

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. Self-assessment will be the norm under GST.

Q 2. Under what circumstances can provisional assessment be done?

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. This is governed by section 60 of CGST Act and rule 98 of the CGST Rules. 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. In what form and manner should the taxable person make a request for provisional assessment?

Ans. Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of section 60(1) shall furnish an application along with the documents in support of his request, electronically, in FORM GST ASMT-01 on the common portal. The taxpayer need to specify reasons for seeking provisional assessment.

Q 4. Can the proper officer ask for additional documents/clarification upon receipt of request for provisional assessment? If so how? Whether he has to issue any order for allowing provisional assessment?

Ans. In case the proper officer requires further information or documents, the proper officer, on receipt of the application should issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request.

The applicant has to file a reply to the notice in FORM GST ASMT – 03

The order for provisional assessment has to be issued within ninety days of the application. The order for provisional assessment has to specify the rate and/or value, as the case may be, to be applied for by the taxpayer.

Q 5. Is it mandatory for the applicant to appear before the proper officer in such cases?

Ans. No. However, if the applicant desires, he can appear before the proper officer in person.

Q 6. In what form and manner will the proper officer issue an order of provisional assessment?

Ans. The proper officer shall issue an order in FORM GST ASMT-04, allowing payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent of the amount covered under the bond.

Q 7. Is there any time limit within which the order for provisional assessment has to be issued by the proper officer?

Ans. Yes. The order needs to be issued by the proper officer within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis, at such rate or on such value as may be specified by him.

Q 8. How should the applicant execute the Bond as per directions given in the order of provisional assessment?

Ans. The applicant should execute a bond in accordance with the provisions of sub-section (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3) (i.e. amount determined in the order of provisional assessment)

Q 9. While executing the bond, is it necessary for the applicant to execute separate bonds for Central Tax and State Tax?

Ans. No. The bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the CGST Act and the rules made thereunder.

Q 10. What is the time limit within which the proper officer has to finalize the provisional assessment?

Ans. Finalisation has to be done by the proper officer within a period of six months from

the date of communication of the order of provisional assessment to the taxable person. The period of six months can be extended by a further period of six months by the Joint/Additional Commissioner and by the Commissioner for such further period not exceeding four years. However, such extension can be given only on sufficient cause being shown and for reasons to be recorded in writing.

Q 11. What procedure will the proper officer follow for finalizing the provisional assessment?

Ans. The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

Q 12. In case the amount of tax determined at the time of final assessment is higher than the tax paid at the time of provisional assessment, should the taxable person pay interest on the entire amount of tax (as finalised) from the initial due date of payment?

Ans. Yes. The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

Q 13. In case, the tax payable on finalisation is less than the tax actually paid at the time of provisional assessment, how can the taxable person claim refund?

Ans. Where the registered person is entitled to a refund consequent to the order of final assessment, such person will have to make an application for refund electronically at the common portal under Section 54 of the Act. The refund claim has to be filed within 2 years from the date of order of final assessment. The claim for refund (if it is not a zero rated supply) will have to pass the test of unjust enrichment. If the refund is not given within 60 days from the date of receipt of refund claim, interest (@ not exceeding 6%) shall be paid on such refund as provided in section 56.

Q 14. After finalization of assessment, how can the taxable person seek release of the security furnished at the time of provisional assessment?

Ans. The applicant has to file an application in FORM GST ASMT- 08 for release of security furnished.

Q 15. In what manner and within what time will the security be released in favour of the applicant?

Ans. The proper officer shall release the security furnished, after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT-09 within a period of seven working days from the date of receipt of the application in FORM GST ASMT- 08.

Q 16. In what manner will returns be scrutinized under GST?

Ans Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto. Also, where possible, the proper officer should quantify the amount of tax, interest and any other amount payable in relation to such discrepancy.

Q 17. What is the time limit for the taxable person to respond to such notice?

Ans. The Taxable person has to respond within 30 days from the date of service of the notice or such further period as may be permitted by the proper officer.

Q 18. In case the taxable person accepts the discrepancies, how should he comply?

Ans. The registered person may either accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

Q 19. How will the proper officer deal with reply given in FORM GST ASMT-11 by the taxable person?

Ans. Where the explanation furnished by the registered person or the information furnished in FORM GST ASMT-11 is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

Q 20. In case the taxable person does not agree with the discrepancies communicated nor does he pay tax/interest etc arising out of such discrepancy, what course of action an the proper officer take?

Ans. In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him 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 initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Q 21. How will assessment of non-filers of returns take place under GST?

Ans. Where a registered person fails to furnish a return under section 39 or section 44 or section 45 or Section 52, a notice in FORM GSTR-3A shall be issued, electronically requiring him to furnish such return within fifteen days.

If within 15 days the returns are not furnished, the proper officer will make an order of assessment and it shall be issued electronically in FORM GST ASMT-13. This order of assessment shall be made by the proper officer to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five 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 the registered person furnishes a valid return within thirty days of the service of FORM GST ASMT-13, 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.

Q 22. How will assessment of un-registered persons take place under GST?

Ans. 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 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five 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:

The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15.

Q 23. 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 24. In what manner will a summary assessment order be issued?

Ans. The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.

Q 25. 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 26. 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 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 27. How can the taxable person make an application for withdrawal of summary assessment order?

Ans. The taxable person may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17.

Q 28. How will the proper officer respond to the request made in FORM GST ASMT-17?

Ans. The order of withdrawal or, as the case may be, rejection of the application in FORM GST ASMT-17 shall be issued in FORM GST ASMT-18.

Q 29. 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 Rs. Two crore, 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 audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST/SGST Act)

Q 30. 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 31. 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 32. 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 33. What are the obligations of the taxable person when he receives the notice of audit?

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 34. 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 35. In what manner will an audit under Section 65(1) be conducted?

Ans. The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.

Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section. This will be issued at least 15 days prior to the conduct of 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 provisions of 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 utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in 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.

On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

Q 36. Under what circumstances can a special audit be instituted?

Ans. A special audit can be instituted in limited circumstances where at any stage of scrutiny, inquiry, investigation or any other proceedings, 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

- (i) the value has not been correctly declared or
- (ii) the credit availed is not within the normal limits

Prior approval of commissioner is necessary before ordering special audit.

The chartered accountant or a cost accountant must be nominated by the Commissioner.

Q 37. 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. This can be done by the Commissioner when he is satisfied that the audit cannot be completed in three months. The reasons for the same must also be recorded in writing.

Q 38. 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 39. 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. The action would also depend on whether the taxpayer voluntarily pays the requisite tax, interest and penalty.

For instance, in case of fraud/suppression cases, if the taxpayer pays the requisite tax with 18% interest and 15% penalty, no notice will be issued by department and proceedings would be concluded.

Post issue of notice, in case he pays the requisite tax, 18% interest and 25% penalty within 30 days, proceedings shall be concluded.

Post adjudication, in case he pays the requisite tax, 18% interest and 50% penalty within 30 days of order, proceedings shall be concluded.

Q 40. What if Audit (Departmental / Compulsory audit by CA) is already conducted or being conducted?

Ans. This audit will be in addition to the audit already conducted under any other statute. Section 66(3) overrides provisions of any audit conducted under this act or any other law.

Q 41. In what form and manner will a special audit be ordered and how will the result of such audit be communicated to the taxable person?

Ans. Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

On conclusion of special audit, the registered person shall be informed of the findings of special audit in FORM GST ADT-04.

Q 42. When does a taxpayer has to get audited compulsorily?

Ans. Every registered person whose turnover during a financial year exceeds the prescribed limit of Rs. two crores has to get his accounts audited by a chartered accountant or a cost

accountant and needs to submit a copy of the

- a. audited annual accounts,
 - b. the reconciliation statement under Section 44 (2)
 - c. and such other documents in such form and manner as may be prescribed
- (Section 35(5), 44(2) of CGST Act, 2018; Rule 80(3) of CGST Rules, 2018; Form GSTR-9C)

Q 43. Whether the turnover of Rs. 2 crore needs to be taken All India or State wise?

Ans. Section 35(5) of CGST Act uses the term turnover whereas the relevant Rule 80(3) of CGST Rules uses the expression aggregate turnover. Aggregate turnover is PAN based while turnover in a State / UT is similarly worded except to the extent that turnover in a State / UT is limited to a State. Therefore, the word turnover used in section 35(5) ought to be understood as aggregate turnover and all taxpayers who had their aggregate turnover exceeding Rs. 2 crore at PAN India level, should get their accounts audited from chartered engineer or cost accountant.