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## ***CBDT proposes amendment in rule 47 of the Income-tax Rules, 1962, forms of appeal and cross-objections to Appellate Tribunal - seeks public suggestions***

June 19, 2018

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### ***In brief***

The Central Board of Direct Taxes (CBDT) has recently issued a draft notification<sup>1</sup> proposing amendments in Forms of appeal/ cross-objections (i.e. Form No. 36 and Form 36A) (Forms) and rule 47 of the Income-tax Rules, 1962 (the Rules) in order to make the aforesaid Forms more informative.

More importantly, the amendments aim to capture information on the amount disputed in pending appeals before the Income-tax Appellate Tribunal (Tribunal) which is vital for designing the policy of the department for litigation management.

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### ***In detail***

- The existing Form of appeal to the Tribunal, i.e., Form No. 36 has not been amended since 1993 (last amended *vide* Income-tax Fifteenth Amendment Rules, 1993), and the Form for cross objections, i.e., Form No. 36A has not been amended since its introduction.
- Further, the existing Forms capture very limited data of the details of appellant/respondent and do not capture detailed information on addition/disallowances, amount disputed in assessment or penalty appeals before the Tribunal, pending appeals for other assessment years (AY), etc.
- Therefore, the CBDT has proposed to rationalise these Forms to make them more descriptive and informative.
- Such detailed Forms will help design the policy of the department for litigation management. Corresponding changes in rule 47 of the Rules has been proposed to give effect to the proposed amendments to the Forms.
- The draft notification has been uploaded on the website of the Income-tax Department for comments from stakeholders and public to be shared electronically by 02 July, 2018.

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<sup>1</sup> F.No.370142/8/2018-TPL dated June 13, 2018

**Proposed changes in Form of filing of appeal to Tribunal, i.e., Form No. 36**

S. No.	Details as per proposed form	Details as per existing form
1	<p><i>Appellant's and respondent's information</i></p> <ul style="list-style-type: none"> <li>Filing of name and address details has been structured.</li> <li>Tax deduction and collection account number is required to be provided, if available.</li> </ul>	<p>Column for filling name and address of appellant and respondent is unstructured.</p>
2	<p><i>Option to receive notices/ communication via email</i></p> <p>Email address to be given.</p>	<p>No option to receive notice/ communication <i>via</i> email. Only physical copy is served to both the parties.</p>
3	<p><i>Appeal details</i></p> <ul style="list-style-type: none"> <li>Details of AY pertaining to the appeal, total income declared by the taxpayer and total income as computed by the tax officer (TO) for such AY.</li> <li>Details of the order appealed against.</li> <li>Income-tax authority passing the order.</li> <li>Section under which order was passed.</li> <li>Date of service/ communication of such order.</li> <li>Date of order.</li> <li>State in which order was made.</li> <li>Section and sub-section under which appeal was preferred.</li> </ul>	<ul style="list-style-type: none"> <li>Details of AY pertaining to the appeal, total income declared by the taxpayer and total income as computed by the TO for such AY.</li> <li>Details of the order appealed against.</li> <li>Income-tax authority passing the order.</li> <li>Section under which order was passed.</li> <li>Date of service/ communication of such order.</li> <li>State in which assessment was made.</li> <li>Section under which the order was passed. Not mandatory to mention about the sub-section under which the appeal was preferred.</li> </ul>
4	<p><i>Details of addition/ disallowance and amount disputed in appeal</i></p> <ul style="list-style-type: none"> <li>Where the appeal relates to any assessment, specific details of addition/ disallowance made, the amount of addition/ disallowance disputed, and disputed demand amount are to be mentioned.</li> <li>Where appeal relates to any penalty, the amount of penalty levied and penalty disputed and payable is to be mentioned.</li> <li>In any other case, the amount disputed and amount payable is to be mentioned.</li> <li>Guidance is provided in the notes to the Form that where the addition/ disallowance has the effect of reducing the loss declared in the return or converting that loss into income, the "amount payable" shall mean the amount that would have been payable in respect of amount of addition/ disallowance which are disputed in appeal had such addition/ disallowance been the total income.</li> </ul>	<p>No such details are required to be furnished.</p>

S. No.	Details as per proposed form	Details as per existing form
5	<p><i>Details of pending appeal</i></p> <p>If an appeal for any other AY is pending with the Tribunal, the details of bench, appeal no., date of filing appeal, concerned AY and details of the concerned order is to be provided.</p>	No details for pending appeals is required to be furnished.
6	<p><i>SoF and GOA</i></p> <ul style="list-style-type: none"> <li>The appellant is now required to furnish statement of facts (SoF) along with a list of documentary evidence relied upon besides SoF with prescribed word limit.</li> <li>Option is also available to enclose SoF and grounds of appeal (GoA).</li> </ul>	Option to furnish only GoA is available and the appellant has no option to furnish SoF either with or without a list of documentary evidence relied upon.
7	<p><i>Appeal filing details and relief claimed</i></p> <ul style="list-style-type: none"> <li>The delay in filing appeal, if any, is to be specifically mentioned.</li> <li>In case of delay, the grounds for condonation of delay is to be mentioned within the prescribed word limit (option to enclose the detailed ground of condonation).</li> <li>BSR Code, date of payment, Sr. No., and amount are to be given in respect of appeal fees paid.</li> <li>Relief claimed in appeal.</li> </ul>	<ul style="list-style-type: none"> <li>The application for condonation of delay is required to be filed separately, as no option is available in the current appeal filing Form.</li> <li>A copy of the challan is enclosed along with the Form of appeal.</li> <li>Relief claimed in appeal.</li> </ul>

**Proposed changes in memorandum of filing of cross-objection, i.e., Form No. 36A**

Changes proposed in Form No. 36A are similar to Form. No. 36, corresponding to the cross-objections that may be filed by the respondent. Such changes are highlighted herein below:

Details as per proposed form	Details as per existing form
<p><i>Details with respect to appeal for cross-objection under the following heads are similar to proposed Form No. 36</i></p> <ul style="list-style-type: none"> <li>Appellant’s and respondent’s information.</li> <li>Option to receive notices/ communication <i>via</i> emails.</li> <li>Details of addition/ disallowance and amount disputed in cross-objections.</li> <li>The amount payable in respect to the additions/ disallowances has to be mentioned.</li> <li>Guidance is provided in the notes to the Form that where the addition/ disallowance has the effect of reducing the loss declared in the return or converting that loss into income, the “amount payable” shall mean the amount that would have been payable in respect of amount of addition/ disallowance which are disputed in appeal had such addition/ disallowance been the total income.</li> <li>SoF, GoA and additional evidence.</li> </ul>	<ul style="list-style-type: none"> <li>Column for filling name and address of appellant and respondent is not structured.</li> <li>No option to receive notices/ communication <i>via</i> email. Only physical copy is served to both the parties.</li> <li>Details of additions/ disallowances and amount disputed in cross-objections is not required to be furnished.</li> <li>Option to furnish only the GoA is available and the appellant has no option to furnish SoF, either with or without a list of documentary evidence relied.</li> </ul>

Details as per proposed form	Details as per existing form
<ul style="list-style-type: none"> <li>Filing details and relief claimed.</li> </ul>	
<p><i>Appeal/ cross-objections details</i></p> <ul style="list-style-type: none"> <li>Details of AY pertaining to the appeal.</li> <li>Details of the order appealed against.</li> <li>Income-tax authority passing the order.</li> <li>Section under which the order is passed.</li> <li>Date of receipt of notice appeal filed by the appellant.</li> <li>State in which the order was made.</li> </ul>	<ul style="list-style-type: none"> <li>Details of AY pertaining to the memorandum of cross-objections.</li> <li>Details of the order appealed against:</li> <li>Section under which the order is passed.</li> <li>Date of receipt of notice of appeal filed by the appellant to the Tribunal.</li> <li>State in which the assessment was made.</li> <li>Required to mention the appeal no. allotted by the Tribunal to which the memorandum of cross-objection relates.</li> </ul>

### ***The takeaways***

- The proposed amendment is a step towards making the appellate Forms descriptive and informative.
- The proposed option to furnish the SoF will allow the appellant/ respondent the opportunity to explain the background of the issue better.
- Option to file condonation of

delay in filing appeal incorporated into the Form itself.

- To overcome the issue of non-service of notice/ communication of appeal in time and to serve the notice/ communication in real time basis *via* email is a welcome step.
- The proposed amendment is similar to the modified Form

for e-filing appeals with the Commissioner, Appeals. However, the draft notification is silent on enabling the option of e-filing of appeal documents.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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