

## Chapter-XVI

# Liability to Pay in Certain Cases

---

- 85. Liability in case of transfer of business
- 86. Liability of agent and principal
- 87. Liability in case of amalgamation or merger of companies
- 88. Liability in case of company in liquidation
- 89. Liability of directors of private company
- 90. Liability of partners of firm to pay tax
- 91. Liability of guardians, trustees, etc.
- 92. Liability of Court of Wards, etc.
- 93. Special provisions regarding liability to pay tax, interest or penalty in certain cases
- 94. Liability in other cases

### Statutory Provision

#### **85. Liability in case of Transfer of Business**

- (1) *Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or, , to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.*
- (2) *Where the transferee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.*

#### **85.1 Introduction**

This section deals with tax liability that may arise in case of transfer of business. It deals with the following situations:

- Liability arising before the transfer of business as a whole or in part; and
- Liability arising post transfer of business as a whole or in part.
- Such liability may arise on account of sale, gift, lease, leave and license, hire or in any other manner.

## 85.2 Analysis

### (i) Liability arising prior to transfer:

- The provision applies when a taxable person who is liable to pay tax transfer his business either wholly or in part, which could be by way of:
- Sale
  - Gift
  - Lease
  - Leave and license
  - Hire or
  - In any other manner

**Tax liability:** Both transferor and transferee will be jointly and severally liable for payment of taxes, interest and / penalty due upto the time of transfer of business (wholly or partly).

The joint and several liability will remain even if such amounts were determined and due after the transfer of business.

*Interestingly even penal liability, which is quasi-criminal in nature, is sought to be fastened on the transferee, although he would not have been responsible for the non-payment of tax liability by the transferor prior to transfer of business*

### (ii) Liability arising post transfer

The tax, interest and / or penalty which is determined and which relates to the period, post transfer of business will clearly be the liability of the transferee of business.

It will remain the liability of the transferee whether or not the business is continued in the same name or otherwise.

As a process, in case the transferee is already an existing taxable person, he needs to apply for amendment of his registration certificate within the prescribed time incorporating the changes as to the acquisition of the business (whole or part).

### (iii) Going concern transfer

Sale of business as a 'going concern' is not taxable as per paragraph 4(c), schedule II of the CGST Act. Read with exemption notification no. 12/2017- Central Tax (Rate) dated 28<sup>th</sup> June, 2017. Please also refer rule 41 that permits the transferor to upload GST ITC 02 on the common portal for effecting a smooth transfer of all unutilised credits pursuant to a 'going concern' transfer.

## 85.3 Comparative analysis

The liability in respect of transactions, post the date of transfer of business, viz., where the

liability is fastened on the transferee is comparable to the erstwhile indirect tax provisions. However, in respect of joint and several liability of both, the transferor and transferee, for liabilities upto the date of transfer is comparable to certain State level VAT laws.

#### 85.4 FAQs

Q1. In case of transfer of business, who is liable to pay tax in respect of business transactions prior to such transfer?

Ans. Both the transferor and transferee of business (either wholly or partly) are jointly and severally liable to pay tax.

Q2. Whether such liability as mentioned above is applicable only for tax?

Ans. Such liability is applicable to interest and penalty also in addition to tax.

Q3. What are the types of business transfers covered in Section 85?

Ans. Following types of business transfers are covered in the subject provision:

- (a) Sale;
- (b) Gift;
- (c) Lease;
- (d) Leave and license;
- (e) Hire; or
- (f) In any other manner

Q4. To what extent the transferor of business is liable to pay tax / interest / penalties?

Ans. The transferor of business is jointly and severally liable to pay tax / interest / penalties arisen along with the transferee (whether determined prior to transfer or post transfer) upto the date of transfer of business.

Q5. Who is liable to pay tax in respect of supplies made after the date of transfer of business?

Ans. The transferee of business is liable to pay tax after the date of transfer of business.

Q6. If the transferee carries on an existing business, what are the actions to be taken on transfer?

Ans. The transferee is required to make amendments in his registration certificate to give effect to the business transfer

#### 85.5 MCQ:

Q1. Transfer of business includes .....

- (a) Sale
- (b) Lease
- (c) Leave & License

- (d) All the above

Ans: d) All the above

Q2. Who is liable to pay the tax in case of transfer of business?

- (a) Transferor  
(b) Transferee  
(c) Both jointly or severally  
(d) jointly

Ans: c) Both jointly or severally

### Statutory Provision

#### **86. Liability of Agent and Principal**

*Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.*

#### **86.1 Introduction**

This section casts the liability on a principal, in addition to the liability of agent who effects the supply of taxable goods on behalf of principal or procures taxable goods on behalf of his principal.

#### **86.2 Analysis**

Under the GST law, in cases where –

- Taxable Goods are supplied by agent on behalf of principal; or
- Taxable Goods are procured by agent on behalf of principal;

the agent is primarily liable for tax. However, by virtue of this provision, both agent and principal, will be jointly and severally made liable to pay for tax payable on such supplies.

It is important to note that transactions between a Principal and Agent involving 'handling' of goods is regarded as a supply *inter se* vide paragraph 3, schedule I. But, in this section, 'joint and several' liability is being fasten on person who are not covered by the said fiction regarding supply. This section is to provide a recourse to the Government against either of them and not necessarily only upon default by the principal obligor. Government is free to recover dues from either of them or both (upto the total dues only) without having to exhaust its remedies against the one who was principally liable (principal obligor) and then only proceed against the other.

#### **86.3 FAQs**

Q1. Whether the principal is also liable for tax payable on the goods supplied by the Agent?

Ans. Yes, the principal will also be jointly and severally liable to pay tax on such supplies, along with the agent.

**86.4 MCQ**

- Q1. Agent and Principal, both are liable to pay tax on supply or receipt of .....
- (a) Taxable Goods only
  - (b) Services only
  - (c) Goods along with service
  - (d) None of the above

Ans: (a) Taxable Goods only

- Q2. Agent and Principal are liable to pay tax.....
- (a) Jointly
  - (b) Separately
  - (c) Both jointly and severally
  - (d) Jointly or Separately

Ans: (c) Both jointly and severally

**Statutory Provision:****87. Liability in case of Amalgamation or Merger of companies**

- (1) *When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to tax accordingly.*
- (2) *Notwithstanding anything contained in the said order, for all purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled, with effect from the date of the said order.*

**87.1 Introduction**

This section deals with tax liability on transactions between the effective date and date of order of Tribunal/Court in case of amalgamation or merger of companies.

**87.2 Analysis**

- (i) In cases of amalgamation or merger of two or more companies by virtue of an order passed by Tribunal/Court/otherwise., the following two crucial dates are relevant, -
- Date from which the amalgamation/merger is effective;

- Date of the order pursuant to which the amalgamation/merger takes place;
- (ii) Normally, by virtue of the said order the transactions of supply of goods and/or services inter-se the companies merged/amalgamated between two dates would get nullified as they would become one entity from the effective date (and not from the date of the order).
  - (iii) However, for the purposes of GST, by virtue of this provision, such transactions would continue to be treated as supply by one entity and receipt by the other, viz., all provisions of this law would equally apply as if the amalgamation or merger had not taken place and both the entities continue as two different taxable persons. Till the date of order of amalgamation / merger, those companies shall be treated as distinct companies and should discharge their respective tax liabilities.
  - (iv) Thus, this provision would eclipse the order of the Court/Tribunal and its legal effect for the limited purposes of GST law.
  - (v) It provides that wherever necessary, the registration certificates of the said companies would stand cancelled with effect from the date of the said order.

Please refer to facility provided by rule 41 for transfer of credits.

### 87.3 Comparative analysis with the erstwhile regime

This is comparable to most of the State level VAT laws, wherein the sale of goods between such entities (between the effective date of merger / amalgamation and the date of the order) will be treated as sale by one entity and purchase by the other. Such transactions will continue to be liable to tax as if the merger or amalgamation had not taken place and both the entities continue as two different entities.

### 87.4 MCQ:

- Q1. When two or more companies are amalgamated, the liability to pay tax on supplies between the effective date of amalgamation order and date of amalgamation order would be on -
- (a) Transferee;
  - (b) Respective companies;
  - (c) Any one of the companies;
  - (d) None of the above.

Ans: (d) Respective Companies.

### Statutory Provision:

#### **88. Liability in case of company in liquidation**

- (1) *When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company*

(hereinafter referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

### 88.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated. This section has to be read with Rule 160 of GST Rules, 2017.

### 88.2 Analysis

- (i) Every person appointed as receiver / liquidator needs to give intimation of his appointment to the Commissioner within 30 days of his appointment.
- (ii) Within 3 months from the date of such intimation, the Commissioner, after making necessary enquiry or calling of information, will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company.
- (iii) When a private company is not able to clear its dues, then every person who was the director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues.
- (iv) However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.
- (v) Rule 160 of GST Rules, 2017 states that where a company is under liquidation, as specified u/s 88 of the GST Act, then the Commissioner shall notify the liquidator for recovery of any amount representing tax, interest, penalty or any amount due under the Act.
- (vi) While section 88 provides the provision must be made by liquidator for GST dues 'then'

or 'likely thereafter to become payable', Rule 68 provides only for 'amount due' i.e. crystallised liabilities existing on the date of the letter and not for likely liabilities to become payable thereafter.

- (vii) As per Rule 160, the intimation must be sent in Form GST DRC – 24 to the Liquidator. This intimation must contain the following details:
- (a) Name of the company being liquidated
  - (b) The GSTIN of the company being liquidated
  - (c) Date of the letter
  - (d) Period for which demand is being made
  - (e) Demand Order No.
  - (f) Reference to Liquidator's letter intimating liquidation of the company
  - (g) The actual amount/ likely amount the company owes to State/ Central Government in terms of tax, interest, penalty, other dues and total arrears thereof
- (viii) Rule 160 employs the term 'notify' the liquidator while Form GST DRC – 24 'directs' the liquidator to make sufficient provision for discharge of current and anticipated liabilities before final winding up of the company.

### 88.3 MCQ

- Q1. Intimation regarding appointment of liquidator should be given to the Commissioner within 30 days of
- (a) Liquidation
  - (b) Cancellation of registration
  - (c) Appointment of Liquidator
  - (d) Order of Court

Ans: (c) Appointment of Liquidator

- Q2. Commissioner will notify the amount of liability within how many days of intimation
- (a) 3 months
  - (b) 30 days
  - (c) 60 days
  - (d) 6 months

Ans: (a) 3 months

- Q3. When would a director not be liable to pay the tax dues,
- (a) Liquidator refuses to pay
  - (b) Auditor refuses to pay



- (c) If the non-recovery is not due to gross neglect of the director
- (d) None of the above

Ans: c) If the non-recovery is not due to gross neglect of the director

**Statutory Provision:**

**89 Liability of directors of Private Company**

- (1) *Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.*
- (2) *Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.*
- Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.*

**89.1 Introduction**

This section deals with recovery of tax dues, interest or penalty from the directors of a private company, where the private company has not discharged its tax, penalty or interest liability towards the supply of goods or services.

**89.2 Analysis**

- (i) If the tax, interest or penalty were not paid by a private company in relation to any supply of goods or services for any period, then every Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when, he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to affairs of company.
- (ii) However, an exception has been carved out for the above provision – viz., this is not applicable to personal penalty imposed on such director.

**89.3 MCQ**

- Q1. When a private company is converted into public company, the liability of director of private company before conversion is.....

- (a) Tax Only
- (b) Tax and Interest
- (c) Tax, Interest or Penalties
- (d) None of the above

Ans. (d) None of the above

Q2. Who is liable to pay the tax in case tax, interest or penalty can't be recovered from the private company?

- (a) Additional director
- (b) Whole time Director
- (c) Managing Director
- (d) All of the above

Ans. (d) All of the above

### Statutory Provision

#### **90. Liability of Partners of firm to pay tax**

*Notwithstanding any contract to the contrary and any other law for time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally, be liable for such payment:*

*Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:*

*Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.*

#### **90.1 Introduction**

This section deals with the liability of a partner of a firm to pay any tax, interest or penalty, that was otherwise payable by the firm.

#### **90.2 Analysis**

- (i) Where a partnership firm is liable to pay any tax, interest or penalty, all the partners of such firm will be jointly and severally liable to pay such amounts.
- (ii) If any of the partners retire, then such partner or the firm shall intimate the Commissioner by a notice in writing within one month from the date of retirement. In

such cases, the retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

- (iii) However, where no such intimation is given by the partner to the Commissioner within 1 month from retirement date, the liability of such retired partner will continue till the date on which the intimation is received by the Commissioner.
- (iv) The provision will be equally applicable for LLPs.

Every partner who retires from a partnership firm should file an intimation to the jurisdictional Commissioner giving the details of his retirement – viz., the name of the firm, registration number of the firm and the date of his / her retirement.  
If the firm is operating in more than one States, such intimation should be filed in all such States.

### 90.3 FAQs

- Q1. Whether the retiring partner is liable to pay tax?  
Ans. Retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).
- Q2. What are the precautions to be taken by the retiring partner?  
Ans. Retiring partner shall intimate the Commissioner by a notice in writing of his retirement within one month from the date of his Retirement.
- Q3. Whether partner or firm is liable to intimate to the Commissioner regarding his retirement?  
Ans. Either the retiring partner or the firm shall intimate the Commissioner by a notice in writing of retirement of a partner.
- Q4. What is the time limit for the firm or partner to give intimation of retirement of partner?  
Ans. The time limit to intimate retirement is within one month from the date of retirement to ensure that the liability is not fastened post retirement date.
- Q5. What are the consequences of non-intimation?  
Ans. The liability of the retiring partner continues till the date of receipt of intimation by the Commissioner

### 90.4 MCQ

1. Retiring partner should intimate the retirement to
- (a) Department
  - (b) Government
  - (c) Commissioner
  - (d) All of the above

Ans. (c) Commissioner

2. Intimation to the Commissioner has to be given within.....
- (a) 1 month
  - (b) 60 days
  - (c) 90 days
  - (d) 45 days

Ans. 1 month

3. If the intimation is delayed to the Commissioner then the retiring partner is liable to pay tax dues till:
- (a) the date of intimation to the Commissioner
  - (b) the date of acceptance of intimation by the Department
  - (c) the date of retirement
  - (d) the date of show cause notice

Ans. The date of intimation to the Commissioner

### Statutory Provision

#### **91 – Liability of guardians, trustees etc.**

*Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.*

#### **91.1 Introduction**

This section enables collection of tax, interest or penalty from the guardians, trustees or agents of a minor or any other incapacitated person in respect of the business carried on for them.

#### **91.2 Analysis**

- (a) In respect of business carried on, on behalf of, or for the benefit of a minor or incapacitated person (by the following persons who carry on such business) then such person will be liable to tax:
- Guardian; or
  - Trustee; or

— Agent;

- (b) The tax, interest, penalty or any other dues which such minor or incompetent person will be liable to, are the amounts which are recoverable from the minor or any such incapacitated person and which are levied, assessed in the hands of guardian, trustee or agent.
- (c) The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.
- (d) The deeming fiction is required to overcome the general principle of law, which operates in favour of a minor or incapacitated person to plead minority or incapacity in respect of dues or claims, particularly penal liability.
- (e) Interestingly the expression 'incapacitated person' is not defined in the Act. It should refer only to a person who is a person of unsound mind or one who is terminally ill.

### 91.3 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. The Guardian, or the Trustee; or the Agent as the case may be who is conducting the business for the benefit of minor or incapacitated person

Q2. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

Ans. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence the general principle of law has no application and the Guardian, Trustee or Agent cannot escape each liability.

### 91.4 MCQ

Q1. In case of business carried on by minor or other incapacitated person through Guardian / Agent who is liable to pay tax?

- (a) Guardian/Agent
- (b) Friend
- (c) Business Partner
- (d) None

Ans. (a) Guardian/Agent

Q2. The dues recoverable under this section includes

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

### Statutory Provision

#### **92 – Liability of Courts of Wards etc.**

*Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager, in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.*

#### **92.1 Introduction**

This section empowers collection of tax, interest or penalty from Administrator General, Official Trustee or any receiver or manager, who controls the estate or any portion thereof in respect of the taxable person who owns a business and whose estate is being controlled.

#### **92.2 Analysis**

In respect of any tax, interest or penalty relating to a business of the taxable person whose estate or part thereof is under their control of the following, (the same persons (following) will be liable as if they were themselves conducting the business as taxable person/s):

- (i) Administrator general or
- (ii) Official trustee or
- (iii) Any receiver or manager or
- (iv) Including any person, whatever be his designation, who in fact actually manages the business.

**Illustration.** Mr. ABC is appointed as manager of Mr. X, to manage the estate of Mr. X, who owns a garment business. Mr. X is liable to pay Rs. 20,00,000/- of CGST, interest and penalty to the Government. The department can recover such dues from Mr. ABC who is managing the estates of Mr. X., by invoking this provision.

#### **92.3 FAQs**

Q1. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

Ans. The dues are recoverable from the Court of Wards as if he is conducting the business for himself.

**92.5 MCQs**

Q1. If the estate or any portion of the estate of a taxable person is under the control of the Court of Wards, Administrative General etc., the tax due from such taxable person is liable to be paid by -

- (a) Court of Wards.
- (b) Taxable Person
- (c) Legal representative of taxable person
- (d) None of the above

Ans. (a) Court of Wards

Q2. The Court of Wards, Administrative General, etc., must be appointed by-

- (a) Supreme Court
- (b) High Court
- (c) Any court
- (d) None of the above

Ans: (c) Any Court

Q3. The dues recoverable under this section includes

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax
- (d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

**Statutory Provision****93. Special Provisions regarding liability to pay tax interest or penalty in certain cases**

(1) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a person, liable to pay tax, interest and penalty under this Act, dies, then-*

- (a) *if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, and*
- (b) *if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such person under this Act,-*

*whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.*

- (2) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons, is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.*
- (3) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.*
- (4) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person liable to pay tax, interest or penalty under this Act,-*
- (a) *is the guardian of a ward on whose behalf the business is carried on by the guardian, or*
- (b) *is a trustee who carries on the business under a trust for a beneficiary.*

*then if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.*

### 93.1 Introduction

Section 93 of GST Act is subject to Insolvency and Bankruptcy Code, 2016. The objects clause of Insolvency and Bankruptcy Code inter-alia provide that it has been enacted amongst other things to 'alter the order of priority of payment of Government dues'.

As per Section 53 of Banking & Insolvency code provides for distribution of assets of a company. It starts with a non-obstante clause against 'any law' enacted by Central or State Government. As per S.53, Government dues stand fifth in the order of priority as follows:

- a. Insolvency Resolution process costs and liquidation costs paid in full
- b. Workmen's dues for 24 months preceding liquidation commencement date and debts owed to a secured creditor
- c. Wages and unpaid dues owed to employees for 12 months preceding liquidation commencement date



- d. Financial debts owed to unsecured creditors
- e. Amounts due to Central Government and the State Government, including amount to be received on account of Consolidated Fund of India and Consolidated Fund of State, in respect of whole or part of two years preceding liquidation commencement date<sup>1</sup>

GST is received by Central and State Governments in Consolidated Fund of India and Consolidated Fund of State respectively

As per S.74, GST, interest, penalty can be demanded for a period of five years from the relevant date. However S.82 states that any amount payable by a taxable person or any other person on account of tax, interest and penalty shall be a first charge on the property of such taxable person or other person, subject to Insolvency and Bankruptcy Code, 2016.

### 93.2 Analysis

#### Death of person (individual)

- (i) If a person (an individual) who is liable to pay tax dies: -
  - (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or
  - (b) In case of discontinuation of business before or after his death: only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government.
- (ii) The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.
- (iii) The legal representative or any other person as the case may be is liable to pay the tax, interest or penalty whether-
  - (a) It has been determined before his death but has remained unpaid or
  - (b) It has been determined after his death<sup>1</sup>

#### Partition of HUF or AOP

- (i) In case of a HUF or AOP property is partitioned between the member or group of members then the liability to pay tax, interest or penalty
  - Is on each member or group of members (jointly and severally) who got a portion in that property.
  - The member or the group of members is/are liable only upto the time of partition whether such
    - Tax, interest and penalty has been determined before partition but has remained unpaid or
    - is determined after such partition

<sup>1</sup> This is to overcome the Supreme Court decision in Shabina Abraham Vs CCE, 2015 (322) ELT 372 (SC),

**Dissolution of firm**

- (i) In case the firm is dissolved-
- Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty.
  - The person who was a partner is liable to pay tax even if it is
    - determined before dissolution but not paid or
    - determined after dissolution.
  - The provision applicable for partnership firm would equally apply for LLP as well.

**Termination of Guardianship or Trusteeship**

- (ii) In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship,
- The ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination.
  - The ward or the beneficiary is liable to pay tax, interest or penalty
    - determined before the termination of guardianship or trusteeship but not paid or
    - determined after such termination

The above provisions are applicable to extent that there is no contrary provision in Insolvency and Bankruptcy Code, 2016.

**93.3 FAQs**

- Q1. Can a legal representative be made liable for tax dues payable by a deceased person?
- Ans. Yes. Legal representative is made liable for the tax dues of the deceased person even if it is determined after death.
- Q2. To what extent tax dues of the deceased person could be recoverable from the legal representative?
- Ans. (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or
- (b) In case of discontinuation of business before or after his death : only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government. The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.
- Q3. In case of partition of HUF or AOP, what would be the extent of liability of members of the HUF/AOP?

Ans. The member or the group of members is/are liable only upto the time of partition.

Q4. In case of dissolution of a firm, upto which date the partners would be responsible to pay the tax dues?

Ans. Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty

**93.4 MCQ**

Q1. Who is liable to pay tax if the business of an individual is discontinued before his death-

- (a) Board of Directors or Manager
- (b) Any member of his person who is willing to pay
- (c) Legal representative of taxable person
- (d) Employee

Ans. (c) Legal representative of taxable person

Q2. The legal representative or any other person of an individual who is dead is liable to pay tax, only if -

- (a) The business has been carried on by the legal representative
- (b) The business has been carried by the legal representative or any other person
- (c) The business has been carried by any other person
- (d) None of the above.

Ans. (b) The business has been carried on by the legal representative or any other person

Q3. The dues recoverable under this section includes-

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax
- (d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Q4. As per this section, the member or group of members of HUF or AOP is/are liable to pay tax on taxable supplies -

- (a) Even after its partition
- (b) Upto the time of partition
- (c) Both (a) and (b)
- (d) None of the above

Ans. (b) Upto the time of partition

**Statutory Provision****94. Liability in other cases**

- (1) *Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-*
- (a) *the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and*
- (b) *every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.*
- (2) *Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.*
- (3) *The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, to partition.*

*Explanation.- For the purpose of this chapter,*

- (a) *a "limited liability partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008) shall also be considered as a firm.*
- (b) *"court" means the District Court, High Court or Supreme Court.*

**94.1 Introduction**

This section discusses the liability of partners of firm or members of AOP or HUF on discontinuation of business.

**94.2 Analysis**

- (i) In case of discontinuance of business, the firm or AOP or HUF, the liability of the firm/AOP/HUF shall be determined (upto the date of discontinuance) as if no such discontinuance had taken place.
- (ii) Every partner of such firm or member of such AOP or HUF at the time of discontinuance shall be jointly and severally liable for payment of tax, interest and penalty imposed.

- (iii) In case of change in the constitution of the firm or association, the partners and members who existed before reconstitution shall be liable jointly and severally to pay tax, interest and penalty for any period upto the date of reconstitution. This will operate even if the retirement was intimated to the commissioner in terms of Section 90.
- (iv) Discontinuance includes dissolution of firm or association and partition in case of HUF.
- (v) This provision, the way it applies to a partnership firm will apply to an LLP as well.

**94.3 FAQs**

Q1. In case of discontinuance of business of a firm or AOP or HUF, who would be liable to pay the tax and other dues?

Ans. Every partner of the firm or member of the AOP or HUF at the time of discontinuance shall be jointly and severally liable.

Q2. In case of discontinuance of partnership business to what extent a partner would be liable?

Ans. The partner is liable jointly and severally for liability of the discontinued firm of tax, interest and penalty.

Q3. In case of reconstitution of partnership firm how and to what extent the partners liability is determined?

Ans. Without prejudice to the provisions of section 90, all the partners of the firm prior to the date of reconstitution and after the date of reconstitution shall jointly and severally, be liable to pay tax, interest or penalty due from firm which is reconstituted, for any period before its reconstitution.

**94.4 MCQs**

Q1. In case of discontinuance of HUF business, the liability would arise till the date of

- (a) Discontinuance
- (b) Court verdict
- (c) As mutually agreed upon by the HUF members
- (d) determination of liability by the Department.

Ans. (a) Discontinuance

Q2. The expression 'firm' would include a \_\_\_\_\_

- (a) company
- (b) LLP
- (c) HUF
- (d) AOP.

Ans. (b) LLP