Roots Institute of Financial Markets

RIFM

Study Notes

Tax Planning and Estate Planning

Assessment Year 2010-11

Forward

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Tax Planning and Estate Planning

Exam Pattern

Test Duration	120 Min.
No. of Questions 1Marks — 40 2 Marks — 20 4 Marks — 15	75
Maximum Marks	140
Pass %	60
Passing Marks	82
Negative Marking	Nil

Grade System

Grade	Score(percentage)
A	Equal and above 80%
B	Equal and above 70% and less than 80%
C	Equal and above 60% and less than 70%
FAIL	Less than 60%

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Curriculum
Tax Planning & Estate Planning

COURSE TITLE: Tax Planning & Estate Planning

COURSE DESCRIPTION: This module would cover the knowledge requirements relating to tax planning and estate planning for a CFP professional.

LEARNING OBJECTIVES: At the end of this module, a student should be able to:

1. Evaluate the appropriateness of tax strategies for individual family situations.
2. Integrate tax planning into the six step Financial Planning process.
3. To understand the universal nature of estate planning needs.
4. To recognize the high level of ignorance regarding estate planning among the general population as well as students.
5. To comprehend the fundamental objective of greater efficiency in wealth transfer.

DETAILED CLASS OUTLINE:

Tax Planning Considerations

1. Ethical considerations in tax planning
    a. Privileged communications
    b. Dangers of tax evasion
2. Tax compliance matters
    a. Filing tax returns and documentation
    b. Advance tax
    c. The audit process
    d. Refund of income tax
    e. Judicial review
3. Taxation terminology
    a. Inclusions
    b. Exclusions
    c. Deductions

Tax Computations

4. Tax calculations and special rules

a. Gross income
b. Adjusted gross income
c. Itemized deductions
d. Taxable income
e. Tax liability

f. Clubbing of Income

5. Tax characteristics of business forms

a. Sole proprietorship
b. General partnership
c. Limited liability companies
d. Trusts
e. Foundations/exempt organizations
f. Professional associations/corporations
g. Co-operative Societies
h. Others

6. Non Resident Indians (NRIs)

a. Residential status of individuals
b. Types of accounts for non-residents
c. Investment opportunities for non-residents
d. Tax implication for non-residents

7. Heads of income

a. Salaries
b. Income from other sources
c. Capital gains
d. Business/ profession
e. House property
f. Interest on government securities

8. Capital Gains tax rules

a. Determination of gain or loss
b. Characterization of gain or loss
c. Netting rules
d. Indexation benefits
e. Capital loss limitations

Tax Planning Strategies

9. Tax relief

a. Exemptions

b. Deductions
c. Rebates

10. Non taxable transactions (e.g., gifts, estate)

11. Tax management techniques

a. Deferral and acceleration
b. Maximizations of exclusions and credits
c. Managing loss limitations
d. Capital asset transactions
e. Deductible expenditures of individuals and business forms

12. Interest and penalty taxes and other charges

a. Failure to file tax return or to pay tax
b. Preparer penalties
c. Accuracy related penalties
d. Fraud/concealment penalties

Estate Planning

13. Features of trust

a. Classification of trusts
b. Characteristics of selected trust provisions
c. Rule against perpetuities

14. Taxation of trust

A. Income tax implications of trusts

a. Exemptions
b. Simple and complex trusts
c. Distributable net income
d. Tax implications of trusts
e. Recommendations and justifications of the most appropriate trust
f. Tax issue on retirement plans at death

15. Property documentation

a. Sale letter/ power of attorney

b. Freehold
c. Mutation
d. Will
e. Succession

Tax Planning and Estate Planning

Assessment Year 2010-11

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CHAPTER

1

ETHICAL CONSIDERATIONS IN TAX PLANNING

A. Legal meaning of privileged communication

An exchange of information between two individuals in a confidential relationship.

A privileged communication is a private statement that must be kept in confidence by the recipient for the benefit of the communicator. Even if it is relevant to a case, a privileged communication cannot be used as evidence in court. Privileged communications are controversial because they exclude relevant facts from the truth-seeking process.

Privileged communications exist because society values the privacy or purpose of certain relationships. The established privileged communications are those between wife and husband, psychotherapist and patient, physician and patient, attorney and client.

If patients were unable to keep secret communications with psychotherapists or physicians relating to treatment or diagnosis, they might give doctors incomplete information. If doctors received incomplete information, they might be unable to administer health care to the patient, which is the very purpose of the doctor-patient relationship.

The Attorney-Client Privilege exists for roughly the same reason as the physician-patient privilege. In order to secure effective representation Privileged Communications are not always absolute. For instance, a criminal defendant may be able to access communications between an accuser and the accuser's doctor if the defendant's interest in the disclosure, in the opinion of the court, outweighs the interest in confidentiality. The court will consider such a request only if the defendant can establish a reasonable probability that important information exists in the communication that will be relevant to the case.

Nature of the Privilege

When the communication involves an attorney, the communication between an attorney and client is protected from compelled disclosure in a controversy when the communication:

(1.) is made in confidence (with an expectation of privilege);

(2.) occurs in the course of soliciting advice from an attorney in his or her capacity as such (i.e., providing legal advice); and

(3.) is relevant to the advice sought.

B. DANGERS OF TAX EVASIONS:

Tax Evasion

Tax Evasion entails the efforts that are made by trusts, individuals, firms, and various other entities to avoid paying taxes by illegal and unfair means. The Evasion of Tax usually takes place when taxpayers deliberately hide their incomes from the tax authorities in order to reduce their liability of tax.

Evasion of Tax takes place when the people report dishonest tax that includes declaring less gains, profits, or income than what has been actually earned and they even go for overstating deductions.

The level of Tax Evasion also depends on the chartered accountants and tax lawyers who help companies, firms, and individuals evade paying taxes. Tax Evasion is a crime in all major countries and the guilty parties are subjected to imprisonment and fines. The various methods of Tax Evasion are:

- Smuggling
- Customs duty evasion
- Value added tax evasion
- Illegal income tax evasion

Smuggling is a method of Tax Evasion, following which people export or import foreign goods through routes that are unauthorized.

Customs duty evasion is another method of Tax Evasion under which the importers evade paying customs duty by false declarations of the description of the product and quantity.

value added tax evasion under which the producers who collect from the consumers the value added tax evade paying taxes by showing less sales amount.

Many people earn money by means that are illegal such as theft, gambling, and drug trafficking and so they do not pay tax on this amount and thus this is another method of Tax. Evasion that is called **illegal income tax evasion.**

Tax Evasion results in the loss of revenue for the government and so ideally, no one should be indulging in it and the Indian government must also take steps in order to stop Evasion of Tax by the people.

Consequences of Evading Tax and Not Filing a Return

Every year, as July 31 approaches, we see large advertisements issued by the Income Tax Department of India, advising citizens to pay income tax and file their tax return to ensure "peace of mind." Indeed, by not complying with the law, you invite possible action from the authorities. The cost of complying with the law is always less than the price you have to pay for not doing so. Let us take a closer look at the two main types of non-compliance in tax matters.

Non-Payment or short payment of tax that is due, and failure to the file one's income tax return- these are two violations that attract stern action from authorities. Other types of violations are violations are less severe.

It's a human instinct to save money

While tax evasion is punishable by law, the concept of tax planning has opened up career avenues for thousands of educated youth, grooming them into financial consultants, creating employment for them and using them to spread awareness among taxpayers about managing money in a better way.

Failure to File Your Income Tax Return

An income tax return is a statement that tells the authorities how much you have earned during the previous Financial Year, how much of your money you invested, what your expenditure was and how much tax you need to pay based on your taxable income. It also gives them details

about these that are relevant to your tax obligations.

If you don't file your return, the tax authorities will not get a picture of these details. It's your annual financial statement that you are obliged to share with the government because you earn a certain level of income in India.

Not paying the taxes due or not filing your return can lead to punitive action from authorities. Let's look at the types of action that can be initiated against defaulters.

Types of Action

There are basically 3 types of action that can be initiated against a person who has violated provisions of tax laws:

Charging interest: If you have not paid taxes by the due date, interest at the rate of 1% per month or part of the month is charged. Interest is more of a reactive way of taking action, in that the defaulter is punished after he has failed to do the needful. He may not mind parting with some money as interest so long as he gets some time to organize his finances and then pay the tax due.

Imposing a penalty: A penalty is like a fine and tends to tarnish one's image and track record. So it acts as a deterrent to one who thinks he can relax and avoid filing a return or paying taxes or defaulting in some other way.

Prosecution: If you were charged interest by the tax authorities because you did not pay taxes in time, none of your contacts would probably know it. Very few might come to know if you were assessed a penalty. But 'Jail'? Yet if you failed to pay income tax, you could land up behind bars for a period ranging from 6 months to 7 years, depending on the amount of tax evaded. This is in addition to interest, penalty and any fine, if levied.

Why Take Punitive Measures?

They say that in any society, self-censorship is the best form of censorship. Similarly, obeying the law of the land pro actively is one of the surest indicators of societal progress. It shows that the citizens are educated, aware, empathic and responsible. But if you fail to obey the law (as in tax evasion, for instance), the governing authority has to step in, and put in place a system to recover the loss suffered and at the same time discourage offenders in particular and the public in general from repeating instances of unlawful behavior.

Let us conclude with this funny but thought-provoking point made by a former U.S. Senator

Elihu Root in a 1913 debate:

"I guess you will have to go to jail, if that is the result of not understanding the Income Tax Law I shall meet you there."

CHAPTER

2

TAX COMPLIANCE MATTERS

A.Filing tax returns and documentation

ASSESSMENT PROCEDURE

RETURN OF INCOME SEC.139(1)

Every person

a) Being a company or firm or
b) Being a person other than a company or a firm if gross total income (before deduction u/c VI-A) exceeds
   The maximum amount not chargeable to tax
   - Shall file return
   - On or before due date
   - In the prescribed form
   - Verified in the prescribed form
   - Verified in the prescribed manner and
   - Setting forthsuch particulars as may be prescribed.

DUE DATES

(1)			DUE DATES
	(i)	For company	30th September of assessment year
	(ii)	A person other than company if the accounts are required to be audited under this act or under any other law	
	(iii)	Where the asseesse is a workingpartner in a firm whose account are required to be audited under any law.	
(2)	In any other case		31st july of assessment year

BELATED RETURN SEC 139(4)

If return is not furnished within time allowed u/s 139(1) or 142(1).
It can be filled as Belated Return
(i) Within one year from the end of relevant A/Y or
(ii) Before completion of assessment
Whichever is earlier.

REVISED RETURN SEC 139(5)

- IF THE ASSESSEE discovers any omission or wrong statement

- In return filled u/s 139 u/s or 139(1) or 142(1)
- He may furnish a revised return
- Within one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier

Note: A return file u/s 139 (u) i.e. belated return cannot be revised.

PAN SEC 139A

In the following cases an application for allotment of PAN has to be made:-

i) The return has to be filled u/s 139(4A),

ii) If the total income of any person during any previous year exceeded maximum amount not chargeable to tax

iii) If total sales or gross receipts are more than Rs. 5 lacs in any previous year.

iv) Being an employer ,who is required to furnish a return of fringe benefits.

However any other person may also apply for allotment of PAN.

Time limit for making application

In case of i) and iii) above	On or before the end of financial year.
In case of ii) above	On or before 31st may of the ay relevant to the previous year whose income exceeded the exemption limit.

RETURN FORMS

PARTICULARS	FORM NO.
For individual having income from salary/pension/family pension & interest	**SARAL –II (ITR-1)**
For individual and HUF not having income from business & profession	**ITR-2**
For individual and HUF being partners in firms and not carrying out business & profession under any proprietorship.	**ITR-3**
For individual and HUF having income from a proprietary business & profession	**ITR-4**
For firm, AOP & BOI	**ITR-5**
For companies other than companies claiming exemption u/s11	**ITR-6**
For person including companies required to furnish return u/s 139(4A),	**ITR-7**

139(4B), 139(4C), 139(4D)	
Return for fringe benefits (up to assessment year 2009-10)	**ITR-8**
Where the data of the return of income in forms ITR-1 , ITR-2, ITR-3, ITR-4, ITR-5, ITYR-6 & ITR-8 is transmitted electronically without digital signature.	**ITR-V**

Some DO's :

1. **Identify Sources of Income**
   Firstly, you need to identify your sources of income under different heads. Under the I-T Act, all incomes earned by persons are classified into five different heads

2. **Refer to the Basic Documents**
   Form No 16 (issued by the employer): This shows the income from salary and tax deducted by the employer on the same.

   Summary of all bank accounts during the year: This summary gives an idea about the income earned during the year, investments made and other expenses. This will ensure that neither any income nor any eligible deductions are left out in the return.

   Details of tax paid during the year: This is required in case the individual has paid any advance tax during the year.

   Income of a minor child: This is to be included (except in few cases) even if it is a small amount, e.g. bank interest.

3. **Compute Your Tax Liability**
   Having identified your sources of income and after referring to the basic documents, you need to compute your tax liability for the year

4. **Chose the Right Form**
   Once the details in respect of income and expenses are collected, you should check which tax return form is applicable to you.

5. **Fill in Correct Personal Details**
   Ensure that you fill in correct personal details in the form meant for you, especially your name, address, bank account details and PAN number.

6. **Claim all Deductions**
   Ensure that you have, under various sections of the I-T Act, claimed all the deductions that you are eligible for. For example,

   a. Under Sec 80 C - For investments made like PF, PPF, NSC, school tuition fees of children, insurance premium, investments in specified mutual funds etc.

b. Under Sec 80 G - Donations made to charitable organizations

c. Housing deduction for interest on housing loan etc.

7. **Information of Specified Investments/ Exempt Income**
You also have to fill in information in respect of specified investments, as per prescribed limits, such as:
Property bought or sold in excess of Rs 30 lakh
Mutual funds, in excess of Rs 2 lakh
Cash deposits in excess of Rs 10 lakh
Credit card payments in excess of Rs 2 lakh
Bonds etc in excess of Rs 5 lakh

It is also important to know that certain income that is exempt (i.e. income which is not taxable) is also required to be disclosed in the I-T return form. For example, dividend received and receipt of PF balance, among others. Not disclosing these incomes may land you in trouble also.

8. **Claiming a Loss**
If you are planning to claim a loss in the income-tax return, which you would like to carry forward, the same can be done, only if the return is filed by the due date

9. **File by Due Date & in the right Tax Jurisdiction**

After the tax return is filled in, the next step is to file it appropriately, by the due date.

9. **Maintain Documents For Future Reference**
The documents based on which the return is prepared may be requested at a later stage by the Income Tax Officer to check the correctness of the claims made. Failure to submit details may lead to disallowance of the deduction claimed, resulting in an increase in the tax liability or a decrease in refund.

CHAPTER

6

NON RESIDENT INDIANS (NRIs)

A.Residential status of individuals

Section 6

A. Individual

(1) **Resident** in India: An individual is resident in India if he satisfies any one of the basic conditions.

Basic conditions: Individual is in India

(i) For 182 days or more during the previous year or
(ii) For 60 days or more during the previous year and for 365 days or more during 4 years immediately preceding the previous year

However in (ii) above the period of 60 days shall be substituted by 182 days in only following cases:

(a) The Indian citizen who leaves India during the previous year for employment outside India or as a member of the crew of an India.
(b) The Indian citizen or person of Indian origin who visits India during the previous years.

A person is deemed to be of Indian origin if he or any of his parents or grand-parents were born in undivided India. Grand Parents include both maternal and paternal grand parents.

Notes:

1. Residential status is determined for every year separately.
2. There is no condition that individual should stay regularly or at one place in India.
3. India includes territorial waters of India; therefore stay in territorial waters shall be included
4. Period of 24 hours is taken to be one day
5. If exact time of arrival or departure is not known then the day of arrival and day of departure shall be taken as complete days

(1) Resident and ordinarily resident- If he satisfies one of the basic conditions and both additional conditions.
(2) Resident but not ordinarily resident- If he satisfies one of the basic conditions but not both the additional conditions.

Additional conditions:

(i) He has been resident in India for at least 2 out of 10 previous years immediately preceding the relevant p/y.
(ii) He has been in India for 730 days or more during 7 years immediately preceding the relevant p/y.

(3) Non-Resident- If satisfies none of the basic conditions.

Who is Indian Citizen ?

Who is person of Indian origin ?

Purpose of Visit in india ?

Bank Accounts

NRIs/PIOs/OCBs/ are permitted to open bank accounts in India out of funds remitted from abroad, foreign exchange brought in from abroad or out of funds legitimately due to them in India, with authorised dealer.

Such accounts can be opened with banks specially authorised by the Reserve Bank in its behalf.

Five types of NRI accounts

Non-Resident (External) Rupee Accounts (NRE Accounts)

NRIs, PIOs, OCBs are eligible to open NRE Accounts. These are rupee denominated accounts. Accounts can be in the form of savings, current, recurring or fixed deposit accounts. Accounts can be opened by remittance of funds in free foreign exchange. Foreign exchange brought in legally, repatriable incomes of the account holder, etc. can be credited to the account. Joint operation with other NRIs/PIOs is permitted. Power of attorney can be granted to residents for operation of accounts.

The deposits can be used for all legitimate purposes. The balance in the account is freely reportable. Interest lying to the credit of NRE accounts is exempt from tax in the hands of the NRI.

Funds held in NRE accounts may be freely transferred to FCNR accounts of the same account holder. Likewise, funds held in FCNR accounts may be transferred to NRE accounts of the same account holders.

Ordinary Non-Resident Rupee Accounts (NRO Accounts)

These are Rupee denominated non-reportable accounts and can be in the form of savings, current recurring or fixed deposits. These accounts can be opened jointly with residents in India. When an Indian National/PIO resident in India leaves for taking up employment, etc. outside the country, his bank account in India gets designated as NRO account.

The deposits can be used to make all legitimate payments in rupees. Interest income, from NRO accounts is taxable. Interest income, net of taxes is reportable.

Non-resident (Non-reportable) Rupee Deposit Accounts (NRNR Accounts)

NRIs/PIOs/OCBs, other non-resident Individuals/entities are permitted to open these accounts. Accounts can be opened by transfer of freely convertible foreign currency funds from abroad, or from NRE/FCNR accounts. Deposits can be held jointly with a resident. Deposits can be for a period from 6 months to 3 years, and can be renewed further. Accounts may also be opened by transfer of funds from the existing NRE/FCNR accounts of the non-resident accounts holders.

The principal is non-reportable; interest can be repatriated. There is no income tax on the interest.

Non-Resident (Special) Rupee Accounts with banks in India

NRIs/PIOs presently have the facility of maintaining bank accounts and undertaking financial transactions in India subject to certain exchange control regulations.

In order to simplify the procedures and to provide greater freedom to NRIs/PIOs for putting through financial transactions in India, NRIs and PIOs are now permitted to open bank accounts in India, which will be at par with rupee accounts, maintained by residents. They can now open Non-Resident (Special) Rupee Accounts with banks in India which will have the same facilities and restrictions as are applicable to rupee accounts maintained in India by residents relating to repatriation of funds held in these accounts and/or income/interest earned on them. The scheme, which has become effective from April 15, 1999 provides that the procedure for opening such accounts is the same as that of domestic accounts of resident individuals.

The existing facilities for NRIs/PIOs to maintain and operate Non-resident (Ordinary) i.e., NRO account, Non-Resident, i.e., FCNR account also continues. The repatriation facilities available under these accounts will continue as before.

Foreign Currency (Non –Resident) Accounts (Banks) (FCNR (B) Accounts)

NRIs/PIOs/OCBs are permitted to open such accounts in US Dollars, Sterling Pounds, Deutsche Marks, Japanese Yen and Euro. The account may be opened only in the form of term deposit for any of the three maturity periods viz; (a) one year and above but less than two years (ii) two years and above but leas than three years and (iii) three years only.

Interest income is tax free in the hands of NRI until he maintains a non-resident status or a resident but not ordinarily resident status under the Indian tax laws.

FCNR (B) accounts can also be UTILIZED for local disbursements including payment for exports from India, repatriation of funds abroad and for making investments in India, as per foreign investment guidelines.

General Permissions

Reserve Bank has granted general permission to NRIs/PIOs, for undertaking direct investments in Indian companies under the Automatic Route, purchase of shares under Portfolio Investment Scheme, investment in companies and proprietorship/partnership concerns on non-repatriation

basis and for remittances of current income. NRIs/PIOs do not have to seek specific permission for approved activities under these schemes.

The Reserve Bank of India has now further simplified financial transactions by NRIs/PIOs by granting general permissions to:

To resident individuals, partnership/proprietorship concerns to avail of interest bearing rupee loans from NRIs/PIOs out of funds remitted by them from abroad or out of funds held in their bank accounts in India, on non-repatriation basis, subject to certain conditions one of them being that the rate of interest on such loans should not exceed Bank Rate plus two percentage points.

NRIs/PIOs to transfer by way of gift shares held by them in Indian companies and to transfer by way of gift immovable property held by them in India subject to compliance with other applicable rules/regulations including the provisions of Foreign Contribution Regulations Act, 1976 by the charitable trust/organisation concerned.

All domestic public/private sector mutual funds for issue of Units to NRIs/PIOs/OCBs on both repatriation as well as non-repatriation basis.

NRIs/PIOs/OCBs to place deposits with Indian firms, on non-repatriation basis and with Indian companies including Non-banking financial companies on both repatriation and non-repatriation basis.

NRIs/PIOs/OCBs for sale of shares acquired under direct investment schemes on stock exchanges in India.

NRIs/PIOs/OCBs have been granted General Permission to invest in Government Securities and Treasury Bills.

Taking into account the facilities that are already available, and the above new measures, NRIs/PIOs will not have to seek specific permission of the Reserve Bank for a whole variety of approved financial/investment transactions. This should considerably reduce paper work and time taken for undertaking such transactions.

CHAPTER

7

HEADS OF INCOME

Income from Salaries

Section[15 to 17]

Important concepts

Employer & employee relationship

- For the income to be taxable under this head, relation of employer and employee must exit between the payer and payee.
- Any payment received by an individual from a person other than his employer cannot `be termed as salary.
- Examples:
    - ✓ Remuneration received by a lecture from his college is salary but remuneration received from another university is not salary. Hence it will be taxable under the head "Income from other sources", not under the head "salaries". (E.g. remuneration for setting question paper of another university).
    - ✓ If director is working in a company in the capacity of employee, then commission or director's sitting fee or any other amount received by him from that company should be taxable as a "Salary income", otherwise as a "Income from other sources ",

1. MLAs or MPs are not treated as an employee of the Government; therefore remuneration received by these people is not taxable under the head "Salaries", but taxable under the head "Income from other sources",
2. Salary received by a partner from a partnership firm is taxable under the head "Business and profession".

Salary income must be real and not fictitious

There should be an intention to pay and receive salary. Likewise, there should be intention to render services.

Surrender of salary

- Salaries are taxable on due basis and once accrued to an employee, its subsequent waiver by the employee does not relieve him from tax liability.

- But if an employee surrenders his salary to Central Government u/s 2 of Voluntary Surrender of Salaries Act, 1961, the salary so surrender will be excluded while computing his taxable income.

Tax- free salary
Amount of tax paid by the employer on behalf pf the employee shall be included in the taxable income of the employee.

Arrear of salary
Arrear will be taxed in the previous year in which these are paid or allowed to employee (i.e. receipts basis).

Salary due or received in foreign currency
If the salary is earned in foreign currency, it will be converted into rupees.

- Conversion rate - T.T. buying rate on specified date.
- Specified date - Last date of the month immediately Preceding the month in which the salary is Due /paid in advance /paid in arrears.

How to compute salary in the grade system
Example

If any employee joins the service on 1-5-97 and is placed in the grade of Rs. 32,500 – 500 – 38,000 – 800 – 44,400.

This means that –

- He will get a basic salary of Rs. 32,500 w.e.f. 1-5-97
- He will get annual increment of Rs. 500 w.e.f. 1-5-98 and on wards till his salary reaches Rs. 38,000.
- Thereafter, he will get on annual incremental of Rs. 800 till his salary reaches 44,400.
- No further increment will be given thereafter till he is placed in other grade.

Basis of charge (Sec.15)

Salary is chargeable either on

1. Due basis ; or
2. Receipt basis

(Whichever is earlier)

1. If salary is due at the end of the month - in this case, salary from April to March is taxable

2. If salary is due on 1st day of the next - In the case, salary from march to feb. Month is taxable.

Note – in case of Government employee, the salary become due on the 1st day of the next month whereas in case of none – Government employee (including bank employees.), the salary become due on the last day of the same month.

Method of accounting

Method of accounting is irrelevant. It cannot very the basis of charge fixed by sec.15.

Salary earned & received outside India.

Since salary earned and received outside India is not taxable in the hands of NOR & NR. Therefore perquisites received outside India for rendering services outside India is not chargeable to tax.

Meaning of salary [Sec. 17(1)]

Salary includes: -

1. Wages
2. Any annuity or pension;
3. Any gratuity;
4. Any fees, commission or perquisites or profit in lieu of or in addition to any salary /wages;
5. Any advance of salary;
6. Leave encashment;
7. Employer contribution to Recognized provident fund (RPF).
8. Interest credited in RPF A/c
9. Transferred balance from URPF to RPF
10. The contribution made by the Central Government to the account of an employee under Pension Scheme referred to in Sec 80CCD.

Performa of computing taxable income

	Rs.	Rs.
Basic salary		xxx
Dearness allowance		xxx
Bonus		xxx
Commission		xxx
Pension		xxx
Employer's contribution in excess of 12% to RPF.		xxx
Interest in excess of 9.5 % on RPF		xxx
Taxable allowance		xxx
Taxable perquisites (after proper valuation)		xxx
Taxable part of gratuity		xxx
Taxable part of computation of pension		xxx
Lump sum received from URPF to the extant employer's contribution and interest thereon		xxx
Taxable part of compensation received		
Gross salary		**xxxx**
Less : Deduction u/s 16		
(i) Entertainment allowance	xxx	
(ii) Employment tax	xxx	
Taxable salary /net salary		**xxxx**

CHAPTER

8

CAPITAL GAINS TAX RULES

Basis of charge sec 45(1)

Any profits or capital gain arising from the transfer

- Of a capital asset
- Shall be chargeable to income tax under the head capital gains and
- Shall be deemed to be the income tax of p/y in which transfer took place
- Unless such capital gain is exempt u/s 54, 54B,54D, etc.

❖ BASICS OF THIS HEAD HAVE BEEN DISCUSSED EARLIER

Capital Gain on transfer of Bonus Shares- Capital gain on transfer of bonus shares shall be calculated as follows:

Different Situations	Special Provisions
Cost of acquisition of bonus shares allotted before April 1, 1981	Fair Market Value on April 1, 1981 is taken as cost.
Cost of acquisition of bonus shares allotted on or after April 1, 1981	Cost of acquisition is taken as zero.
Period of holding bonus shares	The period of holding shall be determined from the date of allotment of bonus shares (and not from the date of acquisition of original shares

Note: The above rules are also applicable in respect of shares, securities, debentures, bonds, units allotted without any payment on the basis of holding of any other financial assets.

Capital gain on transfer of rights shares- Cost of acquisition in different situations is as follows:

Different Situations	Cost of acquisition
Original Shares (on the basis on which the taxpayer becomes entitled to right shares)	Amount actually paid for acquiring shares.
Right entitlement (which is renounced by the assessee in favor of a person)	Nil (see Note)
Right shares acquired by the taxpayer by exercising his rights entitlement.	Amount actually paid by the taxpayer for acquiring asset.
Right shares purchased by the person in whose favor right entitlement has been renounced.	Purchase price paid to renouncer to rights entitlement plus amount paid to the company which has allotted the rights shares.

Note: The amount realized by the original shareholder by selling his rights entitlement will be short term capital gains in his hands (as the cost is taken as nil).the period of holding of the right entitlement will be reckoned from the date of offer made by the company to the date of renouncement.

Short-term/Long-term Capital gains-How Charged to tax

Tax will be calculated as follows:

Gross total Income (excluding income given in columns (2) and (3))	Long term capital gains taxable under section 112	Short term capital gain taxable under section 111A
(1)	(2)	(3
Step A1-find out gross total income from all sources excluding income given in step B1 and step C1	Step B1-Find out long-term capital gain	Step C1-Find out short-term capital gain taxable under section 111A
Step A2-deduct, deduction permissible under section 80C to 80U (A2 cannot exceed A1)	Step B2-find out income tax on long term capital gain at the rate specified by section 112	Step C2-Find out income tax short term capital gain at the rate specified by section 111A.
Step A3-The balancing amount is “other net income”.		
Step A4-find out income tax on “other net income”.		

Step D-Add the tax computed at steps A4, B2 and C2. It is income-tax on net income (income tax on A3+B1+C1).
Step E-Add surcharge*on income tax computed under step D.
Step F- Find out D+E
Step G-Add education cess*at the rate of 2% of step F.
Step H-Add secondary and higher education cess*at the rate of 1%of step F.
Step I-Tax liability is equal to F+G+H

CHAPTER

9

TAX RELIEF

Tax Free Incomes

The following are 14 important items of income, which are fully exempt from income tax and which a resident individual Indian assessee can use with profit for the purpose of tax planning.

1. Agricultural income

Under the provisions of Section 10(1) of the Income Tax Act, agricultural income is fully exempt from income tax.

However, for individuals or HUFs when agricultural income is in excess of Rs 5,000, it is aggregated with the total income for the purposes of computing tax on the total income in a manner which results into "no" tax on agricultural income but an increased income tax on the other income.

2. Receipts from Hindu Undivided Family (HUF)

Any sum received by an individual as a member of a Hindu Undivided Family, where the said sum has been paid out of the income of the family, or, in the case of an impartible estate, where such sum has been paid out of the income of the estate belonging to the family, is completely exempt from income tax in the hands of an individual member of the family under Section 10(2).

3. Share from a partnership firm

Under the provisions of Section 10(2A), in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm is completely exempt from income tax since AY 1993-94.

For this purpose, the share of a partner in the total income of a firm separately assessed as such would be an amount which bears to the total income of the firm the same share as the amount of the share in the profits of the firm in accordance with the partnership deed bears to such profits.

4. Allowance for foreign service

Any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India, rendering service outside India, are completely exempt from tax under Section 10(7). This provision can be taken advantage of by the citizens of India who are in government service so that they can accumulate tax-free perquisites and allowances received outside India.

5. Commutation of pension

The entire amount of any payment in commutation of pension by a government servant or any payment in commutation of pension from LIC pension fund is exempt from income tax under Section 10(10A) of IT Act.

However, in respect of private sector employees, only the following amount of commuted pension is exempt, namely:

(a) Where the employee received any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive; and (b) In any other case, the commuted value of half of such pension.

It may be noted here that the monthly pension receivable by a pensioner is liable to full income tax like any other item of salary or income and no standard deduction is now available in respect of pension received by a tax payer.

6. Life insurance receipts

Under Section 10(10D), any sum received under a Life Insurance Policy (LIP), including the sum allocated by way of bonus on such policy, other than (1) u/s 80DDA or (2)under a Keyman Insurance Policy, or(3) under an insurance policy issued on or after 1.4.2003 in respect of which the premium payable for any of the years during the term of the policy exceeds 20 per cent of the actual capital sum assured, is fully exempt from tax.

However, all moneys received on death of the insured are fully exempt from tax Thus, generally moneys received from life insurance policies whether from the Life Insurance Corporation or any other private insurance company would be exempt from income tax.

7. Payment received from provident funds

Under the provisions of Sections 10(11), (12) and (13) any payment from a government or recognised provident fund (PF) or approved superannuation fund, or PPF is exempt from income tax.

8. Certain types of interest payment

There are certain types of interest payments which are fully exempt from income tax u/s 10 (15). These are described below:

(i) Income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(iia) In the case of an individual or a Hindu Undivided Family, interest on such capital investment bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf (i.e. 7 Capital Investment Bonds);

(iib) In the case of an individual or a Hindu Undivided Family, interest on such Relief Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf (i.e., 9 per cent or 8.5 per cent or 8 per cent or 7 per cent Relief Bonds); (iid) Interest on NRI bonds;

(iiia) Interest on securities held by the issue department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

(iiib) Interest payable to any bank incorporated in a country outside India and authorised to perform central banking functions in that country on any deposits made by it, with the approval of the Reserve Bank of India or with any scheduled bank;

(iv) Certain interest payable by Government or a local authority on moneys borrowed by it, including hedging charges on currency fluctuation (from the AY 2000-2001), etc.;

(v) Interest on Gold Deposit Bonds;

(vi) Interest on certain deposits are: Bhopal Gas victims;

(vii) Interest on bonds of local authorities as notified,

(viii) Interest on 6.5 per cent Savings Bonds [Exempt] issued by the RBI, and

(ix) Stipulated new tax free bonds to be notified from time to time.

9. Scholarship and awards, etc

Any kind of scholarship granted to meet the cost of education is exempt from tax under Section 10(16). Similarly, certain awards and rewards, etc. are completely exempt from tax under Section 10(17A), for example, Lakhotia Puraskar of Rs 100,000 awarded to the best Rajasthani author, every year under Notification No. 199/28/95-IT (A-I) dated 22-4-1996.

Any daily allowance received by a Member of Parliament or by an MLA or any member of any Committee of Parliament or State legislature is also exempt from tax under Section 10(17).

10. Gallantry awards, etc. -- Section 10(18)

The Finance Act, 1999 has, with effect from AY 2000-2001, provided for complete exemption for the pension and family pension of Gallantry Award Winners like Paramvir Chakra, Mahavir Chakra, and Vir Chakra and also other Gallantry Award winners notified by the Central Government.

11. Dividends on shares and units -- Section 10(34) & (35)

With effect from the Assessment Year 2004-05, the dividend income and income of units of mutual funds received by the assessee completely exempt from income tax.

12. Long-term capital gains of transfer of securities -- Section 10(38)

With effect from FY 2004-05, any income arising to a taxpayer on account of sale of long-term capital asset being securities is completely outside the purview of tax liability especially when the transaction has been subjected to Securities Transaction Tax (STT). Thus, if the shares of any company listed in the stock exchange are sold after holding it for a minimum period of one year then there will be no liability to payment of capital gains. This provision would even apply for the old shares which are held by an assessee and are sold after the Finance (No.2) Act, 2004 came into force.

14. Tax exemption regarding reverse mortgage scheme -- sections 2(47) and 47(x)

Any transfer of a capital asset in a transaction of reverse mortgage for senior citizens under a scheme made and notified by the Central Government would not be regarded as a transfer and therefore would not attract capital gains tax. The loan amount would also be exempt from tax. These amendments by the Finance Bill, 2008 apply from FY 2007-08 onwards.

CHAPTER

11

TAX MANAGEMENT TECHNIQUES

Set off & Carry forward of Losses

The Process of setting off losses and their carry forward may be covered in the following steps:

Step 1- Inter-source adjustment under the same head of income

Step 2-Inter-head adjustment in the same assessment year

(Step 2 is applied only if a loss cannot be set off, fully or partly under step 1)

Step 3- Carry forward of loss (step 3 is applied only if a loss cannot be set off, fully or partly under step 1 and 2)

Set off of loss under the same head of Income

If the net result for any assessment year in respect of any head of income is loss, the assessee is entitled to have the amount of such loss set off against the income from any other source under the same head of income. To the aforesaid rule, the following are the exceptions:

- Loss from speculation business can be set off only against the profit in a speculation business.
- Long term capital loss- From the assessment year 2003-4, long term capital loss can be set off only against long-term capital gain.
- Loss from the activity of owning and maintaining race horses-Loss incurred in the business of owning and maintaining race horses cannot be set off against income, if any from any other source except income from such business.
- Loss cannot be set off against winnings from lotteries, crossword puzzles, etc. By virtue of sections 58(4) a loss cannot be set off against winnings from lotteries, crossword puzzles, races, card games other games of any sort or from gambling or betting of any form or nature.

Barring the aforesaid four cases any other loss can be set off against any other Income within the same head of income. For Instance-

(A)Loss from a house properly can be set off against income from another house properly.

(b) Loss from a non-speculation business can be set off against income from speculation or non-speculation business.

(c) Short term capital loss can be set off against any capital gain (whether long term or short term).

(d) Under the head “Income from other sources” Loss from an activity (other than the activity of owning and maintaining race horse) can be set off against any Income but other than income from winnings from lotteries, crossword puzzle, Etc.

Carry forward of loss

If a loss cannot be setoff either under the same head or under the different head because of absence of inadequacy of income of the same year, it may be carried forward and set off against the income of the subsequent year. The following losses can be carried forward :

1. Carry forward and set off of business loss other than speculation loss

- The loss can be carried forward and set off against the profits of any business of profession in a subsequent year (not necessarily the same business in which the loss has been incurred).
- From the assessment year 2000-01, business /profession loss can be carried forward even if the business/profession in which the loss was incurred is not continued during the year in which he wants to set off the loss.
- The loss can be carried forward and set off against the profits of the assesses who incurred the loss.
- The loss can not be carried forward for more than eight assessment year.
- The loss cannot be carried forward unless it is determined in pursuance of a return field by the assesses under section 139.

2. Carry forward and set off of capital loss

Where the net result of computation under the Head “capital gains” is a loss, such loss shall be carried forward to the following assessment year and it can be set off against any income under the head “Capital gains” as follows:

1. From the assessment year 2003-04, long term capital loss can be set off only against long –term capital gain. Up to the assessment year 2002-03, long –term can be set off against long-term/short term capital loss.
2. Short term capital loss can be set off against any capital gains(ie. Short-term or long term capital gains).
3. Short-term/long term capital loss can be carried forward for eight assessment years immediately succeeding the assessment year in which the loss was first computed.
4. Such loss cannot be carried forward unless the return is field within the time-limit of section 139(1).

3. Carry forward and set off of loss from house property

Section 71B has been inserted with the head “Income from house properly” and such loss is not fully adjusted under other heads of income in the same assessment year, then from the

assessment year 1999-2000 the balance loss shall be allowed to be carried forward and set off in subsequent years subject to a limit of 8 assessment years against income from house property.

CHAPTER

13

FEATURES OF TRUST

(A)Classification of trusts

Setting up a Trust is another means of Estate Planning. It an entity created to hold assets for the benefit of certain persons or entities (beneficiaries), with a Trustee managing the Trust (and often holding title on behalf of the Trust). Most Trusts are founded by the persons (called Trustors, settlors and/or donors) who execute a written Declaration of Trust, which establishes the Trust and spells out the terms and conditions upon which it will be conducted. The Declaration also names the original Trustee or Trustees, successor Trustees, or means to choose future Trustees. The assets of the Trust are usually given to the Trust by the creators, although assets may be added by others. During the life of the Trust, profits and, sometimes, a portion of the principal (called "corpus") may be distributed to the beneficiaries, and at some time in the future (such as the death of the last Trustors or settlors) the remaining assets will be distributed to beneficiaries. A Trust may take the place of a will and avoid Probate (management of an estate with court supervision) by providing for distribution of all assets originally owned by the Trustors or settlors, upon their death. There are numerous types of trusts, including revocable Trusts created to handle the Trustors' assets (with the Trustors acting as initial Trustee), "charitable Trust" which provides for eventual guaranteed distribution of the corpus (assets) to charity, thus gaining a substantial tax benefit. A "testamentary Trust" can be created by a Will to manage given to beneficiaries

Section 3 of the Indian Trusts Act, 1882, defines a Trust: A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

- "author of the Trust": "Trustee": "beneficiary": "Trust property": "beneficial interest": "instrument of Trust

The person who reposes or declares the confidence is called the "author of the Trust".
The person who accepts the confidence is called the ''Trustee''.
The person for whose benefit the confidence is accepted is called the "beneficiary".
The subject-matter of the Trust is called ''Trust-property'' or ''Trust-money'':
The "beneficial interest" or "interest" of the beneficiary is his right against the Trustee as owner Trust-property;

And the instrument, if any, by which the Trust is declared is called the "instrument of Trust".

- *"Breach of Trust":* a breach of any duty imposed on a Trustee, as such, by any law for the time being in force, is called a "breach of Trust".
- *"Registered":* and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force
- *"Notice":* a person is said to have "notice" of a fact either when he actually knows that fact or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872 (9 of 1872), section 229

Advantages and Disadvantages of a Trust:

Advantages of a Trust

- The biggest advantage of the Trust is that any property transferred to the Trust during your lifetime will pass directly to the beneficiaries of the Trust. The Trust property will not have to go through a Probate court. The advantages of avoiding Probate are that:

I. No Probate fees are due on property passing outside of Probate
II. The property will pass immediately to the beneficiaries.
III. The terms of the Trust remain private.

(Keep in mind that property disposed of by a Will passes through Probate and is therefore subject to Probate fees and delays are normally associated with Probate. Furthermore, when a Will is probated, it becomes a public document that can be obtained and read by anyone.)

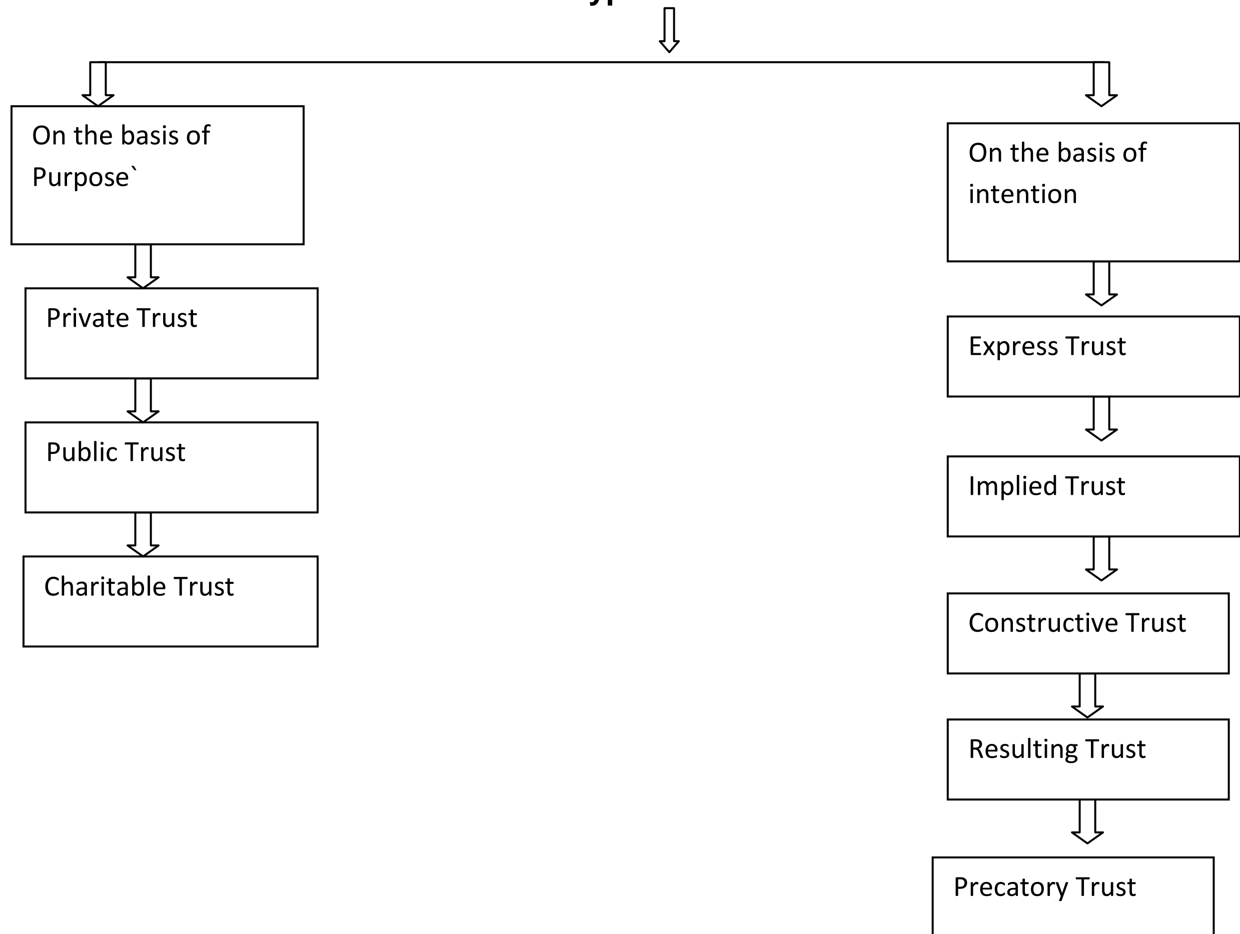
- A Trust is also a good way to make gifts to minor children or to provide for the care of elderly parents. It is also used by people getting on in years who are concerned with their own possible future incapacity.
- Saving on Taxes: The growth on assets, such as shares, transferred to a Trust is not subject to taxes, because the growth belongs to the Trust.

Disadvantages of a Trust

- Firstly, the need to draft a Trust document.
- Secondly, the loss of legal control of assets. All assets are handed over to the Trust and are managed by the Trustees for the benefit of the beneficiaries. Author of the Trust can no longer own the assets, but he can exercise some control over them by being a Trustee.

The three main uses of a Trust are:

- To freeze the value of an estate this has a high asset value. In other words, if the author of the Trust transfers an asset to a Trust, the asset's value does not grow in his hands, which would increase the amount of Trust that will have to be paid on his death.
- To hold and protect assets for minors/incapacitated dependants.
- To protect assets in the event of insolvency. Creditors cannot claim money held in a Trust.



Types of Trust on the basis of intention

- An **Express** Trust is a Trust created by Settlors expressing his intention to create a Trust with reasonable certainty.
- An **Implied** Trust is a Trust implied from the words of an instrument or from the conduct of the parties. An implied Trust is founded on an unexpressed but presumed intention of the party creating it.
- A **Constructive** Trust arises by operation of Law. Section 86 to 93 of the Indian Trusts Act are cases of constructive Trusts. Section 69 of the Transfer of Property Act, 1882 provides that the money received. by the mortgagee arising from the sale of the mortgaged property shall, in the absence of a contract to the contrary, be held by him in Trust to be applied as provided in that section. Another example of a Trust arising by operation of Law is Section 6 of the married Women's Property Act, 1874, which provides that a policy of insurance effected by a married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a Trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not so long as any object of the Trust remains, be subject to the control of the husband or his creditors, or form part of his estate.

A Constructive Trust is imposed in circumstances where it is unconscionable for the Owner of a property to hold it for his own benefit, irrespective of the intentions of the concerned parties. When a person clothed with fiduciary character gains some personal advantage by availing himself of the situation, he is obliged to hold such advantage in Trust. A person, who has knowingly assisted in a dishonest and fraudulent design of the Trustees to misapply the Trust funds, is treated as a Constructive Trust and is personally liable to account.

- A **Resulting** Trust. When a Trust is implied in favour of the party creating it, it is called a **resulting** Trust.

- A **Precatory** Trust is a Trust established by expressions of confidence, request or desire that property will be applied for the benefit of a definite person or object, where such words are construed as constituting a Trust.

Type of Trusts on the basis of purpose

- **Private Trust:** A Trust is termed private in nature if it is created for the benefit of specific individuals that is, individuals who are defined and ascertained individuals or who within a definite time can be definitely ascertained.

- **Public Trust:** If however, the Trust is created for the benefit of an uncertain and fluctuating body of persons who cannot be ascertained any point of time, for instance the public at large or a section of public following a particular religion, profession or faith, the Trust is termed as public Trust. Such a Trust is generally a non-profit venture with charitable object and in such cases; it is also referred to as the charitable Trust.

- **Religious Trust:** A Trust created for religious purposes is termed as a religious Trust and it can be either a private or a public Trust. A religious endowment made via Trustees to a specified person is a private Trust and the one to the general public or a section thereof is a public Trust.

Differences between a Private Trust and a Public Trust

In Private Trusts, the beneficiaries are defined and ascertainable persons. Public Trusts are constituted for the benefit of the public at large. The author of a Public Trust may restrict the benefit to a particular group or section of society, such as caste, class, creed, sex, age etc. A Public Trust is of a permanent and indefinite nature.

(B)Rule against Perpetuity

A bequest is invalid if the vesting of the assets bequeathed is delayed beyond the lifetime of one or more persons living at the testator's death, and the minority of some person who is in existence at the expiration of that period, and to whom the thing bequeathed is to belong on their attaining majority.

Example 1: A fund is bequeathed to A for his life; after his death to B for his life; after B's death to such of the sons of B as shall first attain the age of 25.

Suppose A and B survive the testator - and B's son is born after the death of the testator (but while A and B are alive). The maximum period up to which the vesting can be delayed is the lifetime of A and B, and the period of minority (until he attains 18 years of age) of the son.

In this particular case, the son might attain the age of 25 after the maximum vesting period permitted. Therefore, the bequest after B's death is void.

Example 2: Same example as above, but if B dies before the death of the testator, leaving behind one or more sons.

In this case, the sons of B are in existence on the death of the testator. So the vesting period can be delayed until their lifetime. The age of 25 would fall within this lifetime. Hence, the bequest is valid'.

CHAPTER

14

TAXATION OF TRUST

(A)Simple and complex trust

Simple trust

For federal income tax purposes, all trusts are classified as Simple Trusts or as Complex Trusts. To be classified as a "Simple Trust," the following requirements must be met:

- The trust instrument must require that all income be distributed currently (i.e., in the tax year in which it is earned;
- The trust instrument must provide that no amounts are to be paid, permanently set aside, or used for charitable purposes; and,
- The trust must not distribute any amounts that are allocated to the corpus (principal) of the trust.

Both Living Trusts and Testamentary Trusts can qualify as Simple Trusts.

OR

Simple trust. This term is only used in the USA, but in that jurisdiction has two distinct meanings:

- In a *simple trust* the trustee has no active duty beyond conveying the property to the beneficiary at some future time determined by the trust. This is also called a *bare trust*. All other trusts are *special trusts* where the trustee has active duties beyond this.
- A simple trust in Federal income tax law is one in which, under the terms of the trust document, all net income must be distributed on an annual basis.

Complex Trusts

For federal income tax purposes, all trusts are classified as Simple Trusts or as Complex Trusts. A "Complex Trust" is any trust that is not classified as a Simple Trust.

(B)Tax implication of trust

As mentioned earlier, the Estate Duty Act 1953 provided for payment of tax on transfer of assets consequent to the death of the owner. This was abolished in India in 1985. Further transfer of assets through a will is not treated as a transfer for capital gains tax purposes. However, provisions related to clubbing of income ensure that income tax continues to influence estate planning.

A private trust (family trust) is the standard vehicle for tax planning through wills. Under such an arrangement, property is transferred to a trustee for the benefit of one or more beneficiaries.

CHAPTER

15

PROPERTY DOCUMENTATION

(A)Power of attorney

Introduction

A Power of Attorney is a formal arrangement by which one person gives another person authority to act on his behalf and in his name. The person who gives Power of Attorney "the donor" and the person who acts on the behalf of donor is referred as "the attorney". A Power of Attorney is an instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of act on behalf of principal. A Power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it. A Power of Attorney may be a general power or a special power. What one has to look at before one decides whether a power is general or special is what is the subject matter in respect of which this power is conferred; if the Court comes to the conclusion that the subject matter is not general, that it is restricted to something specific, something particular, then the Power of Attorney would not be a general Power of Attorney.

Power of Attorney & Estate planning

Example

What happens if Hari loses the ability to manage his affairs and make important decisions? Who will take charge? Although his assets will be protected, there will be a cost associated with dealing with the legal issues. In addition, as the legal issues are resolved, important financial decisions may not be made on a timely basis. By drafting a Power of Attorney, he will be able to choose the person who is best qualified to manage his affairs when he becomes mentally incapacitated. A Power of Attorney gives written authority to this person to deal with estate on Hari's behalf If Hari doesn't give a Power of Attorney; laws will govern who is responsible for managing his affairs. Although interested parties can generally apply to the courts to be granted the right to conduct Hari's affairs, this can be a time consuming and expensive process. The family members cannot act on Hari's behalf on short notice.

Even a couple can make separate Power of Attorney and appoint an attorney to one another for managing their business and any other deal in the absence, death or incapability of another partner .

Types of Power of Attorney

- **General Power of Attorney**: A Power of Attorney may be a general power or a special power. General Power of Attorney It is a document by which one person appoints another person to represent him/her and act on behalf of himself to manage, attend or carry out certain works like management, sale of property and dealings in the court, etc.

- **Special Power of Attorney**: A power of authority conferring on the agent or attorney the authority to act in a Single or specified transaction in the name of principal or donor is known as special Power of Attorney. E.g. Special Power of Attorney for a particular court case.

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