

# **PROCEDURE FOR COMPOUNDING OF OFFENCES**

- Prosecution instituted under section 279(1) may be initiated at the instance of PCIT or CIT(A) for the offences mentioned under chapter XXII of Income Tax Act.
- Assessee has to make an application to the PCCIT/CCIT/PDGIT/DGIT expressing his willingness to get the offence compounded under section 279(2) of Income Tax Act.

# CATEGORIES OF OFFENCES

- All the offences have been divided in two categories i.e. category A & B.
- A category A offence can be compounded on more than three occasions, while category B offence can be compounded only once.
- Offences under Sections 276, 276B, 276BB, 276DD, 276E, 277, and 278 are categorized as category 'A' offences while Offences under Sections 275A, 275B, 276, 276A, 276AA, 276AB, 276C(1), 276C(2), 276CC, 276CCC, 276D, 277, 277A, and 278 are categorized as category 'B' offences.

# **GUIDELINES FOR PROSECUTION**

- CBDT has issued guidelines for compounding of offences under Direct Tax Laws'2014 dated 23.12.2014.

# APPLICATION FOR COMPOUNDING

- Assessee has to make an application to the PCCIT/CCIT/PDGIT/DGIT expressing his willingness to get the offence compounded under section 279(2) of Income Tax Act in Annexure 1 (Enclosed with CBDT Guidelines).
- This application for compounding of offence can be made either before or after the institution of prosecution proceedings.
- Assessee has to state that he is willing to get the prosecution compounded and he shall pay the compounding charges for the same.
- However, assessee ought to have paid tax, interest or any other sum due to the government before making this application.

# ACTION BY ASSESSEE ON ACCEPTANCE OF COMPOUNDING APPLICATION

- If the compounding application is found to be acceptable, then the relevant Income Tax Authority will intimate the assessee the amount of compounding charges to be paid by the assessee.
- **This amount is required to be paid within 60 days.** However, under exceptional circumstances such authority may extend the time to 120 days on the request of the assessee.

# COMPOUNDING CHARGES

Compounding charges consist of

- A. Compounding fee.
- B. Prosecution establishment expenses.
- C. Litigation expenses including Counsel's fee.

# ILLUSTRATION OF COMPUTATION OF COMPOUNDING CHARGES

- Compounding charges in case of offence under section 276B of Income Tax Act.
- In the first application for compounding the fee will be computed @ 3% per month or part of month of the amount of tax in default from the date of deduction to date of deposit of tax. For any subsequent application it will be computed @ 5% per month or part of month of the amount of tax in default.
- In addition to the above charges, assessee has to pay prosecution establishment expenses @ 10% of compounding fees subject to minimum of Rs.25,000/-. Litigation expenses will be computed on the basis of Counsel's fee paid/payable by the department in connection with offences compounded by a single order.

# **ORDER OF COMPOUNDING OF OFFENCE**

- After the payment of compounding charges paid by the assessee, the competent authority will pass the order under section 279(2) of Income Tax Act within 30 days of payment of compounding charges.



# LATEST CASE LAW ON COMPOUNDING

- In its latest judgment delivered by Hon'ble Delhi High Court in the case of Vikram Singh v. Union of India [2018] 89 taxmann.com 327 it is decided by Court that **“CBDT Guidelines on Compounding of Offences, 2014, are exhaustive in nature and provide different compounding charges for different offences and guidelines do not reflect any exercise of power which is arbitrary or illegal.”**