Permanently and totally incapacitated individuals

Part 02-11

This document should be read in conjunction with section 10B of the Finance (Local Property Tax) Act 2012

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Contents

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Introduction

This exemption from local property tax (LPT) relates to residential properties that are constructed, purchased or adapted because of their suitability, or to make them suitable, for occupation as a residence by certain severely incapacitated individuals. These are individuals who are permanently incapacitated to such an extent that they are unable to maintain themselves by earning an income from working and whose condition is so severe that it dictates the type of property that they can live in.

The exemption may be claimed in respect of a property that was acquired or adapted before the first liability date of 1 May 2013 provided that the qualifying conditions are met. There is no requirement for the incapacitated individual to be the liable person in relation to the property.

This exemption should not be confused with the relief under section 15A of the Finance (Local Property Tax) Act 2012 (as amended) that applies to residential properties that are adapted to make them more suitable for occupation by a disabled individual. Section 15A relief does not involve an exemption from the charge to LPT but, instead, allows the chargeable value of a property to be reduced in certain circumstances. See Instruction 4.3 for full details of this latter relief.

1. Legislation

The relevant provisions are contained in section 10B of the Finance (Local Property Tax) Act 2012 which was inserted in that Act by section 2(d) of the Finance (Local Property Tax)(Amendment) Act 2013. Also relevant to this exemption are the provisions of section 189 and 189A of the Taxes Consolidation Act (TCA) 1997. Section 189 of that Act provides income tax and capital gains tax relief in respect of personal injury award monies received by an incapacitated individual.1 Section 189A provides similar tax relief in respect of trust income where a trust fund has been established for the benefit of an incapacitated individual.

Section 10B was amended by section 6 of the Finance (Local Property Tax)(Amendment) Act 2015 to give effect to a practice that had been applied on an administrative basis whereby the requirement that an incapacitated individual must have benefited from a court or an Injuries Board[2] award or a public trust fund was relaxed in certain circumstances.

The 2015 Act introduced a requirement for the publication of guidelines in relation to the availability of this exemption. These guidelines, the content of which has been incorporated to a large extent into this instruction, are published on the Revenue website.

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[1] The Manual Part 07-01-02 in the Income Tax Capital Gains Tax Corporation Tax Manuals deals with the provisions of section 189 TCA 1997.

[2] Formerly called the Personal Injuries Assessment Board.

2. Qualifying conditions

In summary, a property qualifies for exemption where:

- It is occupied as a sole or main residence by an incapacitated individual-
  - who has received a court or an Injuries Board award (section 189(1)(b) TCA 1997) or who is a beneficiary of a public trust fund (section 189A TCA 1997), or
  - who has not received a court or an Injuries Board award or benefited from a public trust fund but who has been certified by a doctor as being permanently and totally incapacitated and whose application for exemption has been approved by Revenue, and
- It is acquired because of its suitability for occupation by an incapacitated individual, or has been adapted at a cost of more than 25% of the value of the property before adaptation, to make it more suitable for such occupation.

These conditions are described in detail in sections 2.1 to 2.5 below.

2.1 Incapacity

2.1.1 Nature and extent of incapacity

Section 189A TCA 1997 defines the term “incapacitated individual” and this definition also applies for the purposes of relief under section 10B. An incapacitated individual is someone who is “permanently and totally incapacitated, by reason of mental or physical infirmity, from being able to maintain himself or herself”. “Maintain” in this context means to support oneself by earning an income from working. Total incapacity therefore means that an individual is not capable of earning a living from any kind of work. The incapacity must also be permanent, i.e. there must be no prospect of the individual recovering or of the condition improving to the extent that the individual is able to maintain himself or herself.

This is quite a high threshold of incapacity. For example, a visually impaired individual or an individual who has lost the use of his or her legs could be described as permanently incapacitated but not necessarily totally incapacitated or incapable of maintaining himself or herself by working.

It is not possible to provide a list of medical conditions that can be accepted automatically as meeting the requirements for relief. There are inevitably variations in the severity of many conditions; an individual who has a mild form of a particular condition may not meet the requirements for the relief while someone with a severe form of the same condition may do so. Ultimately, whether a property is eligible for

LPT exemption will be determined by the nature and extent of the individual's incapacity, whatever his or her underlying condition.

Although elderly people above retirement age do not generally maintain themselves by working to earn an income, infirmity or reduced capacity that is attributable **solely** to old age and not to any underlying medical condition is not treated as permanent and total incapacity for the purposes of eligibility for the LPT exemption.

2.1.2 Establishment of incapacity

The payment of a court award or an Injuries Board award involves an assessment of the severity of an individual's incapacity. Public trust funds tend to be established in the case of very severe incapacity. Following the payment of such an award or the establishment of a public trust fund, the LPT exemption is claimed on a self-assessment basis without the need to apply to Revenue.

Where an award is not received or a public trust fund is not established, the liable person in relation to the property for which an exemption is sought, and who satisfies the other required conditions for the LPT exemption (see sections 3.3, 3.4 and 3.5 below), must apply to Revenue for the exemption. The application form for this purpose is included in Annex 2 of the published Revenue guidelines. The primary purpose of this form is to establish that the particular property is occupied by an individual who is permanently and totally incapacitated to the extent that he or she is incapable of maintaining himself or herself by working and earning an income and that the particular property has been acquired and/or adapted for the purpose of its suitability for such occupation. An incapacitated individual's doctor is required to provide certain information in relation to the individual's condition on the application form, focusing primarily on the individual's degree of incapacity/mobility. Thus, information must be provided in relation to:

- The nature and the extent of the incapacity;
- Whether there is any prospect of improvement in the condition;
- How mobile the incapacitated individual is;
- The degree to which the individual's incapacity has affected his or her mobility.

2.1.3 Individuals under the age of 16 years

Where a Domiciliary Care Allowance is paid by the Department of Social Protection, Revenue does not require that incapacity be established by reference to whether the individual is permanently and totally incapacitated to the extent that he or she is unable to maintain himself or herself by working and earning an income. This allowance is paid by the Department of Social Protection in respect of children (i.e. under the age of 16) who have a disability so severe that they need care and attention and/or supervision substantially in excess of other children of the same age. This care and attention must be given by another person, almost all of the time, so that the children can deal with the activities of daily living. They must be likely to require this level of care and attention for at least 12 months.

For the purposes of claiming the LPT exemption, a doctor is not required to provide information in relation to a child’s incapacity. However, an occupational therapist is required to provide information on the extent to which the incapacity has affected the child’s mobility and the reason why the particular property and/or adaptations were considered necessary.

2.2 Monetary award or trust fund

Section 189(1)(b) TCA 1997 refers to orders made by the Injuries Board or civil actions for damages. As a result of a personal injury that caused a mental or physical infirmity, an incapacitated individual must have been awarded compensation by a court or the Injuries Board. In the case of the Injuries Board, it is sufficient that the Board makes an offer of compensation to an individual as the individual has the option of declining any offer and, instead, pursuing his or her claim through the courts. Many of the personal injuries in respect of which awards are made by the Injuries Board are of a relatively minor nature so that an award in itself is not a sufficient condition for exemption.

Alternatively, the incapacitated individual must be a beneficiary of a trust fund that was established specifically for the individual’s benefit. Existing provisions in the TCA 1997 in relation to income tax relief are adopted for the purpose of this LPT exemption. Section 189A(1) TCA 1997 sets out quite detailed conditions in relation to a ‘qualifying’ trust fund. These are that:

- The trust fund results from a public appeal for the purpose of benefiting one or more incapacitated individuals whose identity is known to the donors,
- The total amount of the subscriptions to the trust must not exceed €381,000,
- No single individual can contribute more than 30% of the trust funds,
- The trust funds must be applied at the discretion of the trustees, and
- The trustees must not be connected with the incapacitated individual.

It is not necessary that the personal injury award or the income from the trust actually be used for the acquisition or adaptation of the residential property in respect of which the exemption is claimed. For example, such monies could be used to fund medical care and the property acquisition/adaptation could be funded by other means such as a mortgage.

As stated in section 2.1.2 above, neither a court or Injuries Board award or the establishment of a public trust fund is required where an incapacitated individual’s doctor certifies that the individual is permanently and totally incapacitated to such an extent that he or she is unable to maintain himself or herself by earning an income from working and that the condition is so severe that it dictates the type of property that the individual can live in.

2.3 Acquisition of property and its suitability

The way in which the residential property in respect of which exemption is claimed is acquired is not relevant; it can be constructed, purchased or received by way of a gift. The necessary condition is that it is acquired because of its suitability for occupation by the incapacitated individual. Where an existing property is adapted, the adaptation work must be carried out for the purpose of making the property more suitable for occupation by the incapacitated individual.

The linking of the incapacity with the suitability for occupation requirement effectively means that the nature of the incapacity will invariably relate to the physical mobility of an individual and not to intellectual or sensory incapacity. For example, individuals who have certain sensory or intellectual disabilities may be capable of living in a normal property whereas individuals who have severe mobility difficulties may require a suitably adapted property.

The purpose of acquiring a particular property or adapting a property must be to facilitate its occupation by an incapacitated individual. LPT exemption is not available where general improvements/maintenance works have been carried out or work that is of general benefit to the household rather than specifically addressing the special needs of an incapacitated individual. The key question is whether it would be possible for the incapacitated individual to occupy a 'normal' property.

2.4 Expenditure on adaptations

In the case of adaptations to an existing property, the exemption does not apply unless the cost of the adaptation work when it is completed exceeds 25% of the chargeable value of the property before the adaptation work is carried out. A liable person should therefore establish the chargeable value of his or her property both before and after the work is carried out. In the case of adaptation work that was carried out before the 1 May 2013, a liable person is required to retrospectively establish the chargeable value that would have applied before the adaptation work was carried out.

2.5 Occupation by the incapacitated individual

There is no requirement for the incapacitated individual to be the liable person in relation to the property. What is required is that he or she occupies the property as his or her sole or main residence before the exemption is first claimed. However, the exemption can continue to apply after the incapacitated individual ceases to occupy the property as long as the property is not sold or otherwise transferred, such as by way of a gift or an inheritance. The exemption does not terminate following a sale or a transfer of the property provided that the incapacitated individual continues to live there.

There is no requirement for an incapacitated individual to live in the exempt property on a full-time basis. For example, he or she may spend time away from home for the purpose of receiving medical care.

2.6 Examples

2.6.1

Cian was awarded €35,000 by the Injuries Board in compensation after he was struck by a car while crossing a road near his home. Having suffered severe head and neck injuries he was unable to work for two years. However, as the accident did not result in him being totally and permanently incapacitated, his main residence is not eligible for an exemption from LPT.

2.6.2

Michael and Emily receive a large court award because their daughter Mary has been left severely incapacitated following a difficult birth. Her condition will inevitably deteriorate as she gets older to the extent that she will be totally and permanently incapacitated and unable to maintain herself. Her parents know that they will either have to carry out extensive adaptations to their house to make it suitable for Mary or purchase a more suitable house. In the meantime, they expect that most of the court award will be spent on medical care. Until such time as the house is adapted it is chargeable to LPT.

2.6.3

Jim was a well-known athlete who became quadriplegic and confined to bed after a serious accident a number of years ago. Following a nationwide appeal, a trust fund was established for his benefit. His two-storey house was extensively adapted to make it suitable for occupation by himself and his wife, Joan. Most of the adaptation work was carried out on the ground floor to facilitate the need for essential equipment such as a hospital bed, a large hoist, an industrial fan, a trolley table and an airflow mattress pump. Special access to the house was also required because his specially designed wheelchair/bed was longer and wider than a standard wheelchair. The second floor was adapted to make it suitable as living quarters for Joan.

Joan engaged a property valuer who estimates that the chargeable value of the house for LPT purposes before the adaptation work was carried out in 2007 was €300,000. The cost of the adaptation work was €120,000, which exceeds 25% of the chargeable value of the property, as valued before the work was carried out. Even though the adaptation work was carried out before 1 May 2013, Jim and Joan qualify for an exemption.

If the public trust fund had not been established for Jim's benefit, the property could still qualify for an exemption if Jim's doctor is satisfied that he is incapacitated to such an extent that he will never be able to maintain himself by earning an income from working and that he could not have lived in his house if it had not been suitably adapted. In this situation, Jim and Joan would be required to submit an application form to Revenue for approval of the exemption.

3. Claiming the exemption

The person who without the exemption would be liable to LPT on 1 May 2013 should claim the exemption on the LPT1 return form as part of the normal self-assessment process. The code "I" should be inserted in the exemption box on the return.[3] Where a property that was not exempt on 1 May 2013 is acquired or adapted after 1 May 2013 and becomes exempt, the new owner should claim the exemption.

The revised treatment of properties that are occupied by incapacitated individuals who did not receive a court or Injuries Board award or benefit from a public trust fund applies retrospectively to 1 July 2013. This means that there will be some liable persons who have paid LPT before the revised treatment came into effect and who are now entitled to a refund of the LPT paid. Such individuals can not claim the exemption on a self-assessment basis but must, instead, submit the relevant application form (included in Annex 2 to the published Revenue guidelines) to Revenue who may seek additional information if considered necessary before determining the validity of the claim. Revenue will refund any overpaid tax where it approves the exemption, subject to the liable person not having any other outstanding tax liabilities.

4. Duration of exemption

The property ceases to be exempt when it is sold or otherwise transferred such as by way of a gift or an inheritance unless the incapacitated individual continues to occupy the property as his or her sole or main residence.

The usual 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 next valuation date. This means that a property that was exempt on 1 May 2013 will continue to be exempt until 1 November 2019, regardless of whether the qualifying conditions cease to be satisfied in the intervening period. The duration of the first valuation period was extended by three years by the Finance (Local Property Tax)(Amendment) Act 2015 and now ends on 31 October 2019.

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

4.1. Examples

4.1.1

Ann lives with her incapacitated mother Carol. She had a bungalow specifically designed and constructed to cater for her mother's needs. As the liable person, and having met all of the necessary conditions for a LPT exemption, she claimed the exemption when she submitted her LPT return form on 6 May 2013. Ann emigrates in September 2014 and gifts the property to her sister Sheila who takes over the care of her mother. Although there has been a change of liable person, the incapacitated individual continues to live in the property. This means that the exemption continues for 2015 and 2016 and Sheila can also claim the exemption when she submits her LPT return which is due on 7 November 2016 in respect of the next valuation period commencing on 1 November 2016.

4.1.2.

Adam is terminally ill and meets all of the conditions necessary to claim a LPT exemption in respect of his specially adapted house. He dies in June 2014 and shortly afterwards his wife sells the house. The LPT exemption continues for the years 2014, 2015 and 2016 until the commencement of the following valuation period, 1 November 2016 (payable in 2017), even though there has been a change of liable person. If, instead, Adam's wife continues to own and live in the property, the exemption continues.

5. Compliance

The exemption should be claimed on the LPT1 return form by the liable person as part of the normal self-assessment process. However, Revenue may decide to examine the validity of a claim as part of its normal compliance programme. This may involve the liable person being required to provide evidence and supporting documentation to prove that the property is exempt. Supporting documentation could include, for example:

- a doctor's letter stating the nature and extent of the individual's incapacity,
- details of the payment of an award from the Injuries Board or from a court,
- details of the trust fund that was established to benefit the incapacitated individual,
- a statement of how the particular property (whether it be constructed, purchased and/or adapted) is required for the nature of the incapacity,
- the cost and details of any adaptation work carried out,
- the chargeable value of the property prior to the adaptation work,
- the chargeable value of the property following the adaptation work.

Where the incapacitated individual did not receive a court or an Injuries Board award, there would not have been any independent assessment of the nature and extent of the particular incapacity. For this reason, a liable person is required to submit the relevant application form to Revenue seeking approval for the exemption. The application form requires an assessment by the incapacitated individual's doctor of the nature and extent of the incapacity and whether the particular property and/or adaptation work was necessary, given the incapacity. This means that Revenue has to examine the validity of the claim at this stage.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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In the case of adaptations to an existing property, the exemption does not apply unless the cost of the adaptation work, when it is completed, exceeds 25% of the chargeable value of the property, as valued before the adaptation work is carried out. Staff will, therefore, have to take account of whether the value that is attributed to the adaptation work seems reasonable given the description of the work that is provided on the application form. This may involve the liable person being required to provide evidence and supporting documentation to back up the value being attributed to the adaptation work.

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