

## **Surcharge (income tax, corporation tax, capital gains tax)**

### **Part 07 – 02**

This document should be read in conjunction with sections 35, 38 and 156 of the Finance (Local Property Tax) Act 2012 (as amended) and sections 959AF and 1084 of the Taxes Consolidation Act 1997

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## 1. Introduction

A late filing surcharge in respect of income tax, corporation tax and capital gains tax can be applied where a liable person is not fully compliant with his or her local property tax (LPT) obligations. For convenience, these three taxes are referred to generically as “income tax” in this Tax and Duty Manual (TDM). In the normal course of events, an additional amount, called a surcharge, on the amount of income tax owed by a person is charged where the person’s income tax return is not filed on time. However, even though the income tax return might be filed on time, a surcharge may also apply where a person has not filed all outstanding LPT returns, or has not paid whatever LPT is due, when the income tax return is filed.

## 2. Legislation

The relevant LPT provisions are generally contained in Part 7. The surcharge is imposed by section 38. A liable person’s obligations in relation to the filing of LPT returns and the payment of LPT are contained in sections 35 and 119, respectively. The “return date” is defined in section 2.

The relevant provisions from the Taxes Consolidation Act (TCA) 1997 are sections 959A (definition of “chargeable person” and “specified return date for the chargeable period”) and 959I (obligation to file a return) and section 1084(2) (imposition of surcharge). For income tax purposes, “specified return date” is a fixed date. However, for LPT purposes (under section 38(1)(b)), this fixed date is displaced by an earlier date where an income tax return is filed on a date earlier than the fixed date.

The right of appeal against the imposition of a surcharge is provided for by section 959AF(1) TCA 1997 (appeals against assessments) as a surcharge is included in an assessment under section 959C(6) TCA 1997.

## 3. Operation of surcharge

### 3.1. Income tax return filing obligations<sup>1</sup>

A “chargeable person” within the meaning of section 959A TCA 1997 is required to file an income tax return each year. While most chargeable persons are self-employed individuals or companies, a PAYE employee who has additional non-employment income above a certain amount can also be a chargeable person. The realisation of a capital gain on, for example, the sale of property or shares, can also make a person a “chargeable person” in relation to capital gains tax.

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<sup>1</sup> [TDM Part 47-06-08](#) in the ‘Income tax, corporation tax and capital gains tax’ TDMs deals with the application of a surcharge.

Income tax (Form 11) and capital gains tax (CG1) returns must be filed on or before 31 October each year in respect of the preceding year of assessment.<sup>2</sup> Corporation tax returns (CT1) must be filed on or before the 21st day in the 9th month after the end of the company's accounting period.

These return filing dates are usually extended for chargeable persons who file their returns online instead of by paper, typically by about two weeks (by 23<sup>rd</sup> day in the 9<sup>th</sup> month for corporation tax). There is no statutory fixed extension date and this is decided on an administrative basis by Revenue. Extenuating circumstances, such as the 'Covid' restrictions, can give rise to a longer extension. For example, the extended filing date for income tax returns for the year 2020 was 19 November 2021.

The income tax surcharge is imposed where the return is not filed by whichever return filing date applies. It is notified to a "chargeable person" on the usual income tax Notice of Assessment (or amended Notice of Assessment).

### 3.2. LPT-generated surcharge

The usual income tax surcharge is imposed where the income tax return is not filed by the return filing date. An LPT-generated surcharge does not apply where a liable person incurs an income tax surcharge in its own right as a result of filing the income tax return late. Nor will it apply where a liable person has a 'nil' income tax liability as there is then no amount of income tax on which to impose a surcharge.

#### **Example 1: actual income tax surcharge followed by 'nil' income tax liability**

James is a PAYE employee but because he had sufficient non-employment income in 2019 to make him a "chargeable person" (within the meaning of section 959A TCA 1997), he was required to file a Form 11 return on or before 31 October 2020. He did not file a Form 11 and was therefore subject to the usual income tax surcharge. Nor did he file his LPT return for the first valuation date 1 May 2013, or any subsequent liability dates, despite having the amount of the Revenue estimate for the years 2013 to 2020 compulsorily deducted from his wages. However, because he was subject to an income tax surcharge, the LPT non-compliance has no effect. In March 2021, following Revenue's allowance of James' claim for loss relief, his income tax liability was reduced to nil. However, even though James remains non-compliant for LPT, a surcharge would still not apply as there is no longer an income tax liability on which to impose a surcharge.

In contrast, there is no fixed date for an LPT-generated surcharge. This is triggered on whatever date the income tax return is due to be filed, or on any earlier date on which the return is filed early, as long as this occurs **after** the LPT return filing date or the payable date for the particular LPT liability, as relevant.

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<sup>2</sup> Whether both are filed together on a Form 11 or CGT is filed separately on a CG1.

The return filing date for LPT is 7 November in the year preceding the year for which LPT is payable. However, under section 35(2)<sup>3</sup>, a liable person is not required to file an LPT return in respect of the liability dates (i.e. 1 November in each year) in a valuation period where he or she has filed a return in respect of the first liability date in that valuation period, unless specifically required to do so by Revenue under section 33 or following the sale or transfer of a property under section 35(5A). The first valuation date was 1 May 2013 (for the valuation period 2013 to 2021) and the second valuation date was 1 November 2021 (for the valuation period 2022 to 2025). This effectively means that, where the LPT return(s) has been filed, insofar as the second and subsequent years in a valuation period are concerned, any LPT-generated surcharge may depend solely on whether the relevant LPT liabilities are paid or are being paid under an agreed payment arrangement.

For surcharge purposes, there is no direct correlation between the year of assessment for which the income tax return is filed and the LPT year. If **any** LPT returns or payments are outstanding, irrespective of the year to which they relate, the surcharge applies and may relate to more than one outstanding LPT return/payment. However, regardless of how many LPT returns/payments are outstanding, only a single income tax surcharge is imposed in respect of any income tax filing date. This single surcharge also applies where a person is a liable person in relation to more than one property (see section 3.3 below). However, it is possible that a person may incur a surcharge in respect of both income tax/corporation tax and capital gains tax.

The 'test' as to whether an LPT-generated surcharge applies is done when the income tax return is due to be filed, or is actually filed (if filed early), as long as the LPT return is filed on or before whichever of these income tax dates applies. Therefore, the relevant income tax filing date will be either the statutory return filing date, the extended date allowed for online filing or the early filing date. The 'test' consists of asking on the relevant income tax filing date (in relation to all a liable person's properties):

- if any LPT return that was due to be filed, before the relevant income tax filing date, is outstanding, and
- where all the LPT returns were filed, is there any payable LPT liability that is unpaid and that is not being paid in accordance with an agreed payment arrangement.

If the answer to either of these questions is "yes", the surcharge applies.

The late filing of an LPT return and/or the late payment of an LPT liability do not, in themselves, generate a surcharge if filing and/or payment occur before the relevant income tax return filing date.

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<sup>3</sup> Subsection (2) amended by the 2021 LPT amendment Act (section 29) to take account of the new valuation date 1 November 2021.

**Example 2: LPT paid late but before early filing of income tax return**

Margaret had some outstanding LPT for the year 2019 which she paid on 17 October 2020 and which made her fully LPT-compliant at that stage. She is self-employed and filed her Form 11 return for the year of assessment 2019 early on 20 October 2020. Even though her LPT was paid late, she was not subject to an income tax surcharge as she became fully LPT-compliant before the date on which the income tax return was filed.

**Example 3: CGT return filed on time but default on LPT payment arrangement**

Patrick is a PAYE employee whose only income is from his employment. However, because he made a capital gain on the sale of shares in July 2018, he had to file a CGT return on or before 31 October 2019. When he filed his CG1 return on time he had already filed his LPT return but had not kept up the phased payments to a payment service provider as he had elected to do in his return. He was therefore liable to a surcharge of 10% of his CGT liability.

Unlike the position with the usual income tax surcharge, the LPT-generated surcharge may not be a one-off occurrence. An LPT return that remains unfiled for a particular year, or a particular LPT liability that remains unpaid, may generate ongoing income tax surcharges until such time as the position is rectified.

**Example 4: LPT due for multiple properties and ongoing surcharge**

Jennifer owns several rental apartments for which she filed her LPT return in May 2013. She elected to pay the LPT liability to a payment service provider. However, she did not keep up her payments and has outstanding LPT liabilities for the years 2016 to 2021. Although she filed her income tax returns on time for the years 2015 to 2019, she was subject to a 10% income tax surcharge for each of these years. Even though she owns several properties she was subject only to a single surcharge each year based on 10% of the income tax liability. However, this amount is potentially capped to the value of the aggregate LPT charge or 50% of the value of that aggregate, depending on when she pays all the outstanding liabilities (see section 3.3 below).

**Example 5: LPT deferred but earlier liability remained outstanding**

Gerry was self-employed for many years before 2019 when his business suffered a serious downturn. He filed his income tax returns on time each year but was subject to a surcharge on his returns for the years of assessment 2016 and 2017 because he had outstanding LPT liabilities for the years 2017 and 2018. He then became eligible for, and claimed an LPT deferral for, the years 2019 to 2021. However, he was not eligible to defer the 2017 and 2018 liabilities and did not pay them or make arrangements to pay them. As a result, he continues to be subject to an ongoing income tax surcharge on his income tax returns in respect of the same outstanding LPT liabilities for the years 2017 and 2018.

**3.3. Amount of surcharge**

Section 1084(2) TCA 1997 provides for two rates of surcharge. A surcharge of 5% of the amount of income tax applies where the return is filed within two months of the return filing date, subject to a maximum amount of €12,695. A surcharge of 10% of the amount of income tax applies where the return is filed more than two months after the return filing date, subject to a maximum amount of €63,485. However, where the surcharge arises because of non-compliance with LPT, it is only the higher 10% rate that applies. A 5% surcharge that arises because an income tax return is filed late remains at 5% even where a person is also non-compliant in relation to LPT.

Where a person incurs an LPT-generated surcharge and subsequently files **all** the outstanding LPT returns and/or pays **all** outstanding LPT or enters into an agreed payment arrangement, the surcharge is capped at a proportion of the LPT liability where this would be lower than the amount of the surcharge (assuming, of course, that the income tax return is filed on time). Depending on when the person becomes **fully** LPT-compliant, the cap is either 100% or 50% of the LPT liability. The year that determines the amount of the cap is the year in which a person becomes fully LPT-compliant. The year in which the LPT returns and payments were due isn't relevant. For the years up to and including the year 2021 (i.e. up to 31 December 2021), the surcharge was capped at the amount of the LPT liability (i.e. 100%). For the year 2022 (i.e. commencing 1 January 2022) and subsequent years, the surcharge is capped at 50% of the LPT liability.<sup>4</sup>

Where the surcharge as imposed is less than the capped amount, it stays at this lower amount and is not increased to the LPT liability, or 50% of the LPT liability, as applicable.

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<sup>4</sup> Capped amount reduced to 50% by the 2021 LPT amendment Act (section 30).

Where the unfilled LPT return/unpaid LPT liability relates to more than one LPT year, the LPT liability for each year is aggregated before the 100% or 50% cap is applied.

Where separate surcharges are generated in respect of both income tax/corporation tax and capital gains tax, each surcharge is treated separately in relation to the application of the cap.

Where a liable person owns more than one property, he or she could be compliant in relation to some properties but non-compliant in relation to others. In this situation, where the person becomes fully compliant after a surcharge has been imposed, the capping of the surcharge is determined solely by reference to the LPT liability for those properties in relation to which the person was non-compliant on the income tax filing date and which generated the surcharge.

**Example 6: surcharge capped at 100% of LPT liability**

Martin is a liable person in relation to two properties. He had already filed a return and paid his LPT liability of €225 in respect of one of the properties when he filed his income tax return. However, he wasn't aware that he was also required to file a return for the other property and therefore incurred an income tax surcharge of €378. When he realised his mistake, he filed the LPT return and paid his LPT liability of €315 in respect of the second property in July 2021. The surcharge was then reduced from €378 to €315 (i.e. 100% cap). The LPT liability for the compliant property was not taken into account in capping the amount of the surcharge.

**Example 7: CT surcharge capped at 50% of aggregate LPT liabilities and CGT surcharge less than 50% of aggregate LPT liabilities**

Property Rental Company Ltd's corporation tax return, which was filed on time, shows a CT liability of €700,000 arising from rental income and a CGT liability of €100,000 arising from development land gains. The company owns a number of residential properties for which LPT returns and payments were overdue when the CT and CGT returns were filed in April 2020. It therefore incurred surcharges of €63,485 (i.e. 10% of its CT liability subject to an upper limit of €63,485), and €10,000 (i.e. 10% of its CGT liability). After incurring these surcharges, the company filed its LPT returns and paid its self-assessed LPT liability of €50,000 for all its properties in March 2022. The CT surcharge is therefore capped at €25,000 (50% of the LPT liability) but the CGT surcharge remains at €10,000, as this is less than 50% of the aggregate LPT liability.

### 3.4. Jointly-owned property

Where a property is jointly owned, a single LPT return must be filed in relation to the property by whichever of the liable persons is the designated liable person in accordance with section 42 on a particular liability date. A surcharge can only be imposed on a person's income tax liability where that person is the designated liable person on the liability date in relation to which the LPT return and/or payment is outstanding. If Revenue wants to change the designated liable person in relation to future liability dates, it can do so under section 43(5).

#### **Example 8: designated liable person not income tax chargeable person**

Peter and Mary are a married couple. Mary registered for the household charge and is the designated liable person in relation to the liability date 1 May 2013 in accordance with section 43. Mary is a PAYE employee and Peter is self-employed. When Peter filed his Form 11 return for 2012 on 31 October 2013, Mary had not filed the LPT return although the Revenue estimate was being compulsorily deducted from her wages. As Peter was not the designated liable person, he was not subject to a surcharge. However, if Revenue selects Peter as the designated liable person instead of Mary, a surcharge can be imposed on Peter in relation to liability dates occurring after the change in designation if the LPT non-compliance continues.

## 4. LPT obligations for the year 2022

Different surcharge arrangements apply in relation to a liable person's LPT obligations for the year 2022, the first year in the second valuation period. Outstanding LPT returns for the return filing date 7 November 2021 or outstanding payments for the year 2022 (for example, where a person sells or transfers a property after 1 November 2021 and LPT becomes payable before the usual payable date of 1 January 2022<sup>5</sup>) do not generate a surcharge in relation to the income tax return due for the year 2020. The basis for this arrangement is the Revenue [eBrief 210/21](#) published on 12 November 2021. The paper return was due to be filed by 31 October 2021 and the extended online filing date was 19 November 2021. Income tax returns filed after these dates are subject to a surcharge in their own right and an LPT-generated surcharge does not arise.

However, any outstanding LPT returns or payments for earlier years up to and including the year 2021 can continue to generate a surcharge in relation to the 2020 income tax return.

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<sup>5</sup> Early payment on a sale or transfer of property is required under section 126.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 5. Household charge

Under section 156(3), any household charge that remained unpaid at 1 July 2013 became a €200 amount of LPT to be collected by Revenue in the same way as any other LPT amount. However, non-compliance with the household charge is not taken into account for surcharge purposes. This is because the surcharge arises **in relation to any return required under Part 7 of the LPT Act** (section 38(2)) and a household charge return is not required under the LPT Act. Similarly, any capping of the surcharge does not take account of any household charge liability because of the reference to LPT returns in section 38(4).

## 6. Revenue responsibility for management of surcharge

The surcharge is an income tax surcharge, not an LPT surcharge, and does not appear on a liable person's LPT record. It has no connection with LPT other than being generated by non-compliance with LPT.

Any surcharge related case-working is carried out in the Revenue Branch that deals with the liable person's income tax affairs in conjunction with the LPT Branch. The Notice of Assessment containing a surcharge is issued by this Revenue Branch, as is any amended Notice of Assessment where the original surcharge is capped following compliance with the LPT return filing and payment obligations.

## 7. Appealing the imposition of a surcharge

Section 959AF TCA 1997 provides for an appeal against an income tax assessment to be made to the Tax Appeals Commission (TAC) but restricts the grounds on which an appeal may be made where it involves a surcharge that was imposed by section 1084(2) TCA 1997. A limited number of exclusions apply including where the surcharge was generated by non-compliance with a liable person's LPT obligations in relation to filing a return and paying LPT.<sup>6</sup>

The right of appeal is provided for by section 959AF(1) TCA 1997 (appeals against assessments) as a surcharge is included in an assessment under section 959C(6) TCA 1997.

As set out in the preceding section 6, Revenue's management of a surcharge is carried out in the Revenue Branch that deals with the liable person's income tax affairs in conjunction with the LPT Branch. This extends to managing an appeal against the imposition of a surcharge and may involve amending an assessment following a TAC determination of the appeal.

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<sup>6</sup> Section 959AF(1A) provides for the exclusions, with paragraph (c) providing for the LPT exclusion.