



# **SURAT BRANCH OF** **WIRC OF ICAI**

E-NEWSLETTER  
OCTOBER  
2020



### **CHAIRMAN's MESSAGE**



Dear Professional Colleagues,

Greetings of the season, hope you all are enjoying this monsoon season and the festivities with proper precautions. People are getting back to their routine and along with that Indian economy have started taking step forward again and soon it will regain its momentum. Last month of August brought a welcomed change from the Government of India and CBDT with respect to Assessments of cases related to Income Tax matter. I would say it is the most sought development desired by our fraternity regarding easing the hassle faced by Tax payers and their business. The launching of faceless assessment will bring immense transparency in assessment proceedings and will surely be celebrated by all the stakeholders. The core of this faceless assessment is based on the effective use of technology and this signifies the role of technology in our profession also.

Further, as GSTN is ready to roll out the e-Invoicing under Goods and Service Tax Act our esteemed Institute has conducted a timely

webinar in this regard and discussed the procedures and how this would be implemented effectively. Moreover in the webinar the motive of e-Invoicing was also discussed and brought forward that it will ease businesses in claiming ITC will gradually replace the e-way bill system.

‘Kaizen Approach’ a Japanese term which signifies the continuous improvement at all level proactively and in incremental manner. I believe this approach would apply to every aspect from micro to macro level, in our routines, professional duties, and social responsibilities as well as in development of economy. Kaizen approach signifies holistic inclusion of people to work together proactively to achieve regular and incremental improvements. With this significance as our role as partner in nation building we should too adopt the ‘Kaizen Approach’ and bring incremental development in our nation.

In this September edition of e-Newsletter of Surat Branch of WIRC of ICAI, we have tried to include various updates with respects to our profession for ready reference to our members. Further, I would like to encourage our beloved members of Surat branch to contribute to the e-Newsletter and make it a success.

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## EDITORIAL MESSAGE



Dear Professional Colleague,

Today we are living in an era of disruption. There is so much technological advancement in current times, that we are also required to gain expertise in artificial intelligence, blockchain technology, Fintech, cloud based accounting, etc. Hence, we are expecting many more changes and challenges in future. We are thankful to members for their contribution in newsletter and expect more participation on the new changes that are coming in future.... You may write to us at [surat@icai.org](mailto:surat@icai.org).

I wish all my members a Happy Shardiya Navratra. May goddess Durga give us all powers to fight with evils and the deadly diseases that are prevailing.

Stay healthy, wealthy and safe....  
CA IP Pradeep Kabra

## Faceless Appeal Scheme: An Assessment.



**Contribute by: CA Jayraj  
Dhakan**

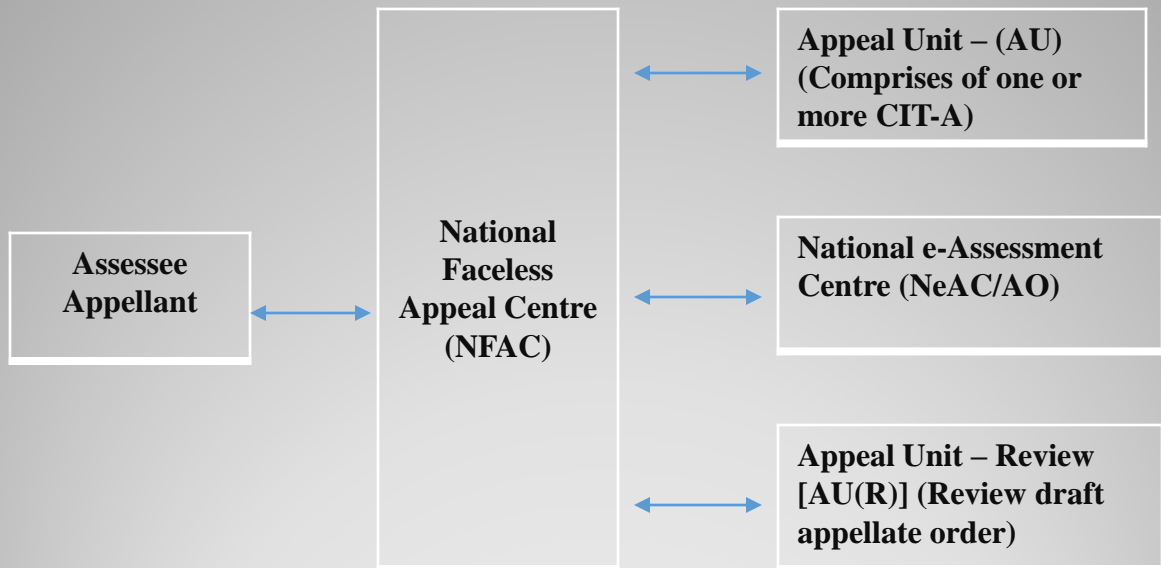
### Background

India – in particular income tax department is sailing thorough faceless proceedings. As signalled by Hon'ble prime minister, a complete overhaul is made to various income tax proceeding which, from now onwards would be done in faceless, team based and with dynamic jurisdiction. Through Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, creating complex web of tax machinery, almost forty new pages were introduced in already (over!) burdened income tax act. In amended act, more than ten proceeding will get masked. The common thread in all these amendment (when these is being written the bill also got presidential assent) is to achieve transparency and accountability, eliminating interface, optimal utilization of resources of department. This will create road block for simplification of taxation law.

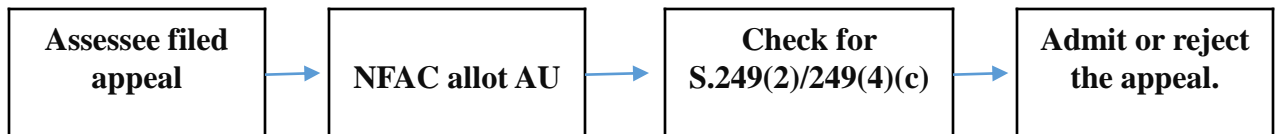
As promised by hon'ble PM, the Faceless Appeal Scheme (FAS/ "scheme") is published on September 25, 2020. Power to frame scheme is sourced from recently introduced S.250(6B) of Income Tax Act. The principle of scheme is *pari-materia* with that of faceless assessment scheme



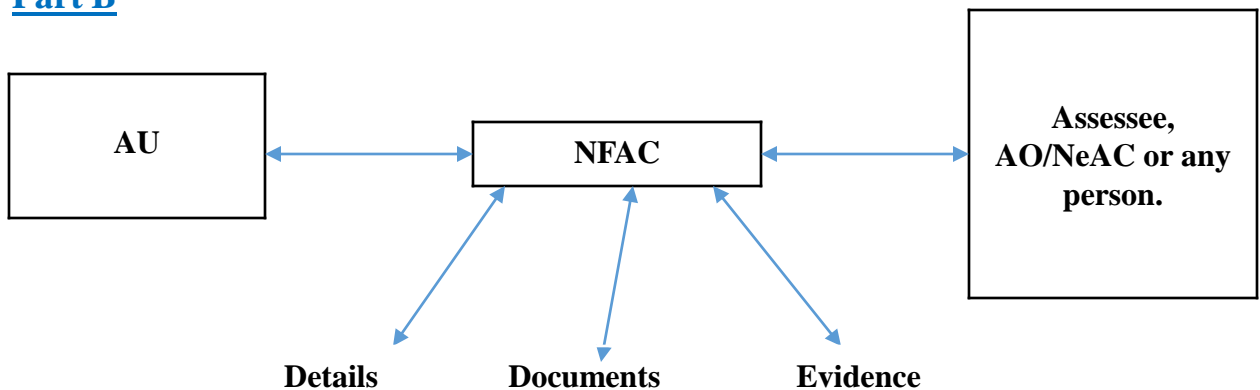
### Various Units



### Part A

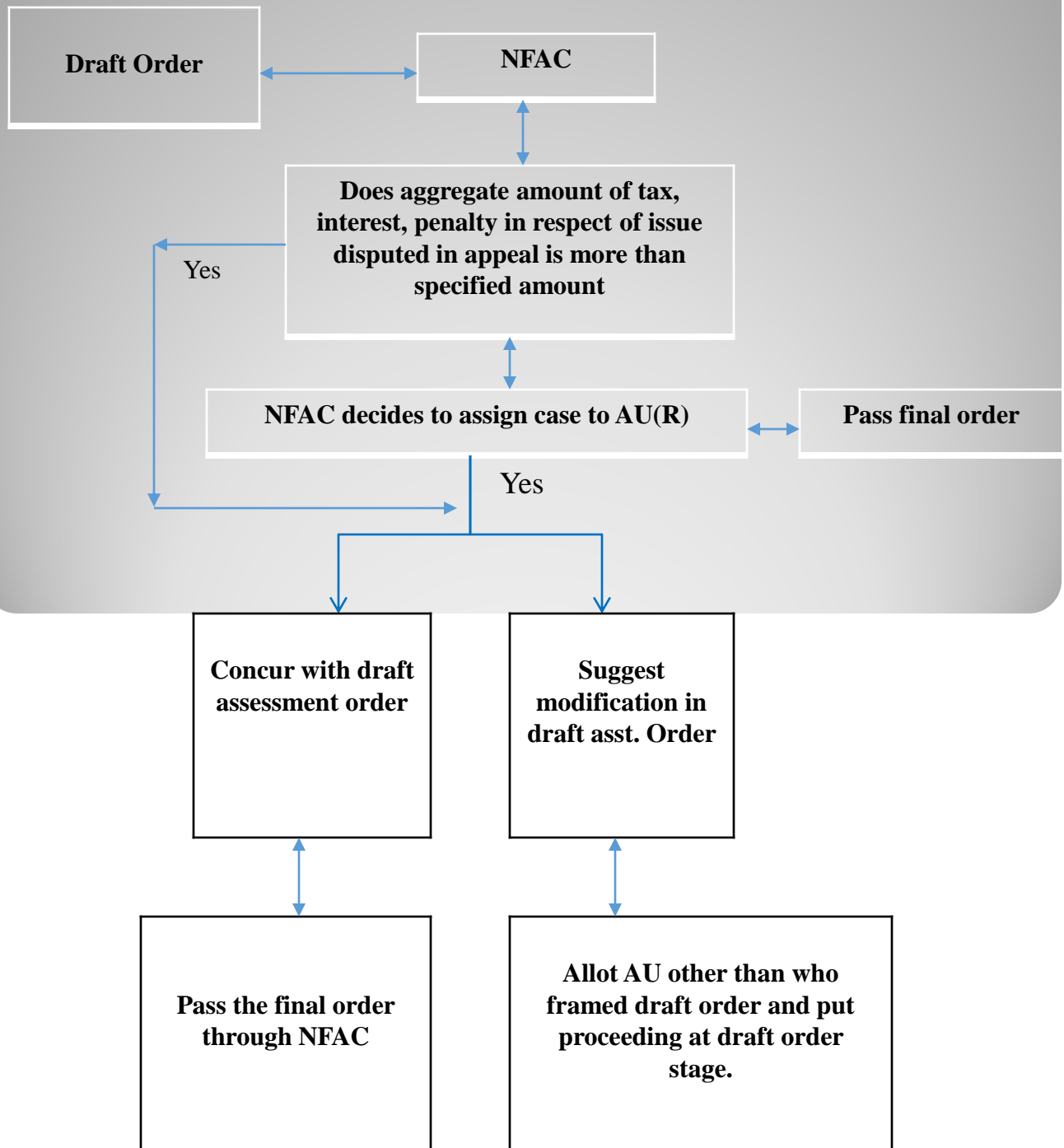


### Part B





**Part C**





### 1. Broad function

1. Appeal Unit – This is in sub and substance perform functions of gathering evidence, details, documents, seeking remand report from AO/NeAC and any person and appreciation/adjudication dispute. It will also exercise power of enhancement. It can only draft the order which is subject to review by review unit. It may comprise of one or more CIT(A); meaning thereby in case of multiple grounds of appeal (GoA), AU comprising of more than one CIT(A) be allocated and order thereof will be drafted collectively.
2. Appeal Unit (Review) - Only review the draft order prepared by appeal unit. Allotment of AU(R) is also at instance of NFAC. In case where aggregate amount of tax, penalty, interest or fee in respect of issued disputed in appeal, is more than specified limit (not specified till date), the review of draft order is mandatory. In other cases review would be at instance of NFAC through automated examination tool.
3. National Faceless Appeal Centre – Its functions include assigning AU & AU(R) to case. This would done through automated allocation system without human intervention. The officials at NFAC have no control over allocation made. Also perform functions similar to postman which would facilitate the interaction between Assessee, AU & AO. It is further stated that various unit inter se would not communicate directly but only through NFAC.
4. Appellate order will be passed under the name and signature of NFAC so as to maintain anonymity.

### 2. Procedure

1. Once the appeal in form 35 is filed by assessee appellant, the NFAC shall assign appeal to specific appeal unit.
2. In case appeal is belated/time barred and appeal unit is satisfied about sufficiency of cause of delay, it may admit appeal.
3. Where appellant applied for exemption from operation of S.249(4)(b) i.e no tax is paid on returned income or no advance tax is paid in case where no return of income is filed by appellant and appeal unit for any good and sufficient reason may exempt appellant from operation of said provision.
4. Where appeal is admitted, appeal unit may obtain information, document or evidence from appellant/NeAC/AO/any other person.
5. Appeal unit may direct NeAC/AO to make further inquiry as he deems fit u/s 250(4).
6. When additional ground of appeal is filed by appellant, the same is forwarded to NeAC/AO and AU who in turn on being satisfied that omission of additional ground from form of appeal was not wilful or unreasonable, admit such ground.
7. When additional evidence is filed, the appeal unit may, after considering additional evidence/report of NeAC/AO, admit or reject additional evidence.
8. In case where additional evidence is admitted, the same needs to be confronted to NeAC/AO for inviting his reports.





9. After considering entire material available on record, additional evidence, response/report filed by appellant/NeAC/AO/any other person, the appeal unit prepare draft order.
10. Where aggregate amount of tax, penalty, interest or fee for issue disputed in appeal, is more than specified (to be specified later) amount, shall send draft order for review. For other cases the NFAC examine draft order by way of automated examination tool and may decide to finalize the appeal as per draft order or send order for review.
11. In case AU(R) concur with draft order, NFAC pass final order.
12. In case variation is suggested by AU(R), NFAC assign appeal to AU, other than AU which prepared draft order or reviewed the draft order.
13. The AU shall after incorporating suggestions of AU(R) and/or gathering material, evidence prepare revised draft order and forward to NFAC.
14. NFAC pass final order.
15. The appeal against order passed by NFAC shall lie before ITAT having jurisdiction over the jurisdictional AO.

### **3. Applicability**

1. The scheme, in addition to using word National e-Assessment Centre uses word Assessing Officer which indicates that appeal against assessment order framed by Territorial Assessing Officer – in offline mode will also be pushed to NFAC. Even cases remanded/set aside by higher judicial forum will also be conducted in faceless manner.
2. As of now it appears that this will apply to all appeals/CIT(A) without any exception.

### **4. Critique**

1. The proposal is the draft order is subject to review by another appeal unit – the officer of equal rank. These may undermine independency of appeal unit preparing draft order. This put a question mark on constitutional validity of scheme. Though working under administrative control of Ministry of Finance, the essential functions performed by CIT(A) is that of judicial officer and all checks and balances of same are equally apply them. Had the review provided by officer of higher rank/judicial forum i.e Member of ITAT, it could be saved from constitutional attack. In fact, this would bring more transparency and compel AU to dispense the justice. Even proviso to S.119 debars CBDT to issue order/instruction/directions in following words;

**Provided** that no such orders, instructions or directions shall be issued — ... (b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.



2. Hearing is indispensable part of any appellate proceeding. In scheme, hearing (through video conferencing) is provided only in certain specified circumstances. Unlike faceless assessment, the scheme should have provided for compulsory personal hearing (through video conferencing) at option of assessee.
3. The scheme is silent on time limit within which appellate order is passed.
4. It is provided that penalty may be initiated for non-compliance of notice issued under scheme. However, the penalty order is not made subject to review by another appeal unit.
5. Appellant, Appeal Unit, Appeal Unit – Review, Appeal Unit – Revised, NeAC, AO may move rectification application through NFAC who in turn forward same to any AU through automated allocation system for his decision. It may be noted that in rectification there is no concept of review and decision of AU is final in this regard.

### A Comparative

Particulars	Conventional mode	Faceless mode
Applicable to	All appellate proceeding	All appellate proceeding
Jurisdiction decided	Territorial based on place of residence/business or type of income	Assigned on basis of automated allocation system.
CIT(A) consist of	Only one CIT(A)	One or more CIT(A)
Power of enhancement	CIT(A)	AU through AU
Admission of additional grounds/evidence	CIT(A)	AU through AU
Appeal is with	Jurisdictional AO	Any AU through NeAC
Inquiry by	CIT(A) or AO	NeAC/AO (The scheme is silent on suo-moto inquiry by AU itself)
Draft order	No such concept	Applicable
Final order	CIT(A)	NFAC
Communication	Physical interface	Exclusively online
Final say	CIT(A)	AU subject to approval by AU(R), if allotted.





### Concluding remark

As against assessment proceeding, the controversy before CIT(A) is limited to the grounds/dispute raised in appeal. The co-terminus power of enhancement has to be exercised on these line. However, bare reading of scheme suggest that scheme is meant to be second round of assessment proceeding and goal post of appreciation of facts were forgotten. Whether new scheme is appealing or not, only time will tell.

### **List of Webinar for Oct month**

10th Oct	A to z of make, start up and non msme	Rajkumar Adukia Speaker
17th Oct	Gst impact on death of proprietor and carry forward of ITC to legal heir	Arup Dasgupta Speaker
21st Oct	Inverted duty structure under gst provision	Shailesh Seth Speaker
24th Oct	Top 6 opportunities of NSE platform for CA's	Chetan Vyas Speaker

### **Startups and Angel tax in India**

The first wave of Indian startups can be traced back to the 1980s as the liberalization of the computer industry led to the origination of the now iconic software service providers such as TCS and Infosys. Interestingly, the evolution of India's startup space has continued to spawn new trends. With an expanding economy, rising middle class and improved ease of doing business, the entrepreneurial energy has trickled down below the creamy layer with a series of first-generation entrepreneurs making it big in the startup scene.

As start-ups turn out to be a major source of revenue and employment, governments from across the world have been going out of their way to facilitate the entrepreneurial dream of Startup Founders. India has done its fair bit to support start up ecosystem by means of its flagship 'Startup India' announced by PM Narendra Modi on 16th January 2016. But even with all these schemes and options, one thing that is still a potential cause of worry is Angel tax.



- **History and meaning of angel tax**

Angel tax is a term used to refer to the income tax payable on capital raised by unlisted companies via issue of shares where the share price is in excess of the fair market value of the shares issued. The excess realization is treated as income and taxed accordingly in the hands of the Company. The tax was introduced in the 2012 Union Budget by then Finance Minister Pranab Mukherjee to arrest laundering of funds. It has come to be called angel tax since it largely impacts angel investments in startups.

- **Law Governing Angel Tax In India**

**Section 56(2)(viib) of Income Tax Act, 1961** is the core section of Angel Taxation. According to the provision of the section 56(2)(viib)

Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf

This provision is being referred to in common parlance as 'Angel' tax.

- **Point of Concern**

With the introduction and applicability of Sec.56(2)(viib), many start-ups started receiving income tax notices, with the authorities vouching to verify the veracity of capital infused by them. Essentially, the capital introduced in these start-ups demanded a huge premium, which was on account of the ideas, innovation or prospects, and their proposed execution by these entities. This dependency of start-ups, on equity, was also accruing to the fact that obtaining funding through loans was unattractive, mainly due to the requirement of securities and the interest rate constraints. However, since this section provided a blanket applicability to a closely held company [company in which public is not substantially interested], without laying any distinguishing factor between the genuine from the bogus, the start-ups faced a mammoth challenge tackling the assessing authorities with plethora of explanations and details.



## • Related Judgements

Below reference is made to the decision of the Hon'ble Jaipur ITAT in the case of **Rameshwaram Strong Glass (P.) Ltd. v. Income-tax Officer in ITA No. 884 (JP) OF 2016**, wherein it was held that where the assessee-company determined Fair Market Value of shares issued at premium on the basis of DCF Method in accordance with Rule 11UA(2)(b), read with Section 56(2)(viib) and valuation report was prepared as per guidelines given by the ICAI and no fault was found in the same, Assessing Officer was unjustified in changing the method of valuation of shares at premium to Net Asset Value Method. However, in another ruling by the Hon'ble Delhi bench of the ITAT in the **case of Agro Portfolio Pvt. Ltd. In TA No. 2189/Del/2018 (Delhi - Trib.)**, it was held that to determine the fair market value, the tax officer could reject the method of valuation adopted by the taxpayer, if the taxpayer failed to produce evidences to substantiate the basis of data supplied to arrive at the FMV. The said decision was also followed in recent case of M/s TUV

**Rheinland NIFE Academy Private Limited vs. ITO, Bangalore in ITA No. 3160/Bang/2018** and addition of Rs. 19,74,00,000/- was confirmed just because the projected revenues did not match with the actual revenues. This is utterly injustice and bad application of law because the Projected revenues are based on the market conditions and assumptions about future, the investor had agreed upon at the time of issuance of share application money and the actual are after the lapse of two to three years based on changed market conditions and the both cannot be compared. Lately, the Income Tax Department has also started issuing the Show Cause Notices to the valuers asking for the basis on which the valuation certificates have been issued by them.

## • Exemption/Relief To Start-ups.

Considering the difficulties faced by the start-ups, the Department for Promotion of Industry and Internal Trade (DPIIT) issued Notification No. 127(E), dated 19-02-2019, suppressing the last Notification, dated 11-04-2018.

The said latest notification from DPIIT dated 19th February 2019 provided much relief to the troubled Startup ecosystem.

1. The period for recognition as a start-up stands to increase from 7 to 10 years.
2. The turnover limit has been increased from the existing Rs 25 crore to Rs 100 crore;
3. The condition for claiming exemption from Section 56 (2) (viib) has been relaxed;
4. The limit mentioned above to exclude the investments received from:
  - A non-resident
  - A Venture Capital Fund or a Venture Capital Company
  - Specified company (listed companies whose shares are frequently traded and who have a net-worth exceeding Rs 100 crore or turnover exceeds Rs 250 crore)



5. The Prior approval from Inter-Ministerial Board (as per the April 11, 2018 notification), and then from the CBDT in a time-bound 45 days (as per the relaxed notification on January 16, 2019), has now been replaced with a simple declaration.
6. The Long Form 2 required for substantiating the higher valuation with supporting documents and explanations have also been dispensed with.
7. Now, eligible start-ups are not required to obtain merchant banker valuation report.

Further, to be eligible for the exemption, there are restrictions on utilization of investments made by the start-ups which are as below-

- Capital contribution made into any other entity;
- Investments in shares and securities;
- Investment in land and building (whether a residential house or not), other than that used by the Start-up for its ordinary course of business
- Loans and advances, other than those extended by the Start-up in its ordinary course of business
- Jewellery other than that held as stock in trade.
- Motor car, yacht, air craft or any other mode of transport whose actual cost exceeds Rs 10 Lakhs.

The period of restriction in making investment in the above mentioned assets shall be of 7 years from the end of the Financial year in which share are issued at premium. However, the above conditions are not applicable in case start-up holds the above assets as stock-in-trade, in its ordinary course of business.

In case the Startup subsequently invests in any of the assets specified above before the end of seven years from the end of the latest financial year in which the shares are issued at premium, the exemption provided under section 56(2)(viib) of the Act shall be revoked with retrospective effect.

### • **What is a startup?**

Revised definition of startup w.e.f 19/02/2019 An entity must be considered as Startup:

- If Incorporated as either a Private Limited Company (as defined in the Companies Act, 2013) or a Registered Partnership Firm ( under section 59 of the Partnership Act, 1932) or a Limited Liability Partnership (under Limited Liability Partnership Act, 2008) in India.
- Up to a period of ten years from the date of incorporation/registration.
- Has an annual turnover not exceeding Rs.100 crore for any of the financial years since incorporation/registration.
- Entity should not have been formed by splitting up or reconstruction a business already in existence.
- It is Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.



### • The Road Ahead

Thus, to put forward in a nutshell for Professional CAs, the role as a service provider/authorized representative for Startups clients can be divided into 3 major milestones.

- Getting them DPIIT recognition certificate by fulfilling the definition of Startups and preparing a write-up to prove innovation or scalability
- Getting the angel tax exemption u/s 56(2)(viiiB) by filing separate application
- Getting the tax exemption u/s 80IAC by filing separate application.

While angel tax exemption shall give fillip to the startup ecosystem, it is quite surprising that the Government has given 80IAC benefits only to 266 Startups out of 35k+ DPIIT approved Startups although tax exemption is the most advertised feature of the Startup India campaign and thus it seems many pro-active measures needs be taken by the present Government in order to achieve its ambitious vision of making India a \$ 5 trillion-economy by 2024.

**Contributed By:**  
CA.Mehul Shah







## **TCS- TAX COLLECTED AT SOURCE**

Article explains TCS related provisions under Section 206C(1H) of Income Tax Act, 1961 Effective from 1st October 2020. Here we understand applicability of Transaction on which TCS under Section 206C(1H) of Income Tax Act, 1961 is applicable, Rate of TCS and Rate of TCS if PAN No. is not provided, Due date of payment of TCS , Certificate of TCS,etc.

TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1<sup>st</sup>. Oct. 2020. The rate of TCS is 0.1% and presently due to corona Pandemic 25% discount has been given in this tax rate till 31 March 2021 and its effective rate is 0.075%.

### ***APPLICABILITY OF TCS***

if your **turnover is more than 10 crores in the previous financial year** i.e. the year ended 31 March 2020, then this year you will have to collect and deposit TCS on your receipts from sale of goods from such buyers from whom you **received more than Rs. 50 Lakhs as sale consideration during the current Financial year.** The



**Contributed By:CA JAY MEHTA**







**Effective from 1st October 2020**

Particulars		Impact	Rate	
			PAN	No PAN
Whether Turnover of the Seller exceeds Rs 10 Crores in F.Y. ended 31.3.2020	Yes	TCS is applicable on payment exceeding 50 Lakhs after 1.10.2020	0.075%	1%
Whether sale of Goods exceeds 50 lakhs in the current year	Yes	TCS is applicable on payment exceeding 50 Lakhs after 1.10.2020		
Sales exceeds Rs 50 lakhs in current year but turnover is less than Rs 10 crores in Previous Year		No TCS is applicable		
Sales is less than Rs 50 lakhs in current year but turnover exceeds Rs 10 crores in Previous Year		For payments above Rs 50 lakhs TCS is applicable		
Whether TDS or TCS is deducted by the Seller under any other provisions	Yes	No TCS is applicable		
Whether the Buyer is a Central /State Govt, Embassy, Local Authority	Yes	No TCS is applicable		
Whether the goods are imported into India	Yes	No TCS is applicable		
Whether InterCompany Sales transaction are also covered	Yes	TCS is applicable on payment exceeding 50 Lakhs		
Goods sold prior to 1st October 2020 exceeding Rs 50 lakhs	Yes	No TCS is applicable		
Goods sold prior to 1st October 2020 exceeding Rs 50 lakhs and payment made after 1st October 2020	Yes	TCS is applicable on payment exceeding 50 Lakhs		



### Due dates of TCS

#### Due dates

The dates for paying TCS to the government are :

Collection Month	Quarter Ending	Due date of Payment	Due Date of filing return	
April	30th June	7th May	15th July	
May		7th June		
June		7th July		
July	30th September	7th August	15th October	
August		7th September		
September		7th October		
October	31st December	7th November	15th January	
November		7th December		
December		7th January		
January	31st March	7th February	15th May	
February		7th March		
March		7th April		

### Certificate of TCS

1. When a tax collector files his quarterly TCS return i.e Form 27EQ, he has to provide a TCS certificate to the purchaser of the goods. This certificate has to be issued within 15 days from the date of filing TCS quarterly returns.

#### The due dates for generating Form 27D–

Quarter Ending	Date for generating Form 27D
For the quarter ending on 30th June	30th July
For the quarter ending on 30th September	30th October
For the quarter ending on 31st December	30th January
For the quarter ending on 31st March	30th May



*my view according to frequently asked question according here :*

### Definition of Turnover :

No clarification has been provided by CBDT in this regard.

GST component is included while calculating the limit of section 44AB i.e. Tax Audit. Same interpretation is to be followed while calculating the threshold limit under this section i.e. GST component will included in sales. For eg, if Mr. A has turnover of Rs. 9cr (exclusive of GST) in FY 2021-22 and collected GST of Rs. 1.08cr, in that case total turnover for the purpose of this section is Rs. 10.08cr. Same conclusion applicable for calculating Rs. 50 lakhs threshold.

### Whether TCS will be collected on GST portion?

Indirect taxes like GST forms integral part of the consideration and therefore TCS is collectible on sales price inclusive of GST and other indirect taxes.

A clarification in this regard is expected from CBDT. Till then the conservative view is to collect TCS on GST component as well.

**TCS provisions not applicable** where resident buyer furnishes a **declaration** to the person responsible for collecting tax, to effect that, the goods referred to above are utilized for the purposes of **manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.**

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