Tax defaulters can't escape prosecution by just paying stiff penalty

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Mumbai:

The government is tightening the prosecution noose around several categories of tax defaulters, such as those who stash black money offshore. These categories of taxpayers won't be able to compound their offences (which is a process of paying a stiff compounding fee, in lieu of prosecution).

Revised guidelines, running into 30 plus pages, on 'Compounding of offences under the direct tax laws', were issued late on Friday by the Central Board of Direct Taxes (CBDT). These come into effect from June 17, and apply to all compounding applications received after this date. The revised guidelines supersede the guidelines issued in December 2014.

Sandeep Bhalla, partner, Dhruva Advisors, points out: "The earlier CBDT guidelines permitted compounding of offences relating to undisclosed foreign bank accounts and overseas assets, if the taxpayer has cooperated and paid the taxes."

Swiss govt to share a/c info of 50 Indians

Swiss authorities are in the process of sharing details of 50 Indian nationals having accounts in their country. They include businessmen with companies, including dummy ones, in sectors ranging from real estate, financial services, technology and telecom to gems and jewellery. P 9

Compounding of offences available only under stringent conditions

Bhalla added, "However, the Anti-Black Money Act of 2015, which was subsequently introduced, did not permit compounding. This Act had provided a limited window within which people could come clean against payment of a flat 30% tax and stiff penalties. The revised guidelines have taken this forward and compounding is not permitted both for cases covered under the Anti-Black Money Act and all offences relating to undisclosed foreign bank accounts or assets."

"Compounding shall also not be available where it is proved a taxpayer enabled others to evade tax, such as through entities used to launder money. The bar also applies where a tax payer generated bogus invoices of sales or purchase or provided accommodation entries. Offences under the Benami Transactions Prohibition Act too cannot be compounded," says Gautam Nayak, tax partner at CNK & Associates.

"Typically accommodation (bogus) entries are routed through shell companies, as share capital, in order to evade tax. Or to launder money, fake loans are shown in account books by a business entity," explains an income-tax official.

While compounding is not the 'right' of a tax payer, this option can be exercised, subject to approval of the application by the competent authorities. During the eight-month period ended November 2017, a thousand odd cases had been compounded; whereas prosecution complaints were filed for various I-T offences, in double the number of cases.

With the revised guidelines, there is likely to be a spike in the number of prosecution cases. However, the revised guidelines do provide that the finance minister may relax restrictions from compounding, in deserving cases.

The revised guidelines continue to classify offences in two categories. Category A defaults, which carry a lower compounding fee related to offences such as failure to deposit the tax deducted at source (TDS), or failure to file the I-T return. Category B include offences such as wilful evasion of tax, failure to produce books of accounts or falsification of books and documents.

"CBDT has provided for stringent conditions and limitations for compounding of offences. Offences like non-deposit of TDS is compoundable on not more than three occasions, whereas several other offences relating to willful attempt to evade taxes can be compounded only if it was a first time offence," explains Bhalla.

There is a relaxation when it comes to delays in deposit of TDS. Here, it has been reduced to 2% per month (from 3%), if the defaulter has applied for compounding prior to the default being noticed by the I-T .

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