

## INHERITANCE OF INDIAN ASSETS, BY NRI & TO NRI TAX IMPLICATIONS IN INDIA







NRI Assets Scenario – Assets in India & Assets outside India



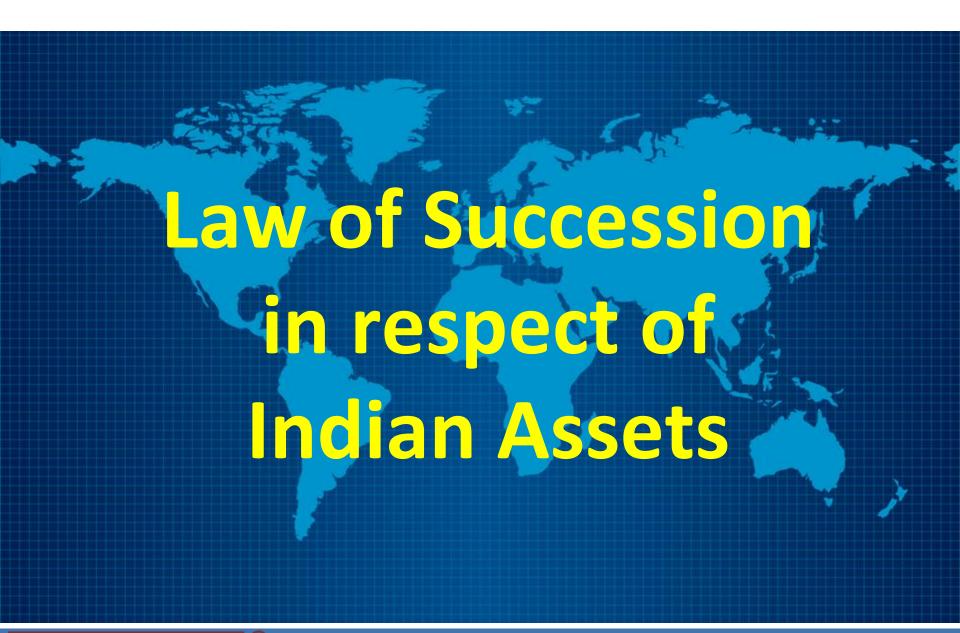
**Assets out of India** 

**Transmission** (Inheritance) of assets governed by laws of respective foreign country

**Assets in India** 

**Transmission** (Inheritance) of assets governed by laws of India







## Law of Succession in respect of Indian Assets

On death of a person – Succession operates

**Testamentary Succession** 

**Intestate Succession** 

- The Indian Succession
  Act
- Muslim Shariat Law

**Hindu Succession Act** 

Hindu, Shikhs, Jain & Buddh

Muslim Shariat Law

Muslim

**The Indian Succession Act** 

**Christian, Parsi** 







## Testamentary Succession – in case of NRI

- When assets are bequeathed on the basis of a Will, it is called as testamentary Succession.
- A Will valid under the Indian Succession Act, has to be made in respect of Indian Asset.
- A Will in respect of Gobal Assets (Foreign + Indian Assets) is valid in India for Indian Assets, if it contains all the essential elements of a valid Will.



## Testamentary Succession – in case of NRI

### **Essential of a valid WILL**

- Will has to be in writing.
- <u>Identification</u> of the person executing the <u>Will.</u>
- ✓ Details of the assets to be bequeathed under the Will.
- Names and details of the beneficiaries under the Will, to whom assets are to be bequeathed.
- / Signature of the person executing the Will, with date.

two adult witness with their of **Signature** 



## Testamentary Succession – in case of NRI Care to be taken when Will executed out of India

- Person signing the Will is advised to sign before Notary Public in the country where the Will is to be executed.
- ✓ It is advisable to execute declaration of the two witnesses confirming the fact that they are the witness of the Will. This can be filed in court at the time of obtaining the probate.
- / Execution of the Will will take place in India, hence the executor has to come to India.



## Testamentary Succession — in case of NRI Final step in — Testamentary Succession

- Executor or Beneficiaries to make <u>application</u> <u>before the Court</u> along with Will to obtain a probate.
- ✓ Court will demand <u>declaration</u> from <u>witness & legal heirs</u>. Court will issue <u>public notice</u>.
- Court will issue a letter of administration with Will (Probate), which will make Will a conclusive document.



## Testamentary Succession — in case of NRI Effect of Nomination / Joint Holder (E or S)

- On death of the holder of such assets transmission of assets needs to be done in favour of the Nominee / Joint Holder (E or S).
- Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset is the one who is the beneficiary under the Will in case of Testamentary Succession (where Will is made).



## Testamentary Succession — in case of NRI Effect of No Nomination / No Joint Holder

- All institutions are obliged to honour the Probate issued by the Court.
- ✓ Probate is a <u>conclusive document</u> for property bequeathed in favour of beneficiary
- ✓ In the absence of a Probate, the institution may prescribe procedure to accept a will without a Probate as document for transmission of asset.







## Intestate Succession – in case of NRI

When a person dies without executing a Will, the process by which the assets of the deceased are bequeathed is called Intestate Succession.

There are specific provision applicable according to the religion followed by the deceased.

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



# Intestate Succession — in case of NRI Distribution of assets where Hindu dies without executing a Will

- Hindu Male : Class I heirs
  Mother, Widow, Daughters, Sons, Heirs of the predeceased 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).

All the assets are to be evenly distributed amongst all the heirs.



## Intestate Succession — in case of NRI Final step in — Intestate Succession

- Heriship Certificate / Succession Certificate is an <u>order of</u> the Court certifying the legal heirs of the deceased and the assets bequeathed to the legal heirs.
- The legal heirs under the law of Succession should obtain a certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) from Mamlatdar office.
- The legal heirs should then apply to the court to obtain a Heirship Certificate / Succession Certificate.
- The Court will issue <u>public notice</u> and consider any <u>responses</u> received <u>thereafter issue</u> a Heirship Certificate / Succession Certificate.



## Intestate Succession — in case of NRI Effect of Nomination / Joint Holder (E or S)

- On death of the holder of such assets transmission of assets needs to be done in favour of the Nominee / Joint holder (E or S).
- Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset are the legal heirs of the deceased under Intestate Succession (where Will is not made).



## Intestate Succession — in case of NRI **Effect of No Nomination / No Joint Holder**

- All institutions are obliged to honour the Heriship **Certificate / Succession Certificate.**
- / Heriship Certificate / Succession Certificate is a conclusive document for property bequeathed the same.
- / In the absence of a Heriship Certificate / Succession Certificate, the institution may prescribe procedure to accept the certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) as document for transmission of asset.







### Management of Assets by Power of Attorney

For Movable Assets

India or Should be notarised in Abroad.

Should be stamped as per local Stamp Act, in Gujarat, it is Rs. 300/=.



# Management of Assets by Power of Attorney Important clauses of POA to manage Movable Assets

- ✓ To carry out all the operations of Depository Account including instruction for debit & credit to the demat account.
- To carry out operation of Government supported savings schemes with specific mention of names.
- √ To carry out the affairs of a Hindu Undivided Family (HUF) where the NRI is the Karta of his HUF.



## **Management of Assets by Power of Attorney** Important clauses of POA to manage Movable **Assets**

- To carry out the affairs of Partnership or **Proprietorship Concern.**
- To carry out functions as a Director of a Company.
- / To make and accept all claims under a WILL or under succession.
- To encash fixed deposits even before maturity and close bank accounts (subject to acceptance by the bank).



## **Management of Assets by Power of Attorney**

### **For Immovable Assets**

- If giver and receiver of POA holder both are in India Should be registered with respective Registrar where the property is located in India.
- If giver and / or receiver of POA are out of India POA should be executed & signed before Indian Embassy abroad and thereafter should be submitted in 90 days to registrar where the property is located. It will be stamped & verified by Stamp Duty Collector Office & District Collector Office. Giver & Receiver of POA both can execute and sign out of India.



## Management of Assets by Power of Attorney

#### **For Immovable Assets**

- Appropriate stamp duty has to be paid, which is Rs. 100/= for POA to close relatives (father, mother, brother, sister, wife, husband, son, daughter, grandson, granddaughter).
- When POA given to any person other than close relative, market value based stamp duty will be liable on the POA.
- It is advisable to give a Letter of Authority to a lawyer, to represent the parties before authorities in India, when the giver & receiver of POA is out of India.







### FEMA & RBI Regulations on Transmission of Assets

### **Immovable Assets**

Name of Asset

The falls.		4	il.d
■ <u>Immo</u>	vable	othe	than
Agricı	ulture	4	Land,
Planta	ation	and	Farm
House		4	

Agriculture Land,Plantation and FarmHouse

#### Regulations on transmission

- From NRI / OCI who has lawfully acquired it
- From a person Resident in India
- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau or North Korea (DPRK), is not allowed to acquire immovable property in India without prior approval from the Reserve Bank of India



### FEMA & RBI Regulations on Transmission of Assets



Name of Asset	Regulations on transmission
Share in Partnership Firm / LLP	Prior approval of Reserve Bank of India is only required, if any regulation gets breached.
Shares – Listed or Unlisted companies	Example: NRI Cap, Sector Cap, Restricted Sectors

Assets like Bank Accounts, Fixed Deposits, Mutual Funds, transmission happens on the basis of the source of investment – Repatriable or Non Repatriable.







Taxability of income from assets received under inheritance in India

India does not have inheritance tax. Estate duty in India has been abolished.



Taxability of income from assets received under inheritance in India

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

- Any sum received without a consideration exceeding Rs. 50,000/=.
- Any movable or immovable property received without a consideration or with inadequate consideration.



Taxability of income from assets received under inheritance in India

## **Exceptions**

Provided that this <u>clause shall not apply</u> to any sum of money or any property received

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



## Taxability of income from assets received under inheritance in India





Name of Asset	Different Types of Income	Taxability
Immovable other than Agriculture Land, Plantation and Farm House	Rent Income	Taxable as per normal tax rate, after deduction of 30% u/s 24.
Agriculture Land, Plantation and Farm House	Agriculture Income	Exempted u/s 10(1)

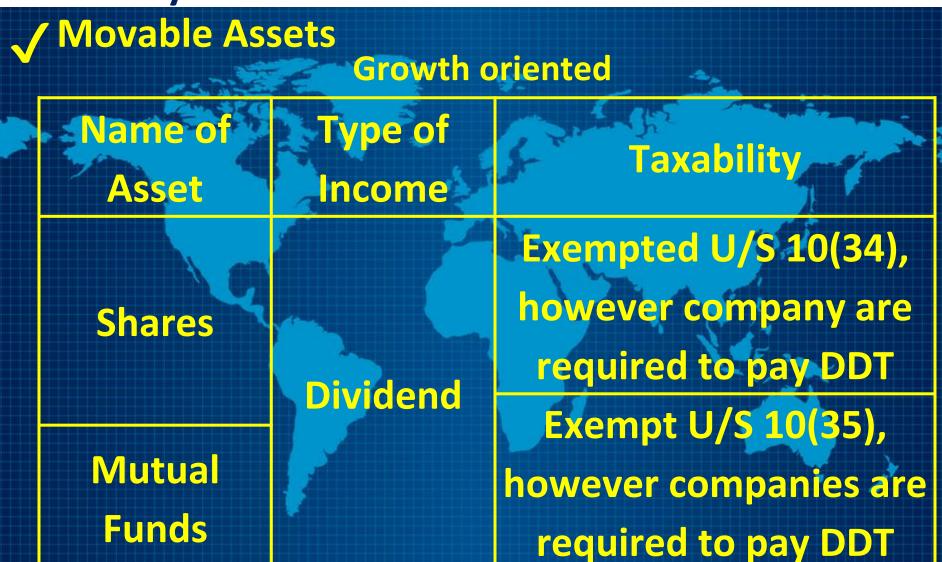




## **Income Generating**

Name of Asset	Type of Income	Taxability
NRO Account / NRO Fixed Deposit	Interest income	Taxable as per normal tax rate
NRE Account / NRE Fixed Deposit FCNR Account	Interest income	Exempted as per Section 10(4)
PPF Investment	Interest income	Exempted as per Section 10 (11)









**Growth oriented** 

Name of Asset	Different Types of Income	Taxability
Share in	Remuneration	Taxable as per
Partnership Firm / LLP	Interest on capital	normal tax rate
	Share in Profit of business	Exempted u/s 10(2A)









Name of Asset	Long Term Capital	<b>Short Term Capital</b>
	Gain	Gain
Immovable other than	More than 2 years	Less than 2 years
Agriculture Land,	Tax Rate - 20% +	
Plantation and Farm		Normal Tax Rate +
House.		surcharge + Health
	& Edu. Cess)	& Edu. Cess
Agriculture Land,	TDS Rate	TDS Rate
Plantation and Farm	20.8%	31.8%
House within the limits	TDS is to be deducted on entire sale	
prescribed.	consideration	

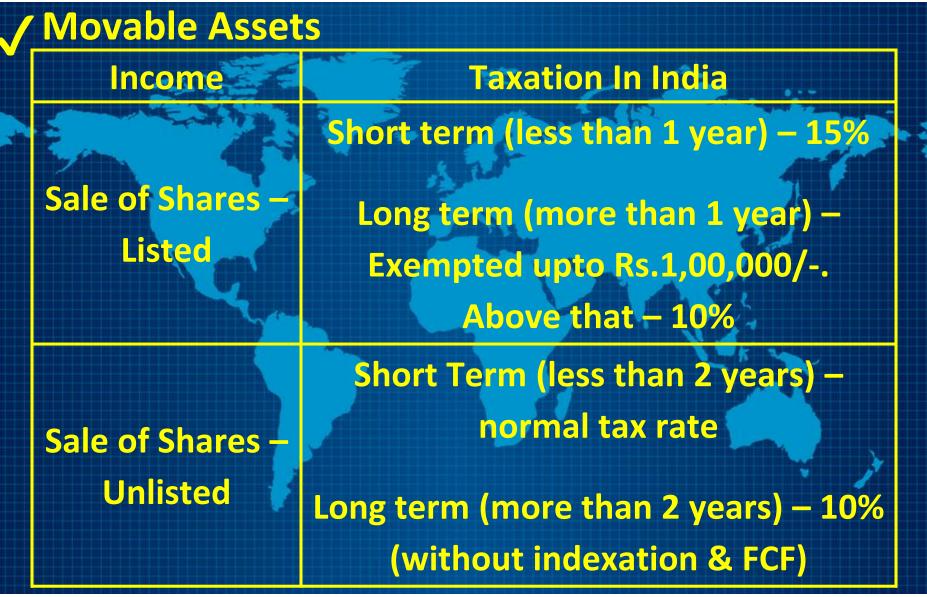


Immovable Assets
Agricultural land situated beyond the below limits are completely exempted.

Population of a city / town etc.	Arial Distance	
10,000 to 1,00,000	2 kms.	
1,00,000 to 10,00,000	6 kms.	
Above 10,00,000	8 kms.	

Agricultural land within these limits are liable to taxation as any other immovable assets.







### **Movable Assets Taxation In India Income** Short Term (less than 3 years) -Normal tax rate **Mutual Fund** Investment -Long Term (more than 3 years) -Debt (Listed) - 20%(with indexation) Long Term (more than 3 years) (Unlisted) - 10% (without indexation & FCF) Short term (less than 1 year) – 15% **Mutual Fund** Investment -Long term (above 1 year) Exempted upto **Equity** 1,00,000/-. Above that -10%







### Repatriation of sale proceeds of assets received under inheritance

### **Immovable Assets** Name of Asset **Regulation for repatriation** purchased from **Foreign** Exchange remittance / FCNR / NRE A/c, entire sale proceeds can be repatriated. Sale proceeds from immovable In case of residential properties, other than Agriculture Land, maximum two properties. Plantation and Farm House. If assets acquired by any other mode, repatriation possible under **US\$ 1** million limit per financial

year.

Sale proceeds from <u>Agriculture</u>
Land, Plantation and Farm
House

Repatriation possible under <u>US\$ 1</u> million limit per financial year.



## Repatriation of sale proceeds of assets received under inheritance

Movable Assets	lovable Assets				
Name of Asset	Regulation for repatriation				
Sale of shares – if purchased from NRE PIS	Full amount				
Sale of shares – if purchased	Repatriation possible under US\$				
from NRO PIS	1 million limit per financial year				
Sale of Mutual Funds – if purchased from NRE A/c	Full amount				
Sale of Mutual Funds – if	Repatriation possible under US\$				
purchased from NRO A/c	1 million limit per financial year				
Share in Partnership Firm /	Repatriation possible under US\$				
LLP	1 million limit per financial year				



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This Presentation may contain <u>references</u>, website links, regulations or other policy materials. This Information provided, is only intended to be a general summary. All information in this presentation, including charts, examples and other website references, may be used for any purpose only after Professional advice.

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# Forthcoming presentations for NRIs

Subject	Date	Venue
Various kinds of incomes in India by NRI and its Income Tax implications	19 January, 2019 (Saturday)	Hotel Imperial Palace, Rajkot
in India.  Overview of FATCA,  FBAR and CRS	26 January, 2019 (Saturday)	Ahmedabad Management Association, Ahmedabad

Please register for the events.



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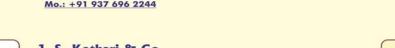


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