

# **GST IMPACT ON DEATH OF A PROPRIETOR - LAW AND PROCEDURE**

# Key Agenda

- Options available to legal heir
- Process for Registration
- Process for cancellation
- ITC – Reversal or Transfer
- Payment of assessed dues of the Deceased
- GST payable on transfer of business

## Upon Death of the Proprietor what are the options available to the legal heir?

### **REPLY-**

On the death of the proprietor the legal heir has the following two options-

- Option 1 : Legal Heir to close down the business
- Option 2 : Legal Heir to continue with the same business

**OPTION- 1:**

**Legal Heir to close**

**down business**

## FAQ1 : What are the actions to be taken if the legal heir wants to close down the business ?

### **REPLY-**

The following actions are to be taken if the legal heir wants to close down the business –

❖ **Incase GST Log in credential is available**, then the legal heir needs to visit [www.gst.gov.in](http://www.gst.gov.in) and navigate the following path- **services tab > returns > track return status**, to check the current return filing status of the deceased proprietor.

Goods and Services Tax

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities

Registration Ledgers Returns Payments User Services Refunds e-Way Bill System

Returns Dashboard View Filed Returns  
Track Return Status Transition Forms  
ITC Forms Annual Return  
TDS and TCS credit received

You can navigate to your chosen page through navigation panel given below.

RETURN DASHBOARD > CREATE CHALLAN > VIEW NOTICE(S) AND ORDER(S) >

ANNUAL RETURN >

Else Go to >> CONTINUE TO DASHBOARD >

Quick Links

- Check Cash Balance
- Liability ledger
- Credit ledger

Goods and Services Tax

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities

Dashboard > Returns

Track Return Status

Indicates Mandatory Fields

ARN Return Filing Period Status

ARN	Return Type	Financial Year	Tax Period	Date of filing ▲	Status ▲	Mode of filing
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❖ **Incase GST Log in credential is not available**, then the legal heir needs to visit [www.gst.gov.in](http://www.gst.gov.in) and go to the tab **Search as taxpayer**. There you would need to key in the GSTIN and you will get the details of the jurisdiction and also the filing status.

**SEARCH**

Search Result based on GSTIN/UID : 22AAAB12345678

<b>Legal Name of Business</b> M/s. ABC & Co. Pvt. Ltd.	<b>Trade Name</b> ABC & Co.	<b>Administrative Office</b> Mumbai
<b>Other Office</b> RANGE-CED5 (Center)	<b>Date of registration</b> 17/07/2020	<b>Constitution of Business</b> Partnership
<b>Taxpayer Type</b> Regular	<b>GSTIN / UIN Status</b> Active	<b>Effective Date of Cancellation</b> -
<b>Principal Place of Business</b> M/s. ABC & Co. Pvt. Ltd., 123, Main Road, Mumbai - 400 001		

**SHOW FILING TABLE**

Search Result based on GSTIN/UID : 22AAAB12345678

Filing details for GSTR3B

Financial Year	Tax Period	Date of filing	Status
2020-2021	June	17/07/2020	Filed
2020-2021	May	10/07/2020	Filed

Filing details for GSTR1

Financial Year	Tax Period	Date of filing	Status
2020-2021	July	17/08/2020	Filed
2020-2021	June	17/07/2020	Filed

❖ Once the above filing details are available the legal heir needs to arrange the following docs-

1. Death Certificate / Sucession Certificate
2. Identity Proof of the deceased
3. Identity Proof of the legal heir which will prove the relationship status with the deceased
4. GST Certificate of the deceased
5. Return filing status ( as presented above)

Once the above documents are arranged the legal heir can visit the Proper Officer for the change of the authorised signatory. On verification of the same, Proper Officer will change the authorised signatory and send a temporary link for updation of details. Once the signatory has been changed then the process of cancellation of registration can be initiated.



## FAQ2 : How the cancellation application needs to be filed by legal heir in case of closure as per Section 29?

### REPLY-

- ❖ It is recommended to file all pending returns till the date of death after payment of tax, if any.
- ❖ The legal heir has to file an application for cancellation of registration by giving the reason as death of proprietor as he wants to discontinue the business along with necessary documents.
- ❖ The process of cancellation of the registration which the legal heir needs to follow is mentioned as below-
- ❖ **Rule 22(3)-** If a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in form GST REG-19, within thirty days from the date of submission of the application submitted by the registered person or the date of reply to the show-cause notice issued to him and cancel the registration, with effect from a date to be determined by him. He will notify the taxable person, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under **section 29(5)**
- ❖ **Rule 22(5)-** The provisions of Rule 22(3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

❖ Documents to be attached for cancellation of registration are mentioned below-

- 1 Death certificate of the deceased
2. Identity Proof and Address Proof of the deceased
3. Proof of the business closure
4. Proof of the bank closure ( if available)
- 5 Indemnity Certificate
6. Detail of the stock held on the date of death

**Note- In case of death of the sole Proprietor, application can be made manually by the legal heir/successor before the concerned tax authorities.**

**FAQ3 : Within how many days the application for cancellation of registration need to be filed?**

**REPLY-**

As per **Rule 20**, the application should be submitted **within thirty days** of the occurrence of the event warranting cancellation, herein due to the death of the proprietor

# FORM GST REG-16

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Form GST REG-16  
[See rule 20]

## Application for Cancellation of Registration

1	GSTIN					
2	Legal name					
3	Trade name, if any					
4	Address of Principal Place of Business					
5	Address for future correspondence (including email, mobile telephone, fax )	Building No./ Flat No.		Floor No.		
		Name of Premises/ Building		Road/ Street		
		City/Town/ Village		District		
		Block/Taluka				
		Latitude		Longitude		
		State		PIN Code		
		Mobile (with country code)		Telephone		
		email		Fax Number		
6.	Reasons for Cancellation (Select one)	<ul style="list-style-type: none"> <li><input type="radio"/> Discontinuance /Closure of business</li> <li><input type="radio"/> Ceased to be liable to pay tax</li> <li><input type="radio"/> Transfer of business on account of amalgamation, merger/demerger, sale, lease or otherwise disposed of etc.</li> <li><input type="radio"/> Change in constitution of business leading to change in Permanent Account Number</li> <li><input type="radio"/> Death of Sole Proprietor</li> <li><input type="radio"/> Others (specify)</li> </ul>				
7.	In case of transfer, merger of business, particulars of registration of entity in which merged, amalgamated, transferred, etc.					
(i)	Goods and Services Tax Identification Number					
(ii)	(a) Name (Legal)					
	(b) Trade name, if any					
(iii)	Address of Principal Place of Business	Building No./ Flat No.		Floor No.		
		Name of Premises/ Building		Road/ Street		
		City/Town/ Village		District		
		Block/Taluka				

# FORM GST REG-16

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		Latitude		Longitude			
		State		PIN Code			
		Mobile (with country code)		Telephone			
		email		Fax Number			
8.	Date from which registration is to be cancelled.		<DD/MM/YYYY>				
9.	Particulars of last Return Filed						
(i)	Tax period						
(ii)	Application Reference Number						
(iii)	Date						
10.	Amount of tax payable in respect of inputs/capital goods held in stock on the effective date of cancellation of registration.						
	Description	Value of Stock (Rs.)	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	Inputs						
	Inputs contained in semi-finished goods						
	Inputs contained in finished goods						
	Capital Goods/Plant and machinery						
	Total						
11.	Details of tax paid, if any						
	Payment from Cash Ledger						
	Sr. No.	Debit Entry No.	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	1.						
	2.						
	Sub-Total						
	Payment from ITC Ledger						
	Sr. No.	Debit Entry No.	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	1.						
	2.						
	Sub-Total						
	Total Amount of Tax Paid						
12.	Documents uploaded						
13.	Verification						
	I/We<> hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.						
	Signature of Authorised Signatory						
	Place			Name of the Authorised Signatory			
	Date			Designation / Status			



# FORM GST REG-16

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## Instructions for filing of Application for Cancellation

- A registered person seeking cancellation of his registration shall electronically submit an application including details of closing stock and liability thereon along with relevant documents, on common portal.
- The following persons shall digitally sign application for cancellation, as applicable:

Constitution of Business	Person who can digitally sign the application
Proprietorship	Proprietor
Partnership	Managing / Authorised Partners
Hindu Undivided Family	Karta
Private Limited Company	Managing / Whole-time Directors/ Chief Executive Officer
Public Limited Company	Managing / Whole-time Directors/ Chief Executive Officer
Society/ Clubs/ Trust/ AOP	Members of Managing Committee
Government Department	Person in charge
Public Sector Undertaking	Managing / Whole-time Directors/ Chief Executive Officer
Unlimited Company	Managing / Whole-time Directors/ Chief Executive Officer
Limited Liability Partnership	Designated Partners
Local Authority	Chief Executive Officer or Equivalent
Statutory Body	Chief Executive Officer or Equivalent
Foreign Company	Authorised Person in India
Foreign Limited Liability Partnership	Authorised Person in India
Others	Person in charge

In case of death of sole proprietor, application shall be made by the legal heir / successor manually before the concerned tax authorities. The new entity in which the applicant proposes to amalgamate itself shall register with the tax authority before submission of the application for cancellation. This application shall be made only after that the new entity is registered.

Before applying for cancellation, please file your tax return due for the tax period in which the effective date of surrender of registration falls.

- Status of the Application may be tracked on the common portal.
- No fee is payable for filing application for cancellation.
- After submission of application for cancellation of registration, the registered person shall make payment, if not made at the time of this application, and shall furnish final return as provided in the Act.
- The registered person may also update his contact address and update his mobile number and e-mail address.

## FAQ4: How to reverse the input tax credit before the cancellation of registration by legal heir?

### REPLY-

- ❖ As per **Rule 44**, *ITC in respect of Inputs held in stock or inputs contained in semi finished/ finished goods held in stock or capital goods* on the day preceding the date of cancellation of the registration need to be reversed.
- ❖ *How to compute the credit which needs to be reversed as per Rule 44-*

**Inputs:** It is computed on a proportionate basis based on the :

- Corresponding invoices on which credit has been availed on such inputs
- OR
- Output tax payable on such goods

**whichever is higher**

**Capital Goods: :** It is computed on a proportionate basis based on the :

ITC involved in the remaining useful life in months of the capital goods taking useful life as 5 years

OR

Tax on the Transaction Value

**whichever is higher**

The same has been explained through an Illustration given below-



## **ILLUSTRATIONS 1-**

*Akash Enterprise registered under GST Act, 2017. It sells shoes which are taxable under GST Act.*

*Total Output produced – 100 @ 500 (GST @ 12%)*

*Output sold – 90*

*Closing Stock – 10*

*It has a market for its semi finished product " Polished Leather " which are stored in its warehouse – 25 Pcs.*

*Input Leather Purchased amounting to Rs.2,00,000/- (Incl. GST amount Rs.36,000/-)*

*Payment made to A Ltd for purchase of Plant and Machinery amounting to Rs.2,00,000/- (Incl. GST amount Rs.24,000/-)*

*It has used the machine for 3 Years 5 months 7 days.*

*Machinery sold @ Rs.50,000.00 (Incl. GST amount Rs.9,000/-)*

*It has shut down from 26<sup>th</sup> May, 2020.*

**Now as per Rule 44 of the CGST Rules 2017, how much ITC needs to be reversed**

ITC to be Reversed as per **Rule 44-**

**INPUTS-**

*Leather ( Input Raw Material in Closing Stock) -  $36,000.00 * 10 / 100 = \text{Rs.}3,600.00$*

*Polished Leather*

*( Input Raw Material in Semi finished good) -  $36,000.00 * 25/100 = \text{Rs.}9,000.00$*

Tax on output =  $500 * 100 * 12\% = \text{Rs.}6,000.00$

**ITC AMOUNT WHICH NEEDS TO BE REVERSED = Rs.12,600.00 ( Rs.3,600.00 + Rs.9,000.00) being the higher between both**

**CAPITAL GOOD-**

*Plant & Machinery - 24,000.00\*1.5/5 = Rs.7,200.00*

*(Capital Goods)*

*(Used for 3 Years 5 months 7 days.)*

*(Total life – 5years)*

*( Remaining Life – 1.5 years)*

OR

Tax on the Transaction Value = Rs.9,000.00

**ITC AMOUNT WHICH NEEDS TO BE REVERSED = Rs.9,000.00 being the higher between both**

## FAQ5: In case of reversal of ITC , how payment of taxes are made?

### REPLY-

- ❖ Where a person, liable to pay tax, interest or penalty under this Act, dies, then the 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.**
- ❖ Any amount which is payable by the deceased under the ACT or Rules made therein would be added to the output tax payable in the final return **Form GST RET 10 if not paid at the time of the cancellation application.**

## FAQ6 : Whether ITC of the deceased can be adjusted or can be claimed as refund?

### **REPLY-**

The balance of electronic credit ledger can be adjusted against tax payable under this act and rules made therein but refund of ITC as per **section 54** is not possible except it is a case of refund as a result of Inverted Duty Structure and Export with or without payment of taxes.

Balance ITC cannot be adjusted against Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein

## FAQ7 : Whether the un-utilized cash balance of the deceased can be adjusted or can be claimed as refund?

### **REPLY-**

The balance of electronic cash ledger can be adjusted against tax Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein and can be transferred by PMT 09 if not available in the particular head.

However refund of the remaining cash balance **as per section 54** can be made but the same need to be claimed as excess cash balance in electronic cash ledger.



## FAQ8: If cancellation application is filed, is there anything else which needs to be done?

### REPLY-

#### INTRODUCTION OF RULE 21A

- **Rule 21A** of CGST Rules 2017 talks about **Suspension of GST Registration**
- Sub **Rule 3** of **Rule 21A** of CGST Rules 2017 says: A registered person, whose registration has been suspended ***shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.***
- A registered person shall not make taxable supply means **shall not issue tax invoice and shall not charge tax accordingly during the pendency of the proceeding related to the cancellation of the registration**

## **FAQ 9: If the legal heir receives a Show Cause Notice, in relation with the cancellation application what are the necessary actions which needs to be taken**

### **REPLY-**

In case the legal heir receives a SCN in relation with the cancellation, he or she needs to comply with all the legal queries raised in the SCN within the due time.

For example- Indemnity certificate copy could be asked from the legal heir , copy of bank closure , copy of closure of business, or copy of surrender of the trade license can be asked to be submitted & furnished before the tax authorities and they need to furnish all the required documents with in the due dates as mentioned in SCN



## FAQ10 : What are the actions to be taken after the cancellation order is received?

### **REPLY-**

Once the cancellation order is received, the legal heir is required to file the final return which is **GSTR 10** electronically through the common portal. The final return is required to be filed **within 3 months** of :

Date of Cancellation

OR

Date of order of Cancellation

**Whichever is later**

## FAQ11 : What are the documents and information required for GSTR 10 as per Section 45 read with Rule 81?

### REPLY-

Information Required-

**GSTIN**

**Legal & Business Name**

**Address**

**Application Reference Number (ARN) if any**

**Effective Date of Surrender/Cancellation** – Here, specify the date of cancellation as given on your cancellation order.

**Whether cancellation order has been passed** – Here, you have to specify whether it's a voluntary cancellation or a cancellation that was forced/ordered by the authorities.

**If Yes, Unique ID of Cancellation order**

**Date of Cancellation Order**

**Particulars of Closing Stock and amount of tax paid on the Closing Stock**

## FAQ12 : What if the Final Return GST RET 10 not filed within the stipulated time?

### **REPLY**

In case the legal heir doesn't file the final return within the stipulated time then the legal heir will get the notice. If he still doesn't file the return within 15 days of the receipt of the notice as a defaulter, the assessment order **GST ASMT 13** under **section 62** will be issued to determine the tax liability as per **section 29(5)** on the basis of the information available with the Proper Officer and if the return has been filed within 30 days of the date of the service of the order then the said order shall be deemed to have been withdrawn.

## FAQ 13: If the legal heir receives a general Show Cause Notice, what are the necessary actions which needs to be taken in case where business is closed?

### **REPLY**

In case the legal heir receives any SCN in relation to short or non payment, short or non deduction of tax, ITC claimed in excess over the limits or claimed wrongly both for reasons other than fraud (**u/s 73**) and reasons due to fraud, wilful misrepresentation of facts or suppression of the facts (**u/s 74**), they have to submit the required information and documents. And if tax is determined to be payable, it needs to be paid out of the estate of the deceased as per the following provision

Section 93(1) of CGST Act, 2017 states - **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) xxxx 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.

**Option 2 :**

**Legal Heir to**

**continue with the**

**same business**



# FAQ1 : WHAT NEEDS TO BE DONE TO CONTINUE THE BUSNIESS ?

## REPLY-

- ❖ Applying for the fresh registration in the name of the legal heir subject to information and documents along with **the reason of transfer of business due to death of the sole proprietor**
- ❖ The legal heir is required to file online **ITC -02** – Its is a declaration for the transfer of the ITC in case of change in the constitution of the business.
- ❖ The legal heir has to file the cancellation registration **with 30 days** from the date of the death of proprietor through **REG- 16** and mention **the reason of transfer of business due to death of the sole proprietor**

## FAQ2 : What are the procedure to be taken if the legal heir wants to continue the business and get registered as per Section 22 ?

### REPLY-

- ❖ When the legal heir decided to continue with the business of the deceased then he needs to get himself registered
- ❖ The following are the process of Registration-

He is **liable to be registered with effect from the date of such succession**, where a business is transferred for any reasons including death of the proprietor.

He need to file electronically **FORM GST REG-01** stating the reasons to obtain registration as “death of the proprietor”.

# FORM GST REG-01

## Form GST REG-01

[See Rule -----]

### Application for Registration

(Other than a non-resident taxable person, a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, a person required to deduct tax at source under section 51 and a person required to collect tax at source under section 52)

#### Part -A

State /UT - ▾ District - ▾

(i)	Legal Name of the Business (As mentioned in PAN)	
(ii)	PAN (Enter PAN of the Business; PAN of Individual in case of Proprietorship concern)	
(iii)	Email Address	
(iv)	Mobile Number	

**Note** - Information submitted above is subject to online verification before proceeding to fill up Part-B. Authorized signatory filing the application shall provide his mobile number and email address.

#### Part -B

1.	Trade Name, if any	
2.	Constitution of Business (Please Select the Appropriate)	
(i) Proprietorship	☐	(ii) Partnership ☐
(iii) Hindu Undivided Family	☐	(iv) Private Limited Company ☐
(v) Public Limited Company	☐	(vi) Society/Club/Trust/Association of Persons ☐
(vii) Government Department	☐	(viii) Public Sector Undertaking ☐
(ix) Unlimited Company	☐	(x) Limited Liability Partnership ☐
(xi) Local Authority	☐	(xii) Statutory Body ☐
(xiii) Foreign Limited Liability Partnership	☐	(xiv) Foreign Company Registered (in India) ☐
(xv) Others (Please specify)	☐	
3.	Name of the State	District
4.	Jurisdiction	State Sector, Circle, Ward, Unit, etc. others (specify)

5.	Option for Composition	Yes ☐ No ☐
6.	Composition Declaration <input type="checkbox"/> I hereby declare that the aforesaid business shall abide by the conditions and restrictions specified in the Act or Rules for opting to pay tax under the composition scheme.	
6.1 Category of Registered Person < tick in check box >		
(i)	Manufacturers, other than manufacturers of such goods as may be notified by the Government for which option is not available	
(ii)	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	
(iii)	Any other supplier eligible for composition levy.	
7.	Date of commencement of business	DD/MM/YYYY
8.	Date on which liability to register arises	DD/MM/YYYY
9.	Are you applying for registration as a casual taxable person?	Yes <input type="checkbox"/> No <input type="checkbox"/>
10.	If selected 'Yes' in Sr. No. 9, period for which registration is required	From DD/MM/YYYY To DD/MM/YYYY
11.	If selected 'Yes' in Sr. No. 9, estimated supplies and estimated net tax liability during the period of registration	
Sr. No.	Type of Tax	Turnover (Rs.)
(i)	Integrated Tax	
(ii)	Central Tax	
(iii)	State Tax	
(iv)	UT Tax	
(v)	Cess	
	Total	
Payment Details		
	CIN	Date
		Amount
12.	Are you applying for registration as a SEZ Unit?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(i) Select name of SEZ	▾
	(ii) Approval order number and date of order	
	(iii) Designation of approving authority	



## FAQ3: What are the requirements of applying for new registration by legal heir as per Section 22?

### **REPLY-**

For Individual & Sole Proprietor		
Owner's PAN Card		
Owner's Aadhar Card		
Owner's Photograph		
Proof of Address		
Bank Account Details		
-		
-		
-		
-		
-		

## FAQ4 : What are the Documents required for filing ITC 02?

### **REPLY-**

- ❖ As per **Rule 41 (2)**, the legal Heir needs to submit a certificate issued by a practising Chartered Accountant or Cost Accountant certifying that the transfer of business has been done **with a specific provision for transfer of liabilities.**

## FAQ5 : What is the Pre-condition for the transfer of the ITC?

### **REPLY-**

In terms of **Section 18(3)** of the CGST and SGST Acts, where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business **with the specific provisions for transfer of liabilities, the said registered person** shall be allowed to transfer the input tax credit which remains un-utilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed in the [CGST](#) / SGST Rules, 2017 by declaring the same, electronically, on the common portal in Form GST ITC-02.]

Therefore, the transfer of ITC of the deceased can be done only when the legal heir is ready to accept the liabilities of the deceased i.e both the sundry creditors and sundry debtors and all other liabilities created by the deceased.

## FAQ6 : What is the process of transfer of ITC?

### **REPLY-**

- ✓ As soon as the legal heir file the **ITC 02** electronically with a request to transfer of the unutilised ITC lying in the electronic credit ledger of the deceased along with the CA certificate, it will be transferred to the registration number of the legal heir.
- ✓ The transferee being the same person , the legal heir needs to log in to his GSTIN and accept the details so furnished from the transferor's GSTIN and upon such acceptance the unutilised **ITC transferred through ITC 02** will be credited in the credit ledger of the new registered person

# ITC - 02

Form GST ITC -02

[See rule 41(1)]

**Declaration for transfer of ITC in case of sale, merger, demerger, amalgamation, lease or transfer of a business under sub-section (3) of section 18**

1.	GSTIN of transferor	
2.	Legal name of transferor	
3.	Trade name, if any	
4.	GSTIN of transferee	
5.	Legal name of transferee	
6.	Trade name, if any	

7. Details of ITC to be transferred

Tax	Amount of matched ITC available	Amount of matched ITC to be transferred
1	2	3
Central Tax		
State Tax		
UT Tax		
Integrated Tax		
Cess		



# **Circular No. 96/15/2019-GST – Relating to ITC 02**

## **Clarification in respect of transfer of input tax credit in case of death of sole proprietor**

- In terms of **Section 18(3)** of the CGST and SGST Acts, where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains un-utilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed in the [CGST](#) / SGST Rules, 2017 by declaring the same, electronically, on the common portal in Form GST ITC-02.]
- As per sub-rule (1) of **rule 41** of the Central Goods and Services Rules, 2017 (hereinafter referred to as „CGST 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.

**FAQ7 : Can a legal heir transfer the excess un-utilized Electronic Cash Ledger balance to his new entity in case of death of sole proprietor?**

**REPLY-**

- ❖ At first, the un-utilized electronic cash balance of the deceased can be adjusted against Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein.
- ❖ Thereafter if any cash remains as closing balance in the electronic cash ledger then it can be claimed as refund **u/s 54**, as **“excess cash balance in electronic cash ledger”**

## FAQ8 : How the cancellation application needs to be filed by legal heir as per Section 29?

### REPLY-

- ❖ It is recommended to file all pending returns till the date of death after payment of tax if any
- ❖ The legal heir has to file an application for cancellation of registration by giving the reason as death of proprietor
- ❖ The process of cancellation of the registration which the legal heir needs to follow is mentioned as below-
- ❖ **Rule 22(3)-** If a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in form GST REG-19, within thirty days from the date of submission of the application submitted by the registered person or the date of reply to the show-cause notice issued to him and cancel the registration, with effect from a date to be determined by him. He will notify the taxable person, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under **section 29(5)**
- ❖ **Rule 22(5)-** The provisions of rule 22(3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.



❖ Documents to be attached for cancellation of registration are mentioned below-

- 1 Death certificate of the deceased
2. Identity Proof and Address Proof of the deceased
3. Proof of the business closure
4. Proof of the bank closure ( if available)
- 5 Indemnity Certificate
6. Detail of the stock held on the date of death

**Note- In case of death of the sole Proprietor, application shall be made manually by the legal heir/successor before the concerned tax authorities**

## FAQ9 : Within how many days the application for cancellation of registration needs to be filed?

### **REPLY-**

As per **Rule 20**, the application should be submitted **within thirty days** of the occurrence of the event warranting cancellation, herein due to the death of the proprietor

However since the time for arranging documents may be longer the 30 days period is considered in genuine situations.

# FORM GST REG-16 – FOR REFERENCE ONLY

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Form GST REG-16  
[See rule 20]

Application for Cancellation of Registration

1	GSTIN			
2	Legal name			
3	Trade name, if any			
4	Address of Principal Place of Business			
5	Address for future correspondence (including email, mobile telephone, fax)	Building No./ Flat No.		Floor No.
		Name of Premises/ Building		Road/ Street
		City/Town/ Village		District
		Block/Taluka		
		Latitude		Longitude
		State		PIN Code
		Mobile (with country code)		Telephone
		email		Fax Number
6.	Reasons for Cancellation (Select one)	<ul style="list-style-type: none"> <li>Discontinuance / Closure of business</li> <li>Ceased to be liable to pay tax</li> <li>Transfer of business on account of amalgamation, merger/merger, sale, lease or otherwise disposed of etc.</li> <li>Change in constitution of business leading to change in Permanent Account Number</li> <li>Death of Sole Proprietor</li> <li>Others (specify)</li> </ul>		
7.	In case of transfer, merger of business, particulars of registration of entity in which merged, amalgamated, transferred, etc.			
(i)	Goods and Services Tax Identification Number			
(ii)	(a) Name (Legal)			
	(b) Trade name, if any			
(iii)	Address of Principal Place of Business	Building No./ Flat No.		Floor No.
		Name of Premises/ Building		Road/ Street
		City/Town/ Village		District
		Block/Taluka		

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	Latitude		Longitude				
	State		PIN Code				
	Mobile (with country code)		Telephone				
	email		Fax Number				
8.	Date from which registration is to be cancelled.		<DD/MM/YYYY>				
9	Particulars of last Return Filed						
(i)	Tax period						
(ii)	Application Reference Number						
(iii)	Date						
10.	Amount of tax payable in respect of inputs/capital goods held in stock on the effective date of cancellation of registration.						
	Description	Value of Stock (Rs.)	Input Tax Credit/ Tax Payable (whichever is higher) (Rs.)				
			Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	Inputs						
	Inputs contained in semi-finished goods						
	Inputs contained in finished goods						
	Capital Goods/Plant and machinery						
	Total						
11.	Details of tax paid, if any						
	Payment from Cash Ledger						
	Sr. No.	Debit Entry No.	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	1.						
	2.						
		Sub-Total					
	Payment from ITC Ledger						
	Sr. No.	Debit Entry No.	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
	1.						
	2.						
		Sub-Total					
	Total Amount of Tax Paid						
12.	Documents uploaded						
13.	Verification						
	I/We hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.						
	Signature of Authorised Signatory						
	Place	Name of the Authorised Signatory					
	Date	Designation / Status					

# FORM GST REG-16

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## Instructions for filing of Application for Cancellation

- A registered person seeking cancellation of his registration shall electronically submit an application including details of closing stock and liability thereon along with relevant documents, on common portal.
- The following persons shall digitally sign application for cancellation, as applicable:

Constitution of Business	Person who can digitally sign the application
Proprietorship	Proprietor
Partnership	Managing / Authorised Partners
Hindu Undivided Family	Karta
Private Limited Company	Managing / Whole-time Directors/ Chief Executive Officer
Public Limited Company	Managing / Whole-time Directors/ Chief Executive Officer
Society/ Club/ Trust/ AOP	Members of Managing Committee
Government Department	Person In charge
Public Sector Undertaking	Managing / Whole-time Directors/ Chief Executive Officer
Unlimited Company	Managing / Whole-time Directors/ Chief Executive Officer
Limited Liability Partnership	Designated Partners
Local Authority	Chief Executive Officer or Equivalent
Statutory Body	Chief Executive Officer or Equivalent
Foreign Company	Authorised Person in India
Foreign Limited Liability Partnership	Authorised Person in India
Others	Person In charge

In case of death of sole proprietor, application shall be made by the legal heir / successor manually before the concerned tax authorities. The new entity in which the applicant proposes to amalgamate itself shall register with the tax authority before submission of the application for cancellation. This application shall be made only after that the new entity is registered.

Before applying for cancellation, please file **your tax return due** for the tax period in which the effective date of surrender of registration falls.

- Status of the Application may be tracked on the common portal.
- No fee is payable for filing application for cancellation.
- After submission of application for cancellation of registration, the registered person shall make payment, if not made at the time of this application, and shall furnish final return as provided in the Act.
- The registered person may also update his contact address and update his mobile number and e-mail address.

## FAQ10: If cancellation application is filed, is there anything else which needs to be done?

### REPLY-

#### INTRODUCTION OF RULE 21A

- **Rule 21A** of CGST Rules 2017 talks about **Suspension of GST Registration**
- Sub **Rule 3** of **Rule 21A** of CGST Rules 2017 says: A registered person, whose registration has been suspended **shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.**
- A registered person shall not make taxable supply means shall not issue tax invoice and shall not charge tax accordingly during the pendency of the proceeding related to the cancellation of the registration



## **FAQ 11: If the legal heir receive a Show Cause Notice, in relation with the cancellation application what are the necessary actions which needs to be taken**

### **REPLY-**

In case the legal heir receives a SCN in relation with the cancellation, he or she needs to comply with all the legal queries raised in the SCN within the time mentioned in the SCN.

For example- Indemnity certificate copy could be asked from the legal heir , copy of bank closure , copy closure of business, or copy of surrender of the trade license can be asked to be submitted & furnish before the tax authorities and they need to furnish all the required documents with in the due dates as mentioned in SCN

Please do follow the GST portal for any notice received even if you do not receive mail or SMS.

## FAQ12 : What are the actions to be taken after the cancellation order is received?

### **REPLY-**

Once the cancellation order is received, the legal heir is required to file the final return which is **GSTR 10** electronically through the common portal

The final return is required to be filed within 3 months of :

Date of Cancellation

OR

Date of order of Cancellation

**Whichever is later**

## FAQ13 : What are the documents and information required for GSTR 10 as per Section 45 read with Rule 81?

### REPLY-

❖ Information Required-

**GSTIN**

**Legal & Business Name**

**Address**

**Application Reference Number (ARN) if any**

**Effective Date of Surrender/Cancellation** – Here, specify the date of cancellation as given on your cancellation order.

**Whether cancellation order has been passed** – Here, you have to specify whether it's a voluntary cancellation or a cancellation that was forced/ordered by the authorities.

**If Yes, Unique ID of Cancellation order**

**Date of Cancellation Order**

**Particulars of Closing Stock and amount of tax paid on the Closing Stock**

## FAQ14 : What if the Final Return GST RET 10 not filed within the stipulated time?

### **REPLY**

In case the legal heir doesn't file the final return within the stipulated time then the legal heir will get the notice. If he still doesn't file the return within 15 days of the receipt of the notice as a defaulter, the assessment order **GST ASMT 13** under **section 62** will be issued to determine the tax liability as per **section 29(5)** on the basis of the information available with the Proper Officer and if the return has been filed within 30 days of the date of the service of the order then the said order shall be deemed to have been withdrawn.



## FAQ15 : What is the GST implication of the transfer of the business?

### **REPLY**

As per **entry no 2 of Notification No: 12/2017** dated 28<sup>th</sup> June 2017, Services by way of transfer of the Going Concern, as a whole or as an independent part thereof, is wholly exempted from GST.

Therefore when the business of the deceased is transferred to the legal heir on the basis of going concern then it will exempted from GST ACT 2017

Example- If the legal heir wants to take only the assets of the deceased without accepting the liabilities of the deceased then the transfer of the business will be taxable as on the date of transfer of business and tax will be leviable on the sale of the assets.



## FAQ 16: If the legal heir receives a general Show Cause Notice what are the necessary actions which needs to be taken

### **REPLY**

In case the legal heir received any SCN in relation to short or non payment, short or non deduction of tax, ITC claimed in excess over the limits or claimed wrongly both for reasons other than fraud (**u/s 73**) and reasons relating to fraud, wilful misrepresentation of facts or suppression of the facts (**u/s 74**) **he would need to submit the necessary documents and informations against the SCN. If it is ascertained that tax is payable and he does not want to prefer appeal, then the same has to be paid by the legal heir as per the following provision.**

Section 85(1) of CGST Act 2017 states that - Where a **taxable person, liable to pay tax** under this Act, **transfers his business** in whole or in part, by sale, gift, lease, leave and license, hire or **in any other manner whatsoever**, the **taxable person and the person to whom the business is so transferred shall, jointly and severally**, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person **upto the time of such transfer**, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

## FAQ 17: If the legal heir who is continuing the business of the deceased receives a Demand for tax, interest or penalty for earlier business will he be liable to pay the same

### **REPLY**

Section 93(1) of CGST Act, 2017 states that - **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) xxxxxxxxxxxx

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

So in this case whether the liability is determined before or after his death the legal representative or any other person continuing the business will have to pay the tax.