

TAX INFO

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Latest update on GST Law: Information regarding **Transfer of ITC in case of death of sole proprietor** based on the **Circular No. 96/15/2019 dated 28.03.2019.**

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In case of death of owner, if legal heir wants to carry on the business, he can do so by taking a new registration (if not already registered), as the successor cannot use the same GST registration since he will have a different PAN. The input tax credit which remains un-utilized in the electronic credit ledger of the sole proprietor is allowed to be transferred to the transferee as per provisions of GST law.

Process to cancel the registration in case of death of sole proprietor and transfer of ITC remained unutilized:

1. In case of death of sole proprietor, Legal heir has to visit the office of the Proper Officer (Jurisdiction Officer) and submit the application for add his name as Authorized Signatory and to submits Death Certificate of the sole proprietor along with the Succession Certificate (Mutual family arrangement) before the Proper Officer as documentary evidence.
2. The proper Officer, after proper scrutinise the facts and documents, will add legal heir as the authorized signatory on the GST Portal for the old business entity.
3. Username and Temporary password reset will be communicated to the e-mail address of the newly added authorized signatory as provided to the Proper Officer.
4. The newly added authorized signatory need to login to the GST Portal available at <https://www.gst.gov.in/> and login using the First time login link. He/ She will be forced to change the username and password after first time login with the Username and Temporary password that was emailed on the newly added e-mail address of the Primary Authorized Signatory. Thus created User Name and Password shall be used for all required compliances under the old GSTIN
5. Legal heir has to apply for new registration using his own PAN, thus New GSTIN would be granted to such Legal heir.
As per Sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".
6. Once the new registration is approved, Legal heir has to apply for the transfer of ITC by filing **FORM GST ITC-02** to new entity. However, there is no restriction on filing of ITC-02 pre or post cancellation. It is an independent form and has no relation with cancellation of the sole proprietorship firm.
Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities.
7. All other Assets and Liabilities of the erstwhile proprietary concern as on the date of transfer shall be taken over by way of Book Entry in the Books of Accounts and Financial of both Transferor as well as Transferee business concern.
8. After entire take over process in the new business entity from the old business entity, Such Legal heir, shall submit the application for cancellation and select the "Death of Proprietor" as reason of Cancellation of Registration and attach sufficient proof in respect of such old business entity.
Clause (a) of subsection (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned in to link the GSTIN of the transferor with the GSTIN of the transferee.
9. *Also, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act.*

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