

Faceless Income Tax- Assessment – 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 includes significant decisions of carrying out income tax assessment without having interface between the Taxpayer and income-tax authority, known as "Faceless Assessment" with effect from August 13, 2020. This will entirely replace the existing system of any physical or virtual tax hearing before income tax authority. It may have a far-reaching implication with the way in which the tax department, Taxpayers as well as tax consultants handle the income tax assessments.

Faceless Assessment involves creation of e-assessment 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 team-based assessment. The use of technology and team-based assessment will further achieve uniformity in decision making process and hence, it may reduce litigation significantly. The Scheme has been designed to achieve its key objectives namely Transparency, Efficiency and Accountability in Tax administration and thereby eliminating face to face interaction of Taxpayer and assessing officer. It is thus significantly modifying the current scheme of tax assessment. Besides implementing Faceless Assessment, with implementation of e-appeals and e-penalty proceedings, these comprehensive reforms may bring a radical change in the efficiency in tax compliance in particular and tax administration process as whole and thus make the whole compliance and administration process even more Taxpayer friendly.

Background

In recent past, the Government of India had taken numbers of measures with a view to achieve dual goal of promoting digitalisation and eliminating corruption. Earlier under the Income-tax Act, 1961 ("ITA"), several amendments have been made wherein the scheme of e-assessment was incorporated and faceless assessment procedure was tested on trial basis in certain metros which clearly reflects the intention of this Government to streamline the process of tax administration using technology.

Earlier, with an objective to reduce the interface between the assessing authority and the Taxpayer, the tax department had started with e-assessments, which was then called as "e-mail based assessment" on a pilot basis in 2016 for a few cities which was then extended to 102 cities in the year 2017. Thereafter, *vide* the Finance Bill, 2018, enabling provisions for implementation of e-Assessment have been incorporated. Thereafter, in the Budget speech of 2019, the Hon'ble Finance Minister gave a brief insight of the proposed faceless e-assessment scheme to be introduced in a phased manner. Finally *vide* Notification number 61/2019 dated 12 September 2019, the Central Government introduced the faceless e-assessment scheme to certain class of Taxpayers which was then introduced as E-Assessment Scheme 2019 ('the Scheme').

Now, the Central Board of Direct Taxes (CBDT) has, in line with announcement made by the Hon'ble Prime Minister, issued a notification dated August 13, 2020 wherein faceless assessment is applicable for all class of Taxpayers. The notification also provides for a detailed process of assessment.

Salient features of the Scheme

Faceless Assessment is conceptualised on the principle of team-based assessment with dynamic jurisdiction. The assessment proceeding shall not be driven by jurisdictional tax officer, rather it would be conducted jointly by teams of people having specialised knowledge and expertise in respective fields.

National e-Assessment Centre (NeAC) shall be nodal agency which will facilitate the assessment. The proceedings will be conducted through NeAC and Regional E-assessment Centres (ReACs) with the assistance of E-assessment Centres such as Assessment Unit (AU), Verification Unit (VU), Technical Unit (TU) and Review Unit (RU).

No name of any person of income tax authority will appear in any communication with Taxpayer.

CBDT will lay down/design an Artificial Intelligence (AI) and Automated Machine Tool technology which will assist NeAC to perform all the functions necessary for the purpose of conducting the faceless assessment as per the Scheme. This technology will also assist NeAC in allocating the assessment involving specific issue or specific class of person or specific income to the dedicated centre under ReAC.

Principal CIT / PDGIT are in charge of each ReAC under any specific region. Each centre under the ReAC further comprises of following income tax authorities:

- Additional Commissioner/ Director or Joint Commissioner/Director
- Deputy Commissioner/ Director or Assistant Commissioner/ Director or Income Tax Officer
- Any other income tax authority, Ministerial Staff, executive or consultant as considered by CBDT.

- All communication amongst the different units within NeAC and with the Taxpayer shall take place only *via* electronic mode. None of the tax authorities other than NeAC will communicate with Taxpayer for tax assessment.

The notice and order shall be intimated to a Taxpayer either to his registered account with the income tax department or be sent to his registered email address or email address of the authorised representative which will also be followed by a real time alert on the registered mobile number.

The Taxpayer shall be required to comply electronically through his registered account (log in portal on Income Tax Department official website). No physical documents to be submitted.

The Taxpayer who is mandatorily required to file their tax return using DSC (Digital Signature) shall be required to authentic the reply *via* DSC only. However, in other cases, the Taxpayer is required to authentic the reply using other electronic mode.

The Taxpayer is required to file the evidence including the electronic evidence, if any, in accordance with the provision of the scheme and instructions issued by the tax department.

CBDT has clarified that the Faceless Assessment Scheme shall apply to all the assessment proceeding under the ITA, except the following:

- Assessment in pursuance to search proceeding u/s 153A/153C charged with Central Ranges
- Assessment proceeding subjected to Transfer Pricing provision u/s 92CA

CBDT will lay down the criteria wherein the request for Taxpayer for conducting personal hearing (which

will take place only through video conferencing) may be considered by the PCIT of ReAC.

No addition can be made without giving a show-cause notice by the NeAC to the Taxpayer.

Power has also been provided to Pr. Chief Commissioner or Pr. Director General in charge of

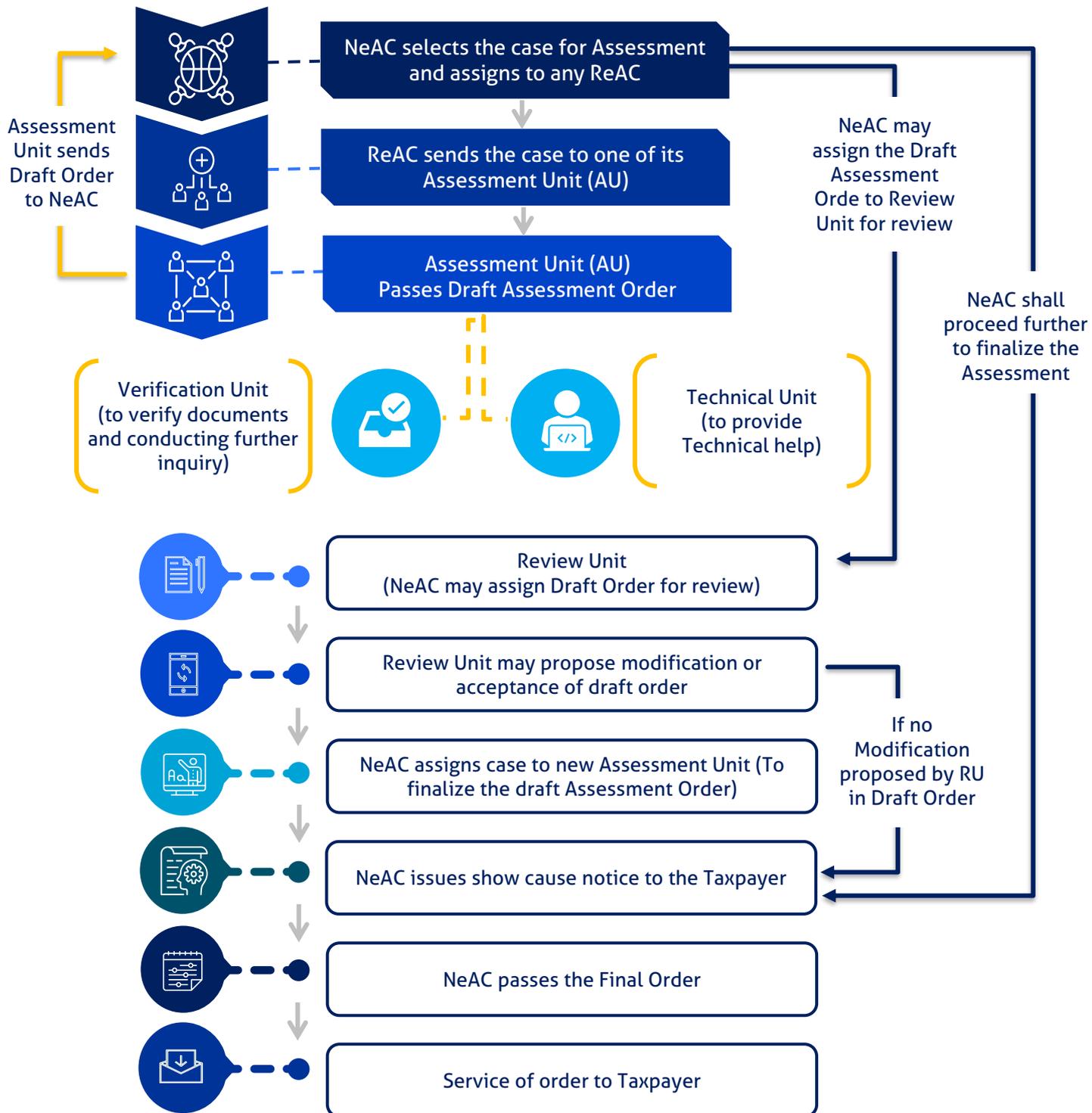
NeAC to transfer the case to the jurisdictional tax officer for completing the assessment, in desirable case, at any stage of proceeding, after obtaining prior approval from CBDT.

Authorities and Functions of E-assessment Centres

Authority	Functions
National E-assessment Centre	Facilitates the conduct of e-assessment proceedings in a centralised manner. It will be communication channel amongst Taxpayer / AR / any other person with ReACs and other units. Assessment order and Penalty orders will be passed and dispatched by NeAC
Regional E-assessment Centres	It will be in-charge of e-assessment proceedings under the jurisdiction of the regional Pr. CCIT
Assessment Unit (AU)	This unit will conduct the assessment u/s 143(3), 144, 147 of ITA. The primary tasks of this unit include identification of issues, seeking information or clarification on points or issues identified or analysis of information furnished by the Taxpayer/AR/any other person or any other function for the purpose of making assessment.
Verification Unit (VU)	This unit will help the AU in carrying out enquiry, cross verification, examination of books of accounts, examination of witness and recording of statements, any other function for the purpose of verification in relation to issues identified by AU.
Technical Unit (TU)	This unit will provide technical input which includes assistance or advice on legal, accounting, forensic, audit, information technology, valuation, transfer pricing, data analytics, management, or any other technical matter. The TU will also assist AU and NeAC in cases involving Special Audit direction, if any.
Review Unit (RU)	This unit will perform the functions which are <i>akin</i> to Revisionary power conferred upon the PCIT u/s 263 of the ITA. It reviews the draft assessment order and check whether the relevant and material evidence, facts, provisions of law have been incorporated in the draft assessment order and the applicable judicial precedents have been considered in the draft order.

Procedure of conducting Faceless Assessment

Step by step procedure involved in conducting scrutiny assessment under the new faceless assessment scheme is summarized as under:



Selection of case

NeAC will be nodal agency who will be conducting the team-based assessment under the new scheme. Notice u/s 143(2) of the ITA shall be electronically issued by NeAC to the Taxpayer on his registered account. NeAC will also specify the issues for selection of the case for assessment.

Team-Based actions – Inquiry and Assessment

On receipt of the notice, the Taxpayer, within 15 days, shall either file complete details and reply in response to issue specified in the said notice or can seek further time to comply with the said notice.

NeAC will assign the case of the Taxpayer to any AU in any one of the ReACs using an automated allocation system designed by NeAC. The reply filed by the Taxpayer shall be verified by AU. Accordingly, an assessment of a person residing in Gujarat may be carried out by ReAC in Delhi.

AU shall conduct initial inquiry on the issue with the reply filed by the Taxpayer. Based on the details submitted by the Taxpayer, AU can take following actions:

- Issuance of notice through NeAC and call for further details and information to verify the claim of the Taxpayer
- In appropriate cases, request NeAC to make specific enquiry/verification on any issue by the VU
- Request NeAC to refer the matter to TU for getting technical assistance on any issue

Based on the recommendations of AU, the NeAC will issue appropriate direction to the Taxpayer and/or VU and/or TU.

On receipt of further notice, the Taxpayer shall be required to comply with the said notice in stipulated time.

In situations where the case has been assigned to TU or VU, such units will make further inquiry and/or provide technical assistance on this issue as per the points suggested by AU. These units, after conducting the inquiry, shall forward their report/comments to NeAC which in turn shall forward the same to the concerned AU.

In case the Taxpayer fails to comply with the notice within the stipulated time period or such extended time so allowed, the NeAC shall issue show cause notice granting final opportunity to the Taxpayer to make do compliance of the notice.

If no response is received from the Taxpayer, then, NeAC shall intimate this failure to the AU which can proceed to pass the draft order u/s 144 of the ITA.

Draft Assessment Order

The AU after considering all the relevant material on records and reply filed by the Taxpayer as well as details and information received from VU or TU shall pass a draft assessment order and send copy of the draft order to the NeAC. The AU shall further propose initiation of penalty proceedings, if any, to NeAC.

The NeAC shall carry out examination of the draft order in accordance with the Risk Management Strategy specified by the CBDT in this regard using an Automated Examination Tool. Based on the outcome of this examination, NeAC may take any of the following actions:

- Where there is no modification proposed in the draft assessment order, finalize the assessment order and send a copy of the assessment order along with demand notice/ specifying the refund amount and notice for penalty proceeding, if any, to the Taxpayer.
- Where modification is proposed in the draft assessment order, NeAC shall issue show cause

notice to the Taxpayer for making assessment as per draft assessment order.

- Assign the draft assessment order to RU under any ReAC selected using the Automated Allocation System designed by CBDT for conducting review.

The RU after conducting its review will give following recommendations to NeAC

- Concurrence with the draft assessment order
- Modification in the draft assessment order

Where no modification has been proposed by RU, NeAC will pass final draft assessment order.

Where modification has been proposed by RU, NeAC shall assign the case to another AU (other than the AU which has made the initial draft assessment order) through automated allocation system for conducting further inquiry.

Such AU after considering the modifications suggested by the RU shall pass final draft order and send it to the NeAC.

Final Assessment Order

NeAC shall issue a such show cause notice where modification has been proposed in the draft assessment order or in the final draft assessment order where the case was referred to RU.

The Taxpayer can file his written submission and also request for personal hearing to NeAC. Request for personal hearing shall be approved by the Chief Commissioner of ReAC in charge of the case if the same falls within the circumstances yet to notified by CBDT. Such personal hearing shall be conducted only though video conferencing in accordance with the procedure laid down by CBDT.

The AU will revise the draft assessment order after considering the written submission and personal hearing as stated above.

The NeAC will pass and issue the assessment order to the Taxpayer along with notice of demand payable/refund to be issued and notice of penalty proceeding, if any, proposed by the AU.

Once the assessment is completed, the NeAC shall transfer all the electronic records to the jurisdictional AO for following corrective actions:

- Rectification of any mistake
- Collection and Recovery of Demand
- Giving effect to Appellate Order
- Submission of remand report, any other report to be furnished or stay representation to be made or to produce any record etc. before CIT(A), ITAT or Courts
- Proposal seeking sanction of launch of prosecution and filing of complaint before the court.

Matters to be handled by Jurisdictional Tax Officer

Following matters will be handled by the jurisdictional tax officer outside the NeAC/ReACs:

- Taxpayer outreach, education, and facilitation
- Rectification proceedings
- Grievance handling
- Demand Management - Collection and Recovery of taxes
- Audit functions including handling matters pertaining to Revenue and Internal Audit and taking remedial actions

- Giving effect to the appellate orders of CIT(A), ITAT, High Court, Supreme Court, Settlement commission
- Preparing scrutiny reports and filing of appeal wherever considered necessary
- Defending writ petitions, recommendation of SLPs, etc
- Revision of order under section 263 / 264
- Prosecution and compounding proceedings and related court matters
- Administrative, HRD and cadre control matters including related court matters
- Custody and management of Case records
- Management and control of infrastructure
- Response received from the Taxpayer shall be sent to the concerned unit who made recommendation for further course of action
- The said unit may make draft penalty order and send a copy of the order to the NeAC suggesting levy of penalty or suggesting dropping the penalty proceeding.
- No further show cause notice is required to be issued by the NeAC to the Taxpayer on receipt of draft penalty order. The NeAC shall levy penalty as per draft penalty order and serve copy of the same along with demand notice to the Taxpayer.

Penalty proceedings under the new scheme

In pursuance of the power available under the ITA, the Faceless Assessment Scheme has been appropriately modified to include the procedure for conducting e-penalty proceeding. The e-penalty procedure as per the scheme is summarized as under:

- Any unit (AU, VU, TU, RU) in the course of assessment proceedings shall send recommendation to the NeAC for initiation of any penalty proceedings under Chapter XXI of the ITA.
- The NeAC on receipt of recommendation shall serve show cause notice to the Taxpayer and grant him an opportunity to respond against initiation of penalty proceedings.

Key takeaways

The Faceless Assessment Scheme addresses key objectives of the government namely Transparency, Efficiency and Accountability in tax administration. With the use of AI, the Government will be able to reduce litigation significantly because of uniformity in decision making process.

Though it is certainly a welcome move, the tax department should be mindful that the use of latest technology can be used to assist in conducting the assessment. Judicial decision-making process should not be replaced by the AI itself. Further, the assessment order passed by NeAC will be a reasoned order considering the process involved and accordingly more efforts will be required on the part of PCIT for revision of such assessment order.

We further believe that the faceless assessment will change the way in which the current representation practice is being followed, both, by the Taxpayer and tax consultants.

Neither there will be tax hearing in person, nor the Taxpayer will be aware as to which tax officer will be carrying out the assessment. In absence of face to

face hearing, the role of personal representation before tax authority will be replaced by drafting of appropriate and comprehensive written submissions.

Since the written submissions will be seen and reviewed by various units of tax department, it will be issue specific & persuasive, instead of being person specific. Any lapse in drafting of submission including non-filing of appropriate evidence may lead to an assessment which is prejudicial to the interest of the Taxpayer.

It is also a matter of concern as to how the various tax officers will understand and interpret the written

submissions. Since the first appellate proceeding will also become faceless, in case the faceless assessments scheme is not implemented properly; potential litigation arising on account of such reasons would eventually be required to be handled by various income tax appellate tribunals in India.

Overall, if the Scheme is implemented with full throttle and in right spirit, India is sure to move up the ranks globally in the area of smooth and Taxpayer friendly Tax Administration.

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