

## Taxation of Gifts

### **Amendment and Addition to Sec. 56(2)(vi) of Income Tax Act, 1961 under Finance Bill, 2009**

Up to assessment year 2009-10, only cash gifts received in excess of Rs. 50,000 were chargeable to tax. However, the recent amendment coming into effect from 1<sup>st</sup> October, 2009 has brought Gifts in Kind under the tax net. One of the reasons of introducing this amendment is to restrain the use of gifts as a tool of tax planning.

We shall now run through the various provisions governing the taxability of gifts under the Income Tax Act, 1961.

Under the earlier provisions of law, which were applicable from 1<sup>st</sup> April, 2006 to 1<sup>st</sup> October, 2009, only when a sum of money aggregating to more than Rs. 50,000 from any person or persons was received without consideration, then it was taxable under the head Income from Other Sources as gifts. Since the words used are "sum of money", gifts in kind are interpreted as exempt, taxing only cash gifts in excess of Rs. 50000/-.

### **However w.e.f. 1<sup>st</sup> October, 2009 the new provision governing the taxability of gifts have come into effect and it reads as follows:**

Where an Individual or Hindu Undivided Family receives in any previous year, from any person or persons

- a) Any sum of money aggregating to more than Rs. 50,000 from any person or persons.
- b) Any immovable property;
  - i. Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
- c) Any property, other than immovable property;
  - i. without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

- ii. for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration.

With this amendment fair market value of a property other than immovable property could become an area of contention .e.g. there could be valuation issues in case of a property, like archeological collections & sculptures, which will give rise to various disputes on valuation leading to endless litigations.

The CBDT has prescribed the rules vide notification No. 23/2010 on 08-04-2010 prescribing Rules 11U and 11UA for determination of fair market value for movable properties received as gifts or purchased at below fair market value which is taxable under Income from other sources.

The rules pertain to valuation of:

- Jewelry
- Archeological Collections, drawings, paintings, sculptures or any work of art
- Shares and Securities

In the case of immovable property, each of the property would be considered separately. However in the case of movable property, the amount of Rs. 50,000 should be considered by adding up all the movable properties and not vis-à-vis each individual item.

### **GIFTS OUTSIDE SECTION 56(2)**

Gifts which are covered under the preceding heads of income (i.e. other than the residuary head) would be outside the purview of section 56(2)(vii).

For e.g.

- An award is given to an employee in recognition of either the quality or duration of service. The same may be taxable under the head "salaries".
- Gifts received by a trader in recognition of the volume of turnover achieved may be taxable as a perquisite of business under section 28(iv). There may be trade

schemes where on buying a minimum quantity an additional item is given. This freebie would also be covered under section 28(iv).

### **Gifts for Firms and LLP's**

This provision extends the concept of gift being considered as income from other sources in the case of firm or a closely held non-listed company w.e.f. 01/06/2010.

- The section states that if a firm (including LLP) or private ltd company or non-listed public company (Specified Assessee), receives shares of a private or public unlisted company from any person, without consideration and the fair market value of which exceeds Rs. 50,000, the whole of the aggregate fair market value is liable to tax.
- Also if the specified assessee, purchases shares of a private or public unlisted company from any person at a price which is less than the fair market value and the difference between the fair market value and the purchase price is more than Rs. 50,000, such income will be considered as income of the specified assessee.
- The section is applicable even if the shares of the unlisted company are acquired as stock in trade.
- The section will not apply to shares received by the above specified assessee by way of transactions not regarded as transfer under the following sections:
  - S. 47(via) – Transfer of shares in an Indian Company in a scheme of arrangement of amalgamation between two foreign companies.
  - S. 47(vic) – Transfer of shares in an Indian Company by a demerged foreign company to the resulting foreign company.
  - S. 47(vicb) – Transfer on re-organization of two co-operative banks.
  - S. 47(vicd) – Transfer or issue of shares by the resulting company in a scheme of demerger to shareholders of a demerged company.
  - S. 47(vii) – Transfer by a shareholder, in a scheme of amalgamation, of shares held by him in an amalgamating company.

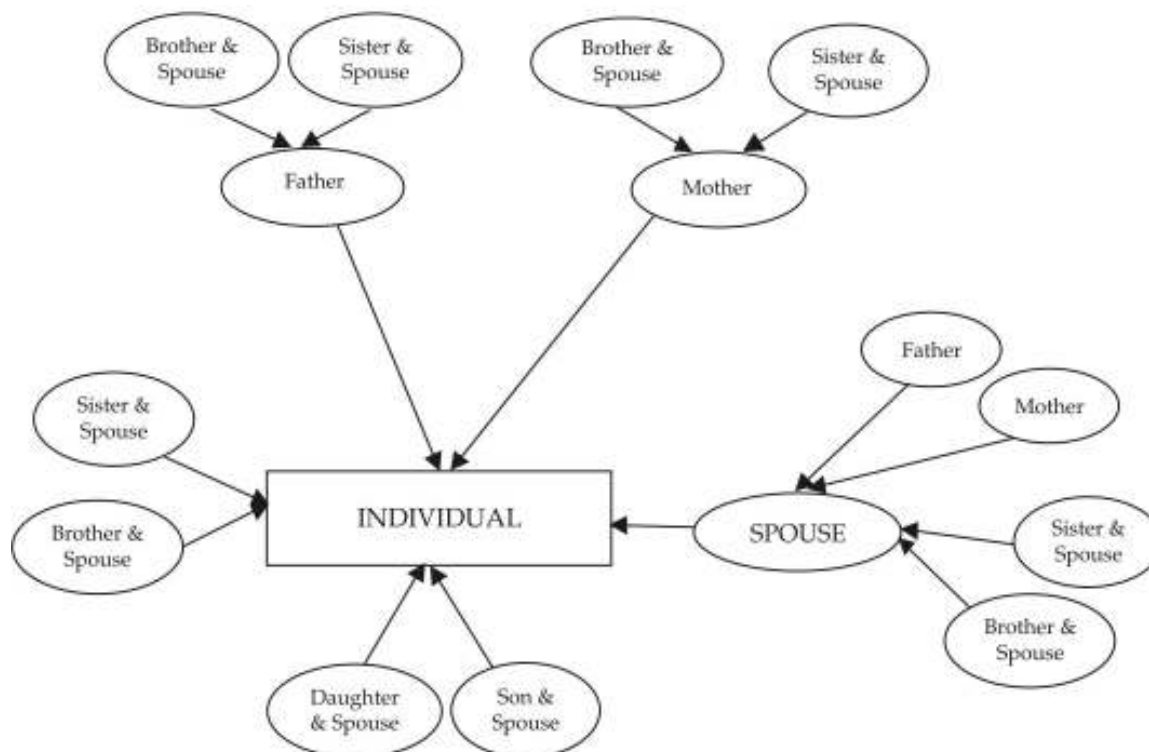
## Exemptions is relations to Gifts

However this clause is subject to certain exceptions, wherein if the amount is received

- i. From a relative, or
  - ii. On the occasion of the marriage, or
  - iii. Under a will or by inheritance, or
  - iv. In contemplation of death of the payer, or
  - v. From a local authority, or
  - vi. From any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
  - vii. From any trust or institution registered under section 12AA
- the same shall not be chargeable to tax under sec 56(2)(vii).

## Definitions

**1) Relative** – For the purpose of this section, the meaning of relative would include



**2) Property:** For the purpose of this clause, the term property means

- |                                |                                     |
|--------------------------------|-------------------------------------|
| 1. Shares and securities;      | 2. Jewellery;                       |
| 3. Archaeological collections; | 4. Drawings; paintings; sculptures; |
| 5. or any work of art.         | 6. Bullion                          |

It is arguable that properties outside the definition would not be chargeable to tax. One could visualize the following assets that are outside the definition.

1. Silver Vessels and Articles;
2. Motor Cars;
3. Stock in Trade other than Shares and Securities.

**3) Stamp Duty Value** means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property. Where the assessee disputes this stamp duty valuation, the procedure for resolving the dispute is the same as that in the provisions of section 50C (2).

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