Exemption for properties occupied by permanently and totally incapacitated people

Part 02-11

This document should be read in conjunction with section 10B Finance (Local Property Tax) Act 2012 (as amended)

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Table of Contents

1. Introduction

This exemption from local property tax (LPT) relates to residential properties that are constructed, purchased or adapted because of their suitability, or to make them suitable, for occupation as a residence by certain severely incapacitated people. These are people who are permanently incapacitated to such an extent that they are unable to maintain themselves by earning an income from working and whose condition is so severe that it dictates the type of property that they can live in.

This exemption should not be confused with the relief provided for by section 15A that applies to residential properties that are adapted to make them more suitable for occupation by a disabled person. The section 15A relief does not involve an exemption from the charge to LPT but, instead, allows the chargeable value of a property, and the LPT liability, to be reduced in certain circumstances.

See Tax and Duty Manual (TDM) Part 04-03 for details of this relief.

As certain claimants may have to apply to Revenue for this exemption, Revenue is required to publish guidelines on the application process. These guidelines are “Guidelines on the local property tax (LPT) exemption for properties occupied by certain severely incapacitated people” available at www.revenue.ie in the local property tax section of the website. This TDM contains much the same material as these guidelines.

2. Legislation

The relevant provisions are contained in section 10B Finance (Local Property Tax) Act2012 (as amended). Section 10B was amended by the Finance (Local Property Tax) (Amendment) Act 2015 (section 6) to give effect to a Revenue practice that had been applied on an administrative basis, whereby the requirement for an incapacitated person to have received a court or a Personal Injuries Assessment Board (PIAB) award or income from a public trust fund was relaxed in certain circumstances.

Also relevant to this exemption are sections 189 and 189A Taxes Consolidation Act (TCA) 1997. Section 189 provides income tax and capital gains tax relief in respect of monies awarded by the Personal Injuries Assessment Board (PIAB) to an incapacitated person.[1] Section 189A provides similar tax relief in respect of trust income where a public trust fund has been established for the benefit of an incapacitated person.

[1] The TDM Part 07-01-02 in the Income Tax Capital Gains Tax Corporation Tax Manuals deals with section 189 TCA 1997.

3. Qualifying conditions

In summary, a property qualifies for the exemption where:

- it is occupied as a sole or main residence by an incapacitated person:

  -who has received a court or a Personal Injuries Assessment Board (PIAB) award (section 189(1)(b) TCA 1997) or who is a beneficiary of a public trust fund (section 189A TCA 1997), or

  - who has **not** received such an award or benefited from a public trust fund but who has been certified by a doctor as being permanently and totally incapacitated and whose application for exemption has been approved by Revenue, and

- it is acquired because of its suitability for occupation by the incapacitated person or it has been adapted, at a cost of more than 25% of the value of the property before being adapted, to make it more suitable for such occupation.

These conditions are described in detail in sections 3.1 to 3.5 below.

3.1 PIAB award or public trust fund

Under section 189(1)(b) TCA 1997, as a result of a personal injury that caused a mental or physical infirmity, an incapacitated person must have been awarded compensation by a court or the PIAB. In the case of the PIAB, it is sufficient that the Board makes an offer of compensation to a person as the person has the option of declining any offer and, instead, pursuing his or her claim through the courts. Many of the personal injuries in respect of which awards are made by the PIAB are of a relatively minor nature so that **an award in itself will not necessarily be sufficient to qualify for the exemption** as the person also has to be severely incapacitated**.**

Alternatively, the incapacitated person must be a beneficiary of a public trust fund that was established specifically for the person's benefit. Existing provisions in the TCA 1997 in relation to income tax relief are adopted for the purpose of this LPT exemption. Section 189A(1) TCA 1997 sets out quite detailed conditions in relation to a 'qualifying' trust fund. These are that:

- the trust fund results from a public appeal for the purpose of benefiting one or more incapacitated persons whose identity is known to the donors;
- the total amount of the subscriptions to the trust must not exceed €381,000;
- no single person can contribute more than 30% of the trust funds;
- the trust funds must be applied at the discretion of the trustees; and
- the trustees must not be connected with the incapacitated person.

It is not necessary for the PIAB award or the income from the trust to actually be used for the acquisition or adaptation of the residential property in respect of which the exemption is claimed. For example, such monies could be used to fund medical care and the property acquisition/adaptation could be funded by other means such as a mortgage.

The payment of a court award or a PIAB award involves an assessment of the severity of a person's incapacity. Public trust funds tend to be established in the case of very severe incapacity. Following the payment of such an award or the establishment of a public trust fund, the exemption is claimed on a self-assessment basis without the need to apply to Revenue.

Different arrangements apply where an award is not received or a public trust fund is not established. These are set out in section 3.2 below.

3.2 Incapacity

3.2.1 Nature and extent of incapacity

Section 189A TCA 1997 defines "incapacitated individual" and this definition is also applied in section 10B. An incapacitated individual is someone who is **"permanently and totally incapacitated, by reason of mental or physical infirmity, from being able to maintain himself or herself".** "Maintain" in this context means to support oneself by earning an income from working. Therefore, total incapacity means that a person is not capable of earning a living from any kind of work. The incapacity must also be permanent; i.e. there must be no prospect of the person recovering or of the condition improving to the extent that the person is able to maintain himself or herself.

This is quite a high threshold of incapacity. For example, a visually impaired person or a person who has lost the use of his or her legs could be described as permanently incapacitated but not necessarily totally incapacitated or incapable of maintaining himself or herself by working.

It is not possible to provide a list of medical conditions that can be accepted automatically as meeting the requirements for relief. There are inevitably variations in the severity of many conditions; a person who has a mild form of a particular condition may not meet the requirements for the relief while someone with a severe form of the same condition may do so. Ultimately, whether a property is eligible for the exemption will be determined by the nature and extent of the person's incapacity, whatever his or her underlying condition.

Although elderly people above retirement age do not generally maintain themselves by working to earn an income, infirmity or reduced capacity that is attributable **solely** to old age and not to any underlying medical condition is not treated as permanent and total incapacity for the purposes of this exemption.

3.2.2 Establishment of incapacity

Where an award is not received or a public trust fund is not established but where the other qualifying conditions for the exemption are met (see sections 3.3, 3.4 and 3.5 below), a person's incapacity must be established and Revenue must approve an application for the exemption. The application form for this purpose is included in Annex 2 of the published Revenue guidelines. The primary purpose of this form is to establish that a property:

- is occupied by a person who is permanently and totally incapacitated to the extent that he or she is incapable of maintaining himself or herself by working and earning an income, and
- has been acquired and/or adapted for the purpose of its suitability for such occupation (see section 3.3 below).

An incapacitated person's doctor is required to provide certain information in relation to the person's condition on the application form, focusing primarily on the person's degree of incapacity and mobility. Information must be provided in relation to:

- the nature and the extent of the incapacity;
- whether there is any prospect of improvement in the condition;
- the mobility of the incapacitated person;
- the degree to which the person's incapacity affects his or her mobility.

3.2.3 Children under the age of 16 years

A Domiciliary Care Allowance is paid by the Department of Social Protection in respect of children (i.e., under the age of 16) who have a disability so severe that they need care and attention and/or supervision substantially in excess of other children of the same age. This care and attention must be given by another person, almost all the time, so that the children can deal with the activities of daily living. They must be likely to require this level of care and attention for at least 12 months. Where a Domiciliary Care Allowance is paid by the Department of Social Protection, Revenue does not require that incapacity be established by reference to whether the person is permanently and totally incapacitated to the extent that he or she is unable to maintain himself or herself by working and earning an income.

For the purpose of claiming the exemption, a doctor is not required to provide information in relation to a child's incapacity. However, an occupational therapist is required to provide information on the extent to which the incapacity has affected the child's mobility and the reason why the particular property and/or adaptations were considered necessary.

3.3 Acquisition of Property and its Suitability

The way in which a residential property in respect of which the exemption is claimed is acquired is not relevant; it can be constructed, purchased or received by way of a gift. The qualifying condition is that it is acquired because of its suitability for occupation by the incapacitated person. Where an existing property is adapted, the adaptation work must be carried out for the purpose of making the property more suitable for occupation by the incapacitated person.

The linking of the incapacity with a property's suitability for occupation effectively means that the nature of the incapacity will invariably relate to the physical mobility of a person and not to intellectual or sensory incapacity. For example, people who have certain sensory or intellectual disabilities may be capable of living in a standard unadapted property whereas people who have severe mobility difficulties may require a suitably adapted property.

The purpose of acquiring a particular property or adapting a property must be to facilitate its occupation by an incapacitated person. The exemption is not available where general improvements/maintenance works have been carried out or work that is of general benefit to the household rather than specifically addressing the special needs of an incapacitated person. The key question to be asked is whether it would be possible for the incapacitated person to occupy a standard unadapted property.

3.4 Expenditure on adaptations

In the case of adaptations to an existing property, the exemption does not apply unless the cost of the adaptation work, when it is completed, exceeds 25% of the chargeable value of the property before the adaptation work was carried out. A liable person should therefore establish the chargeable value of his or her property both before and after the work is carried out. In the case of adaptation work that was carried out before the first LPT liability date 1 May 2013, a liable person is required to retrospectively establish the chargeable value that would have applied before the adaptation work was carried out.

3.5 Occupation by an incapacitated person

The incapacitated person does not have to be the liable person in relation to the property. What is required is that he or she occupies the property as his or her sole or main residence before the exemption is first claimed. However, the exemption continues to apply after the incapacitated person ceases to occupy the property as long as the property is not sold or otherwise transferred, such as by way of a gift or an inheritance. The exemption does not end following a sale or a transfer of the property provided that the incapacitated person continues to live there.

There is no requirement for an incapacitated person to live in the exempt property on a full-time basis. For example, he or she may spend time away from home for the purpose of receiving medical care.

3.6 Examples of qualifying conditions

3.6.1 PIAB award but person not totally and permanently incapacitated

Cian was awarded €35,000 by the PIAB after he was hit by a car while crossing a road near his home. Having suffered severe head and neck injuries he was unable to work for two years. However, as the accident did not result in him being totally and permanently incapacitated, his house does not qualify for the exemption.

3.6.2 Court award but property not yet adapted

Michael and Emily received a large court award because their daughter Mary has been left severely incapacitated following a difficult birth. Her condition will inevitably deteriorate as she gets older to the extent that she will be totally and permanently incapacitated and unable to maintain herself. Michael and Emily know that they will either have to carry out extensive adaptations to their house to make it suitable for Mary to live in or purchase a more suitable house. In the meantime, they expect that most of the court award will be spent on medical care. Until such time as the house is adapted, it remains chargeable to LPT.

3.6.3 Public trust fund and 25% cost threshold for adaptation work

Jim was a well-known athlete who became quadriplegic and confined to bed after a serious accident. Following a nationwide appeal, a trust fund was established for his benefit. His two-storey house was extensively adapted to make it suitable for occupation by himself and his wife, Joan. Most of the adaptation work was carried out to the ground floor to facilitate essential equipment such as a hospital bed, a large hoist, an industrial fan, a trolley table and an airflow mattress pump. Special access to the house was also required because his specially designed wheelchair was longer and wider than a standard wheelchair. The second floor was adapted to make it suitable as living quarters for Joan.

Joan engaged a property valuer who estimated that the chargeable value of the house for LPT purposes before the adaptation work was carried out in 2011 was €300,000. The cost of the adaptation work was €120,000, which exceeded 25% of the chargeable value of the property, as valued before the work was carried out. Even though the adaptation work was carried out before 1 May 2013, Jim and Joan qualify for the exemption.

Without the establishment of the public trust fund for Jim's benefit, the property could still qualify for the exemption if Jim's doctor is satisfied that he is incapacitated to such an extent that he will never be able to maintain himself by earning an income from working and that he could not have continued to live in his house if it had not been suitably adapted. In this situation, Jim and Joan would be required to apply to Revenue for approval of the exemption.

4. Claiming the exemption

A property cannot qualify for the exemption unless the exemption is claimed.[2] How the exemption is to be claimed depends on how and when the qualifying conditions set out in section 3 above are met.

Where the exemption is claimed as part of the normal self-assessment process (i.e., where a court or a PIAB award is received or a public trust fund is established - see section 3.1 above), it isn't necessary for the claim to be approved by Revenue. However, see section 6 below in relation to Revenue's compliance programme.

Where a court or a PIAB award is not received, there is no independent assessment of the nature and extent of the incapacity (see sections 3.2.2 and 3.2.3 above). For this reason, a liable person is required to apply to Revenue for approval of the exemption. There are specific application forms for this purpose.

The form LPT7 is required in the case of an incapacitated adult (i.e., over the age of 16 years). This form requires an assessment by the incapacitated person's doctor of the nature and extent of the incapacity and whether the particular property and/or adaptation work was necessary, given the incapacity.

The form LPT8 is required in the case of an incapacitated child (i.e., under the age of 16 years) who receives a Domiciliary Care Allowance from the Department of Social Protection. This form requires an occupational therapist to provide information on the extent to which the incapacity has affected the child's mobility and the reason why the particular property and/or adaptations were considered necessary.

4.1 Qualifying conditions met on 1 November 2021

Where the qualifying conditions for the exemption are met on the second valuation date[3] 1 November 2021, the exemption should be claimed in the LPT1 return form by inserting the exemption code number "2" in the exemption box. A claim should include any relevant documentation in support of the claim and the relevant application form where this is required. This claim covers the years 2022 to 2025.

[2] Required by sections 3A and 41A in relation to the second valuation period 2022 to 2025.

[3] The valuation date is the date on which the chargeable value of a property is established for all liability dates (1 November in each year) falling with the valuation period.

4.2 Qualifying conditions met after 1 November 2021

Where the qualifying conditions for the exemption are met in the period after 1 November 2021 and on or before 1 November 2024, the exemption should be claimed online using MyEnquiries, ROS or the LPT online service or by writing to LPT Branch, PO Box 100, Ennis, Co. Clare. A claim should include any relevant documentation in support of the claim and the application form LPT7 or LPT 8, as relevant, where this is required. This claim covers the remaining years in the second valuation period 2022 to 2025.

4.3 Qualifying conditions met before 1 November 2021

The revised treatment of properties that are occupied by incapacitated people who did not receive a court or PIAB award or benefit from a public trust fund (see section 3.2 above) was introduced by the Finance (Local Property Tax) (Amendment) Act 2015. This treatment was applied retrospectively to 1 July 2013. Liable persons who had paid LPT before the revised treatment came into effect and who then met the qualifying conditions for the exemption were able to claim refunds of the LPT paid by submitting the required application forms for Revenue approval.

5. Duration of the exemption

The duration of the exemption differs in relation to the first valuation date 1 May 2013 (for valuation period 2013 to 2021) and the second valuation date 1 November 2021 (for valuation period 2022 to 2025)[4].

The exemption continues to apply after the incapacitated person ceases to occupy the property as long as the property is not sold or otherwise transferred, such as by way of a gift or an inheritance. The exemption does not end following a sale or a transfer of the property provided that the incapacitated person continues to live there.

5.1 First valuation date 1 May 2013

In relation to the first valuation date 1 May 2013, a residential property that was exempt on this date continued to be exempt until the end of 2021, even if the qualifying conditions for the exemption ceased to be met during this period.

[4] The original second valuation date was 1 November 2016, but this was extended on a number of occasions until it became 1 November 2021 in the Finance (Local Property Tax) (Amendment) Act 2021.

A property that was not exempt on 1 May 2013 could subsequently become exempt where the qualifying conditions for the exemption were met at a later stage but only with effect from the first liability date (i.e. 1 November in a year) on which the qualifying conditions were met. The exemption then continued to apply until the end of 2021 where the qualifying conditions continued to be met.

5.2 Second valuation date 1 November 2021

In relation to the second valuation date 1 November 2021, a residential property that was exempt on this date does not automatically continue to be exempt for the remainder of the valuation period to the end of 2025. If the property ceases to meet the qualifying conditions for the exemption, it becomes chargeable to LPT with effect from the first liability date (i.e. 1 November in a year) following the date on which the qualifying conditions cease to be met. For example, where the property is sold in December 2021, following the death of the incapacitated person, the exemption applies for the year 2022 but the property is chargeable to LPT for the year 2023 (liability date 1 November 2022).

A property that was not exempt on 1 November 2021, could subsequently become exempt where the qualifying conditions for the exemption are met at a later stage but only with effect from the first liability date (i.e. 1 November in a year) on which the qualifying conditions are met, subject to the qualifying conditions continuing to be met.

5.3 Examples illustrating the duration of the exemption

5.3.1 Qualifying conditions, apart from receipt of court award, met on 1 May 2013

Adam is terminally ill and met some of the qualifying conditions to claim an exemption in respect of his adapted house on 1 May 2013. At that time, legal proceedings were ongoing in relation to compensation for an accident. He received a court award in June 2017 and then submitted a claim for repayment of the LPT paid for the years 2013 to 2017 to Revenue. His claim was approved and Revenue repaid the LPT already paid.

Adam died in August 2018 and shortly afterwards his wife sold the house. However, as the exemption applied on 1 May 2013, it continued to apply for the remainder of the first valuation period to the end of 2021. If, instead, Adam’s wife had continued to own and live in the property, the exemption would have continued.

5.3.2 Transfer of property but continued occupation by the incapacitated person

Ann lives with her totally and permanently incapacitated mother Carol. She had a bungalow specifically designed and constructed to cater for her mother’s needs. As the liable person, having met the qualifying conditions for the LPT exemption (including a PIAB award) on 1 November 2021, she claimed the exemption when she submitted her LPT1 return form on 6 November 2021.

Ann emigrates in September 2023 and gifts the property to her sister Sheila who takes over the care of her mother. Although there has been a change of liable person, the incapacitated person continues to live in the property. This means that the exemption continues for 2024 and 2025. Sheila, as the new liable person, does not need to claim the exemption.

5.3.3 Qualifying condition ceases to be met after 1 November 2021

Cliodna qualified for the exemption on 1 November 2021 in respect of the adapted house that she owns. When her condition deteriorates, she goes to live with her sister in April 2023 and sells her house in September 2023. As the house ceases to be her sole or main residence, the exemption applies only for the years 2022 and 2023 and the new owner is chargeable to LPT for the years 2024 and 2025.

5.3.4 Qualifying condition met after 1 November 2021

Cillian adapts his house to make it suitable for occupation by his daughter who receives a Domiciliary Care Allowance. The adaptation work is completed in December 2023 and costs 30% of the pre-adaptation value of the house. Cillian submits his claim for exemption to Revenue (LPT8) and this is approved. The exemption will apply in respect of the following liability date (1 November 2024) and will apply for the year 2025, the final year in the current valuation period covering the years 2022 to 2025.

6. Self-assessment and compliance

In respect of an exemption that is claimed on the LPT1 return form as part of the normal self-assessment process, Revenue may decide to examine the validity of the claim at a later stage as part of its ongoing compliance programme. The person claiming the exemption may be required to provide evidence and supporting documentation to back up the claim. Any supporting documentation should be retained for a period of 6 years in case it is requested by Revenue for examination.

Supporting documentation could include, for example:

- a doctor’s letter stating the nature and extent of the person’s incapacity;
- details of the payment of a court or PIAB award;
- details of the trust fund that was established to benefit the incapacitated person;
- a statement of how the property (whether it was constructed, purchased and/or adapted) is required for the nature of the incapacity;
- the cost and details of any adaptation work carried out;
- the chargeable value of the property prior to the adaptation work;
- the chargeable value of the property following the adaptation work.

Where the incapacitated person did not receive a court or a PIAB award, the claim for the exemption is made using the form LPT7 or LPT8. Revenue has to examine the validity of the claim at this stage and make a decision about whether or not to approve the claim. Again, the person claiming the exemption may be required to provide evidence and supporting documentation to back up the claim and any supporting documentation should be retained for a period of 6 years in case it is requested by Revenue for examination.

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

[…]

In the case of adaptations to an existing property, the exemption does not apply unless the cost of the adaptation work, when it is completed, exceeds 25% of the chargeable value of the property, as valued before the adaptation work was carried out. Staff will, therefore, have to take account of whether the value that is attributed to the adaptation work seems reasonable given the description of the work that is provided on the application form. This may involve the liable person being required to provide evidence and supporting documentation to back up the value attributed to the adaptation work.

The exemption will be withdrawn where Revenue determines that the qualifying conditions for the exemption were not met. Interest will be charged from the date on which LPT would have been payable in the absence of the exemption. A penalty may be imposed where a person makes a false statement or representation for the purpose of obtaining a reduction in the LPT liability.[5]

[5] Section 147.

7. Appeals against Revenue's refusal of a claim for exemption

It may happen that, following a claim for the exemption, Revenue determines that the qualifying conditions for the exemption were not met. Revenue is required to notify the claimant in writing of its determination. The claimant then has 30 days to appeal against such a determination to the independent Tax Appeals Commission (TAC).[6] However, the TAC can decide to allow appeals made outside this timeframe in certain circumstances. See TDM Part 09-01 for information on the LPT appeals procedures.

[6] Section 41B.