The fact remains that every individual is interested to save his tax. Tax saving can be possible either by legal tax planning or by illegally tax avoidance. Many tax payers resort to illegal activities to save income tax but frankly speaking, such illegal activities are not a part of tax planning process but are part of tax evasion process which I deprecate always. However one can go ahead with legal ways of saving Income Tax and this is possible only when we screen very carefully the provisions contained in the Income Tax Act, 1961 and find out the pointers which are of advantage looking to our facts & circumstances. A very effective and legal way advised by CA’s is creating a HUF. A Hindu Undivided Family offers specific advantages as far as taxation is concerned. Income Tax Act & Wealth Tax Act recognise the HUF as an independent assessable or taxable entity. Therefore, HUF enjoy all deductions and exemptions as a separate assessee. Overall objective behind the formation of HUF is to save tax by having an extra benefit of slab rate, deductions & exemptions.

**H.U.F. — A SEPARATE LEGAL ENTITY UNDER INDIAN TAX LAW**

U/s 4 of the Income Tax Act, 1961, Income-tax is payable by ‘every person’. ‘Person’ includes a ‘Hindu Undivided Family’ as defined in sec. 2(31). The definition of ‘Hindu Undivided Family’ is not found in the Income-tax Act. Therefore the expression ‘Hindu Undivided Family’ must be construed in the sense in which it is understood under the ‘Hindu Law’ [Surjit Lal Chhabda vs. CIT 101 ITR 776(SC)].

According to Hindu Law, ‘Hindu Undivided Family’ is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A ‘Hindu Undivided Family’ is neither the creation of law nor of a contract but arises from status.

HUF may be composed of

- Large Families; or
- Small Families; or
- Nuclear Joint Families

*Please Note: Jain & Sikh families are not governed by Hindu Law. However, for the purpose of Income tax Act, such families are treated as ‘Hindu Undivided Families’.*

**CONCEPT OF COPARCENER**
A Hindu coparcenary includes those persons who acquire by birth an interest in joint family property, whether inherited or otherwise acquired by the family. Only a male member of a family can be a coparcener while the membership of a HUF consists of both males and females. All the coparceners of the family constitute what is called a ‘Coparcenary’. All the coparceners are members of a HUF but all members of a HUF are not coparceners.

The relevance of concept of coparcener is that only coparceners can ask for partition. The other family members; i.e., other than coparceners in a HUF, have no direct claim over HUF property, but can claim only through the coparceners. When a partition takes place, member (mother or widow) of the joint family may get a share equal to the sons and also it is necessary to provide for maintenance and marriage of the unmarried daughter out of family property. The coparcener must be a member of the family but a member of the family need not be a coparcener.

**SOLE SURVIVING COPARCENER**

A Coparcener outliving all other Coparcener is known as Sole Surviving Coparcener. He may be alone in family or there may be some other female members also.

*Effect of Subsequent marriage of sole surviving coparcener and not getting a son*

In *CIT v. Purshotamdas K. Panchal [2002] 257 ITR 0096 [Gujarat]*, it was held that:

An individual who receives ancestral property at a partition and who subsequently acquires family, but has no male 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.

*“SCHOOL OF THOUGHTS” UNDER HINDU LAW*

There are two schools of Hindu Law-

1. Mitakshara &
2. Dayabhaga.

Under the Mitakshara School, each son acquires by birth an equal interest with his father in the ancestral property.

Under the Dayabhaga School which prevails in West Bengal and Assam, a son does not acquire by birth in ancestral property. He acquires interest only on the death of his father. Father enjoys an absolute right
to dispose of the property of the family according to his desire. After the
death of father, his son does not, by operation of law, become members
of the joint family. The sons remain as co-owners with definite shares in
the properties left by father unless they decide to live as a joint family.

**From the Gems of Judiciary**

1. **C. Krishna Prasad vs. CIT** 97 ITR 493
   A single person, male or female, cannot constitute a Hindu
   Undivided Family. An individual, who has obtained a share on
   partition of a joint family, has potentialities of creating a joint
   family; but until he marries, he alone cannot be considered as a
   joint family.

2. **CIT vs. M.M. Khanna (1963) 49 ITR 232 (Bom)**
   STRANGER can be introduced in HUF only by adoption.

3. **Gowli Buddanna vs. CIT** 60 ITR 193
   A joint family may consist of a single male member with his wife
   and daughter(s) and it is not necessary that there should be two
   male members to constitute a joint family.

### Rights and Duties of Members of HUF

As specified under the Hindu law, various members of the family are
entitled to rights, etc., as given below:

1. The coparceners of the HUF are entitled to demand partition.
2. Besides the coparceners, the Hindu widows under the Hindu Women’s
   Right o Property Act, 1937, are also entitled to demand partition just as
   her husband could have done.
3. The members of the HUF which include male and female member’s
   daughters and children of the male members are entitled to
   maintenance. Maintenance includes food, shelter, clothing, education,
   medical aid and marriage.
4. A member of the HUF is entitled to own and possess his separate
   property besides his interest in the HUF property.
5. The widow and children of a deceased coparcener have the right to be
   maintained out of the HUF property.
6. If a coparcener or other member converts himself into any other religion
   like Islam or Christianity, he ceases to be a member of family and he
   cannot enjoy joint status along with other members.
7. A coparcener or member may enter into partnership with Karta of HUF
   by bringing his capital or even without bringing any capital but
   contributing his skill and labour only.

### Manager of HUF or Karta

Understanding the Concept of HUF  http://www.itatonline.org
Property belonging to HUF is managed by any senior male member of HUF. Such member is known as “Karta of HUF”. Thus, Karta is manager of HUF and have controlling powers in respect of affairs of HUF. In General Senior most member acts as Karta in family. However, it is not necessary that only senior most member can act as karta. Sometime, due to inability of senior most member because of infirm, ailing or even a leper, the next senior male member of Family take over as Karta of HUF. Even in absence of senior male member, the elder Minor Son could act as Karta of HUF [Budhi Jena v. Dhobai Naik (AIR 1958 Orissa 7)]. But Supreme Court in CIT vs. Seth Govindram Sugar Mills [1965] 57 ITR 510 (SC) held that co-parcenership is necessary qualification for acting as Karta of HUF.

Please Note: In case of Darshan vs. Prabhu ILR (1946) All 692, it is held that there can be more than one Karta of HUF.

**Female as Karta**

Many courts had held that only a coparcener can become Karta of HUF. Since, a female was not considered as coparcener, she was not empowered to act as Karta prior to amendment in Hindu Succession Act. However, w.e.f. 6th September, 2005, after amendments made by Hindu Succession (Amendment) Act, 2005 in respect of position of female member, the daughter of coparcener shall by birth become a coparcener in her own right in the same manner as the son.

Therefore according to my opinion, after the Hindu Succession (Amendment) Act, 2005, Female Coparcener can act as Karta of HUF.

**Position of Female in HUF**

After amendment made by Hindu Succession (Amendment) Act, 2005, daughter can be coparcener of HUF like the sons of HUF. After her marriage she becomes member of her husband’s HUF and continues to be a coparcener of her father’s family. Being a coparcener, she can also seek partition of the dwelling house where the family resides and she can also dispose of her share in coparcenary property at her own will. If a Hindu dies, the coparcener property shall be allotted to the daughter as is allotted to sons. If a female coparcener dies before partition, then children of such coparcener would be eligible for allotment, assuming a partition had taken place immediately before her demise. A widow of a pre-deceased son even though remarried is now eligible for share in property as legal heir of the pre-deceased son of the family.

**Conditions under Income Tax Act, 1961**

The income of a joint Hindu family may be assessed in the status of HUF if the following conditions are satisfied:-
i. There should be a co-parcenership;

ii. There should be a joint family property which consists of ancestral property, property acquired with the aid of ancestral property and property transferred by its members.

iii. It may be pointed out that once a joint family income is assessed as that of Hindu Undivided Family, it will continue to be assessed as such in future years till partition is claimed by its coparceners.

Under the Hindu Law, ancestral property is the property which a person inherits from any of these three immediate male ancestors, i.e. his father, grandfather and great grandfather.

**Benefits and Drawbacks of HUF**

The major advantage of forming a HUF is that family get an identity of separate assessee under Income Tax Act & thus eligible to claim separate slab rate and various other deductions & exemptions. HUF holds its own Permanent Account Number & therefore one can split the Income, by proper tax planning, in the Income of individual and Income of HUF resulting in tax saving.

Like every coin has two sides; there are some disadvantages as well.

1. Since HUF is a separate assessee under income tax act, therefore we have to maintain separate books of accounts of HUF. Further, we need to file Return of Income of HUF separately for each previous year, which result in extra cost to assessee.

2. Assets of family in the name of HUF are the assets of family and not the asset of specific Individual. The members of HUF have legal right in the assets of the HUF. Therefore proper caution should be exercised while gifting assets to the HUF as whole family would be having a share in the assets of family.

**Creation of HUF - Legal Requirements**

Till now we have understood the major advantage of forming a HUF. Now a question arise How to Create a HUF? There are three simple steps to create HUF. These steps are as below:

1. Create HUF Deed & Requirement of Rubber Stamp of HUF

2. Apply for HUF's Permanent Account Number

3. Open Bank Account in the name HUF

**A. Create HUF Deed & Requirement of Rubber stamp of HUF**

Creating a HUF Deed is not mandatory. However it is always beneficial to have a HUF Deed. A HUF deed is a written formal document on a stamp paper stating the name of Karta and Coparceners of HUF. The eldest male member of HUF becomes Karta...
of HUF. The name of members of HUF and the name of the HUF is also required to be stated in the HUF Deed at the time of creating of HUF. The name of HUF is usually the name of the Karta followed by the word HUF e.g. Ram Kumar HUF. HUF Deed also states the capital with which the HUF has been initiated. There are various sources through which capital can be introduced in the HUF which we will learn later.

A declaration is also provided by each member of family where they declare the name of Karta and also state that—

A Karta has the authority of the accounts vested in his hand

B Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.

Further, A Rubber stamp of HUF will also be prepared. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.

Format of HUF Deed is given at the end of this article.

B. APPLY FOR PAN

Since HUF is a separate assessee under Income Tax Act, 1961, therefore HUF have to hold its own permanent account number. A separate application for PAN Card can be made, in Form 49A, by the Karta of HUF on behalf of HUF for allotment of PAN. On allotment of PAN, HUF is required to file separate Income Tax Return & can avail all the benefits under Income Tax Act, 1961.

C. OPEN BANK ACCOUNT IN THE NAME OF HUF

As regards bank account of a HUF, it should be either in the name of the HUF or in the name of the Karta of the HUF with a specific declaration that the account is that of the HUF. The members should also be careful and not deposit their personal funds in the HUF bank account as only funds belonging to the HUF can be kept in it. Normally, only the Karta is authorized to sign all cheques and operate the account on behalf of the HUF. However, he may also authorize any other member of the HUF to operate the same on behalf of the HUF. A person, who desires to bequeath some property to his son or sons, may also provide a specific instruction in his will to transfer the assets on his demise to the HUF or his son or sons. This will result in effective tax savings in the hands of the beneficiary sons.

CREATION OF HUF- BY OPERATION OF LAW

Typically, a HUF is automatically created. As the name suggests, a HUF means a family of Hindus. However, under the Indian tax law, persons belonging to the Jain and Sikh religion can also form HUFs. The existence of a HUF requires at least two members of a family, of which at
least one should be male. Once member of a HUF receives any ancestral property from any ancestor three generations above him, a HUF is automatically created. However there are some legal requirements also which we have already understood. Capital of Hindu Undivided Family can be created by following ways:

(A) Blending of individual property with the family Hotchpots;
(B) Receipts of Gifts;
(C) Doing Joint labour for the benefit of HUF;
(D) Inheritance through a specific bequest under a Will;
(E) Partition of a larger Hindu Undivided Family;
(F) Reunion of separated coparceners.

**BLENDING OF INDIVIDUAL PROPERTY WITH THE FAMILY HOTCHPOTS**

Blending means transfer of one’s individual property in the common hotchpots and make it a part of the common property of the HUF. It is necessary to waive all separate rights of the property, which must be clearly established through a declaration. Only the coparcener is entitled to throw in HUF’s common property. Blending can be utilized for creating smaller HUF.

**SECTION 64(2) OF I. T. ACT, 1961**

As per section 64(2) of the Income Tax Act, if any property has been transferred by the individual, directly or indirectly, to HUF, otherwise than for adequate consideration, then the income derived from such property shall be deemed to arise to the individual and not to the HUF. Similarly provision was inserted in the Wealth Tax Act, 1957 under section 4(1A). Therefore, it is clear that rights of members of HUF do not get enlarged on throwing property into family hotchpots, income from said property had to be treated as assessee’s individual income only.

**CREATION OF HUF BY RECEIPTS OF GIFTS**

HUF is a creation of law and cannot be created by the act of parties; therefore, HUF cannot be created for the first time by a gift from the stranger. If HUF already exists, gift can be made by a stranger to such HUF. The gifted property will be HUF property if the gift is made to HUF. Intention of donor & the character of the gifted property will depend on the construction of the gift deed.

**CREATION OF HUF BY DOING JOINT LABOUR FOR THE BENEFIT OF HUF**

Property acquired in the course of some business carried on by the persons constituting a joint Hindu family, takes the characteristic of joint family property. As per Hindu law, in case of properties not acquired with the aid of joint family property, it is presumed that property acquired by
coparceners by working together is joint family property unless the persons concerned desire to hold it as co-owners. This is valid if the coparceners are carrying on work together and belong to the same line of ancestors. The income from such property is out of the purview of section 64(2) of the Income Tax Act, 1961 and section 4(1A) of the Wealth Tax Act, 1957. In the cases of properties acquired with the aid of joint family property is also the joint family property.

**Creation of HUF by Inheritance through a Specific Bequest under a Will**

A HUF can also be created by will of a person provided the will is valid and there is a specific bequest in favour of the HUF as held by Punjab & Haryana High Court in CIT vs. Ghanshyam Das Mukim (1979) 118 ITR 930. Moreover, HUF need not be in existence at the time of execution of will. Even a stranger can bring a HUF into existence by making a will in the favour of HUF of a person.

**Creation of HUF by Partition of a larger Hindu Undivided Family**

Partition of an existing HUF can also result in creation of many smaller HUFs. As per Hindu Law, the property does not change its character on partition. Property received by a coparcener having a family, continues to have characteristic of HUF. However, the partition has to be total partition because as per section 171(9) of Income Tax Act, 1961 it does not recognize partial partition. In case of married coparceners who have no child, the property will continue with the status of HUF as held by High Court of Madhya Pradesh in CIT vs. Krishna Kumar (1982) 10 Taxman 292 (MP).

**Creation of HUF by Reunion of Separated Coparceners**

After partition of HUF, members may re-unite to form a new HUF. However, there are certain conditions to make such reunion valid in the eyes of law.

1. Reunion can take place only when there was in existence a HUF and there was total partition of such HUF.
2. It can take place only between persons who were parties to the original partition and to support such reunion, there must be an agreement between the parties.
3. To constitute a reunion there must be an intention of the parties to reunite in estate & interest and such intention is evident.
4. As per Mitkarsha & Dayabhaga, a member of a joint family once separated can reunite only with his
   - Father,
   - Brother or
- Paternal uncle but not with any other relation.

**From the Gems of Judiciary** –

   It is not necessary that all the property belongs to HUF should be brought back in to the re-united joint family. This reunion is said to be VALID

2. **CIT Vs Rupchand Routhmall (1963) 50 ITR 295 (Cal)** –
   The minor cannot be a part of reunion neither by self nor by someone on behalf of such minor.

**ASSETS OF HUF**

Following type of assets are generally accepted as Assets of HUF:

1) Ancestral Property;

2) Property allotted on Partition;

3) Property acquired with the aid of Joint Family property;

4) Separate of Property of Coparceners which is blended with the Property of HUF.

A HUF can hold assets such as shares, securities, jewellery, movable and immovable property. These assets can be either acquired by a HUF by way of a gift which is specifically instructed to be given to the HUF or it can receive assets on partition of a larger HUF of which its coparcener was a member and the same is treated as HUF property. Assets can also be received by a HUF by way of instructions provided in a will where the assets are instructed to be bequeathed to the HUF. However, after the enforcement of the Hindu Succession Act in 1956, if there is no will, on the death of a benefactor, the assets cannot devolve upon a HUF but only on the individual inheritors.

**PARTITION OF HUF UNDER INCOME TAX ACT, 1961 & ITS ASSESSMENT AFTER PARTITION**

Partition means Severance of Status of HUF. Partition could be partial or total. However, as per Sec. 171(9) only total partition of HUF is recognised under Income Tax Act, 1961. ‘Partition’ may be a (i) total or complete partition (ii) partial partition.

Where all the properties of the family are divided amongst all the members of the family, and the family ceases to exist as an undivided family, it is known as total or complete partition.

On the other hand, where one or more coparceners of the HUF may separate from others and the remaining coparceners may continue to be joint or some of
the properties are divided and the balance remain joint it is known as partial partition.

Partition can only be claimed by a coparcener. But, when there is a partition of HUF the following persons are entitled to a share in the assets of the HUF:

1. All coparceners.
2. Mother is entitled to a share equal to the share of a son in case of death of the father.
3. Wife gets a share equal to that of a son if a partition takes place between her husband and his sons. She enjoys this share separately even from her husband.
4. A son in the womb of the mother at the time of the partition.

On a partition between the members of a joint family, the shares are allotted as under:-

1. On a partition in a HUF which includes father, mother and sons, mother has no right to claim partition but when a partition is actually affected, she takes a share equal to the sons.
2. On a partition between a father and his sons where mother is not living, each son takes a share equal to that of the father. Suppose there are four sons, each son of that father will take 1/5th share of the property.
3. If a joint family consists of brothers, they take equal shares on a partition.
4. Each branch takes per stripe as regards every other branch, but members of each branch take per capita as regards each other.
5. None of the unmarried daughters have a right to share on the partition but the partition should provide for their maintenance and education till marriage and for their marriage expenses. However, w.e.f. 9.9.2005, the daughter whether married or unmarried shall also be entitled to equal share on partition as she has also been treated as coparcener like son.

**Procedure to effect partition and consequences after partition are as follows:**

- A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu Undivided Family, except where and in so far as the partition has been recognized by the Assessing officer under this section.

- Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu Undivided Family assessed as undivided that a total partition has taken place among the members of such family, the Assessing Officer shall make an inquiry there into after giving notice of such inquiry to all the members of the family.
On the completion of the inquiry, the Assessing Officer shall record a finding as to whether there has been total partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

Order u/s 171 passed by the Assessing officer after issuing a call memo only to Karta of the HUF and not other members of the family did not comply with the mandatory requirement of Section 17(2), and therefore, illegal and not valid. Matter remanded back to the Assessing Officer with the direction to pass an order under section 171 after notifying all the members of the HUF and hearing them. [P.G. Srinivasetty & Sons (HUF) vs. ITO (2010) 41 DTR 283 (Kar.)]

Where a finding of total partition has been recorded by the Assessing Officer under this section, and the partition took place during the previous year the total income of the joint family in respect of the period upto the date of partition shall be assessed as if so far no partition had taken place; and each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in Clause (2) of section 10, be jointly and severally liable for the tax on the income so assessed.

Where the finding of total partition has been recorded by the Assessing officer under the section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and each member or the group of members shall be jointly and severally liable for the tax on the income so assessed.

Notwithstanding anything contained in this section, if the Assessing Officer finds after completion of the assessment of a Hindu Undivided Family, that the family has already affected a partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the partition of the joint family property allotted to him or it at the partition, whether total or partial.

The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period upto the date of the partition, whether total or partial, of a Hindu Undivided Family as they apply in relation to the levy and collection of tax in respect of any such period.

**Partition under Hindu Law vis-à-vis Income Tax Act, 1961**
The most important point to be noted for recognition of a partition in joint family which has been hitherto assessed is the condition that there should be a partition by metes and bounds. There should be a physical division of the property under the income-tax or wealth tax laws, although Hindu law recognizes partition by mere severance of status without a physical division. Though physical division by metes and bounds is mandatory, but if the property is not capable of physical division, an exception is possible [Joint Family of Udayan Chinuttai v/s CIT (1967) 63 ITR 416]. But merely because property of the family consists of immovable properties there need be no inference that they are indivisible [Kalloomal Tapeswri Prasad (HUF) vs. CIT (1982) 133 ITR 690 (SC)].

A complete partition with unequal shares as may be agreed between the parties is not illegal and can be final. However, an unequal partition between karta as the sole adult member and the minor children may be challenged at the instance of the minor children on attaining majority of having a partition reopened by the Court. Such a reopening however will not only be permitted if the division is unjust and unfair.

The Supreme Court in the case of Kapurchand Shrimal vs. CIT (1981) 131 ITR 451 (SC) held that the Assessing Officer cannot continue to make assessment on HUF without disposal of the application made for partition. If such assessment is done, it shall not be valid and it has to be set aside so that assessment can be made in conformity with the order under Section 171 which the Assessing Officer is bound to pass in accordance with law.

Partial partition is not recognised for tax purposes and as such the joint family shall continue to be liable to be assessed as if no such partial partition had taken place. Each member of such family, immediately before such partial partition and the family shall be jointly and severally liable for any sum payable under the Act. [Sec. 171(9)]

**Residential Status of HUF**

Section 6(2) of the Income-tax Act, 1961, clearly contemplates a situation where a HUF can be non-resident also. In fact, HUF can also be Not Ordinarily Resident. HUF will be considered to be resident in India unless, during the previous year, the control and management of its affairs is situated wholly outside India. In such a case, it will be treated as non-resident HUF.

Section 6(6)(b) of the Income-tax Act, 1961 further provides that,

(i) In case of a HUF whose manager has not been resident in India in nine out of ten previous years preceding the previous year or

(ii) Has, during the seven previous years preceding that year, been in India for a total 729 days or less,
Such HUF is to be regarded as not-ordinarily resident within the meaning of the Income-tax Act, 1961. As such, it is not necessary for a HUF to be resident in India.

Under the Income Tax Act the residential status is determined with reference to the previous year relevant to a particular assessment year. Therefore the residential status of HUF may also be different for different assessment years considering the facts of relevant previous year.

In case of change of Karta of HUF during the year, the residential status of HUF can be determined by considering the period of stay in India of both Karta of HUF i.e. previous Karta and successive Karta.

**Resident but Not Ordinarily resident HUF**

A HUF can get a resident but not ordinarily status (RNOR) if the Karta or manager has been a non-resident in India in nine out of the ten preceding years or has been a resident in India in two out of the seven preceding years. Thus, where the Karta decides to return to India after his residence in any country, the HUF will not turn to resident HUF in India straightaway but it will get the benefit A N.O.R. HUF also enjoys tax advantage in as much as on the return of the Karta, the HUF is treated as R.N.O.R. for the next nine years. The advantage of NOR status is that all income from property or investments belonging to the HUF outside India will be exempt from tax in India.

**Non-resident HUF**

What applies to non-resident individuals will also, in some cases, be applicable to a non-resident HUF. A HUF, whose management and control is exercised wholly outside India during the financial year. From a tax point of view, if it can be shown that all decisions concerning the family members and the affairs of the HUF were taken outside India during the relevant year, that HUF will enjoy all benefits also available to a non-resident individual and the same tax exemptions.

**Income from House Property in the name of HUF**

HUF can hold house property in its own name. Property purchased with the aid of joint family funds, howsoever small that may be, still the property would be HUF property & cannot be property of the individual. Therefore, any rental income arising from such house property is treated as income of HUF under House Property Head. Further following benefits are also available for HUF —

1. Benefit of Self occupied one Residential House Property; &
2. Tax benefit by way of Deduction of Interest on Loan & Repayment of Loan; &
3. Special 30% deduction on Rental Income also to HUF.

**BUSINESS INCOME OF HUF**

HUF can do business in the name of HUF. Form of Business can be Proprietorship Concern, Partnership with other person or even in the form of investment in the shares of other Companies/Mutual Funds. All the provisions of Business head are equally applicable for HUF also. Provision of Tax Audit u/s 44AB is also applicable for HUF if the turnover of Business of HUF exceeds Rs. 1 Crore in any previous year. Further, HUF can claim the benefit of 44AD if all the conditions are satisfied.

Whenever HUF enter into any partnership or proprietorship Business then any member of HUF can be appointed as manager or working partner on behalf of HUF. In case of partnership firm, Remuneration and commission received by such member of HUF on account of his personal qualifications and exertions and not on account of investments of the family funds in the company cannot be treated as income of HUF [Subbiah Pillai (K.S.) vs. CIT 103 Taxman 400/237 ITR 11].

**CAPITAL GAIN INCOME OF HUF**

Provisions of Capital Gain head are equally applicable to HUF. Therefore any Capital gain arising to HUF, from sale of Capital asset, is taxable under Capital gain head. All the exemptions are also available to HUF.

Family Settlement or Arrangement: Since the sole purpose of family settlement should be to settle existing or future dispute regarding property, amongst the members of HUF. Therefore it is not considered as transfer under Income Tax Act, 1961 & accordingly capital gain does not attract on these transactions.

**INCOME FROM OTHER SOURCES FOR HUF**

Any other incomes accrue or arising to HUF during the previous year is taxable under the Head “Income from Other Sources”. For Example, Bank Interest, Dividend Income, Gifts etc.

**GIFT VIS-À-VIS HUF**

Gifts means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money’s worth. Thus a gift does not have the character of income. However, after 1st September, 2004, as per Income Tax Act, 1961 receiver of gift is charged to taxation u/s 56(2)(vii) under the head “Income from Other Sources”. However, receipt of gift by HUF from its member is not taxable under sec. 56(2)(vii).
This is only one side of Coin. HUF can make gifts to others also. In general, any gift by HUF to outsiders is Void. Further, any unreasonable gift to member is also voidable at the option of other members of HUF.

The gift made by the family of a sole coparcener to the wife of the Karta of the family is considered to be valid [M.S.P. Rajah Vs CGT (1982) 134 ITR 1 (Mad)]. Gift by HUF to bride of male member in the form of jewellery at the time of marriage is valid. Obligation of Karta is towards marriage of both sons & daughters. [CIT Vs A.K. Daga & Sons (2008) 296 ITR 623 (Mad) also see CGT Vs Basant Kumar Aditya Vikram Birla (1982) 137 ITR 72 (Cal)]

A Gift of HUF Property By Father
- Within reasonable limits
- As a “gift of affection”.
  [Gift of affection can be made to a wife, daughter & son]

B Gift to Stranger
Gift given to Strangers is void [Guramma v. Mallappa AIR 1964 SC 510]. Karta is not entitled to give any gifts to strangers [Gangadhar Narsiandgas Agarwal (HUF) Vs CIT (1986) 162 ITR 320 (Bom)]. A coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest. It is said to be void [Thamma Venkata Subbamma Vs Thamma Ratanamma & Ors. (1987) 168 ITR 760 (SC)]

C Gift to Coparcener & Members
The gift of family property by Karta of an HUF to coparceners or non-coparceners is voidable.

D Gift to Daughters
Hindu father can make a gift of ancestral property within reasonable limits at the time of marriage or even long after marriage [R. Kuppayee Vs Raja Gounder (2004) 265 ITR 551 (SC)]

E Gift to Wife by Karta
The Karta is empowered to make gifts to his wife within reasonable limit of the movable assets. But the Karta cannot make gifts to his second wife. It is invalid [Commissioner of Gift Tax Vs Bansilal Narsidas (2004) 270 ITR 231 (MP)]

F Gift by Karta to Nephew
Gift made by Karta to nephew & interest on the amount gifted was deposited in the firm. It was held that gift was void.

G Gift by Karta to Minor Children of Family
Gift made by Karta from
• Natural love & Affection
• Within reasonable limits

The gift will be Valid [CWT/CGT Vs Shanmugasundaram (1998) 232 ITR 354 (SC)]

**H EXPENSES INCURRED ON MARRIAGE OF A DAUGHTER BY HUF.**

Marriage of daughter still remains an obligation of the Family under Hindu law. Thus, reasonable amount of gift given on her marriage should not objected by the male coparcener.

**DEDUCTIONS UNDER CHAPTER VIA AVAILABLE TO HUF**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Section</th>
<th>Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>80C</td>
<td>Deduction available to HUF — Insurance Premium can be paid on the life of any member which does not exceed 10% of total sum assured for policies issued on or after 1st Apr, 2012</td>
</tr>
<tr>
<td>2</td>
<td>80D</td>
<td>Mediclaim Policy on the health of any member of the family. Deduction for payment on account of preventive health check-ups not available.</td>
</tr>
<tr>
<td>3</td>
<td>80DD</td>
<td>For maintenance including medical treatment of a dependant member of the family.</td>
</tr>
<tr>
<td>4</td>
<td>80DDB</td>
<td>Medical treatment for any dependant member of the HUF</td>
</tr>
<tr>
<td>5</td>
<td>80G</td>
<td>Donation to certain funds, charitable institutions ,etc.</td>
</tr>
<tr>
<td>6</td>
<td>80IA/80IAB/80IB/80IC/80ID/80IE/80JJA</td>
<td>New Industrial undertakings</td>
</tr>
</tbody>
</table>

**COMPUTATION OF TAXABLE INCOME OF HUF**

**TAXABLE INCOME SHALL BE COMPUTED AS FOLLOWS:**

Step 1 - Income under the different heads of income - First find out income under the five heads of income.

Step 2 - Adjustment of losses of the current year and earlier years - Losses should be set off according to the provisions of sections 70 to 78. The income after adjustment of losses is the gross total income.

Step 3 - Deduction from gross total income - Deductions specified under Chapter VI A should be considered while calculating the gross total income.
Step 4 - Rounding off - The balance should be rounded off to the nearest ` 10. It is called as net income or taxable income or total income.

**Points to Remember while Computing Taxable Income of HUF**

While computing income of a Hindu Undivided Family one should give due consideration of the following:

(i) Where a member of HUF converts his self acquired property into joint family, income from such property shall not be treated as income of HUF u/s 64(2). It shall continue to be taxed in the hands of the transferor who is the member of the HUF.

(ii) Income from an impartible estate is taxable in the hands of the holder of the estate and not in the hands of HUF.

(iii) Income from Stridhan of a woman is not taxable in the hands of HUF.

(iv) Personal income of members cannot be treated as income of HUF.

(v) Where the funds of HUF are invested in a company or a firm, fees or remuneration received by the member as a director or a partner in the company or a firm may be treated as income of HUF in case the fees and remuneration is earned essentially as a result of investment funds.

(vi) Where remuneration is paid by HUF to Karta or any other member for services rendered by him in conducting family's business, the remuneration is deductible provided the remuneration is paid:

(a) Under a valid bonafide agreement;

(b) In the interest of, and expedient for the family business, and

(c) Genuine and not unreasonable.

**Computation of Tax Liability of HUF**

**Calculation of Tax Liability:**

Determine Net Income and tax payable thereon at the slab rate.

**ADD:** Surcharge @ 10% if the total income exceeds Rs. 1 crore.

**ADD:** Education cess and secondary and higher secondary education cess

**DEDUCT:** Rebate u/s 86, 90,90A and 91

**ADD:** Interest payable (if any)

**DEDUCT:** Amount of prepaid taxes paid (Advance Tax, Tax Deducted at Source, etc.)

The balance so arrived is the amount of tax to be paid.

**Note:**

(i) From the Assessment Year 2013-14, tax payable (i.e. amount arrived at Step 3) cannot be less than 18.5 percent of “Adjusted Total Income” in some Specified Cases.
The total amount payable as income tax and surcharge on total income exceeding `1 crore shall not exceed the total amount payable as income tax on a total income of `1 crore by more than the amount of income that exceeds `1 crore.

**Reducing Tax Incidence in Case of HUF**

Following methods or devices may prove useful in reducing the tax incidence in case of HUF:

A **Payment of Remuneration to Karta &/or to Other Members of Family:**
An Important measure of tax planning for an HUF is to pay remuneration to the Karta and/or to other members of HUF for services rendered by them to the HUF Business. The Remuneration so paid shall be allowed as deduction from the income of HUF and thereby tax liability of HUF would be reduced. However one should keep in mind that, remuneration should be reasonable and its payment should be bonafide. Further, such remuneration should be under a Valid Agreement between HUF and recipient of Remuneration.
Therefore, a proper planning can be done using this technique to minimize overall tax liability.

B **Through Family Settlement/Arrangements**
Family settlements/arrangements are also effective devices for the distribution of ancestral property. Object of family settlement should be broadly to settle the existing or future dispute regarding joint property. Family settlement does not involve transfer of asset under Income Tax Act, 1961, therefore there would be no gift and capital gain tax liability or clubbing u/s 64.
By using Family settlement, tax incidence can be considerably reduced or it may even be NIL. Suppose a Family consists of Karta, his wife, two sons and their wives & children and its income is Rs. 6,00,000/-. The tax burden on the family will be quite heavy. If by family settlement income yielding property is settled on the Karta, his wife, his two sons and two daughter-in-law, then the income of each one of them would be Rs. 1,00,000/- which would attract no tax. Hence tax liability has been reduced to NIL.

C **By Loan to Members from the HUF**
If the business capital or investment of HUF is expanding, then such expansion can be done in the individual names of the members of...
HUF by giving loans to the members of HUF. The HUF may or may not charge interest on loans given to members. When such money is invested by such member then any income from the use of such money would be assessable in the hands of such member & not in the hands of HUF.

D By Gift of Movable/Immovable Assets of the HUF to its Female Members
If HUF have excess funds, then, any income generating property of HUF can be gifted to any Non-earning Female member of HUF. Gift of immovable property upto a reasonable level can be made by Karta of HUF to any Female member in the family out of natural love & affection.

E Other Methods/Devices
There are some other methods/ devices which may be used to reduced the incidence of Taxation:

1. Vesting of individual or self-acquired property in a family hotchpots;
2. Family reunion after partition;
3. Through inheritance by succession

Taxability of Income Received by Members from its HUF
As per Section 10(2) of the Income-tax Act, 1961, any sum received by an individual from Hindu Undivided Family of which he is member is exempt from tax. In simple words, any share of profits of HUF will not be taxable in the hands of members because HUF has already paid taxes on such income. But the amount received not as a member of Joint Family but in pursuance of some statutory provision, etc. would not be exempted in this section. Also the position of member of joint family in law to claim the right u/s 10(2) does not get affected only with the reason that they are living apart from the other members of the family.
Please Note that, any remuneration, commission or any other receipt of income by the member of HUF from HUF, for which deduction is allowed to HUF, will be taxable in the hands of Member.

Whether tax liability of an individual member of the HUF can be recovered in full extent from the HUF?
Demand against member of HUF can be recovered from HUF to the extent of its share in property of HUF. [Naresh B. Chheda v. JCIT [2011] 9 taxmann.com 86 (Bom.)]

Provisions related to Stock Market, Mutual Funds & HUF’s
1. HUF can have a separate Demat Account.
2. Make money by investing in shares of companies:
   A  Primary Market
   B  Secondary Market
3. Enjoy Tax Free Income for Long-term Capital Gains by holding shares for
   more than one year.
4. Enjoy lower tax rate of 15% on Short-term Capital Gains u/s 111A.
5. HUF can also invest in Mutual Fund.

**CONCLUDING REMARK**

HUF is a good tax saving tool as it is regarded as a separate legal entity under the tax law and also assessed to tax separately as a distinct legal person. This implies that a person can file two income tax returns, one in his personal individual capacity and one in the name of his HUF. This gives the benefits of dividing his taxable income between two entities and hence, he can claim double deductions and expenses in both capacities, thereby reducing his total taxable income and tax liability substantially. Any income earned by an individual in his capacity as member of HUF is not taxable in his individual capacity as it is already taxed in the hands of the HUF. Joint assets or properties under inheritance for the entire family can be gifted to the HUF instead of gifting to individual members of the family. This can result in tax savings as there is no gift tax or inheritance tax and clubbing of income provisions will also not apply. Similarly, a Karta of a HUF can give, by way of gifts, certain amounts or assets out of HUF properties, to its members over a period of time to gradually build assets in their names.

*Readers are requested to send their feedback & Suggestions on this article to share their experience & improvement in Future. You may reach author @caabhi13@gmail.com or call on +919001686968.*

**FORMAT OF HUF CREATION DEED**

**FORMAT-I**

**DECLARATION**

1. _____________ son of ______________, Residing at _______________ aged ___ Adult do hereby declare-

1. That I am Karta of ___________________________________________.
2. That I received on behalf of the HUF gift of Rs. ___________ by way of CASH/CHEQUE from my FATHER ___________________________(name of relative of karta of HUF) on dt. ____________. This formed the corpus of the HUF.
3. That the HUF at present is consisting of the followings members-
   I) Shri ______________________, Adult, Residing at _______________
   II) Smt. _____________________, Adult, Residing at _______________
III) Kumari _________________, Minor, Residing at _________________
4. That the above statements are true to the best of my knowledge & belief.
   Declare this on _________________

WITNESS: Signature
1. __________________________ (_____________________
2. __________________________ (_____________________

**FORMAT- II**

[TO BE EXECUTED ON RS. 100 STAMP PAPER]

DECLARATION OF GIFT MADE BY ________________________ TO THE HINDU
UNDIVIDED FAMILY OF _______________.
I, _________________, residing at _________________, do hereby declare and affirm as under:
1. That out of natural love and affection borne by me towards the Hindu
   Undivided Family of _______________, I have made a gift of Rs.____
   (Rupees _______________ only) as per the following details: By Cheque
   No._______, dated _________, drawn on Bank _________________,
   _________________ Branch, in favour of _________________HUF.
2. The above Gift has been duly accepted by ________________________, as
   Karta of his Hindu Undivided Family and has been duly acknowledged
   hereunder.
3. This Declaration of Gift is made to record the fact that I have made this
   Gift in favour of the Donee as above, who now has the absolute right,
   title and interest in the gifted amount. Date: ____________, 200__

____________________ (Signature of the Donor)

**ACKNOWLEDGEMENT OF GIFT**

I, ______________________, hereby acknowledge having received the
above gift made to my Hindu Undivided Family by
____________________. Date: ____________, 200__

____________________ (Signature of the Donee)

**Disclaimer:** The contents of this document are solely for informational purpose. It does not
constitute professional advice or a formal recommendation. While due care has been taken in
preparing this document, the existence of mistakes and omissions herein is not ruled out.
Neither the author nor itatonline.org and its affiliates accepts any liabilities for any loss or
damage of any kind arising out of any inaccurate or incomplete information in this document
nor for any actions taken in reliance thereon. No part of this document should be distributed or
copied (except for personal, non-commercial use) without express written permission of
itatonline.org