



## **PROSECUTION UNDER INCOME TAX ACT**

The Income Tax Act, 1961 empowers the tax authorities to prosecute any person who contravenes the provisions of Act, 1961. The empowerment has been rendered upon by the Parliament for effective implementation of the provisions and restrict tax evasion.

Article 265 of the Constitution prescribes safeguard against arbitrary collection of tax as no tax could be levied or collected except by authority of law.

The Chapter XXII of the Income Tax Act, 1961 contains offences and prescribe punishment for the listed offences. As per the provision any person (not necessary to be an assessee) can be prosecuted. In case of Company, Firm, Association of Persons or Body of Individuals, the person(s) in-charge or responsible for the conduct of the business is deemed guilty<sup>1</sup>, whereas for Hindu Undivided Family, the Karta of the family is responsible for any offences<sup>2</sup>.

### **PRESUMPTION OF CULPABLE MENS REA**

Section 278E provides that during the prosecution of any offences, it is presumed that the accused has *malafide* intention, unless the accused proves otherwise. The evidentiary standard of burden of proof is beyond the reasonable doubt and not merely preponderance of probability.

### **CONSTITUTION OF SPECIAL COURTS AND PROCEDURE**

Section 280A of the Act, 1961, provides that the Central Government in consultation with the Hon'ble Chief Justice of the Hon'ble jurisdictional High Court to establish Special Court to adjudicate offences prescribed under the Act, 1961.

Section 280B(b) provides that the Special Court shall take cognizance upon the complaint received from the competent authority.

### **OFFENCES UNDER IT ACT**

#### **1. NON-COMPLIANCE WITH PROVISIONS OF THE ACT**

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<sup>1</sup> Section 278B(1)

<sup>2</sup> Section 278C(1)



- Violation of Section 178(1) and (3) by a person shall be liable for imprisonment for a term of 6 month to rigorous imprisonment upto a term of 2 years.<sup>3</sup>
  - Failure to comply with the procedure while transferring the property as per Section 269UC and 269UL(2) or failure to surrender or deliver possession of the property in which the Central Government has vested interest as per Section 269UE shall be liable for imprisonment for a term of 6 month to rigorous imprisonment upto a term of 2 years.<sup>4</sup>
  - Non-payment to the credit of the Central Government<sup>5</sup> or tax collected at source<sup>6</sup> is punishable with rigorous imprisonment for a minimum term of 3 months and maximum term of 7 years, along with fine.
2. Failure to comply with the order made under the Section 132 (3), is punishable with rigorous imprisonment upto 2 years and liable for fine.<sup>7</sup>
3. **NON-COOPERATION WITH THE TAX AUTHORITIES**
- Any person who failed to afford adequate facility to the authorised officers, while inspecting the books of accounts or other documents as required under Section 132(1)(iib)<sup>8</sup> or fraudulently removes, conceals, transfers or delivers to any person, any property or interest therein from being taken in execution<sup>9</sup>.
4. **WILFUL FAILURE/NON-COMPLIANCE**
- “Wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment” means making false entry or statement in book of account or other documents or wilful omission of relevant entry or statement.

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<sup>3</sup> Section 276A.

<sup>4</sup> Section 276AB

<sup>5</sup> Section 276B

<sup>6</sup> Section 276BB

<sup>7</sup> Section 275A

<sup>8</sup> Section 275B

<sup>9</sup> Section 276



- Wilful evasion of any tax, penalty or interest<sup>10</sup> or wilful evasion of the payment of the same<sup>11</sup> is punishable as per the provision of the Act.
- Wilful failure in furnishing the returns of income is punishable with rigorous imprisonment of 6 months to 7 years for amount evading exceeds Rs. 250,000<sup>12</sup> or rigorous imprisonment ranging for a term between 3 month to 2 years, in any other cases<sup>13</sup>, both along with fine.
- Wilful failure to provide return of income in search cases is punishable with imprisonment for a term of not exceeding 3 months to 3 years, with fine.<sup>14</sup>
- Wilful failure to produce accounts and documents is punishable with rigorous imprisonment for a term not more than 1 year, along with fine.<sup>15</sup>

## 5. FALSE STATEMENT IN VERIFICATION

A person making a false statement in verification or delivers an untrue statement or account is punishable with rigorous imprisonment of 6 months to 7 years for amount evading exceeds Rs. 250,000<sup>16</sup> or rigorous imprisonment ranging for a term between 3 month to 2 years, in any other cases<sup>17</sup>, both along with fine.

## 6. ABETMENT

Inducement or abetment to other person for making or delivering false account or statement or declaration is punishable with rigorous imprisonment of 6 months to 7 years for amount evading exceeds Rs. 250,000<sup>18</sup> or rigorous imprisonment ranging for a term between 3 month to 2 years, in any other cases<sup>19</sup>, both along with fine.

## 7. REPEATED OFFENDERS

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<sup>10</sup> Section 276C(1)

<sup>11</sup> Section 276C(2)

<sup>12</sup> Section 276CC(i)

<sup>13</sup> Section 276CC(ii)

<sup>14</sup> Section 276CCC

<sup>15</sup> Section 276D

<sup>16</sup> Section 277(i)

<sup>17</sup> Section 277(ii)

<sup>18</sup> Section 278(i)

<sup>19</sup> Section 278(ii)



A convicted person under section 276B, 276C(1), 276CC, 277 or 278 and again convicted under the aforesaid provisions, shall be punishable with rigorous imprisonment for a term not less than 6 months, which may extend upto 7 years, along with fine.<sup>20</sup>

### **COMPOUNDING OF OFFENCE**

The Act under Section 279(2) provides that the enlisted officials of the department may compound any offence either before or after institution of the proceedings.

#### ■ **TEAM MAJESTY LEGAL**<sup>21</sup>

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<sup>20</sup> Section 278A

<sup>21</sup> Majesty legal is law firm and aim of the present article is to provide insights regarding offences and prosecution under the Income Tax Act, 1961. The opinions presented in the article are personal in nature and not to be deemed as legal advice.