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**KARNATAKA STATE
CHARTERED ACCOUNTANTS
ASSOCIATION (R)**



**GROW, SHARE
& TRANSFORM**

CA. Raghavendra T.N.
President

CA. Chandrashekara Shetty
Secretary

Date: 10th July 2018

To,

Shri. Sushil Chandra
The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block,
New Delhi 110 001.

Dear Sir.

SUBJECT: REPRESENTATION ON RELAXING THE APPLICATION OF SECTION 234F OF INCOME TAX ACT AND EXTENSION OF DUE DATE FOR FILING INCOME TAX RETURNS OF INDIVIDUALS AND SMALL BUSINESSES

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

We have written to your good selves many a times populating issues and possible solutions. Herein, we are presenting difficulties and hardships faced by the trade, consultants and public at large pursuant to introduction of Section 234F and also, relating to adhering the timelines for filing of Income Tax returns within 31st July 2018, the due date as mentioned in Explanation 2 of Section 139(1). Having a wide outreach to Chartered Accountants, tax practitioners, trade bodies etc., and issues populated by them, KSCAA felt it necessary to put forth these issues and seek your redressal mechanism to alleviate the pain caused as well as seek a reasonable extension of due date.

We wish to present before you the following facts on the ongoings and public sentiment on the matter under two segments:

A. Regarding Section 234F of the Income Tax Act

The Union Budget, 2017 introduced Section 234F for levy of fee for delay in filing of Income Tax Return beyond due date.

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Our view-points:

- In view of various interpretations, general connotations and judicial precedents, fees can be categorized as compensatory or regulatory. While 'Compensatory' involves something of a quid pro quo, 'Regulatory' involves regulating activities which Government feels important but must be reasonable and not excessive and the charge would be in lieu of license.
- The levy under Section 234F is neither for a service nor for any kind of license. Hence, it partakes the character of penalty because it is punitive in nature rather than compensatory. Further, mere change in nomenclature of a levy disregarding its intention and function cannot alter the character of levy.
- Opportunity of being heard is a foundational concept of principles of natural justice. Notice and fair hearing are two aspects which are essential and elementary even in tax laws. It is very important to provide a reasonable opportunity of being heard for such a levy of penalty, which is being introduced under the garb of 'fee' and is not built on sound fundamental principle of natural justice.
- The Department is already deriving revenue on late filings in the form of interest under Section 234A, 234B and 234C on the count of delay in filing of returns, non-payment of advance tax and irregular or non-payment of advance tax installments respectively. Hence the Revenue is sufficiently compensated.
- The filing of return is being narrowed down to assessment year itself and to top that up, this imposition seems too harsh and regressive.
- The nominal earners who are brought into tax net may be discouraged to file the returns though genuinely they wish to file the returns.
- For those assesseees whose income does not exceed maximum amount not chargeable to tax, but, filing returns only for the sake of claiming the refund as well as those assesseees who file with 'Nil' tax liability, this levy seems agonizingly harsh.

Therefore, on behalf of the tax paying community of India, and on behalf of the tax professionals who assist the tax payers in honestly complying with the tax laws of the country, we strongly urge you to withdraw this levy of late fee under Section 234F of the Act.

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B. Regarding extension of due date for filing income tax returns of individuals and small businesses:

The due date fixed for filing returns i.e. on or before 31st July seems more than sufficient to comply but for various factors which are practically acting collectively against such compliance on the part of the assesseees, trade and practitioners. We have presented here in below the actual facts for your better understanding:

- The due date presupposes that all returns pan India can be filed within a span of four months from the completion of the financial year. But practically the filing can only start around June or even later part of June for few class of assesseees and window for filing within the due date immediately closes next month itself pursuant to myriad of factors as underlined herein infra.
- The tax return preparation involves compilation of data from various sources, say from bank, from businesses in the form of TDS certificates, employer's Form 16, credit of tax in Form 26AS despite issuance of such records by the respective deductors. It is a known fact that the TDS certificate is only issued in June and many a times, Deductors issue TDS certificates late due technical glitches or to delayed filings of e-TDS returns by them.
- Many assesseees have multiple businesses and streams of revenue, in genuine situations, may have to await the proper reflection of tax credits and thereafter commence and forward it to their respective consultants. Also, GST compilation and reporting requires time and effort and has to conform with Form 26AS and follow up with the respective deductors for any inadvertent errors and such correspondences happen only after TDS is reflected and is complete in all respects.
- Also, certain documents may be lacking or incomplete on the part of assesseees when they present to their consultants and would be prompted rightly to be provided. The process of such collation from respective sources would also kill time and it is not useful to start this process in April as everyone is aware that things gets reflected in TDS database only in June and it will be a futile exercise to follow up before 1st April.
- Returns would not be comprehensive without considering all the streams of revenue. The tax credits, which sometimes get reflected belatedly and creeping every now and then into the tax credits also cause deviation in the reporting of income in returns. The veracity of the screening process consumes time and effort and filing without considering the same can have penal implications. Adhoc filing without considering all relevant income streams would be futile and incomplete. If the assessee waits for such reflection, there would be delay in filing and this mandatory levy of late fee under Section 234F imposes additional burden to the assessee for no fault of his.

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- The tax department itself does not provide facility to file on 1st April and does not release schema at the beginning of the Assessment Year for all categories of assesseees. This is despite it having one full year from the date of assent by the Hon. President of India.
- Another point of due mention is frequent and intermittent changes to schema not doing any good to the already persistent woes.
- The e-TDS Return filing deadline for fourth quarter for the deductors being 31st May and though there are penal provisions, many deductors for genuine reasons too are filing belatedly and the same is having a rippling effect on the deductees' filing woes.

This write-up is on the back of representations received from our members, tax practitioners and trade bodies who are in the thick of things with the assesseees.

We would be highly thankful if you could extend the due date well in advance, which would be very useful in planning the filings for the assesseees, businesses and practitioners. Also, we seek your intervention on unjust levy under Section 234F fees for filing beyond due date.

Thanking you,

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Raghavendra T.N.
President

CA. Chandrashekara Shetty
Secretary

CA. Vijay Sagar Shenoy
Chairman
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