

The background of the slide is a photograph of prison bars, showing a grid of vertical and horizontal metal bars. A teal rectangular box is overlaid on the left side of the image, containing white text. In the bottom right corner, there is another teal rectangular box containing the name 'Sheetal Shah' in white text.

# Prosecution and compounding under the Income Tax Act

11 January 2020

*Sheetal Shah*

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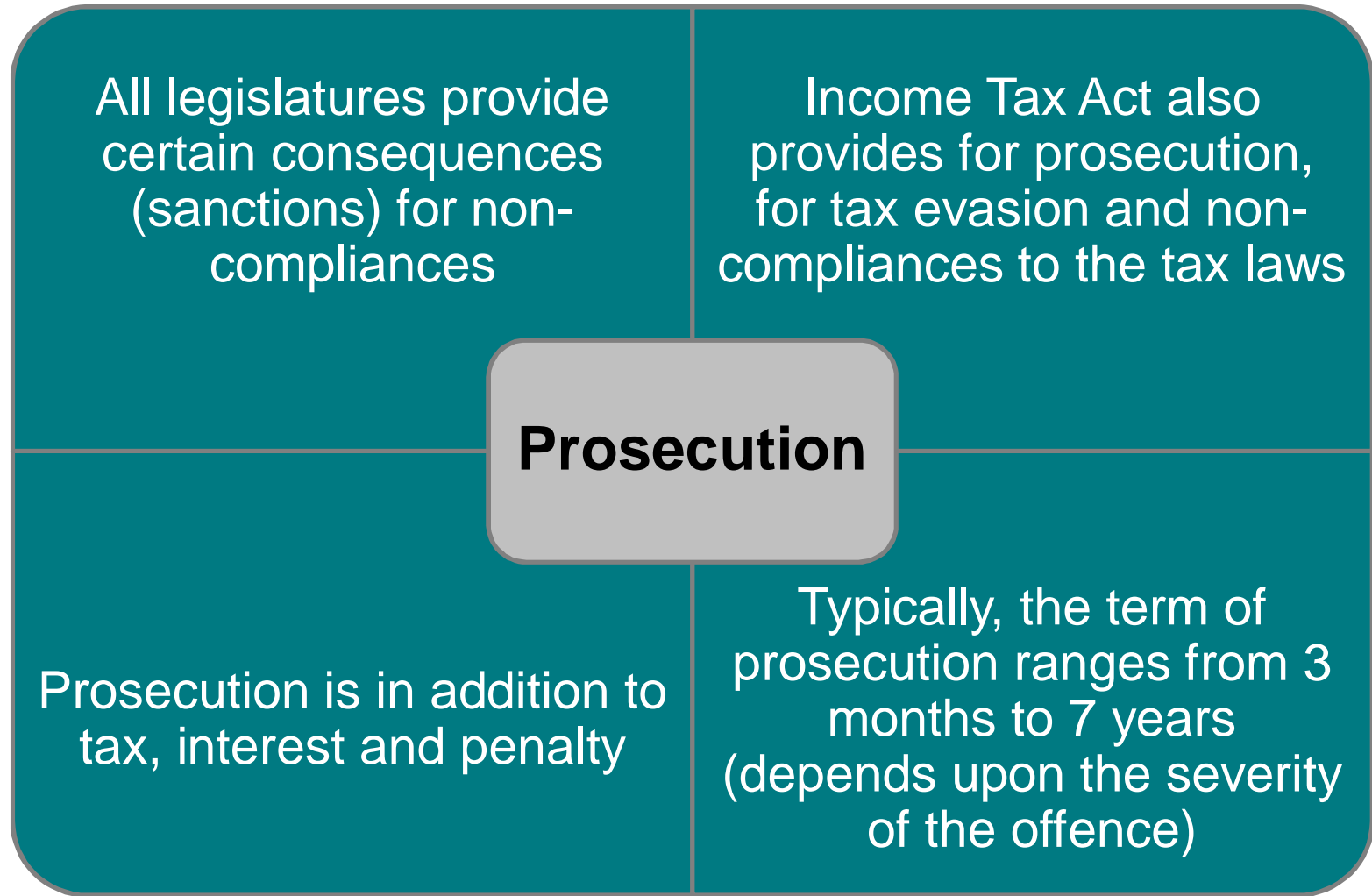


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# What is prosecution

# Prosecution

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# Prosecution - Key Sections

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**1**

## **Section 276B**

**Failure to deposit TDS or DDT with the Government**

**2**

## **Section 276C(1)**

**Willful attempt to evade Tax, Interest, Penalty, etc.**

**4**

## **Section 276CC**

**Failure to furnish return of income (before the end of the Assessment year)**

**3**

## **Section 276C(2)**

**Willful attempt to evade the payment of Taxes, Interest, Penalty**

# Instances of issue of prosecution notices

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1

Failure to pay TDS to the credit of the Central Government (irrespective of amount or period of delay)

2

Claims paid in the ROI not sustainable before the ITA or disallowance accepted by the tax payer

4

Non-filing of ROI or delayed filing of ROI

3

Return of income filed, but self-assessment tax not paid

# Sample notices

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## 276B

- ▶ From the form 27Q filed by the company, it is noticed that TDS u/s 195 totalling to Rs. 2,29,99,005/- which was deducted on two occasions on 30/03/2015 was paid into the credit of government on 29/10/2015, i.e after a delay of 7 months. It is also noted that a sum of Rs. 24,14,884/- has been charged as late payment interest chargeable u/s 201(1A) of the I.T Act.
- ▶ In view of the above facts and circumstances, you are required to explain as to why prosecution u/s 276B may not be sanctioned, as there is a prima facie case of commitment of an offence punishable u/s 276B against the company and its Directors, who has been informed to be the person in charge to whom the offence is attributable.

# Sample notices

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## 276C(1)

- ▶ In this case, during the course of assessment proceedings, the AO disallowed Rs. 22,50,000/- incurred on franking charges and the same were confirmed by the CIT(A). Further, the AO levied penalty u/s 271(1)(c) of Rs.7,64,775/-on the basis of above disallowance. The Id. CIT(A), confirmed the penalty levied by the AO
- ▶ In view of the above, it is clear that, you have committed an offence, which is punishable within the meaning of section 276C(1) and 277 of the Income-tax Act 1961. You are, therefore, required to show cause as to why the sanction for prosecution should not be granted to the Assessing Officer in your case in respect of above offences.



# Sample notices

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## 276C(2)

- ▶ As per the return of income filed on 30/11/2017 for the A.Y. 2017-18, total income declared under normal provisions of the Income Tax Act is Rs. 272,09,31,960 and under section 115JB of the Income Tax Act is Rs. 275,95.44,083/-. It is seen that tax liability is computed at Rs. 57,28,70,730/- was not paid within the due date specified under section 140A of the Income Tax act but same was paid on 16/03/2018.
- ▶ Thus, the assessee has willfully made an attempt to evade the payment of legitimate tax within the prescribed time frame. Therefore this case falls within the ambit of provision of section 276C(2) of the Income Tax Act 1961.
- ▶ Therefore this is to show cause as to why prosecution proceedings u/s 276C of the IT Act not be initiated against the assessee company and its directors who at the time when offence was committed were in-charge of and responsible to the company for the conduct of business of company.

# Sample notices

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276CC

- ▶ The facts available on record indicated that the assessee has filed his Return on Income on 30.3.2016 which is beyond prescribed time limit u/s 139(1) of the I.T.Act, 1961. Accordingly, a Show Cause Notice u/s 279(1) of the Income-tax Act 1961 dated 06.02.2018 was issued by this office requiring the assessee to show cause as to why prosecution should not be instituted against the assessee in his personal capacity for offence under Section 276CC of the Income-tax Act 1961
- ▶ On the appointed date, neither the assessee had appeared nor application for adjournment was filed. In view of the above facts, it is presumed that the assessee does not have anything to say in the matter. The failure of the assessee to file return of income therefore makes assessee liable for proceedings u/s 276CC of the Income-tax Act, 1961



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## **Approach of the Government**



# Approach of the Government

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- Increasing direct tax collection by greater focus on TDS / TCS compliance is of high priority on the Government's agenda
- Government's shift to digitization – in filing of TDS returns, processing of data through data analytics has resulted in identifying the non-compliances made by taxpayers
- Serious non-compliance of TDS provisions by well-known corporate houses in the recent past led to a paradigm shift in the approach of the Government in dealing with the defaulters
- Grave consequences have been carved out for taxpayers committing default / non compliance of TDS provisions
- Clear directions by CBDT to its officers to take coercive action and enforce catastrophic consequences (viz. recovery of tax, interest, penalty and launch the prosecution proceedings) on defaulters
- Issuance of prosecution notices led to many defaulters coming forward for settlement of tax disputes through the compounding process - In the past three years, the cases of compounding of offences have increased manifold
- In cases of serious defaults, however, as per clear directions of the Government, prosecution has been launched on defaulters – cases of launch of prosecution have multiplied significantly in the past few years

# Internal directions to the tax officers

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- Extracts of a few internal departmental correspondence between CBDT and the field officers

Letter by CBDT Chairman dated  
6 December 2017

*“You are, therefore, requested to take all measures to step up collections from arrear and current demand. **Recovery surveys should be carried out in a large number of suitable cases after due diligence.** The powers of attachment and sale of moveable property should be invoked to effect recoveries where regular measures to recover the demand have not been successful. **Even prosecuting u/s 276C ( 2 ) should be invoked where demand is not being paid without any justifiable reason.** Revenue yielding non-time barring scrutiny cases should also be completed now so that the demand so raised is partly collected in the current financial year itself.”*

Letter by CBDT Chairman  
dated 14 September 2017

*“There is an urgent need to step up efforts for augmenting TDS collections. A few indicative steps in this regard are **conducting more TDS surveys to check large scale non-deduction or under deduction of taxes deducted at source as well as non-deposit of taxes already deducted**”*

Letter by CBDT Chairman  
dated 7 March 2017

*“Prosecution and compounding are important areas against tax evaders and non-compliant assesseees and cannot be allowed to be ignored. As we are in the last month of the current FY, I would appreciate if you could put in your best and **expedite filing of prosecution complaints and disposal of compounding applications**”*

# Newspaper articles

## Taxman issues prosecution notices to MNCs to meet steep revenue targets

Experts say mechanical approach led to slapping of notices even for small tax issues.

By Sachin Dave, ET Bureau | Updated: Jan 16, 2019, 08:36 AM IST

Save

## Taxman Chasing 80,000 Cases Where Returns Not Filed Post DeMo: CBDT Chairman

Like

14 November, 2018 by PTI

## Newspaper articles

### NOTICES SENT TO:

Cos that filed **delayed** tax returns

Those that **didn't contest** tax dept's demand but didn't pay the amount

Cos that **challenged** the penalty levied by the tax dept

Cos that **failed** to pay self-assessment tax

Those that **haven't handed over** TDS

### RECOURSE:

Cos will have to **either approach** a magistrate's court **or pay** tax demanded on a compounding basis



## Tax Troubles

A recent CBDT circular gives additional powers to taxman

- ♦ Tax officials can now initiate prosecution against evaders
- ♦ Prosecution notices make such cases equivalent to criminal offences



- ♦ Experts say it gives tax officers powers akin to those of the police
- ♦ In such cases, taxpayers can seek relief only from a magistrate's court

Any expat whose TDS has not been paid by the co, would face prosecution

# Newspaper articles

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## Income tax prosecutions jump nearly 4 fold to 4,527 in FY18: NCRB

1 min read . Updated: 03 Nov 2019, 12:38 PM IST

Neil Borate

- Total assets seized by the tax department fell to ₹992.5 crore from ₹1,469.4 crore in FY16-17, raising the possibility that mainly low value offences are being prosecuted
- Interestingly, income tax prosecutions more than doubled after demonetisation to 1,252 in FY2016-17 and then almost quadrupled to 4,527 in 2017-18

# Newspaper articles

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**I-T dept launches prosecution against 570 tax offenders**

**Taxman pressing ahead with prosecution notices**

By *Sugata Ghosh*, ET Bureau | Dec 11, 2017, 06:10 AM IST

**Newspaper articles**

**TDS default: Income Tax department issues over 850 prosecution notices**

PTI | Updated: Feb 22, 2017, 03:25 PM IST

**Govt looks at higher direct tax collection to tackle revenue collection crisis**



# Central Action Plan 2019-20

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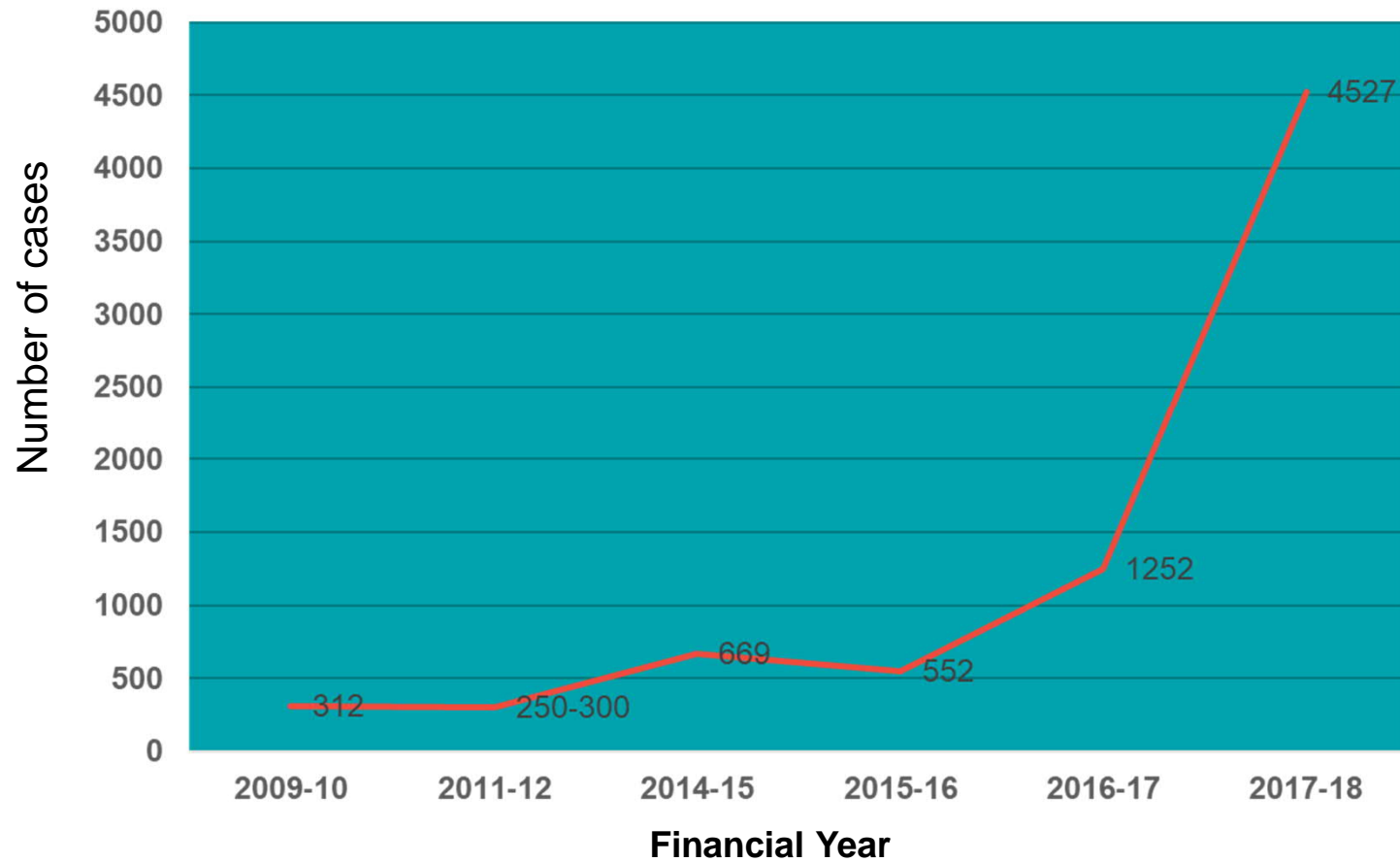


The CBDT has released the **Central Action Plan** for FY 2019-20 capturing the following action points:

- Identification of potential cases for prosecution disseminating the list to CIT (TDS) **within one month** after due date for filing return of income by deductor
- Disposal of prosecution proposals (Filing/compounding) by CIT(TDS) **within 6 months** and disposal of atleast 100 cases in a year
- Finalization of other compounding proposals by CCIT/ CIT(TDS) within 90 days of application

# Prosecution launched – Increasing trend

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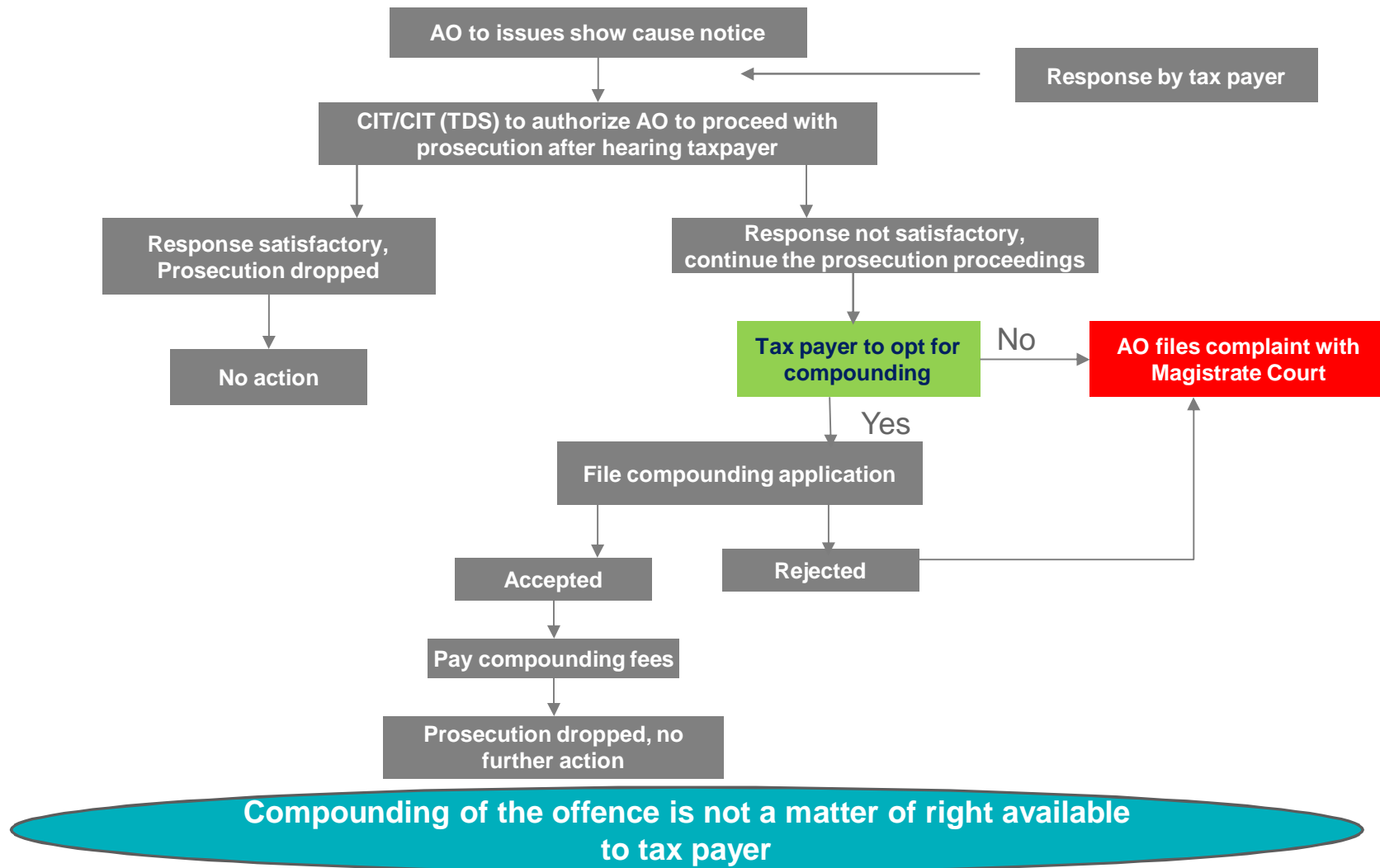


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## Procedure in prosecution proceeding



# Prosecution proceedings - Procedure



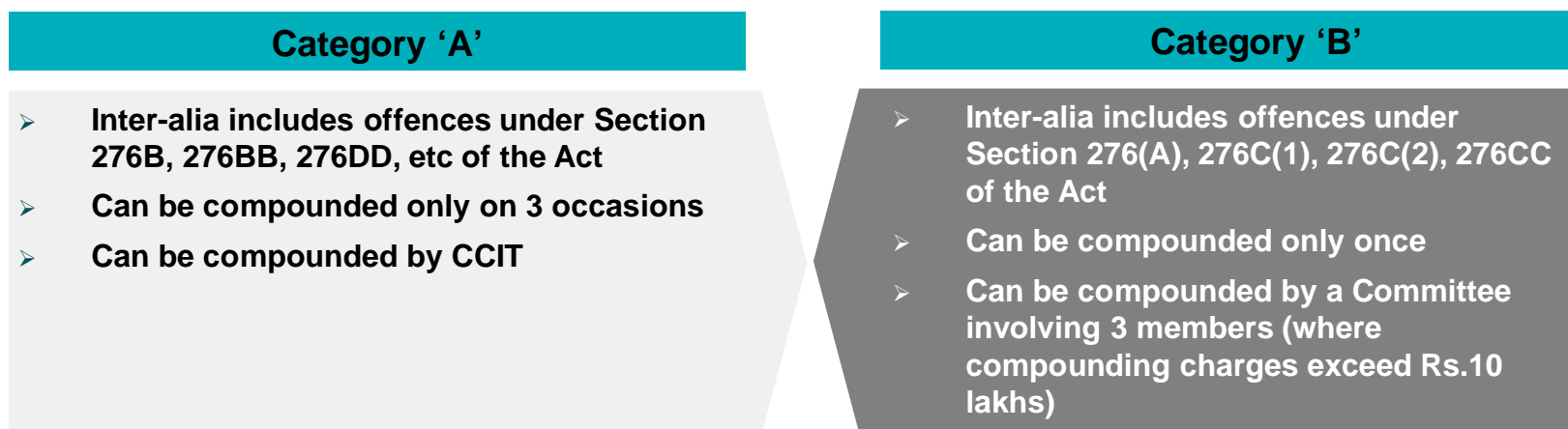


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## Compounding guidelines

# Old guidelines [23 December 2014]

- Valid for the compounding applications filed w.e.f 1 Jan 2015 till 14 June 2019 (*post which new guidelines would be applicable*)
- *The offences are classified into two parts as under:*



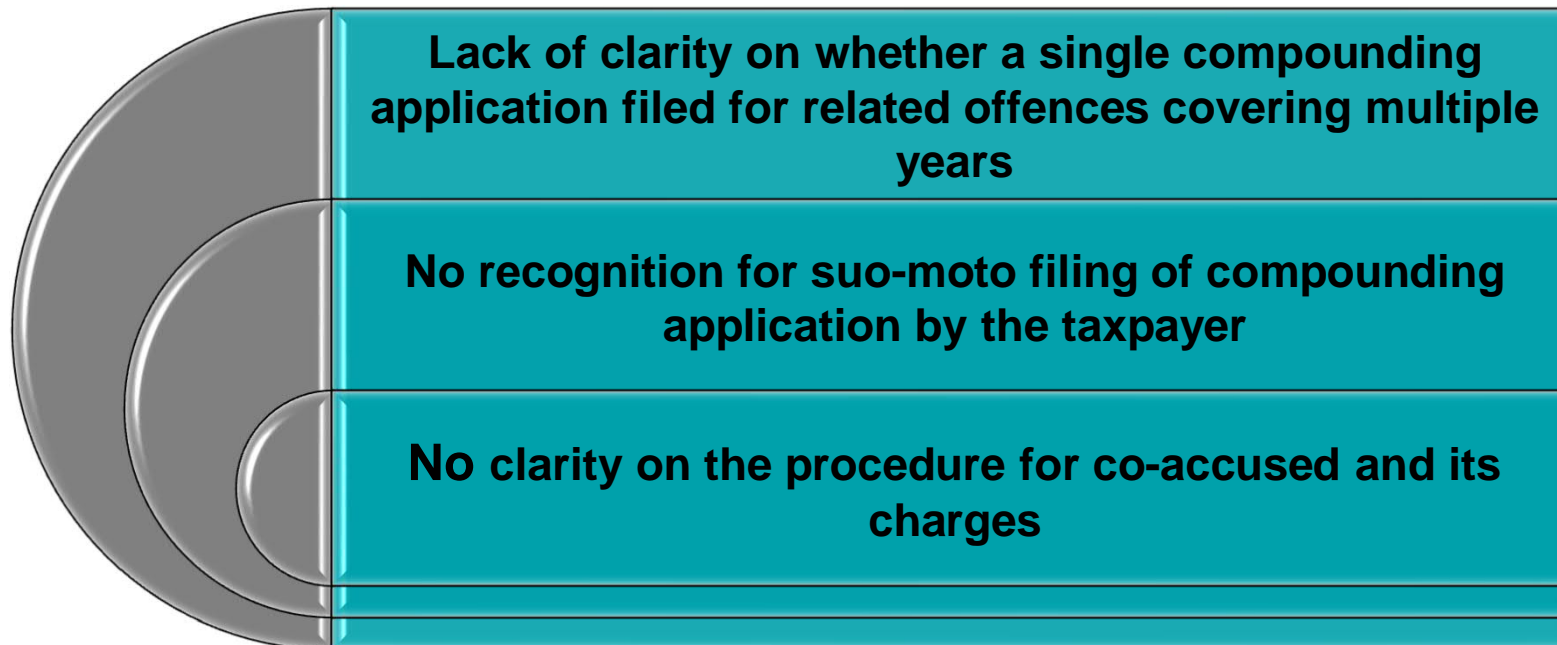
## Fees for compounding



# Old guidelines [23 December 2014]

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- Various shortcomings were faced by the taxpayers in the old guidelines, such as



- Several representations were made to the CBDT with respect to the above

# New guidelines [14 June 2019]

- The new guidelines will supersede the old guidelines and applicable to all applications filed **on or after 14 June 2019**
- As per the Guidelines the offences committed by taxpayers are bifurcated in two categories:

## Category A

- inter-alia includes offences punishable under Section 276B,
  - Section 276CC
- Can be compounded only on **3 occasions** in the life time of the taxpayer

## Category B

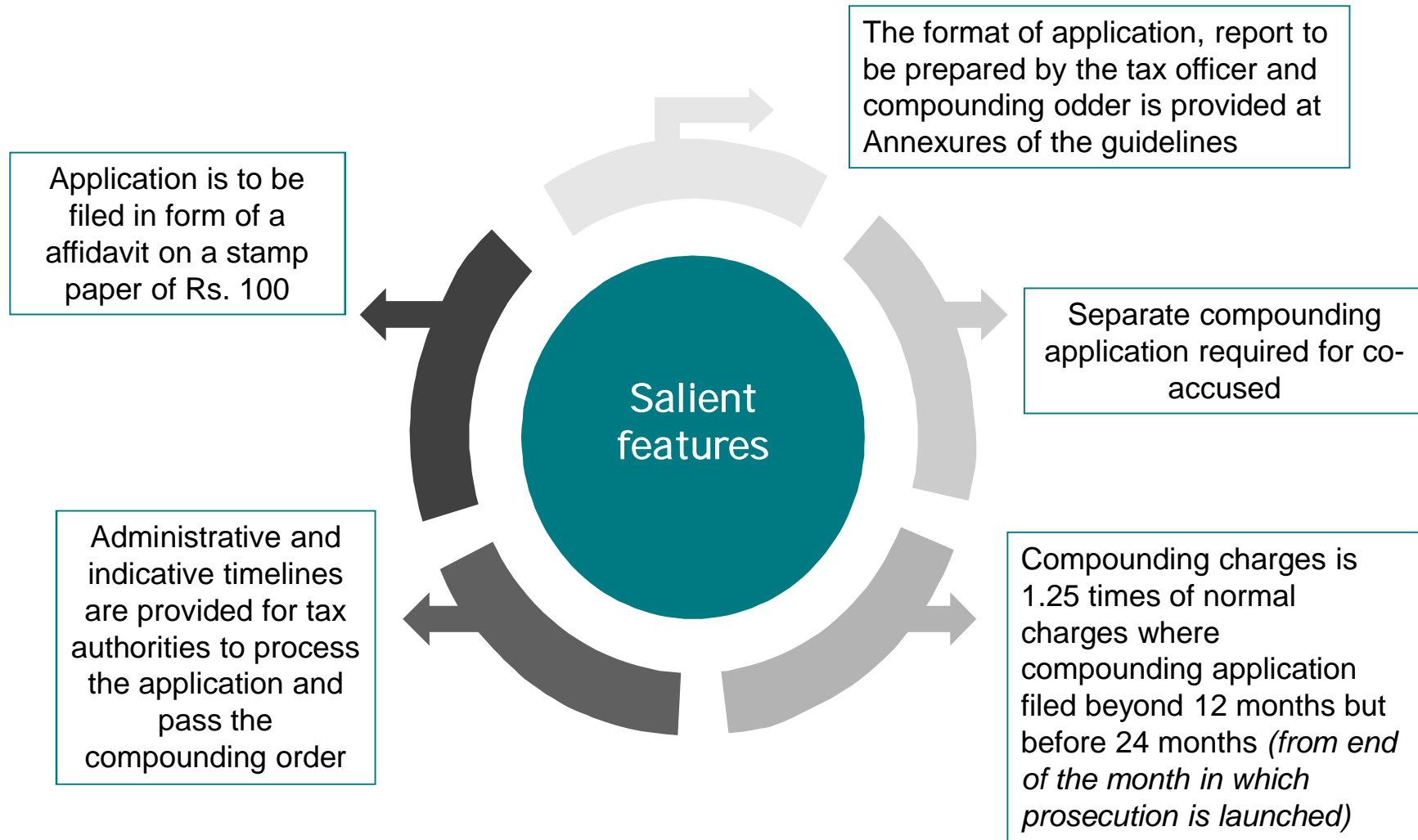
- inter-alia includes offences punishable under Section 276C(1),
  - Section 276C(2)
- Can be compounded **only once** in the lifetime of the taxpayer

## Welcome changes

- Under Category A - Clarification on multiple years could be included under single application.
- Under category B – If the application is made suo-moto, multiple years can be included in first application
- Offences covered u/s 276CC moved from Category B → A [**can be compounded on 3 occasions**]
- Lesser compounding charges at 2% per month for filing suo-moto application for Section 276B cases



# New guidelines - features



# Offences not to be compounded

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**01**

**Category 'A'  
offence on more  
than 3 occasions**

**02**

**Category 'B'  
offence other  
than the first  
offence**

**03**

**Applicant  
convicted by  
court of law**

**04**

**Result of  
investigation**

**05**

**Have a bearing on  
a case under  
investigation**

**06**

**Relating to  
undisclosed  
foreign bank  
account / assets**

**07**

**Offence under  
Black Money Act,  
benami  
transactions**

**08**

**Not fit case for  
compounding  
*(CCIT at his discretion will  
decide)***

# Compounding charges – How to calculate?

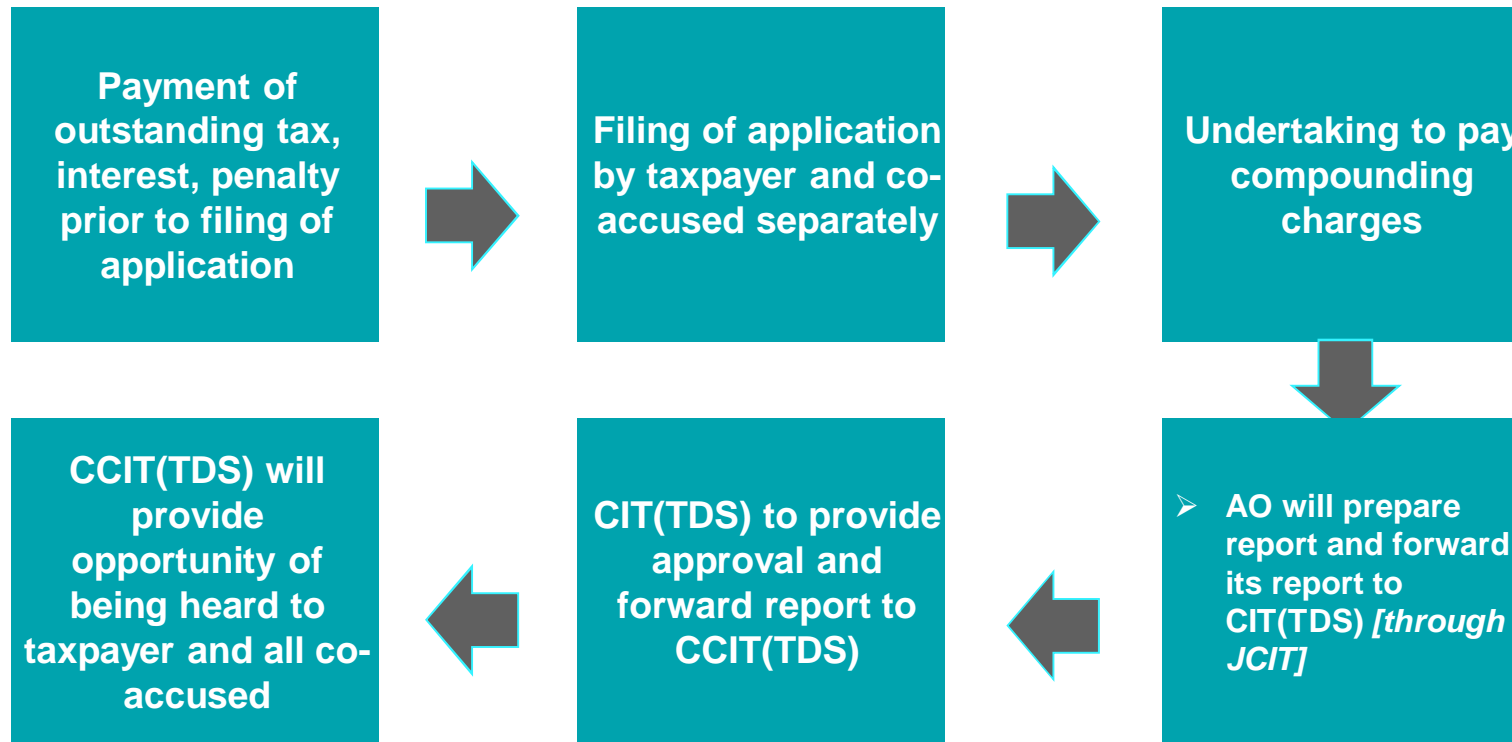
Particulars	Amount (Rs.)
Compounding fees	100
Add: Prosecution & establishment expenses (10% of compounding fees)	10
Add: Litigation expense (as per actuals spent by the department)	5
Add: Co-accused (as per section 278B) charges (10% of compounding fees per co-accused)	10
<b>Total compounding charges</b>	<b>125</b>

## Compounding fees

276B	276C(1)	276C(2)	276CC
<p>Suo-moto → 2% per month</p> <p>First occasion → 3% per month</p> <p>Subsequent occasion (ie. 2<sup>nd</sup> and 3<sup>rd</sup> occasion) → 5% per month</p>	<p>Tax sought to be evaded</p> <ul style="list-style-type: none"> <li>➤ Exceeds 25 lakhs → 150%</li> <li>➤ Other case → 125%</li> </ul> <p><u>Penalty evaded</u></p> <ul style="list-style-type: none"> <li>➤ 100%</li> </ul>	<p>3% per month of tax, interest and penalty which is sought to be evaded</p>	<p>Tax on income (after TDS and advance tax)</p> <ul style="list-style-type: none"> <li>➤ More than 25 lakhs → Rs 4000 / day from due date of filing return</li> <li>➤ Less than 25 lakhs Rs 2000 / day</li> </ul>

# Compounding proceedings procedure (for instance Section 276B)

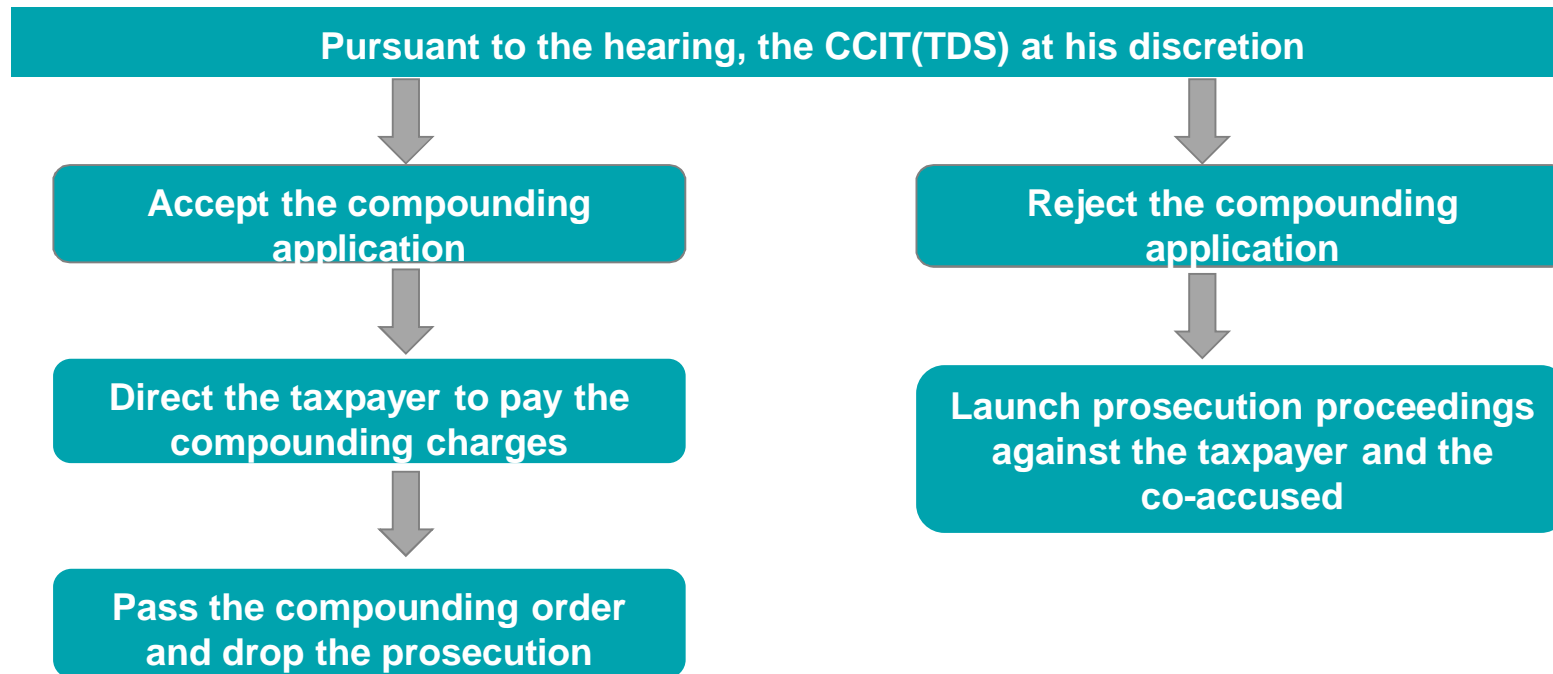
New guidelines, provides detailed procedure for compounding of offence



Typically, time period of 3-6 months goes in reaching the application before the CCIT(TDS)

# Compounding proceedings procedure (for instance Section 276B)

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**Where compounding charges exceed Rs. 10 lakhs, offences can be compounded only by a Committee involving 3 members [Pr CCIT, DGIT (Inv) and CCIT / DGIT]**



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## **Recent amendment in the compounding guidelines**

# Recent CBDT circulars

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Circular No  
24/2019

- If default committed is **less than INR 25 lakhs**, such shall not be selected for prosecution unless the tax payer is a habitual defaulter and tax authorities obtained approval of 2 prescribed officers

Circular No  
25/2019

- Relaxation of time-limit for filing the compounding application where it has been filed before 31.12.2019 (the conditions of filing compounding application within 12 months of launching prosecution is done away with) – **One time benefit only**

Circular No  
1/2020

- Recently, the time limit for filing the compounding application has been extended to **31.01.2020**

**The new compounding guidelines are indicative of the revenue generating mindset of the Government and to avoid undue harassment to small taxpayers**



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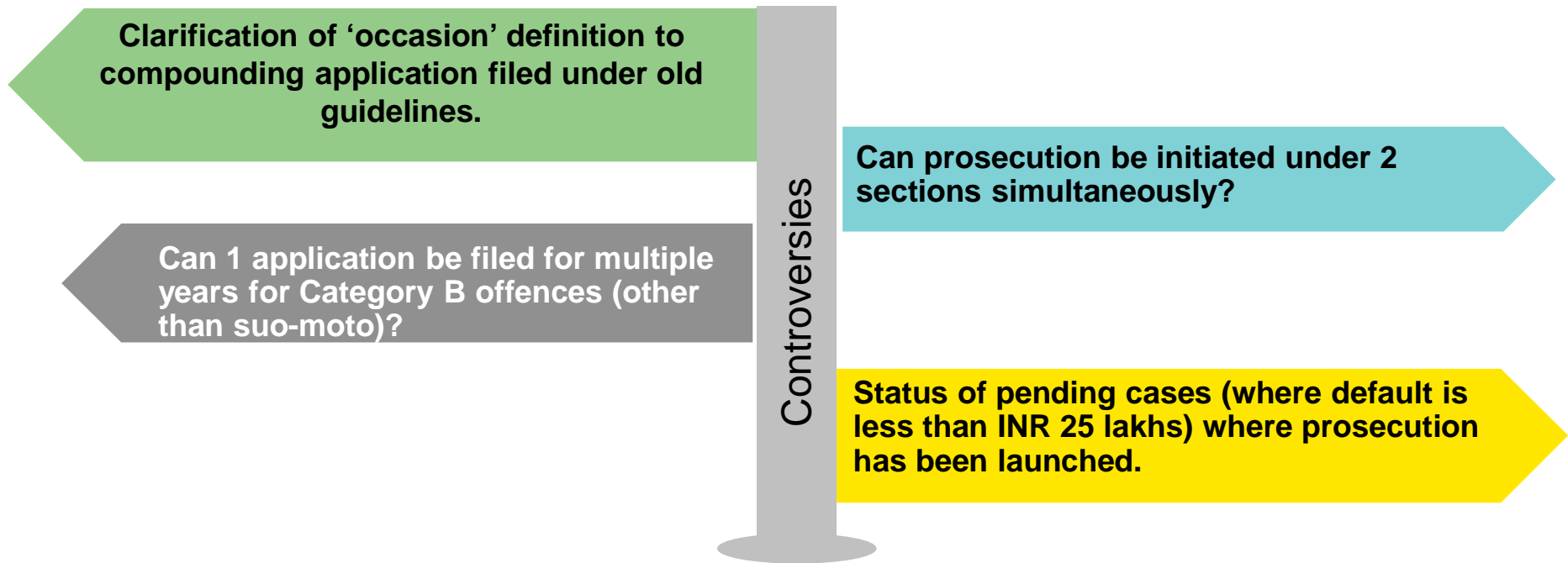


## Controversies





# Controversies - Representations made to CBDT



Representations

Various professional bodies have made representations to CBDT on the above controversies seeking clarifications



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## Key decisions

# Karan Luthra - Offence u/s 276CC

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- Individual taxpayer failed to submit his ROI for 3 years
- There was a tax refund arising in all 3 years (no tax was payable by the taxpayer)
- No ROI filed in response to Notices issued under Section 142(1) and 148 of the Act.
- Prosecution proceedings initiated under Section 276CC of the Act for non-filing of ROI
- Orders framing charge were challenged by the taxpayer in the lower Court
- The lower Court rejected the request to drop the prosecution proceedings as the taxpayer failed to furnish the required information despite issue of notices

## **The Hon'ble Delhi HC upheld the order of the lower Court:**

- **The taxpayer had violated the provisions of Section 139(1) by non-filing of the ROI before the due date**
- **The notice served under Section 142(1) was not complied with and such inaction added to the gravity of the reasons for launching criminal prosecution**

# Jefferris India Pvt Ltd - Offence u/s 276C(1)

- The taxpayer filed its return of income reflecting total income of Rs. 9.58 crores after taking a deduction for franking charges (which were capital in nature) amounting to Rs 22.50 lakhs
- During assessment, the taxpayer realised its mistake and suo moto offered the franking charges to tax (and did not litigate). However, the learned AO, initiated and levied penalty under section 271(1)(c) of the Act at 100% of the tax amount (i.e. Rs. 7.64 lakhs) which was confirmed by the CIT(A)
- The taxpayer being an MNC did not want to litigate the penalty levied **owing to the smallness of the amount involved**. The taxpayer accepted the penalty under contest and filed a letter indicating to the AO
- The Department initiated prosecution proceedings on the Company and the director by issuing a notice under Section 276C(1) of Act
- The taxpayer decided to contest the matter before the Hon'ble Tribunal and filed a belated appeal along with an application for condonation of delay and a request for early hearing both on merits
- **Regarding condonation of delay** - it was submitted that the taxpayer had decided to contest the matter only when the show cause notice for prosecution was received. This was a bonafide reason and no malafide benefit is sought by delay in filing of the appeal
- **On merits of the case** - The error by the taxpayer was bonafide and the franking charges were voluntarily offered to tax during assessment. If the department pursues such bonafide cases and launches prosecution proceedings, it would discourage international investors from investing in India

The Tribunal accepted the bonafide contention and to protect the image of the country and to safeguard MNCs & international investors from undue harassment, not only condoned the delay but at the admission stage itself deleted the entire penalty on merits

# Firoz Abdul Gaffar Nadiadwala - Offence u/s 276B

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- The Assessee delayed in depositing the TDS for FY 2009-10 of Rs 8,56,102 by a period exceeding 12 months as the economic condition of the accused Assessee was not well and the business was not in a good condition.
- Prosecution under Section 276B of the Act was launched against the Assessee despite the TDS and interest being paid suo moto by the Assessee before the launch of such prosecution.
- In it's defence the Assessee submitted before the court a reasonable cause of financial difficulty along with the fact that it was a first time default of statutory payment by the Assessee. Other arguments included that the accountant was unaware of such tax deduction and as such there was no intentional default (no mens-rea).
- The Assessee further relied on the instruction of the CBDT dated 28 May 1980, which contended that prosecution under Section 276B of the Act is not expected to be proposed when the amount involved and the period of default is not substantial and in the meantime, the TDS has also been deposited to the credit of the Government.
- The Court rejected / negated all the arguments posed by the Assessee on the ground that the Assessee had not furnished any material / evidence on record to substantiate its claim. Further the court remarked that, even if the Assessee had paid the due TDS along with interest, it had not availed the option of compounding the offence.

**It was held that since the payment of TDS was made at a belated stage and the delay exceeded a period of 12 months, the accused Assessee was found to be guilty of the offence under Section 276B of the Act and was punished with a sentence of rigorous imprisonment of 3 months and a fine of Rs. 5,000.**

**Thank you**

