# 9

# Extent of Use of Private Trusts

SINCE private trusts have not so far been required to be registered with any statutory authority in India and the Income Tax Department does not also have separate circles or jurisdictions for them or officers exclusively dealing with them, it is not possible to find out the number of private trusts in the country or even make a reasonable estimate of the number based on a proper sample. However, the Comptroller and Auditor General reports that according to provisional figures furnished by the Ministry of Finance, there were 13,288 private trust assessees in the books of the revenue authorities during 1981-82 (Table 9.1).

The Inland Revenue estimated the total number of trusts in the UK at 4,00,000 in 1975, composed of 3,10,000 trusts with interests in possession and 90,000 discretionary trusts (Table 9.2). The total value of assets, *viz.*, £ 16.8 billion, constitutes about 6 per cent of total personal wealth; and most of it is handled by trust companies and banks[2].

Though no data are available to arrive at the precise extent to which trusts have been employed to checkmate the Revenue or the exact value of the services rendered by them to the individuals or families resorting to them and the community at large, there are several indications of the part played by them and the broad dimensions of their assets and income:

(i) It would appear that trusts are popular among the tax-

**TABLE 9.1**

*Numbers of trust assessees in the books of the Income Tax Department*

| | As on March 31, 1981 | As on March 31, 1982 |
|---|---|---|
| Public Charitable trusts | 29,737 | 30,467 |
| Discretionary trusts | 2,486 | 2,786 |
| Specific trusts (where beneficiaries' shares are determinate and known) | 8,464 | 10,502 |
| TOTAL | 40,687 | 43,755 |

*Source*: Comptroller and Auditor General of India 1981-82, Union Government (Civil) Revenue Receipts, Vol. II—Direct Taxes, p. 7.

payers in the higher income brackets, though assessees with small income also make use of trusts. This is obvious from the Comptroller and Auditor General's annual reports to the Parliament and the published rulings of the courts (Appendices I and II). The cases which were taken to the Courts or have been subjected to scrutiny by the Comptroller and Auditor General involve large investments, the beneficiaries of the trusts being close relatives of the settlors. A reading of the court judgments and audit reports leaves one with the impression that the dominant motive in the creation of trusts is provision for the settlor's family at the least cost in terms of taxes.

(ii) The Public Accounts Committee of the Parliament has brought out the fact that the wealth disclosed by some of the persons controlling the large industrial houses in 1977-78 was much less than what they had shown in 1957-58. The value of the wealth admitted in 1957-58 should have appreciated substantially, even if there was no physical addition to it. The anomaly becomes glaring in the context of the pronounced overall growth in the assets of a group as a whole. This feature, illustrated by the Public Accounts Committee with

**TABLE 9.2**

**PRIVATE TRUSTS IN THE UK**

*(a) Trusts with interests in possession*

| Sizes of trusts £ 000 | Numbers | Wealth £ m |
|---|---|---|
| 0—10 | 1,40,000 | 500 |
| 10—20 | 47,000 | 600 |
| 20—40 | 47,000 | 1200 |
| 40—80 | 43,000 | 2300 |
| 80—100 | 11,000 | 1000 |
| Over 100 | 22,000 | 2700 |
| | 3,10,000 | 8300 |
| *(b) Discretionary Trusts* | | |
| 0—50 | 73,500 | 1300 |
| 50—500 | 14,000 | 2500 |
| Over 500 | 2,500 | 4700 |
| | 90,000 | 8500 |

*Source* : Inland Revenue (Appeal) (1980), *Capital Transfer Tax and Settled Property—A Consultative Document*, reproduced from Thomas, G. W. (1981), *Taxation and Trust*, p. 21, London, Sweet & Maxwell.

reference to a few of the large industrial houses, will be evident from Tables 9.3 and 9.4.

In the view of the Public Accounts Committee, the creation of private trusts and transfer of assets to them is one of the reasons for this "disquieting feature". The Public Accounts Committee refers, in this connection, to a study recently conducted by the special cell of the Directorate of Inspection (Investigation) in the Income Tax Department, which revealed how the device of private trusts has enabled the Sarabhai group

**TABLE 9.3**

*Growth of assets of some large industrial houses*

| Names of the Industrial Houses | Value of assets 1972 (Rs. crore) | Assets 1977 (Rs. crore) | Percentage increase over 1972 |
|---|---|---|---|
| Tata | 641.93 | 1009.28 | 66.6 |
| Birla | 589.42 | 1070.20 | 81.6 |
| Mafatlal | 183.74 | 285.63 | 55.4 |
| J. K. Singhania | 121.45 | 167.31 | 120.1 |
| Modi | 58.05 | 125.26 | 115.78 |
| Sarabhai | 88.44 | 136.92 | 62.3 |
| Goenka | 18.01 | 52.26 | 190.17 |

*Note* : The above data do not take into account the market value of the assets. They reflect the book-figures.

*Source* : Government of India, Public Accounts Committee (1981-82), *101st Report on Wealth Tax*, Seventh Lok Sabha, p. 7, para 1.26.

to avoid the wealth tax on a large scale. The family had about 400 private trusts before March 1972. About 1200 trusts were created thereafter in order to frustrate the aggregation provisions of the Income-tax Act. The ultimate beneficiaries in all the trusts were 25 individuals of the group; and each member of the family was made a beneficiary of a number of trusts and also a trustee in other trusts in which he was not a beneficiary. The Public Accounts Committee has pointed out that the book-value of the assets of the group increased from Rs. 88.44 crore in 1972 to Rs. 136.92 crore in 1977, that the market value of the assets was estimated at about Rs. 520 crore as against this book value and that the arrangements made by the group through trusts have enabled it to reduce its wealth-tax liabilities. The Committee is doubtful about the efficacy of the wealth tax in preventing the concentration of wealth in the context of tax avoidance efforts on such an extensive scale.

(iii) Control of companies running large industries is generally exercised through equities held in trusts. As

**TABLE 9.4**

*Wealth shown by some of the members of some of the large industrial houses*

(Rs. lakh)

| Name of the person | Value of wealth disclosed in Assessment year 1957-58 | Projected value of the wealth in 1977-78 at yield of 10 per cent | Wealth disclosed in Assessment year 1977-78 |
|---|---|---|---|
| M.P. Birla | 45.28 | 304.02 | 11.65(R) |
| B.M. Birla | 58.67 | 394.70 | 16.85(R) |
| Smt. Rukmanidevi Birla | 75.43 | 507.40 | 19.49(R) |
| J.R.D. Tata | 12.21 | 82.14 | 12.58 |
| N.H. Tata | 1.98 | 13.32 | 16.00(R) |
| Y.N. Mafatlal | 37.57 | 252.75 | 12.94 (76-77) |
| R.N. Mafatlal | 35.53 | 239.03 | 17.81 |
| Anand Sarabhai | 15.12 | 101.72 | 2.65 |
| Gautam Sarabhai | 22.07 | 148.48 | 0.59 |
| V.H. Dalmia | 9.19 | 61.83 | 7.79 |
| G.H. Singhania | 7.36 | 40.51 | 25.10 |
| K.N. Modi | 2.00 | 13.45 | 0.67 |
| R.P. Goenka | 7.76 | 52.21 | 1.20 |

*Source* : Government of India, Public Accounts Committee (1981-82), *101st Report on Wealth Tax*, Seventh Lok Sabha, p. 8, para 1.27.

mentioned at page 8 in Chapter 1, all trusts, private and public, which have been created by an instrument in writing and which have invested more than Rs. 5 lakh in any company or which have investment in any company ranging between Rs. 1 lakh and Rs. 5 lakh, but constituting 25 per cent or more of its paid-up capital, come within the scope of Sections 153-B and 187-B of the Indian Companies Act, and a Public Trustee has been appointed by the Government to exercise voting rights in respect of the trusts' shares, when necessary, in terms of these provisions. The Public Trustee was vested with the powers of intervention in respect of 34 private and 89 public trusts, i.e., 123 trusts in all, in 1981. The total investment of the private trusts amounted to about Rs. 3.45 crore in public limited companies and Rs. 1.04 crore in private limited companies as on December 31, 1981. The total of 123 trusts included 9 trusts of the Birla group, 6 of the Tata group and 2 of the Thapar group, all of them presumably public trusts. The Public Trustee has no information about trusts having less than 25 per cent control or Rs. 5 lakh investment in any one company.

(iv) The Research and Statistics Wing of the Department of Company Affairs which undertook a study of trusts associated with certain business groups in 1967-68, had to content itself with an examination of the data supplied for only 75 trusts, including 9 private trusts, 3 employee welfare trusts and 63 charitable trusts. The information available in respect of the private trusts is shown at Table 9.5. It would appear that over 200 trusts were requested to supply details of their working but most of them failed to respond to the request.[3] Even the meagre data given in Table 9.5 should serve to indicate the scale of trust investments.

(v) That the aggressive use of private trusts for reduction, deferment or avoidance of tax liability is not confined to the large industrial houses alone is evident from the various cases mentioned by the Comptroller and Auditor General in his annual reports to the Parliament, and also from the cases which have gone to the High Courts for rulings on questions of law, many of which involved a multiplicity of "settlements" in the same families. The following cases set out by the Comptroller and Auditor General in his Report on Revenue Receipts (Direct Taxes) for 1978-79 exemplify the size and nature of the problem :

(a) Ten members of an industrial group in Tamil Nadu

**TABLE 9.5**

*Data of a few private trusts collected by the Research & Statistics Wing of the Department of Company Affairs*

(Rupees in thousands)

| Sl. No. | Name of Trust | Group with which associated, if known | Date of creation | Brief objects | Total assets at date available (with date) | Investments in joint stock companies on that date (excluding deposits with banks) |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1. | Apostolos Raptakos Trust—I-207 | No group | 20.6.46 | Benefit of the settlor, his relatives and others mentioned in the settlement | 24,21 (31.3.68) | 24,21 |
| 2. | Estate Lord Cable | Bird Heilgers | 26.7.27 | Benefits of two private individuals (non-residents) who receive annuities to the extent of the maximum income of the trust | 1,90,91 (31.3.67) | 1,51,38 |
| 3. | Gargi Trust | Mafatlal | 19.10.53 | For the benefit of a sister of the settlor and her issue and in certain events for the benefit of other sisters and their issues | 10,76 (1967) | 10,04 |

| | | | | | |
|---|---|---|---|---|---|
| 4. Gokaldas Binani Trust | Binani | 14.1.57 | Benefit of the settlor's grandson | 10,16 (31.3.68) | 8,03 |
| 5. Hemant Kumar Bhagabhai Trust | Mafatlal | 6.4.44 | For the benefit of the son of the settlor, his issues and in certain events for the benefit of brothers, if any, and heir of the beneficiary | 44,70 (1967) | 19,00 |
| 6. Hemnalini Trust | Mafatlal | 19.10.53 | For the benefit of the daughter of the settlor and her issues and in certain events for the benefit of other sisters | 10,33 (1967) | 10,04 |
| 7. Indian Iron & Steel Trust | Martin Burn | 18.12.57 | To facilitate performance of the settlor's obligation in respect of an advance taken from National Bank of India for purchasing shares of Indian Iron & Steel Co. Ltd. | 34,25 (31.12.67) | ... |
| 8. Kamalnayan Bajaj Trust | Bajaj | 26.12.56 | Benefit of the children of the creator of the trust | 4,75 (31.3.57) | 4,71 |
| 9. Rohini Trust | Mafatlal | 19.10.53 | For the benefit of a sister of the settlor and her issues and in certain events for the benefit of other sisters and their issues | 10,43 (1967) | 10,04 |

set up 77 family trusts upto the assessment year 1976-77. The trusts which were for a period of 18 years from the date on which they came into existence, could be foreclosed at the discretion of the trustees or if the income-beneficiaries in any of them were reduced to one. The audit estimate of the tax advantage sought through these trusts was Rs. 41.90 lakh in 1976-77 as against gift tax payment of only Rs. 23.23 lakh;

(b) A family in Gujarat created 136 private trusts after March 31, 1978, mostly through gifts of shares in companies under its control besides cash. The initial corpus of all the trusts together was about Rs. 82.51 lakh and the aggregate rose to Rs. 430.75 lakh as on March 31, 1976. There were 76 beneficiaries from the family and 95 outsiders in 87 of the trusts, the outsiders being only income-beneficiaries. Twenty-seven of the beneficiaries appeared in 3 to 9 trusts, and a few in 14 trusts;

(c) A group in Bombay constituted 128 trusts upto February 1977 through settlement of the unquoted shares of some of the controlled companies, besides cash, etc., amounting to over Rs. 2 crore for 51 beneficiaries. The present value of the properties held in the trusts has been estimated at about Rs. 6 crore. One of the beneficiaries figured in 20 of the trusts;

(d) A group in Tamil Nadu set up 15 trusts before February 1977 for the discharge of the debts owned by its members to a company controlled by them. The settlors were themselves the beneficiaries;

(e) A family engaged in the production, distribution and exhibition of cinematograph films and having a chain of cinema houses in Bombay set up 6 private discretionary trusts for its members, empowering the trustees to utilise the trust funds in any business, including production, distribution and exhibition of cinematograph films;

(f) Eight discretionary trusts held shares of substantial value in three family companies of an industrial group. These shares were transferred by the trust to members of the group at a price much lower than the market value. According to the Comptroller and Auditor General, tax had been avoided by the trusts on "deemed gift" to the extent of nearly Rs. 23 lakh. When an attempt was made by the revenue authorities to charge tax on the capital gains, the Appellate Tribunal deleted the gains from the assessments on the ground that no "transfers" had occurred within the meaning of the term in the Income-tax Act; and

(g) In 15 cases subjected to audit check, it was found that properties valued at Rs. 86.64 lakh had been settled in trust by Hindu undivided families in favour of male and female relatives.

It is worth noting that the above cases have come up for consideration on a random scrutiny and that no audit of all private trusts liable to the income tax has so far been undertaken.

Apart from income-splitting, trusts have come in handy for reduction of wealth tax,[4] gift tax[5] and estate duty liability in many of the bigger cases. The Comptroller and Auditor General has pointed out that a minor child in one of the industrial groups in Tamil Nadu is alleged to have made gifts of 15,000 unquoted equity shares of a company controlled by its family, valued at Rs. 16,59,430 to 10 private trusts of the family between 1970 and 1974. The Comptroller and Auditor General also refers to a hotel business covered by a testamentary trust in favour of the testator's sons, which was subject to two annuities of Rs. 84,000 per annum to each of the two wives of the testator and a charitable trust. There has been a difference of opinion between the audit and revenue authorities on the question whether the annuities constitute a mere application of the trust's income or were a diversion of the income by an over-riding title before it reached the trust. A list furnishing broad details of the cases subjected to audit scrutiny during the last few years is given in Appendix I.

(vi) An analysis of the wealth tax assessees in India based on the size of the wealth during the years 1970-71 to 1981-82 is given in Table 9.6. The Table shows unaccountable fluctuations in the numbers of assessees with wealth exceeding Rs. 10 lakh in certain years (e.g., 1972-73 and 1976-77). The figures do not also reflect the rises in the prices of precious metals, jewellery and real estates during the period covered by them. One explanation for the relatively low numbers of wealth tax assessees and also for the fall in the numbers of assessees with wealth exceeding Rs. 10 lakh in some of the years may be the resort to trusts by the concerned taxpayers for splitting their wealth and income.[6] This inference is also supported by the fact that gift tax and estate duty cases continue at about the same low level from 1975-76 to 1981-82 (Table 9.7).

**TABLE 9.6**

*Analysis of wealth tax assessees, with reference to the size of their wealth*

| Year | Above Rs. 20 lakh | Between Rs. 10 and Rs. 20 lakh | Between Rs. 5 and Rs. 10 lakh | Below Rs. 5 lakh | Grand Total |
|---|---|---|---|---|---|
| 1970-71 | 448 | 1445 | 6057 | 1,59,669 | 1,67,619 |
| 1971-72 | 449 | 1599 | 6105 | 1,90,172 | 1,98,325 |
| 1972-73 | 361 | 1340 | 5841 | 1,98,440 | 2,05,982 |
| 1973-74 | 385 | 1320 | 6085 | 2,08,459 | 2,16,249 |
| 1974-75 | 331 | 1575 | 6137 | 2,11,336 | 2,19,379 |
| 1975-76 | 296 | 1499 | 6359 | 2,22,370 | 2,30,524 |
| 1976-77 | 301 | 1353 | 6838 | 2,40,814 | 2,49,306 |
| 1977-78 | 408 | 1676 | 7487 | 2,73,293 | 2,82,864 |
| 1978-79 | 784 | 3776 | 12147 | 3,01,743 | 3,18,450 |
| 1979-80 | N.A. | N.A. | N.A. | N.A. | 3,46,291 |
| 1980-81 | N.A. | N.A. | N.A. | N.A. | 3,90,326 |

*Note* : N.A. : Not available.

*Source* : Government of India, Public Accounts Committee (1981-82), *101st Report on Wealth Tax*, Seventh Lok Sabha, para 2.23.

**TABLE 9.7**

*Number af Assessees*

| Year | Income tax | Wealth tax | Gift tax | Estate duty |
|---|---|---|---|---|
| 1975-76 | 37,96,258 | 2,30,524 | 1,00,901 | 40,095 |
| 1976-77 | 37,58,753 | 2,42,306 | 96,432 | 40,695 |
| 1977-78 | 39,55,244 | 2,82,864 | 91,160 | 39,879 |
| 1978-79 | 39,69,965 | 3,18,450 | 98,077 | 36,756 |
| 1979-80 | 41,75,615 | 3,46,291 | 87,069 | 35,179 |
| 1980-81 | 45,94,425 | 3,90,326 | 93,400 | 35,862 |

*Source* : Report of the Comptroller and Auditor General of India for the different years, Union Government (Civil), Revenue Receipts, Vol. II—Direct Taxes.

(vii) Since trusts have not so far been treated as taxable entities in the Income-tax Act, the trustees are assessed to tax on the income enjoyed by the beneficiaries in the same manner and to the extent as the beneficiaries, where the beneficiaries are not assessed directly on the income they derive from the trust. The income from them is not, perhaps, separately reported and statistically depicted in the Income Tax Department for this reason. Trust assessments are evidently included in the assessments of "individuals" or "associations of persons". The total numbers of income tax assessees increased from 33,88,259 on 31.3.73 to 45,94,455 on 31.3.81 and 46,60,865 on 31.3.82. The numbers of income tax assessees in selected ranges of income are given in Table 9.8. By reason of the deficiency in the classification of trusts for statistical purposes, even the Income Tax Department has no ready means, at present, of ascertaining how many trusts are included in which range of income and in which category of assessees—"individuals" or "others". There is, however, every reason to expect that trusts have been thriving like "firms" or partnership concerns. A partnership is constituted for conducting a business and not for holding investments. As pointed out in Chapter 6, a trust confers more advantages to the taxpayers than a company or a firm for carrying on a small or medium business, not being liable to the

**TABLE 9.8**

*Classification of assessees as on March 31, 1981, in selected ranges of income*

| Status of assessees | Income range | | |
|---|---|---|---|
| | Income upto Rs. 25,000 | Income between Rs. 25,001 and Rs. 1,00,000 | Income of Rs. 1,00,001 and above |
| Individuals | 26,71,276 | 8,02,449 | 15,652 |
| HUFs | 1,73,986 | 59,002 | 1,495 |
| Firms | 4,01,046 | 3,16,202 | 36,470 |
| Cos. | 31,210 | 7,205 | 3,710 |
| Others* | 62,310 | 9,588 | 824 |
| TOTAL | 33,39,928 | 11,94,446 | 60,151 |

*Source* : Lok Sabha Unstarred Question No. 1007, dated 26.2.1982.
*Include "associations of persons", "bodies of individuals", cooperative societies and probably also charitable trusts and discretionary trusts. A break-up is not available.

income tax that even registered firms suffer or aggregation of income with the parent's or spouse's that a minor's beneficial interest in a partnership, or the partnership of a husband and wife, entails. It has the added attraction that it can confine itself to investments in shares or securities like an investment company without being required to run a business to justify its existence. The numbers of firms increased from 4,55,558 on 31.3.73 to 7,86,321 including 3,36,398 with income between Rs. 25,001 and Rs.1,00,000 and 38,004 with income exceeding Rs. 1,00,001 on 31.3.82.[7] It is probable that trusts also prospered even if they did not keep pace with the increase in the number of firms during this period, in view of their freedom from the disabilities to which the latter are exposed.

(viii) *Waqf-alal-Aulad,* or *waqf*s which are "partly" for family maintenance and partly for pious or charitable purposes, are not obliged to register themselves with the *waqf* Board, except in Uttar Pradesh and West Bengal. There were 4,990 "partly" charitable and 9,497 purely charitable *waqf*s in Uttar

Pradesh in October 1979. Similarly West Bengal had 886 private *waqf*s and 6,177 public *waqf*s in November 1979. The position in the other States is not known. The total number of public *waqf*s in the country, excluding Bombay, Gujarat and Jammu and Kashmir was 1,50,317 (Table 9.9). Bombay had 1247 public *waqf*s with assets valued at Rs. 20.09 crore in 1976. Even if the *waqf-alal-aulad* constituted only about 14 per cent of the public *waqf*s as in West Bengal and not over 50 per cent as in Uttar Pradesh, the number of *waqf-alal-aulad* in existence in the country as a whole at present can be reasonably estimated at over 20,000. Some of them may be small. Some may be deriv-

**TABLE 9.9**

*Waqfs registered in different States in India*

| Name of Board | Total no. of *waqfs* registered |
|---|---|
| Andhra Pradesh Waqf Board | 34,189 |
| Assam Waqf Board | 96 |
| Bihar Sunni Waqf Board | 1,500 |
| Bihar Shia Waqf Board | — |
| Delhi Waqf Board | 3,624 till 1965 (SIP) |
| Karnataka Waqf Board | 7,805 till 1968 (SIP) |
| Kerala Waqf Board | 3,626 |
| Kutch Waqf Board | 832 |
| Madhya Pradesh Waqf Board | 3,202 |
| Marathawada Waqf Board | 19,677 till 1969 (SIP) |
| Orissa Waqf Board | 852 till 1964 (SIP) |
| Punjab Waqf Board | 38,110 |
| Rajasthan Waqf Board | 16,959 |
| UP Sunni Waqf Board | 9,066 |
| UP Shia Waqf Board | 2,010 |
| West Bengal Waqf Board | 6,146 |
| Lakshadweep Waqf Board | 265 till 1965 (SIP) |

*SIP—Survey in progress.

*Source* : Khalid Rashid (1978), *Waqf Administration in India*, New Delhi, Vikas Publishing House, p. 79.

ing income from sources like agriculture not liable to the central income tax levy. There is, however, no ground for believing that tax avoidance considerations weigh less in the creation of *waqfs* than in the execution of other private settlements.

There is no system of registration of *debuttar* estates and "private temples" or other private religious trusts in any State.

The Income Tax Department has not also so far tried to survey them, though experience has shown that some of the trusts, *waqfs* and Hindu endowments which are ostensibly religious or charitable turn out, on enquiries, to be really not public in character and, therefore, not entitled to tax exemption. In any case, the Income-tax and Wealth-tax Acts require systematic collection of information about sources of income, investment of corpus, application of income, etc., even in the genuinely public trusts, since they are liable to tax in certain circumstances.

(ix) In the UK, banks have been a fruitful source of information regarding trusts. The Association of Corporate Trusts in the UK reported in June 1980 that its members served 1,03,048 trust funds with resources valued at £ 4955 million, besides administering 13,974 estates of the value of £ 495 million.[8] Some of the banks in India too provide trusteeship services to their constituents. Data received from three of them are shown in Table 9.10.

Some of the banks denied that they rendered such trusteeship services, while it is difficult to get the necessary information from some of the others, e.g., the State Bank of India.[10] Some of the foreign banks have stated that they are not functioning as trustees for any trust in India, e.g., National and Grindlay's Bank. The Mercantile Bank of India has declined to supply any statistical information though it was pointed out to the Bank that it would not offend its confidentiality obligations to any of its constituents.[11] If banks can be statutorily compelled to furnish the necessary information, at least a part of the area, about which the public as well as the Government are in the dark, may be lighted up.

It is improbable that the numbers of trusts shown in (i) to (ix) above overlap to any significant extent. They relate to different types of cases, which are mutually exclusive. However, the data that are readily available and that do

**TABLE 9.10**

*Details of trusteeship services p·ovided by three banks*

| | 31.3.79 | 31.3.80 | 31.3.81 |
|---|---|---|---|
| Trust accounts (furnished by the Bank of India, Canara Bank and Central Bank) | 2208 | 2153 | 2224* |
| Trust accounts of wills (-do-) | 289 | 293 | 294* |
| Trust accounts under the Married Women's Property Act, 1874 (furnished by the Bank of India and Canara Bank) | 4120 | 4150 | 4200** |

*The trust investments administered by the Bank of India and the Canara Bank amounted to about Rs. 13 crore, altogether. The information is not available for the Central Bank.

**Value not available.

not carry any confidentiality-inhibition, are not adequate to frame a realistic estimate of the number of private trusts, *waqf-alal-aulad* and Hindu endowments in the country and the funds or property settled in them. Though one is, therefore, hesitant to hazard an estimate, it is clear that the number of such entities is not very small and that the wealth they hold is not inconsiderable. While genuine trusts set up to protect the interests of helpless infants or the mentally unsound or handicapped persons may not necessarily have a large investment, trusts designed primarily to reduce tax liability may be expected to have assets of value exceeding the threshold for wealth tax exemption. One may perhaps venture to presume that there may be over 50,000 trusts in the country not falling in the category of religious or charitable trusts or employees' welfare trusts, with assets ranging in value from Rs. 1 lakh to Rs. 5 lakh on an average, largely motivated by tax considerations. On this rough guess, the aggregate annual income from investments of the order of Rs. 500 crore may be about Rs. 50 crore, and it may go up to Rs. 250 crore if the total investment is around Rs. 2,500 crore, taking the return at about 10 per cent per annum. It is not possible to estimate the tax avoided on this income, for want of the essential data.

## NOTES

1. C.& AG, 1981-82, p. 8. There seems to be some confusion in the matter since the total number of companies as on March 31, 1982, is shown as 46,355. If this number includes 30,467 charitable trusts and 2,786 discretionary trusts, the number of companies assessed to the income tax will be reduced to only 13,082. Since there were 836 Government companies and 57,674 companies in the private sector including 8,465 public companies in 1980-81, the number of companies borne on the tax registers could not be as small as 13,082 in 1981-82.
2. G.W. Thomas (1981), *Taxation and Trusts*, London, Sweet and Maxwell, p. 1.
3. Company News and Notes, Annual No. for 1970, p. 43.
4. The C & AG has reported under-assessment of wealth tax to the extent of Rs. 4,57,384 for the assessment year 1976-77 alone, resulting from the incorrect valuation of shares of private limited companies held by different firms in which 13 private trusts belonging to a "family group" were partners. The interest of the trusts in the partnership concerns was worked out on the basis of the book-value of the shares reflected in the relevant balance-sheet of the concerns and not their market value as the law requires, vide C & AG, 1981-82 p.173. This illustrates the methods adopted by the taxpayers and the revenue at stake.
5. The C & AG mentions two typical cases of avoidance of gift tax in his report for the year 1981-82, pp. 205-6. In the case of a Hindu undivided family there was under-charge of gift tax to the extent of Rs. 82,767, in the transfer of 75 unquoted shares of a private limited campany to two family trusts in the previous year for the assessment for 1974-75. In the other case relating to three private trusts belonging to a particular group, the aggregate gift tax that escaped assessment for 1974-75 and 1976-77 was Rs. 11,26,780. The tax was avoided when the trusts transferred unquoted equities of certain companies as their contribution to the capital of different firms in which they (i.e., trusts) become partners through the trustees.
6. In this connection, see Wheatcroft's observation, quoted at p. 83 ante and also the following extract from the evidence tendered by the US Treasury Department based on a study of estate duty returns showing net estates of $ 500,000 and over in 1945 : ". . . . the larger the amount of wealth transferred the longer is the average duration of trusts. Decedents who transferred property worth between $ 500,000 and $ 1,000,000 put less than 15% of their wealth into trusts for two generations or more whereas decedents who transferred property worth more than $ 3 million put more than 40 per cent of their wealth into trusts for this period. Thus the figures indicate that the wealthiest taxpayers make the most effective use of the tax

advantages of transferring property in trust." *Hearings before the Committee on Ways and Means on Revenue Revision* of 1950, p. 75, Vol. I (House of Representatives, 81st Congress, 2nd Session), quoted at page 358, J. Keith Butters, Lawrence E. Thompson and Lynn L. Bollinger, *Effects of Taxation—Investment by Individuals*, Harvard University, 1953.

7. Source: The reports of the C & AG to the Parliament, Union Government (Civil), Revenue Receipts, Vol. III, Direct Taxes, for the different years.
8. C.W. Thomas (1981), *Taxation and Trusts*, London, Sweet and Maxwell, p. 1.
9. The Bank of India and the Canara Bank also exercised voting power on behalf of the trusts with which they were concerned in 134 companies.
10. There was response only from six banks, though 28 banks were addressed for the necessary information.
11. Mercantile Bank's letter, dated March 9, 1982.