



E-Newsletter
BHUJ BRANCH
OF
WESTERN INDIA REGIONAL COUNCIL
OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Setup by an Act of Parliament)

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You do not
require an
invitation to
make profits.
Dhirubhai Ambani



Happy New Year

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CA Bhavée Thacker

Chairperson's Message

Dear Professional Colleagues,

December Month - Marking the End of the Year and the month of Thanks Giving

In this chilling winds and frosty weather it's a time to rejoice as we are in the end of the Year 2017. The time to ring out old and ring in new.

If we review till now the Year 2017 it began with the aftershock of Demonetisation and ended with the struggle of GST. The whole pave was so fast and turbulent that the year passed by in a wink. We did not have the time to think, to look back and even sort out the things, it just went by.

This Year has also given us many new opportunities, new learning, new goals and new targets to fulfill. It Changed the outlook of people and slowly it seems that things are settling for all. Now if we look on the prespective of newsletter, it has also shown a growth.

This edition gives me immense pleasure to bring 4 articles, the strength of the newsletter has increase with the time fold.

We started with a leap and now it has no bounds. The Whole Year we added fresh writers and we have now bunch of fresh writers adding the basket.

In the coming month also we would like to present the new write ups from the members and students.

I on behalf of the Managing Committee of Bhuj Branch of WIRC of ICAI, take an opportunity to

WISH YOU ALL A VERY HAPPY AND A PROSPEROUS NEW YEAR.

Last but not the Least I remember to Quote few Lines :

**Winter is the time for Comfort, For Good Food and Warmth
For the touch of a Friendly Hand and for the talk besides the
fire.**

"It's the time for Home."

CA Bhavée Thacker

Chairperson

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The Real Estate (Regulation and Development) Act, 2016

Compiled By: -CA VAIBHAV SHETH
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Topics Covered:

1. Introduction;
2. Objective of the act;
3. Applicability of the act;
4. Registration of real estate project and;
5. Registration of real estate agent.

The Real Estate (Regulation and Development) Act, 2016 more popularly known as RERA came in force in Gujarat with effect from 01st May 2017 with 92 sections covered in 10 chapters. The act main objective of the act is to protect the interest of allottee, to establish fast-track dispute resolution mechanism and to promote good governance in real estate sector which in turn would create investor confidence.

The constitutional validity of RERA was challenged in high courts across the country. The Supreme Court stayed the proceedings in other courts and suggested the Bombay High Court to hear its RERA cases first. On 6th Dec, 2017, Bombay High Court has come out with the benchmark judgment that RERA is constitutionally valid.

The act has been established to ensure sale of plot, apartment or building or real estate projects in an efficient and transparent manner. Therefore, for the applicability of RERA, the real estate project shall have an element of sale and if element of sale is missing (e.g. renting or let out), RERA would not come into picture. Further, RERA is applicable to those real estate projects which are in planning areas. However, the RERA authority after obtaining requisite approval may direct any promoter to register its real estate project with Gujarat RERA authority. On such direction, promoter shall register his real estate project with the Gujarat RERA authority and all the provisions of this acts, rules and regulations shall apply to such real estate projects accordingly.

The RERA authority has specified the list of areas in Gujarat which shall be considered as planning area. Kandla SEZ, Mundra Port & SEZ, Bhuj Area Development Authority (BHADA), Bhachau Area Development, Rapar Area Development, Anjar Area Development, Mandvi Municipality, Gandhidham Development Authority, are the planning area of Kutch District. Further, if for any area Nagarpalika is declared under Gujarat Municipalities Act, 1963 along with all industrial estates or industrial areas having jurisdiction under Gujarat Industrial Development Corporation Act, 1962 shall also be considered as planning area for the purpose of RERA.

Where the real estate project is in a planning area, the promoter of such real estate project cannot book or sell offer for sale or invite any person to purchase any plot, building or apartment or any real estate project without obtaining registration of such real estate project with the Gujarat RERA Authority. Further, section 3(1) of RERA 2016, has also stated that the promoter of such real estate project cannot advertise or market without getting its real estate project registered with Gujarat RERA Authority.

All commercial and residential real estate projects which are in planning area will be required to get registered with Gujarat RERA authority except the following:

1. area of land proposed to be developed does not exceed 500 sq mtrs or number of

apartments proposed to be developed does not exceed 8 inclusive of all phases;

2. Promoter who has received completion certificate prior to commencement of Act, i.e. prior to 01st May 2017.
3. for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project ;

Promoter who has not received completion certificate as on 01st May 2017 will have to apply for registration within 3 months of commencement of act, i.e. before 01st August 2017. Further, section 3(2) has also stated that if any real estate project is developed in phases, then every such phase shall be considered as a standalone real estate project and promoter shall obtain registration for each such phase separately.

If any promoter fails to get the project register, he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project. On continues violation, he shall be punishable with imprisonment for a term which may extend up to 3 years or with fine

which may extend up to a further 10% of the estimated cost of the real estate project, or with both. For the purpose of imposing penalty, the Gujarat RERA authority will determine the estimate cost of real project.

It shall be noted that RERA is not only limited to registration of real estate project which are in planning area, a real estate agents who facilitates purchase or sale of real estate project in planning area will also be required to get themselves register with the Gujarat RERA authority. However, there is no bar on the real estate agent for facilitating sale or purchase of real estate projects which are outside planning area.

If any real estate agent who fails to get himself register, he shall be liable to a penalty of Rs. 10,000/- every day during which such default continues which may extend up to 5% of cost of plot, apartment or building of a real estate project for which the real estate agent has facilitated purchase or sale.

HOW HINDU SUCCESSION LAW APPLIES IF WRITTEN WILL IS MISSING

Compiled By: -CA BHAVIK M.MEHTA
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What if tomorrow morning, we wake up and don't find our self in this world! In an old Gujarati proverb it is well said that જર, જમીન, ને જોરૂ તણે કજયાના છોરૂ.

When a person dies unwilled, then The Hindu Succession Act, 1956 applies for division of wealth. This law applies to Hindus, Jains, Buddhists and Sikhs. I think we might have never thought about it, but if we look to the history of princely states like Gaikwad or Jaipur, we will know how ugly it gets when matter goes to the court of law. Money is so powerful that relation doesn't take time to break. Family members can really fight over the issue of who gets how much out of the wealth and a lot of times unexpected things happen. Even people you never thought can suddenly appear claiming their share in the wealth.

Joint Ownership, Nomination, Will

How easily you get the financial asset depends on Joint Ownership, Nomination and Will. Let's understand it.

Joint Ownership: Investment can be made by an individual in his own name, single account or by two or more individuals jointly, called as joint account. There are different types of joint account relationships such as Joint, Either or Survivor, Anyone or Survivor, Former or Survivor, Latter or Survivor.

Nomination: Nomination is the process of appointing a person to take care of your assets in the event of your death. For all investments except shares, nomination does not provide ownership of your assets. The nominee will only be the custodian of the asset till it is given to its beneficiary., Though a nominee is an important person, he or she has no rights over the money or assets unless that is specified under the will or the nominee happens to inherit the money.

Will: A will is an official statement prepared by a person that describes how they want their assets to be divided among their heirs after their death. Preparing a clear will ensures that the heirs are left in no doubt about their

inheritance. It is governed by Indian Succession Act and the capacity to dispose of is governed of by respective personal laws. In case of extreme exigency like person from airforce, etc. at war, privileged will, i.e. oral will also permissible. Will does not require stamp paper nor is registration required. Will can be modified by a codicil or even cancelled. Two attesting witnesses are required. Will has to be proved before a Court and this is called probate. If there is no will then Letter of Succession has to be obtained. Through will, tax planning can be made for future. Nomination merely entitles a person to receive the property but does not extinguish the right of other heirs. In respect of self-acquired property, will can be made even in favor of persons other than heirs. A proper written will (and registered one) is the best way to make sure the wealth is passed on to different people as desired. But in reality people don't write will and keep thinking "one day, I will surely write a will when ..."

So now coming back to the point, if a will is written, then there is no confusion and the wealth is divided as per the WILL. However if a WILL is missing, then the wealth is divided as per Hindu succession Act 1956 laws for Hindu's, Jain's and Sikh's. We have separate law for

Muslims and Christians, but for this article sake, let's just talk about Hindu succession Law applicable for Hindu population. The succession is governed by complex laws of inheritance and religion as well as customs. The laws also differ for men and women. Also note that in this article mainly we are talking about the succession laws related to what happened after death of a MALE individual.

Concept of Legal Heirs under Hindu Succession

Law

Legal heirs are well defined in the Hindu Succession Law. All the relations are categorized into two classes called class I and class II. The first right on wealth is of Class I heirs. Only if there is no one available in Class I, then relations under Class II can claim their rights. If Class I & Class II both are missing, in then there is something called Agnates and Cognates, For now let's understand Class I & Class II heirs under Hindu Succession Law.

Class I relations

Son/Daughter

Widow

Mother

Son/Daughter of a pre-deceased son (pre-deceased means "already Dead")

Son/Daughter of a pre-deceased Daughter

Widow of a pre-deceased son

Son/Daughter of a pre-deceased son of a pre-deceased son (3 levels)

Widow of a pre-deceased son of a predeceased son

Class II relations

Father

Brother/Sister

Son's daughter's son/daughter,

Daughter's son's son/daughter

Daughter's daughter's son/daughter

Sibling son/daughter

Father's Parents

Brother's widow

Father's sibling

Mother's parents

Mother's sibling

If Class I & Class II is missing?

In the absence of heirs of Class I and Class II, the property is passed to the agnates and cognates of the deceased in succession. Now, one person is said to be the agnate, if he/she is related by blood or adoption wholly through the male's chain line. Similarly, one person is said to be the cognate of the other if the two of them are related by blood or adoption, but not totally through males, i.e. there has to be some intervention by a female ancestor somewhere. The first preference is given to Agnates and only if there is no Agnate, then the Cognates comes into picture. To understand Agnate/Cognate in plain plain Gujarati, Its means "Bahu Door na Sambandhi", Agnates are from the chain of Male line and Cognates does not compulsory from the chain of males in the family.

Note that if there are more than one Widow's , then they get one share only and then divide it between themselves and a person immediate family will also be considered as one unit only.

Some Important Rules and Points

A child in womb is treated as a separate child as if he/she was out in the world, He/she gets separate share in the property.

No succession rights if the widow has remarried on the date of succession. If a person has killed the person from whom he was suppose to acquire the wealth and has been declared as murderer by law, then he loses his right of acquiring assets. 2014 How Hindu Succession Law applies if written WILL is missing?

If there is no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall go to the Government.

For Muslims, the succession laws are defined under The Shariat Act. Under that 50% of the property goes to the Widow irrespective of the number of other legal heirs (remember in case of Hindu Succession Law its equal share between Widow and children) and rest is shared in equal parts between children.

Hindu Succession Law in case of a Female death

Till now we saw all the rules which are applicable if a person in question was a dead male, but in case of a female some points are a little different. The property of a female Hindu dying without WILL shall be distributed according to the rules set out as following -

1. Firstly, upon the sons and daughters (including the children of any pre-deceased son or Daughter) and the husband;
2. Secondly, upon the heirs of the husband;
3. Thirdly, upon the mother and father;
4. Fourthly, upon the heirs of the father; and
5. Lastly, upon the heirs of the mother.

Important Points in case of Women Property
If the women has acquired any property from his Father or Mother, in that case the first right will

be of the heirs of her father and not husband, in case of absence of his sons or daughters.

If the women has acquired any property from her Husband, in that case the first right will be of the heirs of her husband, in case of absence of his sons or daughters.

Conclusion

In case a will is missing and the legal heirs get into fight over the wealth, things can get ugly and the wealth might to someone which you might not have wanted or imagined. Hence writing a WILL should be on a high priority list. This article just gives very basic rules under Hindu Succession Law, in reality things can get more complicated and it's always advisable to hire a good lawyer in these cases. This article is just for information and awareness purpose. Don't take it as the complete guide.

Way Bill Rules under GST Regime

Compiled by CA Deep Ramesh Koradia
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Way bill is the key document which must be with the **person-in-charge** of a conveyance during the transportation except for the few transportation where it is exempt. Unlike the previous procedures wherein the waybill is required only when the state border is crossed, In the GST regime the concept of State check-post is been done away. Let's understand the provisions regarding way bill.

Applicability of eWay Bill:

Type of Movement	Voluntary Compliance	Compulsory Compliance
Inter State Movement of Goods	16-Jan-2018 Onwards	01-Feb-2018 Onwards
Intra State Movement of Goods	16-Jan-2018 Onwards	01-June-2018 Onwards

Part A is for the details regarding Goods and purpose of Transport, whereas **Part B** is regarding Information Relating to Transporter. Now, Every registered person who **causes movement of goods** of consignment value exceeding 50,000 rupees:

- in relation to a supply or
- for reasons other than supply or
- due to inward supply from an unregistered person,

Has to furnish the information regarding Goods in **PART A** on the Portal.

The Form of the eWay bill is Called "**EWB-01**". This Form need to file online and after filling, Ewaybill will be generated. There are two Parts in E-Way bill form No. 01.

However, if the principle is sending goods to job-worker in another state, then this 50000 limit is not applicable.

Now For Eg.

- When the Registered Businessman "A" of Bhuj Selling Goods to the Registered Businessman "B" of Gandhidham, **AND** the movement of caused by "A", then the liability to fill Part-A is of "A".
- In the above example, if the movement of goods caused by "B", then the liability to fill Part-A is of "B"
- When the Un-registered Businessman "C" of Bhuj Selling the Goods to the

FORM GST EWB-01 (See rule 138) E-Way Bill

PART-A		
A.1	GSTIN of Recipient	
A.2	Place of Delivery	
A.3	Invoice or Challan Number	
A.4	Invoice or Challan Date	
A.5	Value of Goods	
A.6	HSN Code	
A.7	Reason for Transportation	
A.8	Transport Document Number	
PART-B		
B.1	Vehicle Number	

Registered Businessman "B" of Gandhidham, **AND** even if the movement is caused by "A", the liability to fill the Part-A is of "B", since the A is un-registered.

One more thing is need to be taken care of is, TheeWay bill is not limited to the sells only. It will also cover every movement such as Branch Transfer, Job-work, Sales Return, Replacement, Warranty Supply.

When to Fill Part B of eWay Bill EVB-01?

Sr No	Mode of Transport	Whether Compulsory to Fill PART B?
1	Goods are transported in own conveyance or a hired one	The said Person MAY Generate the E-Way Bill after furnishing information in PART B
2	Goods are transported in Railway	
3	Goods are transported by Air	
4	Goods are transported by vessel	
5	Goods are transported Other than by Sr. no 1 to 4 Methods	The said Person SHALL Generate the E-Way Bill after furnishing information in PART B

So, The Very Basic Understanding can be derived from the above Discussion that, PART A is compulsory for every movement, whereas PART B and generation of Way bill is not compulsory always.

Validity of eWay Bill

- For the first 100 Kms - 1 day
- For Every Next 100 Kms or Part - Addition one day

Exemption from eWay Bill

- Annexure to Rule 138(14) is given in the Rules. Those product which are listed in that Annexure are exempt from this eWay bill Rules. By and Large every exempted products are covered in that list.
- If the movement is caused in non-motorized vehicle (Hand cart etc)
- If the goods are transported from Port, Airport, Aircargo complex etc to Inland container depot or a container freight station.
- Jewellery, Jewellery article, precious stone etc.
- When the movement is caused for the Personal Used and household effects
- When the goods are transported for the distance less than 10 kms.

Documents Need to be carried by person-in-charge of the vehicle

- Tax Invoice / Bill of Supply / Delivery challan **AND**
- Copy of eWay bill or the eWay bill Number

Previously, under the VAT Law, the requirement of the way bill was only limited to inter-state movement. The checking was also limited to the state border check post only. But now, the scope is increased to the intra state movement as well. The conveyance can be examined at any time during the movement. So

it is advisable to maintain the proper documents during transits so as to avoid any trouble.

RECENT JUDICIAL DECISIONS

By CA Jagrutkumar Avinash Anjaria
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The hon'ble Supreme Court, through a recent decision, has put an end to the controversy surrounding the issue of eligibility of depreciation to trusts, in respect of assets where the entire consideration for acquisition of that asset was treated as application of income and therefore, taken out of the taxable income.

Though the issue lost much of its relevance when the Finance Act, 2014 inserted sub section 6 to section 11. This subsection specifically denies depreciation on assets where acquisition of the same was claimed as application of income. This sub section came into effect from 01-04-2015.

The judgment may still have some relevance on the following counts;

It will certainly have the greatest relevance with reference to cases which are pending at various stages of assessment and appeal for the period prior to insertion of sub section (6) to Section 11. This is particularly true when in the said judgment the Hon'ble Supreme Court has referred to and concurred with the judgment of The Delhi High Court which did hold that the insertion of section 11(6) has prospective effect only. This will make any recourse to the argument of retrospective applicability of section 11(6) impossible across the country.

The judgment may carry some academic interest for the reason it gives for allow ability of depreciation to trusts. The argument was that because depreciation provision is there in section 32, under the head Income from Business and Profession, it is applicable to income covered under that portion of the act. This argument was, long before, dismissed by the Bombay High Court. Through this judgment, the Supreme Court has endorsed this stand of the High Court. The Supreme Court may be considered to be taking a stand that wherever

income is to be computed according to commercial principles, depreciation is a natural entitlement and that it is not subject to any specific provision in the act. According to the judgment, the calculation of income under section 11 is to be done according to commercial principles only.

The basic stand against the allow ability of depreciation in such cases was that of "double benefit." The argument was that the whole consideration was "allowed" once as application of income and subsequently, as depreciation. It was the contention that in this manner, the same expenditure was being deducted twice from the income. However, the Bombay High Court had dismissed this contention long back and now the Supreme Court has endorsed it. The logic behind this dismissal is equally interesting. The counter argument that the courts are agreeing to, is stating that what is taken out of the income on the first instance is the "application of funds." The courts seem to be suggesting that in the subsequent years, what is deducted as "depreciation," is, in a way, recognizes the "erosion in the value of asset" that has taken place due to its use during that year. The courts confirm that such "erosion or cost" has nothing to do with whether the same outflow was excluded from the computation of taxable income at any earlier stage or not. This is an interesting angle to look at it.

(Commissioner of Income Tax-Pune-III v/s. Rajasthan and Gujarati Charitable Foundadtion, Pune)

PHOTO GALLERY

CPE held in the Month of December 2017



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