FEAR OF INHERITANCE TAX, OTHER LEVIES LOOMS LARGE

Promoters Rejig Family Trusts for Tax Advantage

Business houses look to shift trusts to offshore locations, realign stake of family members

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Mumbai: A well-known New Delhi-based business family, whose two sons are non-resident Indians (NRIs), feared that their wealth could be taxed not just in India, but also in the US.

The fear has led them to restructure their family trust so that it attracts minimal tax. The family trust, which until now was based in India, is being shifted to an offshore location, and the stake of the family members realigned.

The promoter of an auto component company, which had made acquisitions in Europe, got his son to take up UK citizenship about a year ago. This was done primarily because the businessman feared Indian regulations around place of effective management could lead to increased tax liability in India. Now the fear is, when the wealth is passed on to the son, it may attract inheritance tax.

"Many Indian families who have cross-border wealth fear that the next generation may have to pay inheritance tax, or there may be tax obligations under several regulations like FATCA (Foreign Account Tax Compliance Act)," said Rajesh Narain Gupta, managing partner, SNG & Partners, a Mumbai-based law firm that has undertaken several family trust restructuring.

"A number of business families and ultra HNIs (high net worth individuals) are increasingly considering business restructuring and succession planning, including family trust structures that are compatible with different tax rules and inheritance laws in different jurisdictions," Gupta added.

Not A Matter of Trust

What is a family trust?

It's a structure where assets are transferred and family members own stake in the trust

Many Indian families finding it tough to divide assets to family members in different countries

Tax planning in different countries triggering restructuring of family trusts

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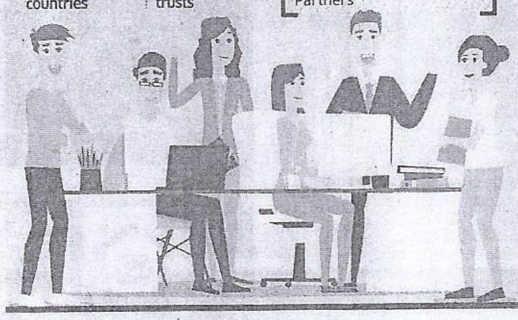

About a year ago, India and the US signed a tax treaty that triggered FATCA. Under this, US tax officials can impose punitive levies on undisclosed cash and property that American citizens (including NRIs) hold in India. This regulation had led many US citizens to surrender their green cards.

In the last few years, many Indian families have sent at least one of their heirs to either the US or Europe with the objective of saving tax in India. However, the problem now is that both Europe (through inheritance tax) and the US (FATCA) themselves have started raising tax queries on the wealth of the families.

Added to this, Indian tax authorities — equipped with data from Switzerland and Panama leaks on money stashed abroad, are going after such family structures spread across the globe. According to government sources, about 4,000 people in the past two years have given up Indian citizenship fearing that the tax department could go after their unaccounted wealth in India.

"The main purpose to restructure the family trust by the settlor is to insulate his properties/assets, based on the latest amendments in tax laws and legal system that are now prevailing in different countries and also in India. Also, this should not pose any problem when assets are bequeathed to the next generation ... interests of the beneficiaries, who could be citizens in all-together different countries, are protected all the time," said Vishwas Pathak, director at Universal Trustee Group, a firm that specialises in managing family and corporate trusts.

Experts said there were mainly three types of families that are restructuring their trusts. Firstly, those who want to create structures to account their wealth for tax planning. The next segment is promoters of companies with stressed loans and who have given personal guarantees, as they want to insulate their assets from potential takeover by lender by transferring them into private family trusts.

There are also some who do so as part of succession planning, wealth management or such reasons, and not to hide anything.

Like recently, the Indian promoter of an ecommerce company created an offshore family trust registered in Singapore. The percentage of ownership would change based on various assumptions, like if the promoter dies in five years, or in 25 years from now.

"Most trusts are not set up to escape tax but are for succession, wealth management and protection. The Indian government must not fence these trusts but encourage it as it may create some transparency," said Prem Rajani, managing partner at Rajani Associates, a Mumbai-based law firm.