

# DEMYSTIFYING ASSET PROTECTION AND ESTATE TAX ISSUES IN INDIA

ASSET PROTECTION DOESN'T MEAN ONE HAS TO RELINQUISH ANY RIGHTS, OWNERSHIP OR CONTROL, ACCORDING TO PANELISTS AT THE HUBBIS INDIAN PRIVATE BANKING FORUM 2014 IN MUMBAI IN LATE AUGUST.

With a steady increase in the number of wealthy Indians, managing family wealth is fast becoming a popular topic of discussion among industry experts.

However, when it comes to asset protection, the biggest fear in the minds of the patriarchs is the loss of control over their assets.

This was one of the key conclusions of speakers on a panel at the Hubbis Indian Private Banking Forum 2014 in Mumbai in late August.

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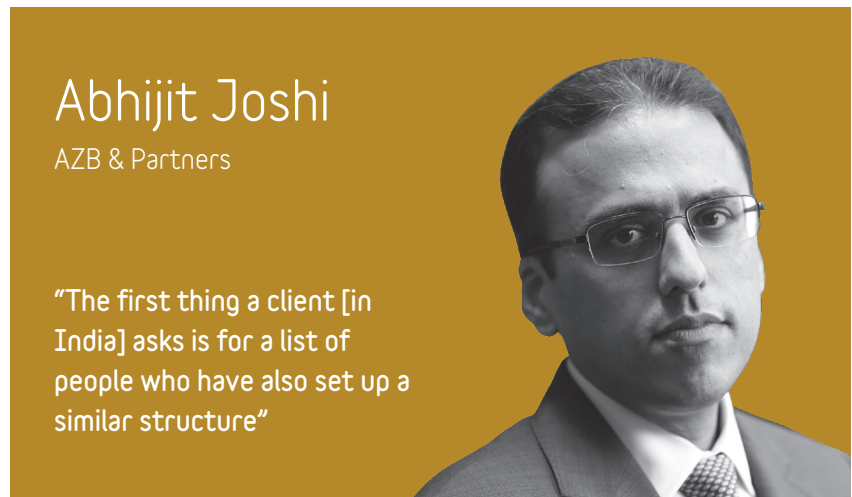
## ASSET PROTECTION AND STRUCTURES

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According to Tariq Aboobaker, managing director for Amicorp, most clients tend to complicate their lives rather than simplifying them.

"They don't have clarity over what control are they talking about," he explained "Are they referring to relinquishing rights of ownership or are they talking about relinquishing rights of control?"

Aboobaker added that historically, most assets such as property have always been in the name of the women.



Abhijit Joshi

AZB & Partners

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The logic was, men run the business and tend to gamble and drink, so it was much safer to keep the assets in the woman's name to protect them.

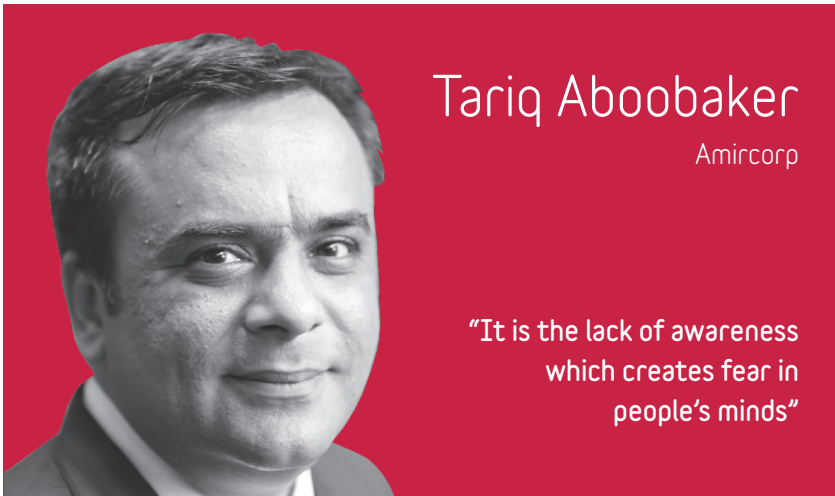
"However, these thoughts have changed now because of the increase in number of divorces," said Aboobaker.

Similarly, if one sets up a vehicle such as a family trust, a client needs to be educated that by doing so, they are not really giving up the rights of ownership. Either the family can manage it or it can be managed by a professional

for them. "It is the lack of awareness which creates fear in people's minds," said Aboobaker.

Abhijit Joshi, senior partner and chief executive officer of AZB & Partners, agreed that education is vital.

"This concept is still not as well-trodden as it is in the West," he said. "The first thing a client [in India] asks is for a list of people who have also set up a similar structure. However, a 'laundry' list is not available in India," explains Joshi. "Loss of control has to be



balanced with wealth creation." Joshi added that it is imperative for a client to know how they perceive that their business would run without them.

He said clients need to consider factors such as: whether they want the business to grow; whether they want family to be involved in the business; and whether they want the family wealth to grow.

"The industry has also moved to a lot of product pushing and I think that's where people get a little scared," he added. "For any form of wealth planning, your objective is very important," said Aboobaker.

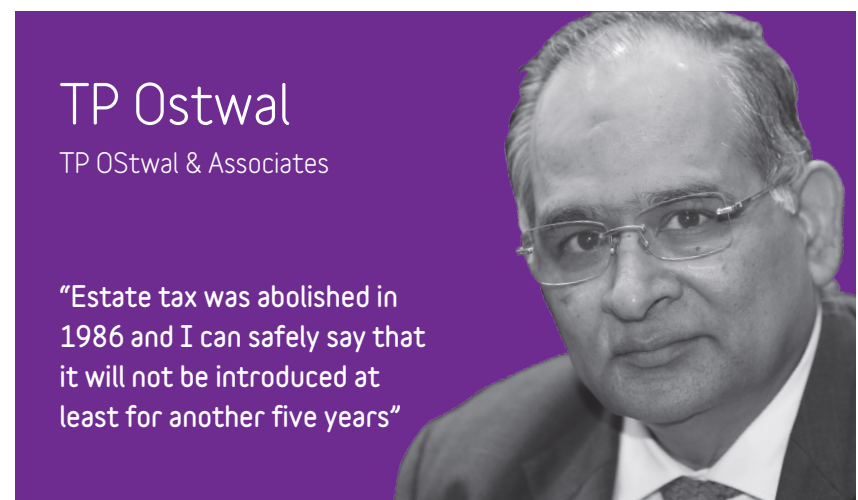
"From an asset protection point of view, an irrevocable trust would suit. Cross-border taxation solutions are also there. Recommendations can be customised to fulfill requirements. The Indian tax act is such that we can customise it according to our needs. It is flexible and open."

Joshi further added that trust structures are not easily undoable. Hence, having a good rationale for setting up a trust is very important.

### HAUNTED BY TAX ISSUES

Meanwhile, according to T P Ostwal, principal, TP Ostwal & Associates, and a member of the Jersey Advisory Group (India), many Indians have been haunted by the mere thought of the introduction of estate tax.

"Estate tax was abolished in 1986 and I can safely say that it will not be introduced at least for another five years," he said.



Joshi also suggested that fear of estate duty is driving people to get into structures.

"Control and taxation are an oxymoron on the subject," he said.

"The more you keep control, the more you are going to go away from the tax saving proposition."

However, Ostwal mentioned that one can also be prepared in the rare case that estate tax does get levied by the Indian government.

"One could create a purpose trust, through the purpose trust one can create vehicles and through those vehicles make investments."

He added that trust laws have been in existence since the 18th century in India and experts understand the subject matter very well.

"The trust business is extremely important from a global perspective, too," he explained.

An alternative suggested by the speakers was overseas investments in many low-tax countries. ■