

LIABILITY TO PAY IN CERTAIN CASES

These provisions of Chapter XVI - from Section 85 to 94 - specify the persons, who shall be liable for the payment of GST, in several different situations.

Short Form used-

TIP = Tax, Interest, or Penalty



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SECTION 85 – TRANSFER OF BUSINESS



- Where transfer of business, in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever,
 - → Transferor & Transferee, jointly and severally, liable - wholly or to the extent of such transfer,
 - to pay the TIP due from the taxable person upto the time of such transfer,
 - whether determined before or after such transfer.
- Where transferee continues to carry on such business,
 - → Liable to pay tax on the supply of goods/ services/ both effected by him w.e.f. the date of transfer
 - If already registered, apply for amendment of his registration certificate within time limit.



SECTION 86 – AGENT

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

SECTION 87 – AMALGAMATION/ MERGER



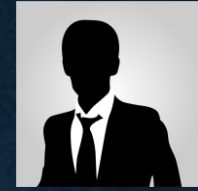
Case: When 2 or more companies amalgamated/ merged due to order of tribunal. The order is to take effect retrospectively. Such companies have supplied/ received any goods/ services/ both to or from each other during the intermittent period (From Effective date till date of the order).

- Then such transactions shall be included in the t/o of the respective companies and liable to pay tax accordingly.
- Such 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. (and not retrospectively)

SECTION 88 – WINDING UP

- When any company is being wound up, “**liquidator**” shall within 30 days after his appointment, give intimation of his appointment to the Commissioner.
- The **Commissioner** shall notify the liquidator within 3 months from the date of receipt of intimation, the amount which would be sufficient to provide for any TIP which is/ may be payable by the company.
- When any **PVT company** is wound up AND any TIP determined under this Act on the company **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 TIP, 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.

SECTION 89 – PVT COMPANY & DIRECTOR



- Where any TIP due from a PVT company cannot be recovered, then, every person who was a director of the PVT company during such period shall, jointly and severally, be liable for the payment of such TIP 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.
- Where a PVT company - converted into a public company and the TIP for any period during being PVT company cannot be recovered before such conversion,
 - Then, sub-section (1) shall not apply → director of such PVT company not liable in relation to any TIP of such PVT company.
 - Proviso: Director still liable for any personal penalty imposed on them.

SECTION 90 – FIRM

- Where any firm is liable to pay any TIP under this Act → the firm & all partners jointly and severally liable for such payment.
- Where any partner retires: He or the firm, shall intimate the date of retirement of the said partner in writing to the Commissioner. Such partner shall be liable to pay TIP due up to the date of his retirement (whether determined or not, on that date).
- If no such intimation given < 1 month of retirement, liability of such partner shall continue until the date of receipt of intimation.



SECTION 91 – GUARDIAN/ TRUSTEE/ AGENT OF A MINOR/ OTHER INCAPACITATED PERSON

- Case: Where the business 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 TIP 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.

SECTION 92 – COURT OF WARDS, THE ADMINISTRATOR GENERAL, THE OFFICIAL TRUSTEE OR ANY RECEIVER OR MANAGER

- Case: Where the estate/ any portion of the estate of a taxable person who owns a business in respect of which any TIP is payable, is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager or any person, whatever be his designation, who in fact manages the business, appointed by or under any order of a court,
 - The TIP 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.

SECTION 93 – DEATH/ PARTITION/ DISSOLUTION

INDIVIDUAL

- Where a person, liable to pay TIP under this Act, dies, then—
- (a) if a business continued after his death - Legal representative/ other person liable to pay TIP due from such person
- (b) if the business 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 of estate, the TIP due, whether determined before or after his death.

HUF/ AOP

- Where the property of the HUF/ AOP is partitioned amongst the members, then, each member shall be jointly and severally liable to pay the TIP due up to time of partition, whether such TIPs has been determined before or after partition.

SECTION 93 – DEATH/ PARTITION/ DISSOLUTION

FIRM

- Where a firm is dissolved, then, every person who was a partner shall be jointly and severally liable to pay the TIP due from the firm under this Act up to time of dissolution whether such TIP has been determined before or after the dissolution.

GUARDIAN/ TRUSTEE

- Where guardian/ trustee was liable to pay tax, and the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the TIP due upto the time of termination, whether such TIP has been determined before or after the termination.

SECTION 94 – DISCONTINUATION/ CHANGE IN CONSTITUTION IN FIRM/ AOP/ HUF

DISCONTINUATION

Where a taxable person is a firm/ AOP/ HUF, and it has discontinued business—

- The TIP payable up to the date of discontinuance may be determined as if no discontinuance taken place.
- Every person who was a partner/ member at the time of such discontinuance, shall jointly and severally be liable for the payment of TIP payable whether determined/ imposed prior to or after such discontinuance, and the provisions of this Act shall apply as if every such person were himself a taxable person.

[These provisions shall apply where dissolution/ partition with respect to the business carried on by it and accordingly references to discontinuance shall be construed as reference to dissolution/ partition.]

CHANGE IN CONSTITUTION

- Where change in the constitution has occurred, the partners/ members, 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 TIP due before its reconstitution.

EXPLANATION FOR WHOLE CHAPTER

For the purposes of this Chapter,—

- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) “court” means the District Court, High Court or Supreme Court.

WHAT WE LEARNT IN THIS CHAPTER

[Section 85 – Transfer of Business](#)

[Section 86 – Agent](#)

[Section 87 – Amalgamation/ Merger](#)

[Section 88 – Winding Up](#)

[Section 89 – PVT. Company](#)

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[Section 93 – Death/ Partition/ Dissolution – Individual, Huf/ Aop, Firm, Guardian/ Trustee](#)

[Section 94 – Discontinuation/ Change in Constitution in Firm/ Aop/ Huf,](#)

[Explanation for whole chapter](#)

END OF PRESENTATION!

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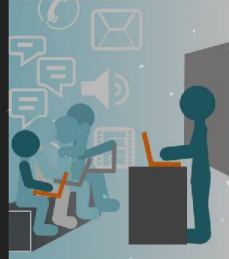
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