

ATHENA NEWSLETTER

GST 10-point Series

A quick and efficient mode to understand important aspects of the biggest tax reform in India

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01

ASSESSMENT

In any tax legislation, assessment plays a very important role as it is the conclusive order determining the rights of the assessee. The Model GST law, in Chapter XII (Ss. 44 to 48) provide for the types and features of assessments. The prescribed assessments being - Self Assessment, Provisional Assessment, Scrutiny Assessment, Best Judgment Assessment and Summary Assessment. The assessments types are discussed below in brief.

02

Self Assessment: Section 44 of the Model GST Law provides that registered taxable persons shall assess the tax payable and furnish a return for each tax period, by themselves. Such shall ensure ease in assessment procedure.

03

Provisional Assessment: In cases where, the registered taxable person is unable to determine the value of goods/ services; or determine the rate of tax applicable on supply:

- He shall submit a request to the proper officer in writing giving reasons for payment of taxes on provisional basis; upon receipt of which proper officer may allow payment of tax on provisional basis at such rate or value as specified by him;
- He shall be required to execute a bond and may also be required to execute surety or security as proper officer deems fit.
- The proper officer shall pass final assessment order within a period of 06 months from the date of order, which may be further extended on sufficient cause and for reasons recorded in writing.

04

On finalization of provisional assessment, interest shall be applicable in case additional tax amount is payable or in case of a tax refund. Rates of interest shall be as prescribed in the provisions relevant to interests.

05

Scrutiny Assessment: Such assessment may be undertaken by a proper officer for verifying particulars of a filed return. There is no clarity on taxability of the transaction of 'facilitation of trade by e-commerce operators'. Any e-commerce transaction shall consist of two transactions:

- a. of sale-purchase; and
- b. of facilitating of the sale-purchase.

The second transaction of facilitation which is also for a consideration has not been dealt with under the law, leaving scope for huge litigation in future.

06

Prescribed procedure for Scrutiny Assessment is as follows:

- In case of discrepancy, proper officer shall inform the taxable person of such discrepancies noticed and seek his explanation.
- In case explanations are found acceptable, the taxable person shall be informed and no further action shall be taken.

- In case satisfactory explanation is not furnished within 30 days of the date of informing the taxable person (or further period as permitted to him); or taxable person accepts discrepancy but fails to take corrective action within a reasonable period;
- Proper officer may initiate appropriate action such as Audit under S. 49; Special Audit under S. 50; Inspection, Search & Seizure under S. 60, or proceed to determine tax and other dues as per Section 51A(6) or 51B(6).

07 Assessment of non-filers of returns: In cases where taxable person has failed to furnish prescribed return u/s 27 or 31 or 32, as the case may be, the proper officer may issue a notice u/s 32 and after allowing a period of 15 days from the date of service of notice, may proceed to assess the tax liability to the best of his judgment.

08 However, in case the taxable person submits a valid return within 30 days from the date of assessment order, the said assessment order shall be deemed to have been withdrawn.

09 Assessment of unregistered persons: In cases where taxable persons have failed to obtain registration when they were liable to get registered, best judgment assessment can be done within a period of 05 years from the due date of filing annual return for the year to which unpaid tax relates. Prior to issuance of assessment orders, show cause notice and opportunity of being heard is to be provided.

10 Summary Assessment: Section 48 of the Model Law provides for summary assessment. The basis of such assessment is generally vague, i.e., “on any evidence showing a tax liability of a person coming to his notice” which can be grossly abused by the authorities to arm twist. The provision also allows for issuance of assessment order without show cause notice or hearing opportunity if the officer is of the belief that any delay in issuance of assessment order shall adversely affect the interest of revenue.

ABOUT THIS PUBLICATION

This publication forms part of 10-point series by Athena Law Associates, to help readers quickly understand key provisions of the Model Goods & Services Tax (GST) law proposed to be implemented in India, starting April 2017.

Refer to our website <http://www.gstlawindia.com/> or contact us for more details about this topic.



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