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Analysing developments impacting business

PROSECUTION PROCEEDINGS TO BE RESORTED TO SPARINGLY AND RELAXATION IN COMPOUNDING GUIDELINES

13 September 2019

Background

In line with the recent assurances from the Finance Minister of India regarding ending the tax harassment, the Central Board of Direct Taxes (CBDT) which is the apex body for administration of direct tax in India, has issued 2 circulars. These circulars are reflective of the recent statements that 'penalty rather than prosecution is the priority of the Government'.

Circular No. 24 of 2019, dated 9 September 2019 lays down the criteria for selecting cases for initiating prosecution and No. 25 of 2019, dated 9 September 2019, CBDT has relaxed one pre-condition of filing compounding.

New criteria for launching prosecution

With a view to ensure that minor default cases don't get selected for prosecution, CBDT under Circular No. 24 of 2019 has provided the following criteria for selection of cases of initiating prosecution:

Offence	Criteria
Section 276B and Section 276BB - Delay in deposit of tax deducted / collected at source amounting to INR 25 lakhs or less.	<p>Normal circumstances</p> <p>Not to be selected for prosecution if the delay does not exceed 60 days from the due date.</p> <p>Exceptional circumstances (habitual defaulters)</p> <p>Prosecution may be initiated only with prior approval of the collegium of two CCIT/DGIT rank officers ("Collegium").</p>
Section 276C(1) - Willful evasion of tax (irrespective of the amount sought to be evaded)	To be launched only after confirmation of penalty by the Income Tax Appellate Tribunal.
Section 276C(1) - Willful evasion of tax of INR 25 lakhs or less	May be initiated only with prior approval of the Collegium (of prescribed authorities).

Section 276CC - Failure to furnish return of income (wherein tax effect is less than INR 25 lakhs)	May be initiated only with prior approval of the Collegium.
Offences other than above	May be initiated with the prior approval of sanctioning authority.

Compounding provisions relaxed

As per recently notified compounding guidelines dated 14 June 2019 ([please see our newsflash covering the introduction of these guidelines](#)), an assessee was barred from filing a compounding application if as on the date of filing such compounding application, 12 months had already elapsed from the date of filing of a complaint in the criminal court for that offence. Circular no 25 of 2019, relaxes the above pre-condition and provides that this disqualification (of 12 months) will not apply to any compounding application filed before 31 December 2019.

It has also been provided that for the purpose of this circular, compounding application can be filed in all cases where:

- Prosecution proceedings are pending before any court of law for more than 12 months;
- Compounding application is withdrawn earlier on the basis that same was not filed within 12 months; and
- Compounding application is rejected solely for technical reasons.

Comments

The revised criteria for initiating prosecution proceedings is a welcome move and it would result in reduction of prosecution complaints. These guidelines would also apply to all pending cases wherein complaint is yet to be filed. Ideally the above criterion should apply even to complaints already filed (as is generally the case when monetary thresholds are set / revised for filing of tax appeals by Tax Department such revised monetary thresholds apply to old appeals as well and old appeals (tax effect of which is below the revised monetary) are consequently withdrawn). Thus, we hope there is a clarification that existing complaints not meeting the above stated criterion, should be withdrawn from the court by the Tax Department.

Providing for relaxation in case of monetary limits (for INR 25 lakhs in a number of cases) as well time period (60 days for delay in deposit of taxes), would provide relief to genuine / bonafide cases and small and medium sector enterprises. Similarly, the relaxation against the bar of 12 months period is also a welcome move and reflective of the intent of the Government to focus on revenue collection in terms of compounding fee rather than the prosecute taxpayers.

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