

7. **Instruction No: 5256**
Section(s) Referred: 279(2)
Statute: Income - Tax Act, 1961

Date of Issue: 20/10/1995

1. The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No. 285/161/90-IT(Inv) dated 30-9-1994 and were circulated under a separate forwarding letter of even number and date. These guidelines do not cover cases of withdrawal of prosecutions once initiated.
2. The Board has been receiving a number of proposals from Chief Commissioners for withdrawal of prosecution in the event of the Revenue losing its case in appeal either in respect of penalty or quantum or both. In this connection, it has been decided that in cases where either the quantum additions and/or penalty by the Appellate Authorities and such decisions have been accepted by the Department, the CCs should, instead of forwarding to the Board the proposals/requests for withdrawal of prosecution, direct that the relevant facts and changed circumstances be brought to the notice of the Departmental Prosecution Counsel who in turn should inform the Trial Court of the changed circumstances and concomitant infirmity in the prosecution complaint. This would facilitate disposal and discharge of the complaint.
3. The above procedure may be brought to the notice of all concerned and the receipt of this letter may kindly be acknowledged.

[Board's F.No. 285/160/90-IT(Inv), dt. 20.10.'95]

8. **F.N0:285/I6/90-IT(Inv)/43. dated 14.05.96**
Guidelines for withdrawal of prosecution under Direct Tax Laws-Clarification-regarding.

A reference is invited to Board's circular letter of even number dated 20.10.1995 on the above subject where in the Chief Commissioners were directed to send proposals/requests for withdrawal of prosecution to the Board due to the fact that addition and penalties have been deleted.

The matter has been considered in the Board's meeting held recently and it has been decided to modify the earliest decisions/instructions circulated on 20.10.95. henceforth, it has been decided that all cases where

the prosecutions were launched on the basis of additions made in the assessments on account of undisclosed income and levy of penalty u/s.271(1)(c) but these additions made were subsequently deleted, the department should take steps to withdraw the prosecutions after taking the opinion of the Ministry of Law and approval of the Finance Minister.

In order to adopt this procedure, the earlier circular letter F.No.285/160/90-IT(Inv.) dated 20.10.1995 stands modified/amended. Therefore, in the light of these instructions the Chief Commissioners may send proposals in suitable cases on the changed circumstances where additions and penalties are deleted by the Appellate Authorities, and these decisions have been accepted by the Department.

B. Instructions / Circulars relevant to compounding

1. F.No.285/90/2008-IT(Inv.)/ 12

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

Room no. 243 F, North Block,

New Delhi

dated 16th May, 2008

To

All CCsIT (CCA)/ DGsIT /CCsIT(Central)

Sir/Madam,

Subject:- Revised Guidelines for Compounding of offences under the provisions of the Direct Tax Laws- reg.-

The existing instructions on compounding of offences under the laws relating to Direct Taxes have been reviewed by the Board. I am directed to issue the following comprehensive revised guidelines on compounding of offences in supercession of all earlier instructions.

1.1 Short title: - These guidelines would be called "The Guidelines for compounding of offences, 2008."

1.2 Commencement and Application: - Subject to the conditions laid down in Para 11, these guidelines will regulate the compounding of offences under Direct tax laws with effect from 01st June 2008.

2 The offences under Chapter-XXII of I.T. Act 1961 shall be classified as technical and non-technical offences for the limited purpose of compounding of the offences.

2.1 Technical offences

Offences punishable under the following sections shall be treated as technical offences:-

i.	276	(Prior to 01/04/1976 – failure to make payment or deliver returns or statements or allow inspection).
ii.	276B	(Prior to 01/04/1989 – failure to deduct or pay tax)
iii.	276B	(w.e.f. 01/04/1989 – failure to pay tax deducted at source to the credit of central Government)

①

iv.	276BB	(failure to pay the tax collected at source)
v.	276DD	(failure to comply with the provisions of section 269SS)
vi.	276E	(failure to comply with the provisions of section 269 T)
vii.	277	(false statement in verification etc.) with reference to technical offences
viii	278	(abetment of false return etc.) with reference to technical offences

2.2 Non-technical offences :-

Offences punishable under the following sections shall be treated as non-technical offences :-

i.	275A	(contravention of order made u/s 132(3))
ii.	275B	(Failure to comply with the provisions of Section 132(1)(ii b)
iii.	276	(w.e.f. 1.4.89- Removal, concealment, transfer or delivery of property to thwart tax recovery)
iv.	276A	(failure to comply with the provisions of sections 178(1) and 178(3))
v.	276AA	(prior to 01/10/1986 – failure to comply with the provisions of section 269AB or section 269)
vi.	276AB	(failure to comply with the provisions of sections 269UC, 269UE and 269UL).
vii	276C(1)	(willful attempt to evade tax etc.)
viii	276C(2)	(willful attempt to evade payment of taxes etc.)
ix.	276CC	(failure to furnish returns of Income)
x.	276CCC	(failure to furnish return of income in search cases)
xi.	276D	(failure to produce accounts and documents)
xii	277	(false statement in verification etc.) -with reference to non- technical offences
xiii	277A	(Falsification of books of account or document etc.)
xiv.	278	(abetment of false return etc.) -with reference to non-technical offences

3 Offences under Direct Tax Laws may be compounded subject to the conditions prescribed in these guidelines. An assessee cannot claim, as a matter of right, that his offence has to be compounded. Factors, such as conduct of the assessee, nature and magnitude of the offence and facts and circumstances of each offence need to be considered while dealing with such a request. Offences under Indian Penal Code cannot be compounded. They can, however, be withdrawn.

4. Eligibility conditions for consideration of a case for compounding
The following conditions should be satisfied before considering a case for compounding:-

4.1 The assessee should make a written request for compounding the offence in the prescribed proforma. || (3)

4.2 The case should be considered for compounding only when the assessee has paid the amount of tax, interest, penalties and any other sum payable relating to the default. (v)

4.3 The assessee should undertake to pay the compounding fee and the prosecution establishment expenses prescribed in Para 9 and 10 below. The compounding charges, as finally determined by the CCIT/DGIT, comprising the compounding fee and establishment expenses should be paid by the assessee, as per para 5.3, on receipt of its intimation from the Department.

4.4 Cases not to be compounded:- Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:-

- a) In case of a non-technical offence, offences other than the first offence as defined in para 8 below.
- b) Offences involving major fraud or scam or misappropriation of government funds or public property.
- c) Offences committed by an assessee linked to any Anti-national/terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other Central Govt. agencies, as per information available with the Income tax department.

Some offences which are not to be compounded as per sub-section 4.4

- d) Offences committed by an assessee who has enabled others in large-scale concealment of income in a systematic and planned way over a number of years like hawala entries, bogus trusts, bogus remittance etc.
- e) Offences committed by an assessee whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out.
- f) Where conviction order has been passed by a Court.
- g) Any other ground, which the CCIT/DGIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of the offence.

5. Compounding procedure

- 5.1 All conditions prescribed in para 4 above should be satisfied before a non-technical offence is considered for compounding. However, no case involving technical offence be rejected if it fulfills all the conditions prescribed in para 4.1, 4.2, 4.3 and not debarred by para 4.4 (b to f) of the Guidelines.
- 5.2 All applications for compounding of offences shall be decided by the authority competent to compound as defined in para 7.1 of the guideline.
- 5.3 The compounding petition should be disposed of by the CCIT/DGIT as far as possible, within 180 days of its receipt. In cases where compounding is accepted, the CCIT/DGIT will intimate the assessee the amount of compounding charges to be deposited. The assessee should pay the requisite compounding charges within 60 days of receipt of such intimation from the department. On assessee's request, the CCIT/DGIT may extend this period.
- 5.4 The CCIT/DGIT shall pass the order u/s 279(2) (as per specified format) as far as possible within 30 days of such payment. Where compounding charge is not deposited

within the time allowed, the compounding petition may be rejected after giving the applicant an opportunity of being heard. The order of rejection, wherever required, shall be brought to the notice of the Court.

5.5 In cases where compounding petition is to be rejected, the CCIT/ DGIT shall pass the order u/s 279(2) (as per specified format) within the period as laid down in para 5.3 above.

6. An offence may be compounded at any stage before or after institution of proceedings subject to eligibility conditions mentioned in para 4 of this guideline.

7. Authority Competent to compound an offence:-

- 7.1
- a) The authority competent to compound all applications for compounding of technical offences will be CCIT/ DGIT having jurisdiction over the case;
 - b) The authority competent to compound all applications for compounding of non-technical offences u/s 276C (1) involving tax sought to be evaded up to Rs. 1,00,000/- will be CCIT/ DGIT having jurisdiction over the case;
 - c) The authority competent to compound all applications for compounding of non-technical offences other than the non-technical offences as covered in para 7.1(b) above will be the Committee comprising:
 - i) CCIT (CCA)
 - ii) DGIT (Inv.) and
 - iii) CCIT/DGIT having jurisdiction over the case.

Where CCIT (CCA)/DGIT(Inv) is the CCIT/DGIT having jurisdiction over the case, then another officer of the rank of CCIT may be co-opted as the member of the Committee. The CCIT/DGIT having jurisdiction over the case will act as Member-Secretary who will also co-opt such other member as the case may be, and convene the meeting, as well as maintain its minutes.

d) Henceforth, no reference to the Board in the above cases will be required.

7.2 Notwithstanding anything contained in the Guidelines, the Finance Minister may grant approval for compounding of an offence in a

suitable and deserving case, after obtaining report from the Board on the petition of the applicant.

8. For the purpose of these guidelines, "first offence" means:-

- a) Offence under any of the Direct Tax Laws committed prior to the date of issue of any show-cause notice for prosecution or any intimation relating to prosecution by the Department to the person concerned or before launching of any prosecution, whichever is earlier; and/or
- b) Offence not detected by the department but voluntarily disclosed by a person prior to the filing of application for compounding of offence in the case under any Direct Tax Acts.

For this purpose, offence is relevant if it is committed by the same taxable entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed.

9. Fees for compounding

The fees for compounding of various offences (in addition to any interest/penalty or any other sum levied) shall be as follows: -

- 9.1 Section 276 - Failure to make payment or deliver return statement or allow inspection etc. (prior to 1/04/1976) An amount of Rs. 2/- for everyday during which the default continues.
- 9.2 Section 276B (prior to 1.4.89) Failure to pay tax under Chapter XIID or XVIIIB 2% per month or part of month of the amount of tax in default.
- 9.3 Section 276B - Failure to pay the tax deducted at source. (w.e.f. 01/04/1989) 5% per month or part of a month of the amount of tax in default.
- 9.4 Section 276BB - Failure to pay the tax collected at source 5% per month or part of a month of the amount of tax in default.
- 9.5 Section 276C(1) - Wilful attempt to evade tax etc. 50% of amount of tax sought to be evaded. -

Explanation 1:- The amount of "tax sought to be evaded" means amount of tax calculated at the maximum marginal rate on the income sought to be concealed.

Explanation 2:- The amount of 'tax sought to be evaded' for purpose of computing compounding fee for offence u/s 276C(1) in case of assessments u/s 158BC/158BD or 153A /153C

means tax on the difference between the tax on the income determined in such assessments and the tax on the basis of income shown in original return filed u/s 139. Where no returns has been filed u/s 139 'tax on the basis of income shown in original return' will be treated as nil, for the purpose of this explanation. 'Tax' for this purpose means tax at the maximum marginal rate for assessments u/s 153A/153C and tax as per section 113 for assessments u/s 158BC/158BD.

For the removal of doubts, it is clarified that the compounding fee as per the scale given above shall be charged even if no penalty was actually levied or the amount of penalty was reduced in appeal.

9.6 Section 276C(2) Wilful attempt to evade payment of any tax etc. 5% per month or part of a month of the amount, the payment of which is sought to be evaded, for period of default.

9.7 Section 276CC - Failure to furnish returns of income.

2% per month or part of a month of the tax and interest determined on regular assessment as reduced by the tax deducted at source and advance tax, if any, paid during the financial year immediately preceding the assessment year reckoned from the date immediately following the date on which the return of income was due to be furnished before to the date of furnishing of the return or where no return was furnished, the date of completion of the assessment.

Where before the date of furnishing of the return or where no returns was furnished before the date of completion of assessments, any tax is paid by the assessee u/s 140A or otherwise:-

- i) Compounding fee shall be calculated in the manner prescribed in this Para up to the date on which the tax is so paid; and
- ii) Thereafter, the fee shall be calculated at the aforesaid rate on the amount of tax and interest determined on regular assessment as reduced by the TDS, advance tax and tax paid u/s 140A or otherwise before filing the return of income or where no return was furnished from the date of completion of assessment.

9.8 Section 276CCC - Failure to furnish return of income in Search cases

The fee for this offence shall be calculated in the same manner as for offences u/s 276CC.

9.9 Section 276DD - Failure to comply with the provisions of Section 269SS (prior to 01/04/89)

A sum equal to 20% of the amount of any loan or deposit accepted in contravention of the provisions of Section 269SS.

9.10 Section 276E - Failure to comply with the provisions of Section 269T (prior to 01/04/89)

A sum equal to 20% of the amount of deposit repaid in contravention of the provisions of Section 269T.

9.11 Section 277 - False statement in verification etc.

Section 278 - Abetment of false return etc.

Where same set of facts and circumstances attract prosecution u/s 277 as well as u/s 278, the compounding fee shall be charged for offences under these sections by treating them as one offence.

Where same set of facts and circumstances attract prosecution under any offence as well as u/s 277 and/or 278 normally a compounding fee @ 10% of the 'compounding fee for the main offence' shall be charged from each co-accused. However the authority competent to compound (as defined in para 7.1)), after considering the extent of involvement of any or all co-accused, may enhance or reduce or waive the amount of compounding fee to be charged from any or all the co-accused. The compounding fees chargeable from the co-accused shall be in addition to the compounding fees which may be chargeable from the main accused.

In cases, where no offence under any other sections of IT Act is involved except u/s 277/278, then the compounding fee shall be decided by the authority competent to compound (as defined in para 7.1) having regard to the amount of tax, which would have been evaded as a result of such offence u/s 277/278.

9.12 For offences, other than those described in para 9.1 to 9.11, no compounding fee has been prescribed. In such cases, the authority competent to compound (as defined in para 7.1) may determine the amount of compounding fee having regard to the nature & magnitude of the offence, subject to levy of a minimum compounding fee of Rs. 10,000/- (in addition to the administrative expenses) for each such offence.

9.13 The prescribed compounding charges shall be applicable while

compounding any offence. However, in extreme and exceptional cases of genuine financial hardship the compounding charges may be suitably reduced with the approval of Finance Minister.

10. In addition to the compounding fee, the compounding charges shall include prosecution establishment expenses. A consolidated fee for prosecution establishment expenses will be charged which would cover the litigation expenses also. Accordingly, prosecution establishment expenses will be charged at the rate 10% of the compounding fee subject to a minimum of Rs.10,000/- and maximum of Rs.50,000/-. This limit will apply even where a number of offences are compounded under a single order.

Applicability to pending cases

11. With effect from 01st June 2008, the procedure mentioned in the new guidelines shall mutatis mutandis apply to all future as well as pending petitions for compounding of offences under all the Direct Tax Laws. However, the offences already compounded under the old guidelines shall not be reconsidered.

Applicability to offences under other Direct Tax Laws

12. These guidelines shall apply mutatis mutandis to offences under the other Direct Tax Laws also and the compounding fee for offences under the other Direct Tax Laws will be same as for the corresponding provisions of offences under I.T. Act.
13. The petition for compounding in all cases of a co-accused shall be considered either along with or after compounding has been approved in the main case.
14. The amount of tax/interest/ penalty/period of default should be as modified after giving effect to order of appellate authorities/ revision/ rectification as on the date of passing of compounding order.

The CCsIT and DGsIT are requested to circulate the above revised guidelines alongwith its annexure nos. 1, 2(a), 2(b), 3(a), 3(b) and 3(c) among the officers of their region.

Yours faithfully,

Sd/-

(D. K. Gupta)

Director (Inv.-I) & OSD (legal)
CBDT, North Block, New Delhi.

Encl- As above (8 pages)

Annexure-1

Proforma of application for compounding of offences under Income Tax Act (to be submitted by assessee)

- | | | |
|-----|---|----|
| 1) | Name of the assessee | :- |
| 2) | Status | :- |
| 3) | Offences committed u/s | :- |
| 4) | AYs / Date/ period involved in offence | :- |
| 5) | Date of filing of complaint, if any | :- |
| 6) | Status of case
(i.e. whether Contemplated/ Pending in Court/
Convicted/ Acquitted) . | :- |
| 7) | Brief facts (attach separate sheet) | :- |
| 8) | Brief reasons of default(attach separate sheet) | :- |
| 9) | Whether the assessee has paid the amount
of tax, interest, penalties and any other sum
payable relating to the default. | :- |
| 10) | Whether the assessee is willing to pay the
compounding fee as shall be intimated by the deptt. | :- |
| 11) | Whether the offence is the first offence | :- |
| 12) | Whether it is part of major fraud or scam or
misappropriation of government funds or
public property. | :- |
| 13) | Whether the offence is committed by an assessee
linked to any Anti-national/terrorist activity and
cases being investigated by CBI, police, enforcement
directorate or any other central govt. agencies. | :- |
| 14) | Whether the offence is committed by an assessee
who has enabled others in large-scale concealment
of income in a systematic and planned way over a
number of years. | :- |
| 15) | Whether, the application for 'plea-bargaining' | |

under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out? :-

15) Whether a conviction order has been passed by a Court :-

Verification

I/we s/shri.....s/o.....
 certify that the information in the above columns is true and correct.

Place

Date

Signature.....

Designation

Annexure 2 (a)

Check List for Compounding of Non-technical Offences (to be submitted by Assessing Officer/ADIT/DDIT to the authority competent to compound)

(A case can be compounded only if the answers to s.no. 1 to 16 matches with the answers given below in remarks column.)

- a) Name of the assessee :-
- b) Status :-
- c) Non-technical offences u/s :-
- d) AYs/ Date/ period involved in offence :-
- e) Date of filing of complaint, if any :-
- f) Status of case (i.e. whether Contemplated/
Pending in Court/ Convicted/ Acquitted) :-

S.No.	Particulars	Remarks	Reference
1.	The assessee has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no.....
2.	The assessee has paid the amount of tax as well as interest and penalties & any other sum relating to the default.	Yes	On Page no.....
3.	The assessee has stated that he is willing to pay the prescribed compounding fee on receipt of its intimation from the Department.	Yes	On Page no.....
4.	It is the first offence as defined in para 8 of the guidelines.	Yes	On Page no.....
5.	The offence involves major fraud or scam or misappropriation of government funds or public property.	No	On Page no.....
6.	The assessee is linked to any Anti-national/terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other central govt. agencies, as per information available with the Income tax department.	No	On Page no.....
7.	The assessee has enabled others in large-scale concealment of income has been	No	On Page no.....

S.No.	Particulars	Remarks	Reference
	done in a systematic and planned way over a number of years.	Yes	On Page no.....
8.	The assessee is a habitual defaulter.	No	On Page no.....
9.	The application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out.	No	On Page no.....
10.	Amount of compounding fee as computed by Assessing Officer.	Rs...	On Page no.....
11.	The compounding fee is in accordance with para 9 and 10 of the guidelines.	Yes	On Page no.....
12.	The conviction order has been passed by a Court.	No.	On Page no.....
13.	The factors, such as conduct of the assessee, nature and magnitude of the offence and facts and circumstance of each offence has been considered while dealing with such a request.	Yes	On Page no.....
14.	The cases of Co-accused are being considered as per para 13.	Yes	On Page no.....
15.	Whether, the amount of tax/interest/penalty/period of default were modified after giving effect to order of appellate authorities/ revision/ rectification? 16. Any other ground, which the CCIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of offence.	Yes	On Page no.....
15.	Any other ground, which the CCIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of offence.	No	On Page no.....

Sd/-

Assessing Officer /ADIT/DDIT

~~Recommended~~ by 1. Jt.CIT/ Addl. CIT/Jt.DIT/Addl. DIT.....
 (Signature).....
 2. CIT/DIT.....(Signature).....

Annexure 2 (b)

Check List for Compounding of Technical Offences
(to be submitted by Assessing Officer /ADIT/DDIT to the authority competent to compound)

(A case can be compounded only if the answers to s.no. 1 to 13 matches with the answers given below in remarks column.)

- a) Name of the assessee :-
- b) Status :-
- c) Technical offences u/s :-
- d) AYs /Date/ period involved in offence :-
- e) Date of filing of complaint, if any :-
- f) Status of case (i.e. whether Contemplated/
Pending in Court/ Convicted/ Acquitted) :-

S.No.	Particulars	Remarks	Reference
1.	The assessee has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no.....
2.	The assessee has paid the amount of tax as well as interest and penalties & any other sum relating to the default.	Yes	On Page no.....
3.	The assessee has stated that he is willing to pay the prescribed compounding fee on receipt of its intimation from the Department.	Yes	On Page no.....
4.	The offence involves major fraud or scam or misappropriation of government funds or public property.	No	On Page no.....
5.	The assessee is linked to any Anti-national/terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other central govt. agencies, as per information available with the Income tax department.	No	On Page no.....
6.	The assessee has enabled others in large-scale concealment of income	No	On Page no.....

S.No.	Particulars	Remarks	Reference
	has been done in a systematic and planned way over a number of years.		
7.	The assessee is a habitual defaulter.	No	On Page no.....
8.	The application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out.	No	On Page no.....
9.	Amount of compounding fee as computed by Assessing Officer.	Rs....	On Page no.....
10.	The compounding fee is in accordance with para 9 and 10 of the guidelines.	Yes	On Page no.....
11.	The conviction order has been passed by a Court.	No	On Page no.....
12.	The cases of Co-accused are being considered as per para 13.	Yes	On Page no.....
13.	The amount of tax/interest/penalty/period of default were modified after giving effect to order of appellate authorities/ revision/ rectification?	Yes	On Page no.....

Sd/-

Assessing Officer/ADIT/DDIT

Recommended by 1. Jt.CIT/ Addl. CIT/Jt.DIT/Addl. DIT.....
 (Signature).....
 2. CIT/DIT.....(Signature).....

Annexure 3 (a)

Suggested format of order u/s 279(2) agreeing to compounding

- | | | |
|----|---|----|
| a) | Name of the assessee | :- |
| b) | Status | :- |
| c) | Offences u/s | :- |
| d) | AYs / Date/ period involved in offence | :- |
| e) | Date of filing of complaint, if any | :- |
| f) | Status of case (i.e. whether Contemplated/
Pending in Court/ Convicted/ Acquitted) | :- |
| g) | Date of hearing, if any | :- |
| h) | Date of order | :- |

Order u/s 279(2) of the Income-Tax Act, 1961

I, the Chief Commissioner of Income-tax / Director General of Income-tax,..... in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income Tax Act, 1961 hereby compound the offence(s), punishable u/s of the Income Tax Act for the A.Y.(s) / Date/ period, committed by M/s / Shri /Ms.

The Statement of the facts of the case are enclosed as Annexure 'A'

Place:-

Seal

Sd/-

Chief Commissioner of Income-tax /
Director General of Income-tax.

Copy to:-

The Commissioner of Income Tax/ Director of Income Tax.

The Assessing Officer/ ADIT/DDIT.

The ADIT/DDIT(Prosecution)

The Prosecution Counsel (if the case is pending in the Court).

The applicant (By name).

Guard file.

Sd/-

ACIT/ ITO (Hq.)
o/o the CCIT/ DGIT

Annexure 3 (b)

Suggested format of order u/s 279(2) rejecting compounding

Name of the assessee	:-
Status	:-
Offences u/s	:-
AYs / Date/ period involved in offence	:-
Date of filing of complaint, if any	:-
Status of case (i.e. whether Contemplated/ Pending in Court/ Convicted/ Acquitted)	:-
Date of hearing, if any	:-
Date of order	:-

Order u/s 279(2) of the Income-Tax Act, 1961

I, the Chief Commissioner of Income-tax / Director General of Income-tax,..... in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income Tax Act, 1961 ~~do~~ decline the prayer to compound the offence(s), punishable u/s of the Income Tax Act for the A.Y.(s) / Date/ period, committed by M/s / Shri / Ms.

The case was not found to be a fit case for compounding as(mention reasons).....”

The Statement of the facts of the case are enclosed as Annexure 'A'

Sd/-

Chief Commissioner of Income-tax /
Director General of Income-tax.

Commissioner of Income Tax/ Director of Income Tax.

Assessing Officer/ ADIT/DDIT.

ADIT/DDIT(Prosecution)

The Prosecution Counsel (if the case is pending in the Court).

The applicant (By name).

Guard file

Sd/-
ACIT/ ITO (Hq.)
o/o the CCIT/ DGIT

Annexure 3(c)

Suggested format for Statement of facts

The statement of facts should mention the following:-

1. Detail of application filed

A petition for compounding of offences punishable u/s of the Income Tax Act was filed in prescribed proforma by M/s /Mr. /Ms. on

2. Brief facts

3. Whether complaint has been filed

A complaint was filed in the Court of onand the case is still pending in the court/ the Court has convicted the assessee who has filed an appeal against the conviction order that is pending in the Court/ the Court has acquitted the assessee & the department has filed an appeal against the acquittal order that is pending in the Court or an appeal against the acquittal order is contemplated.

Or

The complaint is yet to be filed in the Court.

4. In case of order accepting compounding, details of payment of compounding fee by the assessee.
5. Direction to the Assessing Officer/ Standing Counsel to take necessary action to implement the orders at the earliest.

2. **Instruction No: 27**
Section(s) Referred: 279(2)
Statute: Income - Tax Act, 1961

Date of Issue: 21/3/1969

1. It was emphasised that a prosecution should not ordinarily be compounded if the prospects of success were good. The Board desires that in such cases the request of the assessee for having the offence compounded should not ordinarily be recommended to the Board.
2. The provisions of section 279(2) give a discretion to the Commissioner to compound any offence under the I.T. Act and this discretion is an unfettered one. Even so it has to be exercised in a judicial manner. Although it is neither possible to precisely lay down all the circumstances in which an offence may be compounded nor it is intended to fetter the Commissioner's discretion in this matter, it is nevertheless necessary to have a uniform policy for exercising the discretion in a judicial manner.
3. Some of the points which have to be considered before deciding to compound an offence are indicated below.
 - i) Compounding of an offence may be considered only in those cases in which the assessee comes forward with a written request for compounding the offence;
 - ii) Cases in which the prospects of a successful prosecution are good, should not ordinarily be compounded;
 - iii) Bearing in mind the deterrent effect of a prosecution it should be considered whether the purpose will be more effectively served by making the assessee pay a deterrent composition fee or by obtaining a conviction;
 - iv) In cases where subsequent to the launching of prosecution fresh evidence becomes available which may show that the case for the prosecution is weak and the assessee is agreeable to have the offence compounded it may be advisable to compound the offence and not to proceed with the prosecution.
4. Ultimately the answer to the question whether the prosecution should be compounded or not will depend on the facts of each case. The above aspects are only intended to provide broad guidelines. The previous approval of the Board should always be obtained before deciding to compound an offence. No assurance of any kind should be given to the assessee before obtaining the Board's approval.

3. **Instruction No: 1661****Date of Issue: 18/11/1985**

1. As per the present Guidelines for compounding of offences under the Income-tax Act 1961, no payment is received from the assessee towards the prosecution establishment expenses. Only the compounding fee and the litigation expenses are paid by the assessee. It is observed that a number of man hours of the Departmental officials are spent in identifying and processing a case from prosecution angle. It is therefore necessary that while compounding the offence, some compensation in the form of additional fees are charged from the erring tax payers for this effort. The idea behind charging the prosecution establishment expenses is that while compounding the offence, the erring tax payers should compensate the Department for all the expenses incurred by it.
2. The Board have considered this point in detail. In future prosecution establishment expenses at the following rates shall be charged:-
Compounding fee payable as per Board's Instructions Prosecution No. 1317 dated 11-3-1980 Establishment expenses.
 - (i) Upto Rs. 50,000 5,000
 - (ii) Above Rs. 50,000 to Rs. 1 lakh 10,000
 - (iii) Above Rs. 1 lakh to Rs. 5 lakhs 15,000
 - (iv) Above Rs. 5 lakhs 20,000

The prosecution establishment expenses as mentioned above shall be charged in addition to the compounding fee as mentioned in Board's Instruction NO. 1317 dated 11-3-1980 and the litigation expenses incurred by the Department.

4. **Instruction No: 1718****Date of Issue: 9/7/1986**

Board issued Instruction No. 1661, dated 18-11-85 for charging of prosecution establishment expenses. These instructions were made effective from 18-11-85. From time to time, some representations have been received from the field authorities seeking clarifications. After considering the representations, and other material available on record, the necessary clarifications are as under:-

1. Whether prosecution establishment expenses have to be charged for every year in default?

- Reply - Prosecution establishment expenses have not to be charged for every year in default. First of all compounding fees payable for all the years in default have to be calculated as per the Board's Instruction No. 1317, dated 11-3-1980. Depending upon the amount of compounding fees, the prosecution establishment expenses would be working out i.e. if the compounding fees is less than Rs. 50,000 the prosecution establishment expenses of Rs. 5,000 would be charged irrespective of the number of years for which the offence has been committed. In some charges, it is observed that prosecution establishment expenses have been charge a for each year in default. Such cases may not be reopened now. In future the procedure as out-lined here may be followed.
- Query - Whether prosecution establishment expenses have to be charged even when no prosecution is launched.
- Reply - As per the Board's instruction dated 7-6-1984, the Commissioner of Income-tax has been authorised to compound the offence in cases of minor defaults relating to TDS (before launching prosecution). Even on these cases, the prosecution establishment expenses would be charge before passing the order for compounding the offence.
- Query - Whether prosecution establishment expenses have to be charged in those cases where prior to 18-11-85 it was agreed to compound the offence.
- Reply - Orders for charging of prosecution establishment expenses were issued by the Board and made effective w.e.f. 13-11-85. In cases where the administrative approval from the Board for compounding the offence was received prior to this or where the Commissioner of income-tax has agreed for compounding the offence (as per the delegated powers in cases of minor defaults relating to TDS) and as a result thereof, the assessee has made the payment of compounding fees, the prosecution establishment expenses may not be charged.

5. **Instruction No: 5205**
Section(s) Referred: 279(2)
Statute: Income - Tax Act, 1961

Date of Issue: 30/9/1994

The existing guidelines for compounding of offences under the Direct Tax Laws issued vide Board's F.No. 285/239/79-IT(Inv.) dated 11-03-80 have been reviewed in the light of past experience and future needs. The revised guidelines are enclosed.

2. The revised guidelines aim at ensuring fairness and objectivity in compounding of offences, reducing pendency of prosecutions, before the courts and removal of unintended hardship to assesseees in deserving cases.

3. These revised guidelines are a major departure from the guidelines dated 11-03-80 in certain vital aspects. The new guidelines have revived the concept of technical and substantive (or non-technical) offences for the purpose of compounding of offences and a more liberal treatment has been given to the compounding of technical offences. Another point of distinction is that the restriction on compounding of offences, committed by monopoly or large industrial houses or a Director belonging to such house has been removed. In order to expedite the disposal of compounding petitions, the powers to compound offences have been substantially delegated to the CCsIT/DGsIT, subject to certain restrictions.

While the guidelines have been made as simple and unambiguous as possible, it would be worthwhile to clarify a few provisions of the guidelines:-

- (a) The CCsIT/DGsIT have been empowered to compound technical offences before filing of the complaint subject to conditions prescribed in para 4.4 of the guidelines. With a view to reduce the number of existing cases pending in the courts, a one-time exception has been provided to the effect that the CCsIT/DGsIT may compound certain technical offences where complaints have already been filed before coming into effect of these revised guidelines. However the conditions as prescribed in para 4.1, 4.2, 4.3, and 4.4(i) & (ii) of the guidelines must be satisfied in those cases also. The cases involving substantive or non-technical offences and cases involving technical offences not covered by para 4.4

have to be referred to the Board for approval.

- (b) As per para 4.4(ii), the CCIT can compound a technical offence without seeking Board's approval if the compounding charges (compounding fee plus establishment expenses) do not exceed Rs. 10 lakhs. For the limited purpose of deciding the question of reference to the Board, the compounding charges shall be calculated on the basis of assessment order or other order which is the basis of the complaint/offence. However, if that assessment order or the other order has been rectified / revised in appeal, revision etc. and such revised order has become final, compounding charges shall be calculated on the basis of such revised order. For example, in a case where the offence is u/s 276B (prior to 1-4-89) and the assessee is in appeal regarding the quantum and period of default of TDS, for the limited purpose of making reference to the Board, compounding charges shall be calculated on the basis of the order u/s 201 or the amount and period of default mentioned in the complaint. If the quantum or period of default has been reduced in appeal / revision etc. and such appellate order is under appeal, the compounding charges shall be calculated on the basis of original order / complaint.

- (c) For the purpose of these guidelines "amount in default" or "the amount involved in the offence" shall be as under:-

For offences under:-

- (1) Section 276B Amount of tax deducted at source in default.
- (2) Section 276BB amount of tax collected at source in default.
- (3) Section 276C(1) substituted with the words " amount of tax calculated at the maximum marginal rate on the income sought to be concealed" by Board's letter F.No. 285/160/90-IT (Inv.)/392 dt. 20-10-1995.
- (4) Section 276C(2) amount of tax, penalty or interest payment of which has been attempted to be evaded.
- (5) Section 276CC as explained in para 9.7. and 9.7.2 of these guidelines.
- (6) Section 277 amount of tax sought to have been evaded.
- (7) Section 278 amount of tax, interest, penalty sought to have been evaded.

5. The revised guidelines shall be applicable to all pending applications. The cases rejected earlier under the guidelines issued on 11-3-80 can also be considered under the new guidelines. However, the cases in which orders compounding the offence have already been passed shall not be reviewed for reduction of compounding fee or for any other purpose.
 6. In order to make best use of the liberalised compounding guidelines and restrict prosecution only to really hard-core cases, while issuing a show cause notice/intimation for launching of prosecution, assessee may be given an offer of compounding. It may however be clarified in the show cause notice that the petition for compounding shall be decided on merits and in the absolute discretion of the CCIT/DGIT.
 7. The cases where the CCIT/DGIT is not inclined to accede to the assessee's request despite the conditions prescribed in paragraphs 4 & 5 of the guidelines being satisfied, may be referred to the Board before rejection of the compounding petitions.
 8. Adequate publicity may be given to these guidelines so that a large number of cases covered by the guidelines is compounded, resulting in reduction in the number of cases pending in courts. All the applications for compounding of offences must be disposed of or referred to the Board, as the case may be, within 6 months. The statistical information regarding compounding petitions disposed of should be sent regularly. For this purpose a new part, i.e., part C-IV has been included in the 'Proforma for Monthly Statement of Prosecution'. The reports for the month of Oct. 94 onwards may be sent to the Board in the revised proforma.
- These guidelines may be brought to the notice of all concerned. In cases of any doubt regarding any provision of the guidelines reference may be made to the Member-(Inv) CBDT.
- The receipt of the letter may be acknowledged. The guidelines shall be implemented with immediate effect.

Board's F.No. 285/161/90-IT(Inv.), dt. 30.9.'94]

Instruction No: 5206

Section(s) Referred: 279(2)

Statute: Income - Tax Act, 1961

Date of Issue: 30/9/1994

The existing instructions regarding compounding of offences under the laws relating to Direct Taxes have been reviewed by the Board. After careful consideration of the matter, these revised guidelines are hereby issued.

2.1 The distinction between technical and non-technical offences for the purpose of compounding of offences was removed in Board's Instruction No. 1317 dated 11-03-1980. It has now been decided to reintroduce the concept of technical and non-technical offences for the limited purpose of compounding of the offences.

2.2 Offences punishable under the following sections showed be treated as technical offences:-

Sections:

- (i) 275 (prior to 1.4.75 - failure to make payment or deliver returns or statements or allow inspection)
- (ii) 276B (prior to 1.4.89 - failure to deduct or pay tax)
- (iii) 276B (w.e.f. 1.4.89 - failure to pay tax deducted at source)
- (iv) 276BB (failure to pay the tax collected at source)
- (v) 276DD (failure to comply with the provisions of section 269SS)
- (vi) 276E (failure to comply with the provisions of section 269I)

2.3 Offences punishable under the following sections shall be treated as non-technical or substantive offences:-

Sections:

- i) 275A (contravention of order made u/s 132(3))
- ii) 276 (w.e.f. 1.4.89 - removal, concealment, transfer or delivery of property to thwart tax recovery)
- iii) 276A (failure to comply with the provisions of sections 178(1) and 178(3))
- iv) 276AA (prior to 1-10-86 - failure to comply with provisions of section 269AB or section 269I)
- v) 276AB (failure to comply with the provisions of section 269UC, 269UE and 269UL)
- vi) 276C (wilful attempt to evade tax etc.)
- vii) 276CC (wilful failure to furnish returns of Income)
- viii) 276D (failure to produce accounts and documents)
- ix) 277 (false statement in verification etc.)
- x) 278 (abetment of false return etc.)

3. Offences under Indian Penal Code cannot be compounded. They can, however, be withdrawn. Offences under Direct Tax Laws may be compounded subject to the conditions prescribed in paragraph 4 and 5. It must be borne in mind that an assessee cannot claim, as of right, that his offence should be compounded. Factors such as conduct of the assessee, nature and magnitude of the offence and facts and circumstance of each offence will be considered while dealing with such a request.

4. Conditions for compounding technical offences:-

The following conditions should be satisfied before compounding a technical offence:-

- 4.1 The assessee should make a written request for compounding of the offence.
- 4.2 The case should be considered for compounding only when the assessee has paid the amount of undisputed tax as well as interest and penalties relating to the default.
- 4.3 The assessee should state that he is willing to pay the compounding fee prescribed in para 9 below, and the prosecution establishment expenses prescribed in para 10 below. The order compounding an offence should be passed only when the compounding charges comprising of the composition fee and establishment expenses are paid by the assessee/defaulters.
- 4.4 Technical offences may be compounded by CCIT or DGIT (as the case may be) if the following conditions are satisfied cumulatively:-
 - (i) it is the first offence by an assessee.
 - (ii) the compounding charges do not exceed Rs. 10 lakhs.
 - (iii) the offence is compounded only before the filing of complaint.

In the case of offences punishable u/s 276 (prior to 1.4.76), 276B (prior to 1.4.89), 276DD & 276E, complaints in respect of which have been filed before coming into force of these revised guidelines, the CCIT/DGIT may compound the offence without seeking Board's approval if the other conditions prescribed above are satisfied.

In all other cases, the offence shall not be compounded except with

the previous approval of the Board.

4.5 The second and subsequent offences may be compounded with the approval of the Board in the following circumstances:-

- (i) The default does not involve mens rea i.e. it is not deliberate or intended to conceal any information from the department or to defraud the revenue directly or indirectly.
- (ii) Necessary steps for compliance of relevant provisions of Direct Tax Laws have been taken by the assessee prior to the detection of the default by the department. (For example in case of default in respect of tax deducted at source/tax collected at source, the tax should have been deposited by the assessee voluntarily and prior to detection of the default by the department).

4.6 In case of second and subsequent offence, the compounding fee shall be enhanced by 100% each time. Thus for second offence it will be 200% of the normal fee and so on.

4.7 For the limited purpose of determining authority granting approval for compounding, the compounding charges at the time of passing order u/s 279(2) shall be considered. However if the computation of compounding charges is dependent upon the income or tax etc. determined in the assessment order or any other order which is subject matter of appeal, revision, reference etc., the compounding charges shall be calculated on the basis of the assessment order or such other order. It may be clarified that compounding charges payable by a person shall be in accordance with para 9 and 10 only.

5. Compounding of substantive/non-technical offences:-

Following conditions must be cumulatively satisfied before compounding a substantive offence.

- (i) the conditions prescribed in para 4.1, 4.2, 4.3, are satisfied,
- (ii) it is first substantive offence.

- (iii) the prior approval of the Board is obtained. If the amount involved in the offence exceed Rs. 1 lakh, the Board shall grant approval if MOL advises that the chances of successful prosecution are not good.
6. Notwithstanding anything contained in paragraph 4 & 5 above, the F.M. may grant approval for compounding the offence in a suitable and deserving case.
 7. While seeking the Board's approval CCIT/DGIT shall clearly report whether all the prescribed conditions for compounding have been met.
 8. For the purpose of these guidelines the "first offence" will mean the following:-
 - a) Offences under any of the Direct Tax Laws committed prior to the date of issue of any prosecution show-cause notice or any other mode of intimation by the department to the person concerned or prior to launching of prosecution, whichever is earlier. Any offence, even though committed prior to the issue of such show cause notice or intimation or filing of complaint but discovered or disclosed after the first compounding order shall not be considered as "first offence".
 - (b) Offences not detected by the department but voluntarily disclosed by a person prior to the first compounding of offence in his case under any Direct Taxes Acts.

For this purpose offence is relevant if it is committed by the same taxable entity.

9. Fees for compounding:-

The composition fee for compounding of various offences in addition to any interest / penalty leviable) will be as follows:-

- 9.1 Section 276:- Failure to make payment or deliver return or (prior to 1.4.76) statement or allow inspection.

The composition fee would be an amount of Rs. 2/- for every day during which the default continues.

- 9.2 Section 276B:- Failure to deduct or pay tax (prior to 1.4.89).

10% per month or part of a month of the amount in default where the said amount exceeds one lac and 5% per month or part of a month of the

amount in default in other cases.

9.3 Section 276B:- Failure to pay the tax deducted at source (w.e.f. 1.4.89)

5% per month or part of a month of the amount of tax in default.

9.4 Section 276DD:- Failure to pay the tax collected at source.

The same guidelines as in respect of Section 276B in Para 9.3 above shall be applicable for an offence under this section also.

9.5 Section 276D(1):- Wilful attempt to evade tax etc.

(a) If the amount sought to be evaded is less than Rs. one lac the compounding fee shall be 100% of amount sought to be evaded.

(b) If the amount sought to be evaded is more than Rs. one lac the compounding fee shall be 200% of the amount sought to be evaded.

For the removal of doubts, it is clarified that the composition fee as per the scale given above shall be charged even if no penalty was actually levied or the amount of penalty was reduced or cancelled in appeal. It is also clarified that where the same set of facts and circumstances attract prosecution u/s 276C(1), 277 and 278, the compounding fee shall be charged by treating all these offences as one offence.

9.6 Section 276C(2):- Wilful attempt to evade payment of any tax etc.

5% per month or part of a month of the amount, the payment of which is sought to be evaded, for the period of default.

9.7.1 Section 276CC:- Failure to furnish returns of income 5% per month or part of a month of the tax determined on regular assessment as reduced by the tax deducted at source and advance tax, if any, paid during the financial year immediately preceding the assessment year reckoned from the date immediately following the date on which the return of income was due to be furnished, to the date of furnishing of the return or where no return was furnished, the date of completion of the assessment.

9.7.2 Where before the date of furnishing of the return or when no return was furnished, the date of completion of assessment any tax is paid by the assessee u/s 143A or

otherwise:

- (i) Compounding fee shall be calculated in the manner prescribed in para 9.7.1 above, upto the date on which the tax is so paid and
- (ii) thereafter the fee shall be calculated at the aforesaid rate on the amount of tax determined on regular assessment as reduced by the TDS, advance tax and tax paid u/s 140A or otherwise before filing the return of income or where no return was furnished, the date of completion of assessment. ♥.

9.8 Section 276DD:- Failure to comply with the provisions of section 269SS) (prior to 02-04-89)

A sum equal to 50% of the amount of any loan or deposit accepted in contravention of the provisions of section 269SS.

9.9 Section 276E:- Failure to comply with the provisions of section 269I (prior to 01-04-89).

A sum equal to 50% of the amount of deposit repaid in contravention of the provisions of section 269I.

9.10 Section 277:- False statement in verification etc.

Section 278:- Abetment of false return etc.

For both these offences the same guidelines will be applicable as for the offences u/s 276C(1).

9.11 No composition fee has been prescribed for offences u/s 275A, 276(w.e.f. 1.4.89), 276A (w.e.f. 1.4.65), 276AA, 276AB and 276D as these provisions should be strictly enforced. However if there are any mitigating circumstances in any given case, the Board may consider the same on a case to case basis.

9.12 The prescribed compounding charges shall be chargeable while compounding offence. However, in extreme and exceptional case of genuine financial hardship the compounding charges may be suitably reduced with the approval of F.M.

10. In addition to the composition fee, the compounding charges shall include prosecution establishment expenses. A consolidated fee for prosecution establishment expenses will be charged which would cover the litigation expenses also. Accordingly, prosecution

establishment expenses will be charged at the 10% of the composition fee subject to a maximum amount of Rs. 50,000/-. This limit will apply even where a number of offences are compounded under a single order.

11. The revised guidelines outlined above are in supersession of all earlier instructions / clarifications on the subject and apply to future as well as pending cases. However the offences already compounded under the old guidelines shall not be reconsidered.
12. In a case where prosecution has not been filed, no order for compounding of offence need be passed, if as per guidelines issued vide F.No. 285/160/90-IT(Inv.) dated 7.2.1991, the smallness of the default does not call for launching of prosecution. However in such cases levy of interest and penalties prescribed under the Direct Taxes Acts must be considered on merits.
13. These guidelines shall apply mutatis mutandis to offences under the other Direct tax Laws also.

These guidelines may be brought to the notice of all concerned.

[Board's F.No. 285/161/90-IT(INV), dt. 30.9.'94]

7. **Instruction No: 5255**
Section(s) Referred: 279(2)
Statute: Income - Tax Act, 1961

Date of Issue: 20/10/1995

The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No. 285/161/90-IT(Inv) dated 30/9/1994 and were circulated under a separate forwarding letter of even number and date. During the operation of these guidelines certain ambiguities were noticed and, hence, clarifications were sought by the field officers. For instance, in some regions, CCs were calculating the compounding fee for offence u/s.276(c)(1) only on the tax sought to be evaded by the assessee while in others the compounding fee was calculated by aggregating the tax, interest and penalties sought to be evaded by the assessee.

2. Doubtless, there is need for uniformity in the application of the guidelines and in the interpretation of the phrase "amount sought to be evaded." Accordingly, after careful consideration of the matter,

the following clarification is hereby issued:-

Para 4C(iii) of the forwarding letter will now read as under:

"Section 276C(1) Amount of tax calculated at the maximum marginal rate on the income sought to be concealed."

3. Likewise in Para 9.5 of the compounding guidelines, the phrase 'amount sought to be evaded' is mentioned; whereas in Para 4C(iii) of the forwarding letter, the phrase 'amount in default' or the "amount involved in the offences" is likely to convey different meanings. The clarification in regard to Section 276C(1) will, it is hoped make the matter clear and unambiguous.

4. To sum up, henceforth, the compounding fee would be worked out at 100% of the tax calculated at the maximum marginal rate of the income sought to be concealed, where the amount is less than Rs. 1 lakh and @ 200% if the income sought to be concealed exceeds Rs. 1 lakh.

[Board's F.No. 285/82/90-IT(Inv)/1154, dt. 20.10.'95]

The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No.285/161190-IT(Inv.) dated 30.09.94 and were circulated under a separate forwarding letter of even No. and date.

For the purpose of these guidelines 'the amount involved in the offence' has been defined under paragraphs 4(c) of the forwarding letter to the Board's guidelines. In this regard a further clarification was issued by the Board vide circular F.No.285/160/90-IT(Inv.), dated 20.10.95 relating to paragraph 4(c)(iii) of the forwarding letter to the existing guidelines in respect of offences u/s.276C(1).

8. F.No.285/86/90-IT(Inv)/53, Dated 16.05.96

Regarding calculation for Compounding Charges in the case of a Firm]

Income concealed	X
Less : Firm tax and surcharges at maximum Marginal rate of tax. . . .	(A)
Allocable profit (X-A)...	Y
Tax on allocable income in the hands of partners with surcharge at maximum marginal rate....	(B)
Post tax profit for partners and firm (Y -B)...	(Z)

Total tax sought to be evaded (A+B)=(C)....	(C)
Add : 10% consolidated establishment expenses ... :	(0.1) x (C)
Total compounding Charges	(1.1) x (C)
Recoverable for first offence.	

8. F.No.285/62/98-ITOnv)/22. dated 26.03.1999:

Guidelines for compounding of offence under Direct Tax Laws-Clarification-regarding

The Board are of the view that for the purpose of computing compounding fee, the amount of tax should be the tax as modified by appeal / revision / rectification etc. provided such revised order has become final. This is based on the rationale that if the assessment and/or tax payable has been revised as a result of any subsequent order the tax computed in original assessment gets modified to that extent. It is therefore reiterated that while sending the compounding proposals for approval of the Board, the CCsIT/DGsIT may take this into consideration and compounding fee should be calculated accordingly.

It has now been reduced to 2% per month or part of a month of the tax to be calculated as above.

Section 276C(1) : Wilful attempt to evade tax, etc.

Under the existing guidelines, the fee is:

- (a) If the amount sought to be evaded is less than Rs. One Lakh, the compounding fees shall be 100% of amount sought to be evaded.
- (b) If the amount sought to be evaded is more than Rs. One lakh, the compounding fee shall be 200% of the amount sought to be evaded. It has now been reduced to 50% of amount sought to be evaded irrespective of the amount sought to be evaded. Other provisions of the existing guidelines and clarifications issued subsequently from time to time shall continue to be applicable.

Above amendments shall be applicable to future as well as to cases pending at any stage. However, the offences already compounded shall not be reconsidered. These amendments shall apply mutates mutandis to offences under the other Direct Tax Laws also. These amendments may be brought to all concerned and be given wide publicity.

9. F.No. 285/26/2002-IT(Inv.)
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes
 New Delhi, the 29th July, 2003

To

All Chief Commissioners of Income-tax,
 All Directors General of Income-tax(Inv).

Sub. : Guidelines for compounding of offences under Direct
 Tax Laws Amendments regarding

The existing Guidelines for compounding of offences under the Direct Tax Laws issued vide Board's F.No. 285/161/90-IT(Inv.) dated 30th Sept., 1994 have been reviewed in the light of past experience and future needs. Following amendments are hereby made to these Guidelines with immediate effect :-

(a) Procedural Amendments

(1) Under the existing Guidelines, Technical Offences(enlisted in para 2.2 of the said Guidelines) are to be compounded, by the Chief Commissioner of Income Tax or Director General of Income Tax(Inv.)(as the case may be), if following conditions are collectively satisfied :-

- (i) It is first offence by the assessee;
- (ii) the compounding charges do not exceed Rs. 10 lakh;
- (iii) the offence is compounded only before the filing of complaint.

In all other cases, the technical offences as per existing Guidelines, ~~are~~ to be compounded with the approval of the Board.

In this regard, it has now been decided that :

- (a) all types of cases relating to technical offences are to be compounded by CCIT/DGIT;
- (b) distinction between first offence and subsequent offence is removed; and
- (c) CCIT/DGIT shall not reject an application for compounding of a technical offence, if

all conditions prescribed in the Guidelines are satisfied.

- (II) Para 5(iii) of the existing Guidelines provides that for compounding substantive/non-technical offences, in which the amount involved in the offence exceeds Rs. 1 lakh, the Board shall grant approval if Ministry of Law advises that the chances of successful prosecution are not good. The requirement of referring the matter to the Ministry of Law has now been done away with.

(b) Reduction of compounding fee

With a view to encourage the assesses to get their offences compounded, compounding fee in respect of the following offences has been substantially reduced as under :-

- (I) Section 276B(prior to 01/04/1989) Failure to deduct or pay tax Under the existing guidelines, compounding fee is 10% per month or part of a month, of the amount in default where the said amount exceeds Rs. 1 lakh and 5% per month or part of a month of the amount in default in other cases.

It has now been reduced to 2% per month or part of a month of amount in default irrespective of amount in default.

- (II) Section 276DD(prior to 02/04/1989) Failure to comply with the provisions of Section 269SS Under the existing Guidelines, compounding fee is 50% of the amount of any loan or deposit accepted in contravention of the provisions of Section 269SS.

It has now been reduced to 20% of the amount of any loan or deposit accepted in contravention of the provision of Section 269SS.

- (III) Section 276E(prior to 01/04/1989) Failure to comply with the provisions of Section 269T

Under the existing Guidelines, compounding fee is 50% of the amount of deposit repaid in contravention of the provisions of Section 269T.

It has now been reduced to 20% of the amount of deposit repaid in contravention of the provisions of Section 269T.

- (IV) Section 276CC Failure to furnish returns of income Under the existing Guidelines, compounding fee is as under :-

9.7.1 - 5% per month or part of a month of the tax determined on regular assessment as reduced by the

tax deducted at source and advance tax, if any, paid during the financial year immediately preceding the assessment year reckoned from the date immediately following the date on which the return of income was due to be furnished, to the date of furnishing of the return or where no return was furnished, the date of completion of the assessment.

9.7.2 - Where before the date of furnishing of the return or where no returns was furnished, the date of completion of assessment of any tax is paid by the assessee u/s 140A or otherwise:

- (i) Compounding fee shall be calculated in the manner prescribed in para 9.7.1 above, upto the date on which the tax is so paid; and
- (ii) thereafter the fee shall be calculated at the aforesaid rate on the amount of tax determined on regular assessment as reduced by the TDS, advance tax and tax paid u/s 140A or otherwise before filing the return of income or where no return was furnished the date of completion of assessment.

It has now been reduced to 2% per month or part of a month of the ~~tax~~ to be calculated as above.

3) Section 276C(1) Willful attempt to evade tax, etc.

Under the existing Guidelines, the fee is:-

- (a) If the amount sought to be evaded is less than Rs. 1 lakh, the compounding fee shall be 100% of amount sought to be evaded;
- (b) If the amount sought to be evaded is more than Rs. 1 lakh, the compounding fee shall be 200% of the amount sought to be evaded.

It has now been reduced to 50% of amount sought to be evaded ~~respective~~ of the amount sought to be evaded.

4) All other provisions of the existing Guidelines and clarifications issued subsequently from time to time shall continue to be applicable.

3. Above amendments shall be applicable to future as well as to cases pending at any stage. However, the offences already compounded shall not be reconsidered.
4. These amendments shall apply mutatis mutandis to offences under the other Direct Tax Laws also.

These amendments may be brought to all concerned and be given wide publicity.

Yours faithfully,

Sd/-

(SHARAT CHANDRA) ♦.

Director(Inv.II & III), OSD(Legal)

10. F.No.285/20/2007-IT(Inv.)/6, dated 12.04.2007.

1. The existing guidelines for compounding of offences under direct laws were issued vide F.No.285/161/90-IT(Inv.), dated 30.09.1994 and subsequently clarification was issued vide F.No.285/160/90-IT(Inv.), dated 20.10.1995 and guidelines were revised vide F.No.285/26/2002-IT(Inv.), dated 29.07.2003.
2. Certain ambiguities were noted regarding the issue whether the 'tax sought to be evaded' for purpose of compounding in cases where return were to be filed u/s 158BC/158BD or 153A/153C shall be tax only on the additions made by A.O to the income shown in such returns.
3. The Board after careful consideration inserts the following explanation to para 9.5 of the guidelines dated 30.9.1994 read with para 'V' of guidelines dated 29.07.2003 on compounding of offences:-

Explanation:- "The amount of 'tax sought to be evaded' for purpose of computing compounding fee for offence u/s 276C(1) in case of assessments u/s 158BC/158BD or 153A/153C means tax on the difference between the tax on the income determined in such assessments and the tax on the basis of income shown in original return filed u/s 139. Where no returns has been filed u/s 139 'tax on the basis of income shown in original return' will be treated as nil, for the purpose of this explanation. 'Tax' for this purpose means tax at the maximum marginal rate for assessments u/s 153A/153C and tax as per section 113 for assessments u/s

158BC/158BD. This explanation shall apply to all the pending petitions for compounding as on 01.04.2007 as well as to such petitions received subsequent to this date.”

C. Other Important Relevant Circulars / Instructions.

Circular on section 136 Circular No. 421 dated 12/6/85:

Modification of the provisions relating to proceedings before income-tax authorities.-

- 35.1 Under section 136 of the Income-tax Act, proceedings, before an income-tax authority are deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The Finance Act, 1985, has amended the said section to also provide that an income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973. This amendment is intended to secure that prosecution proceedings for offences under the relevant provisions of the Indian Penal Code may be launched on the complaint of the concerned income-tax authority.
- 35.2 The amendment takes effect from 1st April, 1974, that is, the date from which the Code of Criminal Procedure, 1973, came into force.' (Please see Chaturvedi Pitisaria fifth edition volume III page 4536)

VIII

Offences under various other Acts

During the Search & Survey operations or connected enquiries and investigation, the Income-tax authorities may come across some acts of omission and commission which constitute offences punishable under other Acts. Since it is advisable to report such violations of law etc. other than the Direct Taxes Law to the Appropriate Enforcement Agencies, it is deemed fit to give some examples of omission and commission which form offences under other Acts.

Offences punishable under the Prevention of Corruption Act, 1988:

Some such examples are

- (i) a public servant taking gratification other than legal remuneration in respect of an official act;
- (ii) any person taking gratification in order to influence a public servant by corrupt or illegal means;
- (iii) any person taking gratification for exercise of personal influence with a public servant.
- (iv) a public servant obtaining a valuable thing without consideration from any person concerned in proceeding or business transacted by such public servant;
- (v) abetment of any of the above offences;
- (vi) criminal misconduct by a public servant and
- (vii) attempt to commit an offence specified under section 13(1)(c) or section 13(1)(d) of the Prevention of Corruption Act, 1988.

Offences punishable under the Benami Transaction Prohibition Act, 1988:

Under this Act, a benami transaction is a transaction in which properties are acquired in the name of one person for consideration paid or provided by any other person. Under section 3 of the Act, a person who enters into a benami transaction, is punishable with rigorous imprisonment for a term, which may extend to three years or with fine or with both. The law provides for certain exceptions in this regard. The offence is non-cognizable and bailable.

Offences punishable under the Arms Act, 1959:

Under the provisions of the Arms Act, 1959, acquisition, possession or the carrying of certain arms is totally prohibited while such acquisitions,

etc. in respect of certain other arms is permitted only after obtaining proper licence in this regard. Any violation thereof is punishable.

Offences punishable under the Antiquities and Art Treasures Act, 1972:

Section 25 of this Antiquities and Art Treasure Act, 1972 provides that if any person, other than the Central Government or any authority or agency authorized under section 3(1) of that Act, exports or attempts to export any antiquities or art treasure, he shall, without prejudice to any confiscation or penalty under the Customs Act, 1972, be punishable with rigorous imprisonment for a term which shall not be less than 6 months but will extend to 3 years and with fine. Similarly,

- (i) if any antiquity is sold either without, or in contravention of the terms of, a licence granted under Section 8 of that Act; or
- (ii) If a person sells any antiquities, after revocation of his licence to any person who does not hold a licence or
- (iii) If a person fails to get the antiquities registered under section 14 of that Act; or
- (iv) If a person fails to intimate the Registering Officer the transfer of ownership of any antiquities.
- (v) He shall be punishable with rigorous imprisonment for a term, which may extend to six months, or with fine, or with both. The antiquities shall also be liable to confiscation.

Offences punishable under the Wild Life (Protection) Act, 1972:

The Wile Life (Protection) Act 1972 provides for punishment for various offences under that Act. Once the matter has been reported to appropriate authorities under this Act, they will take a decision on enforcement of suitable sanctions against the offender(s).

Offences punishable under the Information Technology Act, 2000:

Under the provisions of section 65 of this Act whoever knowingly or intentionally, conceals, destroys or alters, or causes another person so to do, any computer source code used for a computer, computer programme, computer system or computer net work (where such source code is required to be kept or maintained by law for the time being in force), shall be punishable with rigorous imprisonment for a term upto three years or with fine which may extend to two lakh rupees or with both. For this purpose, computer source code means the listing of programmes, computer commands, design and lay out and programme analysis of computer

resource in any form. Similarly, under section 66 of that Act, whoever with intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public, or any person destroys or deletes or alters any information residing in a computer resource (such act is called hacking) shall be punishable with imprisonment upto three years, or with fine which may extend to two lakh rupees, or with both. Under section 71 of that Act, any misrepresentation or suppression of material facts from the Controller or Certifying Authority under that Act for obtaining any license or Digital Signature Certificate also constitutes an offence.

Offences punishable under the Customs Act, 1962:

Some examples of violations under this Act are, illegal import and export of certain goods, smuggling and selling of smuggled goods by a person having knowledge or reason to believe that goods are smuggled goods, bringing valuable items from foreign countries without declaring etc.

Offences punishable under the Central Excise Act, 1944:

1. Some violations under section 9 of this Act are:
 - (a) contravention of the provisions of section 8 with regard to possession of certain goods;
 - (b) evasion of payment of duty payable under that Act;
 - (c) removal of any excisable goods in contravention of the provisions of that Act or the relevant rules;
 - (d) acquiring possession of or in any way concerning himself in transporting, depositing, keeping, concealing, selling or purchasing or dealing in any other manner with excisable goods otherwise than in accordance with the provisions of the aforesaid Act;
 - (e) contravention in relation to credit of any duty allowed to be utilized towards payment of excise duty for final products; and
 - (f) attempt to commit or abetting of commission of any of the above violations of law.
2. In terms of Section 11AC of the aforesaid Act, where any excise duty has not been levied, or paid, or has been short levied, or short paid or erroneously refunded by reasons of fraud, collusion or any willful misstatement or suppression of facts or contravention of any other provisions of this Act or rules made there under, with

intention to evade payment of duty, the person committing such action shall be liable to penalty equal to the amount of duty.

3. Whoever is liable for punishment under the Central Excise Act, 1944 can be arrested by the Central Excise Officers not below the rank of Inspector of Central Excise, with the prior approval of the Commissioner of Central Excise.

Offences punishable under the Foreign Exchange Management Act, 1999:

In terms of the provisions of section 18 of the Foreign Exchange Management Act, 1999, if any persons contravenes

- (i) any provision of the said Act, or
- (ii) any rule, regulation, notification, direction or order issued in exercise of the powers under the said Act or
- (iii) any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty specified in that section.

Offences punishable under the Prevention of Money Laundering Act, 2002:

According to section 3 of this Act, whosoever

- (i) directly or indirectly attempts to indulge, or
- (ii) knowingly assists or
- (iii) knowingly is a party to, or
- (iv) is actually involved

In any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering punishable under that Act.

Annexure - I

Table of Prosecution provisions under Direct Tax Laws & IPC.

S.No.	Act	Section	Description	Punishment
1	STT	112	False statement in verification	Upto 3 yrs + fine (Non-cog)
2	BCTT	109	-do-	-do-
3	WT	35A	Wilful attempt to evade tax etc.	a) RI of 6 mths to 7 yrs + may be fine b) RI of 3 mths to 3 yrs + may be fine
4	-do-	35B	Failure to furnish returns of net wealth	-do
5	-do-	35C	Failure to produce A/c & records etc.	Upto 1 yr or fine @ Rs.4 Rs.10 for each day or both
6	-do-	35D	False statement in verification other than under S.34AB	a) RI for 6 mths to 7 yrs + fine b) RI for 3 mths to 3 yrs + fine
7	-do-	35E	False statement in verification u/s 34AB	Imprisonment upto 6 mths or fine or both
8	-do-	35EE	Failure to furnish particulars u/s 34ACC	RI of upto 2 yrs + fine
9	-do-	35EEE	Contravention of order under 2nd proviso to sub-sec.1 or sub-sec. 3A of S.37A	RI upto 2 yrs + fine
10	-do-	35F	Abetment of false return	a) RI of 6 mths to 7 yrs + fine b) RI of 3 mths to 3 yrs + fine
11	-do-	35G	Punishment for second and subsequent offences	RI of 6 mths to 7 yrs + fine
12	I.T. Act	275A	Contravention of prohibitory order/order for constructive seizure u/s. 132(3)/Second Proviso u/s. 132(1)	RI upto 2 years + fine
13	-do-	275B	Non-compliance to section 132(1)(iib) in relation to affording facilities to inspect	-do-

S.No.	Act	Section	Description	Punishment
			books of account, electronic records	
14	-do-	276	Removal, concealment etc. to thwart tax recovery	RI upto 2 yrs + fine
15	-do-	276A	Failure to comply with provisions of 278(1) and 278(3)	RI upto 2 yrs
16	-do-	276AB	Non-compliance to sections 269UC, 269UE & 269UL relating to Appropriate Authority	-do-
17	-do-	276B	Failure to pay tax to the credit of Central Government under Chapter XX-D or XVII-B	RI of 3 mths to 7 yrs + fine
18	-do-	276BB	Failure to pay the tax collected at source	-do-
19	-do-	276C	Willful attempt to evade tax	a) RI of 6 mths to 7 yrs + fine b) RI of 3 mths to 3 yrs + fine
20	-do-	276CC	Failure to furnish returns of income under sections (A) 139/142/148; or (B) 153A (search & seizure cases); or (C) 115WD(1)/115WD(2)/115WH (FBT).	-do-
21	-do-	276CCC	Failure to furnish block return of income in search cases	Imprisonment for 3 mths to 3 yrs + fine
22	-do-	276D	Failure to produce accounts and documents	RI upto 1 yr or fine @ Rs.4 Rs.10 for each day or both
23	-do-	277	False statement in verification etc.	a) RI of 6 mths to 7 yrs + fine b) RI of 3 mths to 3 yrs + fine
24	-do-	277A	Falsification of books of account or documents	RI of 3 mths to 3 yrs + fine
25	-do-	278	Abetment of false returns etc.	a) RI of 6 mths to 7 yrs + fine

S.No.	Act	Section	Description	Punishment
				b) RI of 3 mths to 3 yrs + fine
26	-do-	278A	Punishment for second and subsequent offences	RI of 6 mths to 7 yrs + fine
27	I.P.C. Ch[a] X	172	Absconding to avoid service of summons or other proceeding	a) Imprisonment upto 1 mth or fine upto Rs.500 or both b) Imprisonment upto 6 mths or fine upto Rs.1000 or both
28	-do-	173	Preventing service of summons or other proceeding, or preventing publication thereof	a) Imprisonment upto 1 mth or fine upto Rs.500 or both b) Imprisonment upto 6 mths or fine upto Rs.1000 or both
29	-do-	174	Non attendance in obedience to an order from public servant	a) Imprisonment upto 1 mth or fine upto Rs.500 or both b) Imprisonment upto 6 mths or fine upto Rs.1000 or both
30	-do-	174A	Non-appearance in response to a proclamation u/s. 82 of Act 2 of 1974 a) Under sub-section (i) b) Under sub-section (h)	a) Imprisonment upto 3 yrs or fine or both b) Imprisonment upto 7 yrs + fine
31	-do-	175	Omission to produce document to public servant by person legally bound to produce it a) before public servant b) before a Court of Justice	a) Imprisonment upto 1 mth or fine upto Rs.500 or both b) Imprisonment upto 6 mths or fine upto Rs.1000 or both
32	-do-	176	Omission to give notice or information to public servant by person legally bound to give it.	a) Imprisonment upto 1 mth or fine upto Rs.500 or both b) Imprisonment upto 6 mths or fine upto Rs.1000 or both
33	-do-	177	Furnishing false information	a) Imprisonment upto 6 mths or fine upto Rs.1,000 both b) Imprisonment upto 2 yrs or fine or both

S.No.	Act	Section	Description	Punishment
34	-do-	178	Refusing oath or affirmation when duly required by public servant to make it	Imprisonment upto 6 mths or fine upto Rs.1,000 or both
35	-do-	179	Refusing to answer public servant authorized to question	Imprisonment upto 6 mths or fine upto Rs.1,000 or both
36	-do-	180	Refusing to sign statement	Imprisonment upto 3 mths or fine upto Rs.500/- or both
37	-do-	181	False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation	Imprisonment upto 3 yrs + fine
38	-do-	182	False information, with intent to cause public servant to use his lawful power to the injury of another person	Imprisonment upto 6 mths or fine upto Rs.1,000 or both
39	-do-	183	Resistance to the taking of property by the lawful authority of a public servant	Imprisonment upto 6 mths or fine upto Rs.1,000 or both
40	-do-	184	Obstructing sale of property offered for sale by authority of public servant	Imprisonment upto 1 mth or fine upto Rs.500/- or both
41	-do-	185	Illegal purchase or bid for property offered for sale by authority of public servant	Imprisonment upto 1 mth or fine upto Rs.200/- or both
42	-do-	186	Obstructing public servant in discharge of public functions	Imprisonment upto 3 mths or fine upto Rs.500/- or both
43	-do-	187	Omission to assist public servant when bound by law to give assistance	a) Imprisonment upto 1 mth or fine upto Rs.200/- or both b) Imprisonment upto 6 mths or fine upto Rs. 500/ or both
44	-do-	188	Disobedience to order duly promulgated by public servant	a) Imprisonment upto 1 mth or fine upto Rs.200/- or both

S.No.	Act	Section	Description	Punishment
				b) Imprisonment upto 6 mths or fine upto Rs. 1,000/- or both
45	-do-	189	Threat of injury to public servant	Imprisonment upto 2 yrs or fine or both
46	-do-	190	Threat of injury to induce person to refrain from applying for protection to public servant	Imprisonment upto 1 yr or fine or both
47	I.P.C. CH.XI	191	Giving false evidence	Definition
48	-do-	192	Fabricating false evidence	-do-
49	-do-	193 (r.w.sec. 136 of the IT Act, 1961)	a) Punishment for false evidence/Fabricating false evidence for being used in judicial proceeding b) In any other case	a) Imprisonment upto 7 yrs + fine b) Imprisonment upto 3 yrs + fine
50	-do-	194	Giving or fabricating false evidence with intent to procure conviction of capital offence. If innocent person be convicted and executed	a) Imprisonment for life or with RI upto 10 years + fine b) Death
51	-do-	195	Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment or imprisonment for 7 yrs or upwards	Shall be punished as a person convicted of that offence
52	-do-	196 (r.w. sec. 136 of the IT Act, 1961)	Using or attempting to use any evidence as true or genuine knowing the same to be false or fabricated	Same as giving or fabricating false evidence
53	-do-	197	Issuing or signing false certificates	Same as giving false evidence
54	-do-	198	Using as true a certificate known to be false	-do-