

## Brief Analysis of Family Trust and Its Application

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**Abstract:** With the group of high net worth people has been growing rapidly, the issue of family wealth inheritance has been paid more attention. However, for the family trust which is still in primary development in China, the relevant laws and regulations still need to be perfected especially in registration and tax. Through analyzing the development of family trust in China, the author puts forward some suggestions on its existing problems so as to promote the development of family trust in China.

### 1. Introduction

With the continuous improvement of the economic level, the amount of personal wealth in our country has increased significantly, and the group of high net worth people has been growing rapidly. However, due to the continuous enhancement and popularization of the concept of "late marriage and late childbirth, fewer and better children", most of the family structure pattern in China is the one-child family, and the age difference between parents and children is relatively large. Under this model, the majority of the wealth holders in China are middle-aged and elderly, showing an aging trend. Therefore, the management, disposition and inheritance of family wealth has been paid more attention. As a legal tool to realize the inheritance of family property, family trust will have a broad market prospect in China due to its independence and various superior functions.

### 2. The origin of Family Trust and its development in China

The trust originated from ancient Egypt's "Wills wrote". This means that the ancient Egyptians entrust a third party to handle their property by way of inheritance, designating their wife as the inheritor of the estate and designating the corresponding guardian for their children. The Roman law of ancient Rome have rules about the "legacy trust" system, namely in the property division, can be directly put the will grant heir, if appear heir due to his ability or other reasons can't afford to, can put the delegate or otherwise transfer or dispose of the property to a third party for processing, so as to realize the effective inheritance. The modern trust system was born out of the "USE System" established by early England to avoid some regulation and burden of its feudal law. After several centuries of change, the trust has gradually adapted to the evolving social environment and has evolved into a worldwide legal system. Especially in the highly developed British and American areas, the rich people in the society are growing stronger. In order to meet the needs of the high income group for their huge wealth management and inheritance, the family trust came into being. Under the influence of the economic expansion of the developed countries such as the United States and the process of economic globalization, family trust was gradually introduced into many countries and regions of the world.

Since the introduction of the trust system in China, it has undergone many reforms and developments. The Trust law, which was formulated in 2001, has officially opened the curtain on our trust system. However, due to the late start of family trust in China, the law of the trust which was promulgated and applied to the earlier years has lacked the regulation of family trust system. As well as theoretical circles for family trust system is not fully explored and other reasons, family trust at

this stage of application and promotion degree has been limited.

### **3. Characteristics of Family Trust**

#### **3.1 The independence of Family Trust**

Trust property is independent and its ownership is strictly differentiated from the beneficial right. After the establishment of a trust, the property will be excluded from the property owned by the principal, so even if there is a misfortune in the course of the existence of the trust property. It will not have any influence on the existence of trust property and the rights and obligations of the third party of the trust party. The author analyzes the independence of family trust from three aspects. The trustor, the trustee and the beneficiary

##### **3.1.1 Trust property is separated from the trustor's non trust property**

After a client establishes a family trust, if the principal himself is not within the scope of the beneficiary, the trustee will not be entitled to be established as a joint property, statutory inheritance or bankruptcy liquidation property when the marriage and family relationship breaks down, dies, is recovered or declared bankrupt. Thus, to some extent, the beneficiary's right to benefit is not infringed.

##### **3.1.2 Trust property is separated from the inherent property of the trustee**

The trustee shall fulfill his statutory obligations after accepting the establishment of a family trust by entrustment, that is, to strictly distinguish between the trust property and the inherent property of the trustee, and not to include the trust property in the original property range. In addition, the trustee can only obtain the corresponding remuneration through the independent operation and management of the trust property in accordance with the agreement with the client.

##### **3.1.3 Trust property is separated from the property owned by the beneficiary**

The trust property and the property of the beneficiary are separated from each other. The beneficiary can only get the corresponding property when he meets the trust conditions set by the client. Therefore, when the beneficiary is in debt, the debtor shall not take the trust property as the property to recover.

### **4. The function of family trust**

Family trust has the property of private customization, it refers to a trust system that can embody family wishes, safeguard family interests, distribute benefits to family members, so as to realize family wealth's perpetual circulation. The establishment of family trust consists of three parties, the trustor, the trustee and the beneficiary. The trustor is the creator of the trust, usually the natural person, who provides the property for the trustee to manage and use.

The trustee assumes the responsibility to manage the trust property according to the client's will and enjoys the right to pay according to the contract. The beneficiary is designated by the principal and obtains the corresponding funds or property according to the intention of the client. The main functions of family trust are as follows.

#### **4.1 Segregate family assets**

After the establishment of family trust, family property becomes an independent trust property, that is, the property is neither belongs to trustor nor trustee, but is going to be given the beneficiary under certain circumstances. This effectively realizes the isolation and protection of family property. Just like the world media mogul, Mr Murdoch realized the isolation of family assets through the establishment and operation of family trust by GCM trust company. The data show that the Murdoch family owns nearly 40% of the news group's voting shares, but over 38.4% of them are held by the Murdoch family trust fund. As a result, the controlling power of news group is firmly controlled by the Murdoch family. Therefore, in the divorce case of Murdoch and Wendy Deng, Wendy Deng had

only received \$20 million in assets after Murdoch had 13 billion 400 million dollar assets. The use of family trust did not affect the assets and operation of news group.

In real life, family property owners may also be subject to criminal recovery and debt recovery except for the possibility of marital breakdown. In fact, most of the high net worth people have the identity of the actual controllers of many enterprises. Therefore, there may be a problem that is difficult to ascertain the limits of personal and enterprise assets. Due to the existence of the foregoing problems, entrepreneurs' personal assets may be regarded as the object of debt recovery in the face of crises such as bankruptcy liquidation and debt disputes, which will largely cause loss of personal property. At this time, family trust can be used to protect family property. We should isolate the specific property and avoid the loss of property owner's property so as to maximize the wealth of the family.

#### **4.2 Legal avoidance of taxes and fees**

Family trust can achieve the legal advantage of avoiding taxes and fees in favor of our country and at the same time more conducive to the developed countries. This is because in developed countries, heirs need to inherit considerable inheritance tax, thus greatly reducing the family wealth inherited by the heirs. However, our country has not yet implemented the collection of inheritance tax. However, in the era of globalization and rapid development, the collection of estate tax is a trend of development in China. In the future, family trust will have a broader development after the implementation of the relevant legal system of inheritance tax in our country. Family trust can achieve legal evasion of taxes and fees because the established trust property is separated from the succession system when the beneficiary is obtained and does not have to pay the relevant taxes and fees. Under this system, the beneficiary can get all the family property designated by the client. In order to avoid the inheritance tax reasonably, its security can also be guaranteed. Therefore, most of the rich people tend to choose family trust to inherit family wealth, so that they can legally avoid excessive inheritance tax and maximize the benefits of family wealth.

As far as our country is concerned, although there is no inheritance tax collection at present, family trust system can realize the optimization of tax cost for family businesses and family members. By establishing trust, the entrustment will bring the ownership of enterprise property and proceeds into the trust property, and the property right of the enterprise will not be included in the trustee's fixed assets through the family trust system. So as to effectively avoid the business tax and personal income tax to be paid for the proceeds from trust property, so as to reduce the tax cost.

#### **4.3 Solve succession problems**

Family trust can effectively avoid all kinds of problems and disputes arising from the division of the estate. Family trust provides personalized customized services for high net worth individuals, complying with the complex management needs of high net worth customers, and assigning asset allocation schemes based on the willingness of the clients. It has great flexibility. Family trust can not only manage family property effectively and reasonably, moreover, it can guarantee the life of future generations to a certain extent, or it can prevent the loss of family property by setting the requirements for the beneficiaries to restrict the behavior of the descendants. The property owner can formulate the time, way of obtaining the property and benefits, obtaining the conditions and obtaining the amount of the trust beneficiary according to his own needs. It can prevent the beneficiary from irretrievable loss of family property due to his improper financial management or habitually luxurious way of life. Just like the famous artist Anita Mui of Hongkong, she entrusted the HSBC International Trust Company Limited as a trustee to set up a special fund to manage her property. Anita Mui planned her property, in detail through the will. It includes how to manage, allocate, utilize and pay for the estate. The reason why Anita Mui set up a family trust is not to leave her legacy to her at once. It was because she is worried that her fortune would be wasted or deceived, and that it would be difficult to make sure her mother's future life.

In addition, family trust helps to liberate the children of family businesses who want to engage in other professions without inheriting their wishes, or set the descendants of no successors as the beneficiaries of trust, entrust professionals or agencies to manage and distribute family property to

achieve the inheritance of family wealth. Family trust is legally binding while there are intervention by heritage regulatory agencies. To achieve better and more equitable and reasonable distribution of heritage, we will avoid a series of contradictions that the heirs may compete for.

#### **4.4 Protecting personal privacy**

Family trust is confidential and effective in protecting personal privacy when family trust is established, all matters concerning the management and application of trust property are carried out in the name of trustee, and the trustee has the obligation of confidentiality to the client, the personal information of the beneficiary and the actual situation of the trust affairs in addition to reporting the property management activities to the regulatory authorities. To ensure that the privacy of clients and beneficiaries is not disclosed, to a certain extent. To meet the secrecy needs of wealthy groups due to their complex and personal family or business problems.

### **5. The existing problems and related suggestions of family trust in China**

With the rapid development of China's economic level. The number of Chinese high net worth people and their asset size have increased significantly. The wealth owners' demand for family property management has become increasingly strong. Family trust, as a new form of trust industry and foreign trade in family wealth management, has no clear provisions and boundaries for family trust development. Even in some respects, the practice of family trust is lacking in strong support, especially in the aspects of trust registration and tax system.

#### **5.1 Trust registration system**

It has been more than 10 years since the promulgation of the trust law. However, there is still a lack of proper regulation of the trust registration system. When the property of the family trust is involved in the legal registration of real estate and stock rights, it will impede its development because of the lack of a definite operation mode. The tenth provision of the trust law stipulates that the trust shall not be effective if it is to handle or fill in the registration but fails to handle or reissue it. This shows that as long as it is a statutory registered property, the establishment of family trust property, whether registration validity or registration antagonism. Should be handled by trust registration this provision is obviously contrary to the flexibility and efficiency of the trust system, which has increased the formalities and cost burden or establishing family trust.

In view of the above problems, we cannot register as a prerequisite for the establishment of family trust, and adopt registration antagonism to register the trust so as to restore the flexibility of family trust itself and reduce the cost burden to a certain extent, thereby enhancing the dominant position of family trust.

#### **5.2 Trust tax system**

The tax provisions in family trust system are not clear. Tax authorities must strictly abide by the law when collecting taxes and fees, and the lack of tax system will lead to difficulties in the tax revenue of family trust property, or even duplication of taxation. Duplication of taxes will increase the running cost of family trust properly, which will aggravate the burden of relevant legal subjects. This will reduce the advantage of family trust in maximizing its own interests, and even lead to the elimination of family trust system.

In view of the problems existing in the family trust system tax, we can learn the solutions of the Anglo American countries and establish the corresponding tax mode according to the actual situation of family trust in China, and introduce corresponding tax preferential policies to implement the tax problem of trust property.

### **6. Conclusion**

In recent years, through the exploration and study of the trust system, our country has made great achievements in this field, but there are still some problems in the legislative level. This is still a big

gap for the expectations and demands of the high net worth group that we are gradually expanding to the family trust system. Therefore, we should actively draw lessons from the advantages and experiences of the family trust system in Britain and the United States in view of the existing problems. We should improve relevant laws and regulations to promote the further development and improvement of family trust system in China.

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