



ASSESSMENT AND AUDIT



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After reading this chapter, you shall be equipped to:

- ❑ understand and explain the different types of assessment which a registered person may be subjected to.
- ❑ describe the concept of self-assessment and provisional assessment.
- ❑ identify and appreciate the different types of audit which may be conducted against the registered person.
- ❑ gain knowledge pertaining to circumstances under which special audit can be conducted.



1. INTRODUCTION



What is the need for assessment & audit ?

A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

GST is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

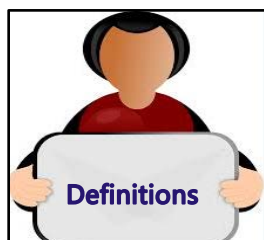
“Audit” has been defined in section 2(13) of the CGST Act, 2017 and it means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

Chapter XII – Assessment [Sections 59 to 64] and Chapter XIII-Audit [Section 65 & 66] of the CGST Act stipulates the provisions relating to assessment and audit respectively. State GST laws also prescribe identical provisions in relation to assessment and audit.

In GST, Section 59 is for self-assessment by assessee whereas section 60 stands for provisional assessment with both assessee and departmental officer playing their respective roles. Sections 61-64 give power to departmental officer for assessment in different situations. Section 65 and section 66 pertains to audit by tax authorities and by CA/CWA nominated by Commissioner respectively. However, before going through the detailed study of Assessment and Audit provisions, let us first go through few relevant definitions.

Provisions of assessment and audit under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS



- ❖ **Assessment** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [Section 2(11)]
- ❖ **Audit** means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder. [Section 2(13)]
- ❖ **Chartered Accountant** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949; [Section 2(23)]
- ❖ **Cost Accountant** means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959; [Section 2(35)]
- ❖ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council. [Section 2(87)]
- ❖ **Proper Officer** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board; [Section 2(91)]



3. SELF ASSESSMENT [SECTION 59]

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.



4. PROVISIONAL ASSESSMENT [SECTION 60]



Situations demanding Provisional Assessment

Provisional assessment provides a method for determining the tax liability in case the correct tax liability cannot be determined at the time of supply. The major determinants of the tax liability are generally the applicable tax rate and the value. There might be situations when these determinants might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time.

Where the taxable person is unable to determine —

- (a) value of goods or services or both to be supplied by him; or
- (b) the rate of tax applicable to the goods or services to be supplied by him,

he may furnish an application in prescribed form stating therein reasons for payment of tax on a provisional basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.



The proper officer may, on receipt of the application, issue a notice in prescribed form requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice, and may appear in person before the said officer if he so desires.

The proper officer shall issue an order, allowing payment of tax on a provisional basis indicating -

- (a) the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis, and
- (b) the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.



Furnish of Security

The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in the prescribed form along with a security in the form of a bank guarantee for an amount as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

A bond furnished to the proper officer under the Central/State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of this Act and the rules made thereunder.

The term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.



Finalization of Provisional Assessment

The final assessment order has to be passed by the proper officer within 6 months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of 6 months may be extended:

- (a) by the Joint/Additional Commissioner for a further period not exceeding 6 months, and
- (b) by the Commissioner for such further period as he may deem fit not exceeding 4 years

Thus, a provisional assessment can remain provisional for a maximum of 5 years.

For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.



Where the tax liability as per the final assessment is higher than in provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax due but not paid, at the rate specified under section 50(1) from the date the tax was due to be paid originally till the date of actual payment.

In simple words, in case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.



Where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 from the date immediately after the expiry of 60 days from the date of receipt of application in accordance with the provisions of Section 54(1) till the date of refund of such tax.

In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.



Release of Security

The applicant may file an application for release of security furnished after issue of final assessment order.

The proper officer shall release the security after ensuring that applicant has paid the amount specified in final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.




5. SCRUTINY OF RETURNS [SECTION 61]




Verifying the correctness of return

The return furnished by a registered person may be selected for scrutiny by proper officer to verify its correctness. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same with reference to the information available with him.

 Issue of notice

In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding 30 days from the date of service of the notice, or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

 Reply to notice

The registered person to whom notice is issued may –

- accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy to the proper officer or
- submit his explanation regarding non-acceptance of discrepancy within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him.

 Action by Proper Officer

Where the explanation furnished by the registered person or the information submitted is found to be acceptable, the proper officer shall inform him accordingly and no further action shall be taken in this regard.

In case no satisfactory explanation is furnished by registered person or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may take recourse to any of the following provisions, namely:

- (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
- (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.



6. ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]



Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person—

- fails to furnish the return under section 39 (monthly/quarterly) or under section 45 (final return), and
- a notice under section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return within a period of 15 days and taxable person fails to file return within the given time;

the proper officer may proceed to assess the tax liability of said person (i.e. Return Defaulter) to the best of his judgement taking into account all the relevant material which is available or which he has gathered.



Time Limit for Assessment Order

The order of Best Judgment assessment shall be issued by Proper Officer in the prescribed form.

The Assessment Order shall be issued by Proper Officer within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.



If a person defaults in filing of return for any tax period falling in F/Y 2017-18, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2017-18 i.e. 31.12.2018. Accordingly, Best judgment Assessment can be made by Proper Officer on or before 31.12.2023.



Withdrawal of Assessment Order

Where the registered person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him) within 30 days of the service of the assessment order, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

7. ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person—

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled under sub-section (2) of section 29, for any of the following reason, namely—
 - (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 - (b) a person paying tax under composition levy under section 10 has not furnished returns for three consecutive tax periods; or
 - (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
 - (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
 - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgement for the relevant tax periods.

Issue of Notice

Before making the assessment, proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and shall be given 15 days' time to furnish his reply, if any.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

**Time Limit for Assessment Order**

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.



If the liability of a person to take registration arises at any time in the F/Y 2017-18 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2017-18 i.e. 31.12.2018. Accordingly, Best judgment Assessment can be made by proper officer on or before 31.12.2023.

**8. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES [SECTION 64]****When Summary Assessment can be made**

Summary Assessments can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

**Withdrawal of Assessment Order**

The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, –

- (a) on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or
- (b) on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

**Deemed taxable person in case of supply of goods**

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.



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.



9. AUDIT BY TAX AUTHORITIES [SECTION 65]



Who may conduct the audit?

- The Commissioner; or
- Any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person at the place of business of the registered person or in their office for a financial year or multiples thereof.

Where it is decided to undertake the audit of a registered person, the proper officer shall issue a notice not less than 15 working days prior to the conduct of audit.



What is meant by commencement of audit?

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.



Time limit for completion of audit

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.



How to conduct audit

The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized,

refund claimed, and other relevant issues and record the observations in his audit notes.

During the course of audit, the authorised officer may require the registered person,—

- a) to facilitate the verification of accounts/records available or requisitioned by the authorities,
- b) to provide such information as the authorities may require for the conduct of the audit, and
- c) to render assistance for timely completion of the audit.

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.



Finalisation of Audit

The proper officer shall finalise the findings of the audit after due consideration of the reply furnished by registered person to audit observation brought to his notice during the course of audit.

On conclusion of audit, the proper officer shall within 30 days inform the registered person whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.



10. SPECIAL AUDIT [SECTION 66]



When Special Audit may be directed and from whom?

If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value has not been correctly declared; or



➤ the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner and specified in the said direction.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

Time limit within which audit to be completed

The Chartered Accountant or cost accountant as nominated by Commissioner shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant; or
- for any material and sufficient reason.

Who will bear the expenses of audit?

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final.

How Special Audit Report to be dealt with?

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

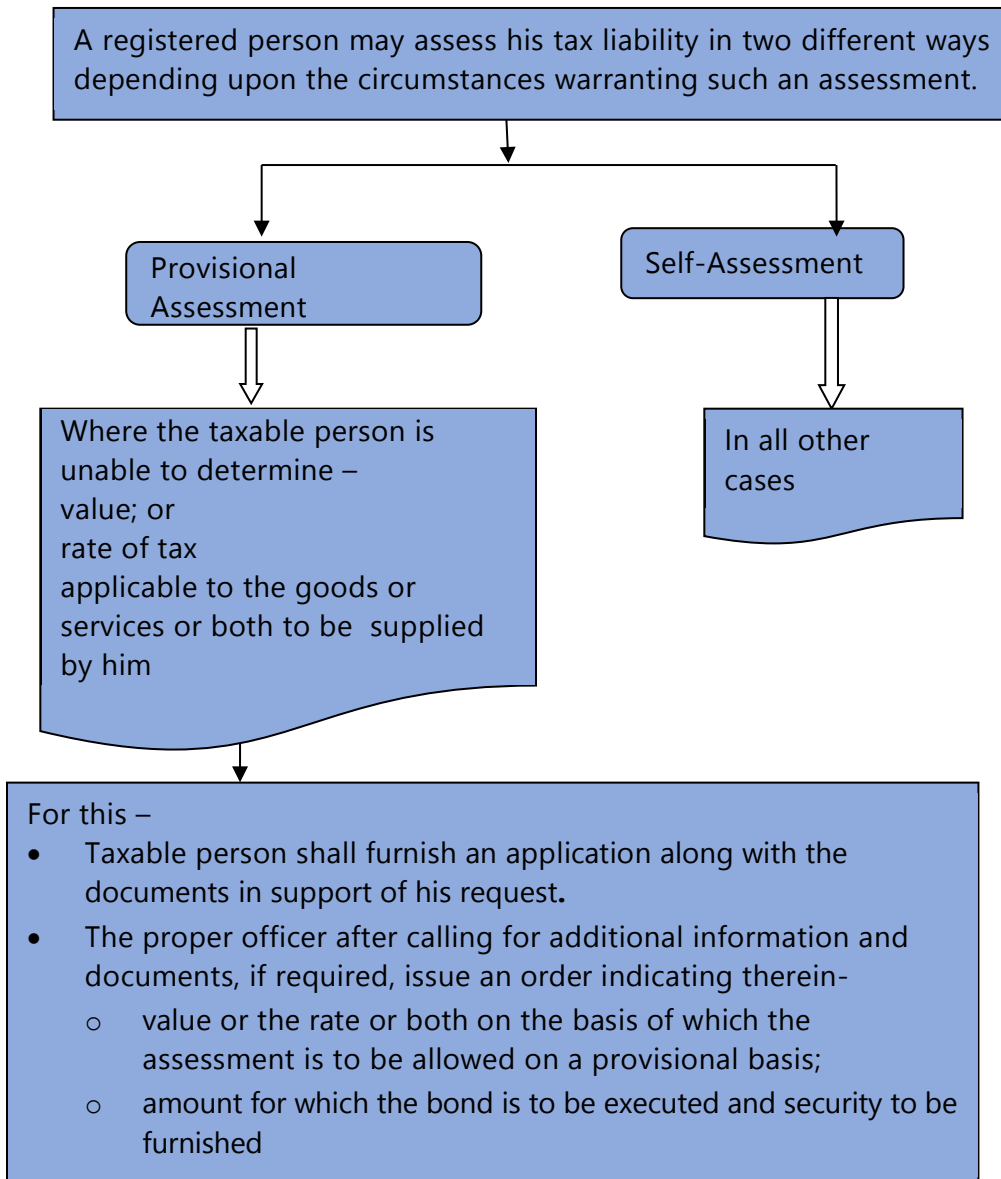
On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person under section 73 or section 74.

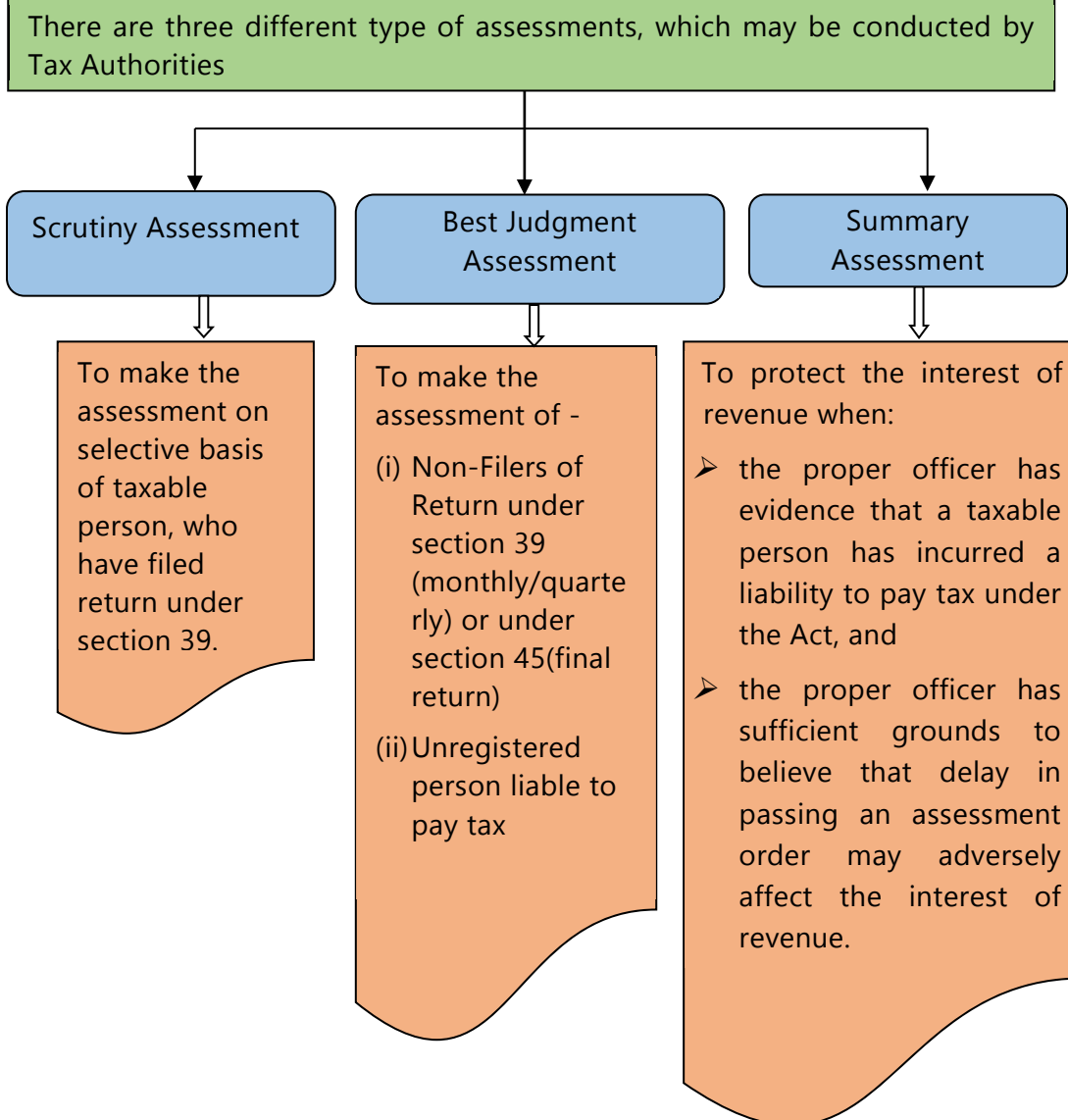
LET US RECAPITULATE

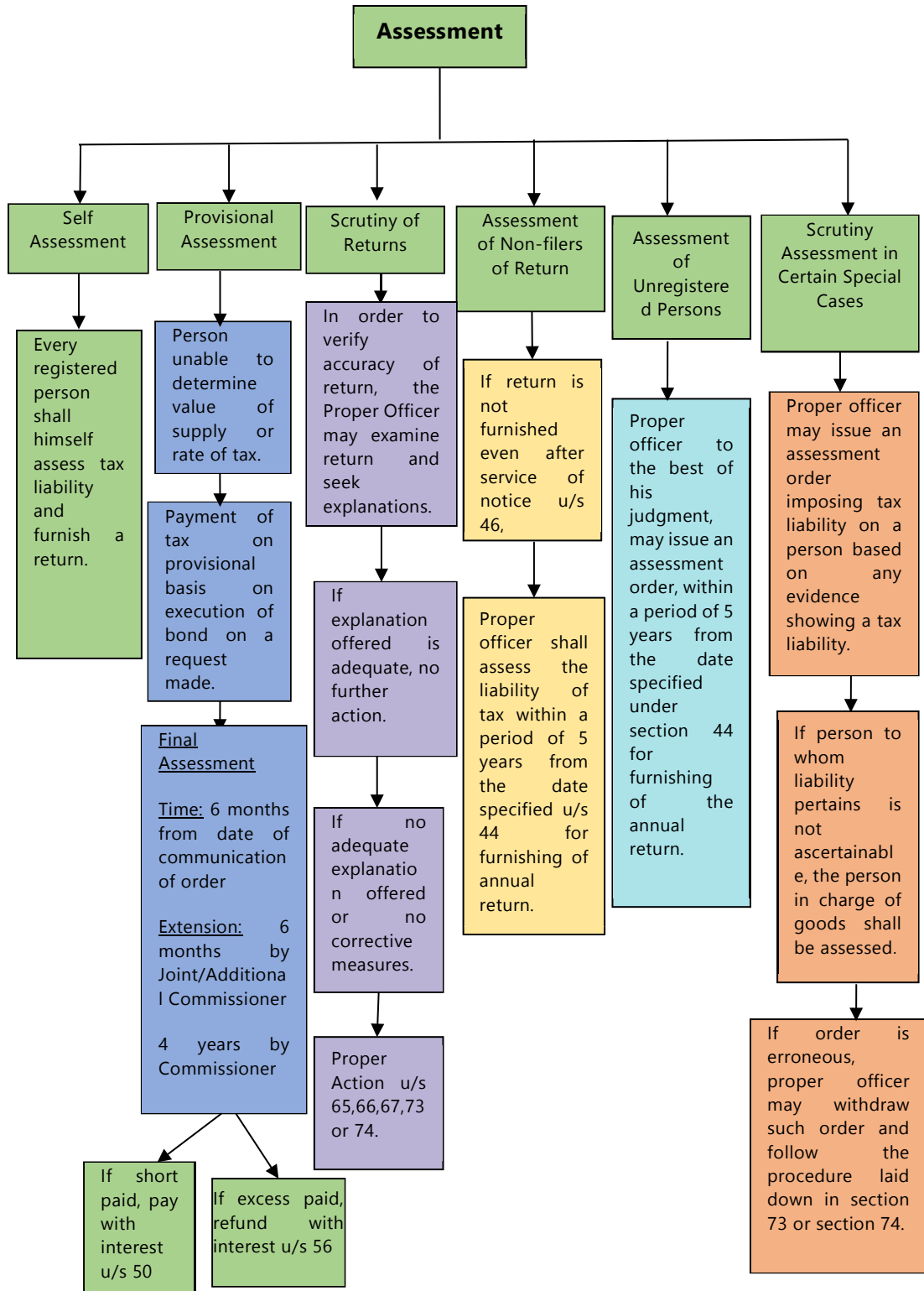
The provisions relating to assessment and audit have been summarised by way of diagrams to help students remember and retain the provisions in a better and effective manner:-

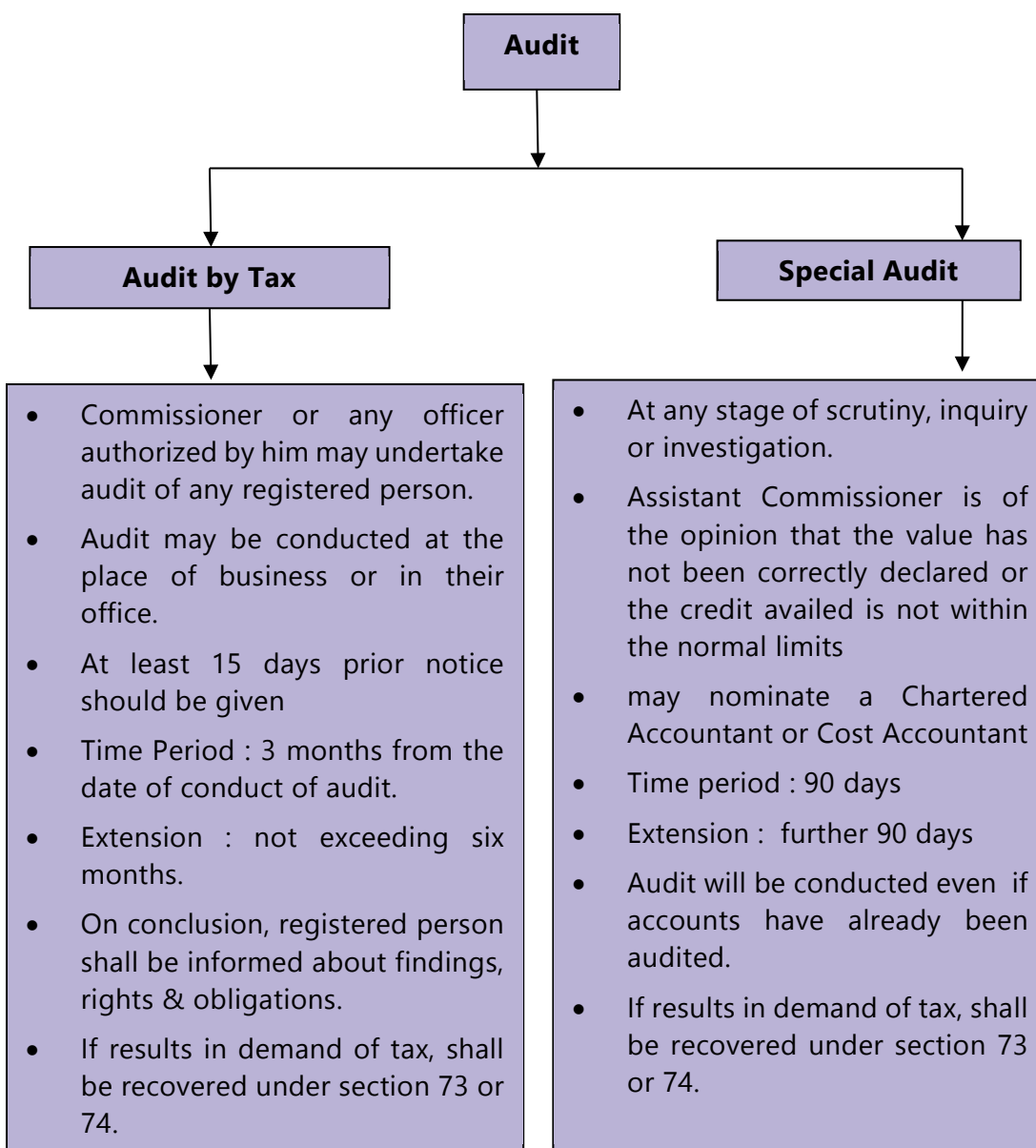
Different ways to assess the tax liability by a registered person



Different types of assessments which may be conducted by the department against the taxable person







TEST YOUR KNOWLEDGE

1. *Is summary assessment order to be necessarily passed against the taxable person?*
2. *Whether principal of natural justice is must to be followed before passing assessment order against the taxable person?*
3. *In what cases, assessment order passed by proper officer may be withdrawn?*
4. *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?*
5. *Who can conduct audit of taxpayers?*

ANSWERS/HINTS

1. 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.
2. Yes, principal of natural justice is must to be followed before passing assessment order against the taxable person seeking to impose any financial burden on him.
3. Assessment Order passed by proper officer may be withdrawn in the following cases:-
 - (i) **Assessment of Non-filers of return** – The best judgment order passed by the Proper Officer under section 62 of CGST 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
 - (ii) **Summary Assessment** – 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 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 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.

4. 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
 - (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.
5. 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 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 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 audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST Act)