FAQs – Private Family Trust in India
(Basics)

WHY – WHAT - HOW

Q1. In simple terms – what, how and why about Family Trust?

Ans. A person when gifts or transfers part of his/her assets and wealth for a specific reason OR to specific person(s), under the control of themselves or other persons under specific rules framed by wealth owner for long-term period.
In simple terms, it is like Gifting but ownership is not transferred immediately, but later and to get benefits of asset as per rules set up. There are three persons in this type of a Trust.

1. Settlor or Author of Trust - Person(s) who owns wealth and decide to Gift / Transfer, it can be more than one person.
2. Trustee(s) - Person(s) who will control and manage the Trust as per the given rules. It can be more than one person.
3. Beneficiaries - Persons for whom the Trust is created. It can be more than one person.
4. Rules framed by wealth owner / settlor is called as a Trust Deed.

Q2. Who should create a Family Trust in India?

Ans. A Trust is **a more secure & safe tool for Succession Planning compared to a Will**. Person(s) having following situation may consider creation of Trust during lifetime as a Living Trust.

1. If you wish to avoid any **uncertainty of challenging your Will** by your legal heirs.
2. If you wish that your family should **avoid Probate** related cost, delay, hassles for transfer of assets.
3. If you have a **Child who requires Special Needs**.
4. If you wish to **avoid your Creditors' claims** on your personal assets.
5. To avoid claims under **matrimonial disputes** / **kids from earlier marriage**
6. If you are **following Muslim Religion** and you wish to distribute your wealth as per your wishes but are facing difficulty due to Forced-heirship (Sharia laws).
7. If you are **residing in Goa where Portuguese laws of community property** is applicable
8. If you are worried about **Business Succession** due to young age kids OR likely fights within legal heirs for management / control resulting into loss of business growth prospects / future family wealth flow.
9. If you are **settled abroad** and have assets in India on which you wish to save additional taxes.
10. If your **kids are settled abroad** and wish to save taxes.
11. If you have **wishes to Give back or do some Charity** but not sure whether family will fulfil your wishes in the same manner later.
12. If you wish to keep **few family properties for joint use by all beneficiaries** like business / immovable properties / Trademarks etc.
13. If you wish to **save inheritance tax** on your wealth in India (if introduced in the future).
14. If you wish to **drive / control / manage your wealth** as per your wishes, even after your demise.

Q3. Is creation of a Family Trust an alternate to Will?

Ans. No, a Family Trust created during lifetime is in addition to Will document.
One can gift/transfer a portion of his/her wealth to the Family Trust during their lifetime, however for remaining properties he/she need to write a Will.
Most advance countries have Family or Private Trust as the most popular planning tool and majority of Will writers have also set-up a Family Trust.

Q4. Can I create my Trust during my lifetime or after my demise?
Ans. A Family Trust can be created during lifetime as a "Living Trust" or if a Trust created after demise (via Will Document) it is called as a "Testamentary Trust".

Q5. What are advantages and disadvantages of a Family Trust?
Ans. Advantages:
- no hassle/delay/cost of obtaining Probate (if succession is done via Will),
- no risk of any family objection for distribution (if succession is donevia Will),
- avoid inheritance tax (if introduced in India),
- control/management of property given to trusted persons for Life Care of Special Child, Minors, ageing Parents, Business management
- Avoid forced heirship/community property laws
- Defer ownership to legal heirs for few years due to young age, likely risk of de-bonding
- Tax saving tool for NRIs

Disadvantages:
- Managing separate accounting of Trust income and filing of tax returns
- Tax rates – maximum marginal rate

Q6. Do Family Trust require any approval of Government / Charity Commission / Income Tax Department etc.?
Ans. No, a Family Trust is a Private Trust created with rules by owner/settlor in a Trust Deed.
It does not require any approval from Government or any regulator.
It requires registration of the Trust Deed at local Sub-Registrar Office as per settlor's residence address.

Q7. Who can be Trustees of a Family Trust?
Ans. Trustee can be Settlor/owner (themself), spouse, children (above 18 years of age), parents, relatives, professionals, companies.

Q8. Who can be the Beneficiaries in a Family Trust?
Ans. Settlor/owner (themself), spouse, children and their family, future children / grandchildren, parents, relatives, NGOs etc.

Q9. Can a person who creates the Trust also be the Trustee and Beneficiary?
Ans. Person(s) creating the Trust can be Settlor, Trustee and one of the many beneficiary, but not the sole beneficiary.

Q10. Is there only one type of Family Trust?
Ans. Trust can be Revocable or Irrevocable, and Discretionary or Determined
It means that if the Settlor/owner wishes to cancel or terminate or dissolve the Family Trust during their lifetime to get all the assets back in their personal name, it is called as a Revocable Trust. But if Settlor/owner transfer assets to trust without any rights to reclaim, then it is called a an Irrevocable Trust. Decision related to Revocable or Irrevocable is required mainly as per objective/reason for creating Family Trust as well as for Tax purpose.
When annual income distribution ratio is fixed for each beneficiary in a Trust Deed, it is called Determined (Specific Trust). When income distribution ratio is to be decided by Trustees – it is called Discretionary Trust.

Q11. Which law applies for Family Trust in India?
Ans. The Indian Trust Act, 1882 governs all the laws related to formation, operations and dissolution of Family Trusts in India.

Q12. How to set-up Family Trust (brief process)?
Ans. The steps for creating a Family Trust as mentioned below:
- objective for creating Family Trust.
- Who will be the Settlor, Trustees and Beneficiaries.
- Rules for management / dissolution of Trust for Family Trust Deed.
- Register Family Deed with sub-registrar's Office.
- Obtain PAN card for Family Trust.

- ➢ Open Bank Account for Family Trust.
- ➢ Transfer assets to Family Trust during your lifetime as and when you wish, or via Will.

Q13. How much time it take to create a Family Trust?
Ans. A regular Family Trust can be completed within a week's time.

Q14. What is the validity of a Family Trust?
Ans. Normally, a Trust is created for few years as per objectives of Trust.
The maximum period can be for 99 years (about 3 generations).

Q15. How does Family Trust come to an end?
Ans. A Family Trust can come to an end in either of the following situations:
- ➢ Objective is achieved.
- ➢ Period for which trust was created is completed.
- ➢ If it is Revocable Trust – then if it is revoked (cancelled) during lifetime of Settlor/Owner.
- ➢ Trust is revoked with consent of all beneficiaries.

Q16. What are basic legal compliances once Family Trust is created?
Ans. Once a Family Trust is created, the below compliances need to be taken care of:
- ➢ Protect Trust corpus / properties
- ➢ Invest funds
- ➢ Maintain accounting
- ➢ File annual Tax returns
- ➢ Maintain meeting records of Trustees and Beneficiaries

Q17. Which assets can be gifted or transferred to a Family Trust?
Ans. Following assets and properties can be gifted or transferred or settled into a Family Trust
- ➢ Immovable Property which are not under loans,
- ➢ All types of financial assets,
- ➢ All types of movable assets including Business Ownerships, Artifacts,
- ➢ All types of Intellectual Property Rights, and
- ➢ All types of Digital assets

Q18. What are Income Tax laws for Family Trust for creation, gift/transfer, management of income/capital gains and dissolution ?
Ans. Following Tax compliances:
<u>For Gift/Transfer of immovable / movables / financial assets</u>
- ➢ No Gift tax, Capital Gains if beneficiaries are Relatives as per Income Tax Act
- ➢ No capital gain tax on dissolution – as per Succession laws
- ➢ Other capital gains laws apply similar to individuals

<u>For annual Income</u>
- ➢ Payment of Maximum Marginal Tax

Q19. Can I create more than one Family Trust ?
Ans. There are simple requirement for which a simple Trust can be created, managed and dissolved without much complexities.
For HHNIs / large family succession – many aspects are considered related to taxation, ownership of business/assets, foreign assets, appointing professional trustees etc., hence many families create multiple Trusts
For example, a Mother Trust which is the main controlling Trust and Baby Trust for each child, Charity related Trust, Business Management Trust, Offshore Trust in foreign country with compliance of Foreign Exchange laws etc.