

Views on why should a businessperson create and structure a Hindu Undivided Family
 by Mr. Bharat Dhawan
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guest **COLUMN** TAX INCIDENCE CAN BE LOWERED CONSIDERABLY BY EFFECTIVE TAX PLANNING UNDER HUF STRUCTURE

United a Hindu family gains, divided it loses



Bharat Dhawan, Managing Partner, Mazars

FOR A common man the task of understanding the procedure and provisions of law is intimidating, not only is the process of tax calculation tedious, its practical implementation tediuous and cumbersome. However, under the law, the tax payer is legitimately entitled to plan his taxes that his tax liability is minimal. A businessman can legitimately structure the business entity in any form as described in the law. It can be in the form of Association of Persons, a Body of Individuals or partnership to carry out business activities. These are subjected to taxation under the Income Tax Act, 1961 or other Indian laws as prescribed suitable for the taxation purpose. But there are variations in the tax provisions relating to each of them which depends on the form of the organisation. In any business, while it's important to choose an appropriate form to make it a successful venture, such selection brings tax benefits to the business man.

The Hindu Undivided Family (HUF) is a special feature of Hindu society and is defined as consisting of an ancestor and all his lineal male descendants together with their wives and unmarried daugh-

STRUCTURING WEALTH

Taxpayer	Exemption Limit	Tax Savings u/s 80C	Total
Mr. X	1,60,000	1,00,000	2,60,000
Mr. X's son	1,60,000	1,00,000	2,60,000
Mr. X HUF	1,60,000	1,00,000	2,60,000
Mrs. X	1,90,000	1,00,000	2,90,000
Mr. X's daughter	1,90,000	1,00,000	2,90,000
Total			13,60,000

Figures in ₹



ters. Daughters born in the family are its members till their marriage and equally women married into the family are members of the undivided family.

The tax incidence can be lowered considerably by effective tax planning under HUF structure. Let us take an example of a small family consisting of Mr. X, his wife a homemaker, one major son pursuing his post-graduation and one major daughter studying in college. They all constitute a HUF. Under this arrangement, Mr. X, the Karta of the family, can make profits in his individual name. An HUF member cannot be taxed

in respect of any sum which he receives as a member out of the family income, even though the family may not have paid tax on its income. As per section 2(31) of the IT Act, 1961, HUF is defined as a separate entity for taxation. It means that the same person can be assessed in two different capacities viz. as an individual and as Karta of his HUF.

Through an intelligent use of gifts and settlements by Mr. X to all family members, each family member has investments in business, industry, house property in their own individual names that each male member and the HUF would

have a gross annual income of ₹260,000 and both the female members an income of ₹290,000 each, in all adding up to ₹13.60 lakh (₹260,000 x 3 + ₹290,000 x 2) and this income is totally tax-free.

In addition, there may be several items of fully exempted income such as agricultural income, dividend income, etc. which could be planned for each of the family member and also for the HUF to secure a high level of zero income tax for the family. Similarly under HUF structure, one can use the following methods to reduce the tax incidence:

- By increasing the number of assessable units through the device of partition of the HUF, where the partition results in separate independent taxable units. Suppose an HUF consists of father and two sons and there are two business establishments, a house property and other sources of income. HUF partition can be done by giving one business establishment to each son, house property to the father and dividing other sources so as to make the partition equitable. Such a HUF partition reduces the tax liability.
- Creation of separate taxable units of HUF through 'will' in favour of HUF or

'gift' to HUF. For example, there is an HUF consisting of Karta, his wife, his two sons, daughter-in-law and grand children and a 'gift' or 'will' is made for the benefit of two smaller HUFs of the sons. The bigger HUF will stay as a separate taxable unit even after Karta's death.

● Through family settlement or arrangement, the tax incidence may be reduced considerably or it may even be nil. Suppose a family consists of Karta, his wife, two sons with their respective wives and children has a total income of ₹6,00,000. If by family arrangement, income yielding property is settled on the Karta, his wife, his two sons and two daughter-in-law, then the income of each would be ₹1,00,000, which may attract nil or considerable lower tax.

● If the business, capital or investment of the HUF is expanding then such expansion can be done in the individual names of HUF members by giving loans to member. The HUF may or may not charge interest on the loans given. Similarly, there may be other methods and devices but application of a particular device will depend upon the facts and circumstances of each individual case.