

Part 32-02-01 Surcharge on Undistributed Income of Trusts

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1. Introduction

Section 805 of the Taxes Consolidation Act 1997 provides for a 20% surcharge on the undistributed income of certain discretionary trusts.

2. Surcharge

The surcharge applies to income which:

- (a) is accumulated or which is payable at the discretion of trustees,
- (b) before being distributed is the income of the trustee only (and not any other person) and is not treated for any of the purposes of the Income Tax Acts as the income of the settlor;
- (c) is not the undistributed income of a charitable trust, or income from investments of a trust devoted solely to the provision of pensions, lump sums, and gratuities given on retirement or death,
- (d) exceeds the income applied in defraying the expenses of the trustees which are properly chargeable to income;
- (e) is not distributed within the year of assessment in which it arose or within 18 months after the end of that year.

The surcharge is in addition to tax at the standard rate and the recipient of the distribution is not entitled to get a credit for any part of the surcharge.

Example

Gross income of the trust		€12,000
Less		
Standard Rate tax 20%		<u>€2,400</u>
		9,600
Less		
Accountancy fees	€800	
Expenses	€500	
Distribution to beneficiary	<u>€1,000</u>	<u>2,300</u>
		€7,300
Surchargeable income	(€7,300 x 100/80)	€9,125
Surcharge @ 20%		€1,825
Net accumulated income	(€7,300 - €1,825)	€5,475

3. Liability for the Surcharge

The surcharge forms part of the liability for the later year of assessment and should be taken into account by the trustees in computing preliminary tax for that year. It should also be included in the return of income of the trust for that year. A section for the surcharge is included in Form 1.

Example

Year of assessment in which income arises:	2014
End of period of 18 months after end of year of assessment	30/06/2016
Year of assessment for which surcharge is to be levied:	2016

4. Discretionary Trust Tax (DTT) allowed as an Expense

Discretionary Trust Tax which is properly chargeable to income for the purpose of calculating a surcharge on undistributed income is allowed as an expense. The reason for this is that the charges are mainly annual and are close in nature to income type expenditure.

Because DTT is a capital tax, it has been suggested Capital Gains Tax

(CGT) should also be allowed as an expense for the purpose of calculating a surcharge on undistributed income of a discretionary trust. CGT is a tax on a chargeable capital gain on the disposal of an asset. It is not an expense which is properly chargeable against income.

Revenue are not prepared to extend to CGT the practice of allowing DTT as an expense for the purpose of calculating a surcharge on undistributed income of a discretionary trust.