

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

Part 07-02

This document should be read in conjunction with sections 35, 38, 42 and 156 of the 2012 Act

Document last reviewed 04 September 2017

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1. Introduction

The purpose of this manual is to explain the provisions in the LPT Act that apply a late filing surcharge in relation to income tax, corporation tax and capital gains tax if taxpayers are not fully compliant for LPT purposes. (For convenience, these three taxes are referred to generically as “income tax” in the remainder of this instruction.) In the normal course of events, an additional amount, called a surcharge, on the amount of income tax owed by a person is imposed where the person’s income tax return is not filed on time. However, even though the income tax return is filed on time, this surcharge may also apply where a person has not filed all outstanding LPT returns or has not paid whatever LPT is due, whether up-front or by an agreed phased payment method.

A LPT-generated surcharge will not apply where a 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 person has a nil income tax liability, as there is no amount of income tax to surcharge.

The surcharge is an income tax surcharge, not a LPT surcharge, and does not appear on the LPT record. It has no connection with LPT other than being generated by non-compliance with LPT. Any surcharge related case-working will be carried out in the tax district that deals with the liable person’s income tax affairs.

2. Legislation

The surcharge is imposed by section 38 Finance (Local Property Tax) Act 2012, as amended by section 8(e) of the Finance (Local Property Tax)(Amendment) Act 2013. Section 42 places the obligation to file a LPT return on the designated liable person where a property is jointly owned. The relevant provisions from the Taxes Consolidation Act (TCA) 1997 are sections 959A (definition of “chargeable person” and return filing dates) and 959I (obligation to file a return) and section 1084(2) (imposition of surcharge). All section references in this instruction are to the Finance (Local Property Tax) Act 2012 (as amended).

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, a PAYE employee who has sufficient non-employment income can also be a chargeable person.¹

¹ See Instruction 42.4.13 in the ‘Income tax, corporation tax and capital gains tax’ Manual for details.

Income tax and capital gains tax returns must be filed on or before 31 October each year in respect of the preceding year of assessment.² Corporation tax returns must be filed on or before the 21st day in the 9th month after the end of the company's accounting period. Taxpayers who file their return online are entitled to an extension on these dates. The usual surcharge is imposed where the return is not filed by the relevant date. However, there is no fixed date for a LPT-generated surcharge; this is triggered on whatever date the income tax return is filed, even if it is filed early, as long as this occurs after the return filing date/payable date for the particular LPT liability date. The return filing date for LPT was 7 May 2013 and 7 November in any later year. A 21-day extension to 28 May 2013 and 28 November, respectively, is allowed for online filers.

Under section 35(2), a liable person is not required to file a LPT return in respect of the liability dates 1 November 2013, 1 November 2014 and 1 November 2015 (i.e. for the years 2014, 2015 and 2016) where he or she has filed a return in respect of the liability date 1 May 2013, unless specifically required to do so by Revenue under section 33. This means that insofar as the years after 2013 are concerned, and assuming the 2013 LPT return has been filed, any LPT-generated surcharge may depend solely on whether the relevant LPT liabilities are paid or are being paid.

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 payment) 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/payment 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. However, it's possible that a person may incur a surcharge in respect of both income/corporation tax and capital gains tax.

The 'test' as to whether a LPT-generated surcharge applies is done when the income tax return is filed, as long as this occurs on or before the deadline for doing so, i.e. either the statutory return filing date or the online extension date. The 'test' consists of asking (in relation to all of a liable person's properties):

- if any LPT return that was due to be filed, before the date on which the income tax return is filed, has been filed and
- where all of the LPT returns have been 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.

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

The late filing of a LPT return and/or the late payment of the LPT liability does not, in itself, generate a surcharge as long as filing and payment occur before the income tax return is filed.

Unlike the position with the usual income tax surcharge, the LPT-generated surcharge may not be a one-off occurrence. A 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.

3. Amount of surcharge

3.1. Applicable rate

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 relevant 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 relevant 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.

3.2. Cap on surcharge

Where a person incurs a LPT-generated surcharge and subsequently files the LPT return and/or pays the required LPT amount or enters into an agreed payment arrangement, the surcharge is capped at the amount of the LPT liability where this is lower than the amount of the surcharge (assuming, of course, that the income tax return is filed on time). Where the surcharge is less than the LPT liability, it stays at this amount and is not increased to the LPT liability.

Where the unfiled LPT return/unpaid liability relates to more than one LPT year, the LPT liability for each year is aggregated before the cap is applied.

Where a surcharge comprises an income tax and a capital gains tax component, the cap is double the amount of the LPT liability, unless the LPT liability is higher than one or both components.

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.

3.3. 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 of the Finance (Local Property Tax) Act 2012 (as amended) 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 particular 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).

3.4. 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).

3.5. Examples

3.5.1. Margaret is self-employed and files her income tax return (Form 11) for the year of assessment 2012 using the Revenue online system (ROS) on 5 November 2013 (the extended filing date for ROS). She filed her LPT return for the liability date 1 May 2013 on 4 November 2013 and paid the liability in full. Even though her LPT return was not filed on time, she is not subject to an income tax surcharge as it was filed before she filed her income tax return. However, if Margaret does not pay the LPT or enter into an agreed payment arrangement before 5 November 2013, she is subject to a surcharge despite filing her LPT return. Her LPT liability in relation to the liability date 1 November 2013 is not payable until 1 January 2014 and cannot be taken into account.

3.5.2 James is a PAYE employee but because he had sufficient non-employment income in 2012 to make him a “chargeable person” within the meaning of section 959A TCA 1997, he is required to file a return (Form 11) on or before 31 October 2013. He does not do this and is therefore subject to the usual income tax surcharge. He does not file his LPT return for the liability date 1 May 2013, despite having the amount of the Revenue estimate compulsorily deducted from his wages. However, because he is subject to an income tax surcharge, the LPT non-compliance has no effect. In March 2014, following the acceptance of James’ claim for loss relief, his income tax liability is reduced to nil which results in a nil income tax surcharge. However, even though he remains non-compliant for LPT, a surcharge still does not apply as there is no income tax liability to surcharge.

3.5.3 Patrick is a PAYE employee whose only income is from his employment. However, because he makes a capital gain when he sells some shares in 2012 he has to file a CGT return on or before 31 October 2013. When he files his CG1 on time he has already filed his LPT return but has not kept up the phased payments to a payment service provider as he elected to do in his return. He is therefore liable to a surcharge of 10% of his CGT liability.

3.5.4. Jennifer files her income tax return for the year of assessment 2012 on 1 August 2013. Although she has already filed LPT returns for the three properties that she owns for the liability date 1 May 2013 and elected to pay to a payment service provider, she has not yet paid any of the liability. She is, therefore, subject to a single surcharge of 10% of her self-assessed income tax liability. The following year she files her income tax return for the year 2013 on 31 October 2014. She has still not paid her LPT liability for 2013 and so incurs a second income tax surcharge in relation to the same LPT liability date of 1 May 2013. Nor has she paid any of her LPT liability in relation to the liability date 1 November 2013 (payable on 1 January 2014), but this does not result in a second income tax surcharge. If she subsequently brings her LPT payments up to date, the surcharge will be capped at the amount of the aggregate LPT liability for the three properties for the years 2013 and 2014.

3.5.5. Martin is a liable person in relation to two properties. He has already filed a return and paid his LPT liability of €225 in respect of one of the properties when he files his income tax return. However, he didn’t know that he was required to file a return for the other property and therefore incurs an income tax surcharge of €378. When he realises his mistake, files a return and pays his LPT liability of €315 in respect of the other property, the surcharge is reduced from €378 to €315. The LPT liability for the compliant property is not taken into account in capping the amount of the surcharge.

3.5.6. Property Rental Co. Ltd. owns a large number of rental properties which it has built on land owned by it. Its corporation tax return, which is filed on time, shows a CT liability of €700,000 and a CGT liability of €100,000 arising from development land gains. The company owns a number of residential properties for which LPT returns were overdue when the CT return was filed. It therefore

incurs a surcharge of 10% of the CT liability of €700,000, but this is capped at €63,485, and 10% of the CGT liability of €100,000, i.e. €10,000. After incurring this surcharge, the company files its LPT returns and pays its self-assessed LPT liability of €50,000 for all of its properties. The CT component of the surcharge is therefore capped at €50,000 (down from €63,485) but the CGT component remains at €10,000, as this is less than the aggregate LPT liability.

3.5.7. 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 files his income tax return for 2012 on 31 October 2013, Mary has not filed the LPT return although the Revenue estimate is being compulsorily deducted from her wages. As Peter is not the designated liable person, he is 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.