



## ERGO

*Analysing developments impacting business*

### Monetary thresholds for filing of appeals by the Income-tax department enhanced

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#### Introduction

In a move that is intended to enhance the ease of doing business, reduce low value litigations, and also help the Income-tax department (Department) focus on high value litigations, on 11 July 2018, the Ministry of Finance released a circular (Circular) enhancing the monetary thresholds of the tax effect on matters below which an appeal (Appeal) cannot be filed by the Department.

'Tax effect' is the tax amount in respect of the issues against which Appeal is intended to be filed (Disputed Issues). The 'tax effect' must be calculated by including applicable surcharge and cess. Interest on such tax payable should not form part of the calculation, unless the chargeability of interest is the Disputed Issue. The tax effect would also include the notional tax on disputed additions in cases where a loss returned by the tax payer is reduced or assessed as income. In case of penalty orders, the tax effect shall mean quantum of penalty deleted or reduced in the order to be appealed against.

#### Enhanced Limits

Under Indian Income-tax laws, the first level authority is the Assessing Officer (AO). The orders passed by the AO are subject to appeal. The first, second, third and the last appellate authorities for income-tax matters are the Commissioner of Income tax – Appeals (CITA), Income-tax Appellate Tribunal (ITAT), High Court (HC) and Supreme Court (SC), respectively. While an Appeal to the first level appellate authority (i.e. CITA) can only be filed by the taxpayer, subsequent Appeals to higher appellate authorities (i.e. the ITAT, HC, or SC) can be filed by the taxpayer as well as the Department.

To ensure that matters with a low tax effect do not pile up on an already burdened judiciary, the Government, from time to time, prescribes monetary thresholds of the tax effect on matters below which appeals cannot be filed by the Department. It is pertinent to note that these monetary thresholds are applicable only on the Department and, thus, a taxpayer can file an appeal for any amount of tax effect. As a result, going forward, the Department cannot file an Appeal unless the tax effect on a matter exceeds the thresholds provided below (Enhanced Monetary Threshold). Further, the Circular also expressly mentions that it will have retrospective effect and, therefore, pending Appeals with a tax effect that is less than the Enhanced Monetary Threshold may be withdrawn or not pursued further by the Department.

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APPELLATE AUTHORITY BEFORE WHICH THE DEPARTMENT WANTS TO FILE AN APPEAL	OLD LIMITS FOR FILING AN APPEAL (INR)	ENHANCED MONETARY THRESHOLD FOR FILING AN APPEAL (INR)
ITAT	1 Million	2 Million
HC	2 Million	5 Million
SC	2.5 Million	10 Million

## Key Considerations

- Applicability: The Enhanced Monetary Threshold does not apply to Appeals in the following cases:
  - where the constitutional validity of the provisions of any legislation has been challenged;
  - where a notification, instruction or circular issued by the Central Board of Direct Taxes has been challenged as being illegal or ultra vires;
  - where a revenue audit objection in a case has been accepted by the Department; or
  - where the addition relates to undisclosed foreign assets/ bank accounts.

Thus, in these scenarios, the Department can file an Appeal even if the tax effect on the matter does not exceed the Enhanced Monetary Threshold. Further, to avoid situations where the Department is held guilty of acquiescence due to non-filing of an Appeal for reasons of it not meeting the Enhanced Monetary Threshold, the Circular prescribes that in such cases, a specific noting should be made to the effect that the Appeal is not being filed only because the tax effect is less than the Enhanced Monetary Threshold. This is with a view to impress upon authorities that the decision not appealed against does not have precedent value.

## Comment

As a result of the increased limits, the orders passed by first appellate authority (i.e. the CITA) will become more significant. This is because, going forward, if CITA passes an order in favour of the taxpayer, the Department can only challenge the same if the tax effect in the Disputed Issue exceeds INR 2 Million (being the applicable Enhanced Monetary Threshold for filing an Appeal before the ITAT). Therefore, from the perspective of a taxpayer, its representation at the CITA level becomes critical.

The Circular is a welcome move as it will go a long way in making Indian income-tax laws a less adversarial regime. Further, the fact that the Circular is applicable retrospectively even to pending Appeals will help reduce pending litigations to a large extent. As per statistics released by the Government, the increase in monetary thresholds can lead up to 34% cases being withdrawn at the ITAT level, 48% at the HC level and 54% at the SC level. This will further reduce the hardships faced by taxpayers in defending favourable orders received from lower authorities. Thus, all pending

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income-tax Appeals filed by the Department will need to satisfy the Enhanced Monetary Thresholds to survive.

- Bijal Ajinkya (Partner), Raghav Bajaj (Principal Associate) and Krutika Chitre (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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**Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

**New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

**Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

**Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)