Succession Planning

Treelife

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Background and Introduction to Succession Planning

The Recent Increase In Wealthy Families In India

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Surge in Billionaires:

According to the Hurun India Rich List 2024, **India now has a total of 1,539 UHNWI** (Ultra High Net-Worth Individual), up from 140 in 2013*.

The **country's billionaire count** has crossed the 300 mark for the first time, **reaching a record 334,** a 29 per cent increase from last year.

India added a Billionaire Every 5 Days In 2024, shows Hurun rich list

New Generation of Wealth Creators:

As per Hurun Rich List 2024 - **11 billionaires born in the 1990s,** including Harshil Mathur & Shashank Kumar (Razorpay) and Kaivalya Vohra (Zepto).

HNWIs on the Rise:

Knight Frank reports a **4.5% year-on-year growth in the HNI population** in 2022.

The number of **HNWIs**, individuals **with investable assets exceeding $1 million,** has also been on the rise

IPO Boom:

Indian **IPO** market shatters records as **317 issues raise ₹1.8 trillion**

For instance:

Swiggy's IPO creates 500 employees crorepati through substantial **ESOP payouts**

*Deccan Herald, NDTV Business News, Economic Times, Statista, Kuvera, Live Mint, India Today

What is Succession planning?

What is Succession Planning?	The process of planning for the distribution and management of your assets during your lifetime and after your death.

Key Goals of succession planning:

01

Protect Assets:
Safeguard your wealth from potential risks

02

Provide for Loved Ones:
Ensure financial security for your family

03

Safeguarding potential estate duty levy:
Reduce impact of potential estate taxes and other costs

04

Fulfill Personal Wishes:
Ensure your assets are distributed according to your desires

05

Ringfencing:
Helps ring fence personal assets vis-a-vis business assets

06

Ensuring seamless wealth transfer:
Facilitates asset migration across generations with minimal paperwork

Why is Succession Planning necessary?

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Increased HNIs families in India

Ensuring **long-term management** of family wealth

Shielding wealth from potential inheritance taxes

Protecting Wealth and Preventing family disputes

Preserving family culture and harmony

Establishing **clear** succession and **governance structures**

Safeguarding family **Assets** from external risks

Optimizing **tax efficiency** and managing tax risks

Balancing ownership with effective control

Defining roles and responsibilities for family members

Typical Modes of Succession Planning

A legal document through which a person declares how their assets will be distributed after death

Will

Trust

Legal arrangement where assets are transferred to a trustee for the benefit of designated beneficiaries, providing control and privacy in succession planning

Will

Will

Who can it work for?

Individuals with simple estates: Those with fewer assets or straightforward asset distribution

Families with clear heirs: Families where beneficiaries are well-defined and there are no significant disputes

People seeking immediate control: Those who want direct, legal control over their estate after death

Process Flow

1. **Drafting of will**
2. **Executing and notarising will**
3. **Probate of will (if required) upon demise**
4. **Executor to be appointed**
5. **Distribution of Assets by executor**

Treelife Insight: If a person dies without will, that person's wealth is distributed to the legal heirs as per the applicable succession law depending on faith of the person

Trust

Trust - Typical Structure

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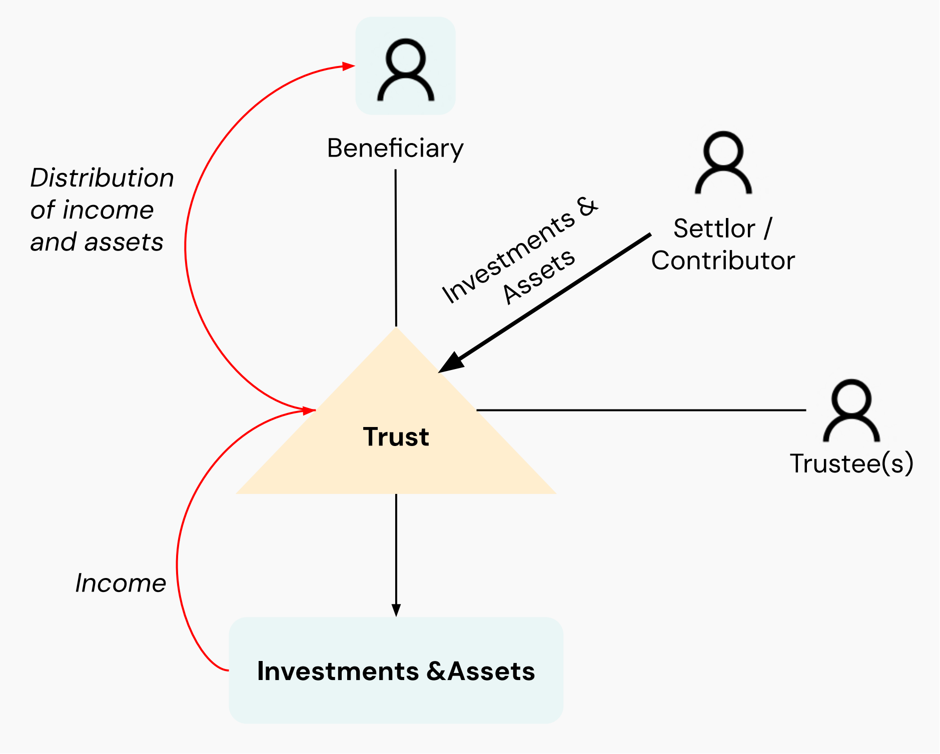
Party to the trust	Roles and responsibility
Trustee	Trustees are the individual entrusted with the responsibility of managing the trust's assets and exercising rights and powers for wealth distribution. Trustee can be a family member, external advisor or a professional trustee company
Settlor	Settlor is the person who makes initial contribution of money / assets to the Trust. Settlor may be a trustee or beneficiary. Once the trust is created, anyone who contributes assets to it is considered a contributor.
Beneficiary	They are the persons for whose benefit trust has been settled



Trust - Types of Trusts

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Type of Trust	Discretionary Trust	Specific Trust	Revocable Trust	Irrevocable Trust
Meaning	- Beneficiaries are identified in the trust deed - But their respective shares are not predetermined - Trustee has the discretion to determine the distribution amount for each beneficiary	- List of beneficiaries with their beneficial interest is determined in the trust deed	- Settlor retains the right to cancel / revoke the transfer of assets or property to the trust during its life time.	- Once the settlor transfers assets into the trust, the transfer cannot be altered, amended, or revoked.
Use case	Preferable where share of beneficiary is not decided upfront	Preferable where share of beneficiary is decided upfront	This is used when the settlor / contributor wishes to retain control over the asset and retain the option to reclaim ownership	Useful where settlor desires to gives away ownership and control of the asset to the trust once and for all

Treelife Insights:

Typically in India, families generally prefer to have an discretionary irrevocable trust to safeguard potential estate duty exposure.

Trust

Pros	Cons
Hassle free transition of wealth to future generations	Families not familiar with the concept of Trust for succession planning
Documenting family philosophy through the trust deed which in turn acts as a guide for the family members in future	Possibility to challenge validity of the Trust by any dissenting family member
Segregation of ownership and control	Difficult to manage the trust where it is desired to appoint professional trustee company
Planning for proposed estate duty taxes	No upfront wealth distribution is done generally

Treelife Insights:

- Stamp duty implications need to be evaluated on transfer of any Real Estate to the Trust
- There could be practical difficulties in transferring units of Mutual fund having lock-in from individuals to Trust

Trust - Taxation of Trusts

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Type of Trust	Discretionary trust	Specific trust
Tax implications for Trust	– Income taxable at Trust level – Trust's income subject to the maximum marginal tax (MMR) rate of approximately 39% (presuming that Trust has opted for section 115BAC) – Specific income heads like capital gains, dividend etc. should continue to be taxed at concessional rates	– Akin to pass through status as the shares of beneficiaries are known
Tax implications for Beneficiaries	– Any income distributed by the Trust to beneficiaries is not subject to additional taxation	– Generally, proportionate share of beneficiaries is taxed in there respective hands in accordance with provisions of section 161 of the Income-tax Act, 1961

Trust - Taxation of Trusts

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Type of Trust	Tax implications for Trust	Tax implications for Beneficiaries
Discretionary trust	– Contributions to a trust established for the benefit of relatives are not taxable, making the timing of asset transfers an important consideration – When all beneficiaries of a trust are individuals, the trust assumes the same tax status as an individual – The trust's income in such cases is subject to the maximum marginal tax rate of approximately 39% (presuming that Trust has opted for section 115BAC) – Specific income heads like capital gains, dividend etc. should continue to be taxed at concessional rates	Any income distributed by the Trust to beneficiaries is not subject to additional taxation
Specific trust	Akin to pass through status as the shares of beneficiaries are known	Generally, proportionate share of beneficiaries is taxed in there respective hands in accordance with provisions of section 161 of the Income-tax Act, 1961

Will vs Trust

Will vs Trust

Key Parameters	Will	Trust
Meaning	Provides for the disposition of assets upon death	Created by a settlor contributing wealth
Modification	Can be amended unlimited times; the latest will is valid	Terms can be modified based on the trust deed provisions
Execution timing	Becomes operational after the death of the transferor	Can be operational during the settlor's lifetime or after death
Process of Disposition	Assets pass through the probate process	Assets are transferred based on predefined trust conditions
Court Involvement	Probate is required for execution in most Indian states	Generally, no court involvement unless contested
Beneficiaries	Named in the will and receive assets post-probate	Defined in the trust deed
Conditions for Distribution	Specified in the will	Conditions can be set by the Trustee
Management	Executor is appointed to carry out the will	Trustees are appointed for ongoing management
Asset Protection	Limited protection, as assets remain in individual ownership	Provides protection from creditors and legal claims
Control & Governance	No control after death	Ensures long-term control and governance
Cost	The cost of preparing will is minimal	Cost of setting up and upkeep for trust structure is high as compared to will

FAQs

FAQs

1) **What is the key objective of succession planning?**

Succession planning aims to ensure a smooth transfer of business ownership, leadership, and family wealth while maintaining harmony and avoiding disputes

2) **What is the difference between ownership and management in succession planning?**

Ownership refers to the legal entitlement to assets or shares, while management pertains to decision-making and operational control. A well-structured plan ensures no dilution of management control while distributing ownership effectively

3) **What are the benefits of using a trust for succession planning?**

A trust helps segregate control and ownership, ensures structured wealth distribution, provides tax efficiency, minimizes legal disputes, and helps in estate protection

4) **How does a discretionary trust work in succession planning?**

A discretionary trust allows trustees to decide how income and assets are distributed among beneficiaries. It provides flexibility while protecting assets from potential liabilities

5) **Is a trust preferable to a will for succession planning?**

A trust can provide better control, tax efficiency, and legal protection compared to a will, which may be subject to probate and potential disputes

6) **How can succession planning help mitigate inheritance tax risks?**

Proper structuring through trusts and holding entities may help shield assets from potential future inheritance taxes while ensuring tax-efficient wealth transfer

FAQs

6) **Is it possible to contribute foreign assets to India Trust?**

Yes, it may be possible to transfer foreign asset to India trust subject to conditions prescribed under applicable tax and exchange control provisions in India and respective overseas jurisdiction

7) **Can a non-resident contribute the overseas wealth owned by him to a India trust?**

It depends on various factors such as the residential status of contributor at the time of purchase of such assets, residential status of the beneficiaries, etc. and laws of the overseas jurisdiction

8) **What legal and regulatory aspects should be considered in succession planning?**

Key aspects include corporate governance, taxation, FEMA (for international assets), SEBI guidelines (for listed companies), and local inheritance laws

9) **Can a family member be both a trustee and a beneficiary of a trust?**

Yes, a family member can be both, but the structure should be carefully designed to prevent conflicts of interest and maintain compliance

10) **Is transfer of assets to a trust taxable under the Income Tax Act, 1961?**

Under Section 56(2)(x) of the Income-tax Act, 1961, if an individual transfers assets to a trust without adequate consideration, it may be considered a gift. However, transfers made to a trust for the benefit of relatives (as defined under the Act) are exempt from taxation

11) **How is income distributed by a trust taxed?**

In a discretionary trust, where beneficiaries' shares are undefined, the trust pays tax at the maximum marginal rate (~39%)

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