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Pre - Owned Assets Tax

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What is Pre - Owned Assets Tax (POAT)?

POAT is an income tax charge introduced by the Finance Act 2004. The tax applies to anyone who used to own a particular asset (e.g. home, car, painting), then gave it away, but still enjoys full or partial benefit from it.

The charge was introduced to target those individuals then participating in Inheritance Tax (IHT) mitigation schemes. However, it can also catch a number of people with wholly innocent motives.

Background

IHT of up to 40% can be charged on lifetime gifts of capital, and upon the value of your estate when you die.

If you give away assets in your lifetime the gift will be a Potentially Exempt Transfer, providing you survive seven years. Once seven years have passed there is no IHT charge. This gives the opportunity to pass significant capital down the generations.

However, if you continue to derive any benefit from an asset given away then this will be a Gift with Reservation of Benefit and the asset will remain within your estate for IHT purposes.

The classic example of this is if you give away your property during your lifetime but continue to live there rent free. You have reserved the benefit and the gift is not effective for IHT purposes, which means the value of the house remains within your estate and is taxable.

Over the years a variety of complex schemes were developed, such as the “home loan” or “double trust” scheme, enabling continued occupation of the family home whilst removing it from the estate for IHT purposes. POAT was introduced as a direct response to these schemes.

Which assets are affected by the tax?

POAT affects land and property, chattels and intangibles. Intangibles are all assets other than land or chattels. There are different rules for each type of asset, though in practice it is likely that most POAT charges arise in respect in property.

The POAT charge to land and property

If you occupy a property (either permanently or occasionally) and you have previously contributed towards its purchase price, you could potentially be liable to a POAT charge. This includes the situation where you gift cash to your children who then buy a property in which you live. However, there are a number of exemptions which may take effect.

Who is affected by the rules?

The POAT regime was introduced from 6 April 2005 but can apply to arrangements that have been in place at any time since March 1986. This means that any pre - existing schemes would need to be reviewed to see if a POAT charge is due.

How is the charge calculated?

In relation to property the charge is based on an open market rent. For all other assets the charge will be a notional value, based on a formula taking into account the valuation of the interest disposed of.

Can the charge be avoided?

The act lists a number of excluded transactions and exemptions which do not create a POAT charge. Most significantly, the charge can be reduced by any actual rent paid by the occupier. This means there would be no POAT charge if full market rent is paid. Alternatively, you could elect to treat the property as part of your Inheritance Tax estate as a Gift with Reservation of Benefit. Remember, POAT is only payable where there has been no Gift with Reservation election.

Wills

POAT and IHT is a complex area and professional advice is necessary before embarking on any course of action. Wills are not affected by the POAT regime and so it is more important than ever to ensure you have a tax efficient Will in place.

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