



MEUMANN WHITE

ATTORNEYS

ADVANTAGES of buying property in the name of a trust

Presented by Meumann White Attorneys

ADVANTAGES of buying property in the name of a trust:-

1. **Limited Liability**

Like a Company or Close Corporation, a trust has a legal personality separate from its trustees and beneficiaries.

2. **Continuity**

The trustees and the beneficiaries enjoy the benefit of continuity as the trust's continued existence is not effected by changes in membership.

3. **Estate Planning**

Estate duty is charged on the "dutable amount" of the estate of a deceased person. The trust is not a person for the sake of the Estate Duty Act and therefore, whatever happens to the trust fund (or to the trustees) has no estate duty implications.

In certain circumstances, the beneficiary's right in the trust fund will not be "property" in the estate of the beneficiary - and will also thus not form part of his estate for estate duty purposes.

However, if anti-generation skipping provisions are introduced by legislation (which seems likely in the near future according to recommendations), the trust will be considered to have died and estate duty will have to be paid at a pre-determined rate, then a major attraction and benefit of the trust will fall away.

DISADVANTAGES of buying property in the name of a trust:-

1. **Transfer Duty**

Prior to 1996 the rate at which a trust paid transfer duty was determined by the identity of the beneficiaries. If they were all natural persons, then transfer duty was determined on the scale applicable to natural persons.

The trust is now deemed to be a person other than a natural person (ie. a legal/juristic person) with regards to the imposition of transfer duty and thus transfer duty is payable at a flat rate of 10 % of the value of the property where a trust acquires immovable property.

2. **CAPITAL GAINS TAX**

Capital Gains Tax is payable where a trust is the Seller of the property.