Newly constructed and unused residential properties

Part 02-04

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

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Introduction

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

The exemption will continue under section 9 of the Finance (Local Property Tax) Act 2012 (as amended) for a new owner, where he or she purchases such new and unused properties from a builder or a property developer in the period 1 January 2013 to 31 October 2020. See Tax and Duty Manual Part 02-08 for full details of this exemption.

1 Legislation

The relevant provisions are contained in section 6 of the Finance (Local Property Tax) Act 2012 (as amended). Also relevant is section 89 Taxes Consolidation Act (TCA) 1997 which defines "trading stock".

2 Qualifying conditions

All the conditions outlined in sections 2.1 to 2.3 below must be met before the exemption can be claimed.

2.1 New, unsold and unused

The property must have been completed and be an actual residential property suitable for use as a dwelling. A builder or a property developer must be the owner. The property must not have been sold and must not have been used as a residence. Therefore, if it is occupied by the builder or property developer or by any other person, whether or not any rent is paid for that occupation, the exemption does not apply.

2.2 Property does not generate income

The property must not have generated any income that would be subject to income tax or corporation tax under Case 1, Case 1V or Case V of Schedule D. This rules out the receipt of any type of income and includes, for example, the receipt of a non-refundable deposit (Case 1), income from granting a licence to use the property (Case IV) and rental income (Case V).

2.3 Trading stock

The property must be treated for tax purposes as trading stock of the builder or property developer. Trading stock takes its meaning from section 89 TCA 1997. Essentially, this means that it is a property that the builder or property developer has constructed with the intention of selling it as part of a trade. This condition rules out a property that is constructed by anyone who is not carrying on a building trade, or that is constructed by a builder who has been engaged to do so by a person who owns a site.

3 Receivers and liquidators

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

4 Claiming the exemption

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

Where a property has not reached the stage of construction at which it is suitable for use as a dwelling until after 1 May 2013, it is outside the scope of LPT for the first valuation period of 1 May 2013 to 31 October 2020. However, it may happen that Revenue issues a return form in respect of the property. Where this happens, the person to whom the return is sent should write to Revenue stating the reason he or she is not a liable person.

5 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.

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

6 Examples

Example 1 –

Larry is a farmer who engages a builder to build a house on a site on his farm that he intends to give to his daughter as soon as the house is completed. Prior to completion of the house, Larry's daughter emigrates permanently, and Larry decides to sell the house and give her the proceeds. The house is completed and sold in September 2013 at which point it becomes occupied as a dwelling. Because Larry does not carry on the trade of a builder or a property developer the house is not treated as part of his trading stock. Larry's gain on the sale is chargeable to capital gains tax and not income tax on trading profits. The LPT exemption does not apply. However, because the house was only completed after 1 May 2013, it is outside the scope of LPT for the first valuation period. The new owner will become the liable person in respect of the liability date 1 November 2020 and will be due to pay LPT from 1 January 2021.

Example 2 –

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

Example 3 –

Owen is a property developer who has completed a housing development consisting of fifty houses. The development has been completed since 2011 and the position with the fifty houses is as follows:

- ten have been sold
- fifteen have been let under a 'Rent-to-Buy' type of arrangement in the hope that the people living in the houses for a trial period will then decide to buy them
- one was occupied by his brother on a rent-free basis until February 2013 and is now unoccupied
- fifteen have continued to be unused and unoccupied
- nine are still in the process of being constructed

The only houses that are eligible for the exemption are the fifteen houses that have been unused since their completion. Owen should claim an exemption for these fifteen houses when he completes his online LPT1 return form before 28 May 2013. The nine houses that have not been completed are outside the scope of LPT as they do not come within the definition of "residential property" on 1 May 2013, and so Owen does not have to file a return for these houses.

7 Self-assessment and compliance

The exemption should be claimed on the LPT 1 return form by the person to whom the return was sent 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. 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 Branch responsible for the person's tax affairs is best placed to make the decision on whether the person is carrying on a building or a property development trade.