

HUF


AKG ADVISORY LLP
Corporate and Legal Consultancy Firm

Are you paying more taxes
than what you should?

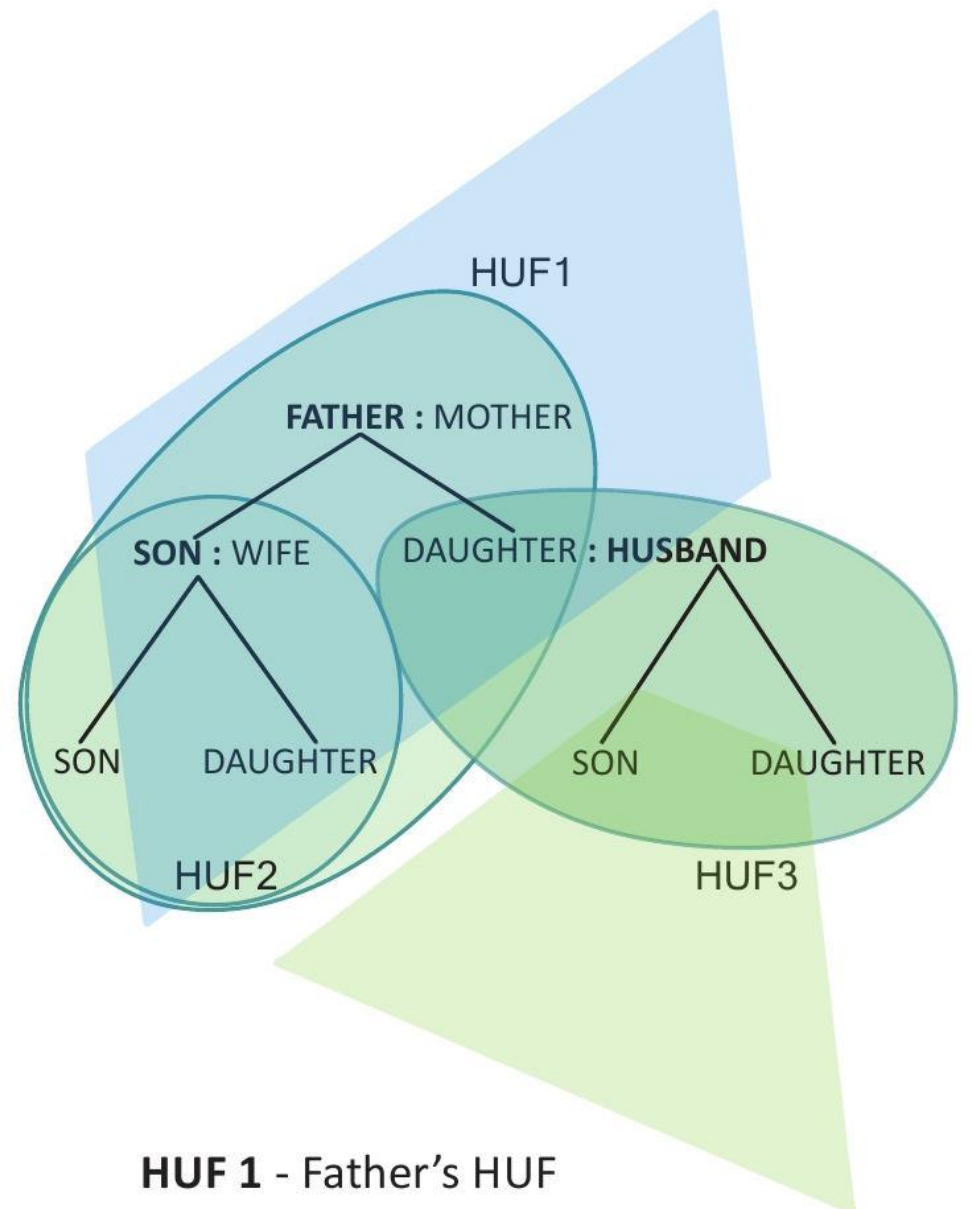
Is your income tax efficient?

Do you want to reduce
your tax liability?

Hindu Undivided Family

www.akgassociates.com

HUF might just be the solution to your tax worries



HUF 1 - Father's HUF

HUF 2 - Father's Son's HUF

HUF 3 - Daughter's Husband's HUF

What is HUF?

HUF stands for Hindu Undivided Family.

An HUF is the unit of a family counted together as a whole.

A joint family is the essence of an HUF.

It is considered as a separate unit from the individual members that constitute the HUF.

Its creation, function, operation is governed by the Hindu Succession Act, 1956.

Why HUF?

HUF is a great tool for making your income 'tax efficient' and reducing your tax liability. It's completely legal and helps you to 'earn more' from your hard earned family income, after all money saved is money earned.

Who can create HUF?

How is it created?

Any person who is a Hindu, Buddhist, Jain or Sikh can create an HUF.

HUF is created automatically upon marriage whereby it comprises of husband and wife.

HUF continues by default unless partitioned.

To get an HUF to function as a separate legal entity, a PAN in the name of the HUF needs to be obtained and a bank account in the name of the HUF needs to be opened.

PAN of HUF can be obtained at any time and not necessarily only at the time of marriage.

NOTE:

HUF is not recognized in the state of Kerala after the enactment of Kerala Joint Family System (Abolition) Act, 1975 with effect from 1st December, 1976.

Who manages the HUF?

The eldest member of the family is known as Karta. He manages the affairs of the HUF.

In case of death of Karta, the next eldest male takes his position.

In the event the eldest male passes away, and there all other males in the family are minors, then their natural guardian, the mother, shall assume the position of Karta.

If in an HUF, consisting of husband, wife and unmarried daughter, the husband passes away, the unmarried daughter would assume the position of Karta. She can, however, give up this right in favour of the widow mother.

If the HUF comprises of husband and wife and the husband passes away, the HUF does not come to an end as long as the female member is capable of adopting a child.

Who constitutes an HUF?

What are their rights?

An HUF comprises of all the males lineally descended from a common ancestor and their wives and daughters (married/unmarried). These are all members of the HUF.

Out of these members, those who have acquired their right to membership by virtue of their birth in the family are called co-parceners.

After the Hindu Succession (amendment Act), 2005, daughter can also be a co-parcener.

An adopted child is at par with a child born in the family.

Co-parcenary is restricted to the four generations of living order.

Only co-parceners have the right to claim partition and also the right to claim a share in the HUF property upon partition of HUF.

The share of different member of an HUF keeps changing due to events such as birth, marriage and death in the family.

Karta - Rights, Powers, Duties

The Karta is responsible for managing the affairs of the HUF, maintaining books of accounts and filing tax return of the HUF.

Karta is responsible for making declaration to Assessing Officer in case of partition of HUF.

He is the representative of the HUF.

He has the power to enter into contracts or form partnership on behalf of HUF.

Karta acts in dual capacity. One, on behalf of the HUF in representative capacity and the other, in his individual capacity.

Karta can earn a salary from the HUF for managing its affairs in his individual capacity.

He functions for and on behalf of the HUF.

He assumes unlimited liability in respect of the HUF.

Tax Residency of HUF

A Hindu undivided family is said to be resident in India in any previous year if during that year the control and management of its affairs is situated in India, whether wholly or partially.

In essence it means that the residential status of HUF is determined by the residential status of the person who control and manage the affairs of the HUF i.e. Karta. Accordingly, HUF can be:

Resident and Ordinarily Resident,
Resident but Not ordinarily Resident,
and
Non Resident.

If Karta is Non Resident (stays abroad) and has delegated the authority to sign on his behalf to a member resident in India, then the control and management of the HUF can be said to be in India and hence, the HUF shall be resident in India.

HUF - A separate legal entity

Once a PAN is obtained in the name of HUF, it is treated as a separate legal entity, distinguished from its members, capable of having income and owning assets separate from its members.

An HUF can:

- earn business income,
- earn capital gains,
- earn rental income,
- earn income from other sources,
- hold property,
- enter into contracts,
- start a proprietary business,
- become a partner in a firm,
- hold shares of a company in its own name.

HUF assets – blending and acquisition

When HUF is created, it may or may not have any assets.

HUF can acquire assets on its own with the help of sale proceeds of assets it already owns or the income earned from such assets.

Son's HUF can also receive assets from his father's HUF or by way of blending his own HUF.

Non co-parcenary members cannot blend their personal property with that of HUF but they can gift their personal property to the HUF.

An individual can be member in two HUFs. One, his/her father's HUF and the other, his own HUF or the HUF of the husband (in case of a daughter). *Refer diagram on page 1*

Partition of HUF

Partition is the severance of a family's HUF status. Partition can be full or partial.

Partial partition means where all assets of HUF are not distributed. Distribution may be to all members or some. If some members of the HUF exit, it is a partial partition. Partial partition is not recognized by the Income Tax Act, 1961, hence, in such cases assessment of HUF and its members shall be made as of no partition has taken place, the income from partitioned assets still assessable in the hands of the HUF.

Under full partition, all assets of the HUF are distributed and the HUF comes to an end, the income from partitioned assets taxable in the hands of the respective member.

Partition is specifically excluded from the meaning of the term 'transfer' by virtue of section 47(i) of The Act, hence, the question of capital gain upon partition does not arise.

Only co-parceners of an HUF have the right to claim partition.

Only co-parceners, mother, wife and son in the womb of his mother at the time of partition can claim a share in the HUF property in the event of partition.

A mother or a wife has no right to claim a partition. She is entitled to maintenance as long as the family remains joint. In case when a partition takes place between the father and sons, the mother is entitled to receive a share equal to that of a son and this she receives in lieu of maintenance. Similarly, the mother of the father can claim a share in the HUF property equal to the share of a grandson.

In case of death of husband, the widows acquires 'co-parcenary interest' in the HUF whereby she is entitled to the husband's share in the HUF property upon partition.

After partition, HUF can be re-created if the members so wish.

Taxation of HUF

HUF's assessment is independent of the assessment of its members.

An HUF is assessed to tax as an individual. Slab rates applicable to an individual also apply to an HUF.

All deductions, exemptions and benefits available to an individual are also available to an HUF.

NOTE:

Individual property of member can be contributed to the HUF common stock without incurring any liability in the hands of the HUF or member under The Income Tax Act, 1961. However, the income earned from such property would continue to be taxed in the hands of the member if such property is transferred to the HUF without adequate consideration, until the HUF is partitioned. Similarly, under The Wealth Tax Act, 1957, individual property of member that has been converted into HUF property shall be deemed to be the property of the member if such property is transferred to the HUF without adequate consideration, until the HUF is partitioned.

How much tax can you

save with an HUF?

The following example shows how much tax you can save on an estimated income of ₹ 2,500,000:

Figures in Rupees

Particulars	With HUF		Without HUF
	Individual	HUF	Individual
Gross Total Income	1,250,000	1,250,000	2,500,000
Less:			
80C	100,000	100,000	100,000
80D	15,000	15,000	15,000
Taxable Income	1,135,000	1,135,000	2,385,000
Tax Liability	175,615	175,615	561,865

Tax Liability with HUF	351,230	(175,615 x 2)
Tax Liability without HUF	561,865	
Tax Saving	210,635	

NOTE:

The slab rates for Assessment Year 2013-2014 have been used to calculate the Tax Liability in the above example.

Advantages of HUF

To conclude, the following are the advantages of an HUF:

HUF can purchase and own assets in its own name and can help divide the assets and income of an individual into two assesses.

Slab benefit of ` 200,000 under Income Tax Act, 1961 and ` 3,000,000 under Wealth Tax Act, 1957 is available to HUF independently.

One house or plot of land (less than 500 sq mts) is exempt under The Wealth Tax Act, 1957 in the hands of an HUF, independent of the members.

Salary paid to Karta is an eligible expense.

HUF can avail benefit of deductions available under section 80 of the The Income Tax Act, 1961 (LIC, Investment, donation, medi-claim, etc)

It can claim deduction of interest on loan paid in respect of house property owned by HUF.

Tax audit limit applies to HUF independently for business or profession carried out by HUF.

There is no capital gain upon redistribution of HUF property upon partition as partition is excluded from the definition of transfer.

Any sum received by a member of an HUF from the HUF is exempt in the hands of the member.

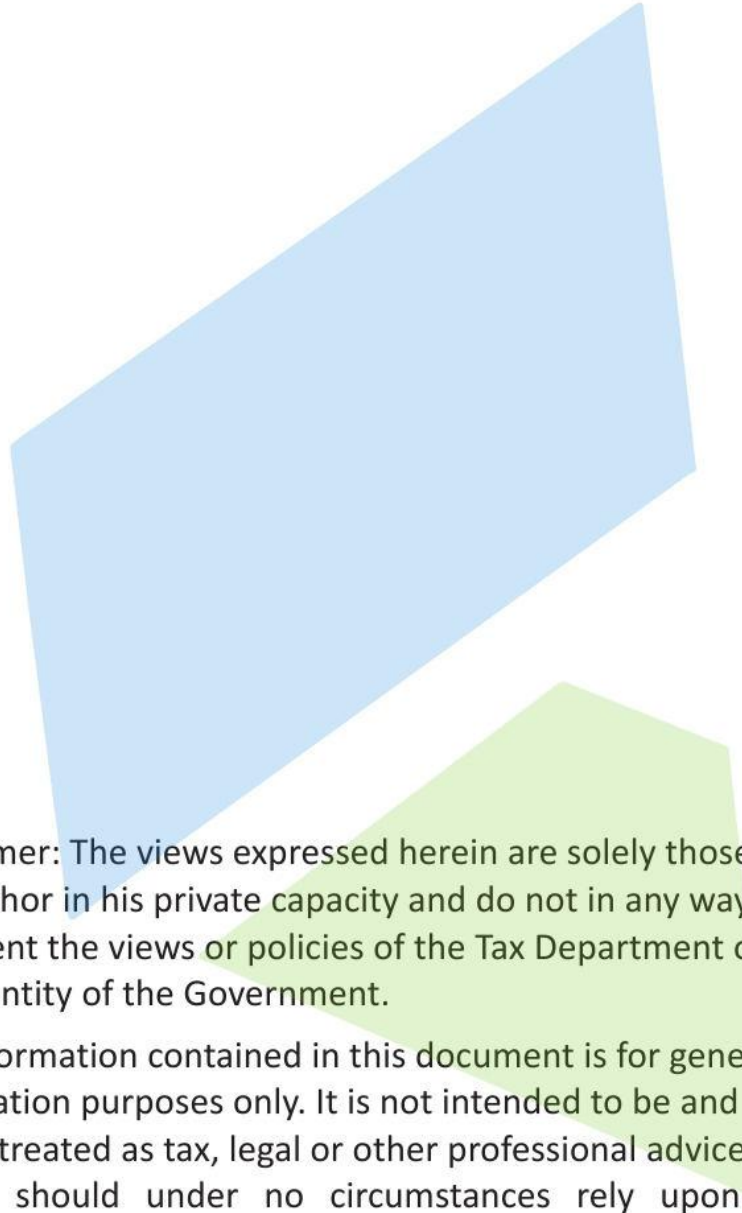
With the help of an HUF, the Service Tax and VAT threshold limit can be doubled.

Impressing of ancestral property with HUF property ensures perpetuity of property in the hands of the family and helps the family enjoy such property without disputes.

HUF for NRIs

HUF can be for Non Resident Indians too. Like mentioned earlier the place of control and management of the HUF decides the tax residency of the HUF. Hence, NRI Kartas residing outside India can avail the benefit of reduced tax liability arising from their 'Resident but Not Ordinarily Resident' or 'Non-Resident status.' Any person having queries should consult their tax advisors in this regard.

**It is our constant endeavour
to create effective and useful awareness.**

A large blue quadrilateral and a smaller green quadrilateral are positioned behind the disclaimer text on the left side of the page.

Disclaimer: The views expressed herein are solely those of the author in his private capacity and do not in any way represent the views or policies of the Tax Department or any other entity of the Government.

The information contained in this document is for general information purposes only. It is not intended to be and should not be treated as tax, legal or other professional advice. The reader should under no circumstances rely upon this information as a substitute for obtaining specific legal or tax advice from a legal or tax advisors.

Compiled by Tushar Goyal ACA



202, Siddharth Chambers, Near IIT, Hauz Khas,
Kalu Sarai, (Adj. Azad Apts.) New Delhi-110016

Ph.: +91-11-41828992, 93,94,96

Email: info@akgadvisory.com

www.akgadvisory.com