

TABLE OF CONTENTS

Liability to Pay in Certain Cases

1. Liability in case of transfer of business (Sec 85) – Page 2
2. Liability of agent and principal (Sec 86) – Page 3
3. Liability in case of amalgamation or merger of companies (Sec 87) – Page 4
4. Liability in case of company in liquidation (Sec 88) – Page 5
5. Liability of directors of private company (Sec 89) – Page 6
6. Liability of partners of firm to pay tax (Sec 90) – Page 7
7. Liability of guardians, trustees, etc. (Sec 91) – Page 8
8. Liability of Court of Wards, etc. (Sec 92) – Page 9
9. Special provisions regarding liability to pay tax, interest or penalty in certain cases (Sec 93) – Page 10-11
10. Liability in other cases (Sec 94) – Page 12

Liability in case of transfer of business (Sec 85)

1. Sec 85 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.
2. Such liability may arise on account of sale, gift, lease, leave and licence, hire or in any other manner whatsoever.
3. **Tax Liability arising before the transfer of business** – 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. The joint and several liability will remain even if such amounts were determined and due before the transfer of business. It is to be noted interestingly, that 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.
4. **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 manner 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)

Liability of agent and principal (Sec 86)

1. Sec 86 deals with tax liability in case of Principal and Agent.

2. Under 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 for tax payable on such supplies.

Liability in case of amalgamation or merger of companies (Sec 87)

1. This section deals with tax liability on transactions between the effective date and date of order (Tribunal/Court) in case of amalgamation or merger of companies.
2. In case 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.
3. 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)
4. However, for the purpose of GST, by virtue of this provision, such transactions would continue to be treated as one of 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.
5. Thus, this provision would eclipse the order of the Court/Tribunal and its legal effect for the limited purposes of GST Law.
6. It provides that wherever necessary, the registration certificates of the said companies would stand cancelled with effect from the date of the said order.

Liability in case of company in liquidation (Sec 88)

Liquidator to intimate Department within 30 days

Sec 88(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 (hereafter in this section referred to as the “liquidator”), shall, within 30 days after his appointment, give intimation of his appointment to the Commissioner.

Department to inform tax dues to liquidator within 3 months

Sec 88(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within 3 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.

Director of Private Company in liquidation liable if non-recovery is because of his fault

Sec 88(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.

Liability of directors of private company (Sec 89)

Sec 89(1) Notwithstanding anything contained in the Companies Act, 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.

Sec 89(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.

Liability of partners of firm to pay tax (Sec 90)

Sec 90 Notwithstanding any contract to the contrary and any other law for the 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 1 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.**

Liability of guardians, trustees, etc. (Sec 91)

Sec 91 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.

Note –

1. 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.
2. 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.

Liability of Court of Wards, etc. (Sec 92)

Sec 92 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
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- 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.

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

Death of Person (Individual)

Sec 93(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, **liable to pay tax, interest or 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, interest or penalty 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.

Partition of HUF or AOP

Sec 93(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 HUF or an association of persons and the property of the HUF 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 **up to 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.

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

Dissolution of Firm

Sec 93(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.

Termination of Guardianship or Trusteeship

Sec 93(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.

Liability in other cases (Sec 94)

Sec 94(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.

Sec 94(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 or penalty due from such firm or association for any period before its reconstitution.

Sec 94(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 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.