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INDIAN TAX OFFICE GOING DIGITAL – TAX ASSESSMENTS TO BE FACELESS

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In furtherance of its widely promoted objective of ensuring efficiency and transparency in tax administration, the Government has notified the much-awaited E-assessment Scheme, 2019 vide Notification No. 61/2019 (Scheme) to provide a framework for conducting assessment proceedings by:

- eliminating the interface between the tax authorities and the taxpayer in the course of proceedings to the extent technologically feasible;
- optimising utilisation of the resources through economies of scale and functional specialisation; and
- introducing a team-based assessment with dynamic jurisdiction.

The e-assessment initiative of the Government, which is expected to be rolled out next month, marks a landmark development as it is aimed at a complete overhaul of the manner in which assessments are conducted by the Income-tax department (Department). Please see below our analysis.

Background

Under the Income-tax Act, 1961 (IT Act), taxpayers are assessed by the jurisdictional tax officers depending on the place of residence / incorporation of the taxpayer. Currently, though the selection of a case for scrutiny is done primarily with the help of a 'Computer Aided Scrutiny Selection' mechanism (based on pre-defined parameters), the assessment itself is done by the jurisdictional tax officer manually involving personal hearings before the officer. This involves a high level of personal interaction between the taxpayer (or its authorised representative) and the Department.

To overcome the concerns posed by such a mechanism, 'e-assessment' was first introduced in the year 2016 on a pilot basis with the objective of reducing the interface between the Department and the taxpayers. Thereafter, in the year 2018, the IT Act was amended to enable the Government to notify a scheme for the purposes of conducting e-assessments - in furtherance of which, the Government has notified the Scheme.

Key features of the Scheme

- It applies to scrutiny assessments (i.e. assessments conducted under Section 143(3) of IT Act).

- It empowers the Central Board of Direct Taxes (CBDT) - *the apex body for direct taxes' administration in India* - to (i) set up several units (discussed below) for the purpose of e-assessments, (ii) specify the territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases to be covered by the Scheme.
- It provides that taxpayers shall not be required to appear either personally or through its authorised representative in connection with any proceedings under the Scheme before the income-tax authorities.
- The cases selected for scrutiny shall be allocated to assessment units in a random manner (*with the help of suitable technological tools, including artificial intelligence and machine learning*) and notices shall be issued electronically by a central cell, without disclosing the name, designation or location of the tax officer.
- The central cell shall be the single point of contact between the taxpayer and the Department.

Units to be set up for e-assessments:

The Scheme empowers the CBDT to set up the following units to facilitate the conduct of e-assessments:

S NO	UNIT	KEY FUNCTIONS
1.	National e-assessment Centre (National Centre)	<ul style="list-style-type: none"> ▪ To facilitate the conduct of proceedings in a centralised manner ▪ To act as the single point of contact for all communication between (i) the taxpayer and the Department, or (ii) the various units of the Department set up pursuant to the Scheme.
2.	Regional e-assessment Centres	To facilitate the conduct of proceedings in the cadre controlling region of a Principal Chief Commissioner.
3.	Assessment units	<p>To perform the function of making assessment, which includes:</p> <ul style="list-style-type: none"> ▪ identification of points or issues material for the determination of any liability (including refund) under the IT Act, ▪ seeking information or clarification on points or issues so identified, ▪ analysis of the material furnished by the taxpayer or any other person.
4.	Verification units	To perform the function of verification, which includes enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements.

5.	Technical units	To perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this Scheme.
6.	Review units	<p>To perform the function of review of the draft assessment order, which includes checking:</p> <ul style="list-style-type: none"> ▪ whether the relevant and material evidence has been brought on record, ▪ whether the relevant points of fact and law have been duly incorporated in the draft order, ▪ whether the issues on which addition or disallowance should be made have been discussed in the draft order, ▪ whether the applicable judicial decisions have been considered and dealt with in the draft order, ▪ arithmetical correctness of modifications proposed, if any.

Procedure to be followed for e-assessment:

The Scheme lists down the procedure to be followed by the Department for the purpose of e-assessment. In summary, it provides as under:

- The notice for assessment will be served on the taxpayer by the National Centre and the taxpayer will have to file its response within 15 days.
- Thereafter, the National Centre will assign the case selected for the purposes of e-assessment under this Scheme to a specific 'Assessment unit' in any one Regional e-assessment Centre through an automated allocation system (*i.e. with the help of suitable technological tools, including artificial intelligence and machine learning*).
- The 'Assessment Unit' may make a request to the National Centre for
 - obtaining such further information, documents or evidence from the taxpayer or any other person, as it may specify;
 - conducting of certain enquiry or verification by 'Verification unit'; and
 - seeking technical assistance from the 'Technical unit'.
- The 'Assessment unit' shall, after taking into account all the relevant material available on record, make a draft assessment order, and send a copy of such order to the National Centre. The 'Assessment unit' shall also provide details of the penalty proceedings to be initiated therein, if any.

- The National Centre shall examine the draft assessment order (*with the help of suitable technological tools, including artificial intelligence and machine learning to reduce the scope of discretion*), whereupon it may decide to:
 - finalise the assessment and serve a copy on the taxpayer, or
 - provide an opportunity to the taxpayer, in case a modification is proposed, to show cause as to why the assessment should not be completed as per the draft assessment order – *in such a scenario, the taxpayer shall be entitled to seek personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit under this Scheme, and such hearing shall be conducted exclusively through video conferencing – the CBDT shall establish suitable facilities to provide access to taxpayers where required, or*
 - assign the draft assessment order to a 'Review unit' in any one Regional e-assessment Centre (*with the help of suitable technological tools, including artificial intelligence and machine learning*), for conducting review of such order.
- After completion of assessment, the National Centre shall transfer all the electronic records of the case to the tax officer having jurisdiction over the relevant taxpayer, for – (a) imposition of penalty; (b) collection and recovery of demand; (c) rectification of mistake; (d) giving effect to appellate orders; (e) submission of remand report, or any other report to be furnished, or any representation to be made, or any record to be produced before the appellate authorities or courts, as the case may be; (f) proposal seeking sanction for launch of prosecution and filing of complaint before the Court.

Penalty proceedings:

In addition to the above, the Scheme also provides that for initiation of penalty, any of the aforesaid units may send recommendation to the National Centre, whereupon the National Centre shall (i) serve a show-cause notice on the taxpayer, and (ii) act as the communication channel between the taxpayer and the concerned unit which recommended the initiation of penalty.

Comments

The Hon'ble Finance Minister, while presenting the Budget 2019-2020 on 5 July 2019, had remarked in her speech that "*This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department*".

With a view to optimise the use of resources and to reduce the scope of discretion, the Scheme envisages usage of suitable technological tools (including artificial intelligence and machine learning) by the National Centre for the purpose of doing allocations *inter se* the different units set up pursuant to the Scheme and the examination of the draft assessment orders.

While this transition to an anonymous mode of assessments is a forward-looking step, interestingly, the Scheme also provides that the National Centre may at any stage of the assessment, if considered necessary, transfer the case to the jurisdictional tax officer.

The National Centre was set up in Delhi last week and after an initial high-level review of the infrastructure (including computer systems, internet and software facilities for the tax officers), the Scheme will be rolled out next month (Source: Economic Times). Once implemented successfully, it will indeed reduce discretion and may improve the

quality of tax assessments which should work well for the taxpayers' confidence in the tax administration.

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