

AN OVERVIEW OF TAX RELIEFS ACCESSIBLE TO REGISTERED FAMILY TRUSTS IN KENYA

Family trusts in Kenya have become a crucial tool in estate and succession planning. Some of the advantages that family trusts offer include:

- preservation or creation of wealth across generations;
- seamless management and distribution of assets during the settlor's lifetime and after their passing;
- avoidance of the probate process, which is often expensive and lengthy;
- protection of the beneficiaries from creditors who would have a priority right of payment from the estate of the deceased; and
- privacy and confidentiality, where, upon the demise of the settlor, their dealings, including property ownership, are protected from being common knowledge.

Notably, the most advantageous incentive for forming a family trust is the tax exemptions available on the transfer of properties within a family trust. The main taxes that would be payable on the transfer of properties within family trusts are Stamp Duty and Capital Gains Tax (CGT).

Movement or transfer of property within family trusts that attract tax exemptions are the transfers:

1. From the settlor (the person who establishes the trust) to the trust
2. From the trust to the beneficiary
3. From the trust to third parties

STAMP DUTY

Under the provisions of Section 52 (2)(b) of the Stamp Duty Act, Cap 480, a conveyance or transfer, or an agreement for a conveyance or transfer, operating as a voluntary disposition of property, **shall not be subject to Stamp Duty if the transfer is to a registered family or charitable trust**.

Further, the Stamp Duty Act, in Section 52(6), exempts stamp duty on the transfer of property from the trustee to the beneficiary/beneficiaries of a trust.

Notably, the transfer of property from a trust to a third party **is subject to stamp duty**.

CAPITAL GAINS TAX (CGT)

Similarly, under the provisions of Paragraph 58 of the First Schedule of the Income Tax Act (ITA), CGT is not chargeable upon transfer of immovable property to a family trust.

Paragraph 6(2)(g) of the Eighth Schedule of the ITA exempts CGT on the transfer of property from the trust to a beneficiary once they have become entitled to it. It is important to note that the law also allows for a settlor to be a beneficiary of a trust, and the exemptions would similarly apply to transfers made from the trust to them.

Paragraph 36(g) of the First Schedule of the ITA exempts CGT payment on the transfer of property, including investment shares, which are transferred or sold for the purpose of transferring the title or proceeds into a registered family trust.

FAMILY TRUSTS AND OTHER TAXES: INCOME TAX:

Section 3 of the ITA imposes income tax on all income of a person, resident or non-resident, which accrued in or was derived from Kenya.

However, Section 11 of the ITA provides for taxation of trust income, deemed income of a trustee or beneficiary.

If part of this income earned includes qualifying dividends or interest income, it is to be taxed under the rules for taxing dividends and interest, as opposed to the general income taxation rules. This is considered to be an advantage in that a lower tax rate will apply. If a trustee, executor, or administrator receives income that is considered taxable income, it is treated as their own income for tax purposes.

Section 11 (4) specifies that if a trustee pays dividends or interest to a person (beneficiary), they can label it as qualifying dividends or interest, thereby treating it as already taxed. The exception to this is that the trustee cannot label more qualifying dividends or interest as 'already taxed' than what they actually received as qualifying dividends or interest.

Where a beneficiary receives money from a trust during the year, either directly from the trustee, or on their behalf (e.g, to pay for school fees or medical expenses), that money is treated as the beneficiary's income. If the money came from income that the trustee was already taxed on, then it is considered a gross amount and is assumed to have already been taxed at the trustee's rate.

Further to the above, paragraph 57 of the ITA exempts from income tax any principal sum of a registered family trust. This means that the original amount put into the trust, is not subject to income tax.

CONCLUSION

Managing property transfers, stamp duty obligations, and wealth planning in Kenya demands a deep understanding of the legal frameworks and strategic foresight. At CM Advocates LLP, we specialise in navigating the intricacies of Family Trusts, tax regulations, and property laws. Our team of experienced experts provides customised advisory services designed to ensure compliance, reduce exposure to risk and tax liabilities, and safeguard your assets and interests. Whether you are setting up a trust, restructuring a property transaction, or seeking to ensure optimum tax efficiency, we deliver clear, practical solutions to help you mitigate any challenges and meet your goals effectively.

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