

# Direct Tax Alert

September 28, 2020



## CBDT notifies Faceless Appeal Scheme, 2020

### Background

In line with the announcements made by the Hon'ble Prime Minister in August 2020 for bringing transparency in the income-tax administration, the Central Board of Direct Taxes ('CBDT') notified the Faceless Appeals Scheme, 2020 ('scheme') on September 25, 2020 and made it operative with immediate effect<sup>1</sup>.

As the name suggests, the scheme is aimed at eliminating physical interface between the taxpayer and the first appellate authority [Commissioner (Appeals)] level.

The procedure and infrastructure under the scheme are similar to the Faceless Assessment Scheme (which has already become operative)<sup>2</sup>.

Salient features of the scheme have been discussed in this alert.

### Faceless Appeals Scheme, 2020

The process of conducting tax proceedings in an electronic manner has evolved over the past few years. With Faceless Assessments now becoming a reality, the Government decided to

extend the process to the first appellate level as well.

Amendments were made vide the Finance Act, 2020 to enable the Central Government to make a detailed Faceless Appeals Scheme.

The scheme provides for setting up of a National Faceless Appeal Centre ('NFAC'), Regional Faceless Appeal Centres ('RFAC') and Appeal Units.

- **NFAC** – will be the nodal agency and will facilitate the conduct of an e-appeal in a centralised manner. It will be assisted by RFACs and Appeal Units.
- **RFACs** – shall support the functioning of the NFAC.
- **Appeal Units** – shall conduct e-appeal proceedings and perform the function of disposing appeals.

Continuing the pace of reforms, CBDT has already constituted the NFAC at New Delhi, four RFACs at New Delhi, Mumbai, Chennai and

<sup>1</sup>Notification No. 76/2020 dated September 25, 2020

<sup>2</sup> Please refer to Dhruva Alert on Faceless Assessment Scheme at: [https://dhruvaadvisors.com/insights/files/Dhruva\\_Alert\\_Transparent\\_Taxation\\_platform.pdf](https://dhruvaadvisors.com/insights/files/Dhruva_Alert_Transparent_Taxation_platform.pdf)



Kolkata, along with over 250 Appeal Units in various cities across the country.

#### Scope of the scheme:

- The scheme covers appeals filed under section 246A and section 248 of the Income-tax Act, 1961 ('the Act').
- Almost all appeals will now be handled under the faceless appeal mechanism.

However, appeals relating to the below matters shall be kept outside the ambit of the scheme<sup>3</sup>:

- International Tax
  - Serious frauds;
  - Major tax evasion;
  - Sensitive and search matters; and
  - Black Money Act.
- CBDT has the power to specify the area, persons, incomes, or cases to which the scheme shall apply.

#### Procedure under the scheme:

- All communication between the Appeal Unit and the appellant or any other person or National e-Assessment Centre ('NeAC') or the Assessing Officer ('AO') shall be through the NFAC.
- NFAC to allocate an appeal filed by taxpayer to any RFAC through an automated allocation system based on data analytics and artificial intelligence.
- Under specified circumstances, NFAC to intimate the appellant of the admission/rejection of the appeal. Before rejection, there is no mechanism in the scheme for providing specific opportunity of being heard to the appellant.
- The Appeal Unit may request NFAC to direct the NeAC/AO to make inquiries, submit information, documents/reports, etc. as may be relevant.
- Pursuant to a notice to be issued by NFAC, appellant to submit such information, document or evidence as may be relevant to the appellate proceedings.
- Additional grounds and additional evidence may be filed by the appellant before NFAC.

These may be admitted depending on the facts and circumstances of each case.

- Where an Appeal Unit decides to enhance an assessment/penalty or reduce the refund, it shall serve a show-cause notice on the appellant through the NFAC.
- Appeal Unit to consider the response of the appellant along with other material on record and forward a draft order to NFAC.

- NFAC to forward the draft order to another Appeal Unit for conducting a review, if monetary effect of issues disputed in the appeal exceed a particular limit (yet to be prescribed).

Where such monetary limit is not exceeded, NFAC to examine the draft order in accordance with risk management strategy (to be specified by the CBDT). Thereafter, it may either finalise the appeal or send the draft order to another Appeal Unit for review.

- The Appeal Unit reviewing such draft order may concur with it, in which case the NFAC shall finalise the appeal as per the draft order.

In case the Appeal Unit reviewing such draft order suggests any variations (i.e. enhancement/relief), the NFAC shall assign the appeal to a third Appeal Unit (other than the two above).

- The third Appeal Unit shall prepare a revised draft order in accordance with the procedure laid down in the scheme as discussed above.

The revised draft order prepared by such third Appeal Unit shall form basis for finalising the appeal.

- NFAC will pass an appeal order post considering the above and forward a copy to the appellant and relevant authorities.

#### Other salient features of the scheme:

- NFAC may transfer the appeal at any time of the proceedings to another Commissioner (Appeals) if considered necessary, with prior approval of the CBDT.
- The Appeal Unit may make recommendations to the NFAC towards initiation of penalty proceedings for non-compliance with the scheme.

<sup>3</sup> As per the Press Release issued by Ministry of Finance dated September 25, 2020. A CBDT order/notification to this effect is awaited.



- The scheme also provides for the manner in which rectification of any mistake in the order passed by NFAC can be carried out.
- Any appeal against an order passed by NFAC shall lie before the Income Tax Appellate Tribunal ('ITAT') having jurisdiction over the jurisdictional AO of the appellant.
  - Where any order has been set-aside by the ITAT/High Court/Supreme Court and remanded back to the NFAC/Commissioner (Appeals), the NFAC shall pass an order in accordance with the provisions of this scheme.
- The NFAC, with prior approval of CBDT, is inter-alia, authorized to prescribe procedure and processes in respect of:
  - circumstances under which personal hearing (through video conferencing) may be granted to the appellant.
  - provision of "e-appeal" facility including login account facility, tracking status of appeal, etc.

Separately, directions have been issued to the effect that any provision of the Act shall not apply/or shall apply with exception, modification and adaptations for giving effect to the scheme<sup>4</sup>.

### **Dhruva Comments:**

The introduction of the scheme by the Government is a welcome step in its roadmap towards a Digital India. However, the implementation of the scheme will be key.

The architecture of the scheme is similar to the Faceless Assessment Scheme with the NFAC being the nodal authority supported by RFACs and Appeal Units constituting of Commissioner (Appeals) who will pass the draft order.

A crucial change in the scheme from the traditional appeal process is the introduction of review mechanism by another Appeal Unit. In case any variation is suggested by such reviewing Appeal Unit, the draft order will be subject to review by a third Appeal Unit.

Such review processes will be conducted at Appeal Unit level and the appellant will have no knowledge of the same. The review process should hopefully result in improvement of the quality of appeal orders.

On the flip side, the overall time taken for adjudication of an appeal could be greatly impacted given multiple reviews by Appeal Units and coordination between the NFAC, NeAC/AO and various Appeal Units.

The "risk management strategy" criteria for review of draft order is similar to the provisions of the Faceless Assessment Scheme. It appears that such criteria will not be disclosed to public and will be dynamic in nature i.e. likely to evolve and change on a frequent basis.

Also, currently, there is no clarity as to whether pending appeals filed by taxpayers will be transferred under the scheme and how appeals where substantial proceedings have been completed will be governed. Further notifications/orders/clarifications in respect of the above aspects would be welcome.

The use of electronic modes for communicating with Revenue/appellate authorities calls for a change in approach from the taxpayer's point-of-view. The opportunities to argue the case may be limited and will certainly not be in the traditional manner. It is therefore imperative to present submissions of the highest quality in a time-bound and lucid manner to obtain a favourable outcome at the first appellate level itself.

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<sup>4</sup> Notification No. 77/2020 dated September 25, 2020



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