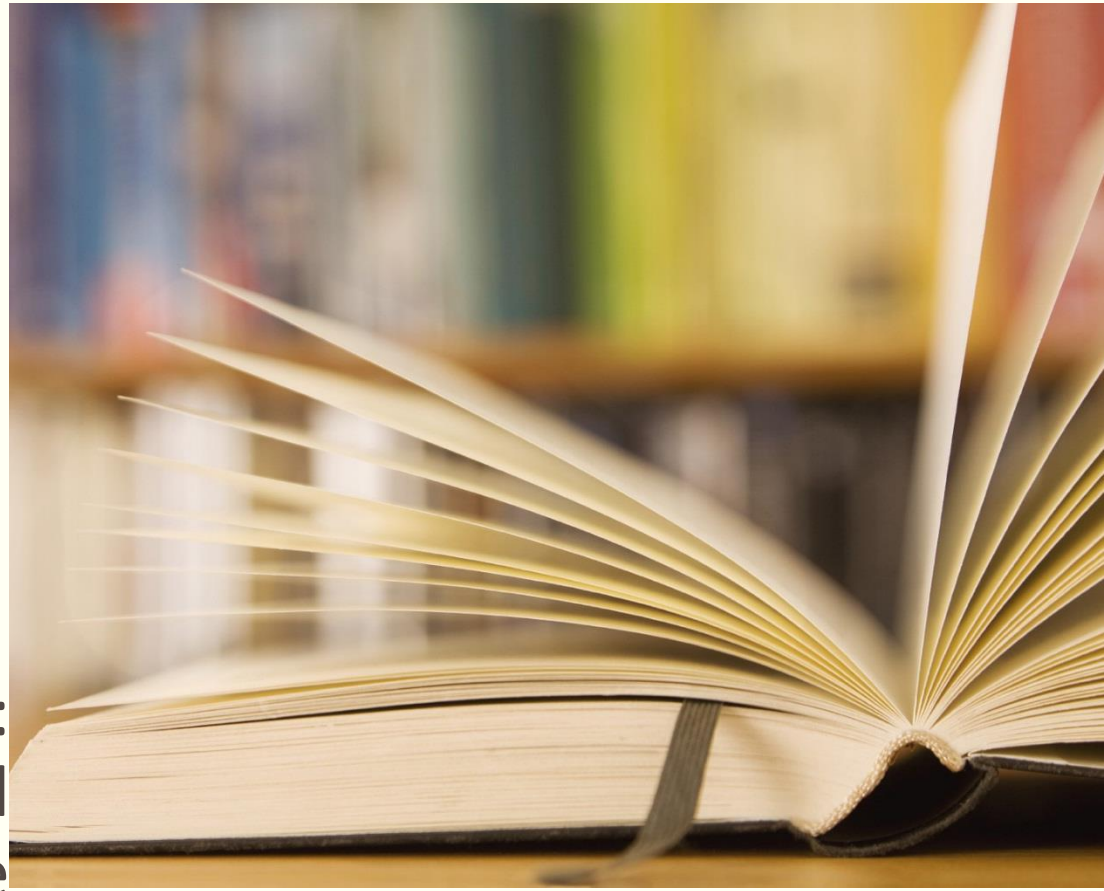
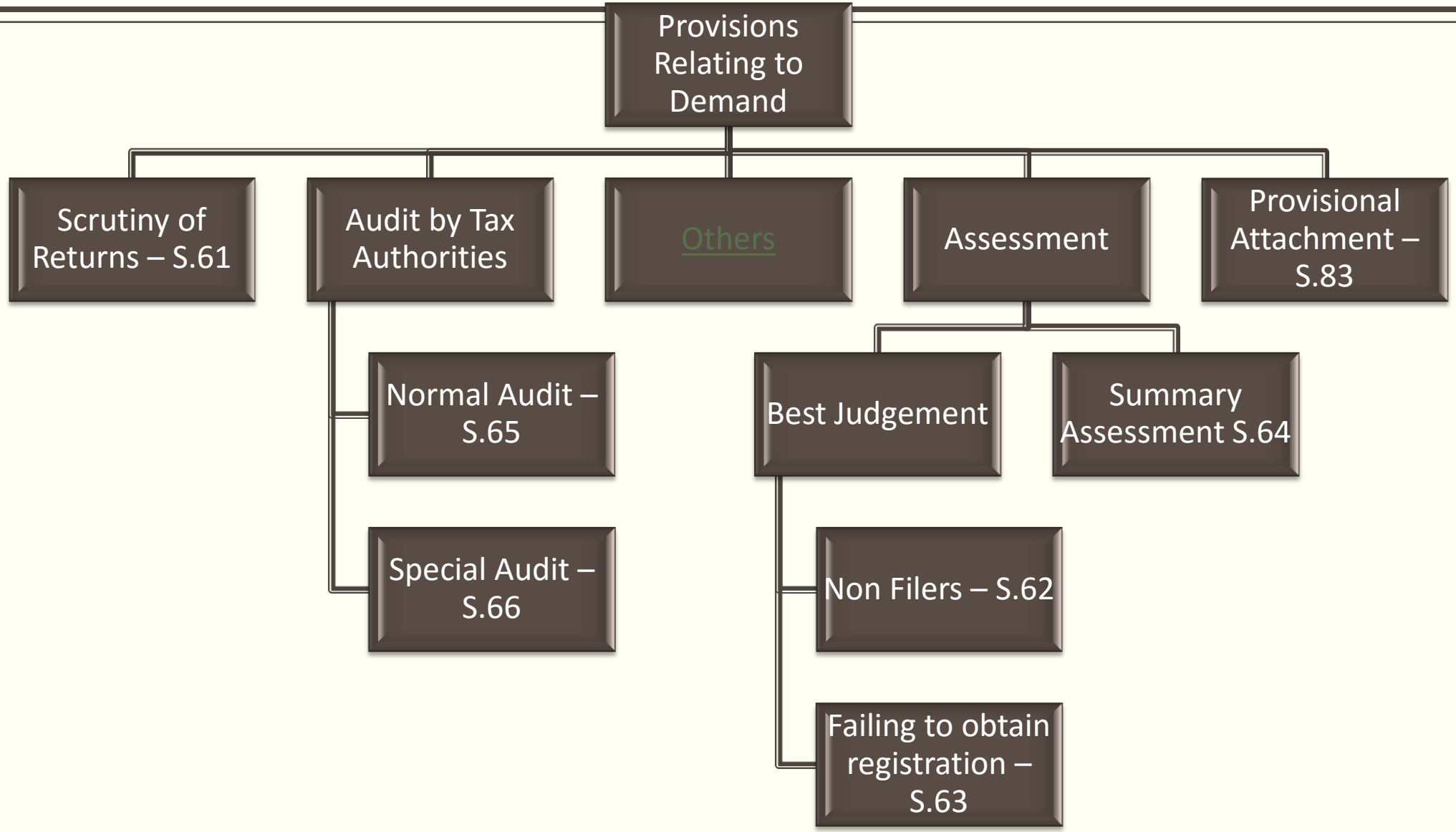
DEMAND & RECOVERY



By:
A. Saiprasad
Advocate

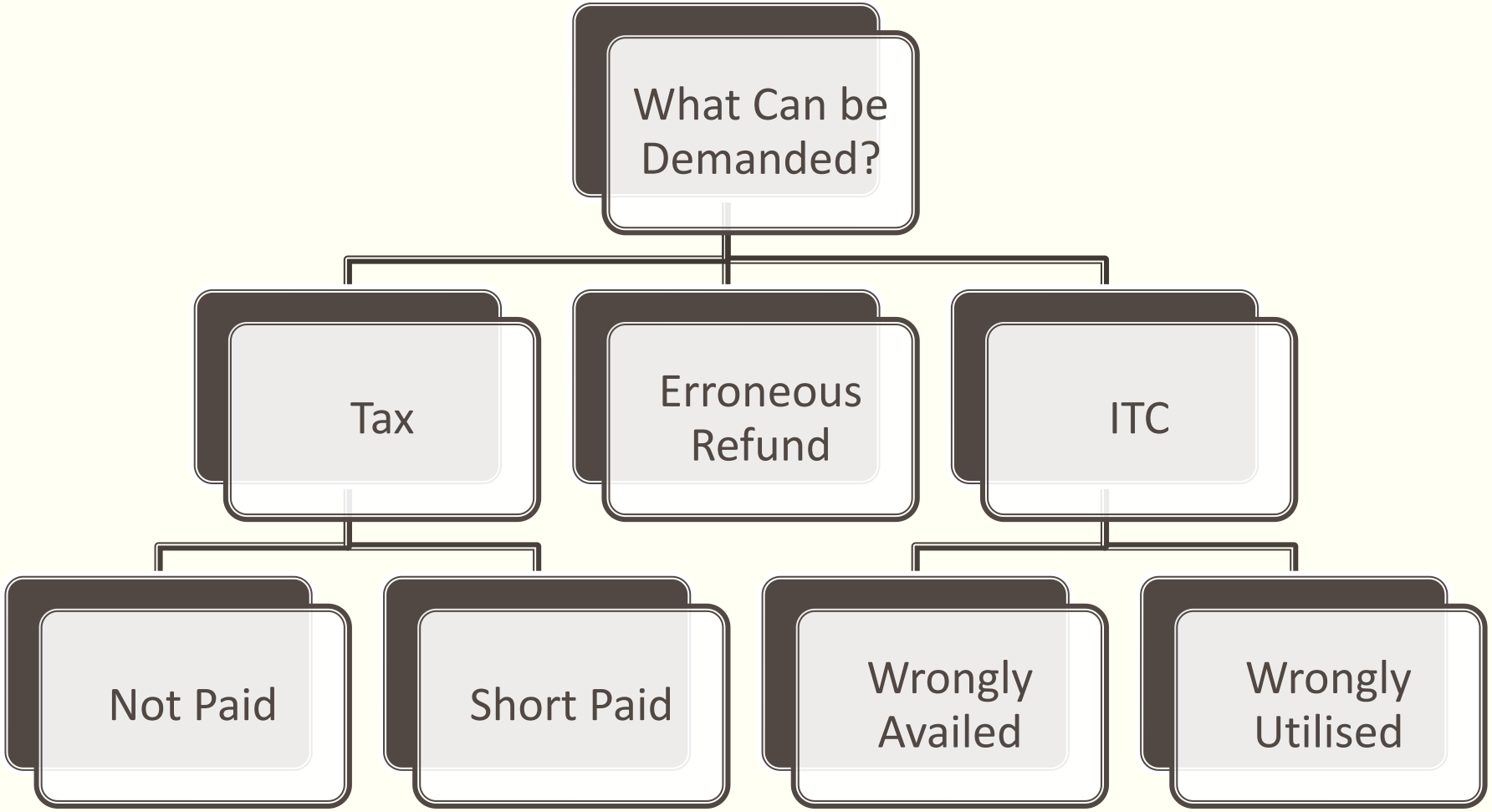
PROVISIONS RELATING TO DEMAND

Provisions Relating to Demand

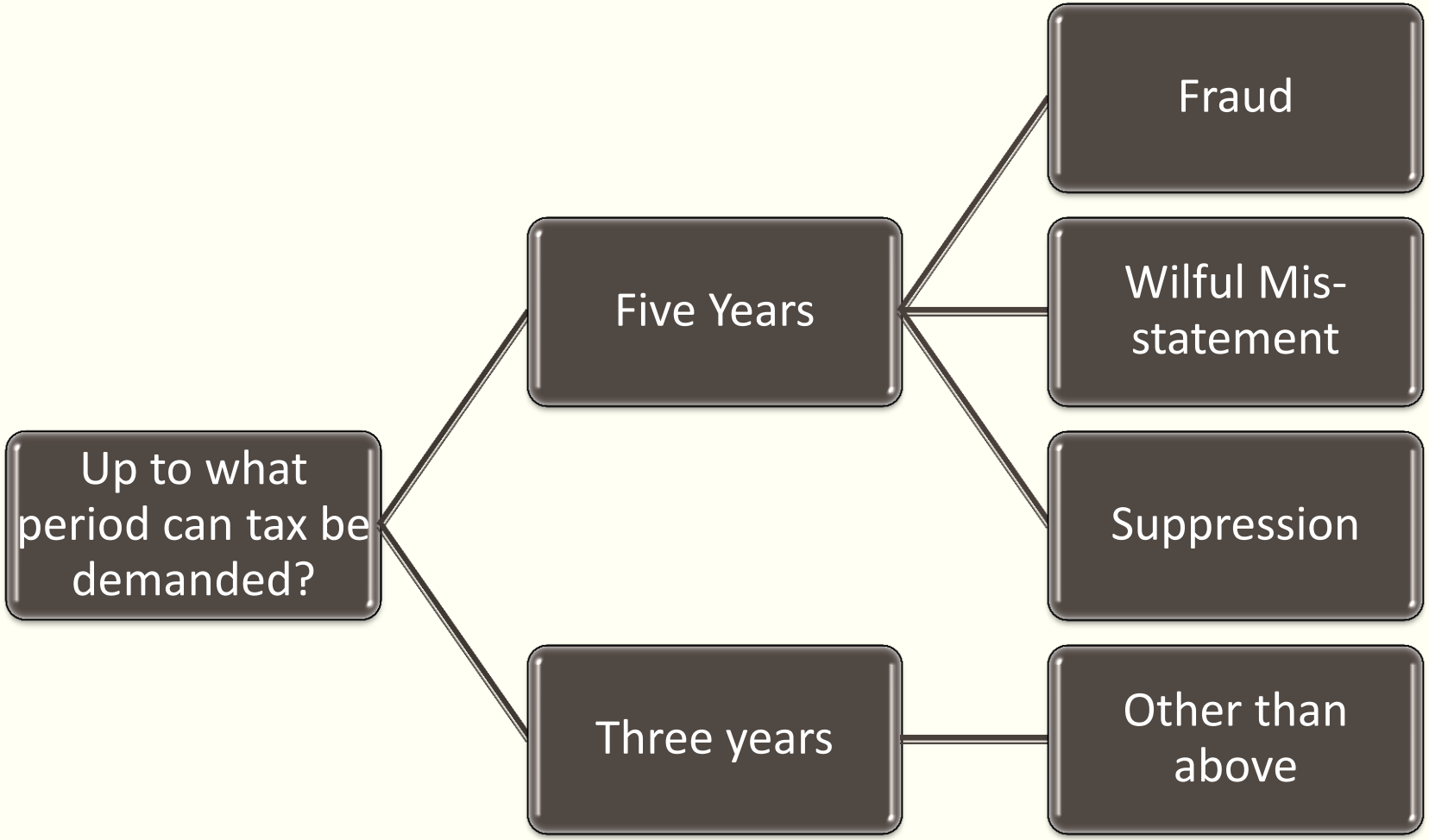


DEMAND PROVISIONS

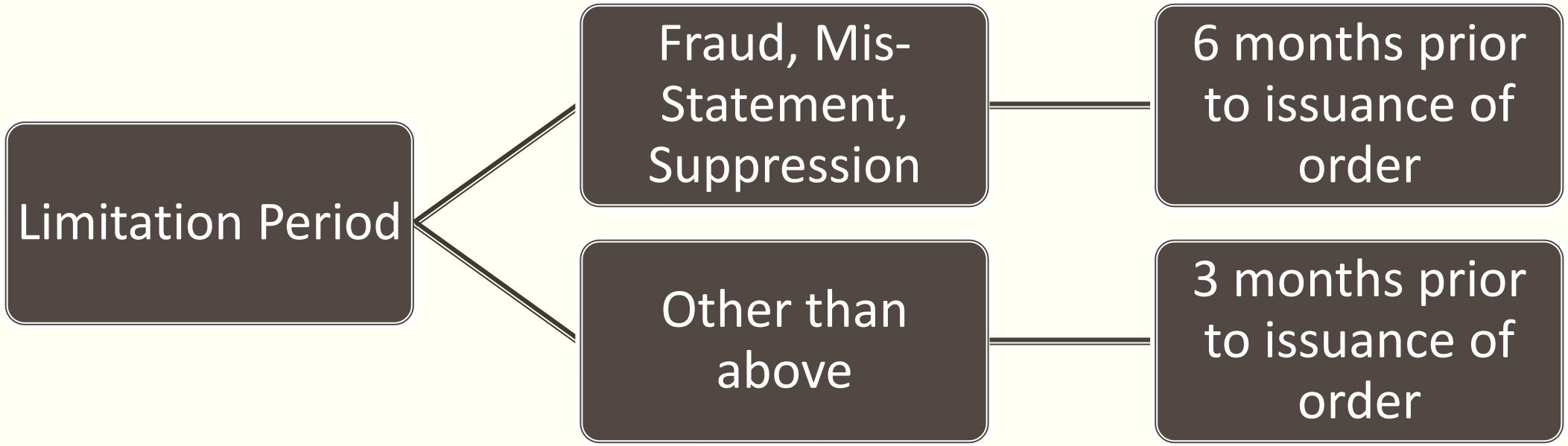
What is that the department can demand?



Up to what period can the SCN be issued?



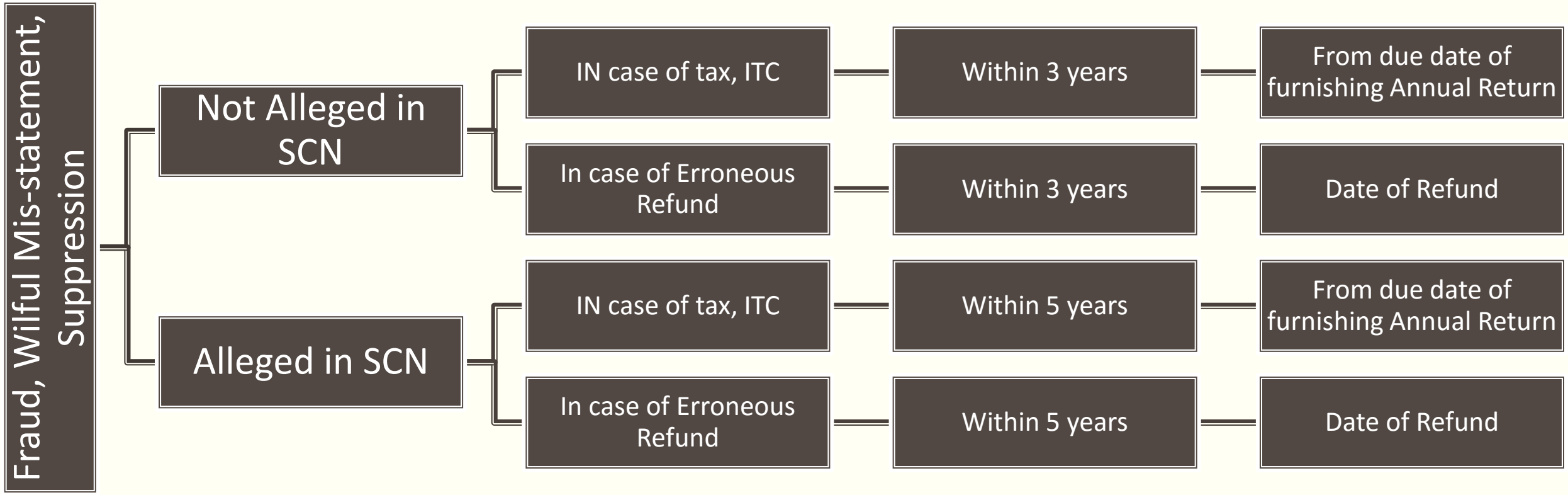
What is the time limit to issue SCN



Payment before Issue of SCN

Fraud Wilful Mis-Statement	Not Alleged in SCN	Before Issue of SCN, Within 30 days of SCN	Pay Tax, Interest No penalty
		On issue of OIO	Pay Tax, Interest Max Penalty – Higher of (10% Tax or Rs.10,000)`
Suppression	Alleged in SCN	Before Issue of SCN	Pay Tax, Interest 15% penalty
		Within 30 days of SCN	Pay Tax, Interest 25% penalty
		Within 30 days of issue of OIO	Pay Tax, Interest 50% penalty

Time Limit for Determination of Adjudication Levies



Miscellaneous provisions relating to Demand

- What about periodical SCNs?
  - Can Fraud/ Mis-statement/ Suppression be alleged in periodical SCNs?
- Would benefit of reduced penalty u/s 73 be available in case of:
  - Self Assessed tax not paid
  - Amount collected as tax but not paid
- What would be the status of proceedings issued against ‘other persons’, when proceedings against ‘main person’ is concluded u/s 73/ 74
- What if SCN is issued alleging omissions / commission but First Appellate Authority or Tribunal or Court conclude that there is no omissions? Would entire demand be dropped?
- Whether Adjudicating Authority can pass OIO without granting opportunity of being heard?

Miscellaneous provisions relating to Demand

- What if the service of notice or order is stayed by order of the Court?
- Can adjournments be taken? If so how many and when?
- Can the Adjudicating Authority demand tax on the basis of grounds, which have not been alleged in the SCN?
- Would interest be payable, if not demanded in SCN/ confirmed in OIO?
- What if the OIO is not issued within 3 years/ 5 years?
  - *Are there any exceptions to the rule that OIO must be issued within 3/ 5 years?*
- Is it necessary to initiate proceedings u/s 73/ 74 wrt to self assessed tax/ interest on self assessed tax, declared in the returns?

S.76 - Tax Collected but not deposited

Amount collected, representing as tax

↓

A’ee has not paid said amount to CG/SG

↓

Tax to be remitted fortwith

↓

Whether supplies were taxable or not

Tax Collected but not deposited – Other Provisions

- Is there any time limit to issue SCN to demand tax collected but not deposited?
- Whether there is any time limit to issue OIO in case of aforesaid SCN?
- Is any interest payable for delay in aforesaid case?
- Whether the person who has borne the incidence of tax can claim refund of tax, wrongfully collected and remitted to CG/SG?
- Whether personal hearing would be granted?
- Can this amount be claimed back as refund by person who has borne such tax?

S. 77 - Tax Wrongfully Collected and Deposited

- Fact: Tax paid as Intra-state transaction but later ascertained as Inter-State Transaction and vice-versa.
- What should I do?
- Can I get refund of tax wrongly paid?
- Am I liable to pay interest?

RECOVERY PROVISIONS

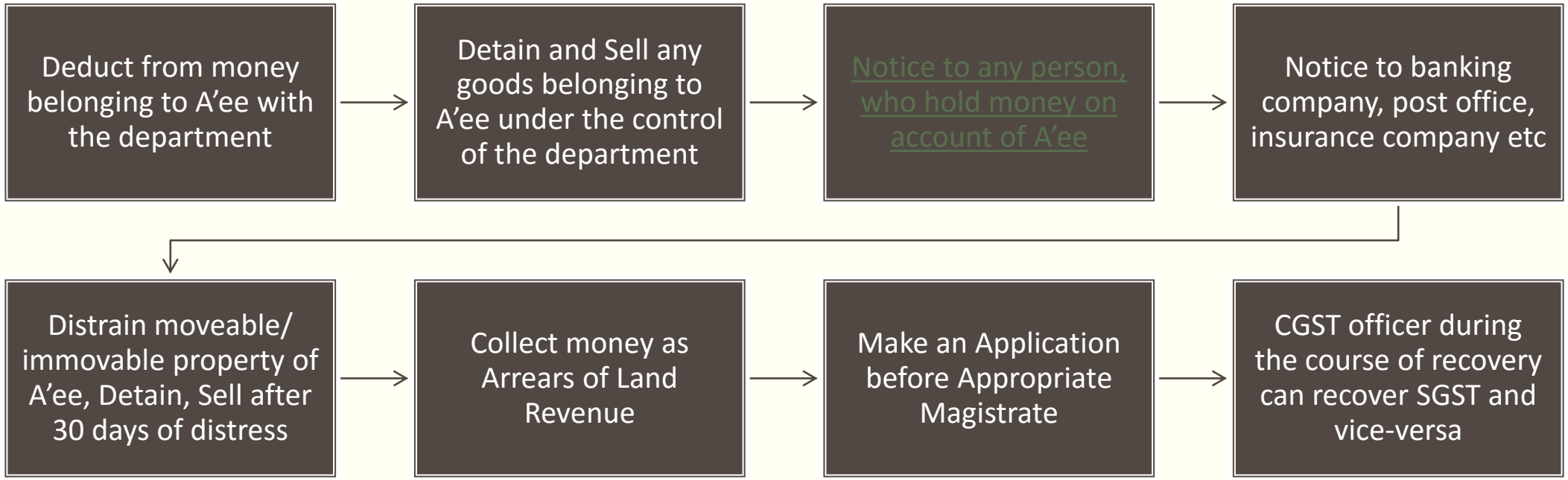
S.78 - Recovery Provision

Can recovery provision be initiated before demand?

Can recovery provision be initiated after issue of SCN but before Adjudicating Authority has issued OIO?

What is the time limit after which recovery proceedings are initiated?

Methods of initiating recovery



Provisions relating to Recovery - Installments

- Can the A'ee pay the tax amount in installments?
  - Whether installment facility is not available in certain cases?
- What is the maximum period allowed for paying tax in installments?
- Would interest be payable for the delay in payment of tax due to installments?
- What if tax has been duly paid for 5 installment and there is a default in payment of 6th installment out of the 12 installments? When would the 7th to 12th installment be due?
- Whether notice must be issued to recover the balance 6th to 12th installment?

Provisions relating to Recovery – Void Transactions

- An OIO confirming tax of Rs. 1 Crore on M/s. XYZ is issued on 1.1.17. The recovery notice is issued on 1.4.17.
- M/s. XYZ anticipating the decisions has transferred land worth Rs.50 lakhs on 30.11.16 to M/s EFG on receipt of consideration and land worth Rs.80 lakhs on 2.2.17 to M/s. PQR for Rs.5 lakhs.
- Whether the sale of land by M/s. XYZ be treated as void? If so which transaction(s)?
- What if M/s. PQR which has purchased land on 2.2.17 has purchased the land for Rs. 80 lakhs, which represents the market value of land and without notice of proceedings against M/s. XYZ?

Provisions relating to Recovery – Provisional Attachment (PA)

When can PA be made?

- When proceedings are pending u/s 62, 63, 64, 67 and 73, 74.

Can PA be made when case is pending before FAA, Tribunal, Court?

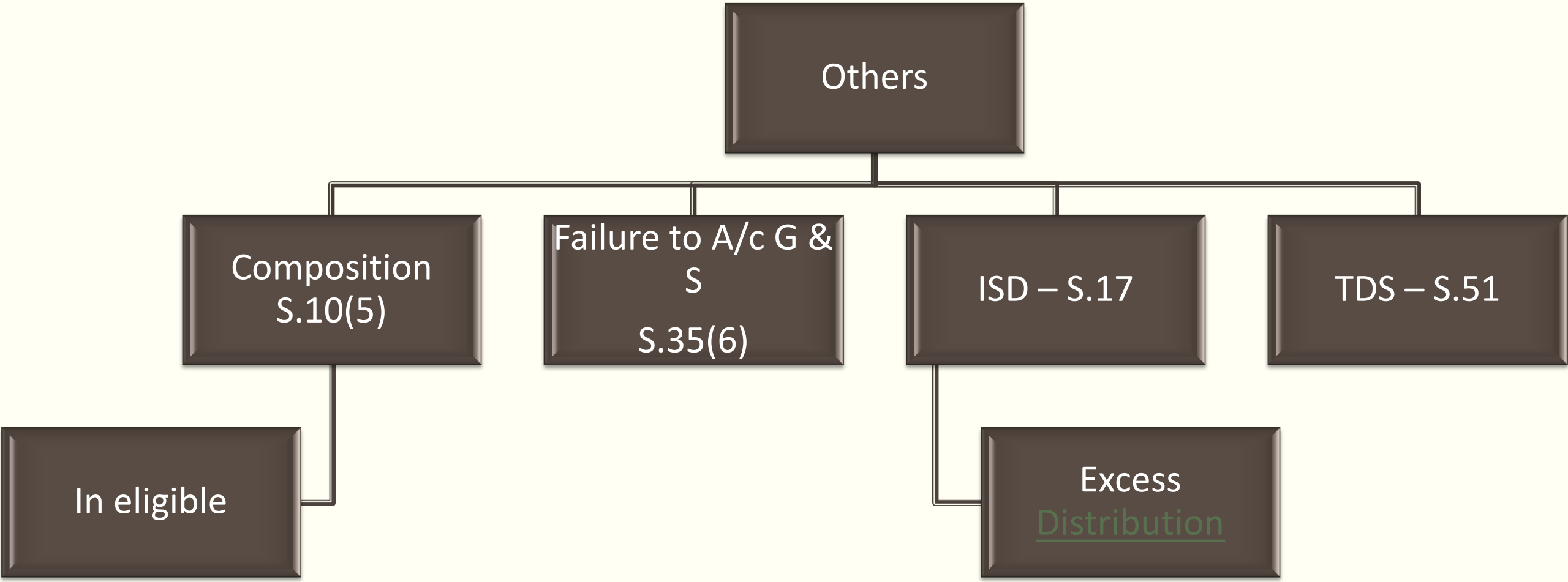
Who can order PA?

What is the procedure for PA?

Is PA open ended or does it have a time limit?

THANK YOU

Provisions Relating to Demand



Recovery Provisions against third parties

- Department has initiated recovery proceedings against M/s XYZ for Rs.50,000/-.
- M/s. ABC is debtor of M/s. XYZ and is liable to pay M/s. XYZ Rs.55,000/-.
  - Can recovery notice be issued to M/s. ABC? If so for how much?
  - What if the debt was Rs.45,000/-?
- M/s. ABC is due to get commission money from M/s. GEF, which has to be remitted to M/s. XYZ. Commission due on 1.5.17. It gets the money on 1.6.17
  - Can recovery be initiated from M/s. ABC prior to 1.5.17?
  - When would M/s. ABC be liable to remit the money?
  - What if M/s. ABC never gets the commission from M/s. GEF?
  - Back

Recovery Provisions against third parties

- What if M/s. ABC get the money and pay it to M/s. XYZ?
  - Who will now be deemed as defaulter?
  - Whether separate recovery proceedings can be initiated against M/s. ABC?
  - What if entire tax recovery is made at a later point of time from M/s. XYZ?
- M/s. GEF becomes bankrupt and goes into liquidation? It does not pay any commission to M/s. ABC
  - Can recovery proceedings *under GST law* still be initiated against M/s. ABC?
  - Since it had contractual obligation to pay part of the commission to M/s. XYZ, which it has still not paid!!
- Methods of initiating recovery