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Benefits of using a Family Trust to manage your assets

By Geoffrey E. Odongo

A family trust is a valuable and convenient tool for use in managing one's assets while still alive. A family trust is a non-trading legal entity that is registered for the purposes of planning and managing a person's estate normally with the intention of preservation or creation of wealth for generations.A family trust once registered becomes a body corporate that can own property by its name as described in its certificate of registration. It also has power to sue and be sued in its corporate name in addition to having a corporate seal. Some of the common purposes for which trusts are created include:-

a) Enabling property to be held for persons who cannot or should not hold it for themselves such as minors, disabled people, spendthrifts, among others;

b) Preserving property for successive generations;

c) Enabling holding of a matrimonial home in trust after a divorce for the use of the person that primarily cares for the child together with the child until the child attains 18 years at which point the house can be sold;

d) Preserving maximum flexibility in the event of unforeseeable circumstances such as financial problems, divorce, disability

e) For tax planning purposes

f) Managing a scenario where it is apparent to a parent that should an asset be passed outright to a child there is no guarantee that they will retain it or even pass it on in a way that would meet with the parents' approval.

The use of a family Trust also comes with a number of attendant tax benefits in that the following incomes of a registered trust are not subject to income tax:-

I. Any amount paid out of the trust income on behalf of any beneficiary that is used exclusively for the purpose of education, medical treatment or early adulthood housing;
II. Income paid to any beneficiary which is collectively below ten million shillings in the year of income;
III. Property, including investment shares, which is transferred or sold for the purpose of transferring title or the proceeds into a registered family trust;
IV. Income or principal sum of a registered family trust; and
V. Any capital gains relating to the transfer of title of immovable property to a family trust.

In addition to the foregoing, whereas stamp duty is payable for any transfer of property made during the life of the owner of a property such as land, any transfer of property made to a registered family trust as a gift will be exempt from stamp duty.

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