

B. Instruction / Circulars relevant to compounding
 1. E.N.285/90/2008-IT(Inv.)/12
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes
 Room No 243F, North Block,
 New Delhi.

Dated 16th May, 2008

To
 All CCsIT (CCA / DGsIT / CCsIT (Central))

Sir / Madam.

Subject- Revised Guidelines for compounding of offences under
 the provisions of the Direct Tax Laws -reg-

The existing instructions on compounding of offences under the laws relating to Direct Taxes have been reviewed by the Board. I am directed to issue the following comprehensive revised guidelines on compounding of offences in supercession of all earlier instructions.

1.1 Short Title:-These guidelines would be called "The Guidelines for compounding of offences, 2008."

1.2 Commencement and Application:- Subject to the conditions laid down in para 1.1, these guidelines will regulate the compounding of offences under Direct Tax laws with effect from 01st June 2008.

2. The offence under Chapter XXII of IT Act 1961 shall be classified as technical and non technical offences for the limited purpose of compounding of the offences.

2.1 Technical offences

Offences Punishable under the following sections shall be treated as technical offences:-

i	276	(prior to 01/04/1976- failure to make payment or deliver returns or statements or allow inspection).
ii	276B	(prior to 01/04/1989- Failure to deduct or pay tax)
iii	276B	(w.e.f. 01/04/1989- failure to pay tax deducted at source to the credit of central Government.)
iv	276BB	(failure to pay the tax collected at source)
v	276DD	(failure to comply with the provisions of section 269SS)
vi	276E	(failure to comply with the provisions of section 269T)
vii	277	(false statement in verification etc) with reference to technical offences
viii	278	(abetment of false return etc) with reference to technical offences.

2.1 Non-technical offences :-

Offences punishable under the following sections shall be treated as non-technical offence:-

i	275A	(Contravention of order made u/s 132(3))
ii	275B	(Failure to comply with the provisions of section 132(1)(ii))
iii	276	w.e.f. 1.4.89 Removal, concealment, transfer of delivery of property to thwart tax recovery)
iv	276A	(failure to comply with provisions of sections 178(i) and 178(3)
v	276AA	(prior to 01/10/1986- failure to comply with the provisions of

		section 269AB or section 269)
vi	276AB	(failure to comply with the provisions of sections 269UC, 269UE and 269UL)
vii	276C(1)	(willful attempt to evade tax etc.)
viii	276C(2)	(willful attempt to evade payment of taxes etc)
ix	276CC	(failure to furnish return of income)
x	276CCC	(failure to furnish return of income in search cases)
xi	276D	(failure to produce accounts and documents)
xii	277	(false statement in verification etc) with reference to non-technical offences
xiii	277A	(falsification of books of account or document etc.)
xiv	278	(abetment of false return etc.) with reference to non-technical offences.

3 Offences under Direct Tax Laws may be compounded subject to the conditions prescribed in these guidelines. An assessee cannot claim as a matter of right, that his offence has to be compounded. Factors, such as conduct of the assessee, nature and magnitude of the offence and facts and circumstances of each offence need to be considered while dealing with such a request. Offences under Indian penal code cannot be compounded. They can, however, be withdrawn.

4 Eligibility conditions for consideration of a case for compounding

The following conditions should be satisfied before considering a case for compounding.

- 4.1 The assessee should make a written request for compounding the offence in the prescribed proforma.
- 4.2 The case should be considered for compounding only when the assessee has paid the amount of tax, interest penalties and any other sum payable relating to the default.
- 4.3 The assessee should undertake to pay the compounding fee and the prosecution establishment expenses prescribed in Para 9 and 10 below. The compounding charges as finally determined by the CCIT /DGIT, comprising the compounding fee and establishment expenses should be paid by the assessee as per para 5.3, on receipt of its intimation from the Department.
- 4.4 Cases not be compounded: Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:
 - a) In case of a non technical offence, offences other than the first offence as defined in para 8 below.
 - b) Offences involving major fraud or scam or misappropriation of government funds or public property.
 - c) Offences committed by an assessee linked to any Anti-national /terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other Central Govt. agencies, as per information available with the Income Tax department.
 - d) Offences committed by assessee who has enabled others in large-scale concealment of income in a systematic and planned way over a number of years like hawala entries, bogus trusts, bogus remittance etc.
 - e) Offences committed by an assessee whose application for 'plea - bargaining' under Chapter XXI-A of Code of Criminal Procedure' is pending in a Court or a Court has recorded that a mutually satisfactory disposition of such an application is not worked out.

- f) Where conviction order has been passed by a Court.
- g) Any other ground, which the CCIT/DGIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of the offence.

5 Compounding procedure

- 5.1 All conditions prescribed in para 4 above should be satisfied before a non-technical offence is considered for compounding. However, no case involving technical offence be rejected if it fulfills all the conditions prescribed in para 4.1, 4.2, 4.3, and not debarred by para 4.4 (b to f) of the Guidelines.
- 5.2 All applications for compounding of offences shall be decided by the authority competent to compound as defined in para 7.1 of the guideline.
- 5.3 The compounding petition should be disposed of by the CCIT/DGIT as far as possible, within 180 days of its receipt. In cases where compounding is accepted, the CCIT/DGIT will intimate the assessee the amount of compounding charges to be deposited. The assessee should pay the requisite compounding charges within 60 days receipt of such intimation from the department. On assessee's request, the CCIT/DGIT may extend this period.
- 5.4 The CCIT/DGIT shall pass the order u/s 279(2) (as per specified format) as far as possible within 30 days of such payment. Where compounding charge is not deposited within the time allowed, the compounding petition may be rejected after giving the applicant an opportunity of being heard. The order of rejection, wherever required, shall be brought to the notice of the Court.
- 5.5 In case where compounding petition is to be rejected, the CCIT/DGIT shall pass the order u/s 279(2) (as per specified format) within the period as laid down in para 5.3 above

6 An offence may be compounded at any stage before or after institution of proceedings subject to eligibility conditions mentioned in para 4 of this guideline.

7 Authority Competent to compound an offence: -

- 7.1 a) The authority competent to compound all applications for compounding of technical offences will be CCIT/DGIT having jurisdiction over the case;
- b) The authority competent to compound all applications for compounding of non-technical offences u/s 276C (1) involving tax sought to be evaded up to Rs. 1,00,000/- will be CCIT/DGIT having jurisdiction over the case;
- c) The authority competent to compound all applications for compounding of non-technical offences other than the non-technical offences as covered in para 7.1 (b) above will be the committee comprising:
 - i) CCIT(CCA)
 - ii) DGIT (inv.) and
 - iii) CCIT/DGIT having jurisdiction over the case

Where CCIT (CCA/DGIT(inv)) is the CCIT/DGIT having jurisdiction over the case, then another officer of the rank of CCIT may be co-opted as the member of the committee. The CCIT/DGIT having jurisdiction over the case will act as Member-

secretary who will also co-opt such other member as the case may be, and convene the meeting, as well as maintain its minutes.

d) Henceforth, no reference to the Board in the above cases will be required.

7.2 Notwithstanding anything contained in the Guidelines, the Finance Minister may grant approval for compounding of an offence in a suitable and deserving case, after obtaining report from the Board on the petition of the applicant.

8 For the purpose of these guidelines, "first offence" means:-

- a) Offence under any of the Direct Tax Laws committed prior to the date of issue of any show-cause notice for prosecution or any intimation relating to prosecution by the Department to the person concerned or before launching of any prosecution, whichever is earlier; and /or
- b) Offence not detected by the department but voluntarily disclosed by a person prior to the filing of application for compounding of offence in the case under any Direct Tax Acts.

For this purpose, offence is relevant if it is committed by the same taxable entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed.

9. Fees for compounding

The fees for compounding of various offences (in addition to any interest/ penalty or any other sum levied) shall be as follows:-

- 9.1 Section 276- Failure to make payment or deliver return statement or allow inspection etc. (prior to 1/04/1976) an amount of Rs.2/- for everyday during which the default continues.
- 9.2 Section 276B (prior to 1.4.89) Failure to pay tax under Chapter XIID or XVIIB 2% per month or part of month of the amount of tax in default.
- 9.3 Section 276B- Failure to pay the tax deducted at source(w.e.f 01/04/1989) 5% per month or part of a month of the amount of tax in default.
- 9.4 Section 276BB- Failure to pay the tax collected at source 5% per month or part of a month of the amount of tax in default.
- 9.5 Section 276C(1)- Wilful attempt to evade tax etc. 50% of amount of tax sought to be evaded.

Explanation 1: The amount of "tax sought to be evaded" means amount of tax calculated at the maximum marginal rate on the income sought to be concealed.

Explanation 2: The amount of "tax sought to be evaded" for purpose of computing compounding fee for offence u/s 276C (1) in case of assessments u/s 158BC/ 158BD or 153A/153C means tax on the difference between the tax on the income determined in such assessments and the tax on the basis of income shown in original return filed u/s 139. Where no returns has been filed u/s 139 'tax on the basis of income shown in original return' will be treated as nil for the purpose of this explanation. 'Tax' for this purpose means tax at the maximum marginal rate for assessments u/s 153A/153C and tax as per section 113 for assessments u/s 158BC/ 158BD.

For the removal of doubts, it is clarified that the compounding fee as per the scale given above shall be charged even if no penalty was actually levied or the amount of penalty was reduced in appeals.

9.6 Section 276(2) willful attempt to evade payment of any tax etc 5% per month or part of a month of the amount, the payment of which is sought to be evaded, for period of default.

9.7 Section 276CC- Failure to furnish return of income, 2% per month or part of a month of the tax and interest determined on regular assessment as reduced by the tax deducted at source and advance tax, if any, paid during the financial year immediately preceding the assessment year reckoned from the date immediately following the date on which the return of income was due to be furnished before to the date of furnishing of the return or where no return was furnished, the date of completion of the assessment.

Where before the date of furnishing of the return or where no returns was furnished before the date of completion of assessments, any tax is paid by the assessee u/s 140A or otherwise:

i) Compounding fee shall be calculated in the manner prescribed in this para up to the date on which the tax is so paid; and

ii) Thereafter, the fee shall be calculated at the aforesaid rate on the amount of tax and interest determined on regular assessment as reduced by the TDS, advance tax and tax paid u/s 140A or otherwise before filling the return of income or where no return was furnished from date of completion of assessment.

9.8 Section 276CC- Failure to furnish return of income in search case. The fee for this offence shall be calculated in the same manner as for offences u/s 276CC.

9.9 Section 276DD- Failure to comply with the provisions of section 269SS (prior to 01/04/89) a sum equal to 20% of the amount of any loan or deposit accepted in contravention of the provisions of section 269SS.

9.10 Section 276E – Failure to comply with the provisions of section 269T (prior to 01/04/89) a sum equal to 20% of the amount of deposit repaid in contravention of the provisions of section 269T.

9.11 Section 277- False statement in verification etc.
Section 278- Abetment of false return etc.

Where same set of facts and circumstances attract prosecution u/s 277 as well as u/s 278, the compounding fee shall be charged for offences under these sections by treating them as one offence.

Where same set of facts and circumstances attract prosecution under any offence as well as u/s 277 and or 278 normally a compounding fee @10% of the 'compounding fee for the main offence' shall be charged from each co-accused. However the authority competent to compound (as defined in para 7.1), after considering the extent of involvement of any or all co-accused, may enhance or reduce or waive the amount of compounding fee to be charged from any or all the co-accused. The compounding fees chargeable from the co-accused shall be in addition to the compounding fee which may be chargeable from the main accused.

In cases, where no offence under any other sections of IT Act is involved except u/s 277/278, then the compounding fee shall be decided by the authority competent to compound (as defined in para 7.1) having regard to the amount of Tax, which would have been evaded as a result of such offence u/s 277/278.

9.12 For offences, other than those described in para 9.1 to 9.11, no compounding fee has been prescribed. In such cases, the authority competent to compound (as defined in para 7.1) may determine the amount of compounding fee having regard to the nature & magnitude of the offence, subject to levy of a minimum

compounding fee of Rs 10,000/- (in addition to the administrative expenses) for each such offence.

- 9.13 The prescribed compounding charges shall be applicable while compounding any offence. However, in extreme and exceptional cases of genuine financial hardship the compounding charges may be suitably reduced with the approval of Finance Minister.
- 10 In addition to the compounding fee, the compounding charges shall include prosecution establishment expenses. A consolidated fee for prosecution establishment expenses will be charged which would cover the litigation expenses also. Accordingly, prosecution establishment expenses will be charged at the rate 10% of the compounding fee subject to a minimum of Rs 10,000/- and maximum of Rs 50,000/- This limit will apply even where a number of offences are compounded under a single order.

Applicability to pending cases

- 11 With effect from 01st June 2008, the procedure mentioned in then new guidelines shall mutatis mutandis apply to all future as well as pending petitions for compounding of offences under all the Direct Tax Laws. However, the offences already compounded under the old guidelines shall not be reconsidered.

Applicability to offence under other Direct Tax Laws

- 12 These guidelines shall apply mutatis mutandis to offences under the other Direct Tax Laws also and the compounding fee for offences under the other Direct Tax Laws will be same as for the corresponding provisions of offences under IT Act.
- 13 The petition for compounding in all cases of a co-accused shall be considered either along with or after compounding has been approved in the main case.
- 14 The amount of tax/interest/ penalty / period of default should be as modified after giving effect to order of appellate authorities/ revision/ rectification as on the date of passing of compounding order.

The CCsIT and DGsIT are requested to circulate the above revised guidelines alongwith its annexure nos. 1,2(a),2(b),3(a),3(b) and 3(c) among all the officers of their region.

Yours faithfully,

(D. K. GUPTA)
Director (Inv.-I) & OSD (Legal)
CBDT, North Block, New Delhi.

Encl : As above (8 pages)

Annexure-1

**Proforma of application for compounding of offences under Income Tax Act
(to be submitted by assessee)**

- 1) Name of the assessee :
- 2) Status :
- 3) Offences committed u/s :
- 4) AYs/ Date/ period involved in offence :
- 5) Date of filing of complaint, if any :
- 6) Status of case :
(i.e. whether contemplated/Pending in Court/ Convicted/ Acquitted).
- 7) Brief facts (attach separate sheet) :
- 8) Brief reasons of default (attach separate sheet) :
- 9) Whether the assessee has paid the amount of tax, interest, penalties and any other sum payable relating to the default. :
- 10) Whether the assessee is willing to pay the compounding fee as shall be intimated by the Deptt. :
- 11) Whether the offence is the first offence :
- 12) Whether it is part of major fraud or scam or misappropriation of government funds or public Property. :
- 13) Whether the offence is committed by an assessee linked to any Anti-national/terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other central govt. agencies. :
- 14) Whether the offence is committed by an assessee who has enabled others in large scale concealment of income in a systematic and planned way over a number of years. :
- 15) Whether, the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out? :
- 16) Whether a conviction order has been passed by Court. :

Verification

I/We.Smt./Shri.....s/o.....
certify that the information in the above columns is true and correct.

Place :

Signature.....

Date :

Designation