

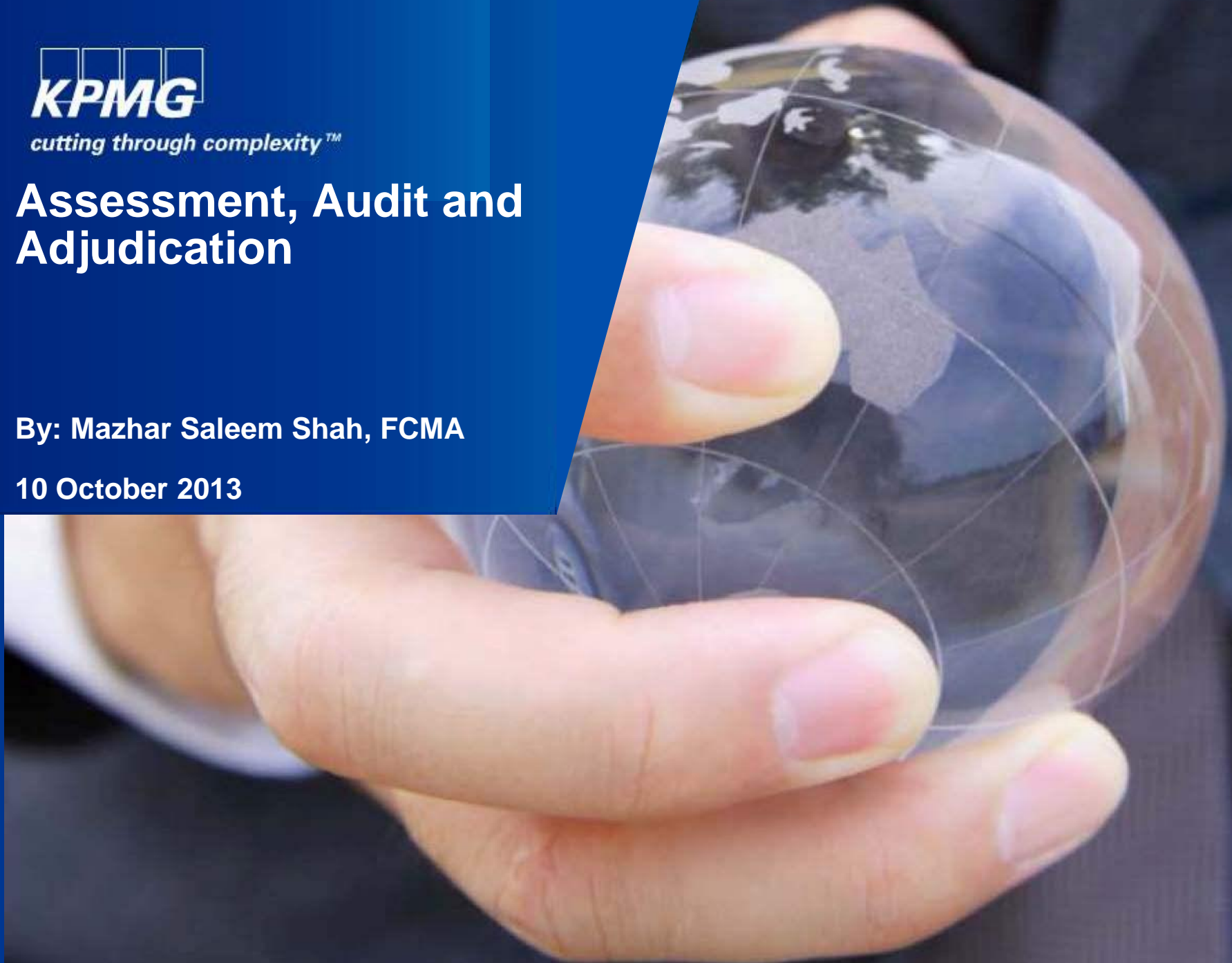


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# Assessment, Audit and Adjudication

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# Topics to be covered

- **Assessment of sales tax**
- **Audit & Investigation**
- **Audit observation, Show cause notice, and Order-in-Original**
- **Default surcharge**
- **Penalties**

# Relevant provisions of Federal & Provincial laws

<b>Subject</b>	<b>STA, 1990</b>	<b>FEA, 2005</b>	<b>SSTA, 2011</b>	<b>PSTA, 2012</b>	<b>KPSTA, 2013</b>
<b>Assessment of Tax</b>	S-11	S-14	S-23 & S-47	S-24 & S-52	S-40 & S-68
<b>Audit &amp; Investigation</b>	S-25, S-32A, S-72B & S-38	S-42B & S-46	S-28, S-29 & S-48	S-33, S-34 & S-53	S-50, S-51, S-69
<b>Audit Observation, Show Cause and Order-in-Original</b>	S-11	S-14, Rule 68	S-23, S-47, S-28	S-24, S-52, S-33	S-40, S-68, S-50
<b>Default Surcharge</b>	S-34	S-8	S-44	S-49	S-65
<b>Penalties</b>	S-33	S-19	S-43	S-48	S-64



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# Assessment of Sales Tax

# Assessment of tax and recovery – S-11 of STA

- Section 36 of STA was omitted vide FA-2012 and merged in S-11.
- Four situations are separately dealt u/s 11 of STA viz-a-viz:
  - ✓ If return is not filed and short-payment is due to any miscalculation.
  - ✓ Non-payment or short payment of tax or claim of inadmissible refund for reasons other than miscalculation.
  - ✓ If tax shortfall or claim of inadmissible refund is due to some collusion or deliberate act.
  - ✓ If tax shortfall or claim of inadmissible is by reason of any inadvertence, error or misconstruction.
- It's difficult for tax officer to distinguish the cases of willful & non-willful evasions
- Show cause is mandatory in all above situations, which can be issued within 5 years of relevant date i.e. the time of payment of tax or when the refund was issued.

# Assessment of tax and recovery – S-11 of STA

- Taxpayer must be awarded an opportunity of being heard.
- Order-in-Original must be issued within 120 days, extendable by CIR upto 90 days, excluding the time lapsed due to stay proceedings or ADRC or adjournment applied by the taxpayer [not beyond 60 days].
- If taxpayer fails to file a return, the tax officer is empowered to determine the tax liability of the registered person. Procedure for determination of minimum tax liability described under Sales Tax General Order No.3 of 2004, dated 12 June 2004.
- Definition of 'tax fraud' describes the cases which tantamount to deliberate evasion of tax. If conditions are not satisfied, the tax officer cannot impose excessive penalties on the registered person.



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# Audit and Investigation

# Tax Audits

## Types of Audit

- Routine audit of records – Section 25 of STA
- Pre or Post Refund Audit – Chapter-III of Sales Tax Rules, 2006
- Investigation/Enquiry under Section-38 & 38B of STA
- Special Audit under Section 32A of STA – By Qualified Accountants
- Audit / Investigation by Directorate General of Intelligence and Investigation-IR [refer SRO.776(I)/2011, dated 19 August 2011].



# Tax Audit – Section 25 of STA

## Departmental Audit – Section 25(1)

- CIR or his authorized Tax Officer can requisition statutory records or access the records / computers.
- On the basis of records, audit can be conducted once in a year.
- Records can be re-audited, if audited previously by Auditor General of Pakistan
- Order to be passed under Section 11 after completion of audit, as per procedure laid down under Para 39 of STGO No. 3 of 2004, dated 12 June 2004.

# Tax Audit – Provincial sales tax laws

## Pre-audit desk review

- Analytical review
- Trends of input-output ratios, previous results, industry norms, etc.

## Departmental Audit

- Not necessarily once a year
- On the basis of returns / records
- By an officer not less than Assistant Commissioner
- Criteria of selection prescribed in Audit Rules

## Inquiry / Investigation

## Special Audit

## ***Basis of Departmental Audit [Rule 3 of Audit Rules-PRA]***

- Irregular or abnormal fluctuations in input tax adjustments including carry forwards;
- Non or short payments of tax amounts declared on the monthly returns or other declarations;
- Unusual variations in inventories;
- Habitual tendency of filing short or misfiled returns;
- Sudden or unexpected downward changes in turnover; and
- Other cogent factor evident from the taxpayer's computer profile over doubts of tax evasion

# Tax Audit

## Scope of special audit

- To determine whether the records, invoices and monthly returns has been maintained and issued correctly;
- To determine whether monthly tax returns reflect correctly all taxable services rendered during tax periods;
- To determine whether input tax, output tax, tax adjustments, tax payable or tax refundable are substantiated with the records.

# Investigations – S-38 of STA

- Section 25 itself provides authority of initiating investigation under Section 38 of STA in cases of tax frauds.
- Wide discretion of authorized officer acting on behalf of the Board or Commissioner to access business premises, stocks, records, etc.
- Onus lies on FBR / CIR to prove the tax fraud according to definition.
- Investigations are generally assigned to DG-I&I offices of FBR.
- Section 38 does not provide authority to adjudicate cases, as such assessment/recovery can be enforced through Section 11 of STA.

# Selection of cases for audit by Board – S-72B

- Board is empowered to select cases for audit on random or parametric basis.
- Section 72B was under litigation where varied interpretations were given by Hon'ble Lahore and Islamabad High Courts. Hon'ble IHC held that Commissioner can exercise his authority independently to initiate audit without selection by the Board.
- Based on decision of LHC, the audit notices for the year 2011 were set aside and specific directions were given to the Board after framing parameters for selection of audit.



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**Audit observation,  
show cause notice and  
Order-in-Original**

# Key considerations

- Audit observation needs to be responded quite seriously to avoid process of adjudication. On the other hand, it helps to reduce the demand prior to issuance of show cause notice.
- It is not obligatory upon tax officers to issue audit observation prior to issue of show cause notice.
- Show cause notice be examined first on technical grounds like time limitation, jurisdiction, etc. and then on merits.
- Imposition of default surcharge and penalties should always be challenged if the tax officer has not proved the malafide intent on the part of taxpayer to evade the tax.
- Reply to show cause notice generally emerges as a vital source to build up a strong case before the appellate / litigation forums.





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# Offences, Default Surcharge and Penalties

# Default surcharge under Section 34

- **Default Surcharge:** Default Surcharge is attracted in case of non payment of tax due within due date whether intentionally or otherwise, as per the following rates:

<b>Non payment on account of any reason, other than tax fraud</b>	<b>KIBOR plus 3% per annum of the amount of tax due</b>
<b>Non payment on account of tax fraud</b>	<b>2% per month (24% per annum)</b>

# Penalty under Section 48

- If a person commits offenses prescribed under various provisions of law, then penalties as provided in the Table of Section 33 would be enforced.
- Penalties are waived on voluntary compliance by registered persons as provided under Section 25 of STA. However, default surcharge is payable on every late payment of tax due.
- Superior courts have held in plethora of decisions that penal provisions of any tax statute become applicable whenever the element of mens-rea exists in relation to evasion of tax.

# THANK YOU