

Faceless Assessments



The Following areas are discussed in the session:

- **Overview of Faceless Assessment Scheme and Taxpayers Charter**
- **E-Assessments V/S Faceless Assessments**
- **Eligibility of the Scheme**
- **Legal Framework – Relevant Provisions and Notifications issued till date**
- **Faceless Assessment Centers – Structures and Hierarchy**
- **Procedure of conducting Faceless Assessment**
- **Powers of the Revenue Authorities**
- **Personal hearing requirement?**
- **Penalty and Procedure, Communication**
- **Operational guide for filing replies, submissions and appeals under Faceless Scheme**

Overview of Faceless Assessment Scheme and Taxpayers Charter

Background:

In furtherance to the E-Assessment Scheme 2019 introduced last year, the Prime Minister of India introduced the platform of “Transparent Taxation - Honouring the Honest” which presented major reforms like Faceless Appeal and Taxpayers Charter along with a revised version of Faceless Assessment Scheme. In lines with the said announcement, the CBDT had released **Notification No. 62/2019/F. No. 370149/154/2019-TPL** dt. 13 August 2020. The said scheme goes on to provide the taxpayers with a Seamless, Painless and Faceless forms of assessments and appeals procedure, whereas the Taxpayers charter discusses about the duties of every taxpayer.



Chronology of Events:

Year	Event
2006	E Filing of TDS Returns/Statements and Income Tax Returns of Companies.
Oct. 2015	CBDT amended Income Tax Rules, 1962 to provide that service of notice, summons, requisition, order and other communication may be done by email. [N.N 89 2015]
Feb. 2016 & April 2017	CBDT notified the procedures and standards to be followed to ensure secure transmission of electronic communication [N.N 2/2016 & 4/2017]
Sept.2017	CBDT stated that its ITBA project was ready to conduct various tax proceedings electronically through the 'e proceedings' facility in an end-to-end manner [Instruc. No 8 2017 Budget]

Chronology of Events:

Year	Event
Budget 2018	Late Arun Jaitley in his budget speech proposed to amend the Income Tax Act to notify a new scheme of assessment where the assessment will be done through electronic mode which would almost eliminate person to person contact leading to greater efficiency and transparency Feb.2018.
Feb. 2018	CBDT directed that except for search related assessment, proceedings in other pending scrutiny assessments shall be conducted only through 'E Proceeding' functionality in ITBA. In cases where the assessee objected to the conduct of assessment proceedings electronically, such cases may be kept on hold [Instruction No 1 2018]
Aug.2018	CBDT issued instructions for conduct of assessment proceedings through 'E Proceeding' facility during 2018-19 Sept.
Sept. 2019	CBDT notifies E Assessment Scheme, 2019.



The key features of Faceless Assessment Scheme for Transparent Taxation are:

- Taxpayers' Charter giving legal basis to taxpayer's rights & duties
- E Communication of information with department
- E-Confirmation by Taxpayer
- E-verification

E-Response & Faceless Assessment are the main pillars of the platform for transparent taxation & focus of the ITD in future. All Cases other than those assigned to Central & International Taxes are to be done through Faceless e-Assessment.

Traditional Scrutiny Assessment

i. Section 2(7A) r.w.s. 120 Jurisdiction of Assessing Officer

i. Section 139 Filing of ROI

ii. Section 142(1) Inquiry before assessment – direction to furnish ROI

iii. Section 143(2) Notice for initiating assessment

notice requiring the Assessee either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the Assessee may rely in support of the return.

v. Section 142(1) Inquiry before assessment

- produce, or cause to be produced, such accounts or documents
- furnish in writing and verified in the prescribed manner information in such form and on such points or matters

(Including a statement of all assets and liabilities of the Assessee, whether included in the accounts or not)

Vi. Other inquires:

- Summons u/s 131
- Summons u/s 133(6)
- Recording of statement etc.

Vii. Section 143(3)/144 Order of assessment

After hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee.

In order to further understand

Rectification of assessment [Section 154]



A rectification request under section 154(1) is allowed by the Income Tax Department for correcting mistakes when there is an apparent mistake in your Income Tax Return. The following errors can be taken care of by filing a rectification – an error of fact, an arithmetic mistake, a small clerical error.

Reassessment of Income [Section 147]



- Section 147 of the Income Tax Act, 1961 dealt with 'Assessment or Re-assessment of Incoming Escaping Assessment'.
- Re-Assessment of Income is possible only in the case of Section 147 & Section 153A i.e. Reassessment in the case of search & Seizure.

E-Assessment V/S Faceless Assessment

E-Assessment (up to 12 th August 2020)	E-Assessment (up to 12 th August 2020)
Termed as E-assessment. Covers only 143(2) proceedings	Termed as 'Faceless Assessment'
Assessment approach is at the discretion of individual assessing officer	Covers almost all assessment proceedings viz., regular scrutiny, best judgement, re-assessment (other than search & seizure cases, international tax matters)
Adjournment for filing responses not specifically covered in earlier scheme	No discretion with any individual officer, Team based assessment
Exchange of information shall always be in electronic mode	Even where Return not filed under above, it will be covered under 'Faceless assessment'
Authentication of submission by assessee shall be through digital signature only	Seeking adjournment / extension of time limit for filing response by assessee is specifically provided
Assessee shall be entitled for personal hearing through video conferencing	Assessee shall request for personal hearing, which may be approved by concerned CCIT / DGIT



Eligibility of the Scheme and Relevant Sections

Eligibility of the Scheme:



All the assessments and appeals would be subject to all the income tax cases including Transfer pricing, etc. except those cases which includes serious frauds, major tax evasions, sensitive and search matters u/s 153A as well as cases which deal with international taxation, Black Money Act and Benami property.

Also, in the above-mentioned cases, the National e-Assessment Centre ('NeAC') shall intimate the Assessee that assessment in his case shall be completed under the said Scheme

Section 144 B provides for the entire scheme of Faceless Assessment

1. 144 B (1) scheme of faceless assessment with 32 steps
2. 144 B (2) The faceless assessment under sub section 1 shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board"
3. 144 B (3) Centres and units
4. 144 B (4) Composition of various units
5. 144 B (5) and 144 B (6) internal and external communications through electronic mode
6. 144 B (7) mode of communication etc
7. 144 B (8) In exceptional case, transfer to jurisdictional AO
8. 144 B (9) Assessment not made in accordance with the scheme bad in law
9. Explanation definitions

Other amendments proposed by the Bill w e f 1-11-2020 to give effect to the Faceless Assessment and to give power to Central Government to notify the scheme

1. **S. 92 CA (8) Reference to TPO**

2. **S. 130 : Faceless jurisdiction of income tax authorities**

It has been inserted to give powers to the Central Government to make a scheme by notifying the same in the Official Gazette, for the purposes of-

- The exercise of any or all powers and performance of any or all the functions conferred on or assigned to the income- tax authorities under the Income Tax Act, as referred to in section 120; or
- To vest the jurisdiction with the Assessing Officer, as referred to in section 124; or
- To exercise the power to transfer cases under section 127; or
- To exercise jurisdiction in case of change of incumbency, as referred to in section 129

3. **S. 135A : Faceless collection of information:**

It give powers to the Central Government to make a scheme for the purpose of calling for information under section 133, collecting information under section 133B, or calling for information by the prescribed income-tax authority under section 133C, or the exercise of power to inspect the register of companies under section 134, or power of the Assessing Officer under section 135.

4. **S. 142B : Faceless inquiry or valuation**

It has been introduced to give powers to the Central Government to make a scheme for the purposes of issuing a notice under sub-section (1) or making an inquiry before an assessment under sub-section (2), or to direct the assessee to get his accounts audited under sub-section (2A) of section 142, or to estimate the value of any asset, property or investment by a Valuation Officer under section 142A.

5. **S. 151A : Faceless assessment of income escaping assessment**

It has been introduced to give powers to the Central Government to make a scheme for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 or sanction for issue of such notice under section 151.

6. **S. 157A : Faceless rectification, amendments and issuance of notice or intimation**

It has been introduced to give powers to the Central Government to make a scheme for the purpose of rectification of mistakes apparent from record under section 154, or other amendments under section 155, or issue of a notice of demand under section 156, or intimation of loss under section 157.

7. **S. 264A : inserted for Faceless revision of orders**

Section 264A gives the Central Government powers to make a scheme for the purpose of giving effect to orders under section 250, 254, 260, 262, 263 or 264.

8. S. 231 : Faceless collection and recovery of tax, TDS assessments, LTDC Certificate etc.,

It has been introduced to give powers to the Central Government to make a scheme for the purposes of-

- i. Issuing certificates for the deduction of income-tax at a lower rate or no deduction of income-tax under section 197, or
- ii. Deeming a person an assessee in default under sub-section (1) of section 201, or sub-section (6A) of section 206C, or
- iii. Issuing certificates for a lower collection of tax under sub-section (9) of section 206C, or
- iv. Passing an order or an amended order under sub-section (3) or sub-section (4) of section 210, or
- v. Reducing or waiving the amount of interest paid or payable by assessees under sub-section (2A), or
- vi. Extending the time for payment or allowing payment by instalment under sub-section (3), or
- vii. Treating an assessee as not being in default under sub-section (6) or sub-section (7) of section 220, or
- viii. Levy of a penalty under section 221, or
- ix. Drawing of a certificate by the Tax Recovery Officer under section 222, or
- x. Jurisdiction of the Tax Recovery Officer under section 223, or
- xi. Staying of proceedings in pursuance of certificate and amendment or cancellation thereof by the Tax Recovery Officer under section 225, or
- xii. Other modes of recovery under section 226, or
- xiii. Issuance of tax clearance certificates under section 230.

9. **S. 264B : Faceless effect of orders**

It gives the Central Government powers to make a scheme for the purposes of giving effect to an order under section 250, 254, 260, 262, 263 or 264.

10. **S. 279(4): granting of sanction for prosecution or for compounding of offence**

11. **S. 293D : Faceless approval or registration**

It has been introduced to give the Central Government powers to make a scheme for the purposes of granting approval or registration by income-tax authority under any provision of the Act. The provisions of Faceless Assessment will also apply to Section 253 (Appeals to the Appellate Tribunal), and Section 279 (Prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner) for the purpose of granting sanction under sub-section (1) or compounding under sub-section (2).

1. Section 143(3A)

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the Assessee under sub section 3 or section 144 so as to impart greater efficiency, transparency and accountability by

- a) eliminating the interface between the Assessing Officer and the Assessee in the course of proceedings to the extent technologically feasible
- b) optimizing utilization of the resources through economies of scale and functional specialization
- c) introducing a team-based assessment with dynamic jurisdiction.

2. Section 143(3B)

The Central Government may, for the purpose of giving effect to the scheme made under sub section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

3. Section 143(3C)

Every notification issued under sub section (3A) and sub section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.



Structure and Hierarchy – Faceless Assessment Centers

Structure and Hierarchy – Faceless Assessment Centres



The CBDT shall set up the following units in order to facilitate smooth functioning of the Scheme:

1. National e-assessment Centre ('NeAC'):

NeAC would facilitate the conduct of e-assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme.

2. Regional e-assessment Centers:

Such Centers would facilitate the conduct of e-assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme.

3. Assessment units:

Assessment units would perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Income Tax Act, 1961 ('The Act') seeking information or clarification on points or issues so identified, analysis of the material furnished by the Assessee or any other person, and such other functions as may be required for the purposes of making assessment.

4. Verification units:

Verification units would perform the function of verification, which includes enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification.

5. Technical units:

Technical units would perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this Scheme; and

6. Review Units

Review units would perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of modifications proposed, if any, and such other functions as may be required for the purposes of review.



Procedure of Conducting Faceless Assessment:

Procedure of Conducting Faceless Assessment:

Under the 'Faceless Assessment Scheme, 2019' the conventional manual mode of conducting of regular assessments involving physical interface and verbal communication between the assessees and the assessing authorities has been completely done away with and all the communication/interface between the assessees and the assessing authorities shall be done electronically only via the 'e-Proceedings' utility in the registered 'e-Filing' accounts of the assessee.

Step 1

The National e-Assessment Centre (NeAC) shall serve notice to assessee. Assessee may reply within 15 days of receipt of notice. NeAC shall assign case to specific Assessment units (AU) in any one Regional e-Assessment Centre (ReAC) through automated allocation system.

Step 2

AU may request to NeAC for

- Obtaining information's, documents or evidence from assessee
- Conducting enquiry or verification by Verification Unit (VU)
- Seeking technical assistance from Technical Unit (TU)

Procedure of Conducting Faceless Assessment contd.

Step 3

NeAC shall issue notice to assessee and assign request to VU and TU. After receiving documents from assessee and reports from VU and TU, NeAC shall transfer the same to AU.

Step 4

If assessee fails to comply with notice, then NeAC shall serve notice u/s 144 as to why assessment should not be completed to best of its judgement.

Step 5

Assessee shall within the time frame file reply to NeAC. If assessee fails to file response than NeAC shall examine draft assessment order as per Risk Management strategy and automation examination tool where it may decide to-

- Finalize Assessment Order
- Provide opportunity to assessee if modification is proposed
- Assign Draft assessment order to Review Unit (RU) in any one ReAC through automated allocation system for conducting review of such order

Procedure of Conducting Faceless Assessment contd.

Step 6	The RU shall conduct review of Draft Assessment Order and may decide to concur with draft assessment order and intimate to NeAC or suggest modifications and send its suggestions to NeAC.
Step 7	NeAC shall upon receiving concurrence of review unit finalize the Draft Assessment Order. NeAC shall upon receiving suggestions for modifications from RU, assign case to AU other than AU which has made draft assessment order through automated allocation system. AU shall after considering modifications suggested by RU send the final Draft Assessment Order to NeAC.
Step 8	NeAC shall finalize Assessment Order or if modifications are proposed follow such procedure.
Step 9	<p>Where Show Cause Notice (SCN) has been served to assessee, he shall furnish reply within time frame. NeAC shall</p> <ul style="list-style-type: none">• If no response of SCN, finalize assessment as per draft assessment order.• If response to SCN received, send response to AU and AU shall make draft assessment order and send it to NeAC.

Step 10

NeAC shall after receiving revised Draft Assessment Order –

- If modification is not prejudicial to interest of assessee with reference to Draft assessment Order, finalize Assessment Order
- If modification is prejudicial to interest of assessee with reference to Draft assessment Order, provide opportunity of being heard.
- NeAC shall deal with response with same procedure i.e. AU will make draft assessment order and so on.



Powers of the Revenue Authorities:

1. In line with the Faceless Assessment Scheme 2019, CBDT **vide Notification No. F No. 187/3/2020-ITA-I** has directed that, henceforth, all the assessment orders shall be passed by National e-Assessment Centre except for the following:
 - Assessment Orders in cases assigned to Central charges
 - Assessment Orders in cases assigned to International Tax charges Any order in violation of the above would be treated as Non-est.

2. In furtherance to the Faceless Assessment Scheme 2019, the CBDT has directed that TDS Commissionerate's, and Investigation wing Directorates would exclusively act as 'income-tax authority' for the purpose of surveys u/s. 133A of the Income Tax Act, 1961. Thus, the competent authority for approval of such survey u/s 133A shall be DGIT (Inv.) for Investigation wing and Pr. CCIT/CCIT (TDS) for TDS charges.

3. Also, the Principal Chief Commissioner or the Principal Director General, in charge of the NeAC shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the NeAC, Regional e-assessment Centres and the unit set-up under the said Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following:

- service of the notice, order or any other communication;
- receipt of any information or documents from the person in response to the notice,
- order or any other communication;
- issue of acknowledgment of the response furnished by the person;
- provision of “e-proceeding” facility including login account facility, tracking status of assessment, display of relevant details, and facility of download;
- accessing, verification and authentication of information and response including documents

Submitted during the assessment proceedings;

- receipt, storage and retrieval of information or documents in a centralised manner;
- circumstances in which certain provisions of shall not apply;
- circumstances in which personal hearing shall be approved;
- general administration and grievance redressal mechanism in the respective Centres and units.



Taxpayer's Charter

The Taxpayer's Charter provides for the rights of the tax authorities and duties of the taxpayers. Although such rights and duties were generally known, exclusive provision of the same in the Taxpayer's Charter enables them to be recognized specifically by the law. Thus, the Taxpayers can approach the Taxpayers' Charter Cell under Principal Chief Commissioner of Income tax in each Zone for compliance to this charter.

The Charter states the obligations of the tax authorities as follows

Sl. No.	Department's Obligations	Particulars
1	Provide fair, courteous, and reasonable treatment	The Department shall provide prompt, courteous, and professional assistance in all dealings with the taxpayer.
2	Treat taxpayer as honest	The Department shall treat every taxpayer as honest unless there is a reason to believe otherwise
3	Provide mechanism for appeal and review	The Department shall provide fair and impartial appeal and review mechanism.

Taxpayer's Charter

Sl. No.	Department's Obligations	Particulars
4	Provide complete and accurate information	The Department shall provide accurate information for fulfilling compliance obligations under the law.
5	Provide timely decisions	The Department shall take decision in every income tax proceeding within the time prescribed under law.
6	Collect the correct amount of tax	The Department shall collect only the amount due as per the law.
7	Respect privacy of taxpayer	The Department will follow due process of law and be no more intrusive than necessary in any inquiry, examination, or enforcement action.
8	Maintain confidentiality	The Department shall not disclose any information provided by taxpayer to the department unless authorized by law.

Taxpayer's Charter

Sl. No.	Department's Obligations	Particulars
9	Hold its authorities accountable	The Department shall hold its authorities accountable for their actions
10	Enable representative of choice	The Department shall allow every taxpayer to choose an authorized representative of his choice.
11	Provide mechanism to lodge complaint	The Department shall provide mechanism for lodging a complaint and prompt disposal thereof.
12	Provide a fair and just system	The Department shall provide a fair and impartial system and resolve the tax issues in a time-bound Manner
13	Publish service standards and report periodically	The Department shall publish standards for service delivery in a periodic manner.
14	Reduce cost of compliance	The Department shall duly take into account the cost of compliance when administering tax legislation.

On one hand, where the taxpayer's charter provides obligations for the tax revenue authorities, on the other hand, it imposes certain duties on the taxpayers as follows

Sr. No.	Taxpayer's Duties	Particulars
1	Be Honest and Compliant	Taxpayer is expected to honestly disclose full information and fulfil his compliance obligations.
2	Be informed	Taxpayer is expected to be aware of his compliance obligations under tax law and seek help of department if needed.
3	Keep accurate records	Taxpayer is expected to keep accurate records required as per law.
4	Know what representative does on his behalf	Taxpayer is expected to know what information and submissions are made by his authorized representative.
5	Respond in time	Taxpayer is expected to make submissions as per tax law in timely manner
6	Pay in time.	Taxpayer is expected to pay amount due as per law in a timely manner.

1. Person shall not be required to appear either personally or through authorized representative in connection with any proceedings under this Scheme before any authority at the NEAC or REAC or any unit
2. If modifications are proposed in draft order and SCN issued to assessee then assessee or AR can make a request for personal hearing so as to make his oral submissions or present his case before the income tax authority in any unit under this Scheme
3. The Chief Commissioner or the Director General, in charge of the REAC under which the concerned unit is set up, may approve the request for personal hearing, if the request is covered by the circumstances to be prescribed

4. If request is approved then such hearing shall be conducted exclusively through video conferencing
5. Subject to the sub section 6 any examination or recording of the statement of the assessee or any other person other than statement recorded in the course of survey under section 133 A of the Act shall be conducted by an income tax authority in any unit under this Scheme, exclusively through video conferencing
6. The Board shall establish suitable facilities for video conferencing so as to ensure that the assessee or AR is not denied the benefit of this.

Scheme of Penalty – For non-compliance of notice – 271(1)(b) – By NEAC and REAC

1. Any unit may, in the course of assessment proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the assessee or any other person, send recommendation for initiation of any penalty proceedings under Chapter XXI of the Act, against such assessee or any other person, as the case may be, to the National e-assessment Centre, if it considers necessary or expedient to do so.

2. NEAC shall, on receipt of such recommendation, serve a SCN notice on the assessee or any other person, as the case may be

3. Response to SCN to be sent by NEAC to concerned unit.

4. After considering the response, the said unit shall,

- Drop the penalty proceeding or
- Make a draft order and send the same to NEAC



5. NEAC shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the assessee or any other person, as the case may be and then transfer the record
6. Sections modified – Chapter XXI – Penalties imposable

All the penalty cases initiated under the Income-tax Act, 1961, pending as well initiated subsequently, is assigned to the National Faceless Penalty Centre.

Exceptions:

- Central charge
- International Tax Charge
- TDS charge
- Penalty proceedings arising/pending in the Investigation Wing
- Penalty proceedings arising out of any statute other than the Income-tax Act, 1961
- Penalties imposable by the officers of the level of Commissioner/Director/Commissioner
(Appeals/Appeal Unit)

1. All communications between the NEAC and the assessee, or his authorized representative, or any other person shall be exchanged exclusively by electronic mode.
2. All internal communications between the NEAC, REAC and various units shall be exchanged exclusively by electronic mode.
3. Only exception to the above: enquiry or verification conducted by the verification unit in the circumstance to be prescribed by Principal Chief Commissioner or the Principal Director General, in charge of the NEAC in consultation with Board.
4. Authentication of the electronic record
 - an electronic record shall be authenticated by NEAC by affixing its digital signature
 - assessee or any other person, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case by affixing his digital signature or under electronic verification code
 - Any notice/ communication/ order without DIN – invalid in law
 - Electronic submission facility shall automatically close 7 days before time barring date. (Notification No. 4/2017)

5. Every notice or order or any other electronic communication to assessee shall be by way of
 - placing an authenticated copy thereof in the assessee's registered account; or
 - sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
 - uploading an authenticated copy on the assessee's Mobile App; and
 - followed by a real time alert.
6. Every notice or order or any other electronic communication to any other person shall be by way of Email to registered email address of such person, followed by a real time alert.
7. The Assessee shall file his response under this Scheme, through his registered account, and once an acknowledgement is sent by the NEAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.
8. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000.

Survey action u/s 133A being an intrusive action, it is expected that the same should be carried out with utmost responsibility and accountability.

- Henceforth, survey to be carried out only by:
 - Directorate of Investigation (Investigation wing)
 - Commissionerate's of TDS
 - CCIT (International Tax)
- Competent authority for approval shall be
 - DGIT(Inv) or
 - Pr. CCIT/ CCIT(TDS)
 - Pr. CCIT/ CCIT (International Tax)
- Before approving surveys, PC/DG etc. should ensure that all other possibilities are exhausted and survey action is only a measure of last resort.
- It took them 56 years to realise that survey is an intrusive action.

Faceless Appeals



The Following areas are discussed in the session

- **Faceless Appeals**
- **Faceless Appeal Provisions**
- **Trading Concepts of Hearing**
- **Key Features**
- **Way forward after review of draft order by new AU**
- **Process for admission of Additional Ground before the NFAC**
- **Process for admission of Additional Evidence before the NFAC**
- **No personal appearance in Centre / Units**
- **Penalty Proceedings**
- **Rectification Proceedings**

Appeal from faceless assessment:



An appeal against an assessment made by the National e assessment Centre under this Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional Assessing Officer and any reference to the Commissioner (Appeals) in any communication from the National e assessment Centre shall mean such jurisdictional Commissioner (Appeals)

Section 246A modified in this regard (Annexure – 1).

Faceless Appeal provisions:

250(6B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (so as to impart greater efficiency, transparency and accountability by-

(a) eliminating the interface between the Commissioner (and the appellant in the course of appellate proceedings to the extent technologically feasible

(b) optimising utilisation of the resources through economies of scale and functional specialisation

(c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

250(6C) The Central Government may, for the purposes of giving effect to the scheme made under sub section (6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification Provided that no direction shall be issued after the 31 st day of March, 2022

250 (6D) Every notification issued under sub section (6B) and sub section (6C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Tradition concept of hearing:

- Part A of Chapter XX of the Act, deal with appeals to CIT(A)
- CIT(A is a quasi judicial and first appellate authority to adjudicate disputes between the assessee and Department He has to act independently, though he is an employee of one of the party to dispute.
- Section 246A enumerates the orders which can be challenged before the CIT(A)
- Section 249 prescribes the form of appeal and limitation, whereas section 250 prescribes the procedure in respect of such appeal.
- Section 250(1) states that the CIT(A) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the AO against whose order the appeal is preferred.
- Section 250(2) states that the appellant, either in person or by an authorized representative as well as the AO, either in person or by a representative, shall have a right to be heard at the hearing of the appeal.
- Section 250(6A) provides that in every appeal, the CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed.

Faceless appeal scheme is pari materia with the faceless assessment provisions. Some of the material features of the scheme as under:

- NFAC, RFAC, Appeal units
- An assessee would not be aware who is the concerned CIT(A), though vice versa is possible.
- An order passed by the CIT(A) will be subjected to review either by National Faceless Appeal Centre ('NFAC') or by another CIT(A).
- There doesn't appear to be a team based disposal of appeals, though provisions are made in this regard
- Faceless scheme is not to apply in certain cases appeals relating to serious frauds, major tax evasion, sensitive & search matters, international tax and Black Money Act.
- Steps are prescribed to specifically adjudicate on condonation of delay, allowing non compliance of conditions prescribed in section 249(4)(b), admission of additional ground and/or evidence before proceeding with the disposal of appeal.

Key features of the Scheme

Ecosystem of Faceless Appeals

The Faceless Appeals Scheme, 2020 will be operated through the Faceless Appeal Centres. The Central Board of Direct Taxes ('the CBDT'), vide notification No. 80/2020 and 81/2020 dated 25 September 2020 has specified the Income-tax authorities of the National Faceless Appeal Centre and Regional Faceless Appeal Centre and has directed them to exercise their powers and perform functions in order to facilitate the conduct of the Faceless appeal proceedings.

The entire scheme of the Faceless Appeal will be a confluence of National Faceless Appeal Centre, Regional Faceless Appeal Centre/the Appeal units, the National e-Assessment Centre/the tax officer and the Appellant. The National Faceless Appeal Centre will coordinate with other players of the scheme to drive the entire scheme. Hence, it will act as a nodal agency and shall be a single contact point between other players.

Role of each main agencies

Now, let us understand the role of each main agencies involved as under:

- National Faceless Appeal Centre (NFAC)
- The NFAC shall be a nodal agency and act as an interface between National e-Assessment Centre (NeAC) or the Assessing Officer (AO), the appellant or any other person and the Appeal Units (AU). The NFAC shall act as a central authority and it shall be conferred with the powers to enable the e-appeal proceedings and dispose of the appeal. Accordingly, entire communications shall be only through the NFAC with the AU by the appellant or the NeAC/Assessing Officer. The NFAC shall inform to the appellant about the admission or rejection of an appeal. The appellant or the authorised representative can communicate electronically through e-mails or other specified electronic modes with the NFAC.

Under the scheme, the appellant can file an e-appeal through his registered account. Hence, the tax appeals proceedings will be through an 'e-appeal' facility under the registered account of the appellant in a designated web portal for e-appeals. The submissions can be filed through the registered accounts of the parties.

Role of each main agencies

Regional Faceless Appeal Centre (RFAC)

The RFAC will facilitate the conduct of e-appeal proceedings and shall be vested with the jurisdiction to dispose of the appeal as per the provisions of the scheme. The four regional centres are in New Delhi, Mumbai, Chennai and Kolkata.

Appeal unit (AU)

Under the scheme, the NFAC shall be assigning the appeals to the appeal units. Accordingly, an automated allocation system using artificial intelligence and other suitable technology will facilitate random allocation of cases. However, all the communications between the AU and the parties to an appeal shall be facilitated through the NFAC. The regional Commissioners of Income Tax (Appeal unit) will act as an AU. In each region, Appeal units will conduct the e-appeal proceedings and perform the function of disposing of appeal, which includes:

- Additional grounds of appeal admission.
- Making further inquiry or directing NeAC or AO to make further inquiry.
- Seeking information / clarification on admitted grounds of appeal.
- Providing an opportunity of being heard to the Appellant, Analysis of material furnished by appellant.
- Review of draft order and other functions as may be required.

An automated examination tool will facilitate examination of draft orders using technology. Hence, the use of artificial intelligence will eliminate discretion in the examination and selection of cases.

In order to further understand

Broadly, the scheme provides procedures for the following proceedings:

Appeal

1. Appellate Proceedings

2. Assignment of Appeal

Through an automated allocation system, the NFAC will assign the appeal to a specific AU, in any one of the RFAC. Hence, without any human interference the appeal will be allocated to AU.

Admission/ Rejection of Appeal:

If there is a sufficient cause, there may be a delay in filing the appeal by the Appellant beyond the time limit of 30 days. In such cases, the AU if satisfied shall condone the delay in filing the appeal or reject the same. Further, in case the appellant has not filed return of income, the AU if satisfied may admit the appeal by waiving the requirement of payment of advance tax, or reject the same.

The AU would intimate the admission or rejection of the appeal to the NFAC and the NFAC would intimate the same to the Appellant.

Conduct of Appeal, once admitted :



Once the appeal is admitted, the AU may request NFAC to:

- Obtain such information or evidence or document from the Appellant or any other person as it may specify.
- Obtain a report from the NeAC or the AO, as the case may be, on grounds of appeal or information or document or evidence filed by the appellant.
- Direct the NeAC /AO, as the case may be, for making further enquiry and submit a report thereof.

Service of notice

The NFAC shall serve a notice on the Appellant or any other person or the NeAC /AO to submit information, document or evidence or report as required by the AU. The information, document, evidence, or report shall be submitted within the specified time.

Response to Notice

The Appellant or any other person shall file a response against the notice received. The NeAC /AO shall furnish a report in response to the notice within the specified time or extended time as may be allowed based on an application made to the NFAC.

The NFAC shall forward the response/report of the appellant or any other person or NeAC or Assessing Officer to AU. However, where no response / report, as the case may be, is filed / received, then the NFAC shall inform the AU about the same.

Enhancement of assessment/ penalty/ reduce the amount of refund

If the AU wants to enhance assessment or reduce the amount of refund then it shall prepare a show-cause notice containing the reasons for such proposed action and send such notice to the NFAC. The NFAC accordingly shall serve the show-cause notice on the Appellant.

The Appellant shall, within the specified or extended time, file his response to the NFAC. The NFAC shall send the Appellants' response to the AU. In case response is not received, the NFAC shall inform about the same to AU.

AU to prepare Draft Order

The AU shall prepare a draft order and send it to the NFAC along with the details of penalty proceedings, if any to be initiated in the Order. While preparing a draft order, the AU shall take into account all material available on record as well as all matter arising during the appellate proceedings.

NFAC's action upon receipt of Draft Order



If the aggregate amount of tax, penalty, interest or fee, including surcharge and cess, payable in respect of issues disputed in appeal, is more than an amount to be specified, the draft order shall be eligible for review. The NFAC sent the draft order through an automated allocation system to a new AU i.e. other than the AU, which prepared such order, for conducting review of draft order.

However, in any other case, the draft order shall be examined on risk management strategy specified by the CBDT. The NFAC may decide to either finalize the appeal as per the draft order or send the draft order to a new AU based on the above discussion.

Way forward after review of draft order by new AU:

- If the new AU agrees with the draft order, it shall intimate it to the NFAC. The NFAC shall finalize the appeal as per the draft order. The NFAC after finalizing the appeal or on receipt of the revised draft order will pass the appeal order and communicate it to the Appellant, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the NeAC or the AO.
- If the new AU suggests variation to the draft order, it shall send the suggestion to the NFAC. The NFAC through an automated allocation system shall assign the appeal to an AU (other than the AU, which prepared or reviewed the draft order).
- After considering the suggestion for variation, the AU shall prepare the revised draft order as mentioned in the earlier points and send the same to NFAC.
- The NFAC after finalizing the appeal or on receipt of the revised draft order will pass the appeal order and communicate it to the Appellant, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the NeAC or the AO.

Process for admission of Additional Ground before the NFAC:



- The Appellant may file additional ground of appeal to NFAC which was not specified in the ground of appeal filed earlier in a specified form before the NFAC.
- The NFAC shall send the additional ground of appeal to NeAC /AO and AU.
- The NeAC / AO shall furnish their comments to the NFAC.
- The NFAC shall send the comments of the NeAC / AO to the AU.
- The AU may admit or reject the additional ground after taking into consideration the comments received.
- The NFAC shall intimate the admission or rejection of the additional ground to the Appellant.

Process for admission of Additional Evidence before the NFAC

- Filing and validity of the additional evidence is governed by Rule 46A(1) of the Income Tax Rules, 1962. The Appellant may file an additional evidence in the form to be specified by the NFAC. The Appellant shall specify how his case is covered by the exceptional circumstances under Rule 46A(1).
- The NFAC shall send the additional evidence to NeAC / AO for furnishing a report. The NeAC /AO shall furnish the report to the NFAC, which shall in turn be sent to the AU.
- The AU, before taking into account the additional evidence shall provide an opportunity to the NeAC /AO to examine such evidence or to cross-examine witnesses produced by the Appellant or to produce any evidence or document or any witness in rebuttal. Accordingly, the NFAC shall serve a notice to the NeAC /AO.

Process for admission of Additional Evidence before the NFAC



- The NeAC /AO may request the NFAC to direct the production of any document or evidence by the Appellant, or the examination of any witness. The NeAC /AO shall furnish the report to the NFAC based on the examination and the NFAC shall send the report to the AU.
- Accordingly, the NFAC will serve a notice prepared by AU to the Appellant and send the Appellant's response to the AU.
- The AU after considering the additional evidence and the report, if any, furnished by NeAC /AO admit or reject additional evidence, for reasons to be recorded in writing, and intimate the NFAC.
- The NFAC shall intimate the admission or rejection of the additional ground to the Appellant.

No personal appearance in Centre / Units:

- Under the scheme, in connection with any proceedings, a person shall not be required to appear either personally or through any Authorized Representative before the income-tax authority.
- The Appellant or his Authorised Representative may request personal hearing to make oral submissions or present his case before the AU under the Scheme.
- Acceptance of Appellant's request for personal hearing will be at the discretion of the Chief Commissioner or Director General in charge of RFAC.
- Under the scheme, hearing shall be conducted entirely through video conferencing or video telephony and any other telecommunication application software, which will support the said system.
- Under the scheme, the Commissioner (Appeals) in any AU shall conduct any examination or recording of the statement of the Appellant or any other person using the above mentioned communication system.
- In order to ensure that the appellant or his Authorized Representatives or any other person gets complete benefit of the Scheme, the CBDT will establish suitable facilities of the above mentioned communication system at such locations as may be necessary.

Penalty Proceedings:

- In respect of non-compliance of any notice, direction or order issued under the Scheme, the AU may recommend the NFAC for initiation of penalty proceedings.
- The NFAC on receipt of the recommendation shall serve a show-cause notice as to why the penalty should not be imposed.
- The Appellant or any other person, as the case may be, shall file his response to the show-cause notice within the specified or extended (allowed based on an application made to the NFAC) date and time.
- The NFAC shall assign the recommendation for initiation of penalty proceedings, along with the response filed by the Appellant to a specific AU in any one RFAC, through an automated allocation system.
- After considering the relevant material available on the record, the AU may either make a draft order and forward to the NFAC or intimate it about dropping the penalty proceedings.

In case the AU has dropped the penalty, the NFAC shall send an intimation thereof or where the appeal unit sends a draft order, the NFAC shall pass the order for imposition of penalty as per such draft order, and communicate such order to the Appellant and the NeAC / AO for such action as may be required under the Act.

Rectification Proceedings:

- An application for rectification can be made to the NFAC by:
 - Appellant or any other person, as the case may be; or
 - AU preparing or reviewing or revising the draft order; or
 - NeAC or the AO, as the case may be.
- On receipt of a rectification application, the NFAC shall assign it to a specific AU, in any one of RFAC, through an automated allocation system. The AU shall prepare a notice and send the same to NFAC.
- The NFAC shall serve the notice on the relevant person to show cause as to why rectification of mistake should not be carried out. The relevant person shall file a response to the notice. The NFAC shall send the said response to the AU. In case a response is not received, then the NFAC shall inform about the same to the AU.
- The AU shall, after taking into consideration the application and response filed by the relevant person, prepare a draft order for either rectification of mistake or for rejection of application for rectification, citing reasons thereof. The AU shall send the order to NFAC.
- The NFAC shall pass an order as per the draft order received from the AU, and communicate it to the Appellant and the NeAC /AO, for such action as may be required under the Act.

The authentication of records submitted with the NFAC can be done either through digital signature or through electronic verification code. On completion of the proceedings, an electronic copy of the order will be provided by the NFAC by affixing a digital signature. Accordingly, a copy of order will be sent on the e-mail id of the parties to the appeal with a real-time alert. Such an order passed by NFAC can be appealed before the Income Tax Appellate Tribunal (the ITAT).

Exceptions: As per the Press release dated 25 September 2020 issued by the CBDT, the Scheme will not apply to the following cases –

- Search and seizure, major tax frauds/evasion
- Cases of International Tax Division, and
- Cases under the Black Money Act.

In a fresh development, it is revealed that the Faceless Appeal Scheme has become embroiled in a controversy. Recently, a Writ Petition has been filed before the Delhi High Court in Lakshya Budhiraja v. UOI W.P.(C) 8044/2020 against the provision of discretionary power of hearing in the scheme. In the said Writ Petition, the petitioner is seeking a direction that an opportunity of hearing be granted to all taxpayers and this should not be at the discretion of the Chief Commissioner or the Director General as proposed in the Faceless Appeal Scheme.

Hence, it is contended by the petitioner that in addition to the violation of Article 14 of the Constitution, the right to provide or not to provide a hearing in the matter is also against the principle of audi alteram partem i.e. no person should be judged without a fair hearing in which each party is given an opportunity to respond to the evidence against them. The Delhi High Court by its order dated 16 October 2020 has scheduled the next hearing to 15 December 2020.

In order to further understand

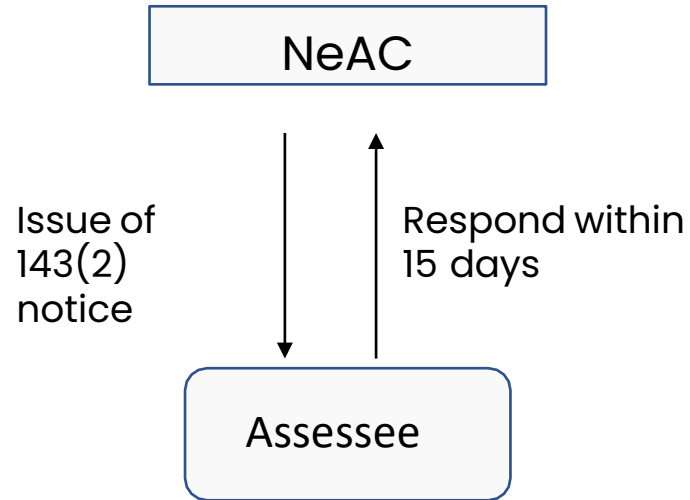
There is no doubt that the scheme has a laudable objective to dispense justice at the earliest as there is a pendency of almost 4.6 lakh appeals at the level of the CIT(A). Hence, it is expected that 88% of the total appeal will be handled by this scheme. However, there are certain suggestions to make it a huge success, which would ultimately go a long way in delivering on the Prime Minister's promise of a 'Transparent Taxation' regime.



Summary

Issue of Notice & Assigning case by NeAC

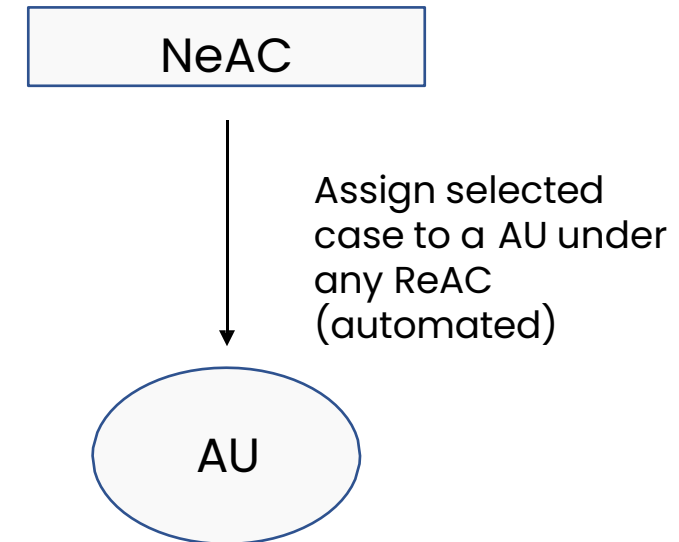
A – Issuance of initial 143(2) notice specifying issues for selection of case for assessment



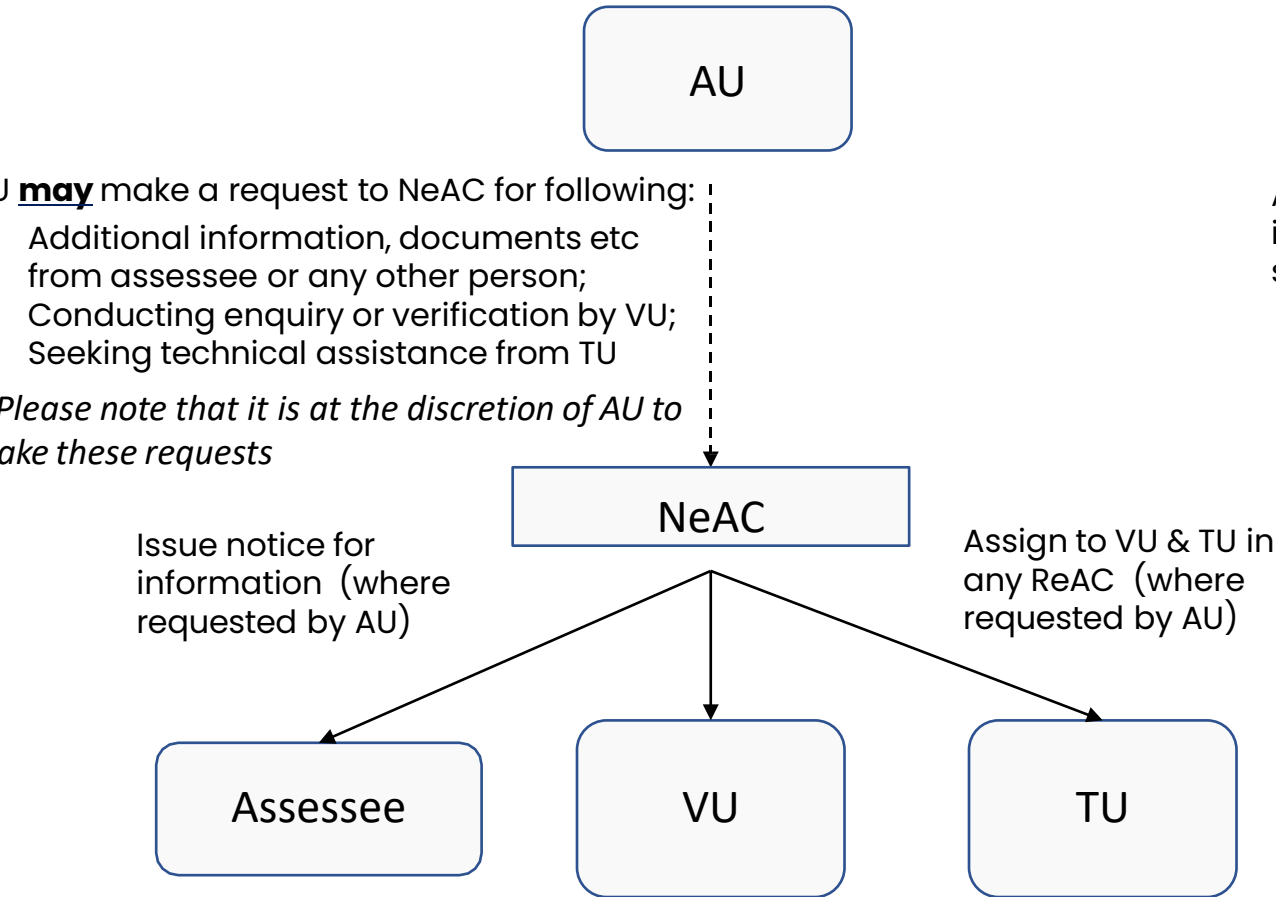
B – Faceless assessment shall be completed in following cases where assessee has:

- Filed ROI u/s 139(1) / in response to 142(1) notice / 148(1) notice **and** 143(2) notice is issued; **OR**
- Not filed ROI in response to 142(1) notice; **OR**
- Not filed ROI u/s 148(1) **AND** Notice u/s 142(1) has been issued

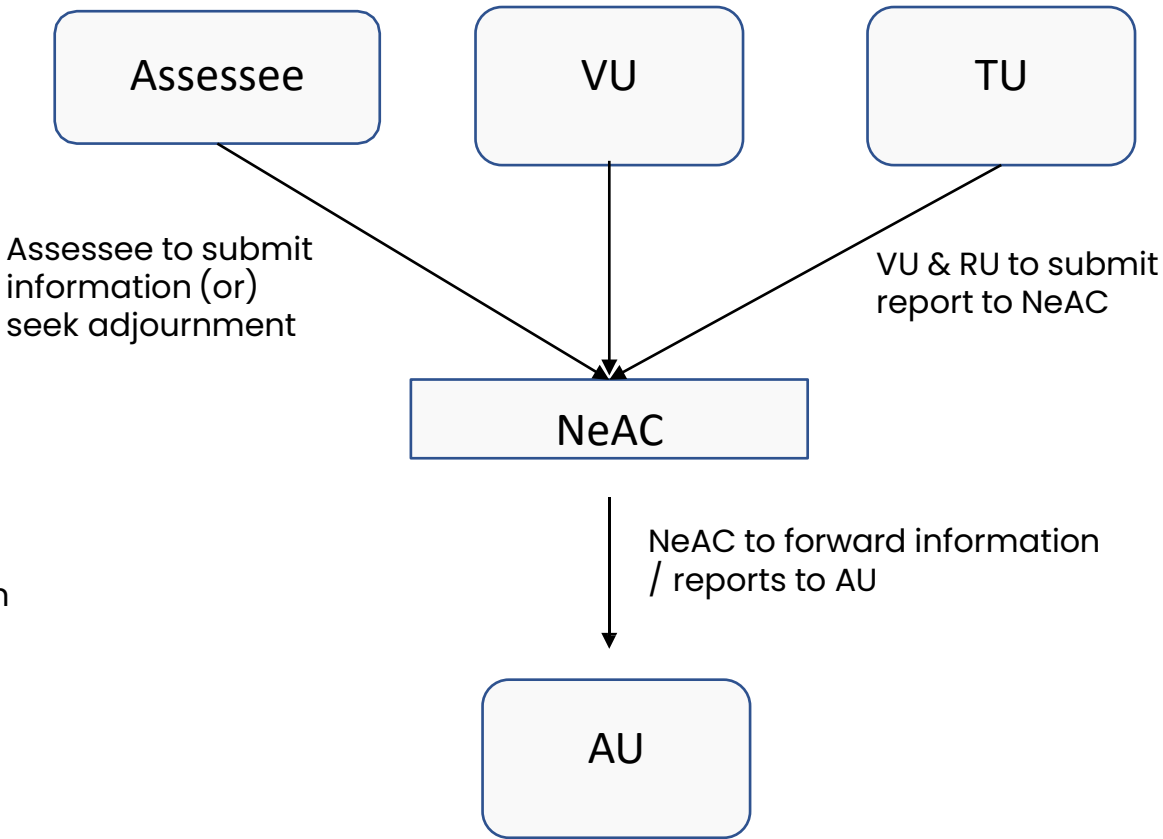
C – NeAC shall assign the case selected for e-assessment to a specific Assessment Unit (AU) under any on ReAC through automated allocation system



D – Activities done by Assessment Unit upon being assigned a case



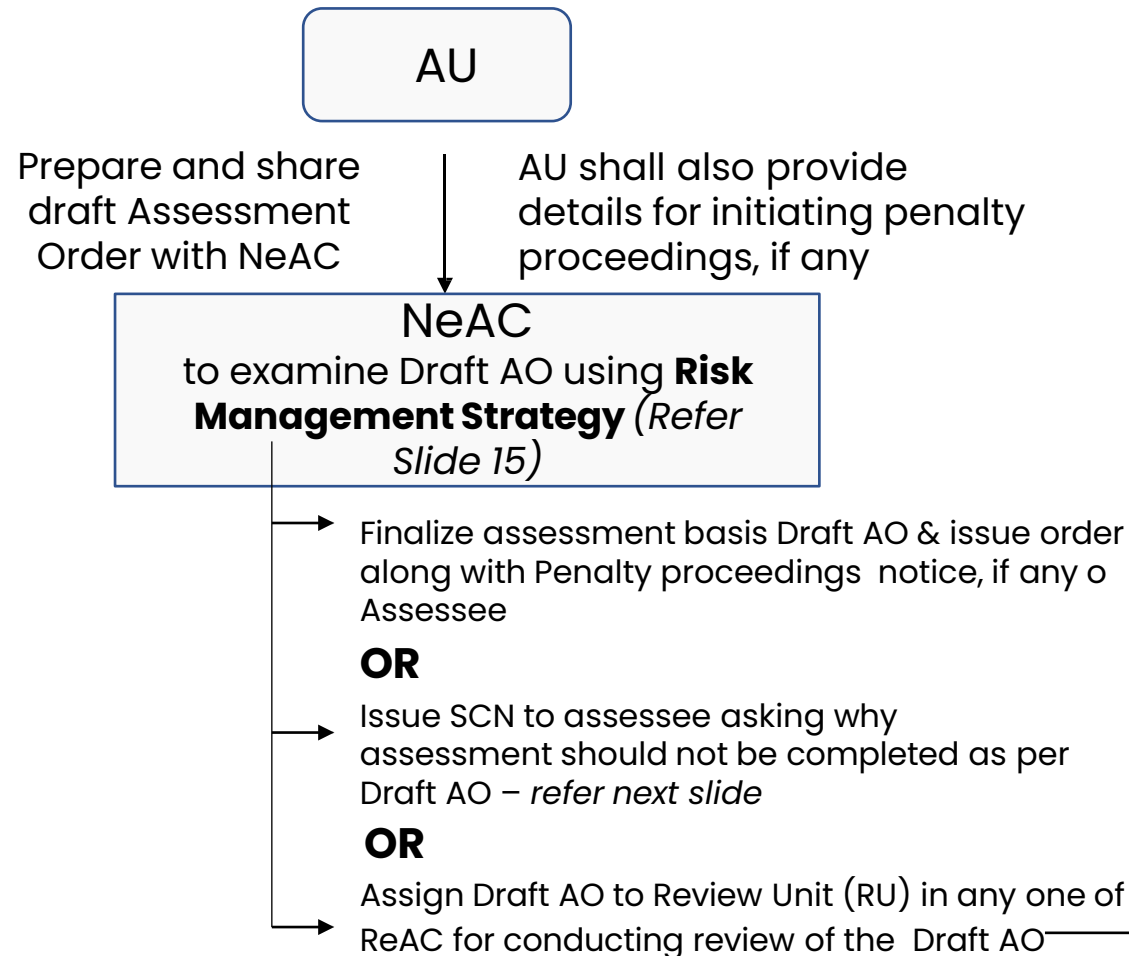
E – Response from Assessee & reports from TU & VU



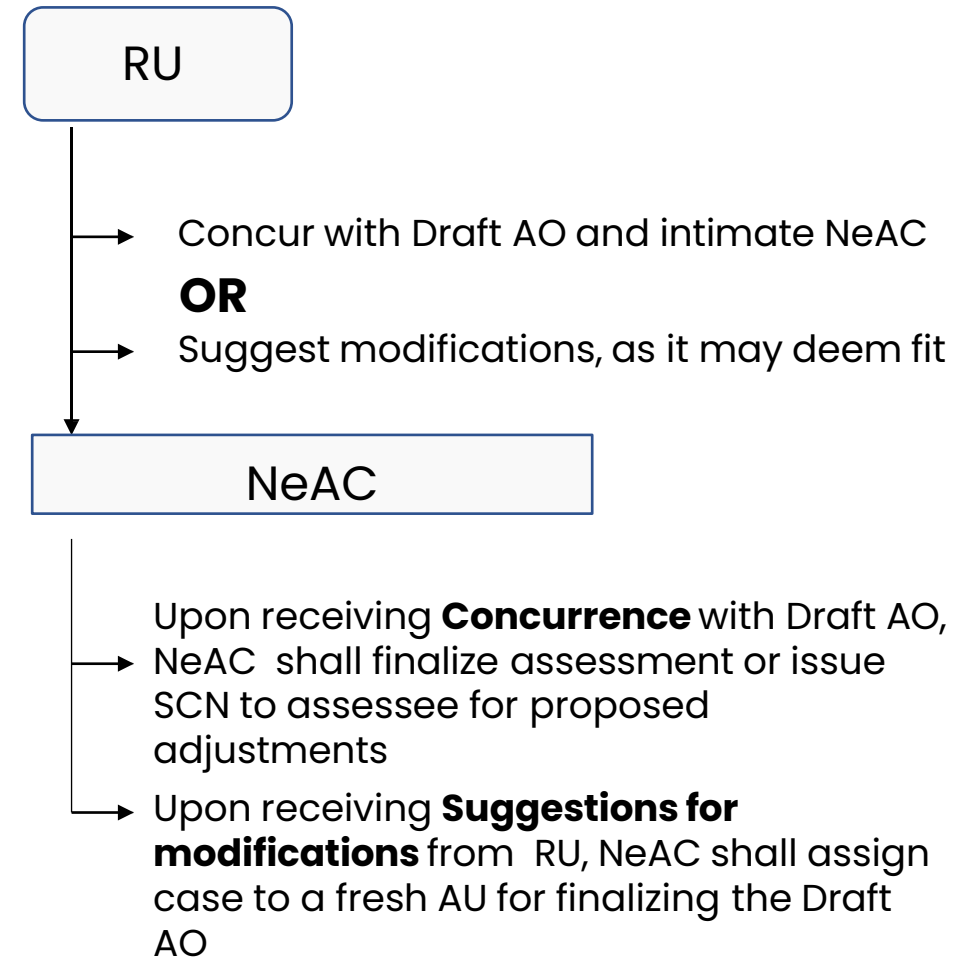
Where no response is received from Assessee, NeAC shall issue SCN asking why assessment should not be completed on best judgement basis u/s 144 of the Act. Where Assessee does not respond even to such SCN, NeAC to intimate failure to AU

Preparation of Draft Assessment Order

F – Assessment Unit to prepare Draft Asst Order basis information available or on best judgement basis where no information is received

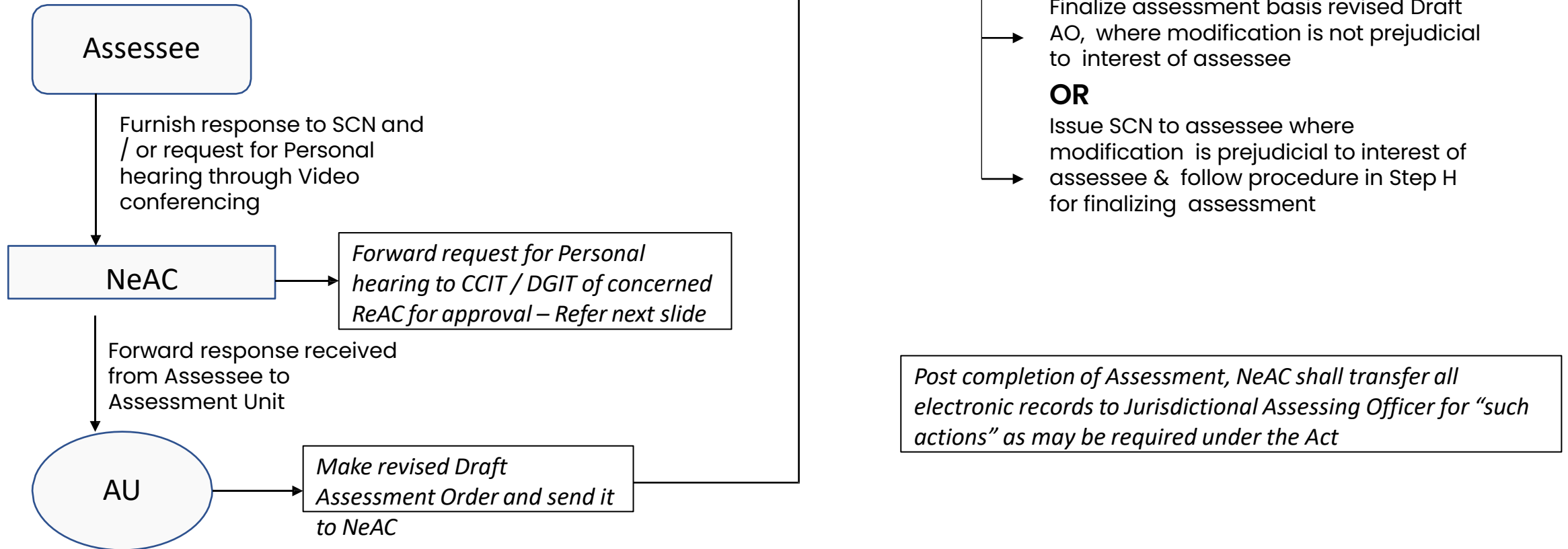


G – Review of Draft AO by Review unit



SCN to Assessee for Draft AO & Finalisation

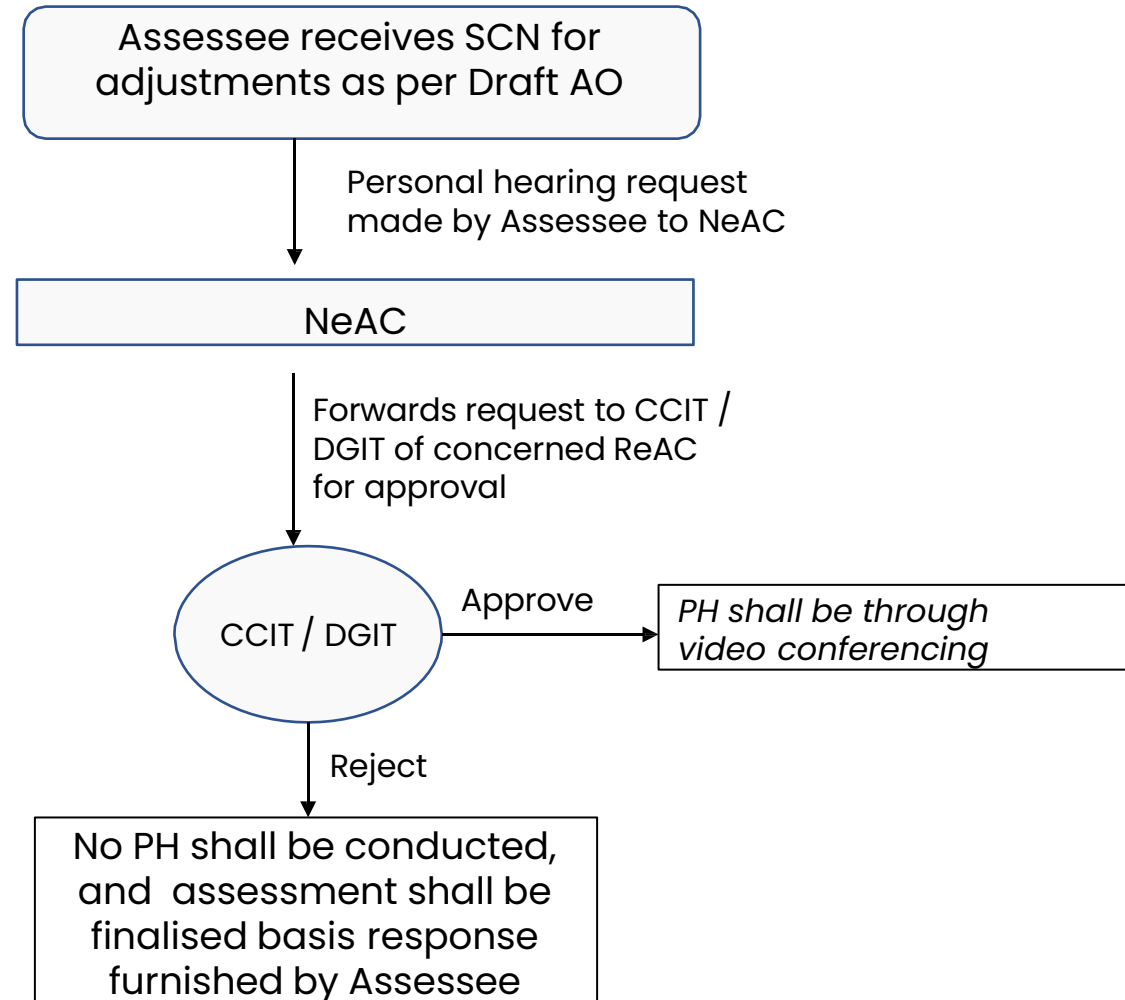
H – As discussed in Step F above, NeAC, may at its discretion after receiving the Draft AO, send a SCN to assessee. Post receipt of SCN, assessee shall follow below process



Where no response is received by Assessee to SCN, NeAC shall finalise assessment basis draft Assessment Order

Personal Hearing request by Assessee

Where a SCN has been issued by NeAC for proposed modifications as per Draft Assessment Order, the assessee may request NeAC for personal hearing

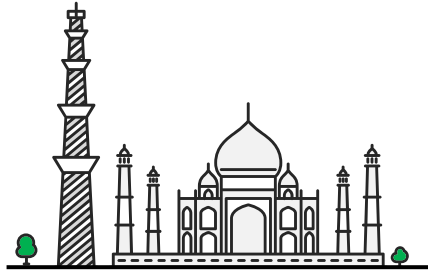


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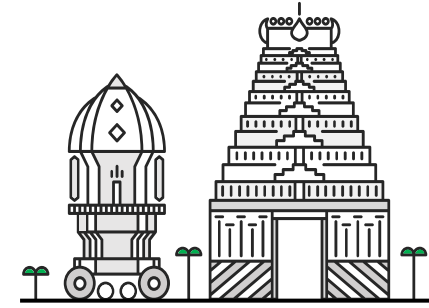
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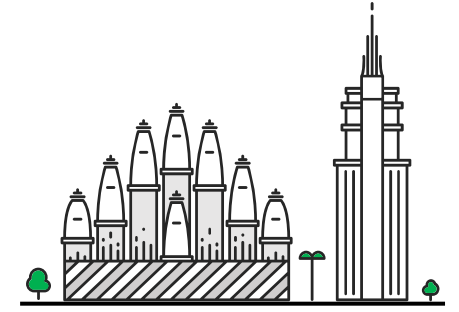
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Thank You



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