

SECTION 276B

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Failure to pay tax to the credit of the Central Government under Chapter XII-D or Chapter XVII-B

Section 276B of The Income Tax Act, 1961 lays down that if a person fails to pay to the credit of the Central Government:

- I. The tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or
- II. The tax payable by him, as required by or under-
 - a. Sub-section (2) of section 115-O; or
 - b. The second proviso to section 194B,

within the prescribed time, as above, the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.

No penalty or prosecution shall be made or launched against the assessee for any failure referred to in section 276B if he proves that there was a reasonable cause for the said failure.

But if there is no reasonable cause for such failure, then the concept of compounding comes in the picture. Compounding of offences means that the assessee can, instead of serving imprisonment term, pay a fee to the revenue department and waive his prosecution charges.

The following points need to be kept in mind by the assessee and also the Chief Commissioner of Income Tax (CCIT) in default for compounding his offences:

- **RATE OF COMPOUNDING FEES:**

Compounding fees is 2% per month or part of a month of amount in default irrespective of amount in default for cases prior to 1-4-1989, and 5% for cases on or after 1-4-1989.

- **POWERS OF CCIT IN REGARD TO COMPOUNDING OF OFFENCES:**

- ❖ CCIT can compound a technical offence without seeking Board's approval. 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 the purpose of these guidelines "amount in default" u/s 276B, or "the amount involved in the offence" shall be the amount of tax deducted at source in default).

- ❖ A person shall not be proceeded against for an offence u/s 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A or 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the Appropriate Authority.

- **CONDITIONS FOR COMPOUNDING OF OFFENCES:**

Offences under Direct Tax Laws may be compounded subjected to the conditions prescribed in paragraphs 1 and 2. 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.

- 1. Compounding of technical offences**

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

- 1.1** The assessee should make a written request for compounding of the offence.
- 1.2** 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.
- 1.3** The assessee should state that he is willing to pay the compounding fee prescribed in para 6 below, and the prosecution establishment expenses prescribed in para 7 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.
- 1.4** All types of cases relating to technical offences are to be compounded by CCIT/DGIT. There is no distinction between first and subsequent offence, & CCIT/DGIT shall not reject an application if all conditions prescribed in the guidelines are satisfied. The conditions are:
 - (i) It is the first offence by an assessee.
 - (ii) The compounding charges do not exceed Rs. 10 lakhs.
 - (iii) The offence is compounding only before the filing of complaint.

In the case of offences punishable under section 276 (prior to 1-4-1976), 276B (prior to 1-4-1989), 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.

- 1.5** 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).

1.6 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.

1.7 For the limited purpose of determining authority granting approval for compounding, the compounding charges at the time of passing order under section 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., then the compounding charges shall be calculated on the basis of the assessment order or such other order.

2. Compounding of substantive/non-technical offences:

Following conditions must be cumulatively satisfied before compounding a substantive offence:-

- (i) The conditions prescribed in paras 1.1, 1.2, 1.3 are satisfied.
- (ii) It is first substantive offence.
- (iii) The prior approval of the Board is obtained.

3. Notwithstanding anything contained in paragraphs 1 & 2 above, the F.M. may grant approval for compounding the offence in a suitable and deserving case.

4. While seeking the Board's approval CCIT/DGIT shall clearly report whether all the prescribed conditions for compounding have been met.

5. 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.

6. Fees for compounding:

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

6.1 Section 276B - Failure to deduct or pay tax (prior to 1-4-1989)

10% per month or part of a month of the amount in default where the said amount exceeds one lakh and 5% per month or part of a month of the amount in default in other cases (now amended to 2% per month or part of a month of the amount in default irrespective of the amount of default).

6.2 Section 276B - Failure to pay the tax deducted at source (w.e.f 1-4-1989)

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

7. 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.

8. 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 Tax Acts must be considered on merits.

9. These guidelines shall apply *mutatis mutandis* to offences under the other Direct tax Laws also.

• **RATIONALE BEHIND CHARGING OF INTEREST:**

Also, interest is charged on non-compliance of Section 276B. In the Income-tax Act, 1961, there are separate provisions for levy of interest, penalty and criminal prosecution. The charging of interest has a different purpose to compensate the Department for depriving it of the use of the money during the period the payment was withheld. Criminal proceedings have nothing to do either with the levy of interest or penalty. In the absence of these proceedings also, criminal prosecution can be launched if the ingredients of the offence under section 276B of the Income-tax Act, 1961, namely, failure to pay the tax deducted at source to the credit of the Central Government within the prescribed time, are made out. The assessee can be charged with interest and also punished by prosecution.