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# Succession Planning & Family Settlements

Legal and Tax Perspectives for  
Effective Wealth Transfer



**Succession Planning & Family Settlements**  
**“Building Legacies with Clarity and Care”**

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Knowledge Series

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## Succession Tools in India

In today's fast-changing business and family environment, **succession planning** has become an essential step for wealth preservation and the smooth transfer of assets across generations. In India, various legal and practical tools are available to ensure an orderly succession.



### Key Succession Tools in India

1. **Will** – A legal declaration by an individual specifying how their assets will be distributed after their death.
2. **Trusts** – A legal structure to hold and manage assets for beneficiaries, commonly used in business families and for tax efficiency.
3. **Family Settlements / Arrangements** – Agreements among family members to distribute property and avoid disputes.
4. **Nomination** – Appointment of a person to receive proceeds from bank accounts, insurance, mutual funds, or securities.
5. **Joint Ownership of Property** – Assets held jointly pass on to the surviving owner(s) automatically.
6. **Hindu Undivided Family (HUF)** – Traditional vehicle for managing ancestral property under Hindu law.
7. **Succession Laws (Intestate Succession)** – Applicable when a person dies without leaving a will, governed by personal laws.

**Business Agreements (Partnership Deeds, Shareholder Agreements, Articles of Association)** – Ensure continuity in businesses by defining succession rights.

## 1. Will- Legal Framework and Definitions:

### Will as a Succession Tool:

- A Will serves as a crucial legal tool for succession planning in India, providing a structured mechanism for asset transfer after an individual's death.
- Wills in India are primarily governed by the **Indian Succession Act, 1925**. A Will is a legal declaration by which a person (testator) expresses their wishes as to how their property is to be distributed after their death.

### 1. Key Characteristics of a Will

- **Testamentary Capacity**: The testator must be at least 18 years old and of sound mind.
- **Written Document**: Usually, a Will must be written and signed by the testator.
- **Witnesses**: The Will must be attested by at least two witnesses.
- **Voluntary and Revocable**: The testator can alter or revoke the Will anytime during their lifetime.
- **Executor Appointment**: A Will may also appoint an executor to ensure the Will's instructions are followed.

### 2. Purpose and Benefits

- A Will ensures assets are distributed as per the testator's wishes, overriding default intestate succession laws and preventing family disputes.
- It supports estate planning by allowing inclusion of specific instructions like guardianship, charitable donations, or creation of trusts.

### 3. Types of Assets Covered

- **Movable assets**: Bank balances, investments, jewellery, vehicles.
- **Immovable assets**: Land, houses, and commercial property.
- **Intellectual property**, business shares, and other personal possessions.

#### 4. Execution Process After Death

- The Will is submitted to the court for probate (certification of Will's authenticity) in certain jurisdictions.
- The executor, once appointed and probated, manages the distribution of assets as per the Will.
- If contested, courts resolve disputes related to the Will's validity.
- Probate strengthens the Will's legal enforceability, especially related to immovable properties.

#### 5. Limitations of a Will

- A Will cannot violate rights of legal heirs under personal laws (such as the Hindu Succession Act), especially regarding **mandatory shares for spouses or children**.
- Sometimes, Wills attract legal challenges on grounds of coercion, fraud, or lack of testamentary capacity.
- Assets not mentioned in the Will fall outside the scope of succession by Will.

## 2. Family Settlement Agreements – Legal and Tax Dimensions

A Will takes effect after death, while a Family Settlement Agreement works during the lifetime through mutual consent, making it a significant succession tool in India to resolve inheritance and property disputes amicably among family members.

#### What is Family Settlement?

- A Family Settlement is a mutual agreement between members of a family to amicably resolve disputes and settle division, ownership, and management of family property.
- It typically occurs when multiple heirs or family members have joint interests in ancestral or inherited property.
- This settlement can be oral or written but is normally documented to avoid future disputes.
- It acts as a legally binding agreement, overriding the right to contest in courts, thereby ensuring lasting peace and clarity.



#### 1. Legal Recognition

- Family Settlements are recognized by Indian Courts and have been upheld under various judgments as valid contracts binding the parties involved.
- The agreement can cover both immovable property (land, buildings) and movable assets (money, shares, valuables).

#### 2. Process of Entering a Family Settlement

##### Step 1: Identification of Members & Assets

- List all parties to the settlement (heirs, claimants, interested family members).
- Identify all relevant assets.

##### Step 2: Negotiation & Mutual Understanding

- Members discuss and agree on how assets should be distributed.
- Often facilitated by a family elder, mediator, or lawyer.

##### Step 3: Recording the Agreement

- **Oral Settlement** – Legally valid if followed by possession/distribution, but harder to prove later.
- **Written Settlement** – Recommended for clarity.
  - If it creates or transfers rights in immovable property, registration under the Registration Act, 1908 is mandatory.
  - If it merely records an already executed oral settlement, registration is not compulsory.

##### Step 4: Execution & Compliance

- Settlement deed signed by all members.

- Registration (if required) and payment of stamp duty.
- Update property records (mutation, company share registers, etc.) to reflect the new arrangement.

#### **Step 5: Court Approval (Optional)**

- If disputes were already in court, the FSA may be filed as a compromise petition, making it binding and enforceable.
- Avoids lengthy court processes, delays, and expenses.

### **3. Tax Implications of Family settlement in India.**

#### **3.1. Capital Gains – Individuals**

- Transfers of assets (movable or immovable) by individual family members under a valid FSA are not regarded as “transfers” under tax law.
- Hence, no capital gains tax arises in the hands of the person parting with property.

#### **3.2. Capital Gains – Corporate Parties**

- If a company or corporate entity transfers assets pursuant to an FSA, the transaction is treated as a “transfer.”
- Normal capital gains provisions apply, since a company is a separate legal entity.

#### **3.3. Stamp Duty and Registration**

- Family settlements involving immovable property require stamp duty and registration as per the applicable state laws.
- Stamp duty for settlement deeds is generally lower than for a sale deed, but it varies by state.
- Proper registration is recommended to give public notice and prevent future disputes.

### **4. Key Benefits**

- Quicker and cost-effective compared to litigation.
- Preserves family harmony and relationships.
- Provides certainty and finality in property relations.
- Avoids lengthy court processes, delays, and expenses.

## **3. Hindu Undivided Family (HUF)**

### **as a Tax-Efficient Structure:**

#### **A Legal and Tax Perspective within Succession Planning & Family Settlements**

#### **1. Introduction**

The Hindu Undivided Family (HUF) holds a unique place in Indian law, blending tradition with modern wealth management. Recognized under Hindu law and the Income-tax Act, 1961, it serves as a tax-efficient vehicle for holding and transferring family assets across generations. This section examines its legal basis, formation, rights, tax benefits, comparative framework, and practical challenges, helping Chartered Accountants, practitioners, and clients assess its role in effective succession planning.



#### **2. Formation, Membership, and Coparcener Rights**

##### **2.1. Formation and Structure**

An HUF is constituted automatically upon marriage and the birth of children, with no formal legal process. Its corpus may consist of ancestral property, or assets contributed via gifts, inheritance, or blending of individual assets.

The Karta, traditionally the eldest male member, manages the HUF, though post-2005, female members can also assume this role. The legal position has evolved with the recognition of daughters as coparceners at par with sons.

##### **2.2. Membership and Coparcenary**

- Coparceners: All lineal descendants up to four generations, including daughters (post-2005).



- Members: Spouses and other relatives, without coparcenary rights.
- Rights: Coparceners acquire their interest by birth and are entitled to demand partition and share in joint family property.

### 3. Tax Advantages and Legal Provisions

#### 3.1. Separate Taxability

The HUF is assessed separately from its members, enjoying all basic exemption limits and deductions available to individuals (Sections 80C, 54, 54F). Thus, assets and income held as HUF property can be leveraged for additional tax optimization.

#### 3.2. Clubbing Provisions

Income transferred by a member to the HUF, without adequate consideration, may attract clubbing under Section 64(2). Gifts received from relatives as per Section 56(2)(x) are tax-exempt, whereas those from non-relatives in excess of ₹50,000 per annum are taxable.

#### 3.3. Partition and Succession

- Partition: Section 171 governs recognition of partition for tax purposes. Only complete partitions—where assets are physically divided among coparceners—are recognized by the tax authorities.
- Succession: After partition or the demise of a coparcener, succession devolves by survivorship, subject to the amended rules that provide daughters with equal rights. Succession pathways limit the adaptability compared to other succession tools.

### 4. Practical Challenges and Limitations

- Dispute Sensitivity: Internal disagreements frequently arise during management or partition, often resulting in protracted litigation.
- Partition Formalities: Only complete partitions are recognized for tax purposes, and post-partition asset division raises practical challenges.
- Diminishing Relevance: Evolving family structures, urbanization, and preference for

more flexible vehicles (like private trusts) contribute to HUF's declining popularity.

- Investment and Succession Constraints: Legal restrictions on asset management, business operations, and prescribed

### 5. Conclusion

The HUF, founded on tradition and refined by statute, delivers a robust, yet inherently limited, means for tax-efficient wealth transfer in India. Its continued relevance hinges on the specific needs and dynamics of families. Careful consideration of the legal framework, tax implications, and practical realities is critical before opting for this structure in succession and estate planning.

## 4. Private Trusts – A Legal and Tax Perspective within Succession Planning & Family Settlements

### 1. Introduction

Private Trusts represent a legally recognized framework for estate planning and wealth transfer. Under the Indian Trusts Act, 1882, they provide a structured means of holding and managing assets for beneficiaries. From a tax and legal standpoint, trusts serve as an alternative to wills and HUFs, offering flexibility, continuity, and protection in succession planning.

### 2. Legal Recognition.

#### 2.1. Indian Trusts Act, 1882

Private trusts derive their legal basis from the Indian Trusts Act, 1882, though specific provisions for taxation flow from the Income-tax Act, 1961. However Public Trusts are governed separately by state specific laws.

#### 2.2. Income-tax Act, 1961

Trusts are recognized as separate entities for taxation purposes in Income Tax Act, 1961. The trustee acts as a representative assessee, and the incidence of tax depends on whether the trust is specific or discretionary.

### 3. Structure and Formation of a Private Trust

**Constitution:** Created by a person who creates a trust (settlor) during his lifetime or via will.

**Parties Involved:** Settlor, Trustees, Beneficiaries.

**Types:** Specific Trusts – fixed and determined shares and beneficiaries.

**Discretionary Trusts:** trustees have discretion in how the distributions be made.

**Continuity:** Unlike wills, trusts operate seamlessly beyond the settlor's lifetime.



### 4. Tax Advantages and Legal Provisions

#### 4.1. Representative Assesses Framework

- Section 160 of the Income-tax Act, 1961 recognizes trustees as “representative assesses.”
- The trustee is liable to be assessed in respect of trust income as if it were the income of the beneficiaries.
- The tax treatment depends on whether the trust is specific (determinate) or discretionary (indeterminate).

#### 4.2. Specific Trusts

- Beneficiaries and their respective shares are determined.
- Taxation mirrors direct ownership:
  - Income is taxed in the hands of the trustee at the slab rate applicable to each beneficiary.
  - Example: If a trust provides Rs. 2,00,000/- annually to a minor child, the trustee pays tax as if the income belonged to the child.
- Clubbing provisions may apply:
  - Under Section 64(1A), the income of a minor child is clubbed with the parent with the higher income, unless the minor has a disability (as per Section 80U).

- Thus, until the child attains majority, the income may effectively be taxed in the hands of the parent, though routed through the trust.

#### 4.3. Discretionary Trusts

- Beneficiaries or their shares are indeterminate.
- Income is taxed in the hands of the trustee at the Maximum Marginal Rate (MMR) (currently 30% + surcharge + cess), irrespective of the individual slab of beneficiaries.
- Exceptions: If none of the beneficiaries have taxable income, courts have permitted taxation at normal slab rates, but this is subject to litigation risk.

#### 4.4. Minors and Vulnerable Beneficiaries

- Trusts are often created to provide for minors until they come of age.
- During minority:
  - In a specific trust, income attributable to the minor is clubbed with the parent (subject to the exemption of ₹1,500 per child per year under Section 10(32)).
  - In a discretionary trust, income remains taxed at MMR until distributed, offering asset protection but at a higher tax cost.
- On attaining majority:
  - Beneficiaries are assessed directly on their share of trust income.
  - Trustees continue to file returns, but the incidence of tax shifts away from representative assessment.

#### 4.5. Capital Gains

- Transfer of assets by the settlor to an irrevocable trust is not considered a transfer under Section 47(iii), hence no capital gains arise at the time of settlement.
- However, subsequent disposal of trust assets (by the trustee) is taxable as capital gains in the hands of the trustee (representative assessee).

#### 4.6. Other Compliance Considerations

- Registration under the Indian Registration Act is mandatory when immovable property is settled into the trust.

- Stamp duty varies state-wise.
- Trusts must obtain a separate PAN and file annual returns.

### Practical Challenges and Limitations

- Stamp duty and registration costs on immovable property.
- Risk of taxation at MMR in discretionary trusts.
- Dependence on trustees' integrity and competence.
- Less tax-efficient than HUF in some scenarios.

## 5. Balanced Perspective: Appropriateness of Trusts

### 5.1. Where Trusts Are Advantageous

- Provides protection for minors, disabled dependents, or elderly family members.
- Enables structured distribution of wealth at defined milestones.
- Facilitates business succession by consolidating family company shares.
- Simplifies cross-border succession for families with NRI beneficiaries.
- Reduces disputes as the trust deed governs distribution and control.
- Settlement into an irrevocable trust is capital gains neutral at inception.

### 5.2. Where Trusts May Be Less Effective

- Discretionary trusts are taxed at the Maximum Marginal Rate, resulting in higher tax liability.
- Settlement of immovable property attracts registration and stamp duty.
- Income of minor beneficiaries may be clubbed with parents under Section 64(1A).
- Trustees' integrity is critical; misuse of authority can compromise assets.
- Ongoing compliance costs are significant.
- For smaller estates, trusts may be unnecessarily complex compared to wills or HUFs.

## 6. Conclusion

Private trusts strike a balance between flexibility, control, and continuity in succession planning. They provide structured wealth transfer while safeguarding family harmony. Though less tax-advantaged than HUFs, they

remain indispensable in scenarios involving complex family structures, multiple heirs, or the need for tailored asset protection.

## ❖ Compliance Calendar for the month of September 2025

Sr no.	Date	Compliance
1	07-09-2025	TDS/TCS Payment
2	07-09-2025	ECB-2 Return
3	11-09-2025	GSTR-1 (Monthly)
4	13-09-2025	GSTR-6, ISD Return Filing
5	15-09-2025	ESIC Payment and Return (Monthly)
6	15-09-2025	PF Payment and ECR Filing
7	15-09-2025	Income Tax Return (ITR) for Assessee not subject to Audit
8	15-09-2025	Payment of Advance Tax (for Q2 of FY 2025-26)
9	20-09-2025	Monthly Payment of Profession Tax (Karnataka)
10	20-09-2025	GSTR-3B (Monthly)
11	25-09-2025	GSTR-3B (Payment under QRMP)
12	30-09-2025	Maharashtra PT Return and Payment
13	30-09-2025	AOC-4 Financial Statements
14	30-09-2025	DIR 3 or KYC verification of DIN holders for the financial year
15	30-09-2025	Annual General Meeting
16	30-09-2025	Filing of Tax Audit Report (except Transfer Pricing cases)

## ❖ RRCO Advisors LLP

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### ❖ Special Mention:

Thank you, **Piyush Abbad**, **Akshay Khandelwal**, **Nakul Chandak**, **Keshav Rander**, **Radhika Lahoti** for the compilation of this knowledge series.

### ❖ RRCO Corner:

On **23rd August**, RRCO hosted its much-awaited recreational event - RRCO Fiesta, uniting articles for a day of laughter, energy, and bonding. The fun began with "*Sab Khelo Sab Jeeto*", where every participant was a winner, followed by the thrilling "*Amazing Treasure Hunt*" that turned the workplace into a maze of riddles and surprises. Showcasing teamwork, creativity, and quick thinking, the articles made the day truly memorable. RRCO Fiesta was not just an event, but a celebration of unity and joy.



On **26th August**, RRCO celebrated **Ganesh Chaturthi** with the auspicious *Ganapati Sthapana* at the office. The day was marked as **Traditional Day**, where everyone came dressed in vibrant ethnic attire, adding colour and cultural charm to the celebrations.

