

Chapter XVI

Liability to Pay in Certain Cases

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Section 85 to 94 of the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017

FAQ's

Liability in case of transfer of business (Section 85)

Q1. In case of transfer of business, who will be liable for the payment of tax, interest and penalty (if any)?

Ans. The transferor and the transferee shall be jointly and severally, be liable to wholly or to the extent of such transfer, to pay the tax, interest or any penalty which was due for the period prior to the date of transfer. Such tax liability, interest and penalty may be determined either prior to the date of transfer or thereafter.

Q2. Whether the transferor of business is liable to pay tax / interest / penalties even in respect of the transactions undertaken after the transfer of business?

Ans. No. The transferor of business is liable to pay tax / interest / penalties arisen (whether determined prior to transfer or post transfer) upto the date of transfer of business.

Liability of agent and principal (Section 86)

Q3. Whether agent is liable for tax in case of transaction made by him on behalf of the principal?

Ans. Yes. When an agent supplies or receives any taxable goods on behalf of the principal both agent and principal are jointly and severally liable in respect of tax payable on such goods.

Q4. Whether an agent can only be held liable for payment of tax on transactions effected on behalf of principal?

Ans. No. Both agent and principal are jointly and severally liable to pay the tax on such transactions.

Liability in case of amalgamation /merger of Companies (Section 87)

Q5. In case of an amalgamation, supplies effected for the period from effective date till the date of order of the Court between the Companies inter-se is liable to tax?

Ans. Yes. In terms of Section 87(1) of the CGST Act, 2017, the supplies between the

Companies inter-se for the period starting from effective date and ending with the date of order of the Court is liable to tax and supply and receipt shall be included in the turnover of supply or receipt of the respective Companies.

Q6. Whether in an amalgamation, the Companies shall be treated as separate entities for the period starting from effective date and ending on the date of Order of the Court?

Ans. Yes, for the purposes of this Act, the two or more companies amalgamated or merged in pursuance of an Order of Court or of Tribunal or otherwise, 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.

Liability in case of Company in liquidation (Section 88)

Q7. What is the responsibility of the liquidator in the course of winding up the Company?

Ans. The receiver of assets / liquidator shall within 30 days from the date of appointment intimate the Commissioner of his appointment. Thereafter, the Commissioner may provide the details that the Company may be liable to pay tax, interest or penalty.

Q8. Liability in case of winding up of Private Limited Company?

Ans. Every director of the Private Company shall be jointly and severally be liable to pay tax, interest or penalty.

Liability of Directors of private company (Section 89)

Q9. Whether the director of a Private Limited Company is liable for the payment of tax in respect of the supply made by or to such Private Company?

Ans. Yes. Every director of the private company during the period for which. tax, interest or penalty due in respect of any supply of goods or services or both, is not recovered 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.

Q10. Whether the liability of the director still exists if such Private Limited Company is converted into Public Limited Company?

Ans. No. If a Private Limited Company is converted into a Public Limited Company, then the provisions of this section do not apply. However, any other personal penalty could be imposed on the Director.

Liability of partners of Firm to pay tax (Section 90)

Q11. Whether the retiring partner of a firm is liable to pay tax?

Ans. Yes. Retiring partner shall be liable to pay tax, interest or penalty upto the date of his retirement whether determined prior to his retirement or otherwise.

Q12. Whether the retiring partner is liable in respect of the transactions taken place after his retirement?

Ans. No. The Retiring partner is not liable for the transactions taken place after his retirement provided he or the firm intimates to the Commissioner by a notice in writing of his retirement within one month from the date of retirement.

Liability of guardians, trustees etc. (Section 91)

Q13. Whether the guardian/ the trustee/ the agent is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. Yes. 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 is liable for payment of tax dues.

Liability of Court of Wards etc. (Section 92)

Q14. Whether Court of Wards controlling the estate of a taxable person is liable for the payment of tax dues in respect of the estate?

Ans. Yes. The Court of Wards is liable for the payment of tax dues in respect of the estate, as if they were conducting the business themselves.

Special provisions regarding liability to pay tax, interest or penalty in certain cases (Section 93)

Q15. Who will be held liable for payment of tax, interest or penalty after the death of the taxable person?

Ans. In terms of Section 93(1) of the CGST Act, 2017, after the death of the taxable person, the tax, interest or penalty remaining unpaid either determined before the death or otherwise, shall be recovered in the following manner:

1. 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
2. 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, interest or penalty due from such person under this Act.

Q16. Liability in case where HUF / AOP/ firm where the property is partitioned/dissolved amongst the members?

Ans. In case where the property of HUF/AOP 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 tax, interest or penalty pertaining to the period prior to the date of partition. Similarly, all the partners of the partnership firm shall be jointly and severally liable to pay tax, interest or penalty for the period prior to the date of dissolution. Such unpaid amount of tax, interest or penalty is determined either prior to partition / dissolution or otherwise.

Liability in other cases (Section 94)

Q17. Liability in case of discontinuation of business by HUF / AOP / firm?

Ans. 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—

1. 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
2. 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.

Q18. In case of reconstitution of partnership firm who will be liable to pay tax, interest or penalty?

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

MCQ's

Liability of agent and principal (Section 86)

Q1. Who is liable to pay the tax in case of Principal and Agent?

- (a) Principal
- (b) Agent
- (c) Both jointly and severally

(d) Jointly

Ans. (c) *Both jointly and severally*

Liability in case of amalgamation /merger of Companies (Section 87)

Q2. 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.*

Q3. In case of amalgamation between two companies, such companies shall be treated as two distinct companies till –

- (a) Till the date of the Court order
- (b) Till the effective date of merger
- (c) Till the date of cancellation of registration
- (d) None of the above

Ans. (a) *Till the date of the Court order*

Liability in case of Company in liquidation (Section 88)

Q4. 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*

Q5. 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

Q6. When shall the Director be not liable to pay the tax dues if the company is not able to pay?

(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*

Liability of Directors of Private Company (Section 89)

Q7. When shall the Director of a Private Limited Company be not liable to pay the tax, interest or penalty, if the company is not able to pay?

(a) In all cases

(b) Company refuses to pay

(c) If the non-recovery is not due to gross neglect misfeasance or breach of duty of the Director

(d) None of the above

Ans. (c) *If the non-recovery is not due to gross neglect misfeasance or breach of duty of the Director*

Liability of partners of Firm to pay tax (Section 90)

Q8. Retiring partner should intimate the retirement to

(a) Department

(b) Government

(c) Commissioner

(d) All of the above

Ans. (c) *Commissioner*

Q9. Intimation to the Commissioner has to be given within.....

(a) 1 month

(b) 60 days

(c) 90 days

(d) 45 days

Ans. (a) 1 month

Q10. If the intimation is delayed to the Commissioner, then the retiring partner is liable to pay tax, interest or penalty till:

(a) The intimation of the date of retirement of partner is received by the Commissioner

(b) Till the date of acceptance of intimation by the Department

(c) Till the date of retirement

(d) Till the date of show cause notice

Ans. (a) *The intimation of the date of retirement of partner is received by the Commissioner*

Liability of guardians, trustees etc. (Section 91)

Q11. In case of business carried on by minor or other incapacitated person through Guardian/ Agent who is liable to pay tax?

(a) Guardian

(b) Friend

(c) Business Partner

(d) None

Ans. (a) *Guardian*

Q12. 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*

Liability of Court of Wards etc. (Section 92)

Q13. 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., and 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*

Q14. 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*

Q15. 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*

Special provision regarding liability to pay tax, interest or penalty in certain cases (Section 93)

Q16. 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*

Q17. 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*

Q18. 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*

Q19. 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*

Liability in other cases (Section 94)

Q20. 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*

Q21. The expression 'firm' would include a _____

- (a) Company
- (b) LLP
- (c) HUF
- (d) AOP

Ans. (b) *LLP*

Q22. In case of discontinuance of the AOP, the liability of the member exists in respect of the tax dues imposed _____

- (a) Prior to the date of discontinuance
- (b) After the date of discontinuance
- (c) Both prior and after the date of discontinuance
- (d) None of the above

Ans. (c) *Both prior and after the date of discontinuance.*