



M2K Advisors

Other laws relating to Wills – Part I

SUCCESSION PLANNING SERIES #17



Other laws relating to Wills

Although the law relating to Wills is dealt with in the **Indian Succession Act 1925**, several other enactments also contain provisions which affect a Will in some way or the other. **Therefore, it is important to look at the below laws as well:**



01

Income Tax Act, 1961

SEBI Takeover
Regulations, 1997

02

03

Companies Act, 2013

Foreign Exchange
Management Act, 1999

04

Income Tax Implications (1/2)

IN THE HANDS OF THE TESTATOR

Any transfer of a capital asset under a Will is a transaction that is not regarded as a transfer, and it shall not give rise to capital gain tax.



IN THE HANDS OF THE BENEFICIARY

Where the capital asset became the property of the assessee by way of a Will, the Cost of Acquisition and the Period of Holding of the asset shall be the cost and period of holding of the previous owner of the property who acquired it.

As per the provisions of Income tax act, where any sum of money or immovable property or movable property is received for no consideration or inadequate consideration, the difference between the aggregate value or stamp duty value or fair market value (as the case may be) and the consideration shall be taxed under the head income from other sources. However, the aforesaid provisions shall not apply to any sum of money or property received under a Will.

Income Tax Implications (2/2)



Since the income earned from the beginning of the year till the date of death would be considered as the income of the deceased, there arises a question as to who is liable for the taxes payable by the deceased.

TAXABILITY IN THE HANDS OF EXECUTORS

- "Executor" includes an administrator or other person administering the estate of a deceased person.
- The executors would be liable to tax, in the case of a testamentary succession, from the date of the death of the person and such assessment shall continue till such date of complete distribution to the legatees/ beneficiaries.
- Legatee is chargeable to tax on income after the date of distribution



TAXABILITY IN THE HANDS OF THE BENEFICIARY

The liability of the legal representative is limited to the income of the period beginning from the previous year in which the deceased died and ending on the date of the death of the deceased. The legal representative would be liable to pay tax which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

Thus, there may be two separate assessments i.e., one as an assessee in personal capacity and one as an assessee in representative capacity. The two cannot be assessed as part of the same return of income of the legal representative. The liability of the legal representative shall be limited to the extent to which the estate is capable of meeting the liability.

SEBI Implications



A

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) **govern the transaction relating to acquisition of shares of a target company** (listed company in India).

B

Regulations 3 and 4 of the Takeover Regulations ensures that a public announcement of an open offer is made, prior an acquisition of the shares of a target company beyond a certain threshold. This open offer is made to the existing shareholders of the target company, so that they **may have a fair exit opportunity in case of a substantial change of control or shareholding in the company.**


C

However, as per **Regulation 10(1)(g) of the SEBI Takeover Regulations**, any acquisition by way of transmission, succession or inheritance **shall be exempt** from the obligation of making public offer.

D

No pre-intimation under Regulation 10 shall be required to be made to avail the general exemption in relation to inheritance. However, necessary reporting post such inheritance shall be made in accordance with the Takeover Regulations.

Companies Act Implications



Pursuant to the provisions of Section 56(2) of the Companies Act 2013, the board has been entrusted with the power to register the shares in the name of the person who is claiming to have rights in such securities transmitted to him.

Generally, the Company before registering such transmission asks for documents such as succession certificate, probate of will, etc. to the Legal representative/Legal heir claiming such right for their satisfaction.

Further, revised share certificates would have to be issued by the company within 2 months.

Succession Knowledge Series



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2. [Types of Succession in India.](#)
3. [An Introduction to Hindu Succession Act](#)
4. [Rules of Intestate Succession Male - Part 1](#)
5. [Rules of Intestate Succession Male - Part 2](#)
6. [Illustrations on Intestate Succession for Male](#)
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8. [Key Aspects in Hindu Succession Act, 1956](#)

9. [Introduction to Indian Succession Act – Part 1](#)
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THANK YOU

Chennai - India

M2K Advisors LLP

30/64, 7th Floor, Briley One,
Ethiraj Salai, Egmore,
Chennai - 600008
Tamil Nadu

Hyderabad - India

M2K Advisors LLP

Manjeera Trinity Corporate
JNTU Road, Plot No S2 ,
Telangana- 500072
Hyderabad

Singapore

M2K Advisors Pte Ltd

The Octagon,
105 Cecil Street, #07-02
Singapore 069534

USA

M2K Sai Advisors Inc

1 AUER CT,
2nd Floor, East
Brunswick
New Jersey - 08816

Reach us at:

knowledge@m2k.co.in



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