

Part 9 – Powers Of Appointment

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Capital Acquisitions Tax

1 Part 9 - Powers Of Appointment - Section 36 CATCA 2003

Section 36 of the CATCA 2003 defines who the disponent is where a person receives a benefit as a result of the exercise of a power of appointment. Normally the disponent is the person who created the power of appointment. However, where a person holds a general power of appointment i.e. the power to appoint in favour of any person or to appoint to himself, he is treated as absolute owner and is therefore the disponent himself in relation to any appointments made by him.

A general power of appointment is defined in Section 2 of the CATCA 2003 as including every power, which would enable the holder to appoint property to whomsoever he thinks fit or to obtain such power right or authority. The holder can appoint the property directly in any manner he chooses or he can appoint to a limited class of objects of which he is one. By appointing to himself, the holder can obtain absolute ownership and then dispose of the property as he wishes.

Example 1:

Mary gives Sheila a life interest in property together with a power exercisable by deed or will to appoint the property to any person as Sheila should choose and in default of appointment by Sheila the property passes on Sheila's death to Nora.

The CAT Implications are as follows:

- ❖ Sheila takes from Mary a life interest coupled with a general power of appointment. Sheila is taxed on the full value of the property and not on the value of a life interest. Sheila is treated as having taken an absolute interest from Mary.
- ❖ If Sheila appoints to James tax will become payable on the basis of an inheritance of the full value of the property taken by James from Sheila when Sheila dies.
- ❖ If Sheila should die without exercising her power the property will pass to Nora and tax will be payable on the basis of an inheritance of the full value of the property taken by Nora from Sheila.

Section 36(2) defines a special power of appointment as a power of appointment, which is not a general power of appointment. The person who created the power is the disponent in the case of the exercise of a special power of appointment.

Example 2:

Noel leaves property to his daughter Deirdre for life and after her death for such of his grandchildren as Deirdre by deed or will appoints and in default of such appointment for all his grandchildren equally.

The CAT Implications are as follows:

- ❖ Deirdre is taxed on the value of the life interest she takes from Noel. As Deirdre only has a special power of appointment she is **not** treated as having taken an absolute interest.
- ❖ If Deirdre appoints the property to one particular grandchild, that grandchild is treated as taking the property from Noel and inheritance tax is payable accordingly when Deirdre dies.
- ❖ If Deirdre fails to exercise the power of appointment the grandchildren take an equal share of the property from Noel when Deirdre dies and they are taxed accordingly.

In the past the use of certain types of wording in Wills has given rise to difficulties in this area. Take for instance the situation where a person by will leaves the residue of his estate to an executor “to be used by him as in his sole discretion he shall think fit”. The intention may have been to create a discretionary trust under the will with the executor being trustee only. However, the use of this type of wording has been held to give the executor an absolute interest in the residue because of the definitions of “absolute interest” and “general power of appointment” in Section 2 of the Act. The executor would be taxed on the full value of the residue and, if he appointed the residue to say a brother of the deceased, that brother would also be taxed on the full value of the residue taken by him from the executor.