



“Transparent Taxation”

- New Thrust**
- New Paradigm**
- New Challenges**

Major, Structural Reforms in the Indian Income-tax Administration

The Indian Income-tax World, as we know it today, has changed forever - Anon

Three major, milestone announcements were made by the Hon'ble Prime Minister of India, Shri Narendra Modi while launching the platform for **“Transparent Taxation - Honoring the Honest”**, which was launched *via* video-conferencing on August 13, 2020. These pathbreaking and fundamental administrative measures, which herald a new paradigm in dealing with the Tax Office, seek to “making the tax system people-centric and public friendly rather than power centric”, are:

- Power of Survey under the Income-tax Act, 1961 ('the Act') henceforth to be exercised only by the Investigation Directorates and the TDS Charges
- Faceless Assessment - to be made effective from August 13, 2020 itself
- Faceless Appeal - to be made effective from September 25, 2020
- Taxpayer's Charter - to be made effective from August 13, 2020 itself

To upshot the 'Transparency Taxation' scheme launched by the Hon'ble Prime Minister, the Central Board of Direct Taxes ('the CBDT'), the apex body responsible for income-tax administration, seized as they are with administrative powers, have come out with a flurry of statutory orders since August 13, 2020, which *inter-alia* include diversion of more than half of the existing manpower at all levels of the Income-tax Department to Faceless charges, defining their roles and carving out their respective jurisdictions.

In this Tax Alert, we seek to declutter these high-impact and foundational changes and explain the salient features of these developments in a lucid manner, for your perusal and understanding.

I. Changes in the Power of Survey:¹

As part of these sweeping changes, the CBDT² has now directed that the officers posted in Investigation Directorates (more popularly known as 'the Wing') and TDS Commissionerate, only and exclusively, shall act as “Income-tax Authority” for the purpose of Survey u/s 133A of

¹ Order F. No. 187/3/2020-ITA-I dated August 13, 2020]

² <https://www.taxmann.com/circulars-notifications.aspx>

the Act. The surveys of the International Taxation charge or for that matter, any other charges, shall have to be conducted in collaboration with the Investigation Directorates.

II. Faceless Assessment³ and Appeal Scheme:

Sections 143(3A) to 143(3C) introduced in Finance Act, 2018 confers powers on the CBDT to devise a scheme for e-assessment by notification in Official Gazette. Thus was born the ‘Faceless Assessment Scheme, 2019’, which paved the way for E-assessments, having been launched with much fanfare on October 17, 2019, with the inauguration of the National e-Assessment Center (NeAC) at New Delhi, under whose aegis 2,686 Officials of the Department were to assess 58,322 income-tax cases to begin with. It may be noteworthy that assessments u/s 147 (Re-assessment) & 144 (Best-judgement assessment) were not covered under this scheme.

Effective from August 13, 2020, all assessments have to be conducted mandatorily under Faceless Assessment Scheme, 2019 and assessment orders passed by the NeAC only, where there must not be any interface between the Assessing Officer (‘AO’) and the taxpayer. In fact, it has been made explicitly clear that any order passed otherwise (barring orders passed by Central Charges and International Tax Charges) shall be treated as *non-est* and shall be deemed to have never been passed. For your better appreciation of the changes, a quick comparison between the earlier E-Assessment Scheme and the recent developments has been tabulated below:

E-Assessment vs. Faceless Assessment:

E-Assessment	Faceless Assessment
Applicable only in relation to assessment proceedings u/s 143(3) i.e. regular scrutiny <u>Exceptions-</u> <ol style="list-style-type: none"> a. Reassessment u/s 147 b. Search Assessment u/s 153A & 153C c. Best Judgement assessment u/s 144 d. Cases related to International Tax e. Cases involving Black Money Act & Benami Property 	All income-tax cases picked up for scrutiny <u>Exceptions-</u> <ol style="list-style-type: none"> a. Search Assessment u/s 153A & 153C b. Cases related to International Tax c. Cases involving Black Money Act & Benami Property

³ Notification No. 61 dated August 13, 2020

How the Faceless Assessment Scheme will be Implemented⁴:

1. The NeAC shall issue the notice u/s 143(2) of the Act, specifying the issues for scrutiny selection, to the Taxpayer. In fact, all subsequent requests for obtaining information, documents or evidence from the Taxpayer or any other person, shall emanate from the NeAC alone.
2. The Taxpayer gets 15 days to file his reply. Any request for adjournment has to be filed online to the NeAC alone, who will use their discretion to sanction/approve the same.
3. The NeAC shall assign the case to a specific Assessment Unit ('AU') in any one Regional e-Assessment Centre ('ReAC) through an automated allocation system.
4. The AU shall, after considering all the material available on record, prepare the draft order, including initiation of penalty proceedings, where appropriate & forward the same to the NeAC.
5. The NeAC shall examine the draft assessment order, in accordance with the risk management strategy to be specified by the CBDT which would include an automated examination tool, finalize the assessment as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the Taxpayer, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the Taxpayer on the basis of such assessment. If the Taxpayer objects to the draft order or requests for modification/s, then, an opportunity of being heard (which could be in person *via* video-conferencing, depending upon the request made by the Taxpayer and also the approval accorded thereto by the concerned CCIT of the relevant ReAC) shall be granted to the Taxpayer by the NeAC. Thereafter, the final assessment order & penalty order shall be passed by the NeAC.
6. The AU may make a request to the NeAC for focused assistance from the following supporting Teams:
 - a. Verification Unit ('VU') who shall make the desired enquiry or verification
 - b. Technical Unit ('TU') who shall provide technical assistance
7. Any persistent failure by the Taxpayer to file response to the notice/s issued by the NeAC shall be intimated to the AU, who shall then proceed to draft the assessment order on a best-judgement basis u/s 144 of the Act.

⁴ CBDT Communication F. No. 173/165/2020 -ITA-1 dated August 14, 2020

8. There is a feature which enables the NeAC to refer the draft assessment order prepared by the AU situated in one ReAC to be reviewed by a Review Unit ('RU') situated in another ReAC.
9. Once the final assessment order has been passed, the NeAC shall transfer all the electronic case-records to the Id. AO having the jurisdiction over the Taxpayer.

Salient Features of Faceless Assessment and Appeals⁵:

1. Scrutiny/Appeal Selection will be only through automated system using **Data analytics & Artificial Intelligence**.
2. **Dynamic Jurisdiction** – Abolition of territorial jurisdiction, thus the Id. AO working on the assessment or the Officer deciding the appeal could be situated in other cities and the taxpayer may not come to know the AO or the Officer deciding the appeal. Local tax sleuths will no longer probe local tax cases.
3. **Automated random allocation** of cases
4. **Central issuance of notices with DIN** – It has now been stated and provided for that any notice or document served without Direct Identification Number ('DIN') shall be considered to be invalid. DIN is necessary for determining the authenticity & traceability of the document. Thus, all notices issued by the Income-tax department will bear identification numbers or the DIN.
5. **Team based assessment/appeal & team-based review** – Now, it has been explicitly provided that there will be a cross verification of the work done by the Income-tax authorities i.e. draft assessment order in one city, review in another city & finalization in third city.
6. **Draft assessment orders** will be shared to the taxpayers before passing the final assessment order and the taxpayers will duly be granted an opportunity of being heard before finalization.
7. Personal hearing shall be granted to the taxpayer or the authorised representative, only if the taxpayer insists and that too after the necessary approvals.
8. **No physical interface** between the AO or the officer adjudicating the appeal and the taxpayer.

⁵ The Notification for Faceless Appeals has not yet been issued/announced

III. Taxpayer’s Charter:

While presenting the Union Budget 2020 on February 1, 2020, the Hon’ble Finance Minister had sought to turn the spotlight on building TRUST with the Taxpayers and the consequent, inherent necessity to give statutory force to the Taxpayer’s Charter. The Hon’ble Minister had stated that *“any tax system requires trust between the taxpayers and the administration. This will be possible only when taxpayer’s rights are clearly enumerated.”* Thus, the Budget contained statutory provisions to mandate the CBDT to adopt a Taxpayer’s Charter.

Befitting the launch of the ‘Transparent Taxation’ platform, the Hon’ble PM unveiled the India’s first ever Charter of Taxpayer’s rights and duties. The Charter seeks to maintain the dignity and sensitivity of the taxpayer and that is based on a trust factor and pertinently, that the taxpayer cannot be merely doubted without a basis. Through the Taxpayer’s Charter enshrined in the Act itself, the Income-tax Department has made certain commitments to the Taxpayers and also put forth certain expectations from them, key highlights of which are excerpted below:

Income-tax Department is <u>C</u>ommitted to	
<ul style="list-style-type: none"> • Provide fair, courteous, reasonable & professional assistance in all dealings with the Taxpayer. 	<ul style="list-style-type: none"> • Hold its authorities accountable.
<ul style="list-style-type: none"> • Treating Taxpayer as honest unless there is a reason to believe otherwise. 	<ul style="list-style-type: none"> • Allow every Taxpayer to choose an Authorized Representative of his choice.
<ul style="list-style-type: none"> • Provide mechanism for impartial appeal & review. 	<ul style="list-style-type: none"> • Provide mechanism to lodge complaint & prompt disposal thereof.
<ul style="list-style-type: none"> • Provide timely decisions. 	<ul style="list-style-type: none"> • Provide fair & impartial system & resolve tax issues.
<ul style="list-style-type: none"> • Collect only the dues as per law. 	<ul style="list-style-type: none"> • Publish standards for service delivery & report periodically.
<ul style="list-style-type: none"> • Following due process of law & be no more intrusive than necessary in any inquiry, examination or enforcement action. 	<ul style="list-style-type: none"> • Reduce cost of compliance.
<ul style="list-style-type: none"> • Maintain confidentiality. 	<ul style="list-style-type: none"> • Provide complete and accurate information.

Income-tax Department Expects Taxpayers to	
<ul style="list-style-type: none">Honestly disclose full information and fulfil the compliance obligations.	<ul style="list-style-type: none">To know what information and submissions are made by the Authorised Representatives.
<ul style="list-style-type: none">Be aware of the compliance obligations under tax law and seek help of department if needed.	<ul style="list-style-type: none">Make submissions in timely manner.
<ul style="list-style-type: none">Keep accurate records required as per law.	<ul style="list-style-type: none">Pay amount dues as per law in timely manner.

Our Comments:

We, at BSC, accord a hearty welcome to these recent E-governance/ administrative reforms as they are aimed towards significant improvement in delivery of services by the Tax Department and shall promote greater transparency in their working. Minimal interface with the Taxpayers is also a good step forward to curb undesirable practices.

It is hoped that the centralization of the Survey operations is expected to be implemented only in instances of serious tax evasions. We reiterate our hope and expectations from the Department that the power of survey, being an intrusive action, is discharged with utmost responsibility and accountability.

Any new administrative change such as these sweeping ones i.e. creation of AU, RU, VU and TU and a radical, uncharted one, at that, are bound to cause significant churn – be it chaos, confusion, concern or anxiety, especially in the short run. After all, we are talking here about a all-new Income-tax Departmental hierarchy, which will henceforth, effective August 13, 2020, work on Faceless Assessments with 30 Chief Commissioners, 154 Principal Commissioners, 565 Additional/Joint Commissioners, 645 Deputy/Assistant Commissioners, 2,830 Income-tax Officers and attendant staff – this is a huge, monumental change. We would attribute these to teething and settling issues, which, we hope, would be addressed quickly and judiciously by the Department in the coming days, weeks and months.

The role of the field formations outside the NeAC and the ReAC hierarchy shall henceforth be for income-tax demand management, collection and recovery or taxes, grievances handling,

rectification proceedings, giving effect to the appellate orders, discharge of audit and judicial functions, handling prosecution and compounding matters and custody of case records. Also, the statutory powers accorded u/s 263 and 264 of the Act, dealing with orders which are prejudicial to the Department or the Taxpayer, have been kept in tact and not disturbed by these changes. Pertinently however, the power to levy penalty has been taken out of the discretion of the jurisdictional AO, which could pose some concern since such proceedings would inherently involve better, case-specific understanding of the finer nuances of the backdrop to the settings necessitating initiation of the proceedings in the first place. Otherwise, there could be gross miscarriage of Justice emanating *inter-alia* from a mechanical levy of penalties by the NeAC.

We also have noted that almost simultaneously, there has been an announcement from the CBDT that the scope of Specified Financial Transactions has been expanded to widen the tax base and these include a host of new entries with a relatively low reporting threshold limit. So now, the compliance burdens, which were already onerous, have just been raised to report payments to hotels, property tax, health insurance premium - all above INR 20,000, domestic air travel availing business class facilities, international travel, electricity consumption above INR 1 lakh (given the prevalence of arbitrarily high and roof-shattering electricity bills during these Covid-19 days, this limit seems to be quite a low threshold), purchase of jewellery, white-goods, paintings, marble above INR 1 lakh and so on and so forth.

In parting, we may express our cautious optimism on the successful implementation of the well-intended administrative measures and wish and sincerely hope that these measures augur well to foster TRUST between the Department and the Taxpayers.

We are sure our Readers would join us in agreement with the Hon'ble Prime Minister's remarks that *"When the life of an honest taxpayer of the country becomes easy, he moves forward and develops, then the country also develops and leaps forward"*. Hope, they say, is the best Medicine!

For a deeper discussion on this topic, please feel free to contact

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