

Exploring Provisions

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Associates**

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**Compounding of offenses under Direct
Taxes Laws- An antidote**

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“YathaDrishti, TathaSrishti- As the vision, so the world”

PREFACE

A person guilty of committing an offence is liable to be prosecuted under the relevant provisions of law. Compound offense refers to an offense composed of one or more separate offenses. Compounding of an offense in the context of law means an amicable settlement for the purpose of averting prosecution for an offense.

As per the Black’s Law Dictionary, to “Compound” means “to settle a matter by a money payment, in lieu of other liability.” This definition thoughtfully presents the concept of Compounding as a settlement mechanism that affords the offender an opportunity to avoid prosecution in exchange of him undertaking a liability that is pecuniary in character or otherwise. The landmark decision of the Calcutta High Court in Murray vs. The Queen-Empress lends the gist of this concept as one which “ signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement of his desiring to abstain from a prosecution”.

Purpose of this Document

All offenses cannot be compounded and hence an attempt has been made to collate relevant information on this subject.

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I. Introduction

From time to time the Ministry of Finance bring out guidelines for compounding of offences under direct taxes laws for reducing pendency or prosecutions before the courts and removal of unintended hardship to assessees in deserving cases. Most importantly an assessee is not entitled to notice before the prosecution is launched against him vide 238ITR461. At the same time it must be borne in mind that an assessee cannot claim, as of right, that his offence should be compounded. Factors such as conduct of the assessee, nature and magnitude of the offence and facts and circumstance of each offence will be considered while dealing with such a request. Often at the show cause stage of launching prosecution the assessee is given an offer of compounding.

Further every petition for compounding of offence must essentially make a case of hardship and detail the circumstances that have resulted into the offence of the type detailed in the relevant section. Along with it the application must clearly bring out that the conditions for compounding are satisfied in all respects and that the assessee is ready to cooperate and pay full compounding fee as shall be determined by the competent authority. The application is considered for compounding only when the assessee has paid the amount of undisputed tax as well as interest and penalties relating to the default and further that the assessee should state that he is willing to pay the compounding fee and the prosecution establishment expenses prescribed in the guidelines. Also it is important to note that in case of second and subsequent offences, the compounding fee get enhanced by almost double.

Even societies, companies can be prosecuted as well and in their cases it cannot be said that a society/company cannot have a guilty mind. The society/company's mind is the mind of the persons controlling such entity. If the persons controlling the company/society have acted fraudulently on behalf of the company/society, it is the company/society which would be indicted for the fraud committed by the persons controlling it. Hence, even though mens rea is one of the elements of the offence which is the subject-matter of the criminal complaint against a company/society, the company/society can be held guilty of the offence if the persons controlling the company had acted on its behalf in committing the offence vide 173ITR487.

II. Prosecution Sections

1. Income tax

S.No.	Section	Offence	Maximum sentence
1.	S. 276B	Failure to pay TDS	7 yrs
2.	S. 276BB	Failure to pay TCS	7 yrs
3.	S. 276C (1)	<p>Willful attempt to evade tax</p> <p>Example cases</p> <ul style="list-style-type: none"> • Fabricating False Evidence in the form of fabricated books, • false entries, • Possession Of Two Agreements Showing Different Values In Respect Of Same Transaction, • Possession Of Document Containing False Entry, • False Verification • False statement, • Making False Claims For Depreciation And Investment Allowance, • Not Recording demand drafts, bank account, fixed deposits, fixed deposits interest In Books Of Account <p>Most importantly the use of jurisdiction by ITO under this provision and under the provisions</p>	7 yrs

		<p>of sections 277 and 278B had nothing to do with the actual assessment orders and it was only when the Assessing Officer found that prima facie the accused had committed offences mentioned in these sections, that, after taking necessary authorization, he could file a criminal complaint.173ITR487. Thus one must be extra cautious in submitting documents and papers during assessment proceedings and in the course of survey /search action.</p> <p>Exception</p> <ul style="list-style-type: none"> • Loss assessment cases however may escape prosecution vide 216ITR446 • Admission of settlement petition u/s 245D vide 133ITR909/216ITR265 	
4.	S. 276C (2)	Willful attempt to evade payment of tax such as non- payment OF Tax and issue of notice u/s 221(1) when not perused	2 yrs
5.	S. 276CC	<p>Failure to furnish return of income</p> <p>Quintessence of the offence</p> <ul style="list-style-type: none"> • It is not merely failure to file the return in time, which constitutes the offence. The failure to file the return in 	7 yrs

		<p>time must be proved by clear, cogent and reliable evidence to be " wilful" and there should be no plausible doubt of its being " wilful" . It must be intentional, deliberate, calculated and conscious with full knowledge of the legal consequences flowing from them. 320ITR263.</p> <ul style="list-style-type: none"> • Non filing of ITR due to accounts under finalization is not a reasonable excuse vide 361ITR163 • Ill health could be a good ground • When the clerk/accountant responsible for preparation of accounts fell ill and the assessee was not conversant with preparation of the profit and loss account and balance-sheet there was a reasonable ground especially viewing the conduct of the assessee who paid the advance tax, penal interest and penalty vide 184ITR47 	
6.	S. 276CCC	Failure to furnish returns in search	3 yrs

		cases Caution: SERVICE OF NOTICE ON CHARTERED ACCOUNTANTS is A VALID SERVICE once ratified in subsequent action vide 272ITR448	
7.	S. 277	False statement in verification etc. Examples <ul style="list-style-type: none"> • Bogus TDS • Bogus exemption claims • Bogus certificate • Bogus signatures 	7 yrs
8.	S.278	Abatement of false return etc. Examples <ul style="list-style-type: none"> • Directors of company, professional/middlemen, property seller who act as abettor come under this section. In a property sale transaction the seller was prosecuted under this section for inducing buyer company to pay on money vide 194ITR462 	7 yrs

2. Wealth tax

S.No.	Section	Offence	Maximum sentence
1.	S. 35A	Wilful attempt to evade tax	7 yrs

2.	S. 35B	Failure to furnish return of wealth Caution Filing of wealth tax return is mandatory under the law even if below the taxable limit vide 309ITR277	7 yrs
3.	S. 35C	Failure to produce accounts, records etc.	1 yr
4.	S. 35D	False statement in verification <ul style="list-style-type: none"> It should be deliberate false stat and not one made with the bonafide belief that an asset was not includible in the net wealth vide 213ITR184 	7 yrs
5.	S. 35E	False statement in verification u/s 35AB	6 months
6.	S. 35EE	Failure to furnish particulars u/s 35ACC	2 yrs
7.	S. 35EEE	Contravention of order made under second proviso to sub-section (1) or sub-section (3A) of section 37A	2 yrs
8.	35F	Abatement of false return	7 yrs

III. Compounding FAQs

S.No.	Question	Answer	History and reference
1.	1. Whether COMPOUNDING CAN BE DONE IN	Under section 279(2) of the Act any offence under Chapter XXII may either before or after the institution of proceedings, be compounded by	CBDT guidelines dated May 16, 2008 on compounding applicable from June 1, 2008 also

	<p>CASES WHERE ORDER OF CONVICTION HAS BEEN PASSED?</p>	<p>the Chief Commissioner or a Director General. The term proceeding shall also include the proceedings at the appellate stage. The Madras High Court in CDBT v. Umayal Ramanathan (2009) 313ITR59 held that the term 'proceeding' shall also include the proceedings at the appellate stage so that an appeal filed against the conviction and sentence passed by the trial court is also a proceeding as contemplated under section 279(2) of the Act.</p> <p>Keeping this into account the CG of 23.12.14 in particular contemplate compounding possibility in the following situations:</p> <ul style="list-style-type: none"> a) if the case is still pending in the court; b) the Court has convicted/sentenced the person who has filed an appeal against the conviction order that is pending in the Court c) the Court has acquitted the person & the department has filed an appeal against the acquittal order that is pending in the Court d) or even when an appeal 	<p>provided that compounding cannot be done when the conviction order has been passed by the court. (2011) 334ITR265.</p>
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		<p>against the acquittal order is contemplated.</p> <p>In a situation where conviction order is passed and no appeal is pending no compounding would be possible ordinarily speaking. Further no compounding is feasible where a person was convicted by a court of law for an offence under any law other than 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.</p>	
2	<p>Whether COMPOUNDING POSSIBLE AFTER FILING OF COMPLAINT?</p>	<p>Yes. The offence can be compounded after the filing of the complaint. Also the Act per se does not prohibit persons from approaching the CCIT/DGIT for compounding the offence at a later stage after the institution of the proceedings.</p> <p>However the CG provide that offences committed by a person for which complaint was filed with the competent court 12 months prior to</p>	<p>Previously however the offence could be compounded only before the filing of the complaint (337ITR251).</p> <p>In any other case therefore post 12 months one has to go to the CBDT or knock the door of the court by filing a writ petition. Under the guidelines the Board may approve compounding in deserving and suitable cases</p>

		receipt of the application for Compounding may not be compounded. Hence, application filed within one year of filing of complaint would only be eligible in the ordinary course.	involving hardship, with the approval of the Finance Minister.
3	Whether by PAYMENT OF INTEREST/PENALTY the assessee is absolved of criminal liability?	No	-
4	Whether OFFENCES CAN BE COMPOUNDED DURING PENDENCY OF APPEAL?	Yes. The CCIT/DGIT can compound the offence sought for by the applicant during the pendency of the appeal. (313ITR59)	-
5	Whether it is required by law to issue NOTICE BEFORE LAUNCHING PROSECUTION	No. There is no provision in law which requires notice to be given to the accused before launching prosecution under the Income-tax Act so said the Bombay High Court Union of India v. Gupta Builders (2008) 297ITR310. Also in Union of India v. Commercial Fibres & Others (2008) 297ITR315 it held that there is no warrant in interpreting this sub-section to mean that before any prosecution is launched, a show-cause notice	-

		should be given. This position is well established by Apex Court decision in UOI v. Banwari Lal Agarwal [1999] 238 ITR 461.	
6	Whether there is any TIME-LIMIT FOR LAUNCHING PROSECUTION?	There is no time-limit for launching prosecution vide Bombay High Court in Union of India v. Gupta Builders (2008) 297ITR310.	-
7	Whether NON-INITIATION OF PENALTY PROCEEDINGS LEAD TO bar on initiation of PRESUMPTION?	<p>No.</p> <p>The Rajasthan High Court in Universal Supply Corporation & Others v. State of Rajasthan (1994) 206ITR222 outlined the following legal position in this regard:</p> <ul style="list-style-type: none"> i) The scope and purport of interest/penalty proceedings and prosecution under the Income-tax Act are separate and independent. The existence or the absence of the one or the other is no bar to any one of them; ii) Simply charging of interest by the Department under section 201(1A) of the Act, for the delay in the payment of the amount to the Central Government, does not obliterate the prosecution; 	Ordinarily however there would be withdrawal of prosecution in the event of the Revenue losing its case in appeal either in respect of penalty or quantum or both.

		<p>iii) The non-initiation of penalty proceedings does not lead to a presumption that the default in payment was for good and sufficient reasons or that the assessee was not obliged to establish that there were good and sufficient reasons for the default in payment;</p> <p>iv) Non-initiation of penalty proceedings in a case cannot be equated with a case where the penalty proceedings were initiated and a finding is recorded by the competent authority that there were good and sufficient reasons for the delay in payment;</p> <p>v) There is no statutory requirement either under section 279 or under any other provision of the Act to give notice to the assessee before criminal proceedings are initiated against him. In other words, a notice or a right of being heard before launching criminal proceedings under the Income-tax Act for the</p>	
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		<p>offences mentioned under Chapter XXII is not mandatory and proceedings cannot be quashed on this ground. However, if such notice is given by the Department, it may check frivolous and unnecessary criminal cases or such cases where the default in payment is technical or committed in good faith. The question of compounding the offence may also be considered by the concerned authority prior to the initiation of criminal proceedings if such notice is given by the assessee desirous to compound the offence.</p>	
8	<p>Whether compounding will be possible in cases of second and subsequent offences?</p>	<p>Yes and no. For instance in case of failure to pay TDS/TCS the CG hold an application as ineligible if 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. On the other hand in case of offences such as non filing of ITR etc. more</p>	<p>Notwithstanding the restrictions the Board may approve compounding in <u>deserving and suitable cases involving hardship</u>, with the approval of the Minister.</p>

		commonly regarded as B Category offences it should necessarily be the first offence by the assessee in order to be compoundable. In other words compounding will not be done in cases of second and subsequent offences.	
9	What is the effective date of application of new guidelines issued vide F. No. 285/35/2013/IT(Inv)/108 dated 23.12.2012?	The new 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	Paragraph 2 of guidelines
10	Whether compounding of offences is bestowed as a right under the law?	No. 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.	Paragraph 4
11	Who is authorized to exercise power to compound an	The power to compound is available to the Principal Chief Commissioner or Chief	Such power is not available to a Commissioner of Income tax.

	offence under direct taxes laws	Commissioner of Income tax (CCIT) or Principal Director General or Director General of Income tax (DGIT) under section 279(2) of the Act.	
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IV. Annexure

- 1. Guidelines for Compounding of Offences under Direct Tax Laws, 2014 dated 23.12.2014**
- 2. Tax deductors who default in depositing TDS by due date shall be liable for prosecution : CBDT**

PRESS NOTES/RELEASES dated 6.8.13 (2013) 356ITR ST 41A

Annexure I

F.No. 285/35/2013 IT(Inv.V)/108
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)

E-2, ARA Centre, Jhandewalan Extn.,
New Delhi. Dated: 23rd, Dec, 2014

To
All PCCsIT/CCsIT/PDGsIT/DGsIT
Sir/Madam,

Subject: Guidelines for Compounding of Offences under Direct Tax Laws, 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'**:

Sl No.	Section	Description/Heading of section
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 and up-to 30/5/1997)- Failure to pay tax deducted at source under chapter XVII-B
iv	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -0 or 2nd proviso to section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
v	276BB	Failure to pay the tax collected at source
vi	276DD	(Prior to 1.04.1989) – Failure to comply with the provisions of section 269SS
vii	276E	(Prior to 1.04.1989) – Failure to comply with the provisions of section 269T
viii	277	False statement in verification etc. with reference to Category 'A' offences
ix	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'**:

Sl No.	Section	Description/Heading of section
i.	275A	Contravention of order made u/s 132(3)
ii	275B	Failure Failure to comply with the provisions of Section 132 (1) (iib)
iii	276	Removal, concealment, transfer or delivery of property to thwart tax recovery
iv	276A	Failure to comply with the provision of sections 178 (1) and 178(3)
v	276AA	(prior to 01/10/1986)-Failure to comply with the provisions of section 269 AB or section 269 I
vi	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
vii	276(C)(1)	Wilful attempt to evade tax etc
viii	276(C)(2)	Wilful attempt to evade payment of taxes etc

ix	276CC	Failure to furnish returns of Income
x	276CCC	Failure to furnish returns of income in search cases in blockassessment scheme
Xi	276D	Failure to produce accounts and documents
xii	277	False statement in verification etc. with reference to Category 'B'offences
xiii	277A	Falsification of books of account or documents etc.
xiv	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- I)**
- 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 case 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 26988 (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.

Yours faithfully,

(Rajat Mittal)

Under Secretary (Inv. V), CBDT, New Delhi

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Annexure 1

**Format of application for compounding of offences under
Income Tax Act to be submitted separately by each applicant**

S. No.	Particulars	Remarks
1	Name of the applicant	
2	Status	
3	Offences committed u/s *	
4	AYs / Date/ period involved in offence	
5	Status of case (i.e. whether contemplated/pending in Court/convicted/ acquitted	
6	Date of filing of complaint, if any	
7	Particulars of offences along-with justification for compounding (separate sheet)	
8	Whether the applicant has paid the amount of tax, interest, penalty and any other sum due relating to the offence	
9	Whether the applicant undertakes to pay the compounding charges as shall be intimated by the department.	
10	Whether similar offences in the case of the applicant have been compounded earlier. If yes, how many times	
11	Whether the offence is first offence as defined in para 8 (ii) of the guidelines	
12	Whether the offence has been committed by the applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/ terrorist activity	
13	Whether any enquiry/ investigation being conducted by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency is pending against the applicant? If so particulars may be given	
14	Whether the applicant 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. If so, particulars may be given along with a copy of the court's order	
15	Whether, the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court and the Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out?	
16	Whether the applicant was convicted by a court of law for the offence sought to be compounded	
17	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the filing of the application for compounding	

VERIFICATION

I son/daughter of in the capacity of..... certify and solemnly affirm that the information in the above columns is true and correct to the best of my knowledge and belief.

Place

Date

Signature

Designation

Current address

* All offences for which compounding is sought

Annexure 2

CHECK LIST for Compounding as per the Guidelines issued by the CBDT vide F.No.- 285/35/2013-1T(Inv. V) dated 23.12.2014 on Compounding of Offences

(to be submitted by AO/ADIT/DDIT to the authority competent to compound through proper channel)

(A case can be compounded only if the answers to Sl. No. 1 to 17 matches with the answers given below in remarks column.)

Name of the applicant :-

Status :-

Offences u/s :-

AYs/ Date/ period involved in offence :-

Date of filing of complaint, if any :-

Status of case (i.e. whether Contemplated/ :-

Pending in Court/ Convicted/ Acquitted) :-

S. No.	Particulars(vis a vis compounding guidelines)	Remarks	Reference of the File submitted
1	The applicant has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no.....
2	Whether the applicant has paid the amount of tax, interest and penalty & any other sum due relating to the default as prescribed in the guidelines.	Yes	On Page no.....
3	Whether the applicant has undertaken to pay the compounding charges in terms of para 7 as computed as per para 12 & 13 of the Guidelines.	Yes	On Page no.....
4	Whether the offence is under the same section under which offences have been committed by the applicant earlier and which have been compounded three times prior to the present application. NOTE: THIS IS APPLICABLE ONLY IN CASE OF A		

Category 'A' OFFENCE.			
5	Whether the offence is the first offence as defined in para 8(ii) of the guidelines NOTE: THIS IS APPLICABLE ONLY IN CASE OF A Category 'B' OFFENCE	No	On Page no.....
6	Whether the offence has been committed by an applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity	No	On Page no.....
7	Whether the offence committed by the applicant has 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*	No	On Page no.....
8	Whether the offence has been committed by the applicant 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*	No	On Page no.....
9	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*	No	On Page no.....
10	Whether the offence is one committed by an applicant for which he was convicted by a court of law	No	On Page no.....
11	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the receipt of application for compounding	No	On Page no.....
12	Amount of compounding charges computed by AO/ADIT/DDIT as per the guidelines	Rs.	On Page no.....
13	The compounding charges are in accordance with para 7 read with paras 12 and 13 of the Guidelines	Yes	On Page no.....
14	The factors, such as conduct of the person, nature and magnitude of the offence and facts and circumstance of the case have been considered while dealing with the compounding application	Yes	On Page no.....
15	Whether the cases of Co-accused are being considered as per para 15	Yes	On Page no.....
16	Any other fact relating to the person/case relevant for consideration of the competent authority	No	On Page no.....

Signature

Name

Designation
Date

Recommended by: 1. Jt.CIT/ Addl. CIT/Jt.DIT/Addl. DIT Signature/Name/Designation/Date

2. PCIT/PDIT/CIT/DIT Signature/Name/Designation/Date

***Note: This may be given on the basis of information furnished by the applicant in his application for compounding or information already available with the competent authority for compounding**

Annexure 3

Part-I

Format for order u/s 279(2) of the I.T.Act for compounding of an offence as mentioned in Para 11 (ii) of the Guidelines issued by the CBDT vide F.No.-285/35/2013-IT(Inv.V) dated 23.12.2014 on Compounding of Offences

Order u/s 279(2) of I.T.Act, 1961

Name of the person :-

Status :-

Offences u/s :-

AYs / Date/ period involved in offence :-

Date of filing of complaint, if any :-

Status of case (i.e. whether contemplated/ Pending in Court/ Convicted/ Acquitted) :-

Date of hearing, if any :-

Date of order :-

ORDER u/s 279(2) of the Income-Tax Act, 1961

I, the Principal Chief/Chief Commissioner of Income-tax / Principal Director/Director General of Income-tax, in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income -tax Act, 1961 hereby compound the offence(s) u/s of the Income -tax Act for the A.Y.(s) / Date/ period , committed by M/s / Shri /Ms.

The Statement of the facts of the case are enclosed as **Annexure – ‘A’**

Place :-

Date :-

Seal

Signature

Chief Commissioner of Income-tax/
Director General of Income-tax

Signature

ACIT/ ITO (Hq.)
o/o the CCIT/ DGIT

Annexure 3

Part-II

Format for order u/s 279(2) of the I.T.Act for rejecting the compounding of an offence as mentioned in Para 11 (ii) of the Guidelines issued by the CBDT vide F.No.-285/35/2013-IT(Inv.V) dated 23.12.2014 on Compounding of Offences

Order u/s 279(2) of I.T.Act.

Name of the person :-

Status :-

Offences u/s :-

AYs / Date/ period involved in offence :-

Date of filing of complaint, if any :-

Status of case (i.e. whether Contemplated/ Pending in Court/ Convicted/ Acquitted) :-

Date of hearing, if any :-

Date of order :-

ORDER u/s 279(2) of the Income-Tax Act, 1961

I, the Chief Commissioner of Income-tax / Director General of Income-tax,..... in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income Tax Act, 1961 hereby decline the prayer to compound the offence(s), u/s of the Income Tax Act for the A.Y.(s) / Date/ period, committed by M/s / Shri /Ms.

.....
The case was not found to be a fit case for compounding as “..... (mention reasons)”

The Statement of the facts of the case are enclosed as **Annexure – ‘A’**

Place :-

Date :-

Seal

Signature
Chief Commissioner of Income-tax/
Director General of Income-tax.
Sd/-
ACTT/ ITO (Hq.)
o/o the CCIT/ DGIT

Annexure -A
Statement of facts

The statement of facts should, inter alia, contain the following:-

1. Detail of application filed

An application for compounding of offences committed u/s of the Income Tax Act was filed in prescribed format by M/s /Mr. /Ms. On

2. Brief facts

3. Whether complaint has been filed

A complaint was filed in the Court of on
..... and the case is still pending in the court/ the Court has convicted the person who
has filed an appeal against the conviction order that is pending in the Court/ the Court has
acquitted the person & the department has filed an appeal against the acquittal order that is
pending in the Court or an appeal against the acquittal order is contemplated.

OR

The complaint is yet to be filed in the Court.

4. In case of order accepting compounding, details of payment of compounding charges by the
person.

5. Direction to the AO/ Standing Counsel to take necessary action to implement the orders at
the earliest.

- See more at: <http://taxguru.in/income-tax/guidelines-compounding-offences-direct-tax-laws-2014.html#sthash.G0JgBV0I.dpuf>

Annexure II.

Tax deductors who default in depositing TDS by due date shall be liable for prosecution : CBDT

PRESS NOTES/RELEASES

It has come to the notice of Income-tax Department that many times the tax deductors, after deducting TDS from specified payments, are deliberately not depositing the taxes so deducted in Government account and continue to deploy the funds so retained for business purposes or for personal use. Such retention of Government dues beyond the due date is an offence liable for prosecution under section 276B of the Income-tax Act, 1961. The defaulter, if convicted, can be sentenced to rigorous imprisonment (RI) for a term which can extend upto seven years.

“The TDS units of Income-tax Department have been taking up prosecution proceedings in suitable cases where TDS has been retained beyond the due date. The Central Board of Direct Taxes has partly modified existing guidelines for identification of cases for launching prosecution. As per the revised guidelines, the criterion of minimum retention period of 12 months has been dispensed with. For the benefit of public at large, it is now clarified that defaulters, who have retained the TDS deducted and failed to deposit the same in Government account within due date, shall be liable for prosecution, irrespective of the period of retention.

However, the offence under section 276B of the Income-tax Act can be compounded by Chief Commissioner having jurisdiction on the case, either before or after the launching of prosecution proceedings. In the recent past, several defaulters have submitted petitions for compounding of such offences and compounding orders have also been passed by the Competent Authority in suitable cases.

[Source : Press Information Bureau, Government of India, dated August 06, 2013.]

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Our Values:

