

CHAPTER 2 Surcharge on certain income of trustees

Surcharge on certain income of trustees. FA76 s13; FA90 s8 805.—(1) (a) In this section—

“personal representative” has the same meaning as in section 799 (1);

“trustees” does not include personal representatives, but where personal representatives, on or before the completion of the administration of the estate of a deceased person, pay to trustees any sum representing income which, if the personal representatives were trustees, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the standard rate.

(b) This subsection shall be construed together with Chapter 1 of this Part.

(2) This section shall apply to income arising to trustees in any year of assessment in so far as it—

(a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person, whether or not the trustees have power to accumulate the income,

(b) is neither, before being distributed, the income of any person other than the trustees nor treated for any purpose of the Income Tax Acts as the income of a settlor,

(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 770,

(d) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income, or would be so chargeable but for any express provisions of the trust, and

(e) is not distributed to one or more persons within that year of assessment or within 18 months after the end of that year of assessment in such circumstances that the income distributed is to be treated for the purposes of the Income Tax Acts as the income of the person or persons to whom it is distributed.

(3) (a) Income to which this section applies shall, in addition to being chargeable to income tax at the standard rate for the year of assessment for which it is so chargeable, be charged to an additional duty of income tax (in this section referred to as a “surcharge”) at the rate of 20 per cent.

(b) A surcharge to be made on trustees under this section in respect of income arising in a year of assessment (in this subsection referred to as “the first year of assessment”) shall—

(i) be charged on the trustees for the year of assessment in which a period of 18 months beginning immediately after the end of the first year of assessment ends, and

(ii) be treated as income tax chargeable for the year of assessment for which it is so charged.

(c) Subject to subsection (4), the Income Tax Acts shall apply in relation to a surcharge made under this section as they apply to income tax charged otherwise than by virtue of this section.

(4) Where income in respect of which a surcharge is made is distributed, no relief from or repayment in respect of the surcharge shall be allowed or made to the person to whom the income is distributed.

(5) A notice given to trustees under any provision specified in column 1 or 2 of Schedule 29 may require that a return of the income arising to them shall include particulars of the manner in which the income has been applied, including particulars as to the exercise by them of any discretion and of the persons in whose favour that discretion has been so exercised.