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Section 398 - Consequences of failure to deduct or pay or, collect or pay.

(1) If a person, including the principal officer of a company,––

(a) who is required to deduct or collect any amount under this Act; or

(b) referred to in section 392(2)(a), being an employer,

does not deduct or pay, or does not collect or pay, or after so deducting or collecting fails to pay, the whole or any part of the tax, as required by or under this Act, then such person shall be deemed to be an assessee in default in respect of such tax in addition to any other consequences which that person may incur under this Act.

(2) Irrespective of anything contained in sub-section (1), any person,—

(a) including the principal officer of a company, who fails to deduct; or

(b) responsible for collecting tax as per section 394(1) (Table: Sl. Nos. 1 to 5 and 9), who fails to collect,

the whole or any part of the tax, as required under this Chapter, on the amount paid or credited to the account of payee or, on the amount collected or debited to the account of the buyer or licensee or lessee, as the case may be, shall not be deemed to be an assessee in default in respect of such tax, if the payee or buyer or licensee or lessee has—

(i) furnished his return of income under section 263;

(ii) taken into account the amount for computing income in that return of income; and

(iii) paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in the form as may be prescribed.

3) (a) Without prejudice to sub-section (1), if any person, as referred to in that sub-section does not deduct or collect the whole or any part of the tax or after deducting or collecting fails to pay the tax as required under this Act, he shall be liable to pay simple interest—

(i) at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible or collectible to the date on which such tax is deducted or collected; and

(ii) at 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted or collected to the date on which such tax is actually paid;

(b) the interest referred to in clause (a) shall be paid before furnishing the statement as per the provisions of section 397(3)(b).

(c) if the person referred to in sub-section (1) is not deemed to be an assessee in default under sub-section (2), then the interest as per clause (a)(i) is payable from the date on which that tax was deductible or collectible to the date of furnishing of return of income by the concerned payee or buyer or licensee or lessee, as the case may be;

(d) when an order is made by the Assessing Officer for the default under sub-section (1), the interest shall be paid by the person as per such order.

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(4) Where the tax has not been paid after it is deducted or collected, the amount of the tax together with the amount of simple interest on it as referred to in sub-section (3)(a) shall be a charge upon all the assets of the person referred to in sub-section (1).

(5) The order shall not be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct or collect the whole or any part of the tax from any person––

(a) after six years from the end of the tax year in which tax was deductible or collectible; or

(b) after two years from the end of the tax year in which the correction statement is delivered under section 397(3)(f),

whichever is later.

(6) The provisions of sections 286(1) and 286(3) shall apply to the time limit specified in sub-section (5).

(7) No penalty shall be levied under section 412 on the person mentioned in sub-section (1), unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct or collect and pay such tax.

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