CLARENCE TRUSTEES
WILLS, TRUSTS, & PROBATE

The Background to APTs

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THE BACKGROUND TO APTs

Before reading this guide we recommend you read our separate guide entitled "Trusts (an Introduction)" to become familiar with some of the terms and principles in this guide.

Asset Protection Trusts (APTs) are used for the protection of assets for many reasons. They are set up with the aim of ensuring such assets are passed to designated beneficiaries on death rather than being depleted by third party claims.

1. KEY FEATURES OF APTs

The key features of an APT are as follows:

- The APT is set up by you in your lifetime and is established with a Trust Deed.
- Assets in your personal ownership are transferred by you, the Settlor, into the ownership of the Trustees of the trust.
- The principle is the same as gifting assets away 'absolutely' to someone, namely if you do not own the assets (because they are now owned by the Trustees) then they cannot be accessed by third parties or used in any kind of assessment of your wealth or means.
- However the Trust Deed will permit you to have use of (or the income from) the assets that are placed into the trust for the rest of your life.
    - For a house placed into the trust this would mean you could continue to live in it as you do now. However you would not be able to sell the house. Only the Trustees could do that.
    - For capital placed into trust, this would mean that you could benefit from the income of the capital but you could not have access to the capital itself.
- On your death the trust assets would then pass to the beneficiaries that you nominated when you established the trust.
- It should be noted that the trust is "irrevocable" – which means the Settlor does not have the right to revoke the trust i.e. once the assets are in the trust they cannot revert back to being owned by the Settlor.

2. BENEFITS OF APTs

The benefits of transferring property and assets into the APT during your life are:

- You have certainty of occupation of the property for the rest of your life.

- If you wish to sell your property to buy another, you can ask the Trustees to do this and they will sell the property and buy another one using the trust funds on your behalf. [Remember, you cannot do it yourself because the Trustees are now the legal owners of the property]

- As explained above - once you pass away, the assets of the trust can be liquidated by the Trustees into cash and the capital passed on to the ultimate beneficiaries when the trust ends according to the Trust Deed.

- You will have no right to the trust capital - which means that the trust capital is outside your estate. This means it cannot be accessed by any third parties and it cannot be taken into account in any means testing.

- Where capital has been placed into the trust you will have the right to enjoy the income from it.

- The Trustees will have the power to remove the right of the ultimate beneficiaries to their benefit for reasons such as impending divorce or bankruptcy. In these circumstances the Trustees could create a standard discretionary trust for such beneficiaries and appoint assets from the APT to the standard discretionary trust. In their discretion the Trustees of the standard discretionary trust could then make the assets available to the ultimate beneficiary once the Decree Absolute is received or once discharged from bankruptcy.

3. OTHER MATTERS TO CONSIDER

While the APT has a number of advantages there are some other matters that need to be kept in view:

- The APT is not effective as a mechanism to reduce Inheritance Tax (IHT). It is only effective as a means of protecting property and capital. When the Settlor puts their assets into the APT this is viewed by HMRC as a “gift with reservation of benefit” (because the Settlor can still have the use of any property in the trust and can still receive any income from the trust assets) and so the entire trust contents are therefore viewed as being "owned" by the Settlor when he/she passes away.

- If the assets passing into the APT are more than the IHT Nil Rate Band (NRB) which at the time of writing is £325,000 then:
    - The transfer is treated for IHT purposes as a "Chargeable Lifetime Transfer" and the amount of the transfer exceeding the NRB will be taxable at 20%.
    - Once the assets are in the trust, if they exceed the NRB then there will be 10 yearly anniversary charges of 6%.
    - Finally, on the death of the Settlor the assets in the APT (which were taxed to IHT at 20% on the way in) will be taxed to another 20% - making the eventual total IHT paid 40%.

  But these points only apply if the assets in the APT including property are above the NRB for a single person/sole owner or twice the NRB for co-owners.

- Once a property has been put into the APT, it will rule out the Settlor being able to take up equity release in the future.
- Transferring property into the trust will require a conveyance and the associated legal costs.
- If there is a mortgage on the property, the permission of the lender will be required to be able to transfer the property into the APT – and mortgage lenders almost never give their permission.
- The income of the APT will be taxed at 20% for the first £1,000 of income and subsequently at 50%. There are also Capital Gains tax issues to consider.

4. FINAL POINTS

Before choosing an APT it is necessary to consider what the aims are for your estate planning. It may be that your aims can be achieved in a different and simpler way.

While an APT can be very effective in the right circumstances, it is important to take professional advice to ensure that your particular circumstances ARE suited to an APT.

5. HOW WE CAN HELP

Clarence Trustees provides a fast, efficient and modern trust service.

We can advise you if an APT is the most appropriate way to achieve your aims, and if it is we can advise on exactly how to use it, as well as providing all the drafting and assisting you with the execution.

Please contact us now about our trust service.

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