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Newsletter

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Respected Members ,

Aiming for an “honouring the honest” tax administration, transparency in political funding, curbing the black money and parallel economy, pushing digital & less cash economy, rural-agricultural sector, prudent fiscal management, infrastructure, effective governance, youth and poor, the Budget rightly calls for a 'tectonic change' in India's policies.

Best Wishes to all members for a very happy ending of financial year 2016-17

And Also a Very Happy and Colorful Holi to All Members.

PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT 1988

"We all are aware of a Law about Benami Property in our country which came into being in 1988, but neither was its rules ever framed nor was it notified. We have retrieved it and turned it into an incisive law against 'Benami Property'. In the coming days, this law will also become operational. For the benefit of the Nation, for the benefit of the people, whatever needs to be done will be accorded our top priority. To curb the menace of black money, post demonetisation, Government of India is yet to make another surgical strike and this time it will be the Benami properties.

The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in the LokSabha on May 13, 2015 to amend the Benami Transactions Act of November 1, 2016.

Following are the key highlights of the Act:

Introduction

Benami is a Hindi word which means without a name. In this kind of transaction, the person who pays for the property buys it under someone else's name. The person on whose name the property has been purchased is called the Benamidar and the property so purchased is called the Benami property. The person who finances the deal is considered to be the real owner. The Benamidars park their black money by buying properties through multiple channels and use bank accounts of different people. In most such deals, the property papers are kept by the person paying the money and he also keeps a power of attorney to sell the property when the price appreciates. The property is held for the benefit - direct or indirect - of the person paying the amount.

What constitutes a Benami Property?

According to the provisions of the act, the constitution of Benami property can be summarized as under:

a. Property held by one person for which the consideration is provided by another person and such property is held for the benefit of person providing such consideration.
b. Property held in a fictitious name;
c. Property whose ownership is denied by the alleged owner;
d. Property for which the consideration is provided by a fictitious person.

Exceptions (Not considered a Benami Property):

1. Property held by Karta, or a member of Hindu Undivided Family (HUF) for the benefit of members of the family and the consideration for such property is paid out of known sources of the HUF.
2. Property held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity.
3. Property held by an individual in the name of his spouse or any child and consideration for same has been paid out of known sources of the individual.
4. Property held by any person in name of his brother, sister, lineal ascendant or descendant as joint owners and consideration for same has been paid out of known sources of the individual.

The point to be noted here is that a property bought by an individual in name of his parents will be considered as a Benami Property under the act.

What constitutes a Property?

Property means assets, whether moveable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal document or instruments evidencing title to or interest in the property. Thus, the scope of property has been substantially widened to include not only real estate but also the financial Securities, fixed deposits, bank accounts, Gold etc. held in someone else's name.

What is the Rationale of holding the Benami property?

There are several purposes for which people hold Benami properties. Major reasons are:

1 To avoid the land ceiling laws so that a person can have more landed properties than prescribed under law.
2 To evade tax.
3 To park black money.

What are the implications of holding a Benami Property or involving in a Benami Transaction?

Under the act, stringent provisions have been prescribed for prohibiting involvement in a Benami Transaction.
Any person entering into a Benami transaction in order to defeat the provisions of any law or to avoid the payment of any statutory dues or creditors will be punishable with:

1. Rigorous imprisonment for a period between 1 to 7 years; and
2. Fine of 25% of the fair market value of the property.

Any person who knowingly gives false information to any authority or furnishes any false document in any proceeding, shall be punishable with:

1. Rigorous imprisonment for a term of 6 months to 5 years; and
2. Fine of 10% of the fair market value of the property.

Also, the property which is a subject matter of a Benami transaction will be liable to be confiscated by the Central Government.
What will happen to an already existing Benami property?

The Act prohibits the re-transfer of a Benami property to the actual owner. Any such transfer will be deemed as null and void. Also, the act clarifies that Benami property that has been declared as part of the Income Disclosure Scheme of 2016 will not be acted against. Thus, any other Benami property will be confiscated by the central government as per the specific procedure prescribed under the act.
What are the authorities prescribed under the Act?
The act also lays down a robust framework for implementation of the provisions regarding Benami transactions. Four authorities have been prescribed to be formed to conduct inquiries, attachment, adjudication and confiscation of the Benami property:

1. Initiating Officer.
2. Approving Authority.
3. Administrator.
4. Adjudicating Authority.

The initiating officer, if believes that a person is Benamidar, will issue the show cause notice specifying why the property should not be treated as Benami property. He may hold the property for a period of 90 days from the date of issue of notice after obtaining a prior approval of approving authority.
The case will then be referred to Adjudicating Authority which will examine all the documents and evidence relating to the matter and then pass an order on whether or not to hold the property as Benami. Based on the order of Adjudicating Authority, the Administrator will confiscate the property in a manner and subject to the conditions as prescribed under the law.
In case a person is not satisfied with the order of adjudicating authority, he can challenge the same with Appellate Tribunal, and if he is not satisfied with the order of Appellate Tribunal, the appeal can be made with High Court.
Conclusion
Benami Transactions (Prohibition) Amendment Act 2016 has substantially widened the scope of operation as compared to the old act. Also, any offence involving Benami transactions has become a non-bailable and cognizable offence.
As quoted by the famous novelist Tom Sharpe, “All is fair in love, war and tax evasion.” the Act is certainly a very comprehensive and stringent piece of legislation.

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RESTRICTIONS ON CASH RECEIPTS IMPOSED U/S 269ST

The Finance Bill 2017 introduced a new Section 269ST in the Income Tax Act. The new section will impose restriction on receipt of any amount exceeding Rs.3 lakhs through modes other than the modes prescribed in that section.

The exact wording of this proposed new section is like this: - No person shall receive an amount of three lakh rupees or more –

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. So in short the main purpose of this section is to curb cash transactions exceeding Rs. 3 Lakhs that are being made routinely. Let us analyze the section in detail: Applicable to All Persons: The provisions are applicable to all the persons of any status receiving the amount. Effective date: Provisions are effective from 01/04/2017 (F.Y.2017-18 onwards) Nature of Receipts:

All types of receipts except those referred under Section 269SS (amount received in the nature of Loan or Deposit) are covered under these provisions Threshold Limit:- Amount of Rs.3 Lakhs or more. Restrictions Imposed:- No person shall receive an amount of 3 lakhs rupees or more (a) in aggregate from a person in a day, or (b) in respect of a single transaction, or (c) in respect of transactions relating to one event or occasion from a person

Exceptions: Provision is not applicable to following transactions: -

(i) any receipt by - (a) Government; (b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS; (iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Penal Provisions:- For any contravention of the provisions contained in this section, penalty equivalent to amount received is leviable under newly inserted Section 271DA. From the above points it is clear that this provision imposes restriction on cash receipts of Rs.3 Lakhs or more- Day wise Transaction wise Event or occasion wise

For example if A sold goods to B OF Rs. 5 lakhs through a single bill, A can receive less than Rs. 3 Lakhs in cash and balance amount by A/c payee cheque or electronic transfer only. Thus penalty cannot be avoided by splitting the payment over several days.

If A sells goods worth Rs. 5 lakhs by making two different bills say of Rs. 2.5 lakhs each then A can receive entire amount in cash. But in this case A cannot receive amount of 3 lakhs or more in cash in a single day from B However, in a day, the aggregate of the receipts may exceed the specified sum of Rs.3 lakhs if the same are from different persons and none of them makes payment exceeding the said limit. The third category of restriction pertains to a single event or occasion. Thus where cash receipts pertaining to a single event like a marriage or a conference although received under different heads e.g. catering, rent, other services, it cannot exceed the specified limit of 3 lakhs. So from the analysis of above provisions it can be derived that these restrictions are imposed on the Payee and not the Payer.

Although there are already prohibitions for cash expenses U/s 40A(3) for payers, one can pay amount exceeding Rs.3 lakhs in some cases e.g. for personal expenses. In such a case penalty would be imposed on payee not the payer. Conclusion: As honorable Finance Minister said in his speech, these measures are aimed at curbing black money and a move towards less cash economy. This new provision will definitely lead to increase in transactions through banking channels.

1. What is Hindu Undivided Family

The expression "Hindu Undivided Family" has not been defined under the Income-tax Act or in any other statute. When we dissect – essentials are (1) One should be Hindu, Jains, Sikhs and Buddhists are considered as Hindus but not Mohammadans or Christians; (ii) There should be a family; i.e. group of persons – more than one and (iii) They should be undivided i.e living jointly and having commonness amongst them. All these three essentials are cumulative. It is a body consisting of persons lineally descended from a common ancestor and include their wives and unmarried daughters, who are living together, joint in food, estate and worship (not now necessary). The daughter, on her marriage, ceases to be a member of her father's HUF and becomes a member of her husband's HUF. However, after 1-9-2005, daughter married or unmarried, is a co-parcener like a son in her father's family.

2. Who can be co-parceners/members of an HUF ?

Birth of a male/female (after 1-9-2005) in a Hindu joint family makes him a co-parcener of the HUF. In view of this, all male members automatically become members of the HUF. In addition to that, if a child is adopted then he also becomes a member of the HUF. Moreover, upon marriage, wife becomes a member of her husband's joint family. Female child remains a member till marriage. Only male can be a coparcener. This is changed now after 1-9-2005 daughters are coparceners like sons.

3. What is the difference between a co-parcener and a member?

A HUF, as such, can consist of a very large number of members including female members as well as distant blood relatives in the male line. However, out of this, coparceners are only those males (now daughters also) who are within 4 degrees in lineal descendent from the common male ancestor. The relevance of concept of coparcenery is that only coparceners can ask for partition. The other male/female family members : i.e. other than coparceners in an HUF, have no direct claim over HUF property, but can claim only through the coparceners.

4. How does an HUF come into existence?

The concept of Joint Family under Hindu Law as well as the HUF in Income-tax Act, 1961 is broadly the same. HUF is purely a creature of law and cannot be created by an act of parties (except in case of adoption and reunion). An HUF is a fluctuating body, its size increases with birth of a member in the family and decreases on death of a member of the family. Females go and come into HUF on marriage. If there is family nucleus, there need not be more than one male member to form an Hindu undivided family as a taxable entity under the Income-tax Act. The expression "Hindu undivided family" in the Income-tax Act is used in the sense in which a Hindu joint family is understood under the personal law of the Hindus. Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and the Income-tax Act does not indicate that an Hindu undivided family as an assessable entity must consist of at least two male members (refer *Gowli Buddanna v. CIT (1966) 60 ITR 293(SC)*. Where a coparcener having a wife and minor daughters and no son receives his share of joint family properties on partition, such property, in the hands of the coparcener, belongs to the HUF of himself his wife and minor daughters. (refer *N.V. Narendranath v. CWT (1969) 74 ITR 190(SC).*

5. Can a single male constitute HUF?

Family always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female does not constitute a family. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Income-tax Act, 1961, treats a Hindu undivided family as an entity distinct and different from an individual. Assessment in the status of an Hindu undivided family can be made only when there are two or more members of the Hindu undivided family (refer *C. Krishna Prasad v. CIT (1974) 97 ITR 493(SC)*. Husband and wife can constitute HUF if property is received on partition. An individual who receives ancestral property at a partition and who subsequently acquires family, but has no issue, would hold that property only as the property of the family. Under the Hindu Law the wife of the coparcener is certainly a member of the family. Whatever be the school of Hindu Law by which a person is governed, the basic concept of a Hindu undivided family in the sense of who can be its members is just the same. Thus, in order to constitute a joint family it is not always necessary that there must be two male members. (refer *CIT v. Parshottamdas K. Panchal 92002) 257 ITR 96 (Guj)*. In cases where the property held by the person who claims it to be his own, had in fact been held by a joint family earlier and is ipso facto capable of being held by other sharers as well in future if and when the family comes into existence and a son/daughter (after 1-9-2005), whether by birth or adoption, is added thereto, such property continues to retain the character of joint family property, even when the family is reduced to a single male member as in the case of a sole surviving coparcener. Though such a sole surviving coparcener may be assessable as an individual as he cannot be said to have a family, unless there are, in fact female joint family members in the family, the character of

the property continues unaltered as joint family property though for the time being it is not shared with any other member of the family and may or may not be subject to any charge in favour of anyone else for any purpose. When the assessee got married and acquired a family that family constituted a Hindu undivided family and the ancestral property which the assessee had received at the partition became the property of that Hindu undivided family. In cases where the property even at the time it vested in the hands of the family had the character of ancestral property the absence of a son, who can claim partition, does not render what is joint family property, individual property. The test is not as to whether his issues are male or female. The test is whether the property was ancestral. Therefore an individual who receives ancestral property at partition and who subsequently acquires a family, but had no male issues would hold that property only a property of the Hindu undivided family (refer *W. P. A. R Rajagopalan v. C.W.T (2000) 241 ITR 344 (Madras)*.

6. Can a son who is the sole surviving coparcener along with other females in the family after his father's death constitute an HUF?

Yes. The HUF shall continue with the son as Karta and other female members as members.

7. Can a son being a member of HUF consisting of his father, himself and his brothers, form an HUF consisting of himself, his wife and minor son?

Under Hindu Law, there can be an HUF within an HUF. Therefore, a son can have his own smaller HUF while he continues to be a member of his father's HUF. In his father's HUF, he is a mere member – coparcener and in his own HUF, he is Karta.

8. Can there be an HUF with only female members?

Yes. Under Hindu Law it is not predicated of an Hindu joint family that there must be a male member. So long as the property which was originally of the joint Hindu family remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues (refer *CIT v. RM AR. AR. Veerappa Chettiar (197)) 76 ITR 467(SC)*. However, after the enactment of the Hindu Adoptions and Maintenance Act, 1956 as well as Hindu Succession Act, 1956, this legal position does not seem to be correct. This is because such female members, upon such death would get their interest in the property absolutely and their absolute interest so crystallised cannot be divested by any subsequent event, for example remarriage or adoption.

II. HUF PROPERTY

1. What is HUF and individual property of an Hindu?

Any property which is received from ancestors by way of partition or otherwise is HUF property. Any property received by the HUF by way of gift through Will, accretions to the existing properties, blended or properties thrown in common hotchpot or impressed with the Character of HUF property by any coparcener etc., are also HUF property. Character of the HUF property on partition in the hands of the coparcener, remains as HUF property.

Any property earned by an individual whether on account of own exertion or out of individual fund without investment of the HUF funds, earning of learning, service, personal qualifications, etc. is separate and individual property of an Hindu (refer *K.S Suffiah Pillai v. CIT (1999) 237 ITR 11(SC)*. Self-acquired property of an Hindu will pass on to his/her legal heirs as per the rules of succession and the legal heirs receive the property as individual property. So also the share of the deceased coparcener in HUF, which otherwise devolves by survivorship to other coparcener goes by succession to legal heirs, which they hold as separate property, if such coparcener has left certain class of female relatives or a male relative who claims through such female relative specified in Class I of the first schedule to Hindu Succession Act, 1956.

2. Whether a family that does not own any property can have the character of Hindu joint family?

Yes, the concept of HUF is not related to possession of any property by the family nor the existence of such joint property is an essential precondition for constituting an HUF. This is because Hindus get joint family status by birth and joint property is simply an adjunct to the joint family.

3. What is the nature of property received by a male member after his marriage but before a male child is born?

There is considerable controversy on these aspects. There are divergent views expressed by different Courts from time-to-time. One view is that since an HUF, as known under Hindu Law, can consist of even husband and wife only, once such an HUF has come into existence upon marriage of a Hindu male, such family can receive property from any source and regard the same as HUF property. However, the other view is that in such a case, a distinction should be made between a property that already has characteristic of a joint property (for example, property received on partition) and other than such properties. In case of receipt of properties of the former kind, such family (that is consisting only of husband and wife) can receive and treat such property as joint Hindu family property. But in case of latter (that is, in the cases like gift or will), unless there are at least two coparceners in the family, such HUF cannot receive or treat such property as HUF property. In other words since in such family of husband and wife there is only one coparcener i.e., husband (wife being a mere member and not coparcener), if such HUF wants to receive and regard any property from an outside source as HUF property then it has to have another coparcener in the family i.e., son. The earlier view seems to a better one. Of course, a donor or testator must indicate that he gives it to the person's HUF.

4. What is the nature of property received by an Hindu, who has only wife and daughters in his family, from his father?

This will depend upon whether the property received by such Hindu from his father is father's individual property or property of father's HUF. In case of the former, such Hindu will be receiving the property as a legal heir of the father and rules of succession as prescribed under Hindu Succession Act, 1956 will prevail. If the property is received from father's HUF, then it can form part of HUF of such Hindu. But the share of the father in the HUF upon his death can go to his legal heirs which will be their individual property if the father has left behind him any female relative or a male relative claiming through such female relative, as in Class I of the schedule to that Act. Of course by will he can give his share to son's HUF.

5. Is property acquired by gift by the assessee with an intention of the donor that the money should be used for the benefit of his family, HUF property?

HUF can receive gifts from anybody including a stranger. In any case, as held by the Supreme Court, (ref *CIT v. Satyendra Kumar (1998) 232 ITR 360(SC)* a gift by mother also can be a source of HUF property. In case of a gift whether from a father, mother, relative or a friend the intention of the donor is important. If there are express provisions to the effect in the deed of gift or Will that the son would take the property for the benefit of the family, that is decisive. The donor or testator dealing with self-acquired property may by evincing the appropriate intention, render to the property gifted the character of a joint family property or as the case may be a separate property in the hands of the donee vis-à-vis his male issue (refer *C. N. Arunachala Mudaliar v. C.A. Muruganatha Muddliar (1953) AIR 1953 SC 495 and CIT v. M. Balasubramanian (1990) 182 ITR 117 (Mad).* It is necessary to take care while making the Will or the gift. Clause should be specific and the donee HUF should open bank account in the name of the HUF. Indication should be clear. (refer *CIT v. Maharaja Bahadur Singh & Others (1986) 162 ITR 343 (SC).*

6. Can a coparcener blend his individual property into his smaller HUF wherein he is a Karta, while continuing to be a member of the bigger HUF consisting of his father, himself and his brothers?

A coparcener can be coparcener of two joint Hindu families. The blending is at his option, he may blend his property with either of the HUF's. In that view of the matter, a coparcener can blend his individual property with his smaller HUF, wherein he is Karta, while continuing to be a member of the bigger HUF consisting of his father himself and his brother. (Refer *CIT v. MM Khanna (1963) 49 ITR 232 (Bom).*

7. What will be the position where the HUF consists of only his wife and minor daughter?

The Supreme Court in *Surjit Lal Chhabda v. CIT (1975) 101 ITR 776* on the above question stated: "Kathoke Lodge was not an asset of a pre-existing joint family. Doctrine of blending or impressing with the character of HUF party into the family hotchpot does not apply. The appellant has no son. His wife and unmarried daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property. Their rights in that property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was even after the property was thrown into the family hotchpot : the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu Law it belongs to the family as it would have if the property were to devolve on the appellant as a sole surviving coparcener. The property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens the property in the eye of Hindu Law, is really his. He can deal with it as a full owner unrestrained by considerations of legal necessity or benefit of the estate. He may sell it, mortgage it or make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation. It was held that income from the Lodge shall be chargeable to tax in the individual hand. It shall be assessable in the hands of the HUF on birth or adoption of the son (refer *S. K Bohra v. CIT (1988) 173 ITR 400 (Rajasthan).* Position will be different after 1-9-2005, as daughter would be coparcener from the beginning.

III. GIFTS TO AND FROM HUF

1. Can Hindu Undivided Family accept gifts from its members or coparceners or outsiders?

Yes. There is no restriction for a HUF to accept gifts from any source. However, the intention of the donor should be clear and gift should be genuine. The donee shall have to prove the identity and capacity of the donor as well as the genuineness of the gift. Friendship, relationship, closeness need be established. The Delhi High Court in *Sajjan Das & Sons v. CIT (2003))* 264 ITR 435 held mere identification of the donor and showing the movement of the amount through banking channel was not sufficient to prove the genuineness of the gift. Since the claim of gift was made by the assessee, the onus lay on him not only to establish the identity of the person making the gift but also his capacity to make a gift and that it had actually been received as a gift from the donor. Gift being by cheque and of movable property, no registration is necessary. However, gift declaration detailing complete information relating to the donor should be drawn and recorded. Gift cheque should go in a bank account in the name of the donee for realisation and subsequent utilisation.

However, section 56(2) Income-tax Act (v) puts restriction on the gifts made by a person to another. Gifts exceeding 50,000/- in the aggregate received by any person before 1-10-2009 becomes taxable in the hands of the donee. After 1-10-2009 not only sum of money but even gift of immovable property and any other property exceeding 50,000/- will be taxable in the hands of the donee. The valuation of immovable property will be the valuation adopted for stamp duty purposes. While for other property it will be the fair market value.

However, this provision does not apply in following situations:-

(a) Gift from a relative

(b) On the occasion of marriage of the individual

(c) Under a will or by way of inheritance.

The definition of relative is given in section 56(vi) proviso (e).

The "relative" include (i) Spouse of the individual (ii) Brother or sister of the individual (iii) Brother or sister of the spouse of the individual (iv) Brother or sister of either of the parent of the individual (v) Any lineal ascendant or descendant of the individual (vi) any lineal ascendant or descendant of the spouse of the individual (vi) Spouse of the person referred to in Clauses (ii) to (vi).

It therefore appears that gift can only be received under this exception by individuals mentioned in the definition and not by an HUF. The main provision regarding 50,000/- refers to individual or an HUF but the definition of relative only refers to individuals. Thus HUF cannot make a gift nor possibly receive gift falling on the definition of relative. The question will be whether gift received by an HUF from an individual can be considered as gift received from a relative as defined. Similarly, gift by an HUF to a member of an HUF will not also fall within the exception because the donor or donee if it is HUF will not fall within the exception.

However, the above position is now slightly changed by reason of Finance Act, 2012 which has extended the definition of a "relative" to include gift from any member of an HUF to HUF. Thus it is now clear that an HUF can receive a gift from its member exceeding 50,000/- without any liability to pay tax u/s. 56(2) of Income-tax Act.

However, the question still remains whether an HUF can give a gift to its member exceeding 50,000/- without making the member liable to tax U/s. 56(2). In other words can an individual receive gifts from his HUF. It is submitted that prohibition still remains, as "joint Hindu family" cannot be considered as a "relative" of member. The converse case is still not included in the amendment carried out by Finance Act, 2012 which is given retrospective effect from 1-10-2009. However the HUF can distribute its income to its member/members under the General Hindu Law principles as such distribution is not a gift. Further, the HUF can spend for marriage, education etc of its members also under general principle for Hindu Law as it is considered as part of its obligation towards its members.

IV. KARTA/MANAGER, MEMBERS, THEIR RIGHTS AND OBLIGATIONS

1. Who can become Karta of an HUF?

An adult male member who manages the affairs of the HUF is known as Karta or Manager of the family. Only a coparcener can become Karta. Generally, the senior most male adult member of the family is made Karta of HUF. However, such senior member may give up his right of management and a junior member may by consent, be appointed as Karta. Where a junior member is in custody, control or possession of the property or the eldest member is not working in the interest of the family or is working against the interest of the family, junior member may be recognised as Karta.

Coparcenership is a necessary qualification in order to become the Karta of a joint Hindu family. The effect of the Hindu Women's Rights to Property Act (XVIII of 1937) is merely to confer upon the widow an interest in the share of the husband and the estate created in that interest is the interest of a Hindu widow. She is also entitled to claim partition of the properties but all these rights either individually or cumulatively do not have the effect of conferring upon the widow the status of a coparcener in the family. Nor do they clothe her with a right to represent the other members of the family as Karta of a joint Hindu family. Under Hindu Law the widow could not become the Karta of a joint Hindu family

(Refer *V.M.N. Radha Ammal (1965) 57 ITR 510).* However, a minor can act as Karta of the joint family through his natural guardian, his mother, in certain exceptional circumstances, for example, where whereabouts of the father are not known at the time. However, after 1-9-2005, daughter married or unmarried is now made a coparcener and can become Karta of her father's family.

2. What are the rights of a coparcener or member?

No coparcener is entitled to any special interest in the coparcenery property nor is he entitled to exclusive possession of any part of the property. As observed by their Lordships of the Privy Council, "there is community of interest and unity of possession between all the members of the family". A member of a joint Mitakshara family cannot predicate at any given moment what his share in the joint family property is. His share becomes defined only when a partition takes place. As no member, while the family continues joint, is entitled to any definite share of the joint property it follows that no member is entitled to any share of the income of the property. The whole income of the joint family property must be brought according to the theory of an undivided family, to the common chest or purse and there dealt with according to the modes of enjoyment by the members of an undivided family.

3. After the marriage of female member after 1-9-2005 whether the daughter would continue to be a member of her father's family and also would become member of her husband's family ?

Yes. She continues to be a coparcener of her father's HUF. A very peculiar position will arise inasmuch as such daughter upon her marriage will

automatically become only a member of her husband's family while she will continue to be coparcener in her father's family.

4. Can such female member demand partition of her father's HUF as well as her husband's HUF ?

As after 1-9-2005 daughter continues to be a coparcener of her father's family, having all the rights and privileges as of a coparcener, she can demand partition of her father's HUF property. However, as far as her husband's HUF is concerned, she is a mere member of the family and not a coparcener and as such cannot demand partition of her husband's HUF property. But would be entitled to a share in case of partition between her husband & her sons or between her sons.

5. What is property of sole surviving coparcener and its incidents?

When the family is reduced to only one male coparcener with female members only, such coparcener is called as sole surviving coparcener. Though for purposes of assessment a sole surviving coparcener is assessed in the status of a Hindu undivided family, his powers are wide and unrestricted and akin to that of an individual. He is free like an individual to alienate the property in whatever manner he likes. Therefore, when he alienates the property he disposes of the same with the powers vested in him as that of an individual. (Refer *Attorney General v. Arunachalam Chettiar (1958) 34 ITR (ED) 42 (PC), M.S.P. Rajah vs. CGT (1982) 134 ITR 1(Madras), CIT v. Anil J. Chinai (1984) 148 ITR 3 (Bombay), CIT v. N. Kannaiyiram (1999) 240 ITR 892 (Madras). Position would be different after 1-9-2005, if he has a daughter as she will be a coparcener & he will not be sole surviving coparcener.*

VI. PARTITION

1. What is partition?

Partition is the severance of the status of Joint Hindu Family, known as Hindu Undivided Family under tax laws. Under Hindu Law once the status of Hindu Family is put to an end, there is notional division of properties among the members and the joint ownership of property comes to an end. However, for an effective partition, it is not necessary to divide the properties in metes and bounds. But under tax laws for an effective partition division by metes and bounds is necessary. There should be physical partition of the property and not the notional partition. Partition under Hindu Law, can be total or partial. In total partition all the members cease to be members of the HUF and all the properties cease to the properties belonging to the said HUF. Partition could be partial also. It may be partial vis-à-vis members, where some of the members go out on partition and other members continue to be the members of the family. It may be partial vis-à-vis properties where, some of the properties are divided among the members other properties continue to be HUF properties. Partial partition may be partial vis-à-vis properties and members both. However, tax laws do not recognise partial partition of property or/and persons after 30-3-1978 on insertion of sub-swction (9) to Section 171 of the I.T. Act. This restriction was put to avoid creation of multiple HUFs which was a misuse.

2. How a partition can be effected and what is its effect?

To constitute a partition all that is necessary is a definite and unequivocal indication of intention by a member of a joint family to separate himself from the family. What form such intimation indication or representation of such interest should take would depend upon the circumstances of each case. A further requirement is that this unequivocal indication of intention to separate must be to the knowledge of the persons effected by such declaration. A review of the decisions shows that this intention to separate may be manifested in diverse ways. It may be by notice or by filing a suit. Undoubtedly, indication or intimation must be to members of the joint family likely to be affected by such a declaration.

Partition is word of technical import in Hindu Law. Partition in one sense is a severance of joint status and coparcener of a coparcenery is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status at any rate in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant in common. Such partition has an impact on devolution of share of such member. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property. A disruption of joint family status by a definite and inequivocal indication to separate implies separation in interest and in right although not immediately followed by a de facto actual division of the subject matter. This may at any time, be claimed by virtue of the separate right. A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense. (Refer *Kalyani v. Narayanan – AIR 1980 SC 1173).*

3. Can there be an oral partition?

Yes. It is not necessary to affect partition by a written partition deed. It can be effected orally and be acted upon. Even a partition of an immovable property can be by an oral agreement (Refer *Popatlal Devram v. CIT (1970) 77 ITR 1073 (Orissa), Padam Lochan v. State of Orissa 84 ITR 88 (Orissa).*

"Partition in the Mitakshara sense may be only a severance of the joint status of the members of the coparcenery that is to say what was once a joint title, has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood

by partition amongst co-shares who may not be members of a Hindu coparcenery... For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary. Such a partition may be effected orally, but if the parties reduce the transaction to a formal document which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition and is thus within the mischief of section 171(1)(b) (Refer *Nani Bai v. Gita Bai – AIR 1958 SC 706, Rishan Singh v. Zila Singh – AIR 1988 SC 881, Hansraj Agarwal v. CCIT (2003) 259 ITR 265 (SC). No particular method is prescribed – AIR 1964 SC 136.*

4. Does a partition take place at the time of death of a coparcener?

A partition is an act effected inter vivos between the parties agreeing to the partition. A death of a coparcener cannot bring about an automatic partition and on such a death, the other surviving members continue to remain joint. However, under the provisions of section 6 of the Hindu Succession Act, there is a deemed partition for a limited purpose of determining the share of the deceased coparcener for the purpose of succession under the Act. The right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. The female heir shall have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible interest in a specific share of the family property which would remain undiminished whatever may be the subsequent changes in the composition of the membership of the family. (Refer *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh (1987) 163 ITR 31(SC)*.

5. Can a widow or wife claim partition?

A widow steps in the shoes of her husband. Earlier on account of the Hindu Women's Right to Property Act, 1937 and now being an heir in Class I can claim the partition on the death of her husband. There can be a valid partition between a widowed mother and son. (Refer *Ram Narain Paliwal v. CIT (1986) 162 ITR 539 (P & H), CIT v. Mulchand Sukmal Jain (1993) 200 ITR 528(Gauhati).* However, a wife during the lifetime of her husband cannot claim a partition but in case there is a partition, she shall get share equal to that of her son and husband. (Refer :*Kundanlal v. CIT (1981) 129 ITR 755(P&H).*

6. Is partition a transfer?

Partition is not a transfer. Each coparcener has an antecedent title to the joint Hindu family property. Though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparcenes had subsisting title to the totality of the property of the family jointly, that joint title is transformed by partition into separate title of the individual coparceners in respect of several items of properties allotted to them respectively. As this is the true nature of a partition, the contention that partition of an undivided Hindu family property necessarily means transfer of the property to the individual coparceners cannot be accepted. (Refer *Ajit Kumar Poplai and Another AIR (1965) SC 432).* Partition does not give a coparcener a title or create a title in him, it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independent of the wishes of his formal co-shares (Refer *Girija Bhai v. Sadha Shiv Dund Raj AIR 1916 PC 104).*

In view of the unit of ownership and community of interest of all coparceners in a joint Hindu family business the position on partition of the joint Hindu family business, whether it be partial or complete, is very similar in law to the position on dissolution of a partnership firm. On partition the shares of the coparceners in the joint family business become defined and their community of interests is separated. Division of assets is a matter of mutual adjustment of accounts as in the case of a dissolved partnership firm. The property which so comes to the share of the coparcener, therefore, cannot be considered as transfer by the joint family to a coparcener or the extinguishment of the right of the joint family in that property, the joint family not having its own separate interest in that property which can be transferred. (Refer*CIT v. S. Balasubramanian (1988) 230 ITR 934 (SC)*. The partition does not effect any transfer as generally understood in the Transfer of Property Act. (Refer *CIT v. N. S. Jetty Chettiar (1971) 82 ITR 599).*

7. Can there be an unequal partition?

Yes. It is at the sweet will of the coparceners and members as to whether to allot on partition in accordance with the share specified under the Hindu Succession Act or to allot lower or more to anyone or more persons. The partition in the family could not be considered to be a disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property. A member of a Hindu undivided family has no definite share in the family property before division and he cannot be said to diminish directly or indirectly the value of his property or to increase the value of the property of any other coparcener by agreeing to take a share lesser than what he would have got if he would have gone to a court to enforce his claim (Refer *CGT v. N.S Getti Chettiar 91971) 82 ITR 599(SC)*. In the light of the said law, it can be a sound tool of tax planning by giving larger share to the less financially sound coparcener and lesser share to the affluent.

8. What shall be the nature of the property received on partition?

The nature of the joint family property on partition shall be as that of joint family property as and when the recipient person is married. Hence the character of the property shall remain that of the joint family property. Such property shall be assessed as individual property, as long as the recipient is unmarried or is reduced to a single person.

The property which devolves on a Hindu u/s. 8 of the Hindu Succession Act would be individual property. Thus individual property shall continue to be individual property on inheritance and HUF property on partition shall be that of the joint Hindu family subject to the existence of family during the relevant assessment year (Refer *CWT v. Chander Sen (1986) 161 ITR 370(SC), CIT v. P.L Karuppan Chettiar 91992) 197 ITR 646(SC), CIT v. Arun Kumar Jhunjhunwala 7 Sons (1997) 223 ITR 43).*

9. Whether an order u/s. 171 is required when an HUF has not been hitherto assessed?

Section 171(1) of the Act starts with the expression "a Hindu Family hitherto assessed as undivided". Hence, if an HUF has not been assessed to tax, sec. 171 shall be inapplicable. Section 171 of the Income-tax Act, 1961, has no application to a case of a Hindu undivided family which has never been assessed before as a joint family i.e. as an unit of assessment. In other words, this section has application to a Hindu undivided family which has been assessed before as a joint family and if the Hindu undivided family has never been assessed to tax, this section has no application (Refer *Additional CIT v. Durgamma (P) (1987) 166 ITR 776 (AP), CIT v. Kantilal Ambalal (1991) 192 ITR 376(Gujarat), CIT v. Hari Kishan 920010 117 Taxman 214.* In such a case even partial partition will be valid.

10. What are the rights of daughters and female members not entitled to share on partition ?

Female members who have right of maintenance and marriage have a charge on the joint Hindu family property in respect of the said right. Hence, at the time of partition amount of such expenses deserve to be quantified provided and only balance to be shared by the persons entitled to share on partition. In lieu of such maintenance and other expenses, the female members can be allotted shares at the time of partition so that the divided properties are free of encumbrances (Refer *State of Kerala v. K.P Gopal (1987) 166 ITR 111(Ker.-FB).* This position is changed since 1-9-2005 as daughters are made coparceners and are entitled to a share.

11. What is notional partition and whether such concept exist under the Income-tax Act ?

When a Hindu male dies on or after 17th June, 1956 having at the time of his death an interest in coparcenery property, leaving behind a female heir of the class one category, then his interest in the coparcenery property shall devolve by succession and not by survivorship. The interest of the deceased will be carved out over devolution, though there is no actual partition. Such an act is considered as a notional partition under the Hindu Law. The concept of notional partition is non-existent under the Income-tax Act. The Income-tax Act recognises only an actual partition and not the notional partition.

12. Stamp Duty on Deed of Partition.

The question arises as to what stamp duty is payable when partition takes place.

So far as Gujarat is concerned under Entry 43 of the Schedule 1 to Gujarat Stamp Act, 1958 is as follows:

Partition : Instrument of as defined by section 2(m):

"The same duty as a Bond (No. 14) for the amount of the market value of the separated share of shares of the property.

N.B : The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.

The duty on bond mentioned in Entry 14 is 25 paise for every 100 Rupees or part thereof, if the value does not exceed 100 crores but if it exceeds 10 crores it would be 50 paise instead of 25 paise.

The Hindu Succession Act, 1956 – with effect from September 1, 2005

6. Devolution of interest of coparcenery property.-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall–

(a) By birth become a coparcener in her own right in the same manner as the son;

(b) Have the same rights in the coparcenery property as she would have had if she had been a son;

(c) Be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

Provided that nothing contained in this sub-section shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenery ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorship and the coparcenery property shall be deemed to have been divided as if a partition had taken place and –
(a) The daughter is allotted the same share as is allotted to a son,

(b) The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter and,

(c) The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition shall be allotted to the child of such pre-deceased child of the pre-deceased daughter, as the case may be.

Explanation – For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.....

(5) Nothing contained in this section shall apply to partition, which has been effected before the 20th day of December, 2004.

Explanation – For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court.

I. Can unmarried or married daughter become karta of her father's HUF ?

The first question is whether a married daughter can become karta of the father's HUF on the death of her father if she is the eldest child. The basic concept of karta is that the male head of the family becomes a karta. A peculiar situation would arise when a married daughter belonging to another family can become the karta of the father's HUF while she cannot be a karta of her husband's joint family. However, the logical answer would be that she can be a karta. The basic Hindu Law would be modified in such a situation. It is also held since long that mother can be a guardian/karta of the her minor sons.

II. Whether children of married daughter become co-parcener of new father's HUF?

Another interesting question is whether the children of the married daughter would become coparceners of father's HUF. Again logically the answer should be in the affirmative but it would negate the fundamental concept of Hindu Law, because the children of the daughter cannot at the same time become coparceners in their father's HUF and also in the maternal grandfather's HUF. It is submitted that a limited effect has to be given to the Amendment Act and it cannot disturb the basic concept of an HUF having as its members, son, son's wife, and son's children. Making children of the daughter coparcener in the father's HUF would be repugnant to the basic concept of an HUF. Similarly it is submitted that husband of the married daughter does not become member of her father's HUF though son's wife, becomes member of the father's HUF. On the same reasoning ,the answer to the earlier question could be that Amendment Act should be given on limited application which should stop by making her daughter married or otherwise a coparcener in the father's family. And not her children or husband. However on the death of the daughter there would be deemed partition and her share would devolve to her heirs as per her will and as on intestacy.

III. Whether sister married or unmarried can become coparcener?

A peculiar question arises as whether if the father is dead and the HUF continues with his sons their sister becomes a coparcener if the father dies before 9-9-2005.

It is submitted that daughters becomes coparceners only if their father is alive on 9-9-2005 as sisters are not covered by Section 6.

(1) Partition before 30-12-2004 is not affected by 2005 Act, but such partition is required to be registered. Does it mean that partition deed should be executed before 20-12-2004 or that it should be registered before 20-12-2004, though a document can be registered within 4 months of its execution and within 8 months with penalty?

Yes: Documented should be executed before 20-12-2004 but should be register before 1-9-2005.
(2) Requirement of registration – Does it rule out oral partition or even written partition of movables which does not require to be registration?

Ans. It is not clear but seems to be in writing even in case of movables. Surprisingly married daughter becomes coparcener in father's HUF but not in her husband's HUF, wife should have been made a coparcener in her husband's family and not in her father's family. Ans : This would have been logical and should be done.

IV. General

In reality it is a very unusual situation created that a married daughter becomes a karta in her father's HUF but not in her husband's HUF.

It is submitted that it would have been better if instead of making a married daughter co-parcener in her father's family to make wife a co-parcener in her husband's family, where under Hindu Law she is entitled to share only when partition takes place between the father and son or between the sons but she cannot demand partition.

RELATED PARTY TRANSACTIONS UNDER COMPANIES ACT, 2013 & SEBI LODR, 2015

Article Discusses Related Party Transactions under Companies Act, 2013 and SEBI LODR Regulations, 2015. It Explains who is Related Party, What is a related party transaction, Related Party Transaction requiring Audit Committee Approval, Related Party Transaction requiring Board/Shareholders' Approval and Related Party Transactions which are not in Ordinary Course of Business and Arm's Length Basis.

WHO IS A RELATED PARTY?

As per Companies Act, 2013 and SEBI (LODR) Regulations, 2015

"Related party", with reference to a company, means—	**"Relative", with reference to any person, means any one who is related to another, if—**
(*i*) a director or his relative;	(*i*) they are members of a Hindu Undivided Family;
(*ii*) a key managerial personnel or his relative;	(*ii*) they are husband and wife; or
(*iii*) a firm, in which a director, manager or his relative is a partner;	*(iii)* A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely.-
(*iv*) a private company in which a director or manager or his relative is a member or director;	(1) Father: Provided that the term "Father" includes step-father.
(*v*) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;	(2) Mother: Provided that the term "Mother" includes the step-mother.
(*vi*) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;	(3) Son: Provided that the term "Son" includes the step-son.
(*vii*) any person on whose advice, directions or instructions a director or manager is accustomed to act:	(4) Son-s wife.
Provided that nothing in sub-clauses (*vi*) and (*vii*) shall apply to the advice, directions or instructions given in a professional capacity;	(5) Daughter.
(*viii*) any company which is—	(6) Daughter-s husband.
(*A*) a holding, subsidiary or an associate company of such company; or *(B)* a subsidiary of a holding company to which it is also a subsidiary,	(7) Brother: Provided that the term "Brother" includes the step-brother;
(ix) a director [other than an independent director] or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.	(8) Sister: Provided that the term "Sister" includes the step-sister.

As per Companies Act, 2013	As per SEBI (LODR) Regulations, 2015
(a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind; (c) leasing of property of any kind; (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company:	Related party transaction means transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract.

AUDIT COMMITTEE APPROVAL REQUIRED FOR ALL RELATED PARTY TRANSACTIONS

Approval from Audit Committee for all Related Party Transactions (Both Companies Act, 2013 & SEBI (LODR) Regulations, 2015 are on the same lines)

All related party transactions shall require approval of the Audit Committee irrespective of the fact whether transactions entered into by the company are in ordinary course of business and on an arm's length basis.

The Audit Committee shall , after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval. Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to a maximum of **rupees one crore per transaction.**

The audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given. **(LODR)**

Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

Nature of transaction	As per Companies Act, 2013	As per SEBI (LODR) Regulations, 2015
Transactions which are entered into by the company in its ordinary course of business and on an arm's length basis.	Following transactions are not required to be taken to the Board/Shareholders for their approval: a) transactions which are entered into by the company in its ordinary course of business and on an arm's length basis. b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.	**However, LODR states that all material related party transactions irrespective of the fact whether transactions entered into by the company are in ordinary course of business and on an arm's length basis, shall require approval of the shareholders through an ordinary resolution** and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not. *Explanation- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.*
Transactions which are not in ordinary course of business and arm's length basis.	Explained in the table below	The above said provisions shall not be applicable in the following cases (a) transactions entered into between two government companies; (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

RELATED PARTY TRANSACTIONS WHICH ARE NOT IN ORDINARY COURSE OF BUSINESS AND ARM'S LENGTH BASIS

S. No.	Related party transactions which are not in ordinary course of business and arm's length basis	Board approval	Shareholders' approval by way of an ordinary resolution, if
a)	sale, purchase or supply of any goods or materials	Required	sale, purchase or supply of any goods or material, directly or through appointment of agent, exceeding ten percent of the turnover of the company or rupees one hundred crore, whichever is lower
b)	selling or otherwise disposing of, or buying, property of any kind	Required	selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten percent of net worth of the company or rupees one hundred crore, whichever is lower

c)	leasing of property of any kind	Required	leasing of property any kind exceeding ten percent of the turnover of the company or rupees one hundred crore, whichever is lower
d)	availing or rendering of any services	Required	availing or rendering of any services, directly or through appointment of agent, exceeding ten percent of the turnover of the company or rupees fifty crore, whichever is lower
e)	appointment of any agent for purchase or sale of goods, materials, services or property	Required	sale, purchase or supply of any goods or material, directly or through appointment of agent, exceeding ten percent. of the turnover of the company or rupees one hundred crore, whichever is lower availing or rendering of any services, directly or through appointment of agent, exceeding ten percent of the turnover of the company or rupees fifty crore, whichever is lower selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten percent of net worth of the company or rupees one hundred crore, whichever is lower
f)	such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company	Required	for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees
g)	underwriting the subscription of any securities or derivatives thereof, of the company	Required	for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent of the net worth

NOTE 1: The turnover or net worth referred in the above table shall be computed on the basis of the audited financial statement of the preceding financial year.

NOTE 2: In case of wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.

NOTIFICATIONS

1. Specified authority notified for the purposes of receiving declarations under the Pradhan Mantri Garib Kalyan Yojana, 2016 (PMGKY)-Notification No. 117/2016, dated 16-12-2016

The Taxation Laws (Second Amendment) Act, 2016 has inserted The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 as Chapter IXA to the Finance Act, 2016. The Scheme provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax, surcharge and penalty totalling in all to 49.9% of such declared income. Besides, the Scheme provides that a mandatory deposit of not less than 25% of such income shall be made in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 which has separately been notified by the Department of Economic Affairs. The PMKGY has come into force from 17th December, 2016 and shall remain open for declarations up to 31st March, 2017. Further, relevant rules in this regard have also been notified. Section 199G provides that a declaration of income in the form of cash or deposit in an account maintained with a specified entity shall be made by a person competent to verify the return of income under Section 140, to the Principal Commissioner or the Commissioner notified in the Official Gazette for this purpose and shall be in such form and verified in such manner, as may be prescribed. Rule 3 of the Pradhan Mantri Garib Kalyan Yojana Rules, 2016 inter alia provides that the declaration is to be made in Form 1 to be furnished to Principal Commissioner/Commissioner notified under Section 199G(1) either electronically or in print form. In exercise of the powers conferred by Section 199G of the Finance Act, 2016, the Central Government has, vide this Notification, notified the Principal Commissioner or the Commissioner, as the case may be, who exercises the jurisdiction under Section 120, as the Principal Commissioner or the Commissioner for the purposes of declaration filed manually or electronically under electronic verification code under Section 199C(1) of the Finance Act, 2016. Further, in case of declaration filed electronically with digital signature, in addition to the Principal Commissioner or the Commissioner as aforesaid, the Commissioner of Income-tax, Centralised Processing Centre, Bengaluru may also be the specified authority.

2. Substitution of sub-rule (2) in Rule 67 of the Incometax Rules, 1962 w.r.e.f. 01-04-2016 vide the Incometax (36th Amendment) Rules, 2016-Notification No. 122/2016, dated 27-12-2016

The Fourth Schedule to the Income-tax Act, 1961 deals with provisions governing the Recognised Provident Funds (Part A) and Approved Superannuation Funds (Part B). Part A of the Fourth Schedule provides for application, definitions, criteria for according and withdrawal of recognition of the fund, conditions to be satisfied etc. Rule 15(1) (bb) of Part A empowers the CBDT to make rules regulating the investment or deposit of the moneys of a recognised provident fund. Accordingly, Rule 67 deals with the provisions governing the investment of fund moneys. Vide this Notification, Rule 67(2) has been substituted. The amended Rule is deemed to have come into force retrospectively from 01.04.2016. Some of the provisions of the newly substituted subrule (2) are as follows: (i) Earlier maximum percentage to be invested in a particular investment avenue was prescribed but now, minimum and maximum both are prescribed. (ii) The scope of investment avenues available has been widened considerably. (ii) The minimum investment to be made in Government Securities and related investments has now been prescribed at 45% and maximum is 50% instead of 55% earlier. (iii) Investment in Debt instruments and related investments has been prescribed at minimum 35% and maximum 45%. Further, new modes of investment like investment in units of debt mutual fund regulated by SEBI, specified infrastructure related debt instruments etc. have been added. (iv) Investment in units of Liquid Mutual funds regulated by SEBI and specified Term Deposit Receipts of upto 1

year duration of scheduled commercial banks have been added in the category Short-term Debt Instruments and Related Investments. Maximum 5% investment could be made in this category. (v) Minimum 5% upto a maximum of 15% could now be invested in the category Equities and Related Investments. Some new modes of investment avenues added include specified Exchange Traded Funds (ETF)/ Index Funds regulated by SEBI, specified ETFs issued by SEBI and specified Exchange traded derivatives regulated by SEBIs. (vi) A new category called Asset Backed, Trust Structured and Miscellaneous Investments have been provided wherein maximum 5% could be invested. This category includes investment in mortgage based Securities or Residential mortgage based securities, units issued by REITs regulated by SEBI, Asset Backed Securities regulated by SEBI and units of Infrastructure Investment Trusts regulated by SEBI. Aforesaid investments are subject to internal limits provided for the same category but in a different mode/avenue as contained in the various provisos to sub-rule (2). For further details regarding the category wise investment limits and the governing conditions, the detailed notification may be referred.

3. Quoting of PAN in all the existing bank accounts and other measures-Notification No. 2/2017, dated 06-01- 2017 & Press Release dated 08-01-2017

Income-tax Rules have been amended to provide that bank shall obtain and link PAN or Form No. 60(where PAN is not available) in all existing bank accounts (other than Basic Savings Bank Deposit Account) by 28.02.2017, if not already done. In this connection, the RBI, vide circular dated 15.12.2016, has mandated that no withdrawal shall be allowed from the accounts having substantial credit balance/ deposits if PAN or Form No. 60 is not provided in respect of such accounts. Therefore, persons who are having bank account but have not submitted PAN or Form No. 60 are advised to submit the PAN or Form No. 60 to the bank by 28.2.2017. The banks and post offices have also been mandated to submit information in respect of cash deposits from 1.4.2016 to 9.11.2016 in accounts where the cash deposits during the period 9.11.2016 to 30.12.2016 exceeds the specified limits. It has also been provided that person who is required to obtain PAN or Form No.60 shall record the PAN/Form No. 60 in all the documents and quote the same in all the reports submitted to the Income-tax Department

Circulars

1. Deduction of tax at source-Income-tax deduction from salaries under Section 192 of the Income-tax Act, 1961 during the Financial Year 2016-17-Circular No. 01/2017, Dated 02-01-2017

The CBDT has, through this circular, provided the rates for deduction of income-tax from the payment of income chargeable under the head “Salaries” during the financial year 2016-17 and explained certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962, including the broad scheme of TDS from Salaries, persons responsible for deducting tax and their duties, computation of income under the head “Salaries” etc. The detailed circulars can be downloaded from the link below: http://www.incometaxindia.gov.in/ Pages/communications/circulars.aspx

CASE LAWS

DIRECT TAX

1. LD/65/91 Aravali Infrapower Ltd. vs. Deputy Commissioner of Income Tax 1st December, 2016

   Section 147: Income escaping assessment Section 148: Issue of notice where income has escaped assessment

   Reassessment proceedings u/s 147/148 upheld, on account of assessee's failure to substantiate genuineness of transactions relating to receipt of share capital; "Primary materials" required to be submitted by the assessee were not merely PAN or other registration identities of the share applicants and it also extended to Bank details of applicants and their creditworthiness

   A notice u/s 148 was issued on account of assessee's failure to substantiate genuineness of transactions relating to receipt of share capital. The assessee was aggrieved by this notice issued by the Assessing Officer (AO) and therefore filed a writ petition before the Delhi HC. The assessee submitted that reassessment notice just proposed to 'look-in' to the original assessment. From the reassessment notice, HC observed that the information was received by the revenue with respect to bogus entries made, resulting in a survey and impounding of certain documents. On this basis, certain inferences were sought to be drawn which amounted to tangible material. HC observed that the question was whether scrutiny by the AO at the time the original assessment was completed into the self-same matters precluded it from seeking recourse to Sections 147/148. HC observed that the requirement in such cases, whether the AO is prima facie not satisfied about the genuineness of the transaction (Section 68), is not merely to establish the genuineness of the identity but also genuineness of the transaction itself and the creditworthiness of the investor. HC remarked that the 'primary materials' required to be submitted by the assessee were not merely PAN numbers or other registration identities of the share applicants, but they also extended to details vis-à-vis other documents such as bank accounts etc., of the share applicants– that the assessee was in possession of. HC observed that there was not a complete disclosure by the assessee. HC further observed that ITR form disclosing returns raised more questions than satisfy the queries. HC observed that the ITRs reflected a very paltry income returned by the share applicants while claiming that they have invested amounts ranging over R8 crore. Thus, the Delhi HC upheld the issuance of notice u/s 148 and dismissed the writ.

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