

Principles of Succession, Taxation on Succession & Hindu Undivided Family

Principles of Succession

Law of succession

: Testamentary Succession :

**The Indian Succession Act
& Muslim Shariat Law**

: Intestate Succession :

Hindu Succession Act	Muslim Shariat Law	The Indian Succession Act
Hindu, Sikhs, Jain, Buddh	Muslim	Christian, Parsi

What is a WILL ?

Any document which expresses the desire (WILL) of a person, to how his / her assets are to be distributed after his death.

Why should one make a WILL ?

- ✓ Distribution of Assets according to his / her wishes.
- ✓ Tax Planning.
- ✓ Taking care of all the related persons and intension of doing any charity.

Essential of a valid WILL

- ✓ WILL has to be writing.
- ✓ It should bear Signature / Thump impression of the person making the WILL preferably on every page.
- ✓ Two adult witnesses, signing in presence of person making the WILL.
- ✓ WILL should be in the language understandable to the person making the WILL.

Is a WILL required to be registered ?

- ✓ Registration is optional.
- ✓ If the WILL is likely to be challenged, it should be registered.
- ✓ All the changes subsequent to a Registered WILL have also to be registered.
- ✓ Registered WILL – no chance of it being untraceable.

Care to be taken in drafting of a WILL

- ✓ Does the WILL take care of all possible eventualities?
- ✓ Does the WILL leave any room for conflict ?
- ✓ Will should be explicit about making certain provisions.
- ✓ Property bequeathed jointly.
- ✓ Loose ends in distributions of assets.

When do you review your WILL ?

- ✓ Death of persons who are witness / executors to the WILL or relations strained with them.
- ✓ Major changes in assets.
- ✓ Major changes in the family circumstances like birth, death etc.

Tax planning ideas and WILL

Assets can be distributed to entities other than legal heirs, Daughter-in-laws, Grand children, HUF's etc.

Tax Planning ideas and WILL

With a 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%), 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 from business”, if used for the benefit of dependent relatives.

Tax Planning ideas and WILL

With a 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.

Legal heirs of a Hindu dying without executing a WILL

✓ Hindu Male : Class I heirs

Mother, Widow, Daughters, Sons, Heirs of the deceased son / daughter. (father not included).

✓ Hindu Female : Class I heirs

Sons, daughters, Children of predeceased son/daughter and the husband. (Father, mother, Father-in-law, Mother-in-law not included).

Law of succession for Hindus

In case a Hindu dies
without making a WILL

Vs.

In case a Hindu dies
after executing a WILL

What happens in case of :

- ✓ Immovable Assets.
- ✓ Movable Assets.
- ✓ Assets in which nominees provided.
- ✓ HUF Property.

Process to acquire rights under succession for Hindus

Procedure on death (immovable assets)



In case a Hindu dies intestate
(without executing a Will)

Heirship Certificate.



Property bequeathed to all or
any of the legal heirs.

In case a Hindu dies after
executing a Will

Letter of Administration with
Will (Probate).



Property bequeathed to the
beneficiaries of the Will.

Guardianship under Hindu Law

Under the Hindu Minority & Guardianship Act “minor means who has not completed the age of eighteen years.”

Natural Guardian

- ✓ Father is the natural guardian of a minor son and daughter.
- ✓ Mother is the natural guardian only when father is dead or incapable of acting as guardian.
- ✓ The Act does not recognise the principle of joint guardian.

Guardianship under Hindu Law

Testamentary Guardian

- ✓ Under Sec. 9 of Hindu Minority & Guardianship Act, testamentary guardian can be appointed only by a WILL.
- ✓ Appointee under the WILL becomes a guardian, only in case of absence of both, father and mother, who are natural guardian.
- ✓ If mother (the surviving natural guardian) appoints testamentary guardian, her appointee will become the testamentary guardian. Deceased father's appointment will be ineffective. If mother does not appoint, father's appointee will become guardian.

Guardianship – Legal Aspects

Guardian appointed by Court (Certified Guardian)

- ✓ Courts are empowered to appoint guardians under the Guardianship & Wards Act.
- ✓ District Court may appoint or declare any person as the guardian whenever it considers it necessary in the welfare of the child.
- ✓ The District Court has the power to appoint or declare a guardian in respect of separate property or separate functions of the minor.

Guardianship – Legal Aspects

Guardianship Certificate for persons with disabilities

- ✓ Under National Trust Act guardian can be appointed for adults with certain disabilities.
- ✓ Local Level Committee (LLC), appoints, monitor or remove a legal guardian.
- ✓ Local Level Committee (LLC) provides Legal Guardianship Certificate in co-ordination with National Trust.

Guardianship – Immovable Assets

✓ Guardians cannot –

- mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor.
- lease any part of such property for a term exceeding 5 years or for a term exceeding more than one year beyond the date on which the minor will attain majority.

Exception

The above does not apply to a Testamentary Guardian who can deal in respect of the immovable property of a minor received under a Will where the Testamentary Guardian is appointed.

Nomination & Succession

- ✓ Nomination facility can be availed for all kinds of financial assets.
- ✓ Nomination can be done with properties in co-operative societies.
- ✓ Joint holding under E or S (Either or Survivor) mode can be done in respect of financial assets.
- ✓ Doing this nomination is extremely important and should be done without fail.

Effects of Nomination

- ✓ On death of the holder of such assets transmission of assets needs to be done in favour of the nominee.
- ✓ Nominee is not the owner of the assets, he is merely a custodian. The real owner of the asset is the one who is the owner under the laws of succession as per Testamentary Succession (where WILL is made) of Intestate Succession (WILL is not made).

Share of Joint holders of Property

- ✓ In case of financial assets held in joint name, his / her share shall be in accordance with the investment made by each co-owner.
- ✓ In case of immovable assets held in joint mode, share of each co-owner is as per the shares mentioned in the purchase document, if nothing is specified then all the joint holders will have equal share.

Effect of Joint holding in Immovable Property

- ✓ Joint holding in Immovable property cannot be on E or S (Either or Survivor) basis.
- ✓ On death of one of the joint holders, immovable property does not get transferred automatically. It has to undergo process of transfer by succession in respect of his / her name.

Taxation on Succession

Taxability of Asset received in succession

Section 56 (x) :- Following are liable to Income Tax

- ✓ any sum received without a consideration exceeding Rs. 50,000/=.
- ✓ any immovable property received without a consideration or with inadequate (difference more than 5%) consideration exceeding Rs. 50,000/=(Amendment w.e.f AY 2019-2020
- ✓ any property other than immovable property received exceeding Rs. 50,000/=.

Taxation on Succession



Taxability of Asset received in succession

Exceptions

Provided that this clause shall not apply to any sum of money or any property received :

- ✓ from any relative (as defined).
- ✓ on the occasion of the marriage of an individual.
- ✓ under a will or by way of inheritance.

Taxability of Asset received in succession

Can I receive any amount of asset under succession?

Sec. 56 (x) does not lay down any limits (upper cap) on the value of the assets that can be received

THEN...

What is the maximum amount of assets that can be received under succession ?

Taxability of Asset received in succession

Provision of Sec 68 of Income Tax Act needs to be considered

Section 68 of Income Tax Act

“under any sum of fund is credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in opinion of the Assessing officer satisfactory the sum so credited may be charged to income tax as the income of the assessee of that pervious year.”

Taxation on Succession



Taxability of Asset received in succession

Provision of Sec 68 of Income Tax Act needs to be considered

- ✓ Rate of tax for incomes made taxable U/s. 68 has been prescribed U/s 115 BBE.
- ✓ The prescribed rate U/s 115 BBE are :
 - $60\% + 25\% \text{ Surcharge} = 77.25\%$ (if disclosed in the return of income and tax paid before the end of previous year.
 - $77.25\% + 10\% \text{ (Sec 271AAC)} = 83.25\%$ (if added during assessment or tax not paid before end of the previous year.
 - $83.25\% + 200\% \text{ Penalty (Sec 270A(8))}$ if it is a case of misreporting of Income

Taxability of Asset received in succession

How to comply with Section 68 of the Income Tax in assets received in succession ?

- ✓ Identity of the person from whom credit received.
- ✓ Credit worthiness.
- ✓ Genuineness of transaction.

Taxability of Asset received in succession

Jewellery which can be considered as explained

- ✓ CBDT Circular in context of search & seizure proceedings provides :

Gold Jewellery & ornaments

500 gms	-	Married lady
250 gms	-	Unmarried lady
100 gms	-	per male member

- ✓ Declared in wealth tax return should not be seized.

Applying the above analogy, it can be considered as explained asset.

Hindu Undivided Family (H. U. F.)

Basic Principles relating to Formation & Succession of HUF

- ✓ Undivided Ancestral assets acquired / owned by the family are HUF assets.
- ✓ Self acquired properties of ancestors not HUF assets.
- ✓ A family consisting of only husband & wife can be recognized as Hindu Undivided Family (HUF) under the present interpretation of Hindu law.

Basic Principles relating to Formation & Succession of HUF

- ✓ There is no Deed required to form a HUF. HUF is created on happening of an event. Deed required by Bank / Income Tax are just affirmation of the formation.
- ✓ A HUF as such cannot to be a partner in a partnership firm. The Karta can become partner and represent the HUF.
- ✓ HUF can make investment and recognized in all financial assets.
- ✓ HUF cannot make nomination as succession process is inbuilt in HUF.

Basic Principles relating to Formation & Succession of HUF

- ✓ Daughters married before 2005 are still recognized as a co-parceners in the HUF.
- ✓ Father & Daughter both need to be alive as & on 09-05-2005 for the daughter to be recognized as a co-parceners in a HUF.
(SC judgment dt : 16/10/2015)
- ✓ The shares of each co-parceners and members of HUF are not fixed, till the time the partition is done.

Basic Principles relating to Formation & Succession of HUF

- ✓ On partition, all the co-parceners (Husband, Son, Married / Unmarried Daughter) & member (wife) are entitled to equal share.
- ✓ On death of any co-parcener, there is a deemed partition and his / her share goes to his / her legal heirs. Only co-parceners can make a will of his / her share.

Basic Principles relating to Formation & Succession of HUF

- ✓ A member (wife) cannot make WILL in respect of her share. She can claim partition during her life time and she is entitled to share in the event of partition.
- ✓ The partition of HUF can be unequal if mutually agreed upon by the co-parceners & member.
- ✓ A co-parceners or member can release himself / herself from the HUF.

Basic Principles relating to Formation & Succession of HUF

- ✓ Only complete partition of HUF is now recognized under Income Tax Act.
- ✓ After complete partition of HUF, co-parceners / member desirous of reuniting can form a HUF without some of the co-parceners / member.
- ✓ Share received by an individual from partition of bigger HUF goes to his HUF, not his individual.

Basic Principles relating to Formation & Succession of HUF

- ✓ When only one member remains in the HUF, the HUF ceases to exist, the same gets merged in the HUF / Individual assets.
- ✓ The eldest co-parceners in the family becomes the Karta. Any (adult person) other than the eldest co-parceners can become Karta by mutual agreement. Mother remains a Manager of the HUF on death of the Karta or till co-parceners are minors.

Basic Principles relating to Taxation of HUF

- ✓ It is recognized as a separate person for purpose of taxation under Income Tax Act.
- ✓ Insurance premium / PPF only for members can be claimed as a deduction by the HUF as a deduction U/s. 80 C.
- ✓ Tuition fees of members of HUF cannot be claimed by the HUF U/s. 80 C.

Basic Principles relating to Taxation of HUF

- ✓ HUF can have income earned by the virtue of its capital, supplemented by management of the affairs by the Karta.
- ✓ Incomes like Salary, Commission, Professional Fees are not HUF incomes.
- ✓ HUF can own a business, Incomes from ownership of expensive equipment / machine etc.
- ✓ Any sum received by a member from the of HUF is tax free U/s. 10(2) of the Income Tax Act.

Basic Principles relating to Taxation of HUF

- ✓ Agricultural income of Ancestral land is HUF income.
- ✓ Real nature of asset important to determine whose income whether that of HUF or Individual.
- ✓ In case of Agriculture land holding, revenue record might not recognize HUF holding, but nature & source of income is important.

Basic Principles relating to Taxation of HUF

Gifts to HUF

- ✓ From its members : Tax free in the hands of HUF, but income derived by the HUF on such gifted amount shall be clubbed to the donor.
- ✓ From non members : Taxable in the hands of the HUF. No clubbing provision is applicable.

Basic Principles relating to Taxation of HUF

Gifts from HUF

- ✓ To relatives of its members – Tax Free in the hands of recipient.
- ✓ To non relatives of its member – Liable to taxation in the hands of the recipient.
- ✓ Gift by a HUF is void or voidable ?

Philosophically speaking...

Do we all believe in life after death?

Some would say... “Yes”

Some would say... “No”

Philosophically speaking...

But the fact is...
we all have assembled
to plan affairs after death.



Thanks...

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