



WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA

Technical Aspects of Representations under FAS

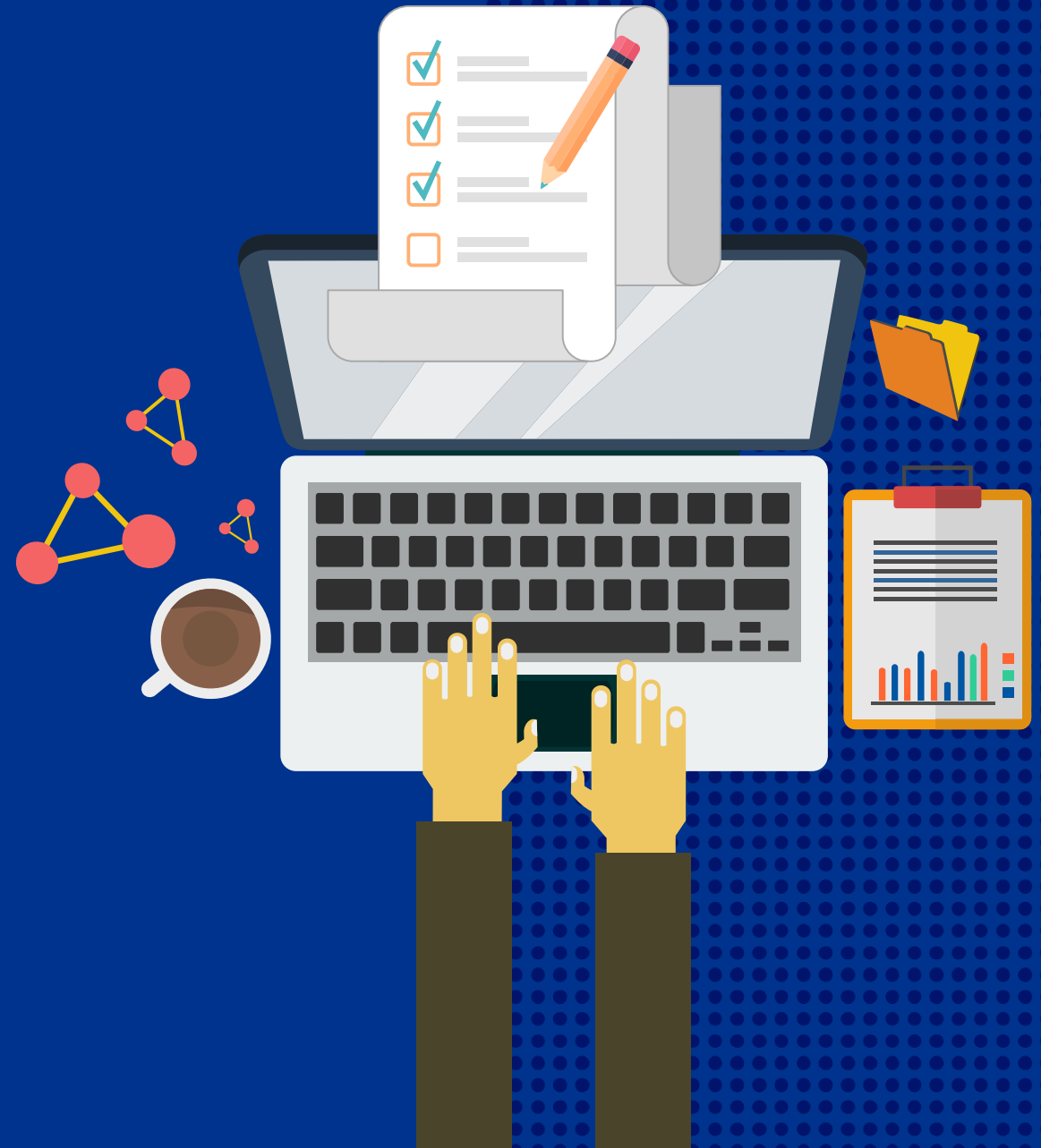
Refresher Course
on Representation
Skills WIRC of ICAI

CA Jayesh Kariya

September 2020



Digital India Movement

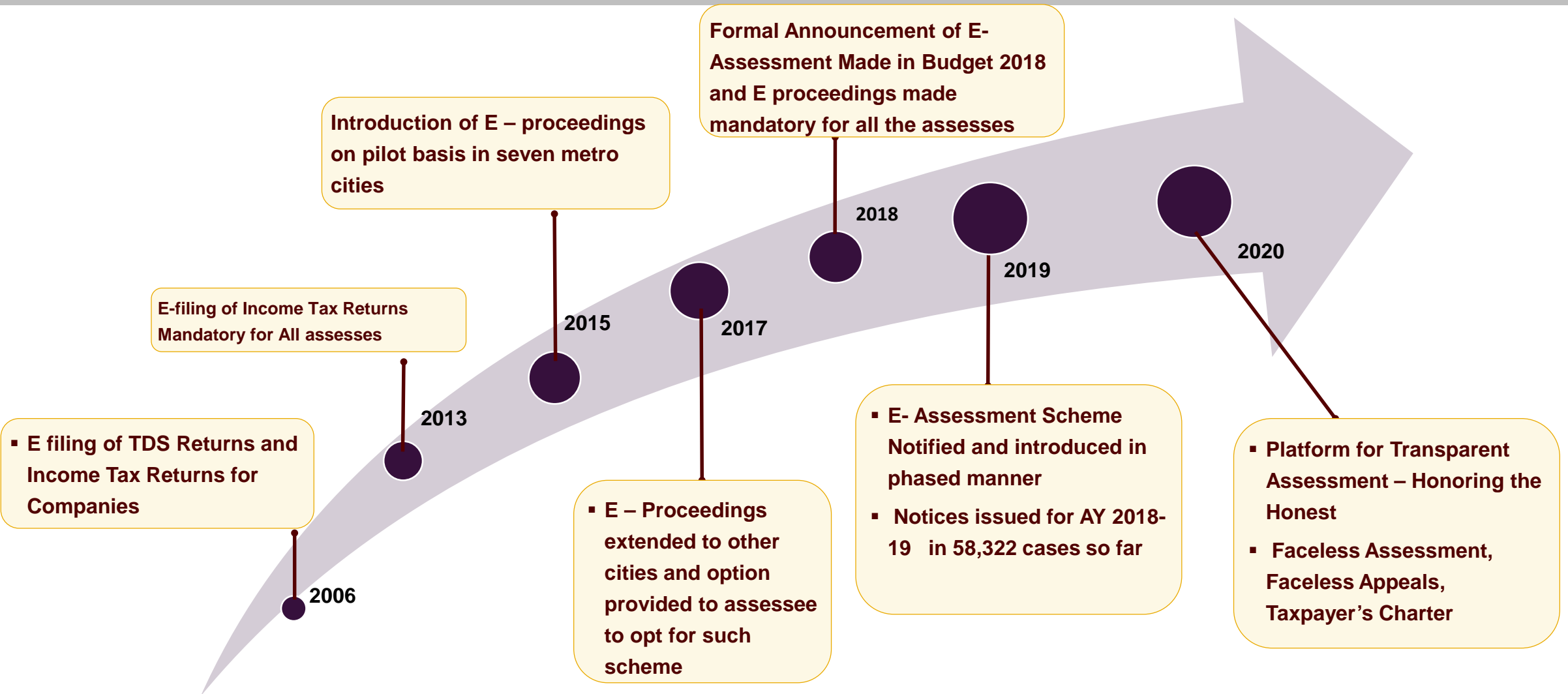


Digital India Movement - The Revolution so far

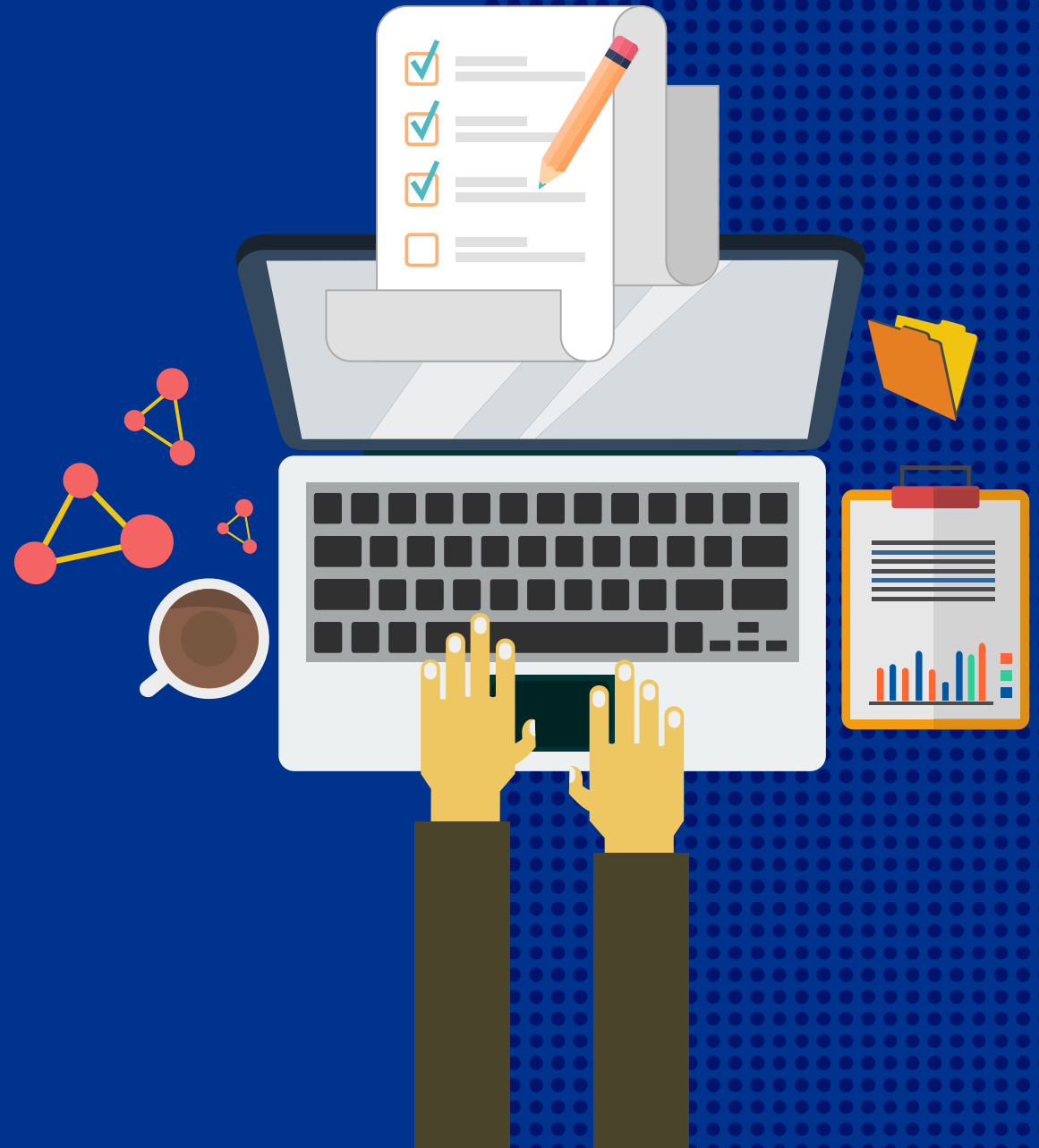


राष्ट्रीय मतदाता सेवा पोर्टल
NATIONAL VOTERS' SERVICES PORTAL

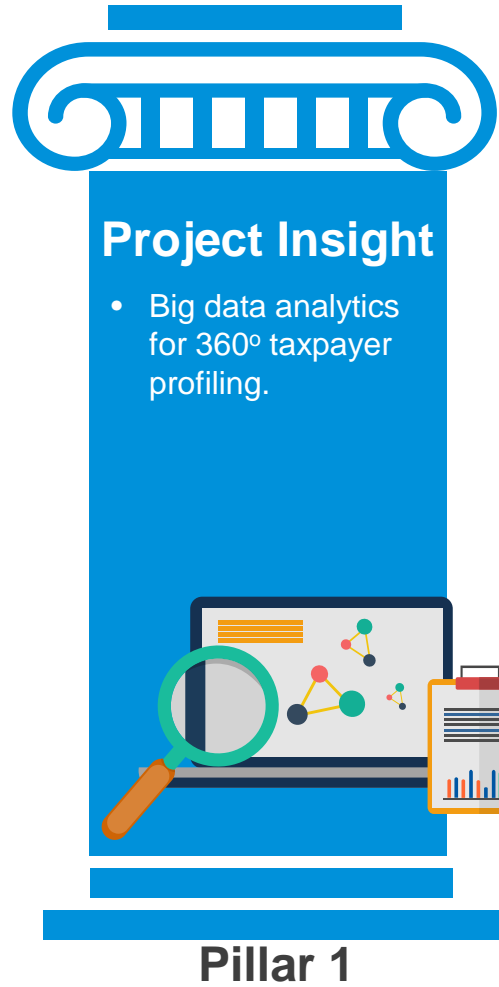
Digitization by Income Tax Department - The Journey So far



Tax Administration Landscape – Four Pillars




Tax Administration landscape - Four Pillar Approach

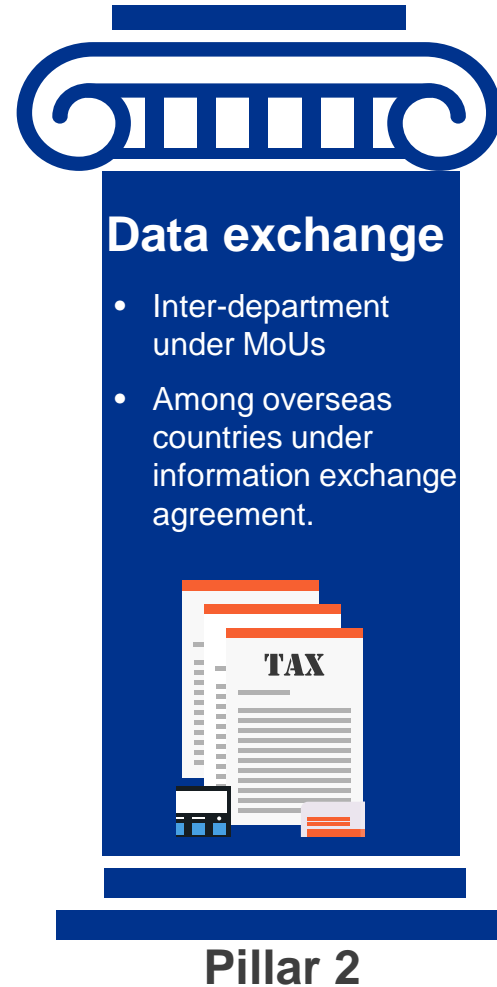


Project Insight

- Big data analytics for 360° taxpayer profiling.




Pillar 1

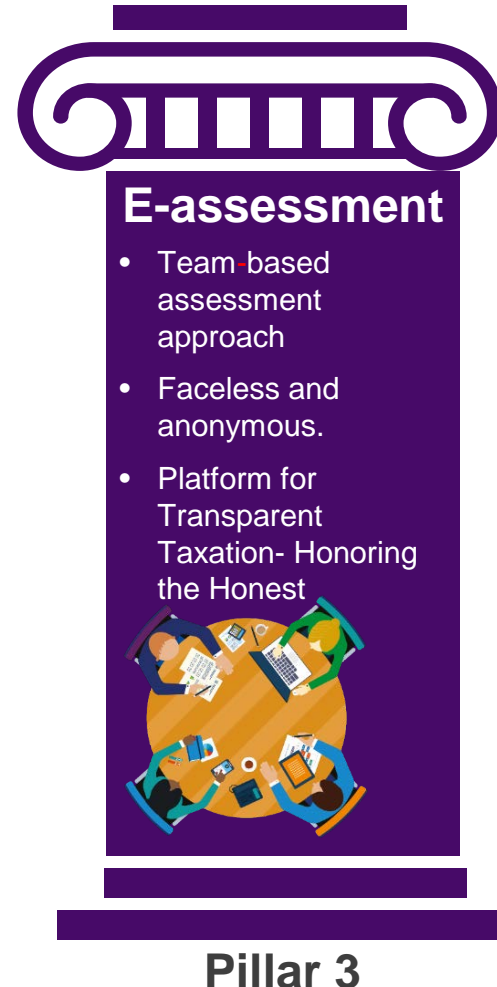


Data exchange

- Inter-department under MoUs
- Among overseas countries under information exchange agreement.




Pillar 2



E-assessment

- Team-based assessment approach
- Faceless and anonymous.
- Platform for Transparent Taxation- Honoring the Honest



Pillar 3



Virtual hearings

- Supreme Court/ High Court/Tribunal
- CIT(A)* and DRP*.



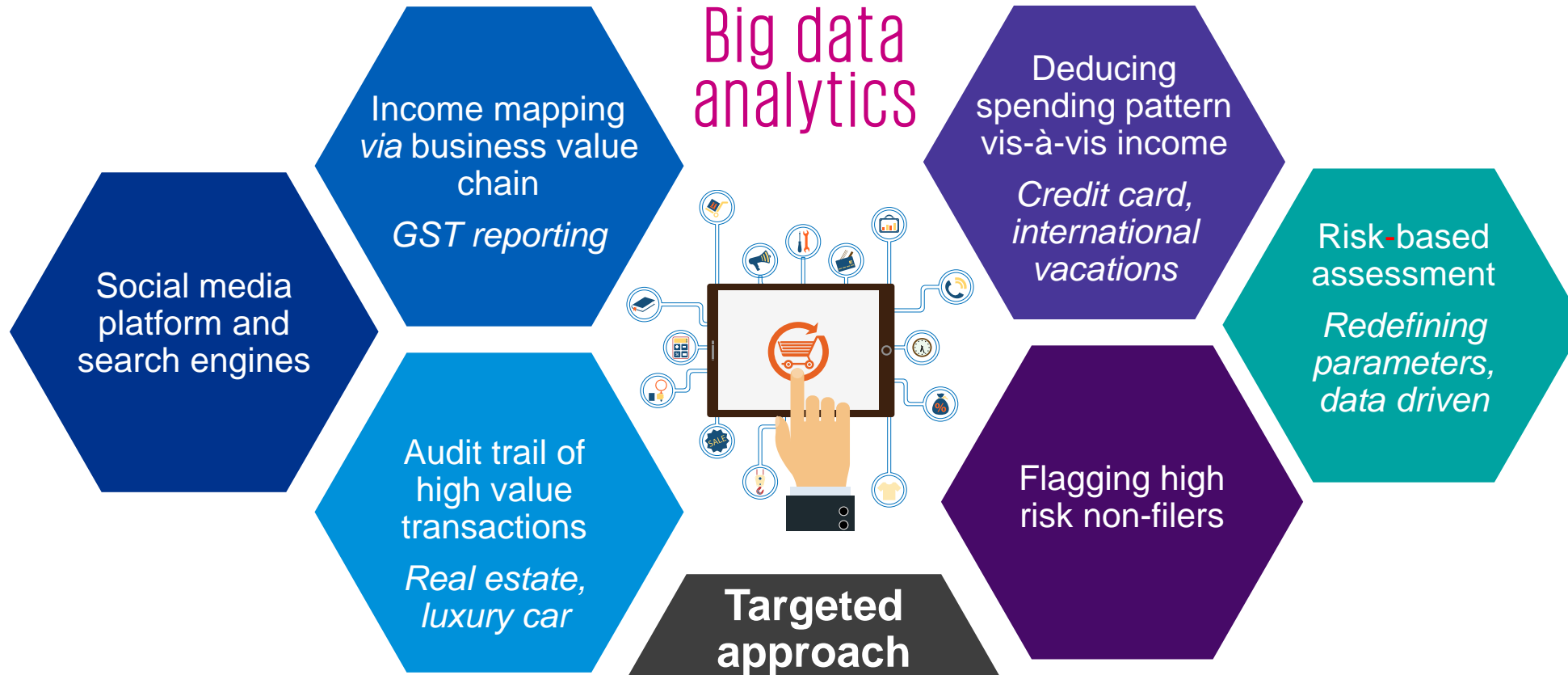
Pillar 4

*CIT(A) – Commissioner of Income Tax Appeals

*DRP – Dispute Resolution Panel



Pillar 1: Project Insight





Pillar 2: Data exchange

Smooth information exchange to promote transparency



Ministry of Corporate Affairs

Information in tax returns, financial statements, return of allotments, data received from bank etc.

Securities and Exchange Board of India

Data on Evasion/Violation marked as 'Stock Market Manipulation'

Central Board of Indirect Taxes and Customs

Business value chain data such as turnover, expenditure, input credits, taxes etc.

Central Board of Direct Taxes

Form 26AS modified - stock trades, real estate, credit card transactions, SFT* reporting

Ministry of Micro, Small and Medium Enterprises

Data exchange to identify taxpayers classified as MSME to prevent incentive misuse

Banks, mutual fund houses, Aadhaar

Details of loan defaulters to bank, Annual Information Return reporting

Exchange with overseas countries

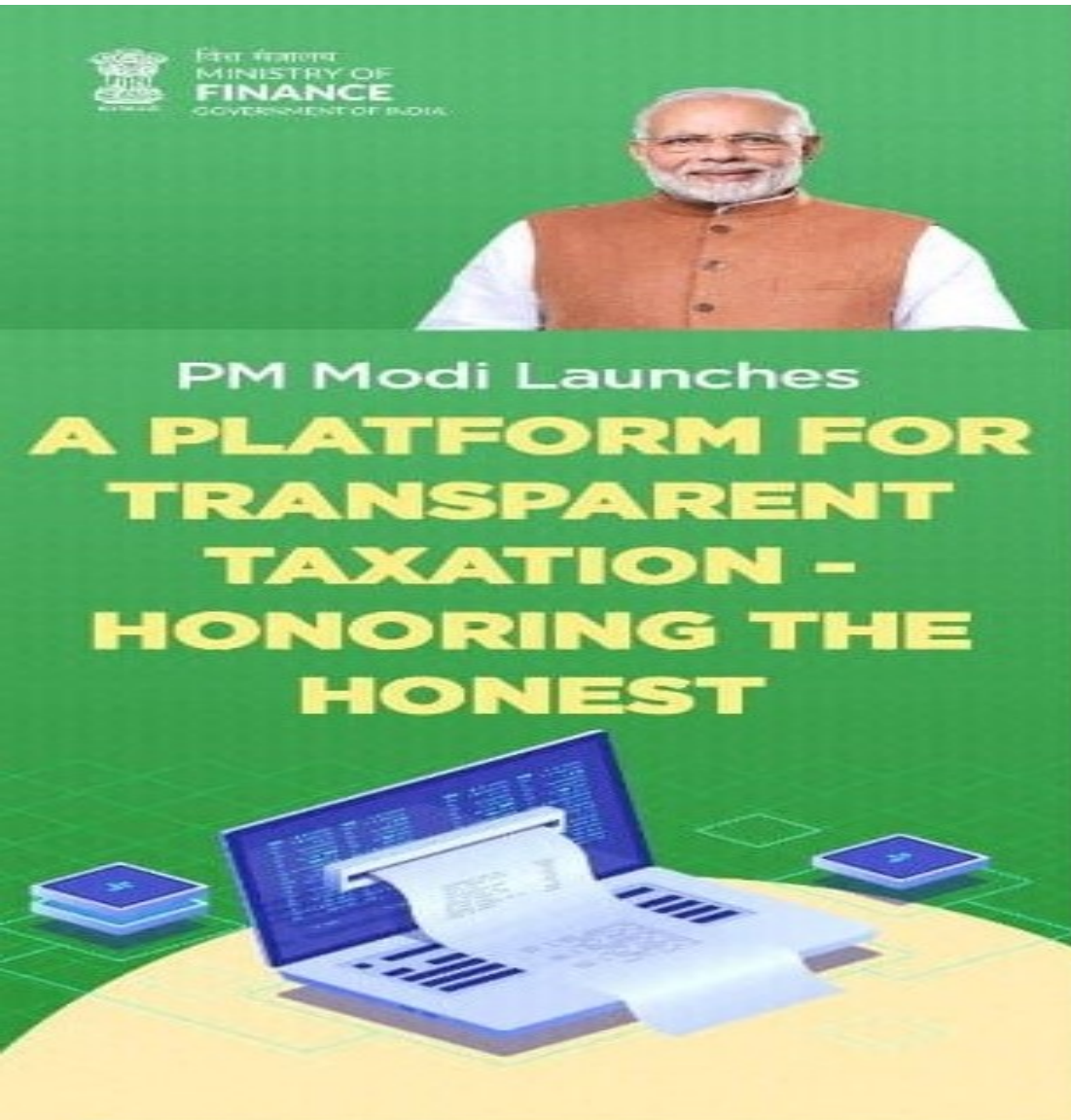
Reporting under FATCA, Common Reporting Standard, Master File, Tax Information Exchange Agreement

Technology as a catalyst to facilitate data driven and focused risk assessment

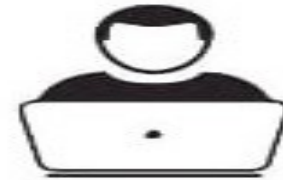
*SFT – Statement of Financial Transactions



Pillar 3: Faceless Assessment Scheme



#HonoringTheHonest



FACELESS ASSESSMENTS

FACELESS APPEALS

TAXPAYERS' CHARTER



Any assessment, other than exception, outside Faceless Scheme will be invalid



No intrusive and survey actions by field officers – Only Investigation wing and TDS wing can after approval by officer of the level of Chief Commissioner or above

Date: 13th August, 2020



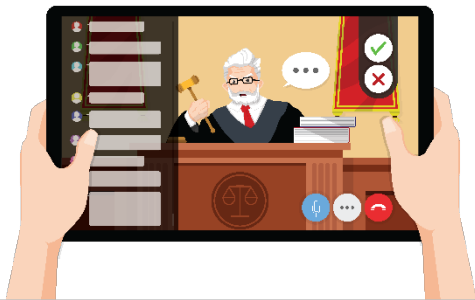
Pillar 4: Virtual hearings (1/2)

Widespread use of virtual hearings in the arena of income tax

Conventional Court room



Virtual proceedings



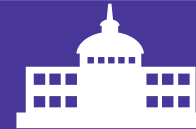
Faceless CIT(A)
and DRP
hearings
through VC



All 27 ITAT
benches
equipped with
VC facility



Mumbai Tribunal
held first virtual
hearing on tax stay
petition in April
2020



Supreme Court/High Court
equipped with VC facilities



India's Apex court leads with
700* judgment via virtual
hearings amid lockdown
U.S. – 20, U.K. – 15,
Australia – 12*



Pillar 4: Virtual hearings (2/2)



SOP/Guidelines

- Submission procedure
- Documentation criteria
- SPOC details
- Consent for VC hearing
- Physical submissions post normalcy



Infrastructure

- Adequate internet bandwidth and hardware facilities
- Strong connectivity
- Inform mode of connecting – Computer/Mobile/Tablet



Etiquettes

- Follow court etiquettes – dress code, decorum, etc.
- Sitting arrangement

Technical Aspects of Representations under FAS



Technical Aspects - Four Stage Approach



Pre-Assessment Preparedness

- Active engagement with clients and preparing for the assessment journey



Stage 1



Managing FAS Process

- Clear understanding of the FAS and process
- Deep technical knowledge and expertise



Stage 2



Post Assessment Process

- Clear understanding of the process
- Deep Technical Knowledge
- Professional Representation



Stage 3



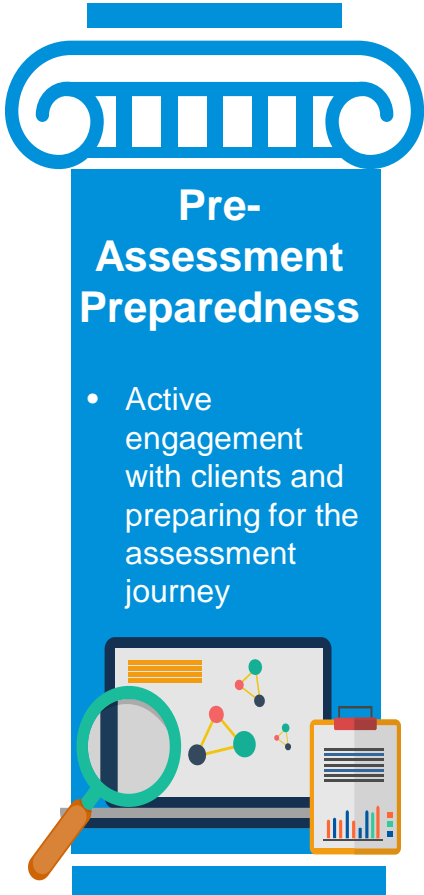
Faceless Appeal Process

- Refreshed Representation Skills
- Tech Savviness



Stage 4

Technical Aspects - Pre-Assessment Stage



Pre-Assessment Preparedness

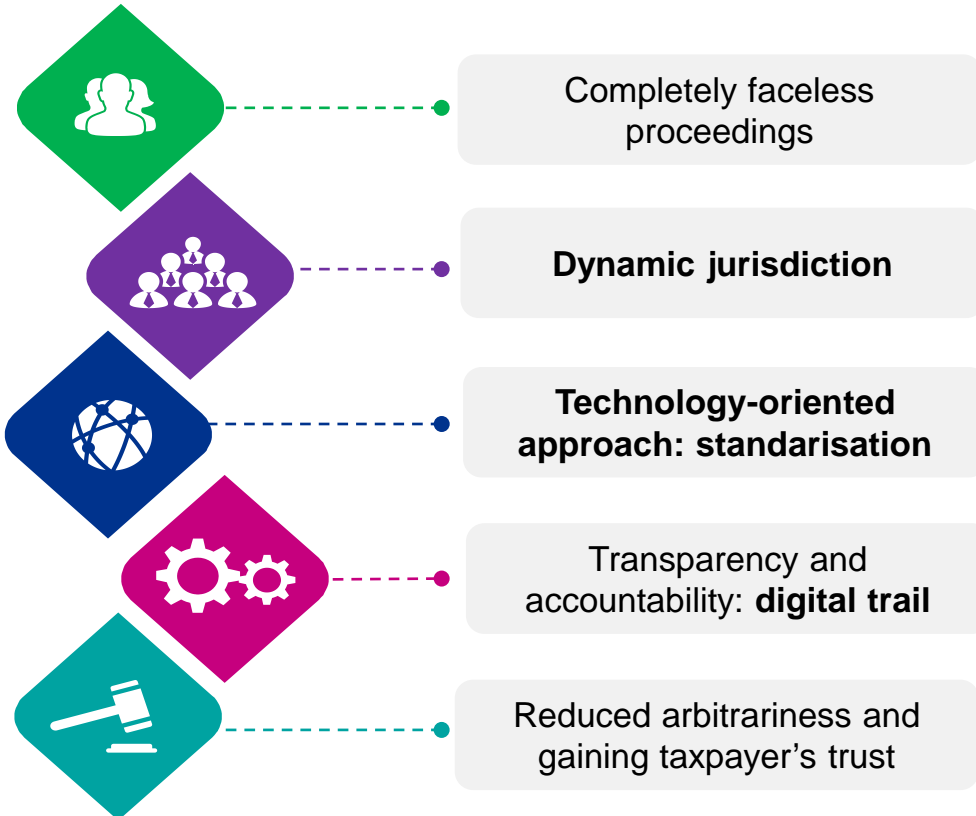
- Active engagement with clients and preparing for the assessment journey

Stage 1

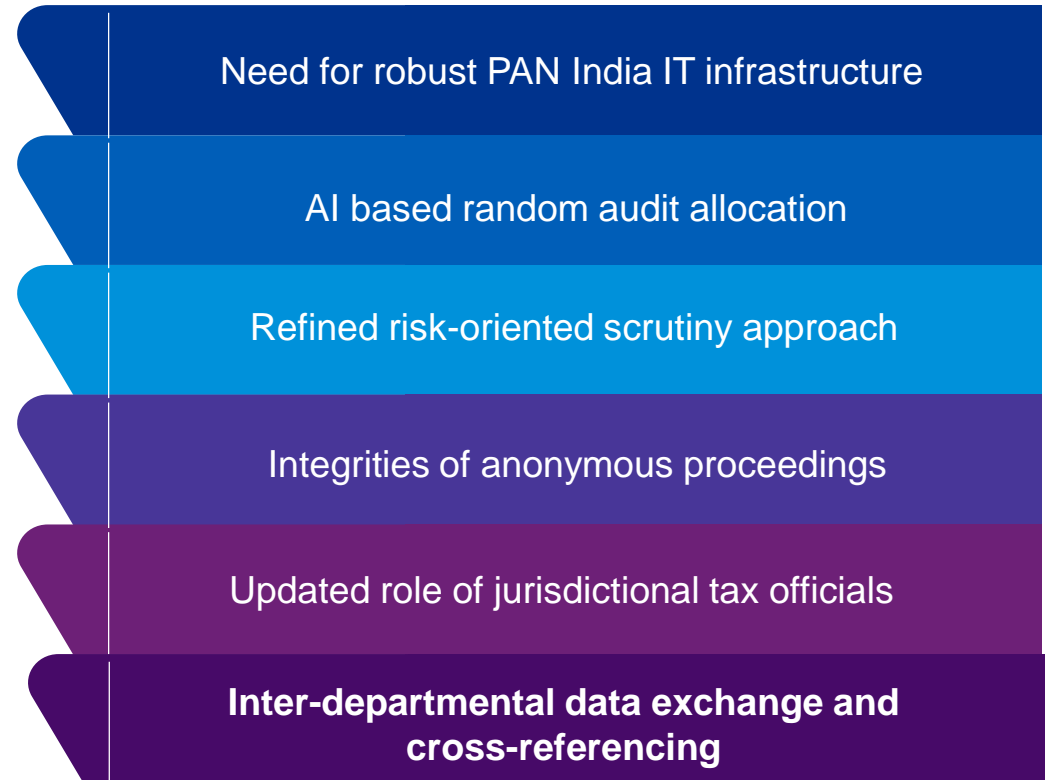
- Knowledge of tax payers Business and Industry
- Proactive engagement with tax payers on tax matters
- Advising on tax positions in respect of important transactions/issues
- Advising Clients on close monitoring of various compliances including withholding taxes
- Pre-finalisation review of financials especially various notes and disclosures impacting the assessment
- Review of Tax Audit Report & Transfer Pricing Study Reports and disclosures
- Review of Tax Returns and positions taken
- Reconciliation of financials with Form 26AS, GST Returns and other returns
- Maintenance of supporting documentations in support of various tax positions
- Proactively identifying potential issues under assessment, collating & maintaining supporting documents

Salient features of Faceless Assessment Scheme (1/2)

Key potential benefits



Navigating through change



 **E-appeals and E-Penalties on the anvil** 

Salient Features of the Faceless Assessment Scheme (2/2)

NeAC to act as Nodal Agency and a single point of contact

All Assessments to be carried out by REAC units with few exceptions i.e. Search Cases, International Tax cases

Jurisdictional Officers to continue rest of the tax functions such as rectification, revisionary proceedings, collection and recovery of taxed, passing OGE, prosecution and compounding proceedings, etc.) in a faceless manner to the extent possible

Effective 13 Aug 20, all cases including existing scrutiny cases to be transferred under FAS to NeAC subject to exceptions

No physical interface except in case of personal hearing through video conferencing on exceptional basis

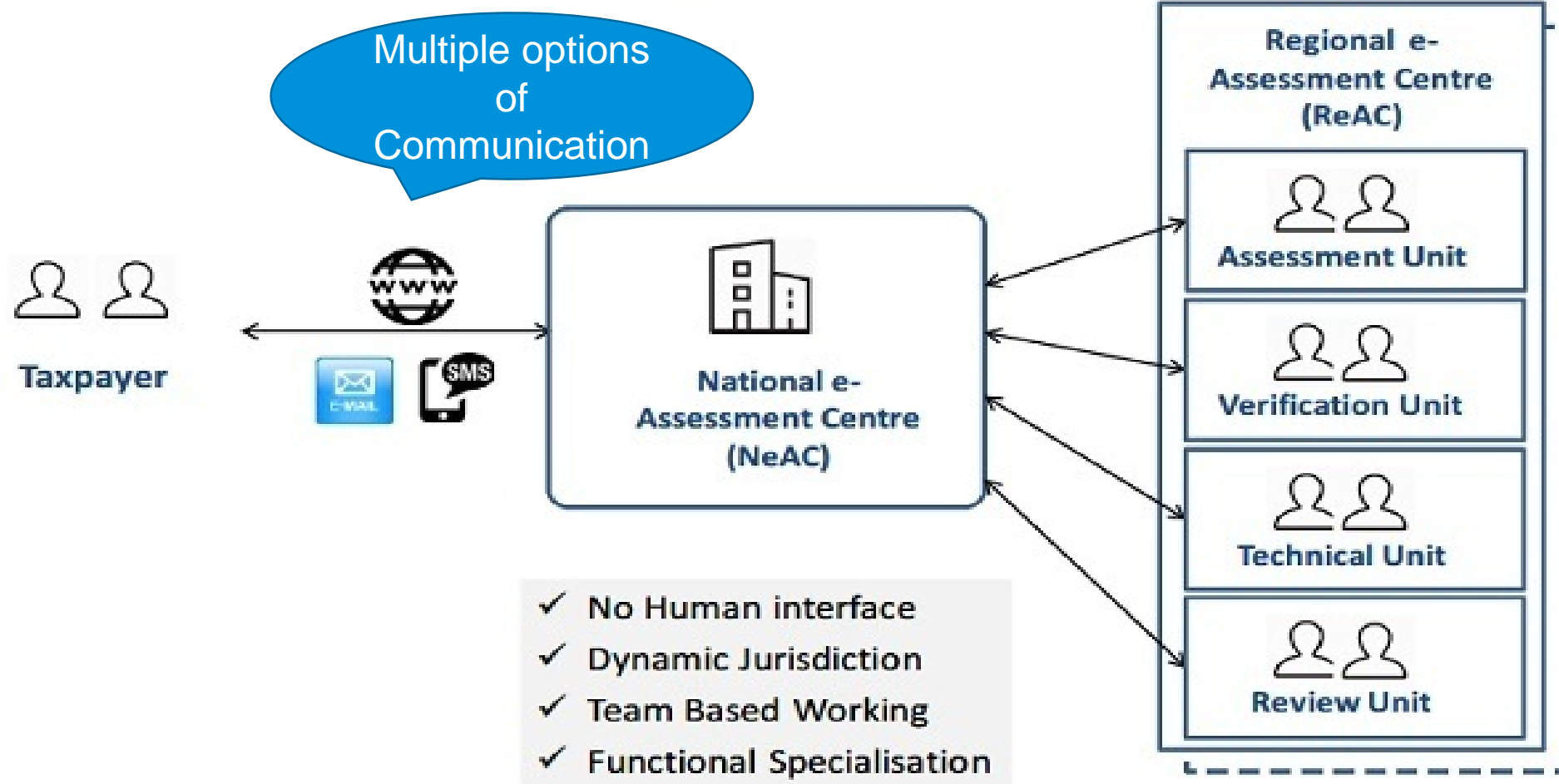
Central Issuance of Notices with mandatory Documentation Identification Number (DIN) for tracking & authenticity

Team based assessment with reviews at multiple stages to eliminate subjectivity

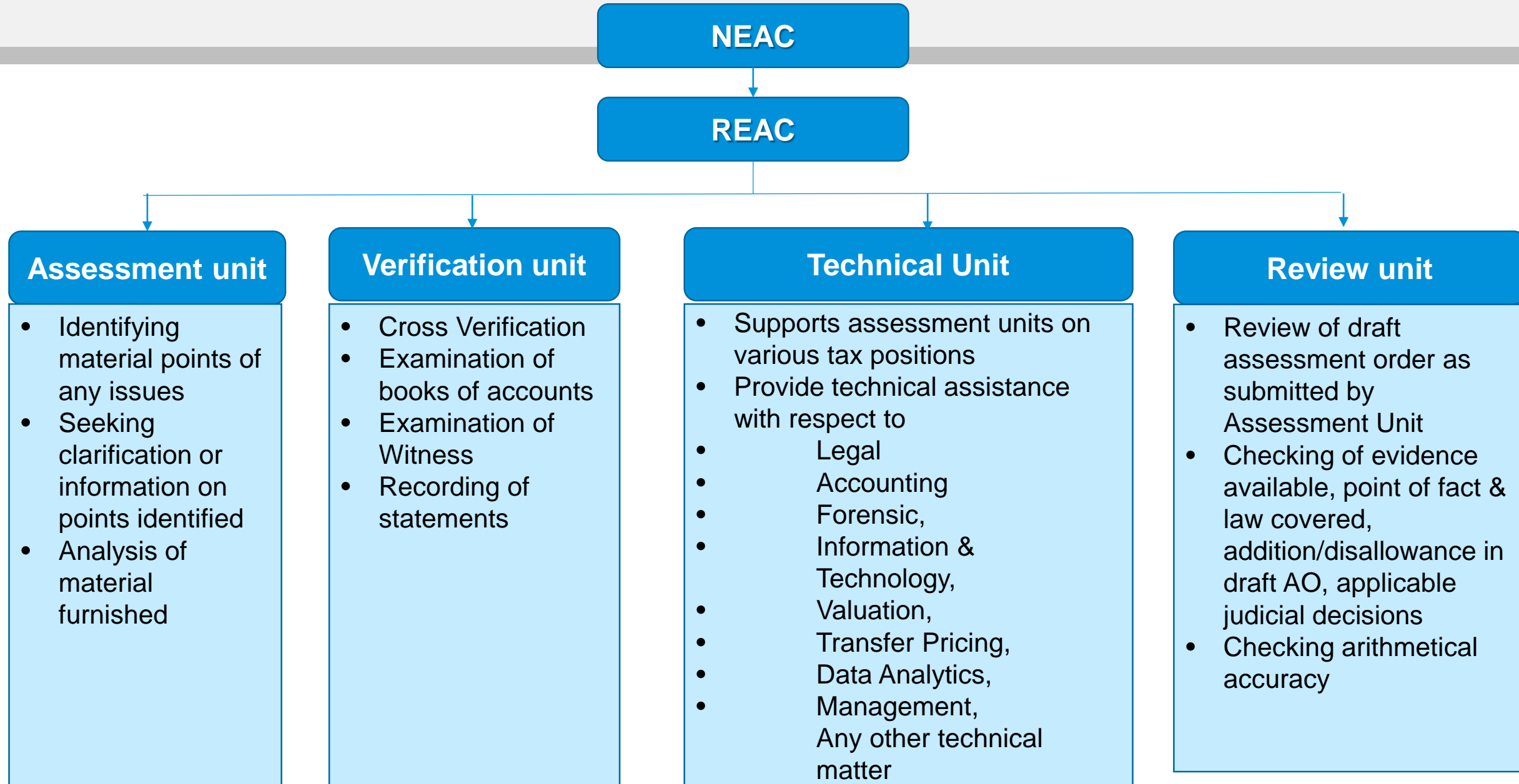
2/3rd of Tax Department's to be moved to NeAC and ReAC for FAS

E-Assessments Eco System

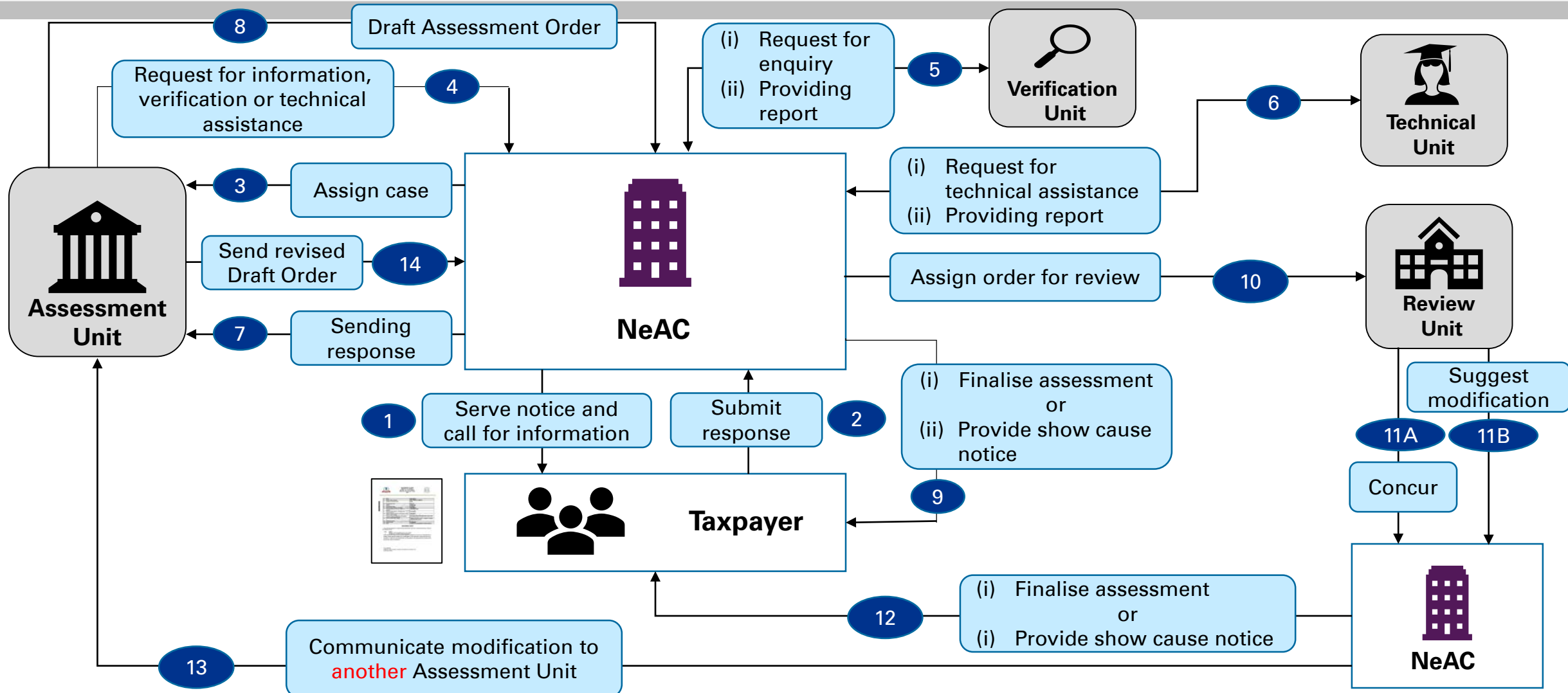
All the communications between all the units mentioned above, for the purpose of making an assessment under this scheme would be done exclusively by electronic mode through the National e-Assessment Centre.



Administrative Structure of Assessment Units



Faceless Assessment Procedure



58,000* cases selected on pilot basis

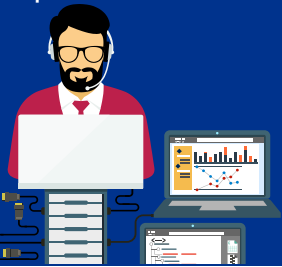
8,000 cases disposed of without adjustment

300 cases for further evaluation

Technical Aspects - FAS Assessment Stage (1/2)

Managing FAS Process

- Clear understanding of the FAS and process
- Deep technical knowledge and expertise



Stage 2

- Clear Understanding of the FAS, Authorities, their powers, roles & responsibilities, process, exceptions, etc.
- Understanding of the profile of the Officers, authorities preparedness, their functioning, Proactive engagement with tax payers on tax matters
- Proactive identifications of issues and preparing for submissions
- Gaining knowledge of industry specific issues, critical industry agnostic issues, and preparing for submissions
- Repository of data about different issues raised, positions taken in assessments, etc.
- Assessing the non-compliance under various legislations and its ramifications
- Strategic thinking and discussions with tax payers while making submissions – approach, contents, timing, timelines, quality, supporting documentation, ramifications, reconciliations, etc.
- Assessing the need for and requesting personal hearing through video conferencing

Technical Aspects - FAS Assessment Stage (2/2)



Managing FAS Process

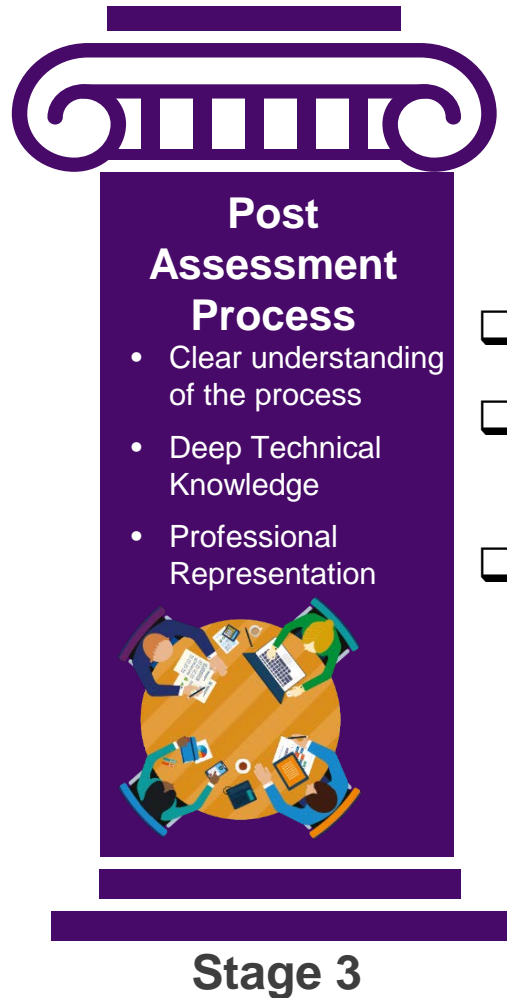
- Clear understanding of the FAS and process
- Deep technical knowledge and expertise

Stage 2

❑ Preparing and filing submissions

- Careful review of notices, discussions with tax payers, understanding the perspective,
- Discussions with the tax payers and gaining understanding
- Detailed analysis of the return documents, TAR, TP Report and GST returns as required
- Carry out reconciliation of financials with Form 26AS
- Quantity and quality of submissions – crisp and precise
- Appropriate use of judicial precedents
- Taking support from other legislations and judicial precedents
- Assessing the impact of submissions on other areas such as TP, GST and FEMA
- Seeking the need to specialists including the Senior Counsels
- Avoid delays and non-compliance with the notices – it could adversely impact the profile of the Tax Payer
- Documents to be submitted along with the submissions
- Continuous Tracking of notices with clients and on ITBA
- Review of Draft Assessment Orders and Objection raised and making appropriate submissions
- Regular communication and discussions with the tax payers to manage risks

Technical Aspects - Post Assessment Stage



**Post
Assessment
Process**

- Clear understanding of the process
- Deep Technical Knowledge
- Professional Representation

Stage 3

- Careful Review of the Order and advising clients on the action steps
 - Reconciliation of Rol and Assessment Order workings
 - Decision on CIT Appeal Vs. DRP
 - Filing of appeal – technical and substantive issues
 - Rectifications Vs. Appeal
 - Stay of Demand
- Appropriate submissions for penalty initiated in the assessment
- Strategizing on prosecution proceedings, if any, that could emanate from the assessment
- Majority of these processes would be in faceless manner – follow the principles discussed in relation to faceless assessments

Technical Aspects - Appeal Stage

Faceless Appeal Process

- Refreshed Representation Skills
- Tech Savviness



Stage 4

- ❑ Clear Understanding of the Virtual hearing process, SOPs, profile of the judicial members, process, exceptions, etc.
- ❑ Review of appeal memos and other related documents to assess the need for filing any additional grounds of appeal, withdrawal of any grounds, or filing of cross objections
- ❑ Discussing and strategizing with the tax payers about the representation strategy including the need for engaging a Counsel
- ❑ Strictly follow the SOPs issued by Appellate Administrative Authorities including the Dress Code
- ❑ Prepare and submit crisp submissions before the hearing to make the hearing effective. Submit the required supporting documents in advance
- ❑ Keep the supporting documents ready at the time of the hearing to avoid distractions
- ❑ Avoid non-compliance with notices and adjournments
- ❑ Follow relevant principles discussed in the context of FAS
- ❑ Carefully reviewing the order and advising tax payers on the way forward

Technical Aspects - Post Assessment Stage

Post Assessment Process

- Clear understanding of the process
- Deep Technical Knowledge
- Professional Representation



Pillar 3

- Knowledge of tax payers Business and Industry
- Proactive engagement with tax payers on tax matters
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Technical Aspects - Appeal Stage

Faceless Appeal Process

- Refreshed Representation Skills
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Pillar 4

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Infrastructure required for seamless implementation of the Scheme

Easily Accessible Video Conferencing centers at various locations in the Country

Dedicated Helpline / Customer Care Number

Use of robust Technology software to avoid any glitches

Acceptance of bulk files with no restriction on file size

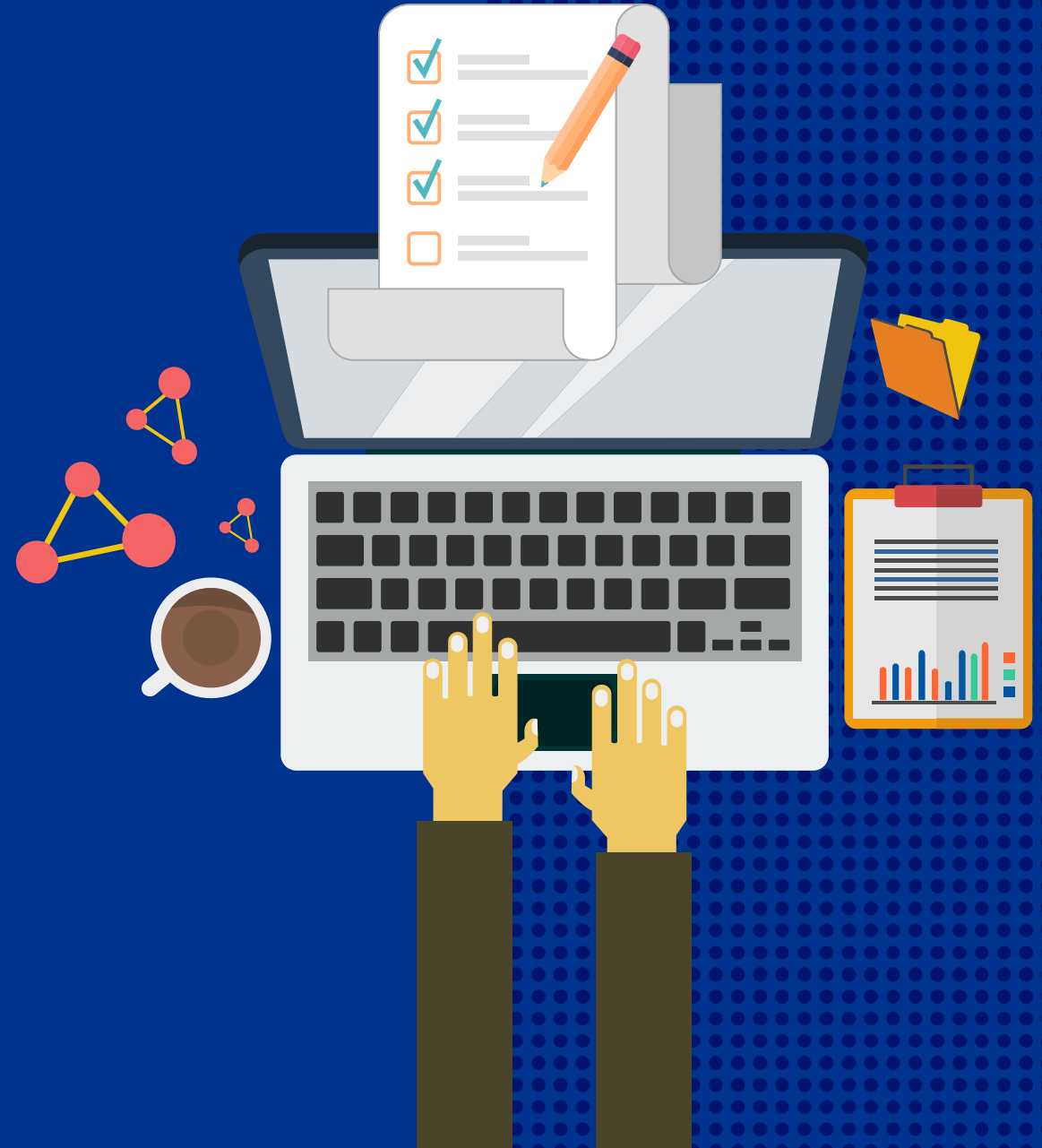
Appropriate training of team members

Mega servers to store and retrieve data

High Speed internet infrastructure in tax offices

Digitization of old records- Smooth transition and updated trail of records

Technical and Legal Issues under FAS



Faceless Assessment - Points for consideration

- ❑ Impact of historical adjustments made by AO's under the new scheme?
- ❑ Fresh reassessment proceedings – Who will issue a 148 notice and record reasons for reopening?
- ❑ Set aside proceedings – Whether to be handled by NeAC or Jurisdictional AO?
- ❑ Penalty Proceedings – Whether covered under the scheme?
- ❑ Revenue targets for NeAC?
- ❑ Provision for personal hearing?
- ❑ Timelines for completion of assessment under the scheme?
- ❑ Jurisdictional HC orders?
- ❑ Behavior mapping of Assesseees
- ❑ NeAC, at any stage, may transfer the case to jurisdictional AO after obtaining prior approval of CBDT
- ❑ Post completion of assessment, NeAC to transfer all electronic records of the case to the jurisdictional AO

Faceless Assessment - Illustrative Open Questions

- When will notices/intimation be issued under faceless regime?
- With the dynamic jurisdiction, the judicial precedents of which region would be applied under the faceless regime – jurisdiction of assessee or Regional e-Assessment Centers ('ReAC')?
- Whether draft assessment order would be served upon the assessee in all the cases?
- Whether past history of the assessee be made available to NeAC and role it would play in the conduct of faceless assessment proceedings?**
- Whether NeAC will have power to levy penalty and if yes, what types of penalty can be levied by NeAC?**
- Who will lay down the circumstances for personal hearing through video conferencing and how will it be practically implemented by ReACs?
- Whether claims not considered in ITR i.e. fresh claims, can be raised before NeAC?**
- How would 360 degree profiling of taxpayer impact the conduct of faceless assessment proceedings?
- What is the procedure for seeking adjournment under the faceless regime?**
- Whether there is a mechanism available under faceless regime to change limited scrutiny proceedings to complete scrutiny?**

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
1	How can we determine whether an Assessee's case is selected for FAS	<ul style="list-style-type: none">• As per CBDT's notification dated 13 Aug 20, all pending as well as future assessments (except cases of Intl. Tax and Central Charge) will be now done through FAS.• Notice from NeAC would be issued to the email id registered with income-tax portal / mentioned in the ROI.• An assessee can regularly visit e-proceeding tab on income-tax portal to check the issuance of assessment notice.
2	Which cases fall under Central Circle?	<ul style="list-style-type: none">• Cases relating to Survey, Search and Seizure, Serious Frauds, Major Tax Evasion, Black Money Act and Benami cases, fall in the range of Central Circle
3	For ongoing assessments, will a fresh notice be issued by NeAC?	<ul style="list-style-type: none">• Notice(s) will be issued by NeAC in due course.
4	Whether in faceless regime, uploading of voluminous data would be a challenge?	<ul style="list-style-type: none">• Efforts are being taken to improve the infrastructure.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
5	When an assessee makes a submission on its letter head, in that case, revenue department would be knowing the contact person name and telephone no? Can the FAS team call the Assessee?	<ul style="list-style-type: none"> • A telephone call by the department (except by RJAO) to the assessee or tax consultant, is not tolerable. • If an assessee receives call from the department then he has enough avenues to lodge a complaint.
6	Whether the assessee will be given an opportunity of being heard if adjustments are made to the returned income?	<ul style="list-style-type: none"> • Para 5 "Procedure for assessment" of the FAS, clarifies that NeAC will issue a 'Show Cause Notice' along with 'draft assessment order' if any adjustments are proposed to the returned income.
7	Whether uploading of responses through portal without DSC is enough, or will it be considered void?	<ul style="list-style-type: none"> • Para 9 (of FAS) "Authentication of electronic record" wherein it is clarified that documents can either be uploaded using DSC or Electronic Verification Code.
8	What is the procedure for seeking adjournment under the faceless regime?	<ul style="list-style-type: none"> • The Assessee must file a letter seeking adjournment and AU will convey to assessee on whether adjournment is granted or not - through the NeAC.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
9	Whether under faceless regime a limited scrutiny proceeding can be changed to complete scrutiny	<ul style="list-style-type: none"> • One can expect further clarification on this issue.
10	How would cases be allocated to ReAC / AU – would the complexities of business, huge size of transactions, business profile etc. be considered	<ul style="list-style-type: none"> • Basis our understanding of the FAS, it would be computer-based / random allocation of cases.
11	With dynamic jurisdiction, the judicial precedents of which region would be applied under the faceless regime – jurisdiction of the assessee or the ReAC?	<ul style="list-style-type: none"> • Law of land is clear that judicial precedents qua the assessee are to be applied, i.e. case laws of the jurisdiction where PAN of assessee is registered. • For consistency, the department is striving for standardization; however, law of land would continue i.e., precedent qua the jurisdiction of assessee would apply. However, standardization can be achieved for issues where there is no conflicting high court decision. At present, it is pre-mature to state on standardization. • The High Court decision of jurisdiction of AO would continue to hold good even after FAS, unless the Supreme Court reverses the decision.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
12	<p>Whether past history of the assessee would be made available to NeAC and the role it would play in conduct of faceless assessment proceedings?</p>	<ul style="list-style-type: none"> • Depending on issues for which the case has been selected for scrutiny, AU may need to refer to past assessment records. • Currently, data of past 3 years is already available in ITBA • Also, if any more data is required by the AU, the same will be made available by NeAC through RJAO. • In case of complete scrutiny, the AU may retain Y-On-Y adjustments, if they pertain to legal issue and do away with those which may be infructuous
13	<p>Who will lay down the circumstances for personal hearing through video conferencing and how will it be practically implemented by ReACs?</p>	<ul style="list-style-type: none"> • NeAC after seeking approval from CBDT will provide circumstances in which personal hearing through VC can be made. Practically, the NeAC will present the circumstances (before the Board) under which VC hearing as an exception should apply and depending on Board approval, the 'prescribed circumstances' would form part of the scheme itself under Para 12 (vib). • A new set of SOPs for FAS would be approved by CBDT outlining the criteria under which a request for a VC interaction could be approved by Chief Commissioner.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
14	Whether NeAC will have power to levy penalty and if yes, what types of penalty can be levied by NeAC?	<ul style="list-style-type: none"> • Powers to initiate penalty proceedings for any non-compliance during the course of assessment, are vested with NeAC and would be faceless. • As far as other penalties for concealment / under reporting / misreporting of income (i.e. Section 270A), etc. is concerned, it would continue to be with RJAO until a separate faceless penalty scheme in this regard is notified. • Faceless penalty scheme is currently in progress and once implemented, all penalty proceedings would move to National e-Penalty Centre.
15	In a case where no response has been received from the assessee despite reminders, how will the physical enquiry be conducted by the VU?	<ul style="list-style-type: none"> • It would be covered by the order of the Pr. CCIT of NeAC issued under clause 12(vi) of the scheme and as approved by the Board. • Further, SOP in this regard is being framed and awaited.
16	Who will undertake TP assessment proceedings – TPO or TU in NeAC?	<ul style="list-style-type: none"> • Resident tax payers TP is covered under FAS and Non-resident tax payers is with the TP authorities. • For resident tax payers, TU will house TP experts and as per the scheme, AU (through NeAC) will make reference to TU for determination of ALP (As of now in case of resident taxpayers only). • The SOPs for both these areas are still being drafted and will be released shortly.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
17	What will happen to pending rectification / OGE applications?	<ul style="list-style-type: none">• As per our understanding of the scheme, all functions except assessment would be performed by RJAO
18	Whether the option for filing additional evidence under Rule 46A would be available and which authority will prepare the remand report?	<ul style="list-style-type: none">• The authority to prepare 'remand report' would be with RJAO.• Faceless appeal scheme is expected soon (as it is effective 25 September 2020) and we will have to wait for more clarity on such matters.
19	Which tax officer is to be addressed for filing an appeal against the assessment order issued u/s 143(3)?	<ul style="list-style-type: none">• RJAO name would be appearing in the appeal. However, one needs to wait for Faceless Appeal Scheme.

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
20	Which authority will have the power to withhold refund u/s 241A? Also, for such withholding, approval would be accorded by Pr. Commissioner or Commissioner of which hierarchy – Faceless or Residual?	<ul style="list-style-type: none"> • Recovery is part of JAO's functions and, as the case is transferred back to JAO post assessment completion, power to withhold refund would rest with JAO. i.e. residuary hierarchy will be responsible. • Accordingly approvals of the jurisdictional PCIT/CIT would be required. • The Department is working on creating a window to get input from both FAS and jurisdictional team. If there are genuine reasons for withholding a refund, a view would be taken by both the teams. The withholding would not be governed by the budgetary targets of the officer.
21	Which authority will process the refund determined post assessment proceedings?	<ul style="list-style-type: none"> • RJAO along with CPC will process the refund as is presently applicable.
22	Whether TDS proceedings would also be covered under the faceless assessment Scheme? If yes, tentatively from when?	<ul style="list-style-type: none"> • We understand that TDS proceedings will be separately handled by TDS officer in TDS wing i.e. face-to-face proceeding / assessment

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
23	<p>Would DRP be covered under FAS?</p>	<ul style="list-style-type: none"> • DRP will continue to function in the same way as at present. • However, clarification regarding FAS for DRP is awaited.
24	<p>Whether draft assessment order would be served upon the assessee in all the cases?</p> <p>Whether DRP route would be available against assessment orders issued by NeAC?</p>	<ul style="list-style-type: none"> • Under the FAS, in case of eligible assessee, NeAC will issue DAO twice viz.: first when adjustments are proposed to the returned income, DAO along with show cause notice will be issued. Second time after considering the response filed by the assessee, NeAC will again issue DAO. • Accordingly, post receipt of the DAO, the assessee will have to exercise an option of DRP / CIT(A) route. • In cases where adjustments are not proposed, DAO will not be served to the assessee.
25	<p>Whether Pr. CIT of RJAO would have revision powers (u/s 263) in case of assessment order passed by NEAC / ReAC</p>	<ul style="list-style-type: none"> • Law would remain the same regardless of FAS

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
26	Who will conduct reassessment proceedings: <ul style="list-style-type: none">• Where notices are already issued.• Where fresh notices are yet to be issued?	<u>Existing Cases:</u> <ul style="list-style-type: none">• All present cases where Section 148 notices have already been issued and responded would move to NeAC. <u>Fresh Cases:</u> <ul style="list-style-type: none">• Fresh notices under Section 148 for re-assessments would be continued to be issued by Residuary Jurisdictional AO
27	Whether claims not considered in the ITR i.e. fresh claims, can be raised before NeAC?	<ul style="list-style-type: none">• Situation remains same as it was prior to FAS. Where fresh claim is being made by assessee, the claim has to satisfy the prevailing tests and judicial precedents.
28	Whether Pr. CIT of RJAO would have revision powers (u/s 263) in case of assessment order passed by NEAC / ReAC	<ul style="list-style-type: none">• Law would remain the same regardless of FAS

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
28	How the provisions of Section 144A will operate in relation to the Powers of a Joint Commissioner to Issue Directions in certain cases, either <i>suo-motu</i> or on reference by either the AO or the Taxpayer?	CBDT has issued scheme u/s 143(3A), directions u/s 143(3B) and notifications u/s143(3C) for the implementation of the scheme. In the decision making process of FAS, Jt. Commissioners are already included in the discussion and accordingly, the purview of section 144A would be modified for faceless assessment as there is already a team based assessment happening under FAS. There are still some assessment proceedings which will be undertaken outside FAS and for those proceedings 144A would still hold good
29	How the provisions of Section 142A with regard to reference to Valuation Officer would work under FAS?	Once the notice is issued under Section 143(2), the AU can refer the matter to TU and TU would thereby make a reference to valuation officer u/s 142A. The draft SOPs are already in place and will be issued for this shortly.
30	How the provisions with regard to invocation of GAAR will work under FAS?	This issue will be clear once SOPs will be issued. Chapter X-A has come into force for AY 2018-19 and as per Section 144BA, the provisions can be invoked only during the assessment proceedings. If at all there would be a situation where facts of a case warrants invocation of GAAR provisions, the decision may be taken to transfer the case to the jurisdictional officer (option available under FAS). Till today, no officer in India has come up with a situation of invoking GAAR, however if in future the situation arises, SOPs will be put in place to deal with the situation.

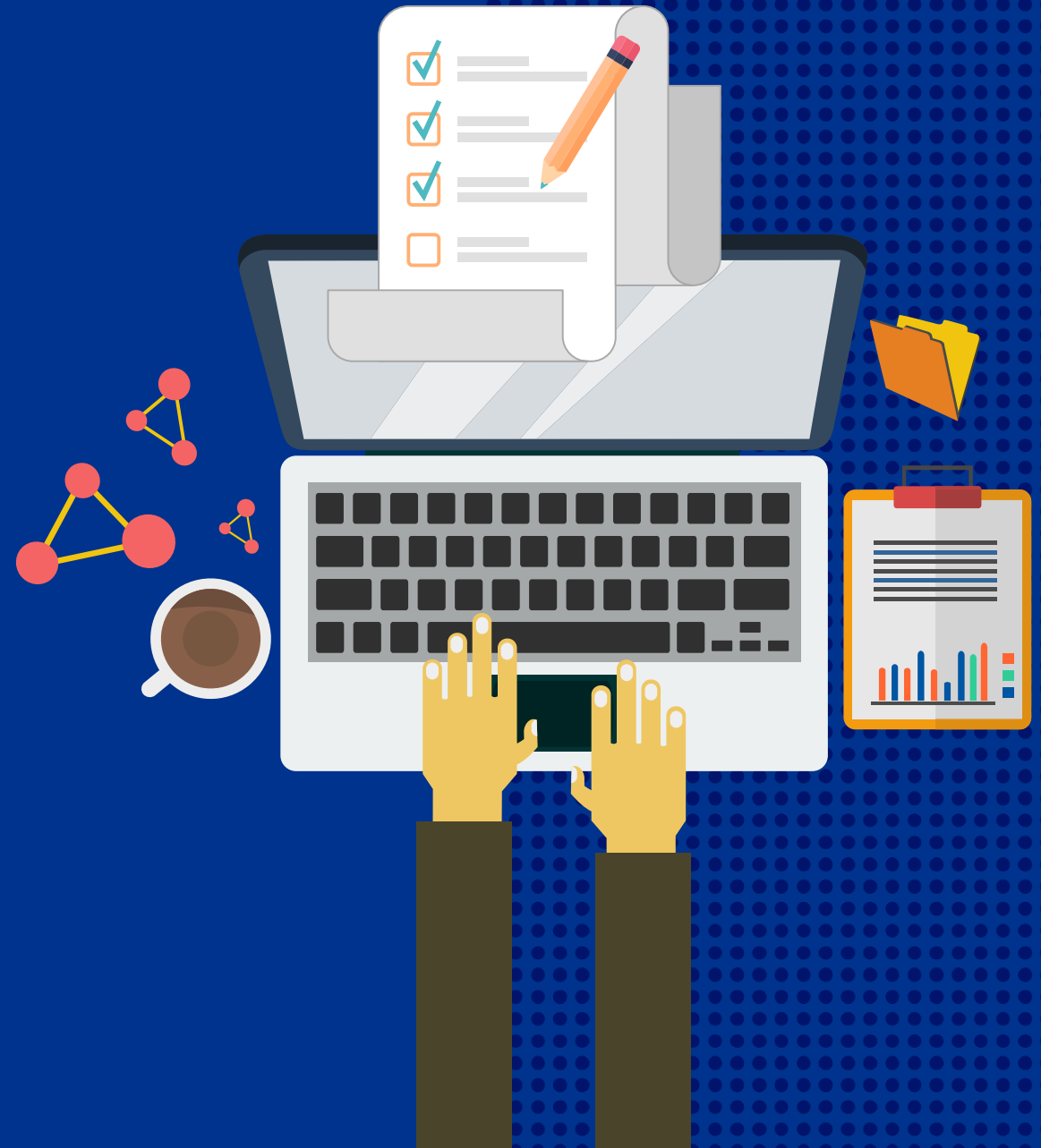
Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
31	<p>Whether the response can be submitted in parts when the issues are complex?</p> <p>Whether adequate time will be provided so that the Tax Authorities do not resort to Best Judgement assessment under Section 144</p>	<ul style="list-style-type: none"> • The Department will modify the system to accept the submissions in parts in case of complex issues and accordingly assessments would be completed • The department would give sufficient time to the taxpayers and use Best judgment assessment provisions sparingly
32	<p>As per current norms a taxpayer is not permitted to upload more than 10 attachments, each not exceeding 10mb. This restriction imposes a huge burden on Taxpayers.</p>	<ul style="list-style-type: none"> • The capabilities of enhancing functionality for uploading voluminous data will be there. But one needs to ensure that questions by the department would be pointed and response should also be pointed. Under FAS, there will be less occasions of voluminous responses to be furnished by the taxpayer and one has to be professional in answering to the questions (quality is important).
33	<p>How would NeAC deal with documents submitted in vernacular language</p>	<ul style="list-style-type: none"> • The Department is considering appointing authorised translators to translate the documents in English for NeAC

Faceless Assessment - FAQs and Preliminary responses based on Speaker's interpretation / Senior Revenue Officers statements

Sr. No.	Questions / Issues	Preliminary view / Response by Senior Revenue Officers
34	The AU may make a request to NeAC for conducting of certain enquiry or verification by a VU. Under what circumstances would such a request be made and how would NeAC ensure that such enquiry or verification is conducted in a Faceless Manner?	<ul style="list-style-type: none">• A very strict SOP on this has been drawn, rest assured there will be stringent measures which would check on any matrix / case which is referred by AU to VU.
35	How the documents impounded under Survey Proceedings under Section 133A would be made available to the tax payers for making submissions under FAS	<ul style="list-style-type: none">• This under examination by the CBDT. In case of impounding, the case will be transferred to the Central Circle and will not be handled under FAS

Key Takeaways and Way Forward



Key takeaways

**Proactive preparedness
with extra cautious
approach**



**Enhanced
transparency and
accountability with
audit trails**



**Inter-departmental
data exchange and
cross-referencing**



**Need for robust,
concise and
comprehensive
submissions**



**Reduced arbitrariness aimed
at gaining taxpayer's trust**



**Adherence to code of
conduct for virtual
court hearings**



Way Forward

Transformation of tax function within the office of the Advisors and tax payers

Investment in IT infrastructure, technology and changes in processes

Ongoing training to the team members

“Change in the mindset” of stakeholders

Timely compliances with notices to avoid stringent penalties for non-compliance

Focus on Quality Vs. Quantity – Proper review submissions being filed

“More Strategic Thinking” to be applied on technical submissions

Maintain exhaustive documentation for each and every transaction

Question and Answers



Thank You

Jayesh Kariya

Steps and Guidelines for Submissions under FAS



How to submit response to Income-tax notices (1/3)

Let us go through the steps of responding to the different types notices the taxpayers receive from Income Tax Department

INTIMATION UNDER PRIMA-FACIE ADJUSTMENTS U/S 143(1)(a):

Given below are the steps on how to respond to the Prima-Facie Adjustments(PFA) notice issued u/s 143(1)(a) of the Income Tax Act.

1. Go to Income-Tax e-Filing portal, '<https://www.incometaxindiaefiling.gov.in/home>'
2. Login to e-Filing portal by entering user ID (PAN), Password, Captcha code and click 'Login'.
3. Post login, click on the 'e-Proceeding' menu and click 'e-Proceedings' link.
4. A new page will appear showing details of the notices (if available) such as PAN, Assessment year, Proceeding Name, Proceeding Status, Proceeding Limitation Date, Proceeding Closure Date and Action.
5. Click on the 'Adjustment u/s 143(1)' hyperlink available under 'Proceeding Name' column to view proceeding details.
6. Additional proceeding details for that particular Assessment year such as Notice/Communication reference ID, Notice u/s, Description, Issue On, Document Id, Served On, Response Due date and Response are displayed.
7. To view the details of the notice, click on the 'Notice/Communication reference ID' link and to submit your response against the particular notice, click on the 'Submit' link under the 'Response' column.
8. By clicking the 'Submit' link, a page will appear show in g details of all the mismatches found in the ITR for which the intimation has been sent to the taxpayer.

How to submit response to Income-tax notices (2/3)

9. At the bottom of the same page, the taxpayer must select an appropriate response among the three available options as follows,



Agree



Partially Agree



Disagree

Table showing the steps to be followed for the above three different options.

1	2	3
<p>If the taxpayer chooses to 'Agree' with the variances received from the income tax department, then he/she must file the revised return before submitting the response.</p>	<p>If the taxpayer chooses to 'Partially Agree' with the variances received from the income tax department then he/she must file the revised return for the agreed variances before submitting the response for the disagreed variances.</p>	<p>If the taxpayer chooses to 'Disagree' with the variances received from the income tax department, he/she needs to choose 'Disagree' and Click 'Continue'.</p>
<p>The revised return can be filed by clicking the 'Please file a Revised Return' hyperlink available next to 'Agree' option or the same can be done through 'e-File Income Tax Return'.</p>	<p>The revised return can be filed by clicking the 'Please file a Revised Return' hyperlink available next to 'Partially Agree' option or the same can be done through 'e-File Income Tax Return'.</p>	<p>In the next page, the taxpayers can enter their responses in the text boxes available against each of the variances listed and reconcile the variances in the 'Dynamic Reconciliation Statement'.</p>
<p>After filing the revised return, the 'Latest Revised Acknowledgement Number' will be auto filled in the page containing details of variances.</p>	<p>After filing the revised return, the 'Latest Revised Acknowledgement Number' will be auto filled in the page containing details of variances. The taxpayer must provide the response to the disagreed variances and reconcile the variances in the 'Dynamic Reconciliation Statement'.</p>	
<p>Click on 'Submit '. A success message will be displayed as 'Agreed and Revised Return filed'</p>	<p>Click on 'Submit '. A success message will be displayed as 'Partially Agreed and Revised Return filed'.</p>	<p>Click on 'Submit '. A success message will be displayed confirming the submission.</p>

Note: The taxpayers can view their submitted response under the 'Response' column by clicking the 'View link.'

How to submit response to Income-tax notices (3/3)

Other Proceedings:

Given below are the steps on how to respond to the notices/intimation other than PFA proceedings,

No Change in step 1 to step 4

5. Click on the hyperlink of appropriate notice available under 'Proceeding Name' column to view proceeding details.
6. Additional proceeding details for that particular Assessment year such as Notice/Communication reference ID, Notice u/s, Description, Issued On, Document Id, Served On, Response Due date and Response are displayed.
7. **To view the details of the notice, click on the 'Notice/Communication reference ID' link and to submit your response against the particular notice, click on the 'Submit' link under the 'Response' column.**
8. Upon clicking on submit, a new page is opened where the Proceeding Name, Document Reference Id and Notice Section are pre-filled. Select the 'Response Type' from the dropdown (Partial Response/Full Response) Enter the 'Response/Remarks'. Select the 'Attachment Description' from the dropdown and attach the supporting scanned documents in PDF format and click 'Continue' to proceed further.

Note: In case, the notice is related to Sec 142(1) [Calling of return]/148/153A/153C, upon click of submit, the assessee shall be re-directed to 'e-File-> Income Tax Return' page, where he/she can upload the Income Tax Return .

9. **The Submission can be-Verified using Electronic Verification Code (EVC) / Digital Signature Certificate (DSC.)**

A success message will be displayed confirming the submission of response.

Key Points to remember while submitting the response for the e-Proceedings

- ❖ **If response submission is made in instalments, then one need to choose the response type as "Partial".**
- ❖ **In case of multiple partial responses, while submitting the last of the partial responses, the 'Response Type' to be chosen as 'Full Response' to indicate that you have nothing more to submit further.**
- ❖ **Maximum characters allowed in 'Response/Remarks' field is 1000 characters.**
- ❖ If list of drop down values does not include the 'Attachment Description' of the document that you propose to attach, choose the value "Others" and enter the name of the document in lines with the other drop down values.
- ❖ **The file name of the attachment should not exceed 100 characters and the file name should not be repeated.**
- ❖ **Maximum of 10 PDF attachments can be submitted in a single response submission and any number of submissions can be made in response to a single notice/intimation/order. Maximum size for each attachment should not exceed 5 MB.**
- ❖ If a document size exceeds 5 MB size, kindly split the document into two or more files with document name differentiated by tagging _1, _2, _3 etc. Example: Bank account statement 1, Bank account statement 2 etc.
- ❖ **If number of document exceeds ten in number, kindly prefer multiple submission in response to the notice by choosing the 'Response Type' as 'Partial Response'.**
- ❖ In case, you have missed out submitting any response or documents you can submit additional response even if the response type mentioned earlier was 'Full Response', as long as the 'Submit' hyperlink against a proceeding is enabled.

Best Practices for Scanning the Supporting Documents

Follow the below key points while scanning the supporting documents

1. Scan Settings

- Set the Scan Clarity to at least 300 DPI.
- **Choose the format of saving the document as PDF and name the document appropriately**
- **Scan the document in Black and White only.**
- Please ensure that the document is not password protected.

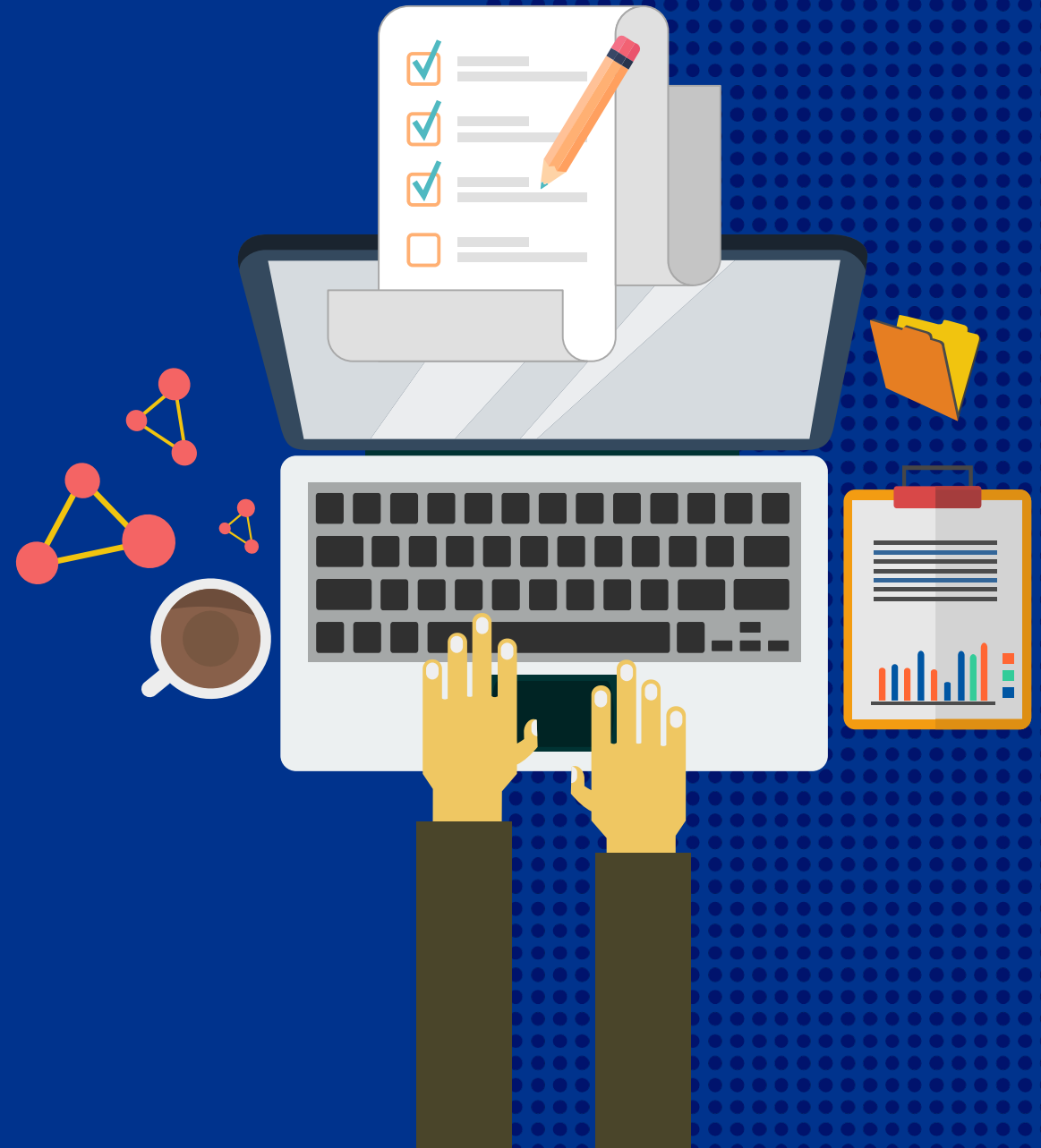
2. Scanning Source Documents

- **Scan only the original document**
- **Ensure that the document size is A4 or letter size only.**
- If there are multiple pages, kindly scan all the pages into a single file and ensure that the final size of the PDF does not exceed more than 5 MB.

3. Key points to avoid poor quality

- Please ensure the original Document that is being scanned is clear and not faded.
- If the documents are handwritten, please ensure that it is clear and legible.
- Please ensure documents are devoid of ink bleeding or smudging.

Reading Materials



Advantages of the Scheme

- ❑ Ease of compliance for taxpayers
- ❑ Elimination of harassments, unethical practices and corruption
- ❑ Transparency and efficiency
- ❑ Functional specialization
- ❑ Improvement in Quality of Assessment
- ❑ Expeditious and timely disposal of Cases
- ❑ Decrease in the cost of compliance - saving in time of visiting tax office and also waiting time at tax office
- ❑ Eliminates cases of non-receipt or delayed receipt of notices
- ❑ Uniform position on various legal issues across different Tax jurisdictions
- ❑ Review mechanism should result in fair and reasonable assessment

Disadvantage of the Scheme

- ❑ Crunched Time lines- expectations of timely compliances increases
- ❑ Could build pressure in certain situations - both on Tax Authorities and Tax payers
- ❑ Complex issues may not get addressed or apprehended properly
- ❑ Personal rapport and influences goes away
- ❑ Constant monitoring of emails and tax payers accounts on portals
- ❑ Additional cost of investment in Hardware & Software requirements
- ❑ Proper justification could be difficult without personal hearing in certain complex cases
- ❑ Extra time and efforts in digitizing documents and uploading lengthy submission pose more challenges
- ❑ All taxpayers could be painted with same “Brush”

Taxpayer's Charter (1/3)

- ❑ Finance Minister on 01 February 2020 in budget speech explained the requirement of giving statutory force to Taxpayer's Charter and relevant extract of the speech reads as under:

*"Any tax system requires **trust** between taxpayers and the administration. This will be possible only when **taxpayer's rights** are clearly enumerated. Towards this end, and with the objective of enhancing the efficiency of the delivery system of the Income-tax Department, I propose to amend the provisions of the Income-tax Act to mandate the CBDT to adopt a Taxpayer's Charter. The details of the contents of the charter shall be notified soon."*

- ❑ Subsequently Finance Act, 2020 inserted section 119A, with effect from 1 April 2020, to empower CBDT to adopt and declare a Taxpayer's Charter.
- ❑ Now, on 13 August 2020, the Hon'ble Prime Minister unveiled country's first charter of taxpayer's rights and duties.
- ❑ CBDT has issued Citizen's Charter from time to time, for standards of service delivery, grievance redressal, etc. However, the same never had statutory backing and didn't form part of Statute Book.
- ❑ Though the Taxpayer's Charter in the present form is too generic in nature, but the intentions are worth praising. Many countries have already implemented Taxpayer's Charter including Australia, Canada, Malta, New Zealand, Kenya, etc. In country like UK, Taxpayer's Charter has statutory backing.

Taxpayer's Charter (2/3)

Taxpayer's Rights

- | | |
|---|---|
| ▪ Right to be treated with fairness and impartiality | ▪ Right to be advised and represented by any person on taxation matters |
| ▪ Right to be treated as honest and tax-compliant | ▪ Right to appeal |
| ▪ Right for Certainty | ▪ Right to privacy and confidentiality of information we hold about you |
| ▪ Right for assistance and information from the Tax Departments | ▪ Right to know what information we hold about you |
| ▪ Right to pay no more than the correct amount of tax | ▪ Right for the licit arrangement of your tax affairs that minimize the tax liability |
| ▪ Right not to be subject to retrospective taxation | ▪ Right to request a payment plan |
| ▪ Right to minimize compliance costs | ▪ Right to complain about our service |

Taxpayer's Obligations

- | | |
|---|---|
| ▪ Obligation to be honest | ▪ Obligation to file proper and complete tax documents and effect payments by the statutory due dates |
| ▪ Obligation to be compliant and cooperate when you deal with the Tax Departments | ▪ Obligation to Inform the Tax Departments about changes in circumstances |
| ▪ Obligation to keep proper records in accordance with the law | ▪ Obligations to know your tax responsibilities and the consequences for non-compliance |

Taxpayer's Charter (3/3)

The Income Tax Department is committed to

- | | |
|--|---|
| ▪ provide fair, courteous and reasonable treatment | ▪ maintain confidentiality |
| ▪ treat taxpayer as honest | ▪ hold its authorities accountable |
| ▪ provide mechanism for appeal and review | ▪ enable representative of choice |
| ▪ provide complete and accurate information | ▪ provide mechanism to lodge complaint |
| ▪ provide timely decisions | ▪ provide a fair and just system |
| ▪ collect the correct amount of tax | ▪ publish service standards and report periodically |
| ▪ respect privacy of taxpayer | ▪ reduce cost of compliance |

and expects taxpayers to

- | | |
|---------------------------|---|
| ▪ be honest and compliant | ▪ know what the representative does on his behalf |
| ▪ be informed | ▪ respond in time |
| ▪ keep accurate records | ▪ pay in time |