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### REVISED GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER THE INCOME TAX ACT

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#### Introduction

The CBDT (Central Board of Direct Taxes) has issued Guidelines for Compounding of Offences under Direct Tax Laws on 14 June 2019 (2019 Guidelines). These will supersede the prevailing compounding guidelines (dated 23 December 2014) and the clarification (dated 4 September 2015) issued in relation thereto (collectively, the 2014 Guidelines).

Chapter XXII of the Income Tax Act, 1961 (IT Act) lists offences as well as related prosecution provisions for such offences. The Chapter also provides that an assessee has an option to compound certain offences and pay prescribed sums instead of going through the hassles of criminal prosecution and settle such issues amicably with the tax department. The 2019 Guidelines are effective for compounding applications filed from 17 June 2019. Applications filed prior to 17 June 2019 will be dealt in accordance with earlier applicable guidelines.

There are broad similarities between the 2014 Guidelines and 2019 Guidelines, prominent among which is the retention of categorisation of compoundable offences into 'A' (more technical / comparatively milder offences) and 'B'. 2019 Guidelines reiterate that compounding is not a matter of right and a lot of factors would need to be considered before compounding applications are accepted. 2019 Guidelines further clarify that a category A offence can be compounded only on three occasions and a category B offence can be compounded only once during the lifetime of an applicant.

#### Certain positives in comparison to the 2014 Guidelines

There has been greater clarity in relation to compounding of delay in deposit of Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) related offences (Section 276B and Section 276BB respectively) upon the notification of 2019 Guidelines. Recently, a huge number of prosecution complaints have been filed by the tax department in case of instances of delay in deposit of TDS and TCS. Such complaints were filed even in cases where taxpayers had voluntarily deposited TDS and TCS with applicable interest for delay in deposit without receiving any notices / survey proceedings, etc. There was no recognition for such voluntary acts of an assessee in the 2014 Guidelines and such assessees were treated at par with the other taxpayers who made payments pursuant to follow up action taken by the tax department. A lot of representations were made in this regard by professional and trade bodies. 2019 Guidelines provide for a lesser compounding fee of 2% per month for the period of delay as compared to a compounding fee 3% (first application) or 5% (subsequent

applications for same offence) as prescribed in the 2014 Guidelines. This provides some relief in terms of reduced compounding fee in case of voluntary payment of TDS / TCS.

There was lack of clarity on whether a single compounding application filed for offences or relating offences covering multiple years would be treated as one instance or would constitute multiple applications. 2019 Guidelines clarify that multiple years covered under a single compounding application will be treated as one occasion for the purpose of calculating compounding fee as well as eligibility as to the number of times compounding applications can be filed depending on the category of offence. This brings in much needed clarity and certainty in comparison to the 2014 Guidelines. Further, it is a positive step from the perspective of an assessee since the treatment of multiple instances as a single occasion would result in a reduced compounding fee in comparison to a higher fee levied for subsequent occasions which was envisaged in the 2014 Guidelines.

### **Certain prohibitions introduced**

2019 Guidelines reiterate that offences that may impact proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 (Black Money Act) cannot be compounded (this was stated in the Budget Speech introducing the Black Money Act as well as the clarification issued in relation to the 2014 Guidelines). In addition, the following categories of offences have been specifically prohibited from compounding under the 2019 Guidelines:

- An offence which has a bearing on any offence under Benami Transactions (Prohibition) Act 1988 (Benami Act);
- An offence having a bearing on an offence relating to undisclosed offshore bank accounts / assets in any manner;
- Primary accused who has been proven to have enabled others in tax evasion by laundering money or by generating bogus invoices of sale / purchase without actual business, or by providing accommodation entries or by falsifying books of accounts; and
- Offences under sections 275A (contravention of order made / directions of tax department in relation to search / survey proceedings to not part with / move / deal with certain books of accounts / documents / assets), 275B (failure to comply with directions relating to search and survey proceedings or obstructing such proceedings) and 276 (removal, concealment, transfer or delivery of property to thwart recovery of taxes) of the IT Act are no longer compoundable offences.

It would be pertinent to note that certain vague terms like 'having a bearing on' have been used while listing these prohibitions. The timing of testing these conditions has also not been prescribed, i.e., it is not clear whether the authorities considering the compounding application will need to test the applicability of all these laws / conditions prescribed above. Another important change in the process is that an applicant will now need to fill in the prescribed format of application (Annexure 1 as prescribed in the 2019 Guidelines) on a stamp paper in the form of an affidavit, which makes the process more onerous. One will also need to state on affidavit as part of the prescribed format that the offence proposed to be compounded will not have a bearing on any offence under the Black Money Act, Benami Act, undisclosed foreign bank account / asset, etc.

### **Procedural changes having a bearing on cash flows**

- Certain procedural changes have been made with a view of reducing the time provided to applicants to pay compounding charges. For instance, charges intimated must now be paid within 1 month from receipt of intimation of amount

(this time period was 60 days under the 2014 Guidelines). There is certain relaxation for delay in payments upon payment of additional charges as prescribed. Extension for paying compounding charges beyond 12 months may be given to an applicant only with the prior approval of the prescribed authorities.

- There is also a direction to the tax department to put in efforts to expedite and conclude all offence related penalty proceedings and recover demand claims, before concluding compounding proceedings. This would result in a speedy recovery for the tax department.

### Comments

2019 Guidelines are comprehensive and positive as far as they clear certain ambiguities relating to multiple years. Moreover, they provide certain relaxation in terms of compounding charges for certain voluntary acts by taxpayers. However, certain exclusions would dampen the situation for taxpayers which were earlier considering the compounding route to amicably settle disputes with the tax department. Being a collection / revenue focused department, compounding provisions under the IT Act should be eased to make compliance easier and not made stringent by including the exclusions as mentioned above.

One will have to consider the facts and circumstances of each and every case in detail to avail the benefits of compounding. There should also be a lot more administrative focus on the part of CBDT in deciding the compounding applications in a time bound manner. This will prove to be a win-win situation for both the tax department, on account of collection of revenues, as well as for taxpayers as it will save their time, effort and resources.

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