

# TAX FLASH NEWS

14 January 2021

## CBDT notifies the Faceless Penalty Scheme, 2021

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 introduced the Faceless Assessment Scheme in the Income-tax Act, 1961 with effect from 1 April 2021. Further the Central Board of Direct Taxes (CBDT) notified Faceless Appeal Scheme, 2020 (vide Notification Nos. 76 and 77).

The Finance Act, 2020 amended Section 274 of the Income-tax Act, 1961 to provide the right to the Central Government to make the Faceless Penalty Scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability. Recently, CBDT has issued Notifications<sup>1</sup> prescribing the Faceless Penalty Scheme, 2021 (the Scheme) under Section 274(2A) as well as Section 274(2B). The Scheme provides mechanism to facilitate the conduct of faceless penalty proceedings. The key highlights of the Scheme are as follows:

### CBDT Notification

#### Faceless Penalty Centres

**National Faceless Penalty Centre (NFPC)** - To facilitate the conduct of faceless penalty proceedings in a centralized manner and vest it with the jurisdiction to impose penalty.

**Regional Faceless Penalty Centres (RFPC)** - To facilitate the conduct of faceless penalty proceedings, which shall be vested with the jurisdiction to impose penalty.

**Penalty Units (PU)** - To perform the function of drafting penalty orders, which includes identification of points or issues for imposition of penalty, seeking information or clarification on points or issues so identified,

providing opportunity of being heard to the taxpayer or any other person, analysis of the material furnished by the taxpayer or any other person, and such other functions as may be required for the purposes of imposing penalty

**Penalty Review Units (PRU):** To perform the functions of review of draft penalty order, which includes checking whether the relevant 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 penalty is to be imposed have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking arithmetical correctness of computation of penalty, if any, and such other functions as may be required for the purposes of review

### Communication

All communication among PU and PRU or with the taxpayer or any other person or any income-tax authority or the National Faceless Assessment Centre (NFAC), with respect to the information or documents or evidence or any other details for the purposes of imposing penalty under this Scheme, shall be through NFPC.

### Tax authorities

PU and PRU 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.

<sup>1</sup> CBDT Notifications Nos. 2 and 3/2021, dated 12 January 2021

- Such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

## Procedure

The penalty shall be levied under the Scheme as per the following procedure:

- Where any income-tax authority or NFAC has, in a case -
  - Initiated penalty proceedings and issued a show-cause notice for imposition of penalty; or
  - Recommended initiation of penalty proceedings,

It shall refer such case, in the form to NFPC

- NFPC shall assign such case to a specific penalty unit in any one of the RFPC through an automated allocation system
- Where in a case assigned to a PU, initiation of penalty proceedings has been recommended, such unit, after examination of the material available on record, may decide to –

- Agree with the recommendation and prepare a draft notice calling upon the taxpayer or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act; or
- Disagree with the recommendation, for reasons to be recorded in writing,

and send such draft notice or the reasons, as the case may be, to NFPC

- NFPC shall upon receipt of the draft notice or reasons from the PU –
  - Serve the show-cause notice, as per the draft referred, upon the taxpayer or any other person, as the case may be, specifying the date and time for filing a response; or
  - Not initiate penalty in cases referred
- Where in the case assigned to a PU, penalty proceedings are already initiated, such unit shall prepare a draft notice calling upon the taxpayer or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act and send such notice to NFPC
- NFPC shall serve the show-cause notice, as per draft upon the taxpayer or any other person, as the case may be, specifying the date and time for filing a response
- The taxpayer or any other person, as the case may be, shall file a response to the show-cause notice, within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, with NFPC

- Where response is filed by the taxpayer or any other person, as the case may be, NFPC shall send such response to the penalty unit, and where no such response is filed, inform PU

- PU may make a request to NFPC for –
  - Obtaining further information, documents or evidence from any income-tax authority or NFAC; or
  - Obtaining further information, documents or evidence from the taxpayer or any other person; or
  - Seeking technical assistance or conducting verification

- NFPC shall, upon receipt of request, issue appropriate notice or requisition to the income-tax authority or NFAC or the taxpayer or any other person, as the case may be, to submit such information, documents or evidence, as may be specified by the penalty unit, specifying the date and time for furnishing a response

- The income-tax authority or NFAC or the taxpayer or any other person, as the case may be, shall furnish a response to the notice or requisition, within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to NFPC

- Where a request for conducting of certain enquiry or verification or seeking technical assistance has been made by the penalty unit, NFPU shall send such request to NFAC specifying a date and time for submitting a report

- Where response to notice is filed by the income-tax authority or the NFAC or the taxpayer or any other person, as the case may be, the NFPC shall send such response to the PU, and where no such response is filed, inform the PU

- PU shall, after considering the material on record including response furnished, if any, or report, if any, propose for —
  - Imposition of the penalty and prepare a draft order for such imposition of penalty; or
  - Non-imposition of the penalty, for reasons to be recorded in writing and send the proposal along with such draft order or reasons, as the case may be, to the NFPC

- NFPC shall examine the above proposal, in accordance with the risk management strategy specified by the CBDT, including by way of an automated examination tool, whereupon it may decide,
  - In a case where imposition of penalty has been proposed, to pass the penalty order as per draft order and serve a copy thereof upon the taxpayer or any other person, as the case may be; or

- In a case where non-imposition of penalty has been proposed, not to impose penalty under intimation to the taxpayer or any other person, as the case may be; or
- Assign the case to a penalty review unit in any one of the RFPC through an automated allocation system, for conducting review of such proposal;
- The PRU shall review the proposal of penalty unit whereupon it may concur with, or suggest modification to, such proposal, for reasons to be recorded in writing, and intimate the NFPC
- Where the PRU concurs with the proposal of PU, the NFPC shall follow the prescribed procedure
- Where the PRU suggests modification to the proposal, the NFPC shall assign the case to a specific PU, other than the PU, in any one of the RFPC through an automated allocation system
- Where the case is assigned to a PU, such PU, after considering the material on record including suggestions for modification and reasons recorded by the PRU —
  - In a case where the modifications suggested by the PRU are prejudicial to the interest of the taxpayer or any other person, as the case may be, as compared to the proposal of the PU, shall follow the prescribed procedure and prepare a revised draft order for imposition of penalty; or
  - In a case where the modification is not prejudicial to the interest of taxpayer or any other person, as the case may be, shall prepare a revised draft order for imposition of penalty; or
  - May propose non-imposition of penalty, for reasons to be recorded in writing,
 and send such order or reasons to the NFPC
- Upon receipt of revised draft order from the penalty unit, the NFPC shall pass the penalty order as per such draft and serve a copy thereof upon the taxpayer or any other person or not impose penalty under intimation to the taxpayer or any other person, as the case may be
- Where in a case, the NFPC has passed a penalty order, or not initiated or imposed penalty, as the case may be, it shall send a copy of such order or reasons for not initiating or imposing penalty to the income-tax authority, or the NFAC, as the case may be, for such action as may be required under the Act.

## Rectification proceedings

- The application for rectification of mistake may be filed with the NFPC by the, —
  - The taxpayer or any other person, as the case may be; or
  - PU which prepared the order; or
  - PRU which reviewed the order; or
  - Income-tax authority; or
  - NFAC
- Where an application, is received by the NFPC it shall assign such application to a specific penalty unit in any one of the RFPC through an automated allocation system.
- The penalty unit shall examine the application and prepare a notice for granting an opportunity
  - To the taxpayer or any other person, as the case may be, where the application has been filed by the authorities
  - To the authorities referred, where the application has been filed by the taxpayer or any other person, as the case may be,
 and send the notice to the NFPC.
- The NFPC shall serve the notice, upon the taxpayer or any other person, as the case may be, or authorities to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act, specifying the date and time for filing a response.
- The response to the show-cause notice shall be furnished within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the NFPC.
- Where a response, is filed, the NFPC shall send such response to the penalty unit, or where no such response is filed, inform the PU.
- The penalty unit shall, after taking into consideration the response, if any, prepare a draft order,—
  - for rectification of the mistake; or
  - for rejection of application for rectification, citing reasons thereof,
 and send the order to the NFPC.
- The NFPC shall upon receipt of draft order, pass an order as per such draft and communicate such order to, —
  - the taxpayer or any other person, as the case may be; and

- the National Faceless Assessment Centre or the income-tax authority having jurisdiction over the case, for such action as may be required under the Act.

## Appellate Proceedings

An appeal against a penalty order made by the NFPC under this Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional income-tax authority or before the NFAC.

## Exchange of communication exclusively by electronic mode

All communications between NFPC 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 –

- NFPC by affixing its digital signature
- The taxpayer or any other person, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case by affixing his digital signature or under electronic verification code.

## Delivery of electronic record

Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the taxpayer or any other person, by way of –

- Placing an authenticated copy thereof in the taxpayer's or any other person's registered account, as the case may be; or
- Sending an authenticated copy thereof to the registered email address of the taxpayer or any other person, as the case may be, or his authorised representative; or
- uploading an authenticated copy on the taxpayer's or any other person's Mobile App, as the case may be, and followed by a real time alert.

Every notice or order or any other electronic communication under this 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 or any other person, as the case may be, 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 the NFPC 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 of section 13 of 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 before the income-tax authority at the NFPC or RFPC or PU or RPU 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 PU under this Scheme.
- The CCIT or the DGIT, in charge of the RFPC, under which the concerned PU 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.

## Our comments

The Faceless Penalty Scheme introduced by the government is a welcome move. The scheme specifies setting up of NFPC, RPC, PU and RU for execution of penalty proceedings, such that a penalty order is issued correctly and undergoes review before being issued to the taxpayer. This centre will allocate a recommendation for penalty made under the faceless assessment initiative to its regional units which can confirm or reject the penalty. The national centre can also refer the recommendation from its penalty unit for review and modification by another unit before finally passing an order in the case confirming or dropping penalty, as per an official order.



All communications between units and taxpayers will be done via electronic mode, while physical hearing will be allowed only with the approval from CBDT.

The government has been relying heavily on technology, artificial intelligence and machine learning to plug tax evasion and in turn making assessments, appeals, penalty proceedings for taxpayers as seamless as possible.



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