



Rajput Jain & Associates

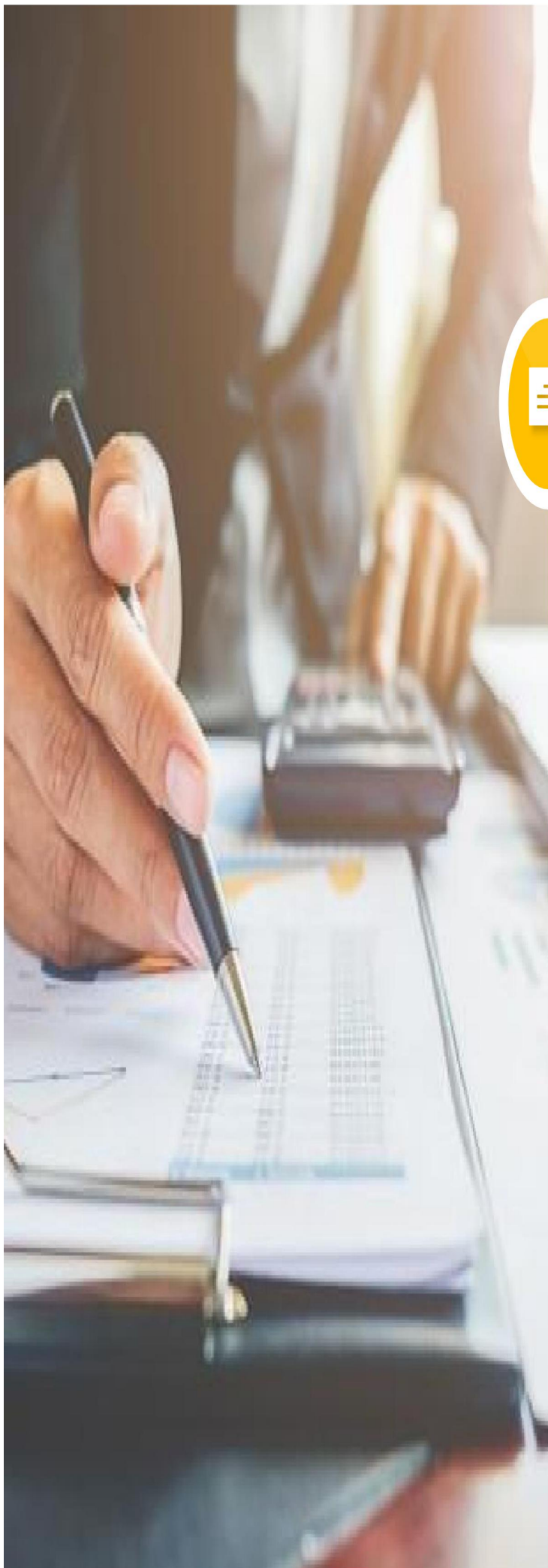
Chartered Accountants

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## Assets/Income Transferred To Spouse Shall Be Taxable In The Hands Of Transferor Spouse

Assets/Income Transferred To Spouse





## **About Us**

*Rajput Jain & Associates, Chartered Accountants, is one of the leading providers of financial and business advisory, internal audit, statutory audit, corporate governance, & international taxation and regulatory services. With a global approach to service delivery, we are responds to clients' complex business challenges with a broad range of services*

*across industry sectors and national boundaries. The Firm has been set up by a group of energetic, open minded, highly skilled and motivated professionals who have gained experience from top consulting companies and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Assurance, Risk, Taxation, & Business advisory services to various clients & their stake holders. We have been associated with various national & International recognized associations in the field of our profession; Association of International tax consultants (AITC) is one of them.*





## Assets/Income Transferred To Spouse Shall Be Taxable In The Hands Of Transferor Spouse

### Shall Be Taxable In The Hands Of Transferor Spouse



In India there is normal practise to buy/transfer properties under the name of a woman, for example acquisition of real estate under the name of a wife, buying jewellery or stock under the name of a wife etc. this is happen due to different reasons, for example in the case of women, the specified stamp duty rate is lower. While other justified reasons for buying the properties in the name of the wife may be happen, another additional ulterior motive remains, i.e. Tax Avoidance.

To reduce those circumstances, which may lead to tax evasion / reduction (by the use of a woman's free hand salary exemption slab), rules for safeguarding income are included in the tax laws. Therefore the following provisions are very relevant to one know:

- As stated in the Income Tax Act, where a property or earnings are passed to the spouse without proper consideration, the income or earnings from that property are included in the possession of a transferor spouse for the purpose of income tax calculation. Exception to this provision is where assets in conjunction with a living apart relationship have been passed.
- Similarly, according to the Income Tax Act, whether a partner receives income from a business in which the other spouse has a 20% or greater interest. The only exception to this provision is where the partner earns their salary as a result of a scientific or vocational degree.
- According to the Wealth Tax Act, an estate that is passed to a partner without adequate regard is counted in the transferor spouse's net wealth when calculating wealth tax.

Therefore, in short, the argument should be made that even though assets are acquired in the spouse's name (e.g. wife) for the sake of stamping duties or for any legitimate reasons they should be included in the possession of a spouse whose funds were involved in purchasing the assets for tax calculation purposes. For instance, if a husband purchases an immovable property with his wife or merely on the basis of the name of his wife (in order to safeguard stamp duty), the same shall be included in the husband's hands to calculate the income tax or wealth tax. Even, if such deposits are made from husband's assets by a woman, the husband's tax calculation interest income from these deposits should be added.

## Following table showing applicable Tax Provisions related to Clubbing of income

Under Section	Transaction Nature	Applicable Clubbed In The Hands Of	Relevant Reference	Exceptions/ Conditions
U/S 64(1)(ii)	Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial* interest.	Spouse whose total income (excluding income to be clubbed) is greater.	<p>1. Income other than salary, commission, fees or remuneration is not clubbed under this clause.</p> <p>2. The relationship of husband and wife must subsist at the time of accrual of the income. [Philip John Plasket Thomas 49 ITR 97 (SC)]</p>	Clubbing not applicable if: Spouse possesses technical or professional qualification and remuneration is solely attributable to application of that knowledge/ qualification.
U/S 61	Revocable transfer of Assets.	Transferor who transfers the Assets.	<p>Transfer held as revocable</p> <p>1. If there is provision to re-transfer directly or indirectly whole/part of income/asset to transferor;</p> <p>2. If there is a right to reassume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary. [S. Raghbir Singh 57 ITR 408 (SC)]</p> <p>3. Where no absolute right is given to transferee and asset can revert to transferor in</p>	<p>In the below case Clubbing not applicable if:</p> <p>1. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case.</p> <p>2. Trust/ transfer irrevocable during the lifetime of beneficiaries/ transferee or</p>

			prescribed circumstances, transfer is held revocable. [Jyotendrasinhji vs. S. I. Tripathi 201 ITR 611 (SC)]	
<b>U/S 64(2)</b>	<b>Income of HUF from property converted by the individual into HUF property.</b>	Income is included in the hands of individual & not in the hands of HUF.	Fiction under this section must be extended to computation of income also. [M.K. Kuppuraj 127 ITR 447 (Mad)]	Clubbing applicable even if: The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.
<b>U/S64(1A)</b>	<b>Income of a minor child [Child includes step child, adopted child and minor married daughter].</b>	<p>1. If the marriage does not subsist, in the hands of the person who maintains the minor child.</p> <p>2. If the marriage subsists, in the hands of the parent whose total income is greater; or;</p> <p>3. Income once included in the total income of either of parents, it shall continue to be included</p>	<p>1. The parent in whose hands the minor's income is clubbed is entitled to an exemption up to Rs. 1,500 per child. [Section 10(32)]</p> <p>2. Income out of property transferred for no consideration to a minor married daughter, shall not be clubbed in the parents' hands. [Section 27]</p>	<p>In the below case Clubbing not applicable for:—</p> <p>1. Income on account of any activity involving application of skills, talent or specialized knowledge and experience.</p> <p>2. Income on account of manual work done by the minor child.</p> <p>3. Income of a minor child suffering any disability specified u/s. 80U</p>

		in the hands of some parent in the subsequent year unless AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)		
<b>U/S 64(1)(iv)</b>	<b>Income from assets transferred directly or indirectly to the spouse without adequate consideration.</b>	Individual transferring the asset.	<p>1. Income earned out of Income arising from transferred assets not liable for clubbed. [M.S.S. Rajan 252 ITR 126 (Mad)]</p> <p>2. Transaction must be real. [O.N. Mohindroo 99 ITR 583 (Delhi)]</p> <p>3. Cash gifted to spouse and he/she invests to earn interest. [Mohini Thaper vs. CIT 83 ITR 208 (SC)]</p> <p>4. Capital gain on sale of property which was received without consideration from spouse [Sevential M. Sheth vs. CIT 68 ITR 503 (SC)]</p>	<p>Clubbing not applicable if, The assets are transferred;</p> <p>1. With an agreement to live apart.</p> <p>2. Before marriage.</p> <p>3. Income earned when relation does not exist.</p> <p>4. By Karta of HUF gifting co-parcenary property to his wife. L. HirdayNarain vs. ITO 78 ITR 26 (SC)</p> <p>5. Property acquired out of pin money. [R.B.N.J. Naidu vs. CIT 29 ITR 194 (Nag.)]</p>



<b>U/S 64(1)(vi)</b>	<b>Income from the assets transferred to son's wife.</b>	Individual transferring the Asset.	Cross transfers are also covered [C.M.Kothari 49 ITR 107 (SC)]	Condition: The transfer should be without adequate consideration.
<b>U/S 60</b>	<b>Transfer of Income without transfer of Assets.</b>	Transferor who transfers the income.	1. Section 60 does not apply if corpus itself is transferred. [Grandhi Narayana Rao 173 ITR 593 (AP)] 2. Income for the purpose of Section 64 includes losses. [P. Doriswamy Chetty 183 ITR 559 (SC)] [also see Expl. (2) to Section 64]	Irrespective of: 1. Whether the transfer is effected before or after the commencement of IT Act. 2. Whether such transfer is revocable or not.
<b>U/S 64(1)(vii),(viii)</b>	<b>Transfer of assets by an individual to a person or AOP for the immediate or deferred benefit of his: (vii) – Spouse. (viii) – Son's wife.</b>	Individual transferring the Asset.	1. Transferor need not necessarily have taxable income of his own. [P. Murugesan 245 ITR 301 (Mad)] 2. Wife means legally wedded wife. [Executors of the will of T.V. Krishna Iyer 38 ITR 144 (Ker)]	Condition: 1. The transfer should be without adequate consideration.

\* An individual shall deemed to have substantial interest in a concern for the purpose of Section 64(1)(ii)

IF THE CONCERN IS OTHER THAN A COMPANY	IF COMPANY IN CONCERN
Person either himself or jointly with his relatives is entitled in aggregate to not less than 20% of the profits of such concern, at any time during the previous year.	Person's beneficial shareholding should not be less than 20% of voting power either individually or jointly with relatives at any time during the Previous Year. (Shares with fixed rate of dividend shall not be considered)

Note : Here another significant argument is that the saving made by a woman from pin money (i.e. StriDhan) does not form part of the husband's profits. Similarly, non-working women can have their parents/relatives receipts, etc. In light of this, it is extremely necessary for women to construct their receipts/income annually by keeping a record of receipts/income, submitting ITR annually, maintaining their funds on the bank accounts etc. According to the Income tax Provsion, the clubbed income retains the same income head under which it is earned.



*Connect with Us:*

## CORPORATE OFFICE

P-6/90, Connaught circus  
Connaught Place New Delhi 11001  
Phone no.9555555480  
Email.info@carajput.com  
www.carajput.com

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