Long-term mental or physical infirmity

Part 02-03

This document should be read in conjunction with section 5 Finance (Local Property Tax) Act 2012 (as amended)

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1 Introduction

This manual deals with two different exemptions from local property tax (LPT) relating to those who have a long-term mental or physical infirmity. The first exemption is for residential properties that are vacant because their owners, who suffer from a long-term mental or physical infirmity, are unable to continue living in them. The second exemption is for nursing homes.

2 Legislation

The relevant provisions are contained in section 5 of the Finance (Local Property Tax) Act 2012 (as amended). Paragraph (a) refers to the long-term mental or physical infirmity aspect of the exemption. Paragraph (b) refers to nursing homes and states that the nursing home must be registered under section 4 of the Health (Nursing Homes) Act 1990. However, this reference may be taken to be a reference to section 49 of the Health Act 2007, which is the current provision under which registration of nursing homes is required.

3 Qualifying conditions

3.1 Use as sole or main residence

Before it was vacated, the property must have been occupied as the person's sole or main residence.

3.2 Long-term mental or physical infirmity

The property must have been vacated by the person because he or she is unable to continue living there because of a long-term mental or physical infirmity. It is not necessary that the infirm person be elderly. The particular infirmity and its long-term nature must be independently verified and certified by a doctor. Essentially, a condition that has lasted for at least 12 months, or that is considered by a doctor to be likely to last for at least 12 months, is regarded as sufficiently long-term for this exemption.

Where the property has already been vacated for at least 12 months on 1 May 2013, a doctor must certify the infirmity. If the property has been vacated for less than 12 months, a doctor must certify the infirmity and be satisfied that the person is unlikely to resume occupation of the property at any stage after 1 May 2013.

In the case of a property that has been vacated for less than 12 months, provided that a doctor is satisfied on 1 May 2013 that an infirm person is unlikely to resume occupation of the property in the future, a subsequent re-occupation of the property by the person will not cause the exemption to be withdrawn retrospectively. Nor will a subsequent re-occupation of the property by an infirm person who had lived elsewhere for at least 12 months cause the exemption to be withdrawn retrospectively. This is because of the general rule that where a property is exempt on the first liability date of a valuation period, it remains exempt until the first liability date of the following valuation period (see part 4 of manual 2.1 for details).

Example 1 –
Ellen who is aged 72 lives alone. She is admitted to hospital after suffering a stroke in April 2013. Following her discharge from hospital, she spends some time in a convalescent home and on the advice of her consultant goes to live with her daughter. Her consultant certifies that her condition after the stroke means that she is unlikely to return to her home at any stage in the future. Therefore, she meets the necessary condition in relation to a doctor's certification of long-term physical or mental infirmity. If it happens that Ellen recovers sufficiently and moves back home before the following valuation date of 1 November 2020, her property will continue to be exempt until that valuation date but will then become chargeable in respect of the years 2021 to 2023.

3.3 Vacant property

Section 5 contains a proviso that a property must remain vacant and must not be occupied by any person other than the infirm person during the period for which the exemption applies. However, because the general rule described in manual 2.1 (part 4) is not disapplied, where a property is exempt on the first liability date of a valuation period, it remains exempt until the first liability date of the following valuation period. Therefore, where a property is not occupied on 1 May 2013 by any other person such as the infirm person's spouse, a family member or an unrelated tenant, it is exempt until the following valuation date of 1 November 2020. However, occupation is not simply a question of being physically present in the property but of having the right to occupy coupled with actual occupation. Therefore, it is not sufficient that the property be vacant on 1 May 2013 where there is a person who habitually occupies the property but is not in occupation on that particular date.

Where a liable person has transferred ownership of the property before 1 May 2013 because he or she will not resume occupation, it is not relevant for the purposes of this exemption whether the new owner occupies the property. The new owner becomes the liable person and the exemption does not apply.

Example 2 –
Tom is 35 and suffered a serious head injury following a fall in January 2012. After a long stay in hospital he went to live with his parents as he is unable to live independently. By 1 May 2013 he had been living away from his house for over 12 months. However, the property is not eligible for an exemption as John, one of Tom's friends, has had the use of the property whenever he wanted and has been staying there since Tom moved out. John, who regularly works abroad, was out of the country on 1 May 2013 but occupied the property again when he was off work for the month of July 2013.

Example 3 –
Philip is an elderly man who has been living with his daughter Joan since March 2011. Joan first let Philip's house in August 2011, but the tenants left in October 2012. The house has been vacant since then. As Joan was still looking for new tenants on 1 May 2013, the exemption applies.

Example 4 –
May is an elderly lady who lived alone before moving into a nursing home in January 2013. Before she moved, she transferred her house to her two adult children. The house has remained vacant and, while her children do not intend to live there, they do not wish to sell it in case their mother wants to return at some stage. The exemption does not apply as May's children are both liable persons in relation to the house on 1 May 2013.

3.4 Location of liable person

Because section 5 also provides for an exemption for nursing homes, it might be assumed that the liable person who has vacated his or her home must go to live in a nursing home. However, this is not the case. For example, as an alternative to living in a nursing home, the infirm person could go to live with a relative or a friend.

3.5 Sole liable person

Where there is more than one liable person in relation to a property, for example, where the property is jointly owned, all of the liable persons must meet the conditions required for the exemption.

Example 5 –
Jim and his sister Kay jointly own their house. Jim has dementia and has been in a nursing home since 2011. Kay continued to live in the house until she was transferred to Germany when her employer moved there in August 2012. The house has been vacant since she left. The house is not exempt because Kay is a liable person and she did not move out because of a long-term mental or physical infirmity

3.6 Nursing homes (section 5(2)(b) exemption)

A nursing home must be used exclusively for the care of individuals who have been medically certified as suffering from a long-term mental or physical infirmity. It must also be registered under section 49 of the Health Act 2007 (replacement provision for section 4 of the Health (Nursing Homes) Act 1990).

4 Residential units associated with nursing homes

Many nursing homes have separate residential units associated with them that were constructed under a tax incentive scheme.[1] These residential units are not registered under section 49 of the Health Act 2007. The exemption applies only to the nursing home itself and does not extend to such residential units

[1] Section 268(3A) TCA 1997 contains the provisions for the nursing home residential unit tax incentive scheme.

5 Claiming the exemption

The person who otherwise would be liable to LPT on 1 May 2013 but who meets the qualifying conditions for an exemption should claim the exemption on the LPT1 return form as part of the normal self-assessment process. The code “H” should be inserted in the exemption box on the return form by a person claiming exemption under section 5(2)(a). In the case of a registered nursing home, the relevant code is “G”.[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 claim the exemption or file a return for the first valuation period 1 May 2013 to 31 October 2020. However, where a property that was not exempt on 1 May 2013 is acquired after 1 May 2013 and becomes exempt, the new owner should claim the exemption.

6 Duration of exemption

The general 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 following valuation date. This means that a property that was exempt on 1 May 2013 will continue to be exempt until 1 November 2020, regardless of whether the qualifying conditions cease to be satisfied in the intervening period. The duration of the first valuation period was extended by four years and now ends on 31 October 2020.

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 registration of the nursing home, a doctor’s certification of the nature of the infirmity and the likelihood of the person resuming occupation of his or her property or evidence that the person is living elsewhere.

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