

TAX FLASH NEWS

21 June 2019

CBDT issues revised guidelines for compounding of offences under the Income-tax Act

Recently, the Central Board of Direct Taxes (CBDT) issued a letter¹ whereby revised guidelines for compounding of offences have been issued under the Income-tax Act, 1961 (the Act). The revised guidelines have been issued in supersession of its earlier guidelines dated 23 December 2014. The new guidelines shall come into effect from 17 June 2019 and shall be applicable to all applications for compounding received on or after the aforesaid date. However, applications received before 17 June 2019 will continue to be dealt with in accordance with the erstwhile guidelines.

CBDT revised guidelines

Key amendments in the revised guidelines are summarised as follows:

Applicability of guidelines to prosecutions under IPC

Prosecution complaints under Indian Penal Code (IPC) may be withdrawn by competent authority where:

- The prosecution complaint filed under the provisions of both the Act as well as the Indian Penal Code (IPC) are based on the same facts; and
- The complaint under the Act is compounded, then the process of withdrawal of the complaint under the IPC may be initiated by the Competent Authority.

Classification offences

- Offences punishable under Section 276CC of the Act (failure to file tax return) and 276CCC of the Act (failure to furnish tax return in search cases in block assessment scheme) have been shifted from category 'B' to category 'A' offence.

- Offences punishable under the provisions of Section 275A of the Act (Contravention of order made under Section 132(3)² of the Act shall be punishable with rigorous imprisonment), Section 275B (Failure to comply with the provisions of Section 132(1)(iib)³ of the Act) and Section 276⁴ of the Act (Removal, concealment, transfer or delivery of property to thwart tax recovery) have been removed from category 'B' and will not be compounded.

Offences normally not to be compounded

- Any offence in respect of which, the compounding application has already been rejected, except in the cases where benefit of rectification is available.
- The cases of a person as main accused where it is proved that he has enabled others in tax evasion such as, through entities used to launder money or generate bogus invoices of sale/purchase without actual business, or by providing accommodation entries in any other manner as prescribed in Section 277A of the Act (falsification of books of account or document, etc.).

² Whoever contravenes any order referred to [in the second proviso to sub-section (1) or] sub-section (3) of section 132 shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.

³ If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section (1) of section 132, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

⁴ Whoever 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 taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine

¹ CBDT letter, (F.No.285/08/2014-IT(Inv.V)147, dated 14 June 2019).

- Any offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner.
- Any offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- Any offence which has bearing on any offence under the Benami Transactions (Prohibition) Act, 1988.

Eligibility conditions for compounding and relaxation of time

- An application for compounding of offence is to be made to the tax officer in the prescribed format (Annexure-I) in the form of an affidavit on a stamp paper of INR100.
- No application of compounding can be filed after the end of 12 months from the end of the month in which prosecution complaint, if any, has been filed in the court of law in respect of the offence for which compounding is sought.
- The time limit for filing of compounding of offence in deserving cases may be relaxed, where application is filed beyond 12 months but before completion of 24 months from the end of the month in which a complaint was filed. Such delay should be attributable to reasons beyond the applicant's control. However, the compounding charges would be 1.25 times the normal compounding charges as applicable to the offence on the date of filing of the original compounding application.

Meaning of the term 'occasion'

It has been clarified that Category 'A' offences cannot be compounded on more than three occasions. If in one instance the taxpayer files multiple applications for one or more than one Assessment Year (AYs), all of these applications shall be treated as one 'occasion'.

Authority competent to compound an offence

- If a deductor has committed an offence under Section 276B or 276BB of the Act for non-payment of TDS in respect of both resident and non-resident deductees and therefore the jurisdiction over such deductor lies with more than one Pr.CCIT/CCIT/Pr.DGIT/DGIT, then the Pr. CCIT/CCIT/Pr. DGIT/DGIT in whose jurisdiction compounding application has been filed will be the Competent Authority. However, he shall compound the offence only on the approval of committee comprising of three officers of the rank of CCIT, constituted by the Pr.CCIT of the region.
- Applicant having more than one Tax Deduction Account Number (TAN) lying in the jurisdiction of two or more Pr. CCIT/CCIT/Pr. DGIT/DGIT – the application shall be filed before the Pr.CCIT/CCIT having jurisdiction over the TAN of the region in which PAN jurisdiction of the applicant is falling.
- The Competent Authority shall duly consider and dispose off every application for compounding through a speaking order in the suggested format (Annexure-3) either by rejecting or by intimating the compounding charges payable. Such order may be passed within six months from the end of the month of its receipt (excluding the time for payment of the compounding charges) as far as possible.
- Compounding charges to be paid by the applicant within one month from the end of the month of receipt of intimation from competent authority. On written request of applicant for further extension of time under exceptional circumstances, the Pr. CCIT/CCIT/Pr. DGIT/DGIT may extend this period by three months.
- Additional compounding charge at the rate of 2 per cent per month or part of the month on the unpaid amount of compounding charges upto three months and 3 per cent if the Competent Authority has extended the payment period beyond three months.
- The Competent Authority shall pass the compounding order within one month from the end of the month of payment of compounding charges.
- The order of acceptance/rejection of application of compounding shall be brought to the notice of the Court, through prosecution counsel in all cases where prosecution proceedings have been instituted.
- If any compounding application has been rejected solely on account of late payment of compounding charges or shortfall in payment of compounding charges and if such shortfall is for some bonafide mistakes or on some other technical grounds, such compounding order can be rectified at the written request of applicant provided the payment of compounding charges was made before rejection or time allowed by the Competent Authority whichever is applicable.

Compounding procedure

- The timelines mentioned for processing the compounding applications prescribed in the revised guidelines are administrative and indicative for work management and do not prescribe a limitation period for disposal of the compounding application.

Section 140A(1)⁵ of the Act, is less than INR1,00,000 – the compounding fees will be restricted to that said difference amount subject to a minimum of INR10,000.

Definition of 'tax'

For the purpose of computation of the compounding fee, the word 'tax' means- tax including surcharge and any cess by whatever name called, as applicable.

Compounding fees

- Suo-moto compounding application is filed by the taxpayer for offence punishable under Section 276B and/or Section 276BB of the Act for any period is brought to his knowledge by the tax department:
 - Compounding fee at the rate of 2 per cent per month or part of a month of the amount of tax in default disclosed in the compounding application.
 - However, the compounding fee under this clause shall not exceed the TDS amount and interest under Section 20I(1A) taken together, if the default in deposit of TDS is less than INR1 lakh.
- Offence punishable under Section 276C(1) of the Act:
 - Where such tax sought to be evaded exceeds INR25 lakh, 150 per cent of the tax sought to be evaded. In any other case, 125 per cent of the tax sought to be evaded.
 - In cases involving attempt to evade only the penalty, 100 per cent of penalty sought to be evaded.
- Offence punishable under Section 276CC and 276CCC of the Act:
 - In case of default in furnishing the tax return on or before due date prescribed under Section 139(1) of the Act –
 - Where tax on returned income as reduced by TDS and advance tax, if any exceeds INR25 lakh, INR4000 per day.
 - In any other case; INR2000- per day. However, in cases where the difference between the aggregate of taxes paid/payable on the returned income and the aggregate of taxes already paid under any provision of the Act as enumerated in

- Non-compliance of notices under Section 142(1)(i)/148/153A/153C of the Act –
 - Compounding fees shall be charged at the rate of INR4000 per day where the tax on returned income as reduced by TDS and advance tax, if any exceeds INR25 lakh to the date specified in the notice under Section 142(1) of the Act and at the rate of INR5000 per day from the date specified in the notice under Section 142(1)/148/153A/153C of the Act till the date of filing of tax return or completion of assessment, whichever is earlier.
 - INR2,000 per day in other cases from the due date for filing tax return under Section 139(1) of the Act till the date specified in the notice under Section 142(1)/148/153A/153C of the Act, and at the rate of INR3000 from the date specified in notice under Sections 142(1)/148 of the Act till date of filing of tax return or completion of assessment, whichever is earlier.
- In case where return of income filed is not only late but self-assessment tax is not paid: These constitute two separate offences which are to be handled separately under Sections 276CC and 276C(2), and Action under Section 276C(2) of the Act is to be undertaken only after the issue of demand notice under Section 143(1)/143(3) of the Act etc.
 - In cases where no return of income was filed, tax on returned income to be replaced by tax on assessed income.
 - In case the income determined under Section 143(1) is more than the returned income, tax on returned income to be replaced by tax on income determined under Section 143(1) of the Act.
 - The compounding fee for offence under Section 276CCC of the Act shall be calculated in the same manner as for offences under Section 276CC of the Act was prescribed in the Compounding Guidelines dated 16 May 2008.

⁵ Self-assessment of tax

- Offences for which no compounding fee has been prescribed - levy of a minimum compounding fee of INR1,00,000 for each such offence.

Computation for period of default

The period of default for calculating the compounding fees under Section 276C(2) of the Act shall be as under:

- Where tax, interest or penalty as per notice of demand under Section 156 of the Act is not paid, from the date immediately following the due date of payment till the date of actual payment.
- Where the self-assessment tax was not paid as specified in Section 140A of the Act, from the due date of filing of return of income under Section 139(1) of the Act to the date of actual payment.
- For computing the period of default, any period of stay of demand granted by any Income Tax Authority, the Appellate Tribunal or Court shall be excluded.

Clarification for offences punishable under Section 277 and 278 of the Act

- In the case of prosecution proceedings under Sections 278B or 278C of the Act unless the main accused i.e. Company/HUF comes for compounding, the offence of the co-accused cannot be compounded separately.
- If one or more co-accused has not filed the compounding application or is not agreeable to the payment of compounding charges, then unless the main accused, on an undertaking obtained and furnished from such co-accused, unequivocally undertakes to pay the compounding charges on his own behalf and on behalf of all such co-accused as well, the compounding of the offence of the main accused cannot be accepted.

Amendments in the format of application form of affidavit (Annexure 1) for compounding of offence

Following changes have been incorporated in the Annexure:

- Earlier rejection
- Undisclosed bank account/assets
- Black money
- Benami transactions
- Offences under Section 275A, 275B and/or 276 of the Act
- Verification of records, etc. aligned to the requirement of the revised guidelines

Our comments

The revised guidelines provide a more stringent framework for compounding offences punishable under the Act. The revised guidelines exclude offences done under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Act, 2015, the Benami Transactions (Prohibition) Act, 1988 which cannot be compounded in normal cases.

The CBDT guidelines also state that offences committed by a person which, as per the information available with the PCCIT and other officials concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by the Enforcement Directorate, CBI, Lokpal, Lokayukta or any other central or state agency are also not to be normally compounded.

It provides relief for genuine taxpayers i.e. compounding to be allowed upto three times for certain offences. Further, the Finance Minister has power to provide relief for compounding of offence in deserving cases based on the recommendation of CBDT.



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