

# WILLS, HUF, SUCCESSION LAWS FAMILY TRUST & CORPORATE SUCCESSION

SUB-REGIONAL CONFERENCE,  
EIRC-ICAI

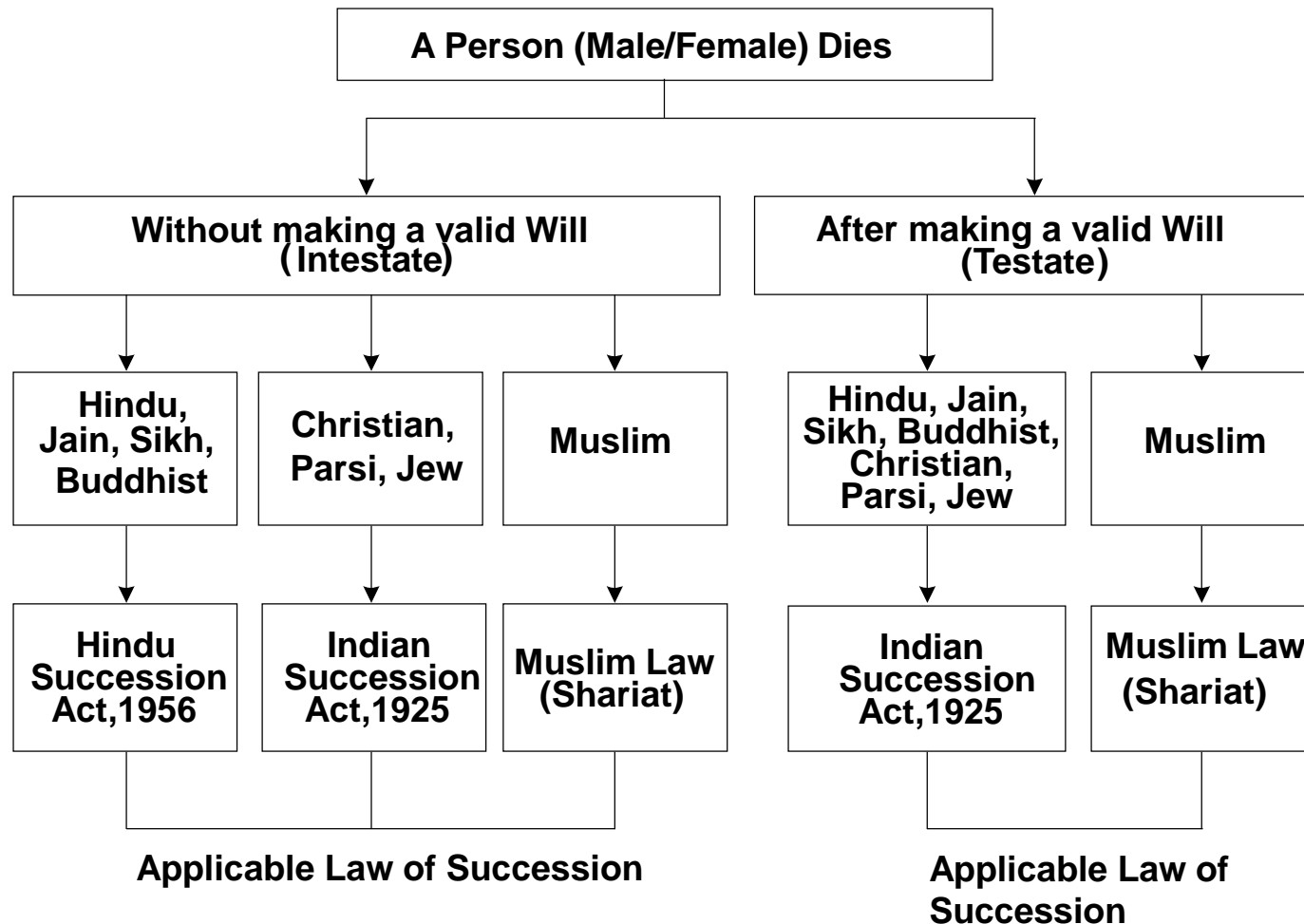
DURGAPUR, SILIGURI, ASANSOL &  
RANIGANJ BRANCH

30.05.2026



K.K.CHHAPARIA  
FCA, ACS, DISA, IP

# SUCCESSION LAWS IN INDIA



# SUCCESSION LAWS – SUBJECT OF DISCUSSIONS TODAY

Will (Testate) vs. Intestate vs. Nomination

HUF laws – Hindu Succession Act, 1956 r/w amendment by Hindu Succession (Amendment) Act, 2005

Private Family Trust with reference to stamp duty – Family partition and arrangements

# Intestate Succession

Dying Without a Will — Statutory Distribution Rules

# HINDU SUCCESSION ACT 1956

- This Act had a major revamp by Hindu Succession (Amendment) Act, 2005 which was made operative from **09.09.2005**
- This Act would apply in a case where a **Hindu male** or **female** dies without making a Will
  - Separate provisions for succession of Hindu Male, Hindu Female and **HUF property**

# Hindu Male — Intestate Succession (HSA 1956)

INTESTATE

## CLASS I HEIRS

- Mother
- Widow
- Sons (each getting one share)
- Daughters (each getting one share)

### Conditional

- In case of predeceased son/daughter – lineages of predeceased

## CLASS II HEIRS (if no Class I heirs)

- Father;
  - Siblings;
  - Sibling's children;
  - Grandparents;
  - Uncles & Aunts
- ( 9 categories)

Example : A Hindu male dies leaving behind his father and two brothers— no class 1 heir – All asset will be bequeathed to father.

## AGNATES

Related by blood or adoption through males only.

### Example

Father's brother's daughter is an Agnate but not Father's sister's son

## COGNATES

Related through females. Take after Agnates.

Example  
mother's brother's daughter or father's sister's son

**Priority: Class I → Class II → Agnates → Cognates → Government (Escheat)**

# HINDU MALE – INTESTATE SUCCESSION

- **Example 1:** A Hindu male dies intestate leaving behind his mother, wife, married son and two married daughters. Corpus 100 lacs. Mode of division shall be :
  - **Mother**      20
  - **Wife**        20
  - **Son**         20
  - **D1**          20
  - **D2**          20
- **Example 2 :** Estate consists of 1 residential house worth Rs 10 cr, business having value of Rs. 10 cr and liquid investment of Rs 10 cr. Survivors : wife, one married son & one married daughter
- **Example 3:** A unmarried male dies intestate leaving behind mother, father, brother and sister. In this case, mother will succeed to the entire property.

# Hindu Female — Intestate Succession (Sec. 15 HSA)

INTESTATE

**1st** Sons, Daughters & Husband  
Equal shares

**2nd** Heirs of Husband  
In absence of above

**3rd** Mother & Father  
In absence of above

**4th** Father's heirs  
In absence of above

**5th** Mother's heirs  
Lastly

**Exception- Section 15(2)-If Hindu Female dies without any children or any pre-deceased children, any property inherited from her parents shall devolve upon the heirs of her father. Further, property inherited from her husband or father-in-law shall devolve upon her husband or his heirs.**

# HINDU FEMALE – INTESTATE SUCCESSION

## ■ Example 1

- Female intestate: if a female dies, leaving behind her married daughter, two sons of predeceased son, then her estate will be divided as follows:
  - 50% to her daughter
  - 25% each to two sons of pre-deceased son

## ■ Example 2

- A Hindu female dies intestate and leaves behind her husband, two sons and parents. Her husband and her two sons are entitled to one-third share each in preference to her parents.

# Tax Implications — Intestate Succession

INTESTATE

Section 47(iii) of ITA 1961 or **Section 70(1)(b) of ITA 2025**

## No Capital Gains on Inheritance

Distribution of inherited assets is fully exempt from capital gains tax

Section 56(2)(x) of ITA 1961 (or **Section 92(2)(m) of ITA 2025**)

## Not Treated as Income

Assets received by legal heirs under intestate succession are not taxable as gift or income

Section 49(1) of ITA 1961 (or **Section 73 of ITA 2025**)

## Cost of Acquisition

Heir steps into shoes of deceased — cost of deceased is the heir's cost for computing future gains

Holding Period

## Deceased's Period Counted

Period of holding by deceased included for determining LTCG/STCG on heir's subsequent sale

Release of Share

## Relinquishment Taxation

Release of share among co-heirs for consideration is a taxable transfer

# INTESTATE SUCCESSION -WITHOUT A TESTAMENT/WILL

- **Personal laws :** Intestacy governed by personal laws of deceased
- **Domicile :**
  - Succession to the **immovable property** in India of a deceased person shall be regulated by the law of India,
  - Succession to the **movable property** of a deceased person shall be regulated by the law of the country , in which such may have had domicile at the time of his death

# EXECUTION OF SUCCESSION CERTIFICATE/LOA – PRACTICAL APPROACH

- Individual dies without Will, then legal heirs shall seek Succession Certificate (for movable assets) or Letter of Administration (if immovable assets exists).
  
- Documents required:
  - Legal Heir certificate/family tree affidavit
  - Official death certificate issued by KMC.
  - Detailed asset inventory.
  - NOC's (relinquishment affidavits)
  
- Steps:
  - Determine the jurisdiction (filed before District Judge)
  - Petition submission. (lists date of death, class I Heirs etc.)
  - Public notice in local newspaper
  - Security/administration bond issued by court.
  - Payment of court fees on ad-valorem basis on assets before final certificate issuance.

# Hindu Undivided Family (HUF)

Tax Treatment · Formation · Coparcenary Rights

# HUF & HINDU LAW

## ■ Important Hindu Laws

- Hindu Succession Act 1956
- Hindu Marriage Act 1955
- Hindu Adoption & Maintenance Act 1956
- Hindu Minority & Guardianship Act 1956

## ■ Hindu Law is governed by two schools of thoughts:

- Mitakshara Law – property devolves by Survivorship
- Dayabhaga Law – property devolves by Succession
- Hindu Succession Act doesn't make any distinction between the two law for personal assets

## ■ Four Generation

# Introduction to HUF — Joint Family Tax Entity

HUF

## What is HUF?

A Hindu Undivided Family — a unique tax entity under Indian law. It's a body of persons consisting of all persons lineally descended from a common ancestor, including wife

## Coparcenary

The subset who have a right to demand partition. Historically males + daughters since the 2005 amendment to HSA. Coparceners have a birth-right interest in HUF property.

## Karta

The eldest coparcener who manages the HUF.

## Separate Tax Entity

HUF has a separate PAN, files its own ITR, and is assessed as a distinct unit under the Income Tax Act. Members' shares in HUF income are exempt u/s 10(2).

# Daughter's Coparcenary Rights — 2005 Amendment & Vineeta Sharma

HUF

## Hindu Succession (Amendment) Act, 2005 — Section 6 Amended

Daughters are now coparceners by birth — equal rights and liabilities as sons in HUF property

- ✓ **Equal Coparcenary:** Daughters have same right by birth to claim a share in HUF property as sons
- ✓ **Partition Rights:** Daughters can now demand partition of HUF just like any other coparcener- However, wife cannot demand partition
- ✓ **Pre-2005 Daughters:** Vineeta Sharma v. Rakesh Sharma (SC 2020): Rights apply even if father died before 2005
- ✓ **Retroactive Effect:** Daughters born before 2005 are entitled to coparcenary rights — birth is the trigger, not the law's date
- ✓ **Testamentary Exclusion:** Coparcener can still bequeath his own self-acquired property as he wishes via Will

# HUF PROPERTY – SUCCESSION

## EXAMPLE 1

- A(HUF) consist of following members:
  - A (Karta)
  - B ( wife of Karta)
  - S (Son of Karta)
  - D (daughter of Karta)
  - S1 & S2 (Son of S)
  - M (Mother of Karta)
  - F (Father of Karta)
- In the given example, there are three coparceners and wife (being a member) – A, B, S and D, all have  $\frac{1}{4}$ <sup>th</sup> share each
- If A doesn't make a will, then his coparcenary interest will not extinguish and share of remaining person shall increase

# HUF – CERTAIN FAQ

S.No	FAQ
1.	If the wife of the karta dies intestate, while the HUF is continuing . Does her contingent shares passed to her heirs? Can the wife of Karta execute a valid will bequeathing her right in unpartitioned HUF property.
2	What happens to HUF property, if the family is governed by Dayabhaga School of Law? Can a resident of West Bengal switch from Dayabhaga to Mitakshara Law by executing a Affidavit?
3	Can a Rajasthani family born and brought up in West Bengal following Mitakshara Law? Can a Bengali family permanently follow Mitakshara Law after migrating from Delhi?

# Formation & Sources of HUF Property

HUF

## □ Ancestral Property

Property inherited by coparceners from their fathers, grandfathers or great-grandfathers

## 🎁 Gifts to HUF

Gifts received by HUF from relatives, outsiders — treated as HUF corpus

## 👫 Husband + Wife HUF

Whether a husband and wife can form a HUF — Yes, as per Hindu Law. Guwahati HC in Arvind Kumar Jhunjunwala & Sons (HUF) 223 ITR 45 — HUF created on marriage- Valid.

## 📈 HUF Income Accretion

Income earned by HUF and reinvested becomes part of HUF corpus over time

## ⚖️ Through WILL

HUF can be Formed through Will — Would be HUF

## 🔄 Blending (Throwing in)

Member voluntarily converts self-acquired property into HUF property. But Sec. 64(2) clubs income back!

### PAN, Exemption, Alternate Tax Regime & Rebate

No rebate u/s 87A, Can opt for alternate tax regime

**S. 64(2) of ITA61 (s.99(3) of ITA 25) r/w 56(2)(x) of ITA61: or u/s 92(2)(m) of ITA25**

Any personal funds or property given by a member of HUF to the HUF will lead to clubbing provisions u/s 64(2) of I.T.Act 1961

### **S. 171 of I.T.Act of ITA 1961: or u/s 315 of ITA, 2025**

HUF Partition – AO has to record a finding as to whether there has been total or partial partition and the date on which such partition has taken place

### **S. 10(2) of ITA61 or Sch III, Table SI. No 1 of ITA25**

Any sum received by a member out of income of HUF is exempt.

### **S 47(i) of I.T.Act of ITA61: or S 70(1)(a) of ITA25**

Any distribution of capital assets on the total or partial partition of a HUF – Not a transfer  
Partial partition not recognized now [s.171(9)]

### **GAAR Risk**

Artificial blending or diversion of income to HUF without genuine purpose may attract GAAR provisions u/s 95–102

# UNBORN CHILD'S RIGHTS

- If a child was in the womb of his mother at the time of the death of an intestate and if he is subsequently born alive, then he/she shall have the same inheritance rights as if he/she were born before the death of the intestate.
- However, if the child dies at any time after being born alive, then the property which he was entitled to would devolve upon his heirs

# Partition of HUF — Tax & Legal Implications

HUF

## TOTAL PARTITION

- Entire HUF property divided among coparceners & HUF ceases to exist after total partition
- Section 171: Information to AO
- No capital gains on partition of HUF — Sec. 47(i) - Each coparcener's cost = proportionate HUF cost
- Stamp duty payable on partition deed

## PARTIAL PARTITION

- Only some members OR some property is partitioned
- NOT recognised for income tax purposes since 1978
- Section 171(9): HUF assessed as if no partition

# STAMP DUTY ON PARTITION IN WB

- Partition or Total Partition of HUF governed by Article 45 of Schedule IA of Indian Stamp Act (WB amendment)
- Stamp Duty rate for a partition deed amongst family members is 0.5% of market value of separated share – The share with highest market value is designated as the “retained share” and is exempt from stamp duty.
- Example 1: Two properties – one having SDV of Rs. 100 crores and second having SDV of Rs. 1 crore. One property go to Mr. X and second goes to Mr. Y. The Stamp Duty shall be 0.5% of Rs. 1 crore i.e. Rs. 50,000/-. If both properties goes to Mr. X, then there can be dispute that advantage of retained share will not be available.

# EXECUTION OF JOINT/HUF PROPERTY PARTITION – PRACTICAL APPROACH

- If individuals/ co-owners/ coparceners of HUF intend to sever the HUF then they may do so by executing Deed of Partition or Partition suit.
- Steps:
  - Drafting allotment schedule – identify separated / retained share
  - Payment of concessional fees – As intra-family arrangement, therefore Stamp Duty 0.5% + registration fees – 1%
  - Execution and Biometrics – All coparceners must visit Sub-registrar office for biometrics and signature validation.
  - Payment of court fees on ad-valorem basis on assets before final certificate issuance.

# Wills

Legal Framework · Essentials · Tax Implications

### DEFINITION

*"A legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death." — Indian Succession Act, 1925*

- Governed by Indian Succession Act, 1925
- Applicable to Hindus, Christians, Parsis & others (not Muslims for certain aspects)
- Muslims governed by Muslim Personal Law (Shariat)
- HUF property can be bequeathed via Will by coparcener

### KEY TYPES

#### PRIVILEGED WILL

Soldiers / Airmen on active duty;  
verbal or informal

#### UNPRIVILEGED WILL

Written, signed, 2 witnesses —  
standard Will for civilians

#### JOINT WILL

Joint Will between two parties —  
binding after death of both persons

#### WILL OF PART OF THE ASSETS

A person may make Will for some  
part of his estate

# Essentials of a Valid Will

## WILLS

1

### Sound Mind

Testator must be of sound mind at the time of execution

2

### Not a Minor

Must have attained majority (18 years)

3

### Written Document

Must be in writing — handwritten or typed, sign on each page – No correction (else sign by each)

4

### Signature

Signed or thumb-imprint by testator at the end

5

### Two Witnesses

Signed by at least 2 witnesses who saw the testator sign – not necessary for witness to know the contents of WILL

6

### Executor Named

Person entrusted to carry out Will's instructions – Executor can be witness

7

### Clear Beneficiaries

Specific identification of heirs and their shares

8

### Registration (Optional)

Not a legal requirement. But litigation regarding identity, mental capacity of testator etc may be avoided by registration

### PROBATE & LETTERS OF ADMINISTRATION

- Probate = Court-certified copy of Will confirming its authenticity
- Letters of Administration issued when no executor named or executor refuses
- Earlier mandatory in West Bengal, Maharashtra, Tamil Nadu for immovable property – Now mandatory applicability removed by Repealing & Amending Act, 2025

### STATE-WISE STAMP DUTY

#### West Bengal

₹2/100 (cap ₹50,000) – now redundant

#### Maharashtra

₹2/100 (cap ₹75,000) – now redundant

#### Tamil Nadu

₹2/100 (varies) – now redundant

#### Other States

Varies by state law

# Features of a Will — What Can & Cannot Be Transferred

## WILLS

### ✓ CAN BE DONE

- Revocable anytime during testator's lifetime
- Last Will prevails over earlier Wills
- Multiple Wills allowed (for different assets/geographies)
- Can bequeath coparcener's share in HUF property
- Can create trusts via testamentary trust provisions

### ✗ CANNOT BE TRANSFERRED

- Directorship in a Company (personal right)
- Karta-ship of HUF (passes by survivorship)
- Trusteeship (personal fiduciary duty)
- Tenancy Rights (in certain case)
- Property not legally owned by the testator

# Will vs Nomination — Know the Difference

## WILLS

Aspect	Will	Nomination
<b>Legal Framework</b>	Indian Succession Act, 1925	Specific statute (Cos. Act, Insurance Act etc.)
<b>Ownership Transfer</b>	Transfers ownership to beneficiary	Nominee is trustee — NOT beneficial owner
<b>Overriding Effect</b>	Will overrides nomination	Cannot override a valid Will
<b>Registration</b>	Optional (recommended)	Mandatory with the issuing institution
<b>Scope</b>	All assets of the deceased	Specific to each instrument/investment

**⚠ A Will overrides nomination — nominees act as trustees for legal heirs**

# Tax Implications of a Will

## WILLS

DEATH OF  
TESTATOR



PROPERTY  
INHERITED



SALE BY  
HEIR



CAPITAL  
GAINS TAX

### Section 47(iii) of ITA 1961 or Section 70(1)(b) of ITA 2025)

Transfer of capital asset under a Will is EXEMPT from capital gains tax

### Section 56(2)(x) of ITA 1961 (or Section 92(2)(m) of ITA 2025)

Inheritance received under Will is NOT treated as income — fully exempt

### Cost of Acquisition u/s Section 49 of ITA 1961 (or S.73 of ITA 2025)

Heir inherits the original cost of the deceased — no step-up in cost basis

### Holding Period

Period of holding by deceased is included for computing long-term vs short-term gains

### LTCG Benefit

Inherited assets often qualify as long-term if held for the required period by testator + heir

### No Estate Duty

India abolished Estate Duty in 1985 — no tax on inheritance itself

# RECENT LANDMARK JUDGEMENTS...

Citation/ Reference	Judgement/ Conclusion
<b>Meena Pradhan &amp; Ors. Vs. Kamla Pradhan &amp; Ors. (Supreme Court)</b>	The Supreme Court crystallized the absolute tests required to prove a valid Will under Section 63 of the Indian Succession Act. The propounder of the Will must erase all "suspicious circumstances" (e.g., shaky signatures, unnatural exclusion of immediate heirs, active participation of the beneficiary in drafting the Will). <b>Video-recorded will or medical fitness certificate advised at the time of signing of Will.</b>
<b>Kanchana Rai v. Geeta Sharma (Supreme Court, January 2026)</b>	The Supreme Court ruled that under Hindu Adoption and Maintenance Act, 1956 (Section 22), all legal heirs who succeed to an estate—whether through intestate succession or via a testamentary Will—are under a strict legal and moral obligation to maintain the dependants of the deceased (such as a widowed daughter-in-law and/or son of the predeceased son) out of the funds/assets inherited. <b>While calculating inherited estates, keep contingency and provision of such claims.</b>
<b>Himani Walia vs Hemant Walia &amp; Ors. on 23 March, 2022</b>	Under Section 2(15) of the Indian Stamp Act, 1899, an "instrument of partition" creates or extinguishes property rights in the present and mandatory stamp duty must be paid. However, if a family partition is arrived at orally (which is legally valid) and is subsequently reduced to writing merely as a record or memorandum of that past transaction, it does not attract stamp duty. <b>Document oral understanding rather than creating a fresh transfer deed.</b>

# EXECUTION OF PROBATE – PRACTICAL APPROACH

- Probate application filed by the named Executor under Article 276 of ISA, 1925 before District Judge or original side of Calcutta HC.
  
- Documents required:
  - Original Will
  - Official death certificate issued by KMC.
  - Affidavit of assets and liabilities.
  - Affidavit of at least one attesting witness (if surviving)
  - Complete list of all legal heirs
  
- Steps:
  - Filing the petition (registered as a PLA)
  - Notice to all immediate legal heirs, if they wish to contest the will.
  - Public notice in English daily and Bengali daily
  - Court forward affidavit of assets to Dist. Collector to verify the valuation.
  - If objection, the PLA is converted Testamentary Suit (TS)
  - Deposit of court fees and final grant of probate.

# Family Trusts

Structure · Taxation · Succession Planning Vehicle



### SETTLOR

Person who creates the trust and transfers assets into it. Can be an individual, company, or HUF.

(Section 7) : Can be any person capable to contract



### TRUSTEE

Holds legal title to trust assets and manages them in accordance with the Trust Deed. Can be an individual or a company.

(Section 10): Every person capable of holding property



### BENEFICIARY

Person(s) who enjoy the benefit of trust property. Can be specific or a class of persons.

(Section 9) : Every person capable of holding property



### TRUST DEED

- Rights, powers (and restrictions thereon), duties, liabilities and disabilities of trustees, including procedure for their appointment, removal, resignation or replacement and minimum/maximum number of trustees
- Terms of extinguishment of the Trust
- Alternate dispute resolution
- Possible to have combination of specific and discretionary trust

# Uses of Family Trusts — Why Families Choose Trusts

## TRUST



### Ring Fencing of assets

Shield wealth from creditors, business risks and future claims of members



### Succession Planning

Seeing its implementation during his lifetime, enabling corrective action to be taken in a timely manner and minor beneficiaries.



### Probable Inheritance Tax

Inheritance Tax (may come as perceived before every Budget) – Estate duty tax upto 1985 – USA and some other countries



### Privacy

Trust transfers are private — unlike Wills which may require public probate proceedings



### Business Continuity

Hold business shares in trust for uninterrupted family business without separation.



### Easier to operate

The Trust Act is an enabling Act and doesn't contain regulatory provisions. As against being regulated by laws, Trust is governed and regulated by Trust Deed

# SPECIFIC VS DISCRETIONARY TRUST

- **Assessment of Specific/ Non discretionary Trust –Sec 161(1A)**
  - If income consists of PGBP, tax chargeable at MMR
  - Tax liability co-extensive with that of beneficiary – ‘in the like manner and to the same extent’ as the beneficiary
  - Multiple returns, depending upon number of beneficiaries
  - u/s 166, AO has an option to tax beneficiaries instead of trustee
  - Circular 157/26.12.1974 – assessment can be made either on trustee or on beneficiary, not both
- **Assessment of Discretionary Trust – Sec 164 of ITA 1961 or Sec 307 of ITA 2025**
  - If income consists of PGBP, tax chargeable at **MMR**
  - If Trust created through Will of a person, and such trust is the only trust so declared by him, tax chargeable at slab rate applicable to AOP

Whether MMR  
include Surcharge

Alternate tax regime u/s 115BAC  
of ITA 1961(u/s **202 of ITA 2025**)

# PRIVATE ACCUMULATIVE TRUST

- A Private accumulative trust for a minor child is a trust which is so settled that the entire income/accrual is accumulated till the minor child attains majority. The fund of the trust is distributed only after the beneficiary attains majority.
- In such a situation since the entire income is deferred beyond the minority, no part of it accrues or arises to the minor as held in following judgments
  - Apex Court in CIT Vs M.R. DOSHI (1995) 211 ITR ( SC)

# PRIVATE TRUSTS – TAXATION ISSUES

- **Taxation on transfer of property to Trust**
  - Section 47(iii) – no capital gains implication in the hands of Settlor as transaction not regarded as ‘transfer’
  - Section 56(2)(x) – Taxable, except where transfer by individual for benefit of relative u/s 56(2)(vii)
  
- **Taxation in the hands of beneficiary on distribution by Trust**
  - Since beneficiaries have pre-existing right in trust, no tax implication
  
- **Cost and Date of Acquisition**
  - Cost to previous owner (section 49)
  - Indexation available

# Family Arrangement & Corporate Succession

Structure · Taxation · Succession Planning Vehicle

# FAMILY ARRANGEMENT – RELEVANCE

- **Practical necessity**
  - Immovable Property like residential house
  - Daughter being Karta
- **Not a transfer u/s 2(47)**
  - Every member has a pre-existing right to the property which is subject matter of settlement
  - Intention is to benefit the family by comprising on disputed rights by avoiding litigation
  - CIT V. Kay Arr Enterprises (2008) 299 ITR 348 (Mad HC) – SC in 306 ITR 5 rejected SLP
- **Stamp Duty advantage**

# CORPORATE SUCCESSION/RESTRUCTURING

- **Demerger**
  - Issue of Preference Shares by resulting company
  - transfer of shares between relatives after demerger
  - Cancellation of shares in the demerger scheme
- **Buyback of shares**
- **Conversion of Company into LLP**
  - LLP stake not covered under definition of 'property'

# SUCCESSION PLANNING

## SUMMING UP

- **During lifetime of a person**
  - Will (may be for part of assets)
  - Family Trust
  - Business SOP
  - Nomination/ joint holder in bank account etc
- **Unequal holding structure in group entities**
  - Marriage gift
  - Will
  - Demerger
- **HUF Succession**
  - Family Arrangement

# CHECK LIST OF DOCUMENTS

- Religion of the deceased
- Full name including aliases
- Domicile at the time of death
- Family tree with dates of birth, marriage, death and place of residence
- Asset ascertainment – consider all assets, even with lowest valuation
- Movables : account/policy numbers, bank name and address, nominee, share certificate numbers, demat account
- Immovables : Address, survey number, measurement of property, title search report, copy of conveyance deed
- Valuation of assets in INR (estimated)
- Name of co-owner and the relationship



**Thank You!**

**CA K. K. Chhaparia**

**[kkc@teamcna.in](mailto:kkc@teamcna.in)**

**9830044407**