

Assessment and Audit

Q 1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such assessment he shall file the return required under section 39.

Q 2. When can a taxable person pay tax on a provisional basis?

Ans. As a taxpayer has to pay tax on self-assessment basis, a request for paying tax on provisional basis has to come from the taxpayer which will then have to be permitted by the proper officer. In other words, no tax officer can suo-moto order payment of tax on provisional basis. This is governed by section 60 of CGST/SGST Act. Tax can be paid on a provisional basis only after the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:

a) the value of goods or services to be supplied by him, or

b) determine the tax rate applicable to the goods or services to be supplied by him.

In such cases the taxable person has to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q 3. What is the latest time by which final assessment is required to be made?

Ans. The final assessment order has to be passed by the proper officer within six months from the date of the communication of the order of provisional assessment. However, on

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sufficient cause being shown and for reasons to be recorded in writing, the above period of six months may be extended:

- a) by the Joint / Additional Commissioner for a further period not exceeding six months, and
- b) by the Commissioner for such further period as he may deem fit not exceeding four.

Thus, a provisional assessment can remain provisional for a maximum of five years.

Q 4. Where the tax liability as per the final assessment is higher than in provisional assessment, will the taxable person be liable to pay interest?

Ans. Yes. He will be liable to pay interest from the date the tax was due to be paid originally till the date of actual payment.

Q 5. What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?

Ans. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

(a) Proceed to conduct audit under Section 65 of the Act;

(b) Direct the conduct of a special audit under Section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or

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(c) Undertake procedures of inspection, search and seizure under Section 67 of the Act;
or

(d) Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

Q 6. If a taxable person fails to file the return required under law (under section 39 (monthly/quarterly), or 45 (final return)), what legal recourse is available to the tax officer?

Ans. The proper officer has to first issue a notice to the defaulting taxable person under section 46 of CGST/SGST Act requiring him to furnish the return within a period of fifteen days. If the taxable person fails to file return within the given time, the proper officer shall proceed to assess the tax liability of the return defaulter to the best of his judgement taking into account all the relevant material available with him. (Section 62).

Q 7. Under what circumstances can a best judgment assessment order issued under section 60 be withdrawn?

Ans. The best judgment order passed by the Proper Officer under section 62 of CGST/SGST Act shall automatically stand withdrawn if the taxable person

furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order.

Q 8. What is the time limit for passing assessment order u/s 62 (Best Judgment) and 63 (Non-filers)?

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Ans. The time limit for passing an assessment order under section 62 or 63 is five years from the due date for furnishing the annual return.

Q 9. What is the legal recourse available in respect of a person who is liable to pay tax but has failed to obtain registration?

Ans. Section 63 of CGST/SGST Act provides that in such a case, the proper officer can assess the tax liability and pass an order to his best judgment for the relevant tax periods. However, such an order must be passed within a period of five years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

Q 10. Under what circumstances can a tax officer initiate Summary Assessment?

Ans. As per section 64 of CGST/SGST Act, Summary Assessments can be initiated to protect the interest of revenue when:

a) the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and

b) the proper officer believes that delay in passing an assessment order will adversely affect the interest of revenue.

Such order can be passed after seeking permission from the Additional Commissioner / Joint Commissioner.

Q 11. Other than appellate remedy, is there any other recourse available to the taxpayer against a summary assessment order?

Ans. A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty

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days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST/SGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous (section 64 of CGST/SGST Act).

Q 12. Is summary assessment order to be necessarily passed against the taxable person?

Ans. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax (proviso to Section 64 of CGST/SGST Act).

Q 13. Who can conduct audit of taxpayers?

Ans. There are three types of audit prescribed in the GST Act(s) as explained below:

(a) Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a

chartered accountant or a cost accountant. (Section 35(5) of the CGST/SGST Act)

(b) Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST/SGST Act)

(c) Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special

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audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST/SGST Act)

Q 14. Whether any prior intimation is required before conducting the audit?

Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 working days prior to conduct of audit.

Q 15. What is the period within which the audit is to be completed?

Ans. The audit is required to be completed within

3 months from the date of commencement of audit. The period is extendable for a further period of a maximum of 6 months by the Commissioner.

Q 16. What is meant by commencement of audit?

Ans. The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

a) the date on which the records/accounts called

for by the audit authorities are made available to them, or

b) the actual institution of audit at the place of business of the taxpayer.

Q 17. What are the obligations of the taxable person when he receives the notice of audit?

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Ans. The taxable person is required to:

a) facilitate the verification of accounts/records available or requisitioned by the authorities,

b) provide such information as the authorities may require for the conduct of the audit, and

c) render assistance for timely completion of the audit.

Q 18. What would be the action by the proper officer upon conclusion of the audit?

Ans. The proper officer shall, on conclusion of audit, within 30 days inform the taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.

Q 19. Under what circumstances can a special audit be instituted?

Ans. A special audit can be instituted in limited circumstances where during scrutiny, investigation, etc. it comes to the notice that a case is complex or the revenue stake is high. This power is given in section 66 of CGST /SGST Act.

Q 20. Who can serve the notice of communication for special audit?

Ans. The Assistant / Deputy Commissioner is to serve the communication for special audit only after prior approval of the Commissioner.

Q 21. Who will do the special audit?

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Ans. A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit.

Q 22. What is the time limit to submit the audit report?

Ans. The auditor will have to submit the report within 90 days or within the further extended period of 90 days.

Q 23. Who will bear the cost of special audit?

Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

Q 24. What action the tax authorities may take after the special audit?

Ans. Based on the findings / observations of the special audit, action can be initiated under Section 73 or Section 74 of the CGST/SGST Act.

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