



## **CBDT prescribes safeguard and provides relaxation for compounding and prosecution of offences**

**Recently, CBDT has issued two Circulars to relax the norms in relation to the compounding of offences and prosecution under the Income-tax Act, 1961 ('the Act'). The objective of these Circulars is to reduce the tax litigation and to mitigate the hardship to taxpayers and to prosecute only the deserving cases. The Circulars are discussed below:**

### **Circular No. 24/2019 dated 9 September 2019: Procedure for identification and processing of cases for prosecution under the Act**

Under this Circular, CBDT has relaxed the norms relating to the prosecution of offences for delay in depositing the tax deducted at source (TDS) / collected at source (TCS), under reporting of income and the failure to furnish return of income. The Circular comes into effect immediately and applies to all the pending cases where the prosecution complaint is yet to be filed.

Earlier, the Income tax department was routinely issuing the prosecution notices including to the small tax offenders. The Government has now brought the safeguards to reduce the prosecution for pecuniary and small tax offences.

The Circular lays down the relaxation and appropriate safeguards for launching prosecution in respect of cases where the amount of tax involved is Rs. 25 lakhs or less.



The same are discussed in the table below:

Offence under the Act	Punishment under the Act	Compounding fee under the Guidelines dated 14 June 2019	Circular No. 24/2019 dated 9 September 2019
<p><b>Section 276B - Failure to deposit TDS to the credit of Central Government</b></p> <p>and</p> <p><b>Section 276BB - Failure to deposit TCS to the credit of Central Government</b></p>	<p>Rigorous imprisonment for a term from 3 months to 7 years and with fine</p>	<p>Suo moto application by taxpayer - Compounding fee is 2% per month or part of a month of the amount of tax in default</p> <p>On notice of Income tax department - Compounding fee is 3% or 5% per month or part of a month of the amount of tax in default</p>	<ul style="list-style-type: none"> <li>• No prosecution in normal circumstances if delay in deposit of tax is less than 60 days from the due date</li> <li>• In exceptional cases like habitual defaulters, etc. prosecution may be initiated with previous administrative approval of the collegium of two CCIT / DGIT rank officers ('collegium')</li> </ul>
<p><b>Section 276C(1) – Wilful attempt to evade tax etc.</b></p>	<p>In case of amount of tax evaded is Rs. 25 lakhs or less, rigorous imprisonment for a term from 3 months to 2 years and with fine</p>	<p>Compounding fee is 125% of the tax sought to be evaded</p>	<ul style="list-style-type: none"> <li>• Previous approval of the collegium required to initiate prosecution</li> <li>• Further, prosecution under this section shall be launched only after the confirmation of the order imposing penalty by ITAT</li> </ul>
<p><b>Section 276CC – Failure to furnish the Return of income</b></p>	<p>In case of amount of tax to be evaded is Rs. 25 lakhs or less, rigorous imprisonment for a term from 3 months to 2 years and with fine</p>	<p>Compounding fee is Rs. 2,000 per day</p>	<p>Previous approval of the collegium required to initiate prosecution</p>



In cases where amount involved / tax sought to be evaded is more than Rs. 25 lakhs, the Circular does not provide any relaxation / safeguard and the prosecution shall be initiated as per the prevailing guidelines.

In addition, in the case of following offences, to assure that only the deserving cases below the threshold limit of Rs. 25 lakhs (wherever applicable) get selected for filing the prosecution complaint, the sanctioning authority is required to take the prior approval of collegium:

- Contravention of the order made under search and seizure under section 132(1) or section 132(3)
- Failure to afford necessary facility to authorized officer to inspect books of account or other documents under section 132(1)
- Removal, concealment, transfer or delivery of property to thwart tax recovery
- Failure to comply with the provision under section 178(1) and (3) in relation to the company in liquidation
- Failure to comply with the provision under section 269UC, 269UE and 269UL regarding purchase of properties by Government
- Wilful attempt to evade payment of any tax, penalty or interest under section 276C(2)
- Wilful failure to furnish in due time return of total income required to be furnished under the block assessment
- Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)
- False statement in verification or delivery of false account or statement
- Falsification of books of accounts or document etc. to enable any other person to evade any tax, penalty, interest chargeable or leviable under the Act
- Abetment of false return, account, statement or declaration relating to any income chargeable to tax

In all cases where the tax sought to be evaded exceeds Rs. 25 lakhs, the prosecution proceedings can be initiated by the sanctioning authority.



## **Circular No. 25/2019 dated 9 September 2019: One-time measure for compounding of offence**

Under the prevailing Compounding guidelines, the taxpayer is generally required to file the application for compounding within 12 months from the end of month in which prosecution complaint is filed (in which case, normal compounding charges are payable). On failure of the taxpayer to file the compounding application within 12 months, the taxpayer is subject to enhanced compounding charges i.e. 1.25 times of the normal compounding charges.

In order to mitigate the unintended hardship to the taxpayers in deserving cases and to reduce the pendency of existing prosecution cases before the courts, the CBDT has announced a one-time measure. Under such one-time measure, the condition of filing the application for compounding within 12 months has been relaxed subject to the following conditions:

- i. Application for compounding shall be filed before Competent Authority i.e. Pr.CCIT/CCIT/Pr.DGIT/DGIT on or before **31 December 2019**
- ii. Application for compounding is not for offences which are generally not compoundable (such as tax evasion through bogus transactions, etc., money laundering, terror financing, benami properties, undisclosed foreign bank account / assets, Black money law)

The Circular states that application filed on or before 31 December 2019 shall be deemed to be filed in accordance with timeline provided in the revised guidelines.

The Circular further provides that all application filed under the one-time measure shall not be subject to the enhanced compounding charges provisions i.e. 1.25 times of the normal compounding charges.

For the purpose of this Circular, the compounding application can be filed in all the cases where:

- Prosecution proceedings are pending before any court of law for more than 12 months; or
- Any compounding application filed previously was withdrawn by the Applicant because application was filed beyond 12 months; or
- Any compounding application which was rejected earlier solely for technical reasons.



## Dhruva comments

In order to provide relief to the small tax offenders and to mitigate the unintended hardship to the taxpayer in the deserving cases, the Government has relaxed the norms relating to prosecution for offences considering the nature and magnitude of the offences. However, the Circular does not intend to pardon the offences related to money laundering, non-disclosure of foreign assets or possession of a benami asset, etc.

Further, in order to reduce the number of prosecutions, CBDT has prescribed safeguard in the form of prior approval of the collegium of two CCIT/DGIT rank officers for proper examination of the cases before launching the prosecution. Keeping in mind the objective of the Circular, CBDT may also consider giving its benefit / relaxation to the cases where prosecution complaint has already been filed in respect of the small tax offenders.



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