GSTZONE

Business Changes & Who Pays

When the business changes hands, the tax follows someone

The complete guide, plus all 16 sections and rules

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A Khemchandani Finance initiative

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GST liability does not simply disappear when a business is sold, merged, dissolved or wound up. The Act sets out, situation by situation, who inherits it - and the answer is often a person rather than an entity.

Transfer a business and the transferee can be held jointly liable for dues up to the transfer date. Amalgamate two companies and supplies between them from the effective date get pulled back into the net. Wind up a private company and directors can be personally liable, unless they show the non-recovery was not down to their neglect or breach of duty.

Partnerships are stricter still. A partner stays liable for the period they were a partner, and for a year after retiring - unless they give written intimation of retirement to the Commissioner.

A worked example

A retirement that stayed expensive for a year

Partner exits the firm in April	**Deed updated, bank mandate changed**	No intimation to the Commissioner
Firm defaults on GST during the year	**₹12,00,000 outstanding**	Recovery proceedings begin
Retired partner's position	**Jointly and severally liable**	Liability continues for a year

> **The point:** One letter to the Commissioner would have capped the exposure at the retirement date. Without it, joint and several liability means the department can pursue any partner for the whole amount.

The mistakes that cost people money

- Retiring from a firm without written intimation to the Commissioner. The deed protects you between partners, not against the department.
- Buying a business without a GST due-diligence check on the seller's filings. Transferee liability is real.
- Assuming limited liability protects directors of a private company in liquidation. Section 89 shifts the burden onto them to prove no neglect.

What this guide covers

Every provision, explained

SECTION 85 · CGST ACT, 2017

Liability in case of transfer of business

When a business is transferred (sale, lease, etc.), the transferor and transferee are jointly and severally liable for any GST dues up to the transfer date.

- Joint and several liability for dues UP TO the date of transfer - a slump-sale or business-transfer agreement must carry a GST indemnity and a dues certificate.
- If the transferee carries on the business under a different name, he must be registered afresh from the date of transfer.
- Transfer of a business as a going concern is itself exempt from GST (entry 2 of Notification 12/2017-CTR), but the exemption does not touch this liability.

SECTION 86 · CGST ACT, 2017

Liability of agent and principal

An agent and the principal are jointly and severally liable for the tax on goods supplied through the agent.

- Applies where goods are supplied through an agent who receives or supplies them on the principal's behalf; the agent's liability is joint and several, which is why an agency agreement must fix who files and pays.

SECTION 87 · CGST ACT, 2017

Liability in case of amalgamation or merger of companies

When two or more companies amalgamate or merge by court order, supplies between them from the effective date to the order date are treated as their supplies, and they are taxed as distinct companies until the order.

- Between the effective date of the amalgamation and the date of the court order, the companies are treated as DISTINCT companies for GST, so supplies between them in that window are taxable - a point that decides the tax on inter-company transactions during a long-pending scheme.
- Registration is cancelled from the date of the order.

SECTION 88 · CGST ACT, 2017

Liability in case of company in liquidation

On liquidation of a company, the liquidator must notify the department within 30 days; the officer notifies the dues, and a private company's directors can be made liable if the dues cannot be recovered from the company.

- The liquidator must give notice within thirty days of appointment; the Commissioner notifies the amount within three months.
- Read with the IBC: dues not admitted in an approved resolution plan stand extinguished, so this section bites mainly in liquidation, not in a successful resolution.

SECTION 89 · CGST ACT, 2017

Liability of directors of private company

Where a private company's GST dues cannot be recovered, its directors during the relevant period are jointly and severally liable, unless a director proves the non-recovery was not due to any neglect or breach on his part.

- Applies to directors of a PRIVATE company for dues of the period in which they held office, and only where recovery from the company fails.
- The escape is proof that the non-recovery was not attributable to any gross neglect, misfeasance or breach of duty on that director's part - a personal defence, so board minutes and resignation records matter.
- It also reaches a private company converted into a public company, for the period when it was private.

SECTION 90 · CGST ACT, 2017

Liability of partners of firm to pay tax

Partners of a firm are jointly and severally liable for the firm's GST dues; a retiring partner stays liable up to the date of retirement unless intimation is given to the department within one month.

- A retiring partner remains liable for dues up to the date of retirement unless the department is intimated within one month - the intimation, not the deed, is what limits the liability.

SECTION 91 · CGST ACT, 2017

Liability of guardians, trustees, etc

Where a business is run by a guardian, trustee or agent on behalf of a minor or other incapable person, the tax is levied and recoverable in the same manner as from the beneficiary.

- Tax is levied on and recovered from the guardian, trustee or agent in the same manner and to the same extent as from the beneficiary.

SECTION 92 · CGST ACT, 2017

Liability of Court of Wards, etc

Where an estate is under the Court of Wards/Administrator General/Official Trustee, the tax is levied and recoverable from that manager as it would be from the beneficiary.

- Where the estate of a taxable person is under the Court of Wards, an Administrator General, an Official Trustee or a receiver, tax is levied on and recoverable from that person in the same manner as from the taxable person.

SECTION 93 · CGST ACT, 2017

Special provisions regarding liability to pay tax, interest or penalty in certain cases

On death, the legal representative (to the extent of the estate) is liable for the deceased's GST dues; on dissolution of a firm/HUF/AOP, members are liable for dues up to dissolution.

- Death: liability is recovered from the legal representative to the extent of the estate, or from the person continuing the business.
- Dissolution of a firm, partition of a HUF, or termination of a guardianship each carry their own recovery route in this section.

SECTION 94 · CGST ACT, 2017

Liability in other cases

On discontinuance of a firm/AOP/HUF, every person who was a partner/member is jointly and severally liable for the tax, interest and penalty up to the discontinuance, and a reconstituted firm remains liable for the earlier period.

- Where a partnership or association is dissolved or discontinued, every person who was a partner or member is jointly and severally liable for dues of the period before dissolution.

RULE 117 · CGST RULES, 2017

Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

Transitional credit: TRAN-1 had to be filed within ninety days of 1 July 2017, extended repeatedly and finally reopened by the Supreme Court's order for the window from 1 October to 30 November 2022, with the credit verified by the officer before it was allowed.

RULE 118 · CGST RULES, 2017

Declaration to be made under clause (c) of sub-section (11) of section142

A person covered by section 142(11)(c) - who paid VAT and service tax on the same transaction before GST - had to declare it in TRAN-1 to take credit of the tax paid under the earlier law.

RULE 119 · CGST RULES, 2017

Declaration of stock held by a principal and job-worker

A principal or job worker holding goods of the other on the appointed day had to declare that stock in TRAN-1 so that the transitional relief in section 141 applied.

RULE 120 · CGST RULES, 2017

Details of goods sent on approval basis

Goods sent on approval before GST and returned after the appointed day had to be declared in TRAN-1 under section 142(12).

RULE 120A · CGST RULES, 2017

Revision of declaration in FORM GST TRAN-1

A TRAN-1 already filed could be revised once, within the time the Commissioner allowed - the rule under which most transitional-credit corrections were made.

RULE 121 · CGST RULES, 2017

Recovery of credit wrongly availed

Transitional credit taken through TRAN-1 can be verified and, if wrongly availed, recovered through proceedings under section 73, 74 or 74A.

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