

Compounding of Offences Under Direct Tax Laws 2019

written by Raghav Gaiind | July 19, 2019

Compounding of offences is not a matter of right. According to Section 279(2) of the Income Tax Act, 1961 ("Act"), any offence under Chapter XXII of the Act, may, either before or after the institution of the proceedings be compounded either by the Chief Commissioner of Income-tax or Director General of Income Tax as the case may be. Compounding of offences enables a defaulter to settle a case and avoid any kind of cumbersome trial by paying tax, interest and compounding charges. Earlier, in order to avoid the experience of prison life, the tax offenders used to except the discrepancies made in order to avoid payment of tax in front of the authorities and pay extra tax along with interest within a specific period of time.

With a prime motive of tightening the screws on the tax evaders, the Central Board of Direct Tax ("CBDT") has issued new guidelines of Direct Tax Laws 2019 ("Guidelines") in relation to the compounding of offences as detailed in the previous guidelines issued on December 23, 2014 ("December Guidelines"). These Guidelines are issued with an intention to curb evasion of tax under the major money laundering laws which *inter alia* includes the Black Money Act, Benami Property Act, etc. The new guidelines will be effective from June 17, 2019, and apply to all the cases of compounding received on or after this date.

AMENDMENTS MADE IN NEW Direct Tax Laws 2019:

The

major amendments to the Guidelines include insertion of Category B offences of

the December Guidelines in Category A. Therefore, in order to avoid complicatedness, we have detailed the list of Category A and Category B offences as mentioned in the Guidelines:

Category A

Offences

punishable under the following sections are included in Category A:

S. No.	Section	Description/Heading
1.	276	(Prior to 01/04/1976) – Failure to make payment or deliver returns or statements or allow inspection.
2.	276B	(Prior to 01/04/1989) – Failure to deduct or pay tax
3.	276B	(w.e.f. 01/04/1989 and up-to 30/5/1997)- Failure to pay tax deducted at source under chapter XVII-B
4.	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115-0 or 2 nd proviso to section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
5.	276BB	Failure to pay the tax collected at source
6.	276CC	Failure to furnish return on income
7.	276CCC	Failure to furnish returns of income in search cases in block assessment scheme

8.	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
9.	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269 T
10.	277	False statement in verification etc. with reference to Category 'A' offences
11.	278	Abetment of false return etc. with reference to Category 'A' offences

Category

B

Offences under the following sections are included in Category B:

S. No.	Section	Description/Heading
1.	276A	Failure to comply with the provision of sections 178 (1) and 178 (3)
2.	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
3.	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
4.	276C (1)	Wilful attempt to evade tax etc.
5.	276C (2)	Wilful attempt to evade payment of taxes etc.
6.	276D	Failure to produce accounts and documents
7	277	False statement in verification etc. with reference to Category 'B' offences
8.	277A	Falsification of books of account or documents etc.
9.	278	Abetment of false return etc. with reference to Category 'B' offences

In comparison to the December Guidelines, the offences under Section 276CC and Section 276CCC have been moved from Category B to Category A. Further, under the Guidelines sections 275A, 275B and 276 of the Act have been ripped off from Category B as detailed in December Guidelines and are regarded as Non-Compoundable offences in the Guidelines.

Form and Time limit for filing of the compounding application:

- The application for compounding shall be filed in the form of the affidavit on the stamp paper bearing value of INR 100. In the December Guidelines, there was no requirement of filling the same in the form of an affidavit on a stamp paper;
- Under the Guidelines, it is clearly detailed that the application of compounding may be filed by the applicant on its own motion irrespective of the fact whether the authorities are aware of an offence or not. However, it is pertinent to note here that no application shall be filed after the expiry of 12 months from the end of the month in which the complaint has been filed in any court of law for which compounding is sought;
- It is clearly mentioned in the Guidelines that there shall no dues relating to the offence for which the compounding is sought before making the application. If found out then the

same

shall be intimated to the applicant and the applicant shall clear the same within 30 days from the date of intimation;

- The applicant undertakes to pay the compounding charges determined in accordance with these Guidelines;
- The applicant undertakes to withdraw appeals filed, if any, related to the offence(s) sought to be compounded. In case such appeal has mixed grounds, one or more of which may not be related to the offence(s) under consideration, an undertaking shall be given for the withdrawal of such grounds as are related to the offence to be compounded.
- Any application for compounding of offence under section 276B/276BB of the Act by an applicant for any period for a particular TAN should cover all defaults constituting offence under section 276B/276BB in respect of that TAN for such period.

Offences

which are generally not compounded:

According to the Guidelines, the following expenses are generally non-compoundable:

- Category A offences which have occurred on more than 3 occasions. However, such offences shall be allowed to be compounded if sufficient grounds are provided before the authorities;
- Category B offence other than the First Offence. For the purpose of clarity, the Guidelines have explained the meaning of the First Offence. The First Offence means:
 - Offences committed prior to the following:
 - Before the date of issuance of any notice in relation to the prosecution; or
 - Before the intimation is given by the department to the applicant in relation to the filing of any prosecution; or
 - Launching any prosecution;Whichever is earlier.
- Offence(s) not detected by the department but voluntarily disclosed by the applicant prior to the filing of the application for Compounding of Offence(s) in the case under any Direct Tax Acts for one assessment year or more.
- Offences in which the applicant has already been convicted under the taxation laws by any court of law;
- Offences in which the application filed by the applicant has already been rejected except in the cases where the benefit of rectification is provided under these Guidelines;
- Proceedings in which the applicant has already been regarded as the main accused where it is found out that the applicant has enabled others for tax evasion by way of money laundering or bogus entries as the case may be.
- Where it is found by the investigating agencies that the applicant is involved in any kind of anti-national or terrorist activities;
- Any offence committed by the applicant in which the prescribed punishment is more than 2 years or more with or without fine and which has the bearing on the offence sought to be compounded;
- Any offence committed by the applicant which has a bearing on the case under investigation by ED, CBI, Lokpal, Lokayukta or any other Central or State Agency;

- Any offence committed by the applicant whose application for plea bargaining under Chapter XXI-A of 'Code of Criminal Procedure' in respect of any offence is pending in any court of law or where a court has recorded "mutually satisfactory disposition of such an application is not worked out" and such offence has bearing on an offence sought to be compounded;
- Any offence which has a 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/CCITI Pr. DGIT/DGIT concerned considers not fit for compounding in view of factors such as to the conduct of the person, nature and magnitude of the offence.

Conclusion - Direct Tax Laws 2019

CBDT has come up with a tougher approach in dealing with tax evasion at a time when direct tax revenue collections in FY 2019 is estimated to be below the target aimed by the Finance Ministry. For the purpose of economic growth of the country and holding the money back in the country, India has been tapping all available sources of information from its treaty partner countries to identify those who have foreign income which is not disclosed. Such sharing of the information across national borders has made it harder to hide wealth abroad.

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