

Trust - Revocable Irrevocable

Irrevocable clause in the Trust Deed has attained significance in the recent past . Comparison of revocable and irrevocable clause in the trust deeds:

Trust could either be revocable trust or irrevocable trust.

Revocable trust is a trust which can be altered, modified or cancelled at any time during the lifetime of the author or settlor of the trust. It serves 2 purposes

(a) Author or settlor will remain the owner of the asset transferred and exercise control over it.

(b) Property will be handed over to the intended and mentioned beneficiary, after the death of the author/grantor/settlor. On the event of the demise of the grantor, the revocable trust becomes an irrevocable trust.

Primary objective of the revocable trust is to avoid the legal procedure of obtaining the probate as it ensures easy transfer of the asset to the intended beneficiaries and at the same time ensuring dominance over the assets during the lifetime of the author.

On the other side, irrevocable trust is a trust which cannot be extensively amended/ modified/ altered/terminated by the grantor after the trust deed is signed and implemented. More importantly, once the asset & property is transferred to the trust, it can never revert back. In short, once the asset is vested with the trust, the author or settlor loses all control over the assets. No control whatsoever is there with the grantor after it is transferred to the trust.

Revocable vs Irrevocable Trust

S. No. (i) A revocable trust can be canceled at any time till the survival of the author whereas an irrevocable trust cannot be cancelled.

(ii) In revocable trust, author can exercise his rights & control over the property transferred whereas in an irrevocable trust, the settlor cannot exercise his rights & control over the property.

(iii) Major existence of revocable trust is for private trust whereas irrevocable trust is for public / general trust.

(iv) One of the key logic for revocable trust to avoid the legal process of obtaining probate whereas it is to protect the assets against creditors and estate duty in case of irrevocable trust.

(v) Revocable trust offers full flexibility for amendment of trust deed whereas is is restrictive in case of irrevocable trust.

(vi) In case of revocable trust, income is normally taxed in the hands of the trustee/ author/ transferor only.

Irrevocable trusts do offer some tax benefits whereas it is not available in case of revocable trust.