



INCOME TAX PLANNING FOR

- **ASSETS RECEIVED BY INHERITANCE & WILL**
- **HUF (HINDU UNDIVIDED FAMILY)**

Law governing succession of assets by Inheritance & Will

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

What is Testamentary Succession ? & How does it operate ?

Testamentary Succession

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

Essential of a valid WILL :

- ✓ Will has to be in writing.
- ✓ Identification of the person executing the Will.
- ✓ Details of the assets to be bequeathed under the Will.

Testamentary Succession

Essential of a valid 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.
- ✓ Signature of two adult witness with their identification.

Testamentary Succession

- ✓ 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.

- ✓ 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.

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.

Testamentary Succession

Final step in – Testamentary Succession :

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

Testamentary Succession

Effect of Nomination / Joint Holder (E or S) :

- ✓ On death of the holder of financial 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

Effect of No Nomination / No Joint Holder :

- ✓ All institutions are obliged to honour the Probate issued by the Court.
- ✓ Probate is a conclusive document 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.

What is Intestate Succession ? & How does it operate ?

Intestate Succession

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

Intestate Succession

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 equally distributed amongst all the heirs, surviving at the time of his / her death.

Intestate Succession

Final step in – Intestate Succession :

- ✓ Heirship Certificate / Succession Certificate is an order of 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 public notice and consider any responses received, thereafter issue a Heirship Certificate / Succession Certificate.

Intestate Succession

Effect of Nomination / Joint Holder (E or S) :

- ✓ On death of the holder of financial 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

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.

Income Tax Planning for Assets received by 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 OR any property other than immovable property without a consideration or with inadequate consideration exceeding Rs. 50,000/=.

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

“where any sum is found 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.”

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% Surcharge = 77.25% (If disclosed in the Return of Income).
 - 77.25% + 10% of tax payable (Penalty U/s. 271AAC) = 83.25%. (In case of detection during the Assessment Proceedings).
- ✓ Can invite prosecution (Imprisonment & Fine) U/s. 276C(1), 277, 277A of the Income Tax Act.

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 (when Wealth Tax Act was in force).
- ✓ Jewellery reflected in the Balance Sheet as asset.

The above can be considered as explained assets.

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 (x).
- ✓ Is the WILL expected to be challenged ? This is the Deciding factor.

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

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% + 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.).

Tax planning ideas and succession

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.

Joint holders of assets

- ✓ In case of financial assets held in joint name, his / her share shall be in accordance with the investment made by each co-owner. The first holder is treated as the owner of asset, by the financial institution.
- ✓ 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, under revenue law. Joint holders with undefined shares can discharge Income Tax liability as per their share in investment.

Effect of joint holders of assets

- ✓ 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 Will / succession in respect of his / her name.

Law governing Hindu Undivided Family (HUF)

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.

(PRAKASH & ORS. VERSUS PHULAVATI & ORS.
SC : CIVIL APPEAL NO.7217 OF 2013)

- ✓ 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 cannot claim partition during her life time but she is entitled to share in the event of partition, during her life time.
- ✓ 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.

Income Tax Planning for Hindu Undivided Family (HUF)

Income Tax Planning for HUF

- ✓ It is recognized as a separate “person” for purpose of taxation under Income Tax Act.
- ✓ Insurance premium paid for its members can be claimed as a deduction by the HUF as a deduction U/s. 80 C, over & above other investments U/s. 80 C.
- ✓ Tuition fees of members of HUF cannot be claimed by the HUF U/s. 80 C.

Income Tax Planning for 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.

Income Tax Planning for HUF

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

Income Tax Planning for 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, beyond Rs. 50,000/-. No clubbing provision is applicable.

Income Tax Planning for HUF

Gifts from HUF

- ✓ To its members : Taxable in the hands of recipient.
- ✓ To non members : Taxable in the hands of recipient.
- ✓ Gift from 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.**

A request...

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