Private Client 2020

Contributing editors
Anthony Thompson and Nicole Aubin-Parvu

LEXOLOGY
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

First published 2012
Eighth edition
ISBN 978-1-83862-179-7

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Private Client
2020

Contributing editors
Anthony Thompson and Nicole Aubin-Parvu
Forsters LLP

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Guernsey and Jersey.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

London
November 2019

Contents

India

Bijal Ajinkya, Aditi Sharma and Natasha Bardia

Khaitan & Co

TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

Indian residents are liable to pay income tax on their global income, whereas non-resident Indians are liable to pay income tax only on income that arises or accrues, or is deemed to arise or accrue, in India.

The concept of domicile is not relevant for tax purposes. Instead, the Income Tax Act 1961 (the Income Tax Act) uses specific categories: residents (taxed on their global income), residents but not ordinary residents, and non-residents (both taxed on income sourced in India).

As per the Income Tax Act, the following considerations are necessary for an individual to establish residence in India:

- he or she was in India for 182 days or more in the relevant financial year (1 April to 31 March); or
- he or she was in India for 365 days or more during the four years preceding the relevant financial year and was in India for 60 days or more in the relevant financial year.

However, regarding the second consideration above, the Income Tax Act provides for specific instances wherein the 60-day threshold is increased to 182 days. This increased threshold applies when the individual is:

- an Indian citizen and leaves India in any previous year for the purposes of employment outside India; or
- either an Indian citizen or a 'person of Indian origin' living outside India who visits India in any previous year. An individual is a person of Indian origin if he or she, or either of his or her parents or grandparents, was born in undivided India as it was defined before its partition into India and Pakistan.

As regards types of income, income is categorised under the following mutually exclusive heads of income:

- salary;
- business income;
- capital gains;
- income from residential property; or
- income from other sources (residuary category).

In addition to the tax residency tests, it is important to consider Indian exchange control regulations when dealing with foreign assets, entities and non-residents. From an exchange control perspective, an individual's residential status depends on the satisfaction of the physical presence test and the intention test. An individual is regarded as resident in India when he or she was in India for more than 182 days in the previous financial year. However, an individual is not considered to be resident in India if he or she has left or stayed outside India for:

- taking up employment outside India;
- carrying on a business or vocation outside India; or
- any purpose that indicates his or her intention to stay outside India for an uncertain period of time. (While there is no statutory definition of 'uncertain period', its usage in this chapter connotes both an uncertain duration of time that an individual may spend outside India as well as the uncertainty of his or her return to India.)

An individual who does not fit the above definition of an individual resident in India is regarded as resident outside India under Indian exchange control laws.

Income

2 | What, if any, taxes apply to an individual's income?

An individual's income is liable to tax as per a slab-based regime. Incomes above specified amounts are also subject to a surcharge, thereby resulting in a higher effective tax rate.

The rates of income tax are as follows:

Total income	Applicable rate of income tax
Up to 250,000* rupees	Nil
Exceeding 250,000 rupees but not exceeding 500,000 rupees	5% of the amount by which total income exceeds 250,000 rupees
Exceeding 500,000 rupees but not exceeding 1 million rupees	12,500 rupees plus 20% of the amount by which total income exceeds 500,000 rupees
Exceeding 1 million rupees	112,500 rupees plus 30% of the amount by which the total income exceeds 1 million rupees

* If the individual is:

- 60 years or more but less than 80 years: the income threshold for tax is 300,000 rupees;
- 80 years or more: the income threshold for tax is 500,000 rupees

For resident individuals, all tax rates above will be increased by a health and education tax at a rate of 4 per cent and a surcharge, as follows:

Total income	Surcharge
Exceeding 5 million rupees but not exceeding 10 million rupees	10%
Exceeding 10 million rupees but not exceeding 20 million rupees	15%
Exceeding 20 million rupees but not exceeding 50 million rupees	25%
Exceeding 50 million rupees	37%

The 27 and 37 per cent surcharge rates are not applicable to income under capital gains in certain cases pertaining to a resident individual, provided that securities transaction tax is paid on the security concerned.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

Gains arising to an individual on transfer of capital assets is taxed under capital gains. Capital gains taxation is dependent upon the holding period and the type of assets that are being transferred. A brief overview is as follows:

Type of asset	Holding period	Category of capital asset	Rate of applicable capital gains tax
Immovable property and shares of Indian unlisted company	24 months or less	Short-term	As per income tax slab rate
	More than 24 months	Long-term	20% with indexation
Shares of Indian listed company (only shares sold through the Indian stock exchange on which securities transaction tax (STT) has been paid)	12 months or less	Short-term	15%
	More than 12 months	Long-term	10% on gains over 100,000 rupees
All other assets	3 years or less	Short-term	As per income tax slab rate
	More than 3 years	Long-term	20%

Importantly, there are specific exemptions provided in the Income Tax Act wherein capital gains are not applicable to an inherited property.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

There is no gift tax regime in India on account of the Gift Tax Act 1958 being repealed in 1998. However, section 56 of the Income Tax Act deems receipt of assets for no or inadequate consideration as a recipient's income from other sources and it therefore effectively provides for the taxation of gifts, subject to certain exceptions. It provides that if a person (legal entities and individuals) receives property with a value exceeding 50,000 rupees from any person with no or inadequate consideration, then the difference between the fair market value of the property and the consideration paid, if any, will be treated as the recipient's income and be chargeable to tax. However, this does not apply to any sum of money or any property received:

- from a relative (in the case of an individual, relative means: (i) the spouse of the individual; (ii) the brother or sister of the individual; (iii) the brother or sister of the spouse of the individual; (iv) the brother or sister of either parent of the individual; (v) any lineal ascendant or descendant of the individual; (vi) any lineal descendant of the spouse of the individual; or (vii) the spouse of the person referred in (ii) to (vi));
- on the occasion of marriage of an individual;
- under a will or by way of inheritance;
- in contemplation of death of the donor;
- from any prescribed local authority;
- from or by any prescribed fund, foundation, university or other educational institution, or any medical institution;
- from or by any prescribed trust or institution;
- under transactions specified not to be regarded as transfers;
- from an individual by a trust created for the benefit of the relative of such individual; or
- from such class of persons and subject to such conditions, as may be prescribed.

As per the Finance Act 2019, gifts from residents to non-residents will be deemed to accrue or arise in India and will thereby be taxable in India. This will be effective from 1 April 2020. However, gifts to relatives, as prescribed, still remain exempt.

Along with income tax, different states of India impose stamp duties on gifts made by an individual. Certain states impose nominal stamp duties on gifts of certain assets between relatives who qualify as family. Any applicable local cess is additional. Further, gifts of immovable properties must be registered before the local registration authorities, who charge applicable registration fees for the gifts.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There is no estate tax or inheritance tax applicable to transfers of assets upon the death of an individual or to the estate of the deceased. The Estate Duty Act 1953 was repealed in 1985.

Real property

6 | What, if any, taxes apply to an individual's real property?

Real estate may be held as an investment (capital asset) or as stock-in-trade (business asset). Depending on the characterisation of income and the length of time for which the real estate is held in the case of a capital asset, either a 20 per cent (if the holding period exceeds 24 months) or a 30 per cent tax rate shall apply to resident taxpayers. Further, certain rollover benefits may apply for individuals in the case of long-term capital gains.

Exemption from capital gains tax for certain transfers is available upon investment of net consideration received on account of such a transfer in a residential house. The asset being transferred (ie, the original asset) must be a long-term capital asset not being a residential house. To benefit from this provision, an individual must purchase or construct a house within a specified period. However, if the individual transfers the new asset within a period of three years from the date of its purchase or construction, the exemption originally availed shall be considered to be the long-term capital gain in the year of transfer of the new asset.

Exchange controls restrict the Indian real estate acquired, held and gifted by individuals. For instance, non-resident Indians (NRI) and foreign nationals cannot hold or acquire agricultural land (unless inherited). Further, an NRI cannot undertake real estate business in India.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

An individual may import assets other than cash for his or her personal use and enjoyment as part of his or her baggage when arriving in India, or separately through various modes. Import of goods in India attract customs duties (including goods and services tax and compensation cess) at various rates and social welfare surcharge at a standard rate of 10 per cent of the aggregate customs duties. Imports in India are primarily governed by the Customs Act 1962 and various rules issued under that Act..

The Baggage Rules 2016 contains provisions governing the import of goods as part of baggage. An Indian resident, a foreigner residing in India or a tourist is allowed to bring goods (except those expressly prohibited) in his or her baggage free of duty to the extent of the following:

- used personal effects (items required for satisfying daily necessities except jewellery) and travel souvenirs: unlimited; and
- other goods: up to a value of 50,000 rupees. For a tourist of Indian origin, the limit specified is 15,000 rupees. However, certain additional restrictions apply if the individual is arriving from Nepal, Bhutan or Myanmar.

The above value-based relaxation is not available for certain goods, such as firearms, alcoholic liquor or wines in excess of two litres, gold or silver in any form other than ornaments, LCD or LED television, among others. Import of goods as part of baggage in excess of the specified limits attracts customs duties at an effective rate of 38.5 per cent.

The duty rates, exemptions, concessions and prohibitions applicable for goods imported other than as part of baggage depend upon the tariff classification of the particular product based on the World Customs Organization Harmonized System Nomenclature (HSN). The duty may be calculated ad valorem (calculated as a percentage of the value) or specific (fixed amount per unit of the goods).

India allows export of most goods without payment of any duty. However, certain specified goods, such as metal ores and East Indian tanned leather, attract export duty which may be ad valorem or specific.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

Goods and services tax (GST) has been in effect since 1 July 2017. GST aimed at consolidating the indirect tax regime in India has subsumed most of the earlier indirect taxes, such as excise duty and service tax. GST is applicable to an individual if his or her annual turnover exceeds a certain threshold and will be determined by the nature of services or goods supplied.

Stamp duty is payable on any instrument that creates or extinguishes any right, title or interest of a person in a property, regardless of whether it is movable or immovable. Although the Indian Stamp Act 1899 governs the levy of stamp duties, there are also various state-specific legislations. The rate of stamp duty varies across states and is dependent upon the nature of the property being dealt with under the instrument.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Taxation of trusts differs between revocable and irrevocable trusts, and between determinate and discretionary trusts. Trusts are not separate legal persons.

Revocable v irrevocable trusts

In a revocable trust (akin to a grantor trust), the settlor has the power to reassume the asset that has been settled in the trust. Conversely, the settlor of an irrevocable trust has no such powers.

In the case of a revocable trust, the income of the trust is taxed in the hands of the settlor.

In the case of an irrevocable discretionary trust, the income of the trust is taxed in the hands of the trustee (who is the legal and beneficial owner of the property) or the beneficiaries as the representative assessee in the same manner.

Discretionary v determinate trust

In a discretionary trust, the trustee has the discretion to make distributions of the trust property to the beneficiaries. No beneficiary has any predetermined or pre-established interest in the trust property, whereas the interest of a beneficiary in the trust property is predetermined and specified in a determinate trust.

In an irrevocable determinate trust, the income of the trust can be taxed in the hands of either the trustee or the beneficiaries to the extent of their interest in the trust, but never both. Once the income is taxed, in the hands of either the trustee or the beneficiary (as in the case of a determinate trust) no further tax will apply when the income is distributed.

Taxable events that may arise during the lifetime of the trust are as follows:

- Creation of the trust: from the transferor's perspective, any transfer of a capital asset to an irrevocable trust is exempt from capital gains tax. From the transferee's perspective, any income or property received from an individual by a trust created or established solely for the benefit of relatives (as defined) of the individual is exempt from the purview of tax.
- Term of the trust: the Income Tax Act provides that the income of a discretionary trust is subject to tax at the maximum marginal rate (ie, 30 per cent, excluding any surcharge and cess). However, capital gains earned by such a trust from the disposal of capital assets held by it should be taxed at the beneficial rates (if any) specified in the Income Tax Act. All income of a business trust is taxed at the maximum marginal rate. It is, therefore, advisable that separate trust structures be created for investment and business purposes. Further, the rollover benefits applicable to individuals and Hindu undivided families are not extended to discretionary trusts.
- Distribution of trust property (income or capital, or both): Since income received by the trustee would have already been subject to tax, such income shall not be taxed again once in the hands of the beneficiaries at the time of the actual distribution of such income.

Charities

10 | How are charities taxed in your jurisdiction?

Income of a charitable institution is not subject to tax if:

- the charitable institution has been set up for a charitable object for the benefit of the general public utility;
- at least 85 per cent of such institution's income is applied for charitable purposes in India in a given financial year; and
- the remaining 15 per cent is being invested in furtherance of the Income Tax Act. Charities are eligible for various income tax deductions on this remaining 15 per cent.

Where 85 per cent of the income is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the financial year, but is accumulated or set apart for such purposes in India, the charity makes an application to the tax officer, before the due date for providing an income tax return, stating the purpose and the period (not to exceed five years) for which the income is being accumulated.

The income so accumulated must be invested in the modes specified under the Income Tax Act, failing which the income will be liable to tax. If in any year, the accumulated income is applied to a purpose other than religious or charitable purposes, or ceases to be set apart for application to such purposes, it will be subject to tax as the income of that year.

On the transfer of a capital asset which is held under trust for charitable or religious purposes, and the net consideration is used for acquiring another capital asset, the capital gain arising from the transfer is deemed to have been applied to charitable purposes and will, therefore, be tax exempt.

Any income of a charity considered to be profits and gains of business are not eligible for tax exemption unless the business is incidental to the attainment of the objectives of the organisation. The charitable organisation must maintain separate account books in respect of such business.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Indian general anti-avoidance rules (GAAR), effective from 1 April 2017, essentially seek to classify an arrangement as an impermissible avoidance arrangement (IAA) if its main purpose is to obtain a tax benefit, and the arrangement:

- creates rights or obligations not ordinarily created between persons dealing at arm's-length;
- results, directly or indirectly, in the misuse or abuse of the provisions of the Income Tax Act;
- lacks commercial substance or is deemed to lack commercial substance in whole or in part; or
- is entered into, or carried out, by means, or in a manner, not ordinarily employed for bona fide purposes.

Satisfaction of one or more of the four conditions above entitles the authorities to disregard the legal form of the transaction, structure or arrangement, and instead determine the tax based on the substance of the transaction. In addition, some overarching general anti-abuse rules may empower the tax authorities to declare an arrangement as an 'impermissible avoidance arrangement'.

The application of GAAR is subject to specified exemptions and de minimis thresholds.

Interaction of GAAR and private trusts may arise when creation of a trust is intended for the transfer of income from the current person entitled to income to others who may be taxable at a lower rate or exempt from tax. In this context, there are various specific anti-avoidance rules in the Income Tax Act:

- If the settlor retains benefit, directly or indirectly, in the corpus or income of the trust, the entire income from the trust property will be taxable in the hands of the settlor on account of being a revocable transfer (section 61 of the Income Tax Act).
- If the settlor creates a trust for income arising from an asset without transferring the asset to the trust, the income would be considered as being in the hands of the settlor for the purpose of taxation (section 60 of the Income Tax Act).
- If a trust is created for the benefit of a spouse or daughter-in-law, the income would be considered as being in the hands of the settlor (section 64 of the Income Tax Act).

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Yes, both private and public trusts (charities) are recognised in India.

Charitable or public trusts in India are governed by the Charitable and Religious Trusts Act 1920, the Religious Endowments Act 1863 and the Charitable Endowments Act 1890. They must also adhere to the rules prescribed by the applicable state legislations. A public trust must be constituted for:

- a charitable purpose, such as poverty relief, education, medical relief and environmental preservation;
- religious or spiritual awareness; or
- other objects of public good for the benefit of the public at large or a large section of the public.

Private trusts are governed by the Indian Trusts Act 1882 (the Indian Trusts Act), wherein a trust is defined as an obligation annexed to property ownership and 'arises out of confidence reposed in and accepted by the owner' (being author of the trust), or 'declared and accepted by him, for the benefit of another' (beneficiary), or of another and the owner. The person who accepts the confidence is called the trustee. Private trusts are often used as a sophisticated tool of succession planning, especially among high net worth individuals. A private trust may be revocable or irrevocable, depending on whether the power of revocation is retained by the settlor of the trust. A private trust may also be determinate or discretionary, depending on the distribution pattern and on whether the beneficial interest under the trust is predetermined.

A single trust may have characteristics of both a determinate trust and a discretionary trust, for instance, where the trust deed fixes the share of each beneficiary at a certain percentage and confers discretion on the trustee with respect to the remainder of the trust property.

A trust that is created under an individual's will is called a testamentary trust, wherein the executors of the will are usually also intended to be the trustees of such a trust.

Offshore trusts created by Indian residents or offshore trusts which have an Indian nexus, (eg, beneficiaries) are recognised by Indian authorities as long as relevant provisions of Indian laws (eg, exchange control, tax reporting, money laundering and source of funds) are complied with.

Generally (based on recent judicial precedents), Indian beneficiaries of an offshore trust may be required to explain the source of the investments held under the trust.

Private foundations

13 | Does your jurisdiction recognise private foundations?

Foundations are not recognised under Indian law. To achieve philanthropic objectives, public charitable trusts, societies or non-profit companies may be set up.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

In September 2018, a five-judge bench of the Supreme Court of India in *Navtej Singh Johar v Union of India* declared, with regard to same-sex relationships, that 'insofar as section 377 of the Indian Penal Code 1860 criminalises consensual sexual acts of adults (ie, persons above the age of 18 years who are competent to consent) in private, it violates articles 14, 15, 19 and 21' (articles primarily dealing with fundamental rights of quality before law, equal protection of the law, personal liberty and privacy) of the Constitution of India. This may be considered as a first step for India to accord recognition to same-sex relationships. However, the ecosystem to truly foster legal and social recognition across various spheres is still lacking.

The taxation regime for individuals in same-sex relations is the same as for other individuals. However, due to the lack of full legal recognition, certain benefits that may be available to a heterosexual and married couples are not available to individuals in same-sex relationships. For instance, lifetime gifts between same-sex couples are not exempt for income tax purposes.

As a corollary of the absence of full legal recognition of such individuals, rules of intestate succession where the 'husband' or the 'wife' inherits fixed portions of the estate of the deceased spouse do not apply to same-sex couples. Despite this, testamentary succession by way of bequests under wills and codicils can facilitate the succession of assets of such individual as intended. Similarly, succession under living trusts is also viable in such cases.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

All Indian personal laws recognise marriage as a heterosexual union. For instance, the Hindu Marriage Act 1955 provides that the bridegroom must have attained the age of 21 years and the bride must have attained the age of 18 years. The Indian Christian Marriage Act 1972 has a similar provision.

While individuals in a live-in relationship are accorded certain spousal rights, the Supreme Court in the case of *Indra Sarma v VKV Sarma* 2013 (SCC) 755 ruled that live-in relationships are not equivalent to marriage. Long-term cohabitation of a heterosexual couple is distinguished from that of a short duration and transient nature: the former may entail the presumption of marriage. Further, the treatment of live-in relationships varies according to personal laws. For instance, live-in relationships are not recognised in Islam.

Civil unions are not recognised in India. If a civil union model were to be adopted in India, it would be necessary not only to enact new legislation governing civil unions, but also to amend existing legislation, such as the Indian Succession Act 1925, the Guardian and Wards Act 1890, Workmen's Compensation Act 1923, among other legislation relating to succession, adoption, pensions, etc, so that a partner in a civil union will be given the same status as a spouse and considered to be family.

The taxation regime, as generally applicable to individuals, likewise applies to individuals in live-in relationships. The tax rates covered in question 2 likewise apply.

The rules of testamentary succession as generally applicable to individuals (see question 22) apply to individuals in live-in relationships as well. As regards intestate succession, individuals in a heterosexual relationship who are not married typically face the same challenges as same-sex couples (see question 14). The challenge essentially stems from non-recognition of the 'spouse' in such couples. Similar to the case of same-sex couples, such individuals in a heterosexual relationship other than marriage may plan their succession by way of bequests under wills and codicils, and private trusts.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

An individual's estate for succession purposes comprises every asset, including movable, immovable, tangible and intangible property that the individual owns and over which he or she exercises the power to bequeath.

Generally, the term 'beneficial ownership' is not defined in tax treaties. Under Indian as well as international jurisprudence, the beneficial owner is said to be the person who has the absolute discretion to utilise and enjoy the income in a manner deemed appropriate to him or her and who assumes the risk and control over such income. Thus, a beneficial owner may be distinguished from a legal owner in law. In essence, the beneficial ownership test favours a substance over form approach to prevent abuse.

Succession laws applicable to jointly held assets typically vary depending on whether the asset is movable or immovable. Generally, where there is a preselected survivorship mandate ('either or survivor' clause) for a joint account in a financial asset, the surviving account holder would become the beneficial owner of the balance funds and securities in the account.

As regards joint ownership of immovable property, the concepts of joint tenancy and tenancy-in-common exist in India. While the distinct shares of each co-owner in the former are not identifiable, the shares of each co-owner in the latter are earmarked and thus identifiable. In the Indian context, more often than not, co-ownership in real estate assets is based on joint tenancy.

Unlike most common law jurisdictions, Indian trust law does not recognise duality of legal and equitable ownership; the trustee is the legal and beneficial owner of the trust property and the beneficiaries merely have a 'beneficial interest' in such property. Indian courts recognise that although the trustee is the legal owner of the trust property and the property vests in the trustee, it is to be used and managed by the trustee for the benefit of the beneficiaries. In other words, while the trustee legally and beneficially owns and holds the trust property, it is so owned or held in a manner that the beneficiaries of the trust shall benefit.

The Indian Trusts Act defines beneficial interest as the right of the beneficiary, as opposed to the trustee, as the owner of the trust property. Beneficiaries of a determinate trust have their beneficial interest distinctly earmarked, whereas the beneficial interest of beneficiaries in a discretionary trust are not specified. To this extent, it may be said that in the former, the beneficial interest forms part of the estate of the beneficiary, whereas it may be argued to be the contrary in the latter, where in effect, the trustee may exercise discretion to make no distributions at all. From an Indian income tax perspective, it is provided that a transfer will be regarded as a revocable transfer if it contains provisions permitting retransfer, whether directly or indirectly, of the assets to the transferor, or the transferor retains a right to reassume power over the income or assets in question. At the onset of a revocable trust, the assets are construed to form part of the estate of the settlor if he or she retains the power to revest assets settled in him or herself. Moreover, the Income Tax Act provides for clubbing of the income arising in cases of revocable transfers with the income of the settlor in order to arrive at the total income of the settlor (individual). In cases of irrevocable trusts, the asset can only be construed to form part of the estate of the beneficiary upon a distribution being made.

An individual's estate may further be understood under the realm of the former Estate Duty Act 1953 (the Estate Duty Act). Section 12 ('Settlements with reservation') and section 10 ('Gifts whenever made where donor not entirely excluded') of the Estate Duty Act provided that where a gift is made under a trust or a settlement and the settlor reserves a life interest in the trust property to him or herself, the whole of the property is deemed to form part of the settlor's estate upon his or her death. Such settlements are subject to the mandates of the relevant provisions where subject to estate duty. Furthermore, the Estate Duty Act discussed what property is deemed to be within the disposing power of an individual, and hence what property forms part of his or her estate. For instance, it provided that once it is established that a person was competent to dispose of a particular asset, it shall be irrelevant to consider whether or not the person actually made the disposition. Therefore, the presence or absence of the power to dispose is the paramount consideration.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

As in most jurisdictions, the legal regime regarding lifetime gifts in India runs in tandem with that regarding bequests made under a will.

Transfers and bequests made by individuals may be in the nature of life interest in a property in favour of another individual. It is a settled principle that life interest of an individual in a property means an interest which terminates upon death. Judicial precedent has laid down that the holder of life interest has a limited, and not an absolute, right in a property. An individual with life interest in a property cannot sell such property. For instance, if a testator mentions in his or her will that the asset should ultimately devolve upon a named 'full' legatee (or remainderman) upon the death of the holder of life interest, then such provision negates any intention of the testator to bequeath absolute interest to the legatee.

In addition, the rule against perpetuity mandates that beneficial interest of an unborn person under a will must be preceded by life interest to a person living at the time of the will's execution. Absolute interest (as held by the testator of the will) must be bequeathed to the unborn individual, not limited interest. Further, the unborn individual must be born before the death of the person to whom life interest was bequeathed at the time of the will's execution.

Generally, the concept of community of property between a married couple is not prevalent in India. In this regard, the Law Commission of India in its Consultation Paper on Reform of Family Law dated 31 August 2018 (Consultation Paper) espoused the need for a doctrine recognising the community of all self-acquired property acquired after marriage. This would entail that all property of either spouse acquired after marriage be treated as a unit between the couple. Refer to question 18 as regards restrictions on bequests for certain communities in India.

18 | To what extent do individuals have freedom of disposition over their estate on death?

The personal laws of individuals govern the disposition of and succession to an individual's property and assets in India.

Succession laws for individuals professing Hinduism, Zoroastrianism, Judaism and Christianity are codified; however, succession among Muslims is governed by uncodified shariah law. The Indian Succession Act 1925 (the Indian Succession Act) governs succession among Parsees, Jews and Christians. Succession matters of Hindus, Sikhs, Buddhists and Jains are enshrined under the Hindu Succession Act 1956 (the Hindu Succession Act). So far as wills and testamentary dispositions are concerned, the provisions of the Indian Succession Act are applicable to everyone, except Muslims, regardless of the religion being followed. The testator can thereby bequeath his or her property in any manner that he or she desires.

A Muslim cannot bequeath more than one-third of his or her property under a will as shariah law is applicable. The remaining two-thirds devolves upon the heirs in the manner specified under shariah law. In the event that a Muslim testator bequeaths more than one-third of his or her property under a will, the bequest would be valid only if the heirs at the time of distribution of properties give their consent to the distribution in accordance with the will. However, Muslims who register their marriage under the Special Marriage Act 1954 may be able to bypass the restriction on bequests. In such a case, the Indian Succession Act applies to bequests by Muslims.

Unique succession laws specific to the Indian state of Goa as well as certain rules of forced heirship are applicable to the domiciles of Goa, regardless of religion. The concept of forced heirship applies whereby the portion of the property that the testator cannot dispose (legitime) is set apart by law for the benefit of lineal descendants or ascendants. Generally, an individual can only dispose of half of his or her estate by will or lifetime gifts, and the remaining property has to be allotted to his or her heirs. Further, community property laws apply such that a married couple jointly owns all assets irrespective of such assets being acquired before marriage or after marriage. Currently, community property rules are applicable only to the domiciles in Goa and not to the country at large. As mentioned in question 17, the Consultation Paper proposes rules of community property across the country for self-acquired property acquired after marriage.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Since India (Goa being an exception to a certain extent) does not have a uniform civil code for the purposes of succession, matrimony, guardianship and related matters, the inheritance of assets, including shares for each heir of an individual dying intestate, is governed by the personal laws applicable to the individual. Accordingly, Hindus, Jains, Buddhists and Sikhs are governed by the Hindu Succession Act, shariah law applies to Muslims, and Christians and Parsees are governed by the Indian Succession Act. Each of these contains varying rules for intestate succession.

The Hindu Succession Act provides for different rules for inheritance of the estate of a Hindu male and a Hindu female dying intestate. Class I heirs of a Hindu male take precedence over other heirs (being Class II, III, IV heirs), and the widow, children and mother take equal shares in the estate of such an intestate.

Different schools of Islam prescribe different rules pertaining to classification of heirs and distribution among them, wherein a daughter generally takes half of what a son inherits.

For an Indian Christian male dying intestate and being survived by a widow and lineal descendants, the widow's share shall be one-third of the estate, while the lineal descendants inherit two-thirds. In the event of there being a widow and kindred but no lineal descendants, the estate devolves equally upon the widow and the kindred.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

In India, the status of adopted and illegitimate children regarding succession rights varies across personal laws.

While shariah law and Christian law do not recognise the concept of adoption for the purposes of intestate succession, for Hindus, so long as the adoption is valid and undertaken in a legally compliant manner, there is no legal distinction between a naturally born child and an adopted child. Further, unless there is a contract or agreement stating otherwise, the parents may also inherit from their adopted child.

As per Hindu statute and case law, illegitimate children born to Hindu parents outside wedlock are regarded as being related to their mother and to one another. They can, thus, inherit from their parents and from each other. However, case law relating to the rights of an illegitimate child to the family or coparcenary property in which the parents are entitled to a share has been inconsistent. Illegitimate Hindu minors are entitled to maintenance from their father.

Shariah law recognises the doctrine of acknowledgement whereby, so long as lawful union or marriage can be proven, an acknowledgement by the father confers legitimacy on the child. The rights of inheritance of the child depends on the sect. For instance, an illegitimate child cannot inherit from his or her father but may inherit from his or her mother. Further, such a child may also, by application under the Code for Criminal Procedure 1973, claim maintenance from his or her mother. Christian law does not recognise the right of an illegitimate child to inherit property.

The Consultation Paper propounds that the Indian legislature should enact a law addressing the issue of legitimisation of children born out of live-in relationships wherein an unmarried couple has not reached the threshold of long-term cohabitation. It is proposed that inheritance rights to the extent of self-acquired properties of parents should be secured to such children. It also recommends that the definition of 'child' under the Indian Succession Act should be widened to include illegitimate children. The argument against this proposal may be that the sanctity of the institution of marriage would be tarnished in the context of Indian ethos and culture. However, it may be argued that a balancing act may still be needed in contemporary times.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Section 5 of the Indian Succession Act provides that succession to immovable properties in India of a deceased individual shall be regulated by lex situs (ie, Indian law) irrespective of the domicile of the individual at the time of his or her death. Further, succession to movable assets of a deceased individual is regulated by lex domicilii (ie, the law of the country in which such person had his domicile at the time of his death). It is further provided that a person can have only one domicile for the purpose of succession of his or her movable property.

Since domicile is relevant in the context of succession, it is worth mentioning that the Indian Succession Act lays down that the domicile of origin of a legitimate child is in the country where the father was domiciled at the time of birth of the individual, whereas the domicile of origin of an illegitimate child is in the country in which his or her mother was domiciled at the time of his or her birth.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

The Indian Succession Act governs the execution of wills in India. The Supreme Court in *Jagdish Chand Sharma v Narain Singh Saini* AIR 2015 SC 2149 reiterated the requirements of section 63 of the Indian Succession Act and provided that:

> *to execute the will as contemplated therein, the testator would have to sign or affix his mark to it or the same has to be signed by some other person in his presence and on his direction. Further the signature or mark of the testator or the signature of the person signing for him has to be so placed that it would appear that it was intended thereby to give effect to the writing as will. The section further mandates that the will shall have to be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to it or has seen some other persons sign it, in the presence and on the direction of the testator, or has received from the testator, personal acknowledgement of a signature or mark, or the signature of such other persons and that each of the witnesses has signed the will in the presence of the testator. It is, however, clarified that it would not be necessary that more than one witness be present at the same time and that no particular form of attestation would be necessary*

Section 59 of the Indian Succession Act provides that every person of sound mind and who is of majority age may dispose of his or her property by will. Sound testamentary capacity means that at one and the same time:

- the testator must understand that he or she is giving his or her property to one or more legatees;
- the testator must understand and recollect the extent of this property; and
- the testator must understand the nature and extent of the claims upon him or her both of those whom he is including in his will and those whom he is secluding from the will.

A will, or any part of a will, is void if it was made under fraudulent or coercive circumstances, or under other such importunity which removes the free agency of the testator.

Registration of a will is optional under the provisions of the Indian Registration Act 1908, and no adverse inference can be drawn against the will in the case of non-registration. There is no prescribed format for writing a will, and the will may be written on plain paper. Further, no stamp duties are applicable to wills.

Probate means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator. In the case of *Clearance Pies and others v Union of India* 2001 (43) FLR 249, the Supreme Court of India provided that probate is not required for wills executed by Hindus outside the cities of Calcutta, Madras and Bombay. Further, probate is not required by a Hindu for a will made with respect to immovable property situated in territories other than Bengal, Bombay and Madras.

Probate does not apply to Indian Christians and Muslims. If a will requires a probate, it is prudent that the will be attested by a person likely to be present in the jurisdiction where the probate proceedings or administration of the will are to be conducted. Hence, it is practical to have as the witness of a will an individual who is likely to be present in India for any such testimony or for attesting affidavits at the time of the will taking effect.

Uneven distribution of assets is valid. While case law has held that unequal distribution cannot lead to a conclusion of such a will being 'unnatural', there are rulings laying down that where heirs are being disinherited, context and reasons for the disinheritance must be explicitly provided in the will. Quantum and manner of distribution lies squarely within the pure discretion of the executant of the will.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

Recognition of foreign wills in India varies depending on whether the foreign will is proved in a court of competent jurisdiction overseas or not. Further, the applicable law will also depend on whether the will relates to movable or immovable assets.

If a foreign will has already been proved and deposited in a competent court abroad, an Indian court is permitted to grant letters of administration with a copy of the will annexed. Where a foreign will has not been proved, the Indian court is required to take evidence as to the due execution of the will according to the applicable law.

Administration

24 | Who has the right to administer an estate?

The legal system broadly categorises estate administration procedures as follows.

Where a person has died leaving a will

The Indian Succession Act defines 'executor' to be a person to whom the execution of the last will of a deceased person is confided by way of the testator's appointment. Appointment of executor is not mandatory under law; however, owing to the crucial role the executor plays in administering the estate of a testator in accordance with his or her last will, it is advisable to appoint an executor by express nomination in the body of the will. Where there is no executor, the competent authority appoints a person as 'administrator' for administering the estate of the deceased. Generally, an executor can derive his or her office only from a testamentary appointment. However, where a provision in a will confers on a person the power to collect the sums owed to the deceased, pay debts and manage property, it has been held that he or she is appointed executor by implication.

Where a person has died intestate

Similar to cases wherein no executor is named in a will, where a person has died intestate, the court of competent jurisdiction, upon an application by an interested party or legal heir, shall appoint an administrator for the purpose of administering the estate.

Executors or administrators are treated as personal representatives of the deceased.

In the context of administration of an estate, the succession certificate has a limited role. While a succession certificate does not determine questions of title or what property does or does not belong to the estate of the deceased, it has a role in the facilitation of debts and affording protection to parties paying debts to the representatives of the deceased.

When the estate forms part of a private trust, the trustee is entrusted with the fiduciary responsibility to administer the estate held under trust for the benefit of the beneficiaries.

The distinction between an executor and a trustee is that an executor, after accepting the office of the executor, cannot retire by appointing someone in his or her place without fully administering an estate, but a trustee can retire by appointing a new trustee under the provisions of the Indian Trusts Act.

25 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

As regards immovable assets, passing of title of the deceased's assets to the legal heirs or legatees requires completion of mutation formalities (formalities for the conveyance of title to real estate assets) before relevant municipal authorities.

As regards movable assets, typically the executor, administrator or legal heir, as applicable, is mandated to coordinate with the relevant financial institutions or organisations, in accordance with the respective by-laws, such that the assets smoothly devolve upon the heirs or legatees.

The Indian Succession Act provides that debts of every description must be paid before any legacy is taken or enjoyed. It is a rule of distribution and administration of an estate that no legatee is entitled to anything until all the debts left by the deceased are discharged. The executor of a will cannot lawfully distribute the assets of the testator to the legal heirs without first having paid the debts of the testator in full.

Challenge

26 Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

A will is usually contested in cases where the validity of the will itself is challenged. A will may be rendered invalid on the grounds of forgery of the will or the signature of the testator, coercion meted out to the testator, or that the testator lacked testamentary capacity. In addition, the factual backdrop is pertinent in the context of challenging a will. For instance, case law has laid down that soundness of mind can be proven by facts demonstrating that the testator was independently attending to his or her routine affairs, was filing tax returns and was corresponding with respect to judicial proceedings. Moreover, the Indian Succession Act provides that a person of generally unsound mind may validly execute a will during a lucid interval.

In *N Govindarajan v N Leelavathy* 2011 (5) CTC 287, unusual delay in filing a petition for probate was considered a suspicious circumstance as regards the genuineness of the will. However, there are contrary precedents as well that do not render a will suspicious on account of such a delay.

Further, substantiating the fact that disproportionate distribution does not affect authenticity of a will, it was held in *Shakuntala Devi v Savitri Devi* AIR 1997 HP 43 that if execution of the will is proved satisfactorily, the fact that the testator has not bequeathed any property to one of his or her children cannot make a will invalid.

As mentioned in question 22, probate is a mandatory procedure for wills made under certain specified jurisdictions in India or in cases where a will pertains to immovable assets situated in those jurisdictions. All heirs are served notice of the probate proceedings and are provided an opportunity to raise objections. Heirs are also required to give their consent by executing no-objection affidavits as part of the probate proceedings. Further, irrespective of probate, any heir may obstruct administration of the estate of a deceased by filing a caveat in the court of the appropriate jurisdiction.

Once a will is proved to be valid, there remains no recourse for any disgruntled heirs who may be expecting a bequest.

CAPACITY AND POWER OF ATTORNEY

Minors

27 What are the rules for holding and managing the property of a minor in your jurisdiction?

Personal laws, as well as the Guardianship and Wards Act 1890 (the Guardians and Wards Act), govern the provisions relating to ownership of assets on behalf of minors until they attain the age of majority (ie, 18 years).

The concept of coparcenary property prevails in respect of Hindus, wherein members derive undivided interest in joint family property upon birth. Under Hindu law, the manager (*karta*) of the family of the minor can alienate the minor's undivided interest in the joint family property without the permission of the Court, provided that alienation is for legal necessity or for the benefit of the minor. This right is left untouched by the Hindu Minority and Guardianship Act 1956, which provides that when the joint family property is under the management of an adult member of the family, no guardian shall be appointed for the undivided interest of the minor in the joint family property. Courts have held that under the Guardians and Wards Act, no legal guardian can be appointed in respect of undivided interest of the minor in joint family property unless the minor is the sole surviving coparcener.

Age of majority

28 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The Indian Majority Act 1875 provides that a minor for whom a guardian is appointed attains majority at the age of 21 years, while the age of majority is 18 years for all other persons domiciled in India.

Loss of capacity

29 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

A power of attorney may be granted to an individual of sound capacity to deal with the property of the incapacitated person. Under the Mental Health Act 2017, incapacitated persons (other than minors) may make an advance directive in writing regarding the manner in which they wish to be cared for and appoint a nominated representative. The duties of the nominated representative shall include taking proper care and making decisions relating to the treatment of the medical illness. The Mental Health Act 1987 empowered the district court to appoint a guardian, as well as a manager, to manage the property of a person with a mental illness. The court may appoint a guardian when such a person is unable to take care of him or herself. If that person is also unable to manage his or her property, then the Court of Wards may do so, failing which, upon seeking proper approval, the collector will be entrusted with this responsibility. Should the collector be unable to manage the property, then the district court may appoint any suitable person to do so.

In the recent ruling of *Aruna Ramchandra Shanbaug v Union of India*, the Indian Supreme Court allowed passive euthanasia (ie, withholding of medical treatment for discontinuance of life). Last year, in *Common Cause (A Regd Society) v Union of India and Anr*, the Supreme Court, in a landmark ruling, granted legal sanctity to living wills and advanced medical directives in India. The decision provided that adults with competent medical facilities are entitled to execute advance medical directives subject to various safeguards. In effect, it is now permissible to choose not to use medical treatment and life support in the face of terminal illness, such as vegetative state. The process of executing living wills entails a host of other formalities, including recording the conclusive opinion of a medical board duly constituted. Unlike wills, living wills are required to be countersigned by a Class I Judicial Magistrate along with attestation by two witnesses.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

A visa is a form of permission for a non-citizen to travel, enter, transit through or remain in a particular country. Generally, all foreigners except for nationals of Nepal, Bhutan and the Maldives, require a visa to enter India. The type of visa depends on the nationality of the foreign national and the purpose for which such foreign national intends to visit India.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

In the parlance of the Indian visa regime, a visitor's visa, called a tourist visa, is granted to a foreigner whose sole objective of visiting India is:

- recreation;
- sightseeing;
- a casual visit to meet friends or relatives;
- attending a short-term yoga programme; and
- short duration medical treatment, including treatment under Indian systems of medicine, etc.

No other purpose or activity is permissible for the granting of a tourist visa. The tourist visa is non-extendable and non-convertible to any other type of visa except in specific cases. Depending on the nationality of the foreign national, the continuous stay during each visit cannot exceed either 90 days or 180 days on a tourist visa. The tourist visa is not available to nationals of Pakistan.

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

Foreign high net worth individuals intending to establish an industrial or business venture, other than proprietorship and partnership firms, in India may use the business visa regime. To be eligible for an initial business visa B-4 Visa (Investor), the foreign investor must invest a minimum of 100 million rupees within 18 months or 250 million rupees within 36 months. A foreign investor promising investment as per the aforementioned thresholds will be granted the business visa for a period of 18 months or 36 months respectively, without any stay stipulation.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

The spouse and dependents of the investor are eligible for B-4X Visa, which is coterminous with the business visa of the investor and is on the same terms and conditions. After fulfilment of the eligibility conditions, the foreign investor and his or her spouse or dependents, or both, may apply for permanent residency status (PRS) to the Foreigners Regional Registration Office (FRRO). The FRRO is the primary agency for regulating registration, movement, stay and departure of foreign nationals in India, including recommending the extension of their stay in India.

34 | Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Foreign investors (excluding Pakistani citizens or third-country nationals of Pakistani origin) making investments under the foreign direct investment (FDI) route may become eligible for PRS. This scheme aims to encourage foreign investment in India and facilitate the 'Make in India' programme of the government of India. The Make in India programme is targeted at ameliorating the condition of the domestic manufacturing industry and attracting foreign investments in India.

PRS, granted for a maximum of 10 years, serves as a multiple-entry visa without any stay stipulation and entitles the foreign investor to purchase one residential property for dwelling purposes. Transfer of immovable property acquired by the PRS holder under the PRS scheme must comply with Indian exchange control law. PRS may be renewed for another 10 years.

Additionally, the spouse or dependants, or both, of the investor who is granted PRS may undertake studies in India without a separate student visa and without being subject to any specific permission required to be obtained from the FRRO for this purpose. However, prior to undertaking studies in India, the spouse or dependants are required to inform the FRRO about the details of the institution wherein they are seeking admission along with other prescribed details, such as the duration and subject of the course.

A foreign investor holding PRS is required to make necessary annual filings as prescribed to the FRRO, including filing a copy of the FC-GPR (a form issued by the Reserve Bank of India (RBI) for this purpose under the Foreign Exchange Management Act 1999); a copy of the annual return on foreign liabilities and assets, which is filed with the RBI by the Indian company receiving FDI, and the RBI's acknowledgement letter to that effect; and the income tax return, which is filed before the Income Tax Department. These compliances are required to ensure that the individual holding PRS fulfils the conditions regarding the investments made. The FC-GPR must be filed by a company through its authorised dealer category 1 bank with the Regional Office of the RBI, under whose jurisdiction the registered office of the company making the declaration is situated as and when securities are issued to the foreign investor.

35 | Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

No, such a programme does not enable an individual to obtain citizenship in India per se. According to the Citizenship Act 1955, Indian citizenship may be obtained by birth, descent, registration or naturalisation. Moreover, Indian law does not permit dual citizenship, thereby implying that Indian citizenship cannot be obtained alongside the foreign citizenship of the individual in any case.

UPDATE AND TRENDS

New legislation and current developments

36 | Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

- Direct Tax Code: the government has constituted a task force to review the extant Income Tax Act 1961 in light of India's economic needs, the direct tax systems prevalent in various countries, international best practices and other connected matters. In August 2019, the task force submitted its recommendations to the Ministry of Finance currently not in the public domain) and an overhaul of direct tax legislation seems to be in the pipeline.
- Surcharge on the incomes of high net worth individuals: surcharge applicable to income tax on the total income of individuals exceeding 20 million rupees but not exceeding 50 million rupees stands at 25 per cent. Surcharge on the total income of individuals exceeding 50 million stands at 37 per cent. However, these rates of surcharge are not applicable to income arising on account of capital gains in specified cases.
- Gifts from residents to non-residents are now taxable: with effect from 1 April 2020, income arising outside India on account of gifts from residents to non-residents shall be deemed to have accrued or arisen in India, and hence taxable in India. Relatives, as defined under the Income Tax Act 1961 remain exempt.
- Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015: relevant provisions in the 'Black Money Act' have been amended such that non-resident Indians are now within its ambit. This is seen as a specific anti-avoidance rule targeted at individuals keeping income abroad under the guise of being 'non-resident Indians'.
- Long-term capital gains: taxpayers can claim an exemption on capital gains tax by investing long-term capital gains arising from the sale of house property in up to two house properties contrary to the earlier provision of investment in one house property. However, the capital gains on the sale of house property must not exceed 20 million rupees.
- Exemption regarding taxation of trusts and sums of monies received in prescribed cases: while the Finance Act 2017 (fiscal legislation that amends the Income Tax Act 1961 annually) enacted an exemption whereby there shall be no tax in the hands of the recipient (ie, beneficiaries) so long as the trust is created for the benefit of the relatives (defined to include spouse, parents, children, siblings, among others). The Finance Act 2019 has added yet another exemption to the effect that recipients of sums of money or property shall be exempt from income tax provided these receipts are from a prescribed class of persons and subject to prescribed conditions.
- Notification of the Significant Beneficial Ownership (Amendment) Rules 2019 (the Amended Rules): on 8 February 2019, the Ministry of Corporate Affairs released a notification on the Amended Rules. It provided that it shall be the responsibility of an individual qualifying as a significant beneficial owner (SBO) to declare its beneficial interest to the relevant reporting company, and all individuals qualifying as SBO on 8 February 2019 must make such a declaration within 90 days therefrom. The Amended Rules place the onus on companies to take necessary steps to identify individuals who are SBOs. To this end, each company must also notify its non-individual members who hold at least 10 per cent of its shares, voting rights or the right to receive or participate in the dividend and other distributions in a financial year, and request information about its ultimate individual members or right holders who may qualify as SBO of the company. In the context of private trusts, the following are the SBOs on whom the obligation to disclose ownership lies:

Type of shareholder	SBO
Revocable trust	Settlor
Discretionary trust	Trustee
Specific trust	Beneficiary

- Insolvency and Bankruptcy Code 2016: the Bankruptcy Code 2016 (the Code) is one of the most significant measures undertaken by the government to address the substantial increase in the level of distressed debt in India. It is now partly in force. The Code sets out a timebound insolvency resolution process for defaulting corporate debtors. Various legal proceedings have recently been initiated under the Code in respect of corporate insolvency resolution processes.
- Permanent account number (PAN) and *Aadhar* to become interchangeable: for enhancing the ease of taxpayers and to achieve greater tax compliance, the Union Budget 2019 proposed allowing individual tax filers to quote either their PAN or *Aadhar* ID (unique identification number) while filing ITR.

KHAITAN &CO
Advocates since 1911

Bijal Ajinkya
bijal.ajinkya@khaitanco.com

Aditi Sharma
aditi.sharma@khaitanco.com

Natasha Bardia
natasha.bardia@khaitanco.com

One Indiabulls Centre
13th Floor, Tower 1
841 Senapati Bapat Marg
Mumbai 400 013
India
Tel: +91 22 6636 5000
https://www.khaitanco.com/

Other titles available in this series

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
Healthcare M&A
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
Luxury & Fashion
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Partnerships
Patents
Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

lexology.com/gtdt

an LBR business

ISBN 978-1-83862-179-7