed penalty/ fine in addition to additional fees. (Chart of some regular forms with corresponding additional fees and penalties/ fine given above)

**Question: Whether fine/ penalty can be imposed after payment of additional fees?**

If a company files a form after due date even with late fees it shall always be considered as non compliance of section. [eg. If company files e-form AOC-4 after expiry of due dates i.e. 30 days then company and officer in default liable for penalty].

Once a company made any non compliance it is required to do followings according to sections' requirement:

- Compounding
- Condonation
- E-adjudication

Therefore, one can opine that if a company filing any e-form after due date, company and officer in default always liable for payment of penalty/ fine under that section. Just payment of additional fees can't save a company from fine/ penalty.

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