Prosecution/ Compounding provisions

Why Prosecution ?

- Under the Income-tax Act, 1961 there are various provisions for compliance with taxing provisions and the collection of taxes. The Income-tax Act seeks to enforce tax compliance in a three fold manner; namely :-

  1. Imposition of interests

  2. Imposition of penalties and,

  3. Prosecutions

- Even though assessees in general may not be worried by levy of interest or penalties which they can afford to pay, the idea of undergoing imprisonment if convicted of offences can be a strong deterrent from brazen tax evasion and non-compliance.

Offences relating to TDS liable for prosecution under the Income tax Act

Failure to pay tax deducted at source to the credit of the Central Government

- Section 276B - If a person fails to pay within prescribed time limit under Ch. XVII-B to the credit of the Central Government:
- (i) the tax deducted by him (i.e. TDS) or
- (ii) the dividend distribution tax (DDT) as per section 115-O(2) or
- (iii) tax in respect of winning from lottery or crossword puzzle as per section 194B.
- (iv) tax in respect of first proviso to sub-section (1) of section 194R (TDS on Benefits or perquisites related to business) or
- (v) tax in respect of the proviso to sub-section (1) of section 194S (TDS on payment of transfer of virtual digital assets) or
- (vi) tax in respect of subsection (2) of section 194BA (Online Gaming)
- punishable with RI - 3 months to 7 years and with fine.

- **As per the Proviso inserted by the Finance (No.2) Act, 2024 w.e.f. 01.10.2024, the provisions of the section 276B of the Act shall not apply if the payment of TDS deducted has been made to the credit of Central Government at any time on or before the time prescribed for filing of statement for such payment u/s. 200(3) of the Act.**

Failure to pay the tax collected under the provisions of section 206C

- **Section 276BB -** If a person fails to pay the tax collected by him to the credit of the Government, then as per section 276BB he shall be punishable with rigorous imprisonment for a period of which shall **not be less than 3 months but which may extend to 7 years and with fine**.

Punishment in case of offences by a company

- As per **section 278B**, where an offence under the Income-tax Act has been committed by a company, then every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- Where it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section (278B):

(a) "company" means a body corporate, and includes :-

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director" in relation to :-

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof

- As per the proviso to the above section 278B, if a person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent commission of such offence, then such person is not liable for punishment u/s. 276B/276BB of the Income Tax Act,1961.

Punishment in case of offence by Hindu Undivided Family

- As per **section 278C**, where an offence under the Income-tax Act has been committed by a Hindu Undivided Family, the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Punishment not to be imposed in certain cases

- As per Section 278AA, no person shall be punishable for any failure referred to in the provision of section 276B or section 276BB, if he proves that there was reasonable cause for such failure.

Initiating prosecution with the previous sanction of tax authorities

- As per section 279, prosecution for offences under section 276B, section 276BB are to be instituted with the previous sanction of Commissioner of Income Tax (TDS).

Various Guidelines/SOPs issued by CBDT

- CBDT instruction F. No. 255/339/79-IT(Inv.), dated 28.05.1980
- CBDT Circular F.No. 285/90/2008 – IT (Inv-I)/05, dated 24.04.2008
- CBDT Instruction F. No. 285/90/2008-IT(Inv/05, dated 07.02.2013
- CBDT Guidelines F. No. 285/15/2014-IT(Inv-V)/60, dated 29.08.2014
- CBDT SOP dated 02.02.2015
- CBDT Guidelines F. No. 285/90/2013-IT(Inv-V)/384, dated 18.10.2016
- CBDT SOP F. No. 285/51/2013/IT(Inv-V)/471, dated 09.12.2016
- CBDT Circular F.No. 285/08/2014/IT(Inv-V)/349, dated 09.09.2019

Particulars	Amount of default and period of default for processing the prosecution proceedings
Instruction Dated 24.04.2008	Cases having Amount of tax deducted is Rs. 25,000 or more and the same is not deposited even within 12 months from the date of deduction shall be processed for prosecution.
Guidelines dated 07.02.2013	Cases having Amount of tax deducted is Rs. 1,00,000 or more and the same is not deposited by the “due date” are to be mandatorily processed, while those involving belated remittances of Rs. 25,000/- to Rs. 1,00,000/- have to be processed depending upon the facts and circumstances of the case.
Guidelines Dated 18.10.2016	A list of cases of defaulters shall be generated periodically by the DGIT(Systems) based on criteria approved by the Member (Inv.) CBDT which shall be processed for prosecution.
Circular Dated 09.09.2019	Cases where non-payment of TDS is Rs. 25 Lakhs or below and the delay in deposit is less than 60 days from the due date shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers

Procedure for prosecution

- **As of now the SOP dated 09.12.2016 and Guidelines dated 09.09.2019 are the guiding light for the TDS AOs and CIT w.r.t. the procedure to be followed for processing cases for TDS/TCS defaults for prosecutions.**
- Vide revised guidelines issued by the CBDT in F.No. 285/90/2013-IT(Inv.-V)/384 dated 18.10.2016, the following is decided:
  - A list of cases shall be generated periodically by the Pr. DGIT(Systems) based on the criteria approved by Member(Inv.) CBDT which shall be mandatorily processed for prosecution in addition to the recovery steps as may be necessary in such cases.
  - The CIT(TDS) may consider any other case for prosecution, based on information from sources such as survey/spot verification/grievances received. In such cases, the CIT(TDS) shall send intimation to the Pr.CCIT/CCIT(TDS) along with the reasons for selecting the said case. If any TDS/TCS default is detected during action u/s 132/132A of the I.T. Act, the processing ADIT/DDIT shall inform the Assessing Officer having jurisdiction over TDS about such defaults under intimation to the Range Head and CIT(TDS). While passing such information, he shall also forward copies of the relevant documents.

Procedure contd……

- **The potential cases for prosecution are identified and uploaded on the TRACES Portal by the CPC–TDS. Thereafter, the AO shall initiate the process for prosecution on the basis of evidence available.**

- **The AO shall issue a show cause notice to the assessee giving the details of the offence and requiring him to show cause as to why prosecution should not be launched. The time line for assessee's response prescribed is normally of 30 days.**

- **On receipt of reply or also otherwise, he shall send a proposal containing all the relevant facts of the case and the offence committed along with the facts of the case in the prescribed Form 'T' to the CIT(TDS).**

Procedure contd……

- The AO shall submit prosecution proposal to the CIT(TDS) preferably within 90 days of the issue of show cause notice by him. However, CIT(TDS) may extend the timeline for submission of prosecution proposal considering the facts and circumstances of each case.
- Time line for CIT for completing the process and passing an order u/s 279(1) sanctioning prosecution or dropping the show cause notice expeditiously, is preferably within 90 days of receipt of the proposal from the AO(TDS) through Range Head.
- However, any deviation from timeline shall not render prosecution proceedings barred by limitation.

Procedure contd……

- If the CIT concludes that it is a fit case for launching of prosecution, he shall accord sanction u/s.279(1) of the Act.
- Sanction u/s. 279 should be separate for each assessment year.

- On receipt of the sanction the AO shall forward the sanction order, the case record and the evidences relied upon to the Prosecution Counsel for drafting the complaint.

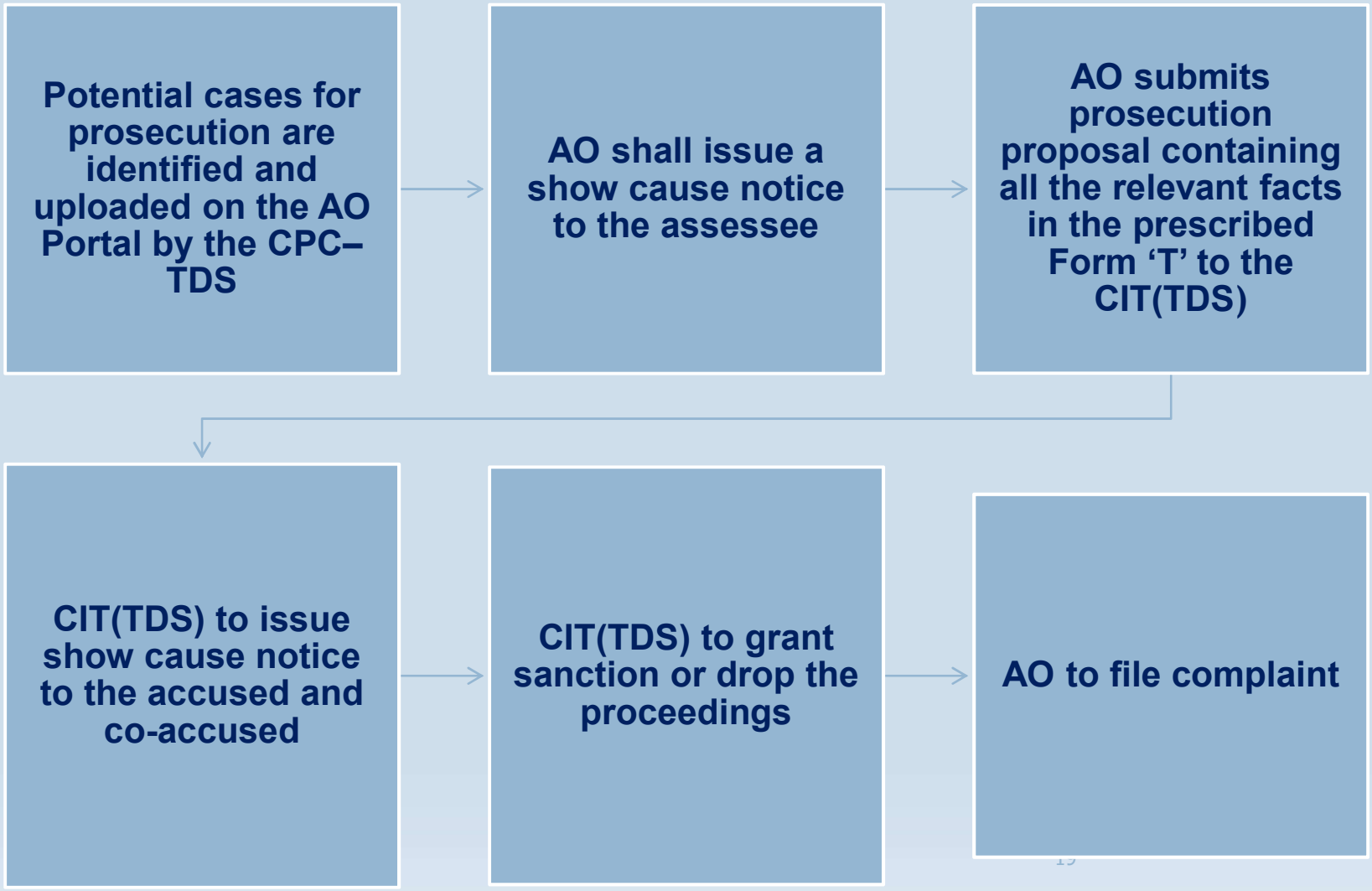
- The AO shall file the complaint in the appropriate jurisdictional court with the help of Prosecution Counsel.

Recently, following three lists are updated on TRACES:

- Report No. 97A/2021-22 V 1.0 : Newly identified Prosecution Cases (Non-International charge) as per CBDT guideline. (Uploaded on **28.02.2022**).
- Report No. 97A/2022-23 V 1.0 : Newly identified Prosecution Cases (Non-International charge) as per the CBDT guideline. (Data uploaded on **02.10.2022**).
- Report No. 97A/2023-24 V 1.0 : Newly identified Prosecution Cases (Non-International charge) as per the CBDT guideline (Data uploaded on **09.01.2024**)

All are requested to move proposal expeditiously as per the above data, if not worked upon yet.

PROCEDURE FOR LAUNCHING PROSECUTION



The time period for the entire process from identification to passing of order u/s 279(1) is

Sr. No.	Section	Time limit for submitting proposal for sanction u/s 279(1)	Time limit for according sanction u/s 279(1)	Time limit for filing prosecution complaint
1	276B	Preferably within 90 days from issue of SCN by AO TDS[CIT(TDS) may extend the timeline for submission of prosecution proposal considering the facts and circumstances of each case] (Refer Para 4.13 of SOP)	Preferably within 90 days of receipt of proposal from the AO(TDS) through Range Head (excluding the additional time taken to dispose off compounding application filed, if any) [Refer Para 4.15(g) of SOP)	Preferably within 30 days of receiving approval u/s 279(1) (Refer Para 4.19 of SOP)
2	276BB	-do-	-do-	-do-

Form T- FOUNDATION

- Total – 15 columns –No Blank columns
- Details of assessee and co-accused-ROI/Insight /from assessee as per procedure laid down in **Annexure-2** of SOP
- Details of TDS default-Column no. 6A- Default sheet(if contested details shall be prepared after verification)
- **Detailed note justifying the proposal for prosecution –Column No. 13-**
- Details of defaults in terms of frequency and quantum.
- Status of demand and efforts taken for recovery,
- Prosecution documents upon which offence is sought to be proven before Court –Default sheet; financial statements; Audit Report, minute books; other relevant documents –collected from assessee and other sources viz. Insight Portal / TRACES Portal / ITBA Portal, etc.; Observation of AO on factual accuracy of submission, reasons for proposing names of co-accused.
- **These documents are important prosecution documents and should be collected ad preserved carefully by the AO as these are useful in establishing the offense before the court.**

COMPOUNDING OFOFFENCES

- u/s 279(2) of the Act, any offence under Chapter XXII may be compounded by the competent authority.

Various guidelines issued by the CBDT

- Section 279(2), read with section 2 (15A) and 2 (21) of the Income Tax Act.1961 (Act') provides that any offence under Chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the Pr. CCIT/CCIT/Pr. DGIT/DGIT. The Central Board of Direct Taxes ('CBDT) had earlier issued following guidelines for compounding of offences under section 279 (2) of the Act:
- i. Guidelines issued vide letter dated **16.05.2008,**
- ii. Guidelines issued vide letter dated **23.12.2014,**
- iii. Guidelines issued vide letter dated **14.06.2019**, and
- iv. Guidelines issued vide letter dated **16.09.2022.**
- However, the above Guidelines have been reviewed and in supersession thereof, a new Compounding Guidelines F.No./285/08/2014-IT(inv.-V)/163 for compounding of offences have been issued by the CBDT on **17.10.2024.**

COMPOUNDING OF OFFENCES

- The New Guidelines shall come into effect from the date of issuance i.e. **17.10.2024**.
- They shall apply mutatis mutandis to all applications which are either filed after the date of issuance of these guidelines or were already filed earlier but had not been disposed.
- For applications, pending on the date of issuance of these Guidelines, if compounding charges have already been determined and intimated but not fully paid, compounding charges shall be re-determined, provided they are lower as per these guidelines.
- No refund or adjustment against dues shall be made if the higher compounding charges, determined as per the previous guidelines, have already been paid.

COMPOUNDING OF OFFENCES

- Applications may also be filed again, in case applications under earlier guidelines were rejected only on account of curable defects.
- Further, those applications rejected in the past on merits by the Competent Authority shall not be reconsidered, under this provision.
- **Conditions for consideration of Compounding Application:**
- An application for compounding is made to the CCIT having jurisdiction over the case, in the prescribed format (Annexure-1), in the form of an affidavit on a stamp paper of Rs.100/-.
- The Compounding Application, filed for multiple years/quarters, shall be called 'Consolidated Compounding Application' whereas Compounding Application, filed for single year/ quarter, shall be called 'Single Compounding Application

COMPOUNDING OF OFFENCES

Compounding Application Fee

- For Single Compounding application - Rs. 25,000/- (per application
- Consolidated Compounding application-Rs. 50,000/- (per such application)
- The said fee is a non-refundable fee, but adjustable against applicable total compounding charges decided by the Competent Authority, if any.
- The Compounding Application Fee, at above rates, shall also be payable in respect of applications which were filed before the date of issuance of these guidelines but have been rejected and that are proposed to be revived in terms of these guidelines.
- The Compounding Application Fee shall not be payable in respect of applications pending as on date of issuance of the guidelines and filed in terms of earlier guidelines.

Eligibility conditions

- **Payment of all taxes, interest & other sums relating to offence for which compounding sought:** All outstanding tax, interest penalty and any other sum due, relating to the offence(s) for all relevant year(s) and/or quarter(s) for which compounding has been sought shall be paid before making the Compounding Application or the Consolidated Compounding Application, as the case may be.
- However, if on verification by the Department, any related demand is found outstanding or is considered payable, the same, on being intimated to the applicant. shall be paid (including interest u/s 220 of the Act) within 30 days of the intimation by the Department or such period (not exceeding three months) allowed by the Competent Authority.
- The compounding application or the consolidated compounding application, as the case may be, shall be considered valid only consequent to the payment of all the demand pertaining to the offence(s) for respective years/quarters.
- **Undertaking by the applicant:** The applicant shall undertake to pay the Compounding charges, determined in accordance with these guidelines by the CCIT concerned, within the stipulated timeframe.
- **Withdrawal of appeals:** The person/applicant shall undertake to withdraw appeals filed by him, if any, related to the offence(s) sought to be compounded.

Authority Competent to Compound an Offence:

- The jurisdictional CCIT is the Competent Authority for compounding of offences.
- If a person has committed an offence u/s 276B/276BB of the Act for non-payment of TDS/TCS in respect of both resident and non-resident payees/ collectees then the jurisdiction over such person normally lies with more than one jurisdictional charge. In such case, the CCIT in whose jurisdiction compounding application has been filed will be the Competent Authority.
- However, in case the applicant files applications in more than one jurisdictional charge, the Competent Authority will be the jurisdictional authority where the quantum of TDS default is higher. All other applications shall be transferred to such Competent Authority.
- Further, in case of any dispute in deciding Competent Authority, the Pr. CCIT having PAN jurisdiction will decide Competent Authority, within 30 days of receipt of such reference.

Authority Competent to Compound an Offence:

- In case an applicant files Compounding application for offences committed u/-276B/276BB of the Act, in respect of two or more TANs falling in two or more jurisdictions, the jurisdictional authority where the quantum of TDS default is higher shall be the Competent Authority. All other applications shall be transferred to such Competent Authority.
- Further, in case of any dispute in deciding Competent Authority, the Pr. CCIT having PAN jurisdiction will decide Competent Authority, within 30 days of receipt of such reference.

Authority Competent to Compound an Offence:

- **The Competent Authority, in the following cases, may compound only with the approval of Chairman, CBDT:**

(a) In case of an offence for which the applicant has been convicted with imprisonment for two years or more, with or without fine, by a court of law:

(b) In case of an offence which is related to another offence under any other law for which he has been convicted with imprisonment for two years or more. with or without fine, by a court of law;

(c) If the applicant, as per information available on the basis of an investigation conducted by any Central or State Agency, has been found to be involved, in any manner, in anti-national or terrorist activity. In such cases, the Competent Authority shall consult with relevant Agency and seek inputs regarding the said activity and its implications, for the purpose of deciding it as a deserving case and incorporate them while seeking approval;

Authority Competent to Compound an Offence:

d) In the case of an applicant, being a person other than the main accused, where it is proved that the applicant facilitated tax evasion through mechanisms such as use of entities for laundering of money, generation of bogus invoices of sale/purchase without actual business, by providing accommodation entries or in any other manner, as prescribed in section 277A of the Act;

e) If the offence is directly related to an offence under the following Acts:

i. the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; or

ii. Prohibition of Benami Property Transactions Act, 1988;

f) In case of an offence under section 275A and/or 275B of the Act (Offences related to proceedings u/s. 132 of the Act).

Other terms of compounding

- Applications for compounding shall normally be accepted if the conditions mentioned in these guidelines are satisfied.
- However, compounding is not a matter of right and applications may be rejected by the Competent Authority in exceptional cases, on recording in writing, reasons such as if the applicant is a habitual offender or the gravity of the offence considering the facts and circumstances of the offence, etc.
- Prosecution instituted under Indian Penal Code (IPC) (or now Bhartiya Nyay Sanhita 2023), if any, cannot be compounded, under these Guidelines. In case the prosecution complaint filed under the provisions of the Act as well as under the Indian Penal Code (IPC) (or now Bhartiya Nyay Sanhita 2023), is based on the same facts and the offence(s) under the Act have been compounded, then the complaint relating to the offences under IPC (or BNS. 2023) shall be withdrawn by the Competent Authority, in terms of section 321 of Criminal Procedure Code, 1973, and/or section 360 of Bharatiya Nagarik Suraksha Sanhita, 2023.

Compounding Procedure

- On receipt of the Compounding application, the Competent Authority shall obtain a report from the Assessing Officer/Assistant or Deputy Director concerned who shall submit it promptly along-with duly filled in check-list (Annexure-2), to the Competent Authority, through proper channel.
- In cases where, the compounding application is not found to be acceptable, then the Competent Authority shall dispose of such application through a speaking order in the suggested format (Annexure-3-Part-II), Such order may be passed within two months from the end of the month of receipt of the application as far as possible.

Compounding Procedure

- In cases where, the compounding application is found to be acceptable, then the Competent Authority shall intimate the applicant accordingly, along with the compounding charges payable and other pending liabilities, if any. Such intimation may be issued within two months from the end of the month of receipt of the application as far as possible.
- The Competent Authority shall, while intimating the amount of compounding charges to the applicant, require him to pay the same within one month from the end of the month of receipt of such intimation. On written request of the applicant for further extension of time period for payment of compounding charges, the Competent Authority, under exceptional circumstances, may extend this period up to six months.

Compounding Procedure

- Extension beyond 6 months and upto 12 months shall not be permissible except with the prior approval in writing of the Pr. Chief Commissioner of Income Tax of the Region concerned. Extension beyond 12 months and upto 24 months from the end of month shall not be permissible except with the prior approval of Chairman, CBDT or a Member, CBDT authorized by the Chairman, CBDT on a proposal of the Competent Authority concerned. No extension shall be allowed after 24 months from the end of the month of receipt of such intimation of compounding charges.
- Where compounding charge is not paid within the time allowed/extended, the application will be rejected and prosecution proceedings shall be initiated, if nom already done so.

Compounding Procedure

- The complainant shall serve a copy of the prosecution complaint to each accuses within 15 days of filing complaint to allow prompt filing of compounding application
- The order of acceptance/rejection of application of compounding shall be brought the notice of the Court, where the said prosecution proceedings are pending before the Court, immediately through prosecution counsel in all cases where prosecution proceedings have been instituted.

Payment of compounding charges

- The following path on e-Filing website of the department is relevant:

  "Login on e-Filing portal → e-Pay Tax→ New Payment → Income Tax → Minor Head → Other Receipts (500) → compounding charges".

- Where the payment of compounding charges is made within time allowed/extended, the Competent Authority shall pass the compounding order in the suggested format (Annexure-3-Part-1) within one month from the end of the month of payment of total compounding charges.

- Taxpayers, particularly NRIs, avoid opting for compounding due to a misconception that it constitutes an admission of offences, which could affect their reporting obligations at various statutory and international forums. To address this misconception and encourage taxpayers to seek compounding. it is directed that the Competent Authority shall include the following paragraph in the compounding order issued under section 279(2) of the Act:

  "This compounding order is intended to resolve the offence under section 279(2) of the Act and should not be construed as an admission of the offence(s) by the applicant."

- **Compounding Charges:** The compounding charges for the 'first' compounding application or consolidates compounding application by a person shall be computed, for each offence disclose in the application, as given in the Annexure-4 to these Guidelines.
- Further, any application filed subsequent to the first application, shall be counted second, third and fourth compounding application or consolidated compounding application and so on. Furthermore, if a person applied for compounding of an offence(s), the type of which was applied for earlier, then compounding charges for subsequent offence(s) shall be 1.2 times, 1.4 times, 1.6 times, and so on of the compounding charges given in the Annexure-4 to these Guidelines, for the second, third, fourth, etc. time of such offence.
- It is also clarified that if a subsequent application(s) includes any offence(s), the type of which had not been disclosed in any of the earlier applications, the compounding charges for the said offence(s) shall be computed only as per the charges given in the Annexure-4 to these Guidelines.

Timeline for filling compounding application

- Where the compounding application(s) had been filed in accordance with prior guidelines and are either pending or were rejected or have been compounded, all such applications, filed prior to issuance of these guidelines, shall together be considered as 'first' compounding application.
- **If the application is made beyond 12 months from the end of the month in which the prosecution complaint is filed, the compounding charges shall be increased by 50% of the amount calculated as per above Paras.**

Co-accused and Abettor-Section 278B (Offences by companies) and Section 278C (Offences by Hindu undivided families).

- Where an offence under this Act has been committed by a Company or HUF as defined in section 278B or 278C of the Act, an application for compounding may be filed separately or conjointly by the main accused i.e., Company, or HUF and/or any of the person(s) deemed to be guilty of the offence under section 278B or 278C of the Act, to be referred as "Co-accused" for the purpose of compounding under these guidelines. The Competent Authority may decide the application accordingly subject to the payment of compounding charges as per these guidelines.
- It is again clarified that in cases of offences by a company or HUF, the main accused or co-accused may apply separately or conjointly. On payment of compounding charges for the offence as determined under these guidelines, by any one of them separately or jointly, the Competent Authority shall compound the offences of the main accused as well as all the co-accused, vide an order u/s 279(2) of the Act.
- For the purpose of depositing compounding charges, co-accused under Section 278B or 278C of the Act may deposit the charges under his PAN for the relevant financial year of the offence for which compounding is sought.

NCLT/LIQUIDATION CASES

- In case liability of a company for an offence committed prior to the commencement of the corporate insolvency resolution process ceases due to the provisions of section 32A of the Insolvency Bankruptcy Code (IBC), it is clarified that prosecution proceedings against the co-accused can still continue. In such a case, the compounding application and payment of compounding charges can be made by the co-accused and/or the main accused company.

Computation of Compounding Charges for compounding the offence 276B/276BB as per Annexure-4 of New Guidelines

- 1.5% per month or part of a month of the amount of tax in default for the default period.
- The period of default 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) (ii) of the Act.
- The compounding charge shall not exceed the TDS amount in default.

Once the offence is compounded, the complaint filed before the court of law in respect of such offence is to be withdrawn.

ISSUES TO VERIFY WHILE SUBMITTING COMPOUNDING STATUS REPORT

- **Default Sheet:** In certain cases, the default sheet does not contain the rate of percentage and amount of compounding charges Please ensure that the default sheet are furnished after incorporating these details.

- Copy of order u/s 279(1) of the Act/copy of complaint filed in court may be enclosed with the status report.

- While submitting the status report, whether the case is fit for compounding and if not, the reason thereof, may be specifically mentioned.

- Comparative Analysis of earlier Guidelines with new Guidelines

	Compounding Guidelines F.No. 285/90/2008-IT(Inv.V)/12 dated 16.05.2008	Compounding Guidelines F.No. 285/35/2013 IT (Inv.V)/108 dated 23.12.2014	Compounding Guidelines F.No. 285/08/2014-IT(Inv.V)/147dated 14.06.2019	Compounding Guidelines F.No. 285/08/2014-IT(Inv.V)/ 196 dated 16.09.2022
Time limitation filling of compounding application.	No specific timeline	No application may be filed by a person after 12 months of filling of complaint.	No application of compounding may be filed after the end of 12 months. This time line may be extended by the Committee referred to in Para 10 of these Guidelines, from 12 months to 24 months, with condition of 1.25 times the normal compounding fee provided such delay should be attributable to reasons beyond applicant's control.	No application of compounding may be filed after the end of 12 months. This time line is extended from 12 months to 24 months, with condition of 1.25 times the normal compounding fee. Further, compounding applications beyond 24 months but up to 36 months may be allowed with the approval of the Pr.CCIT of the region subject to 1.5 times of the normal fee.

Authority Competent to Compound an Offence	The CCIT/DGIT having jurisdiction over the person, seeking compounding of an offence.	The CCIT/DGIT having jurisdiction over the person, seeking compounding of an offence.	The CCIT/DGIT having jurisdiction over the person, seeking compounding of an offence. However, an order in case of an application for compounding of an offence, involving compounding charges in excess of Rs.10,00,000/- shall be passed by the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned only on the prior approval of a committee comprising of 3 officers of the region concerned, namely Principal CCIT having jurisdiction of the case and two other officers of the rank of Pr.CCIT/CCIT/Pr.DGIT/DGIT constituted by the Pr. CCIT of the region. In case such officers are not available within the region, a suitable officer of the rank of the DGIT or CCIT from any nearby region may be co-opted as Member by the Pr. CCIT.	The CCIT/DGIT having jurisdiction over the person., seeking compounding of an offence. Mechanism of Committee for various approvals proposed to be done away with.

Occasions for filing compounding applications	Not specified.	Category 'A' offence is not to be compounded on more than three occasions.	Category 'A' offence is not to be compounded on more than three occasions. However, in exceptional circumstances compounding requested in more than three occasions can be considered only on the approval of the Committee referred to in Para 10 of these Guidelines. The 'occasion' is defined in Para 8.2.	Category 'A' offence is not to be compounded on more than three occasions. Power vested with Pr.CCIT of the region now. Mechanism of Committee for various approvals proposed to be done away with.

Conviction by a court of law under Direct Taxes Laws	Where conviction order has been pass by the court.	Offences committed by a person for which he was convicted by a court of law under Direct Taxes laws	Offences committed by a person for which he was convicted by a court of law under Direct Taxes Laws.	Any offences under Direct Taxes Laws for which the assessee was convicted earlier with imprisonment for two years or more, with or without fine by a court of law.

Compounding Charges payable by the applicant	Compounding fees- 5% per month or part of a month of the amount of tax in default disclosed in the compounding application.	Compounding fees- 3% per month or part of a month of the amount of tax in default disclosed in the compounding application. For 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.	Compounding fees- i) 2% per month or part of a month of the amount of tax in default where the assessee has suo moto filed its compounding application. i) 3% per month or part of a month of the amount of tax in default disclosed in the compounding application for first occasion, if default has been detected by the Department. i) In respect of any application for subsequent occasions 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.	Compounding fees- Same as per compounding guidelines dated 14.06.2019.

Timeline for payment of compounding charges	Within 60 days from date of receipt of intimation by the applicant with respect to payment of compounding charges. On applicant's request the CCIT/DGIT may extend this period.	Within 60 days from date of receipt of intimation by the applicant with respect to payment of compounding charges. Under exceptional circumstances and on receipt of a written request for further extension of time, further period of 120 days may be extended by the competent authority. Beyond 120 days shall not be permissible except with the previous approval of the Member (Inv), CBDT on a proposal of the competent authority concerned.	Within one month of the end of the months in which the compounding charges was intimated. On written request of applicant for further extension of time under exceptional circumstances, the Pr.CCIT/CCIT/Pr.DGIT/DGIT may extend this period by three months. Extension beyond 3 months shall not be permissible except with the previous approval in writing of the Committee defined in Para 10 of the guidelines. However, no extension beyond twelve months from the end of month in which intimation of compounding charges was given to the applicant shall be given except with the previous approval of Member (Inv.), CBDT on a proposal of the competent authority concerned.	Within one month of the end of the months in which the compounding charges was intimated. CCIT/DGIT may extend this period by six months. Extension beyond 6 months may be allowed with the approval of the Pr.CCIT of the region. However, no extension beyond twelve months from the end of month in which intimation of compounding charges was given to the applicant shall be given except with the previous approval of Member (Inv.), CBDT on a proposal of the competent authority concerned.

Additional Compounding charges	There is no provision for additional compounding charges in these guidelines.	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.	Wherever, extension of time allowed to make compounding charges is allowed beyond one month from the end of intimation of compounding charges in accordance with Compounding Guidelines, the applicant shall have to pay additional compounding charges @ 2% per month or part of month on the unpaid amount of the compounding charges upto three months and 3% for period beyond three months.	Additional compounding charges has been reduced to 1% and 2% instead of 2% and 3% respectively

Important Legal Issues in Compounding

- The decisions of Hon'ble Bombay High Court in the cases of ***M/s. Footcandles Film Pvt. Ltd.*** *(WP No. 429 OF 2022)* and ***M/s. Sofitel Reality LLP (WP No. 14574 of 2023)*** have thrown up some important legal issues on compounding matters.

- ***M/s. Footcandles Film Pvt. Ltd. (WP No. 429 OF 2022)***

- The Hon'ble Bombay High Court vide its order dated 28.11.2022 in the case of M/s. Footcandles Film Pvt. Ltd. (WP No. 429 OF 2022) held that the CBDT Guidelines in F.No. 285/08/2014-IT(Inv.V)/147 dated 14.06.2019, to the extent it creates a limitation on the time within which application under section 279(2) of the Income Tax Act, 1961 is required to be filed, is of no consequence. It was further held that as long as a proceeding, as referred to in sub-section (1) to 279 of the Act, is pending, be they before the Magistrate or on conviction of the petitioners, in an appeal before the Sessions Court, an application for compounding of offence would be maintainable under sub-section (2) of Section 279 and will have to be dealt with by the authorities on its own merits.

M/s. Sofitel Reality LLP (WP No. 14574 of 2023)

The Hon'ble Bombay High Court vide its order dated 18.07.2023 in the case of M/s. Sofitel Realty LLP (formerly known as Sofitel Realty Pvt. Ltd.) A.Y. 2009-10 (WP No. 14574 of 2023) held that the CCIT(TDS), Mumbai cannot reject the compounding application on the ground of delay in filing the application and that the only requirement under sub-section (2) of Section 279 of the Act is that the complaint filed should be still pending. The Hon'ble Court also observed that in order to put a time limitation bar upon the compounding application, the Department has relied upon the Guidelines issued by the CBDT. The CBDT by the Guidelines cannot provide for limitation nor can it restrict the operation of sub section (2) of Section 279 of the Act. The Guidelines cannot travel beyond the scope of the powers conferred by the Act or the Rules. It cannot contain instructions or directions curtailing a statutory provision by prescribing the period of limitation where none is provided by either the Act or the rules framed thereunder.

To summarize, the issues which have emerged in consequence of the orders of Hon'ble Bombay High Court as discussed above, are as follows:

- That the CBDT Guidelines are subordinate to the principal Act or Rules, they cannot override or restrict the application of specific provision enacted by legislature. The Guidelines cannot contain instructions or directions curtailing a statutory provision by prescribing the period of limitation where none is provided by either the Act or the rules framed thereunder.

- That the CBDT Guidelines dated 14th June 2019 do not take away jurisdiction of authorities, referred to in sub-section (2) of Section 279, from entertaining an application for compounding of offence at any time during the pendency of the proceedings, be they before the Magistrate or on conviction of the petitioners, in an appeal before the Sessions Court.

- That the orders, instructions or directions issued by the CBDT under Section 119 of the Act or pursuant to the power given under the Explanation will not limit the powers of the authorities specified under Section 279(2) in considering such an application, much less place fetters on the powers of such authorities in the form of a period of limitation.

Thanks .... !!!