

STRICTLY FOR DEPARTMENTAL USE

Manual on
**Prosecution
&
Compounding**
2020

VOLUME-II





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Prosecution
and
Compounding
2020

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Manual on Prosecution and Compounding 2020

Vol. II

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The statements in this Manual should not be construed as the final authority about any provision of law. For the same, the actual text of a provision of law or a judgment or Circular etc, which are quoted in this book, may be referred to. Every care has been taken to avoid mistakes. However, if there is any, the same may please be brought to the notice of **Investigation–Division V of Central Board of Direct Taxes.**



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P.C. Mody

Chairman (I/c) Member Inv., CBDT
North Block, New Delhi

FOREWORD

I am happy to learn that Investigation Division V of CBDT is bringing out the revised version of the Prosecution Manual. The earlier edition of the Manual was brought out in 2009. There has been a paradigm shift in the approach of the Department since then. The edifice of the department today is based upon voluntary tax compliance through a non-adversarial system which provides a facilitating and enabling environment to every taxpayer to fulfil his sovereign duty. While the honest taxpayers are celebrated, as a natural corollary, tax delinquents need to be dealt with firmly and decisively. Thus, instances of large, aggressive and deliberate tax defaults are to be discouraged. The provisions of prosecution and compounding provide the required deterrence. With the emphasis of the government towards eradication of black money, pursuit of systematic acts of tax evasion to logical end by filing prosecution complaints in the jurisdictional courts is considered desirable. This process also entails exercise of positive discretion to allow restitution of mistakes in the form of compounding to those willing to come clean.

There was a need to revise the existing guidelines to bring them in sync with the current times. These would help to clarify the doubts in the minds of the departmental officers and officials. It was also felt that a Standard Operating Procedure (SOP) needs to be put into place for uniformity of approach by the field formations. The Prosecution Guidelines and SOP for TDS/TCS related cases were brought out in FY 2016-17. A Working Group (WG) was constituted with the task to propose the revised Compounding Guidelines, Prosecution Guidelines

and the Standard Operating Procedure (for cases other than TDS/TCS) as also to revise the Prosecution Manual. On the recommendations of the WG, the revised Guidelines for Prosecution and Compounding have since been issued.

The revised version of Prosecution Manual now called as the 'Manual on Prosecution and Compounding' is an endeavour to bring all relevant material related to the subject of Prosecution and Compounding into a single compilation for ready reference by the field officers. Old chapters have been updated and new chapters have been added like for Offences under various other acts such as Black Money Act 2015, Prohibition of Benami Property Transactions Act 1988, Overview of Prosecution Module in ITBA and AO Portal of CPC-TDS, List of Courts notified under section 280A of the I.T. Act in various Pr. CCIT regions etc. The relevant case laws on the subject have also been updated. I am sure that the officers shall find the Manual very useful as a guiding tool in addressing the challenges & performing their duties diligently.

I congratulate Shri S.K. Gupta, Member (TPS&S) (I/c) (Legal), Chairman of the WG, along with other members of the group, namely, Smt. Anuradha Bhatia, Principal CCIT, Pune, Shri Omkareshwar Chidara, Principal CIT, Vishakhapatnam, Shri Satish Sharma, CIT (Exemption), Mumbai, Dr. Zakir Thomas, CIT(OSD)(Inv.) CBDT, Shri V.K. Gupta, CIT-TDS, Mumbai, Shri Purushottam Tripuri, CIT DRP, Mumbai, Shri Ramesh Krishnamurthi, ADG (Systems)-3, New Delhi, Smt. Mamta Bansal, Director (Investigation-V), CBDT, Shri Neeraj Kumar, Addl. CIT, New Delhi, Shri Gaurav Kanaujia, Addl. DIT (Inv.), Kolkata, and Shri T. Sankar, Addl. CIT, Ahmedabad for their contribution to the Manual. I hope that this Manual will be put to best use by all in the Department.



(P.C. Mody)



S.K. Gupta

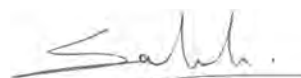
Member (TPS&S) (I/c) (Legal),
CBDT, North Block, New Delhi

ACKNOWLEDGEMENTS FROM CHAIRMAN, WORKING GROUP

A Working Group (WG) of officers was constituted by the Chairman I/c Member Inv. CBDT on 14.05.2018 for revising the Prosecution Manual 2009. The WG was also mandated to suggest suitable amendments to the Guidelines for Compounding of Offences; Guidelines for identifying and examining Prosecution cases (other than TDS/TCS) as also to suggest a Standard Operating Procedure for examining cases for Prosecution (other than TDS/TCS). Considering the complexity of the subject, several members were co-opted into the WG to make it more broad-based. Multiple rounds of meetings were held wherein the amendments suggested by the group members were scrutinized minutely and discussed extensively. Suggestions made by and clarifications sought by field officers from CBDT on several issues pertaining to Prosecution and Compounding were duly considered and factored in. Discussions were also held with senior officers in the field to elicit their views and opinions at the draft stage. The Investigation Division V of CBDT provided effective and meaningful support during the entire process of revision of the guidelines and the manual. The Chairman I/c Member Inv. CBDT was a great source of encouragement and provided constant guidance to the WG.

The Manual is the outcome of the tireless efforts of the WG members who found time despite their own work commitments to actively participate and contribute to the task at hand. I would like to thank each one of them for their contribution viz., Smt. Anuradha Bhatia, Principal CCIT, Pune, Sh. Omkareshwar Chidara, Principal CIT,

Vishakhapatnam, Sh. Satish Sharma, CIT (Exemption), Mumbai, Dr. Zakir Thomas, CIT(OSD)(Inv.) CBDT, Sh. V.K. Gupta, CIT-TDS, Mumbai, Sh. Purushottam Tripuri, CIT DRP, Mumbai, Smt. Mamta Bansal, Director (Investigation-V), CBDT, Sh. Neeraj Kumar, Addl. CIT, Range 26 New Delhi, Sh. Gaurav Kanaujia, Addl. DIT (Inv.), Kolkata, Shri T. Sankar, Addl. CIT, Range-1, Ahmedabad, and Sh. Ramesh Krishnamurthi, ADG (Systems), New Delhi. I would like to place on record special appreciation for Sh. Satish Sharma, CIT (Exemption), Mumbai and Smt. Mamta Bansal, Director (Investigation-V), CBDT for their valuable inputs and contribution.



(S.K. Gupta)

A. Instructions / Circulars / Guidelines/ Clarifications relevant to Prosecution

1. F.NO.285/08/2014-IT(INV.V)/351 DATED 09.09.2019

Confidential

**F.No.285/08/2014-IT(Inv. V)/351
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

Room No.515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 09.09.2019

To,

The Pr. CCsIT/ CCsIT/ Pr. DGsIT/DGsIT

Madam/Sir

Subject: Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 dated 27.06.2019

The undersigned is directed to refer to the Para 16(xix) of the Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 issued vide F.No.285/08/2014-IT(Inv. V)/155 dated 27.06.2019, which is reproduced as hereunder:

“16(xix).Notwithstanding anything contained hereinabove, the Commissioner of Income-tax may initiate the proceedings for prosecution in any case deemed fit, keeping in view the nature and magnitude of the offence.”

2. Para 16 (xix) as reproduced above, is hereby withdrawn with immediate effect.
3. Pr. CCsIT/CCsIT/Pr. DGsIT/DGsIT are requested to circulate the above, among all the officers of their region.
4. This issues with the approval of the Competent Authority.

Yours faithfully,

Sd/-

(Mamta Bansal)

Director, Inv. V
CBDT, New Delhi

2. F.NO.285/08/2014-IT(INV.V)/349 DATED 09.09.2019

Circular No. 24/2019

F.No.285/08/2014-IT(Inv. V)/349

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

Room No.515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 09.09.2019

Subject: Procedure for identification and processing of cases for prosecution under Direct Tax Laws

The Central Board of Direct Taxes has been issuing guidelines from time to time for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961 (the Act), and to remove any doubts on the intent to address serious cases effectively, this circular is issued.

2. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes in exercise of powers under section 119 of the Act lays down the following criteria for launching prosecution in respect of the following categories of offences.

i. Offences u/s 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.

Cases where non-payment of tax deducted at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

ii. Offences u/s 276BB: Failure to pay the tax collected at source.

Same approach as in Para 2.i above.

iii. Offences u/s 276C(1): Wilful attempt to evade tax, etc.

Cases where the amount sought to be evaded or tax on under-reported income is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

Further, prosecution under this section shall be launched only after the confirmation of the order imposing penalty by the Income-tax Appellate Tribunal.

iv. Offences u/s 276CC: Failure to furnish returns of income.

Cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

3. For the purposes of this Circular, the constitution of the Collegium of two CCIT/DGIT rank officers would mean the following-

As per section 279(1) of the Act, the sanctioning authority for offences under Chapter XXII is the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. For proper examination of facts and circumstances of a case, and to ensure that only deserving cases below the threshold limit as prescribed in Annexure get selected for filing of prosecution complaint, such sanctioning authority shall seek the prior administrative approval of the Collegium of two CCIT/DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies. The Principal CCIT(CCA) concerned may issue directions for pairing of CCsIT/DGsIT for this purpose. In case of disagreement between the two CCIT/DGIT rank officers of the Collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event that the Pr.CCIT(CCA) is one of the two officers of the Collegium, in case of a disagreement the decision of the Pr.CCIT(CCA) will be final.

4. The list of prosecutable offences under the Act specifying the approving authority is annexed herewith.

5. This Circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed.

6. Hind version shall follow.

Encl: As above

Sd/-
(Mamta Bansal)
Director to the Government of India

Annexure

Section	Nature of default	Approving Authority
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
275B	Failure to afford necessary facility to authorized officer to inspect books of account or other documents as required under section 132(1)(iib)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276A	Failure to comply with provisions of section 178(1) and (3) – reg. company in liquidation	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276AB	Failure to comply with provisions of sections 269UC, 269UE and 269UL reg. purchase of properties by Government	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276B	Failure to pay to credit of Central Government (i) tax deducted at source under Chapter XVII-B, or (ii) tax payable u/s 115-O(2) or second proviso to section 194B -	-
	(a) where non-payment of TDS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276BB	Failure to pay to the credit of Central Government the tax collected at source under section 206C -	-
	(a) where non-payment of TDS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276C(1)	Wilful attempt to evade tax, penalty or interest or under-reporting of income -	-
	(a) where tax which would have been evaded exceeds Rs. 25 lakh	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers

276C(2)	Wilful attempt to evade payment of any tax, penalty or interest -	-
	(a) where payment of any tax, penalty or interest exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276CC	Wilful failure to furnish returns of fringe benefits under section 115 WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A -	-
	(a) where tax sought to be evaded exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276CCC	Wilful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(a)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
277	False statement in verification or delivery of false account or statement etc -	-
	(a) where tax which would have been evaded exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
277A	Falsification of books of account or document, etc. to enable any other person to evade any tax, penalty or interest chargeable/ leviable under the Act	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax -	-
	(a) where tax, penalty or Interest which would have been evaded exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers

3. F.NO.285/08/2014-IT(INV.V)/155 DATED 27.06.2019

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**F.No.285/08/2014-IT(Inv.V)/155
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

Room No.- 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 27.06.2019

To,

The Pr. CCsIT/ CCsIT/ Pr. DGsIT/DGsIT

Madam/Sir

Subject: Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) and Standard Operating Procedure (SOP) for examining cases for Prosecution (Other than TDS/TCS related) under the Income-tax Act, 1961

Kindly refer to the captioned subject.

2. In this regard, the undersigned is directed to enclose herewith the following documents:

- i. Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 and
- ii. Standard Operating Procedure (SOP) for examining cases for Prosecution (Other than TDS/TCS related) under the Income-tax Act, 1961.

3. The undersigned is further directed to state that the aforesaid Prosecution Guidelines and SOP are meant **strictly for departmental use** and are to be circulated among all the officers of your charge for information and guidance.

Yours faithfully,

Encl: As above

Sd/-
(Mamta Bansal)
Director, Inv. V
CBDT, New Delhi

Confidential/strictly for Departmental Use
F. No. 285/08/2014-IT(Inv. V)/155 dated 27.06.2019

Guidelines for Identifying and Examining Prosecution Cases (other than TDS or TCS related) under Income-tax Act, 1961

1. The Board has issued guidelines from time to time for streamlining the procedure of identifying & examining the cases for initiating prosecution for offences under Direct Taxes Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961, (hereinafter referred to as “the Act”) these comprehensive Guidelines are being issued in supersession of all existing guidelines (except the Guidelines issued vide F. No. 285/90/2013-IT(Inv-V)/384 dated 18.10.2016 in respect of identification of offenses relating to section 276B and 276BB) on the subject, in general and the following in particular in so far as non TDS/TCS cases are concerned:

- i. F.No.285/16/90-IT(Inv.)/43 dated 14.05.1996
- ii. F.No.285/90/2008-IT(Inv.-I)/05 dated 24.04.2008

2. These guidelines shall come into effect from 01.07.2019 in respect of all cases where sanction u/s 279(1) has not yet been granted. A Standard Operating Procedure (SOP) is being issued separately to outline the procedure (other than prosecution under sections 276B and 276BB of the Act, which is governed by separate SOP issued on 09.12.2016) to be followed for examining the prosecution cases.

3. General Guidelines for prosecution

- i. Chapter XXII of the Act lays down provisions regarding offences and prosecutions. A summary of offences liable for prosecution under this Chapter is given in **Annexure-A** of the guidelines for ready reference.
- ii. The offences and punishment specified in Annexure-A are as per provisions existing on the date of issue of these Guidelines. However, the offences and quantum of punishment would be in accordance with the law as it stood at the time of commission of the offence.
- iii. Section 280D of the Act provides that the procedure for prosecution would be governed by the Criminal Procedure Code, 1973 (Cr.P.C. for short), save as otherwise provided in the Act. As per the provisions of Section 280A, offences under this chapter and other offences are to be tried by Special Courts so notified by the Central Government. Section 280B provides that Special Courts will take cognizance of the offence only when an authority authorized under the Act makes a complaint.

- iv. As prosecution is a criminal proceeding, the ingredients described for particular offence in the respective section, need to be proved beyond reasonable doubt based upon the evidence gathered by Income-tax authorities. Moreover, records and documents *in original* are required for presenting before the court.
- v. In the procedure for trial, a case is either ‘*summons case*’ or ‘*warrant case*’ as per the provisions of Cr.P.C. Section 280C defines what is a summons case, according to which an offence will be tried as a summons case if it is punishable with imprisonment not exceeding 2 years or with fine or with both. The main points of difference between the two types of cases are given in **Annexure-B** for basic understanding.
- vi. Offences under the Act are non-cognizable, irrespective of provisions of Cr.P.C. Some of the offences are expressly non-cognizable as per section 279A of the Act, and others are non-cognizable being summons cases. Therefore, prosecution is initiated by filing complaint in the competent court of law and procedural provisions of Cr.P.C. relating to “*Cases instituted otherwise than on police report*” are applicable. A cognizable offence as per section 2(c) of Cr.P.C. is the one where a police officer has the authority to make an arrest without a warrant and start investigation with or without permission of the court.
- vii. Although no time limit has been prescribed in the Act for initiation of prosecution, in order to make the tool of prosecution effective, it is desirable that the case should be examined and complaint should be filed at the earliest, once a prosecutable offence is detected. Unreasonable delay may weaken the case and the original and important records/evidences may get misplaced / lost with the passage of time.
- viii. The nature of offence in a particular section has to be clearly understood so that its commission can be proved. For instance, in order to invoke the provision under section 276C(1), “attempt to evade tax” in itself is sufficient for prosecution and establishing actual ‘evasion of tax’ is not necessary, if attempt can be proved.
- ix. In some sections, non-compliance of certain obligation within time prescribed constitutes a punishable offence. Subsequent compliance shall not obliterate the offence of not meeting the legal timeline, which once committed, is punishable.
- x. Wherever the punishment depends on amount of any tax, penalty or interest, as may be applicable, that would have

been evaded, it is necessary to compute that amount before filing complaint on the basis of available facts, because the trial process (i.e. summons case or warrant case) depends on that quantum.

- xi. Commission or omission of certain acts constitute offence both under the Act as well as under the Indian Penal Code (IPC for short). However, under the Act '*culpable mental state on part of the accused*' can be presumed by the department as per section 278E thereof. Thus, onus gets shifted to the accused to prove that he did not have such mental state. Such presumption is not available under the IPC. Therefore, it is desirable that where specific provisions under the Act are available in respect of an offence, proceeding should preferably be initiated under those provisions of the Act.
- xii. When an offence punishable under the IPC has been committed by any person and there is no provision for prosecution of such offence available under the Act, the prosecution under the IPC may be considered. In such cases, administrative approval of the Principal Commissioner/Commissioner or Principal Director/Director shall be obtained before instituting complaint in the appropriate court. However, this clause shall not bar filing of an FIR in cases involving offences such as obstruction to duty or physical assault, where previous sanction may not be possible due to urgency of the matter. In such cases, an intimation should be given to the Commissioner at the earliest.

4. Broad Heads of provisions of prosecution under Income-tax Act, 1961

4.1 There are five broad heads under which prosecution provisions can be classified under the Act:

- (i) Provisions relating to Search and Seizure: Sections 275A, 275B, 276CCC & 278D
- (ii) Provisions relating to Evasion and payment of tax, false statement in verification, falsification of books of account: Sections 276C, 277 and 277A
- (iii) Provisions relating to failure to furnish returns of income: Section 276CC
- (iv) Provisions relating to Abetment: Section 278
- (v) Other provisions: Sections 276A, 276AB, 276B, and 276BB (Failure to discharge statutory obligations). Sections 276

(removal, concealment, transfer or delivery of property to thwart tax recovery), 276D (failure to produce accounts and documents), and 278A (punishment for second and subsequent offences), section 278B (offences by companies), section 278C (offences by Hindu Undivided Families).

4.2 Certain procedures for examining prosecution cases have been laid down in the Act such as: 278AA (punishment not to be imposed in certain cases), 279(1) (prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner), 279(2) (compounding of offences).

4.3 There is a special provision u/s 136 of the Act for initiating prosecution u/s 193, 196 and 228 of I.P.C. r.w.s. 195 of the Cr.P.C.

5. Provisions relating to Search and Seizure

5.1 Section 275A: Contravention of order made under section 132(3)

This section provides that whoever contravenes any order referred to in the second proviso to sub-section (1) or sub-section (3) of section 132 shall be punishable with rigorous imprisonment and shall also be liable to fine. The orders referred to here are deemed seizure order and prohibitory order.

5.2 Section 275B: Failure to comply with provisions of section 132(1)(iib)

This section provides that if a person who is required to afford to the authorised officer necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section (1) of section 132 and fails to afford such facility to the authorised officer then he/she shall be punishable with rigorous imprisonment and shall also be liable to fine.

5.3 Section 278D: Presumption as to assets, books of account, etc. in certain cases

This section creates a rebuttable presumption. It states that where during the course of any search made u/s 132, any money, bullion, jewellery or other valuable article or thing (hereafter referred to as the assets) or any books of account or other documents has or have been found in the possession or control of any person or requisitioned under section 132A and such assets or books of account or other documents are tendered by the prosecution in evidence against such person or the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far

as may be, apply in relation to such assets or books of account or other documents. This means that such books of account, documents, money, bullion, jewellery or other valuable article or things would be deemed to be belonging to the person in whose possession or control these were found and that such books of account and documents are true and signed and so executed or attested.

6. Provisions relating to Evasion and payment of tax, false statement in verification, falsification of books of account

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

- (a) Under this section '**attempt to evade tax, penalty or interest chargeable or imposable or under reporting of income**' itself is a punishable offence with imprisonment and fine. Therefore, proving actual tax evasion is not necessary, if attempt (it can be an attempt which failed or partially succeeded) can be proved beyond reasonable doubt. Prosecution can be initiated even before completion of assessment in appropriate cases where attempt can be established, for example cases covered by Explanation below that section which is reproduced hereunder for ready reference.

Explanation - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

- (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or*
 - (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or*
 - (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or*
 - (iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.*
- (b) The circumstances as mentioned in clause (i) to (iii) of the Explanation as above, will normally arise in search and

survey cases. Therefore, wherever strong and irrefutable evidence to prove *attempt to evade tax*, as defined above, are found to exist, the case should be examined to initiate prosecution at the earliest.

- (c) In survey cases where evidence for tax evasion in current year is found but assessee declares such income in the return, normally penalty proceeding u/s 271(1)(c)/270A is not initiated as concealment of income is seen with respect to the return filed. However, in such cases, 'attempt to evade tax' can be proved. Hence such cases may be considered for prosecution under this section.
- (d) In cases where prosecution is considered after completion of assessment, the amount of evasion for which attempt was made may be higher than the amount of addition made, as part of income might be already declared in return or the attempt to evade might be successful partially only. In some cases, this may help in invoking clause (i) of section 276C(1).
- (e) In respect of applicants who approach Income-tax Settlement Commission (ITSC for short), the following cases are fit for prosecution under this section, namely:
 - (1) where the settlement application has been rejected or not admitted by ITSC, particularly on account of lack of true and full disclosure;
 - (2) where the ITSC has not granted immunity from prosecution;
 - (3) where immunity from prosecution stands withdrawn in terms of section 245H(1A);
 - (4) Where ITSC has withdrawn immunity from prosecution u/s 245H(2).
- (f) This provision also allows filing of prosecution where attempt to evade only penalty independent of tax is there as in the case of penalty u/s 271DA etc.

6.2 Section 276C(2): Wilful attempt to evade payment of tax, etc.

- (a) Under this section, any '**attempt to evade payment of tax, penalty or interest**' has been made a punishable offence with imprisonment and fine. The provisions would be attracted, inter alia, in following circumstances:
 - i. Cases where self-assessment tax is shown as payable in return filed, but not paid.

- ii. Cases where demand has attained finality after conclusion of appellate proceedings but is not paid.
 - iii. Any amount, as per demand notice under section 156 of the Act duly served, is not paid, unless the assessee is not treated as “assessee in default” or an application, not to treat him assessee in default, is pending before appropriate authority.
 - iv. Cases where tax deducted at source and tax collected at source has not been paid by deductor or collector after such deduction or collection. In other words, this section can be invoked in addition to section 276B and section 276BB.
- (b) Prosecution can also be filed in appropriate cases where after due service of demand notice full outstanding demand has not been paid, even if they are pending in appeal (including first appeal), provided that no stay or installments have been granted by any Authority, and no stay application is pending before any Authority.

6.3 Section 277: False statement in verification, etc.

This section applies in the following circumstances:

- (a) Making ‘false statement in verification’.
- (b) Since return of income has to be statutorily verified, for any falsity in the return filed.
- (c) If someone (including any person other than assessee) delivers an account or statement which he knows or believes to be false or does not believe to be true.
- (d) Filing of false Statement of Financial Transaction or Reportable Account u/s 285BA of Act.

6.4 Section 277A: Falsification of books of account or document, etc.

- (a) Where a person (first person) makes or causes to be made any entry or statement, which is false with intention to help some other person (second person), then such first person is liable for prosecution under this section.
- (b) Only making or causing to be made of false entry in books by first person with the intention to help second person is required to be proved. It is not necessary to prove that the second person has actually evaded tax.

(c) This provision is inter alia applicable to persons indulging in the act of providing bogus or accommodation entry to others for tax evasion.

(d) Prosecution under this section often involves criminal conspiracy with the beneficiary (second person) which is punishable under section 120B of the IPC. The same may be explored and if the ingredients are fulfilled, the beneficiary may be included along with the first person under section 120B of the IPC in the same complaint. For instance, in the case of an accommodation entry provider to a beneficiary through dummy concerns, the entry provider along with the dummy directors are prosecutable under this section as well as section 120B of IPC whereas the beneficiary is liable for prosecution under section 120B of IPC. The beneficiary in addition may also be liable under section 276C(1) and section 277 of the Act.

7. Provisions relating to failure to furnish returns of income

7.1 Section 276 CC: Failure to furnish returns of income

(a) Under this section, failure to furnish return within time allowed is punishable with imprisonment and fine. This is applicable in following circumstances:

- i. Cases where return u/s 139(1) has not been filed within due date or before the end of the assessment year voluntarily, except where the tax payable on regular assessment reduced by Advance tax and TDS is less than Rs. 3,000/-.
- ii. In case of companies w.e.f. 01.04.2018, where return u/s 139(1) has not been filed within due date or before the end of the assessment year voluntarily, irrespective of whether any tax was payable or not.
- iii. Cases where return in response to notice u/s 142(1), 148 or 153A has not been filed within the time allowed by notice.

(b) The Supreme Court in its judgment in *Sasi Enterprises Vs. ACIT 361 ITR 163* has held that benefit of Proviso to section 276CC is available only to voluntary filing of return as required under section 139(1) of the Act, and said proviso would not apply after detection of failure to file return and after a notice under section 142(1) or section 148 is issued calling for filing of return of income.

(c) It may be noted that the punishment depends upon the amount of tax that would have been evaded, if failure was not discovered.

(d) Potential cases for prosecution under this section identified by the Systems Directorate must be examined for Prosecution by the Assessing Officer and if deemed fit, complaint may be filed in appropriate cases. Notwithstanding such identification by the Systems Directorate, the Assessing Officer may independently examine any case for Prosecution under this section in case of proven non-compliance.

(e) It is necessary to estimate the extent of tax evasion before filing prosecution under this section in order to determine whether the case falls under clause (i) or clause (ii) of the section. The Assessing Officer may determine the quantum keeping in view, the amount of tax paid in the last return filed, if any, or tax payable on income escaping assessment, if any, on the basis of information available with the Assessing Officer at the time of filing complaint etc. In case after filing prosecution complaint under clause (ii), on the basis of any information, it is found that the quantum of tax evasion exceeds the threshold provided under clause (i), the Assessing Officer/complainant may move to the court for converting the summons case into a warrants case under section 259 of Cr.P.C.

8. Provisions relating to abetment

8.1 Section 278: Abetment of false return, etc.

(a) Where a person abets or induces another person to make and deliver a false account or statement or declaration relating to any income chargeable to tax, he is liable for prosecution as abettor.

(b) The quantum of punishment depends upon the tax that would have been evaded, if such declaration, account or statement were accepted as true.

(c) This provision is also applicable to professionals/persons rendering assistance to an assessee in evasion of tax.

9. Other Provisions

9.1 Section 276: Removal, concealment, transfer or delivery of property to thwart tax recovery

This section provides that whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment and shall also be liable to fine.

9.2 Section 276A: Failure to comply with the provisions of sub-sections (1) and (3) of section 178

This section provides that a person shall be punishable with rigorous imprisonment if he:

- (a) fails to give the notice in accordance with sub-section (1) of that section; or
- (b) fails to set aside the amount as required by sub-section (3) of that section; or
- (c) parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section.

9.3 Section 276D: Failure to produce accounts and documents

- (a) Under this section, the following is punishable:
 - i. Failure to produce on or before due date, accounts or documents (and not failure to furnish merely some information called for) as specified in the notice u/s 142(1) of the Act.
 - ii. Failure to comply with direction issued u/s 142(2A) to get accounts audited.
- (b) Careful drafting of notice u/s 142(1) as to its requirements, will be helpful in invoking this provision.

9.4 Section 278A: Punishment for second and subsequent offences

This section makes the second and subsequent offence punishable much more severely. It provides that if any person convicted of any offence under section 276B or sub-section (1) of section 276C or section 276CC or section 276DD or section 276E or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment which may extend to seven years and with fine.

9.5 Section 278B: Offences by companies, body corporates, firms, AOPs & BOI

This section provides for punishing not only company but also every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. Such co-accused person may not be prosecuted if

he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. This section also provides for punishing any director, manager, secretary or other officer of the company, if it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any of them and they shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In such cases the company is punished with fine but every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Explanation – For the purposes of this section, -

- (a) “company” means a body corporate, and includes –
 - (i) a firm; and
 - (ii) an association of persons or a body of individuals where incorporated or not;
 and
- (b) “director”, in relation to –
 - (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

9.6 Section 278C: Offences by Hindu Undivided Families

This section provides that where an offence under this Act has been committed by a Hindu Undivided Family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, if the Karta proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then he shall not be liable to any punishment. It is further provided that if an offence under the Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu Undivided Family then such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Mandatory Cases to be examined for prosecution

10.1 The following category of cases shall be mandatorily examined for prosecution at the earliest under relevant provisions, irrespective of monetary limit-

- (a) The offence that involves major fraud or scam or misappropriation of government funds or public property;
- (b) The cases where it is proved that a person has enabled others in large-scale tax evasion such as through shell companies or by providing accommodation entries in any other manner as mandated in section 277A;
- (c) Cases in which additions have been made on account of detection of undisclosed assets outside India including undisclosed foreign bank accounts; and
- (d) The cases where the accused is linked to any anti-national/terrorist activity and case is being investigated by CBI, Police, Enforcement Directorate or any other Law Enforcing Agency.

10.2 The examining of a case for prosecution does not necessarily mean filing of Prosecution complaint in the court, the decision regarding which needs to be taken by the Commissioner, after considering entire facts and circumstances of the case, during proceedings u/s 279(1) of the Act. ***The terms “examined” and “examining” refer to and include all actions leading to either filing of prosecution complaint in the court, or compounding the offence u/s 279(2), or taking a decision that the case is not fit for prosecution.***

11. Priority cases for prosecution

The following cases may be examined on the priority basis depending on the facts and circumstances of such cases—

- (a) Cases where the assessee has filed Settlement application but is not eligible for immunity from prosecution under conditions as referred to in clause 6.1(e) above.
- (b) Cases where penalty under section 270A or 271(1)(c) or 271AAA or 271AAB of the Act has been confirmed by CIT(A) or ITAT, are fit for prosecution, as confirmation of penalty establishes tax evasion and consequently, the attempt thereof.
- (c) Cases where the amount sought to be evaded is more than the limit specified for stricter punishment in respect of offences in Chapter XXII of the Act, should be prioritized.
- (d) In respect of the following offences, the punishment does not depend on any tax amount evaded. Therefore, these may be examined irrespective of the tax effect, on a case to case basis:

- i. Offence u/s 275A for contravention of order made u/s 132(3).
 - ii. Offence u/s 275B for failure to comply with the provisions of section 132(1)(iib).
 - iii. Offence u/s 276 for removal, concealment, transfer or delivery of property to thwart recovery of tax.
 - iv. Offence u/s 276A for failure to comply with the provisions of sub-section (1) and (3) of section 178 of the Act.
 - v. Offence u/s 277A for falsification of books of account or documents.
- (e) Cases of outstanding demand, confirmed at any appellate stage, with financial capacity to pay such demand; where no stay or installments have been granted by any Authority; and no stay application is pending before any Authority.
 - (f) The cases which are identified from time to time as defaulters under different sections by the Directorate of Systems based on the criteria approved by CBDT.

12. Offences and Prosecutions under IPC

The Income-tax authorities may come across circumstances where initiation of prosecution under various provisions of other statutes including those of IPC may be more appropriate. Details of some of the offences relevant to the department contained in Chapters X, XI, XVI and XVII of IPC are given in **Annexure-C**.

13. Special provisions relating to section 136 - Proceedings before Income-tax authorities to be judicial proceedings.

Any proceeding under the Act before an income-tax authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every 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 (2 of 1974). Details are given in **Annexure-D**

14. Immunity from prosecution

14.1 Certain provisions relating to immunity from prosecution are as under-

- (i) The Income-tax Settlement Commission (ITSC) has power to grant immunity from prosecution and penalty under the Act u/s 245H. These

provisions are, however, subject to certain conditions such as full and true disclosure of income by the assessee and also disclosure of the manner in which such income has been derived. The ITSC however cannot grant immunity in cases where prosecution proceedings have been instituted prior to the receipt of application u/s 245C.

Under sub-section 1 of section 245H, the ITSC earlier had the power to grant immunity “from prosecution for offence under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force”. However, w.e.f. 1.6.2007, the Act has been amended whereby the ITSC can no more grant immunity for offences under the IPC, or any other Central Act except under Income-tax Act and Wealth tax Act.

(ii) Immunity from prosecution was also granted under VDIS 1997, KVSS and for Special Bearer Bond 1981, IDS-2016, PMGKY- 2016.

(iii) For obtaining the evidence of any person directly or indirectly concerned in or privy to the concealment of income/evasion of payment of tax, the Central Government has been vested with powers to tender immunity from prosecution under the Act or under IPC or under any other Central Act u/s 291(1) of the Act. Under sub-section (3) of section 291, the Central Government has also been given power to withdraw such immunity. For granting immunity and withdrawing the same, some conditions have been prescribed in the said section.

14.2 Under section 292A of the Act, nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under the Act (Income-tax Act) unless that person is under eighteen years of age.

14.3 There is a bar u/s 293 of bringing any suit in any civil court against any order made under the Act. It has also been provided that “no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.”

14.4 Under section 270AA of the Act, the AO may grant immunity from imposition of penalty u/s 270A and initiation of proceedings under section 276C or section 276CC in admitted cases subject to fulfillment of conditions specified u/s 270AA itself.

15. Withdrawal of prosecution complaints

15.1 In a summons case, as per section 257 of Cr.P.C., the complainant may request the court’s permission to withdraw the prosecution complaint on justified grounds, at any time before final order is passed by the court. However, no such withdrawal of complaint shall be requested without justified reasons and prior administrative approval of the CCIT or DGIT.

15.2 In a warrant case, where it is found that the prosecution instituted under the provisions of the Act and/or Indian Penal Code needs to be withdrawn in view of the change in circumstances (due to appellate orders or otherwise), the proposal for withdrawal shall be submitted to the Board for seeking the approval of the Central Government as required u/s 321 of Cr.P.C.

15.3 Section 279(2) of the Act confers the power of compounding the offence even after institution of complaint in court. In case an offence has been compounded after filing of the complaint, a copy of the compounding order u/s 279(2) shall be produced before the Trial Court through the Prosecution Counsel.

16. Some General Principles

- i. Prosecution under the Act cannot be initiated except with previous sanction of the Principal Commissioner or Commissioner which also means Principal Director or Director of Income-tax as per section 2(16) of the Act.
- ii. Although there is no statutory requirement for giving opportunity of being heard to the person against whom prosecution proceeding is contemplated, however, such an opportunity should be given by the Commissioner intimating him of the proposed action and calling for accused's version on facts in respect of offences mentioned in the notice and any other offences committed, which he may offer to disclose (in view of the fact that for second/subsequent offence, higher punishment is prescribed and compounding is prohibited). This will, inter alia, facilitate verification of correctness of facts as well as ascertaining intention of the accused to have the offence compounded.
- iii. There is no mandatory requirement of obtaining opinion of the counsel before granting sanction u/s 279(1). Only if there is any doubt as to whether facts of a case justify initiation of prosecution, the Commissioner may obtain opinion of a prosecution counsel considered appropriate by him. Such opinion is only for assisting the Commissioner and neither binding nor the sole deciding factor to grant sanction for prosecution.
- iv. In case a legal person i.e. Company, Firm, LLP, AOP, HUF etc. is to be prosecuted for an offence, every natural person, who was in-charge of or was responsible for the conduct of the affairs of that entity at the relevant time, shall be deemed to be guilty of the offence and be treated as co-accused in the complaint filed. The Income-tax Authority may carefully examine the facts and records (such as Financial Statements,

- Minutes of Board's meeting(s), Resolution(s) and other relevant documents etc.) to ascertain role of any Director, Partner, Member, Manager, Secretary or any other officer of the legal person; or Karta of HUF to apply provisions of section 278B or, as the case may be section 278C, for treating such person as co-accused. However, no such person can be punished, if he is able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence as provided in sections 278B & 278C.
- v. A case of an Individual shall not ordinarily be considered for initiating prosecution for any offence, if the individual concerned has attained the age of 70 years at the time of commission of the offence. However, if such individual has played active role in commission of offence, this clause shall not apply.
 - vi. While proposing prosecution for any offence, due care should be taken to include in the proposal, notice, sanction order and complaint, all the provisions of punishable offences that may apply in particular facts and circumstances. For example, along with section 276C (1), section 277 shall also apply, if return was filed; or for non-payment of TDS/TCS, section 276C (2) may also apply along with 276B or 276BB. In the case of Company or HUF, it is necessary to invariably invoke, section 278B or, as the case may be, section 278C.
 - vii. Entries in records and documents in the custody of the Income-tax Department are admissible evidence in the prosecution proceedings.
 - viii. For companies in liquidation (section 178 of the Act) there is a special provision under section 276A for prosecution of liquidator for failure to comply with section 178(1) and 178(3) etc.
 - ix. Prosecution launched under IPC cannot be compounded. It can, however, be withdrawn.
 - x. Non-filing of return itself is an offence, since the law has cast a duty to file voluntary return u/s 139(1) of the Act, where the assessee has taxable income. Where no such return was filed voluntarily within time, the argument that there was no wilful failure cannot be accepted unless the assessee is able to rebut the presumption of culpable state of mind.
 - xi. The best-judgment assessment u/s 144 of the Act does not nullify the duty to file return u/s 139(1) of the Act. The legal obligation to file a return is not washed out by the assessment.

The argument that no prosecution could be instituted till the culmination of assessment proceedings cannot be accepted, when no return is filed within the prescribed time limit for filing return.

- xii. Prosecution u/s 276CC of the Act is maintainable in the case of non-filing of voluntary return within time and non-compliance of statutory notices would further justify the proceedings. In the case of the firm, the argument that the firm's accounts were not finalised as an explanation for not having filed individual returns, is also not acceptable. The fact that the assessment was a best judgment one would also not make a difference.
- xiii. The mere fact that appeal proceedings against assessment were pending, need not await finality for purposes of prosecution. In fact, such a view has been taken in *P.R. Metrani Vs. CIT [2006] 287 ITR 209 (SC)* besides *Ravinder Singh Vs. State of Haryana [1975] 3 SCC 742* and *Standard Chartered Bank Vs. Directorate of Enforcement [2006] 130 Comp Cas 341 (SC)*. The argument for reconsidering the decision on the subject in *Prakash Nath Khanna Vs. CIT [2004] 266 ITR 1 (SC)* was not found acceptable. In fact, it was this decision, which was followed by the High Court for dismissal of the appeals by the accused.
- xiv. As regards the presumption of culpable mental state, it is merely a rule as regards burden of proof. Though the presumption would require existence of *mens rea* with burden on the accused to prove the absence of the same and that too beyond reasonable doubt, the accused would be satisfying the law, if he proves the circumstances which prevented him from filing returns as per section 139(1) or in response to notice under section 142 or 148 of the Act. This clarification, no doubt, lightens the burden of the assessee, since even in the absence of presumption; it is the explanation for not having complied with law that would decide the ultimate outcome of the prosecution.
- xv. Section 276CC mandates that an offence is committed on non-filing of the return of income in contravention to provisions of section 139(1) or in response to notice u/s 142(1) or 148 or 153A of the Act and it is totally unrelated to the pendency of the assessment proceedings except for the second part of offence where for determination of period of sentence of the offence is involved. Accordingly, the Revenue may resort to the best judgment assessment or otherwise rely upon past year income to determine the extent of the breach. In this

context, reference may be made to the decision of Hon'ble Supreme Court in case of *Sasi Enterprises Vs. Asst. CIT* [2014] 361 ITR 163.

- xvi. If an assessee does not submit the return of income in time as stipulated u/s 139(1), he is liable to pay interest u/s 234A or fee u/s 234F of the Act. However, the Act also provides for prosecution proceedings u/s 276CC in case of non-filing or late filing of Income-tax return in addition to the levy of interest, fee etc. In other words, mere payment of interest, fee or penalty could not absolve criminal liability of the assessee as held by Hon'ble Apex Court and Madras High Court in cases of *N.A. Mulbary Bros. Vs. CIT* (1964) 51 ITR 295 and *DCIT Vs. M. Sundaram* (2010) 322 ITR 196 respectively. Hon'ble Supreme Court in the case of *T.S. Balaiah Vs. ITO* (1969) 72 ITR 787 as held that prosecution itself could be both under the Income-tax Act and under the Indian Penal Code as the principle of double jeopardy was held inapplicable.
- xvii. Hon'ble Supreme Court in case of *K.C. Builders Vs. ACIT* (2004) 265 ITR 562 following its earlier decision in case of *G.L Didwania Vs. ITO* (1997) 224 ITR 687 has held that where penalty is found inexigible prosecution cannot survive and has also rejected the contention of the revenue that penalty and prosecution proceedings are independent of each other. However, Hon'ble Punjab and Haryana High Court in the case of *ITO Vs. Mukesh Kumar* (2002) 254 ITR 409 has pointed out that trial court is not bound by the penalty order. Keeping in view the above legal principle, the Assessing Officer and their supervisors must ensure proper drafting of legally sustainable penalty orders of the Act so that prosecution complaints filed by them survive before trial court. It is pertinent to mention here that prosecution complaint should not be solely based on penalty order but must contain all the ingredients as stipulated u/s 276CC of the Act.
- xviii. When a penalty is deleted on technical ground, the merit of evidence of concealment or evasion or under-reporting or misreporting is not examined, in such cases prosecution u/s 276C has to be examined on merits and prosecution should be initiated if the facts so warrant.
- xix. Notwithstanding anything contained hereinabove, the Commissioner of Income-tax may initiate proceedings for prosecution in any case deemed fit, keeping in view the nature and magnitude of the offence.

Annexure – A**Prosecutable offences under Income-tax Act, 1961**

Section	Nature of Default	Punishment
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure	Up to 2 years (rigorous imprisonment or RI)
275B	Failure to afford necessary facility to authorized officer to inspect books of account or other documents as required under section 132(1)(iib)	Up to 2 years (RI)
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Up to 2 years (RI)
276A	Failure to comply with provisions of section 178(1) and (3) – reg. company in liquidation	6 months to 2 years (RI)
276AB	Failure to comply with provisions of sections 269UC, 269UE and 269UL reg. purchase of properties by Government	6 months to 2 years (RI)
276B	Failure to pay to credit of Central Government (i) tax deducted at source under Chapter XVII-B, or (ii) tax payable u/s 115-O(2) or second proviso to section 194B	3 months to 7 years (RI)
276BB	Failure to pay to the credit of Central Govt the tax collected at source under section 206C	3 months to 7 years (RI)
276C(1)	Wilful attempt to evade tax, penalty or interest or under-reporting of income -	
	(a) where tax which would have been evaded exceeds Rs. 25 lakh	6 months to 7 years (RI)
	(b) in other case	3 months to 2 years (RI)
276C(2)	Wilful attempt to evade payment of any tax, penalty or interest	3 months to 2 years (RI)
276CC	Wilful failure to furnish returns of fringe benefits under section 115WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A -	
	(a) where tax sought to be evaded exceeds Rs. 25 lakh	6 months to 7 years (RI)
	(b) in other case	3 months to 2 years (RI)
276CCC	Wilful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(a)	3 months to 3 years
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)	Up to 1 year (RI)

277	False statement in verification or delivery of false account or statement etc -	
	(a) where tax which would have been evaded exceeds Rs. 25 lakh	6 months to 7 years (RI)
	(b) in other case	3 months to 2 years (RI)
277A	Falsification of books of account or document, etc. to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	3 months to 2 years (RI)
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax -	
	(a) where tax, penalty or interest which would have been evaded exceeds Rs. 25 lakh	6 months to 7 years (RI)
	(b) in other case	3 months to 2 years (RI)
278A	Second and subsequent offences under section 276B, 276C (1), 276CC, 277 or 278	6 months to 7 years (RI)

Annexure – B**Difference between Summons case and Warrant case**

Summons case	Warrant Case
Offence punishable with imprisonment up to 2 years - Summons normally issued against accused	Offence punishable with imprisonment exceeding 2 years - Summons or Warrant may be issued against the accused
Trivial/minor offences – simple and speedy one stage procedure [Section 251 to 259 of Cr.P.C.]	Serious/grave offences – elaborate two stage (pre- and post-charge framing) procedure [Section 244 to 250 of Cr.P.C.]
Trial of a summons case as a warrant case is only a minor irregularity which is curable under section 465 of Cr.P.C.	The trial of a warrant case as a summons case is a serious irregularity, which would vitiate the trial if the accused has been prejudiced.
When the accused appears before the Magistrate, the particulars of the offence are stated to him and he is asked as to whether he pleads guilty. It is not necessary to frame formal charges [Section 251 of Cr.P.C.].	When the accused appears or is brought before a Magistrate, the Magistrate shall hear the prosecution and take all such evidence as may be produced in support of the prosecution. If Magistrate is of the opinion that triable and punishable offence is made out, he shall frame in writing a charge against the accused which is read out and explained to the accused who is then asked whether he pleads guilty or has any defence to make [Section 244 & 246 of Cr.P.C.]
The Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The accused can cross-examine any of the prosecution witnesses immediately after their examination-in-chief (Section 254 of Cr.P.C.). The accused will be discharged only in a case instituted on complaint case and not in the case of Police Report.	During trial, evidence of all witnesses for the prosecution is first taken who can be cross-examined and re-examined. Then evidence of defence witness shall be taken who may be cross-examined and re-examined. Thus, in warrant case, the accused can cross-examine a witness twice, once before framing of charge and also during trial after charges are framed [Sections 246 of Cr.P.C.]
If the complainant is absent on the date of hearing, the accused <u>shall</u> be <u>acquitted</u> , unless for some reason Magistrate thinks it proper to adjourn the hearing of the case. Where complainant is represented by a pleader, personal attendance of complainant may be dispensed with [Section 256 of Cr.P.C.].	If the complainant is absent on the day of hearing, the Magistrate may, in his discretion, at any time before the charge has been framed, <u>discharge</u> the accused if the offence is compoundable or non-cognizable. But if it is otherwise, he shall proceed with the trial and dispose of the case on merits [Section 249 of Cr.P.C.].

The accused may be convicted from the facts admitted or proved whatever may be the nature of the complaint or summons [Section 255(3) of Cr.P.C.].	A specific charge must be framed, read and explained to the accused and he shall then be asked to enter upon his defence and produce his evidence [Sections 246 and 247 of Cr.P.C.]
If there are sufficient grounds to justify, in a summons case, the complainant can withdraw the complaint with the permission of the court, at any time before the final order is passed [Section 257 of Cr.P.C.]	In a warrant case, prosecution complaint can be withdrawn only with the prior approval of the Government [Section 321 of Cr.P.C.]
The Magistrate is empowered to convert a summons case into a warrant case under section 259 of Cr.P.C.	A warrant case cannot be converted into a summons case.

Annexure – C**Offences under Indian Penal Code****Chapter X of IPC: Contempt of the lawful authority of public servants**

Prosecution can be initiated under various provisions of this chapter, under following circumstances:

- (i) When a person absconds to avoid service of summons, notice or order (S.172) [A.O./T.R.O./A.D.I.T/I.T.I.]
- (ii) When a person intentionally prevents service of summons etc.; prevents lawful affixing of notices etc.; intentionally removes any such summons etc.; from any place where it was lawfully affixed; intentionally prevents the lawful making of any proclamation etc.; (S.173) [A.O./T.R.O./A.D.I.T/ I.T.I.]
- (iii) When a person intentionally omits to attend at a certain place and time in response to summons or notice issued (S.174, S.174A r.w.s. 82(4) of the Cr.P.C.) [A.O./A.D.I.T/TRO]
- (iv) When a person legally bound to produce or deliver any document or electronic record intentionally omits to do so, (S.175) [A.O./A.D.I.T/TRO]
- (v) When a person intentionally omits to give any notice or furnish information which he was legally bound to give or furnish on any subject to any public servant (S.176) [A.O./A.D.I.T/TRO]
- (vi) When a person intentionally furnishes false information (S.177) [A.O./A.D.I.T]
- (vii) When a person refuses to bind himself by an oath or affirmation (S.178); and refuses to answer any question when bound by oath to do so (S.179) [A.O./T.R.O./A.D.I.T]
- (viii) When a person refuses to sign any statement made by him when required to do so (S.180) [A.O./T.R.O./A.D.I.T]
- (ix) When a person intentionally makes a false statement under oath (S.181) [A.O./T.R.O./A.D.I.T]
- (x) When a person gives false information to any public servant (S.182). This is of special importance to information supplied by informants in the Investigation Wing [A.D.I.T/A.O./T.R.O.]
- (xi) When a person offers resistance to taking of any property by the lawful authority of a public servant (S.183) [A.D.I.T/A.O./T.R.O./A.A.]; and sale of such property (S.184) [A.A./T.R.O.]
- (xii) When a person bids for or purchases property on behalf of legally incapacitated person (S.185) [T.R.O./A.A.]

- (xiii) When a person voluntarily obstructs any public servant in discharge of public functions (S.186) [A.D.I.T/T.R.O./A.O./I.T.I. etc.]
- (xiv) When a person bound by law to render or furnish assistance to any public servant in execution of any public duty intentionally omits to do so (S.187). This may be of special importance to the Investigation Wing in case of witnesses [A.D.I.T/Authorized Officer]
- (xv) When a person, knowing that, by an order promulgated by a public servant, is directed to abstain from a certain act or take certain property in his possession or management, disobeys such order (S.188). This may be of special importance in cases of attachment orders by the Assessing Officers and prohibitory orders by the authorized officers. For the latter purpose Section 275A of the Income-tax Act is also applicable [A.D.I.T/A.O./T.R.O.]
- (xvi) When a person holds out any threat of injury to any public servant or his agent (S.189 & 190). [All officers and officials]

Chapter XI of IPC: False evidence and offences against public justice

Prosecution can be initiated under various provisions of this chapter, under following circumstances:

- (i) When a person legally bound by oath or by an express provision of law to state the truth fails to do so (S.191) [A.D.I.T/A.O./TRO]
- (ii) When one causes any circumstance to exist or [makes any false entry in any book or record or electronic record, or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence” (S.192)

Similar provisions are also there from Section 193 to Section 196 covering different situations of giving or fabricating false evidences. Sections 193 and 196 of IPC have been referred to in section 136 of the Act [Authorities before whom such offences take place]

- (iii) When a person who issues, signs or uses any false certificate making it out to be a true and genuine certificate (S.197 and 198). (For example, any certificate issued by any person/ authority in relation to say claim of deduction under Chapter VIA etc.) [A.D.I.T/A.O./T.R.O.]
- (iv) When a person makes a false statement, which is receivable by law as evidence and using as true such statement knowing it to be false (S.199 and 200). (For example, false affidavits, false declaration or false statement made by assessee/related persons or witness) [A.D.I.T/A.O./T.R.O.]
- (v) When a person causes disappearance of any evidence or gives false information to screen offender (S.201); intentional omission to give information of offence by person bound to inform (S.202), for example, false tax audit report; giving false information in respect of offence committed (S.203); destruction of document or electronic record to prevent its production as evidence (S.204); false personation (S.205); fraudulent removal or concealment or transfer of property/ acceptance, receipt or claim to prevent its seizure (S.206 and 207) [A.O./A.D.I.T/T.R.O./I.T.I.]
- (vi) When a person intentionally insults or interrupts to public servant sitting in judicial proceeding (S.228). This section has been referred to in section 136 of the Act [Authorities before whom such offence take place.]

Chapter XVI of IPC: Offences Affecting the Human Body

- (i) When a person voluntarily causes hurt or grievous hurt or deters/prevents any public servant from discharging his duties (S.333). [All officers and officials]

Chapter XVII of IPC: Offences against Property

- (i) When a person entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust” (S.405). [Authorities before whom such offence take place]

Annexure – D**Special provisions relating to Section 136****Section 136: Proceedings before Income-tax authorities to be Judicial Proceedings**

Any proceeding under this Act before an Income-tax authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every 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 (2 of 1974).

Broadly it means that:

- i. Proceedings before Income-tax authorities are deemed to be 'judicial proceedings';
- ii. Commission of offences u/s 193, 228 and 196 IPC before Income-tax authorities tantamount to commission of offences in a judicial proceeding;
- iii. In this regard, Income-tax authorities are deemed to be 'civil courts' for the purpose of section 195 of Cr.P.C. but not for the purpose of Chapter XXVI of Cr.P.C. That is to say, if such offences are committed before Income-tax authorities in judicial proceedings, they are Civil Courts for the purpose of launching prosecution u/s 195 Cr.P.C.
- iv. Section 195 of Cr.P.C. deals with 'Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.' Chapter XXVI of Cr.P.C., comprising sections 340 to 351, deals with 'Provisions as to offences affecting the administration of justice' and is applicable for Criminal Courts.
- v. The relevant provisions for section 136 of the Act are section 195(1)(b)(i) and section 195(3) of the Cr.P.C. for 'civil courts';
- vi. Hence, Income-tax authorities, acting under these sections, have to file a complaint before the competent judicial authority. It is not necessary to file a police complaint. Since they are not declared to be 'criminal courts', they cannot punish the persons accused of such offences, but have to file complaint in a court of law.

- vii. In case of such offences committed before C.I.T/C.I.T.(A), the complaint has to be filed by the C.I.T./C.I.T.(A) concerned or by 'some other public servant to whom he is administratively sub-ordinate' [section 195(1)(a) of Cr.P.C.]
- viii. In the absence of this section, the Departmental Authorities would have had to (a) file a police complaint, or (b) file a complaint in the Appropriate Court like any other complainant in which case the complainant is to be examined on oath by the Magistrate before admission of the complaint.

Similar provisions occur u/s 245L for Income-tax Settlement Commission, u/s 245U (2) for Authority for Advance Ruling and u/s 255(6) for ITAT.

4. F.NO.285/08/2014-IT(INV.V)/155 DATED 27.06.2019

Confidential/Strictly for Departmental Use
F. No. 285/08/2014-IT(Inv. V)/155 dated 27.06.2019

Standard Operating Procedure for Examining Cases for Prosecution (other than TDS or TCS related) under Income-tax Act, 1961

1. Prosecution under Income-tax Act, 1961(hereinafter referred to as 'the Act') is an important tool to be used as deterrence against tax evasion. Recently revised Guidelines for identifying and examining cases for initiating prosecution for offences have been issued on 27.06.2019 vide F. No. 285/08/2014-IT (Inv. V)/155. These guidelines should be studied along with this Standard Operating Procedure (SOP) which dwells more on procedural part.

1.2 The procedure for examining of cases for prosecution needs to be uniform and streamlined. This SOP lays down a detailed stage wise procedure along with roles of various authorities in handling prosecution matters (other than TDS/TCS related prosecution u/s 276B and 276BB of the Act). The SOP should be followed as far as possible and shall apply prospectively to all prosecution proceedings (except prosecution proceedings u/s 276B & 276BB of the Act) w.e.f. 01.07.2019 in respect of all cases where sanction u/s 279(1) has not yet been granted. In all such cases the proposals should, henceforth, be submitted in the new prescribed proforma (Form A) enclosed as **Annexure-1** with this SOP. However, prosecution proposals which have already been submitted by the Assessing Officer (AO for short) to the Commissioner, need not be revised but rest of the procedures should be as per this SOP.

2. General

- i. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence or crime, as defined in the relevant provision, has to be proved beyond reasonable doubt by the complainant.
- ii. Even though presumption of culpable state of mind is available u/s 278E, the offence under relevant provision has to be made out against the accused on facts of the case.
- iii. Where offence is by a legal person i.e. Company, Firm, LLP, AOP, HUF etc., natural persons who are in-charge of affairs of that entity are also to be proceeded against as co-accused in accordance with the provisions of section 278B and 278C. The necessary information and evidence with regard to roles of such persons shall be brought on record to derive a well-

reasoned satisfaction. For detailed guidance in this regard **Annexure-2** should be referred to.

- iv. In criminal proceedings, all documentary evidence has to be proved before the court, therefore, records and documents *in original* are required to be preserved for production before the court.
- v. As far as practicable, it may be ensured that all pages in a multi-page document like submissions, statement etc are signed by the person duly authorized to do so. If the case has potential of prosecution, it is even better if the papers are signed by the assessee and not the Authorized Representative.
- vi. Although no time limit has been prescribed in the Act for initiation of prosecution, it is desirable that proceeding is initiated and complaint filed at the earliest once a prosecutable offence is detected. Unreasonable delay may weaken the case and the original and important records, evidences may get misplaced/lost with passage of time.
- vii. The entire work relating to prosecution should be done through the Prosecution Module in ITBA, once it is fully functional. This module provides facility for all actions like submission of proposal, issue of notice, sanction order u/s 279(1), uploading of complaint filed and tracking of subsequent actions.
- viii. In respect of existing prosecution cases, the necessary particulars are to be filled up and scanned documents should be uploaded in the Module.
- ix. If the defaulter is a public servant referred to in Section 197 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and the default is related to discharge of his official duties, then as required under that section, the AO should seek approval of State Government or Central Government as the case may be. The AO should follow up for expediting the required sanction of the Central Government or the State Government, as the case may be.

2.1 The examining of a case for prosecution does not necessarily mean filing of prosecution complaint in the court, the decision regarding which needs to be taken by the Commissioner, after considering entire facts and circumstances of the case, during proceedings u/s 279(1) of the Act. The term examining/examined refers to and includes all actions leading to -

- a) filing of prosecution complaint in the court, or
- b) compounding the offence u/s 279(2) before or after filing of the complaint with court, or
- c) taking a decision that the case is not fit for prosecution.

3. Identification of cases & institution of proceedings

3.1 Para 11 of Guidelines for identifying and examining the Prosecution cases (other than TDS/TCS related) issued vide F. No. 285/08/2014-IT (Inv. V)/155dated 27.06.2019 provides for certain categories of cases which should be examined for prosecution on priority. As per clause (f) of Para 11, the Directorate of Systems based on the criteria approved by the CBDT may also identify defaulters under different sections from time to time, which also need to be examined on priority. Other cases for examining for prosecution under various sections may be selected by the field, based on the above-mentioned Guidelines.

3.2 Field Authorities responsible for identification and institution of prosecution proceedings

3.2.1 Investigation Directorates

- i. The Officers of Investigation Directorate (i.e. DDIT/ADIT/ITO(Inv.)in-charge) conducting search shall be responsible for examining cases for prosecution and initiating proceedings under sections 275A (Contravention of order made under sub section 3 of section 132) and 275B (Failure to comply with provisions of clause (iib) of sub section (1) of section 132) of the Act.
- ii. Based upon the evidence collected during Search/Survey, he/she shall also be responsible for identification of potential cases as well as for filing complaintsfor offences under sections 276C(1) [particularly cases covered by the *Explanation* to the said section], 277, 277A, 278 etc. wherever ingredients of those sections are duly satisfied. In other cases, they should pass on specific information along-with the evidences for necessary action by the Central/Assessment Charges.

3.2.2 Directorate of Intelligence & Criminal Investigation

The Officers of Directorate of Intelligence & Criminal Investigation (i.e. DDIT/ADIT/ITO) shall be responsible for examining of cases for prosecution under sections 277, 277A and 278 of the Act for furnishing false statement of financial transaction or reportable account u/s 285BA of the Act. Further during survey operations, cases may come to light where offences u/s 276C (1) or any other provision of the Act have been committed.

3.2.3 Assessment including Central Charges & CIT(A)

- i. The Assessing Officer concerned shall primarily be the authority responsible for identification of all potential cases for prosecution under various provisions of Chapter XXII of the Act including sections 276A, 276C(1), 276C(2), 276CC, 276D, 277, 277A and 278.
- ii. There is greater scope of identifying potential cases for prosecution u/s 276C(1), 276C(2), 276CC, 276D, 277, 277A, 278 etc. in Central Charges having jurisdiction over search and seizure cases.
- iii. Even though, the responsibility for identification of potential cases u/s 276B & 276BB rests with TDS/International Taxation charges, other AOs may also come across such defaults. Upon such identification, they shall intimate the jurisdictional TDS charges at the earliest.
- iv. Investigation in potential cases shall be taken to logical conclusion with a view to institute prosecution proceedings at the earliest.
- v. Where completion of assessment is considered necessary to strengthen the evidence etc, for initiating prosecution proceedings, assessment proceedings shall be completed expeditiously.
- vi. If any offence is noticed by the CIT(A) during the appellate proceedings or by the Pr. Chief Commissioner, Chief Commissioner, Pr. Director General, Director General, Commissioner during the revision or any other proceeding, the concerned CIT(A) or the Commissioner or any other Income-tax authority, as the case may be, may direct the jurisdictional AO to examine the case for prosecution under the appropriate sections.
- vii. If any Income-tax authority, during any proceeding before him/her, notices that an offence under chapter XXII of the Act has been committed by a person on whom he/she does not have jurisdiction, he/she will pass on the information, through his/her Controlling Officer, in the form of a self-contained report to the Commissioner having jurisdiction over the case immediately upon noticing such offence.
- viii. There is no bar on initiating prosecution proceedings by the AO either before the commencement of assessment proceedings or during the pendency of assessment proceedings or after the completion of assessment proceedings.

4. Proposal for seeking previous sanction

- i. No prosecution complaint under the Act can be filed without previous sanction from Commissioner u/s 279(1) of the Act. The authority proposing the prosecution (such officer referred to as Complainant Officer or CO for short) should examine the records to bring the facts in a self-contained proposal for sanction u/s 279(1) of the Act. The proposal may be prepared in the format as per **Form A** enclosed as **Annexure-1** to this SOP so that all required particulars are included.
- ii. As far as possible, the proposal should be submitted on ITBA Module, so that notice u/s 279(1), order etc may be generated through ITBA Module.
- iii. The CO should submit the proposal for each assessment year and each offence separately. However, one proposal may include more than one offence for the same assessment year in case the facts are inextricably linked. For example, if attempt to evade tax u/s 276C(1) is detected based on the return of income filed and duly verified as per section 140 of the Act, then offence u/s 277 of the Act is also invariably committed and in such cases the proposal for prosecution may include both the sections.
- iv. For preparing the proposals of prosecution in the cases of Company/Firm/LLP/AOP/HUF etc. natural persons who are in-charge of affairs of those entities can also be proceeded against in accordance with provisions of section 278B and 278C. For careful selection of co-accused certain basic details about roles of various persons in conducting affairs of legal persons are required. Therefore, such details as discussed in **Annexure-2**, may be collected by the AO from assessee or other sources, while examining prosecution complaint in such cases.
- v. For each proposal entered in ITBA, a unique prosecution ID shall be generated for identification of case. The same ID shall continue for entire period till the case is closed by way of dropping, compounding before filing complaint or on disposal by court.
- vi. The Range/Unit Head on receipt of Form A in ITBA shall examine the proposal received offline also. It is the responsibility of Range/Unit Head to ensure that the prosecution proposal is proper and complete in all respects. If there is any deficiency,

he/she should send it back to the AO for removing the deficiency and re-submit the proposal at the earliest. He/she shall forward the complete proposal after duly checking the same to the Commissioner on ITBA as well as in the offline mode.

5. Sanction u/s 279(1)

- i. The Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he/she should issue show cause notice to all proposed accused and co-accused to ascertain the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. The Commissioner may also seek any additional facts/documents/information as he/she deems fit. The show cause notice should be drafted in such a manner that it enables him to take a fair and judicious decision for granting sanction u/s 279(1) in the case of accused as well as each of the proposed co-accused, if any.
- ii. If there are more than one accused or co-accused in case of company, firm, HUF etc, the show cause notice seeking above clarification should be sent to all the accused or co-accused. The Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he may seek clarification with regard to the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. He may also seek any additional facts/documents/information as he deems fit.
- iii. After receiving reply or expiry of time granted, the Commissioner may consider whether prosecutable offence on part of accused/co-accused is made out on facts gathered.
- iv. If Commissioner is satisfied of ingredients of the offence, he may grant previous sanction u/s 279(1) of the Act through a speaking order duly recording facts of the case and evidences relevant thereto. The application of mind and fairness of decision should reflect in the order. If applicable, the provisions of section 278AA should be kept in mind before giving any sanction u/s 279(1).
- v. If on consideration of facts and reply of accused or co-accused, the Commissioner is in doubt whether prosecutable offence is made out, he may seek opinion of Special Public Prosecutor regarding fitness of case for prosecution. Such opinion is only for assisting the Commissioner and is neither binding nor the sole deciding factor to grant sanction for prosecution.

- vi. It shall be ensured that sanction order contains names of all accused and co-accused, Assessment year and correct sections under which offences were committed, role(s) of each co-accused, reasons for sanction of prosecution under relevant provisions for which sanction is granted, keeping in view the provisions of section 278B/278C of the Act in case of Company, Firm, HUF etc.
- vii. Separate sanction order should be passed for each complaint.
- viii. While considering a case of second and subsequent offence as mentioned u/s 278A of the Act, the Commissioner should incorporate particulars of earlier offence while according sanction u/s 279(1).
- ix. Where the Commissioner, after considering reply of accused or otherwise, is of the opinion that the case is not fit for prosecution, he may record the reasons for his conclusion and communicate the decision not granting sanction to the authority who submitted proposal for prosecution.
- x. The activity of generation of show cause letter and passing the order u/s 279(1) of the Act should be done on ITBA as far as possible. In case the Commissioner has issued the show cause notice/sanction order offline the same should be uploaded on ITBA for proper tracking and record of prosecution proceedings.
- xi. Prosecution should not ordinarily be initiated against a person who has attained the age of 70 years at the time the offence was committed. However, if such individual has played active role in commission of offence, this clause shall not apply.

6. Preparation of complaint

- i. The Commissioner shall forward copy of sanction order to the CO for record and as many additional copies as are required to be filed in the court with complaint as per rules of the court. One copy of the order u/s 279(1) shall also be sent to the Nodal Officer in Prosecution Cell, responsible for monitoring of prosecution matters, if the prosecution cell is functional.
- ii. On receipt of previous sanction u/s 279(1), the CO shall send all relevant documents to Special Public Prosecutor (SPP for short) for drafting of the complaint. The CO shall vet the draft prepared by SPP and correctness of facts and figures in the complaint shall be the responsibility of CO. In complex cases, the CO may involve Unit/Range Head in vetting the draft complaint.

- iii. Complaint should bring out clearly the facts regarding commission of the alleged offence and fulfillment of ingredients as provided in the Act, chronology of events leading to the commission of offence(s), evidence collected during investigation etc. The correct names and complete addresses of the accused and co-accused person(s), if any, should be mentioned to prevent delay in service of summons/warrant etc, by the court.
- iv. The complaint should incorporate the reasons recorded in the sanction u/s 279(1) and the section(s) under which the prosecution proceedings are initiated. The provisions of section 278E may suitably be incorporated in the complaint to strengthen the case.
- v. If the offence is committed by a company/Firm etc or HUF, role(s) of persons as mentioned in section 278B or 278C of the Act has to be discussed in the complaint and the name of such persons, against whom sanction has been accorded under section 279(1), should be included as co-accused (Annexure-2).
- vi. In case the offence is second or subsequent (in terms of section 278A), this fact should be incorporated in the complaint.
- vii. In case, any prosecution proceeding is pending for similar offence or it has been compounded, these facts may also be incorporated in the complaint.
- viii. The complaint should be duly signed and verified by the CO.
- ix. The following documents are normally required to be annexed to the complaint:
 - (a) Sanction order u/s 279(1) in original.
 - (b) List of documentary evidences including depositions, submissions etc to prove the offence.
 - (c) List of witnesses on which departmental case depends.
 - (d) Any other documents required as per procedure of the court.

7. Filing of Complaint

The CO should ensure that:

- i. The complaint is filed in the court of jurisdiction
- ii. The relevant documents are attached
- iii. The complaint is signed by CO concerned

- iv. The particulars of complaint number and date of filing are intimated to the sanctioning authority and the Nodal Officer in Prosecution cell.
- v. As soon as the complaint is filed the complaint number should be entered on the ITBA. Office copy of complaint (with complaint number) duly signed by the CO should be scanned and uploaded on the ITBA.

8. Safe Custody of Documents

- i. The original documents and other evidence, based on which the offence is sought to be proved, should be kept in the personal safe custody of the CO. In the case of transfer/decentralization of case, the documents should be duly handed over and mentioned in the handing over note. It would be desirable to keep scanned images in soft form and print out may be used for day to day work.
- ii. In order to ensure evidentiary value of document, it is necessary that the relevant documents are identified and maintained, inter alia, as per the requirements of provisions of Indian Evidence Act.
- iii. In case of digital evidence, necessary precautions are to be taken as per the provisions of the Information Technology Act, 2000 and Indian Evidence Act, 1872 along with the detailed guidelines provided in Digital Evidence Investigation Manual, 2014.

9. Compounding application before filing of complaint

- i. Where the person(s) proposed to be proceeded against submits that he/she would opt for compounding of the offence, the Commissioner may ask such person to submit evidence of filing the compounding application within reasonable time. The filing of complaint should not be delayed beyond a reasonable period on such grounds.
- ii. In a case where the compounding application has been filed, the Commissioner should keep the proposal for prosecution pending till a decision is taken on the compounding application. In such cases, the Competent Authority should dispose of the compounding application expeditiously.
- iii. Where the compounding of offence is rejected by the Competent Authority during the pendency of proposal for sanction u/s 279(1), the Commissioner should proceed with the proposal for sanction u/s 279(1) without any delay.

- iv. Where sanction u/s 279(1) is given before receipt of the compounding application, the filing of the complaint should not be delayed.

10. Procedure after filing complaint

- i. The filing of complaint in court is merely the beginning of the prosecution process. The ultimate objective is to secure conviction of the accused. Therefore, regular follow up of complaint cases in court and coordination with Prosecution Counsel to ensure timely attendance of witness(es) and production of evidences is key to achieve the objective.
- ii. For this purpose, a "Prosecution Cell" (PC) may be created in the office of Pr. CCIT with an officer of the rank not less than Addl. CIT working as Nodal Officer under the overall supervision of CIT (Judicial). For other stations, the work of PC can be assigned to officers/officials as deemed appropriate by respective CCIT having jurisdiction over the station. The PC will monitor the progress of prosecution cases and co-ordinate with Prosecution Counsel, field officers and the Court for ensuring proper representation before the Court.
- iii. The Prosecution Cell shall keep track of prosecution proceedings in the court. They should collect the cause list showing fixation of date for hearing and take necessary steps to ensure proper and timely representation before the court.
- iv. The Inspector(s) shall remain present through the hearings and note down the requirements of each case in consultation with the Prosecution Counsel representing the case.
- v. Timely intimation to the CO and witnesses for ensuring evidence in the court to preclude unnecessary adjournments is necessary.
- vi. The record of the specific reasons for adjournments such as non-availability of officers on the day fixed for trial, non-availability of witness, non-availability of prosecution counsel or adjournment sought by the accused should be maintained. This record will also be helpful at the time of sanctioning bills of prosecution counsels vis-a-vis effective hearings. Record of proceedings may also be available online and in such cases the same may be downloaded from the court website for record.
- vii. The Prosecution Cell/CO/AO should keep in touch with the prosecution counsel.

- viii. The Prosecution Cell should keep track of the stay granted by the Higher Courts, if any, and advise the field authorities to take necessary steps to get the same vacated.

11. Timelines for institution of proceedings

11.1 Section 468 of Criminal Procedure Code specifically excludes offences committed under various provisions of the Act from the purview of limitation. The Act also does not provide any time limit for instituting prosecution for any offence under Chapter XXII. It is, however, desirable that the prosecution in deserving cases is instituted at the earliest once the offence is detected. The efforts should be made to complete the entire process beginning from the submission of proposal by the CO up to the grant of sanction u/s 279(1) of the Act within three months. Once the sanction u/s 279(1) has been accorded, the institution of complaint should be done as soon as possible.

11.2 In the case of offence u/s 275A and u/s 275B, the investigating authority concerned should submit the proposal for sanction u/s 279(1) of the Act before the Pr. Director of Income-tax (Inv.) incorporating the facts, chronology of events, the list of evidences and witnesses in a self-explanatory form as soon as the offence comes to his notice. In such cases, the decision regarding sanction u/s 279(1) is to be conveyed by the Pr. Director concerned, as far as possible, within 15 days from receipt of the proposal from investigating authority and wherever such sanction has been accorded, prosecution should be instituted as soon as possible.

11.3 Wherever the Department is not satisfied with the order of the Trial Court, appeal in the deserving cases is required to be filed by the CO in Sessions Court within 60 days with the approval of Commissioner.

11.4 Thereafter, if the Department is not satisfied with the order of the Sessions Court, appeal in the deserving cases is required to be filed by the incumbent officer holding the office of the CO, in the High Court within 90 days with approval of Pr. CCIT/CCIT/Pr. DGIT/DGIT.

11.5 For any appeal against any order of High Court, the existing timeline and procedure for filing Appeal/SLP in the Supreme Court should be followed.

12. Prosecution Provisions under the Income-tax Act, 1961 & Indian Penal Code, 1860

12.1 There are offences for which specific prosecution provisions exist under the Income-tax Act, 1961. Some of such offences may also constitute an offence under the Indian Penal Code, 1860 (IPC for short).

As mentioned in para 3(xi) of Guidelines dated 27.06.2019, commission or omission of certain acts, constitute offence both under the Act as well as under the IPC. However, under the Act '*culpable mental state on part of the accused*' can be presumed by the department as per section 278E thereof. Thus, onus gets shifted to the accused to prove that he/she had no such mental state. Such presumption is not available under the IPC. Therefore, it is desirable that where specific provisions under the Act are available in respect of an offence, proceedings are preferably initiated under those provisions of the Act. However, if the same set of acts/omissions also amount to an offence under IPC, the same can also be invoked in suitable cases in the same complaint. A list of prosecution provisions under the Income-tax Act, 1961 is given in Annexure-A & under the IPC is given in Annexure-C of the Guidelines dated 27.06.2019.

12.2 When an offence punishable under the IPC has been committed by any person and there is no provision for prosecution of such offence available under the Act, the prosecution under the IPC may be considered. In such cases, administrative approval of the Principal Commissioner/Commissioner or Principal Director/Director shall be obtained before instituting complaint in the appropriate court. However, this clause shall not bar filing of an FIR in cases involving offences such as obstruction to duty or physical assault, where previous sanction may not be possible due to urgency of the matter. In such cases, intimation should be given to the Commissioner at the earliest after filing the FIR. Appropriate entries of such FIR and subsequent proceedings should be made in the prosecution module of ITBA.

13. Provisions relating to procedure for initiating prosecution under Income-tax Act, 1961

Certain important provisions have been laid down in the Act, which relate to procedure for initiating prosecution, which are as under:

13.1 Section 279(1): Prosecution to be at instance of Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner.

The Act provides that a person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority under section 269UA(c). However, the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General

may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

13.2 Section 279(2): Prosecution can be compounded by the Pr. Chief Commissioner or Chief Commissioner or Pr. Director General or Director General.

Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Pr. Chief Commissioner or Chief Commissioner or Pr. Director General or Director General.

13.3 Section 278AA: Punishment not to be imposed in certain cases.

Notwithstanding anything contained in the provisions of section 276A, section 276AB, or section 276B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.

13.4 Section 292C: Presumption as to assets, books of account, etc. in search and survey cases.

Though this provision is not in the “Chapter XXII Offences and Prosecutions” and appears in the “Chapter XXIII Miscellaneous” it may be invoked in the cases of search u/s 132 or survey u/s 133A and may be used in the complaints filed in the courts. It provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search u/s 132 or survey u/s 133A, it may, in any proceeding under this Act, be presumed-

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person’s handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

13.5 Section 278E: Presumption as to culpable mental state.

This is a very useful provision and, as stated earlier, must be invariably used wherever the facts so warrant. It provides that in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. However, in this section, “culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

This provision is to be read in the context of provisions u/s 101 and 103 of the Evidence Act which stipulate that the burden of proof lies with the person who wishes the Court to believe in the existence of a particular fact “unless it is provided by any law that the proof of that fact shall lie on any particular person”. The Income-tax Act is one such “any law”, within the meaning of section 103 of the Evidence Act, which provides for presumption of culpable mental state of the assessee/witness. The burden of proof to that extent shifts to the accused in relation to prosecutions filed under Income-tax provisions. But this benefit is not available if prosecution is initiated under IPC.

14. Withdrawal of prosecutions

14.1 There is no specific provision under the Act regarding withdrawal of prosecution proceedings already instituted. However, in a summons case, as per section 257 of Cr.P.C., complainant may request the court’s permission to withdraw the prosecution complaint on justified grounds, at any time before the final order is passed by the court. Such withdrawal of complaint shall not be requested without prior administrative approval of the CCIT or DGIT. The Commissioner shall submit proposal to the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, who after recording reasons for doing so, may approve withdrawal of the complaint.

14.2 In a warrant case, where it is found that the prosecution instituted under the provisions of Act and/or IPC needs to be withdrawn in view of the change in circumstances (due to appellate orders or otherwise), the proposal for withdrawal shall be submitted to the Board for seeking the approval of the Central Government as required u/s 321 of Cr.P.C.

14.3 In either case, after receiving approval of Pr. CCIT/CCIT/Pr. DGIT/DGIT/Central Government, the Commissioner shall authorize the CO to approach the court through the prosecution counsel to withdraw the prosecution complaint. A report of all such cases where withdrawal of prosecution has been approved shall be sent to the Board on monthly basis.

14.4 Section 279(2) of the Act confers the power of compounding the offence even after institution of complaint in court. In case an offence has been compounded after filing of the complaint, a copy of the compounding order u/s 279(2) shall be produced before the Trial Court through the Prosecution Counsel seeking courts permission for withdrawal of the complaint.

15. Reporting Mechanism

The management of all tasks relating to prosecution on ITBA is mandatory. The present system of monthly and quarterly progress reports on prosecution will continue till such time an alternative online system of reporting is prescribed by the Board. The Pr. CCIT, through the Prosecution Cell, if functional, or otherwise will be the repository of all data regarding prosecution in his charge.

16. The timelines given in this SOP do not provide limitation period, but they serve the purpose of expediting the prosecution proposals.

Annexure – 1**FORM A****Proforma for submitting Prosecution Proposal u/s 279(1) of Income-tax Act, 1961**

1. Section(s) under which prosecution is proposed:
2. Details of Accused:
 - i) Name :
 - ii) Address :
 - iii) PAN :
 - iv) Status :
 - v) Date of Birth/Incorporation :
3. Details of proposed co-accused (if any) u/s 278B/278C of the Income-tax Act, 1961 i.e. partners, directors, karta, principal officer, DDO etc who are proposed to be prosecuted, in the case of firm, company, HUF, AOP or BOI etc.

Name of the Director/ Partner/ Principal Officer, etc.	Position Held	Date of Birth	PAN	Residential address of the person
(i)	(ii)	(iii)	(iv)	(v)

4. Assessment Year
5. Date of filing of return
6. Name & designation of the person who verified the return
7. Total income declared as per the return
8. Date of assessment order, if assessment completed
9. Section under which assessment made
10. Assessed income
11. Sections of other laws such as IPC which are also proposed for simultaneous prosecution
12. Status of proceedings of appeal of order, if any, relating to offence
13. Status of penalty proceedings, if any, relating to offence
14. The date of sanction order u/s 197 of Cr.P.C. from Government, in the case of a public servant

15. Details of evidence required to prove the offence
- i) Return of income/Revised return of income
 - ii) Admission
 - iii) Oral evidence of third party
 - iv) Other Documentary evidence
 - v) Any other evidence (Please specify)
16. Name and address of witnesses required to prove prosecution case
17. Name of the Approver in the case, if any
18. i) Whether any prosecution proceedings for offence under same provision instituted earlier?
- ii) If yes, Complaint Number and date of filing, status of prosecution
19. If the provisions of section 278A are attracted, following details;
- i) Complaint Number and date of filing of earlier complaint.
 - ii) Sections under which conviction has taken place.
 - iii) Date and other details of conviction order.
 - iv) Enclose the copy of conviction order.
20. A note containing chronology of events with detailed facts indicating offence as defined in the relevant section (use annexure, if needed). See Appendix to this form for suggestive contents of the note.
21. Compounding Status:
- i) Whether compounding petition for this year or any other year was filed?
 - ii) If yes:

Sr. No.	The year(s) for which compounding application(s) were filed	Chargeable section(s) of offence under Income-tax Act, 1961 against which compounding application(s) filed	Status of the application

22. Details of the Income-tax Authority(ies) passing relevant order/ recording statement etc.

- (i) Name(s) :
- (ii) Present designation :
- (iii) Present posting :
- (iv) Employee code, if available :
- (v) Permanent address, if available :

Date: _____ **Signature** : _____
Name : _____
Employee Code : _____
Designation : _____
Permanent address : _____

Instructions for filling up this Form

- i) No column of the Form should be left blank. If the column is not applicable, the same shall be clearly mentioned.
- ii) At Sr. No. 3, the details of the co-accused to be filled-in on the basis of details gathered as per procedure laid down in Annexure-2 of SOP.
- iii) The original copies of prosecution documents mentioned in Sr. No. 15 should be kept safely in personal custody of the CO and a proper handing over of such documents should be done at the time of change of incumbent.
- iv) Following facts may be incorporated in Sr. No. 20 –
Specific defaults constituting offence under relevant section
 - Facts which prima facie lead to conclusion (for guidance, see appendix) about commission of the offence
 - Brief explanation for the default, if any, submitted by the accused and observation of the CO on factual accuracy of the same
 - The relevance of various evidence in proving the offence
 - The role of each proposed witness in proving the offence
 - The reasons for proposing names of different co-accused at Sr.No.3, if any, for Prosecution.
- v) Income-tax Authorities to be mentioned in Sr. No. 22 would include those who have signed important documents or passed the relevant order which are required for proving the offence such as officers passing assessment orders; recording statements; signing notices u/s 142(1), 148, 153A for prosecution u/s 276B etc.
- vi) In Sr. No. 1 & 11 include all the sections for which sanction u/s 279(1) is being sought.

Appendix

Note: Suggestive contents in respect of some provisions

Section 275A Contravention of order made under sub section (3) of section 132.

- i. Offence u/s 132(3) or second proviso to 132(1)
- ii. Date of Warrant u/s 132
- iii. Name of the Person in whose case search was conducted
- iv. Address of the premises searched
- v. Date of Prohibitory Order (PO)
- vi. Name & Designation of the Officer issuing the PO
- vii. Particulars of the place put under prohibition
- viii. Contents placed in the PO
- ix. Name and other details of the persons on whom the PO order was served and date of service
- x. Date on which the contravention of PO was detected
- xi. Nature of contravention
- xii. Name & Designation of the Officer who detected contravention

Section 275B Failure to comply with the provisions of Clause (iib) of sub-section (1) of section 132.

- i. Date of Warrant u/s 132
- ii. Name of the Person in whose case search was conducted
- iii. Address of the premises searched
- iv. Date of Search
- v. Particulars of the person found to be in possession or control of books of accounts maintained in form of electronic records (including name, address, designation/relation to searched person)
- vi. Description of offence (how the person at (v) above restricted access/denied facility to inspect such books of accounts)
- vii. Documentary Proof relied upon in this regard (statements/ *panchnama*) (upload PDF)
- viii. Name & Designation of the Authorized Officer at the premises.

Section 276 Removal, concealment, transfer or delivery of property to thwart tax recovery.

- i. Name of the assessee/defaulters
- ii. Name & Designation of the TRO
- iii. Section under which Certificate has been drawn by TRO
- iv. Date of issue of Certificate
- v. Date of Service on the defaulter/assessee
- vi. Mode of service
- vii. Details of the property w.r.t which certificate has been issued by TRO and has been alienated to thwart recovery
- viii. Nature of offence (brief description)
- ix. Documentary Proof w.r.t. alienation of property involved, if any. (upload PDF)

Section 276A Failure to comply with the provisions of sub-sections (1) and (3) of section 178.

- i. Contravention of section involved
 - a. 178(1)
 - b. 178 (3)
- ii. Name/PAN of the Company is liquidation
- iii. Name, Address & PAN of the liquidator
- iv. Date of appointment of liquidator

In case, section 178(1) is involved

- v. Last date for notifying the Assessing Officer of his appointment as the liquidator.
- vi. Document or order w.r.t. appointment of liquidator containing date of appointment

In case, section 178(3) is involved

- vii. Date of notice of appointment given by Liquidator to the Assessing Officer
- viii. Date of Notification by the Assessing Officer to the Liquidator of the amount to be set aside on account of taxes due or likely to be due.
- ix. Amount notified by the Assessing Officer

- x. Details of the failure on part of the Liquidator to set aside the assets of the company in liquidation equivalent to the amount notified by the Assessing Officer.

Section 276C(1) Wilful attempt to evade tax, penalty and interest

- i. Whether it is a case of attempt to evade any tax, penalty or interest.
- ii. Whether it is a case of evading only penalty independent of tax for example section 271DA.
- iii. Whether the assessee has already evaded the tax, penalty or interest or it is an attempt.
- iv. What is the amount of tax, penalty or interest sought to be evaded or under-reported or mis-reported.
- v. Whether it is case covered in any one of the clauses of explanation to Section 276C.
- vi. Whether it is a case of search or survey or otherwise.
- vii. Whether the assessment is completed or not, if so, under which section
- viii. Whether any penalty has been levied or pending to be levied under any section
- ix. Whether it is a case in which assessee has approached Settlement Commission and if so, whether the application has been rejected or not admitted or immunity from prosecution not granted or immunity withdrawn u/s 245H(1A)/245H(2).

Section 276C(2) Wilful attempt to evade of the payment of tax, interest or penalty

- i. Whether it is a case of Self-assessment tax shown as payable in return but not paid.
- ii. Whether it is a case where demand has been confirmed in any appellate proceedings and the same has not been paid even though there is no stay order.
- iii. Whether it is a case where assessee has not paid any demand and the assessee has been declared as “assessee in default” and no stay application is pending.
- iv. Whether it is a case where TDS/TCS has not been paid by the deductor/collector after such deduction/collection. This section can be invoked in addition to Section 276B/276BB.

Section 276CC Failure to furnish return of Income

- i. Section under which return was required to be filed [section 139(1); 148; 153A or 142(1)(i)]
- ii. Date of notice, if any
- iii. Amount of tax which would have been evaded if the failure of furnish return would not have been detected (the amount is to be computed after giving credit of the pre-paid taxes and TDS)
- iv. Whether any reasons for non-furnishing of return have been submitted by the assessee.
- v. Brief reasons for non-acceptance of the reasons submitted as reasonable cause.

Section 276D Failure to produce accounts and documents

In case of non-compliance to section 142(1)

- i. Date of issue of notice u/s 142(1)
- ii. Date of service of notice and mode of service
- iii. Date specified in the notice for furnishing accounts and documents
- iv. Nature of books and documents sought by the AO, in brief
- v. Reasons in brief, if any, submitted by the assessee for non-compliance
- vi. Brief reasons by the AO for non-acceptance of the reasons submitted by the assessee to be reasonable cause for non-compliance

In case of non-compliance to section 142(2A)

- vii. Date of issue of notice to assessee for invoking provisions of section 142(2A)
- viii. Date of approval of the Principal Chief Commissioner/ Principal Commissioner/Commissioner
- ix. Date of order issuing directions to assessee to get its books of accounts audited.
- x. Date of service of such order
- xi. Name & Particulars of the accountant selected for the Audit

- xii. Date for the submission of the Audit Report (including extension, if any)
- xiii. Brief details of the failure on part of the assessee to comply with the directions under section 142(2A)
- xiv. Brief description of the failure of the assessee to comply, as reported by the accountant appointed for the special audit.

Section 277 False statement in verification, etc.

- i. Particulars of the (a) statement made under verification which has been found to be false; (b) account or statement delivered which has been found to be false
- ii. Section under which statement recorded under verification, if applicable
- iii. Nature of the income/investment/expenses etc. w.r.t which false statement has been made under verification
- iv. Amount of income sought to be evaded by making such false statement or furnishing false documents/accounts.
- v. Amount of taxes sought to be evaded by making false statement

Section 277A Falsification of books of account or document

- i. Name, Address, PAN of the person (first person) who has enabled the second person to evade taxes.
- ii. Name, Address, PAN of the assessee who has been enabled to evade taxes (second person)
- iii. Assessment Year(s) involved
- iv. Nature of the false entry or statement made/caused to be made by the first person with the intention to enable the second person to evade taxes.
- v. Documentary evidence relied upon as evidence to establish that the entry/statement/account under examination is false/not true.
- vi. Whether second person has actually evaded any tax, penalty or interest chargeable or leviable under the Act, if yes, amount thereof.

Section 278 Abetment of False Return

- i. Name, Address, PAN of the accused/person involved in abetment

- ii. Name, Address, PAN of the assessee who has been induced to make and deliver a false account or statement or declaration relating to any income chargeable under the Act.
- iii. Assessment Year(s) involved
- iv. Nature of the false declaration or statement or account made/ caused to be made by the accused relating to the income of the assessee.
- v. Amount of tax, penalty and interest that would be evaded if false account or statement or declaration relating to any income chargeable under the Act was accepted to be true.
- vi. Documentary evidence relied upon as evidence to establish that the declaration/statement/account under examination is false/not true.

Annexure – 2

Procedure for initiating prosecution in the case of Company/ Firm/LLP/AOP/BOI/HUF

1. Companies/Firm/LLP/AOP/BOI, etc. are legal entities. Though such entities can also be convicted, but they cannot be imprisoned. Moreover, it is always the persons in control of the business who are responsible for commission and omission of various acts. It is, therefore, necessary to carefully identify the persons who are responsible for offence committed by the Company/Firm/LLP/AOP/BOI etc. so that they also can be prosecuted.
2. In the case of Company/Firm/LLP/AOP/BOI, provisions of Section 278B are relevant in deciding the accused and co-accused. As per Section 278B(1) of the Act, *“where any offence is committed by a Company/Firm/LLP/AOP/BOI, every person who, at the time the offence was committed, was in charge of, and was responsible to, the Company/Firm/LLP/AOP/BOI for the conduct of the business of the Company/Firm/LLP/AOP/BOI as well as the Company/Firm/LLP/AOP/BOI shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence”*. Company includes Firm/LLP/BOI/AOP for the purpose of this section.
3. Further, u/s 278B(2) of the Act, when an offence is committed by a Company/Firm/LLP/AOP/BOI and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company/Firm/LLP/AOP/BOI, such director, partner, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
4. For the purposes of section 278B —
 - (a) “company” means a body corporate, and includes—
 - (i) a firm; and
 - (ii) an association of persons or a body of individuals whether incorporated or not; and
 - (b) “director”, in relation to—
 - (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

5. In this regard, it is important to mention that Hon'ble Supreme Court in the case of *Madhumilan Syntex Ltd. Vs. Union of India (2007)*, 290 ITR 199 (SC) has held that from the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown that he/she is a 'principal officer' under section 2(35) of the Act **or** is 'in charge of' and 'responsible for' the business of the company or firm.

Thus, the persons who are held Principal Officer u/s 2(35) of the Act, **or** the persons "in charge of" and "responsible for" business of the Company or the Firm are liable to prosecution besides the person(s) with whose consent, connivance or because of whose neglect the offence has been committed. The AO, therefore, should keep these provisions in mind while collecting the details and evidences and preparation of prosecution proposals while proposing the names of the accused and co-accused.

6. The following details may, therefore, be collected in the case of Companies while examining prosecution complaint by the AO/CO from assessee or other sources:

(i) Details of the Company:

Registered address	Other address(s), if any	PAN	Date of incorporation	Contact numbers
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(ii) Details of All Directors (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Whether Active or not	Responsibilities handled *	Date of appointment
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(*) In support, copies of relevant resolution or other relevant documents may be submitted.

(iii) Details of person responsible for finalization of accounts, filing of Returns and verification and submission of details before Income-tax authorities, for relevant Assessment Year:

Name	Date of Birth	PAN	Residential address	Mobile Number	Designation	Other Responsibilities handled **	Date of appointment
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(**) In support, copies of relevant resolution or other relevant documents can be sought. These persons are prima facie covered under section 278B of the Act. These persons are also prima facie responsible and liable for prosecution under section 278B of the Act, unless they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent commission of such offence.

- (iv) Details of every person (including Directors) who was in charge of and was responsible for conduct of business of the company (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Designation	Responsibilities handled ***	Date of appointment
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(***) In support, copies of relevant resolution or other relevant documents can be sought.

- (v) Duly certified copy of Minutes book showing minutes of the meeting of the Board of Directors. From these details the facts about the role of various persons in conduct of business and their control can be gathered. The minutes will also be helpful in verification of details provided at Sr. No. (iii) & (iv) above along with audit reports and annual reports.

7. Appropriate changes in above the format can be made to collect information in respect of Firm/AOP/BOI, etc.

8. Similarly, appropriate changes in above format can be made to collect information in respect of HUF keeping in mind the provisions of section 278C(1) and 278C(2).

9. The Principal Commissioner or Commissioner, before according sanction u/s 279(1), should carefully ascertain that no person should be made co-accused unless he fulfils the ingredients of the sub section (1) or (2) of section 278 whichever is applicable.

10. The Principal Commissioner or Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he may seek clarification with regard to the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. He may also seek any additional facts/documents/information as he deems fit. The letter seeking clarification/information from the assessee should be drafted in such a manner that it enables him to take a fair and judicious decision for granting sanction u/s 279(1) in the case of accused as well as each of the proposed co-accused, if any.

11. If there are more than one accused or co-accused in case of company, firm, HUF etc, letter seeking such clarification should be sent to all the accused or co-accused.

5. F.NO.385/17/2016-IT(B) DATED 06.12.2017**Dear Principal Chief Commissioner of Income-tax,****Subject: Accelerated efforts for maximization of revenue collection including recovery from arrear and current demand.**

A review of the position of revenue collection at the end of November, 2017 reveals that the all-India growth rate of net collections is 14.36% as against the required growth rate of 15.3%. It is disappointing to note that some Regions are still showing a negative rate of growth of net collections while some other are growing at a rate much below their target growth rate. It is quite evident that sufficient efforts have not been made in the area of revenue maximization in some Regions.

2. One area where efforts of the field officers can directly result in higher collections is recovery from arrear and current demand. However, the figures of recoveries made till October, 2017 paint a dismal picture. Only 25.5% of the annual target of Rs. 71,513 crore has been collected out of arrear demand and a number of Regions have barely achieved 5% to 15% of the target. Similarly, in the area of current demand, as against the target of collection of 20% of the current demand raised, only 1.5% of the demand raised has been collected. A chart showing the performance of various Regions in the area of cash collection is annexed for ready reference. Very few recovery-related surveys have been carried out in the country and practically no property has been auctioned by the TRO for recovery of demand.

3. You are, therefore, requested to take all measures to step up collections from arrear and current demand. Recovery surveys should be carried out in a large number of suitable cases after due diligence. The powers of attachment and sale of movable property should be invoked to effect recoveries where regular measures to recover the demand have not been successful. Even prosecution under section 276C(2) should be invoked where demand is not being paid without any justifiable reason. Revenue-yielding non-time-barring scrutiny cases should also be completed now so that the demand so raised is partly collected in the current financial year itself.

4. These measures must be put in place immediately so that the results are visible from early next quarter. The last quarter may be specifically focused on cash collection from arrear and current demand so that the targets set in this regard are achieved and the overall position of revenue collection also improves significantly.

Sd/-
(Sushil Chandra)
Chairman, CBDT

6. F.NO. 285/51/2013-IT(INV.V)/471 DATED 09.12.2016

**F.No. 285/51/2013-IT(Inv.V)/471
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

E-2, ARA Centre, Jhandewalan Extn.,
New Delhi
Dated: 09.12.2016

To,

All Pr. CCIT(CCA)/CCIT/CCIT(TDS), all DGIT (Inv.) and all CCIT (Central)

Madam/Sir,

Subject:- Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default

Kindly refer to this office letter F.No.285/51/2013(Inv.V)/386 dated 18.10.2016 regarding withdrawal of Standard Operating Procedure(SOP) for Prosecution in the cases of TDS/TCS defaults dated 02.02.2015.

2. In this regard, the undersigned is directed to enclose herewith the Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default with a request to circulate the same among all officers of your charge for information and guidance.

Yours faithfully,

Encl: as above

Sd/-
(Mamta Bansal)
Director, Inv. V
CBDT, New Delhi

Strictly for Departmental Use
F. No. 285/51/2013-IT(Inv. V)471 dated 09.12.2016

STANDARD OPERATING PROCEDURE FOR PROSECUTION IN CASES OF TDS/TCS DEFAULT

1. Introduction

1.1 This SOP is issued for the use of the departmental officers with the objective to streamline the procedure for processing cases of TDS/TCS defaults for prosecution and make it more efficient. The SOP should be followed as far as possible and shall apply prospectively to all prosecution proceedings, for TDS/TCS defaults, which are pending at any stage in the office of the Commissioner/Chief Commissioner or its subordinate office(s) as on the date of issue of this SOP. **In all cases the proposals should, henceforth, be submitted in the new prescribed proforma (Form "T") annexed with this SOP.** However, prosecution proposals which have already been submitted by the AO to the CIT(TDS), need not be revised.

2. Identification of the cases

2.1 Vide revised guidelines issued by the CBDT in F.No. 285/90/2013-IT(Inv.-V)/384 dated 18.10.2016, it has been decided that a list of cases **shall be generated periodically by the Pr. DGIT(Systems) based on the criteria approved by Member(Inv.) CBDT which shall be mandatorily processed for prosecution** in addition to the recovery steps as may be necessary in such cases. **It has been clarified in the guidelines that mandatory processing does not mean mandatory filing.** It has also been reiterated in the revised guidelines that in addition to the cases selected on the basis of the approved criteria (which are to be processed mandatorily), the CIT(TDS) may consider any other case for prosecution, based on information from sources such as survey/spot verification/grievances received. In such cases, the CIT(TDS) shall send intimation to the Pr.CCIT/CCIT(TDS) along with the reasons for selecting the said case. If any TDS/TCS default is detected during action u/s 132/132A of the I.T. Act (hereinafter referred to as 'the Act'), the processing ADIT/DDIT shall inform the Assessing Officer having jurisdiction over TDS about such defaults under intimation to the Range Head and CIT(TDS). While passing such information, he shall also forward copies of the relevant documents.

3. Proposal for Prosecution

No prosecution complaint u/s 276B/276BB of the Act can be filed without proper sanction from CIT(TDS) u/s 279 of the Act. The proposal for prosecution needs to be sent by the AO to the CIT(TDS) for obtaining sanction u/s 279(1) of the Act in Form No. "T", which is enclosed as **Annexure-1** to this SOP. The AO should, therefore, carefully go through this proforma and prepare a complete and correct prosecution proposal, which is the foundation of any successful prosecution proceedings.

4. Procedure for processing of cases for Prosecution

4.1 After potential cases for prosecution are identified and uploaded on the AO Portal by the CPC-TDS, the AO shall initiate Prosecution proceedings by issuing notice to the deductor preferably within 30 days of uploading of list by CPC-TDS on the AO portal.

4.2 Such prosecution notices shall be generated through TRACES functionality in respect of all the cases whether identified by the CPC-TDS or by the CsIT(TDS).

4.3 For the cases identified by the CIT(TDS), the AO shall add the same in the prosecution functionality on TRACES Portal through option "**manually identified cases**" available under "**Enforcement Menu**" and issue the show cause notice preferably within 30 days of the case being identified.

4.4 In the case of a Company/Firm/AOP/BOI, provisions of Sec. 278B are relevant in deciding the accused and co-accused(s) for the purposes of prosecution. The detailed protocol expected to be followed in this regard is enclosed as **Annexure-2**.

4.5 The details of late payment defaults for each case identified for mandatory processing shall be generated by the CPC(TDS). These details shall include the section under which TDS was deducted, amount of TDS, date of deduction, due date of payment and actual date of payment.

4.6 In respect of cases selected by CIT(TDS):

a) Wherever corresponding TDS statements have already been filed, late payment details as per TDS statement, if any, shall be obtained by AO from AO portal on TRACES.

b) In the case of a non-filer, AO will upload order passed under section 201(1)/201(1A) on the basis of default details obtained during the survey or otherwise.

4.7 The details of late payment defaults should be enclosed as annexure to the notice issued by the AO and preserved as they are the basis for initiating Prosecution. The purpose of enclosing these details with the notice is also to confront the deductor and require him to confirm these defaults.

4.8 In case, the deductor does not object to these details, the same will form part of Sr. No. 6 of Form “T”. In case the deductor objects to the details of defaults, the AO shall examine the relevant documents submitted by the deductor and prepare a statement of defaults on the basis of such verification and such statement of defaults will form part of Sr. No.6 of Form “T”. The documents on the basis of which the statement of default has been prepared shall be preserved and made prosecution document to be used before court.

4.9 By way of this notice, the deductor shall also be asked to furnish his explanation as to why the prosecution proceedings u/s 276B/276BB of the Act should not be initiated against him.

4.10 Following information/documents regarding the Deductor, as may be applicable, may also be collected from the Deductor and/or through other sources including from TRACES:

- a) Copies of the TDS statement(s) filed by the Deductor.
- b) Copies of challans of late deposit of TDS filed by the Deductor.
- c) Copies of the intimations u/s 200A of the Act showing late payment interest for all the quarters of the relevant assessment year, if they are available.
- d) Copies of Order u/s 201(1)/(1A) of the Act showing default of delayed payments, if any passed.
- e) Statement(s), of relevant person(s), if any, recorded in connection with the defaults.
- f) Certified copies of Audit report in Form 3 CD, if they show default, along with Balance sheet, Profit & Loss A/c. and Annual Reports.
- g) Copies of Ledger of Deductees in whose case the TDS deducted has not been deposited in time.
- h) While collecting above information, AO(TDS) may also collect other details, such as, whether the deductor himself rectified the mistake and deposited the tax along with interest prior to issue of first notice relating to prosecution by the department.
- i) Whether the deductor has been convicted earlier u/s 276B/276BB of the Act for any other year, to find out the applicability of Sec. 278A of the Act.

The documents mentioned above are important prosecution documents, which are useful in establishing the offence before the Court and should be collected and preserved carefully by the AO. The original copies of prosecution documents mentioned in Sr. No. 13(e) of Form “T” should be kept safely in personal custody of the AO and a proper handing over of such documents should be done at the time of change of incumbent.

4.11 The AO may ensure, to the extent possible, that the reply is obtained normally within 30 days of the issue of the show cause notice. In case no reply is furnished within the prescribed time, it may be presumed that the person responsible for tax deduction and deposit has no explanation to offer and the matter may be pursued forward. It is also advisable for the AO to simultaneously make attempt to collect relevant details from other sources such as TAN/PAN records, assessment records, TRACES, website of Registrar of Companies, so that non-compliance on the part of the deductor doesn't come in the way of proceeding further and/or filing prosecution complaint.

4.12 The AO(TDS) shall examine the reasons/reply for default and prepare the proposal in Form “T”. **This form should be filled with due care ensuring that all details required are complete and correct and send the same to the CIT(TDS) through proper channel on TRACES.** Detailed proposal has to be submitted offline. **Separate proposal should be submitted for each assessment year.**

4.13 The AO(TDS) shall refer all the cases falling in the list of TDS defaulters generated by CPC-TDS for mandatory processing to the CIT(TDS) through the Range Head. He may also refer any other case found fit for Prosecution to the CIT(TDS), keeping in view CBDT revised guidelines issued in F. No.285/90/2013-IT(Inv.V)/384 dated 18.10.2016. The AO shall submit prosecution proposal to the CIT(TDS) preferably within 90 days of the issue of show cause notice by him. However, CIT(TDS) may extend the timeline for submission of prosecution proposal considering the facts and circumstances of each case.

4.14 The Range Head on receipt of Form “T” on TRACES shall examine the proposal received offline also. **It is the responsibility of Range Head to ensure that the prosecution proposal is fit and complete before it is submitted to CIT(TDS).** If there is any deficiency, he should send it back to the AO for removing the deficiency and re-submit the proposal at the earliest. After satisfying himself, he shall forward it to CIT(TDS) on TRACES as well as in the offline mode. Once, the Form “T” is forwarded to CIT(TDS) on TRACES, he may also download the proposal from TRACES.

4.15 The CIT(TDS) is the competent authority to accord sanction u/s 279(1) for filing of prosecution complaint. The CIT(TDS) shall follow the procedure as under:

- a) He should examine the proposal thoroughly and if he finds that the case is not fit for prosecution, then he may drop the proceedings and intimate the decision to the AO, who will make the entry of dropping the proceedings in the TRACES. The AO shall also intimate the decision to drop the proceedings to the deductor.
- b) If he is of the opinion that the case is prima facie fit for prosecution, then, issue show cause notice(s) to all proposed accused(s) u/s 276B/276BB r.w.s. 278B of the Act, as to why sanction for launching of prosecution should not be accorded. The show cause notice should be generated from the online module on TRACES. In case he wants to add certain other details/issues, he can manually issue show cause also while the notice generated on CPC (TDS) may be downloaded and kept on record to ensure that necessary entry is made in the system.
- c) After examining the explanation of accused(s) along with the documents adduced for supporting the explanation and material relied upon by the AO in his proposal, the CIT(TDS) shall take a fair and judicious view to proceed further by either according sanction u/s 279(1) of the Act or dropping the proceedings, keeping in view the provisions of Sec. 278AA of the Act.
- d) There could be possible extraordinary circumstances or situations beyond the control of the deductor which may prevent or hinder timely compliance at his end. Vide F.No. 285/90/2013-IT(Inv.V)/384 dated 18.10.2016, clarification has been issued by the Board for interpretation of section 278AA to address genuine concerns of the deductors. **The fact that the deductor has remitted the tax before filing of TDS statement and interest before receipt of notice from the AO (TDS) for prosecution, may be taken note of amongst other submissions of the deductor while considering his case for prosecution.** Some of the other circumstances where section 278AA could be invoked, **provided the deductor has remitted the money with interest** are highlighted below:
 - i) Payment of TDS by the deductor within 60 days of the due date on account of genuine hardship.
 - ii) Deductor having filed application under BIFR or under the Insolvency and Bankruptcy Code, 2016 during the relevant period which has been admitted.

- iii) Where only provision has been made in the books of account without actual payment to the Deductees due to financial constraints, court order, statutory obligations under various laws including under the Companies Act, 1956, pending legal proceedings, etc.
- iv) Cases of genuine financial hardship leading to closure of business.
- v) Sudden demise of person responsible for deposit of taxes in cases of defaults of payment of TDS for small period i.e. upto six months.
- vi) Lock out in the factory and/or office premises due to labour strike, court cases, natural disaster or calamity, law and order problem in the area, etc. justifying the period of delay.

The above enumerations are only suggestive and indicative in nature, and the CIT(TDS) is not bound by these and should take a judicious view based on facts and circumstances of each case.

- e) There is no statutory requirement for obtaining opinion of the Legal Counsel before granting sanction for prosecution. However, reference may be made in complex situations like identification of accused(s), etc to avoid legal infirmities in prosecution complaints. In such cases, it should be ensured that the opinion is obtained from the Counsel within 30 days.
- f) If after examining the proposal received from the AO, the evidence and other material on record, explanation of the deductor along with evidence adduced to support the explanation and the opinion of the Counsel (wherever it is obtained), if the CIT(TDS) is satisfied that-
 - (i) **It is a fit case for prosecution**, he shall pass a speaking order u/s 279(1) separately for each assessment year. The application of mind and fairness of decision should reflect in the order. In view of provisions of Sec. 278AA of the Act, it is expected that the explanation given by the accused is properly rebutted. Further, brief reasons should also be given for according sanction in the cases of Directors/ Partners/Other responsible persons for offence committed by Companies, Trusts, Firms, etc. keeping in view provisions of Sec. 278B of the Act.
 - (ii) **It is not a fit case for Prosecution**, he may drop the proceedings after recording reasons for the same for internal purposes. The decision to drop the proceedings should be intimated to the deductor.

- g) An entry shall be made by the CIT(TDS) in the TRACES on passing of such orders as mentioned in para (f) above or as soon as the decision to drop proceedings is made. The CIT(TDS) shall complete the process and pass an order u/s 279(1) sanctioning prosecution or dropping the show cause notice preferably within 90 days from receipt of proposal from the AO(TDS) through the Range Head excluding the additional time taken to dispose off compounding petition filed, if any.

4.16 The Deductor can at any stage of the proceedings, file a compounding application before the Pr. Chief Commissioner of Income-tax /Chief Commissioner of Income-tax. Instruction vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 should be followed in dealing with the compounding applications. If a person who has committed an offence(s) under S.276B/276BB files an application for compounding of the said offence(s), the application should be processed expeditiously and disposed off within the time frame prescribed in the Central Action Plan for the FY. During the pendency of the compounding application, the CIT(TDS) shall keep the prosecution proposal pending. As soon as an application for compounding is moved, an entry should be made in TRACES. Entries of subsequent action on compounding application should also be made on TRACES.

4.17 The CIT(TDS) after according sanction u/s 279(1) shall send back the records to the authority seeking sanction along with the sanction order in duplicate, one for filing in the Court with complaint and other for the record.

4.18 If the defaulter is a government servant, then as required u/s 197 of the Code of Criminal Procedure, 1973 (Cr.PC), the AO should seek approval of State Government or Central Government as the case may be. If no timely response is received from the Government, the AO should continuously follow up with the Government, so that the required sanction order is expedited.

4.19 Once the AO receives the sanction order u/s 279(1) of the Act he should get the prosecution complaint drafted by the departmental Prosecution Counsel and file it in the Jurisdictional (Economic Offences) Court within 30 days.

4.20 Brief guidelines for proper drafting of complaints

The prosecution complaint should be drafted with due care to ensure that the ingredients of the offence are clearly brought out with the relevant facts. While drafting the complaint, the following points may be considered:

- a) The place of commission of the offence shall specifically be mentioned and accordingly the jurisdiction of the court should also be mentioned.
- b) The correct names and complete addresses of the accused should be specifically mentioned. This prevents delay in service of summons, etc. by the court.
- c) Before prosecution is filed, it is mandatory to obtain sanction for such prosecution u/s 279(1) of the Act. Therefore, the reference of order u/s 279(1) of the Act passed should invariably be mentioned in the complaint.
- d) Chronological events leading to the commission of offence should be spelt out. Why the explanation submitted by assessee is not acceptable, in view of provisions of Sec. 278AA, should be discussed. The reasons for filing complaint against all co-accused(s) in terms of Sec. 278B should also be mentioned.
- e) The following should be annexed to the complaint:
 - i) Sanction order for prosecution.
 - ii) List of important documents/exhibits.
 - iii) List of prosecution witnesses.
 - iv) Sanction order u/s 197 of Cr.PC in case of a government servant.
- f) It may, however be noted, that prosecution can also furnish additional list of witnesses during trial [Section 204(2) of the Cr.PC].

4.21 The CIT(TDS), Range Head & the AO(TDS) shall make necessary entries in TRACES at various stages of processing prosecution. For procedural aspects of handling cases on TRACES, **tutorials** are also available on TRACES which may be referred to by all the authorities.

4.22 Similarly, if any such prosecutable offence comes to light during the proceedings before the appellate authorities, revision authorities or any other proceedings, same shall also be treated at par with other prosecutable cases as enumerated under Chapter-XVII of the Income-tax Act, 1961 and action shall be initiated in accordance with the procedure laid down in this SOP.

5. TIME FRAME

5.1 The time period for the entire process from identification to passing of order u/s 279(1)/279(2) is summarized as under:

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

5.2 The time lines given above should be followed as far as possible. However, any deviation from the time lines shall not render prosecution proceedings barred by limitation. The Pr.CCIT/CCIT (TDS) should monitor progress of the cases identified for processing for prosecution, particularly cases in which the timelines have not been followed.

6. ROLES OF DIFFERENT TDS AUTHORITIES IN ADDRESSING THE ISSUE OF PROSECUTION AND COMPOUNDING OF TDS/TCS CASES

6.1 Role of Principal CCIT/CCIT(TDS)

(i) Taking quarterly review meeting with CIT(TDS), CIT(International Taxation) & CIT(LTU) monitoring progress in cases identified for prosecution for TDS/TCS defaults and timelines laid down.

(ii) Apprising the Zonal Member of the progress made/ outcome achieved during the month in the monthly DO. Copy of such progress shall also be sent to Pr. DGIT(Admn.), New Delhi for information.

(iii) Disposing all compounding petitions expeditiously and within the time period prescribed in the Central Action Plan for the FY. While disposing off compounding petitions, speaking orders are expected to contain those facts based on which a fair and judicious view has been taken in accordance with relevant provisions of the Act.

6.2. Role of CIT(TDS)

- (i) Ensuring that fair distribution of work relating to prosecution among officers of his charge, is done.

- (ii) Monitoring on a regular basis the progress of processing the cases for prosecution flagged by CPC-TDS.
- (iii) Guiding AO(TDS) to shortlist the cases for processing of prosecution on the basis of information received from sources such as survey/spot verification/grievances received and monitoring timely action being taken thereon.
- (iv) Ensuring entries of various actions undertaken by the AO, Range Head and his own office on the TRACES.
- (v) Processing all the proposals received by him. If he is of the opinion that the case is prima facie fit for prosecution, issue show cause notices to the defaulter(s) u/s 276B/276BB r.w.s. 278B or 278C as to why sanction for launching of prosecution should not be accorded.
- (vi) Seeking opinion of the Prosecution or Legal Counsel, if need is felt in view of the complexity of facts involved and ensuring that the opinion is obtained from the Counsel within 30 days.
- (vii) Examining the replies to the SCN, other material and the opinion of the legal Counsel where ever it is obtained, and on satisfaction that it is a fit case for prosecution, passing speaking order u/s 279(1) in the case of defaulter(s) for each assessment year separately. In case he is satisfied with the submissions of the deductor, he shall drop the proceedings after recording the reasons in writing with an intimation to the deductor.
- (viii) Completing the process and passing an order u/s 279(1) sanctioning prosecution or dropping the show cause notice expeditiously, preferably within 90 days of receipt of the proposal from the AO(TDS) through Range Head.
- (ix) Ensuring an entry for the following events in TRACES:
 - a) On issue of show cause notice to the accused/co-accused.
 - b) Reference of legal opinion sought/received.
 - c) On passing of sanction order u/s 279(1) or on dropping of the proceedings as the case may be.
 - d) On receipt of compounding application/report on the compounding application.
 - e) On filing of prosecution complaint before the competent court.
 - f) On receipt of order of competent Court.
 - g) On appeal, if any appeal is filed by the accused or by the Department.

- (x) Ensuring that the guidelines for compounding of offences under Direct Tax Laws issued vide F.No. 285/35/2013-IT(Inv.V)/108 dated 23.12.2014 are adhered to.
- (xi) Providing feedback regarding quality of cases selected for mandatory processing in the previous year to Director Inv-V, CBDT.

6.3 Role of Addl./Joint CIT(TDS)

- (i) Monitoring timely action in all the cases involving mandatory processing for prosecution or cases identified otherwise and to report the progress to the CIT (TDS) in the monthly DO.
- (ii) Discussing cases prepared on the basis of information received from sources such as survey/spot verification/grievances received with AO(TDS) and also guiding them in short listing the cases fit for prosecution.
- (iii) Ensuring that the prosecution proposal submitted by AO(TDS) is fit and complete and in case of any deficiency, he should get it rectified from the AO(TDS) at the earliest.
- (iv) Monitoring the AO for making entries in TRACES for the following events:
 - a) On issue of show cause notice to the accused/co-accused.
 - b) On receipt of compounding application/report on the compounding application.
 - c) On filing of prosecution complaint before the competent court.
 - d) On receipt of order of competent Court.
 - e) On appeal, if any appeal is filed by the accused or by the Department.
- (v) Ensuring timely submissions of reports on compounding applications by the Assessing officer and Range office for timely disposal of the applications.

6.4 Role of AO (TDS)

- (i) Monitoring list of cases identified by CPC-TDS for mandatory processing and ensuring action in all such cases.
- (ii) Examining cases of TDS default other than those already identified by CPC-TDS based on survey/spot verification/grievances received and shortlist cases fit for prosecution after discussion with Range Head and CIT(TDS).

- (iii) Issuing show cause notice to the defaulters giving due opportunity to them once the cases are identified by CPC(TDS) or otherwise and collect information in accordance with the procedure laid down in this SOP.
- (iv) Sending the proposal prepared in Form “T” on TRACES along with other details/documents to the CIT(TDS) through proper channel.
- (v) Making entries for all the events associated with prosecution and compounding on TRACES.
- (vi) Timely submissions of reports on compounding applications for disposal of the applications.
- (vii) Submission of reports along with records to the CIT(TDS) through proper channel in all cases where notice is issued by AO along with comments either recommending or dropping prosecution.

6.5 Role of CIT(CPC-TDS), Ghaziabad

- (i) Providing analysis of the data with respect to TDS statements filed during the previous F.Y. to the Director (Inv-V), CBDT immediately after 15th July of the relevant Financial Year.
- (ii) Generating list of TDS/TCS defaulters along with their statement of defaults for mandatory processing of cases for prosecution based on the parameters approved by the Member (Investigation), CBDT and make it available to AO(TDS) as well as the CIT(TDS) in the second quarter of every F.Y. preferably by 31st July of the relevant Financial Year.
- (iii) Providing monthly disposal status of prosecution and compounding for TDS/TCS defaults to Pr.CCIT/CCIT(TDS), CIT(TDS), Directorate of TDS, Member(Revenue), and Member (Inv.).

Annexure – 1**Form–T****Proforma for submitting proposal for prosecution****u/s 276B, 277 & 278 of the I.T. Act, 1961**

1. Details of deductor (accused):

i) Name :

ii) TAN :

iii) Address :

iv) PAN :

v) Status :

2. Details of proposed co-accused (if any) u/s 278B of the I.T. Act i.e. partners, directors, karta, principal officer etc. who are proposed to be prosecuted, if the deductor is firm, company, HUF, AOP or BOI and DDO in the case of Government deductor.

Name of the Director/ Partner/ Principal Officer/ DDO, etc.	Date of Birth	PAN No.	Residential address of the persons

3. The date of sanction order u/s 197 of Cr. PC from Government, in the case of a government deductor.

4. Financial years / Assessment Years involved:

Financial Year	Assessment Year

5. Details of TDS statements of the quarters in which defaults have been committed:

Form No. and quarter	Due date of filing of statement	Date of filing of statement	Total amount of TDS paid for the quarter	Tax paid after due date(s)

6. Details of default in payment of TDS:

(a) Details of Defaults under Chapter XVII except section 194B:

Section under which TDS is deducted	Amount of deduction	Date of Deduction of TDS	Due date for Payment to the credit of Govt.	Actual date of payment to Government	Period of delay	Outstanding payment, if any	Date of service of first notice relating to prosecution

OR

(b) Details of default in payment of TDS under proviso to section 194B:

Total value of winning (including winning in kind)	Amount of liability of TDS	Date of release of winning	Due date for payment to Govt.	Actual date of payment to Govt., if any.	Period of delay

OR

(c) Details of default in payment of Dividend Distribution Tax (DDT) referred to in section 115-O:

Total amount of distributed profit	Amount of DDT payable	Date of declaration /payment/ distribution of dividend, whichever is earlier	Due date for payment to the credit of Govt.	Actual date of payment to Govt.	Period of default

7. Details of Late payment interest (LPI):

Form No. & quarter	Amount of LPI chargeable u/s 201(1A)	Amount of LPI paid before filing of statement	LPI demand generated in order u/s 201(1A) or 200A	Date of payment of demand	Outstanding amount of LPI

8. Details of late filing fee u/s 234E:

Form No. & quarter	Amount of late filing fee levied	Amount of late fee paid	Date of payment of late fee	Whether appeal filed	Status of appeal

9. Details of penalty u/s 221(1) of the I.T. Act for relevant A.Y., if imposed:

Date of order u/s 221(1) of I.T. Act	Amount of penalty levied	Amount of penalty paid	Date of payment of penalty	Date of appeal before CIT(A), if filed	Status of appeal before CIT(A)	Status of further appeal, if any

10. Please specify the other sections of Income-tax Act and other laws such as IPC, which are also proposed for simultaneous prosecution.

11. Whether the provisions of Sec. 278A are applicable i.e. whether the defaulter has been convicted of an offence u/s 276B of the I.T. Act earlier?

12. Details of compounding applications filed, if any:

a) Whether compounding application for this year or any other year was filed: Yes / No

b) If yes:

Sr. No.	The year(s) for which compounding application(s) were filed	Status

13. Detailed note justifying the proposal for prosecution:

- a) The details of defaults in terms of frequency and quantum.
- b) Present state of demand and short note on efforts for recovery.
- c) Brief explanation for the defaults submitted by the accused and observation of AO on factual accuracy of the same.
- d) The reasons for proposing names of different co-accused at Sr. No.2, if any, for prosecution.
- e) The details of prosecution documents on the basis of which offence is sought to be proven before Court.
 - i) Details of relevant TDS statement(s).
 - ii) The copies of challan of late deposit of TDS.
 - iii) The audit report in form No. 3CD.
 - iv) The minute book.
 - v) Copies of ledgers of deductee in whose cases the TDS deducted has not been deposited in time.

- vi) Statements of any person recorded in connection with the default.
 - vii) The copies of order u/s 201(1)/(1A) of the I.T. Act, if passed.
 - viii) The sanction order of the government u/s 197 of Cr PC in the case of government deductor.
 - ix) Any other document which may be relevant to establish the offence or the role of accused and co-accused(s).
14. List of proposed prosecution witnesses:
15. Details of the Assessing Officer passing order u/s 201(1)/(1A) of the I.T. Act, details of his present posting / address may also be given.
- (i) Name
 - (ii) Present designation
 - (iii) Present posting
 - (iv) Employee code, if available
 - (v) Permanent address, if available

Date : _____ **Signature:** _____

Name of Officer Submitting proposal: _____

Employee Code: _____

Designation: _____

Permanent Address: _____

Instructions for filling up this Form:

- i. No column of the Form should be left blank. If the column is not applicable, the same shall be clearly mentioned.
- ii. At Sr. No. 2, the details of the co-accused to be filled in on the basis of details gathered as per procedure laid down in Annexure-2 of SOP.
- iii. At Sr. No. 5, the details of only those quarters shall be given in which defaults of delayed payments are there.
- iv. At Sr. No. 6(a), details of defaults generated by CPC should be enclosed if they are not contested by the defaulter. If contested, the details shall be prepared on the basis of verification of documents submitted by the defaulter.
- v. For preparing details in Sr. No.13(e), the minutes book, signatures on audit report, balance sheet, etc. may also be relevant along with other material, as they throw light on role of various directors/partners, etc in controlling the business and their responsibility in accordance with Sec. 278B of the I.T. Act.
- vi. The original copies of prosecution documents mentioned in Sr. No. 13(e) should be kept safely in personal custody of the AO and a proper handing over of such documents should be done at the time of change of incumbent.
- vii. This proforma shall also be used for submitting prosecution proposals u/s 276BB with relevant changes as applicable.

Annexure – 2

Procedure for launching prosecution in the case of a Company/Firm/AOP/BOI.

1. The Companies/Firm/AOP/BOI, etc. are artificial entities. Though such entities can also be convicted, but they cannot be imprisoned. Moreover, it is always the persons in control of the business who are responsible for commission and omission of various acts. It is, therefore, necessary to carefully identify the persons who are responsible for offence committed by the Company/Firm/AOP/BOI etc. so that they also can be prosecuted.
2. In the case of Company/Firm/AOP/BOI, provisions of Sec. 278B are relevant in deciding the accused and co-accused. As per Sec. 278B(1) of the I.T. Act, 1961 —*where any offence is committed by a Company, every person who, at the time the offence was committed, was in charge of, and was responsible to the Company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence*". The company include Firm/BOI/AOP for the purpose of this section.
3. Further, u/s 278B(2) of the I.T. Act, 1961 where an offence is committed by a Company/AOP/BOI and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, partner, manager, secretary or other officer of the company/AOP/BOI, such director, partner, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
4. For the purposes of section 278B—
 - (a) "company" means a body corporate, and includes—
 - (i) a firm; and
 - (ii) an association of persons or a body of individuals whether incorporated or not; and
 - (b) "director", in relation to—
 - (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.
5. In this regard, it is important to mention that Hon'ble Supreme Court in the case of Madhumilan Syntex Ltd. Vs. Union of India (2007), 290 ITR 199 (SC) has also held that from the statutory provisions, it

is clear that to hold a person responsible under the Act, it must be shown that he/she is a 'principal officer' under section 2(35) of the Act **or** is "in charge of" and "responsible for" the business of the company or firm.

Thus, the persons who are held Principal Officer u/s 2(35) of the I.T. Act, 1961 **or** the persons 'in charge of' and 'responsible for' business of the Company or the Firm are also liable to prosecution besides the person (s) with whose consent, connivance or because of whose neglect the offence has been committed. The AO, therefore, should keep these provisions in mind while collecting the details and evidences and preparation of prosecution proposals while proposing the names of the accused and co-accused(s).

6. The following details may therefore be collected in the case of Companies through the Show Cause Notice to the defaulter and/or through other sources:

(i) Details of the Company:

Address (present)	Other address(s), if any	PAN Number	Date of incorporation	Contact numbers

(ii) Details of Directors (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Whether Active or not	Responsibilities handled *	Date of appointment

(*) In support copies of relevant resolution or other relevant documents can be sought.

(iii) Details of person responsible for payment on which TDS is deducted (From 1st April of relevant F.Y. till date):

Name and designation	Date of Birth	PAN	Residential address	Mobile Number	Designation	Other Responsibilities handled **	Date of appointment

(**) In support, copies of relevant resolution or other relevant documents can be sought. These persons are prima facie covered under section 278B of the I.T. Act. These persons are also prima facie responsible and liable for prosecution under section 278B of the I.T. Act, unless they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent commission of such offence.

(iv) Details of every person (including Directors) who was in charge of and was responsible to the company for conduct of business of the company (From 1st April of relevant F.Y. till date):

Name and designation	Date of Birth	PAN	Residential address	Mobile Number	Designation	Responsibilities handled ***	Date of appointment
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(***) In support, copies of relevant resolution or other relevant documents can be sought.

(v) Duly certified copy of Minutes book showing minutes of the meeting of the Board of Directors. From these details the facts about the role of various persons in conduct of business and their control can be gathered. The minutes will also be helpful in verification of veracity of details provided at Sr. No. (iii) & (iv) above along with audit reports and annual reports.

7. Appropriate changes in above format can be made to collect information in respect of Firm/AOP/BOI, etc.

8. The AO may issue a notice to the Principal Officer of Company confronting him with the defaults and seek explanation for the default and to show cause as to why the prosecution proceedings u/s 276B of the I.T. Act shall not be initiated. Through the same notice, the persons who were in-charge of and were responsible to the Company/Firm/AOP/BOI at the time of commission of offence may also be required to submit their explanation as to why he/she should not be treated as principal officer and co-accused along with the Company/Firm/AOP/BOI and be prosecuted against u/s 276B/276BB r.w.s. 278B of the I.T. Act, 1961.

Further, the persons who were responsible for payment on which tax is deducted may also be asked through the same notice to show cause as to why the provisions of Sec. 278B of the I.T. Act are not applicable to them.

9. The above details will be helpful to the AO for identification of other accused in terms of section 278B of the I.T. Act, 1961. The show cause notice being generated by the TRACES has been designed keeping above in view.

7. F.NO.285/90/2013-IT(INV.V)/384 DATED 18.10.2016**Streamlining of procedure for identification and processing of cases for prosecution under Sections 276B & 276BB of the Income-tax Act, 1961 and related issues**

Guidelines issued vide F.No.285/90/2008-IT(Inv.-I)/05 dated 24.04.2008 contains the procedure for identification and processing of potential prosecution cases for various categories of offences. Paragraph 3.1 (i) and (ii) of the said guidelines pertain to identification of cases for processing relating to the offences under sections 276B & 276BB of the Income-tax Act 1961 (the Act) respectively for failure to pay tax deducted at source (TDS) or tax collected at source(TCS), as the case may be, to the credit of central government. These paragraphs were modified vide Guidelines issued vide 285/90/2013-IT(Inv.)/384 dated 07.02.2013.

2. It has been decided to broaden the selection criteria from quantum based to a more scientific and risk based approach which factors in the compliance behaviour of the Deductors. In accordance with this, the following guidelines are issued for identification of potential prosecution cases forthwith, in supersession of earlier guidelines of the Board on the subject, including those contained in F.No.285/90/2013-IT(Inv.) dated 07.02.2013:

(i) Offences u/s 276B: Failure to pay tax deducted at source to the credit of Central Government by the due date

A list of cases of defaulters shall be generated periodically by the DGIT(systems) based on criteria approved by the Member(Inv.) CBDT which shall be processed for prosecution in addition to the other steps including recovery as may be necessary in such cases.

The authority for processing the cases for prosecution under this section shall be the officer having jurisdiction over the TDS cases. These cases have to be mandatorily processed for prosecution. Mandatory processing does not mean mandatory filing of prosecution. It requires due application of mind of the CIT concerned on all relevant facts and arriving at a judicious decision with regard to action u/s 276B

(ii) Offences u/s 276BB: Failure to pay tax collected at source to the credit of Central Government

The guidelines for identification and processing of cases under this section would be the same as for offences u/s 276B of the Act.

3. It is reiterated that in addition to the above list of cases of defaulters generated by DGIT(Systems), the CIT(TDS) may consider any other case for prosecution based on information from sources such as survey/spot verification/ grievances received. The CIT(TDS)

may also select any other case, based on facts and circumstances of that case, under intimation to the Pr.CCIT/CCIT(TDS) along with reasons for selecting the case. If any default is detected during search, the processing ADIT/DDIT shall inform the AO having jurisdiction over TDS at the earliest.

4. Where a case is selected for processing under section 276B or 276BB of the Act, as the case may be, for a particular year, the defaults for other years in respect of such case, if any, may also be considered for processing for prosecution irrespective of whether or not the case was previously considered for processing for prosecution.

5. Each CIT(TDS) would ensure fair distribution of work among officers of his charge, as far as possible, by assigning or reassigning the jurisdiction of the cases.

6. Another set of guidelines were issued vide 285/90/2013-IT(Inv.-V)/112 dated 27.12.2014 on the subject “Addressing genuine concerns of the assessee while processing cases for TDS/TCS related prosecution under Direct Tax Laws”. Doubts have been raised regarding interpretation of words “before detection” used in para 4.1 of the said guidelines. It has been decided to supersede the above guidelines with the following:

(i) *Section 278AA of the Act provides that for the purpose of section 276B, no person shall be punishable for any failure referred to in the said provision if he proves that there was a reasonable cause for such failure. The fact that the Deductor has remitted the tax before filing of TDS statement and interest before receipt of notice from the AO(TDS) for prosecution, may be taken note of amongst other submissions of the defaulter while considering his case for prosecution u/s 276B/276BB, a fair and judicious view should be taken in view of the provision of section 278AA before taking a decision for filing of complaints.*

(ii) *If a person who has committed an offence(s) under section 276B/276BB files application for compounding of the said offence(s), the compounding application should be processed on priority and mandatorily disposed off within the time frame prescribed by the CAP guidelines.*

2. The Pr.CCsIT/CCsIT and DGsIT are requested to circulate the amended guidelines among all officers of their region for strict compliance.

Sd/-
(Mamta Bansal)
 Director, Inv. V
 CBDT, New Delhi

8. F.NO.279/MISC./M-77/2011-ITJ DATED 20.02.2017

**MODIFICATIONS TO INSTRUCTION NO.6/2016 DATED 07.09.2016
FOR ENGAGEMENT OF SPECIAL PUBLIC PROSECUTOR(SPPs) TO
REPRESENT THE INCOME-TAX DEPARTMENT BEFORE COURTS
OF SESSION AND ITS SUBORDINATE COURTS.**

Ref.- CBDT Instruction no. 6/2016 dated 7th September 2016

Kindly refer to the above.

2. Instruction No. 6/2016 of CBDT (hereinafter “Instruction”) has revised the guidelines for engagement of Special Public Prosecutors(SPPs) to represent the Income-tax Department before various courts. Certain suggestions to modify the said Instruction were given by Ministry of Law and Justice (MOLJ).

3. In this regard and as per the discussions with MOLJ following shall be added in para 2.2(b) of the said instruction. “In Delhi, Mumbai, Kolkata, Chennai and Bangalore, a Joint Secretary Level Officer from Ministry of Law and Justice (MoLJ) shall be requested to be part of the Screening Committee.”

4. This modification will apply to all Screening Committees constituted after 20.02.2017 and may be brought to the notice of all the officers concerned.

5. This issues with the approval of Member (A&J) CBDT.

6. Hindi Version shall follow.

Sd/-
(Neetika Bansal)
Deputy Secretary(ITJ)
CBDT

9. F.NO.279/MISC/M-77/2011-ITJ DATED 18.10.2016**MODIFICATION TO INSTRUCTION NO.6/2016 FOR ENGAGEMENT OF SPECIAL PUBLIC PROSECUTORS (SPPs) TO REPRESENT INCOME-TAX DEPARTMENT BEFORE COURTS OF SESSIONS AND ITS SUBORDINATE COURTS****Ref: CBDT instruction No. 6/2016 dated 7th September 2016.**

Kindly refer to the above.

2. Instruction No. 6/2016 of CBDT (hereinafter “Instruction”) has revised the guidelines for engagement of Special Public Prosecutors(SPPs) to represent the Income-tax Department before various courts in supersession of the earlier Instruction No. 1880/1991 and Instruction No. 1925/1995 of the CBDT on the subject. Suggestions have been received from various authorities for modifications to the Instruction.

3. In this regard, after considering the suggestions received, the following modifications are hereby made to the Part B (Bill for appearance etc.) of the Proforma ‘P4’ of the Instruction, by adding the rows 7, 8 & 9.

- *The Part B of the Proforma ‘P4’ of the Instruction after modification is as follows:*

Part B (Bill for appearance etc.), as applicable*(Amount in Rs.)*

1.	Substantial and effective hearing (Whether Connected case — Yes/No)	
2.	Non-effective hearing	
3.	Conference fees	
4.	Clerkage @10%	
5.	Out of pocket expenses (particulars to be given)	
6.	For performing duties outside headquarters (as per para 3.4)	
7.	Date of Judgment	
8.	Date of furnishing the certified copy of the judgment to the office concerned.	
9.	Deduct 20% of (1 + 2) above, if date at (8) is more than 10 days (excluding the time taken by the courts) from the date at (7)	
	Total	

4. These modifications may be brought to the notice of all the Officers concerned.

5. Hindi version of this will follow.

Sd/-
(K. Vamsi Krishna)
 ACIT(OSD)(ITJ-II)

**10. F.NO.279/MISC/M-75/2011-ITJ (PART-II) DATED
18-10-2016**

MODIFICATION TO INSTRUCTION NO.7/2016

Kindly refer to the above.

2. Instruction No. 7/2016 of CBDT (hereinafter “Instruction”) has revised the guidelines for engagement of standing counsels to represent the Income-tax Department before High Courts and other judicial forums in supersession of the earlier Instruction No. 3/ 2012 of the CBDT on the subject. In this regard, representations have been received from various authorities suggesting modifications and seeking certain clarifications with respect to the matters dealt with in the Instruction.

3. In this regard, after considering the suggestions, the following modifications are hereby made to the Instruction.

- a. In ‘Duties of the Standing Counsels’ in para 7.2 of Annexure-I, the phrase, “*Diary number, ITA number etc.*” shall be substituted with the phrase, “**Diary number and ITA number of appeals filed, Diary number of other petitions/applications filed etc.**”
- b. In Annexure-II, the para 2 heading, para 2.1 and para 2.2, the words, “*For Drafting*” shall be substituted with the words, “**For Drafting and Filing**”
- c. In Annexure-II, para 12.1.1, the words, “*Bills for drafting*” shall be substituted with the words, “**Bills for drafting and filing.**” Also, in the same para 12.1.1, the following sentence shall be added, “**Bill for drafting and filing of appeals shall be submitted only after removal of all defects with ITA No. of appeal filed.**”
- d. In proforma- ‘X’ of Annexure-II, under the head, PRE-RECEIPTED at S. No. 5, the words, “*ITA no./WTO no. etc.*” shall be substituted with the words, “**ITA no./WTO no.**”
- e. In the heading at Part A of proforma- ‘X’ of Annexure-II, the words, “*Bill for drafting*” shall be substituted with the words, “**Bill for drafting and filing.**”
- f. In the second column of the Proforma-‘B-1’ and Proforma-B-2’ of Annexure-I of the Instruction at the marking for Academic record (marks scored in LLB), instead of the earlier marking

scheme, the revised marking scheme for Academic record (marks scored in LLB) may be read as follows, “>60% - 5 marks”

- g. In Annexure-II of the Instruction, the following paragraph, i.e., para 13, shall be added after para 12.

“13. Dispute Resolution

In the event of any doubt or difference regarding the fees payable to the counsels, the fees determined by the Principal Chief Commissioner of Income-tax of the Region concerned shall be final and binding.”

4. These modifications may be brought to the notice of all the Officers concerned.

11. F.NO.279/MISC./M-77/2011-ITJ DATED 07.09.2016 INSTRUCTION NO.6/2016
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GUIDELINES FOR ENGAGEMENT OF SPECIAL PUBLIC PROSECUTORS (SPPS) TO REPRESENT INCOME-TAX DEPARTMENT BEFORE COURTS OF SESSIONS AND ITS SUBORDINATE COURTS; REVISION OF THEIR SCHEDULE OF FEES AND RELATED MATTERS-INSTRUCTIONS

[Also refer F.No. 279/MISC/M-77/2011-ITJ dated 18.10.2016 and F.No. 279/MISC./M-77/2011-ITJ dated 20.02.2017 for further modifications]

With a view to streamline the process of engagement of Special Public Prosecutors (SPPs) by the Department to represent before Courts of Session and its subordinate Courts in prosecution cases and in supersession of the existing Instructions of the CBDT on the subject matter in general and Instruction No. 1880 dated 30-1-1991 and Instruction No. 1925 dated 31-3-1995 in particular, the following instructions are issued herewith for compliance by all concerned:—

2. Procedure for engagement

The procedure for engagement of Special Public Prosecutors, renewal of their terms, requisite qualifications and terms and conditions of their engagement shall be as follows:

2.1 Qualification of Special Public Prosecutors

In order to be eligible for engagement as an SPP, a person should:

- (a) be eligible to appear before the court as an Advocate and
- (b) have a minimum experience of 7 years as a Practicing Advocate, in criminal matters. Adequate experience of handling trials relating to Direct Taxes is desirable.

2.2 Procedure for engagement of Special Public Prosecutors

- (a) For the purpose of engagement, the CCIT shall call for applications in **Proforma 'P1'** either by advertisement in local newspapers or from Bar Association. It should, however, be ensured that the process of engagement is transparent and broad based.
- (b) A five-member Screening Committee headed by a Pr.CIT/ Pr.DIT shall be formed by the CCIT for the purpose of evaluation of proposals received. The Screening Committee shall have representatives from DGIT (Inv.) and DGIT (Intelligence & Criminal Inv.). CIT (J) shall also be part of the Screening Committee wherever possible. Officer looking after prosecution matters may work as Member-Secretary of the Committee. The particulars of the applicants' experience in handling criminal cases and their suitability to represent the prosecution cases of the Department will be evaluated by the Committee. It shall have interaction with the applicants to assess their suitability for the purpose of engagement. The CCIT shall forward the proposal to the Board with his recommendation along with the report of the Screening Committee and copies of applications received in Proforma P1.
- (c) The First engagement of SPP shall normally be for a period of 18 months. Such engagement will be renewable on receipt of recommendation of the CCIT along with annual performance appraisal on completion of first 12 months of the engagement.

2.3 Renewal of the term of engagement/performance review

2.3.1 The performance of the SPPs shall be reviewed by the jurisdictional Pr.CsIT/ Pr.DsIT/ CsIT/ DsIT whose cases have been represented by the SPP, on an annual basis and a report in **Proforma-P2** shall be submitted to CIT (J)/CCIT before 31st May of the following year. The CCIT shall submit the annual performance of the SPP (Proforma-P2) to the Board so as to reach before 30th June of the year.

2.3.2 The CCIT shall submit a proposal for renewal of period of engagement to the Board at **least three months before the expiry**

of the term, if the performance of the SPP is found to be satisfactory. The performance appraisal should be sent along with the proposal in **Proforma-P3**. The renewal of the term shall normally be for a period of 3 years.

2.4 Allocation of cases to Special Public Prosecutors

The CCIT shall be the overall in charge of entire prosecution work on behalf of the Income-tax Department in his Region. Work allocation amongst the SPPs in a Pr. CCIT Region shall be done by the CCIT/DGIT. However, a copy of the list of SPPs and the cases assigned to them shall also be forwarded to the CIT (J)/Addl CIT (J)/Technical in the O/o the Pr. CCIT for maintaining a centralized database for prosecution cases in the Region.

2.5 Termination of engagement/resignation/expiry of term

The engagement of SPP can be terminated through written intimation by either side without assigning any reason. The CCIT is authorized to act on behalf of the department for the purpose. On expiry of the term or termination or resignation, the SPP shall immediately handover the briefs and other related papers to the Pr. CIT/Pr. DIT/CIT/DIT concerned or the other SPPs nominated by the CCIT for the purpose and the pending bills of the SPP should be settled within three months of the end of the term.

2.6 Duties of the Special Public Prosecutors

Duties of the special Public Prosecutors shall include:

- (i) To represent the Department personally and effectively in conduct of trial for prosecution matters in the Trial courts/ Courts of Session.
- (ii) To give opinion when it is sought about the feasibility of filing a prosecution case or any other prosecution matter.
- (iii) To draft complaints and assist in compliance of the technical requirements.
- (iv) To intimate criminal complaint number to the officer concerned/complainant.
- (v) To intimate the Assessing Officer/officer concerned about the outcome of each hearing and the date of next hearing, immediately after the hearing.

- (vi) To assist the witnesses of the Department before their evidences and guide them in facing cross examination. The SPP should prepare each witness and its statement in such a manner that there is consistency in the stand of the Department.
- (vii) To apply for the certified copy within 3 days of the judgment and deliver it to the Pr. CIT/Pr. DIT/CIT/DIT concerned within 10 days (excluding the time taken by the Courts).
- (viii) When a case represented by him/her is decided against the Department, to apply for certified copy of the judgment within three working days of pronouncement and give his opinion regarding the advisability of filing an appeal against such a decision within seven days of taking delivery. In other cases also the same time limits shall be applicable, though opinion will not be required;
- (ix) To draft revision petition, if required or to draft reply to the revision petition, if preferred by the accused.
- (x) To represent the Department in revision matters before the Court of Session.
- (xi) To furnish a statement of the cases handled to the Pr. CIT/Pr. DIT/CIT/DIT concerned, by 30th April of every year, indicating the performance in preceeding financial year in ‘P2’.
- (xii) To perform such other duties of legal nature as may be assigned to him/her by the Department.

2.7 Assistance to Special Public Prosecutors by the Department

- (i) The Investigation or Assessing Officer having jurisdiction over the case or the Directorate of Criminal Investigation (DCI), shall provide all assistance to the SPPs such as providing original records; producing the Departmental Officers as witness, etc.
- (ii) The SPP shall be kept informed of the decisions of Appellate Authorities having bearing on prosecution cases.

3. Schedule of Fees, Allowances and Terms of Payment

3.1 The SPPs will be engaged in accordance with the revised schedule of fees and related terms & conditions applicable to them as given below:

S.No.	Activity	Fees Payable
1.	Effective Hearing ¹	Rs. 2,000/- per day per case (there shall be no ceiling per day, irrespective of the number of cases heard on a day)
2.	Non-effective Hearing	Rs. 500/- per day per case (subject to the payment for maximum 5 non-effective hearings in a case/connected cases).
3.	Drafting Complaints ²	Rs. 2,000/- per complaint
4.	Drafting Revisions, Replies, Written Arguments, Affidavits, etc. ³	Rs. 1,000/- per case
5.	Conference fees (With Assessing Officer or above)	Rs. 750/- per conference limited to payment for a maximum of 5 conferences in a case/connected cases.
6.	Clerkage	10% of fee at Sl. No. 1 to 4 above.
7.	Opinion fees (written opinion in cases/matters, other than those where adverse orders have been passed by the Court in the cases represented by the SPP)	Rs. 2,000/- per case/connected cases

- I. A substantial and effective hearing is one in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgment is delivered by the Court, it would not constitute an effective hearing.
- II. If substantially identical complaints, affidavits etc. are drafted in connected cases (as defined in para 3.2), drafting fees of Rs. 2,000/- will be paid for the main case only. For other cases drafting fees of Rs. 750/- per case will be paid.
- III. If substantially identical Revisions, Replies, Written Arguments etc. are drafted in connected cases, drafting fees of Rs. 1,000/- will be paid for the main case only. For other cases drafting fees of Rs. 500/- per case will be paid.

3.2 Appearance fee in connected cases

When more than one complaint involves substantially identical issues, where the arguments are heard in the main case and the other cases are decided accordingly, such complaint in which the arguments are heard shall be treated as the main case and the others as connected cases irrespective of the fact whether all the cases are heard together or not. The SPP shall be paid appearance fee as per para 3.1 above in the main case and only Rs. 750/- in each of the connected cases for every effective hearing.

3.3 Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses including for obtaining certified copies of judgment/order shall be reimbursed to the SPP on receipt of the claim.

3.4 For matters outside Headquarters

(The headquarters of the SPP shall be the station where the Trial Court for which the SPP is engaged is stationed)

3.4.1 When the SPP is required to go out of headquarters in connection with any litigation or for conference outside the headquarters, he will be entitled to a daily fee of Rs. 3,000/- per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back to the headquarters. However, no fee will be paid for the day of departure if he leaves headquarters after court hours and for the date of arrival if he arrives at the headquarters before the court hours. The daily fee will be in addition to the normal appearance fee as prescribed in para 3.1 above.

3.4.2 Travel/Hotel Expenses: In addition to the daily fee, the SPP will be entitled for travel expenses by train in First Class/AC 2 Tier. Road mileage for the journey actually performed by Bus/Taxi/Own Car will be paid as per Mileage Allowance in the T.A. Rules applicable to Central Government Servants at the rate admissible to officers drawing grade pay of Rs. 6,600/-. He will also be paid a lumpsum amount of Rs. 750/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for staying in hotel, subject to maximum of Rs.3,000/- per day.

3.5 Late submission of certified copies of judgment

If the certified copy of the judgment is not delivered to the office concerned within 10 days (excluding the time taken by the Courts) from the date of judgment, 20% of the hearing fees payable to the SPP shall be deducted.

3.6 Procedure for submission and payment of bills to Special Public Prosecutors

The SPPs should submit professional bills in **proforma 'P4'** of this Instruction by 10th of every month. The bills should enclose copy of documents drafted, in case of claim for drafting fee, and minutes/gist of proceedings or a copy of order/judgment where it is necessary in case of claim for appearance fee. The bills shall be scrutinized within

30 days of receipt and deficiencies or excess claim, if any, shall be communicated to the SPP within a week of such scrutiny. The scrutiny of bills should not be kept pending due to non-availability of funds.

After passage, the bill should be arranged in seriatim of receipt, for payment. The cheque should be sent to the SPP concerned giving particulars of bills covered by the payment.

4. Right to Private Practice

- (i) The SPP will have the right to private practice, but he shall not appear in the prosecution matters against the Department in any court or be associated with any assessee in respect of any offence under the Direct Tax Laws in any manner.
 - (ii) If the SPP happens to be a partner of any firm of lawyers or solicitors, it will be incumbent on the firm not to take up any prosecution case against the Department in any court.
- 5.** The CCIT referred to in this Instruction means the Pr. Chief Commissioner of Income-tax/Chief Commissioner of Income-tax in charge of Prosecution matters in the CCA Region.
 - 6.** The Prosecution Counsels currently engaged by the Department on the basis of Instruction No. 1925 will henceforth be called as Special Public Prosecutors.
 - 7.** These guidelines and the revised schedule of fee and allowances shall come into effect from 7-9-2016.
 - 8.** The SPPs will be paid fee at the old rates in respect of their appearance and other work done by them on or before 6-9-2016 and at the revised rates in respect of the work done by them on or after 7-9-2016.
 - 9.** This issues with the concurrence of Ministry of Law and Justice vide their I.D. No. J11019/2/2016-Judn.Part(1) dated 24-6-2016 and the Department of Expenditure I.D. No.9 (4)/2012-E.II(B)-Pt.dated 29-8-2016.

Sd/-
(D.S. Rathi)
 DCIT(OSD)(ITJ), CBDT

PROFORMA 'P1'

Particulars to be furnished by an Advocate applying for engagement as Special Public Prosecutors

1. Name of the person
2. Permanent Account No.
3. Father's Name
4. Date of Birth
5. Address : (i) Residence :
(ii) Office:
6. Telephone, Mobile Number and E-mail ID
7. *Educational Qualification
8. *Date of Enrolment as an Advocate in the State Bar Council and Registration No.
9. If a partner in a firm, name(s) of the firm(s) and other partners
10. Number of criminal cases dealt with during last five years as an Advocate
11. Brief particulars of experience in handling prosecution cases under Direct Taxes
12. Income from professional practice (copy of the latest IT Return to be attached)

Verification

I _____, S/o/D/o/W/o _____do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief.

Signature

DATE:

PLACE:

***Applicant to submit documentary proof with respect to aforesaid items /information**

Undertaking

I, S/o/D/o/W/o do hereby declare that if engaged by the Department, I shall fully abide by the terms and conditions of the engagement.

Signature

DATE:

PLACE:

PROFORMA 'P2'

ANNUAL PERFORMANCE APPRAISAL OF SPECIAL PUBLIC PROSECUTOR FOR THE FINANCIAL YEAR_____		
PART-I		
Name of the Pr. CCIT /CIT Region /Pr. CIT/CIT Charge		
Name of the Special Public Prosecutor		
Date of Birth		
Date of Engagement		
PART-II		
PERFORMANCE REPORT		
Complaints handled during the period under review		
1	No. of cases handled by the SPP	
	(list of cases to be enclosed)	
2	Cases decided in favour of the Department	
3	Cases decided against the Department	
4	Complaints Quashed by Hon'ble High Court	
5	Offences Compounded by the Department	
6	Cases closed by the Court	
7	Cases adjourned Sin-a-die	
PART-III		
Comments of the Pr.CIT/Pr.DIT/CIT/DIT on the performance of the SPP		
Pr. Commissioner of Income-tax/Commissioner of Income-tax		
Review of the performance by the Pr. CCIT/CCIT		
Whether the performance is found satisfactory		Y E S / NO
Pr. Chief Commissioner of Income-tax/Chief Commissioner of Income-tax		

NOTE:

Part-I and Part-II of the proforma are to be filled by the SPP. Part-II should be verified by the respective Pr.CsIT/Pr.DsIT/CsIT/DsIT before offering their comments on the performance.

PROFORMA 'P3'

PERFORMANCE APPRAISAL OF SPECIAL PUBLIC PROSECUTOR FOR THE PERIOD _____ (To be sent at the time of renewal of term of engagement)	
PROFORMA	
PART-I	
1. Pr. CCIT/CCIT Region	
2. Name of the Special Public Prosecutor	
3. Date of Birth	
4. Date of First Engagement	
5. Date of expiry of existing Tenure (Board's reference No. by which last Renewal was sanctioned should be specified)	
PART-II	
PERFORMANCE REPORT	
1.	No. of cases handled by the SPP
2.	Cases decided in favour of the Department
3.	Cases decided against the Department
4.	Complaints Quashed by Hon'ble High Court
5.	Offences Compounded by the Department
6.	Cases closed by the Court
7.	Cases adjourned Sin-a-die
PART-III	
1.	Does the SPP take interest in his work and generally alert in the Department's interest in various litigation entrusted to him
2.	Specific comments should be given about the promptness in:
2.1.	Informing the Department from time to time regarding hearing of Cases, supply of copies of Judgment etc.
2.2.	Taking steps for Vacation/Variation of stay
3.	Whether the Pr.CCIT/CCIT satisfied with the performance of the SPP? If no, the instances may be indicated.
4.	Whether continuance is recommended? If so, for what period?

Pr.CHIEF COMMISSIONER OF INCOME-TAX/CHIEF COMMISSIONER OF INCOME-TAX

PROFORMA 'P4'

Bill for claim of professional fees by Special Public Prosecutors (case wise) to be submitted to the Pr. CIT/CIT concerned/CIT (J)

PRE-RECEIPTED

1.	Name of the SPP	
2.	Pr.CIT/CIT Charge	
3.	Circle/Ward	
4.	Name of the accused	
5.	Asst. Yr.	
6.	Section(s) of the Act involved	
7.	Case Title	
8.	Dates and amount of bills earlier claimed in this case	

PART A (Bill for Drafting), as applicable

(Amount in Rs.)

1.	Complaints	
2.	Revisions, replies, written arguments etc.	
3.	Written opinion	
	Total	

PART B (Bill for appearance etc.), as applicable

(Amount in (Rs.))

1.	Substantial and effective hearing (Whether Connected case- Yes /No)	
2.	Non-effective hearing	
3.	Conference fees	
4.	Clerkage@ 10%	
5.	Out of pocket expenses (particulars to be given)	
6.	For performing duties outside headquarters (as per para 3.4)	
	Total	

Certified that the above information is correct and in accordance with the terms of engagement. The above claims have not been made earlier.

Revenue Stamp

Received Payment

Signature and Name

Of Special Public Prosecutor

Mobile/Tel. No.

For office use only**Total Bill**

Part A	
Part B	
Total Amount claimed	
Deductions, if any*	
Amount passed for payment	

* The SPP shall be intimated of the deductions made before payment of the bill.

Signature and Name of the D.D.O.

.....

12. STANDARD OPERATING PROCEDURE FOR PROSECUTION IN CASES OF TDS/TCS DEFAULTS DATED 02.02.2015

STANDARD OPERATING PROCEDURE FOR PROSECUTION IN CASES OF TDS/TCS DEFAULT**Introduction:**

1.1 As per the Income-tax Act, all cases where TDS/TCS is deducted but not deposited within the due date, as prescribed, are punishable u/s 276B/276BB or 278A. The selection of cases & their processing is further governed by Instruction F.No.285/90/2008-IT(Inv-I)/05 dated 24.04.2008 which has been modified by the CBDT [vide F. No.285/90/2013-IT(Inv.)] dated 07.02.2013. Presently, the monetary limit specified for cases to be considered for prosecution is as under:

(i) Cases, where amount of tax deducted is ₹ 1,00,000 or more and the same is not deposited by the due date prescribed under the Income-tax Act, 1961 read with the Income-tax Rules, 1962 shall mandatorily be processed for prosecution in addition to the recovery.

(ii) Cases, where the tax deducted is between ₹ 25,000 and ₹ 1,00,000 and the same is not deposited by the due date prescribed under the Income-tax Act, 1961 read with the Income-tax Rules, 1962 may be processed for prosecution depending upon the facts and circumstances of the case, like where there are instances of repeated defaults and/or tax has not been deposited till detection.

1.2 Thus, the present Instructions envisage two categories of cases for prosecution in TDS related offences; the first category is cases which are mandatorily to be processed (TDS of more than ₹ 1,00,000 deducted but not deposited before due date) and the second category is defaults between ₹ 25,000/- to 1,00,000/- which may be processed depending upon facts and circumstances of the cases.

Identification of cases:

2.1. CPC-TDS/TRACES will generate a list of prosecutable cases for mandatory processing for prosecution (List-A) in accordance with the criteria laid down by the CBDT vide its instruction dated 07.02.2013 or any other modified criteria, if the same is done in view of suggestions made in this regard. Such identification shall be done within one month of the filing of the quarterly TDS statement. CPC – TDS following the Instruction dated 07.02.2013, adopted following two parameters for identifying prosecutable case for mandatory processing:-

- (i) where Late Payment Interest had not been paid completely/not paid at all till that date;
- (ii) where deduction had been made but no challan was available in the account of the deductor i.e. the amount was not at all paid to the Government account. (Vide F.No. CPC(TDS)/Prose_cases/2014-15 dated 15.09.2014, limit of ₹ 1,00,000/- for the cases of Late Payment Interest and for Short Payment all the cases have been approved.)

2.2 CPC-TDS will generate another list of cases (List-B) involving defaults of delay in payment of ₹ 25,000 to ₹ 1,00,000/- along with default sheets for the year as well as preceding year and subsequent year (if details are available), within one month of the filing of the quarterly TDS statement, to help AO (TDS) to identify cases fit for prosecution based on facts and circumstances of the case. The AO (TDS) can identify the cases from second list and also from the information gathered from external sources to complete identification of second category of cases and enter them in prosecution register maintained manually or on utility to be provided by CPC-TDS.

2.3 It may be noted that the TDS cases, otherwise dealt by the International Taxation Division, with respect to payments made to

non-residents also required to be dealt with in the same manner as other cases under Chapter-XVII of the Income-tax Act, 1961.

2.4 In cases of default in furnishing the quarterly TDS statement, CPC-TDS shall generate the list of such non-filers within one month from due date and communicate to the AO(TDS) for issue of notice and further pursuit.

Procedure for launching prosecution

3.1 After identification of potential cases for prosecution by the CPC-TDS in case of mandatory processing or otherwise, it should be entered in the 'Prosecution register' maintained in Form-C (page 74 of the Prosecution Manual) and to be reported to the CIT(TDS) who shall also maintain the prosecution register in Form-D (page 75 of the Prosecution Manual). Till a specific module in CPC-TDS is made functional for having control on prosecution proceedings, the entries may be made in manual register.

3.2 Following information/documents regarding the deductor may be collected by the AO(TDS) once the case is identified for processing:

(a) Details of the company/ firm/ individual

Name of the company/ firm/individual	Present address	PAN Number	TAN Number
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(b) Details of its directors/ partners/ proprietor etc.

Name of Directors/ Partners/ Proprietor as applicable for the relevant year	Date of birth	PAN & residential address
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(c) Accounts of the deductor for the relevant year showing late payments.

(d) Copies of the TDS statement filed by assessee deductor.

(e) Copies of challans of late deposit of TDS by the assessee deductor.

(f) Copies of the intimations showing late payment interest for all the quarters of the relevant assessment year, if it is available.

(g) Copies of Audit report, if they show default.

(h) While collecting above information, AO(TDS) may also collect other details that may help the CIT(TDS) take a considered decision as also assist subsequent compounding proceedings (if any) viz. (a) whether the default was only in one year and no defaults took place later, (b) whether the deductor has himself rectified the mistake and deposited the tax along with interest prior to issue of notice by the department, (c) whether the same offence has been compounded earlier and if yes, how many time etc.

3.3 The AO(TDS) after collecting the above information/documents shall issue show cause notices to the person responsible for deduction (directors/principal officers/partners/members/karta), within 45 days of receipt of the list of prosecutable cases from CPC-TDS in accordance with Sections 278B/278C r.w.s. u/s 276B/276BB of the Income-tax Act, 1961.

3.4 It may be ensured that the reply is furnished within 30 days of the issue of the show cause notice. In case no reply is furnished within 30 days, it shall be presumed that the person responsible for deduction has no cause to state and the matter may be pursued further.

3.5 The AO (TDS) shall examine the reasons/reply for non-compliance and will prepare the proposal in Form 'F' (as prescribed in Prosecution Manual) and send it to the CIT(TDS) through proper channel. Separate proposal should be submitted for separate assessment years. The Form 'F' will indicate inter alia, the following:

- (a) The facts indicating the commission of offence.
- (b) Chronology of events, primary & secondary evidences to establish the offence.
- (c) Present stage of the proceedings relating to the commission of offence.
- (d) List of documentary evidences including depositions, submissions to prove the offence.
- (e) List of witnesses on which the departmental case depends.
- (f) Any other facts or evidence to establish the offence.
- (g) It has to be clearly mentioned in the proposal whether the offence is second or subsequent offence in terms of Section 278A.

An entry can be made by the AO (TDS) in the Form 'C' (manual register or the specific module for prosecution as and when developed on TRACES) as soon as the proposal is moved.

3.6 While the AO (TDS) will mandatorily refer all the cases of TDS default exceeding ₹ 1 lakh to CIT(TDS), cases of defaults between ₹ 25000-Rs.1lakh shall be referred to the CIT(TDS) only if he is satisfied that it is a case fit for prosecution. The report to CIT(TDS) shall be submitted within 60 days of the issue of show cause notice. Time granted to furnish the reply may be excluded from this time limit.

3.7 The CIT(TDS) is the competent authority to accord sanction u/s 279(1). He shall:

- a. If he is of the opinion that the case is prima facie fit for prosecution, then, issue show cause notice(s) to all proposed accused(s) u/s

276B/276BB r.w.s. 278B of the I.T. Act as to why sanction for launching of prosecution should not be accorded. The show cause notice can be generated from the online module on TRACES, as and when the facility is made available.

b. He shall after hearing the assessee and after proper application of mind clearly enunciate that while processing the cases for prosecution u/s 276B/276BB r.w.s. 278B, a fair and judicious view has been taken in view of the provisions of Section 278AA before filing the complaint(s). This should get reflected in both the sanction orders passed by the Commissioners/Directors under Section 279(1) and the complaints filed with the competent Courts:

- i.** There is no statutory requirement for obtaining opinion of the Counsel before granting sanction for prosecution. However, given the fact that TDS offences are technical in nature, such reference could be made in complex situations like identification of accused(s) etc to avoid legal infirmities in prosecution proposals/complaints. In such cases, it should be ensured that the opinion should be obtained from the Counsel within 30 days. If after examining the opinion of the Standing Counsel, he is satisfied that it is a fit case for prosecution, he shall pass a speaking order u/s 279(1) separately for each assessment year.
- ii.** In case he is not satisfied after receiving reply, he shall drop the proceedings.

An entry shall be made by the CIT(TDS) in the prosecution register or in the utility as and when available in TRACES on passing of such orders as mentioned in para (b) above or as soon as the decision to drop proceedings is made. The CIT(TDS) shall complete the process and pass an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.

3.8 The assessee deductor can at any stage of the proceedings, file a compounding application before the Pr. Chief Commissioner of Income-tax/Chief Commissioner of Income-tax. Instruction vide F. No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 should be followed in dealing with the compounding applications. If a person who has committed an offence(s) under S.276B/276BB files an application for compounding of the said offence(s), the application should be processed on priority basis and mandatorily be disposed off within the time frame as prescribed by the Central Action Plan guidelines. During the pendency of the compounding application, the CIT(TDS) shall keep the prosecution proposal pending. However, if the application is not decided within the prescribed time, the CIT(TDS) shall proceed to file the complaint. As soon as an application for compounding is moved,

an entry should be made in the prosecution register maintained manually or in the utility as and when available in TRACES. Entries of subsequent action on compounding application shall also be made in such register.

3.9 The CIT(TDS) after according sanction u/s 279(1) shall send back the records to the authority seeking sanction with sanction order in duplicate, one for filing in the Court with complaint and other for the record.

3.10 The AO(TDS) shall, after entering receipt of the sanction order in the prosecution register maintained by him, ensure that the complaint is launched in the competent Court having jurisdiction over the place where the offence is committed.

3.11 The CIT(TDS) & the AO(TDS) shall both make an entry in the respective registers maintained manually or in the utility as and when available in TRACES.

3.12 Similarly, if any such prosecutable offence comes to light during the proceedings before the appellate authorities, revision authorities or any other proceedings, same shall also be treated at par with other prosecutable cases as enumerated under Chapter-XVII of the Income-tax Act, 1961 and action shall be initiated in accordance with procedure as laid vide this SOP.

TIME FRAME:

4. The time period for the entire process from identification to passing of order u/s 279(1)/279(2) should be as under:

S. No.	Section	Time limit for submitting proposal for sanction u/s 279(1)	Time limit for according sanction u/s 279(1)	Time limit for launching Prosecution	Authority to submit proposal & launch prosecution
1	276B	Within 90 days of generation of list on CPC-TDS detection of offence or receipt of information from any other source/ Income-tax authority	Within 60 days of receipt of information from the AO(TDS)	Within 30 days of receiving approval u/s 279(1)	AO(TDS) having jurisdiction.
2	276BB	-do-	-do-	-do-	-do-

STANDARD OPERATING PROCEDURE DEFINING THE ROLES OF DIFFERENT TDS AUTHORITIES IN ADDRESSING THE ISSUE OF PROSECUTION AND COMPOUNDING OF TDS CASES

I. Role of Principal CCIT/CCIT(TDS)

- (i) Taking quarterly review meeting with CIT(TDS) monitoring progress in all cases identified for prosecution.
- (ii) Apprising the Zonal Member of the progress/ outcome made during the month through monthly DO. Copy of such progress shall also be sent to Pr. DGIT(Admn.), New Delhi for information and monitoring.
- (iii) Disposing all compounding petitions received expeditiously and within the time period prescribed in the Central Action Plan. While disposing off compounding petitions, speaking orders are expected to contain those facts based on which a fair and judicious view has been taken in accordance with relevant provisions of the Income-tax Act, 1961.

II. Role of CIT(TDS)

- (i) Ensuring that the Guidelines issued vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 are adhered to.
- (ii) Monitoring the action in the cases of mandatory processing for prosecution generated by the CPC-TDS on a monthly basis.
- (iii) Guiding AO(TDS) to shortlist the cases for processing of prosecution on the basis of list-B and identified on the basis information received from external sources such as spot verification/survey and monitoring action thereon.
- (iv) Maintaining a register in Form-D or in online utility as and when made available in TRACES wherein record of all cases identified for prosecution should be kept.
- (v) Processing all the proposal received by him and if he is of the opinion that the case is prima facie fit for prosecution, issue show cause notices to the accused(s) u/s 276B/276BB r.w.s. 278B or 278C as to why sanction for launching of prosecution should not be accorded.
- (vi) Seeking opinion of the Prosecution or Standing Counsel, as the case may be, about suitability of the case for launching of prosecution and as well as strength of the case against accused(s). Ensuring that the opinion is obtained from the Counsel within 30 days.
- (vii) Examining the opinion of the Standing Counsel and on satisfaction that it is a fit case for prosecution, passing speaking

orders u/s 279(1) in the case of accused(s) for each assessment year separately. In case he is not satisfied, he shall drop the proceedings.

(viii) Completing the process and passing an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.

(ix) Making an entry for the following events in the manual register or in the utility created in TRACES:

- a. On receipt of proposal from the AO(TDS).
- b. On issue of show cause notice to the accused/ co-accused.
- c. On passing of sanction order u/s 279(1) or on dropping of the proceedings as the case may be.
- d. On receipt of compounding application / report on the compounding application.
- e. On filing of complaint / launching of prosecution before the competent court.
- f. On receipt of order of competent Court
- g. On appeal, if any appeal is filed.

III. Role of Addl.CIT(TDS)

(i) Discussing cases of list-B generated by CPC-TDS and list prepared on the basis of information received from external sources such as spot verification/survey with AO(TDS) and also guiding them in short listing the cases fit for prosecution.

(ii) Monitoring timely action in all the cases involving mandatory processing for prosecution or cases identified otherwise and to report the progress to the CIT (TDS) in the monthly DO.

IV. Role of AO(TDS)

(i) Downloading list of cases identified by CPC-TDS for mandatory proceeding of cases (list-A).

(ii) Downloading list-B of cases for identification of cases based on facts and circumstances of the cases and also to examine cases on the basis of information gathered from external sources such as spot verification / surveys and shortlist cases fit for prosecution amongst these cases after discussion with Range Head and CIT(TDS).

(iii) Initiating action and collecting information in accordance with the procedures laid down above.

- (iv) Issuing show cause notice to all the accused(s) identified by him giving due opportunity to the accused within 45 days of receipt of the list of prosecutable cases from CPC-TDS.
- (v) Sending the proposal prepared in Form 'F' alongwith other information / documents to the CIT(TDS) through proper channel.
- (vi) Making an entry for the following events in the manual register or as and when in the utility made available in TRACES:
 - a. Initiation of proceedings for prosecution.
 - b. Sending the proposal to the CIT(TDS) for necessary action.
 - c. Date of receipt of sanction u/s 279(1) of CIT(TDS).
 - d. Filing of complaint / launching of prosecution in the competent court on receiving order u/s 279(1).
 - e. In case report on the compounding application is to be sent on filing of compounding application by the deductor, date of the report as well as when order on such application is received from the competent authority.
 - f. On receiving orders of the competent Court in the case, date of filing of appeal, if any filed.

V. Role of CIT(CPC-TDS), Ghaziabad

- (i) Generating list-A of defaulters along with their statement of defaults for mandatory processing of cases for prosecution involving delayed payment of ₹ 1 lakhs or more as prescribed in the present Instruction and make it available to AO(TDS) as well as the CIT(TDS) within one month of the filing of the quarterly TDS statement.
- (ii) Generating list-B of cases involving defaults of delay in payment of ₹ 25,000/- to 1,00,000/- alongwith default sheets for the year as well as proceeding year and subsequent year (if dates are available), to help CIT(TDS) AO(TDS) to identify cases fit for prosecution based on facts & circumstances of the cases within one month of the filing of the quarterly TDS statement.
- (iii) Generating a list of non-filers of TDS statement within one month of the due date and communicating to the AO(TDS) with a copy to the CIT(TDS).
- (iv) Developing and maintaining a specific module/utility in TRACES for identification and control over prosecution proceedings where all the details of each case of prosecution can be maintained online.

13. F.NO.285/90/2013-IT (INV.V)/112 DATED 27.12.2014**Addressing genuine concerns of assesseees while processing cases for TDS/TCS related prosecution under Direct Tax Laws**

I am directed to refer to the guidelines/procedure for identification and processing of prosecution cases u/s 276B and 276BB of the Act issued vide F.No.285/90/2013-IT (Inv.)/05 dated 07.02.2013. It inter-alia provides that cases having TDS/TCS of Rs. 1 lakh or more not deposited by the due date shall be processed for prosecution mandatorily.

2. In view of the above guidelines, list of cases of TDS/TCS defaults where the tax deducted exceeded Rs. 5 lakhs and was not paid to the credit of the Central Government beyond one year for three F.Y.s 2009-10, 2010-11, and 2011-12 were collated with the help of Directorate of Systems and disseminated to the field formations during the F.Y 2013-14. During the current F.Y i.e. 2014-15, the Directorate of Systems has also separately identified such instances for F.Ys 2008-09 to 2011-12 where though the taxes deducted were not paid to the credit of the Central Government at all, in addition to the defaults under the category of Tax deducted but deposited beyond the due date prescribed in the Act.

3. A number of representations have been received from various trade bodies, chambers, associations etc. that prosecution proceedings under section 276B/276BB are being initiated indiscriminately without appreciating the reasons for default.

4. Considering the representations and with a view to address genuine concerns of the assesseees in such matters, the following clarifications vis-a-vis the guidelines dated 07.02.2013 are issued:

*(i) Section 278AA of the Act provides that for the purposes of section 276B, no person shall be punishable for any failure referred to in the said provision if he proves that there was a reasonable cause for such failure. The fact that the deductor has remitted the money with interest before detection may be taken note of amongst other submission of the defaulter while deciding to launch prosecution. While processing the cases for prosecution u/s **276B/276BB, a fair and judicious view should be taken in view of the provisions of section 278 AA before filing of complaints.***

*(ii) If a person who has committed an offence(s) under section 276B/276BB files application for compounding of the said offence(s), **the compounding application should be processed on a priority basis and mandatorily disposed off within the time frame prescribed by the CAP guidelines.***

5. The PCCsIT/CCsIT and DGsIT are requested to ensure wide dissemination of these clarifications w.r.t. guidelines among all officers of their region. They are also requested to ensure a close monitoring of these processes to ensure that both prosecutions and compounding are effectuated in a timely and judicious manner.

Sd/-
(Rajat Mittal)
Under Secretary (Inv. V)
CBDT

14. F.NO.285/15/2014-IT(INV.V)/60 DATED 29.08.2014

Clarification regarding applicability of modified guidelines on prosecution dated 07.02.2013

Ref.: Director (Inv.)-V and OSD(Legal), CBDT, New Delhi's letter in F.No. 285/90/2013-IT(Inv.), dated 07.02.2013

Section 276B & 276BB of the I.T. Act 1961 contains the provisions regarding offences and prosecution related to TDS & TCS default respectively. Instruction F.No.285/90/2008-IT (Inv.)/05 dated 24.04.2008 contains the guidelines/procedure for identification and processing of potential prosecution cases for various categories of offences. Paragraph 3.1(i) and (ii) of the said instruction pertains to the offences under section 276B and 276BB of the Income-tax Act, 1961 (the Act) respectively relating to failure to pay tax deducted at source (TDS) or tax collected at source (TCS), as the case may be, to the credit of Central Government. As per the guidelines, cases, where the amount of tax deducted exceeded Rs. 25,000/- and the same was not deposited within 12 months from the date of deduction, were to be processed for prosecution.

2. These guidelines were revised vide letter F.No.285/90/2013-IT(Inv.) dated 07.02.2013. As per the amended guidelines, cases, where amount of tax deducted is Rs. 1,00,000/- or more and the same is not deposited by the "due date", are to be mandatorily processed for prosecution, while those involving belated remittances of Rs. 25,000/- to Rs. 1,00,000/- have to be processed for prosecution depending upon the facts and circumstances of the case.

3. Doubts have been received from the filed formation as to whether the revised guidelines of 07.02.2013 would also cover such offences which were not covered by the previous guidelines, for the purposes of compounding.

4. In this regard, it is seen that offences related to TDS/TCS are defined under section 276B & 276BB of the Act. Prosecution proceedings are instituted when the offences is committed as defined in the said sections. The guidelines referred supra were issued only for the purpose of prioritisation of action in identification and processing of potential prosecution cases. However, the same do not, in any manner, impact the fact of offence under the provisions of sections 276B & 276BB.

5. In view of the above, it is clarified that the revised guidelines dated 07.02.2013 are applicable in respect of all pending cases covered by provisions of section 276B and 276BB, irrespective of their stage such as identification, filing of complaint, compounding etc.

6. All the CCsIT&DGsIT are requested to bring the clarification to the notice of all concerned in their region.

Sd/-
(Rajat Mittal)
Under Secretary (Inv. V)
CBDT

15. F.NO.285/90/2013- IT (INV. V) DATED 07.02.2013

Streamlining of procedure for identification and processing of cases for prosecution under Direct Tax Laws

Instruction F.No. 285/90/2008-1T (Inv.)/05 dated 24.04.2008 contains the guidelines/ procedure for identification and processing of potential prosecution cases for various categories of offences. Paragraph 3.1 (i) and (ii) of the said Instruction pertains to the offences under sections 276B and 276BB of the Income-tax Act, 1961 (the Act) respectively relating to failure to pay tax deducted at source (TDS) or tax collected at source (TCS), as the case may be, to the credit of Central Government.

2. Instances have come to notice wherein certain deductors / collectors are retaining with them large amounts of TDS / TCS and are depositing the same just before the expiry of 12 months from the date of deduction, thereby avoiding launching of prosecution against them.

3. Considering that the relevant provisions of the Act do not lay down any specific time limit for the said default in deposit of the TDS / TCS for launching of prosecution and with a view to enable the field

formations to take appropriate action in such cases, the Central Board of Direct Taxes (the Board) has decided to modify the paragraph 3.1(i) and (ii) of the said guidelines. The modified guidelines are as under:

“(i) Offences u/s 276B: Failure to pay tax deducted at source to the credit of Central Government.

(a) Cases, where amount of tax deducted is Rs. 1,00,000 or more and the same is not deposited by the due date prescribed under the Income-tax Act, 1961 read with the Income-tax Rules, 1962 shall mandatorily be processed for prosecution in addition to the recovery steps as may be necessary in such cases.

(b) Cases, where the tax deducted is between Rs. 25,000 and Rs. 1,00,000 and the same is not deposited by the due date prescribed under the Income-tax Act, 1961 read with the Income-tax Rules, 1962 may be processed for prosecution depending upon the facts and circumstances of the case.

The authority for processing the case for prosecution under this section shall be the officer having jurisdiction over TDS cases. The prosecution shall preferably be launched within 60 days of such detection. If any such default is detected during search and survey, the processing ADIT/DDIT or the authorized officer shall inform the AO having jurisdiction over TDS forthwith.

(ii) Offences u/s 276BB: Failure to pay tax collected at source to the credit of Central Government

The guidelines for launching prosecution under this section would be the same as for offences u/s 276B of the Act.”

4. The CCsIT and DGsIT are requested to circulate the amended guidelines among all officers of their region.

Sd/-
(Amaresh Singh)
Director (Inv.)-V & OSD (legal)
CBDT, New Delhi

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16. F.NO.285/90/2008- IT (INV.) DATED 28.01.2011**Immediate launching of prosecution in certain categories of cases**

Ref: CBDT's letter of even number dated 24th April, 2008 specifying various categories of offences alongwith their monetary limits for launching under the Direct Tax Laws.

As you are aware, there is no bar either under Law or under CBDT's Instructions which prevents initiation of prosecution proceedings before disposal of appeals against assessment orders or imposition of penalty under the Direct Tax Laws.

2. In view of the above, I am directed to inform that in the following categories of cases prosecution proceedings may be initiated immediately after completion of assessment / reassessment without waiting for the disposal of appeals, if any, filed by the assessee and / or imposition of penalty:

- a. Cases having suspected linkage to any anti-national / terrorist activity or corruption;
- b. Cases in which additions have been made on account of detection of undisclosed assets outside India including undisclosed foreign bank accounts;
- c. Cases involving major frauds or scams or misappropriation of government funds or public property;
- d. Any other case which the Commissioner of Income-tax considers fit for launching of prosecution without waiting for disposal of appeals, if any, filed by the assessee.

3. It is requested that the above procedure should be circulated amongst all the officers in your region for compliance.

Sd/-
(D.K. Gupta)
Director, Inv. I
CBDT

17. F.NO.285/90/2008-IT(INV.-I)/05 DATED 24.04.2008**Streamlining of procedure for identification and processing of case for Prosecution under Direct Tax Laws**

It is noticed that prosecution is being launched in very few cases and that too only in cases of technical offences. In spite of Action plan targets, many regions have not filed even a single prosecution case in a year.

2. In order to ensure that prosecution provisions are effectively implemented so as to create adequate deterrence against tax evasion, I am directed to inform the following revised procedure for identification and processing of cases for launching prosecution. This procedure will regulate the launching of prosecution for offences under Direct Tax laws with effect from 01.05.2008 and this procedure will not apply to a case where the prosecution has already been launched.

3. Identification and processing of potential prosecution cases:

3.1 The following categories of offences shall be processed for launching prosecution:

(i) Offences u/s 276B: Failure to pay taxes deducted at source to the credit of Central Government

Cases, where amount of tax deducted is Rs. 25,000 or more, and the same is not deposited even within 12 months from the date of deduction, shall be processed for prosecution in addition to the recovery steps as may be necessary in such cases.

The authority for processing the prosecution under this section shall be the officer having jurisdiction over TDS cases. The prosecution shall preferably be launched within 60 days of such detection. If any such default is detected during search / survey, the processing ADIT/DDIT or the authorized officer shall inform the A.O having jurisdiction over TDS forthwith.

(ii) Offences u/s 276BB: Failure to pay taxes collected at source to the credit of central government

The guidelines for launching prosecution under this section would be the same as for offences u/s 276B of the Act.

(iii) Offences u/s 276C(1): Wilful attempt to evade taxes

All cases where penalty u/s 271(1)(c) exceeding Rs. 50,000/- is imposed and confirmed by the ITAT (if any second appeal has been filed) shall be processed for filing prosecution complaint.

The case for prosecution under this section shall be processed by the A.O preferably within 60 days of receipt of the ITAT's order, if any.

(iv) Offences u/s 276C(2): Wilful attempt to evade payment of taxes

All cases, where an assessee wilfully evades payment of outstanding tax, interest, penalty or any other sum amounting to more than Rs. 1 lakh for 180 days or more after its final determination i.e. after giving effect to appellate orders, if any, shall be processed for filing prosecution complaint.

The case for prosecution under this section shall be processed by AO/TRO preferably within 60 days of expiry of the said period.

(v) Offences u/s 276D: Failure to produce accounts and documents

The following cases shall be processed for filing prosecution complaint:

- (a) Cases, where an assessee wilfully fails to produce any books of accounts and/or documents involving transaction of Rs. five lakhs or more and penalty u/s 271(1) (b) has been confirmed upto second appeal (if any),
- (b) Cases, where an assessee wilfully fails to comply with the directions issued u/s 142(2A) of the I.T. Act, 1961 to get the accounts audited and the accounts involve turnover of Rs. 40 lakhs or more in case of business income or Rs. 10 lakhs or more in case of professional income and penalty u/s 271(1)(b) has been confirmed upto second appeal (if any).

The A.O. shall process the case for prosecution preferably within 60 days of receipt of the penalty order from ITAT (if any).

(vi) Offences u/s 277A: Falsification of books of account or documents etc

Prosecution shall be processed in the case of any person found to have indulged in falsification of books of account or documents etc, irrespective of the amount of evasion by the person concerned.

The processing ADIT/DDIT or the assessing officer shall process the case for prosecution preferably within 180 days of its detection during the course of search or survey or any other proceeding. The prosecution in the case of any person, who has provided hawala entries to any other person, shall not preclude the A.O concerned from launching prosecution against the beneficiary on receipt of information from the ADIT/DDIT/A.O processing the main case.

(vii) Offences u/s 278: Abetment of false return

Prosecution shall be launched by A.O depending on the facts and circumstances of each case. However, if the abetment is for any offence

against which prosecution has been initiated, then the officer initiating prosecution in the main case, shall preferably initiate prosecution under this section simultaneously.

3.2 Whereas the cases falling in various categories enumerated in para 3.1 above shall be processed for launching prosecution, for offences u/s 275A, 275B, 276, 276 (prior to 1.4.76), 276 (w.e.f. 1.4.89), 276A, 276AA, 276AB, 276CC, 276CCC and 277 of the I.T. Act, 1961, each case should be examined and decision may be taken on the facts of each case. Similarly, for offences committed under Wealth Tax Act and in respect of BCTT and STT decision may be taken on the facts of each case.

3.3 All cases, where search or survey action is conducted under I.T. Act, 1961 and the person covered is found not to have filed return of income u/s 139(1) or in response to notice u/s 142(1)/148 of the I.T. Act, 1961 in respect of any previous year, should be processed for launching prosecution u/s 276CC of I.T. Act, 1961 or corresponding provisions of other Direct tax laws.

3.4 A case of an Individual shall not ordinarily be processed for launching prosecution for any offence, if the individual concerned has attained the age of 70 years at the time of commission of the offence.

4. Notwithstanding anything contained in this procedure, prosecution under relevant provisions of Direct tax laws shall be launched in all cases where:

- (a) The offence involves major fraud or scam or misappropriation of government funds or public property or;
- (b) 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; or
- (c) The assessee has enabled others in large-scale concealment of income; or
- (d) Any other case, where the CIT considers it a fit case for launching prosecution, keeping in view the nature and magnitude of the offence.

5. In case the assessee has filed any petition for compounding, the same shall be disposed before filing of the prosecution complaint.

6. The CCsIT and DGsIT are requested to circulate the above revised procedure among all the officers of their region.

Sd/-

(D.K. Gupta)

Director, (Inv. 1)& OSD(Legal)
CBDT, New Delhi

18. INSTRUCTION NO. 1968 DATED 08.06.1999**Action for TDS Defaults**

1. Attention of the Board has been drawn to the issue of applicability of penalty and prosecution provisions for TDS defaults committed by various assessees. The matter has been considered and examined and this instruction issues with the approval of Central Government.

2. So far as the levy of penalty under section 271C is concerned, the penalty under section 271C is to be levied in cases where there is a failure to deduct the whole or any part of tax as required by or under the provisions of Chapter XVII-B. However, as per section 274 of Income-tax Act, the assessee must be heard or given a reasonable opportunity of being heard and also the conditions as laid down in section 273B of I.T. Act must be kept in mind in such cases.

3. As regards initiation of prosecution proceedings under section 277 of Income-tax Act for false verification of TDS return, it needs to be examined in each case as to whether revised TDS return has been filed voluntarily or otherwise. In such case, it may also be verified as to whether taxes together with penal interest under section 201(1A) have been paid or not.

4. Prosecution proceedings under section 276B of Income-tax Act may be initiated subject to section 278AA of Income-tax Act in all cases where there is a failure to pay to the credit of the Central Government the tax deducted at source as required by or under the provisions of Chapter XVII-B.

19. INSTRUCTION F. NO. 286/247/98-IT(INV. II) DATED 02.02.1999**Seized assets which have specific evidentiary value in prosecution not to be released**

Instances have come to the notice of the Board of seizure of assets, which prima facie, appear to have been disclosed in the regular books of account maintained by the persons subjected to the search cases.

1. In such cases of seizure of declared assets, the seized assets could be released subject, of course, to recovery action by the Department against existing arrears.

2. There are also instances where jewellery or perishable stocks are seized. The searched parties sometimes request for release of jewellery on grounds of need for personal use. The perishable stocks again, if not released, could deteriorate in quality leading to an erosion in their

value. In such cases, it has been decided that if an unconditional irrevocable bank guarantee to the full extent of the value of the seized assets is given, the assets could be released to that extent. The valuation is to be done by the Income-tax Department and the guarantee should be clear and unequivocal.

3. The bank guarantee should be valid till the relevant assessment proceedings are complete and taxes are collected. The Department should have the option to enforce the guarantee at any point of time.

4. It will also be ensured that in cases where the seized assets will have specific evidentiary value in prosecution, the assets will not be released till the completion of prosecution proceedings.

20. F.NO. 285/16/90-IT(INV)/43 DATED 14.05.1996

Guidelines for withdrawal of Prosecution under Direct Tax Laws-Clarification

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 20.10.1996 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.

21. INSTRUCTION NO. 5256 DATED 20.10.1995**Withdrawal of Prosecution**

1. The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No.285/161/90-IT(Inv) dated 30.09.1994 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]

22. INSTRUCTION NO. 5252 DATED 08.03.1995**Prosecution to be launched if books of account are maintained in loose sheets with the motive of subsequent manipulation and consequent tax evasion**

1. Section 44AA contains provisions relating to maintenance of books of accounts by persons engaged in the business or profession. Also, under section 44AA(3) read with rule 6F of the I.T. Rules, 1962, certain books of account have been notified.

2. It is possible that, taking advantage of the fact that nowhere either in the I.T. Act or in the rules it has been specifically mentioned that the books shall be kept in the traditional form in bound volumes certain unscrupulous taxpayers may keep their accounts in loose sheets with the sole motive of subsequent manipulation to reduce their tax liabilities. While, with the advent of computers to a large

extent in the industry and the business, accounts may be kept in loose computer-sheets on a daily basis and bound periodically, caution must be exercised on the possible tax evasion through maintenance of accounts otherwise in loose sheets.

3. The Board desires that, at the time of surveys under section 133A or searches under section 132 of the Act, this aspect should be borne in mind and if it is found that the books of account are maintained in loose sheets solely with the motive of subsequent manipulation and consequent tax evasion suitable deterrent action should be taken both levy of penalty under section 271(1)(c) read with *Explanation 5* thereto and also by launching prosecution under section 276(1) read with *Explanation* thereto for wilful attempt to evade tax.

23. CIRCULAR NO. 696 DATED 16.12.1994

Extension of date for voluntary compliance to avoid prosecution Non-initiation of penalty and prosecution proceedings in certain cases of defaulters under chapter XVII-B

It has come to the notice of the Board that some employers are not correctly evaluating the perquisites, allowances or other profits in lieu of or in addition to any salary or wages (referred to as “salaries” hereinafter) paid to their employees for the purpose of deducting tax at source under section 192 of the Income-tax Act, 1961. Such defaulters are liable to penalty proceedings under sections 221 and 271C of the Act, and also liable to prosecution under Chapter XXII of the Act.

2. However, before taking stringent measures, the Board has decided to grant an opportunity to such defaulters. Even now if they pay the proper tax on “salaries” as envisaged under section 192 along with interest liability under section 201(1A) of the Act no penalty proceedings under section 221 or prosecution under Chapter XXII of the Act shall be initiated provided such payment is made on or before February 28, 1995.

3. This circular shall also cover such cases which were earlier covered by Circular No. 685, dated 17th June, 1994, where the facility was extended in respect of salaries and allowances paid abroad or perquisites provided abroad to the employee for services rendered in India. The time limit of 31st July, 1994, was fixed by Circular No. 685 (which was later extended to 31st August, 1994) is now extended to 28th February, 1995.

4. The contents of this circular may be brought to the notice of all the assesseees especially those responsible for deducting tax under section 192, so that they can avail of this opportunity. It may be emphasized that the Department will initiate coercive steps to recover the due tax,

which was not deducted at source and/or not paid to the Government before 28th February, 1995.

5. The circular will apply in respect of the assessment years beginning from 1989-90 till the assessment year 1994-95.

24. CIRCULAR NO. 685 DATED 17.06.1994

Non-initiation of penalty and prosecution proceedings in certain cases of defaulters under Chapter XVII-B – Measure to encourage immediate voluntary compliance

It has come to the notice of the Board that some of the employers, including foreign companies operating in India, have been defaulting in deducting tax at source as required under section 192, on the salaries and allowances paid abroad, or perquisites provided abroad, to their employees for services rendered in India. In some cases, tax might have been deducted at source, but not remitted to Government. All payments and perquisites to employees for services rendered in India are taxable in India irrespective of the place where the payment occurs. The employers are, therefore, liable to deduct tax at source even on payment of salary, allowances and perquisites paid or provided abroad to their employees who have rendered service in India. They are also required to remit such deducted tax to Government. Failure to comply with these requirements would render the employer an assessee in default, and would attract interest under section 201(1A). Penalties under sections 221 (assessee in default) and 271C (failure to deduct tax) are then leviable and prosecution proceedings under section 276B can also be initiated in such cases.

2. To encourage immediate voluntary compliance, the Board has decided that proceedings under sections 221 and 271C for levy of penalties and proceedings under section 276B for prosecution need not be initiated in cases where an employer voluntarily comes forward and pays the whole of the tax due under section 192, along with interest liability under section 201(1A) on or before July 31, 1994.

3. Employers (Indian and foreign), who committed default in the past are advised to make use of this opportunity to pay up arrears of TDS (tax deductible at source) together with interest on or before 31.07.1994 and avoid penalty and prosecution proceedings.

4. Wide publicity may be given regarding this opportunity.

5. From 01.08.1994, penalty provisions under sections 221 and 271C and prosecution provisions under section 276B will be strictly implemented according to law.

25. INSTRUCTION NO. 5051 DATED 07.02.1991**Guidelines for initiation of prosecution proceedings**

Under the Direct Tax Laws prosecution against tax offences and tax frauds is a significant provision and requires to be effectively deployed to create an appropriate impact and to subserve as a deterrence against tax evasion. During the last few years the department has stepped up the number of cases where proceedings for prosecution have been initiated. Considering the mounting pendency and the inability of the judicial administration to speed up the disposal, it has become necessary to re-examine the strategy in regard to initiating prosecution proceedings.

2. The efforts of the department should be to concentrate on relatively important cases in filing prosecution complaints. For achieving this, it is essential that greater stress is laid on offences involving tax frauds, fabrication of evidence and major defaults relating to various other offences. While selecting cases for filing prosecution complaints, it is necessary to examine the facts of the case properly so that complaints are filed in really strong and sustainable cases.

3. Once a default has been properly examined and it falls within the parameters of prosecution guidelines, the assessing officer should send a notice to the defaulter intimating the nature of offence committed and requiring the assessee to show cause why prosecution proceedings may not be initiated.

No such notice will be sent in any case where the offence committed is u/s 276C(1) and 277. All relevant enquiries regarding the default should be made by the assessing officer before the issue of the above mentioned notice.

4. Prosecution need not normally be initiated against persons who have attained the age of 70 years at the time of commission of offence.

5. The guidelines for initiation of prosecution proceedings for specific offences are given below:

(i) Section 276B - Failure to pay the tax deducted at source

The offence u/s 276B w.e.f. 01.04.89 is only for failure to pay the tax deducted at source. Prosecution need not be initiated where the cumulative interest payable u/s 201(1A) for all the years involved in respect of tax deductions at sources under sections 192 to 195 of the Income-tax Act is less than Rs. 10,000/- and the tax is also paid to the credit of the Central Government. Where the tax deducted at source has not been paid, the interest u/s 201(1A) has to be calculated upto the

date on which the show cause notice mentioned in para 3 is issued. If the interest so calculated comes to less than Rs. 10,000/- and the default continues, then, such cases should be reviewed periodically.

The above will also apply to the defaults of failure to deduct or pay the tax deducted at source in time committed prior to 01.04.1989.

(ii) Section 276BB - Failure to pay the tax collected at source

The guidelines for defaults u/s 276B mentioned at (i) above will also be applicable to the defaults under this section.

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

Prosecution u/s 276C(1) of the Income-tax Act, 1961 or the corresponding provision of the Wealth-tax Act 1957, need not be initiated if;

- (a) the income sought to be evaded is less than Rs. 25,000/- or
- (b) the net wealth sought to be evaded is less than Rs. 50,000/-.

The same will apply to an offence u/s 277 for false statement in verification etc.

(iv) Section 276C(2) - Wilful attempt to evade payment of taxes, etc.

Prosecution need not be initiated for an offence under this section if the aggregate amount of tax interest and penalty involved is less than Rs. 10,000/-. This limit would be Rs. 1,000/- for the corresponding provision under the Wealth-tax Act, 1957.

(v) Section 276CC - Failure to furnish return of income

Prosecution need not be launched for an offence u/s 276CC if;

- (a) the net tax involved is less than Rs. 5,000/- and
- (b) the tax payer is not a habitual defaulter.

The net tax involved would mean 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 involved.

(vi) Section 276D - Failure to produce accounts and documents

Prosecution need not be initiated if subsequent to the failure to produce accounts and documents referred u/s 276D, the

person has co-operated in matters of enquiry relating to the relevant proceedings and has produced the accounts and documents and the failure has not resulted in any loss of revenue.

- (vii) Sections 276DD & 276E - Acceptance or repayment of loan or deposit in cash.

Keeping in view the fact that the defaults under these sections are no longer offences w.e.f. 01.04.89, the prosecution under these sections may be filed in important and sustainable cases on merits.

- (viii) No guidelines are considered necessary for offences u/s 275A, 276 (prior to 01-04-76) 276 (w.e.f. 01-04-89), 276A (w.e.f. 01-04-65), 276AA and 276AB in view of the need for their strict enforcement.

- (ix) Similarly no guidelines are necessary for offence u/s 278 as it is invariably linked with other offences.

6. These instructions supersede all earlier instructions on the subject.

7. This may be brought to the notice of all the officers of your charge.

[Board's F. No. 285/160/90-IT(Inv), dt. 07.02.1991]

26. INSTRUCTION NO. 1880 DATED 30.01.1991
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Schedule of fees payable to the Prosecution Counsels

The President has been pleased to sanction the schedule of fees payable to the Prosecution Counsels for the Department as annexed hereto . This schedule comes into effect from 1.1.1991

2. The consent of the Counsels already working at present, may be obtained in respect of this schedule of fees.

3. The above schedule of fees will not apply to Bombay and Calcutta, where the fees would be in accordance with the rates prescribed by the concerned Branch Secretariats of the Ministry of Law.

4. This issue with the concurrence of the Ministry of Law and Justice vide their despatch No. 3305/90 dated 27-12-1990 (Judicial Section).

27. INSTRUCTION NO. 1870 DATED 10.12.1990**No power to IT Authorities to settle cases**

Reference have been received from time to time whether Commissioners of Income-tax are vested with the power to “settle” cases. It has been suggested that if necessary such power should be conferred on the Commissioners in the Income-tax Act itself to enable them to determine the tax liability, reduce or waive penalty, compound offences and grant immunity from prosecution in suitable cases.

2. The issue has been considered by the Board and the following clarifications are issued in this regard:

- (i) There is no power conferred by the Income-tax Act or other direct tax enactments on the Commissioners to “settle” cases;
- (ii) A separate machinery was created for settlement of cases by constituting the Settlement Commission;
- (iii) There is no necessity to confer similar power to settle cases on the Commissioners, as a high powered body has already been entrusted with this work;
- (iv) The powers vested under section 273A of the Income-tax Act are not powers for settlement, as wrongly conceived in some quarters, but are statutory powers authorising waiver or reduction of penalties and interest (penalty only with effect from assessment year 1989-90). An order waiving or reducing penalty or interest can be passed under section 273A only after the conditions mentioned in that section are fulfilled in the light of Board’s instructions and circulars issued in this regard;
- (v) The question whether a particular income is to be assessed in a particular assessment year, the status under which such income should be brought to tax, whether deposits and other assets are to be spread over a period of years, etc. have to be decided by the Assessing Officers on the facts of each case and should be capable of being sustained on an inspection of the file in which the decision has been taken.

3. In cases where evidence of tax evasion has been collected either in the course of the search or in the course of investigations, the objective should be to collect full facts and material with a view to levy penalty under section 271(1)(c) for concealment and also to file prosecution complaints for the offence of tax evasion under section 276C, section 277 of the Income-tax Act or under the corresponding provisions of the Indian Penal Code.

4. It must be ensured that the above instructions are strictly followed by all the Income-tax authorities, if any decision, which is contrary to the provisions of the Act and which cannot be sustained on the basis of the facts, comes to notice, the Income-tax authority who has taken the decision would be held accountable.

28. INSTRUCTION NO. 1618 DATED 03.06.1985

Prosecution Guidelines

It is observed that scrutiny assessments are completed by the field authorities in a routine manner thus defeating the very purpose of scrutiny. Hereafter great care has to be taken while completing scrutiny assessments (including cases selected for scrutiny on random basis). The recent liberalisation in the limit for summary assessments vide Board's Instruction No.1617 dated the 16th May 1985 (F.No.201/109/85-ITA.II) is only one limb of the policy to ensure better voluntary compliance from taxpayers. The other essential limb of the same policy is intensive scrutiny and relentless investigation in the remaining cases so as to leave no doubt in the minds of taxpayers that they cannot get away with anything they declare in their returns. Intensive scrutiny is thus an essential step in the implementation of the total policy package which reposes increasing faith in the taxpayers and seeks to ensure at the same time that this faith is not abused.

2. Scrutiny assessments should be framed keeping two broad objectives in view. Firstly, there should be no error in the assessments so that audit objections and the need for rectifications do not arise. Secondly each assessing officer should be able to process about a half dozen cases from the prosecution angle. No hard and fast rule can be laid down for selecting these cases. It is based entirely on the judgement of the assessing officer, his investigating ability and alertness as well as experience gathered in the department.

3. For spotting potential prosecution cases, the following among others may be used:-

- a) Information regarding the assessee and his general reputation:
- b) Intimations received from other officers regarding the business transactions of the assessee:
- c) Substantial increase in wealth:
- d) Unsatisfactory state of accounts and low rate of profit: Improved conditions of particular trade or industry during the year not reflected in the books of accounts:

- e) Assessee being connected with any important group of cases suspected to be evading taxes.

4. The assessing officer has to be alert in detecting fraud and tax evasion. He has to look for and identify the weakness in each case. While going through the accounts and documents furnished by the assessee, he may keep in mind the following points:-

- (i) The profit and loss account and balance sheet of the earlier years should be scanned to find out if there has been any abnormal or unusual increase or decrease in any item or to see whether any new item has been introduced;
- (ii) The wealth tax records of the earlier years should also be scrutinized to see whether there has been abnormal increase in the wealth;
- (iii) Total wealth statement may be obtained wherever required;
- (iv) The methods of detecting tax evasion described in the three volumes of "Investigation of accounts in the context of the practices followed in the specific trade/industry may be kept in view;
- (v) Whether addition has been made in the earlier years and if so what happened to it in appeals,
- (vi) Whether the accounts are audited he must invariably go through the notes of the Auditor to see whether any comments have been made on the financial results of the organisation. The report of cost auditors, if any, may also be seen.

5. It is not possible to spell out all the areas where concealment could be detected. Tax dodgers are continuously developing newer and finer methods of concealing their income and the accounts are frequently looked up so as to look perfect and flawless. A good investigating officer has to remove this veil of perfection and look at the real state of affairs. It may be mentioned that it is not enough to confine the scrutiny only to the books of accounts. The real clues to tax evasion are increasingly available now outside the books. Some of the clues that one is ordinarily likely to come across while examining the books may however be stated. These are:

- (a) Bogus and inflated purchases;
- (b) The expenses claimed under various heads may be bogus, inflated or personal;
- (c) Stocks may be suppressed or understated;
- (d) Stocks may be undervalued or suppressed; (Find out whether stocks have been pledged with Bank or other

agencies and see if the value thereof is more than what is stated in the accounts I)

- (e) Excessive commission amounts and secret commission may have been paid;
- (f) Look for erasures, overwriting and totaling mistakes;
- (g) Bogus partnership deeds might have been created in the beginning.

Subsequently one partner may be signing for all the partners in Form No.11 or 12;

- (h) Bogus cash credits/hundis loans may be present;
- (i) Double sets of accounts may be existing.

The clues mentioned above are only illustrative and are not exhaustive wherever large stocks are involved the possibility of carrying out survey u/s 133 A should be intensified and resorted to more often to detect unaccounted stocks.

6. It may be ensured that the wealth-tax assessments are invariably completed along with the income-tax assessments for the relevant years. Further intimation slips may be sent to other assessing officers wherever required.

7. If any fraud or tax evasion has been detected, the original documents should be kept in the personal custody. The statements of the concerned parties should be recorded u/s 131. Since the Income-tax authorities are not police officers, the Supreme Court has held that the statements recorded by them are admissible in evidence so long as they are not under coercion. Additional evidence should be collected from the Bank accounts and from other sources. For proving the signatures of the parties opinion of the Handwriting Expert may be taken. Efforts should be made to collect independent evidence on the points in dispute. Such information should then be put to the assessee and the parties should be examined and cross-examined so that later on the assessee may not be able to take the stand that the information has been collect behind his back. After hearing the assessee further enquiries should be made if found necessary. All the relevant evidence etc. can be collected quite conveniently during the assessment stage. Later on when the assessee is aware that it is proposed to launch a prosecution against him, collection of independent evidence becomes difficult, Hence the need to be careful in these matters while finalising the assessment in a potential prosecution case.

8. If after completing all these formalities the assessing officer feels that the case is fit for prosecution he may be taken further action on the following lines:-

- i) As per Boards existing guidelines no prosecution has to be launched where the concealment does not exceed Rs.10,000 or the assessee is above 70 years of age;
- ii) List out the documents which will be necessary for proving the guilt of the accused;
- iii) Make a list of all the names of witnesses record their statements u/s 131 and mention at the end that these statements have not been given under undue influence, inducement threat or coercion. This is necessary so that the persons may not charge their statements before the Trial Magistrate;
- iv) List out the relevant judgements of the court which will help us in the case. Take an extract of these judgements. Also identify any circular/instructions etc. of the Board which may help in strengthening the case;
- v) Make an inventory of all the information that is available and the additional information required to make the case fool-proof;
- vi) The Commissioners of Income-tax are being directed to keep a guard file of the circulars/instructions/letters/important court judgements etc. regarding prosecutions, see if any help can be obtained from this guard file.

9. After completing the above requirements the case may be sent to the D.D.I.T./A.D.I.T.(Prosecution) for further processing. The opinion of the standing/prosecution counsel may be taken. If the counsel is of the opinion that a successful prosecution complaint can be filed in the facts and circumstances of the case, the case may be made ready for obtaining the administrative approval of the board.

10. While sending a proposal to the board, the following points may be kept in mind:-

- a) Since prosecution is an important item of work prosecution proposals should be sent by the concerned commissioner of Income-tax only under his own signature after ensuring that the formalities as mentioned above have been completed.
- b) Along with the prosecution proposal an annexure should be provided listing out the documents that have to be relied upon, witness to be produced and case-laws/circulars/instruction etc. from which help has to be taken in the prosecution case,
- c) Also enclose a copy of the opinion of the standing/prosecution counsel

11. After obtaining the Board's approval great care should be taken in drafting the complaint. Our standing/prosecution counsel should be provided with all the necessary help and should be properly briefed. A copy of the scrutiny note containing all the details should be given to the prosecution counsel so that the complaint could be drafted correctly.

12. Kindly bring these instructions to the notice of all your assessing officers urgently.

29. INSTRUCTION NO: 1518 DATED 19.07.1983

Where default mentioned u/s 276(b) has been committed prior to 1st April, 1976

Under section 276 (b), in Chapter XXII- Offences and Prosecution) as it stood prior to 1st April, 1976, if a person failed without reasonable cause or excuse to furnish in due time any of the returns or statements mentioned in Section 133, Section 206, Section 285 or Section 286, he was liable to be punished with fine which might extend to ten rupees for every day during which the default continued. For this the Department had to file a complaint of prosecution and the punishment as mentioned above may be awarded on conviction by the Court. With effect from 1st April, 1976 Section 276(b) of Income-tax Act, 1961 was deleted and section 272 was introduced in Chapter XXI-Penalties Imposable Sub-section (2) (a) of Section 272A provides that if a person, without reasonable cause or excuse fails to furnish in due time any of the returns or statements mentioned in Section 133, Section 206, Section 285, Section 285B or Section 286, he shall pay, by way of penalty, a sum which may extend to ten rupees for every day during which the failure continues.

2. The question, whether in respect of a default mentioned in section 276(b) of Income-tax Act, 1961, committed prior to 1st April, 1976 and the default continued after 1st April, 1976, the default was a continuing one and, if so, whether the provisions of section 276(b) would apply for the period prior to 1st April, 1976 and thereafter the provisions of section 272A(2)(a) would apply, was examined by the Board in consultation with the Ministry of Law, in the light of the judgements of the Supreme Court in the cases of (1) Brij Mohan Vs. CIT (1979) 120 ITR-1 and (2) C.W.T. Vs. Suresh Seth (1981) (129 ITR 328). The legal position is that a wrong or default which is complete but whose effect may continue to be felt even after its completion, is

not a continuing wrong or default. Therefore, if a default mentioned u/s 276(b) has been committed prior to 1st April, 1976, only the provisions of Section 276(b) would apply and the provisions of section 272A(2)(a) would not apply even if the effect of the default continued to exist after 31st March, 1976.

30. INSTRUCTION NO. 1100 DATED 23.09.1977

Instruction relating to the initiating of prosecution

1. The Taxation Laws (Amendment) Act, 1975, provides for prosecution in a case of:

(1) Wilful attempt to evade any tax, penalty or interest chargeable or imposable under I.T. Act (section 276C(1) inserted by section 68 of the amendment Act w.e.f. 1.10.75.

(2) Wilful attempt to evade the payment of any tax, penalty or interest under I.T. Act (section 276C(2) inserted by section 68 of the amending Act w.e.f. 1.10.75.)

(3) Wilful failure to comply with the direction issued under section 142(2A) for getting the accounts audited (inserted in Section 276D by Section 69 of the amending Act w.e.f. 1.4.76.

Instruction No.1083,* circulated under Board's letter F.No.285/362/77-IT(INV) dated the 6th August, 1977, emphasises the need for initiating prosecution under section 276C(2) of the Income-tax Act, 1961 in all suitable cases. The Board desire that similar action should be taken under section 276 C(1) and 276D also, wherever necessary.

2. It will be noticed in this connection that the ambit of section 276C(1) is wider than that of section 277. Section 277 is attracted only where any verification made is false or where a false account or statement is delivered, whereas section 276C(1) extends to all cases of wilful attempts, in any; manner whatsoever, to evade any tax, penalty or interest chargeable or imposable under the Income-tax Act. For the purposes of Section 276C, wilful attempt to evade any tax etc. will include a case in which any person:-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

- (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
- (iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

3. Provision similar to those contained in section 276C(1) and 276C(2) of the Income-tax Act have also been made in section 35A(1) and 35A(2) of the Wealth-tax Act, inserted by section 100 of the Taxation Laws (Amendment) Act, 1975. The instruction relating to the initiating of prosecution under the Income-tax Act shall apply *mutatis mutandis* to proceedings under the Wealth-tax Act also.

B. Instructions/ Circulars/ Guidelines/ Clarifications relevant to Compounding of Offences

1. F.NO.285/08/2014-IT(INV.V)/350 DATED 09.09.2019

Circular No. 25/2019

F.No.285/08/2014-IT(Inv. V)/350

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

Room No.515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.

Dated: 09.09.2019

Subject: Relaxation of time - Compounding of Offences under Direct Tax Laws - One-time measure - Reg.

The Central Board of Direct Taxes (CBDT) has been issuing guidelines from time to time for compounding of offences under the Direct Tax Laws, prescribing the eligibility conditions. One of the conditions for filing of Compounding application is that, it should be filed within 12 months from filing of complaint in the court.

2. Cases have been brought to the notice of CBDT where the taxpayers could not apply for Compounding of the Offence, as the compounding application was filed beyond 12 months, in view of para 8(vii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2014 dated 23.12.2014 or in view of para 7(ii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated 14.06.2019.

3. With a view to mitigate unintended hardship to taxpayers in deserving cases, and to reduce the pendency of existing prosecution cases before the courts, the CBDT in exercise of powers u/s 119 of the Income-tax Act, 1961 (the Act) read with explanation below sub-section (3) of section 279 of the Act issues this Circular.

4.1 As a one-time measure, the condition that compounding application shall be filed within 12 months, is hereby relaxed, under the following conditions:

- (i) Such application shall be filed before the Competent Authority i.e. the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, **on or before 31.12.2019.**

- (ii) Relaxation shall not be available in respect of an offence which is generally/normally not compoundable, in view of Para 8.1 of the Guidelines dated 14.06.2019.

4.2 Applications filed before the Competent Authority, on or before 31.12.2019 shall be deemed to be in time in terms of Para 7(ii) of the Guidelines dated 14.06.2019.

4.3 it is clarified that Para 9.2 of the Guidelines dated 14.06.2019, shall not apply to all such applications made under this one-time measure. The other prescriptions of the Guidelines dated 14.06.2019 including the compounding procedure, compounding charges etc. shall apply to such applications.

5. For the purposes of this Circular, application can be filed in all such cases where-

- (a) prosecution proceedings are pending before any court of law for more than 12 months, or
- b) any compounding application for an offence filed previously was withdrawn by the applicant solely for the reason that such application was filed beyond 12 months, or
- c) any compounding application for an offence had been rejected previously solely for technical reasons.

6. Hindi version shall follow.

Sd/-
(Mamta Bansal)
Director to the Government of India

2. F.NO.285/08/2014-IT(INV.V)/147 DATED 14.06.2019

**F.No.285/08/2014-IT(Inv. V)/147
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

C-Block, Dr. S.P. Mukherjee Civic Centre,
Minto Road, New Delhi-110002.
Dated: 14th June, 2019

To,

All Pr.CCsIT/CCsIT/Pr.DGsIT/DGsIT

Madam /Sir,

Subject: Guidelines for Compounding of Offences under Direct Tax Laws, 2019

In the light of references received from the field formation from time to time, the existing Guidelines on Compounding of Offences under the Income-tax Act, 1961 (the Act) have been reviewed. In supersession of earlier Guidelines on this subject, including the Guidelines of the Board issued vide F.No.285/35/2013 IT(Inv.V)/108 dated 23rd December 2014, the following Guidelines are issued for compliance by all concerned.

2. These Guidelines shall come into effect from 17.06.2019 and shall be applicable to all applications for compounding received on or after the aforesaid date. The applications received before 17.06.2019 shall continue to be dealt with in accordance with the Guidelines dated 23.12.2014.

3. Compounding Provision

Section 279(2) of the Act provides that any offence under Chapter XXII of the Act may, either, before or after the institution of proceedings, be compounded by the Pr. CCIT/CCIT/Pr. DGIT/DGIT. As per section 2(15A) and 2(21) of the Act, Chief Commissioner of Income-tax includes Principal Chief Commissioner of Income-tax, and Director General of Income-tax includes Principal Director General of Income-tax. These Guidelines are issued in exercise of power u/s 119 of the Act read with explanation below sub-section (3) of section 279 of the Act.

4. Compounding is not a matter of right

Compounding of offences is not a matter of right. However, offences may be compounded by the Competent Authority on satisfaction of the

eligibility conditions prescribed in these Guidelines keeping in view factors such as conduct of the person, the nature and magnitude of the offence in the context of the facts and circumstances of each case.

5. Applicability of these Guidelines to prosecutions under IPC

Prosecution instituted under Indian Penal Code(IPC), if any, cannot be compounded. However, section 321 of Criminal Procedure Code, 1973, provides for withdrawal of such prosecution. In case the prosecution complaint filed under the provisions of both Income-tax Act, 1961 and the IPC are based on the same facts and the complaint under the Income-tax Act, 1961 is compounded, then the process of withdrawal of the complaint under the IPC may be initiated by the Competent Authority.

6. Classification of Offences

The offences under Chapter-XXII of the Act are classified into two parts (Category 'A' and Category 'B') for the limited purpose of Compounding of Offences.

6.1 Category 'A'

Offences punishable under the following sections are included in **Category 'A'**:

S.No.	Section	Description/Heading of section
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 and up-to 30/5/1997)- Failure to pay tax deducted at source under Chapter XVII-B
iv.	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -O or 2 nd proviso the section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
v.	276BB	Failure to pay the tax collected at source
vi.	276CC	Failure to furnish Return of Income
vii.	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
viii.	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
ix.	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269 T
x.	277	False statement in verification etc. with reference to Category 'A' offences
xi.	278	Abetment of false return etc. with reference to Category 'A' offences

6.2 Category 'B'

Offences punishable under the following sections are included in **Category 'B'**:

S. No.	Section	Description/ Heading of section
i.	276A	Failure to comply with the provision of sections 178(1) and 178(3)
ii.	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
iii.	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
iv.	276C(1)	Willful attempt to evade tax, etc
v.	276C(2)	Willful attempt to evade payment of taxes, etc
vi.	276D	Failure to produce accounts and documents
vii.	277	False statement in verification etc. with reference to Category 'B' offences
viii.	277A	Falsification of books of account or documents, etc.
ix.	278	Abetment of false return, etc. with reference to Category 'B' offences

6.3 Offences under sections 275A, 275B and 276 of the Act will not be compounded.

7. Eligibility Conditions for Compounding

All the following conditions should be satisfied for considering compounding of an offence:

- An application is made to the Pr. CCIT/CCIT/Pr. DGIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format (Annexure-1)** in the form of an affidavit on a stamp paper of Rs. 100/-.
- The compounding application may be filed *suo-moto* at any time after the offence(s) is committed irrespective of whether it comes to the notice of the Department or not. However, no application of compounding can be filed after the end of 12 months from the end of the month in which prosecution complaint, if any, has been filed in the court of law in respect of the offence for which compounding is sought.
- The person has paid the outstanding tax, interest (including interest u/s 220 of the Act), penalty and any other sum due, relating to the offence for which compounding has been sought before making the application. However, if any related demand is found outstanding on verification by the Department,

the same should be intimated to the applicant and if such demand including interest u/s 220 is paid within 30 days of the intimation by the Department, then the compounding application would be deemed to be valid.

- iv. The person undertakes to pay the compounding charges determined in accordance with these Guidelines by the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned.
- v. The person undertakes to withdraw appeals filed by him, if any, related to the offence(s) sought to be compounded. In case such appeal has mixed grounds, one or more of which may not be related to the offence(s) under consideration, an undertaking shall be given for withdrawal of such grounds as are related to the offence to be compounded.
- vi. Any application for compounding of offence u/s 276B/276BB of the Act by an applicant for any period for a particular TAN should cover all defaults constituting offence u/s 276B/276BB in respect of that TAN for such period.

8. Offences normally not to be compounded

8.1 The following offences are generally not to be compounded:

- i. Category 'A' offence on more than three occasions. However, in exceptional circumstances compounding requested in more than three occasions can be considered only on the approval of the Committee referred to in Para 10 of these Guidelines. The 'occasion' is defined in Para 8.2.
- ii. Category 'B' offence other than the first offence(s) as defined in Para 8.2 for the purpose of these Guidelines.
- iii. Offences committed by a person for which he was convicted by a court of law under Direct Taxes Laws.
- iv. Any offence in respect of which, the compounding application has already been rejected, except in the cases where benefit of rectification is available in these Guidelines.
- v. The cases of a person as main accused where it is proved that he has enabled others in tax evasion such as, through entities used to launder money or generate bogus invoices of sale/purchase without actual business, or by providing accommodation entries in any other manner as prescribed in section 277A of the Act.
- vi. Offences committed by a person who, as a result of investigation conducted by any Central or State Agency and as

per information available with the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity.

- vii. Offences committed by a person who was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine and which has a bearing on the offence sought to be compounded.
- viii. Offences committed by a person which, as per information available with the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State Agency.
- ix. Offences committed by a person whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' in respect of any offence is pending in a Court or where a Court has recorded that a 'mutually satisfactory disposition of such an application is not worked out' and such offence has bearing on offence sought to be compounded.
- x. Any offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner.
- xi. Any offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- xii. Any offence which has bearing on any offence under the Benami Transactions (Prohibition) Act, 1988.
- xiii. Any other offence, which the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned considers not fit for compounding in view of factors such as conduct of the person, nature and magnitude of the offence.

8.2 Meaning of terms “occasion” and “first offence” for the purpose of these Guidelines will be as under-

8.2.1 If in one instance the assessee files multiple applications for one or more than one Assessment Year (AYs), all of these applications shall be treated as one “occasion”.

8.2.2 First offence means, offence(s) under any of the Direct Tax Laws:

- (a) Offences committed prior to any of the following-

- i. the date of issue of any letter/notice in relation to the prosecution, or
 - ii. Any intimation relating to filing of prosecution complaint sent by the Department to the person concerned, or
 - iii. Launching of any prosecution,
- whichever is earlier.

Or

- (b) Offence(s) not detected by the department but voluntarily disclosed by a person prior to the filing of application for Compounding of Offence(s) in the case under any Direct Tax Acts for one assessment year or more.

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

8.3 Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in Para 8.1 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

9. Relaxation of time

9.1 The restrictions imposed in Para 7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed, where application is filed beyond 12 months but before completion of 24 months from the end of month in which complaint was filed, by the Committee defined in Para 10 of these Guidelines, provided that such delay should be attributable to reasons beyond the applicant's control. However, a plea of pendency of appeal at any stage or before any authority cannot be treated as a reason beyond the applicant's control, because furnishing an undertaking to withdraw the appeal(s) having bearing on the offence is a prerequisite as per clause 7(v) above.

9.2 However, in all such cases where relaxation has been provided in this Para, the compounding charges would be 1.25 times the normal compounding charges as applicable to the offence on the date of filing of the original compounding application.

10. Authority Competent to Compound an Offence

10.1 The Pr. CCIT/CCIT/Pr. DGIT/DGIT having jurisdiction over the person, seeking Compounding of an Offence, is the Competent Authority for compounding of all Category 'A' and Category 'B' offences. However, an order in case of an application for compounding

of an offence, involving compounding charges (as explained in Para 12 below) in excess of Rs. 10,00,000/- (Rupees Ten Lakhs) shall be passed by the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned only on the prior approval of a Committee comprising of three officers of the Region concerned, namely Pr. CCIT/CCIT/Pr. DGIT/DGIT having jurisdiction over the case and two other Officers of the rank of Pr. CCIT/CCIT/Pr. DGIT/DGIT constituted by the Pr. CCIT of the Region. In case such officers are not available within the Region, a suitable Officer of the rank of CCIT/DGIT from any nearby Region may be co-opted as Member by the Pr. CCIT.

10.2 If a deductor has committed an offence u/s 276B/276BB of the Act for non-payment of TDS in respect of both resident and non-resident deductees and therefore the jurisdiction over such deductor lies with more than one Pr. CCIT/CCIT/Pr. DGIT/DGIT, then the Pr. CCIT/CCIT/Pr. DGIT/DGIT in whose jurisdiction compounding application has been filed will be the Competent Authority. However, he shall compound the offence only on the approval of Committee comprising of three Officers of the rank of CCIT from among the CCIT/DGIT/Pr. CCIT/Pr. DGIT having jurisdiction over the applicant, constituted by the Pr. CCIT of the region.

10.3 In case an applicant having more than one TAN lying in the jurisdiction of two or more Pr. CCIT/CCIT/Pr. DGIT/DGIT wants to file compounding application in respect of offences committed u/s 276B/276BB in respect of two or more TANs falling in the jurisdiction of two or more Pr. CCIT/CCIT/Pr. DGIT/DGIT, the application shall be filed before the Pr. CCIT/CCIT having jurisdiction over the TAN of the region in which PAN jurisdiction of the applicant is falling. Such Pr. CCIT/CCIT having jurisdiction over such TAN will be treated as Competent Authority. For such cases the Committee will be constituted by the Pr. CCIT in whose region jurisdiction over PAN lies and will also be comprising of three members including Competent Authority. The report from all jurisdictional authorities concerned from different offender TANs shall be called by the Competent Authority.

10.4 The Competent Authority will act as the Member Secretary and convene the meeting, as well as maintain the records.

11. Compounding Procedure

- i. On receipt of the application for compounding, the report on the same shall be obtained from the Assessing Officer/ Assistant or Deputy Director concerned who shall submit it promptly along-with duly filled in check-list (**Annexure-2**), to the authority competent to compound, through proper channel.

- ii. The Competent Authority shall duly consider and dispose of every application for compounding through a speaking order in the suggested format (**Annexure-3**) either by rejecting or by intimating the compounding charges payable. Such order may be passed within six months from the end of the month of its receipt (excluding the time for payment of the compounding charges) as far as possible.
- iii. Where compounding application is found to be acceptable, the Competent Authority shall intimate the amount of compounding charges to the applicant, requiring him to pay the same **within one month** from the end of the month of receipt of such intimation. On written request of applicant for further extension of time under exceptional circumstances, the Pr. CCIT/CCIT/Pr. DGIT/DGIT may extend this period by **three months**. Extension beyond three months shall not be permissible except with the previous approval in writing of the Committee defined in Para 10 of these Guidelines. However, no extension beyond **twelve months** from the end of month in which intimation of compounding charges was given to the applicant shall be given except with the previous approval of Member (Inv.), CBDT on a proposal of the competent authority concerned.
- iv. Whenever the compounding charges are paid beyond one month from the end of month in which it was intimated to the applicant, if extended by the Competent Authority, he shall have to pay additional compounding charge at the rate of 2% per month or part of the month on the unpaid amount of compounding charges upto three months and 3% if the Competent Authority has extended the payment period beyond three months.
- v. The Competent Authority shall pass the compounding order **within one month** from the end of the month of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application shall be rejected after giving the applicant an opportunity of being heard only in relation to compounding charges payable.
- vi. The order of acceptance/ rejection of application of compounding shall be brought to the notice of the Court, where the prosecution complaint was filed/ or the complaint is pending, immediately through prosecution counsel in all cases where prosecution proceedings have been instituted.

- vii. Normally any offence in respect of which the compounding application has been rejected is not considered for compounding as per Para 8.1(iv). However, if any compounding application has been rejected solely on account of late payment of compounding charges or shortfall in payment of compounding charges and if such shortfall is for some bonafide mistakes or on some other technical grounds, such compounding order can be rectified at the written request of applicant provided the payment of compounding charges was made before rejection or time allowed by the Competent Authority whichever is applicable. A decision to rectify such order can be taken by the Committee as per Para 10 after considering various facts and circumstances of the case. However, the applicant will be required to pay interest as per Clause (iv) of this Para, on the unpaid compounding charges from the due date of payment as per original intimation of compounding along with the shortfall in compounding charges.
- viii. The timelines mentioned for processing the compounding applications prescribed in these Guidelines are administrative and indicative for work management and do not prescribe a limitation period for disposal of the compounding application.
- ix. Wherever the facility to perform any function relating to processing of any compounding application is available on ITBA, such function should be performed on ITBA.

12. Compounding Charges

The compounding charges shall include compounding fee, prosecution establishment expenses and litigation expenses, including Counsel's fee.

12.1 The compounding fee shall be computed in accordance with Para 13 of these Guidelines for various offences. Prosecution establishment expenses will be charged at the rate 10% of the compounding fees subject to a minimum of Rs. 25,000/- in addition to litigation expenses including Counsel's fees paid/payable by the Department in connection with offence(s) compounded by a single order. In a case where the litigation expenses are not readily ascertainable, the competent authority may arrive at litigation expenses, *inter alia*, on the basis of rates prescribed by the Government and on the basis of existing records with the Government and the counsels.

12.2 In all cases where relaxation of time as provided in Para 9 of the Guidelines is allowed, the compounding charges shall be 1.25 time of the normal compounding charges.

12.3 Wherever, extension of time allowed to make compounding charges is allowed beyond one month from the end of intimation of compounding charges in accordance with Compounding Guidelines, the applicant shall have to pay additional compounding charges @ 2% per month or part of month on the unpaid amount of the compounding charges upto three months and 3% for period beyond three months.

12.4 The compounding charges are payable in addition to the tax, interest and penalty, if any payable or imposable as per provisions of the Act. Such tax, interest and penalty as mentioned in Para 7(iii) are to be paid before filing the compounding application as required in these Guidelines.

13. Fees for compounding

For the purpose of computation of the compounding fee, the word “tax” means- tax including surcharge and any cess by whatever name called, as applicable.

The fees for compounding of offences shall be as follows:

13.1 Section 276B - Failure to pay the tax deducted at source Section 276BB - Failure to pay the tax collected at source

13.1.1 In respect of application for Compounding of Offences, the compounding fee shall be calculated as under-

- (i) 2% per month or part of a month of the amount of tax in default disclosed in the compounding application in those cases, where the assessee has *suo-moto* filed compounding application, before any offence u/s 276B/276BB of the Act for any period is brought to his knowledge by the Department. Such type of offence would also constitute an “occasion” for the purpose of Para 8.1. Such offences which are detected in the course of any search and seizure or survey operation will not fall in this category.

However, the compounding fee under this clause shall not exceed the TDS amount and interest u/s 201(1A) taken together, if the default in deposit of TDS is less than Rs. 1,00,000/- (Rupees One lakh).

- (ii) 3% per month or part of a month of the amount of tax in default disclosed in the compounding application for first occasion in cases not covered in Para 13.1.1(i) above.
- (iii) In respect of any application for subsequent occasion, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default.

13.1.2 The period of default for calculating compounding fee in this category shall be calculated from the date of deduction to the date of deposit of tax deducted at source as is done in respect of calculating interest under section 201(1A) of the Act in respect of compounding application filed.

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

- (a) In the cases involving tax sought to be evaded (where evasion of interest and penalty may be consequential)
 - i. Where such tax sought to be evaded exceeds Rs. 25 lakhs, 150% of the tax sought to be evaded.
 - ii. In any other case, 125% of the tax sought to be evaded.
- (b) In cases involving attempt to evade only the penalty, 100% of penalty sought to be evaded. For example, penalties which are not directly related to tax evasion, such as penalty u/s 271DA etc.

13.3. Section 276C(2) - Willful attempt to evade payment of any tax, interest and penalty

3% per month or part of the month of the amount of tax, interest and penalty, the payment of which was sought to be evaded, for the period of default. The period of default for calculating the compounding fees shall be as under:

- i) Where tax, interest or penalty as per notice of demand under section 156 of the Act is not paid, from the date immediately following the due date of payment till the date of actual payment.
- ii) Where the self-assessment tax was not paid as specified in section 140A of the Act, from the due date of filing of return of income u/s 139(1) of the Act to the date of actual payment.

For computing the period of default, any period of stay of demand granted by any Income-tax Authority, the Appellate Tribunal or Court shall be excluded.

13.4 Section 276CC - Failure to furnish returns of income

13.4.1

- (a) In case of default in furnishing the return of income on or before due date u/s 139(1) of the Act, the default period will be computed from the due date u/s 139(1) to the date of actual filing of return or completion of assessment, whichever is earlier and compounding fees will be ;

- i. Where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs, Rs. 4000/- per day.
- ii. In any other case; Rs. 2000/- per day.

However, in cases where the difference between the aggregate of taxes paid/payable on the returned income and the aggregate of taxes already paid under any provision of the Act as enumerated in section 140A(1) of the Act, is less than Rs. 1,00,000/-, the compounding fees will be restricted to that said difference amount subject to a minimum of Rs. 10,000/-.

- (b) In case of offence of non-compliance of notice u/s 142(1) (i) of the Act, the compounding fees shall be charged at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 142(1), and at the rate of Rs. 5000/- per day where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3000/- per day in other cases, for the period between date specified in notice u/s 142(1) to the date of filing of return of income or completion of assessment, whichever is earlier.
- (c) In case of offence of non-compliance of notice u/s 148 of the Act, the compounding fees shall be charged at the rate of Rs. 5000/- per day where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3000/- per day in other cases, from the date specified in such notice till filing of return or assessment whichever is earlier. In case, there was also default of not filing return of income within due date prescribed u/s 139(1), then for the period between due date u/s 139(1) to the date specified in the notice u/s 148, compounding fees at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 148 will also be charged.
- (d) In case of offence of non-compliance of notice u/s 153A/153C of the Act, the compounding fees shall be charged at the rate of Rs. 5,000/- per day where tax on returned income

as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3,000/- per day in other cases, from the date specified in such notice till filing of return or assessment whichever is earlier. In case, there was also default of not filing return of income within due date prescribed u/s 139(1), then for the period between due date u/s 139(1) to the date specified in the notice u/s 153A/153C, compounding fees at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 153A/153C will also be charged.

- (e) In case where return of income filed is not only late but Self Assessment Tax is not paid:
 - i. These constitute two separate offences which are to be handled separately under sections 276CC and 276C(2), and
 - ii. Action u/s 276C(2) is to be undertaken only after the issue of demand notice u/s 143(1)/143(3) etc.

13.4.2 In cases where no return of income was filed, the compounding fee is computed upto the date of completion of assessments. In such cases, for computing the slab prescribed in Para 13.4.1 tax on assessed income (as reduced by tax deducted at source and advance tax) will be adopted.

13.4.3 In case the income determined u/s 143(1) is more than the returned income, tax on the same will be applied for computing tax slab prescribed in Para 13.4.1.

13.4.4 Tax on returned income in the context of Para 13.4 means tax leviable (including surcharge and cess) on the returned income as reduced by tax deducted at source and advance tax.

13.5 Section 276CCC - Failure to furnish return of income as required under section 158BC

The fee for this offence shall be calculated in the same manner as for offences u/s 276CC was prescribed in the Compounding Guidelines dated 16.05.2008.

13.6 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.

13.7 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.

**13.8 Section 277 - False statement in verification etc.
Section 278 - Abetment of false return etc.**

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

13.8.2 Where same set of facts and circumstances attract prosecution u/s 277 in addition to another offence in connection with which prosecution u/s 277 was attracted in case of the same person, no separate compounding fee shall be charged for offence u/s 277. For example, where a person is charged with an offence u/s 276C(1) as also u/s 277, in respect of the same facts and circumstances, the compounding fees shall be charged only for the offence u/s 276C(1) at the rates prescribed for the said section.

13.8.3 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 at the rate of 10% of the 'compounding fee for the main offence' shall be charged from each of the person charged under sections 278B or 278C. However, the authority competent to compound, after considering the extent of involvement of any or all co-accused or abettor, may enhance or reduce or waive the amount of compounding fee to be charged from any or all the co-accused or abettor. The compounding fees chargeable from the co-accused or abettor shall be in addition to the compounding fees which may be chargeable from the main accused.

It is further clarified that:

- (a) In the case of prosecution proceedings under sections 278B or 278C of the Act unless the main accused i.e. Company/ HUF comes for compounding, the offence of the co-accused cannot be compounded separately.
- (b) If one or more co-accused has not filed the compounding application or is not agreeable to the payment of compounding charges as the case may be, then unless the main accused, on an undertaking obtained and furnished from such co-accused, unequivocally undertakes to pay the compounding charges on his own behalf and on behalf of all such co-accused as well, the Compounding of the Offence of the main accused cannot be accepted.

13.8.4 In case where no offence under any other sections of the Act is involved except u/s 277 or 278 of the Act, the compounding fee shall be decided by the Committee as per Para 10 having regard to the amount of tax which would have been evaded as a result of such offence u/s 277 or 278 subject to a minimum compounding fee of Rs. 1,00,000/- (Rupees One Lakh) which may be increased based on the assessment of loss caused to the revenue directly or indirectly for each of such offence on completion of assessment/reassessment.

13.9 Offences, other than those described in Para 13.1 to 13.8, for which no compounding fee has been prescribed, the authority competent to compound may determine the amount of compounding fee having regard to the nature and magnitude of the offence, loss of revenue directly or indirectly attributable to such offence, subject to levy of a **minimum compounding fee of Rs. 1,00,000/-** (Rupees One lakh) for each such offence.

13.10 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 the Finance Minister.

14. In case any penalty proceedings which have bearing with the offence sought to be compounded are pending at the time of filing of the compounding application, efforts should be made to conclude such penalty proceedings expeditiously and recover demand before concluding the compounding proceedings.

15. Applicability of these Guidelines to offences under other Direct Tax Laws

These Guidelines shall apply *mutatis mutandis* to offences under other Direct Tax Laws and the compounding fee for offences under the other Direct Tax Laws will be same as prescribed supra for the corresponding provisions of offences under the Income-tax Act, 1961.

16. The Pr. CCsIT/CCsIT/Pr. DGsIT/DGsIT are requested to circulate the above revised Guidelines along with its Annexure Nos. 1, 2 and 3 among all the officers of their Region for compliance.

Yours faithfully,

Sd/-

(Mamta Bansal)

Director, Inv. V
CBDT, New Delhi

Encl: As above

Annexure – 1**Format of application in the form of Affidavit for Compounding of Offences under Income-tax Act, 1961 to be submitted separately by each applicant**

S. No.	Particulars	Remarks
1.	Name of the applicant	
2.	Status	
3.	Offences committed u/s *	
4.	AYs / Date/ period involved in offence	
5.	Status of case (i.e. whether contemplated/pending in Court/convicted/acquitted)	
6.	Date of filing of complaint, if any	
7.	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the filing of the application for compounding?	
8.	Particulars of offences along-with justification for compounding (separate sheet)?	
9.	Whether the applicant has paid the amount of tax, interest, penalty and any other sum due relating to the offence?	
10.	Whether the applicant undertakes to pay further tax, interest, penalty and any other amount as is found to be payable on verification of the record.?	
11.	Whether the applicant undertakes to pay the compounding charges as shall be intimated by the department.?	
12.	Whether similar offences in the case of the applicant have been compounded earlier. If yes, how many times. Give details in annexure.?	
13.	Whether the offence is first offence as defined in Para 8.2 of the Guidelines?	
14.	Whether the offence has been committed by the applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity?	
15.	Whether any enquiry/investigation being conducted by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agencies pending against the applicant? If so, particulars may be given?	
16.	Whether the applicant was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine. If so, particulars may be given along with a copy of the court's order.?	

17.	Whether, the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court and the Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out?	
18.	Whether the applicant was convicted by a court of law for the offence sought to be compounded?	
19.	Whether it is an offence in respect of which, the compounding application has already been rejected.?	
20.	Whether it is an offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner?	
21.	Whether it is an offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.?	
22.	Whether it is an offence which has bearing on any offence under The Benami Transactions (Prohibition) Act, 1988.?	
23.	Whether it is an offence u/s 275A, 275B and/or 276?	

VERIFICATION

I son/daughter of in the capacity ofcertify and solemnly affirm that the information in the above columns is true and correct to the best of my knowledge and belief.

Place: Signature.....

Date: Designation

Current address

* All offences for which compounding is sought

Annexure – 2**Suggested Check List for Compounding as per the Guidelines issued by the CBDT vide F.No.285/08/2014-IT(Inv.V) dated 14.06.2019 on Compounding of Offences*****(To be submitted by AO/ADIT/DDIT to the authority competent to compound through proper channel)***

(A case can be compounded only if the answers to S. No. 1 to 22 match with the answers given below in remarks column.)

Name of the applicant :-

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) :-

S.No.	Particulars (vis-a-vis Compounding Guidelines)	Remarks	Reference of the File submitted submitted
1.	The applicant has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no.....
2.	Whether the applicant has paid the amount of tax, interest and penalty & any other sum due relating to the default as prescribed in the Guidelines.?	Yes	On Page no.....
3.	Whether on verification of record any further amount of tax, interest and penalty & any other sum was found payable by the applicant.?	Yes/No If yes, date of intimation and date of payment.	If yes, give details in brief. Add annexure if required. On Page no....
4.	Whether the applicant has undertaken to pay the compounding charges computed as per Paras 12 & 13 of the Guidelines.?	Yes	On Page no.....
5.	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the receipt of application for compounding.?	No	On Page no.....

S.No.	Particulars (vis-a-vis Compounding Guidelines)	Remarks	Reference of the File submitted submitted
6.	Whether the offence is under the same section under which offences have been committed by the applicant earlier and which have been compounded three times prior to the present application.? NOTE: THIS IS APPLICABLE ONLY IN CASE OF A CATEGORY 'A' OFFENCE.	No	If yes, give details in brief. Add annexure if required. On Page no....
7.	Whether the offence is the first offence as defined in para 8.2 of the Guidelines? NOTE: THIS IS APPLICABLE ONLY IN CASE OF A CATEGORY 'B' OFFENCE.	Yes	If no, give details in brief. Add annexure if required. On Page no....
8.	Whether the offence has been committed by an applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity?	No	If yes, give details in brief. Add annexure if required. On Page no....
9.	Whether the offence committed by the applicant has a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency*?	No	If yes, give details in brief. Add annexure if required. On Page no....
10.	Whether the offence has been committed by the applicant who was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine*?	No	If yes, give details in brief. Add annexure if required. On Page no....
11.	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*?	No	If yes give details in brief. Add annexure if required. On Page no....
12.	Whether the offence is one committed by an applicant for which he was convicted by a court of law?	No	If yes, give details in brief. Add annexure if required. On Page no....

S.No.	Particulars (vis-a-vis Compounding Guidelines)	Remarks	Reference of the File submitted submitted
13.	(i) Whether it is an offence in respect of which, the compounding application has already been rejected, (ii) If yes, whether it is a case where relaxation is available in the Guidelines.?	(i) Yes/No (ii) Yes [If (i) is yes]	If yes, give details in brief. Add annexure if required. On Page no....
14.	Whether it is a case of a person who is main accused and where it is proved that he has enabled others in tax evasion such as, through shell companies or by providing accommodation entries in any other manner as mandated in Sec. 277A of the Act?	No	If yes, give details in brief. Add annexure if required. On Page no....
15.	Whether it is an offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner?	No	If yes, give details in brief. Add annexure if required. On Page no....
16.	Whether it is an offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.?	No	If yes, give details in brief. Add annexure if required. On Page no....
17.	Whether it is an offence which has bearing on any offence under The Benami Transactions (Prohibition) Act, 1988.?	No	If yes, give details in brief. Add annexure if required. On Page no....
18.	Amount of compounding charges computed by AO/ADIT/DDIT as per Paras 12 & 13 of the Guidelines.?	Rs.	On Page no.....
19.	The compounding charges are in accordance with Paras 12 and 13 of the Guidelines?	Yes	If no, give reasons. On Page no....

S.No.	Particulars (vis-a-vis Compounding Guidelines)	Remarks	Reference of the File submitted submitted
20.	The factors, such as conduct of the person, nature and magnitude of the offence and facts and circumstance of the case have been considered while dealing with the compounding application and in calculating compounding charges?	Yes	If no, give details in brief. Add annexure if required. On Page no....
21.	Whether the cases of Co-accused are being considered as per Para 13.8?	Yes/Not Applicable	If yes, give details in brief. Add annexure if required. On Page no....
22.	Any other fact relating to the person/case relevant for consideration of the Competent Authority?	No	If yes, give details in brief. Add annexure if required. On Page no....

Signature:

Name:

Designation:

Date:

Recommended by:

1. Addl. CIT/Jt. CIT/Addl. DIT/Jt. DIT.....Signature/Name/Designation/Date

2. PCIT/PDIT/CIT/DIT.....Signature/Name/Designation/Date

***Note: This may be given on the basis of information furnished by the applicant in his application for compounding or information already available with the Competent Authority for compounding**

Annexure – 3
(Suggested Format)

Part-I

Format for Order u/s 279(2) of the Income-tax Act, 1961 for Compounding of an Offence as mentioned in Para 11 (ii) of the Guidelines issued by the CBDT vide F.No. 285/08/2014-IT(lnv.V) dated 14.06.2019 on Compounding of Offences

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

Name of the person	:-
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 Principal Chief Commissioner/Chief Commissioner of Income-tax /Principal Director General/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) u/s.....of the Income -tax Act,1961 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:

Date:

Seal:

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

Signature

ACIT/ ITO (Hq.)

O/o the Pr. CCIT/CCIT/ Pr. DGIT/DGIT

Annexure – 3
(Suggested Format)

Part-II

Format for Order u/s 279(2) of the Income-tax Act, 1961 for rejecting the Compounding of an Offence as mentioned in Para 11 (ii) of the Guidelines issued by the CBDT vide F. No. 285/08/2014-IT(lnv.V) dated 14.06.2019 on Compounding of Offences

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

Name of the person	:-
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 Principal Chief Commissioner/Chief Commissioner of Income-tax/Principal Director General/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 decline the prayer to compound the offence(s), u/s.....of the Income-tax Act, 1961 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'**

Place:

Date:

Seal

Signature

Principal Chief Commissioner/Chief
Commissioner of Income-tax/
Principal Director General/
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 Pr. CCIT/CCIT/ Pr. DGIT/DGIT

Annexure – A
Statement of Facts

The statement of facts should, inter alia, contain the following:

1. Detail of application filed

An application for Compounding of Offences committed u/s.....of the Income-tax

Act, 1961 was filed in prescribed format by M/s. /Mr. /Ms..... on.....

2. Brief facts

3. Whether complaint has been filed

A complaint was filed in the Court of.....on.....and the case is still pending in the court/the Court has convicted the person who has filed an appeal against the conviction order that is pending in the Court/ the Court has acquitted the person & 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 charges by the person.

5. Direction to the AO/ Standing Counsel to take necessary action to implement the orders at the earliest.

3. F.NO. 285/90/2013 IT(INV.V)/212 DATED 04.09.2015**GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER INCOME-TAX ACT, 1961/WEALTH-TAX ACT, 1957 IN CASES OF PERSONS HOLDING UNDISCLOSED FOREIGN BANK ACCOUNTS/ASSETS**

Doubts have been expressed by the field formation as to whether offences relating to undisclosed foreign bank accounts/assets could be compounded as per the extant guidelines of the Board dated 23-12-2014. The matter has been examined in consultation with the Special Investigation Team (SIT).

2. In this regard, the undersigned is directed to convey the following:

- (i) Such cases can be compounded only after filing the Prosecution complaint(s) and shall not be compounded at the stage of show-cause notice and/or without filing the complaint in the court.
- (ii) The cases in which the assessee has not admitted the foreign bank account(s)/assets and/or has not co-operated with the Department in the assessment, penalty & recovery proceedings shall not be compounded.
- (iii) The cases in which the assessee has admitted accounts/assets either fully (all accounts with which he is associated) or partially (only a few accounts out of all accounts with which he is associated), paid taxes and penalty and co-operated with the Department may be considered for compounding as per the guidelines dated 23-12-2014, only after filing the complaints.

3. This clarification is issued in continuation to the Board's guidelines for compounding of offences dated 23-12-2014. The Pr.CCsIT/CCsIT/Pr.DGsIT/DGsIT are requested to circulate the same among all the officers of their region for necessary action.

4. It is clarified that there is no provision for compounding of offences under the newly enacted Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Consequently, the above clarifications will not apply to cases coming under the purview of this Act.

Sd/-

(Rajat Mittal)

Under Secretary(Inv. V)
CBDT, New Delhi

4. F. NO. 285/05/2015-IT(LNV.V)/197 DATED 17.08.2015**Clarification on Guidelines for compounding of offences under Direct Tax Laws, 2014 dated 23rd Dec. 2014**

Kindly refer to this office letter vide F.No.285/35/2013 IT(Inv.V)/108 dated 23rd December 2014 on the subject mentioned above.

2. In this regard, the undersigned is directed to draw your kind attention to serial no.5 of **Annexure-2** of the compounding guideline. The serial no. 5 reads as under:

S. No.	Particulars <i>Vis-a-vis compounding guidelines)</i>	Remarks	Reference of the File submitted
5.	Whether the offence is the first offence as defined in para 8(ii) of the guidelines <u>NOTE: THIS IS APPLICABLE ONLY IN CASE OF A CATEGORY 'B' OFFENCE.</u>	No	On Page No....

Answer 'No' gives an impression that a category '**B**' offence can be compounded only when it is not a first offence which is in contradiction to **Para 8(ii)** of the guidelines, which provides that, in case of category '**B**' offences, only first offence can be compounded.

3. In view of the above, the undersigned is directed to convey that the **answer 'No' in the remarks column at serial no.5 may be read as 'Yes'.**

4. The Pr.CCsIT/CCsIT/Pr.DGsIT/DGsIT are requested to circulate the above clarification among all the officers of their region for compliance.

5. This issues with the approval of Member (Investigation), CBDT.

Sd/-
(Rajat Mittal)
Under Secretary(Inv. V)
CBDT, New Delhi

5. F.NO.285/35/2013 IT(INV.V)/135 DATED 24.02.2015**Clarifications for compounding of offences of directors etc. in the context of TDS / TCS related prosecutions.**

I am directed to refer to the Guidelines for compounding of offences issued by the Board vide F.No.285/35/2013 IT(Inv. V) dated 23.12.2014. Doubts have been expressed by the field formations in the context of TDS related prosecutions that in cases where a Company/

Firm/AOP/BOI is the main accused and its directors, partners are co-accused, whether the compounding fee has to be paid only by the defaulter Company/Firm/AOP/BOI or in addition to the payment of compounding fees by such entities, the directors/partners also have to pay compounding fees at the rates prescribed in the guidelines dated 23.12.2014, individually for the same default.

2. In this regard, the undersigned is directed to convey the following:

- (i) Section 278B of the Act provides that where an offence under the Act has been committed by a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (ii) Sub-section (2) lays down that where it is proved that the offence was committed with the consent convenience of, or is attributable to any neglect of any director, manager, secretary or other officer, such person also be deemed to be guilty of the offence and shall be proceeded against and punished.
- (iii) Sub-section (3) lays down that where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section(1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1) or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.
- (iv) **The company for the purpose of section 278B includes a Firm/AOP/BOI and director includes partners of a firm and members of AOP/BOI.**

3. It is thus seen that all the directors of the company and persons associated with it are not to be prosecuted for the offence committed by the company. Only those directors/persons, who were in charge of, and responsible to the company for the conduct of the business or to whom the consent/connivance/neglect etc mentioned in section 278B could be attributed, are to be proceeded against. In the light of these provisions, in the case of a company prosecution is initiated against the company as well as its directors separately. Since prosecution proceedings are against the specific persons for specific defaults as

per relevant provisions of the Act, the compounding application is to be filed separately by the company and each of the directors against whom the prosecution proceedings have been initiated, in case they desire for compounding.

4. In this regard, attention is invited to paragraphs 12.8 to 12.9 of the Board's Guidelines of even number dated 23.12.2014. The said paragraphs, *inter alia*, provide for charging of compounding fee at the rate of 10% of the 'compounding fee for the main offence' from each of persons charged u/s 278B or 278C. On the same analogy, in the case of compounding applications of Directors of a company for TDS/TCS related offences, compounding fee at the rate of 10% of the compounding fee determined in the case of the company for compounding of the TDS/TCS related offence may be charged from each of the directors seeking compounding.

5. It is further clarified that in such cases, compounding applications of directors shall be considered only if the company itself has applied for compounding and its case has been found fit for compounding.

6. These clarifications may be read as part of the Board's guidelines for compounding of offences dated 23.12.2014.

7. The PCCsIT/CCsIT/PDGsIT/DGsIT are requested to circulate the above clarifications among all the officers of their region for compliance.

Sd/-
(Rajat Mittal)
Under Secretary (Inv. V)
CBDT, New Delhi

6. F.NO.285/35/2013 IT (INV.V)/108 DATED 23.12.2014
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GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER DIRECT TAX LAWS, 2014

In the light of various references received from the field formation from time to time, existing guidelines on compounding of offences under Income-tax Act, 1961 (the Act) have been reviewed and in supersession of the same, including the guidelines issued vide F.No. 285/90/2008-IT(Inv.)/12 dated 16th May 2008, the following guidelines are issued for compliance by all concerned.

2. These guidelines shall come into effect from 01.01.2015 and shall be applicable to all applications for compounding received on or after the aforesaid date. The applications received before 01.01.2015 shall

continue to be dealt with in accordance with the guidelines dated 16.05.2008.

3. Compounding Provision:

Section 279(2) of the Act provides that any offence under chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the CCIT/DGIT. **As per section 2(15A) and 2(21) of the Act, Chief Commissioner of Income-tax includes Principal CCIT and Director General of Income-tax includes Principal DGIT.**

4. Compounding is not a matter of right:

Compounding of offences is not a matter of right. However, offences may be compounded by the competent authority on his satisfaction of the eligibility conditions prescribed in these guidelines keeping in view factors such as conduct of the person; nature and magnitude of the offence and facts and circumstances of each case.

5. Applicability of these guidelines to prosecutions under IPC:

Prosecution instituted under Indian Penal Code, if any, cannot be compounded as per these guidelines. However, section 321 of Criminal Procedure Code, 1973 provides for withdrawal of such prosecutions.

6. Classification of Offences:

The offences under Chapter-XXII of the Act are classified into two parts (Category 'A' and Category 'B') for the limited purpose of compounding of the offences.

6.1 Category 'A'

Offences punishable under the following sections are included in **Category 'A'**:

Sl. No.	Section	Description/Heading or section
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 and up to 30/5/1997)- Failure to pay tax deducted at source under chapter XVII-B
iv.	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -O or 2nd proviso to section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
v.	276BB	Failure to pay the tax collected at source

vi.	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
vii.	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269 T
viii.	277	False statement in verification etc. with reference to Category 'A' offences
ix.	278	Abetment of false return etc. with reference to Category 'A' offences

6.2 Category 'B':

Offences punishable under the following sections are included in **Category 'B'**:

Sl. No.	Section	Description/ Heading of section
i.	275A	Contravention of order made u/s 132 (3)
ii.	275B	Failure to comply with the provisions of section 132(1)(iib)
iii.	276	Removal, concealment, transfer or delivery of property to thwart tax recovery
iv.	276A	Failure to comply with the provision of sections 178 (1) and 178 (3)
v.	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
vi.	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
vii	276C(1)	Wilful attempt to evade tax etc.
viii	276C(2)	Wilful attempt to evade payment of taxes etc.
ix.	276CC	Failure to furnish returns of Income
x.	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
xi.	276D	Failure to produce accounts and documents
xii	277	False statement in verification etc. with reference to Category 'B' offences
xiii	277A	Falsification of books of account or documents etc.
xiv.	278	Abetment of false return etc. with reference to Category 'B' offences

7. Eligibility Conditions for compounding:

The following conditions should be satisfied for considering compounding of an offence:

- The person makes an application to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format (Annexure-1)**
- The person has paid the **outstanding** tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought.

- iii. The person undertakes to pay the **compounding charges** including the compounding fee, the prosecution establishment expenses and the litigation expenses including counsel's fee, if any, determined and communicated by the CCIT/DGIT concerned.
- iv. The person undertakes to withdraw appeal filed by him, if any, in case the same has a bearing on the offence sought to be compounded. In case such appeal has mixed grounds, some of which may not be related to the offence under consideration, the undertaking may be taken for appropriate modification in grounds of such appeal.

8. Offences generally not to be compounded:

- i. **A Category 'A' offence** sought to be compounded by an applicant in whose case compounding was allowed in the past, in an offence under the same section for which the present compounding has been requested, on 3 occasions or more.
- ii. **A Category 'B' offence** other than the first offence as defined herein below:

First offence means offence under any of the Direct Tax Laws committed prior to:—

(a) the date of issue of any show-cause notice for prosecution
or

(b) any intimation relating to prosecution by the Department to the person concerned

or

(c) launching of any prosecution, whichever is earlier;

OR

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 entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed.

- iii. Offences committed by a person **who**, as a result of investigation conducted by any Central or State agency and as per information available with the CCIT/DGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity.

- iv. Offences committed by a person **who**, was convicted by a court of law for an offence under any law, other than the Direct Taxes laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine, and which has a bearing on the offence sought to be compounded.
- v. Offences committed by a person **which**, as per information available with the CCIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency.
- vi. Offences committed by a person for which he was convicted by a court of law under Direct Taxes laws.
- vii. Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding.
- viii. Offences committed by a person 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'.
- ix. Any other offence, which the CCIT/DGIT concerned considers not fit for compounding in view of its nature and magnitude.

9. Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in para 8 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

10. Authority Competent to Compound an Offence:

The CCIT/DGIT having jurisdiction over the person, seeking compounding of an offence, is the competent authority for compounding of all **Category 'A'** and **Category 'B'** offences. **However, an order in case of an application for compounding of an offence appearing in Category 'B' of para 6 supra, involving compounding charges (as explained in para 13 infra) in excess of Rs. 10,00,000 (Rs. ten lakhs) shall be passed by the CCIT/DGIT concerned only on the recommendation of a committee comprising of 3 officers of the region concerned**, namely (i) Principal CCIT, (ii) DGIT (Inv.) and (iii) CCIT/DGIT having jurisdiction over the case. In case such officers are not available within the region, the nearest DGIT or CCIT may be co-opted as Member.

10.1 Where Principal CCIT / DGIT(Inv) is the CCIT/DGIT having jurisdiction over the case, then another officer of the rank of CCIT may

be co-opted as a member of the Committee. The CCIT/DGIT having jurisdiction over the case will act as the 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.

11. Compounding Procedure:

- i. On receipt of the application for compounding, the same shall be processed by the Assessing Officer/Assistant or Deputy Director concerned and submitted promptly along-with duly filled in check-list (**Annexure-2**), to the authority competent to compound, through proper channel.
- ii. The competent authority shall duly consider and dispose of every application for compounding through a speaking order in the prescribed format (**Annexure-3**) within the time limit prescribed by the Board from time to time. In absence of such a prescription, the application should be disposed off **within 180 days** of its receipt. However, while passing orders on the compounding applications, the period of time allowed to the assessee for paying compounding charges shall be excluded from the limitation specified above.
- iii. Where compounding application is found to be acceptable, the competent authority shall intimate the amount of compounding charges to the applicant requiring him to pay the same **within 60 days** of receipt of such intimation. Under exceptional circumstances and on receipt of a written request for further extension of time, the competent authority may extend this period up-to further period of **120 days**. Extension beyond this period shall not be permissible except with the previous approval of the Member (Inv), CBDT on a proposal of the competent authority concerned.
- iv. However, wherever the compounding charges are paid beyond 60 days as extended by the competent authority, the applicant shall have to pay **additional compounding charge** at the rate of 2% per month or part of the month of the unpaid amount of compounding charges.
- v. The competent authority shall pass the compounding order **within 30 days** of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application may be rejected after giving the applicant an opportunity of being heard. The order of rejection shall be brought to the notice of the Court immediately through prosecution counsel in the cases where prosecution had been instituted.

12. Fees for compounding:

The fees for compounding of offences shall be as follows:

12.1 Section 276B - Failure to pay the tax deducted at source.

Section 276BB - Failure to pay the tax collected at source.

3% per month or part of a month of the amount of tax in default disclosed in the compounding application. After compounding of the said offence, if the same person comes forward for compounding of such offence through any subsequent application, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default. The period of default for calculating compounding fee in the category shall be calculated from the date of deduction to the date of deposit of tax deducted at source as is done in respect of calculating interest under section 201(1A).

12.2 Section 276C(1) - Wilful attempt to evade tax etc.

100% of the amount sought to be evaded.

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

3 % per month or part thereof of the amount of tax etc., the payment of which was sought to be evaded, for the period of default.

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

12.4.1 2% per month or part of a month of the tax and interest determined on assessment or reassessment, in relation to return of income that was required to be furnished under section 139(1) or section 142(1) or section 148 or section 153A/153C as the case may be, existing on the date of conveyance of compounding charges to the applicant, determined after rectification u/s 154 of the Act, if any and 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, to the date of completion of the assessment.

12.4.2 Where, before the date of furnishing of the return or where no return was furnished before the date of completion of assessment, any tax is paid by the person u/s 140A, compounding fee shall be calculated in the manner prescribed above up-to the date on which the tax is so paid; and thereafter, the fee shall be calculated at the aforesaid rate on the amount of tax and interest determined on the assessment or re-assessment as the case may be, determined after rectification u/s 154 of the Act, if any, as reduced by the TDS, TCS, advance tax and tax paid u/s 140A before filing of the return of

income or where no return was furnished from the date of completion of assessment or reassessment.

12.5 Section 276CCC - Failure to furnish return of income as required under section 158BC.

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

12.6 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.

12.7 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 provision of Section 269T.

12.8 Section 277 - False statement in verification etc.

Section 278 - Abetment of false return etc.

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

12.8.2 Where same set of facts and circumstances attract prosecution under section 277 in addition to the offence in connection with which prosecution under section 277 got attracted in case of the same person, no separate compounding fee shall be charged for offence under section 277. For example where a person is charged with an offence under section 276C(1) as also under section 277, for the same set of facts and circumstances, the compounding fees shall be charged only for the offence under section 276C(1) at the rates prescribed for the said section.

12.8.3 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 of the person charged under sections 278B or 278C. However, the authority competent to compound, 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.

12.8.4 In case where no offence under any other sections of I.T. Act is involved except under section 277 or 278, the compounding fee shall be decided by the authority competent to compound having regard to

the amount of tax which would have been evaded as a result of such offence u/s 277 or 278.

12.9 Offences, other than those described in para 12.1 to 12.8, for which no compounding fee has been prescribed, the authority competent to compound may determine the amount of compounding fee having regard to the nature and magnitude of the offence, subject to levy of a **minimum compounding fee of Rs. 25,000/-** for each such offence.

12.10 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 approval of the Finance Minister.

13. Compounding Charges:

The compounding charges shall include compounding fee, prosecution establishment expenses and litigation expenses including Counsel's fee. Prosecution establishment expenses will be charged at the rate 10% of the compounding fees subject to a minimum of **Rs. 25,000/-** in addition to litigation expenses including Counsel's fees paid/payable by the Department in connection with offence(s) compounded by a single order. In a case where the litigation expenses are not readily ascertainable, the competent authority may arrive at litigation expenses, inter alia, on the basis of rates prescribed by the Government and on the basis of available records with the government and the counsels.

14. Applicability of Guidelines to offences under other direct tax laws

These guidelines shall apply *mutatis mutandis* to offences under other Direct Tax Laws and the compounding fee for offences under the other Direct Tax Laws will be same as prescribed supra for the corresponding provisions of offences under the Income-tax Act, 1961.

15. The application for compounding in the cases of co-accused shall be considered along with the main case or immediately after a decision has been taken in the main case.

16. The PCCsIT/CCsIT/PDGsIT/DGsIT are requested to circulate the above revised Guidelines along with its annexure Nos. 1, 2 and 3 among all the officers of their region for compliance.

Sd/-
(Rajat Mittal)
Under Secretary(Inv. V)
CBDT, New Delhi

Annexure – 1**Format of application for compounding of offences under Income-tax Act to be submitted separately by each applicant**

S.No.	Particulars	Remarks
1	Name of the applicant	
2	Status	
3	Offences committed u/s *	
4	AYs/Date/Period involved in offence	
5	Status of case (i.e. whether contemplated / pending in court / convicted/ acquitted)	
6	Date of filing of complaint, if any	
7	Particulars of offences alongwith justification for compounding (separate sheet)	
8	Whether the applicant has paid the amount of tax, interest, penalty and any other sum due relating to the offence.?	
9	Whether the applicant undertakes to pay the compounding charges as shall be intimated by the Department?	
10	Whether similar offences in the case of the applicant have been compounded earlier. If yes, how many times?	
11	Whether the offence is first offence as defined in para 8(ii) of the guidelines?	
12	Whether the offence has been committed by the applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity?	
13	Whether any enquiry / investigation has being conducted by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency is pending against the applicant? If so, particulars may be given.?	
14	Whether the applicant was convicted by a court of law for an offence under any law, other than Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine. If so, particulars may be given alongwith a copy of the court's order.?	
15	Whether, the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court and the Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out?	
16	Whether the applicant was convicted by a court of law for the offence sought to be compounded?	
17	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the filing of the application for compounding?	

* All offences for which compounding is sought

Verification

I son/daughter of..... in
the capacity of certify and solemnly affirm that
the information in the above columns is true and correct to the best of
my knowledge and belief.

Place	Signature.....
Date	Designation.....
	Current Address.....

Annexure – 2**CHECK LIST for Compounding as per the Guidelines issued by the CBDT vide F.No.285/35/2013-IT(Inv.V) dated 23.12.2014 on Compounding of Offences**

(to be submitted by AO/ADIT/DDIT to the authority competent to compound through Proper channel)

(A case can be compounded only if the answers to Sl.No. 1 to 17 matches with the answers given below in remarks column.)

- a) Name of the applicant :-
- 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) :-

<u>S.no.</u>	<u>Particulars</u> <u>(vis a vis compounding guidelines)</u>	<u>Remarks</u>	<u>Reference of the</u> <u>file submitted</u>
1.	The applicant has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no.....
2.	Whether the applicant has paid the amount of tax as well as interest and penalty& any other sum relating to the default as prescribed in the guidelines.?	Yes	On Page no.....
3.	Whether the applicant has undertaken to pay the compounding charges in terms of para 7 as computed as per para 12 & 13 of the Guidelines.?	Yes	On Page no.....
4.	Whether the offence is under the same section under which offences have been committed by the applicant earlier and which have been compounded three times prior to the present application.? <u>NOTE: THIS IS APPLICABLE ONLY IN CASE OF Category 'A' OFFENCE</u>		
5.	Whether the offence is the first offence as defined in para 8(ii) of the guidelines.? <u>NOTE: THIS IS APPLICABLE ONLY IN CASE OF Category 'B' OFFENCE</u>	No	On Page no.....

S.no.	Particulars (vis a vis compounding guidelines)	Remarks	Reference of the file submitted
6.	Whether the offence has been committed by the applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity?	No	On Page no.....
7.	Whether the offence committed by applicant has a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency*?	No	On Page no.....
8.	Whether the offence has been committed by the applicant who, was convicted by a court of law for an offence under any law, other than Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine.*?	No	On Page no.....
9.	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*?	No	On page no.....
10.	Whether the offence is one committed by an applicant for which he was convicted by a court of law?	No	On Page no.....
11.	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the filing of the application for compounding?	No	On Page no.....
12.	Amount of compounding fee as computed by AO/ADIT/DDIT as per the guidelines	Rs.....	On Page no.....
13.	The compounding charges are in accordance with para 7 read with paras 12 and 13 of the Guidelines.	Yes	On Page no.....
14.	The factors, such as conduct of the person, nature and magnitude of the offence and facts and circumstance of the case have been considered while dealing with the compounding application	Yes	On Page no.....
15.	Whether the case of Co-accused are being considered as per para 15 of the Guidelines.?	Yes	On Page no.....
16.	Any other fact relating to the person / case relevant for consideration of the competent authority	No	On Page no.....

Signature.....

Name.....

Designation.....

Date.....

Recommended by

1. Jt.CIT/ Addl. CIT/Jt.DIT/Addl. DIT.....Signature/Name/
Designation/Date

2. PCIT/PDIT/CIT/DIT.....Signature/Name/Designation/Date

*** Note: This may be given on the basis of information furnished by applicant in his application for compounding or information already available with the competent authority for compounding**

Annexure – 3

Part-I

Format for order u/s 279(2) of the I.T. Act for Compounding of an offence as mentioned in Para 11(ii) of the Guidelines issued by the CBDT vide F.No.285/35/2013-IT(Inv.V) dated 23.12.2014 on Compounding of Offences

Order u/s 279(2) of I.T. Act, 1961

- | | |
|--|----|
| a) Name of the person | :- |
| 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 Principal Chief/Chief Commissioner of Income-tax / Principal Director/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), 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:-

Date:-

Seal

Sd/-

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

Annexure – 3**Part-II****Format for order u/s 279(2) of the I.T. Act for rejecting the compounding of an offence as mentioned in Para 11(ii) of the Guidelines issued by the CBDT vide F.No.285/35/2013-IT(Inv.V) dated 23.12.2014 on Compounding of Offences****Order u/s 279(2) of I.T. Act**

- | | | |
|----|---|----|
| a) | Name of the person | :- |
| 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 decline the prayer to compound the offence(s), 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’

Place:-

Date:

Seal

Sd/-

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

Annexure – A

Statement of facts

The statement of facts should, inter alia, contain the following:-

1. Detail of application filed

An application for compounding of offences committed 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 person who has filed an appeal against the conviction order that is pending in the Court/ the Court has acquitted the person & 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 person.

5. Direction to the AO/ Standing Counsel to take necessary action to implement the orders at the earliest.

7. F.NO. 285/47/2013-IT(INV.V)/85 DATED 27.12.2013**Clarification in respect of the Competent Authority to Compound Offences related to the TDS provisions**

Kindly refer to the guidelines of the Board F.No.285/90/2008-IT(Inv.)/12 dated 16.05.2008 w.r.t. compounding of offences under the provisions of the Direct Tax Laws. Paragraph 7.1(a) of the said guidelines pertains to the authority competent to compound the applications for compounding of technical offences including offences punishable u/s 276B & 276BB. In its present form it says that CCIT/DGIT having jurisdiction over the case will be the authority competent to compound all application for compounding of technical offences.

2. Clarifications have been sought from the Board in respect of the competent authority to compound offences related to the TDS provisions.

3. The matter has been examined and it is clarified that as per the guidelines the authority competent to compound all applications for compounding of technical offences will be CCIT/DGIT having jurisdiction over the case. It flows from the above that in respect of TDS related cases, the CCIT under whose jurisdictional control the CIT(TDS) functions would be the competent authority.

4. This issues with the approval of Member (Inv), CBDT.

Sd/-
(Amaresh Singh)
Director (Inv. V)

8. F.NO. 385/26/2011-IT(B)/141 DATED 19.03.2012**Compounding of offences under the provisions of the Direct Tax Laws - Modification of para 10 of the existing guidelines**

Comprehensive guidelines on compounding of offences have been issued vide CBDT letter F.No. 285/90/2008-IT(Inv.)/12 dated 16.05.2008. Para 10 of the said letter deals with the prosecution establishment expense which are to be charged, and reads as under

“In addition to the compounding fee, the compounding charges shall include prosecution establishment expenses. A consolidated fee for prosecution establishment will be charged which would cover the litigation expenses also. Accordingly, prosecution establishment expenses will be charged at the rate of 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.”

2. Reference has been received from the filed formation that the above levy of “prosecution establishment expenses” while compounding the offence is highly disproportionate to the fees payable by the Department to the prosecution counsel and therefore, deserves to be appropriately reviewed.

3. The matter has been examined and it has been decided to modify the para 10 of the said guidelines as under:

“In addition to the compounding fee, the compounding charges shall include prosecution establishment expenses and the litigation expenses. While the prosecution establishment expenses will be charged at the rate of 10% of the compounding fee subject to a minimum of Rs. 10,000/- and maximum of Rs. 50,000/-, the litigation expenses will be the fees paid/payable by the Department to the prosecution counsel till the date of compounding of offences as per the Instruction applicable on the subject on the date of compounding. This will apply even where a number of offences are compounded under a single order.”

Sd/-

(Amaresh Singh)
Director (Inv.)-V & OSD (legal)
CBDT, New Delhi

9. F.NO.285/90/2008-IT(INV.)/12 DATED 16.05.2008

Revised Guidelines for Compounding of offences under the provisions of the Direct Tax Laws

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 supersession 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)
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.

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.

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.
- 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.

11. Applicability to pending cases

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.

12. Applicability to offences under other Direct Tax Laws

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 all the officers of their region.

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
directorates 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? :-
- 16) 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

Signature.....

Date

Designation

Annexure – 2(a)

CHECK LIST for Compounding of Non-technical Offences
(to be submitted by AO/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) :-

<u>S.No.</u>	<u>Particulars</u>	<u>Remarks</u>	<u>Reference</u>
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 done in a systematic and planned way over a number of years.	No	On Page no.....
8.	The assessee is a habitual defaulter.	No	On page no.....

S.No.	Particulars	Remarks	Reference
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 AO.	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 of the Guidelines.	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?	Yes	On Page no.....
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.	No	On Page no.....

Sd/-

AO/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 AO/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) :-

<u>S.No.</u>	<u>Particulars</u>	<u>Remarks</u>	<u>Reference</u>
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 has been done in a systematic and planned way over a number of years.	No	On Page no.....
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 AO.	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 of the Guidelines.	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/-
AO/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.

Annexure – 3(b)**Suggested format of order u/s 279(2) rejecting 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 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’

Place:-

Seal

Sd/-

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

Annexure – 3(c)

Suggested format of 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 on and 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 AO/ Standing Counsel to take necessary action to implement the orders at the earliest.

10. F.NO.285/20/2007-IT(INV.)/6 DATED 12.04.2007

‘Tax sought to be evaded’ for purpose of compounding in cases where return were to be filed u/s 158BC/158BD or 153A/153C

The existing guidelines for compounding of offences under Direct Tax 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."

11. F. NO. 285/26/2002-IT (INV.) DATED 29.07.2003

GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER DIRECT TAX LAWS AMENDMENTS

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 September, 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

(I) 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 the 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 of substantive/non-technical offences, in which the amount involved in the offence exceeds Rs. 1 lakh, the Board shall grant approval if the Ministry of Law advises that the chances of successful prosecution are not good. This 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 assesseees to get their offences compounded compounding fee in respect of the following offences has been substantially reduced as under:

(I) Section 276B (prior to 1-4-1989) - 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. One 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 2-4-1989) - 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 1-4-1989) - 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 which 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 return was furnished, the date of completion of assessment of any tax is paid by the assessee under section 140A or otherwise :

- (i) Compounding fee shall be calculated in the manner prescribed in para 9.7.1 above, 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 determined on regular assessment as reduced by the TDS, advance tax and tax paid under section 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.

(V) 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 fee shall be 100% of the 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.

2. 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.

Sd/-
(Sharat Chandra)
Director (Inv. II&III), OSD (Legal)

12. F.NO.285/62/98-IT(INV)/22 DATED 26.03.1999

Guidelines for compounding of offence under Direct Tax Laws - Clarification

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 *mutatis mutandis* to offences under the other Direct Tax Laws also. These amendments may be brought to all concerned and be given wide publicity.

13. F.NO.285/86/90-IT(INV)/53 DATED 16.05.1996**Regarding calculation for Compounding Charges in the case of a Firm**

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

14. INSTRUCTION NO. 5255 DATED 20.10.1995**Clarifications on Guidelines dated 30.09.1994**

The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No.285/161/90-IT(Inv) dated 30/09/1994 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:-

Para4C(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 offences’ 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 its 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).

15. F.NO. 285/90/94-IT(INV.)/867 DATED 01.04.1995**Instruction No. 5253 -CIT not empowered to pass order u/s 279(2)**

Recently, an instance has come to the notice of the Board where an order u/s 279(2) of I.T. Act was passed by a Commissioner of Income-tax. In the past also one or two such instances have come to the notice of the Board.

2. Section 279(2) which provides for compounding of offences punishable under the I.T. Act was amended w.e.f. 1-4-89. The amended provisions provided that only the Board, CCIT or the DGIT could compound an offence. The sub-section (2) of Section 279 was further amended by Finance (No. 2) Act 1991. The amended provisions which are in operation w.e.f. 1-10-91 provide that an offence can be compounded by the Chief Commissioner or the Director General. Thus w.e.f. 1-4-89 the Commissioner of Income-tax is no longer empowered to pass order u/s 279(2).

3. This legal position may be kept in mind by all the Chief Commissioners and Commissioners of Income-tax while dealing with requests for compounding of offences. Needless to say that the guidelines issued by the Board Vide F.No.285/161/90-IT(Inv.) dated 30-9-94 for compounding of the offences may also be followed in all cases.

4. These instructions may be brought to the notice of the Commissioners of the Income-tax working under your jurisdiction.

16. INSTRUCTION NO. 5205 DATED 30.09.1994**Guidelines for Compounding of Offences under the Direct Tax Laws**

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 assessee 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.

4. 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, assessees 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.

9. 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.

10. 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]

17. INSTRUCTION NO. 5206 DATED 30.09.1994
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Guidelines for Compounding of Offences under the Direct Tax Laws

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) 276D (wilful attempt to evade tax etc.)
- vii) 276DD (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 Act 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]

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18. INSTRUCTION NO: 1718 DATED 09.07.1986**Clarifications on Prosecution Establishment Expenses**

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 :-

Query 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 charged 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 charged 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 prior to 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.

19. INSTRUCTION NO. 1661 DATED 18.11.1985**Prosecution Establishment Expenses**

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.

20. INSTRUCTION NO. 27 DATED 21.03.1969**Guidelines for Compounding of Offences**

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.

C. Other Relevant Circulars / Guidelines / Instructions

1. PIB PRESS RELEASE DATED 21.01.2019

CBDT clarifies regarding Issue of Prosecution Notices

The Central Board of Direct Taxes (CBDT) has stated that certain news items that appeared in a section of media regarding enmasse issue of prosecution notices to small companies for TDS default are completely misleading and full of factual inaccuracies. CBDT clarified that Mumbai Income-tax TDS office has issued prosecution Show Cause Notices only in a limited number of big cases where more than Rs. 5 lakhs of tax was collected as TDS from employees etc. and yet the same was not deposited with the Income-tax Department in time.

CBDT said that some defaulter companies and vested interests are deliberately misleading the media to thwart action against themselves. Having deducted tax from employees and other taxpayers and not depositing the same in time in the Government Treasury is an offence punishable under the law. It also affects the interest of the employees from whose salary the tax has been deducted by the unscrupulous employers who have not deposited the same in time in the Government Treasury. If the TDS is not deposited in time, the employee would be ineligible for claiming credit of the tax deducted when he files his own return.

CBDT stated that in last one month, only in 50 big cases prosecution notices have been issued by Mumbai IT TDS office. Out of these, in 80% of the cases the TDS tax default is above Rs. 10 lakhs and in 10 % cases, TDS default is between Rs. 5 to Rs. 10 lakhs. In the remaining 10% cases, TDS default is of more than Rs. 1 crore as detected in the survey. Prosecutions have also recently been launched against 4 big business houses where more than Rs. 50 Crores of tax was collected by them from the tax payers and yet not deposited with the Government in time. But such legal and rightful action is being unfortunately projected in the media by the vested interests as if the Department is going overboard to harass small employers.

It would be pertinent to note that in a country of 130 Crores people where around 6 Crores returns are filed every year, only a total of 1400 prosecutions have been filed so far for various offences under the Income-tax Act during this financial year. This, by any stretch of imagination, cannot be termed as mass harassment by the Income-tax department. Therefore, to say that prosecution notices enmasse have been sent to taxpayers for minor defaults is completely incorrect and misleading, the CBDT added.

2. F. NO. 285/29/2018-IT(INV. V)/415 DATED 03.12.2018

Applying provisions of Section 405 of the Indian Penal Code

To,

All the Pr. Chief Commissioners of Income-tax

Madam/Sir,

Subject: Writ Petition No. 2537 in the case of Ram Prakash Biswanath Shroff Vs. CIT (TDS) & others-reg.

Kindly refer to the order of Mumbai High Court dated 15.10.2018 in the above mentioned writ petition.

2. In this case, Hon'ble Court has observed that many employers do not issue Form 16 to their employees in violation of the existing legal provisions and because of that many employees, some of them being senior citizens, suffer. The Hon'ble Court also drew the attention of the department towards applicability of section 405 of the Indian Penal Code, 1860 in such cases.

3. Section 405 of the Indian Penal Code, 1860 deals with the criminal breach of trust which is dishonest misappropriation or conversion to own use another's property. Several illustrations of situations that tantamount to a breach of trust are also mentioned in the section itself. The provisions of section 405 of IPC could be invoked, based upon the appreciation of facts and circumstances, while initiating prosecution in suitable cases.

4. In this regard, the undersigned is directed to enclose a copy of the said order of Hon'ble Mumbai High Court for circulation amongst the officers/officials of your charge for information & necessary action.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY
ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2537 OF 2018

Ramprakash Biswanath Shroff ... Petitioner

Vs.

The Commissioner of Income-tax (TDS) and Ors. ... Respondents

CORAM: S.C. DHARMADHIKARI &

B.P. COLABAWALLA, JJ.

MONDAY, 15TH OCTOBER, 2018

1. At the request of Mr.Suresh Kumar and to enable him to file a comprehensive affidavit, we post this matter on 19th November, 2018.
2. This Writ Petition raises an issue which is of serious concern for those salaried employees employed by Companies and Corporations, whose Promoters and persons in-charge do not bother to issue, to the employees from whose salary, the tax is deducted at source, the certificates. Hence, the petitioner says that the Form No.16 having not been issued in time, the employees are suffering serious consequences and are proceeded against for breaching and violating legal provisions. Some of these employees are senior citizens.
3. We would, therefore, request the respondents, particularly the Commissioner of Income-tax (TDS), Mumbai to file a comprehensive affidavit.
4. We want the Ministry of Finance, Department of Revenue also to be made aware of these serious lapses in Mumbai and around. We have noticed that there is no transparency, in the sense, no information is ever displayed in relation to such defaulters by the Department. We expect the Department to provide information of such defaulters so that those seeking employment or awaiting either retiral benefits or such other sums from the employers would know in advance as to how they are expected to comply with law. The petitioner says that he is a senior citizen of 65 years of age and because he is not in possession of Form No. 16, he has suffered at the hands of the Department. Let, therefore, the necessary steps be taken in law so that such occurrences are avoided in future. We would expect the Department of Revenue, particularly, Department of Income-tax to penalise such defaulters and take other strict measures contemplated by law against them. We post this matter in the hope that this Writ Petition will be taken as test case by respondent No.1.
5. During the course of arguments, we have invited Mr.Suresh Kumar's attention to Section 405 of the Indian Penal Code, 1860 and we find that *prima facie*, the reading of this Section together with its explanation furnishes enough ground to bring the persons like respondent Nos.2 to 5 to book by applying provisions of Section 405 of the Indian Penal Code to them. We do not see any record till date of the Department of Revenue having applied such a provision in the prosecution launched against such defaulters. Let Mr.Suresh Kumar enlighten us on this aspect as well.

3. F.NO.225/245/2018-ITA.II DATED 25.07.2018**SECTION 138 OF THE INCOME-TAX ACT, 1961 - DISCLOSURE OF INFORMATION RESPECTING ASSESSEES TO SPECIFIED OFFICER, AUTHORITY OR BODY PERFORMING FUNCTIONS UNDER ANY OTHER LAW - NOTIFIED AUTHORITY UNDER SECTION 138(1)(a) (ii)-CBDT ORDER**

In exercise of powers conferred under section 138(1)(a) of Income-tax Act, 1961 ('Act'), the Central Board of Direct taxes, hereby directs that income-tax authorities specified in column (3) of the Table below shall furnish the information as mentioned in the corresponding entry in column (2) to the Director General, Central Economic Intelligence Bureau, Department of Revenue, Government of India, as notified under sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Act, vide Notification No. 34/2018 dated 25.07.2018.

TABLE

S. No.	Information to be Furnished	Specified Income-tax Authority
(1)	(2)	(3)
1.	Preliminary Search Report, Summary of Survey Report, Summary of Appraisal Report	DGIT (Investigation)
2.	Summary of assessment order(s) in cases searched/surveyed by DGIT(Investigation)	Pr.CCIT, DGIT (Investigation), Pr. CCIT (International-tax), CCIT (Exemption), CCIT (Central)
3.	Summary of appellate order(s) of Commissioner (Appeals) in cases searched/surveyed by DGIT (Investigation)	Pr.CCIT, DGIT (Investigation), Pr. CCIT(International-tax), CCIT (Exemption),CCIT (Central)
4.	Details of Prosecution filed/convictions/acquittals	Pr.CCIT, DGIT (Investigation), Pr. CCIT (International-tax), CCIT (Exemption), CCIT (Central), DGIT (I&CI)

While furnishing the above mentioned details, as provided in section 138(1)(a) of the Act, the specified income-tax authority has to form an opinion that furnishing of such information is necessary for the purpose of enabling the specified authority in CEIB to perform its functions.

The protocol of furnishing information to CEIB by various specified income-tax authorities shall be dealt with by the Investigation division of CBDT.

**4. F. NO. SYSTEM/ITBA/INSTRUCTION/PROSECUTION/2017-18
DATED 26.05.2017**
ITBA-Prosecution Instruction No. 2-Functionality for Compounding Proceedings and Grant / Withdraw Immunity
Subject: Launch of Income-tax Business Application (ITBA) - Prosecution Module (Phase 2).

This is in reference to the subject mentioned above. Phase 1 of the Prosecution Module of **ITBA** was rolled out on 03.03.2017 in which facility to initiate prosecution proposal. Issue authorization u/s 279(1) and recording Court proceedings was provided. The functionality for **Compounding Proceedings** and Grant/ Withdraw Immunity has now been rolled out in Phase 2 with effect from 23.05.2017.

2. The Prosecution Module of ITBA can be accessed by entering the following URL in the browser: <http://itba.incometax.gov.in>

The path for entering Prosecution module is:
ITBA Portal→ Login→ Modules→ Prosecution

3. The following additional functionalities have been made available in Phase 2 of Prosecution Module of ITBA:

(i) Compounding:

a) Functionality to initiate compounding proceedings on receipt of application from the assessee and passing the compounding order u/s 279(2) of the IT Act and 35-1(2) of the W.T. Act has been provided in ITBA. The users for this functionality are CCIT/ DGIT. Hors. of CCIT/ DGIT and their staff. The user needs to select the Prosecution ID on which the compounding proceedings has to be initiated. The Prosecution ID relates to the work item for a prosecution proceeding initiated earlier in relation to which the assessee has filed application for compounding. If the prosecution proceedings are not initiated for that case, user can select “Not Applicable” and continue.

The path for the initiating compounding proceedings is:
Prosecution → Initiate Compounding

b) For a prosecution proceeding initiated manually, the user can record the details of the said proceedings through ‘Manual to System’ option provided in the screen ‘Initiate Prosecution Proposal’. This will generate the prosecution II of such manual proceedings and then the user can go to ‘Initiate Compounding’ screen and initiate compounding proceedings.

c) The user can enter the entire details of the compounding application in the ‘Initiate Compounding’ screen and submit. After

initiating compounding proceedings, a work item for Compounding is created. The user can go to the work item and record his decision on the application. If the application is approved, the user has to enter the Compounding Fee, Prosecution Establishment Expenses and **Litigation Expenses** in the relevant fields. After this, the user can generate Intimation Letter for informing the assessee that his application has been approved subject to payment of Compounding Charges specified in the letter. A template for such Intimation Letters has been provided in the System.

d) Once the assessee pays Compounding Charges, the CCIT/ DGIT can generate Compounding Order u/s 279(2) of the I.T. Act/ 35-1(2) of the W.T. Act. The user can also pass order for rejection of the application for compounding in the Module. There is a template for both approval and rejection order in the Module as specified in the Board's Instruction dated 23.12.2014 on the subject.

(ii) Grant/ Withdrawal of Immunity:

a) A facility to grant immunity u/s 278AB(3) of the I.T. Act/ 35GA(3) of the Wealth Tax Act and to withdraw the immunity granted earlier u/s 278AB (4)/(5) of the I.T. Act/ 35GA (4)/ (5) of the W.T. Act has been provided. The users for this functionality are PCIT/ CIT and their other officers and staff.

The path for initiating Immunity proceedings is:

Prosecution→ Grant Immunity

b) After immunity proceedings are initiated, the PCIT can go to the relevant Work item and record his decision on the application of the assessee. The POT can generate order for grant of immunity or rejection of the application of the depending upon his decision.

c) The users have also been provided a facility to withdraw immunity by passing an order u/s 278A8(5) of I.T. Act/ 35GA(S) of W.T. Act. The users can also withdraw the immunity by issuing letter if the immunity stands withdrawn under the provisions of section 278AB(4) of I.T. Act/ 35GA(4) of W.T. Act.

The path for the same is:

Prosecution→ Withdraw Immunity

d) MIS Reports-

There is a facility for viewing and generating various MIS in respect of **Prosecution Module**. Relevant users will be able to view various reports. The MIS is accessible through Prosecution Home Page.

The path for viewing MN is:**Prosecution→ MIS Reports**

4) Relevant users will need their individual name based department email IDs and RSA tokens. The username and passwords are communicated on their respective email ID. The log-in to the system will be through the username and password (sent on individual email ID) along with the RSA token over the Tax net nodes. Users are advised to contact their respective RCC Admin for name based department email ID.

5) Users on Windows XP system are advised to download the Chrome (version 43) or Firefox (version 36) browser (if unavailable) from **ITBA Portal→ Download Pre- Requisites** to access the new ITEM application.

6) Training material including user manual, help content and frequently asked questions (FAQs) are available on the Prosecution Module Home Page and on **ITBA Portal→ Online Training on ITBA**. Users can refer these in case of any issues.

7) Users are advised to contact help desk in case of any issues in respect of the ITBA.

- a) URL of help desk – <http://itbahelpdesk.incometax.net>
- b) Help desk number – 0120-2811200
- c) Email ID – helpdesk.messaging@incometax.gov.in
- d) Help desk Timings – 8.30 A.M. – 7.30 P.M. (Monday to Friday)

**5. F.NO. SYSTEM/ITBA/INSTRUCTION/PROSECUTION/2016-17
DATED 08.03.2017**

ITBA-PROSECUTION INSTRUCTION NO.1-LAUNCH OF PROSECUTION MODULE (PHASE 1) IN INCOME-TAX BUSINESS APPLICATION (ITBA)

This is in reference to the subject mentioned above. The Prosecution Module (Phase 1) of ITBA has been rolled out on 3-3-2017. The Prosecution Module (Phase 1) provides the entire workflow for prosecution starting from initiation of prosecution proposal, issuing show-cause notice and authorisation u/s 279(1) of the I.T. Act, 1961 and recording details of proceedings in Court. Similar functionality is provided for offences under the W. T. Act, 1957. The process flow for compounding of offence and grant and withdrawal of immunity u/s 278AB of the I.T. Act, 1961 shall be provided in the next phase.

2. The Prosecution Module of ITBA can be accessed by entering the following URL in the browser: <http://itba.incometax.gov.in>

The path for Prosecution module is: ITBA Portal → Login → Modules → Prosecution.

3. Following functionalities have been provided in the Prosecution Module:

- a. Initiation of Prosecution Proposal** - A user can initiate prosecution proposal for relevant sections of the I.T. Act/W.T. Act. The proposal can be initiated by the AO/TRO/Range Head/PCIT/CIT(Appeals)/PDIT/Addl.DIT/JDIT/DDIT/ADIT/ITO (Inv.) depending upon their powers as per law. The proposal can be initiated for relevant sections under the I.T. Act/W.T. Act along with relevant sections of IPC or any other statute entered by the user. There is facility for further submission of the proposal by the Range Head/Addl.DIT/JDIT (Inv.) to the PCIT/PDIT (Inv.) along with his comments if the proposal has been initiated by a lower authority.

The facility to initiate prosecution proposals relating to TDS provisions has not been provided in ITBA and shall be provided in CPC-TDS.

- b. Proceedings under section 279(1)** - Once a proposal reaches PCIT/PDIT, he has facility to issue show-cause notice u/s 279(1) of the I.T. Act (or section 35-1(1) of the W.T. Act), record hearing in pursuance of notice(s) and issue authorisation u/s 279(1) of the I.T. Act. In case there are multiple accused in a case, separate notices have to be issued to each accused but a single authorisation is to be issued u/s 279(1).
- c. Record Court Proceedings** - Once authorisation u/s 279(1) has been issued, pendency is created for the officer who initiated the proposal for recording details of complaint filed in Court. He can also record details of hearings in Court and judgment passed by the Court. There is also a facility to record details of proceedings in appellate Court in case further appeal has been filed by the Department or the accused.
- d. MIS Reports** -
 - i.** There is facility for viewing and generating various MIS in respect of Prosecution Module. The users can view various reports relating to their charge. The MIS is accessible through Prosecution Home Page.

The path for the same is Prosecution → MIS Reports

4. Relevant users will need their individual name based department email IDs and RSA tokens. The username and passwords have already been communicated to their respective email ID and if not, they can obtain the same through local RCCs. The log-in to the system will be through the username and password along with the RSA token over the Tax net nodes.

5. Users on Windows XP system are advised to download the Chrome (version 43) or Firefox (version 36) browser (if unavailable) from **ITBA Portal → Download Pre-Requisites** to access the new ITBA application.

6. Training material including user manual, help content and frequently asked questions (FAQs) are available on the Prosecution Module Home Page and on **ITBA Portal → Online Training on ITBA**. Users can refer these in case of any issues.

7. Users are advised to contact helpdesk in case of any issues in respect of the ITBA.

- a. URL of helpdesk – <http://itbahelpdesk.incometax.net>
- b. Help desk number – 0120-2811200
- c. Email ID – helpdesk_messaging@incometax.gov.in
- d. Help desk Timings – 8.30 A.M. – 7.30 P.M. (Monday to Friday)

For any clarification/difficulties user may be advised to contact helpdesk of ITBA.

**6. OFFICE MEMORANDUM NO. 142/22/2007-AVD.I DATED
10.11.2008**

No. 142/22/2007-AVD.I

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

North Block, New Delhi,
Dated 10th November, 2008

OFFICE MEMORANDUM

**Subject: Prosecution sanction – evidence of sanctioning/signing/
authenticating authority.**

The undersigned is directed to say that investigating agencies generally include the name of the sanctioning authority/signing/authenticating authority in the list of prosecution witnesses for the purposes of proving the validity of the sanction accorded under Section 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1) of the Criminal Procedure Code, 1973 for prosecution of government servants . It is observed that summons for recording of evidence for proving the sanction are usually received long after the concerned officer has vacated the post and , many a times, long after the said officer has retired from Service. The process of recording of evidence/ cross examination also involves a number of visits to the Courts. The officers who have retired have to make their own arrangements for travel/ stay and then are required to claim reimbursements from the concerned Departments/organizations subsequently. This puts the sanctioning/signing/authenticating authority to a considerable inconvenience. A question has been raised whether personal evidence of sanctioning/signing/authenticating authority is a legal requirement for proving the sanction or whether the same can be proved otherwise.

2. The question whether a personal evidence of sanctioning/signing/authenticating authority is a legal necessity to prove the validity of the sanction accorded u/s 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1), CrPC has been examined in consultation with the Ministry of Law & Justice (Department of Legal Affairs).

3. The Hon'ble Supreme Court in the case of Md. Iqbal Ahmed Vs. State of AP 1979 Cr LJ 633 (SC) and in the case of State of Rajasthan Vs. Dr. A.K. Dutta AIR 1981 SC has held that the requirement of

proving the sanction can be done in any two ways - either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In the case of CBI, Hyderabad Vs. P. Muthuraman 1996 Cr LJ 3638, it was held that signature on the sanction should be proved either by the sanctioning authority or by his subordinate officer or clerk who has seen the sanctioning authority or who is acquainted with the signature of the sanctioning authority. Once the signature is proved and if the sanction order is a speaking order, then the matter ends there; otherwise evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction which may not be in a particular form. In the case of Babarali Ahmedali Sayed Vs. State of Gujarat 1991 Cr.LJ 1269 (Guj.) it was held that if facts appear on the face of sanction then there is no question of proving it by leading evidence of authority who has accorded sanction to prosecute. No separate evidence is required to be led to show that relevant facts were placed before the authority. If the facts are not appearing on the face of the sanction, then it can be proved by independent evidence that sanction was accorded after those facts had been placed before the sanctioning authority.

In the case of State Vs. K. Narasimhachary (2006 Cr.LJ 518 SC) , the Apex Court has held that the prosecution sanction order being a public document, there may not be a need to summon sanctioning authority as prosecution witness provided the prosecution proves that all the relevant material was placed before the sanctioning authority and the sanction was accorded thereafter. There are several other judgements of the Hon'ble Supreme Court and other High Courts reiterating the above legal position

4. Therefore, in the light of the catena of judgements on the subject, it is evident that if the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction, there is no requirement for the prosecution to summon the sanctioning/signing/authenticating authority for their personal evidence to prove the validity of the sanction. If at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority/signing/authenticated authority. Accordingly, there is no requirement for the prosecution to insist on personal evidence of sanctioning/signing/authenticating authority for

proving the validity of sanction as the same can be proved adequately otherwise.

5. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non-application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority.

6. All the concerned authorities/investigating agencies may keep the above settled legal position in view while taking steps for proving the validity of the sanction and ensure that the Sanctioning/signing/authenticating authority may not be routinely included in the list of witnesses for the Prosecution.

Sd/-

(Vijay Kumar)

Under Secretary to the Government of India



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