

Succession and Tax Planning through Private Trusts

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Trusts



Private Trusts



Trust – Important Terms

- **Trust** – It is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner.
- **Author of Trust** – the person who reposes or declares the confidence (also known as Settlor)

Trust – Important Terms

- **Trustee** – The person who accepts the confidence.
- **Beneficiary** – The person for whom the confidence is reposed or declared.
- **Trust Property** – It is the subject matter of the trust.
- **Instrument of Trust** – The instrument by which the trust is declared.

Creation of Trust

- When author of the trust indicates with reasonable certainty:
 - An intention on his part to create a trust;
 - The purpose of the trust;
 - The beneficiary; and
 - The trust property, and (unless the trust is declared by will or the author of the trust is himself to be a trustee) transfers the trust property to the trustee.

Requisites of a Proper Trust

- Trust Deed
- Author / Settlor
- Purpose - Lawful
- Beneficiaries
- Description of property settled –
Immovable / Movable
- Trustees
- Other particulars

Trustees

- Cannot renounce after acceptance, only when:
 - Permission of principle civil court of original jurisdiction
 - If beneficiary is competent to contract, by his consent
 - By virtue of special power in the instrument of trust.
- Cannot delegate
- New trustee appointment in case of death – person nominated in deed or author or last surviving trustee

Private Trusts

- 100% Specific Beneficiary Trust or Trust for several specific persons.
- Trust for Idol or deity.
- Discretionary Trust to be operative during life time of the author for living as well as unborn persons.
- Discretionary Trust under a Will.
- Oral and written Trusts.

Assessment of Specific Trust

- Assessment of a 100% specific Beneficiary Trust through a trustee – Sec.160(1)
- Has to be in writing if not – statement in writing within 3 months of declaration- Sec. 160(1)(v)
- Direct Assessment of the Beneficiary – Sec. 166.
- Private trust for the wife of the tax payer – Sec. 64(1)
- Specific business trust for any dependent relative created through will – proviso to sec. 161(IA)

Assessment of Specific Trust

- Private trust for a minor and S.C. in CIT v. M.R. Doshi (1995) 211 ITR 1(SC)
- Private trust a Major Son / Daughter
- Private trust for the daughter-in-law and sec. 64(1)(viii)
- Private trust for the parents & other relatives
- Mode of investments of a private trust

Tax Rates for Private Trusts - Specific

<p>If Income consist of or include PGBP in any general cases except below</p>	<p>MMR</p>
<p>If Income consist of or include PGBP when trust declared by will exclusively for benefit of any relative dependent on him and such trust is only trust so declared by him</p>	<p>Rate applicable to total income of each beneficiary</p>
<p>If income does not consist of PGBP</p>	<p>Rate applicable to total income of each beneficiary</p>

Assessment of a Discretionary Trust

- Tax Planning through Trust for an unborn person
– Sec. 164 (1)
- Trust for would – be-son / daughter
- Trust for would – be-wife / husband
- Distributions received by a beneficiary from a discretionary trust – CIT v. Dr. Anand Sarabhai Trust (1998) 231 ITR 524 (SC).
- Discretionary Trust through Will and normal rates
– Sec. 164(1)

Tax Rates for Private Trusts - Discretionary

<p>If Income consist of or include PGBP when trust declared by will exclusively for benefit of any relative dependent on him and such trust is only trust so declared by him</p>	<p>Tax rates as of AOP</p>
<p>If Income consist of or include PGBP in any other case</p>	<p>MMR</p>
<p>If income does not consist of PGBP then in following cases:</p> <ul style="list-style-type: none"> ■ None of beneficiaries has any income chargeable to tax exceeding maximum amount not chargeable to tax or is a beneficiary of any other trust ■ Income is received under trust declared by will and such trust is the only trust so declared by him. ■ Income from trust created before 1970 for benefit of dependent relatives. ■ Income on behalf of PF, S Fund, GF, for benefit of his employees 	<p>Tax rates as of AOP</p>
<p>In any other Case</p>	<p>MMR</p>

Oral Trust

- Tax to be charged at MMR (Section 164A)

Extinguishment of Trust

- When purpose is completely fulfilled
- When purpose becomes unlawful
- When fulfillment of its purpose becomes impossible by destruction of property or otherwise
- Revocation of trust- in terms of specific purpose of trust is achieved
- In case of extinguishment – trust property to be held by trustee for the benefit of author or his legal representative.

Thank You

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