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Corporate Tax

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Faceless Appeals – The way forward to New Era of Transparent Taxation

Snapshot

The Hon'ble Prime Minister of India launched the platform for promoting transparent taxation and Honouring the Honest on August 13, 2020 which included the significant decision of conducting hearings before the Commissioner (Appeals) without having any interface between the Taxpayer and the Department. This Scheme is known as "Faceless Appeals" and it has become effective from September 25, 2020. "Faceless Appeals" will entirely replace the existing system of physical hearing before the jurisdictional Commissioner (Appeals).

Faceless Appeals involves creation of e-appeal centres at national and regional levels and use of modern technology like Artificial Intelligence (AI) and Auto-allocation Tool (Automated Machine Tool) for smooth coordination and conducting of Appellate proceedings. The use of technology and centralised appeals will further achieve uniformity in decision making process and hence, it may reduce litigation significantly and save significant resources of the Taxpayer. Faceless Appeals has been designed to achieve its key objectives which are Transparency, Efficiency and Accountability in Tax administration and Appellate Proceedings.

Besides implementing Faceless Appeals, the government has already introduced faceless assessments and e-penalty proceedings, which may bring a radical change in the tax compliance and tax administration process as a whole and consequently make both the processes Taxpayer friendly.

Background

E-filing of appeal before Commissioner (Appeals) was introduced by CBDT from March 01, 2016. The Objective was to reduce excessive paperwork, removing human interface while filing the appeal and for providing efficient services to the Taxpayer.

Further, the government has introduced Faceless Assessment Scheme wherein the assessment shall be conducted in centralised manner and has removed the interface between the Assessing Officer and the Taxpayer. Now, to achieve the objective of transparency, efficiency and accountability at a higher level, the government added one more feather to its cap by introducing Faceless Appeals vide Finance Act, 2020.

In pursuance to the same, the CBDT has issued a notification dated September 25, 2020 wherein the Faceless Appeals has been made applicable to all pending appeals barring few exceptions. The notification also provides a detailed process through which the appellate proceedings will be carried out.

Salient features of the Scheme

Faceless Appeal has been conceptualised in consonance with the faceless assessment scheme i.e. following the principle of team-based proceedings and dynamic jurisdiction. The appellate proceeding shall not be driven by a single jurisdictional Commissioner (Appeals), instead it would be conducted by different Appeal Units having specialised knowledge and expertise.

National Faceless Appeal Centre (NFAC) shall be the Nodal Agency which will facilitate the appellate proceedings. The proceedings will be conducted through NFAC and Regional Faceless Appeal Centres (RFAC) with the assistance of Appeal Unit (AU).

The identity of Commissioner (Appeals) will not be revealed to the Taxpayer.

CBDT has designed an Automated Allocation System which will assist NFAC in assigning the appeals to AU of any RFAC.

Following Income Tax Authorities of NFAC, having headquarters at Delhi, shall facilitate the conduct of Faceless Appeal proceedings in centralised manner:

- Principal Chief Commissioner of Income Tax
- Commissioner of Income Tax
- Additional / Joint Commissioner of Income Tax
- Deputy / Assistant Commissioner of Income Tax
- Income Tax Officer

Chief Commissioner of Income Tax shall be in charge of each RFAC under any specific region. Each RFAC shall further have various Commissioner of Income Tax (Appeal Units). The AU shall comprise of following income tax authorities:

- One or more Commissioner (Appeals)
- Any other income tax authority, Ministerial Staff, executive or consultant as considered by CBDT.

All communication amongst the appeal unit or National e-assessment Centre (NeAC) or Assessing Officer (AO) or Taxpayer or any other person shall take place only *via* electronic mode and through NFAC.

The admission / rejection of appeal, admission of additional grounds of appeal or additional evidence, delivery of notice, filing of response or report and service of final appeal order shall be intimated to the Taxpayer either through his registered account with the income tax department or to be sent to his registered email address or email address of the authorised representative which will be also followed by a real time alert on the registered mobile number. No physical documents to be submitted.

Unlike the faceless assessment, no opportunity of being heard is required to be given to the Taxpayer before passing of the final appeal order. Hence it is necessary that the reply to be filed with NFCA is a detailed one covering all aspects on the issue.

The Taxpayer who is mandatorily required to file their tax return using DSC (Digital Signature) shall be required to authentic the appeal, additional grounds of appeal, written submission and any other information *via* DSC only. However, in other cases, the Taxpayer is required to authentic the records using other electronic mode.

No personal hearing shall be granted to the Taxpayer except on the request of the Taxpayer subject to approval by the Chief Commissioner or Director

General, in charge of RFAC as per rules to be framed by CBDT. The personal hearing shall be conducted exclusively through video conferencing or video telephony.

The Draft Order (DO) prepared by the AU shall be reviewed or revised by different AU before passing of the final appeal order by the NFAC.

In set-aside proceedings, where the appeal is remanded back by the Income Tax Appellate Tribunal (ITAT) or High Court (HC) or Supreme Court (SC), the appellate proceedings shall be conducted in accordance with the Scheme.

Only, Pr. Chief Commissioner or Pr. Director General (NFAC) with prior approval of CBDT may transfer the appeal to the Commissioner (Appeals) for carrying out physical hearing of appeal.

The Scheme has become effective from 25.09.2020 and will apply to all the pending appeals as on date **except** appeal relating to:

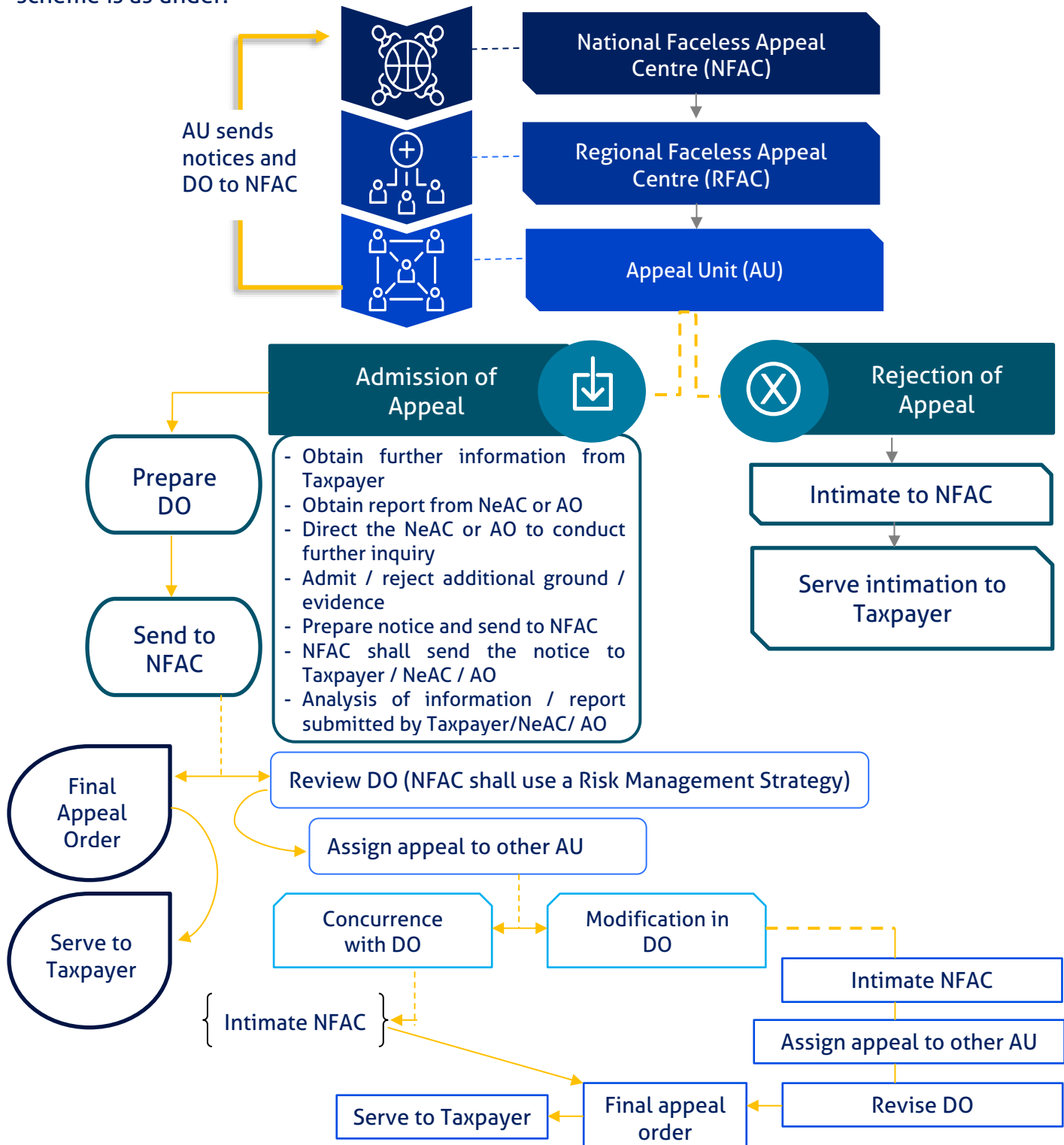
- Search matters
- Serious frauds and major tax evasion matters
- International Tax matters
- Black Money Act matters

Authorities and Functions of Faceless Appeal Centres

Authority	Functions
National Faceless Appeal Centre (NFAC)	Facilitate the conduct of faceless appeal proceedings in a centralised manner. It will be the communication channel amongst RFAC / AU / NeAC / AO / Taxpayer / any other person. Final Appeal orders will be passed and dispatched by NFAC.
Regional Faceless Appeal Centre (RFAC)	It will be in-charge of faceless appeal proceedings and would dispose the appeal in accordance with the Scheme.
Appeal Unit (AU)	This unit will facilitate the conduct of e-appeal proceedings in accordance with the Scheme and perform various functions like <ul style="list-style-type: none">• Admission or rejection of appeal, condonation of delay, additional ground of appeal as well as additional evidence filed by the Taxpayer,• Making of further inquiry,• Directing NeAC or AO for conducting further inquiry,• Providing opportunity of being heard to the Taxpayer,• Analysis of material furnished by the Taxpayer as well as report submitted by NeAC or AO,• Preparation of draft order,• Review of draft order,• Preparation of revised draft order

Procedure of conducting Faceless Appeals

Step by step procedure involved in conducting appellate proceedings under the new faceless appeal scheme is as under:



Allocation of case

NFAC shall assign the appeal to a specific AU in any RFAC through an automated allocation system for disposing the appeal in accordance with the scheme.

Admission of Appeal

The Appeal filed by the Taxpayer shall be admitted except in following circumstances:

- Appeal filed after expiration of the prescribed time – mainly delayed filing cases
- Appeal filed without payment of advance tax in case no return has been filed

In above mentioned circumstance, the AU may admit the appeal if the delay or non-payment of tax is due to good and sufficient cause.

If AU is not satisfied with the reason submitted by the Taxpayer, the AU may reject the appeal and may not admit the same after recording the reasons for rejection in writing.

The admission or rejection of appeal shall be intimated by AU to NFAC and the NFAC shall serve such intimation to the Taxpayer.

Where the appeal is admitted, the AU shall conduct the appellate proceedings in accordance with the Scheme and AU can

- Request NFAC to obtain further information, document, or evidence from the Taxpayer or any other person
- Request NFAC to obtain report from NeAC or AO on the grounds of appeal or information or document or evidence filed by the Taxpayer
- Request NFAC to direct NeAC or AO for making further inquiry and submit report thereof

On the basis of the above request made to NFAC, the NFAC shall serve the notice to the Taxpayer or NeAC or AO or any other person.

On receipt of the notice, the Taxpayer or NeAC or AO shall submit the response to NFAC within such date and time specified therein or extended date and time as allowed by NFAC.

The NFAC shall send the response along with the details or evidences received from the Taxpayer or report received from the NeAC or AO to the AU for verification and examination of such response/ details / evidences / reports.

Additional Grounds of Appeal

The Taxpayer if required may file additional grounds of appeal other than the grounds filed along with the appeal and also furnish the reason for omission of such ground of appeal at the time of filing the appeal.

On receipt of such additional grounds of appeal, NFAC shall send the additional grounds of appeal filed by the Taxpayer to NeAC or AO for comments as well as to AU.

The NFAC on receipt of comments from NeAC or AO shall send such comments to AU.

The AU after considering the additional grounds and the comments received from NeAC / AO may admit or reject the additional grounds of appeal filed by the Taxpayer and the AU shall for the reasons to be recorded in writing intimate the same to NFAC.

On receipt of intimation from AU, the NFAC shall send the intimation to the Taxpayer.

Additional Evidence

The Taxpayer may file evidence other than the evidence produced during the course of assessment proceedings for the first time before the NFAC in conformance with Rule 46A of Income Tax Rules, 1962.

On receipt of such additional evidence, the NFAC shall send the additional evidence to NeAC or AO for

furnishing of the report on admissibility of such additional evidence.

The report, if any received from the NeAC or AO by NFAC shall be sent to AU along with the additional evidence filed by the Taxpayer.

AU after considering the additional evidence and the report of NeAC or AO, shall intimate to NFAC about the admission or rejection of such additional evidence.

NFAC shall intimate the admission or rejection of additional evidence to the Taxpayer and NeAC or AO.

Where the additional evidence submitted by the Taxpayer is admitted by AU, the AU shall prepare the notice for granting an opportunity to NeAC / AO for submitting the report on such additional evidence or produce any evidence or witness in rebuttal of such evidence produced by the Taxpayer and send such notice to NFAC.

NFAC shall send the notice to NeAC or AO for submission of report within such time and date as mentioned therein or allowed by the NFAC.

NeAC / AO may furnish the report to NFAC and NFAC on receipt of the report, if any shall send the same to AU.

Direction from NeAC or AO

NeAC or AO may request NFAC to direct the Taxpayer to produce any document or evidence or examination of witness relevant for disposing the appeal.

NFAC on receipt of such request shall forward the same to AU and if AU considers such request appropriate, shall issue notice to the Taxpayer through the NFAC and direct the Taxpayer to produce such document or evidence or produce any other person being witness for examination.

Where the Taxpayer receives the notice from NFAC, the Taxpayer will be required to file response to the notice within such time and date as specified in the notice or such extended time as allowed by NFAC.

NFAC on receipt of response from Taxpayer shall send the same to AU.

Enhancement of Appeal

Where AU intends to enhance an assessment or penalty or reduce the amount of refund, it shall prepare a notice specifying the reasons therein for enhancement and send it to NFAC

NFAC shall serve the notice to the Taxpayer and the Taxpayer shall file his response to the notice to NFAC within such time and date as specified therein or such extended time as may be allowed by NFAC.

The response, if any received from Taxpayer by NFAC shall be sent to the AU by NFAC.

Draft Order (DO)

AU after examining all the relevant material and response filed by the Taxpayer as well as the report furnished by NeAC or AO and after considering any matter arising out of the appellate proceedings, shall prepare DO and send it to NFAC along with the details of penalty, if any to be initiated.

The Taxpayer can seek for personal hearing for making his oral submission or present his case before the AU. Such request is required to be made to Chief Commissioner in charge of RFAC and he may approve such request if the same is falling within the circumstances which will be notified by CBDT.

The NFAC shall send the DO to some other randomly selected AU for its review, if the disputed tax along with penalty, interest or fee including surcharge and cess involved in the DO exceeds the specified amount. The AU selected would be different than the AU which had prepared the DO.

In any other case, NFAC may pass the final appeal order or if NFAC considers it necessary may send the DO for review to some other randomly selected AU. The AU selected would be different than the AU which has prepared the DO. In this case, however, NFAC shall use a Risk Management Strategy as may be specified by Board. In this strategy, NFAC shall use technological tools such as Artificial Intelligence and Machine Learning so as to evaluate the quantum of risk involved in the DO passed and whether the same requires a review by another AO.

Where an AU receives the DO for review, it may either confirm the DO or suggest a modification in the DO.

Where the reviewing AU intimates NFAC about concurrence with DO, then NFAC shall pass the final appeal order.

Where reviewing AU suggests modification in the DO to NFAC, then NFAC shall assign the appeal to another randomly selected AU (other than the AU which has prepared and reviewed the DO).

AU after considering the modifications suggested by the reviewing AU and if such modifications results in enhancement, the AU shall conduct the appellate proceedings in accordance with the Scheme and prepare revised DO and send it to NFAC along with the details of penalty proceedings if any recommended by the AU.

Final Appeal Order

The NFAC on receipt of DO or revised DO shall pass final appeal order and communicate such appeal order to:

- Taxpayer,
- Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner of Commissioner and
- NeAC or AO

NFAC along with the final appeal order shall issue the notice to the Taxpayer for levy of penalty, if recommended by AU during the course of Appellate proceedings.

Penalty Proceedings

AU may recommend NFAC for initiation of penalty proceedings for non-compliance of any notice or direction or order issued under this Scheme.

NFAC on receipt of recommendation from AU shall issue notice to the Taxpayer or any other person for imposition of the penalty.

On receipt of notice from NFAC, the Taxpayer shall file response to NFAC within such time and date as specified or such extended time as allowed by NFAC.

The recommendations for initiation of penalty proceedings and response filed by Taxpayer shall be assigned to an AU by NFAC through an automated allocation system.

AU after taking all relevant material on record may either prepare the draft penalty order and send it to NFAC or drop the penalty proceedings, after recording the reasons for dropping the penalty and intimate the same to NFAC.

The final penalty order imposing the penalty or the intimation dropping the penalty shall be sent by NFAC to the Taxpayer and the NeAC or AO for further course of action.

Rectification Proceedings

NFAC is empowered to amend the order passed by it with a view to rectify any mistake apparent from record.

Application for rectification of the order may be made to NFAC by the following:

- Taxpayer; or
- AU preparing or reviewing or revising the DO; or
- NeAC or AO

On receipt of rectification application, NFAC shall assign such application to AU through an automated allocation system.

The AU after examining the application shall prepare notice for granting an opportunity to the Taxpayer or NeAC or AO, as the case may be, and send the notice to NFAC. NFAC shall serve the notice to Taxpayer / NeAC / AO as prepared by AU.

The response to the notice is required to be filed by NeAC or AO or the Taxpayer, within such time and date as mentioned therein or within such extended time as allowed by NFAC.

NFAC shall send the response to AU and AU after taking all relevant material shall prepare and send the DO rectifying the mistake or rejecting the rectification application and shall also mention the reasons to NFAC.

The NFAC on receipt of DO shall pass final order and communicate the same to the Taxpayer and NeAC or AO, for further course of action.

Appeal before Income Tax Appellate Tribunal ("ITAT")

The appeal against the order passed by the NFAC shall be filed before the ITAT having jurisdiction over the jurisdictional AO i.e. even if order is passed by NFAC if the jurisdictional AO is in Ahmedabad, then appeal would be filed before ITAT, Ahmedabad.

Key Takeaways

The Faceless Appeal Scheme is in line with the Faceless Assessment Scheme and addresses key objectives of the government namely Transparency, Efficiency and Accountability in tax administration. With the use of Artificial Intelligence, Government will be able to reduce litigation significantly because of uniformity in decision making process. Further, as the Appellate proceedings will be conducted in centralised manner, the litigations arising due to difference in opinion in various jurisdictional courts shall reduce significantly. Also, the appeal order passed by NFAC will be a reasoned order considering the process involved and will significantly reduce the litigation before ITAT.

The effectiveness of the Scheme shall be affected if the uniformity in decision making process is not maintained by AU and there are chances where different appeals of different assessment year of the same Taxpayer may be assigned to different AU, resulting into difference of opinion on same issue, adding to pending litigation. Further it is also required to be seen as to how such AU (which shall not be the jurisdictional AU) will abide by the decision of jurisdictional ITAT and HC on the issue before such AU. It is therefore necessary for the Taxpayer to bring out to such AU as many jurisdictional decisions which are in his favour to contradict any adverse non jurisdictional decisions.

We further believe that the faceless appeals will change the way in which the current representation practice is being followed. Neither there will be hearing in person, nor the Taxpayer will be aware as to which Appeal Unit will be carrying out the appellate proceedings. In absence of face to face hearing, the role of personal representation before Commissioner (Appeals) shall be replaced by

drafting of appropriate and comprehensive written submissions and other relevant evidence. Since the written submissions will be seen and reviewed by various Appeal Units, it will be issue specific & persuasive, instead of being person specific. It is also a matter of concern as to how the various Appeal Units will understand and interpret the written submissions.

The faceless appeals scheme shall be implemented on immediate basis and with a view to centralise the process, the Government has already updated Form 35 [Form for filing appeal before Commissioner (Appeals)].

Overall, if the Scheme is implemented with full throttle and in right spirit, India is sure to improve its global rankings in respect of smooth and Taxpayer friendly Tax Administration.

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For further analysis and discussion, you may please reach out to us.

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