
**Plan Today for a better Tomorrow**

Often the most deferred task is to plan for one's own self and when it comes to planning for after death that gets pushed even further. However, this task is as important as planning for a vacation or for that matter buying a car. You would not like to leave your loved ones with the burden of taking care of your estate more so when the chances of a dispute over your accumulated wealth is likely to happen. Often in businesses when the second or third generation steps in, there is lack of clarity in terms of ownership and there are differences in managing the businesses which leads to discord. This, however, does not mean that succession planning is only for business families. Possession of real estate post death or, ownership of money lying in the bank or the fixed deposits are the biggest cause of disputes between families post the death of an individual. Therefore, estate planning is not only for high-net-worth individuals but for all individuals who have any assets which would be inherited by their loved ones.

Usually, people do not know how to start going about drawing up an effective succession plan and therefore people struggle in putting pen to paper and then thoughts of scepticism coupled with ignorance of the process results in procrastination taking the driver's seat. A simple way therefore to start is to first understand your estate, your business, and the needs of your family. Once this is done, then is the time to have the uncomfortable conversation with the family as to how you would like to pass on your wealth. An important point to be noted is that daughters have an equal right in your wealth and your succession plan should factor this aspect. By the time the aforesaid discussion is completed with the family the broad contours of the plan are already in place and therefore the next step is to finalise the plan.

The plan should tick these essential boxes of simplicity, tax efficiency, flexibility and should be compliant with the applicable laws. Implementation of the plan depends upon how the plan is drawn meaning thereby whether its implementation during the lifetime of the individual or would it take effect post the demise of the person or is it a combination of both. Gifting of property, setting up of a trust, partitioning of HUF's, restructuring of businesses and contribution towards philanthropy are common ways of planning during the lifetime. Post death succession is achieved through Will, Testamentary Trust, Nominations made during lifetime coming into effect and Intestate succession.

Gifting of property is the simplest form of succession planning though it has its pitfalls as well. Gift once made is irrevocable and therefore if you have only one property then the same should not be gifted in your lifetime. The succession of the property should take place post your demise. One also needs to bear in mind the provisions of section 56(2)(x) of the Income-tax Act, 1961 as per which a gift given to a non-relative is taxable in the hands of the recipient. The said section provides a definition of the term relative and therefore a gift of property to an extended family member might pose a challenge in this case.

Private trusts are generally formed with a specific objective of taking care of certain family members or in order to ring fence the assets from legal disputes. The taxability of private trusts is a little complex and how the trust is taxed depends upon whether the trust is a discretionary or a determinate trust. A discretionary trust is one where the shares of the beneficiaries are not known, and a determinate trust is where the shares of the beneficiaries are fixed in the trust deed. A discretionary trust is taxed on the maximum marginal rate whereas a determinate trust is taxed like an individual.

Partition of an HUF must be done by metes and bounds as a partial partition though recognised under the Hindu Law is not valid as per the provisions of the Income-tax Act. After carrying out the partition you must approach the tax authorities and obtain an order under section 171 of the Act to complete the process. As mentioned above, care must be taken that the daughters are given their due share. Any amount received on partition of the HUF is not taxable in the hands of the recipient.

Partition of business assets is a more complex exercise as a company cannot be a party to a family arrangement however the shares of a company held by individuals can be a part of the total assets to be covered under the said arrangement. Therefore, depending upon the ultimate objectives a slump sale, exchange, merger, de-merger, reduction of capital, buy back of shares etc. might have to be adopted to fulfil the objectives. The choice of the route typically depends upon the objective, time duration, transaction cost and tax outflow.

Nomination and Wills are the most common forms of succession planning that take effect after your demise and therefore as a first step one must ensure that all your nominations are in place in respect of your financial assets. A Will is a unilateral legal declaration wherein the testator (creator of the will) declares his/her intention concerning his/her assets. It comes into action after the death of the testator. A Will can be on plain paper and it has to be attested by two witnesses. While there is no legal requirement of a Will to be registered but is recommended that you do register your Will with the Sub-Registrar specially if there are chances of any dispute that you foresee post your demise. If you die intestate i.e. without making a Will then the provisions of the law depending upon your religion would come into play and therefore it is advisable to draw up a Will as a bare minimum tool of succession planning.

Because One Size Does Not Fit All, every plan must be curated depending upon the needs of the family and the wishes of the person drawing up the plan. Each of the options listed above, have their own pros and cons and can be used in isolation or in conjunction with one another. If wealth creation is an art, then so is wealth preservation. Therefore, your succession plan should look at equitable distribution of wealth such that your loved ones are happy and contented otherwise you would leave a family which will remember you for the mess that you have left for them. You therefore have a choice as regards what would you like to be remembered for!

*A good plan Implemented Today is better than a perfect plan Implemented Tomorrow-George Patton*

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