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PTC Me ASAP: Estate Planning with Private Trust Companies

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More and more families are turning to private trust companies (PTCs) for their trusts and estates. Are they right for you?

What is a private trust company?

Private trust companies provide trust and fiduciary services to a single-family group — this is their sole purpose, and they are prohibited from doing business with the public.

Typically, private trust companies serve as trustee for various trusts established by one or more individuals from the same extended family, which allows more generational involvement in respect of the succession and growth of such family's wealth.

What are the benefits of a private trust company?

- Greater privacy due to lower regulation requirements.
- Greater control over trust decisions while preserving relationships with existing trust advisors.
- An opportunity to bring younger generations into family decisions and gain wealth management experience.

What are the potential drawbacks of a private trust company?

- PTCs don't offer the same level of services as a larger institution.
- Family control of decision-making can lead to infighting.
- Compliance and reporting requirements can be a burden without expert assistance.

How are private trust companies structured?

PTCs can generally be owned directly by family members or purpose trusts controlled by family members. The more common structure is ownership by a purpose trust.

Private trust companies are typically formed as corporations or limited liability companies. Corporations offer a more formal structure; limited liability companies provide more flexibility and are the more common choice.

Where should you establish your private trust company?

PTCs are increasing in popularity in the United States for both US and non-US families alike. Such increase in popularity is due various factors, including a well-developed legal system in respect of trusts, rule of law, and flexibility in administration.

Where is this happening? Complementing this increase in popularity, various states have passed legislation to encourage the establishment of private trust companies. Some states that are generally seeing the greatest increase in activity include:

- Florida
- Nevada
- New Hampshire
- South Dakota
- Wyoming

Where should you go?

A few factors to consider: (i) trust legislation; (ii) state income tax laws; (iii) regulatory environment; (iv) enhanced privacy; and (v) geography.

What are some additional tax and regulatory implications?

Income taxes

PTCs are most commonly structured as "C" corporations for US federal income tax purposes. That said, PTCs are not intended to generate much, or any, profit, but establishing cash flow will be necessary for paying vendors and service providers.

Estate taxes

It is imperative that the governing documents of a PTC (and trust agreement for its owner, if its owner is a purpose trust) contain necessary restrictions to maintain a family's estate tax objectives. For example, if a beneficiary of a trust whose trustee is the PTC also serves as a manager on the board of managers of such PTC, that beneficiary should be precluded from participating in certain decisions made by the PTC on behalf of such trust.

SEC regulations

In general, PTCs should be structured in a manner that qualifies for the "family office rule" of the Investment Advisers Act of 1940. Otherwise, if a PTC constitutes an "investment advisor" pursuant to the Investment Advisers Act of 1940, such PTC will have enhanced reporting obligations and more regulatory oversight.

CONTACTS

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