Local Property Tax Conveyancing Issues

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Local Property Tax and Conveyancing

When Local Property Tax (LPT) was first introduced there was uncertainty as to how LPT issues should be dealt with on the conveyance of residential property. The legislation made it clear that LPT would be held as a charge on property where the tax was underpaid but there was no provision for a clearance procedure for purchasers.

Revenue have since published guidelines which clarify how a purchaser can ensure that no charge will remain on the property while a vendor can clearly establish what is required to meet the pre-sale LPT obligations.

Undervaluation of Property

The property values used by many residential property owners in completing LPT returns may be understated in some cases. Many residential property owners used the Revenue estimate which was received prior to filing the first LPT return and these estimates, which did not take account of property size, type, condition etc. may have been an undervalue of residential property in some cases.

It is also widely accepted that the residential property market has recently experienced something of an upturn (particularly in the Dublin area).

Where residential property is sold, the sales price may be significantly in excess of the value returned for LPT purposes. This does not necessarily mean that the valuation used in the LPT return was not reflective of the valuation of the property on the valuation date, but it is important that any residential property owner can explain any differential between the LPT valuation and the sales price to the satisfaction of Revenue.

Purchaser Issues

The main issue for a purchaser is that any underpayment of LPT, relating to the period prior to the purchase of the property, can remain as a charge on the property following the purchase.

Revenue will not usually give a clearance for LPT, and the purchaser must decide whether the valuation used by the vendor in returning the LPT prior to the purchase, was a reasonable valuation.

If the purchaser does not consider the valuation to have been reasonably arrived at, then the purchaser is obliged to file a return following the purchase of the residential property (Form LPT4) including an updated valuation. Where this procedure is followed any pre-sale LPT will not remain as a charge on the property and Revenue will pursue the vendor for any balance of tax due.

Revenue have also issued Guidelines for the Sale or Transfer of Ownership of a Relevant

Residential Property and in this guide they explain that where the sales price exceeds the LPT valuation used by a vendor, and any of the following conditions are met, Revenue accepts that there is no charge on a property in respect of ‘uncrystallised’ liabilities.

These conditions are as follows:

Condition 1

The sales price and LPT valuation differential must be within the allowable margin. It is acceptable for the LPT valuation to have fallen in the immediately succeeding band to the sales price band, up to a €300,000 property value. Otherwise the sales price cannot be greater than 15% higher than the upper limit of valuation band used for LPT purposes.

Condition 2

The sales price and LPT valuation differential must be within the allowable margin (i.e. condition 1) adjusted upwards by any enhancement expenditure.

Where enhancement expenditure has been spent on the property and the sales price exceeds the LPT valuation previously used, the differential cannot be greater than the allowable margin plus any enhancement expenditure. For the condition to apply, the vendor must be in a position to make available (if requested by Revenue) receipts verifying the type of work undertaken and the cost of the work done.

Condition 3

The declared valuation band must be equal to or

higher than the Revenue’s guidance valuation band (Illustrated on Revenue’s Interactive Map) and the vendor must have evidence of at least one comparable property sold within the period of six months prior to 01 May 2013. Comparable properties are explained in the guidelines.

Specific Written Clearance

Revenue will consider providing specific written clearance, on the request of a vendor, where the conditions above are not met but the vendor, nevertheless, claims that the valuation at the 01 May 2013 valuation date was made in good faith.

Ultimately, if the purchaser does not consider the valuation to have been reasonably arrived at, and none of the conditions outlined above are met, then the purchaser should file a return following the purchase of the residential property (Form LPT4) including an updated valuation unless the vendor can supply the purchaser with specific written clearance from Revenue. As outlined above, where this procedure is followed any pre-sale LPT will not remain as a charge on the property and Revenue will pursue the vendor for any balance of tax due.

It is important for a purchaser to note that a stamp duty return filed with Revenue and relating to the purchase of residential property, would indicate the sales price of the property to Revenue. One would expect that if the sales price from the stamp duty return is in excess of the LPT valuation previously returned, and none of the above conditions are met, this would be visible on Revenue’s system.

Vendor Issues

A vendor may wish to self-correct the LPT prior to sale if it appears that the property was undervalued. If a residential property owner is considering selling the property in 2014, and the sales proceeds are likely to exceed the LPT valuation, such that the conditions outlined above are not met, it would be prudent to self-correct unless the vendor feels that the LPT valuation on 01 May 2013 was justified.

Detailed guidelines in relation to self-correction of LPT have been published by Revenue.

If a vendor feels that a lower valuation was justified, the specific Revenue clearance can be sought, but this clearance procedure is only available where:

- There is an actual sale taking place
- The sales price is agreed
- The vendor has not self-corrected
- None of the conditions (conditions 1 to 3) above are met

To seek specific LPT clearance a Form LPT5 should be completed and sent to Revenue via secure email to lpt@revenue.ie including the text "Application for Specific Revenue Clearance" in the subject field of the email.

It is likely that specific LPT clearance would be required where it appears to a purchaser that the valuation included in the LPT return was not reasonable, to prevent the purchaser filing a return indicating a revised valuation. Where a purchaser files a return indicating a revised valuation, it is likely that Revenue would assess the amended valuation on the vendor for the period prior to the sale and seek to recover any balance of LPT due.

Conclusion

LPT is still in the early stages and it is likely that there will be further modifications to the legislation and Revenue practice in the short term to deal with specific issues arising.

For the moment, it would be prudent for anybody selling residential property to review the LPT valuation and likely sales proceeds. If the sales proceeds are in excess of the LPT valuation, none of the three general clearance conditions apply, and the vendor cannot provide specific LPT clearance there is likely to be an additional LPT liability following the sale (for the vendor). Vendors have the option of self-correcting prior to the sale in such scenarios.

A purchaser of residential property should be mindful of the obligation to file an LPT return, indicating an updated valuation, if it appears that the original LPT valuation returned by the vendor could not have been reasonably arrived at. Filing this return will remove any charge which could otherwise be held on the property.

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