Local Property Tax

O'Hanlon Tax Ltd, 6 City Gate, Lower Bridge Street, Dublin 8, D08F291

Tel: 01 6040280 Fax: 01 6865400 Eml: info@ohanlontax.ie W: www.ohanlontax.ie

Local Property Tax

Local Property Tax (LPT) was introduced by the Finance (LPT) Act 2012 (FLPTA 12) and amended by the Finance (LPT) (Amendment) Act 2013 (FLPTAA 13).

LPT is payable by the owners of residential property, based on the market value of the property. In 2013 the tax will only be in force for 6 months of the year, halving the cost to the taxpayers so the full impact of the new tax will not be felt until 2014.

FAQs have been published to provide some guidance to the new tax and are available on the Revenue website. In addition Revenue have provided an LPT calculator to assist taxpayers in calculating the amount due.

How should a Property be Valued?

LPT is a self assessed tax and the property owner is responsible for valuing the property, filing the return and paying the tax. However, Revenue are taking the unusual approach of sending an estimate of the tax due to each property owner in advance of the return filing date. If a return is not filed, then the amount contained in the estimate will be assessed on the taxpayer by Revenue.

Revenue estimate that there are 1.99 million residential properties in Ireland (which is in line with the 2011 Census figure). Revenue acquired a geo-directory which identifies every residential property in the country, and they have linked this with information from Revenue's own database to create a residential property register for Ireland (also available on the Revenue website).

Revenue's online guidance looks at the following:

- The type of property e.g. detached, semi-detached, apartment etc., and
- The age of the property e.g. whether it was built before the year 2000 or after.

Revenue indicate that their estimate is informed by the average values for properties in an area, but is not an actual valuation of any individual property.

A taxpayer can seek a valuation from a professional valuer. Alternatively Revenue indicate that if the property was purchased or valued in recent years, the relevant value can be used for LPT once it is adjusted for any movements in the market since the date of purchase or valuation. Revenue suggest that other sources of information, such as the property section of local newspapers, information from local estate agents and property websites might be used.

Revenue have confirmed that if a taxpayer values a property using the Revenue guidelines for valuation, then the valuation will not be challenged, if the value is €1m or less. Revenue have reserved the right to review a formal valuation. Once a property is valued for the purposes of paying LPT in 2013, this valuation can be used up to and including the tax year 2016.

Properties Valued at €1m & Under

The Thornhill Report to Government on LPT indicates that circa 73% of the residences in Ireland are likely to be valued at €200,000 or less, and circa 94% are likely to come in at €300,000 or less. The estimates also indicate that only 0.04% of residences (just under 800 homes using a household count of 1.99m) are expected to come in at values higher than €1m.
LPT will apply at a rate of 0.18%, in the case of properties valued at €1m or under. A banded system applies with the first band being €0 to €100,000 and bands increasing in increments of €50,000 thereafter

up to €1m. The 0.18% rate will apply to the mid value of the band and a table illustrating the banded system has been published by Revenue (available on their website).

Example:

A property valued at €395,000, falls into the band from €350,000 to €400,000. The 0.18% rate will apply to the mid value €375,000, resulting in an amount of €675 being payable for a full year.

In 2013, the tax will only apply for 6 months and therefore, €337 will be payable for 2013.

Local authority houses will be deemed to fall into a €0 to €100,000 band so LPT will apply to the mid range of €50,000 at 0.18%, resulting in tax of €90 for a full year (€45 for 2013).

The Mansion Tax (Properties Worth Over €1m)

For properties valued over €1m, LPT will be charged at a rate of 0.25% on the value in excess of €1m. The lower rate of 0.18% will still apply to the first €1m (giving rise to tax of €1,800 on the first €1m in value).

Example:

The owner of a property valued at €1,250,000 will be subject to LPT of €2,425. The first €1m will be taxed at 0.18% giving rise to tax of €1,800. The excess over €1m (€250,000) will be taxed at 0.25% giving rise to LPT of €625, so the total tax for one year will be €2,425.

In 2013, the tax will only apply for 6 months of the year as it is being introduced from July 2013. Therefore only half of the full year's liability (tax of €1,212) will be payable for 2013.

LPT Returns

LPT is calculated on the market value of a property on the liability date (01 May 2013).

Revenue indicate that the most straightforward way to file an LPT Return is to file on-line. If the taxpayer has more than one property which is subject to LPT the return has to be filed online and is due by 28 May 2013, but taxpayers with a single property can file a paper return which is due by 07 May 2013.

The second LPT return will not be due until 07 November 2016 (dealing with the LPT valuation for 2017 to 2019 inclusive) unless circumstances change or a taxpayer wishes to select an alternative payment method, in which case an interim return should be filed.

Who is Liable?

The owner of a residential property on the trigger "liability date" (which is 01 May 2013 for the tax year 2013) is liable to pay the LPT. Joint owners will have a joint and several liability. In the case of properties leased for more than 20 years, the tenant of the property is liable for the tax but in the case of properties leased for a term of 20 years or less, the landlord is liable.

If a person has no legal title to the property but has acquired (or is acquiring) title by adverse possession then he will be liable to LPT. Revenue indicate that a person who has occupied a property on a rent-free basis without challenge, and has a prima facie right to register title under the adverse possession legislation (which normally occurs after 12 years unchallenged occupation) will be the liable person.

Revenue are conscious that difficulties can arise in terms of establishing the ownership of property, and the LPT legislation deals with this by swinging the onus of proof over to the taxpayer.

S. 11 FLPTA 12 provides that the absence of documentary evidence of title to property shall not preclude an assessment, and S. 12 FLPTA 12 provides that it will be presumed (until the contrary is proven) that a person who is in occupation of a relevant residential property, or is in receipt of the rents or profits, is a liable person.

Revenue will not carry out an investigation into the title to any property in any case, but will rely on the taxpayer to set the Revenue Register right in the case of inaccuracies.
In Q. 6 of the LPT Guide Revenue indicate that if an error is made the person getting the LPT correspondence should take steps to correct it, by explaining to Revenue why he is not the liable person, and enclosing any relevant supporting documents such as a copy of a lease agreement if the taxpayer is a short term tenant, or proof of sale of the property before the relevant liability date if the taxpayer is no longer the owner.

Payment of LPT

Taxpayers will have the option of making the payment of LPT in a single payment (by credit card, debit card, debit instruction/bank transfer or cash payment through certain service providers) by 01 July 2013 or by phased payments in equal instalments from 01 July 2013 until the end of the year.

Taxpayers who opt for phased payments will begin payments in July 2013 and can make the payments by:-

- Deduction at source from salary or occupational pension.
- Deduction at source from Department of Social Protection, or Department of Agriculture, Food and the Marine Payments.
- Direct Debit or Debit/Credit Card.
- Cash payments and over the counter Debit/ Credit Card payments through three service providers - An Post, Payzone or Omnivend.

One of the phased payment options being made available is deduction at source from salary or occupational pension. Employers and pension providers may be required to deduct LPT from the owner's net salary/occupational pension, with the deductions spread evenly over the pay periods occurring between July and December 2013, and account for it on a P30.

The full 2014 payment of LPT will be due by 31 January 2014 and phased payments would also begin on this date.

Exemptions from LPT

An LPT exemption will be available for the following properties:

- Newly built, unoccupied and unrented properties purchased between 01 January 2013 and 31 October 2016 (but this exemption will not apply after 31 October 2016).
- Properties subject to commercial rates.
- Mobile homes, vehicles & vessels.
- A home which is unoccupied due to the mental or physical infirmity of the owner.
- Houses in certain "ghost estates" and other unfinished developments (listed in SI 91 of 2013).
- Properties vested in a public or charitable body or organisation and used to provide accommodation for the elderly or disabled.
- A residential property held by a charity which is used for recreational activities in carrying out the main purpose of the charity.
- A residential property purchased or adapted for use as the sole or main residence of a permanently incapacitated individual (under specified housing regulations). The cost of adapting the property must exceed 25% of the chargeable value of the property before it was adapted.
- Residential properties which have been pyrite damaged. Regulations are to be issued by the Minister for the Environment and Local Government to detail how properties will be assessed for pyrite damage and to provide for the issue of certificates.
- Properties bought by first-time buyers between 01 January 2013 and 31 December 2013 in respect of the years 2013, 2014 and 2015.
- Registered nursing homes.

The first time buyer LPT exemption is subject to certain conditions, the main one being that the property must be the person's sole or main residence. If the property is sold or ceases to be the person's main residence between 2013 and 2016, the exemption is lost.

If a land dealer sells a site and the purchaser builds a house himself, and completes it before 01 May 2013, the property will be subject to LPT, unless the owner is eligible for the first time buyer LPT exemption and occupies the property as his sole or main residence.

However, if the building is not completed until after 01 May 2013, no LPT will arise until 2017.

To claim an exemption a taxpayer must complete a Return and indicate the exemption condition that is satisfied.

What is the Conveyancing Impact of LPT?

There are 3 key points:-

- LPT is a charge on the property (with no set time limit),
- LPT clearance will be needed on sale, and the FLPTA 13 sets out some other documents to be

PAC Presentation - Revenue

In her presentation to the Public Accounts Committee on 21 February 2013 the Revenue Chairman Josephine Fehilly indicated that the snitch clause is *"... largely designed as a transparency clause between the buyer and the seller...... A certain amount of administration relating to the property tax must take place at a conveyance.*

Charges will have to be discharged and so on. In the context of the conveyance, we maintain that the seller should tell the purchaser the value he or she put on the property. Presumably the purchaser will wish to assure herself that there is no bill stuck on the property because of a deferral.

One thing the public debate on this clause taught me is that we need to prepare some dedicated guidance on what will happen or on the implications for a conveyance in the context of this new tax...... If someone has made a significant under-declaration, we maintain the purchaser should tell us because if the purchaser is paying a vast price for a house, it is material for her to know how the seller valued it..."

provided on sale,

- There is also a requirement for a purchaser to file an additional return if he has reason to believe that the value set out in the vendor's LPT return was not reasonable (see "snitch" clause below).

Charge on the Property

Any unpaid LPT will remain a charge on the property even after it is sold. S. 36 Statute of Limitations 1957 is specifically over-ridden by the LPT legislation, so there is no time limit for the charge and a purchaser's solicitor will want to check that LPT has been paid in full and that no charge remains on the title.

Documentation to be provided by the Vendor

Where the property is sold between two liability dates, the vendor must provide the following to the new owner:

- Details of the chargeable value on the last valuation date,
- A copy of the return or if no return was made, the estimate which was issued.

A penalty of €500 applies if the relevant documentation is not provided by the vendor.

Obligation of New Owner to File a Return (the "Snitch" Clause)

The new owner must make a new return if it appears to him that the chargeable value returned by the vendor is not a value which could reasonably have been arrived at.

A purchaser's solicitor should advise him of this reporting obligation as the standard penalty of €3,000 for failure to file can apply where an LPT return is due but not filed.

What if a Sale occurs before the LPT is Due?

LPT is triggered by ownership on the liability date (which is 01 May 2013 for 2013) but the tax is not due for 2 months (the payment date is 01 July 2013) so there is a gap between the "trigger" date and the payment.

The FLPTAA 13 confirms that the LPT must be paid on sale if the property is sold in this 2 month period. The vendor (as owner on the liability date) is responsible for making the LPT payment, but the purchaser should confirm the payment has been paid as unpaid LPT is a charge on the property.

Example: Alan owns a house in Dublin and contracts to sell it to Brian on 15 November 2013. 2 LPT payments need to be considered:-

- *The 2013 liability date is 01 May 2013 and the return is due by 07 May 2013*
- *The 2014 liability date is 01 November 2013 and the payment would normally fall due by 01 January 2014. As a sale contract has been signed the due date is brought forward to 15 November 2013.*

How are Estates and Trusts Taxed?

S. 11 FLPTA 12 provides that a trustee will be liable to LPT if the trustee or a beneficiary of the trust is entitled to possession of a residential property.

It is possible for several people to be liable for the same LPT charge at the same time. For example the trustee of a life interest trust will be liable to LPT on the property, and so will the beneficiary who is occupying the property. Holding a power to appoint a residential property can also give rise to a liability to LPT.

Only one return needs to be filed for each property. There is no provision for determining priority so all liable parties are equally liable, and Revenue suggest that the liable persons agree who will make the relevant LPT Return and pay the tax. If no one pays or files a return, Revenue can proceed to collect the tax due from any of the liable persons, and presumably can penalise all liable parties.

The personal representative of the estate of a person who was a liable person is also a liable person. This may result in an unexpected liability in some cases.

For example, the personal representative of a life tenant's estate will rarely have any dealings with a property which was subject to a life interest as it automatically passes on to the remainderman on the life tenant's death. However if the life tenant was a liable person for LPT purposes his personal representative will also be a liable person for the property.

The liability for LPT may attach to fiduciaries to an unprecedented degree. For example under the legislation the personal representative of a trustee's estate will be a liable person in respect of any residences held in the trust (although a trustee's personal representative will not be able to exercise any control over the property and will have no role in dealing with it).

It is not clear how the link to a trust property in such cases can be broken by the personal representative who wants to close off any personal liability for tax before distributing the trustee's estate.

S. 12 FLPTAA 13 provides for a "grace period" of 12 months for an intestate estate (where the deceased did not leave a Will) or for any estate where the executor predeceased the deceased.

This is presumably on the basis that there is no-one in place to deal with the estate immediately following the death. After this period any person who occupies or receives rents from a relevant residential property held in an estate will be liable for LPT on the property until the Grant of Representation issues.

If the deceased left a Will, and an executor survives the deceased, then the executor is the liable person (and there does not appear to be any provision that the liability cannot arise until after the grant has issued).

It is not unusual for a person to go into occupation of an estate property under a caretaker arrangement to protect the property, as there may be maintenance and insurance issues if a property is left vacant for any length of time.

In an intestate estate (or one in which there is a predeceased executor) the caretaker would be a liable person for LPT once the 12 month period of grace has expired without a Grant of Representation.

A deferral of LPT can be obtained by a personal representative of an estate where no Grant of Representation has been issued within the first 12 months following the death, in respect of:

- unpaid LPT at the date of death,
- LPT which was deferred by the deceased, and/ or
- LPT which falls due in the 3 years following the date of death.

This deferred LPT will become due and payable once the personal representative is in a position to transfer the property to a beneficiary or distribute the proceeds from the sale of the property. In any case, the LPT will become due and payable on the third anniversary of the death.

Deferrals of LPT

A deferral is available if the property is the sole or main residence of the liable person, and his income is under certain thresholds (gross income of €15,000 or less for a single person or €25,000 for a couple). It should be noted that this income threshold is lower than the age exemption for income tax (€18,000 for a single person and €36,000 for a couple).

If a taxpayer has a mortgage on their sole or main residence, the relevant ceiling can be increased by 80% of the mortgage interest paid in that year and a full deferral will be available if the gross income is less than this increased limit.

Marginal relief is available to owner-occupiers where the gross income (or the adjusted income if there is a mortgage on the property) of the owner is up to €10,000 over the limits set out above. In such cases, up to 50% of the LPT can be deferred. Any amount deferred will fall due on the sale or transfer of the property.

This interest rate for deferred LPT applies at half the rate that applies to unpaid taxes generally which accrue interest at a daily rate of 0.0219% (an annual rate of circa 8%). If the LPT is late, but not technically deferred, this standard rate will apply.

Example:

A single person with gross income of €14,000 can defer payment of LPT on his residence. If his income was €18,000 then only 50% of the LPT could be deferred.

A taxpayer with a mortgage on his residence can increase the LPT deferral limits by 80% of the interest paid. If a single person pays mortgage interest of €5,000 in a year, then the gross income limit of €15,000 can be increased by €4,000 and the full LPT liability can be deferred if his income is €19,000 or less, or 50% of the LPT can be deferred if he has gross income in excess of €19,000 but less than €29,000.

Key Dates for Local Property Tax

30 Apr 2013	The household charge will be capped at €130 if paid before this date
01 May 2013	LPT Liability and valuation date
07 May 2013	Paper returns due for LPT
28 May 2013	Electronic returns due for LPT
01 Jul 2013	LPT will be increased by €200 if the household charge is not paid before this date. 2013 Single payment due date
15 Jul 2013	2013 Payments by direct debit commence
21 Jul 2013	Single payment bank debit deducted i.e. bank transfers
01 Nov 2013	LPT Liability for 2014 and subsequent years
01 Jan 2014	Single payment due date 2014 2014 phased payments commence

A deferral of LPT will be available where a person has entered into a personal insolvency arrangement (as provided for in the Personal Insolvency Act 2012) and holds a residential property on trust for his creditors.

A deferral of LPT may be granted by Revenue where payment of LPT would result in excessive hardship due to a significant loss suffered or a significant expense incurred.

The deferral will not commence until sufficient information has been provided to Revenue and Revenue has notified the liable person that the deferral has been allowed.

Enforcement

The timely submission of LPT and income tax returns for self employed persons will be linked. This means that late filing of an LPT return can expose a self employed taxpayer to an income tax surcharge.

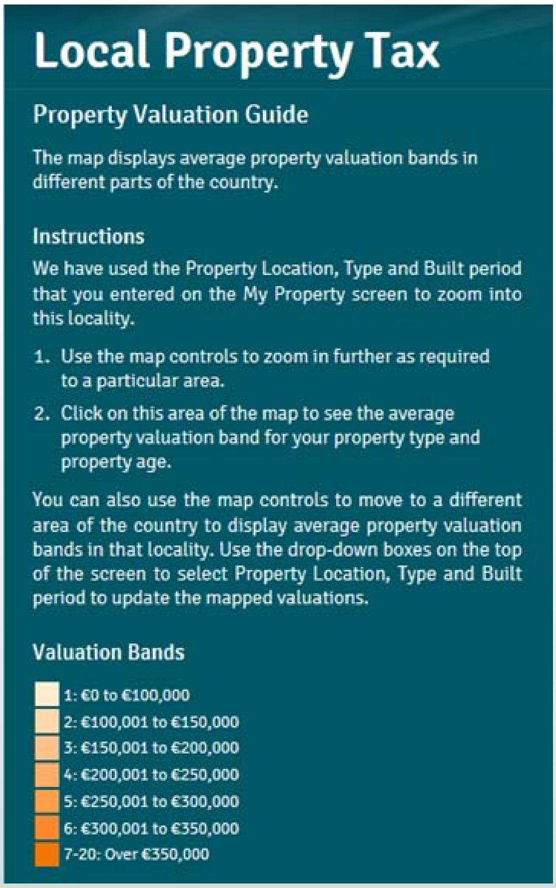
The FLPTAA 13 provides that where the liable person does not prepare and deliver the LPT return, has not paid the LPT liability or has not entered into an arrangement with Revenue for the payment of the LPT liability then he will be deemed to have not complied with S.959I TCA 97 which provides for the obligation to file an income tax return.

As the liable person will be deemed not to have filed his income tax return the surcharge for late filing of returns (S.1084 TCA 97) will apply. Where the person subsequently delivers the LPT return the LPT surcharge will be capped at the amount of the LPT liability.

The provision has been revised to clarify that the standard surcharge for filing an income tax return late will apply if the income tax return is filed late, regardless of whether or not the LPT obligations have been met.

The following measures are designed to ensure compliance with LPT legislation:

- Tax clearance certificates will not be provided to self employed taxpayers who have not met their LPT obligations.
- Where a return is not filed and no election has been made by the taxpayer for a particular payment method, deduction at source will be used as the default means of collection.
- Outstanding LPT will be a charge on the property. In the event of the sale or transfer of a property, Revenue will provide confirmation that the LPT in respect of the property has been paid.
- When introduced, the NPPR charge and the household charge were to remain a charge on a property for a period of 12 years. There are no time limits for LPT.
- The standard Revenue collection mechanisms can be employed to enforce payment of the LPT e.g. referral to the Sheriff, attachments or court orders.



Penalties, Interest & Surcharge

Part 14 of the legislation deals with penalties for non compliance. S. 146 imposes a maximum penalty of €3,000 for a liable person's failure to deliver a return. S. 146 deals with penalties where an employer is obliged to deduct the LPT liability at source from an employee's pay and remit this deduction to Revenue.

Where an employer fails to comply with the requirements of Part 10 of the legislation the employer will be liable to a penalty of €3,000.

In addition if the employer fails to deliver an annual statement of the LPT deducted by that employer for the year he will be liable to a penalty of €500 per month for each month that the return remains outstanding (up to a maximum of €3,000). If the employer is a body of persons then the secretary of that body will be liable for a separate €2,000 penalty.

Interest of 0.0219% per day or part of a day (circa 8% per annum) applies to LPT which is paid late.

Example:

John owns 2 houses on 01 May 2013 and his total LPT liability for 2013 is €630. In 2013, John's income tax liability is €15,000.

He files his return but does not pay the LPT liability for 2013 on time, however his liability for 2014 is paid on time. The outstanding liability for 2013 is paid on 31 March 2015.

As the payment for 2013 is late the following interest and surcharge payments will be due:

Due Date for payment:	*01 July 2013*
Date Payment Made:	*31 March 2015*
Days Late:	*639*
Interest Due:	*14% (daily rate of 0.0219%)*
Interest Payment Due:	*€88*

Surcharge due (capped at 100% of LPT liability): €630. John's surcharge for not paying his LPT liability is 10% of his tax liability, i.e. €1,500. As this is greater than the LPT liability, the LPT surcharge is capped at €630 once John pays the outstanding liability.

Total Payment Due:

LPT Liability:	*€630*
Interest Due:	*€88*
Surcharge Due:	*€630*
Total:	*€1,348*

Household Charge & NPPR

The household charge has been abolished from 01 January 2013 but the Non Principal Private Residence (NPPR) charge will not be abolished until 01 January 2014. Arrears of the household charge are to be capped at €130 where payment is made in full by 30 April 2013.

If the household charge is not paid by 01 July 2013, then the LPT on the property will be increased by €200. This effectively converts the outstanding Household Charge to LPT (and increases it to €200)enabling Revenue to collect the tax under the LPT system.

Adjustment by Local Authority

The current rate of LPT is 0.18% for properties valued at €1m or under. For properties valued over €1m, the rate is 0.18% on the first €1m and 0.25% on the balance over €1m. These percentages may be adjusted by the local authority by 15% upwards or downwards.

The factors which must be taken into account in making an adjustment to the percentage are the likely income that the local authority will receive and an estimation of the expenditure which it is likely to incur.

The financial position of the local authority, including its assets and liabilities, and the economic effect of the change to the rate on the functional area of the Local Authority will also be relevant..

If a local authority decides to vary the percentage, the Revenue must be notified on or before 30 September in the year in which the change is made. In such a case, the amendment will be implemented for the liability date falling in that tax year.

Caveat: *These notes are intended as a preliminary guide to some provisions of the Local Property Tax legislation. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*

Services

O'Hanlon Tax Limited provides Irish taxation services for a wide range of clients and intermediaries, including:-

- Tax on business profits (income tax and corporation tax),
- Tax on investments (capital gains tax "CGT"),
- Tax on gifts & inheritances (capital acquisitions tax "CAT")
- Taxation issues for trusts (tax on investments and discretionary trust tax "DTT"),
- Tax on Property (VAT and stamp duty),
- Tax on Estates, including estate income tax, CAT, DTT & CGT,
- Tax compliance advice on UK inheritance tax ("IHT") and US federal estate tax ("FET"),
- Advising in relation to the Irish aspects of Double Taxation Agreements.

We provide a practical approach to our clients' tax issues, and our tax consultancy services enable professional firms to enhance the range of services offered to their own clients.

Publications

OHT has a strong publication and presentation programme and provides tax lectures, tutorial and examination services to a range of bodies and firms including the Law Society, the Irish Taxation Institute (ITI), the Society of Trust & Estate Practitioners ("STEP"), the DSBA, and Stephenson Solicitors.

Publications include:

- ITI book *"**The Taxation of Capital Gains**"*
- Law Society OUP Manual *"**Capital Taxation for Solicitors**"*
- Articles for the DSBA Parchment, the STEP Journal, and ITI's Irish Tax Review

Our website has a range of articles on taxation matters, and useful tax tools and charts. Any specific tax queries can be raised by phone or email to the address below.

O'Hanlon Tax Limited,
6 City Gate, Lower Bridge St, Dublin 8, D08F291
T: 01 6040280 F: 01 6865400
E: info@ohanlontax.ie
W: www.ohanlontax.ie

Finola O'Hanlon

finola@ohanlontax.ie

Sandra Meade

sandra@ohanlontax.ie

Brian Broderick

brian@ohanlontax.ie