Exemption for newly constructed and unused residential properties

Part 02-04

This document should be read in conjunction with sections 6 and 9 Finance (Local Property Tax) Act 2012 (as amended)

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1 Introduction

Certain residential properties that were constructed by a builder or a property developer (whether an individual, partnership or a company) as part of their building or property development trade were exempt from local property tax (LPT). These were properties that were completed but not yet sold and not yet used as a residence.

The exemption applied for the first valuation period covering the years 2013 to 2021. The Finance (Local Property Tax) (Amendment) Act 2021 (section 10) terminated the exemption for years after the year 2021.

The exemption continued under section 9 for a new owner who purchased such a new and unused property from a builder or a property developer in the period 1 January 2013 to 31 October 2021. See Tax and Duty Manual Part 02-08 for details of this exemption. This exemption was also terminated after the year 2021.

2 Legislation

The relevant provisions are contained in section 6. The continuation of the exemption following a sale is provided for by section 9. Also relevant is section 89 Taxes Consolidation Act (TCA) 1997 which defines “trading stock”.

Under section 14(2), a property that was exempt on the first valuation date 1 May 2013 continued to be exempt until the second valuation date 1 November 2021.

The Finance (Local Property Tax) (Amendment) Act 2021 (section 10) terminated the exemption after the year 2021.

3 Qualifying conditions

All the conditions outlined in sections 3.1 to 3.3 below must have been met before the exemption could be claimed.

3.1 New, unsold and unused

The property must have been completed and been an actual residential property suitable for use as a dwelling. The property must have been owned by a builder or a property developer. The property must not have been sold and must not have been used as a residence. This means that if the property was occupied by the builder or property developer, or by any other person, whether or not any rent was paid for that occupation, the exemption did not apply.

3.2 No income generated by property

The property must not have generated any income that would have been subject to income tax or corporation tax under Case I, Case IV or Case V of Schedule D. This precluded the receipt of any type of income including, for example, the receipt of a non-refundable deposit (Case I), income from granting a licence to use the property (Case IV) and rental income (Case V).

3.3 Trading stock

The property must have been treated for tax purposes as "trading stock" of a builder or a property developer. Trading stock takes its meaning from section 89 TCA 1997. Essentially, this meant that it was a property that the builder or the property developer had constructed with the intention of selling it as part of a trade. This condition excluded any property that was constructed by anyone who was not carrying on a building trade, or that was constructed by a builder who had been engaged to do so by a person who owned a site.

3.4 Receivers and liquidators

Where a receiver or a liquidator took control of properties owned by a builder or a property developer, Revenue took the view that those properties continued to be exempt where the receiver or the liquidator met all the qualifying conditions for the exemption, other than being the owner of the properties.

4 Duration of exemption

A property that was exempt from the charge to LPT on the first valuation date 1 May 2013 was not chargeable until the second valuation date 1 November 2021.[1] This was the position regardless of whether any of the qualifying conditions ceased to be met in the intervening period.

5 Claiming the exemption

Where a property met all the qualifying conditions on 1 May 2013, the builder or the property developer was to file the LPT1 return and claim the exemption on that return as part of the normal self-assessment process. The code "C" was to be inserted in the exemption box on the return form.

[1] 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.

Where a property had not reached the stage of construction at which it was suitable for use as a dwelling until after 1 May 2013, it was outside the scope of LPT for the first valuation period covering the years 2013 to 2021. However, where Revenue issued a return form in respect of the property, the person to whom the return was sent was to write to Revenue stating the reason he or she was not a liable person.

6 Examples illustrating operation of exemption

6.1 Property not trading stock of owner

Larry was a farmer who engaged a builder to build a house on a site on his farm that he intended to give to his daughter as soon as the house was finished. Before the house was finished, Larry's daughter emigrated permanently, and Larry decided to sell the house and give her the proceeds. The house was finished and sold in September 2013 at which point it became occupied as a dwelling. Because Larry did not carry on the trade of a builder or a property developer the house was not treated as part of his trading stock. Larry's gain on the sale was chargeable to capital gains tax and not income tax on trading profits. The LPT exemption did not apply. However, because the house was not finished until after 1 May 2013, it was outside the scope of LPT for the years 2013 to 2021, the first valuation period. The new owner became the liable person in respect of the liability date 1 November 2021 and was liable for LPT from 1 January 2022.

6.2 Construction company with property rental business

Property Construction Ltd. carried on a trade of constructing residential properties for sale. It also constructed properties with the intention of retaining them for use in its property rental business. Some of these rental properties were vacant since their completion because the company was not able to find tenants for them. These properties were not eligible for the exemption because they were treated as fixed assets of the company for tax purposes and not as trading stock.

6.3 Development with properties at varying stages of completion/use

Eoin was a property developer who was working on a housing development comprising fifty houses. At 1 May 2013 (the first valuation and liability date for LPT) the position with the fifty houses was as follows:

- ten were sold
- fifteen were let under a 'rent-to-buy' type of arrangement in the hope that the people living in the houses for a trial period would then decide to buy them
- one was occupied by Eoin's brother on a rent-free basis until February 2013 and then became unoccupied
- fifteen continued to be unused and unoccupied
- nine were still in the process of being constructed

The only houses that were eligible for the exemption were the fifteen houses that were unused since their completion. Eoin claimed the exemption for these fifteen houses on his LPT1 return form. The nine houses that were not completed were outside the scope of LPT as they did not come within the definition of "residential property" on 1 May 2013, and so Eoin did not have to file a return for these houses.

7 Self-assessment and compliance

The exemption was to 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 ongoing compliance programme. This may involve requiring the person to provide evidence and supporting documentation to back up the claim for exemption. Where the validity of a claim is being verified by Revenue, the person should provide evidence that shows that a property was part of the trading stock of the business such as the accounts prepared for income tax or corporation tax purposes. The Revenue Division responsible for the person's tax affairs is best placed to make the decision on whether the person was carrying on a building or a property development trade.