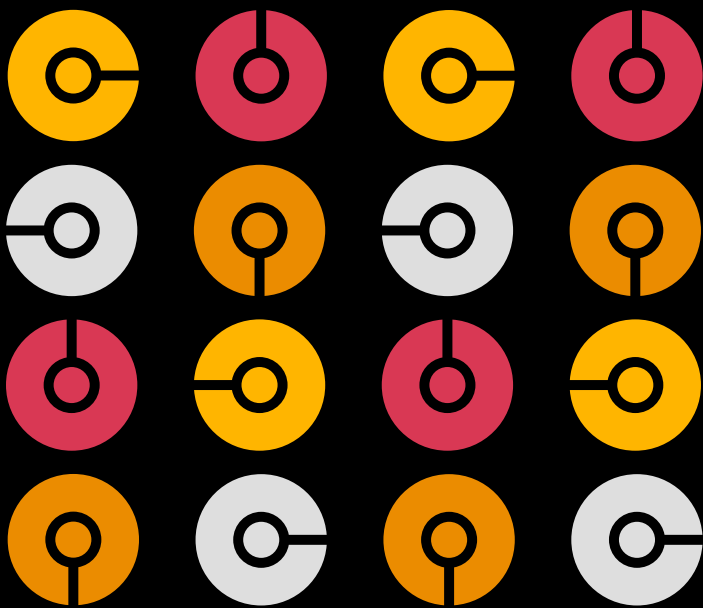


# Faceless interface:

A paradigm shift  
in administration  
of the Income-tax law





## A. Objective of this publication



The advent of the faceless regime for taxpayers' interaction with the Income-tax Department is a watershed moment in the history of tax administration in India. The introduction of 'The Faceless Assessment Scheme 2020', 'The Faceless Appeal Scheme 2020' and 'The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020', along with a large number of circulars and notifications, has resulted in taxpayers having to obtain material from various sources to understand the mechanics of this regime. Further, the impact the system would have on the corporate internal tax function is still unclear.

Consequently, we felt that there was a need for a publication that would encapsulate all relevant schemes, amendments made to the Income-tax law, as well as relevant circulars and notifications pertaining to the 'faceless' regime. At the same time, we wanted to provide in a single publication an in-depth insight into how the faceless regime is expected to affect taxpayers.

Our report endeavours to enlighten taxpayers on the various facets of the faceless regime and its impact, and how taxpayers can gear themselves to comply with its requirements. We have also made suggestions which seek to facilitate smooth functioning of the faceless regime, so that it is a win-win situation for both the Income-tax Department and taxpayers.

## B. Interpretation of this report



We have tried to craft this report simply, and yet be comprehensive and include all possible questions in the minds of taxpayers. In addition, we have covered all relevant amendments, notifications, circulars, etc. All the chapters in this publication are interconnected with each other, and therefore, they should be read in sequence. If you need a snapshot of details pertaining to the faceless regime and how you should prepare for it, please refer to the chapters 'Key takeaways' and 'Taxpayers' preparedness'.



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# 1. Foreword

On 13 August 2020, the Government of India (GoI) launched its 'Transforming taxation – Honouring the honest' platform, with the objective of simplifying India's tax system and increasing trust between taxpayers and the Income-tax Department. The GoI has incorporated the following pathbreaking measures to translate its objective into reality:

## a) Faceless assessment and appeal

The GoI has introduced a 'faceless' mechanism for Income-tax proceedings, including tax assessments, appeals and various other procedures under the Income-tax law. The objective behind the introduction of the faceless mechanism is to reduce the physical interface between the Income-tax Department and taxpayers, enable optimal utilisation of resources, introduce team-based assessment (and thereby reduce arbitrary exercise of discretion by tax officers in concluding assessments and appeals). Technology is at the very heart of the faceless mechanism and the main intention of the Income-tax Department is to harness the power of data through collation of information from various sources, along with the use of various data analytics techniques. This is expected to ensure effective and efficient collection of tax revenues by the Income-tax Department.

## b) Taxpayers' Charter

The Taxpayers' Charter' introduced in the Income-tax Act, 1961 (the Act) makes a commitment whereby the Income-tax Department will ensure fair administration of taxation for taxpayers (please refer to Appendix I for further details).

### In this report, we attempt to provide:

- a) An overview of faceless assessment and appeal schemes and provisions
- b) Insight into procedures introduced in relation to faceless assessment and appeal
- c) Broad guidance on how taxpayers can prepare to operate in the era of faceless interface with the Income-tax Department

- d) Key takeaways from the faceless initiative
- e) An overview of the Taxpayers' Charter.

The Government's faceless assessment scheme is an uncharted territory for taxpayers, and therefore, it is necessary for them to adapt to and make this paradigm shift quickly. The expected changes (in the nature of enquiry and data reconciliation) that will be demanded from taxpayers will require them to re-examine their policies and practices in relation to assessment<sup>1</sup> preparation.

This report also lists certain areas where further guidance and amendments will be welcome from the tax administration. If our experience of notable changes in administration of tax functions has taught us anything, it is that a shift of this nature will require significant adjustments by both taxpayers and the Income-tax Department. This will entail a period of learning and experimentation on both sides before the ecosystem stabilises. Therefore, it is not surprising that there will be a need for guidance and refinements along the path of learning.

An efficient tax policy framework rests on the twin pillars of an equitable tax law and its efficient administration. Admittedly, the former has a significant impact on the outcome of the latter. Moreover, a complex piece of legislation is always difficult to administer. And whereas the Government has rightly moved in the direction of bringing about a significant change and a welcome one in the manner in which tax policy is administered, it has some way to go in simplifying the overall tax code. This is a difficult ask at a time when businesses and business operations are evolving at a rapid pace and are becoming more complex than ever before.

We hope you find this report useful and it helps you navigate your way safely through issues you may face when traversing the uncharted territory of the faceless regime.

<sup>1</sup> Refers to the process of audit of the return of income filed by the taxpayer, by the Income-tax authorities



## 2. Background

Although the faceless regime for interface with the Income-tax Department is of recent origin, the GoI's e-Governance Income-tax-related initiatives can be traced to 2006, when the department launched a project to enable e-filing of Income-tax returns. The following takes you on a short journey through the key e-Governance initiatives introduced by the GoI:

**2006:** Launch of a project for e-filing returns

**2007:** Mandatory e-filing of returns for corporate taxpayers and taxpayers who are required to have their accounts audited under Section 44AB of the Act, and thereafter, for other taxpayers at different points in time

**2009:** Establishment of the Centralised Processing Centre Online (CPC) and viewing of Form 26AS

**2015:** Online verification of tax returns through Aadhaar and Electronic Verification Code

These e-Governance measures were taken to ensure accurate and secure filing of tax returns and their quick processing by the CPC. However, the GoI felt it necessary to transform taxpayers' interface with the Income-tax Department in relation to proceedings for assessment and appeals, and simultaneously enable the department to improve the quality of its audits and bring in country-wide consistency in its approach and position.

Consequently, in 2015, the Central Board of Direct Taxes (CBDT), the Apex Tax Authority, ushered in a paperless environment for tax assessment proceedings on a pilot basis by using emails to correspond with taxpayers. The CBDT launched this optional facility for selected taxpayers in certain cities, whereby these taxpayers could respond to notices and questionnaires via emails.

In April 2017, the CBDT launched an e-Proceeding facility to enable electronic tax assessments, under which a tax officer or assessing officer could communicate with a

taxpayer through the Income-tax e-Filing portal. Using this facility, the tax officer could upload a notice on the Income-tax e-Filing portal and the taxpayer would have the option to respond to it on this portal. This marked the expansion of electronic assessment proceedings<sup>2</sup> and eliminated the need for taxpayers to send their responses either as hardcopies or via email. However, although the scope of the e-Proceedings facility covered the various aspects of tax assessments electronically, taxpayers had the option to opt out from the 'e-Proceedings facility'. In August 2018, the CBDT made it mandatory for all assessments framed in the financial year 2018-19 to be conducted through the e-Proceeding facility, except in certain circumstances.

In his Budget Speech in 2018, the Hon'ble Finance Minister introduced the faceless assessment procedure (which was initially known as the e-Assessment scheme). The objectives of the scheme as highlighted by the Finance Minister in his Budget speech and the memorandum to the Finance Bill, 2018 resembles the faceless assessment scheme closely.

To achieve the objectives of the Central Government, the Finance Act, 2018 amended the Income-tax law<sup>3</sup> to empower the GoI to prescribe a new scheme for electronic and faceless tax assessments and add significantly to its efficiency, transparency and accountability. Accordingly, the e-Assessment scheme was notified on 12 September 2019, vide SO 3264<sup>4</sup> and 3265,<sup>5</sup> for automation of the various assessment procedures mandated under the Act.



<sup>2</sup> Referred to as e-proceedings

<sup>3</sup> Amendment to Section 143(3A) and insertion of sub-Section (3B) and (3C)

<sup>4</sup> Notification No. 61/2019 (F No. 370149/154/2019-TPL) dated 12 September 2019

<sup>5</sup> Notification No. 62/2019 (F No. 370149/154/2019-TPL) dated 12 September 2019

On 13 August 2020, the Hon'ble Prime Minister introduced a revamped scheme for tax assessments, with certain modifications to make it faceless. Accordingly, the Gol renamed the e-Assessment scheme as the faceless assessment scheme and issued notification no 2745(E)<sup>6</sup> and 2746(E)<sup>7</sup> with the details of the faceless scheme. With this scheme, the Gol announced the introduction of 'Faceless Appeal' and the 'Taxpayers' Charter'. The following is a brief note on Faceless Assessment, Faceless Appeal and the Taxpayers' Charter. We have discussed this in some length in the ensuing chapters.



## a) Faceless assessment

With the introduction of faceless assessment, going forward, all cases for tax assessments, other than those allotted to central and international tax charges, will be selected by an automated allocation system through the use of artificial intelligence (AI) and machine learning tools. Utilisation of these technology-driven tools seems to suggest a 360-degree profiling of taxpayers, and aims to enable more focused and meaningful assessments than in the past. The faceless assessment system includes a team-based assessment mechanism that comprises multiple layers of units formed by the CBDT.

## b) Faceless appeal

The Gol has extended the faceless regime to the CIT (A) proceedings. This has made appeal proceedings governed similar to faceless assessments, and involves the concept of dynamic jurisdictions to increase the objectivity of appeal orders and instil efficiency and transparency in such proceedings.

## c) Taxpayers' Charter

It has always been the objective of the Income-tax Department to provide a fair and transparent tax administration to taxpayers in the country. The Citizen's Charter published by the Income-tax Department on its website summarises its mission and vision as well as its expectations from taxpayers and their rights. However, the Citizen's Charter did not have any statutory basis; it was only a sound governance practice. The introduction of the Taxpayers' Charter by amendment of the Income-

tax law<sup>8</sup> ensures that it will have legal binding. The Taxpayers' Charter seeks to reinforce the relationship between the taxpayer and the Income-tax Department in the new regime. Its objective is to inculcate a trust-based relationship between the Income-tax Department and taxpayers, and enhance the efficiency of the department's service delivery system.

**With these reforms, the Gol aims to:**

- Introduce policy-driven governance by putting in place unambiguous policies and minimising grey areas to rule out alleged discretion in administrative processes
- Bridge the trust deficit between taxpayers and the Income-tax Department
- Limit human interface and substitute it with technology-driven models to improve the Gol's administrative systems
- Integrate the elements of 'efficiency, integrity and sensitivity' in the governance system
- Reduce tax litigation at various levels
- Improve India's ranking on the 'Ease of doing business' list of rankings.

The introduction of the faceless assessment scheme had raised doubts about whether the Gol had the power to create such a scheme through a notification, and if this action is tantamount to excessive delegation of authority. To put all such doubts to rest, the faceless assessment scheme was codified in Income-tax Law,<sup>9</sup> introduced vide 'The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020', effective 1 April 2021.

6 Notification No. 60/2020 (F No. 370149/154/2019-TPL) dated 13 August 2020.

7 Notification No. 61/2020 (F No. 370149/154/2019-TPL) dated 13 August 2020

8 Section 119A of the Act

9 Section 144B of the Act

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 also expanded the scope of the faceless regime to various other proceedings under the Act, which are as follows:

Reference to the Transfer Pricing Officer <sup>10</sup>	Faceless collection and recovery of tax <sup>11</sup>
Faceless jurisdiction of Income-tax authorities <sup>12</sup>	Filing of Departmental Appeal to Income-tax Appellate Tribunal <sup>13</sup>
Faceless collection of information <sup>14</sup>	Faceless revision of orders <sup>15</sup>
Faceless inquiry or valuation <sup>16</sup>	Faceless order-giving effect <sup>17</sup>
Reference to Dispute Resolution panel <sup>18</sup>	Prosecution and compounding of offences <sup>19</sup>
Faceless reassessment <sup>20</sup>	Faceless approval or registration <sup>21</sup>
Faceless rectification <sup>22</sup>	

With the incorporation of these proceedings in the Act, the legislature has made provisions to also make other proceedings faceless. The Gol is expected to notify the faceless scheme with respect to such proceedings shortly.



10 Section 92CA(8) of the Act

11 Section 231 of the Act

12 Section 130 of the Act

13 Section 253(8) of the Act

14 Section 135A of the Act

15 Section 264A of the Act

16 Section 142B of the Act

17 Section 264B of the Act

18 Section 144C(14B) of the Act

19 Section 279(4) of the Act

20 Section 151A of the Act

21 Section 293D of the Act

22 Section 157A of the Act



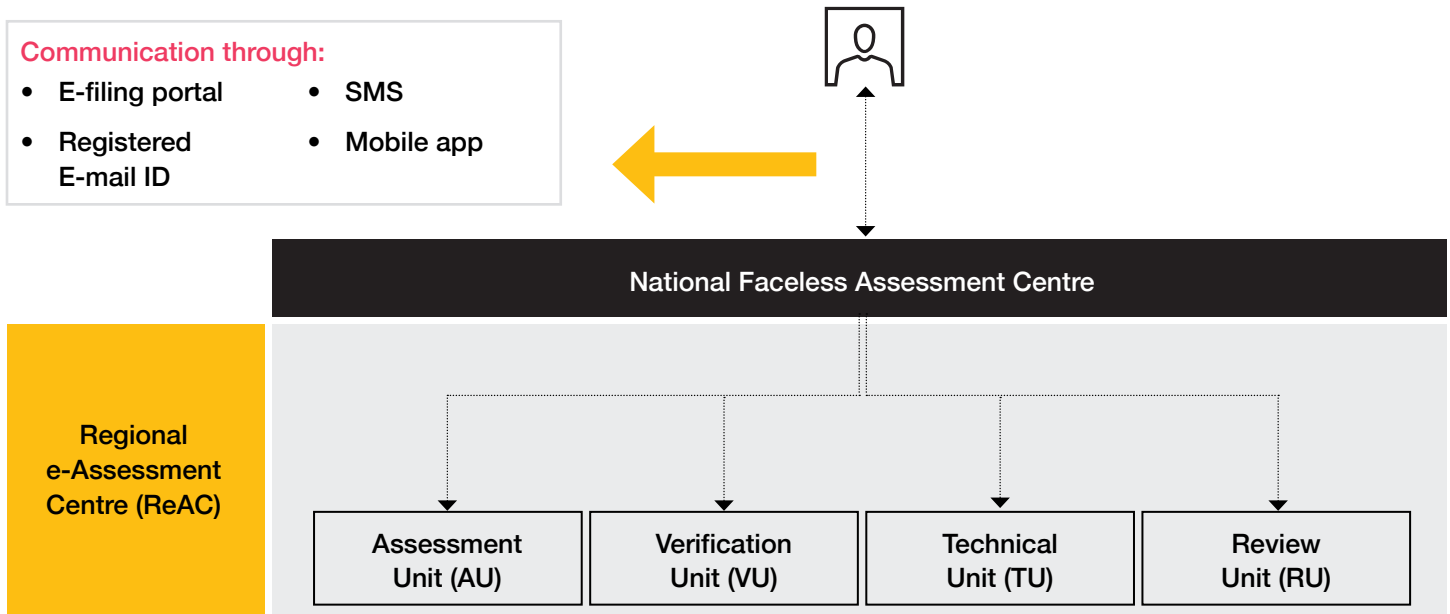
# Faceless assessment:

## 3. Structure

### Procedure for Faceless Assessment

#### Communication through:

- E-filing portal
- Registered E-mail ID
- SMS
- Mobile app



Before delving into the structure of faceless assessment, it is useful to understand the functioning of the current assessment procedure and the need for the GoI to introduce a new regime.

The tax scenario before the introduction of faceless assessment was that a taxpayer's case was selected for assessment through the system, manually or based on certain information available with the Income-tax Department. The assessment was conducted by the jurisdictional tax officer. This has led to the following limitations:

- 1) Issuance of notices, through the system and manually (before the introduction of documentation identification number), made record-keeping difficult and often led to disputes between the taxpayer and the Income-tax Department.
- 2) It often entailed multiple physical meetings between the taxpayer and Income-tax Department officials, and there was usually a long waiting time before the taxpayer could meet a tax officer.

- 3) The discretionary power vested with tax officers led to a subjective approach and varying interpretations, either in the same location or across various jurisdictions on similar issues.
- 4) A large percentage of Income-tax Department personnel were involved in the tax assessment process.

In order to overcome these limitations, it was necessary to transform the assessment mechanism to enable transparency, efficiency, accountability and optimal utilisation of technology.

The structure of the faceless assessment process is designed to address the challenges mentioned above. The GoI has created a parallel jurisdiction for assessment proceedings by vesting the power to conduct assessments with the National Faceless Assessment Centre (NFAC). All existing assessment proceedings pending before jurisdictional tax officers have been transferred to the NFAC.



A taxpayer's case is expected to be selected for assessment by the use of certain technology tools, including AI and machine learning. And while we have elaborated the procedure for faceless assessment in detail in the next chapter, we discuss below the structure of the faceless assessment procedure along with its various facets:

- a) At the top of the pyramid is the NFAC, which will be responsible for the overall conduct of faceless assessment proceedings in a centralised manner. The NFAC will serve notices<sup>23</sup> to taxpayers under the Income-tax Law and specify the issues that led to selection of their cases for assessment. Notices will be sent to taxpayers either on the e-filing portal, their registered email IDs or on the income-tax Department's mobile app, and will be followed by real time alerts. Taxpayers will need to file their response to these notices within 15 days from the date of their receipt. And although there is no provision for extension of the time limit for this first notice, it is expected that provisions to extend the time limit to respond will be incorporated in the law so that taxpayers in specific cases can seek additional time to file their response. For subsequent notices, the taxpayer will have to respond within the time specified in a notice or within the extended time limit if it has sought an adjournment.
- b) The NFAC will assign the case to an Assessment Unit (AU) in any Regional Faceless Assessment Centre (RFAC) through an automated allocation system. The entire system of allocation of cases is completely automated and requires minimal human intervention. If the AU asks for the assistance of the Technical Unit (TU) or the Verification Unit (VU), this request will be directed to the NFAC, which will assign it to a TU or VU through an automated allocation system.
- c) The procedure for completing an assessment under the faceless regime in relation to NFAC and its units, and taxpayers is explained in detail in the next chapter.

#### d) Personal hearing

The faceless assessment mechanism provides for a personal hearing, but only after issuance of a draft assessment order, and this request will be considered at the discretion of the Chief Commissioner or Director General in charge of the RFAC. Moreover, a personal hearing will only take place through video conferencing or video telephony.

Doubts have been raised about whether a taxpayer can be denied a personal hearing if the request for it is made to the Chief Commissioner or Director General of Income-tax. Moreover, if such a request were denied, would it be considered arbitrary and against the principles of natural justice (if challenged by the taxpayer)? In the context of faceless appeals, the Delhi High Court has recently admitted a petition<sup>24</sup> where a plea has been taken that the request for a personal hearing, being at the discretion of the Chief Commissioner or Director General of Income-tax, is against the provisions of Article 14 of the Indian Constitution. It is expected that the legislature will address this issue appropriately to avoid further litigation and build trusted relationships between taxpayers and the Income-tax Department.

#### e) Completion of assessment order

Once the NFAC serves an assessment order or draft assessment order to a taxpayer, along with the demand or refund notice and notice for initiating penalty proceedings (if any), the assessment process will end, and the NFAC will transfer the records to the tax officer who has jurisdiction over the taxpayer.

#### f) Functions

The functions of the NFAC and the various units to implement the scheme of faceless assessment are broadly described below:

##### 1) NFAC

The NFAC will act as a central gateway for all communication between taxpayers and field officers, thereby, maintaining anonymity between the Income-tax authorities and taxpayers. The NFAC is located in Delhi and headed by a Principal Chief Commissioner of Income-tax. However, at any stage of the assessment, the NFAC may transfer a case to the tax officer with jurisdiction over such case (with the approval of the CBDT).

##### 2) RFAC

The RFAC will be responsible for facilitating the conduct of the proceedings of faceless assessments. Every RFAC will have AUs, VUs and RUs, and will be assisted by the technical units. Every RFAC will be headed by a Chief Commissioner of Income-tax.

23 Section 143(2) of the Act

24 Lakshya Budhiraja v. Union of India- W.P.(C) 8044/2020

### 3) AU

The AU will be responsible for conducting the assessment proceedings. Broadly, its functions will include:

- Identifying points and issues that are material for determination of a tax liability or refund
- Seeking information or clarification on issues identified for a taxpayer
- Seeking assistance from the VU and the TU
- Analysing the material or submissions furnished by the taxpayer or any other person
- Preparing the draft assessment order and determining whether penalty proceedings should be initiated
- Preparing a final draft assessment order based on receipt of comments from the RU.

### 4) VU

The VU carries out enquiries and cross verification, examines books of accounts and witnesses, and records statements.

### 5) TU

The TU provides assistance or advice on legal, accounting, forensic, IT, valuation, Transfer Pricing, data analytics, management or any other technical matters that may be required.

### 6) RU

The RU will perform the following functions:

- Check whether the relevant and material evidence has been put on record
- Check whether the relevant points of fact and law have been incorporated in the draft order
- Check whether applicable judicial decisions have been considered and dealt with in the draft order
- Verify the arithmetical accuracy of modifications proposed
- Review the draft assessment order and decide on whether it will concur with it or make modifications to it, and accordingly, communicate this to the NFAC.



**The AU, TU, VU and RU will be manned by officers of the following ranks:**

1. Additional Commissioner, Additional Director, Joint Commissioner or Joint Director
2. Deputy Commissioner, Deputy Director, Assistant Commissioner, Assistant Director or Income-tax Officer
3. Other Income-tax authority, ministerial staff, executive or consultant, as required by the CBDT.

**On perusal of the structure of faceless assessment and the functioning of different units and centres, the key aspects that emerge are as follows:**

- a) A tax officer does not have any discretion in selection of cases, which are completely automated.
- b) A taxpayer's case is randomly allocated to AUs. Thus, assessment of a taxpayer in a city could be conducted by a tax officer in another city and a tax officer in a third city could review it. This pre-empts the case being left to the discretion of an individual tax officer and promotes team-based assessment.
- c) A taxpayer has to authenticate submissions, and in the case of a corporate entity, this can be done by the authorised person assigned to sign a tax return. Every submission filed by a taxpayer under the faceless regime will have to be authorised by a digital signature certificate or by using an electronic verification code.
- d) All notices under the faceless assessment scheme will be issued electronically with a valid Document Identification Number (DIN). Any notice without a DIN will not be considered valid.

- e) The scheme will save time for taxpayers and their representatives by freeing them from multiple visits to a tax office. However, the advantage of explaining one's case and resolving any queries raised by a tax officer, face-to-face, will no longer be available. In our experience, in some of the cases, where the opportunity to explain a case in person was not availed, this has resulted in arbitrary and/or ad hoc adjustments made to the returned income.
- f) In terms of the functions of the VU, it has still not been decided how a unit will cross-examine persons, or books of accounts or other documents in the absence of a personal hearing.
- g) At any stage of the assessment, the NFAC has the discretion to transfer an assessment to the tax officer with jurisdiction over a case. Consequently, it needs to be seen how and when such discretion will be exercised. Based on our experience of tax administration functions, this is likely to be through a speaking order.

Due to introduction of faceless assessments, India is a pioneer in embracing technology and AI in tax administration, to enhance accountability, transparency and efficiency in the system.





# Faceless assessment:

## 4. Procedure

As discussed in the previous chapter, the NFAC is the central point of contact for all communication between taxpayers and the Income-tax Department and its various units. Taxpayers will be required to respond to notices and show cause notices received from the NFAC at various stages of assessments, and based on their response and material gathered, the NFAC will issue draft assessment orders. If a taxpayer fails to respond to notices and/or show cause notices, the assessment will be completed on a best judgement basis.

Since the functions and procedures between a taxpayer and NFAC broadly remain the same as it is currently, in the following pages we will discuss the internal functions of and procedures between the NFAC and its various units.

The faceless assessment regime has a specific provision that wherever the NFAC proposes any variation in the returned income, it will need to issue a show cause notice and seek the taxpayer's response.

### Steps involved in faceless assessment

- a) The AU may ask for information or clarification from a taxpayer and/ or request assistance from the VU and the TU, through the NFAC, at various stages of a faceless assessment. The AU will prepare a draft assessment order, based on material collected during the assessment proceedings and input received from the VU and TU, either accepting the returned income or making changes in the returned income, and send a copy of the order to the NFAC. The AU may also be required to provide details of penalty proceedings to be initiated in a draft assessment order.
- b) **Once the NFAC receives a draft assessment order from the AU, it has the following options:**
  - i. If no variation is proposed, finalise the assessment as per the draft assessment order, and serve a copy of the order along with the notice for initiating penalty proceedings (if any)
  - ii. If variation is proposed, provide an opportunity to the taxpayer to respond to this
  - iii. Send the draft assessment order to an RU (through an automated allocation system) for a review of the order.
- c) In the case of b(ii), a taxpayer's response is to be sent to the AU for review, and accordingly, the assessment procedure will continue until the final assessment order has been issued.
- d) In the case of b(iii), where the NFAC has sought a review from the RU, the suggestions received from the RU will be sent to an AU other than the AU that has sent the draft assessment order. Thereafter, the assigned AU will send the final draft assessment order to the NFAC, and accordingly, the assessment procedure will continue until the final assessment order is received.
- e) At any stage of an assessment, the NFAC can, if it considers it necessary, transfer a case to the tax officer with jurisdiction over the case (with the approval of the CBDT).



f) After completion of an assessment, the NFAC will transfer all the electronic records of the case to the tax officer with jurisdiction over the case, as may be required under the Income-tax law. Under the erstwhile e-Assessment scheme, the jurisdictional tax officer is required to conduct the following proceedings under the Income-tax law:

- Imposition of penalty
- Collection and recovery of demand
- Rectification of mistake
- Giving effect to appellate orders
- Submission of remand report, any other report to be furnished, any representation to be made or any record

to be produced before the Commissioner (Appeals), Appellate Tribunal or Courts, as the case may be

- Proposal seeking sanction for launch of prosecution and filing of complaint before the Court.

However, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has expanded the scope of the faceless regime to various other proceedings under the Act, including most of the proceedings mentioned above. These proceedings are to be continued by jurisdictional officers for the time being. We will have to wait and watch for further developments and notification of schemes for the expanded scope of the scheme.





# Faceless appeal: Structure and procedure

## 5.

### Background

The Finance Act, 2020 amended the Income-tax law<sup>25</sup> and empowered the GoI to prescribe Faceless Appeal scheme. The Faceless Appeal Scheme 2020<sup>26</sup> was notified on 25 September 2020. The objective of the GoI in introducing it is akin to its reason for initiating faceless assessment.

According to a press release dated 25 September 2020, the Faceless Appeal Scheme will not be applicable for Income-tax proceedings in relation to serious fraud, major tax evasion, and matters pertaining to searches, international tax, the Black Money Act and other sensitive issues.

The CBDT will set up the National Faceless Appeals Centre (NFAPC), Regional Faceless Appeal Centres (RFAPCs) and Appeal Units to conduct faceless appeal proceedings in accordance with the provisions of the scheme.

### Structure of faceless appeals

In essence, the procedure of faceless appeal will be conducted online under a dynamic jurisdiction. The entire process of an appeal, from the communication of notice, questionnaire, verification, enquiry and finally communication of the appellate order will be online, will dispense with the need for any physical interface between taxpayers and their authorised representatives and the Income-tax authorities. The scheme also prescribes the electronic process for filing of additional grounds, admission of additional evidence, penalty proceedings for non-compliance of notices and rectification proceedings.

**Against this backdrop, we present below the structure of faceless appeals with its various facets:**

(A) At the top of the pyramid is the NFAPC, which will be responsible for the overall conduct of the appeal proceedings in a centralised manner. All communication between the appeal unit and the taxpayer or any other person, or the NFAC or the

Assessing Officer with respect to the information, documents, evidence or any other details, as may be required, will be through the NFAPC, exclusively through the electronic mode. The NFAPC will send notices to taxpayers on their e-filing portals, registered email IDs and the Income-tax department's mobile app. This will be followed by a real-time alert.

(B) Under the NFAPC, there will be the RFAPC, which will be responsible for facilitating appeal-related proceedings and disposal of appeals. Every RFAPC will have multiple Appeal Units and each Appeal Unit will have one or more CITs (A) and other Income-tax authority or staff, as required by the CBDT.

### Procedure of faceless appeal

The functions and procedures of taxpayers and the NFAPC will remain largely the same during and after appellate proceedings, as they do in the current 'physical hearing' environment. Furthermore, with regard to the internal functioning and procedures of the NFAPC and its various units, these will be similar to faceless assessment proceedings.

The scheme with requires that any additional grounds for appeal filed by an appellant is to be forwarded to the AO or the NFAC for their comments before such grounds are admitted. It is important to emphasise here that Income-tax Law empowers absolute discretion to the CIT (A) for admission of any additional ground, on being satisfied that the omission is not wilful or unreasonable. Hence, it seems that the provisions of the scheme may need to be reconsidered by the GoI in order to avoid increased litigation.

A notable feature in the Faceless Appeal Scheme is its proposal for review of orders. Under the scheme, a draft appeal order will be mandatorily reviewed by an Appeal Unit other than the Appeal Unit that has issued the draft appeal order, if the aggregate amount payable in respect of issues disputed in appeal exceeds the threshold to be prescribed by the CBDT. With respect to other orders, these will be subject to review, based on the risk management strategy specified by the CBDT.

<sup>25</sup> Section 250(6B) of the Act

<sup>26</sup> Notification No. 76/2020/F.No. 370142/33/2020-TPL]; [Notification No. 77/2020/F.No. 370142/33/2020-TPL]

The NFAPC will have to send a draft order to another Appeal Unit for preparing a revised draft appeal order, if it has sent the draft order to a review appeal unit and which has provided its comments on the order. In this process, it seems that the original appeal unit may not have an opportunity to give its comments, which may not fit into the basic tenets of judicial principles. Therefore, it is suggested that an appeal exceeding the threshold limits should be heard by larger appeal units, which meet the requirements of the judicial process, and are efficient as well as beneficial to taxpayers who can present their cases to all the concerned units.

As far as a personal hearing is concerned, taxpayers or their authorised representatives will have to make a request for such hearings. The Chief Commissioner or the Director General of the RFAPC may approve their request. In the context of faceless appeals, the Delhi High Court has recently admitted<sup>27</sup> a petition where non-granting of a personal hearing has been challenged on the plea that it is ultra vires to Article 14 of the Indian Constitution.



27 Lakshya a Budhiraja vs Union of India- W.P.(C) 8044/2020



## 6. Key takeaways

- i. This is a very significant initiative taken by the Gol, which seeks to address age-old issues plaguing India's tax administration, by deploying technology, team-based assessment and efficient use of internal resources. There may be teething problems in the beginning, but we see a robust assessment system in the long run that will iron out issues faced in the existing system, such as non-availability of old documents and records, long waiting hours at the tax office and appeals arising due to administrative failure or lags.
- ii. One of the important aspects for successful implementation of the faceless regime will be the streamlined IT infrastructure in which the Income-tax Department and taxpayers will need to invest.
- iii. It is also provided in the scheme that cases will be selected for assessment based on certain risk management parameters. We will need to wait for notifications explaining what such risk management parameters will be and how a taxpayer's case will be selected for assessment, based on such parameters. We understand that instead of a detailed general questionnaire, specific questions based on the parameters mentioned above will be asked in it.
- iv. In the faceless regime, the main objective is to remove physical interaction as much as possible, and hence, the taxpayers may not have the opportunity to explain (in person) business-related complexities and explain various positions they have taken while filing their Income-tax returns. These facilities are available in the existing system. Though a limited facility of video conferencing and telephony is being made available after extensive written submissions are filed with the Income-tax department. In these circumstances, it is very important for taxpayers to ensure that appropriate documents with factual matrix are available and filed, and their written submissions (including submissions on legal aspects) are comprehensive, but brief and to the point.
- v. The faceless appeal regime should bring in increased efficiency to achieve speedy disposal before the CIT (A). This would not only enhance certainty, but will also help in ease of doing business in India.
- vi. The security and confidentiality of taxpayers' data has never been compromised, and it is critical that this standard is maintained in the future under the new system, under which huge documents will be filed and the entire process will run online.







# 7. Suggestions for smooth functioning of faceless assessment and faceless appeal schemes

While the introduction of the scheme is overall a positive step in the right direction, it would help substantially if the tax administration considered the following:

## A. Faceless assessment

### 1. IT infrastructure

- (a) In the all-encompassing role of technology in the overall scheme of faceless assessment, there is an imperative need for a robust IT infrastructure. As on date, the Income Tax e-Filing portal allows a maximum of ten attachments at a time and each attachment can be of maximum 5 MB. In the case of certain taxpayers, backup documents for certain transactions may run into several hundred pages, which is a constraining factor under the existing facility.
- (b) Additionally, although the data security and confidentiality of taxpayer data has never been compromised, ensuring this in the future with use of new systems, in which documents are submitted and maintained online, will be vital in retaining the trust of taxpayers.

### 2. Personal hearing

- (a) Allowing a taxpayer to seek a virtual hearing only at the stage of when an internal draft assessment order is issued may lead to unnecessary delay when complex issues, which require detailed explanations at the initial stages, are involved. Accordingly, provision should be made to accept a taxpayer's request for a virtual hearing, not necessarily after issuance of an internal draft assessment order. Furthermore, it is still not certain how the VU will cross-examine persons in the absence of a personal hearing.

Moreover, the CBDT is yet to notify standard procedures for personal hearings through video conferencing or video telephony. Further, this will require significant enhancement of infrastructure, connectivity (and its availability).

### 3. Scope of review under Section 263 of the Act

As the income-tax department has no right to appeal against the order passed by the tax officer, Section 263 was introduced under the Act to arm Income-tax Commissioners with the power of revising the orders of tax officers if the orders are erroneous and prejudicial to the interest of the Income-tax Department.

However, in view of the procedures of the new faceless assessment, which provides for team-based assessment, it is expected that there will be minimum invocation of Section 263 of the Act, since the outcome will hereafter be achieved at the assessment level by the various units.

### 4. Other points

- (a) If a managing director or director has to sign every submission digitally, it can become very onerous, and accordingly, specific guidance should be provided on this aspect.
- (b) It is necessary to lay down the circumstances in which assessment proceedings will be transferred to jurisdictional Income-tax officers.
- (c) General Standard Operating Procedures are required for procedural aspects such as where opportunities for personal hearings will be provided and when enquiry or verification can be conducted by other than in the electronic mode. Expedious clarification from the CBDT on these aspects will help to smoothen the transition into the new system.



## B. Faceless appeals

1. In the current scenario, various jurisdictional courts and tribunals settle some positions on issues that have binding precedents in the jurisdiction where the courts and tribunals are located. In the case of faceless appeals, the expectation is that the NFAPC will follow the decisions laid down by the appellate tribunals or high courts of taxpayers jurisdiction.
2. The expectation is that the faceless appeal authorities will pass a speaking order or provide the opportunity of a hearing to the taxpayer in respect of the following matters:
  - Where an appeal is rejected due to a delay in filing
  - Where an appeal is rejected due to non-payment of taxes
  - Where an additional ground is rejected
  - Where additional evidence is rejected
  - There is a rebuttal or cross-examination of any report, evidence or witness produced by the NFAC or AO.
3. In the traditional system of appeal, it was possible to file huge paper books and submissions. Under the new regime, it will be incumbent on the Gol and taxpayers to have in place adequate IT infrastructure so that there are no glitches while uploading voluminous paper books and submissions.



## 8. Taxpayers' preparedness

**Benjamin Franklin rightly said, "By failing to prepare, you are preparing to fail." This quotation is apt while considering the need for taxpayers to prepare themselves to face the challenges posed by the faceless ecosystem. The Income-tax Department is in the process of extensively adopting use of technology in the form of AI and machine learning. It had also begun harnessing the power of data analytics through Project Insight<sup>28</sup> to focus on the following:**

- (i) Promotion of voluntary compliance by taxpayers and deterrence of non-compliance
- (ii) Promotion of a fair and judicious tax administration.

Over a period of time, the use of technology tools has improved the Income-tax Department's ability to process and analyse humongous amounts of data. It therefore seems that the Gol has an edge over taxpayers in terms of incorporation of technology in administration processes.

**In this context, the following are the specific aspects pertaining to taxpayers' preparedness under the faceless interface regime:**

### A. Maintaining documentation in advance of assessment

Existing systems for conducting assessments and appeal hearings are characterised by face-to-face interactions. Therefore, taxpayers have adequate opportunities to present their cases verbally and thereby substantiate their positions adopted in a detailed manner. Under the faceless regime, the law will not provide for personal hearings, except through video conferencing or video telephony, and that too at the discretion of the Income-tax Department in the circumstances to be prescribed. To sum up, the taxpayer will have very limited window to ask for a personal hearing.

Under the faceless regime, the Income-tax Department will provide specific timelines to taxpayers to furnish details and submissions, and they will have a limited window to seek adjournment. Consequently, it is essential for taxpayers to be assessment-ready and have clarity on their facts to support the legal positions they have taken.

#### **Some best practices taxpayers may consider:**

- It will be essential to access the Income-tax portal regularly to check for updates and notices issued so that there are no lapses and appropriate responses can be filed in time.
- Robust documentation should be maintained for positions taken in Income-tax returns, as well as appropriate documentation substantiating claims of expenditure and disallowances made in earlier years by the Income-tax Department.
- Data submitted during the course of assessment proceedings will need to be aligned with that submitted to other statutory or non-statutory authorities.
- Written submissions covering factual aspects and legal positions should be comprehensive but brief.
- At the time of personal hearings, taxpayers or their authorised representatives will need to ensure that representations are brief, well-articulated and aligned with the written submissions filed earlier.
- Accounting entries should be self-explanatory so that appropriate submissions and explanations can be furnished by taxpayers when these are required by the Income-tax Department.
- Under the faceless regime, responses to pre-assessment enquires should be prompt, since any laxity may entail a detailed assessment.

<sup>28</sup> Project insight is an initiative by the Income-tax Department focusing on the use of data analytics to garner additional information of the taxpayer so as to ascertain their income patterns and purchasing patterns in order to determine his overall tax liability.

## B. Technology-driven processes

Taxpayers will need to increasingly adopt technology to maintain, reconcile and present data. This will require them to invest in IT infrastructure, including appropriate ERP systems, and/or upgrade their ERP systems, and video conferencing and video telephony facilities.

## C. Specific action points

- a) Taxpayers should keep their email IDs and contact numbers on the Income Tax e-Filing portal regularly updated, along with validating the bank account details. They should keep tabs on any communication from the Income-tax Department (via the e-Filing portal, email and SMS) and respond within the due date.
- b) Taxpayers will need to meet specified timelines and keep their assessment-related details ready beforehand, along with the required supporting documents, with the use of technology (wherever feasible).
- c) Current practices of leaving selective questions in a notice unanswered and resorting to opportunities for giving explanations to tax officers verbally will not be available in the future. Therefore, taxpayers will need to address every query raised in a notice, and back their submissions by the documentation and evidence required.
- d) Taxpayers have been usually expected to furnish evidence, such as invoices supporting expenses on a sample basis. However, with its focus on technology-enabled tools, the Income-tax Department may ask for 100% backup data or documents. Therefore, taxpayers will need to furnish such data and documents. This will make it imperative for them to maintain robust documentation for every transaction.
- e) It will be essential that reconciliation of various data points, submissions, filings, etc., are prepared at each stage and maintained to justify any differences that may arise. In addition, it will be necessary to synchronise information submitted before the Income-tax Department with that submitted to other authorities, including the GST authorities and in filings with SEBI and RBI etc.
- f) Taxpayers will need to maintain a ratio analysis on their large expense heads as well as comparisons from the previous year's numbers. This will support explanations to questions posed by the Income-tax Department about the business impact of an increase or decrease under such expense heads.

g) Over a period of time, filing requirements have been enhanced with respect to the nature and degree of information being sought from taxpayers, e.g., return-filing forms. Taxpayers will need to ensure that they maintain appropriate back-ups to support such disclosures, including comprehensive calculations for forex conversion, bond stripping, allocation of costs and valuation of stock, etc. The GoI has also recently notified an updated Form 26AS that incorporates various additional details such as cash deposits, high value transactions and GST-related information.

- h) The GoI has also undertaken the following steps:
- Introduced the reporting portal for filing statements of specified financial transactions
  - Widened the ambit of TDS and TCS provisions
  - Curbed cash transactions through various legislative changes in Income-tax Law
  - Widened the network of information exchange agreements with various countries and among its various departments.

In light of the measures discussed above, the Income-tax Department now has a significant cache of information. Therefore, it is imperative for taxpayers to prepare themselves by having in place robust documentation and explanations for their business transactions, to respond to enquiries from the department.

i) The rapid digital transformation of the Indian tax administration system has resulted in seamless assimilation of the different aspects of taxpayers' information, e.g., their bank accounts, income, expenses and investments, through Permanent Account Number (PAN) and Aadhaar. Under the Annual Information Return, considerable information about a taxpayer's activities is provided to the Income-tax Department. Using such streams of information, the tax authorities are using automatic triggers to capture transactions with values disproportionate to a taxpayer's reported income and/or scale of operations. These data-linkages are expected to increase the tax compliance base, identify defaulters and make enquiries more specific and 'to-the-point'.

The introduction of the faceless regime will require significant adjustments to be made by taxpayers. Further, this process is expected to be an evolving and ever-changing journey as we tread along the path of this new regime.



# Appendix I

## Taxpayers' Charter

It has always been the objective of the Income-tax Department to provide a fair and transparent tax administration to taxpayers in the country. The earlier Citizen's Charter published by the Income-tax Department on its website briefly presents the mission and vision of the Income-tax Department and its expectations from taxpayers, and includes their rights. However, the Citizen's Charter did not have any statutory basis and was only issued as a good governance practice. The introduction of the Taxpayers' Charter, by an amendment of the Income-tax Law<sup>29</sup>, will have legal binding and will help to elicit a more measured approach from both parties than currently. While introducing the Taxpayers' Charter, the GoI stressed that the Income-tax Department is committed to take measures to ensure that citizens are free from harassment of any kind. It was also emphasised that tax administration requires trust between taxpayers and the GoI, which will only be possible when taxpayers' rights are clearly enunciated and codified via the Charter.

The Taxpayers' Charter consists of 14 obligations that illustrate the level of services the taxpayers can expect from the Income-tax Department. Some of these rights, such as the "right to be represented by someone else on behalf of the taxpayer" and the "right to appeal", are already provided in the relevant sections in the Income-tax Law. The Charter also includes 6 obligations from the taxpayers; thereby making it a two-way responsibility, which seeks to shape the conduct between the taxpayers and the Income-tax Department, to bridge the existing trust deficit between them. The overarching theme of the Taxpayers' Charter is that the Income-tax Department will not be too intrusive in its inquiries, examination or enforcement.

While the Taxpayers' Charter aims to resolve the issues faced by taxpayers, it needs to be seen how each right will be implemented, based on detailed guidelines, which may be provided under the Charter in the future.

14 commitments to taxpayers		6 expectations from taxpayers
Provide fair, courteous and reasonable treatment	Maintain confidentiality	Be honest and compliant
Treat taxpayer as honest	Hold its authorities accountable	Be informed
Provide mechanism for appeal and review	Enable representative of choice	Keep accurate records
Provide complete and accurate information	Provide mechanism to lodge complaints	Know what the representative does on behalf of the taxpayer
Provide timely decisions	Provide a fair and just system	Respond in time
Collect the correct amount of tax	Publish service standards and report periodically	Pay in time

29 Section 119A of the Act

# Abbreviations

The Government of India	The GoI /Central Government
The Income-tax Act, 1961	The Act
The Centralised Processing Centre	CPC
The Central Board of Direct Taxes	CBDT
The Commissioner of Income-tax (Appeal)	CIT(A)
Artificial Intelligence	AI
National Faceless Assessment Centre	NFAC
Assessment Unit	AU
Regional Faceless Assessment Centre	RFAC
Technical Unit	TU
Verification Unit	VU
Review Unit	RU
Information Technology	IT
Document Identification Number	DIN
National Faceless Appeal Centre	NFAPC
Regional Faceless Appeal Centre	RFAPC



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