

TAX PLANNING THROUGH HUF & FAMILY ARRANGEMENT

By CA Dheeraj Soni

What is Tax Planning ?

2

- Analysis of a financial situation, or plan, from a tax perspective.
- The purpose is to ensure tax efficiency and plan one's finances in the most optimized manner.
- It allows a taxpayer to make the best use of the various tax exemptions, deductions and benefits to minimize their tax liability.
- Tax planning is a legal way of reducing income tax liabilities.

Types of Tax Planning

3

- **Purposive tax planning:** Planning taxes with a particular objective in mind.
- **Permissive tax planning:** Tax planning that is under the framework of law
- **Long range and Short range tax planning:** Planning done at the start and end of a fiscal year respectively.

Tax Planning Objectives

4

- Reduction in overall tax liability
- Economic stability
- Growth
- Litigation minimization
- Productive investment.



Tax Planning-Evasion-Avoidance

5

- **Tax planning:** It is a way to reduce tax liability by taking full advantages provided by the act through various exemptions, deductions, rebates and relief **(uses benefits of the law)**.
- **Tax avoidance:** It is an exercise by which the assessee legally takes advantage of the loopholes in the Act.**(uses loopholes in the law)**.
- **Tax evasion:** It is the illegal way to reduce tax liability by deliberately suppressing income or sale or by increasing expenses etc., which results in reduction of total income of the assessee. **(overrules the law)**

Tax Planning – Ethical ?

6

- Questions have been raised as to whether tax planning with a view to reduce the amount of tax payable is ethical or moral. We do not purpose to go into the questions but have indicated as to what is the law of the land today as interpreted by the judiciary and how an intelligent taxpayer can make use of it for his own benefit without falling foul of the law.
- Once a transaction is found to be genuine one, merely because it has been entered into with a motive to avoid tax, it would not become a colorable device attracting any disqualification. (*CIT v. Special Prints Ltd. (2013) 356 ITR 404 (Guj.)* Also see *Union of India v. Azadi Bachao Andolan (2003) 263 ITR 796(SC)*).

Hindu Undivided Family (HUF) as Tax Planning Tool

What is HUF ?

8

- Under Section 4 of the Income Tax Act, 1961 tax is payable by every person.
- The term 'Person' as defined u/s 2(31)(ii) of the Income Tax Act, 1961 includes a Hindu Undivided Family.
- The term HUF has not been defined under the Income Tax Act as it has well defined connotation under Hindu Law. The expression 'HUF' must be construed in the sense in which it is understood under the Hindu Law. (*Surjitlal Chhabra v. CIT 101 ITR 776 (SC) and CIT v. Gomedalli Laxmi Narayan 3 ITR 367 (Bom.)*)

What is HUF ? (contd...)

9

- Hindu Undivided Family consists of a common ancestor and all his lineal descendants together with their wives and unmarried daughters.
- Therefore, a HUF consists of all males & females in the family. Daughters born in the family are its members till their marriage and women married into the family are also members of the HUF.
- Hindu Succession Act, 1956 applies to any person who is Hindu by religion including Hindu Sampradayas (Arya Samaj, Swaminayan, Brahma Samaj and also those professing Sikh, Jain or Buddhist religion.

What is HUF ? (contd...)

10

- Family is a group of people related by blood or marriage. A Hindu male with his wife and children automatically constitutes the HUF. No formal action is required to create an HUF.
- Only one person cannot form an HUF.
- An HUF need not consist of two male members-even one male member is enough.
- A father and his unmarried daughter can also form an HUF.
- Nucleus or ancestral joint family property is not required for the existence of HUF.

Who is Karta ?

11

- He is the person who manages the affairs of the family . Normally the senior most male member of the family acts as Karta. However, any other male member can also act as Karta with the consent members. (Narendrakumar J. Modi Vs Seth Govindram Sugar Mills 57 ITR 510 (SC)).
- A woman can be a Karta after the demise of the male head in three situations;
 - when the sons are minors and she acts as their guardian.
 - when the male members are not in a position to act as Karta and have given her the permission to manage the family affairs. &
 - when there are no male members in the family.

Benefits of HUF

12

- The creation of Hindu Undivided Family helps the tax payers to save their taxes in a legal manner.
- It will enjoy the benefits of Income Tax Slab Rate i.e. Income would be tax free up to the specified limits and would then be taxed progressively at 10%, 20% & 30% resulting in tax saving.
- Deduction available u/ch. VIA; (Sec 80C, 80D, 80DD, 80DDB, 80G, 80TTA and 80 IA/ IAB/ IB/ IC/ ID/ IE/ JJA).

What is HUF Property ?

13

- Property acquired by joint efforts of all the members of HUF.
- By gifts from outsiders or from father, brothers, sisters of the Karta who are not members.
- Gift of self acquired property by father to son's HUF.
- HUF through will.
- Creation of new HUF's through partition of an existing HUF.

Stock Market, Mutual Funds & HUF's

14

- HUF can have a separate Demate Account.
- Make money by investing in shares of companies;
 - ▣ Primary Market
 - ▣ Secondary Market
- Enjoy Tax Free Income from LTCGs by holding shares for more than one year.
- Enjoy lower tax rate of 15% on STCGs.
- HUF can also invest in Mutual Funds.

Tax Planning Through HUF

15

- Increase number of assessable units through the device of partition of the HUF.
- Create separate taxable units of HUF through will in favor of HUF or gift to HUF.
- Family settlement or arrangement.
- Payment of remuneration to Karta and also to other members.
- Loan to the members of HUF.
- Gift by HUF to its members specifically female members.

Multiple Family Structures

16

- An HUF can consist of several branches or sub- branches.
 - A person with his wife and sons constitutes an HUF.
 - If the sons have wives and children, they constitute smaller HUF's.
 - If the grandsons also have wives and children, then they also constitute HUF's.

Multiple Family Structures. Cont..

17

- As long as Hindu society is governed by Hindu Law, a Hindu would have the right to own separate property as an Individual, as a member of bigger HUF of say his father and the smaller HUF of his Own.
- The quantum of properties of the three units and consequently the income can further be distributed in a manner most beneficial to him by resort to total partition of any families or by throwing his individual property into the common hotchpot in any of two families.

Create Separate Taxable Units of HUF

18

- It can be done through will in favor of HUF or gift to HUF.
- It is immaterial whether the giver is a male or female, whether he or she is a member or an outsider.
- What is important is the intention of the donor that the property is given for the benefit of the family as a whole.

Family Settlement/Arrangement

19

- Works as effective device for distribution of ancestral property.
- The object of the family settlement should be broadly to settle existing or future disputes regarding property amongst the members of the family.
- Since family settlement/arrangement does not involve transfer, it would not attract capital gains tax or clubbing provisions.

Remuneration

20

- Remuneration to Karta and members for the services rendered by them to the family business, is allowed as deduction from the income of HUF, provided the remuneration is reasonable and paid for service to the family for commercial or business expediency.
- Loan to members with or without interest. A device to expand business, capital or investment of the HUF.

Gift of HUF Property

21

- The Karta of an HUF cannot gift or alienate HUF property but for legal necessity, for pious purposes or in favor of female members of the family.
- Gift to female members of immovable property within reasonable limits only for dutiful purpose e.g. marriage etc.
- Also gift of movable property can be made on the occasion of marriage or for maintenance of daughter.

Gifts received in Cash or in kind

22

- Any sum exceeding Rs. 50000 received by HUF without consideration – taxable in the hands of HUF u/s 56(2)(vii).
- Gift received in kind by HUF is also taxable subject to provisions.
- The definition of the term ‘relative’ now includes in case of HUF, any member thereof.

Whether clubbing provision applicable to HUF ?

23

- As per Sec 64 (2) of the Act, if income of HUF from property converted by the individual into HUF property, then that shall be clubbed in the hands of individual & not in the hands of HUF.
- Clubbing applicable even if ; The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.

Illustration..1

- Let's understand taxation of HUF with an example – After the death of his father, Mr. X decides to start an HUF with his wife, son, and daughter as members. Since Mr. X had no siblings, property held by his father was transferred in the name of the HUF. The property held by late Mr. Y earns an annual rent of Rs 7.5 lakhs. Mr. X has an income from salary of Rs 20 lakh. By creating an HUF, Mr. X can save tax, see below.

Illustration..1 (Cont..)

25

Income from various sources	Income of Mr. X before formation of HUF	Income of Mr. X after formation of HUF	Income of HUF
Salary	20,00,000	20,00,000	
Income from house property (net off Standard Deduction @30%)	5,25,000	–	5,25,000
Total taxable income	25,25,000	20,00,000	5,25,000
Ded [^] u/s. 80C	1,50,000	1,50,000	1,50,000
Ded [^] u/s. 80D	25,000	25,000	25,000
Net taxable income	23,50,000	18,25,000	3,50,000
Tax Payable (Slab of A.Y. 2018-19)	5,33,025	3,70,800	2,575
Total tax paid by Mr. X & HUF			3,73,375
Tax saving due to forming an HUF			1,59,650

Illustration..2

26

- If you are a salaried employee and you receive payment on account of house rent and if by chance your HUF is the owner of the house property, then it is possible for an individual to make payment of the rent to the HUF, obtain rent receipt from the HUF and submit the same to the employer and thereafter get a tax deduction on the HRA amount from the employer. Hence, for all those persons who receive HRA i.e. House Rent Allowance from their employer, for them it would be worthwhile to make payment of rent to the HUF and claim a tax deduction from the salary income by submitting the rent receipt to the employer together with copy of PAN Card of the HUF.

Illustration..3

27

- Loan HUF;
 - HUF can receive loan from any person including interest free loans from its members.
 - Such amount can be invested in income generating assets.
 - Income from such assets, is not going to club.

Illustration..4

28

- A member of the HUF throwing his money into the common pool or the family hotchpots, is out of question, thanks to Sec.64(2) which would tax the income earned by the HUF on the money in the individual member's hands only.
- But the clubbing provision can be bypassed if the HUF invests the money in instruments yielding tax-free income. The tax-free income than can be reinvested to earn even taxable income. Income on income is out of clubbing provisions.

Partition of HUF

29

- The tax liability can be reduced by partition of HUF, especially where partition results in separate independent taxable units.
- Partial partition of HUF may also be used. (subject to provisions of section 171 of the Income Tax Act, 1961.)
- The sum received by a member as and towards his share as coparcener of HUF, on its partition, is not subjected to tax as income. [Smt. Sudha V. Iyer Vs ITO 15 Taxmann.com 234 (ITAT-Mum)(2011).

Eyes on HUF

30

- In spite of the efforts of the legislature to render this tool as ineffective as possible by a spate of amendments in the recent past, it has not lost all its efficacy.

FAMILY ARRANGEMENT

31

- It is arrangement between the members of a family descending from a common ancestor or near relation trying to settle their differences and disputes, solve their conflicting claims once and for all to buy peace and bring about harmony and goodwill in the family, by an equitable distribution of assets and properties amongst the members of family.

- Main components of Family Arrangement
 - Family
 - Property
 - Dispute
 - Arrangement

Family

32

- The term family in this context is not to be understood in the narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property under dispute though it necessary to have some common tie between parties to such family arrangements, it need not be between the persons who are commonly understood as a family (blood relation or marriage).
- The term 'family' has to be used in a broader sense. It is not necessary that there should always be a legal claim as member, even if there is a possible claim or resemblance of a claim, it is sufficient e.g. married daughters or sisters.

Property

33

- Joint property in the family hotchpot is considered for the purpose of family arrangement. Individual properties or self acquired properties generally don't become the subject of family arrangement. However, if the antecedent title, claim or interest in such a property is proved to be in existence, family arrangement in respect of such properties can be validly arrived at.

Dispute

34

- Normally a dispute in the family leads to a family arrangement. The family arrangement is aimed at settlement of disputes and differences, existing or future.

Arrangement

35

- The term 'arrangement' means to come to an agreement about, to settle the dispute. The consideration for entering into such a family arrangement should be preservation of peace and honour of the family and avoidance of litigation.

Taxability of Assets received in succession.

36

- Section 56 (x): - following are liable for Income Tax;
 - Any sum received without a consideration exceeding Rs. 50,000/-
 - Any immovable property without a consideration or with inadequate consideration exceeding Rs. 50,000/-
 - Any property other than immovable property exceeding Rs. 50,000/-

- Exceptions : this clause shall not apply to any sum of money and 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 Assets received in succession. Cont..

37

- Provision of sec. 68 of the Act needs to be considered, it says;
‘under any sum of fund is credited in the books of assessee maintained for any previous year and 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 previous year.’

- Rate of tax for income made taxable u/s. 68 has been prescribed u/s. 115BBE.
 - if disclosed in return of income :60% + 25% S.C. = 77.25%
 - if added during assessment: 77.25% + 10% (Sec. 271AAC) = 83.25%
 - In case of misreporting of income: 83.25% + 200% Penalty (Sec. 270A(8))

Taxability of Assets received in succession. Cont..

38

- Conditions to comply with Sec. 68 for assets received in succession ;
 - Identity of the person from whom credit received
 - Credit worthiness
 - Genuineness of transaction.

Taxability of Assets received in succession. Cont..

39

- 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.

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

Transfer by Gift or WILL ?

40

- Is it better to receive a gift of property from a close relative in his/her lifetime or under a WILL ?
- Both are exempted from Income Tax by virtue of Sec.56(x).
- Is the WILL expected to be challenged ? Deciding factor.

THANK YOU

Taxation of HUF, Family Arrangements, Trust & Wills

By: CA Shardul D Shah

Day: August 04, 2018

Organized by WIRC of ICAI

HUF

- An HUF is a family which consists of all persons lineally descended from a common ancestor, and also the wives and daughters of the male descendants.
- It consists of the *karta*, who is typically the eldest person or head of the family, while other family members are coparceners.

HUF

- The *karta* manages the day-to-day affairs of the HUF.
- Children are coparceners of their father's HUF.
- Once a daughter gets married, she becomes a member of her husband's HUF, while continuing to be a coparcener of her father's HUF.
- Even Jain, Buddhist and Sikh families can have HUFs.

HUF

- Under section 2(31) of the Income-tax Act, 1961, an **HUF** is considered a “person” and, therefore, is treated as a separate entity for the purpose of tax assessment.
- Often families that own ancestral properties and businesses obtain a separate Permanent Account Number (PAN) in the name of the HUF.

HUF

- This is done so that the incomes earned from the assets and businesses owned by the HUF are assessed separately, which also brings down the family's tax liability.
- An HUF is taxed on the same slab rates that are applicable to an individual income tax assessee.

Residential Status

- S.6(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.
- S.6(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

HUF – Tax Planning

- By increasing the number of assessable units through the device of partition of the HUF;
- By creation of separate taxable units of HUF through will in favour of HUF or gift to HUF;
- Through family settlement / arrangement;
- By payment of remuneration to the Karta and other members of the HUF;
- By use of loan from HUF to the members of the HUF;
- Through gift by HUF to its members specially to the female members;

HUF & HNI

- In a case where the members of the HUF have got high individual incomes, in such a case it is not advisable to break or partition the HUF.
- The HUF should be allowed to continue as a separate taxable unit.

Partial Partition

- Partial partition of HUF is also a very effective device for reducing its tax liability.
- Partial partition is recognized under the Hindu Law.
- However partial partition of an HUF has been de-recognised by the provisions of sec. 171(9) of the Income Tax Act, 1961 according to which any partial partition effected after 31.12.1978, will not be recognized.

HUF & Gift

- The HUF can receive gifts from anybody i.e. from a coparcener, non-coparcener and even stranger. CIT V/s K Satyendra Kumar (1998) 232 ITR 360 (SC)
- What matters is the intention of the donor or testator that the property given is for the benefit of the family as a whole.
- Doner should clearly indicate that he is donating to the HUF. CIT V/s Maharaja Bahadur Singh & others (1986) 162 ITR 343 (SC).

HUF

- The Hindu Succession Act, 1956 has now been amended w.e.f. 06.09.2005.
- The effect of this amendment is that all daughters (whether married or unmarried) before or after 06.09.2005) and male members of the HUF are co-parceners of the HUF.
- Thus, the married daughter is a co-parcener of the HUF of father while she is a member of her husband's HUF but not co-parcener.

Family Arrangement (FA)

- The family arrangement should be for the benefit of the family in general.
- The family arrangement must be bonafide, honest, voluntary and it should not be induced by fraud, coercion or undue influence.
- The purpose of the family arrangement should be to resolve present or possible family dispute and rival claims not necessarily legal claims by a fair and equitable division of the property amongst various members

FA

- The parties to the family arrangement must have antecedent title, claim or interest. Even if a possible claim in the property which is acknowledged by the parties to the settlement will be sufficient.
- The consideration for entering into family arrangement should be preservation of family property, preservation of peace and honour of the family and avoidance of litigation. *Kale v. Deputy Director of Consolidation* (AIR 1976 SC 807)

FA

- The concept of family arrangement is an age old one. It is not only applicable to Hindus but also to other communities in which there is a common unit, common mess and joint living. In the case of **Bibijan Begum v. Income Tax Officer (34 TTJ 557)**, the Gauhati Bench of the Appellate Tribunal in a very elaborate judgement held that there is no bar for Mohammedans to effect a family arrangement

FA

- A family arrangement differs from partition in as much as in a family settlement there can be a division of income without the distribution of assets and there is no bar to a partial partition.
- The provision of section 271 of the Act, which places restriction on a partial positions do not apply to a family settlement

FA

- It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it would amount to a document of title declaring for future what rights in what properties the parties possess.

FA

- Another aspect that attracts our attention is whether family arrangement, if recorded in a document, requires registration as per the provisions of section 17(1)(b) of the Indian Registration Act, 1908.
- Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to create declare, assign, limit or extinguish either in present or in future any right, title or interest in immovable property

FA

- The transaction of a family settlement entered into by the parties bonafide for the purpose of putting an end to the dispute among family members, does not amount to a transfer *Hiran Bibi v. Sohan Bibi*, AIR 1914 PC 44, approving, *Khunni Lal v. Govind Krishna Narain*, (1911) ILR 33 All 356 (PC).
- It is not also the creation of an interest

FA

- It is not necessary, as would appear from the decision in Rangaswami Gounden v. Nachiappa Gounden AIR 1918 PC 196, that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property.
- All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a resemblance of a claim on some other ground as say, affection

FA

- To record a family arrangement arrived at orally, a memorandum of family arrangement-cum-compromise is required to be drawn up wherein the properties and assets belonging to the parties to the family arrangement are required to be specified.
- Thereafter the fact of arriving at family arrangement sometime in the past with the help of well-wishers and family friends is required to be mentioned.

FA

- In the operative portion of the Memorandum of Family Arrangement-cum-Compromise the properties and business which have been allotted to different parties are required to be specified
- In order to enable the member of the family to whom a particular property is allotted on arriving at a family arrangement, a power of attorney is required to be given by a member in whose name the said property was standing prior to the family arrangement to enable the party receiving the property to deal with the property as his own

Trusts

- While the biggest advantage of a trust is the flexibility it offers to the settlor in determining the distribution of the trust property, some other advantages include -
 - (i) if structured properly, least tax burden can be achieved,
 - (ii) all the procedural formalities and associated delays in getting a probate on a will can be avoided,
 - (iii) once a trust is settled, since the settlor is no longer holding the trust property in his personal capacity, any actions against him will not directly impact the assets (ie, ring fencing of assets),
 - (iv) trust property can be utilized for the benefit of multiple generations of the family,
 - (v) settlors can exercise the degree of control they prefer,
 - (vi) the management of the trust property can become efficient and
 - (vii) if the trust is settled in compliance with applicable laws, disputes arising from succession can be wholly avoided.

ASSESSMENT OF TRUSTS

- The term “Trust” has not been defined in the Income Tax Act, 1961.
- The dictionary meaning of the word “trust” is an arrangement by which property is handed over to or vested in a person, to use or dispose it off for some particular purpose(s).
- The Indian Trust Act, 1882 defines a trust as an obligation annexed to the ownership of the property and arising out of the confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another/ himself / another and himself.

Trust

- “Public Trust” means a trust for the benefit of the public or some considerable portion of the public.
- “Private Trust” means a trust for the benefit of some limited persons such as individuals, families, etc. A private trust can be classified under two categories:
- Private Specific Trust (PST) means a trust where shares of beneficiaries are determinate/known.
- Private Discretionary Trust (PDT) means a trust where shares of beneficiaries are not determinate/known.
- “Combined Trust/ Public-cum-Private Trust” means a trust whose beneficiaries are both public as well as specific persons.

Charitable Purpose

- According to Section 2(15) of the Income Tax Act, 1961 “Charitable Purpose” includes:
- Relief of poor,
- Education,
- Medical Relief,
- Preservation of environment (including watersheds, forests and wildlife),
- Preservation of monuments or places or objects of artistic or historic interest , and
- Advancement of any other object of general public utility.

Trusts

- It may be noted that “the advancement of any other object of general public utility” is not considered as a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce, or business, or any activity of rendering any service in relation to any trade, commerce or business, for a Cess or fee or any other consideration, irrespective of the nature of the use or application, or retention, of the income from such activity.

Trusts

- **CIT Vs. ANDHRA CHAMBER OF COMMERCE (1965) 55 ITR 722 (SC)**
- Definition of the term “Charitable Purpose” is inclusive and not exhaustive. The expression is not restricted to the objects beneficial to whole mankind. An object which is beneficial to a section of the public is also a charitable object.

- **CIT Vs. BAR COUNCIL OF MAHARASHTRA (1981) 130ITR 28 (SC)**
- The expression “advancement of general public utility” includes any object beneficial to the public or a section of the public as distinguished from an individual or a group of individuals.

Trust

- Onshore Trust: Normally situated in tax neutral / High tax jurisdiction .Settlor normally a non resident, can be resident also .Normally Non resident beneficiary/ies and could be resident also
- Offshore Trust : A word “offshore” indicates “off the shore”, outside the place. Normally a jurisdiction with low tax or no tax .Formed by Non Resident settlor and Non resident beneficiary/ies

Trusts

- Generally under Domestic tax laws, basis could be one of the following
- Entity level taxation - Trust itself is taxed on its income and beneficiary is either exempt from taxation or credit of taxes are given to the beneficiary/ies
- Beneficiaries are only taxed, and trust is not taxed
- Beneficiaries pay taxes on the distributed amount and Trust pays on the undistributed amount of income

Trust

- Jurisdiction of Taxation for a trust Normally, where Trust is treated as “Resident” under the tax law of the State /system
- Residential Status
- Place of management/Administration
- Place where settlor is Resident
- Place where beneficiary/ies are Resident
- Location of the Assets

Assessment

- Section 160 prescribes that the trustees of a trust shall be deemed to be representative of trust and they shall be assessed by the department.
- However, such assessment shall be made in representative capacity only. It shall not be merged with the personal assessment of trustees.

Assessment

- Section 166 provides an additional protection to the department in two ways – i)The department can make a direct assessment on the beneficiaries ,or ii) even if the department has made assessment on the trustees in a representative capacity u/s 160, it can make recovery from the beneficiaries.

Exemptions

Type of Trust	Exemption u/s 11/12 of the Income Tax Act, 1961
Oral Trust	Exemption u/s 11/12 is not allowed
Private Trust	Exemption u/s 11/12 is not allowed
Public Charitable Trust/Public Religious Trust	Exemption u/s 11/12 is allowable subject to fulfillment of prescribed conditions
Combined Trust (ie. Public-cum-Private Trust)	Exemption u/s 11/12 is allowable in relation to public portion, subject to fulfillment of prescribed conditions.

11(1)(a)

- Income derived from property held under trust wholly for charitable or religious purposes
- To the extent income is applied to such charitable or religious purposes in India. Whereas such income is accumulated or set apart for such application, to the extent of 15% of the income from such property.
- In computing the 15% of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in Section 12 shall be deemed to be part of the income.

11(1)(c)

- Income derived from property held under trust for a charitable purpose, which tends to promote international welfare in which India is interested
- To the extent income is applied to such charitable or religious purposes outside India. Exemption is available only if the Board has directed such exemption.

11(1)(d)

- Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
- 100% Exemption

Control & Management

- Another crucial aspect of planning a trust is the control and management of the trust.
- Settlers usually prefer retaining control over the trust property during their lifetime. Due to fear of losing control over trust property or losing the property entirely, settlers have an inherent hesitation in relinquishing their rights over the trust property.
- The trust deed can provide for decision making process in the trust. In case of multiple trustees, decisions of the trust can be made on majority or a unanimous basis.
- Settlers, to take full leverage, opt to relinquish their rights over the trust property and allowing the trustees to manage the trust while retaining veto powers over certain critical decisions of the trust.
- In case of a corporate trustee, the constitution documents can state how resolutions are adopted.

Trusts

- Where shares of beneficiaries are determinate or known (Sec.161)
 - Where income does not include business profits [Sec.161(1)]
 - The trustee is assessable at the rates applicable to each beneficiary.
 - Where income includes profits from business [Sec.161(1A)]
 - The whole of the income of the trust is taxable at maximum marginal rate.
- However, if such profits from business are receivable under a trust declared by any person by 'will' exclusively for the benefit of any relative, dependant on him for support and maintenance and such trust is the only trust so declared by him, then, the trustees shall be assessable at the rates applicable to each beneficiary.

Trusts

- Where shares of beneficiaries are indeterminate or unknown i.e. in case of discretionary trust [Section 164(1)]

Where income does not include profits from any business and if:

- None of the beneficiaries has taxable income exceeding maximum amount not chargeable to tax or is a beneficiary in any other trust; or
- The income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or
- The income is receivable under a non testamentary trust created before 1.03.1970 exclusively for the benefit of relatives of settlor, or member of HUF, who are mainly dependant upon settlor; or

Trusts

- The income is receivable by trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other bona fide fund created by the employer carrying on business or profession for the benefit of his employees,
- Then, income of the trust is taxable in the hands of trustees at the rates applicable to an AOP. In any other case, income is taxable at the maximum marginal rate.

Transfer

- Sec.60 Transfer of income where there is no transfer of assets. All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.
- Sec.61 Revocable transfer of assets. All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Registration

- In order to claim exemptions under Section 11 and 12 of the Income Tax Act, 1961, a trust needs to be registered under Section 12AA of the Income Tax Act, 1961.
- Every trust shall make an application to the CIT or Director of Income Tax (Exemption) in the prescribed format and along with prescribed documents.
- The prescribed form is Form No. 10A.

Documents

- Form No.10A
- Copy of Registration Certificate under Public Trust Act
- Certified copy of Trust Deed
- Certified copy of Objects Clause
- List of names and addresses of all the trustees
- Copy of PAN of all trustees
- Audit Reports (maximum three years)
- Undertaking
- Affidavit of the Managing Trustee for utilization of the objects only.

WILL

- A Will is a legal declaration made by a person during his lifetime with regard to disposal of his properties after his death.
- The Will does not take effect from the date of its execution. It speaks from the death of the testator.
- During the Testator's lifetime, the Will is an ambulatory document, revocable at any time and having no legal effect

Will

- No prescribed form for a Will; only needs to be signed and attested
- Can be in any language; no technical words need to be used
- Two witnesses must attest a Will; one preferably a doctor
- They should sign in the presence of each other and the person making the Will.
- In India, the registration of Wills is not compulsory
- The Will should provide for the appointment of executors, though not mandatory.
- No stamp duty is required to be paid for executing a Will.

IMP

- It must be intended to come into effect after the death of the testator: A gift to take effect the life time of the donor is a deed of settlement and not a Will. And
- It must be revocable by the testator at any time. Although Wills are usually made for disposing property, they can also be made for appointing executors, for creating trusts and for appointing testamentary guardians of minor children. Section 63 of the Indian Succession Act, 1925 provides that a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

WILL

- A Will has to be Written but a verbal will is permitted in Defence Personal.
- However, a verbal will is not valid if you have a valid, written will. If you have no written will, a verbal will can be valid with regard to any property you own, except land.
- Property that can be transferred under a verbal will includes stocks, bonds, cars, coin collections, jewelry and appliances.
- A verbal will is valid only if know you are dying and say what you want in your will to two competent, disinterested witnesses.
- The witnesses must put the will in writing and sign the transcription within ten days.

Without a Will

- If you die without leaving a valid legal Will, you are said to have died 'Intestate'.
- The law dictates who will inherit your Estate and in what proportions.
- The law also decides who will have responsibility for administering your Estate (your Personal Representatives).
- Such an decision may create a disputes and some family hurdles among the family members.

Joint Wills?

- No it is not possible to have a joint Will they must be individual Wills.
- However “Mirror Wills” are quite common.
- A mirror Will is when a spouse or partner make almost identical Wills, or even identical Wills, leaving for example, everything to each other respectively should one partner perish and if both perish together then direct to children.
- If they have no children then to a named beneficiary's.
- This is where major differences often occur say, for example, the husband could leaves his possessions and estate to his siblings and the wife leaves her possessions and estate to her siblings.

Contesting a Will

- Wills are often contested by peoples. Some common grounds on which wills are contested are as follows-
- That the person was of not sound mind.
- The Testator lacked testamentary capacity to sign a will.
- The person was unduly influenced into signing a will/ a will is made under pressure.
- The will was procured by fraud.
- The Will is not signed before two witnesses.
- The name of family members is not mentioned in will.

Registration

- A person should make a Will in a sound mind and should have the will Registered with the Registrar of Sub Assurances in presence of two witnesses registrar will also ask for Indentify proof, Doctor Certificate, Residential proof of person who makes Will, Identity proof of witness expenses are very nominal

Marriage

- If you marry or enter into a civil partnership, your Will is revoked.
- This is because there is an assumption that you would wish to provide for your new spouse or civil partner.
- There is an exception to this rule if you have made your Will 'in anticipation of' marriage / entering a civil partnership.

THANK YOU