

Meaning of a “residential property”

Part 01-01

This document should be read in conjunction with sections 2 and 2A of the Finance (Local Property Tax) Act 2012 (as amended)

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1 Introduction

What constitutes a residential property is of fundamental importance as local property tax (LPT) is charged on the market value of such a property and issues may arise as to whether a property is a residential property, how certain properties are to be valued and the components of a property that are to be valued for LPT purposes.

The meaning of a “residential property” has several components. These are:

- whether the property is a “building” (as defined);
- the exclusion of certain types of structure;
- what constitutes a “dwelling”;
- the use of the property as a dwelling or its suitability for such use;
- the inclusion of associated buildings and land; and
- the extent of the associated land to be included.

These components are discussed individually in this TDM along with the valuation issues arising in certain situations.

2 Legislation

“Residential property” is defined in section 2.¹ As originally enacted, it meant: **“any building or structure which is in use as, or is suitable for use as, a dwelling and includes any shed, outhouse, garage or other building or structure and any yard, garden or other land, appurtenant to or usually enjoyed with that building, save that so much of any such yard, garden or other land that exceeds one acre shall not be taken into account for the purposes of this definition;”**.

The Finance (Local Property Tax) (Amendment) Act 2021 (sections 4(b) and 5) amended this definition but did not make any substantive change to the meaning of a “residential property”. The original definition was restructured to make the meaning clearer by separating out the individual components. Superfluous references to “structure” were deleted as this was already contained in the definition of a “building”. The ‘acre’ measurement was changed to the ‘hectare’ equivalent in compliance with EU standards. The current definition is now to be construed in accordance with a new section 2A which reads:

“(1) In this Act, “residential property” means any building which is in use as, or is suitable for use as, a dwelling.

¹ Similar provisions are used for other tax heads - see SDCA 1999 (section 1), CATCA 2003 (section 86), TCA 1997 (“house” section 372AK and CGT section 604).

(2) A shed, outhouse, garage or other building which is appurtenant to or usually enjoyed with a residential property shall be considered, for the purposes of this Act, to form part of the residential property.

(3) Subject to subsection (4), yards, gardens and other lands appurtenant to or usually enjoyed with a residential property as its garden or grounds shall be considered, for the purposes of this Act, to form part of the residential property.

(4) Where the total area of the yards, gardens and other lands, referred to in subsection (3), exceeds 0.4047 hectares, only those parts of such yards, gardens and other lands, which would be the most suitable for occupation and enjoyment with the dwelling, up to a total area (exclusive of the area, at ground level, of the building referred to in subsection (1)) of 0.4047 hectares, shall form part of the residential property.”.

“Building”, which is used in the meaning of a “residential property”, is also defined in section 2 as including:

(a) part of a building, and

(b) a structure or erection of any kind and of any materials, or any part of that structure or erection, but excludes a structure that is not permanently attached to the ground, a vessel and a vehicle (whether mobile or not):”.

3 Meaning of residential property

3.1 Building or structure

An actual ‘building’ itself is not defined for the purposes of the Finance (Local Property Tax) Act 2012 (as amended). Instead, the section 2 definition of a “building” expands the usual meaning of a building and is concerned with what a building **includes** (i.e. part of a building and a structure) rather than what a building is. What a building is therefore takes its ordinary or colloquial meaning which would be a relatively permanent enclosed construction with walls and a roof on a plot of land. Examples of residential buildings are a house, apartment block, duplex and maisonette².

“Part of a building” comes within the meaning of “building”. This means that a part of a building that comes within the meaning of “residential property” is a residential property in its own right. An example would be an apartment in an apartment block or in a building that contains a ground floor shop with living quarters overhead or a basement level ‘granny flat’. It is not necessary that the entire building be a single residential property.

² A small apartment that is usually part of a larger building with two levels and that has its own external entrance.

“Part of a building” refers to actual physical buildings such as an apartment that is part of a larger building. It does not refer to a share or interest that a person holds in a single building.

“Building” is widely defined to include structures and erections (or part thereof) of any kind. What constitutes structures and erections is not itself defined. The issue has been considered in a large body of case law, the decisions in which are beyond the scope of this TDM. However, because of the requirement for a structure or erection to be used as, or to be suitable for use as, a dwelling, it should be obvious if a particular structure or erection is a residential property. For example, while a child’s tree-house would be a structure or erection, it is unlikely to be used as a dwelling.

Certain types of structure are specifically excluded from the definition of “building” and are not therefore residential properties even if they are used as a dwelling. These are:

- vessels (i.e. boats such as ships, yachts, barges, house-boats etc);
- vehicles, whether they are actually mobile or not; for example, caravans, campervans and vehicles converted for dwelling purposes; and
- structures that are not permanently attached to the ground; for example, mobile homes, shipping containers fitted out as residential accommodation and tents.

It is only **structures** that are not permanently attached to the ground that are excluded from the broader meaning of a “building”. A building in its own right that is not permanently attached to the ground comes within the meaning of a “residential property”; for example, certain types of garden room might not require a foundation or be permanently attached to the ground.

3.2 In use as, or suitable for use as, a dwelling

A residential property is (inter alia) “**any building which is in use as, or is suitable for use as, a dwelling.....**”. Therefore, the scope is wider than buildings in which people **actually** live and extends to buildings in which people **could** live.

Identifying a property that is actually occupied and in use as a dwelling does not present any problems. Such a property is clearly a residential property. However, identifying a property that is not suitable for use as a dwelling is not always straightforward. While this may involve the consideration of properties that are being used for non-residential purposes such as retail or manufacturing, it more commonly involves the consideration of properties that might be regarded as essentially uninhabitable. What constitutes an uninhabitable property can be a very subjective matter that is likely to elicit widely varying opinions from different people (see [section 7.1](#) below in relation to seeking a Revenue determination on the

matter). The problem is to identify the boundary between what is suitable for use as a dwelling and what is not suitable. But what constitutes a dwelling must be considered first.

3.2.1 Meaning of “dwelling”

The word “dwelling” is not defined and is therefore given its ordinary and colloquial meaning. It is simply a place where a person dwells, lives or resides (not necessarily on a permanent basis) and that contains the facilities required for day-to-day private domestic existence. Whether a property is a dwelling does not depend upon its size, dimensions or configuration or on any terms and conditions or rules and regulations under which it is occupied. Nor does it necessarily depend on the facilities or amenities available within it or to it.

What constitutes a dwelling has been widely considered by the courts (mainly in the UK). However, the judgements were concerned with a variety of taxes and circumstances and are not necessarily relevant in the context of LPT. An important caveat from one UK case³ was that the word “dwelling” did not have a precise, technical meaning and had to be interpreted having regard to its legal and factual context and the purpose of the statute in which it was used. This means that dwelling has different meanings in different statutory contexts and care should be exercised in drawing inferences in an LPT context. For example, a well-known UK case, ‘Uratemp’⁴, involving the occupation of a single hotel room without cooking facilities and with the use of a shared bathroom was held to be a dwelling. This case concerned security of tenure under the Rent Acts. Some interesting quotes from the judgement are set out below:

- “Such a place does not cease to be a “dwelling” merely because one takes all or some of one's meals out; or brings take-away food in to the exclusion of home cooking; or at times prepares some food for consumption on heating devices falling short of a full cooking facility.”
- “Just what use he makes of it when living there, however, depends on his mode of life. No doubt he will sleep there and usually eat there; he will often prepare at least some of his meals there. But his home is not the less his home because he does not cook there but prefers to eat out or bring in ready-cooked meals.”
- “In ordinary parlance a bed-sitting room where somebody habitually stays is therefore capable of being described as a dwelling-house. So much for generalities. The setting in which the word appears in the statute is important.”

A Revenue appeal case about whether or not certain student accommodation was a dwelling for the purposes of LPT provides a good overview of the body of case law.

³ R (CN) v Lewisham London Borough Council [2014] UKSC 62.

⁴ Uratemp Ventures Ltd. v Collins HL 11 October 2001.

In this case, the Appeal Commissioner determined in Revenue's favour that the student accommodation was in use as a dwelling and was therefore residential property. The determination was not appealed to the High Court. Read the determination [here](#).

Notwithstanding the absence of a statutory definition of "dwelling", Revenue does not, **as a matter of course**, take the narrow 'Uratemp' view that a single room without, for example, cooking facilities should necessarily be regarded as a dwelling. Instead, it **generally** takes the broader view that a dwelling comprises self-contained living accommodation in the sense that the basic elements of private domestic living for the use of the occupants of the accommodation are located in reasonable proximity to each other. It is not possible to be prescriptive about the facilities or amenities that might be required. Facilities or amenities required for day-to-day private domestic living might, for example, include those for sleeping, cooking, eating, relaxing, bathing and laundry. However, it isn't necessary that all these facilities or amenities be present in each dwelling. Nor is it relevant that some of them are shared with occupants of other residential units within a single building. For example, changing lifestyles mean that people may choose not to have cooking facilities, instead opting to eat out, eat take-away food or have ready-made food delivered. The absence of a kitchen, cooker or fridge would not necessarily result in a property not being regarded as a dwelling.

While what constitutes a dwelling will be clear in most cases, there will inevitably be unusual cases that Revenue will have to decide on the facts and circumstances of the particular case. For example, while Revenue would not generally treat a bedsit⁵ as a self-contained dwelling separate from the building in which it is contained, there may be instances where such a residential unit is capable of being owned by a different liable person to the rest of the building and would therefore have to be considered on its own merits. See [section 6](#) below in relation to valuation issues that arise in relation to certain dwellings that are an integral part of a larger building.

Buildings configured for shared or co-living arrangements

In one sense, any residential property that is occupied by more than one person involves sharing some, or all, of the living accommodation and facilities. In the same vein, but on a larger scale, are buildings that are designed and purpose-built for use as multi-occupancy accommodation, often for use as student accommodation. The essential features of this type of building is that they contain individual ensuite bedrooms with the additional facilities such as lounges, kitchens and laundry/utility rooms required for occupation as a dwelling provided on a shared or communal basis. In some cases, particular shared facilities are allocated to a relatively small number of occupants whose bedrooms are clustered around these facilities. A layout or configuration in which bedrooms are clustered around shared living facilities such as kitchen, dining, bathing, relaxing is in substance no different than a normal apartment with several occupants. Each cluster might be regarded as a self-

⁵ Commonly understood as comprising a single room containing sleeping and basic cooking facilities but no bathroom or separate sitting room.

contained dwelling. However, the sharing of larger communal facilities by larger numbers of occupants does not mean that a building, or parts of the building, are not also in use as a dwelling.

Institutional dwellings

Certain institutions such as hospitals, prisons, army barracks and boarding schools contain living accommodation. While one might regard the occupants of such institutions as being in a place of confinement and where they would not normally choose to live, this does not necessarily prevent their living accommodation from being treated as a dwelling for LPT purposes. As with non-institutional situations, it is not always possible to be definitive and it is often necessary to take a 'facts and circumstances' approach to particular types of institutional residential property. For example, within an army barracks there may be a mixture of dormitory/billet type accommodation with communal dining and bathing facilities and private self-contained houses for officers. Revenue would not regard the former as residential properties but would regard the latter as such. Students in a boarding school may sleep in dormitories and dine and relax communally. However, not all boarding schools will conform to this typical model and some may have different types of living arrangements. Student accommodation provided by a third-level college often takes the form of study-bedrooms clustered around shared living facilities that are shared among a relatively small number of occupants and which is in substance little different to a shared apartment. Living quarters provided for staff may comprise self-contained accommodation and be treated as a separate dwelling.

3.2.2 In use as a dwelling

A property that is actually occupied as a dwelling is in use as a dwelling and comes within the meaning of "residential property". It is, therefore, not relevant that the property may be in an extremely bad state of repair or that some people might regard it as not fit to live in or uninhabitable.

In relation to the timing of use as a dwelling, it is the pattern of occupation that counts and not whether a property is not occupied on a particular LPT valuation date or liability date.

3.2.3 Suitable for use as a dwelling

Including the 'suitable for use' condition ensures that liability for LPT cannot be avoided simply by arranging to have a residential property vacated or unoccupied on the LPT liability date or otherwise used for a purpose that is not residential and which is not consistent with the nature of the property as a dwelling. Where a dwelling is used for a commercial purpose, such as a guesthouse or an office, and is not subject to the payment of commercial rates (see section 4 exemption [Tax and](#)

[Duty Manual \(TDM\) LPT Part 02-02](#)), it is still a residential property for LPT purposes if it is suitable for use as a dwelling.

For a property to be suitable for use as a dwelling essentially means that the property is fit to live in or habitable. A property that is derelict to such an extent that it is uninhabitable is not a residential property (provided it is not actually in use as a dwelling). What constitutes an uninhabitable property is not defined and must be determined based on the facts and circumstances of each case. It is therefore not possible to provide a definitive or exhaustive list of defects or deficiencies or a description of what makes a property uninhabitable. A property may have several serious defects, none of which, when considered in isolation, is sufficient to make the property uninhabitable. However, when these defects are considered as a whole, the property may be regarded as uninhabitable.

The Revenue view of certain situations illustrates this difficulty; for example:

- A property may be unoccupied for a number of years and be in need of modernisation; for example, where the owner lives in a nursing home. In spite of the lack of heating resulting in dampness, mould and mildew, such properties are typically determined by Revenue to be habitable.
- It may be argued that a property is uninhabitable because it doesn't have a modern heating system (gas, oil, radiators). Revenue's view is that the type of heating, or, indeed, the absence of heating, does not in itself make a property uninhabitable. Properties may have alternative heating such as back boilers, open fires, electrical or storage heaters.

The absence of utilities such as water or electricity or sanitary facilities does not necessarily mean that a residential property can be regarded as uninhabitable. A property may have been constructed, renovated or refurbished to a stage of near completion. Once the electricity and water utilities have been connected, the property would be regarded as habitable. However, a water supply or electricity supply that is simply turned off or temporarily disconnected does not mean that a property is considered unsuitable for use as a dwelling.

3.2.4 Indicative defects and deficiencies

As a general rule, property owners should take account of the structure of a building including whether it has a roof, windows, is internally exposed to the elements or is structurally sound. There are varying degrees of being in a rundown and seriously neglected condition. For example, a property that has damp, mould, peeling paint, draughty doors/windows, but that does not have such serious structural defects that it is in a dangerous condition, is suitable for use as a dwelling. It is possible to live there safely without carrying out any significant remedial works. However, further along the continuum, a property may be so affected by damp that it is rendered uninhabitable where, for example, the extent of the damp or water ingress has rendered the property structurally unsafe due to the rotting away of supporting

beams/rafters. At the other end of the continuum, a property may be rundown and neglected because it has been abandoned or deserted to the extent that it is derelict and falling into ruins. A property's roof may be absent or falling in and some of its internal rooms may be exposed to the elements and, in such circumstances, would be uninhabitable.

The degree or type of remediation or refurbishment required to restore a property to a habitable condition may be indicative of whether or not it is uninhabitable. Does it just require surface/superficial refurbishment such as painting, decorating and furnishing? Does it require modernisation such as the installation of a new heating system or re-wiring? Does it require extensive structural work such as the installation of a roof or the re-building of walls?

A property that is undergoing significant remedial work to the extent that the occupants have no choice but to move out for the duration of the work would be regarded as uninhabitable where all, or practically all, the rooms are being worked on and/or the conditions created by the remedial work would be injurious to the occupants' health and safety.

4 Factors affecting when a property becomes suitable for use as a dwelling

Liability for LPT for any year is determined on 1 November in the preceding year (called the 'liability date'). It will be a question of fact whether a property is suitable for use as a dwelling on a liability date. This will generally be determined by the physical state of the property rather than by extraneous factors such as a delay in the property obtaining a local authority certificate of completion. However, the value declared for a property that is in a poor state of repair, but not so poor that it is uninhabitable, on a valuation date may reflect the poor state of repair.

4.1 Legal and regulatory standards not met

There may be certain legal or regulatory constraints on the renting out of a property to tenants or the occupation of a property that are not met on a liability date. However, not meeting the required building/safety standards or not being certified as completed does not mean that the property is uninhabitable as it can nevertheless still be suitable for use as a dwelling.

4.2 Order to vacate a property

Revenue accepts that a property is uninhabitable where its occupants have been given a formal order to vacate the property and the property is actually vacated on

foot of the order. This might happen, for example, following the identification of serious fire or other safety risks such as flooding. It is not sufficient that such risks are identified, there **must be a statutory order made** to vacate the property, for example, by a local authority fire officer or a court. Nor is it sufficient that such an order is made, the property must actually be vacated on foot of the order. Revenue regards a property as uninhabitable from such time as it is vacated until such time as it is reoccupied, whether or not the safety defects have been rectified.

4.3 Properties undergoing change of use

A property may be constructed as a non-residential property such as a shop or office and be subsequently adapted or converted to residential use. It will be a question of fact if the property as first constructed and fitted out was suitable for use as a dwelling or if it only became suitable for such use following its conversion, adaptation and fitting out.

A property that was constructed for use as a dwelling but that is subsequently used for non-residential purposes continues to be suitable for use as a dwelling in the absence of significant structural or conversion work. However, if the property becomes fully subject to the payment of local authority commercial rates, it may qualify for an exemption (see section 4 exemption [TDM LPT Part 02-02](#)).

4.4 Remediation of uninhabitable property

Where an uninhabitable property is restored to a habitable condition it becomes a residential property with effect from the following liability date (i.e., 1 November following the property becoming habitable).

In relation to the first valuation period, an uninhabitable property that was not a residential property on 1 May 2013 did not become a residential property until the following valuation date 1 November 2021, even if it was refurbished to a habitable state before this date or it became occupied. However, in relation to the second valuation period (2022 to 2025), a property that becomes habitable or occupied after the second valuation date 1 November 2021 becomes a residential property on the following liability date.

Example

Alan's house is derelict and uninhabitable on 1 November 2021. He does not submit a return to Revenue on this valuation date. However, his property is refurbished during 2022 and this work is completed in September 2022. This means that Alan becomes liable to pay LPT on 1 November 2022 for the year 2023. He must file a return and declare the chargeable value that would have applied to his property if it had been refurbished on 1 November 2021.

4.5 Demolition of property

A property may have previously been uninhabitable (or chargeable to LPT) before it is demolished; for example, because of its poor state of repair or its acquisition purely for its location or site. Where a property no longer exists, it ceases to be a residential property on the first 1 November liability date following its demolition.

5 Associated buildings and land

A residential property includes certain associated buildings and land that comprise the curtilage of the dwelling. The word '**curtilage**' is generally used to refer to a parcel of land attached to, or immediately surrounding, a dwelling that is integral to and used for the benefit and enjoyment of the occupants of the dwelling. It is essentially the area of land occupied by such items as sheds, garages, yards and gardens that have a domestic or residential purpose. It forms part and parcel of the dwelling and would typically be sold or transferred along with the dwelling. What forms the curtilage is straightforward in the case of a small house but may be less straightforward in the case of a large sprawling country estate. It will fall to be determined on a case by case basis in the context of the nature and setting of particular dwellings.

Section 2A(2) treats sheds, outhouses, garages or other buildings that are appurtenant to or usually enjoyed with a residential property as part of the "residential property". A building that is appurtenant to a dwelling is one that relates to, belongs to, is attached to, is ancillary to or is associated with the dwelling. A building that is enjoyed with a dwelling is one that is occupied with the dwelling and available for the use and benefit of the occupants of the dwelling.

Examples of the type of buildings that would be included in the definition of a "residential property" are:

- sheds;
- outhouses;
- garages;
- greenhouses;
- garden rooms such as home offices; and
- accommodation for domestic animals and pets.

As the definition of "building" includes structures (see [section 2](#) above), also included in the definition of a "residential property" are walls and gates. Not included are structures that are not permanently attached to the ground such as certain garden features such as gazebos, pergolas, moveable water features and enclosures for rubbish bins.

Subsection 2A(3) also treats yards, gardens and other lands appurtenant to or usually enjoyed with a residential property as its garden or grounds as part of the “residential property”. Examples of the type of land that would be included are:

- yards;
- driveways and paths;
- car parking spaces;
- gardens (whether cultivated or not);
- lawns;
- patios; and
- ponds.

The appurtenant buildings and land are to be used for the benefit and enjoyment of the occupants of a dwelling and should have a domestic or residential purpose. This excludes buildings and land that have a purely commercial or business function, such as a workshop used for light manufacturing activity, and were designed and constructed as such. An external room used as an office by a person who works from home is not excluded.

Land, farmyards and buildings used for farming are not part of a residential property (despite their adjacent location to a farmhouse) and they are not liable for LPT. However, a farmhouse is not treated any differently to other dwellings in relation to any associated building or land that is not used for farming. This means that a garden, for example, is treated as part of the residential property but a haggard, farmyard or a commercial glasshouse is not.

It is not possible to be prescriptive as to the buildings and land that should be treated as part of a residential property in all potential situations. Each case must be decided on its own particular facts and circumstances.

There is an upper limit of one acre (equivalent to 0.4047 hectares) on the area of the appurtenant land that is treated as part of a residential property and that must be valued together with the dwelling. The area occupied by the dwelling and its appurtenant buildings is not included in the acre. Where this upper limit of one acre is exceeded, the part of the land that is to be valued as part of the residential property is the part that is the most suitable for enjoyment with the dwelling. This would typically be the land nearest to the house that is used as its yard and/or garden. It would also typically be the more valuable part of the land. Such considerations will not be relevant for the vast majority of residential properties which don't exceed an area of one acre.

Example

A person has a large period house with adjoining land of 5 acres. The long-established garden occupies almost an acre and immediately surrounds the house, significantly enhancing its character, appeal and value. The remainder of the land is overgrown and subject to flooding and is clearly not the most suitable part of the land for enjoyment with the dwelling. If the person was

allowed to value the house without the garden and, instead, include an acre of the land situated at the furthest remove from the house (and not even visible from the house!), the value for LPT purposes would be significantly reduced.

6 Valuation of certain residential properties

Issues may arise in relation to the valuation of separate dwellings that are situated in a single building (see [section 3.2.1](#) above). The strict legal position is that any part of a building that is used as a dwelling should be treated as a separate residential property that incurs a separate local property tax (LPT) liability. However, Revenue recognises that certain types of dwelling that are an integral part of a larger building may be difficult to value and sell on the open market in their own right. Therefore, in relation to certain types of dwelling, where the same person owns the entire building, Revenue accepts that a liable person can opt to value the separate dwelling either as part of the overall building or as a separate residential property. **This practice does not apply where there are different liable persons for the different dwellings. In this case, the dwellings must be valued separately.** While the liable person is generally the person who owns a residential property, a lessee who leases a residential property under a lease of at least 20 years is also a liable person.

It is not possible to be prescriptive about the precise circumstances in which this Revenue practice will be appropriate. This will have to be determined by reference to the unique facts and circumstances of each case. However, as a general guide, the approach used by Revenue in determining whether the practice is appropriate in particular circumstances is set out below.

This Revenue practice generally applies in the case of self-contained dwellings such as basement 'granny flats' or converted garages or extensions to a house that have an external entrance door that is separate to the entrance door to the main building. It would not generally apply in the case of dwellings in a building that do not have their own external entrance door and that are not self-contained. An example is a room known as a 'bedsit', commonly understood as comprising a single room containing sleeping and basic cooking facilities but with no bathroom or separate sitting room and used for short-term rental accommodation. Such accommodation has become less common in recent years as regulations stipulating minimum standards for rental accommodation have been introduced. While Revenue would not generally accept separate valuations for individual bedsits, it may happen that there could be a different liable person involved; for example, in the case of a long-term lease.

The practice does not apply in the case of individual apartments in an apartment block. Such apartments are clearly self-contained dwellings and should be valued separately and individually regardless of the existence of a single liable person in respect of the apartment block. However, in the case of the type of shared or co-living accommodation described in [section 3.2.1](#) above, Revenue would expect that

the entire building would be valued as a single residential property. The individual clusters of study bedrooms that share facilities are unlikely to be capable of being sold on the open market or to have separate liable persons. In the case of such buildings that are used as student accommodation, it may be appropriate to disregard certain facilities that would not typically be required for normal domestic living, for example, library and indoor sports facilities, when valuing a property as these may be regarded as relating more to the operation of the college than to the private domestic life of the students.

A self-contained dwelling that is situated on the site or grounds of another residential property (but not attached to the property) is a separate residential property and should be valued as such, even if it is occupied by members of the same household. Some examples would be a converted garage or other building, a mews house or a gate lodge associated with a large house on a country estate. Such buildings should not be treated as other buildings that are appurtenant to or usually enjoyed with a residential property as set out in [section 5](#) above.

7 Self-assessment, Revenue determinations and appeals

To be chargeable to LPT, a property must come within the meaning of a “residential property” (as set out in [section 2](#) above) on a liability date (i.e. 1 November in each year). In the first instance, it is up to property owners to ‘self-assess’ as to whether their property comes within the meaning of a “residential property”. This involves the consideration of such matters as whether a property is in use as a dwelling or, if not in such use, if it is suitable for such use.

In this self-assessment context, where a person does not consider that he or she is a liable person in relation to a residential property, there is no requirement to value the property or to file a return. However, should Revenue subsequently disagree with the property owner’s view and determine that a property is a residential property, the outstanding LPT liability will be subject to interest on late payment from the original due date for payment (i.e. 1 January in each year) and possibly penalties for failing to file a return.⁶ It would therefore be prudent for property owners to seek Revenue’s opinion on a matter, particularly if they are uncertain about the position. In certain situations, there is statutory provision for the making of Revenue determinations that can then be appealed to an independent appeals body.⁷

While, in the normal course, there may not be a requirement for property owners to file a return where they do not consider their property to be a residential property, Revenue may issue a notice requesting a return and a property owner must then comply with this request.⁸ In such circumstances, the onus is on the property owner

⁶ Section 146.

⁷ Procedures set out in sections 33 and 34.

⁸ A notice requiring a person to file a return may be issued under section 33.

to inform Revenue of the reason that he or she does not consider the property to be a residential property; for example, the reason(s) the property is considered to be uninhabitable.

7.1 Whether a property is a residential property

There may be a number of reasons why a property might not be considered to come within the meaning of a “residential property” and these are set out in [section 3](#) above. One cause of uncertainty can be whether a property is suitable for use as a dwelling. As set out in [section 3.2](#) above, this can be a highly subjective matter and property owners may wish to establish if Revenue agrees with their view. They may also have been issued with a notice to file a return. Such property owners should provide Revenue with the information required to make a determination on the matter.⁹ Essentially, the property owner should explain why the property is considered to be uninhabitable. To do this, they may have to provide documentation such as engineers’ or architects’ reports and photographs to support their view. To secure an early determination and to avoid prolonged engagement with Revenue about the evidence that is required to support the property owner’s view, it is important that the documentation and photographs should be as comprehensive as possible. For example, in the case of damage caused by dampness and water ingress, photographs of a particular wall or a confined area may not be sufficient as Revenue will need to consider the damage to the overall property. This may be relevant in the case of certain properties offered for sale where photographs and information contained in the sales brochures refer to a property in need of modernisation and show a property that is clearly habitable.

Depending on the circumstances of the case, Revenue may or may not agree that a particular property is uninhabitable. Where Revenue considers that a property is suitable for use as a dwelling and, therefore, a residential property, it issues a written determination to the property owner.

While the matter of whether a property is uninhabitable is the most common cause of uncertainty for property owners, there may be other reasons for uncertainty about the scope of the meaning of a “residential property”; for example, whether a particular structure or building is a dwelling or whether it is permanently attached to the ground or whether part of a building is a separate dwelling. There may also be uncertainty about the associated buildings or land to be treated as part of the residential property. Whatever the matter causing uncertainty, a property owner should provide Revenue with the explanations and information that is required for Revenue to make a determination on the matter.

⁹ Section 33 – claim that person not a liable person.

7.2 Appealing a Revenue determination

A person who does not agree with a Revenue determination can appeal the determination to an independent appeals body, the Tax Appeals Commission (TAC). A Revenue determination on a matter should clearly set out the reason(s) for the determination. This will facilitate the person in stating the grounds for the appeal when completing the notice of appeal to be submitted to the TAC. The notice of determination should also advise the property owner about his or her right of appeal and how to exercise this.

8 Interaction with requirements for other charges and tax reliefs

8.1 Stamp duty

The Stamp Duties Consolidation Act 1999 (section 1) has its own definition of “residential property” and this is not relevant for LPT purposes. When a stamp duty return is being filed in respect of a new property, or a property previously unregistered for LPT, Revenue provides the filer with an LPT property ID for the property to facilitate the filing of the stamp duty return. This should not be regarded by the filer as Revenue agreement that the property is necessarily a residential property for LPT purposes.

8.2 Non-principal private residence (NPPR) and household charge (HC)

Liable persons may seek Revenue confirmation that a self-declaration that their property was accepted as not suitable for use as a dwelling, and that was used for the purposes of the NPPR/HC, is a sufficient basis for non-liability for LPT. In response, Revenue advises that it considers the position of a property solely in the context of the requirements of LPT and that a self-declaration in itself is not sufficient for it to determine whether or not a property is suitable for use as a dwelling. Revenue takes the same approach in relation to sworn affidavits that relate to the NPPR/HC. While a sworn affidavit may be useful for Revenue in relation to the status of a property for LPT purposes, it is accepted only **as part of** any evidence or documentation that is submitted to it in support of a claim that a property is not suitable for use as a dwelling. See [section 7.1](#) above.

8.3 'Help to buy' scheme

The 'help to buy' tax incentive scheme (section 477C TCA 1997) applies in the case of a "qualifying residence" that is a new building that was not, at any time, used or suitable for use as a dwelling. Renovation or refurbishment of old houses to either upgrade or reinstate them for habitation does not qualify for this scheme. However, where a house was previously used as a dwelling but was later demolished and rebuilt, it is regarded as 'new'. For Revenue to make a determination that the dwelling being built on the site is 'new', evidence is required to show that the previous dwelling was demolished and replaced as opposed to being extended/refurbished. An examination of whether or not LPT was payable in respect of the previous building may be relevant in this regard.