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I recently met with my accountant to have my tax return prepared – and he told me that I should consider having a family trust set up in order to save some tax in future years. He suggested that I speak with a tax lawyer. How can I go about having a family trust set up?

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In order to have a family trust established, you should first consult a lawyer who is familiar with both the legal requirements and the tax rules for family trusts (such as a tax lawyer) – since it is essential that the family trust be created in accordance with trust law requirements and that it operate tax-effectively. Second, you would need to decide who will be the “settlor” (the individual creating the trust), who will be the “trustees” (the “managers” of the trust) and who will be the “beneficiaries” (the family members for whose benefit the trust is being created) of the “discretionary” family trust. Third, you would need to decide what will be the property of the family trust (the funds to be transferred to the trust by the “settlor” when he or she creates it, being the “trust settlement property”). Fourth, you would need to have a trust agreement (also called a deed of settlement) prepared by a tax lawyer for signing by the “settlor” and the trustees – which is the “roadmap” for operating the family trust (including the making of investments by the trustees). Fifth, you would need to have the “settlor” and the trustees meet in order to have the trust settlement property transferred to the trustees and to have the trust agreement signed.

You would also need to consult your accountant, since the family trust would have to file a trust tax return every year to report its income and pay tax on its taxable income. However, if the “discretionary” family trust allocates and pays its income to some or all of the beneficiaries (the family members), then the beneficiaries (some of whom may be in lower tax bracket(s)) rather than the family trust would be responsible for paying the tax on that income – and tax savings may be achieved. A tax lawyer can help navigate you through this process and help you determine the most appropriate structure for your situation.



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Michael is Counsel to the firm practicing in the Tax Law Group. He is an accomplished tax lawyer, providing tax planning and estate planning advice, as well as tax dispute resolution advice, to individuals and corporations including owner-operated private companies, professionals and family businesses.

Michael's tax law practice includes personal and corporate tax planning, corporate reorganizations, tax issues in estate planning, tax planning for business succession, tax planning for charities and not-for-profit organizations, cross-border tax planning, tax opinions, tax dispute resolution and tax litigation.



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