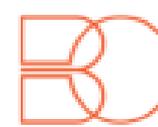




**Trust the “Trusts”
....only a matter of time**

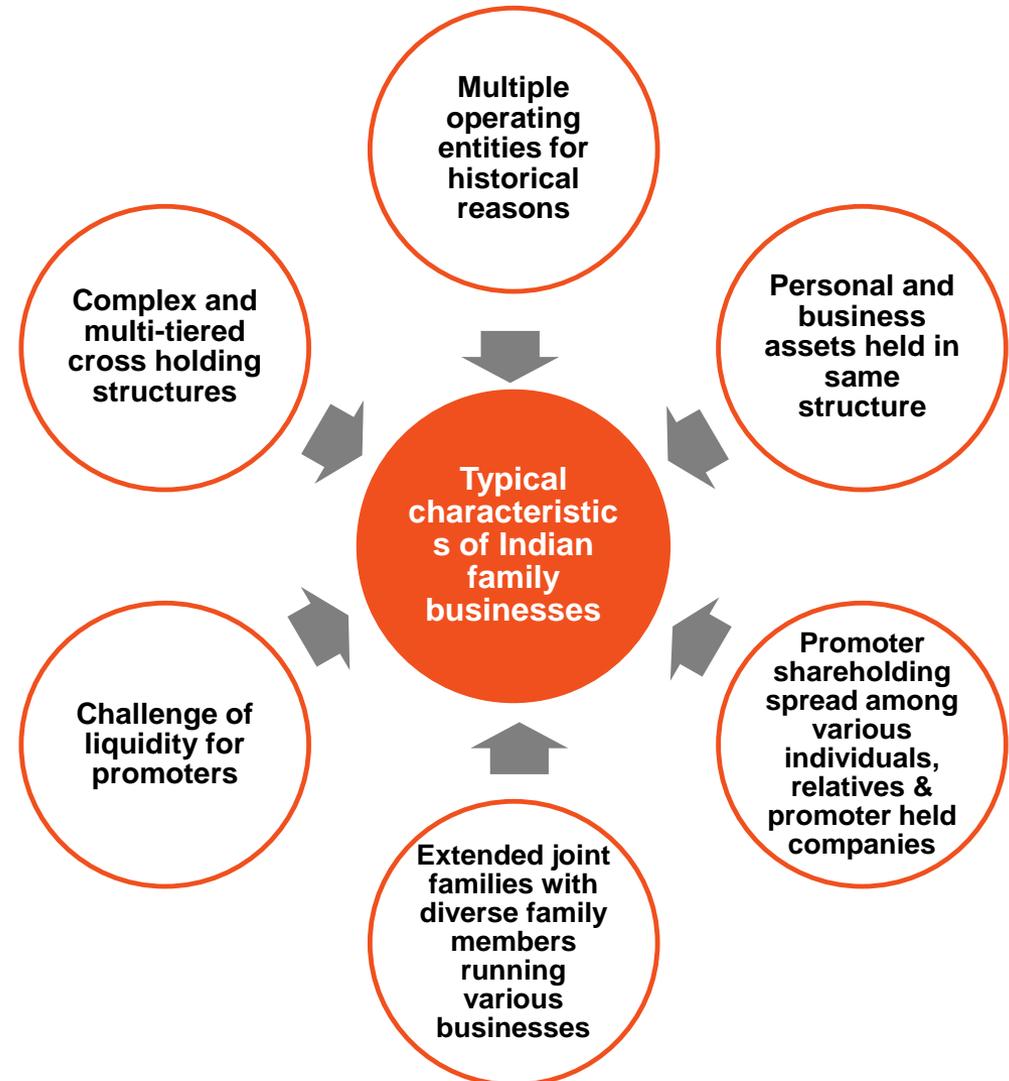


BAGARIA
& COMPANY

June 2019

Family business in India – overview & characteristics

- India has the **highest** percentage share of family businesses in Asia
- **Over 80%** of businesses in India are family businesses
- Family businesses account for **90%** of gross industry output
- Family businesses contribute **79%** to the Indian GDP



Succession planning & its benefits

What is succession / estate planning?

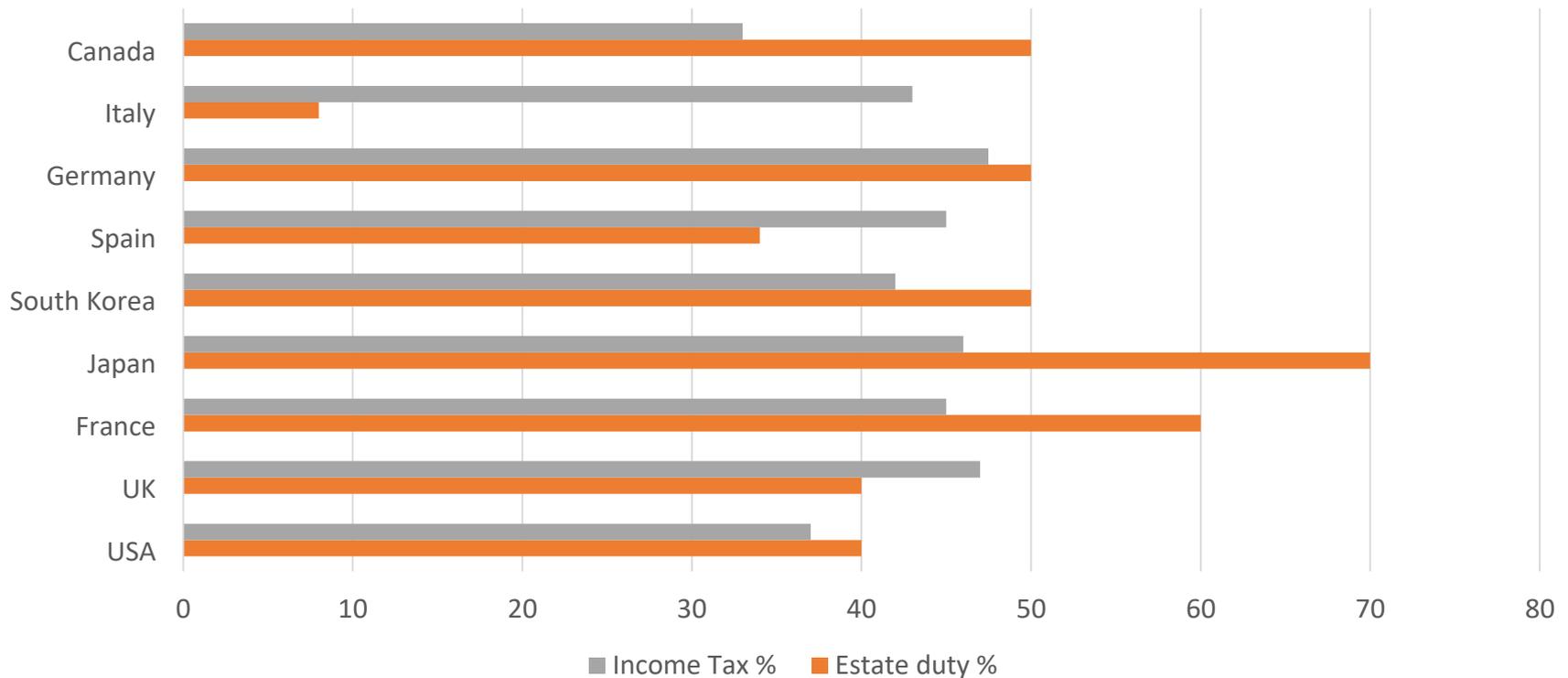
- ▶ Perpetuating / preserving / maintaining / holding the family wealth for generations
- ▶ Flexibility to distribute economic interests in desired proportions to family members and at desired time
- ▶ Regular income flow for family members
- ▶ Building a robust structure in conformity with applicable succession laws

What is achieved by Succession / Estate planning?

- ▶ Smooth transition of wealth to the next generation
- ▶ Segregation of economic interest and management control
- ▶ Segregation of business and personal assets
- ▶ Inheritance tax planning (if levied in future)
- ▶ Simplification of group structure goes hand in hand with estate planning - facilitating liquidity to promoters with minimal tax leakage

**Estate Duty
still unthinkable?**

Estate Duty – worldwide



In general, the estate duty is levied only when the inheritance value is above the specified threshold. The rate is generally dependent on the value of inheritance. In some countries it is also dependent on the relationship of the beneficiary with the deceased like in France, Denmark, etc.

Estate Duty – India future?

- ▶ Estate duty was abolished in India in 1985 citing high cost of collection and causing disparity in the economy
 - before abolition, estate duty was as high as **85%**
 - taxed at the time of the death
 - market value of the assets owned
- ▶ **Minister of State** for finance in 2014 made a press statement of the possibility of introduction of Estate Duty
- ▶ He further clarified subsequently that there will be a threshold limit to trigger estate duty also suggested a limit of **more than Rs. 25 crs** to trigger estate duty provisions
- ▶ Experts believe Estate duty was not introduced by Modi Government 1.0 due to **effects of GST and De-monetisation** on the economy
- ▶ A **Task Force** was formed by the Finance Minister on 26th November, 2018 to overhaul the Income Tax Act and suggest a new direct tax code for the country
- ▶ Outgoing Finance Minister on 24.05.2019 extended the tenure of the Task Force to provide **a detailed report by 31st July, 2019**
- ▶ There is a **wide shortfall in the direct tax collection** of the Government of India post reduction of tax rates and this makes a case for reintroduction for Estate Duty
- ▶ Further, with the **abolition of Wealth Tax (in 2015)** there is no statute which levies any tax on the wealth of an individual in India
- ▶ **Manifesto 2019 of the BJP** places strong averments to provide benefit to the middle class of the country. As Estate duty shall be applicable to only wealthy few, the justification to Manifesto 2019 survives.

**Trusts:
legitimate way to
avoid Estate duty**

Trusts – Broad structure

Trust:

- ▶ a legal concept
- ▶ Property vested / placed under control of a person or persons
- ▶ For benefit of specified individuals or organizations

Specific trust:

- ▶ Share of each beneficiary is pre-determined at the time of formation
- ▶ Trustee to be taxed in the capacity of a representative taxpayer

Discretionary trust:

- ▶ Trustee has absolute discretion to apply income can capital of the trust
- ▶ Beneficiaries, as a result of trustee’s discretion, are not entitled to receive definite proportion of income or corpus

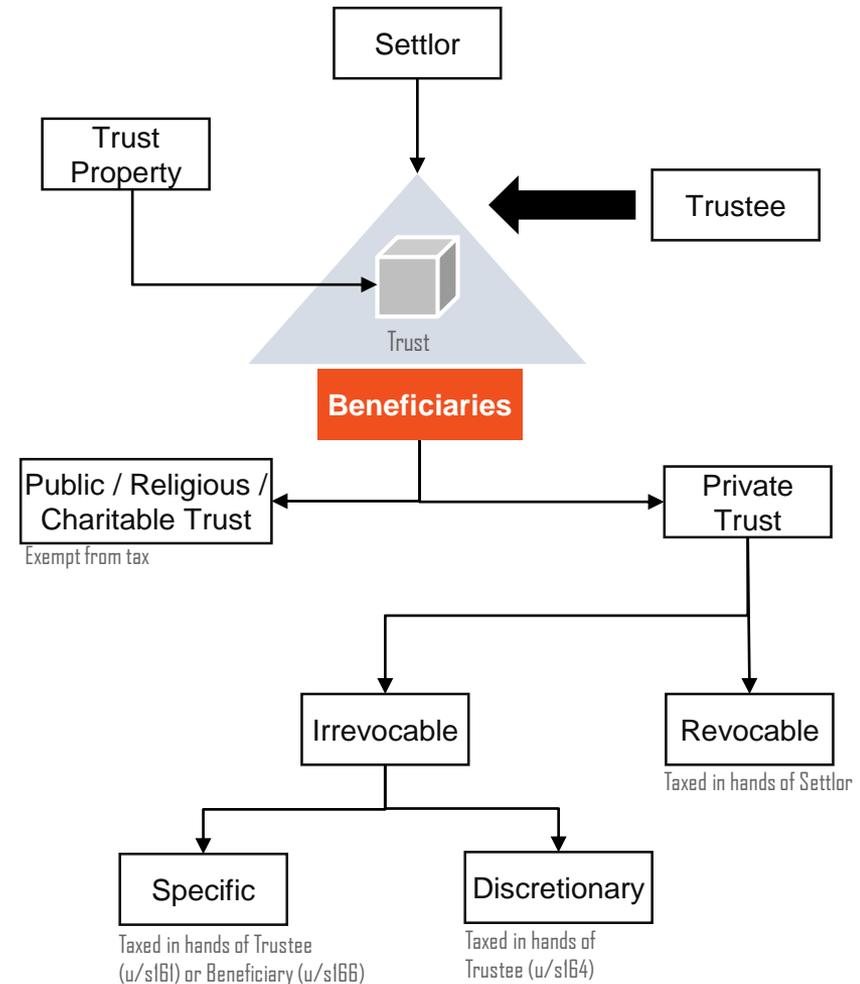
Settlor: Person who places his property or settles his property into the trust for the benefit of other specified individual(s)

Beneficiaries: Individual(s) for whom a trust is created for

Trustee: Person in whose confidence the property is placed for the benefit of specified individual /individuals

Trust Property: The subject matter of the trust which is applied for the benefit of the beneficiaries

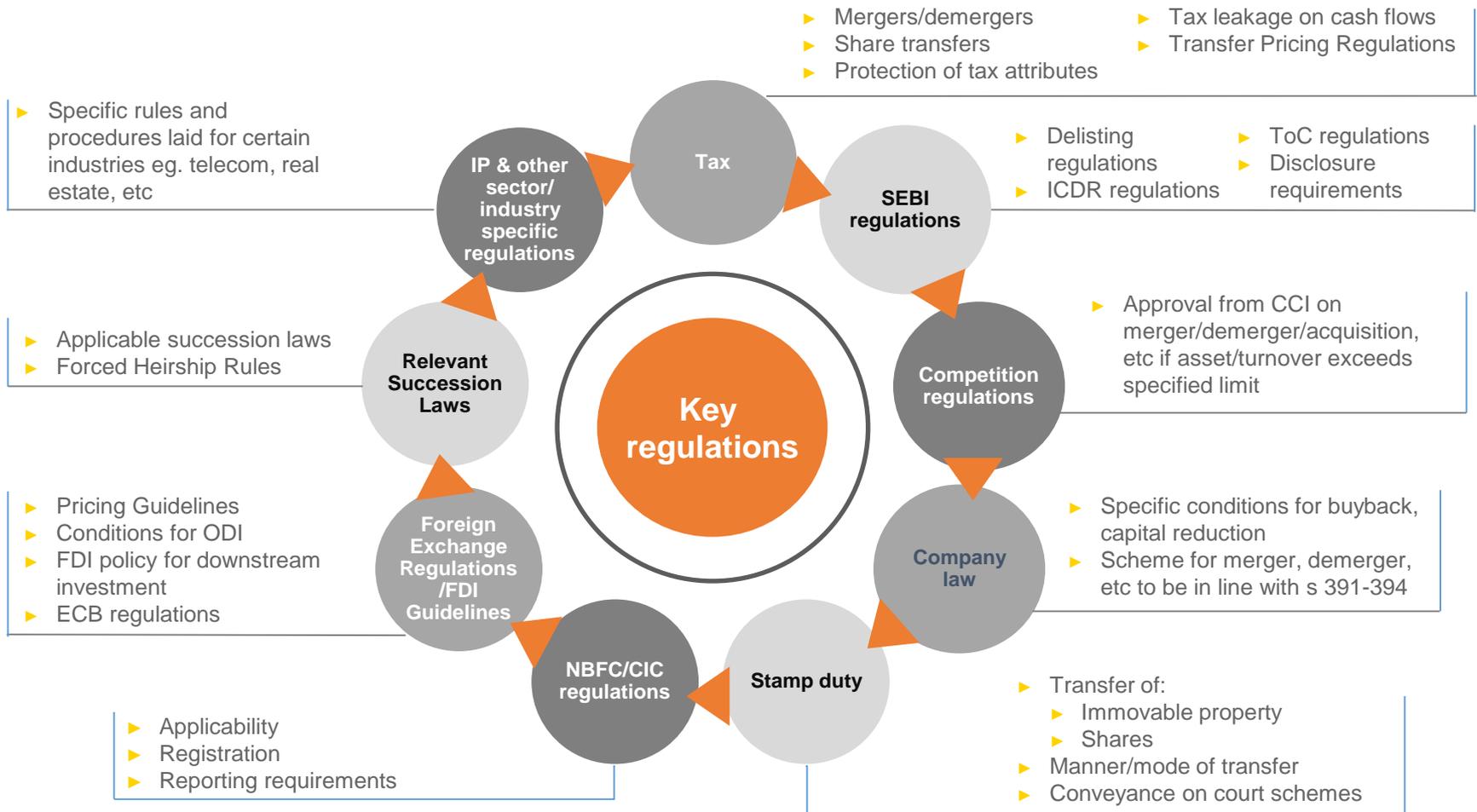
Trust Deed: Instrument (usually written) governing the trust - should state clearly objectives of settling the trust



Trusts – key benefits

- **Avoidance of Estate Duty**
- **Absolute discretion and control**
- **Easiest and hassle free way to transfer family assets to coming generations**
- **Highly Flexible**
- **Privacy**
- **No requirement of “Probate” from court**
- **Negligible scope for litigation**
- **Protection of assets from bankers, creditors and lawsuits**
- **Protection of assets under insolvency**
- **Ring fencing of family assets in the event of divorce**

Trusts – laws and regulations



Trusts – time tested structure

At least 47 listed promoters who are the who's who of India Inc. have set up family trusts since 2013.

“The transfer of my direct and indirect holdings of Mahindra shares were done to the trusts for meeting the estate planning needs of my family. We had sought and obtained the necessary regulatory permissions in this regard,”

- Anand Mahindra, chairman of M&M

(This is being done) because of taxation benefits. Suppose, if an estate duty comes, the trust doesn't have to pay. Many countries have it. A lot of people are talking about inequality of wealth, etc. In the US, they still have an estate duty. If the government wants to do it, they are in majority, they will do it. There is so much talk about it all over,”

- Adi Godrej, chairman of Godrej Group

Notable business
Groups having trust
model:

Tata Group
Mahindra & Mahindra
Adani Group
Godrej Family
Wipro
Havells India
Emami Group
GMR Infrastructure
Vinati Organics
Max Group
Prestige Group

Trusts – our concluding thoughts

- **A Trust has far more advantages than disadvantages**
- **Today, trusts in the present form are exempt from estate duty however with the advent of the Direct Tax code this route may also be plugged. Hence one must act in time to get this benefit**
- **In summary, succession planning is a process and should be planned in an organized manner**
- **Planned succession can help in protection and smooth transition of wealth whereas an unplanned succession can lead to erosion of family wealth and could create bitterness and feuds in family**
- **Finally, Trust is an established mechanism of succession planning tool and provides protection, flexibility and transition of assets to next generation**



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