

**Government of Karnataka
(Department of Commercial Taxes)**

No. KSA/GST.CR-108/2018-19

**Office of the Commissioner of Commercial Taxes
Vanijya Therige Karyalaya, Gandhinagar,
Bengaluru-560009, Dated: 27-03-2019**

COMMISSIONER OF COMMERCIAL TAXES CIRCULAR No. GST-36/2018-19

Subject: Clarification in respect of transfer of input tax credit in case of death of sole proprietor-reg

Doubts have been raised whether sub-section (3) of section 18 of the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as 'KGST Act') provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Karnataka Goods and Services Rules, 2017 (hereinafter referred to as 'KGST Rules'), the registered person (transferor of business) can file **FORM GST ITC-02** electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of **FORM GST ITC-02** in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, in exercise of the powers conferred by section 168 (1) of the KGST Act, the issues raised are hereby clarified as below.

2. Clause (a) of sub-section (1) of section 29 of the KGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the KGST Act and sub-rule (1) of rule 41 of the KGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below –

- a. **Registration liability of the transferee / successor:** As per provisions of sub-section (3) of section 22 of the KGST 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".
- b. **Cancellation of registration on account of death of the proprietor:** Clause (a) of sub-section (1) of section 29 of the KGST 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 to link the GSTIN of the transferor with the GSTIN of transferee.

- c. **Transfer of input tax credit and liability:** In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the KGST 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 KGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the KGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business “in whole or in part, by sale, gift, lease, leave and license, hire *or in any other manner whatsoever*”. Furthermore, sub-section (1) of section 93 of the KGST Act provides that where a person, liable to pay tax, interest or penalty under the KGST 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. It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.
- d. **Manner of transfer of credit:** As per sub-rule (1) of rule 41 of the KGST Rules, a registered person shall file **FORM GST ITC-02** electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or *transfer or change in the ownership of business for any reason*. In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file **FORM GST ITC-02** in respect of the registration which is required to be cancelled on account of death of the sole proprietor. **FORM GST ITC-02** is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.


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