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COMMISSIONER OF INCOME-TAX (APPEALS) GETS MASKED: GOVERNMENT INTRODUCES FACELESS APPEAL SCHEME

29 September 2020 [Introduction](#)

In line with Government's widely promoted objective of ensuring efficiency and transparency in tax administration, the Government has notified the much-awaited Faceless Appeal Scheme, 2020 (Scheme) vide Notification No. 76/2020 dated 25 September 2020 to provide a framework for disposal of appeals by Commissioner of Income tax (Appeals) (CIT(A)) by:

- eliminating the interface between the CIT(A) and the taxpayer in the course of appellate proceedings to the extent technologically feasible;
- optimising utilisation of the resources through economies of scale and functional specialisation;
- introducing an appellate system with dynamic jurisdiction in which appeal will be disposed of by one or more CIT(A).

The above Scheme has been announced in view of the powers vested to the Government under section 250(6B) of the Income-tax Act, 1961 (IT Act) recently inserted by the Finance Act, 2020. The Scheme will transform the appellate process before CIT(A) completely. The above reform is also part of the Government's attempt to honour 'honest' taxpayers of the country and to make the tax system 'seamless, faceless and painless' and is also in furtherance to the Hon'ble Prime Minister's initiative of the 'Transparent Taxation' Platform launched on 13 August 2020 comprising of faceless assessments, faceless appeals and taxpayers' charter.

[Background](#)

Under the IT Act, appeals against the orders passed by the tax officers are appealable before the CIT(A) (being the first appellate authority). This appellate process was conducted manually which involved high level of personal interaction between the taxpayer (or its authorized representative) and the CIT(A).

To overcome the concerns posed by such mechanism, the Scheme has been launched by the Government. The Scheme is effective from 25 September 2020.

[Key Features of the Scheme](#)

- **Scope:** It applies to all appeals filed before CIT(A). The Central Board of Direct Taxes (CBDT) vide its press release dated 25 September 2020 has, however, specified that appeals relating to serious frauds, major tax evasion, sensitive and search matters, international tax and Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 matters will not be covered currently under the Scheme.
- It empowers the CBDT to (i) set up several units (discussed below) for the purpose of conducting e-appeals, (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.

Units to be set up for e-appeals:

S No	Unit	Key Functions
1.	National Faceless Appeal Centre (NFAC)	<ul style="list-style-type: none"> ▪ To facilitate the conduct of e-appeal proceedings in a centralised manner. ▪ To act as a single point of contact for all communications between (i) the taxpayer and the Appeal Units, or (ii) Appeal Units and the National e-Assessment Centre (NeAC)/ tax officer.
2.	Regional Faceless Appeal Centres (RFAC)	To facilitate the conduct of e-appeal proceedings if CBDT deems necessary.
3.	Appeal Units	<p>To perform the function of disposal of appeal which includes:</p> <ul style="list-style-type: none"> ▪ admission of additional grounds of appeal, ▪ making further inquiries, ▪ directing the NeAC or the tax officer for making further inquiry, ▪ seeking information or clarification on admitted grounds of appeal, ▪ providing opportunity of being heard to the taxpayer, ▪ analysis of the material furnished by the taxpayer, ▪ review of draft order, and ▪ such other functions as may be required for the purposes of the Scheme.

- **Procedure in e-appeals:** The Scheme lists down *inter alia* the procedures to be followed for the purpose of disposal of appeals. In summary, it provides as under:
 - The appeals will be allocated by NFAC to any appeal unit in a random manner (with the help of suitable technological tools, including artificial intelligence and machine learning).
 - The 'Appeal Unit' may make a request to NFAC for:
 - obtaining such further information, documents or evidence from the taxpayer or any other person, as it may specify;
 - obtaining report from NeAC or the tax officer on grounds of appeal or information or documents or evidence as filed by the taxpayer;
 - directing NeAC or tax officer for making further inquiries and submit a report on the same;
 - The 'Appeal Unit' after considering the response/submissions filed by the taxpayer and on perusal of information available on record will pass a draft order in writing and send such draft order to NFAC along with details of any penalty proceedings to be initiated, if any.
 - The NFAC upon receipt of draft order in case where:
 - The aggregate amount of tax, penalty, interest or fee, including surcharge and cess, payable in respect of issues disputed in appeal is more than the amount as may be prescribed, will send the draft order to Appeal Unit other than the Appeal Unit which prepared the draft order through automated allocation system for conducting review of such order;
 - In any other case, examine the draft 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 order or
 - send the draft order to Appeal Unit other than the Appeal Unit which prepared the draft order through automated allocation system for conducting review of such order
 - The NFAC after finalizing the order, will send the copy of order to:
 - the taxpayer;
 - Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;
 - NeAC or the tax officer for such action as may be required under the IT Act;
 - where initiation of penalty has been recommended in the order, serve a notice on the taxpayer calling upon him to show cause as to why penalty should not be imposed.
- **Enhancement cases:** In a case where 'Appeal Unit' intends to enhance an assessment or a penalty or reduce the amount of refund, it needs to prepare and send a show-cause notice containing the reasons for such enhancement or

reduction, as the case may be, to NFAC, whereupon NFAC will (i) serve a show-cause notice on the taxpayer, and (ii) act as a communication channel between the taxpayer and the Appeal Unit.

- **Circumstances in which manual appeal proceedings can be conducted:** The Scheme also provides that Principal Chief Commissioner or the Principal Director General, in charge of NFAC, may at any stage of the appellate proceedings, if considered necessary, transfer the appeal with the prior approval of the CBDT to such CIT(A) as may be specified in the order.
- **No personal appearance:** The Scheme provides that the taxpayer will not be required to appear either personally or through its authorised representative in connection with any proceedings under the Scheme before NFAC or RFAC or Appeal Unit. The taxpayer may request for personal hearing to make oral submissions to present his case. The Chief Commissioner or the Director General, in charge of the RFAC under which the concerned unit is set up, may approve the taxpayer's request for personal hearing (an electronic hearing through video conferencing) provided such a request is covered under the prescribed circumstances (circumstances yet to be notified).
- **Further appellate proceedings:** The Scheme provides that an appeal against an order passed by the NFAC will lie before the Income Tax Appellate Tribunal (ITAT) having jurisdiction over the jurisdictional tax officer. Subject to the provisions as may be prescribed, where any order passed by the NFAC or CIT(A) is set-aside and remanded back to the NFAC or CIT(A) by the ITAT or High Court or Supreme Court, the NFAC will pass the order in accordance with the provisions of the Scheme.
- **Penalty proceedings:** The Scheme also provides for initiation of penalty for non-compliance of any notice, direction or order issued under the Scheme. The Appeal Unit may send recommendations to the NFAC whereupon NFAC will (i) serve a show-cause notice on the taxpayer, and (ii) act as a communication channel between the taxpayer and the Appeal Unit which recommended the initiation of penalty.
- **Mode of communication:** All exchange of communications between the NFAC and the taxpayer as well as all internal communications between NFAC, RFAC, NeAC, tax officers and Appeal Units will be strictly through electronic mode.
- **Delivery of electronic record:** Every notice/order/any other electronic communication will be delivered to the taxpayer by way of placing in the taxpayer's registered e-filing account or sending it to the registered email address or uploading on the income-tax department's mobile application that has been downloaded on the taxpayers' registered mobile number followed by a real time alert. The taxpayer is required to file responses to any notice or order or any other electronic communication under this Scheme through his or her registered account.

Comments

This is a welcome move by the Government especially considering its intent to eliminate the human interface between taxpayers and CIT(A) and to bring greater transparency during appellate proceedings. The Government is also on a spree to digitize the tax administration system in India which is evident from the fact that faceless assessment scheme is already in force. Besides this, The Taxation and Other Laws (Relaxation and amendments of certain provisions) Bill, 2020 (passed by Lok Sabha as on date) also contains various provisions which enables the Government to devise a scheme to further drive the digitization process viz. faceless inquiry, faceless transfer pricing

proceedings, faceless dispute resolution panel proceedings, faceless collection and recovery of tax, faceless effect of appellate orders etc.

The Scheme has also clarified that appeals against orders of NFAC will lie before the ITAT having jurisdiction over the jurisdictional tax officer. Besides this, Scheme also provides for rectification of any orders passed by NFAC. Given the involvement of more than one CIT(A) in the appellate proceedings, the quality of appellate orders will be further enhanced and appellate orders are going to be well reasoned. Given that there would be no personal hearings (except as mentioned above), it becomes important for written submissions to be filed under the faceless appeal regime to contain all factual aspects (in addition to the legal arguments) relating to the grounds of appeal and be filed with utmost care. This is because CIT(A) and ITAT are those forums where significant importance is given to the facts of the case and thus all crucial facts of the taxpayers should be contained in the written submissions that are going to be filed under the Scheme.

It is understood that the Scheme will *inter alia* apply to all pending appeals filed by the taxpayers since it has been made effective from 25 September 2020 and press release dated 25 September 2020 issued by the CBDT also specifies that out of almost 4.6 lakhs total pending appeals before CIT(A), 88% of the appeals will now be handled under the Scheme and almost 85% of the present strength of CIT(A) has been allocated for disposing of appeals under the faceless appeal mechanism.

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