

Tax Alert | Delivering clarity

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CBDT provides relief to reduce the pendency of prosecution cases and to mitigate undue hardship to taxpayers

CBDT relaxes norms for initiating prosecution in respect of certain offences and relaxes time limit for application for compounding of offences till 31 December, 2019

Criteria / minimum threshold prescribed for initiating prosecution proceedings, and compounding of offences beyond 12 months can be filed till 31 December 2019.

Background

Section 292(2) of the Income-tax Act, 1961 provides that "any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General."

The Central Board of Direct Taxes (CBDT) had issued guidelines for compounding of offences under the Direct Tax Law, on 16 May 2008¹.

The May 2008 guidelines were superseded by revised guidelines dated 23 December 2014², w.e.f 1 January 2015.

The December, 2014 guidelines were also superseded by revised guidelines³ dated 14 June 2019, w.e.f 17 June, 2019, which lay out the procedures to be adopted for institution of the prosecution proceedings.

The CBDT issued circulars No 24 and 25 dated 9 September 2019 providing criteria / minimum threshold for initiating prosecution proceedings; and one-time measure to relax the timeline for filing application for compounding of offense.

Relaxation in one of the conditions for filing application for compounding of offences

As per existing guidelines dated 14 June 2019, no application for compounding of offences can be filed after the end of 12 months in which prosecution complaint has been filed in any court, except only in deserving cases, and when approved by a competent authority like Principal Chief Commissioner of Income-tax.

Compounding of offence means a tax evader agrees to pay the tax with interest, penalty and compounding charges/fees, in exchange for the income tax department not proceeding with the prosecution case on satisfying eligible conditions prescribed in the guidelines.

The CBDT *vide* the circular⁴ has introduced a one-time measure to file an application for compounding beyond the period of 12 months from filing the complaint in the court, subject to the following:

- Application should be filed before the Competent Authority⁵ on or before 31 December 2019.

¹ E.N.285/90/2008-IT(Inv.)/12 dated 16 May, 2008

² F.No.285/35/2013 IT(Inv.V) dated 23 December, 2014.

³ F.No.285/08/2014-IT(Inv.V)/147 dated 14 June 2019.

⁴ Circular No. 25/2019 dated 9 September 2019.

⁵ Pr. CCIT/CCIT/Pr.DGIT/DGIT

- Relaxation should not be available in respect of an offence, which is generally/normally not compoundable per paragraph 8.1. of CBDT Guidelines dated 14 June 2019.

The enhanced compounding charges of 1.25 times of normal charges, as per paragraph 9.2 of the June 2019 circular, should not apply to the application filed under this one-time measure:

- Where prosecution proceedings are pending before any court of law for more than 12 months
- Where compounding application filed previously was withdrawn by the taxpayer/applicant solely for the reason that such application was filed after expiry of 12 months
- Where compounding application of taxpayer/applicant was rejected solely for technical reasons.

Criteria specified for instituting prosecution in respect of certain categories of offences

The CBDT in another circular⁶ has laid down the criteria for NOT launching prosecution in the following categories of offences, unless permission of collegium of two

CCIT/DGIT rank officers is obtained:

Offence under the Income-tax Act, 1961 (the Act)	Condition
Failure to deposit TDS and TCS to government treasury (section 276B and 276BB of the Act respectively)	Where non-payment of TDS/TCS is INR 25 Lacs or less and there has been delay in deposit of TDS / TCS less than 60 days.
Willful attempt to evade tax, etc. (section 276(1) of the Act)	The amount of tax sought to be evaded or tax on under-reported income, is INR 25 Lacs or less.*
Failure to furnish return of income (section 276CC of the Act)	The amount of tax sought to be evaded is INR 25 lacs or less.

*The prosecution can be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.

The above circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed.

The CBDT has also clarified the meaning of collegium of two CCIT/DGIT rank officers for which prior administrative approval shall be sought by the sanctioning authority.

The CBDT has also specified the list of approving authority for various prosecutable offences under the Act.

Observations

The CBDT vide its circulars has tried to ensure that taxpayers do not undergo hardship in genuine cases.

Under the Act, where an offence is committed by a Company, generally by its Director, Manager, secretary or any other officer, may be deemed to be guilty of the offence, unless they prove that they were not involved in committing that offence.

The one-time relaxation in filing timelines should enable taxpayers to avail the benefit of compounding of offences and avoid the blemish of imprisonment and related litigation. However,

⁶ Circular No. 24/2019 dated 9 September 2019.

this one-time relaxation in timelines should not apply to cases mentioned in Para 8.1 of the Guidelines which *inter alia* include, where the person is a repetitive offender or where person has enabled others to evade taxes by money laundering/ bogus or accommodation entries, or has undisclosed foreign bank accounts, or has bearings on a case under investigation or bearing on offences under other laws e.g. Black Money (Undisclosed Foreign Income and Assets) Act, 2015, Benami Transaction (Prohibition) Act, 1988, etc.

The minimum threshold criteria for institution of prosecution proceedings should mitigate unintended hardship to small taxpayers in deserving cases and reduce the pendency of prosecution cases before the courts.



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