

Government notifies Faceless Appeal Scheme, 2020

25 September 2020



Summary

On 13 August 2020, the Prime Minister had launched the **Transparent Taxation - Honouring the Honest**, with the objective of:

- (i) Introducing faceless assessment
- (ii) Adopting a taxpayer's charter
- (iii) Moving towards the faceless appeal

In line with this announcement, the government has now notified¹ the **Faceless Appeal Scheme, 2020** (Scheme).

Faceless Appeal Centres

The Central Board of Direct Taxes (CBDT) will set the following centres/units for the purpose of facilitating faceless appeals in a centralised manner:

- National Faceless Appeal Centre (NFAC)
- Regional Faceless Appeal Centre (RFAC)
- Appeal units (AU)

National Faceless Appeal Centre

The NFAC will act as a nodal point of communication between the taxpayer, AU and National e-assessment Centre (NeAC)/assessing officer (AO). Accordingly, all communications with respect to any information, documents or any other details relating to appeal proceedings will be routed through the NFAC.

Regional Faceless Appeal Centre

The RFAC shall also facilitate the conduct of faceless appeal proceedings and will consist of various AUs.

Appeal units

The AU will consist of one or more Commissioner (Appeals) [CIT(A)] and such other income-tax authority, ministerial staff, executive or consultant to assist the CIT(A) as considered necessary by the CBDT.

It will perform the function of disposing appeal, namely:

- Admitting additional grounds of appeal
- Making further inquiry, as deemed fit
- Directing the NeAC/AO for making further inquiry

¹ Notification No 76 and 77 dated 25 September 2020

- Seeking information or clarification on admitted grounds of appeal
- Providing opportunity of being heard to the taxpayer
- Analysing of the material furnished by the taxpayer
- Reviewing of draft order, and
- Other functions as may be required for the purposes of the scheme.

Procedure for appeal

- **Assignment of appeals:** The NFAC will assign appeal to an AU, in any one RFAC, through an **automated allocation system**.
- **Time-barred appeals:** Where appeal is time-barred, the AU will, if it satisfied that there was sufficient cause for the delay, admit the appeal. The NFAC would then intimate the taxpayer about admission or rejection of appeal, as the case may be.
- **Process to be followed once the appeal is admitted:** Where the appeal is admitted, the AU may request NFAC to:
 - Obtain further information, document, or evidence from the taxpayer
 - Obtain report from the NeAC/AO on the grounds of appeal or on the information, document or evidence filed by the taxpayer

- Direct NeAC/AO to conduct further enquiry and submit a report

The NFAC will serve a notice to the taxpayer or NeAC/AO to submit such information, document or evidence or report.

- **Response by the taxpayer/NeAC/AO:**

Within the time allowed by the NFAC:

- The taxpayer will file the response to the notice with the NFAC
- The NeAC/AO will furnish the report with the NFAC

The NFAC will share the response/report with the AU.

- **Additional grounds of appeal or additional evidence:** The taxpayer can file additional grounds of appeal and additional evidence with the NFAC. The AU will, after examining the details filed by the taxpayer and obtaining relevant report from the NeAC/AO, either approve or reject the filings made by the taxpayer. The NFAC will intimate the taxpayer regarding acceptance or rejection of additional grounds or additional evidence, as the case may be.

Procedure in case of enhancement of assessment/penalty or reduction of loss

- **Show cause notice (SCN):** The AU will prepare a SCN. The NFAC will issue notice to the taxpayer.
- **Draft order by the AU:** The AU will examine taxpayer's response together with all relevant material available, prepare a draft order and provide it to the NFAC.
- **Allocation of draft order for review:** Where the aggregate amount of tax, interest, penalty or fee, including surcharge and cess is more than a 'prescribed amount', the NFAC will send the draft order to another AU (selected through automated allocation system) for review. In any other case, the NFAC will review the draft order in accordance with CBDT's risk management strategy by automated examination tool. Thereafter, it may decide to finalise the draft order or send the draft order to another AU (selected through automated allocation system).
- **Review of draft order:** The AU will review the draft order. Upon review, the AU may either concur with the draft order or suggest variation(s) to the draft order.
 - **Concurrence with the draft order:** The NFAC will finalise the appellate order.

- Variation suggested in the draft order:

The NFAC will assign the appeal to a different AU (other than the AU which prepared or reviewed the draft order). This newly appointed AU will, after considering the suggestions, prepare a revised draft order as per laid down procedure.

- **Passing of appeal order:** The NFAC will finalise the appeal order and communicate the same to the (i) taxpayer (ii) Principal Chief Commissioner² (PCC) (iii) NeAC/AO. The NFAC will also initiate penalty proceedings, wherever required.

Other aspects of the scheme

- **Appellate proceedings:** Order passed by the NFAC will be appealable before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional AO.
- **Penalty proceedings:** An AU may, in the course of appeal proceedings, for non-compliance of any notice, direction or order issued, send recommendation for initiating penalty proceedings to the NFAC.
- **Rectification proceedings:** With a view to rectifying any mistake apparent from record, the NFAC may amend any order passed by it. Application for rectification of mistakes can be made by the (i) taxpayer (ii)

² or Chief Commissioner (CC) or Principal Commissioner (PC) or Commissioner

AU (preparing or reviewing or revising the draft order) (iii) NeAC/AO.

- **No personal appearance either before NFAC or AU:** The scheme provides that a taxpayer may request for personal hearing to make oral submissions. The CC or the Director General shall approve³ the request in accordance with the policy to be notified. All such hearing will be conducted exclusively through videoconferencing or video telephony.
- **Transfer of cases to CIT(A):** The PCC⁴ in charge of NFAC may, with prior approval of CBDT, transfer the appeal to any CIT(A).
- **Exclusion from the Faceless Appeal Scheme:** The CBDT, vide press release,⁵ has stated that appeals relating to **serious frauds, major tax evasion, sensitive and search matters, International Tax and Black Money Act** shall not be finalised under the Faceless Appeal Scheme.

Our comments

After faceless assessments, the government has now notified the faceless appeal scheme. This is yet another welcome move towards tax transparency which should lead to consistent tax positions and ultimately help reduce litigation, especially on repetitive issues.

³ if the taxpayer's situation falls within the prescribed category (to be notified)

⁴ or Principal Director General

⁵ CBDT press release dated 25 September 2020

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