

**GST ...**

**PROCEEDINGS by the TAX OFFICE**

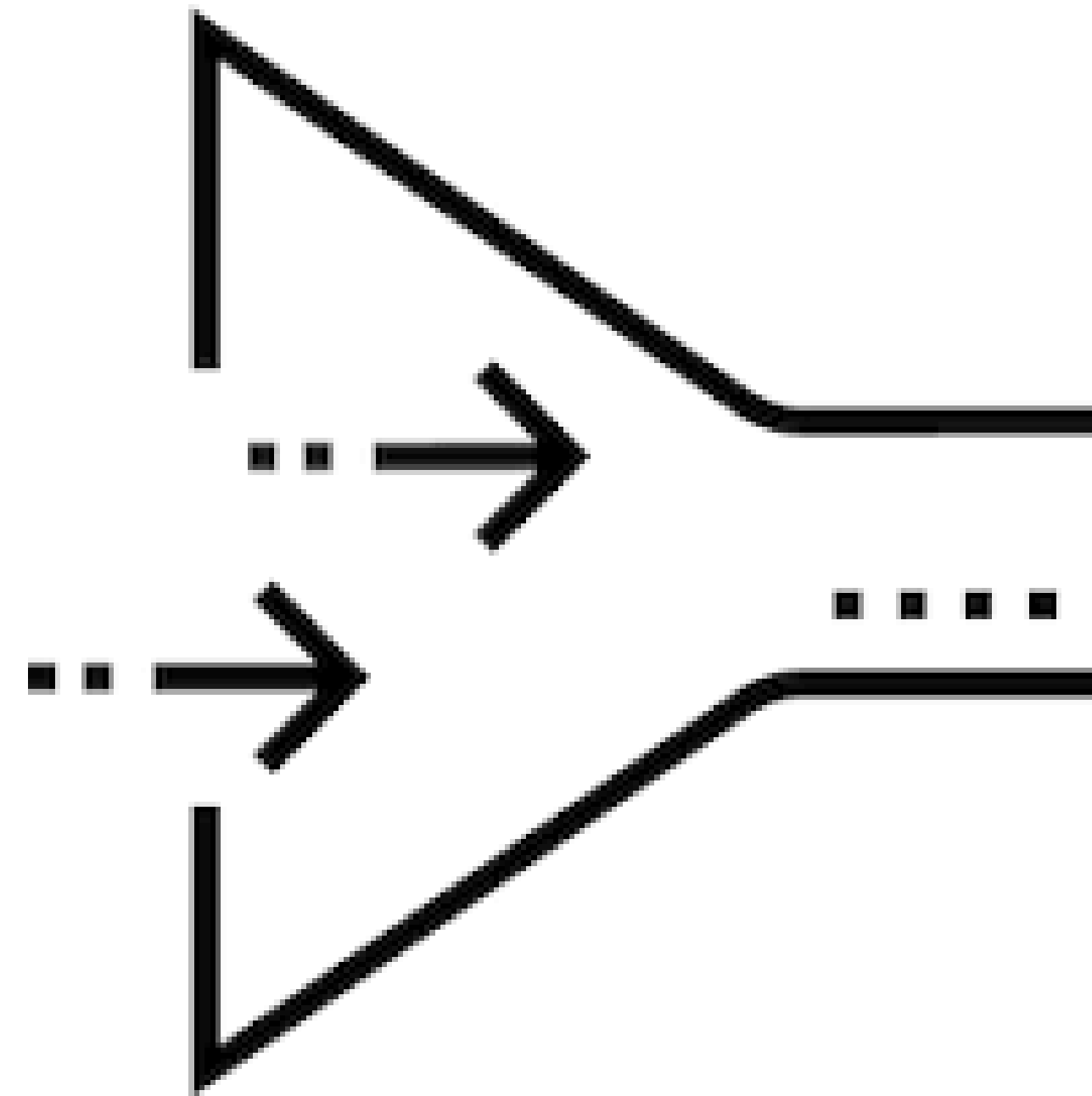
**SINGHVI  
DEV & UNNI LLP**  
CHARTERED ACCOUNTANTS



June 17, 2023

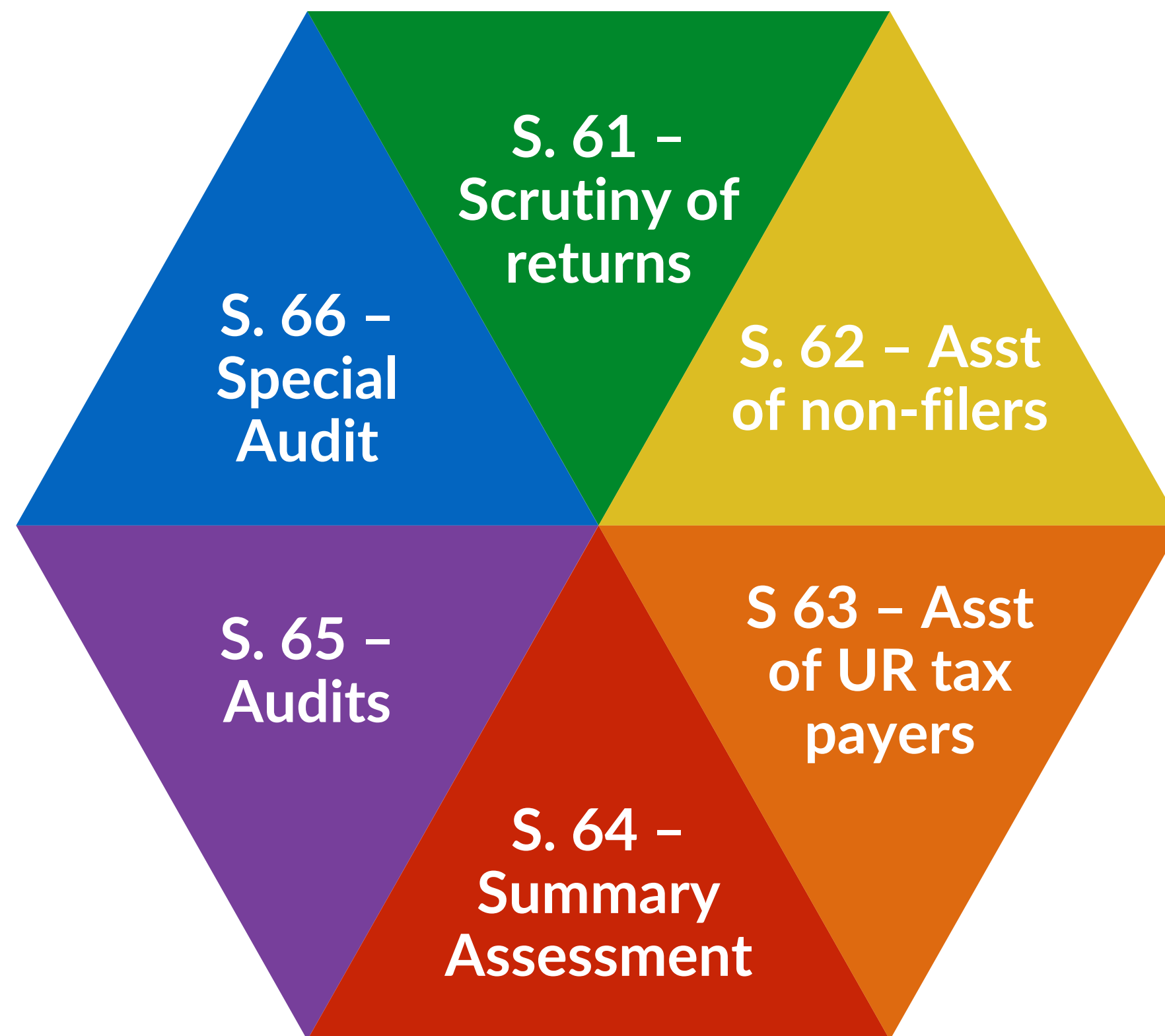
# Is it this many?

- Inspection
- DGGI
- Enforcement
- Investigation
- CAG
- Scrutiny
- Preventive
- Audit
- IAP
- Inquiry
- Special Audit



- Scrutiny
- BJA
- Summary Asst.
- Audit
- Special Audit
- CAG?

## Let's understand and compare these...



1. What are the various formats of proceedings?
2. Who can conduct the proceedings?
3. What is scope and coverage under each of them?
4. What can trigger the proceedings by the tax office?
5. What is the timelimit for initiation?
6. What is the procedure to be followed?
7. How long can it be conducted once initiated?
8. What could be the possible action by the tax office?
9. What will be the final step in the proceedings?
10. What is the timelimit for conclusion?

## A comparison ...

### Scrutiny

BJA – NF

BJA – URTP

Summary Asst.

Audit

Special Audit

- By the jurisdictional officer
- Merely for verification of correctness of the returns (*Eg: difference in 3B and 2A; 3B and 1; arithmetical errors*)
- Should be based only on scrutiny of returns + other evidence that is available with the TO (nothing can be asked for, from the TP)
- If filed within 30 days ... AO deemed withdrawn
- Can conclude with ...
  - ASMT 12 OR
  - Proceedings under S. 65, 66 or 67 OR
  - Notice under S. 73 or S. 74
- Can extend to ... Search | Seizure | Arrest | Summons | Access to business premises

## A comparison ...

Scrutiny

**BJA – NF**

BJA – URTP

Summary Asst.

Audit

Special Audit

- By the jurisdictional officer
- Mere non-filing of returns despite notice
- Anytime within 5 years from the due date of GSTR 9
- Deemed withdrawn if filed within 30 days | Proceedings can continue for interest and other amounts
- Can extend to ... Search | Seizure | Arrest | Summons | Access to business premises

## A comparison ...

Scrutiny

BJA – NF

**BJA – URTP**

Summary Asst.

Audit

Special Audit

- By the jurisdictional officer
- Anytime within 5 years from the due date of GSTR 9
- Opportunity of being heard is mandatory
- Concludes with AO
- Deemed withdrawn if filed within 30 days | Proceedings can continue for interest and other amounts
- Can extend to ... Search | Seizure | Arrest | Summons | Access to business premises

## A comparison ...

Scrutiny

BJA – NF

BJA – URTP

**Summary Asst.**

Audit

Special Audit

- By the jurisdictional officer - with permission of Ad Com or JC
- Only if there is evidence showing a tax liability
- Assess the liability and pass the order directly (no requirement of PH)
- Can fasten the liability even on the person in charge of such goods (agent; WH keepers)
- No notice; No opportunity of being heard
- Can be withdrawn suo motu / on application by the TP – within 30 days
- Concludes with Notice under S. 73 or S. 74
- Can extend to ... Search | Seizure | Arrest | Summons | Access to business premises

## A comparison ...

### Scrutiny

### BJA – NF

### BJA – URTP

### Summary Asst.

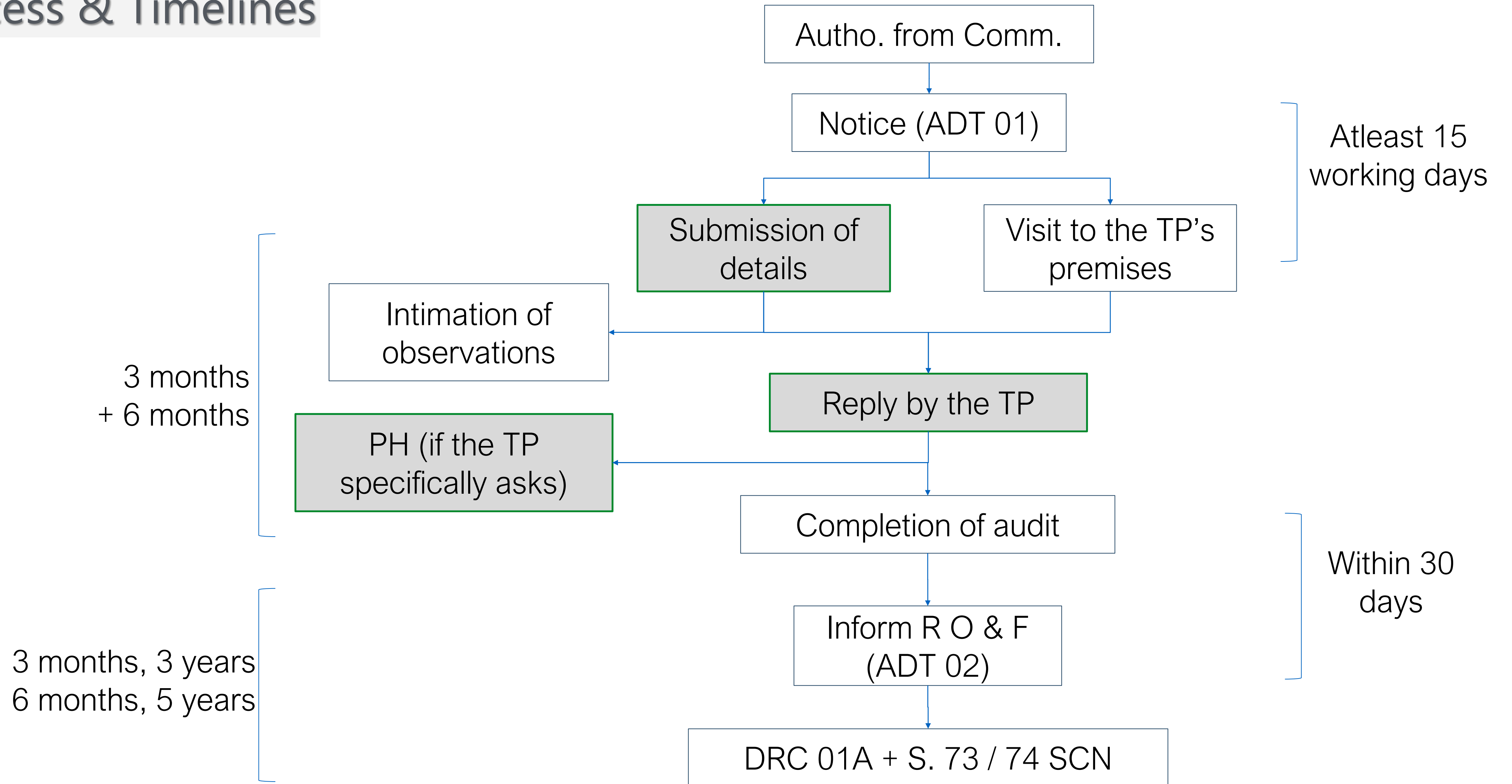
### Audit

### Special Audit

- By the Commissioner or person authorized by him
- Trigger could be - Risk assessment, Sampling, Industry specific or Company specific
- Cannot - summon others; access any other premises; access documents of other than the TP
- At least 15 working days notice prior to visit
- Should complete the report within 3 months (+ 6 months by Commn)
  - 3 months commences - on date of filing of details by TP or the date on which they visit the premises for audit - whichever is later
- Concludes with report of the findings or notice under S. 73 or S. 74



# Process & Timelines



## TO vs. TP

- Reason
  - Period
  - Frequency
  - No. of times
  - Officer
  - Place
  - Documents to be verified
  - Extension of 3 months?
- Authorisation
  - Reason for audit?
  - Validity of ADT 01
  - Request for PH
  - Himself / authorized repn 😊

## A comparison ...

Scrutiny

BJA – NF

BJA – URTP

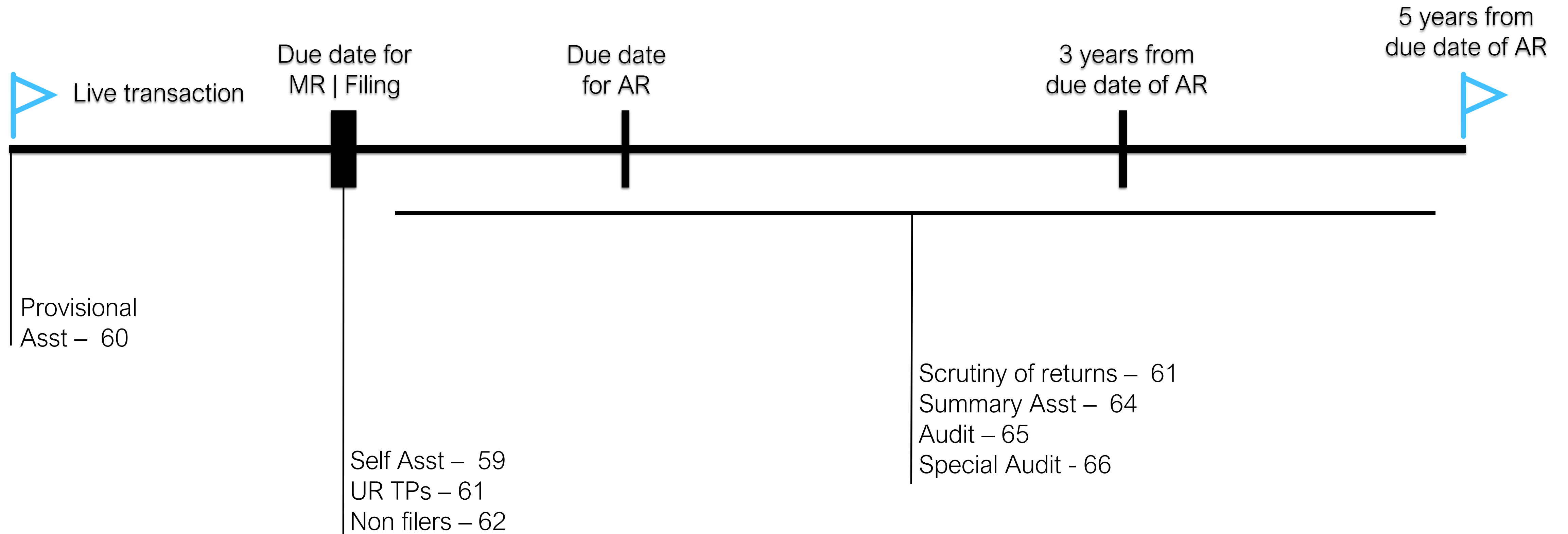
Summary Asst.

Audit

**Special Audit**

- AC & above with approval of the Commissioner
- Trigger could be nature and complexity of business; in the interest of revenue; if the value declared is incorrect or if the ITC is not within limits
- CA / CMA to submit report within 90 days
- Cost of CA / CMA to be borne by the TO
- Opportunity of being heard should be provided before findings are used
- Concludes with Notice under S. 73 or S. 74 or use of the findings in other proceedings already initiated

# At various stages



1. Can 2 separate proceedings be initiated under S. 65 simultaneously by different teams?
2. Can S. 61 and S. 65 proceedings be initiated simultaneously?
3. What about S. 65 and S. 67 being initiated simultaneously?
4. Can audit be initiated for a cancelled GSTIN (suo moto / on application)?
5. Can not providing the details / information during audit be treated as malafide?
6. Can S. 65 be re-initiated after previous one has already resulted in S. 73 / S. 74 notice?
7. While S. 65 is WIP, can S. 73 / S. 74 notices be issued?
8. Whether non cooperation by the tax payer be a reason for adverse opinion by the TO?
9. Can we apply for advance ruling for a matter which is listed in the intimation of observations after ADT 01?
10. Should malafide intent be established even before asking the data for 5 years?
11. Can S. 65 be undertaken and visit be initiated for duty free stores at the port / airport?
12. Should the TP be sent back where the WRIT is for reason of not providing PH despite it being asked for?

13. Can S. 65 initiated based on EWB difference or detention of goods during movement?
14. Is issue of draft / summary of observations mandatory?
15. Can errors identified by the TP and also observed in ADT 02 take the return rectification route instead of S. 65 proceedings?
16. Can the same jurisdiction issuing ADT 01 issue SCN and the OIO?
17. Is ADT 01 a demand? Should the amounts indicated therein be paid?
18. What would be the status of the amounts paid during audit (before and after ADT 02) – S. 73 or S. 74)?
19. What if the TP has applied for CIRP?
20. What is the difference between S. 65 and S. 71 for accessing the business premises?

## Timelines to remember

Year	9C	SCN 73	OIO - 73	SCN 74	OIO - 74
2017-18	05-Feb-20	30-09-2023	31-12-2023	05-08-2024	05-02-2025
2018-19	31-Dec-20	31-12-2023	31-03-2024	30-06-2025	31-12-2025
2019-20	31-Mar-21	31-03-2024	30-06-2024	30-09-2025	31-03-2026
2020-21	28-Feb-22	30-11-2024	28-02-2025	31-08-2026	28-02-2027
2021-22	31-Dec-22	30-09-2025	31-12-2025	30-06-2027	31-12-2027

## Consider these very strongly

1. Fake invoicing - in the returns filed or details being furnished
2. Status of the suppliers – on the date of transaction, on the date of filing of return, during the course of the proceedings
3. Respond to every communication ... even if you want to say, I will not respond !!!
4. Incorrect notice ... challenge at the very first instance; else cannot be taken up later
5. Contesting in appeals ... try and limit it to only legal matters | sort out the data related issues at the AO stage itself
6. If you think, any position taken is aggressive ... maintain that amount in ECrL (can negate interest and penalties)



*Hope it was a useful discussion*

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|||||