

GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER DIRECT TAX LAWS, 2014

LETTER [F.NO.285/35/2013 IT (INV.V)/108, DATED 23-12-2014

In the light of various references received from the field formation from time to time, existing guidelines on compounding of offences under Income-tax Act, 1961 (the Act) have been reviewed and in supersession of the same, including the guidelines issued vide F.No. 285/90/2008-IT(Inv.)/12 dated 16th May 2008, the following guidelines are issued for compliance by all concerned.

2. These guidelines shall come into effect from 01.01.2015 and shall be applicable to all applications for compounding received on or after the aforesaid date. The applications received before 01.01.2015 shall continue to be dealt with in accordance with the guidelines dated 16.05.2008.

3. Compounding Provision:

Section 279(2) of the Act provides that any offence under chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the CCIT/DGIT. As per section 2(15A) and 2(21) of the Act, Chief Commissioner of Income Tax includes Principal CCIT and Director General of Income tax includes Principal DGIT.

4. Compounding is not a matter of right:

Compounding of offences is not a matter of right. However, offences may be compounded by the competent authority on his satisfaction of the eligibility conditions prescribed in these guidelines keeping in view factors such as conduct of the person; nature and magnitude of the offence and facts and circumstances of each case.

5. Applicability of these guidelines to prosecutions under IPC:

Prosecution instituted under Indian Penal Code, if any, cannot be compounded as per these guidelines. However, section 321 of Criminal Procedure Code, 1973 provides for withdrawal of such prosecutions.

6. Classification of Offences:

The offences under Chapter-XXII of the Act are classified into two parts (Category 'A' and Category 'B') for the limited purpose of compounding of the offences.

6.1 Category 'A'

Offences punishable under the following sections are included in **Category 'A'**:

<i>Sl. No.</i>	<i>Section</i>	<i>Description/Heading or section</i>
<i>i.</i>	276	(Prior to 01/04/1976) - Failure to make payment or deliver returns or statements or allow inspection.
<i>ii.</i>	276B	(Prior to 01/04/1989) - Failure to deduct or pay tax
<i>iii.</i>	276B	(w.e.f. 01/04/1989 and up-to 30/5/1997)- Failure to pay tax deducted at source under chapter XVII-B
<i>iv.</i>	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -O or 2nd proviso to section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
<i>v.</i>	276BB	Failure to pay the tax collected at source
<i>vi.</i>	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
<i>vii.</i>	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269 T
<i>viii.</i>	277	False statement in verification etc. with reference to Category 'A' offences
<i>ix.</i>	278	Abetment of false return etc. with reference to Category 'A' offences

6.2 Category 'B':—

Offences punishable under the following sections are included in **Category 'B'**:

<i>Sl. No.</i>	<i>Section</i>	<i>Description/ Heading of section</i>
<i>i.</i>	275A	Contravention of order made u/s 132 (3)
<i>ii.</i>	275B	Failure to comply with the provisions of section 132(1)(iib)
<i>iii.</i>	276	Removal, concealment, transfer or delivery of property to thwart tax recovery
<i>iv.</i>	276A	Failure to comply with the provision of sections 178 (1) and 178 (3)
<i>v.</i>	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
<i>vi.</i>	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
<i>vii.</i>	276C(1)	Wilful attempt to evade tax etc.
<i>viii.</i>	276C(2)	Wilful attempt to evade payment of taxes etc.
<i>ix.</i>	276CC	Failure to furnish returns of Income
<i>x.</i>	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
<i>xi.</i>	276D	Failure to produce accounts and documents
<i>xii.</i>	277	False statement in verification etc. with reference to Category 'B' offences
<i>xiii.</i>	277A	Falsification of books of account or documents etc.
<i>xiv.</i>	278	Abetment of false return etc. with reference to Category 'B' offences

7. Eligibility Conditions for compounding:

The following conditions should be satisfied for considering compounding of an offence :—

- i.* The person makes an application to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the prescribed format (Annexure-1)
- ii.* The person has paid the outstanding tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought.
- iii.* The person undertakes to pay the compounding charges including the compounding fee, the prosecution establishment expenses and the litigation expenses including counsel's fee, if any, determined and communicated by the CCIT/DGIT concerned.
- iv.* The person undertakes to withdraw appeal filed by him, if any, in case the same has a bearing on the offence sought to be compounded. In case such appeal has mixed grounds, some of which may not be related to the offence under consideration, the undertaking may be taken for appropriate modification in grounds of such appeal.

8. Offences generally not to be compounded:

- i.* A Category 'A' offence sought to be compounded by an applicant in whose case compounding was allowed in the past, in an offence under the same section for which the present compounding has been requested, on 3 occasions or more.
- ii.* A Category 'B', offence other than the first offence as defined herein below:
First offence means offence under any of the Direct Tax Laws committed prior to (a) the date of issue of any show-cause notice for prosecution or (b) any intimation relating to prosecution by the Department to the person concerned or (c) launching of any prosecution, whichever is earlier;
OR
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 entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed.
- iii.* Offences committed by a person who, as a result of investigation conducted by any Central or State agency and as per information available with the CCIT/DGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity.

- iv. Offences committed by a person who, was convicted by a court of law for an offence under any law, other than the Direct Taxes laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine, and which has a bearing on the offence sought to be compounded.
- v. Offences committed by a person which, as per information available with the CCIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency.
- vi. Offences committed by a person for which he was convicted by a court of law under Direct Taxes laws.
- vii. Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding.
- viii. Offences committed by a person 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'.
- ix. Any other offence, which the CCIT/DGIT concerned considers not fit for compounding in view of its nature and magnitude.

9. Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in para 8 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

10. Authority Competent to Compound an Offence:

The CCIT/DGIT having jurisdiction over the person, seeking compounding of an offence, is the competent authority for compounding of all Category 'A' and Category 'B' offences. However, an order in ease of an application for compounding of an offence appearing in Category 'B' of para 6 supra, involving compounding charges (as explained in para 13 infra) in excess of Rs.10,00,000 (Rs. ten lakhs) shall be passed by the CCIT/DGIT concerned only on the recommendation of a committee comprising of 3 officers of the region concerned, namely (i) Principal CCIT, (ii) DGIT (Inv.) and (iii) CCIT/DGIT having jurisdiction over the case. In case such officers are not available within the region, the nearest DGIT or CCIT may be co-opted as Member.

10.1 Where Principal CCIT / DGIT(Inv) is the CCIT/DGIT having jurisdiction over the case, then another officer of the rank of CCIT may be co-opted as a member of the Committee. The CCIT/DGIT having jurisdiction over the case will act as the 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.

11. Compounding Procedure:

- i. On receipt of the application for compounding, the same shall be processed by the Assessing Officer/Assistant or Deputy Director concerned and submitted promptly along-with duly filled in check-list (**Annexure-2**), to the authority competent to compound, through proper channel.
- ii. The competent authority shall duly consider and dispose of every application for compounding through a speaking order in the prescribed format (**Annexure-3**) within the time limit prescribed by the Board from time to time. In absence of such a prescription, the application should be disposed off **within 180 days** of its receipt. However, while passing orders on the compounding applications, the period of time allowed to the assessee for paying compounding charges shall be excluded from the limitation specified above.
- iii. Where compounding application is found to be acceptable, the competent authority shall intimate the amount of compounding charges to the applicant requiring him to pay the same **within 60 days** of receipt of such intimation. Under exceptional

circumstances and on receipt of a written request for further extension of time, the competent authority may extend this period up-to further period of **120** days. Extension beyond this period shall not be permissible except with the previous approval of the Member (Inv), CBDT on a proposal of the competent authority concerned.

- iv. However, wherever the compounding charges are paid beyond 60 days as extended by the competent authority, the applicant shall have to pay **additional compounding charge** at the rate of 2% per month or part of the month of the unpaid amount of compounding charges.
- v. The competent authority shall pass the compounding order **within 30 days** of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application may be rejected after giving the applicant an opportunity of being heard. The order of rejection shall be brought to the notice of the Court immediately through prosecution counsel in the cases where prosecution had been instituted.

12. Fees for compounding:

The fees for compounding of offences shall be as follows:

12.1 Section 276B- Failure to pay the tax deducted at source.

Section 276BB- Failure to pay the tax collected at source.

3% per month or part of a month of the amount of tax in default disclosed in the compounding application. After compounding of the said offence, if the same person comes forward for compounding of such offence through any subsequent application, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default. The period of default for calculating compounding fee in the category shall be calculated from the date of deduction to the date of deposit of tax deducted at source as is done in respect of calculating interest under section 201(1A).

12.2 Section 276C(1)- Wilful attempt to evade tax etc.

100% of the amount sought to be evaded.

12.3 Section 276C(2)-Wilful attempt to evade payment of any tax etc.

3 % per month or part thereof of the amount of tax etc., the payment of which was sought to be evaded, for the period of default.

12.4 Section 276CC- Failure to furnish returns of income.

12.4.1 2% per month or part of a month of the tax and interest determined on assessment or reassessment, in relation to return of income that was required to be furnished under section 139(1) or section 142(1) or section 148 or section 153A/153C as the case may be, existing on the date of conveyance of compounding charges to the applicant, determined after rectification u/s 154 of the Act, if any and 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 to the date of furnishing of the return or where no return was furnished, to the date of completion of the assessment.

12.4.2 Where, before the date of furnishing of the return or where no return was furnished before the date of completion of assessment, any tax is paid by the person u/s 140A, compounding fee shall be calculated in the manner prescribed above up-to the date on which the tax is so paid; and thereafter, the fee shall be calculated at the aforesaid rate on the amount of tax and interest determined on the assessment or re-assessment as the case may be, determined after rectification u/s 154 of the Act, if any, as reduced by the TDS, TCS, advance tax and tax paid u/s 140A before filing of the return of income or where no return was furnished from the date of completion of assessment or reassessment.

12.5 Section 276CCC- Failure to furnish return of income as required under section 158BC.

The fee for this offence shall be calculated in the same manner as for offences u/s 276CC.

12.6 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.

12.7 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 provision of Section 269T.

12.8 Section 277- False statement in verification etc.

Section 278- Abetment of false return etc.

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

12.8.2 Where same set of facts and circumstances attract prosecution under section 277 in addition to the offence in connection with which prosecution under section 277 got attracted in case of the same person, no separate compounding fee shall be charged for offence under section 277. For example where a person is charged with an offence under section 276C(1) as also under section 277, for the same set of facts and circumstances, the compounding fees shall be charged only for the offence under section 276C(1) at the rates prescribed for the said section.

12.8.3 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 of the person charged under sections 278B or 278C. However, the authority competent to compound, 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 fees which may be chargeable from the main accused.

12.8.4 In case where no offence under any other sections of I.T. Act is involved except under section 277 or 278, the compounding fee shall be decided by the authority competent to compound having regard to the amount of tax which would have been evaded as a result of such offence u/s 277 or 278.

12.9 Offences, other than those described in para 12.1 to 12.8, for which no compounding fee has been prescribed, the authority competent to compound may determine the amount of compounding fee having regard to the nature and magnitude of the offence, subject to levy of a **minimum compounding fee of Rs. 25,000/-** for each such offence.

12.10 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 approval of the Finance Minister.

13. Compounding Charges:

The compounding charges shall include compounding fee, prosecution establishment expenses and litigation expenses including Counsel's fee. Prosecution establishment expenses will be charged at the rate 10% of the compounding fees subject to a minimum of **Rs.25,000/-** in addition to litigation expenses including Counsel's fees paid/payable by the Department in connection with offence(s) compounded by a single order. In a case where the litigation expenses are not readily ascertainable, the competent authority may arrive at litigation expenses, inter alia, on the basis of rates prescribed by the Government and on the basis of available records with the government and the counsels.

14. Applicability of Guidelines to offences under other direct tax laws

These guidelines shall apply *mutatis mutandis* to offences under other Direct Tax Laws and the compounding fee for offences under the other Direct Tax Laws will be same as prescribed supra for the

corresponding provisions of offences under the Income-tax Act, 1961.

15. The application for compounding in the cases of co-accused shall be considered along with the main case or immediately after a decision has been taken in the main case.

16. The PCCsIT/CCsIT/PDGsIT/DGsIT are requested to circulate the above revised Guidelines along with its annexure Nos. 1, 2 and 3 among all the officers of their region for compliance.

[Annexure 1](#)

[Annexure 2](#)

[Annexure 3](#)

[Annexure - A](#)

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