

Compounding Under Income Tax Act, 1961- Latest Guidelines

Chapter XXII of the Income Tax Act, 1961 ('Act') provides for offences and initiation of prosecution for non-compliance of the provisions of the Act. Section 279 of the Act provides for initiation of prosecution for the offence specified there in. This section requires previous sanction of Principal Commissioner or Commissioner or Commissioner (Appeals) or appropriate authority¹.

Section 279(2) provides that any offence under this chapter **may either before or after institution of proceedings** be compounded by Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General. (authority competent to compound an offence).

Explanation to Section 279(3) provides for power of Central Board of Direct Tax (CBDT) to issue orders, instructions or directions under the Act shall include and shall be deemed include the power to issue instructions or directions obtain previous approval of CBDT to other income-tax authorities for the proper composition of offences under this section.

CBDT issued guidelines² on 14th June 19 in suppression of earlier guidelines pertaining to compounding of offences including the guidelines of CBDT dated 23rd December 14. The new guidelines shall be effective from 17th June 19. All the applications received for compounding after the said date shall comply with new guidelines.

The guidelines states that the compounding of offences is not a matter of right. However, the competent authority on satisfactory compliance with eligibility conditions mentioned in the guidelines keeping in view factors such as conduct of person, nature and magnitude of offence in the context of facts and circumstances of each case, will proceed with application.

The guidelines states that the prosecution initiated under Indian Penal Code (IPC) are not subject to compounding under these guidelines. In case prosecution was initiated under the Act and IPC based on the same facts and the complaint under the Act is compounded, the competent authority may initiate process of withdrawal of compliant under IPC by adopting the procedure laid down vide Section 321 of Criminal Procedure Code, 1973.

The guidelines provide for classification of offences for limited purposes of compounding aspects. The offences are divided into Category A and Category B³. However, the offences

¹ As defined in Section 269UA(c)

² F No 285/08/2014IT (Inv.v)/147

³ List of Offences as per Categories at the end of this article

mentioned vide Section 275A⁴, Section 275B⁵ and Section 276⁶, though part of Chapter XXII of the Act, are stated not to be compoundable.

The guidelines lay down certain eligibility conditions for compounding the offence. Only on satisfaction of such conditions, the competent authority can make its order.

Eligibility Conditions:

- Applicant has to make an application in the prescribed form to the Pr. CCIT/CCIT/Pr. DGIT/DGIT having jurisdiction over the case for compounding of offences in form of an affidavit.
- Applicant can make an application on suo-moto basis at any time after the offence is committed irrespective of whether it comes to the notice of the department or not. However, compounding application be made within 12 months from the end of the month in which prosecution complaint is filed in the court of law in respect of offence for which compounding is sought.
- The Committee⁷ formed for the purpose of compounding may allow filing of application beyond 12 months but before completion of 24 months from the end of the month in which complaint was filed in case where such delay is for reasons beyond the applicant's control. On such extension of time compounding charge would be 1.25 time of normal compounding charges applicable.
- Applicant has paid the outstanding tax, interest (including interest under Section 220), penalty or any other sum due, relating to the offence for which compounding is sought before making an application. In case of any related payment is found outstanding on verification by Department, the same should be intimated to the applicant and such demand should be paid within in 30 days of the intimation, so that the application filed would continue to be valid.
- Applicant should pay the compounding charges as applicable. Applicant has to pay Compounding charges which include compounding fee, prosecution establishment expenses and litigation expenses including counsel fee.
- The compounding charges are payable in addition to the tax, interest and penalty if any payable or imposable as per the provisions of the Act. Such interest, interest and penalty are to be paid before filing the compounding application as required. For the purpose of computation of compounding fee tax means tax including surcharge and any cess by whatever name called as applicable.

⁴ Contravention of order made under second proviso to Sec 132(1)/ 132(3)

⁵ Failure to comply with provisions of Sec 132(1) (iib)

⁶ Fraudulent removal, transfer or concealment or transfer of property to thwart tax recovery

⁷ Formed for compounding an offence involving compounding charges in excess of Rs. 10 Lakhs.

- Applicant should withdraw the appeals filed in relation to offence for which compounding is sought. In case appeal pertains to compoundable offences and other matters, applicant should give an undertaking for withdrawal of grounds relating to compounding.

Offences normally not to be compounded:

The guidelines states that following offences are generally not to be compounded:

- Category A offences on more than three occasions. Compounding more than three occasions is permissible only in exceptional circumstances only on the approval of the Committee (supra). The guidelines also define 'occasion' to mean, if in one instance the applicant files multiple applications for one or more than one assessment year, all of these applications are treated as one occasion.
- Category B offence other than first offence(s).

The guidelines defined the 'first offence' in two limbs. The first limb deals with offences which are committed by the applicant prior to earlier of the following (i) date of issue of any letter/notice in relation to prosecution or (ii) any intimation relating to filing of prosecution complaint sent by Department to person concerned or (iii) launching of any prosecution.

The second limb deals with offences committed but not detected but voluntarily disclosed by person prior to the filing of application of compounding of offences in the case under any direct tax acts for one assessment year or more.

Further, the guidelines clarify that the offence is relevant if it is committed by the same person/entity. Further, the first offence is to be determined separately with reference to each section of the Act under which it is committed.

- Offences committed by a person for which he was convicted by a court of law under Direct Taxes Law
- Any offence in respect of which compounding application was rejected, except where rectification of the same is available as per the guidelines
- The case of person as main accused where it is proved that he has enabled others in tax evasion such as through money laundering or generation of bogus invoices for sale or purchase without business or by providing accommodating entries in any manner prescribed in Section 277A of the Act

- Offence committed by a person who as a result of investigation conducted by any State or Central Agency and as per information available with the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned has been found involved in any manner in anti-national/terrorist activity
- Offences committed by a person who was convicted by a court of law for any offence under any law, other than Direct Tax Laws for which prescribed punishment was imprisonment of two years or more with or without fine and which has a bearing on the offence sought to be compounded
- Offences committed by a person, which as per the information available with the Pr. CCIT/CCIT/Pr.DGIT/DGIT have bearing on a case under the investigation at any stage⁸ by ED/CBI/Lokpal/Lokayukta/ any other Central or Stage Agency
- Offences committed by a person whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' in respect of any offence is pending in a Court or where a Court has recorded that a 'mutually satisfactory disposition of such an application is not worked out' and such offence has bearing on offence sought to be compounded
- 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
- Any other offence, which the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned considers not fit for compounding in view of factors such as conduct of the person, nature and magnitude of the offence.

However, the Finance Minister may relax restrictions above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

Summarised version of Compounding Procedure:

- On receipt of application for compounding a report be called for from AO/Asst. DIT/Dy DIT

⁸ Including enquiry, filing of FIR/Complaint.

- The Competent authority shall consider and dispose of every application for compounding through speaking order either rejecting or intimating the compounding charges payable. Such order may be passed within six months from the end of month of its receipt
- Competent authority shall intimate the compounding charges requiring the applicant to pay the same within one month⁹ from the end of month of receipt of such intimation where the application for compounding found acceptable;
- Competent authority shall pass compounding order within one month from the end of the month of payment of compounding charges.

Category A

Sec	Description
276	Failure to make payment or deliver returns or statements or allow inspection (Prior to 01/04/1976)
276B	Failure to Deduct or Pay Tax (Prior to 01/04/1989)
	Failure to pay tax deducted at source under Chapter XVII-B (01/04/1989 to 30/05/1997)
	Failure to pay TDS under chapter XVII-B or tax payable U/S 115O or 2 nd proviso to Sec 194B to the credit of C.G (w.e.f 01/06/1997)
276BB	Failure to Pay TCS
276CC	Failure to Furnish Return of Income
276CCC	Failure to furnish return of income in search cases in block assessment
276DD	Failure to comply with provisions of sec 269SS (before 01/04/1989)
276E	Failure to comply with the provisions of sec 269T (before 01/04/1989)
277	False Statement in verification with reference to Category A Offences
278	Abetment of false returns with reference to Category A Offences

Category B

Sec	Description
276A	Failure to comply with provisions of Sec 178(1) and 178(3)
276AA	Failure to comply with the provisions of Sec 269AB or 269I
276AB	Failure to comply with the provisions of Sec 269UC/269UE/269UL
276C(1)	Wilful attempt to evade tax
276C(2)	Wilful attempt to evade payment of tax
276D	Failure to produce accounts and documents
277	False statement in verification with reference to Category B Offences
278	Abetment of false return with reference to Category B Offences

⁹ Further extended this period by 3 months under exceptional circumstances. Beyond 3 months with prior approval in writing of Committee. This payment is subject to charge of interest.