Pandora Papers Leak

Why in News

Recently, several prominent Indian names have been included in the **Pandora Papers leak.**

- There are over **300 Indian names** in the leak, including over **60 prominent ones.**
- Pandora Papers are **11.9 million leaked files from 14 global corporate services firms** which set up about 29,000 **off-the-shelf companies and private trusts.**

Trust

- **About:**
    - A trust can be described as a **fiduciary arrangement where a third party, referred to as the trustee, holds assets** on behalf of individuals or organisations that are to benefit from it.
    - A trust is **not a separate legal entity, but its legal nature comes from the 'trustee'.** At times, the 'settlor' appoints a 'protector', who has the powers to supervise the trustee, and even remove the trustee and appoint a new one.
- **Indian Law:**
    - The **Indian Trusts Act, 1882,** gives legal basis to the concept of trusts. Indian laws **recognise the trust as an obligation of the trustee** to manage and use the assets settled in the trust for the benefit of 'beneficiaries'. India also recognises offshore trusts.

Off-the-Shelf Company

- An 'off-the-shelf' company or **ready-made company is a pre-registered limited company,** however, it has never been traded. An 'off-the-shelf' company **is ready for immediate use** and can be purchased after paying a certain cost for it.

Key Points

- **About:**
    - The Pandora Papers **reveal how trusts are used as a vehicle in conjunction with offshore companies set up for the sole purpose of holding investments** and other assets by business families and ultra-rich individuals.
        - The trusts can be set up in known **tax havens which offer relative tax advantages.**
        - **For Example:** Samoa, Belize, Panama, and the British Virgin Islands.
    - They reveal **how the rich set up complex multi-layered trust structures for estate planning,** in jurisdictions which are loosely regulated for tax purposes, but characterised

by air-tight secrecy laws.
  - Businesses have created **a new normal** after countries have been forced to tighten the laws on such offshore entities with rising concerns of money laundering**, terrorism funding,** and tax evasion**.**
    - The **Panama and Paradise Papers** dealt largely with offshore entities set up by individuals and corporations respectively.
- **Reasons for Setting up Trusts Overseas:**
  - **Secrecy:**
    - Overseas trusts offer remarkable secrecy because of **stringent privacy laws** in the jurisdiction they operate in.
  - **Maintain a Degree of Separation:**
    - Businesspersons set up private offshore trusts to project a degree of **separation from their personal assets.**
  - **Avoid Tax in the Guise of Planning:**
    - Businesspersons avoid their Non-resident Indians (NRI) children being taxed on income from their assets by transferring all the assets to a trust.
  - **Prepare for Estate Duty Eventuality:**
    - There is a pervasive **fear that estate duty,** which was abolished back in 1985 will likely be re-introduced soon.
    - Setting up trusts in advance will **protect the next generation from paying the death/inheritance tax,** which was as high as 85% in the more than three decades after its enactment (The Estate Duty Act, 1953).
  - **Flexibility in a Capital-Controlled Economy:**
    - India is a **capital-controlled economy.** Individuals can invest only USD 2,50,000 a year under the **Reserve Bank of India**'s **Liberalised Remittance Scheme (LRS).**
    - To get over this, businesspersons have turned to NRI , and under **Foreign Exchange Management Act, 1999,** NRIs can remit USD 1 million a year in addition to their current annual income, outside India.
      - Further, the tax rates in overseas jurisdictions are much lower than the 30% personal Income-Tax rate in India
- **Grey Areas of Indian Taxation:**
  - There are certain **grey areas of taxation where the Income-Tax Department is in contest with offshore trusts.**
  - After the **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015,** came into existence, resident Indians have to report their foreign financial interests and assets.
    - **NRIs** are not required to do so.
  - The I-T Department may consider an offshore trust to be a resident of India for taxation purposes if the trustee is an Indian resident.
  - In cases where the trustee is an offshore entity or an NRI, if the tax department **establishes the trustee is taking instructions from a resident Indian, then too the trust may be considered a resident of India** for taxation purposes.
- **Government's Initiatives:**
  - **Legislative Action:**
    - **The Fugitive Economic Offenders Act, 2018**
    - The Central Goods and Services Tax Act**,** 2017

            - **The Benami Transactions (Prohibition) Amendment Act, 2016**
            - **The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**
            - **Prevention of Money Laundering Act, 2002.**
    - **International Cooperation:**
        - **Double Taxation Avoidance Agreements (DTAAs):**
            - India is proactively engaging with foreign governments with a view to facilitate and enhance the exchange of information under **Double Taxation Avoidance Agreements (DTAAs)/Tax Information Exchange Agreements (TIEAs)/Multilateral Conventions.**
        - **Automatic Exchange of Information:**
            - India has been a leading force in the efforts to forge **a multilateral regime for proactive sharing of financial information** known as Automatic Exchange of Information which will greatly assist the global efforts to combat tax evasion.
        - **Foreign Account Tax Compliance Act of USA:**
            - India has entered into an information sharing agreement with the USA under the act.

Source: IE