

Taxation of Gift- Under Income Tax

Receipts without consideration [Sec. 56(2)] [Applicable from AY 2005-06 onward]

Four categories chargeable to tax

A receipt of sum of money or property* without consideration chargeable to tax under S. 56(2)(VII) if the following condition are satisfied.

1. Individual or HUF
2. Received on or after 01.10.2009
3. Sum of money or property falls in any of the following category
4. It does not fall under exempted category

Category

Categories	Tax Treatment	For ceiling of Rs. 50000 single transaction or all transaction of the Previous Year will be considered.
1. Any sum of money [gift in cash, cheque or draft]	Aggregate amount of sum of money from one or more persons during the PY exceeding Rs. 50000 shall be chargeable to tax	All transaction
2. Immovable property without consideration	Any immovable property is received without any consideration , the stamp duty value of which exceeds Rs. 50000 ,will be chargeable to tax . If however an immovable property is purchased or acquired for consideration which is lower than stamp duty value , nothing will be	Single transaction

	taxable in hand of purchaser/ recipient . Even if the difference between the stamp duty value and the consideration paid/ payable is more than Rs. 50000	
3. Movable property** without consideration	If aggregate fair market value of the movable properties received without consideration during PY exceeds Rs. 50000 whole market value shall be chargeable to tax.	All transaction
4. Movable property for consideration which is less than the market value	If the consideration is less than the fair market value of the property by an amount exceeding Rs. 50000 , then difference is chargeable to tax.	All transaction

- Property** property for this purpose means the following capital assets of the assessee i.e. recipient : immovable property being land or building or both, shares and securities, jewellery, Archaeological collection, drawings , painting, sculpture, any art of work or bullion [

Exempted Category

1. Money or property received from relative
2. Money or property received on the occasion of marriage
3. Money or property received by way of will or inheritance
4. Money or property received on contemplation of death
5. Money or property received from local authority
6. Money or property received from any fund, foundation, university, other educational institute, hospital, medical institution, any trust or institution referred in Sec. 10[23C].
7. Money or property received from any charitable institute registered under section 12AA.

Relative means ;

<i>List of Male Donors</i>	<i>List of Female Donors</i>
Father (Papa or Pitaji)	Mother (Maa or Mummy)
Brother (Bhai)	Sister (Bahin)
Son (Beta or Putra)	Daughter (Beti or Putri)
Grand Son (Pota or Potra)	Grand Daughter (Poti or Potri)
Husband (Pati)	Wife (Patni)
Sister's Husband (Jija)	Brother's Wife (Bhabhi)
Wife's Brother (Sala)	Wife's Sister (Sali)
Husband's Brother (Dewar)	Husband's Sister (Nanad)
Mother's Brother (Mama)	Mother's Sister (Mausi)
Mother's Sister Husband (Mausa)	Wife's brother's wife (Sala Heli)
Father's Brother (Chaha or Tau)	Father's Brother's Wife (Chachi or Tai)
Father's Sister's Husband(Fufa)	Father's Sister (Bua)
Grand Father (Dada)	Grand Mother (Dadi)
Great Grand Father (Pardada)	Great Grand Mother (Pardadi)
Daughter's Husband (Jawai)	Son's Wife (Bahu or Putra Vadhu)
Wife's Father (Sasur)	Wife's Mother (Sas)
Husband's Father (Sasur)	Husband's Mother (Sas)
Wife's Grand Father (Dada Sasur)	Husband's Grand Mother (DadiSas)
Husband's Grand Father (Dada Sasur)	Wife's Grand Mother (Dadi Sas)
Wife's Great Grand Father(Bada Dada Sasur)	Husband's Great Grand Mother (Badi Dadi Sas)
Husband's Great Grand Father(Bada Dada Sasur)	Wife's Great Grand Mother (Badi Dadi Sas)
Brother's Wife(Bhabhi)	Mother's Brother's Wife (Mami)
	Husband's Brother's Wife(Devrani or Jithani)

Other relevant points :

1. In the case of movable property value to be considered shall be fair market value as on the date of receipt.
2. In case of immovable property, the value of the property shall be stamp duty value of the property.
3. Gift received by HUF from its member shall be treated as gift received from relative.
4. The provision is applicable whether recipient/ Donor is resident or non resident.
5. Gift of agriculture land situated in rural area in India , is not chargeable to tax in the hand of recipient as the agriculture land is not capital assets under Section 2[14].

VALUATION RULES -

Properties	Valuation
Immovable property	Stamp duty value
Jewellery, Archaeological collection, drawings , painting, sculpture, any art of work or bullion	<ol style="list-style-type: none"> 1. If purchased from registered dealer, Invoice value shall be the fair market value. 2. In any other case, the price of the assets shall be if it is sold in the open market.
Quoted shares and securities through transaction in recognized stock exchange	Value as recorded in stock exchange.
Quoted shares and securities [not being received through transaction in recognized stock exchange]	Lowest price of such shares traded in any recognized stock exchange in India.
Unquoted equity shares	=Net worth*paid up value one share/total amount of paid up equity shares capital as shown in the balance sheet.
Other unquoted shares and securities	Market value shall be the price it would fetch if sold in the open market on the valuation date and the assessee may get report from category -1 Merchant Banker or Chartered Accountants in respect of such valuation

Some Examples :

Question	Answer
1. On June 1,2011, X get gift of House property in Delhi of Rs. 50 lacs [Stamp duty value same]. from Y and property valuing Rs. 50000 in Nagpur from Z.	X will be taxed for Delhi property of Rs. 50 lacs under the head "income from other sources" though the Nagpur property will not be taxed as it does not exceed Rs. 50000. In the hand of Y and Z, nothing will be tax as capital gain as gift is not treated a transfer under sec. 47[iii] and section 50C has no role to play
2. A purchased property on 23.5.2011 from X in Delhi for Rs. 30 lacs stamp duty value of the property is Rs.50 lacs. What is chargeability of the same under S. 56(2).	Nothing will be chargeable in the hand of A under the head "income from other sources". Cost of acquisition of property for A shall be Rs. 30 lacs for further sale and capital gain . In the hand X, value of property sold shall be Rs. 50 lacs under S. 50C. for capital gain purpose.
3. Immovable property received as gift in Stock in trade by A from X of the value of Rs. 50 lacs.	Section 56[2][viii] shall be applicable only when property is received as capital assets. Since house property in the hand of A is as stock in trade , nothing shall be taxable.
4. Motor car received as gift.	Nothing is taxable under S. 56[2][vii].
5. X receive property under will .	Not taxable.

Receipt of shares by a Firm or a closely held company

Clause (viiia) has been inserted in section 56(2) with effect from 1.6.2010 . this is applicable if the following conditions are satisfied -

1. Recipient is form or closely held company[company in which the public are not substantially interested.
2. The assets which is received is in the form of share in closely held company.
3. These shares are received from any person.
4. Such shares are received on or after 1.6.2010.
5. Such shares are received without consideration or for inadequate consideration.
6. Such shares are not received by way of transaction referred to in Sec. 47[via]/[vic]/[vicb]/[vid]/[vii].

Consequences if these conditions are satisfied.

Situations	Taxabiity
1.shares are received without consideration and aggregate value of shares does not exceed Rs. 50000.	Nothing is taxable.
2.shares are received without consideration and aggregate value of shares exceed Rs. 50000.	Aggregate fair value of shares shall be taxable in the hand of recipient.
3.shares are received for consideration which is less than the fair market value and the aggregate difference does not exceed Rs. 50000.	Nothing is taxable
4. shares are received for consideration which is less than the fair market value and the aggregate difference exceed Rs. 50000.	Aggregate fair market value minus the aggregate consideration will be taxable in the hand of the recipient.

Share premium in excess of fair market value [S.56(2)(viib),

Applicable from assessment year 2013-14.

Where a company [not being company in which the public are substantially interested] received in any previous year from any resident person, any consideration for issue of shares . If the consideration for issue of shares exceed the face value of such shares, the aggregate of consideration exceeding the market value of shares shall be taxable in the hand of recipient company under the head ‘ income from other sources”

- The fair market value of the shares shall be the higher of the value:
 - a] as may be determined in accordance with the prescribed method; or
 - b] as may be substantiated by company to the satisfaction of the assessing officer, based on the value of its assets, including tangible assets, being goodwill, know how, patent, copyright, trademark, licences, franchises, or any other business or commercial right of similar nature.
- This provision is not applicable in the following two cases:
 - a. Where the consideration is being received by venture capital undertaking from venture capital company or venture capital fund ; or
 - b. Where the consideration for issue of shares is received by company from a class or classes of person as notified by the Central Government.

Article written By CA. Sanjeev Singhal, FCA, DISA [ICAI]