

Foreword

THE National Institute of Public Finance and Policy is an autonomous, non-profit society engaged in research and training in the area of public finance and policy. The Institute also undertakes consultancy work on behalf of the Central and State governments as well as international agencies and other public bodies. In addition, it undertakes studies on its own, on subjects of importance from the national point of view, particularly in terms of policy formulation.

The use of private and public trusts for tax planning purposes and the proper tax treatment of these entities have evoked considerable interest and controversy in recent years.

The subject is a vast one, as it covers private trusts, public trusts of various kinds and employee welfare trusts. The scope of the present study is limited to the tax treatment of private trusts. Its author, Shri K. Srinivasan, who was formerly a Member of the Central Board of Direct Taxes, has outlined the history of the legislation on the subject, the existing law and some of the difficulties experienced in its working. He has also indicated the legislative action required to plug the still existing loopholes and to effect the necessary improvements in the administration of the law. The Institute decided to sponsor this study because of the intrinsic importance of the subject on which no standard book has been written to-date. It is hoped that the book will meet the felt need for an analysis of the law and the facts available on the subject.

The Governing Body of the Institute does not take responsibility for the views and analysis presented in the study. In respect of the reports and publications of the Institute, generally speaking, besides the author, the Director and the other staff associated with the concerned project also share the responsibility for the basic approach and views. However, in

the present case, Shri Srinivasan, who is an acknowledged expert in the field of direct taxation, was given the sole responsibility for conducting the study. And the views expressed and the conclusions arrived at are his own and do not necessarily reflect those of the Institute.

September 30, 1983
New Delhi

R. J. CHELLIAH
Director

Preface

ONE of the reasons why taxes tend to be complicated all over the world is that they are subject to various other laws which directly or indirectly affect the income and property rights of a person. Even the countries which do not have to cope with the intricacies of the Hindu law or the Mohammedan law have not succeeded in simplifying their tax statutes significantly. The problem is accentuated in India not merely by the influence which the personal laws exercise on various aspects of social life and economic activity but also by the import of the distinctively British concept of trusts. The direct taxes system in India has suffered a great deal from the piecemeal, patchwork, disharmonised legislation through which it is trying to adjust itself to this medley of laws.

The attempt in this book is confined to an appraisal of the position of private trusts in the levy of direct taxes in India. The general law governing trusts is summarised in the first Chapter; and the second Chapter indicates the role of trusts as one of the intermediaries in taxation. The current tax treatment of private trusts and how it has evolved over a period of years are explained in Chapter 3. Chapter 4 describes how trusts have fared in other countries. The inadequacy of the existing provisions in the tax statutes in India is brought out in Chapter 5, and their indifference to the principles of equity and neutrality in Chapter 6. Some of the common methods of tax avoidance through trusts are set out in Chapter 7, with suggestions on the action needed to neutralise them in Chapter 8. Chapter 9 points out how scanty are the data available to show the extent of the use of private trusts in the country, while the last chapter briefly indicates the view one can reasonably take on the treatment to be accorded to private trusts in the light of the picture that emerges from the earlier chapters.

The case law on the points made in the text and also clarifications on some of the issues with which it was not considered necessary to burden the text, are furnished in the notes at the end of each chapter. They are supplemented by the additional notes preceding the index, seeking to cover further facts and court decisions that could not be incorporated in the body of the text or the notes following the different chapters.

More data are available on public trusts than on private trusts, which are veiled in secrecy and which are of relatively limited interest to the public though they cause constant vexation to the Revenue. Apart from the availability of more information in some of the States which have statutory regulation and supervision of public trusts, charitable and religious trusts have a pervasive impact on the day-to-day life of the community. They raise issues of greater public interest than private trusts which primarily concern the affluent. India has had a long tradition in public endowments and the law on several aspects of this subject is settled by court rulings, despite the absence of a comprehensive central legislation. The implications of the tax privileges that public trusts enjoy require detailed consideration in a separate book. It is proposed to deal with the employee welfare and other allied trusts also along with religious and charitable trusts.

My debt of gratitude to Dr. R. J. Chelliah is very heavy. He has taken the trouble of going through the text completely and with great care and given invaluable suggestions. More than this help, I must confess that it would not have been possible for me to write this book but for my association with the Institute as a Consultant, for which Dr. Chelliah is responsible.

The first draft of this book was shown to Dr. I. S. Gulati whose comments and advice have been duly taken into account. I ventured on this study on the suggestion of Dr. Amaresh Bagchi and I have had the benefit of discussing the contents of the book with him at length from time to time. I owe a lot to both Dr. Gulati and Dr. Bagchi.

I must also acknowledge the considerable help I have received from Mr. Christopher Cecil in editing the book; his tireless energy and zeal have speeded up the printing and

publication of the book. I am thankful to the banks which have taken the trouble of supplying me the information that I needed, to the extent possible for them. Some of the banks could have been more helpful, but they apparently believe that they are rendering a service to their constituents by withholding general statistical data.

I have received the maximum practicable secretarial assistance from Mr. Suhas Kumar. I must place on record his outstanding ability as a stenographer and his excellent language sense, which have made my task lighter.

I may make it clear that this book is not a commentary as such on any provisions of the Income-tax and other Acts. It is more in the nature of a study of the background and the implications of the current tax treatment of trusts and the extent to which it is susceptible of improvement.

September 30, 1983
New Delhi

K. SRINIVASAN