Exemption for residential properties fully subject to commercial rates

Part 02-02

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

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1 Introduction

A property that is **wholly** used as a dwelling and, in respect of which, commercial rates are payable to a local authority, is exempt from the charge to local property tax (LPT). Such properties are relatively uncommon. What is more common is for a single property to have both a residential and a 'commercial' part, in which case local authority rates are payable only in respect of the commercial part of the property. Such mixed-use properties do not qualify for this 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 manual. Whether a property is chargeable to commercial rates is a matter for the relevant local authority and not for Revenue.

2 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 and, for the most part, these are not residential properties.

Section 14(2) of the Finance (Local Property Tax) Act 2012 (as amended), which provided for the continuation of an exemption throughout the first valuation period covering the years 2013 to 2021, does not apply to the second valuation period covering the years 2022 to 2025. This allows for the ending of this exemption during this latter period where the qualifying conditions cease to be met.

3 Residential properties wholly used as a dwelling and fully subject to commercial rates

To qualify for the exemption, section 4 requires that a property is **wholly** used as a dwelling **and** that commercial rates are payable in respect of the property. This means that the entire property must be used for residential purposes and be subject to commercial rates. See example 8.1 below.

Commercial rates must actually be payable in respect of a property. This means that properties that are exempted from the payment of commercial rates do not qualify for the exemption. Schedule 4 to the Valuation Act 2001 contains a list of the various types of properties that are exempted from the payment of commercial rates. An example of such a property is a constituency office of a TD, Senator or MEP. Where such an office is a building that was built for use as a dwelling house[1], the property is chargeable to LPT if it remains suitable for use as a dwelling. See example 8.2 below.

Properties that can qualify for this exemption would typically be used in the tourist accommodation sector. An example of where commercial rates are payable in respect of an entire residential property is what the Valuation Act 2001 calls an "apart-hotel": i.e. an apartment block that is used for the trade of hotel-keeping. Guesthouses that are registered as such with Fáilte Ireland[2] are also treated as fully subject to commercial rates. See example in section 8.1 below. 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 cottages and residential properties that are integral to holiday villages. Therefore, such properties are fully chargeable to LPT. See example 8.3 below.

3.1 Mixed-use properties

Section 4 specifically excludes "mixed hereditaments"[3] from the exemption. These are properties that are used as a dwelling to a significant extent in addition to being used for non-residential purposes to a significant extent. See examples 8.4 and 8.5 below. 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(s) 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 part of the value attributable to the residential part of the property is disregarded for the purposes of commercial rates.

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[1]Suitable for use as a dwelling in accordance with definition of "residential property" in section 2A.

[2] 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.

[3] Within the meaning of the Local Government (Financial Provisions) Act 1978 – defined as "a hereditament

Where commercial rates are chargeable in respect of the non-residential part of a property, the remaining residential part of the property is chargeable to LPT. The commercial part can be disregarded for the purposes of establishing the chargeable value of the property for LPT purposes. As with any other property, the chargeable value[4] 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 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 in practice.**

4 Claiming the exemption

How the exemption is to be claimed depends on when the qualifying conditions are met: i.e. property wholly used as a dwelling and commercial rates payable (see section 3 above). A property cannot qualify for the exemption unless the exemption is claimed.[5] As the exemption is claimed as part of the normal self-assessment process, it is not necessary for the claim to be approved by Revenue. However, see section 6 below in relation to Revenue's compliance programme.

4.1 Qualifying conditions met on 1 November 2021

Where the qualifying conditions for the exemption are met on the second valuation date[6] 1 November 2021, the exemption should be claimed in the LPT1 return form by inserting the code "5" in the exemption box. This claim covers the years 2022 to 2025. See example 8.7 below.

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which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent".

[4] "chargeable value" defined in section 2.

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

[6] 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. This claim covers the remaining years in the second valuation period 2022 to 2025. See example 8.8 below.

Where a property is acquired after 1 November 2021 from a person who claimed the exemption, the new owner does not then have to claim the exemption where the qualifying conditions continue to be met. However, where a property that does not meet the qualifying conditions on 1 November 2021 is acquired after this date and then meets the qualifying conditions, the new owner should claim the exemption.

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).

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. See example 8.6 below.

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.

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. See example 8.9 below.

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.

6 Self-assessment and compliance

The exemption is claimed 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 ongoing 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.

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.[7]

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).[8] However, the TAC can decide to allow appeals made outside this timeframe in certain circumstances. See Tax and Duty Manual Part 09-01 for information on the LPT appeals procedures.

8 Examples illustrating the operation of the exemption

8.1 Property fully subject to commercial rates

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 allowance for the residential element. The LPT exemption therefore applies.

[7] Section 147.

[8] Section 41B.

8.2 Property exempted from payment of commercial rates

A TD acquires a new house and decides to start using her former house as her constituency office. Although no longer used as a dwelling, the constituency office is still suitable for use as a dwelling and therefore comes within the definition of "residential property" for LPT purposes. As a TD's constituency office is exempt from local authority rates, the LPT exemption does not apply and the property is fully chargeable to LPT.

8.3 Commercial rates not payable

Jane owns a residential property that she 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.

8.4 Mixed-use property – commercial rates payable

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 on 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 should be factored in when establishing the chargeable value of the residential quarter.

8.5 Home office – not a mixed-use property

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.

8.6 Property exempt on 1 May 2013

Margaret qualified for the exemption in respect of her guesthouse on 1 May 2013. In April 2015 she ceased her guesthouse business and started to use the property for a purpose that was exempted from the payment of commercial rates. However, she continued to qualify for the LPT exemption for the entire first valuation period covering the years 2013 to 2021. She then became chargeable for LPT in relation to the second valuation date 1 November 2021 covering the years 2022 to 2025.

8.7 Property sold after 1 November 2021

Ciara met the qualifying conditions for her guesthouse on 1 November 2021 and claimed the exemption on her LPT1 return form. She later sells the property in July 2023 to Joe who continues to operate the guesthouse. Ciara qualifies for the exemption for the years 2022 and 2023 as she is the liable person in relation to the liability dates 1 November 2021 (for the year 2022) and 1 November 2022 (for the year 2023. The exemption continues for Joe for the years 2024 and 2025 as he is the liable person in relation to the liability dates 1 November 2023 and 1 November 2024.

8.8 Qualifying conditions met after 1 November 2021

Grainne purchases a property with 6 bedrooms and starts using it as a guesthouse in April 2022. The property is fully subject to commercial rates. She claims the exemption in respect of the following liability date 1 November 2022 which will apply for the remaining years in the second valuation period (i.e. 2023 to 2025), assuming, of course, the qualifying conditions continue to be met. The exemption should be claimed online by Grainne using MyEnquiries, ROS or the LPT online service or by writing to LPT Branch, PO Box 100, Ennis, Co. Clare. The claim should include any relevant documentation in support of the claim. The previous owner is liable for LPT in respect of the year 2022.

8.9 Qualifying conditions cease to be met

Paul qualifies for the exemption in respect of his guesthouse for the years 2022 and 2023. However, in February 2023 he stops running his guesthouse business and starts to use the entire property as his home. As he qualified for the exemption on 1 November 2022, the exemption applies for the full year 2023 notwithstanding that he stops meeting the qualifying conditions in February 2023. The property then becomes chargeable to LPT on the following liability date 1 November 2023 and Paul is liable for LPT for the years 2024 and 2025.