


Direct Tax Alert

December 30, 2021



CBDT notifies modified Faceless Appeal Scheme

Background

In terms of roadmap set out by the Government towards bringing in transparency in tax administration, the Faceless Appeal Scheme, 2020 was notified on 25 September 2020¹. Under this scheme, proceedings for appeals filed by taxpayers before the first income-tax appellate authority [i.e. Commissioner (Appeals)] are conducted in a faceless manner.

Although the said Scheme was announced in September 2020, it took time for the tax administration to gear up the infrastructure to put the said scheme in operation, thus, we witnessed very few appeals being fixed for hearing and disposed-off. In fact, priority was given to disposal of cases pursuant to settlement under the Direct Tax Vivad se Vishwas Scheme, ('DTVsvV') which led to huge pendency of other appeal matters.

There were certain modifications sought by taxpayers to the scheme, of which few have been incorporated by the Central Board of Direct Taxes ('CBDT') by notifying the Faceless Appeal Scheme, 2021² ('new Scheme') in supersession of the old scheme announced last year.

Some key modifications made in the new Scheme are discussed below:

1. Appeal Units to work directly with National Faceless Appeal Centre

Old Scheme: The old Scheme provided for setting up of a three-tier structure consisting of the National Faceless Appeal Centre ('NFAC') (as the nodal agency), the Regional Faceless Appeal Centres ('RFACs') (to support the functioning of NFAC) and the Appeal Units (to conduct appeal proceedings and dispose them). Further, each

¹https://www.dhruvaadvisors.com/insights/files/Dhruva_Alert_Faceless_Appeal_Scheme_2020.pdf

² Notification No. 139/2021 dated December 28, 2021



Appeal Unit consisted of one or more Commissioner (Appeals) ['CIT(A)'].

New Scheme: The new Scheme has completely eliminated RFACs and the Appeal Units will now work directly in coordination with NFAC. Further, each Appeal Unit shall now consist of only one CIT(A).

2. Grant of personal hearing

Old Scheme: Earlier, taxpayers could make a request for personal hearing so as to make their submissions orally or present the case before the Appeal Unit. However, it was to the discretion of Chief Commissioner/Director General of Income Tax ('CCIT'/DGIT) to approve taxpayer's request if such official was of the opinion that the request made is covered under certain prescribed circumstances³.

New Scheme: The provisions regarding the aforesaid conditions of prescribed circumstances and discretion to tax officials have been completely removed. Now, the CIT(A) shall allow the request for personal hearing whenever the same is made by the taxpayer during the appellate proceedings.

However, such hearing shall be conducted only vide video conferencing, video telephony, etc. in accordance with the procedure laid down by CBDT.

3. Review by multiple Appeal Units eliminated

Old Scheme: Previously, the Appeal Unit would forward its draft order to the NFAC. Post considering the monetary effect of issues disputed in the appeal and/or the risk management criteria, NFAC would send such draft order to another Appeal Unit for review.

Where such unit reviewing the draft order suggests any variation, NFAC would assign the appeal to a third Appeal Unit which would then

pass a revised draft order. The NFAC would then pass a final order based on the above and communicate the same to the taxpayer.

New Scheme: The above process of review by multiple Appeal Units has now been eliminated. The CIT(A) shall now consider the submissions filed by the taxpayer and pass an appeal order which shall be communicated to the taxpayer through the NFAC.

Dhruva Comments

These are welcome modifications and would certainly go a long way in easing the process of the Faceless Appeal Scheme.

It is trite law that no adverse action should be taken against any taxpayer without providing a reasonable opportunity of being heard to it. By providing discretion to tax administration authorities on this aspect, an element of subjectivity was created. This has been done away with and taxpayers will now be given an opportunity of personal hearing via prescribed electronic modes, wherever requested.

Further, since the review process has been completely done away with, it should also reduce the completion time for passing the appellate order. However, such elimination could also impact the consistency of positions taken by the Income-tax department given that the same would no longer be subject to peer review.

It is likely that the modified Scheme will provide impetus to the process at the first appellate level and taxpayers could see a surge of long-pending appeals before the CIT(A) being scheduled for hearing in the coming months.

It is also noteworthy that the constitutional validity of the Faceless Appeal Scheme was challenged by a reputed organization representing the tax

³ As prescribed by the Principal Chief Commissioner/Principal Director General of Income Tax at NFAC (with prior approval of CBDT)



fraternity and the proceedings are ongoing before the Bombay High Court. Although, the outcome of such constitutional challenge is keenly awaited, the new Faceless Appeal Scheme seems to be a step in the direction to consider modifying some aspects of the old scheme.

Contributors:

[Sandeep Bhalla](#) (Partner)

[Ashish Agrawal](#) (Principal)

[Ritesh Thakkar](#) (Senior Associate)

For any queries in relation to this tax alert, please feel free to reach out.



ADDRESSES

Mumbai

1101, One World Center, 11th floor,
Tower 2B, 841 Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad 380015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
P.O. Box 127165
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Sandeep Bhalla (Mumbai)

sandeep.bhalla@dhruvaadvisors.com

Mehul Bheda (Ahmedabad)

mehul.bheda@dhruvaadvisors.com

Ajay Rotti (Bengaluru)

ajay.rotti@dhruvaadvisors.com

Vaibhav Gupta (Delhi/NCR)

vaibhav.gupta@dhruvaadvisors.com

K. Venkatachalam (Pune)

k.venkatachalam@dhruvaadvisors.com

Aditya Hans (Kolkata)

aditya.hans@dhruvaadvisors.com

Mahip Gupta (Singapore)

mahip.gupta@dhruvaadvisors.com

Nimish Goel (Dubai)

nimish.goel@dhruvaadvisors.com

Dhruva Advisors has been consistently recognised as the **“India Tax Firm of the Year”** at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

Dhruva Advisors has also been recognised as the **“India Disputes and Litigation Firm of the Year”** at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review's in its World Tax Guide.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review's Indirect Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing** practice ranking table in ITR's World Transfer Pricing guide

Disclaimer:

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication