“Taxability of Gifts”

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In layman’s word, gift is an unexpected receipts of money or things, without any consideration, from relatives, friends and well wishers.

Section 2(24) of the Income Tax Act 1961 (charging section) defines income and it also covers gift as income under clause (xiv) of subsection 24 of section 2.

Gift is taxable under the head “Income from Other Sources”. The Clause (vi) of Sub section (2) of Section 56 says:

I. (For gifts received between 1st April 2007 to 30 September 2009)

Where any sum of money, the aggregate value of which exceeds fifty thousand rupees (Rs.50,000) is received without consideration by individual or a HUF, in any previous year from any person or persons on or after the 1st day of April 2007, the whole of aggregate value is taxable as income from other sources.

Provided that this clause shall not apply to any sum of money received;
(a) from any relative; or
(b) on the occasion of marriage of the individual; or
(c) under a will or by way of inheritance; or
(d) in contemplation of death of the payer or
(e) from any local authority as defined in the *Explanation* to clause (20) of section 10; or
(f) from any fund or foundation or university or othe educational inst. or hospital or other medical inst. Or any trust or institution referred to in clause (23C) of section 10; or
(g) from any trust or institution registered u/s 12AA.

For the purpose of this, ‘relative’ means:
(a) spouse of the Individual;
(b) brother or sister of the individual;
(c) brother or sister of the spouse of the individual;
(d) brother or sister of the either of the parents of the individual;
(e) any lineal ascendant or descendant of the individual;
(f) any lineal ascendant or descendant of the spouse of the individual;
(g) spouse of the person referred to in clause (ii) to (vi).

Based on the above section, a receipt of money that fulfills the following conditions shall be qualified as gift:

1. Any sum of money: - The gift should be money only and not in kind. In other words, gift in kind is not taxable.

2. Exceeds Rs.50,000 :- The aggregate value of the gift should be more than Rs.50,000 in a year. If X has received gift in money from his friend Y Rs. 35,000 on 29th of September 2009 and another cash gift of Rs. 35,000 on 27th of October 2009, it will be deemed as an income of Mr.X as the aggregate value of the gift is exceeding Rs.50,000 during the same Financial Year.

3. The gift should not be received for any consideration i.e. it should be received without any consideration.

4. It should be received by an individual or a HUF.

If all the above conditions are fulfilled, money received as a gift shall be taxable in the hands of receiver.

If the gift is received from a relative, it shall not be taxable in the hands of the receiver.

II. <u>(For gifts received on or after 1st October 2009 to 31st May 2010)</u>

From 1st October 2009, a new clause [Sec. 56(2)(vii)] has been introduced for charging of Gifts received by individual/HUF. Earlier, only money received as gift was chargeable under Income Tax Act 1961. However with effect from 01.10.2009 gift received in kind is also chargeable subject to certain conditions.

The new provisions are described as under:

A) Any sum of money received without consideration, the aggregate of which exceeds Rs.50,000, shall be chargeable.

B) If any immovable property is received –

(a) without consideration, the stamp duty value of which exceeds Rs.50,000, the stamp duty value of such property will be chargeable.

(b) For a consideration, which is less than stamp duty value of property by an amount exceeding Rs.50,000, the stamp duty value of such property as exceeds such consideration will be chargeable.

C) if any property other than an immovable property is received –

(a) without consideration, the aggregate fair market value (FMV) of which exceeds Rs.50,000, the whole of aggregate FMV of such property will be chargeable.

(b) For a consideration, which is less than the aggregate FMV by an amount exceeding Rs.50,000, the aggregate FMV as exceeds such consideration will be chargeable.

However any such gifts received from relatives shall not be treated as income and hence shall not be chargeable to tax.

For the purpose of this, 'relative' means :
(a) spouse of the Individual;
(b) brother or sister of the individual;
(c) brother or sister of the spouse of the individual;
(d) brother or sister of the either of the parents of the individual;
(e) any lineal ascendant or descendant of the individual;
(f) any lineal ascendant or descendant of the spouse of the individual;
(g) spouse of the person referred to in clause (ii) to (vi).

The Finance Bill 2010 proposes to exclude transfer of any immovable property for inadequate consideration from the ambit of provisions of Section 56(2). This amendment will take effect retrospectively from 1st October 2009 and will, accordingly will be applicable from A.Y. 2010-11.

<u>Relative:</u>

Section 2(41) of Income tax Act,1961 defines relative as under:-

" Relative", in relation to an Individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that Individual."

Scope of relative as covered by Section 56 (2) is much larger than defined u/s 2(41). If we analyze these two sections, following differences can be identified:-

Sl No.	Relative of Individual	Sec. 2(41) Apply	Sec. 56(2) Apply
1.	Son's Wife	No	Yes
2.	Brother's Wife	No	Yes
3.	Daughter's Husband	No	Yes
4.	Sister's Husband	No	Yes
5.	Wife's Brother	No	Yes
6.	Wife's Brother's wife	No	Yes

7.	Wife's Sister	No	Yes
8.	Wife's sister's husband	No	Yes
9.	Father's Brother	No	Yes
10.	Father's Brother's wife	No	Yes
11.	Father's sister	No	Yes
12.	Father's sister's husband	No	Yes
13.	Mother's Brother	No	Yes
14.	Mother's brother's wife	No	Yes
15.	Mother' sister	No	Yes
16.	Mother's sister's husband	No	Yes
17.	Husband's brother	No	Yes
18.	Husband's Brother's wife	No	Yes
19.	Husband's sister	No	Yes
20.	Husband's sister's husband	No	Yes
21.	Husband's father	No	Yes
22.	Husband's Grandfather	No	Yes
23.	Husband's Great Grandfather	No	Yes
24.	Husband's Mother	No	Yes
25.	Husband's Grandmother	No	Yes
26.	Husband's Great Grand Mother	No	Yes
27.	Wife's father	No	Yes
28.	Wife's Grandfather	No	Yes
29.	Wife's Great Grandfather	No	Yes
30.	Wife's Mother	No	Yes
31.	Wife's Grandmother	No	Yes
32.	Wife's Great Grand Mother	No	Yes

*This is an illustrative list.

III. (For gifts received on or after 1st June 2010)

A new clause (viia) is proposed to be added in section 56(2) by the Finance bill 2010. This new clause will tax shares of company (not being a company in which public are substantially interested) received by a firm or company (not being a company in which public are substantially interested).