



# Estate & Tax Planning through Wills

# Law of succession

On death of a person – Succession operates

**Testamentary Succession**  
(when a person decease after making a Will)

- ✓ The Indian Succession Act
- ✓ Muslim Shariat Law

**Intestate Succession**  
(when a person decease without making a Will)

- ✓ Hindu Succession Act  
Hindu, Shikhs, Jain & Buddh
- ✓ Muslim Shariat Law  
Muslim
- ✓ The Indian Succession Act  
Christian, Parsi

# Testamentary Succession

A Will valid under the Indian Succession Act, has to be made in respect of his / her Assets.

Important points for debate and discussion in a Will

- ✓ Will has to be in writing. Stamp paper / Plain paper.
- ✓ Identification of the person executing the Will.  
The assets are self acquired – HUF assets etc.
- ✓ Details of the assets to be bequeathed under the Will.  
Detailing in respect of Movable Assets and Immovable Assets.

# Testamentary Succession

Important points for debate and discussion in a Will

- ✓ Names and details of the beneficiaries under the Will, to whom assets are to be bequeathed.  
Reasons why someone is not made a beneficiary.
- ✓ Clause for dealing with residual assets (assets which have not been specifically bequeathed).
- ✓ Bequeath to wife, more than one children, eventualities of spouse predeceasing the testator.

# Testamentary Succession

Important points for debate and discussion in a Will

- ✓ Role of executor and advisor under the Will.
- ✓ Use of photographs in the Will.
- ✓ Difference between directions of bequeath and advise under the Will.
- ✓ Provision for charity under the Will.
- ✓ Distribution of assets from a pool of assets, especially movable assets.

# Testamentary Succession

## Important points for debate and discussion in a Will

- ✓ Signature of two adult witness with their identification.  
Selection of Witnesses.
- ✓ It is advisable to execute Declaration of the two witnesses confirming the fact that they are the witness of the Will. This Declaration can be filed in court at the time of obtaining the probate.
- ✓ Person signing the Will can sign before Notary Public or get the Will Registered.
- ✓ Whether to sign the Will, without Notary, before Notary or get the same registered depends on the facts & circumstances of the case.

# Testamentary Succession

When should you revise your Will, prepare a new / fresh Will

- ✓ It is imperative to make a new Will when :
  - the person to whom the assets are bequeathed dies.

Sec. 105 – Indian Succession Act.
- ✓ It is advisable to make a new Will when :
  - one or both the witnesses to the Will dies.
  - new Will when the executor/s of the Will dies.
- ✓ When there is a structural change in the movable and immovable assets of the testator.

# Taxability of amount received under Will, Inheritance or Gift

Following receipts in cash or kind are tax free U/s. 56(2) of the Income Tax Act :

1. Any amount to the extent of Rs 50,000
2. From following persons without any upper limit :  
In case of an individual :
  - A. Spouse of the individual.
  - B. Brother or Sister of the individual.
  - C. Brother or Sister of the spouse of the individual.
  - D. Brother or Sister of either of the parents of the individual.
  - E. Any lineal ascendant or descendant of the individual.
  - F. Any lineal ascendant or descendant of the spouse of an individual.  
Spouse of the person referred to in items (B) to (F).
3. On the occasion of the marriage of an individual.
4. Under a Will or by way of inheritance.



# Transfer by Will or Gift ?

Is it better to receive a gift of property from a close relative in his / her life time or under a Will ?

- ✓ Both are exempted from Income Tax by virtue of Sec 56(2).
- ✓ Is the Will expected to be challenged ?  
This is the deciding factor.
- ✓ Transfer of ownership during lifetime.
- ✓ Higher cost of transfer of assets by Gift in comparison to transmission by Will.

# Tax planning ideas and succession

## Scope of planning with the Will

- ✓ If assets are bequeathed by way of intestate succession than, it is received by defined legal heirs and not persons / entities of choice.
- ✓ Assets can be received by HUFs, Females, Minors etc., if assets are bequeathed under Will.

# Tax planning ideas and succession

## Formation of a Family Trust under a Will

- ✓ One discretionary Family Trust can be created as a part of the Will.
- ✓ A discretionary trust is liable to tax at the maximum marginal rate (presently 30% + Surcharge), but if formed under a Will is liable to be taxed as a separate person at regular rates. Even deduction U/s 80 C is available.
- ✓ The Trust can have income other than business income (interest, dividend capital gains etc.). If it has business income, than all income will be treated at maximum rate.

# Tax planning ideas and succession

## Formation of a Family Trust under a Will

- ✓ Discretionary Trusts are trusts where beneficiaries and / or shares of beneficiaries are not determined.
- ✓ Such Trusts are useful to take care of dependents decisively.
- ✓ Trustees can be empowered to distribute the income among the beneficiaries & at a certain stage even dissolve the trust.
- ✓ Shares of a company can also be bequeathed to such trust.

*Where there is a Will there is a way... to plan your inheritance & taxes.*

# Disclaimer

This Presentation aims to tell the General Views and Laws related to Investments, Estate & Tax Planning & Wills.

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