

Discretionary Trust Tax

Part 5

This document should be read in conjunction with Part 3, Chapters 2 and 3 of the Capital Acquisitions Tax Consolidation Act 2003

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Revenue



Cáin agus Custaim na hÉireann
Irish Tax and Customs

Introduction

A discretionary trust may be defined as a trust in which property is held on trust to accumulate the income or part of the income of the property or 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.

1. 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 is 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.

[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%.

2. 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.

3. Exemptions from Discretionary Trust Tax

Section 17 CATCA 2003 sets out various types of discretionary trusts, which are exempt from discretionary trust tax. The following trusts are exempt where it can be shown to the satisfaction of the Revenue Commissioners that they have been created exclusively:

- ❖ For purposes which, in accordance with the law of the State, are public or charitable.

[**Note:** Prior to the passing of Finance Act 2014 only trusts created for public or charitable purposes **in the State or in Northern Ireland** qualified for exemption. Finance Act 2014 removed this territorial limit of “the State or Northern Ireland” from section 17 for trusts created on or after the passing of the Act (on 23 December 2014) and as respects inheritances taken on or after 23 December 2014 thus bringing the exemption into line with the exemption under Section 76 in relation to gifts or inheritances taken for public or charitable purposes.

It should be noted that the location of the trust or the location of the trustees is not relevant to the exemption nor is the actual location where the purposes of the trust are carried out. However, the question of whether the purposes of the trust qualify to be treated as public or charitable has to be determined by reference to the law of Ireland.

Finance Act 2014 also added a new anti-avoidance provision in relation to the exemption for these public or charitable trusts by providing that a discretionary trust that is at any time a party to any arrangements the main purpose (or one of the main purposes) of which is to secure a tax advantage for any person shall be regarded as not having been created exclusively for purposes which, in accordance with the law of the State, are public or charitable]

- ❖ 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.

4. Finance Act 2012 Amendments to Discretionary Trust Tax (DTT)

Discretionary Trusts Created By Wills

4.1 Background

The initial once-off 6% charge to DTT arises by deeming the trustees to have taken an inheritance of the trust property at the **latest** of the three following dates:

- (a) the date on which the property becomes subject to the discretionary trust;
- (b) the date of death of the disponent; or
- (c) where there are principal objects of the trust, the date on which there ceases to be a principal object of the trust under the age of 21.

After the initial once-off 6% charge arises, annual 1% charges to DTT then arise in the following years while the property remains in the trust.

In the case of a discretionary trust set up by a disponent during their **lifetime**, the initial 6% charge arises on the death of the disponent or, if later, when all of the principal objects have reached 21.

In the case of a discretionary trust set up by the **will** of the disponent, the Revenue view was that the date on which the property passing under the will became subject to the discretionary trust was the date of death of the disponent and that the initial 6% discretionary trust tax charge arose at the date of death of the disponent or, if later, arose when all of the principal objects of the trust had reached 21.

An alternative view was that, in the case of a discretionary trust set up by the will of the disponent, the property passing under the will only became subject to the discretionary trust when the administration of the estate was completed and that, accordingly, discretionary trust tax charges did not begin to arise until the administration was completed. This alternative view, that the property (normally the residue of the estate) was not subject to the discretionary trust under general law prior to the completion of the administration of an estate and was, thus, not liable to discretionary trust tax charges until the administration of the estate was completed,

had the effect of postponing the charges to the discretionary trust tax in trusts created by will.

In *Revenue Commissioners v Christie* (2006) High Court case, the Court determined this issue and held that no charges to discretionary trust tax could arise during the period when an estate was being administered. The Court determined that, during the period of time between the date of death of the disponent and the date when the administration of the estate was completed by the executors of the estate, the property passing under the will was not subject to the discretionary trust under general law and that charges to discretionary trust tax could not begin to arise until the property became subject to the trust under general law on the completion of the administration of the estate.

Accordingly, charges to discretionary trust tax were delayed in trusts created under wills until the administration of the estate was completed and until the property under general law became then subject to the discretionary trust created by the will.

4.2 Finance Act 2012 Amendments and Guidelines -Discretionary Trust Tax

Discretionary Trusts Created By Wills

4.2.1 The Initial Charge

Section 111 F.A.2012 provides that property will be treated as being subject to a discretionary trust on the date of the disponent's death where such a discretionary trust is created by his or her will. The initial charge to discretionary trust tax will therefore, arise on the date of death of the disponent or, if later, the date when all of the principal objects of the trust have reached 21 years of age. Section 111 F.A. 2012 sets back the initial discretionary trust tax charge to the date of death of the disponent by **deeming** the property in the estate to be subject to the discretionary trust at the date of death. The decision in the *Christie* High Court case that discretionary trust tax charges cannot arise before the property becomes subject to the discretionary trust under general law on the completion of the administration of the estate therefore no longer applies to discretionary trust tax due to the deeming provisions in section 111 F.A.2012. The initial 6% charge, accordingly, arises at the date of death of the disponent.

4.2.2 Extension of definition of 'Discretionary Trust'

Section 111 F.A. 2012 extends the 6% initial charge and the 1% annual charge to any entities, for example, foundations, which are similar to discretionary trusts irrespective of how such entities are described in the places where they are established. A foundation is any legal entity, wherever established, to which an individual transfers property. Examples of foundations are entities known as anstalts and etablissements in Liechtenstein and foundations, stiftungs, anlagestiftungs and familienstiftungs in Switzerland.

4.2.3 Future Trusts

The position remains unaltered in relation to discretionary trusts only coming into existence at a future date. An example would be a trust created by a will providing for a spouse or child of the deceased to hold the property for their lifetime and thereafter to hold the property on discretionary trusts. No charges to discretionary trust tax arise while a person, such as a life-tenant, is beneficially entitled in possession to a limited interest in the trust property. The initial 6% charge to discretionary trust tax will only arise on the coming to an end of the limited interest in possession and when the property then becomes subject to the discretionary trust. The trust will not be required to pay either the initial charge or the annual charges during the lifetime of the life tenant as no such charges will have arisen.

4.2.4 Payment Dates

The initial 6% discretionary trust tax charge arises on the death of the disponent or, if later, when all of the principal objects of the trust have reached 21.

The 6% initial charge is payable within four months of the Valuation Date of the inheritance deemed to be taken by the trustees.

In the case of a residuary estate passing into a discretionary trust under a person's will, the Valuation Date will normally be the date of the ascertainment of the residue of the estate and the 6% initial charge will therefore, be payable within four months of that date of ascertainment of residue.

In situations where the administration of an estate lasts for a period of years, a number of annual 1% charges may also have arisen before the Valuation Date for the initial 6% charge arises. In these situations, the Valuation Dates for any of the accrued annual 1% charges will be the Valuation Date for the initial 6% charge.

Discretionary Trust Tax is payable, for the initial 6% charge, and for any accrued 1% charges, on the value of the trust property at the Valuation Date for the initial 6% charge.

4.2.5 Refunds of Discretionary Trust Tax

Any claims for refunds of discretionary trust tax should be made within 4 years commencing on the later of the Valuation date and the date of payment of the tax concerned where that tax has been paid within 4 months after the Valuation date.

4.2.6 When do the F.A. 2012 Amendments to Discretionary Trust Tax come into effect from?

The new discretionary trust taxes provisions apply in the case of discretionary trusts created by a person's will where that person died on or after 8 February 2012.

A more recent version of this manual is available.