

The various Advantages and Disadvantages of Charitable Institutions viz-a-viz Private Trust

CA.(Dr.) Gautam N.Shah

Distinction between Public & Private Trust

The essential distinction between a public and a private endowment (trust) is that in case of Public Trust the beneficial endowments vests in an uncertain and a fluctuating body of the persons either the public at large or some considerable portion of it answering a particular description.

On the other hand, in a private endowment the beneficiaries are definite and ascertained individuals .

Laws relating to Public Trusts

The Laws relating to Public Charitable Trusts are

- The Maharashtra Public Trust Act, 1950,
- The Gujarat Public Trust Act,
- Other state acts like the laws in the state of Rajasthan and Karnataka
- The Societies Registration Act, 1860
- The Companies Act, 2013

Laws relating to Private Trusts

The Private Trusts are governed by The Indian Trust Act of 1882. This act is applicable all over India.

However it is mentioned in section 1 of the Act that this act will not affect the rules of Mohammedan Law as to wakf or the mutual relations of the members of the undivided family as determined by any customary or personal law or applies to public religious or charitable endowments.

Advantages of a Public Charitable Trust

- **Income Exemption:**

Income to the extent it is applied or deemed to have been applied for charitable or religious purposes in India of a wholly or partly charitable or religious trust would be exempt from tax, provided the Charitable Trust is registered u/s.12AA of the Income Tax Act, 1961.

- **Income Accumulation:**

Income accumulated or set apart, subject to maximum of 15% of the income, which is allowed to be

Advantages of a Public Charitable Trust contd...

accumulated u/s.11(1)(a) of the Income Tax Act, 1961.

Income in excess of 15% can be accumulated as under,

As per section 11(1) read with explanation 1 of the Income Tax Act, 1961, if Form 9A is filed online on or before the filing of the Income Tax return as specified u/s.139(1) of the Income Tax Act, 1961 with the reason as to why the income need to be accumulated

OR

As per section 11(2), by filing Form No.10 online on or before the filing of the Income Tax return as specified u/s.139(1) of the Income Tax Act, 1961 along with the specific reason for accumulations and the accumulated amount is invested u/s.11(5) of the Income Tax Act, 1961

Advantages of a Public Charitable Trust contd...

- Public trust is of a more permanent nature than a private trust.
- Public charitable Trust has a legal standing as it is registered in few states whereas Private Trust is not required to be registered in most of the cases, other than when there is a Transfer of Immovable Properties, Certain percentage of Equity holdings, etc.
- Public Charitable Trusts have the option to amalgamate/merge with another Public Charitable Trust having similar objects subject of prior permission from the respective State laws as applicable, whereas Private Trust have limitation of amalgamation/ merger.

Disadvantages of a Public Charitable Trust

- There is no Central Act applicable for Public trusts, but various states have enacted their own acts suitable to their conditions and administration.
- The Charity Commissioner has been given wide powers for better administration and management if the same is used properly and diligently however currently it is more of a hindrance.
- Alteration of the objects laid down in the trust deed is difficult and time consuming. In case of modification of objects the Trust will have to reapply for 12AA registration.

Disadvantages of a Public Charitable Trust contd...

- a Trust cannot be dissolved easily, though a new clause allowing dissolution has been introduced but it requires adequate reason to be given to the Office of Charity Commissioner and it has a huge Income Tax liabilities such as tax on accreted income under section 115TD of the Income Tax Act, 1961.

Advantages of a Private Trust

- **Succession Planning**

Succession planning through private trusts, allows the settlor to have complete control over the Trust and freedom to pass on the assets unto the beneficiaries, which can be set out in the Deed by the settlor.

- **Estate Planning**

A trust is a vehicle through which the estate owner can transfer his property to some beneficiaries and at the same time benefit from it.

Advantages of a Private Trust contd...

- **No need for registration**

A private Trust is governed by the Indian Trust Act, 1882 and it does not need to be registered.

- **Confidentiality**

Family trusts are not publicly registered and therefore can be kept confidential. It can mask the real owner and hide his personality from the public glare and still allow him with a great freedom to operate.

Disadvantages of a Private Trust

- **Not Perpetual**

A Private Trust cannot be formed for life it always has a end limit.

- **Expense**

One of the primary drawbacks is the cost necessary to establish it. This most often requires legal assistance and administering the trust may also add expenses.

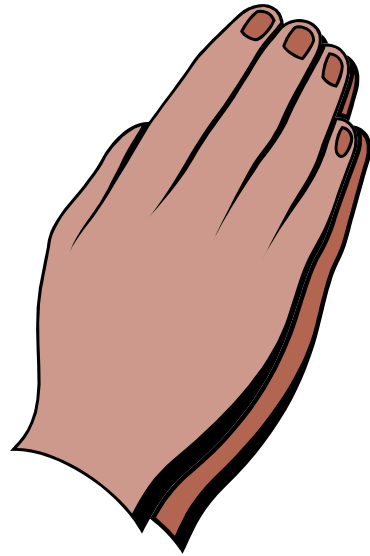
Disadvantages of a Private Trust contd...

- **No tax Advantages**

Trusts do not provide any particular tax advantages.

- **Future Law Changes**

Possible changes to legislation of trust law may remove or effect some of the original objectives for the trust formation.



THANK YOU