

# TAX FLASH NEWS

13 September 2019

## CBDT notifies E-assessment Scheme, 2019

The Finance Minister (FM) while presenting the Budget 2019 stated that the existing system of scrutiny assessments in the Income-tax department involves a high level of personal interaction between the taxpayer and the tax department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Prime Minister, a scheme of faceless assessment in electronic mode involving no human interface will be launched this year in a phased manner. This new scheme of assessment will represent a paradigm shift in the functioning of the income tax department.

Recently, the Central Board of Direct Taxes (CBDT) has notified<sup>1</sup> E-assessment Scheme, 2019 (the Scheme) under Section 143(3A)<sup>2</sup> of the Income-tax Act, 1961 (the Act). Further in exercise of the powers conferred by Section 143(3B)<sup>3</sup> of the Act to give effect to the Scheme, CBDT has also notified<sup>4</sup> the relevant directions. The scheme shall come into force on the date of its publication in the Official Gazette<sup>5</sup>. The Scheme and directions are summarised as follows:

### CBDT Notification

#### E-assessment centres

For the purpose of the scheme, the CBDT may set up following units/centre for smooth conduct of e-assessment proceedings and specify their respective jurisdiction.

- **National e-assessment Centre (NEC)** - To facilitate the conduct of e-assessment proceedings in a centralised manner

- **Regional e-assessment Centres (REC)** - To facilitate the conduct of e-assessment proceedings in the cadre controlling region of a Principal Chief Commissioner
- **Assessment units** - To perform the function of making assessment i.e. identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, etc.
- **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, and such other functions as may be required for the purposes of verification.
- **Technical units** - To perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, etc.
- **Review units** - To perform the function of review of the draft assessment order i.e. checking 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, etc.

### Communication

All communication among the Assessment unit, Review unit, Verification unit or Technical unit or with the taxpayer or any other person with respect to the information or documents or evidence or any other details under the Scheme shall be done through the National e-assessment Centre.

<sup>1</sup> Notification No. 61/2019, 12 September 2019

<sup>2</sup> The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the taxpayer under sub-section (3) so as to impart greater efficiency, transparency and accountability.....

<sup>3</sup> The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

<sup>4</sup> Notification 62/2019, 12 September 2019

<sup>5</sup> Notification has been published in the Official Gazette on 12 September 2019

## Tax authorities

The Assessment units, Verification units, Technical units, Review units shall have the following authorities:

- Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.
- Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer.
- such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the CBDT.

## Procedure for assessment

The assessment under the Scheme shall be made as per the following procedure:

- The NEC shall serve a notice on the taxpayer under Section 143(2) of the Act, specifying the issues for selection of his case for assessment.
- The taxpayer may file his response to the NEC within 15 days from the date of receipt of the notice.
- The NEC shall assign the case selected for the purposes of e-assessment to a specific assessment unit in any one regional e-assessment centre through an automated allocation system.
- Where a case is assigned to the assessment unit, it may make a request to the National e-assessment Centre for:
  - Obtaining such further information, documents or evidence from the taxpayer or any other person
  - Conduct certain enquiry or verification by verification unit and
  - Seek technical assistance from the technical unit.
- Where a request for obtaining further information, documents or evidence from the taxpayer or any other person has been made by the Assessment unit, NEC shall issue appropriate notice to them for obtaining the information, documents requested by the Assessment unit.
- Where a request for conducting of certain enquiry or verification by the Verification unit has been made by the Assessment unit, the request shall be assigned by the NEC to a Verification unit through an automated allocation system.
- Where a request for seeking technical assistance from the Technical unit has been made by the Assessment unit, the request shall be assigned by the NEC to a technical unit in any one REC through an automated allocation system.
- The Assessment unit shall, after taking into account all the relevant material available on the record, make in writing, a draft assessment order either accepting the returned income of the taxpayer or modifying the returned income of the taxpayer and send a copy of such order to the NEC.
- The Assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any.
- NEC shall examine draft assessment order in accordance with the risk management strategy specified by the CBDT, including by way of an automated examination tool, whereupon it may decide to:
  - finalise the assessment as per the draft assessment order and serve a copy of order and notice for initiating penalty proceedings, if any, to the taxpayer, alongwith the demand notice, specifying the sum payable by, or refund on the basis of such assessment; or
  - Provide an opportunity to the taxpayer by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order; or
  - Assign the draft assessment order to a Review unit in any one REC, through an automated allocation system, for conducting review of such order.
- The Review unit shall conduct review of the draft assessment order, referred to it by the NEC whereupon it may decide to -
  - concur with the draft assessment order and intimate the NEC about such concurrence or
  - suggest such modification, as it may deem fit, to the draft assessment order and send its suggestions to the NEC.
- NEC shall, upon receiving concurrence of the review unit, follow the specified procedure and upon receiving suggestions for modifications from the review unit, communicate the same to the Assessment unit.
- The Assessment unit shall, after considering the modifications suggested by the Review unit, send the final draft assessment order to the NEC.
- The NEC shall, upon receiving final draft assessment order, follow the specified procedure.
- The taxpayer may, in a case where show-cause notice<sup>6</sup> has been served upon him, furnish his response to the NEC on or before the date and time specified in the notice.

<sup>6</sup> Show cause notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order

- Where no response to the show-cause notice is received, the NEC shall, finalise the assessment as per the draft assessment order or in other case, send the response from the taxpayer to the assessment unit.
- The assessment unit shall, after taking into account the response furnished by the taxpayer make a revised draft assessment order and send it to the NEC.
- The NEC shall, upon receiving the revised draft assessment order –
  - in case no modification prejudicial to the interest of the taxpayer is proposed with reference to the draft assessment order, finalise the assessment as per the specified procedure or
  - in case a modification prejudicial to the interest of the taxpayer is proposed with reference to the draft assessment order, provide an opportunity to the taxpayer
  - The response furnished by the taxpayer shall be dealt with as per the prescribed procedure.
- The NEC shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer (AO) having jurisdiction over such case., for –
  - Imposition of penalty
  - collection and recovery of demand
  - rectification of mistake
  - giving effect to appellate orders
  - submission of remand report, other report to be furnished, or any representation to be made, or any record to be produced before the Commissioner (Appeals) [CIT(A)], Appellate Tribunal or Courts
  - proposal seeking sanction for launch of prosecution and filing of complaint before the Court;
- The NEC may at any stage of the assessment, if considered necessary, transfer the case to the AO having jurisdiction over such case.
- The NEC, on receipt of such recommendation, shall serve a notice on the taxpayer or any other person, calling upon him to show cause as to why penalty should not be imposed on him
- The response to show-cause notice furnished by the taxpayer or any other person will be sent by the NEC to the concerned unit which has made the recommendation for penalty.
- The said unit shall, after taking into consideration the response furnished by the taxpayer or any other person, as the case may be, -
  - Make a draft order of penalty and send a copy of such draft to National e-assessment Centre; or
  - Drop the penalty after recording reasons, under intimation to the National e-assessment Centre.
  - The NEC shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the taxpayer or any other person, as the case may be.

### Appellate Proceedings

An appeal against an assessment made by the NEC under the Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional AO and any reference to the CIT(A) in any communication from the NEC shall mean such jurisdictional CIT(A).

### Exchange of communication exclusively by electronic mode

All communications between the NEC and the taxpayer or his authorised representative, shall be exchanged exclusively by electronic mode. Further all internal communications between the units shall be exchanged exclusively by electronic mode.

### Authentication of electronic record

An electronic record shall be authenticated by the originator by affixing his digital signature. However, in case of the originator, being the taxpayer or any other person, such authentication may also be done by electronic signature or electronic authentication technique

### Delivery of electronic record

- Every notice or order or any other electronic communication under the Scheme shall be delivered to the addressee, being the taxpayer, by way of-
  - placing an authenticated copy thereof in the taxpayer's registered account or
  - sending an authenticated copy thereof to the registered email address of the taxpayer or his authorised representative or

### Penalty proceedings for non-compliance

- Any unit may, in the course of assessment proceedings may send recommendation for initiation of any penalty proceedings<sup>7</sup> to NEC for non-compliance of any notice, direction or order issued under the Scheme on the part of the taxpayer or any other person.

<sup>7</sup> Under Chapter XXI of the Act

- uploading an authenticated copy on the taxpayer's Mobile App and followed by a real time alert.
- Every notice or order or any other electronic communication under the Scheme shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.
- The taxpayer shall file his response to any notice or order or any other electronic communication, under the Scheme, through his registered account, and once an acknowledgement is sent by the NEC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.
- The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions the Information Technology Act, 2000

### **No personal appearance in the Centres or Units**

- A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under the Scheme.
- In a case where a modification is proposed in the draft assessment order, and an opportunity is provided to the taxpayer by serving a notice, the taxpayer or his authorised representative 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 the Scheme, and such hearing shall be conducted exclusively through video conferencing<sup>8</sup>.
- Any examination or recording of the statement of the taxpayer or any other person (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit under the Scheme, exclusively through video conferencing<sup>8</sup>.
- to ensure that the taxpayer, or his authorised representative, or any other person is not denied the benefit of the Scheme merely on the consideration that such taxpayer or his authorised representative, or any other person does not have access to video conferencing at his end.

<sup>8</sup> Including use of any telecommunication application software which supports video telephony, in accordance with the procedure laid down by the CBDT

### **Power to specify format, mode, procedure and processes**

The Principal Chief Commissioner or the Principal Director General, in charge of the NEC shall lay down the standards and procedures for effective functioning of the NEC, REC and the unit set-up under the Scheme, in an automated and mechanised environment, including format, mode, procedure and processes.

### **Directions**

The provisions of specified sections<sup>9</sup> and Chapter XXI of the Act shall apply to the assessment made in accordance with the Scheme subject to certain exceptions, modifications and adaptations

### **Our comments**

The E-assessment scheme involves creation of e-assessment centres at national and regional levels. The cases will be allocated automatically among these centres. Further, all communication with taxpayers and among assessment centres, etc., will be issued through electronic mode which will be digitally authenticated and most importantly taxpayer will not to make personal appearance at centres. Even the assessment will be governed by certain pre-determined risk assessment criteria and other pre-fixed broad parameters.

This new scheme of assessment will represent a paradigm shift in the functioning of the Income tax department. The functionality to conduct e-proceeding will be available for all types of notices, other communications issued under various sections of the Act.

The overhaul of tax assessment and investigation process is a part of Prime Minister's endeavor to improve ease of doing business and curb corruption. The new system will be location-agnostic as assessing officials will be chosen electronically, making their location irrelevant.

However, filing of bulky submission files through electronic mode may pose challenge before the taxpayer as well as the tax authorities as verification of such electronic file may not be an easy task.

Further the success of the Scheme will depend mainly on the availability of video conferencing facility including telecommunication application software which supports video telephony. CBDT should set-up these facilities as soon as possible to provide smooth functioning of the Scheme amongst the taxpayers.

<sup>9</sup> Section 2(7A), Section 92CA, Section 120, Section 124, Section 127, Section 129, Section 131, Section 133, Section 133A, Section 133C, Section 134, Section 142, Section 142A, Section 143, Section 144A, Section 144BA, Section 144C

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