

## **Part 5 - Discretionary Trust Tax**

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## Capital Acquisitions Tax

### 5 Part 5 - Discretionary Trust Tax

#### 5.1 Introduction

A discretionary trust may be defined as a trust in which property, put into trust by a disponent (that is the person who provides the property) is held on trust by trustees for a certain class of beneficiaries (called the objects of the trust), but in which the trustees have an absolute discretion as to when, how and to which of the objects of the trust they may appoint the capital or the income of the trust property. The distinguishing feature of a discretionary trust compared to a strict settlement is that, neither any one of the objects of the trust in whose favour the discretion might be exercised, nor the class of beneficiaries as a whole, is entitled, as of right, to any capital or income of the trust, except when the trustees appoint property out to them. Each object of the trust has merely a hope or expectation that the trustees may exercise their discretion in his or her favour.

The execution of a discretionary trust, while it constitutes a disposal of the property of the disponent, is for CAT purposes a non-event in the sense that no person thereby becomes immediately entitled in possession to any benefit. Consequently, there is an indefinite postponement of CAT until such time as the trustees exercise their discretion in favour of some object of the trust. When that event occurs, the object will take a gift or inheritance, as the case may be, from the disponent. The date of the appointment out of the trust funds to the object will be the date of the gift or inheritance. Special legislation to enable tax to be levied on discretionary trusts was introduced in the 1984 and 1986 Finance Acts.

#### 5.2 The once off 6% charge

A once off 6% charge applies to any property comprised in a discretionary trust on 25 January 1984 and to property, which becomes subject to a Discretionary Trust after that date.

The tax is only imposed on the latest of the following dates:

- (a) the date on which the property becomes subject to the discretionary trust
- (b) the date of death of the disponent
- (c) the date there are no “principal objects” under the age of 21 years. Principal objects can be defined as the spouse of the disponent, children of the disponent or the children of a predeceased child of the disponent.

Where property is transferred into a discretionary trust under a will the property does not become subject to the discretionary trust until the administration of the estate is completed.

Form I.T.4 is the self-assessment return form for the 6% once off charge, which must be delivered by the accountable person i.e. the trustees or the agent on their behalf.

Where the entire trust property is appointed out of the trust to an object of the trust within 5 years of the date of the 6% charge arising, the once off charge is reduced to 3%.

### **5.3 The annual 1% charge**

An annual 1% charge arises on 31 December each year on the value of the trust assets.

Form I.T.32 is the self-assessment return form for the 1% charge, which must be delivered by the accountable person i.e. the trustees or the agent on their behalf.

Under Section 24 CATCA 2003 the values of non-quoted shares and real property agreed for one chargeable date will also apply for the following two chargeable dates, subject to the conditions outlined in the section.

### **5.4 Exemptions from Discretionary Trust Tax**

Section 17 CATCA 2003 sets out types of discretionary trusts, which are exempt from discretionary trust tax. The following are the exempt trusts:

- ❖ Trusts for public or charitable purposes in the State or Northern Ireland
- ❖ Superannuation or Unit Trusts
- ❖ Trusts providing for the upkeep of a heritage house or garden
- ❖ Trusts for the benefit of one or more named individuals who are because of age or improvidence or physical, mental or legal incapacity incapable of managing their affairs.