

# **FINANCE ACT 2004 SECTION 84 AND SCHEDULE 15 AND PRE-OWNED ASSETS**

## **INTRODUCTION**

Legislation, criticised by the accountancy and legal professions as draconian and retrospective, was introduced by the Finance Act 2004. There now exists a new charge to Income Tax ('POT Charge') on an individual who, from 6 April 2005, has a benefit in land or chattels which he previously owned but subsequently disposed of.

## **THE CHARGE**

The provisions of the POT Charge affect land, chattels and intangible property.

### **Land**

An individual comes within the POT Charge if certain conditions are satisfied. Primarily, he must be in occupation of any land, (alone or with others), called 'Relevant Land' in the legislation. If at any time since 17 March 1986 the individual:-

- owned either the Relevant Land or any other property (including cash) which was used to purchase the Relevant Land , and
- disposed of all or part of his interest in the Relevant Land or the other property except by way of an excluded transaction, he will have satisfied the 'Disposal Condition' and fallen into the net.

There is also a broadly similar 'Contribution Condition' which will apply to an individual who has contributed in part to the purchase of Relevant Land.

Where an individual satisfies either of the two Conditions he is treated as having in the tax year of assessment taxable income calculated with reference to the 'appropriate rental value' of the Relevant Land. The Act provides a formula for

calculating the appropriate rental value and the Treasury is to issue further detail on the method of computation.

### **Chattels**

The Disposal and Contribution conditions also relate to chattels in much the same way as they relate to land and the tax charge in such a case is based on a 'Chargeable Amount' and once again the legislation provides a formula for calculating the Chargeable Amount.

### **Intangible Property**

This includes cash and other intangibles held in a trust. More detail on this can be provided if it is relevant to your circumstances.

### **EXCLUDED TRANSACTIONS**

1. A market value disposal of the relevant property. Note that this does not cover disposals of a share or part of an interest in a property, or the position where the vendor has reserved an interest in the property for himself.
2. Disposal of the relevant property into a settlement in which the individual, his spouse or former spouse has a right to income.
3. Transfers of property between spouses or former spouses under Court Order.
4. A gift which falls within the annual £3000 exemption for Inheritance Tax.
5. A cash gift to another individual used as a contribution towards the acquisition of property occupied by the taxpayer made at least 7 years before the taxpayer's occupation of the land or use of the chattels. This means that all cash gifts made prior to April 1998 are excluded.

### **EXEMPTIONS**

Various technical exemptions are contained within the legislation, mainly applying where the relevant property would still be chargeable to Inheritance Tax under existing rules notwithstanding the disposal.

In addition a 'de minimis' exemption applies where the appropriate rental value (land) or the appropriate amount (chattels) or the aggregate of the two does not exceed £5000 in the tax year.

Transfers of property under a deed of variation in relation to the administration of a deceased's estate is not within the scope of the POT Charge.

### **ELECTION TO DISAPPLY THE CHARGE**

The taxpayer may make an election on or before the 31 January following the tax year in which he comes within the POT Charge for the income tax charge not to apply and for the property to be treated as being part of his estate for inheritance tax.

### **CONCLUSION**

If you suspect you may at any time since 17 March 1986 have carried out a transaction which means you now find yourself facing the POT Charge we recommend that you review the transaction and seek advice on how the new rules will affect you in the future.

If you wish us to carry out a review of your scheme for you to see if you fall within the POT Charge and advise you on your options please contact Christopher Wright ([crw@royds.com](mailto:crw@royds.com)) or Hazel French ([haf@royds.com](mailto:haf@royds.com)) who will be pleased to undertake such a review.

It must be stressed the above is only a brief outline of the legislation and should be treated only as a general guide to the Pre-Owned Assets regime.