

TAX FLASH NEWS

28 September 2020

CBDT notifies Faceless Appeals Scheme 2020

The Finance Act, 2020 amended Section 250 of the Income-tax Act, 1961 to provide the right to the Central Government to make the Faceless Appeal Scheme, for the purposes of disposal of appeal by the Commissioner of Income-tax (Appeals) [CIT(A)], so as to impart greater efficiency, transparency and accountability.

On 13 August 2020, the Prime Minister (PM) launched 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. The PM had stated that the faceless assessments/appeals will have technology driven interface and the facility of faceless appeal will be available for citizens across the country with effect from 25 September 2020.

On 25 September 2020, the Central Board of Direct Taxes (CBDT) has issued a Notification and press release¹ to prescribe Faceless Appeal Scheme, 2020 (the Scheme) under Section 250(6B). Further, in exercise of powers conferred by Section 250(6C)², for the purposes of giving effect to the Scheme, the CBDT also issued certain directions³. The Scheme provides mechanism for the purposes of disposal of appeal by the CIT(A) and it comes into force from 25 September 2020.

Further, the CBDT press release states that under Faceless Appeals, all tax appeals will be finalised in a faceless manner except appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act. Under the Faceless Appeals, from now on, in income tax appeals, everything from e-allocation of appeal,

e-communication of notice/ questionnaire, e-verification/e-enquiry to e-hearing and finally e-communication of the appellate order, the entire process of appeals will be online, dispensing with the need for any physical interface between the taxpayer and the tax department. There will be no physical interface between the taxpayers or their counsel/s and the tax department. The taxpayers can make submissions from the comfort of their home and save their time and resources

The key highlights of the Scheme are as follows:

Applicability of the Scheme

The Scheme is applicable to taxpayers filing appeal before the CIT(A) under Section 246A or appeal under Section 248⁴ by the taxpayer denying his liability to deduct tax under the provisions of Section 195.

Faceless appeal Centers

For the purpose of this scheme, CBDT may set up following units/center:

- **National Faceless Appeal Centre (NFAC)** – To facilitate the conduct of e-appeal proceedings in a centralised manner. NFAC shall be a common point of contact for all the appeal units.
- **Regional Faceless Appeal Centres (RFAC)** – To facilitate the conduct of e-appeal proceedings which shall be vested with the jurisdiction to dispose appeal in accordance with the provision of the Scheme.

¹ CBDT Notification No. 76 of 2020 and press release, dated 25 September 2020

² The Central Government may, for the purposes of giving effect to the scheme made under Section 250(6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by CIT(A) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no direction shall be issued after the 31 March 2022.

³ CBDT Notification No. 77 of 2020, dated 25 September 2020

⁴ With respect to the payment to non-residents, the taxpayer can dispute its obligation to deduct tax at source through an application under section 195(2). A separate appeal against such order passed by the AO under Section 195(2) can be challenged before CIT(A) under Section 248.

- **Appeal unit (AU)** – To conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes admitting additional grounds of appeal, making such further inquiry as thinks fit, directing the National e-Assessment Centre (NEC) or the Assessing Officer (AO), 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 taxpayer, review of draft order, etc.

Communication

- All communication between the AU and the taxpayer or any other person or the NEC or the AO with respect to the information or documents or evidence or any other details, as may be necessary under the Scheme shall be routed through the NFAC.

Tax authorities

The AU shall have the following authorities:

- One or more CIT(A)
- Such other income-tax authority, ministerial staff, executive or consultant to assist the CIT(A) as considered necessary by the CBDT.

Procedure for appeals

The appeal shall be disposed of under the Scheme as per the following procedure:

- The NFAC shall assign the appeal to a specific AU in any one RFAC through an automated allocation system
- Where the appeal is filed beyond the time limit specified under Section 249(2) or where taxpayer has applied for exemption under Section 249(4)(b)⁵, AU may admit the appeal or reject the same under intimation to the NFAC, who in turn shall intimate it to the taxpayer about the admission or rejection of appeal.
- Where the appeal is admitted, AU may request the NFAC –
 - To obtain such further information, document or evidence from the taxpayer or any other person, as it may specify.
 - To obtain a report of the NEC or the AO, as the case may be, on grounds of appeal or information, document or evidence filed by the taxpayer
 - To direct the NEC or the AO, for making further inquiry under Section 250(4) and submit a report thereof

The NFAC shall serve a notice upon the taxpayer or any other person, or the NEC or the AO, to submit such information, document or evidence or report, as may be specified by AU.

- The taxpayer or any other person, shall file a response to the notice within the date and time specified or such extended date and time allowed on the basis of an application made in this behalf, with the NFAC.
- The NEC or AO shall furnish a report in response to the notice within the specified date and time as may be allowed on the basis of an application made in this behalf, to the NFAC
- Where response is filed by the taxpayer or any other person, or a report is furnished by the NEC or the AO, the NFAC shall send such response or report to the AU, and where no such response or report is filed, inform the AU.
- The taxpayer may file additional ground of appeal in such form, as may be specified by the NFAC, specifying therein the reason for omission of such ground in the appeal filed by him.
- Where the additional ground of appeal is filed—
 - The NFAC shall send the additional ground of appeal to the NEC or the AO, for providing comments, if any, and to the AU
 - The NEC or the AO, shall furnish their comments, within the date and time specified or such extended date and time as may be allowed
 - Where comments are filed by the NEC or the AO, the NFAC shall send such comments to the AU
 - The AU shall, after taking into consideration the comments, if any, received from the NEC or the AO admit such ground or if not satisfied with the additional ground reject the same with the reasons to be recorded in writing
- The NFAC shall intimate the admission or rejection of the additional ground to the taxpayer
- Similarly, the taxpayer may file additional evidence, other than the evidence produced by him during the course of proceedings before the NEC or the AO, in such form, as may be specified by the NFAC.
- Where the additional evidence is filed—

⁵ No appeal shall be admitted unless at the time of filing of the appeal where no return has been filed by the taxpayer, the taxpayer has paid an amount equal to the amount of advance tax which was payable by him

- The NFAC shall send the additional evidence to the NEC or the AO, for furnishing a report within the specified date and time on the admissibility of additional evidence under Rule 46A⁶.
- Upon receipt of such report from NEC or AO, the NFAC shall forward the report to the AU.
- AU may, after considering the additional evidence and the report, admit or reject the additional evidence, for reasons to be recorded in writing, and intimate the NFAC. Subsequently, the NFAC shall intimate the taxpayer and the NEC or the AO
- Where the additional evidence is admitted –
 - The AU shall, before taking such evidence into account, prepare a notice to provide an opportunity to the NEC or the AO within the date and time specified there into examine such evidence or to cross-examine such witness. For this purpose, the NFAC shall
 - The NEC or the AO, as the case may be, shall furnish the report, within the specified date and time.
 - The NFAC shall send the report furnished by the NEC or AO, as the case may be, to the AU or where no such report is furnished, inform the AU
- The NEC or the AO, may request the NFAC to direct the production of any document or evidence by the taxpayer, or the examination of any witness, as may be relevant to the appellate proceedings. Where the request is received –
 - The NFAC shall send such request to the AU and it shall consider such request and may, if it deems fit, prepare a notice directing the taxpayer to produce such document or evidence, as it may specify; or for examination of a witness and send such notice to the NFAC
 - The NFAC shall serve the notice upon the taxpayer or any other person, being a witness
 - The taxpayer shall file his response to the notice within the date and time to the NFAC. Subsequently, the NFAC shall send such response to the AU.
- Where the AU intends to enhance an assessment or a penalty or reduce the amount of refund, -
 - AU shall prepare a show-cause notice containing the reasons for such enhancement or reduction as the case may be and send such notice to the NFAC which in turn shall serve the notice to the taxpayer.
 - The taxpayer shall, within the specified date and time file his response to the NFAC
 - NFAC shall send such response to the AU, or where no such response is filed, inform the AU.
- AU shall, after taking into account all the relevant material on record prepare in writing, a draft order in accordance with the provisions of Section 251 of the Act and send such order to the NFAC along with the details of the penalty proceedings, if any, to be initiated therein.
- NFAC upon receipt of the draft order shall –
 - 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 a specified amount, send the draft order to an AU, other than the AU which prepared such order, in any one RFAC through an automated allocation system, for conducting review of such order
 - In any other case, examine the draft 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 appeal as per the draft order; or
 - ✓ send the draft order to an appeal unit, other than the unit which prepared such order, in any one RFAC through an automated allocation system, for conducting review of such order
- AU shall review the draft order and may decide to:
 - Concur with the draft order and intimate the NFAC about such concurrence or
 - Suggest such variation, as it may deem fit, to the draft order and send its suggestions to the NFAC.
- NFAC shall, upon receiving concurrence of the appeal unit, finalise the appeal as per the draft order.
- NFAC shall, upon receiving suggestion for variation from the AU, assign the appeal to an AU, other than the AU which prepared or reviewed the draft order, in any one RFAC through an automated allocation system.

⁶ The taxpayer shall not be entitled to produce before the Deputy Commissioner (Appeals) [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the AO, except in the following circumstances

- The appeal unit, to whom appeal is assigned, shall, after considering the suggestions for variation:
 - where such suggestions intend to enhance an assessment or a penalty or reduce the amount of refund, follow the prescribed procedure and prepare a revised draft order; or
 - In any other case, prepare a revised draft order as per the prescribed procedure

and send the such order to NFAC along with the details of the penalty proceedings, if any, to be initiated therein

- The NFAC shall after finalising the appeal or upon receipt of revised draft order pass the appeal order and:
 - Communicate such order to the taxpayer
 - Communicate such order to the Principal Chief Commissioner (Pr.CCIT) or Chief Commissioner (CCIT) or Principal Commissioner (Pr.CIT) or Commissioner (CIT)
 - Communicate such order to the NEC or AO, as the case may be
 - Where initiation of penalty has been recommended in the order, serve a show cause notice on the taxpayer
- The Pr.CCIT 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 such CIT(A) as may be specified in the order.

Penalty proceedings

- AU may, in the course of appeal proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the taxpayer or any other person send recommendation for initiation of any penalty proceedings to NFAC.
- NFAC shall, upon receipt of recommendation serve a show cause notice on the taxpayer or any other person. Subsequently, the taxpayer shall file a response to the show-cause notice within the specified date and time to NFAC.
- NFAC shall assign the recommendation for initiation of penalty proceedings, to a specific AU in any one RFAC through an automated allocation system.
- AU shall, after taking into account all the relevant material available on the record, including the response filed, if any, by the taxpayer or any other person prepare a draft order and send a copy of such order to NFAC; or drop the penalty after recording reasons, under intimation to NFAC.

- Where AU has dropped the penalty, NFAC shall send an intimation thereof or where the AU sends a draft order, NFAC shall pass the order for imposition of penalty as per such draft, and communicate such order to the taxpayer or any other person, and the NEC or the AO for such action as may be required under the Act.

Rectification Proceedings

- With a view to rectifying any mistake apparent from the record the NFAC may amend any order passed by it, by an order to be passed in writing. An application for rectification of may be filed with the NFAC by the:
 - Taxpayer or any other person, or
 - AU preparing or reviewing or revising the draft order; or
 - NEC or the AO.
- On receipt of application, the NFAC shall assign such application to a specific AU in any one RFAC through an automated allocation system. Subsequently, the AU shall examine the application and prepare a notice for granting an opportunity to the respective persons and send the notice to the NFAC.
- NFAC shall serve the show cause notice upon the taxpayer or any other person, or the NEC or the AO. Response to the said notice shall be filed by the respective persons within the specified date and time specified to NFAC.
- On receipt of responses, NFAC shall send such response to the AU, or where no such response is filed, inform AU.
- The AU shall, after taking into consideration the application and response prepare a draft order for rectification of mistake or for rejection of application for rectification, citing reasons thereof and send the order to NFAC.
- NFAC shall upon receipt of draft order, pass an order as per such draft and communicate such order to the taxpayer or any other person, and to the NEC or the AO for such action.

Appellate Proceedings

- An appeal against an order passed by the NFAC shall lie before the Income-tax Appellate Tribunal (the Tribunal) having jurisdiction over the jurisdictional AO.
- Where any order passed by NFAC or CIT(A) is set-aside and remanded back to NFAC or CIT(A) by the Tribunal or High Court or Supreme Court, the NFAC shall pass the order in accordance with the provisions of this Scheme.

Exchange of communication exclusively by electronic mode

- All communications between NFAC 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 NFAC or the taxpayer by affixing its digital signature if he is required under the Rules to furnish his return of income under digital signature. In any other case by affixing his digital signature or under electronic verification code.
- 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 to the registered email address of the taxpayer or his authorised representative or
 - Uploading an authenticated copy on the taxpayer's Mobile App and followed by a real time alert.
 - 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 this Scheme, through his registered account, and once an acknowledgement is sent by NFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

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 before the income-tax authority at the NFAC or RFAC or AU set up under this Scheme.
- The taxpayer or his authorised representative, may request for personal hearing so as to make his oral submissions or present his case before the AU under this Scheme.
- The CCIT or the DGIT, in charge of the RFAC, under which the concerned AU is set up, may approve the request for personal hearing if he is of the opinion that the request is covered by the circumstances.

- Where the request for personal hearing has been approved, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony.
- Any examination or recording of the statement of the taxpayer or any other person shall be conducted by CIT(A) in any AU under the Scheme, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony.

Power to specify format, mode, procedure and processes

The Principal Chief Commissioner or the Principal Director General, in charge of NFAC shall, with the prior approval of CBDT, lay down the standards, procedures and processes for effective functioning of the NFAC, RFAC and AU set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes.

Our comments

The Faceless Appeals Scheme introduced by the Central Government is a welcome move. Appeals against most tax assessment orders will now be processed in a faceless manner. Processing appeals in a technology driven and faceless manner is expected to offer a big compliance relief to the taxpayers while giving tax department more time to specialise in complex areas of taxation.

The scheme is intended to eliminate personal bias and decide the appeals on objective evaluation and merits of the case. Appeals relating to serious frauds, major tax evasion, sensitive and search matters, international tax and cases covered by the Black Money Act will not be covered under the faceless assessment scheme.

As per the Scheme, there will be no physical interface between the taxpayers or their counsel and the tax department. The taxpayers can make submissions from the comfort of their home and save their time and resources. The Scheme also provides the procedure with respect to the faceless rectification and penalty proceedings.

As per CBDT data⁷, about 4.6 lakh appeals are pending at the level of the CIT(A). Out of this, about 88 per cent or 4.05 lakh appeals will be handled under the faceless appeal mechanism. Almost 85 per cent of the present strength of CIT(A) will be utilised for resolving the cases under the faceless Appeal mechanism.

⁷ Press Release, dated 25 September 2020

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