

Properties used for diplomatic purposes

Part 02-00

This document should be read in conjunction with section 11 of the Finance (Local Property Tax) Act 2012 (as amended) and the Diplomatic Relations and Immunities Act 1967 (as amended)

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1 Introduction

Certain residential properties that are used for diplomatic purposes are not chargeable to local property tax (LPT). They are outside the scope of the Finance (Local Property Tax) Act 2012 (as amended) rather than being specifically exempted by this Act. This has implications for the requirement to comply with certain provisions of this LPT Act such as the requirement to claim an exemption and to file a return. Instead, the exemption arises under the Diplomatic Relations and Immunities Act 1967 (as amended) which takes precedence over the LPT Act. This Act provides for exemption from various types of taxes, not just those that relate to property.

LPT liability depends on the type of diplomatic property, the purpose for which the property is used and the country of residence of the owner of the property. There are essentially two types of diplomatic property: property used by an embassy and property used by a consulate. It should not be assumed as a matter of course that all diplomatic properties are outside the scope of LPT. For example, a property may be chargeable to LPT if the liable person in relation to the property is an Irish national or is permanently resident in Ireland.

2 Legislation

Diplomatic properties are outside the scope of the Finance (Local Property Tax) Act 2012 (as amended). Instead, any exemption from the charge to LPT arises under the Diplomatic Relations and Immunities Act 1967 (as amended) which takes precedence over the LPT Act. This Act gives effect to Ireland's obligations under the Vienna Convention on Diplomatic Relations 1961 (the 1961 Convention) and the Vienna Convention on Consular Relations 1963 (the 1963 Convention) (contained in the first and second schedules, respectively, to the Act). These are international treaties that govern the operation of diplomatic relations between countries. They specify the privileges and immunities relating to an embassy/consulate and its officials and staff and these include various types of tax exemption. For convenience, the relevant articles from the Conventions are reproduced in the Appendix.

However, Part 3 of the Finance (Local Property Tax) Act 2012 (as amended) is also relevant in relation to establishing the liable person in circumstances where a diplomatic property may be chargeable to LPT; for example, where the liable person in relation to the property is an Irish national or is permanently resident in Ireland and does not have diplomatic status.

3 Embassies and diplomats (1961 Convention)

The term used in the 1961 Convention to refer to the diplomatic representation of a sending State in a receiving State (Ireland for the purposes of this Tax and Duty Manual (TDM)) is a “mission”. While a “mission” encompasses more than an embassy (or an ambassador or other ‘head of mission’¹), as an embassy is the most common type of mission, for convenience, this is this term used in this TDM.

An embassy premises includes the embassy building(s) (or parts of such building(s)) and any ancillary land where these are used for the purposes of the embassy. While “purpose” is not defined, the functions of an embassy are specified² and these include representing the sending State in the receiving State, promoting friendly relations between both States and developing their economic, cultural and scientific relations. So, for example, a residential property used as an office would be treated as embassy premises. Of most relevance for LPT purposes is that embassy premises include the ambassador’s residence and any residential properties situated on the embassy’s ancillary land that are used for the purposes of the embassy. This would include accommodation for embassy staff.

A sending State and an ambassador are exempted from all national taxes (such as LPT) in respect of embassy premises, whether the premises is owned or leased by them.³ The exemption is not given for the premises itself which means that, other than a person acting on behalf of a sending State or an ambassador, another person could potentially be a liable person for LPT purposes if he or she comes within section 11.

The exemption under the Diplomatic Relations and Immunities Act 1967 (as amended), arising from the 1961 Convention, is specifically stated **not** to apply in respect of taxes payable under Irish law (such as LPT) by a person who enters into a legally binding agreement with a sending State or an ambassador. This means that embassy premises that is a residential property could be chargeable to LPT where the owner of the property is the liable person because of a lease to a person acting on behalf of a sending State or to an ambassador for a period that will not exceed 20 years. However, in the case of such a lease that exceeds 20 years, LPT would not be chargeable as the lessee would have been the liable person.

¹ Article 14.

² Article 3.

³ Article 23(1).

However, such liability is subject to any other exemptions allowed under the 1961 Convention. In this regard, there is a general tax exemption for an ambassador and for embassy staff with diplomatic rank.⁴ However, **it specifically excludes (inter alia) taxes on private property** unless the particular diplomat holds the property on behalf of the sending State for the purposes of the embassy. This means that a residential property acquired by a diplomat in his or her personal capacity as an investment and to earn rental income would be chargeable to LPT.

Where this general tax exemption applies, it also applies to:

- the diplomat's family members who form part of his or her household, and
- the embassy's administrative and technical staff and their family members,

provided they are not Irish citizens nor, in the case of the administrative and technical staff, permanently resident in Ireland.⁵

4 Consulates and consuls (1963 Convention)

The tax exemptions for residential properties used as consular premises are broadly similar to those that relate to embassies.

It might initially appear that there is no tax (such as LPT) exemption relating to a consul's residence as, although building(s) (or part of a building(s)) and ancillary land used for the purposes of a consul are included in the definition of "consular premises", this use must be **exclusive** and a consul's residence is excluded.⁶ However, an exemption for a consul's residence is provided separately. This facilitates a distinction to be made between the residence of a career consul and that of an honorary consul. Honorary consuls are typically citizens of the receiving State.

A consular premises that is owned or leased by a sending State, or a person acting on its behalf, is exempt from all national taxes (such as LPT).⁷ However, this exemption is specifically stated **not** to apply in respect of taxes payable under Irish law (such as LPT) by a person who enters into a legally binding agreement with a sending State or a person acting on its behalf. This means that consular premises that is a residential property could be chargeable to LPT where the owner of the property is the liable person because of a lease to a person acting on behalf of a sending State for a period that will not exceed 20 years. However, in the case of such a lease that exceeds 20 years, LPT would not be chargeable as the lessee would have been the liable person.

⁴ Article 34(b).

⁵ Article 37.

⁶ Article 1(j).

⁷ Articles 32(1) and 60(1) in respect of a career consul and an honorary consul, respectively.

In addition to consular premises, the exemption outlined in the preceding paragraph applies in respect of a career consul's residence⁸ but not to an honorary consul's residence.

Both career consuls and honorary consuls, and members of their families, are given a general exemption from all national taxes except those in respect of private property (such as LPT).⁹ However, unlike the position for embassies,¹⁰ there is no exception for such a person who holds the property on behalf of the sending State and uses it for the purposes of the consul. However, the specific exemption (allowed under a different article¹¹) for consular premises and a career consul's residence may apply unless taxes are payable under Irish law (such as LPT) by a person who enters into a legally binding agreement with a sending State or a person acting on its behalf (as set out in the third paragraph of this section) under a lease for a period that will not exceed 20 years.

5 Timing of exemption

As it is possible for embassy and consul premises to be chargeable to LPT or to be exempt at different times depending on the circumstances, the usual provisions relating to residential properties in general apply.

In relation to the first valuation date 1 May 2013 (for valuation period 2013 to 2021), a residential property that was exempt or non-liable (i.e., outside the scope of LPT) on this date generally continued to be exempt or non-liable until the end of 2021, even if the qualifying conditions for the exemption or non-liability ceased to be met during this period. 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. A similar position would have applied for non-liable diplomatic properties.

In relation to the second valuation date 1 November 2021 (for valuation period 2022 to 2025), a residential property that was exempt or non-liable on this date does not automatically continue to be exempt for the remainder of the valuation period. If the property ceases to meet the qualifying conditions for the exemption or non-liability, 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.

⁸ Article 32(1).

⁹ Article 49(b).

¹⁰ Article 34.

¹¹ Article 32.

The purpose of the embassy or consul may extend beyond the term of an ambassador/diplomat's or consul's posting in the receiving State. An ambassador/diplomat who is posted abroad at short notice is normally given some time to tidy up his or her affairs in the receiving State. For example, he or she may decide to leave a family here for a while to allow a child to complete a school year. In such circumstances, any exemption that applied should be allowed to continue for a reasonable period. What constitutes a reasonable period may need to be clarified with the Department of Foreign Affairs.

6 Examples

6.1 Long lease of residential property

John leases a residential property under a 25-year lease to the Ruritanian ambassador for use as her residence. Under section 11, the ambassador is the liable person in relation to the embassy premises. However, she is exempt from the charge to LPT under the 1961 Convention (Article 23). As the property is therefore outside the scope of the Finance (Local Property Tax) Act 2012 (as amended), John does not have to submit an LPT return form to Revenue or to claim an exemption.

6.2 Short lease of residential property followed by sale

Sarah leases a residential property to the Ruritanian ambassador for use as his residence. However, as this property is leased under a 10-year lease, Sarah is the liable person in relation to the property and the property is not exempt under the 1961 Convention. She is therefore chargeable to LPT and must submit an LPT return form to Revenue and pay LPT. However, mid-way through the period of the lease, the Ruritanian State purchases the property (for continuing use as its embassy) from Sarah in August 2022. As a result, Sarah ceases to be the liable person on the following 1 November 2022 liability date and the property becomes non-liable for the year 2023 onwards.

6.3 Properties used for embassy purposes

The Ruritanian ambassador owns several residential properties on behalf of Ruritania. These comprise her residence, an adjacent property used as an office and a property on the grounds of the residence used to house security staff. The residence is exempt from LPT as are the other two properties which are used for the purpose of the embassy.

6.4 Use of property for non-embassy purposes

One of the Ruritanian embassy's administrative staff (who is not an Irish citizen or permanently resident in Ireland) is responsible for purchasing a number of suitable Irish investment properties. Although these properties are held on behalf of the Ruritanian State, they are not exempt from the charge to LPT as they are not used for the purposes of the embassy.

6.5 Residence of an honorary consul and consular premises

The Ruritanian State owns two residential properties in Ireland. The property occupied by the Ruritanian honorary consul as his residence is not exempt from LPT as he is not a career consul. An ancillary residential property that is used exclusively as a consular office is however exempt as a 'consular premises' under the 1963 Convention (Articles 1(j) and 32).

Appendix

RELEVANT EXTRACTS FROM VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961 AND VIENNA CONVENTION ON CONSULAR RELATIONS 1963

1. Vienna Convention on Diplomatic Relations 1961 (emphasis added)

Article 1

(a) The **Head of Mission** is the person charged by the sending State with the duty of acting in that capacity.

(d) The members of the **diplomatic staff** are the members of the staff of the mission having diplomatic rank.

(e) A **diplomatic agent** includes the head of a mission or member of diplomatic staff.

(i) The **premises of the mission** are the buildings or part of the buildings and the land ancillary thereto, **irrespective of ownership**, used for the purposes of the mission **including** the residence of the head of the mission.

Article 14

Heads of mission are divided into three classes, namely:

(a) Ambassadors or nuncios accredited to Heads of State, and other Heads of Mission of equivalent rank;

(b) Envoys, ministers' internuncios accredited to Heads of State; and

(c) Chargés d'Affairs accredited to Minister for Foreign Affairs.

Article 23

1. The **sending State and the head of the mission** shall be exempt from all national, regional or municipal dues and taxes in respect of the **premises of the mission whether owned or leased**, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article **shall not apply** to such dues and taxes payable under the law of the receiving **State by persons contracting with the sending State or the head of the mission**.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(b) dues and taxes on **private immovable property** situated in the territory of the receiving State, **unless he holds it on behalf of the sending State for the purposes of the mission;**

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households.....shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35.

2. Vienna Convention on Consular Relations 1963 (emphasis added)

Article 1

(1)(a) **Consular post** means any consulate general, consulate, vice consulate or consular agency.

(c) **Head of consular post** means the person charged with the duty of acting in that capacity.

(j) **Consular premises** mean the building or part of buildings and the land ancillary thereto, **irrespective of ownership, used exclusively for the purposes of the consular post.**

(2) Consular officers are of two categories, namely **career consular officers** and **honorary consular officers.**

Article 9

Head of consular posts are divided into four classes, namely

- (a) consuls-general;
- (b) consuls;
- (c) vice-consuls;
- (d) consular agents.

Article 32

(1) Consular premises and the residence of the **career head of consular post** of which the sending State or any person acting on behalf is **the owner or lessee** shall be exempt from all national or municipal dues and taxes whatsoever, other than as represent payment for specific services rendered.

(2) The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the law of the receiving State, they are **payable by the person who contracted with the sending State** or with the person acting on its behalf.

Article 49

Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(b) dues or taxes on **private immovable property** situated in the territory of the receiving State, **subject to the provisions of article 32**.

Article 60

1. **Consular premises** of a consular post headed by an **honorary consular officer** of which the **sending State is the owner or lessee** shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article **shall not apply** to such dues and taxes if, under the laws and regulations of the receiving State, they are **payable by the person who contracted with the sending State**.