

Residential properties fully subject to commercial rates

Part 02-02

This document should be read in conjunction with section 4 of the Finance (Local Property Tax) Act 2012 (as amended)

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Introduction

Residential properties that are **fully** subject to commercial rates payable to a local authority are exempt from local property tax (LPT). Such properties are relatively uncommon. What is far more common is for a single property to have both a residential and a commercial element, in which case rates are paid only in respect of the commercial element of the property. While such properties do not qualify for this exemption, the commercial part of a property is disregarded for the purposes of establishing the chargeable value of the property for LPT purposes.

A property must actually be chargeable to commercial rates and not just potentially chargeable to be eligible for the exemption. The circumstances in which a local authority may decide not to charge commercial rates or to restrict the charge to part of a property is outside the scope of this instruction. Whether a property is chargeable to commercial rates is a matter for the relevant local authority and not for Revenue.

1. Legislation

The relevant provisions are contained in section 4 of the Finance (Local Property Tax) Act 2012 (as amended). This section contains references to the Local Government (Financial Provisions) Act 1978 (meaning of “mixed hereditament”) and the Valuation Act 2001 (meaning of “municipal rates”). Schedule 4 to this latter Act contains a list of properties that are not subject to commercial rates: for the most part, these are not residential properties.

2. Residential properties and commercial rates

2.1 Fully commercial or fully residential

An example of where commercial rates are charged in respect of an entire residential property is what the Valuation Act 2001 calls an “apart-hotel”, i.e. apartments that are used for the purposes of hotel-keeping. Guesthouses that are registered as such with Fáilte Ireland¹ are also treated as fully rateable. However, commercial rates are not charged in respect of other residential properties that are used for commercial purposes, such as bed and breakfast establishments, holiday

¹ The Registration and Renewal of Registration Regulations for Guest Houses 2003 outline the requirements for a guesthouse. These include a minimum of 7 guest bedrooms with private bathrooms en-suite and no more than 30 guest bedrooms with private bathrooms, all of which must have separate access to the bedroom corridor.

cottages and residential properties that are integral to holiday villages. Such properties are, therefore, fully chargeable to LPT.

2.2 Mixed-use properties

The legislation specifically excludes “mixed hereditaments” from the exemption. These are mixed-use properties that are used as a dwelling to a significant extent in addition to being used for other non-residential purposes to a significant extent. This would include properties such as shops and pubs with living accommodation at the rear or overhead, a business office or a crèche operating from a room or rooms in a house or a workshop attached to a house. Occupiers of this type of property pay commercial rates based on the rateable valuation of the non-residential part of the property. The value attributable to the residential part of the property is apportioned out.

3. Valuation of mixed-use properties

Where commercial rates are chargeable on the non-residential part of a property, the remaining residential part of the property is chargeable to LPT. As with any other property, this is the price that the unencumbered fee simple of the residential part of the property might be expected to fetch on a sale on the open market were the property to be sold on the valuation date in a particular year in a manner that would secure the best possible price for the property and with the benefit of any access to the property that would have existed prior to the sale. This is the expected price from a hypothetical sale on the open market **as if the full interest in the property could be sold without any encumbrances or restrictions, even if this is not actually possible.**

4. Claiming the exemption

Where the entire property (including the residential element) is chargeable to commercial rates on 1 May 2013, the person to whom the LPT1 return form has been sent should claim the exemption on the return form as part of the normal self-assessment process. The code “K” should be inserted in the exemption box on the return form.²

Where an exempt property is acquired after 1 May 2013, the original owner will have been responsible for filing the return and the new owner does not have to file a return to claim the exemption for the first valuation period 1 May 2013 to 31 October 2019. However, where a property that was not exempt on 1 May 2013 is

²The exemption types are listed on page 10 of the Revenue booklet that was issued with the LPT1 return form.

acquired after 1 May 2013 and becomes exempt, the new owner should claim the exemption.

5. Duration of exemption

The usual LPT rule is that a property that is exempt from the charge to LPT on the first valuation date will not be chargeable until the next valuation date. This means that a property that was exempt on 1 May 2013 will continue to be exempt until 1 November 2019, regardless of whether the qualifying conditions cease to be satisfied in the intervening period. The duration of the first valuation period was extended by three years by the Finance (Local Property Tax)(Amendment) Act 2015 and now ends on 31 October 2019.

6. Examples

6.1

Mark owns a small hotel that has a self-contained residential quarter at the rear of the building that is accessed through the hotel. The part of the building used for the hotel business has been valued separately for commercial rates. Mark is liable for LPT in respect of the part of the building in use as a residence and must establish the chargeable value of that part. To do this, he must assume a hypothetical sale of the residential quarter in the open market without any restrictions and with the benefit of any access to the property that already exists. If, in reality, the residential quarter cannot be sold separately, this is not relevant. However, the fact that it is attached to a hotel and that it does not have its own separate access may affect the price that it would be expected to realise on this hypothetical open market sale. This would be factored in when establishing the chargeable value of the residential quarter.

6.2

Ken is a civil servant who occasionally works from home. He has converted one of his bedrooms into an office for this purpose. As the office is not used for a commercial business and as the property is not used to a significant extent for non-residential purposes, commercial rates are not chargeable. Therefore, the entire property is chargeable to LPT.

6.3

Jane owns a residential property that she occupies and uses for her bed and breakfast business. The property has six bedrooms, four of which are used as guest bedrooms with the remaining two occupied by Jane's family. Although the property is used primarily for commercial purposes, the local authority does not charge commercial rates. Therefore, the entire property is chargeable to LPT.

6.4

Ann owns a guesthouse and lives there along with two of her staff. Although the guesthouse is used as her residence, Ann pays commercial rates on the entire property with no discount for the residential element. The LPT exemption, therefore, applies.

7. Self-assessment and compliance

The exemption should be claimed on the LPT 1 return form as part of the normal self-assessment process. However, Revenue may decide to examine the validity of the claim at a later stage as part of its normal compliance programme. The person claiming the exemption may be required to provide evidence and supporting documentation to back up the claim, such as evidence of the charge to commercial rates and that the charge related to the entire property.