

HINDU UNDIVIDED FAMILY

CREATION & DOCUMENTATION OF HUF

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“HUF is not created, only its kitty is filled”
(Only Assets are provided to it by gift or otherwise)

Creation of HUF:

Is in God's hands, what we can do is to create HUF property once there is a family nucleus. Modes of creation of HUF property are:

1) **By Blending:**

- Of self acquired property into HUF property by conduct/ declaration of members of HUF

Creation of HUF:

2) **By Gift from Non-members:**

- Nucleus should exist – property created by gift
- Intention of donor, documentation, receiver's statement

3) By Partition of Pre-Existing HUF :

- Partial Partition: Partial as to members and/or as to property
- Total Partition: Nothing left in HUF
- Unequal partition is possible
- Who is entitled to enforce partition
- Who is entitled to how much share upon partition
- Nature of property on partition in hands of receiver

4) By Will (of any person):

- To own HUF
- To HUF of others
- To future HUF of unmarried son

5) By Reunion:

- Of previously partitioned HUF
- All members who were partitioned need not necessarily reunite
- But those who reunite must bring back all properties received on earlier partition

6) By Joint Labour:

- Family of craftsmen, joint activity and creation of joint income

Creation of Assets of HUF

- A Hindu male with his sons and grandsons constitutes an HUF but this HUF need not own any property. {A situation where the family has not inherited any property}
- In today's India there are large number of men who are entirely self-made, in trade, in industry, in profession and in services. Yet, they constitute a joint family not only with their children, but very often with their brothers.

Creation of Assets of HUF...pivotal question?

- The assets acquired by different income earning members in practice and in law, belonged either to the bigger family of brothers or the smaller family constituted with their children.
- But the income from these assets, was invariably clubbed with their individual income and subjected to tax.
- A question, therefore, arises: *How the families consisting of a father and his sons, or of brothers, and the like, can acquire assets?*

Properties of HUF can be acquired by joint labour

- Joint Labour: HUF property (movable and immovable) can be acquired under Mitakshara by joint labour of the coparceners and this can be utilised as a source of creating HUF property or nucleus of a branch of HUF.
- Joint Family funds: Even though some (or one) of the members had put in their labour and skill for earning the income, then the property will be joint family property.

Vesting of self-acquired property in family hotchpot

- HUF assets can be created by vesting of self-acquired property in the family hotchpot even where the family kitty is empty.
- Thus assets of a main family or branch of the family are created by a Karta or another coparcener throwing his self-acquired property into the hotchpot of the family or branch of the family to which they belong.
- There is nothing in Hindu Law which prevents a Hindu male from throwing his self-acquired property in the hotchpot of the smaller unit to which he belongs while the larger unit remains intact.

Creation of new HUFs through partition of an existing HUF

- Partition of an HUF by dividing its assets among its coparceners and members is a recognised method of creating a number of smaller HUFs and thereby distributing its income into a number of units which bear tax at a lower rate.
- It is thus a useful tool in tax planning.
- The partition strategy can therefore be usefully adopted to create smaller HUFs.

Creation of HUF through reunion after total partition

- If the circumstances of the family require partial partition while others remain joint and continue to carry on the business of the main HUF, the members can first have a total partition dividing all the family assets and liabilities amongst smaller HUFs and claim a total partition under section 171 before the ITO.
- **The ITO will enquire and pass an order u/s. 171(1).**
- Two or more smaller HUFs so formed can then reunite.

THANK YOU