

# Clubbing of Income

## Introduction

Generally, income is taxed in the hands of the person who earns it. However, Sections 60 to 64 provide the provisions for clubbing of income in specified cases to curb tax avoidance through indirect transfers or arrangements.

### Transfer of Income without transferring the Assets.

If income is transferred without transferring the asset, such income is clubbed with the income of the transferor, irrespective of whether the transfer is revocable or irrevocable, and regardless of when it was made.

### Revocable Transfer of Assets

If an asset is transferred with a provision for retransfer or the right to reassume control, the income from such asset is clubbed with the transferor's income.

#### *Exceptions*

Clubbing does not apply if:

- (a) The transfer is irrevocable during the lifetime of the transferee, and
- (b) The transferor derives no direct or indirect benefit.

If power to revoke arises later, income is clubbed from that point onward.

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## Clubbing of Income of Specific Relations

### (a) Spouse

- **Remuneration:** Income of spouse from a concern in which the other spouse has a substantial interest is clubbed, unless attributable to technical/professional qualifications.
- **Transfer of Asset:** If an asset is transferred to a spouse without adequate consideration, income from such asset is clubbed with the transferor. However, income from the accretion of transferred assets or assets transferred under an agreement to live apart is not clubbed.
- **Asset invested in Business:** If the transferred asset is invested in business, the income is clubbed proportionately.
- **Asset transferred for Spouse's Benefit:** Income arising to another person or AOP from assets transferred for the direct/indirect benefit of the spouse is also clubbed.

### **(b) Son's Wife**

Similar provisions apply to the spouse, including income from assets transferred directly/indirectly without adequate consideration, business income from such assets, or assets transferred for her benefit.

### **(c) Minor Child**

Income of a minor is clubbed with the parent having the higher total income, except:

- Income up to ₹1,500 (exempt per minor child)
- Income from manual work or application of skill/talent
- Income of a minor with disability under Section 80U

Once income is clubbed with one parent, it remains so unless reassigned by the AO with the opportunity of hearing.

### **(d) Property Gifted to HUF**

Income from personal property converted to HUF property is taxable in the hands of the individual who made the conversion. If property is partitioned and the spouse receives a share, income from such share is clubbed proportionately.

### **Computation and Tax Treatment**

- (a) Income is computed in the hands of the recipient under the relevant head before clubbing.
- (b) Losses are also subject to clubbing.
- (c) Clubbed income retains the character of the original head.

### **Tax Liability of Transferee**

While income is taxed in the hands of the transferor, the transferee may be served a notice of demand and held liable to the extent of tax attributable to the clubbed income.

# Compounding of Offence

## Introduction

Compounding of an offence under the Income-tax Act, 1961 allows an assessee to avoid prosecution by paying a prescribed sum of money. Such compounding is permitted by the jurisdictional Principal Chief Commissioner/Chief Commissioner or Principal Director General/Director General of Income-tax, either before or after prosecution proceedings are initiated.

## About the Compounding Scheme

### *(a) Scope and Applicability*

The CBDT has issued revised guidelines for compounding vide Letter F. No. 285/08/2014-IT(Inv. V)/163, dated 17-10-2024, superseding all previous guidelines. These apply to all applications filed on or after this date, including those pending as of the date of issuance. For pending applications where compounding charges have been determined but not fully paid, the charges shall be re-determined if lower under the new guidelines. However, no refund or adjustment is allowed if the earlier charges have already been paid.

### *(b) Refiling of Rejected Applications*

Compounding applications earlier rejected due to curable defects (e.g., non-payment of dues, incorrect proforma, short payment, etc.) can be refiled. A single consolidated application may be filed for multiple earlier rejections. Credit shall be given for payments already made against the compounding charges to be paid under these new Guidelines. However, applications earlier rejected on merit will not be reconsidered.

### *(c) Prosecution under IPC or Bhartiya Nyay Sanhita*

Offences under IPC or Bhartiya Nyay Sanhita, 2023, cannot be compounded under Income-tax guidelines. However, if the same facts are prosecuted under both statutes and the Income-tax prosecution is compounded, the competent authority may initiate withdrawal of the IPC complaint.

### *(d) Discretionary Nature of Compounding*

Compounding is not a matter of right. Even if eligibility conditions are satisfied, the competent authority may reject the application in exceptional cases, with reasons recorded in writing.

## Eligibility Conditions for Compounding

An offence can be considered for compounding subject to the fulfilment of the following conditions:

- (a) **Filing of Application:** The application must be submitted to the jurisdictional authority in the prescribed affidavit format (Annexure-I) on Rs. 100 stamp paper.
- (b) **Eligibility for Consolidated Applications:** Consolidated application is allowed for multiple financial years (or quarters for deductors).
- (c) **Corporate and HUF Offences:** Applications can be filed by the main accused (i.e. Company, or HUF) and/or persons deemed guilty under Sections 278B/278C. Payment by any party is sufficient for compounding.
- (d) **Implications of Insolvency Proceedings:** Section 32A of the IBC extinguishes the company's liability, but the co-accused may still be prosecuted and can file for compounding.
- (e) **Time Limit:** Application may be filed at any time after the offence. If prosecution has been initiated, it must be filed within 12 months from the end of the month of the complaint. Beyond this, charges shall be 1.5 times the normal charges.
- (f) **Application Fee:** Rs. 25,000 per application; Rs. 50,000 for consolidated applications. This fee is non-refundable but adjustable against compounding charges. There is no additional fee for pending applications filed before 17-10-2024.
- (g) **Payment of Outstanding Dues:** All outstanding taxes, interest, and penalties must be paid before application. Any shortfall must be paid within 30 days (not exceeding 3 months) of intimation.
- (h) **Undertaking to Pay Charges:** Applicant must undertake to pay compounding charges within the prescribed time, upon determination by the authority. Compounding charges vary depending on the nature of the offence and are calculated as a percentage of the tax evaded, the defaulted amount, or the income, subject to prescribed minimums. These include:
  - **Sections 275A, 275B:** 10% of the highest of total income in the past 7 years, including the year of search (minimum Rs. 5 crore)
  - **Section 276:** the lower of 75% of the outstanding tax or the recovery amount sought to be thwarted
  - **Section 276B/276BB:** 1.5% per month or part of a month of defaulted TDS/TCS, subject to the default TDS/TCS amount
  - **Section 276C(1):** 125% of tax evaded or tax on under-reported income
  - **Section 276C(2):** 1.5% per month or part of the month of tax, interest and penalty sought to be evaded, subject to the amount of evaded tax, interest, and penalty

- **Section 276CC/276CCC:** 15%-30% of the amount of evaded tax or the amount of tax on under-reported income, subject to a minimum of Rs. 5–10 lakh
- **Section 276D:** 10% of returned income or assessed income, whichever is higher, subject to a minimum of Rs. 5 lakh
- **Section 277/278:** 50% of the amount of evaded tax
- **Section 277A:** 100% of the amount of evaded tax, interest, or penalty

Refer **Letter F. No. 285/08/2014-IT(Inv. V)/163, dated 17-10-2024**, for more..

***(i) Treatment of Repeat Offences***

The compounding charges specified above apply to the *first* application (or a consolidated application). Subsequent applications attract enhanced charges:

- 2nd offence: 1.2 times of applicable charges
- 3rd offence: 1.4 times
- 4th offence: 1.6 times
- Each additional offence: an increment of 0.2 times

If the application is made beyond 12 months from the end of the month in which the prosecution complaint was filed, charges are further increased by 50%.

***(j) Payment and Procedure***

- Compounding charges must be paid online via the e-filing portal under “Other Receipt (500)” head.
- Assessee must furnish details of *all* defaults if applying under Sections 276B or 276BB for a particular TAN.
- Applicant must undertake to withdraw appeals related to the compounded offence.

**Other Relevant Provisions for Compounding**

***(a) Revival of Defective Applications***

Applications with curable defects (e.g., wrong year, non-payment of dues, etc.) may be revived if corrected within one month from notification. If not corrected in time, such applications will be returned and treated as *subsequent* applications if refiled.

***(b) Authority to Compound***

The jurisdictional Principal CCIT/CCIT/Pr. DGIT/DGIT is the competent authority. In Sections 276B/276BB offence involving multiple TANs or jurisdictions, the authority where the TDS default is highest will be the competent one. Disputes are resolved by the Pr. CCIT has a PAN jurisdiction.

### ***(c) Prior Approval of CBDT Chairman Required***

Certain cases require prior approval of the Chairman, CBDT:

- Offences where imprisonment  $\geq 2$  years has been awarded
- Cases involving convictions with imprisonment  $\geq 2$  years under other laws
- Involvement in anti-national or terrorist activity
- Offences linked to money laundering, benami transactions, or black money law
- Sections 275A and 275B offences

### ***(d) Conclusion of Penalty Proceedings***

Pending penalty proceedings linked to the offence should be concluded before the compounding decision.

### ***(e) Procedure of Compounding***

- *Application in Annexure 1 to the competent authority*
- *AO or Assistant/Deputy Director submit report with checklist in Annexure 2*
- *In case of Rejection: Speaking order in Annexure 3 – Part II, within 2 months from the end of the month of receipt of the application*
- *In case of Acceptance: Charges are intimated to the applicant within 2 months from the end of the month of receipt of the application*
- *Payment of compounding charges: Within 1 month from the end of the month of receipt of such intimation. Extension under exceptional circumstances: Up to 6 months allowed; beyond that, only with prior written approval. No extension beyond 24 months*
- *Issuance of order: Compounding order is issued in Annexure 3 – Part I within 1 month from the end of the month of payment of the compounding charges.*

Timelines for disposal are administrative; no legal limitation period is imposed. Applications are processed via ITBA/TRACES to the extent feasible.

## ADVANCE RULING UNDER INCOME-TAX

An Advance Ruling is a decision by the Board for Advance Rulings (BAR) on the tax implications of a transaction or arrangement. The main objective of an advance ruling is to provide clarity and certainty regarding the tax treatment of a transaction, thereby helping to avoid future disputes with the tax authorities.

### **Board for Advance Rulings (BAR)**

The Board for Advance Rulings (BAR) has been functioning since 01-09-2021 and has the powers of a civil court. Before this, the power to issue advance rulings was vested in the Authority for Advance Rulings (AAR).

The Central Board of Direct Taxes (CBDT) has established three offices of the BAR—two in Delhi and one in Mumbai. Each BAR consists of two members and one Secretary.

The Members are senior officers of the Income-tax Department, not below the rank of Chief Commissioner, and are nominated by the CBDT.

If the two Members of a BAR differ on any issue, the matter is referred to the Principal Chief Commissioner of Income-tax (International Taxation). This officer then nominates one more Member from another BAR. The issue is then decided based on the majority opinion of the three Members.

### **Who Can Apply for Advance Ruling?**

- **Non-residents:** For tax determination on transactions undertaken or proposed.
- **Residents dealing with non-residents:** For tax implications of transactions with non-residents.
- **Residents Rs.:** For determining tax implications of a transaction of Rs. 100 crores or more in total.
- **Public Sector Companies:** For total income computation issues pending before the income tax authorities or the ITAT.
- **General Anti-Avoidance Rule (GAAR) Matters:** To determine if an arrangement is an impermissible avoidance arrangement.

### **When Advance Ruling Cannot Be Sought?**

- Matters pending before tax authorities, ITAT, or Courts (*except for Public Sector Companies*).
- Determination of the market value of any property.
- Transactions designed for tax avoidance, except GAAR-related applications.

### **Application Process**

- Applications is required to be filed in prescribed forms:
  - **Form 34C** (Non-residents)
  - **Form 34D** (Residents transacting with non-residents),
  - **Form 34DA** (Residents undertaking a transaction of Rs. 100 crores or more),
  - **Form 34E** (Public Sector Companies),
  - **Form 34EA** (GAAR cases).
- Applications should be sent via email to BAR.
- Applicants can represent themselves or appoint an authorised representative (AR).
- The form must be signed digitally or physically by the applicant or an authorised signatory.

### **Fees for Advance Ruling**

- **Rs. 2 lakh** (if the value of transaction(s) is up to Rs. 100 crores).
- **Rs. 5 lakh** (if the value of transaction(s) is between Rs. 100-300 crores).
- **Rs. 10 lakh** (if the value of transaction(s) exceeds Rs. 300 crores).
- **Rs. 10,000** for Public Sector Companies & GAAR-related cases.

### **Withdrawal of Application**

- Within 30 days of submission.

### **Ruling and Appeals**

- BAR must issue a ruling within 6 months of receiving an application.
- If the ruling is obtained through fraud or misrepresentation, it is declared void ab initio, and all tax provisions apply retrospectively.
- Appeals against BAR rulings can be filed with the High Court within 60 days (extendable by 30 days for valid reasons).

## **E-ADVANCE RULINGS SCHEME**

The Finance Act, 2021 replaced the Authority for Advance Rulings with the Board for Advance Rulings (BAR) and empowered the Central Government to establish a faceless mechanism for advance rulings. Accordingly, the e-Advance Rulings Scheme, 2022, was notified on 18-01-2022 to process applications digitally and ensure efficiency and transparency.

### **Application Procedure**

- Applications must be filed in Form 34C, 34D, 34DA, 34E, or 34EA, as applicable, via email to [bar.application@incometax.gov.in](mailto:bar.application@incometax.gov.in).

- Applicants not assessed in India must provide their head office details, place of residence and office located or likely to be located in India, and details of the representative in India.
- The BAR Secretary reviews applications and may return defective ones for correction.
- If an application has already been allowed by the Authority for Advance Rulings, it is deemed allowed by BAR.
- Applications can be withdrawn within 30 days of filing. Applications pending as of 01-09-2021 before AAR can be withdrawn by 31-10-2024, and orders rejecting them must be issued by 31-12-2024.

### **Processing of Application**

- Upon allocation, BAR forwards a copy of the application:
  - To the Principal Commissioner or Commissioner (if the applicant is already assessed in India).
  - To the Joint Secretary (Foreign Tax & Tax Research) (if the applicant is not assessed in India).
- The Joint Secretary assigns the case to the appropriate Principal Chief Commissioner of Income-tax (International Taxation) or Chief Commissioner of Income-tax (International Taxation) based on the applicant's location.
- If relevant records are unavailable, BAR may proceed with the case based on available materials.

### **Order of Advance Ruling**

- If an application is allowed, BAR issues a notice for submission of further materials.
- If the BAR intends to reject an application, an opportunity is given to the applicant to explain why the application should not be rejected. The applicant may request a hearing through video conferencing to present his explanation.
- BAR must pronounce its ruling within 6 months of receiving the application.
- If Members of BAR differ in opinion, the matter is referred to the Principal Chief Commissioner (International Taxation), who assigns an additional Member for a majority decision.

### **Rectification of Mistakes**

- BAR may amend its ruling to correct mistakes before it is given effect by the AO.
- Corrections can be made suo motu or based on requests from the applicant or tax authorities.

### **Communication and Proceedings**

- All communications occur electronically through email..
- Applicants can represent themselves or appoint an authorised representative.

- No personal appearance is required—hearings take place via video conferencing.
- Proceedings are confidential and not open to the public.

### **Appeal Against BAR Rulings**

- Appeals against BAR orders can be filed with the High Court within 60 days (extendable by 30 days for valid reasons).
- Appeals may be filed by either the applicant or the Assessing Officer, as directed by the Principal Commissioner/Commissioner.

### **Language & Publication**

- English or Hindi may be used. If documents are in another language, English translations must be submitted.
- Orders may be published in authoritative reports at BAR's discretion.

### **Effect of Advance Ruling**

- The ruling would remain in force unless there is a change in law or facts.
- It applies for multiple assessment years unless otherwise restricted by law.

### **Administration**

- The Principal Chief Commissioner (International Taxation) oversees the scheme's implementation.

## Advance Tax

### Introduction

Advance Tax, also known as the "Pay-As-You-Earn" scheme, requires taxpayers to pay income tax during the same financial year in which the income is earned. The scheme of advance tax helps maintain a regular flow of revenue to the government. Under this scheme, every taxpayer is required to estimate the income likely to be earned during the financial year, and if the tax liability on this estimated income exceeds a specified limit, the taxpayer is required to pay the tax in instalments within the same financial year. The tax rates for advance tax purposes are prescribed each year in Part III of the first schedule of the Finance Act and section 2 thereof.

### Liability to Pay Advance Tax

- Applicable if the estimated tax liability for the financial year is Rs.10,000 or more.
- **Exemption:** Senior citizens (age 60 or above) without business/professional income.

### Computation

1. **Calculate Estimated Income:** Include all income, deductions under Chapter VI-A, and apply the relevant tax rates.
2. **Account for Tax Credits:** Deduct MAT/AMT credits, relief under Sections 89, 90, 90A, or 91, and prepaid taxes (TDS/TCS).
3. **Determine Advance Tax Liability:** Compute net liability and round off to the nearest multiple of Rs.10.

### Payment Schedule

- **Taxpayers not opting for presumptive tax scheme under Section 44AD or 44ADA**
  - 15% by June 15
  - 45% by September 15
  - 75% by December 15
  - 100% by March 15
- **Taxpayers opting for presumptive tax scheme under Section 44AD or 44ADA:** Pay 100% by March 15.
- Payments made by March 31 are treated as advance tax.

### Modes of Payment

- Mandatory e-payment for companies and taxpayers requiring tax audit under Section 44AB).

- Tax can be paid using Challan ITNS 280 via internet banking, debit card or authorised banks.

### **Non-compliance**

- **Interest:** Penal provisions under Sections 234B and 234C apply for defaults or deferments.
- **Demand Notice:** Assessing Officers can issue demand notices (Form 28) for unpaid advance tax. If the assessee does not pay the advance as per the demand notice, he is deemed to be an assessee-in-default

### **Adjustments & Revision**

Taxpayers can adjust subsequent instalments based on revised income estimates.

### **Credit for Advance Tax**

Amounts paid are treated as tax credits during regular assessments.