THE PROPERTY OWNERS' WATCHDOG
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IPOA News

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Official Newsletter of the Irish Property Owners' Association,
the National Landlords' Representative Organisation

Issue 36 | December 2017

Editorial

Stephen Faughnan
Chairman

The recent Prime Time programme and subsequent media coverage described a very small, but nevertheless unacceptable segment of the private rental market. The people who were investigated by the programme are nothing other than sharks and vultures tarnishing the good name of private landlords. Those engaged in offering sub-standard accommodation and overcrowding do not even deserve to be called landlords in 21st century Ireland.

Their so-called accommodation can only be described as hovels and must be weeded out as such behaviour is disgraceful, distressing and totally unacceptable for both tenants and landlords, but in no way can it be considered the norm for the private rental sector. Writing in the Sunday Business Post, Senator Michael McDowell is correct when he says that some accommodation is "subhuman".

The real problem which allowed these few to operate can only be because of the completely outdated and ineffective housing standards inspection criteria carried out in an extremely limited and slapdash way by local authorities throughout the country. Recent commentary has suggested that certain local authorities are cherry picking the areas or houses that are inspected.

This appears to be done where there are very few or no rent assisted tenants, because if certain accommodation failed the inspection, these tenants would have to move out - and where would they go? I think local authorities acting in this way are very unhelpful to the private rental sector because it is the responsible private rental sector which provides the bulk of accommodation for a significant amount of people in each local authority area.

The inspection standard operates on the strict basis of a Pass or a Fail, which is fundamentally unfair. One item wrong in an educational setting could still give an A grade, but one item wrong in a housing standard inspection is an immediate Fail. It is long past time for legislation to adequately and fairly support the vast majority of private rental sector landlords who are supplying good quality accommodation.

It should not be the cause of continually and officially undermining the sector as has been the case for several years. The IPOA is happy to work with any agency or body to address any perceived difficulties, but it behoves Government, local authorities and charities in the sector to understand that they must all play their part.

I would like to take this opportunity to thank you for supporting the IPOA during the year and extend our very best wishes for Christmas and the New Year.

Stephen Faughnan
Chairman

Contents

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DATES FOR YOUR DIARY

IPOA Evening Seminars

- Cork Thursday 25th January 2018
- Dublin 22nd February 2018
- Limerick 21st March 2018

Best wishes for Christmas Season

We would like to take this opportunity to offer our best wishes for the Christmas Season and for 2018. We really appreciate your constant support. Thank you!

AGM

IPOA Members at AGM

The 2016 AGM was held on the 18th October 2017 in the Red Cow Hotel. The meeting was Chaired by Tom Reilly. The legal requirements in respect of Company Law were dealt efficiently including the adoption of the minutes and financial accounts, election of the Management Committee etc.

A brief update was given on legislation around the sector including clarification on the Rent Pressure Zone Measures, and updating on the Housing Standards for Rented Houses Regulations 2017.

Cathal Lawlor, Alan Moore Tax Consultants was the first guest speaker. He gave a comprehensive presentation on the transfer of property to a Company and the resultant capital tax matters. He detailed a number of samples and the effect of incorporating on the next level. He gave a comprehensive explanation on Agricultural Relief, Business Asset Relief and the Small Gift Exemption. He detailed the situation around Capital Losses and same event relief and the recent changes made to the Seven/ Four year exemption from Capital Gains.

Brendan Allen, Allen Morrissey and Company was the second guest speaker. He gave a wide-ranging presentation on Taxation around rental property including allowable deductions, and sample rental income accounts. He also gave an update on Budget 2018. He explained the new relief for landlords, pre-letting expenses, changes to Capital Gains Tax, changes to Stamp Duty. Brendan showed the difference in tax treatment of a private landlord compared to an Irish REIT. He detailed the cost of changes to Government on allowing 100% mortgage interest relief, outlined the tax treatment of Airbnb and an update on the NPPR. Brendan can be contacted on (045) 868 252 or emailed at brendan@allenmorrissey.com.

Brendan Allen, Allen Morrissey and Company

Des Daly, Margaret McCormick and Tom Reilly

Water Charge Refunds

The government has announced that Domestic Water Charge refunds will begin once legislation has been passed.

How and when you will receive your refund

Irish Water will send a cheque to the account holder at their registered address. The cheque will be attached to a letter. Refunds of almost one million payments will start as soon as the necessary legislation has passed and government funding has been put in place. This process will take a number of months.

Why cheques are being used

Irish Water want to refund their customers efficiently and securely within the time-frame given. Cheques are the most effective method available to do this while also ensuring a refund to the correct person.

What you need to do

You do not have to apply or contact us for your refund unless your address or personal details have changed and you have not informed Irish Water.

Update your address or personal details

If your address or other details have changed and you have not already told Irish Water please contact them immediately to update your account. Contact them on Callsave 1850 448 448 or +353 1 707 2824, Monday to Friday 9am to 5:30pm. Please have your WPRN and Account Number to hand, alternatively a number of security questions will be asked to protect customers' accounts.

Pre-Budget Submission

A prebudget Submission was compiled by the Association and sent into the Minister in September. We outlined the issues around the Tax Treatment of the sector and the problems they cause.

The main items:

- An exemption be provided from income tax on the long term letting of residential property.
- 100% Mortgage Interest Relief to restored with immediate effect.
- Refurbishment for energy efficient measures to be allowable.
- LPT to be allowable as an expense.
- A reintroduction of Rollover Relief.
- Refurbishment Relief reinstated with clear guidelines.
- Amending the Housing Standards to allow for designated bathrooms outside a bedsit.
- Review the Rent Supplement Legislation.

As the representative body for owners of private rental properties, the IPOA asked that real action be taken on these simple measures to help this sector. These proposals are not costly measures, but will help ensure the continuation of good quality rental accommodation in the future as the country seeks to recover its economy and address society's needs.

Insuring Your Property….Underinsurance and The Insurance Policy Condition Of Average

One of the most important things to consider as a property owner is ensuring adequate insurance cover is in place in respect of damage to the building, landlord's contents, and loss of rental income. It will also be a requirement of any financial lender that the building is adequately insured. It is important when arranging insurance cover that the correct insurable sum is established.

When setting the sum insured it is a common error on occasion to select the market value of the property. In the event of physical damage to the property, the loss sustained by the owner on the majority of occasions will be the cost of repairing the damage, and that is the basis on which the sum insured should be considered.

The sum insured for the building should represent the full cost of re-instating the building (incl. outbuildings, driveways, boundary walls etc) to as near as possible the specification it was in prior to a loss occurring. The sum insured should include;

- An allowance for demolition and debris removal
- Reinstatement of the building to comply with current building regulations and local authority requirements
- Inflationary factor to cater for increase in building repair costs during the course of construction (a building could be totally destroyed on the last day of insurance cover almost one year from the initial inception)
- Professional Fees (Architect/Surveyor/Engineer)
- If a Landlord is not VAT registered, then the VAT element of the building repair cost (currently 13.5%) and on Professional Fees (currently 23%) should be included.

The consequences to a business of inadequate insurance cover should not be taken lightly, as can be demonstrated as follows;

- If a building is insured at €500,000, and following total destruction by a fire costs €1,000,000 to rebuild, then the owner is left with a €500,000 shortfall
- Insurance Policies contain an underinsurance penalty clause called 'Average' which proportionately reduces the sum payable in respect of any claim in the event that a property is inadequately insured. In the most simplistic terms, a property insured for €500,000 which will cost €1,000,000 to rebuild if it was destroyed is only insured for 50% of its rebuilding value. Therefore, in the event of damage which costs €100,000 to repair, the Insurer will only be liable to pay €50,000, being 50% of the claim.

It is recognised within the insurance industry the need for protection to property owners to avoid un-necessary over-insurance. Inflationary factors and changes to VAT rates cannot be predicted and where multiple buildings are insured, it may be considered that a total loss of all buildings from one event is unlikely. There are various methods of dealing with these factors, and an experienced insurance broker should be consulted to consider the most appropriate insurance product.

When considering the sum insured for Loss of Rental income, two factors need to be considered;

- Period of cover - What time period will be required to repair a building following total destruction? If 12 months would be considered sufficient, then a 12 month period of cover can be selected. However it is seldom the case that any sizeable property which sustains serious damage can be re-instated within a 12 month time period and a period of 18 months, 24 months or even 36 months may be considered appropriate. It is advisable to ensure that additional time is allowed for the fitting out and re-letting of the property.
- The sum insured should be set at the maximum loss of rental income which may be sustained during the indemnity period. For example, if the property contains 4 fully occupied apartments each producing rental income of €12,000 per year and a 12 month period of cover is selected, then the sum to be insured should be €48,000. If a 24 month period of cover is selected then the sum insured should be €96,000.

Landlord's contents (which may comprise contents of common areas and/or individual flats / apartments) should be insured for their estimated replacement value. Whilst the setting of loss of rent and contents sums insured may be a relatively straightforward process, establishing a rebuilding cost for a property can be a more complex matter.

William Wilson ACII ACILA
Executive Adjuster UK / Ireland

NPPR Not Deductible

The Court of Appeal reversed the High Court's ruling and found in favour of Revenue's position that the second home charge, known as the NPPR (non principal private residence) charge, is not an allowable deduction against rental income for income tax purposes.

The judgement delivered by the Court of Appeal on 19 October in the case of Revenue Commissioners vs Thomas Collins (2016/581) found that the NPPR charge does not fall within the term "rate" or "levy" used in the Taxes Consolidation Act 1997 (section 97(2) of that Act). According to the Court of Appeal judgement "the NPPR charge was not one which was "levied" by a local authority. Since this latter requirement is a pre-condition for satisfying the deductibility of s.97 (2) (b) of the 1997 Act, it is plain that the taxpayer's claim for deduction on this ground must accordingly fail".

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 19th day of October 2017

1. This appeal raises the question of whether the annual non-principal private residence charge ("NPPR") is a deductible expense as against rental income for income tax purposes. This arises in the present case because the respondent taxpayer, Mr. Thomas Collins, is the owner of six rental properties to which the NPPR charge was applicable. In the tax year 2009 he had paid the NPPR charge, being €200 per each property. Mr. Collins then sought to deduct the sum of €1,200 against rental income received under s. 97(2)(b) of the Taxes Consolidation Act 1997 ("the 1997 Act"). The net issue in this appeal is whether these charges are so deductible.
2. The appeal originally came before the High Court by way of case stated from the Appeal Commissioners. The question for the Court to determine is as follows:

   "Whether the Non-Principal Private Residents charge (hereinafter referred to as the "NPPR charge") chargeable pursuant to the Local Government (Charges) Act 2009 is deductible against rental profits under s. 97(2) of the Taxes Consolidation Act 1997 (hereinafter referred to as "the TCA 1997") as being "any rate levied by a local authority".
3. In the High Court Reynolds J. answered this question in the affirmative: see Revenue Commissioners v. Collins [2016] IEHC 748. The Revenue Commissioners have now appealed to this Court against that decision.
4. The NPPR charge was in some respects a forerunner to the more general form of property tax which has now replaced it. The point raised in the case stated is nonetheless of some general importance since, as we were informed at the hearing, where there are several other cases awaiting the outcome of this appeal.
5. The NPPR charge was introduced by the Local Government (Charges) Act 2009 ("the 2009 Act") and the Act itself was commenced by statutory instrument on the 24th July, 2009. The charge was introduced as an imposition on the owners of all residential properties other than the taxpayer's principal private residence. The charge thus applied to second homes such as holiday homes and rental properties. As I have already indicated, the only issue, therefore, which this Court is required to determine is whether the NPPR charge should be allowed as a deductible expense from rental profits.
6. It is accepted that the NPPR was introduced for the purpose of assisting local authorities to fund local services. An annual charge of €200 per property applied from 2009 to 2013 in respect of residential property which was not the taxpayer's only or main residence for those years. The charge was collected by each local authority and retained by the local authority for its use. To that extent, therefore, the 2009 Act sought to address a perceived funding deficit for local authorities caused in part by the abolition of domestic rates in 1978 by the Local Government (Financial Provisions) Act 1978. For the reasons I am about to state, however, that does not mean necessarily mean that the NPPR should be regarded as a "rate levied by a local authority" within the meaning of s. 97(2)(b) of the 1997 Act. Before considering that issue, however, it is first necessary to set out the relevant legislation.

The relevant legislation

7. Section 1 of the 2009 Act provides that the word "charge" has the meaning assigned to it by s. 3(1) and (2). The section provides as follows:

   "3(1) A person who, on such date (in this Act referred to as the "liability date") falling in the year 2009 as is prescribed, is the owner of a residential property shall be liable to pay the sum of €200 (in this Act referred to as a "charge") to the relevant local authority.

   (2) A person who, on 31 March (in this section also referred to as the "liability date") of each year subsequent to the year 2009, is the owner of a residential property shall be liable to pay the sum (in this Act also referred to as a "charge") specified in subsection (3) to the relevant local authority."
8. While s. 3 prescribed an annual charge of €200, s. 3(5) envisaged that the amount of the charge might be varied by ministerial order having regard to changes in the consumer price index:

   "(5) The Minister may from time to time review the amount of the charge in subsection (2) and, having regard to any change in the consumer price index since the amount of the charge was last specified or prescribed under this section, prescribe a revised amount as the Minister considers appropriate, and that amount shall have effect for and from the next liability date until further varied."
9. Section 97(2) of the 1997 Act (as amended) provides for the deductibility of certain expenses from gross rental income for income tax purposes as follows:

   "(2) The deductions authorised by this subsection shall be deductions by reference to any or all of the following matters:-

   (a) the amount of any rent repayable by the person chargeable in respect of the premises or in respect of part of the premises;

   (b) any sums borne by the person chargeable:

   (i) in the case of a rent under a lease, in accordance with the conditions of the lease, and

   (ii) in any other case, relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, in respect of any rate levied by a local authority, whether such sums are by law chargeable on such person or on some other person...."

The determination of the Appeal Commissioner

10. The matter was originally heard by the Appeal Commissioner on 9th May 2013. The Commissioner found for the taxpayer in a

written determination issued on 21st October 2013. In his determination the Commissioner concluded as follows:

"The NPPR charge is a rate levied by a local authority: the amount of €200 is a fixed rate per applicable premises and that the amount is levied or collected by the relevant local authority. The charge amount is set out in the Local Government (Charges) Act 2009 and in this it results from a different process from that employed by a local authority in setting the annual rates as part of the annual budgeting process.

However, this difference does not, in my determination, deny the NPPR charge to be regarded as a open "rate"; section 97(2) TCA 1997 does not restrict the meaning of a rate to that applicable to the budgeting process of local authorities set out above, the phrase used is "any rate levied by a local authority" and I have concluded that the ordinary meaning of that phrase includes the charge. The appellant is therefore entitled to a deduction of €200 in respect of the NPPR charge for each of the six residential properties claimed under s. 97(2) TCA 1997 in respect of 2009."

11. The matter was then the subject of a case stated to the High Court.

The judgment of the High Court

12. In her judgment Reynolds J. noted that there was no definition of what constituted a "rate" for the purposes of s. 97(2)(b) of the 1997 Act. She concluded that as this funding mechanism was designed exclusively for the benefit of local authorities it would be artificial and contrived not to hold that the charge amounted to a rate levied by a local authority for this purpose. On this point she said:

"It is clear from the legislation underpinning the NPPR that the charge is constructed in a way expressly designed to ensure that the revenue achieved is attributable entirely to the local authority. It mandates that the collected funds are steered in one direction only - locally and away from central government. To conclude in these circumstances that the charge is in reality a national one, as contended by the appellants, would be contrived and artificial and contrary to the intent of the statute (namely, the Local Government (Charges) Act 2009). The legislature is the architect of a framework specifically engineered to ensure the resulting revenue stream flows directly into the coffers of the local authority. If anything, central government is deliberately bypassed to allow local authorities to be the collectors of the generated proceeds and are indeed empowered to prosecute defaulters. The government's involvement is effectively to design and sign off on a system which takes it out of the loop and distances itself from what to all intents and purposes is a tax or charge levied by the local authority.

Where there is no definition of the word "rate" or "levy" in the Taxes Consolidation Act, 1997 the Court must look to the ordinary meaning of the phrase "any rate levied by a local authority". Clearly the use of the word "any" suggests that the provision was not limited to a particular category of a rate but was providing prospectively for rates which might be contemplated by the legislature at some point in the future.

In interpreting the provisions of the statute, the Court is guided by the principles set down in the Inspector of Taxes v. Kiernan [1981] I.R. 117. Clearly this is a legislative provision directed at the public at large and therefore the phrase "any rate levied by a local authority" must be given its "ordinary or colloquial meaning". The test to be applied is that which "an ordinary member of the public would intend it to have when using it ordinarily". I am satisfied that ordinary or colloquial meaning includes the NPPR charge. In the circumstances, I must answer the question in the affirmative."

13. meaning of the phrase "...any rate levied by a local authority...."

The appeal accordingly reduces itself to the single question of whether the NPPR charge is a rate levied by a local authority. The current rating system has its origins in pre-Famine and post-Famine Victorian legislation, namely, the Poor Law (Ireland) Act 1838 and the Valuation (Ireland) Act 1852 prior to the enactment of modern legislation such as the Valuation Act 1988 and the Valuation Act 2001. It is true that, historically, the rating system amounted to a form of annual ad valorem charge on immoveable property and, in the context of commercial rates, industrial plant and machinery. The amount of this ad valorem charge was left to the local authority itself whose task it was to fix or strike the rate for coming financial year.

14. In my view, it is unnecessary to decide for present purposes whether the NPPR charge might amount to a rate in this sense, because even if that were so, it could not be said that the NPPR charge has been "levied" by a local authority within the meaning of s. 97(2)(b) of the 2009 Act. As the Long Title to the 2009 Act itself recites and s. 3 of the 2009 Act clearly provides, the NPPR charge was imposed by legislation enacted by the Oireachtas. It was an autonomous decision taken by the Oireachtas which itself fixed the amount of the charge, albeit that the proceeds of the charge were intended for the benefit of local authorities. But local authorities were given no power to vary or review the charge, since s. 3(5) of the 2009 Act reserves this power to the Minister for Local Government alone.

15. As Reynolds J. observed in her judgment, the Supreme Court has made it clear that in the case of the interpretation of legislation such as this which is addressed to the members of the general public, the word or phrase in question should be "given the meaning which an ordinary member of the public would intend it to have when using it ordinarily": see Inspector of Taxes v. Kiernan [1981] I.R. 117, 122, per Henchy J. I consider that the word " to levy" would be understood in this context by members of the general public as the power to impose or to raise a charge.

16. In Kiernan Henchy J. further suggested that in approaching this question of interpretation a judge should normally draw on his or her "own experience of its use", such that dictionaries "should be looked at when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning." While there can really be no doubt as to the meaning of the words "to levy" in ordinary modern usage, this can, in any event, be independently confirmed by dictionary definitions.

17. The verb to levy has accordingly been defined as the power "to impose a tax, fee or fine": see Concise Oxford Dictionary (1990) (8th ed). The word has etymological roots in the Latin levare and the French lever, namely, to raise. In passing, it is perhaps interesting to note that Article 22.1.2 of the Constitution excludes from the definition of a Money Bill ".any taxation...raised by local

authorities or bodies for local purposes". Article 22.1.2 thus envisages that local authorities can have a role in raising taxes for local purposes and the levying of rates by local authorities was the traditional method whereby this was done.

18. But, to repeat, the 2009 Act does not fall into this category of local taxation raised by a local authority for local purposes. The 2009 Act rather represents instead a form of charge imposed by statute by the Oireachtas. Local authorities were given no role in determining whether to raise such charge or to determine or even to vary the amount that would be levied on each taxpayer. On any view, therefore, on the ordinary meaning of the words contained in s. 97(2)(b) of the 1997 Act, the NPPR charge was not one which was "levied" by a local authority. Since this latter requirement is a pre-condition for satisfying the deductibility provisions of s. 97(2)(b) of the 1997 Act, it is plain that the taxpayer's claim for a deduction on this ground must accordingly fail.

19. Counsel for the taxpayer, Mr. Mooney, contended strongly that the sub-section must be interpreted by reference to the presumption against double taxation. It is, I think, sufficient to say in response to this submission that the issue of double taxation simply does not arise, because the NPPR is charge in respect of property, whereas the 1997 Act provides for a tax on income. There is, accordingly, no question of double taxation in respect of the taxpayer's income.

Conclusions

20. In conclusion, therefore, since I am of the view that as the NPPR charge is not a charge which has been "levied" by a local authority, the taxpayer cannot bring himself within the scope of the deductibility provisions of s. 97(2)(b) of the 1997 Act. I would therefore allow the appeal and answer the question posed in the case stated in the negative.

Budget Update

Paschal Donoghue T.D., Minister for Finance

- No change to mortgage interest relief.
- Housing Assistance Payment Scheme will increase by €149m.
- Funding for homeless services will increase by €18m to more than €116m.
- €750m is to be made available for commercial investment in housing finance.
- The level of stamp duty on **commercial property transactions will rise from 2% to 6%.**
- The vacant site levy will increase from **3% in the first year to 7%** in second and subsequent years.
- A new house-building entity to boost construction has been announced.
- **Pre-Letting Expenses available for qualifying expenses up to end of 202**
- The point at which an income earner attracts the higher rate of incom tax will rise next year by €750 per annum.
- The entry point for single earners will increase from €33,800 to €34,550.
- The entry point to USC will remain at €13,000.
- The **2.5% USC rate will be reduced to 2%** with the ceiling for the new rate increased from €18,772 to €19,372.
- The **5% USC rate will be reduced to 4.75%**.
- A working group will be set up over the coming year to plan the amalgamation of the USC and PRSI over the medium term.
- The Earned Income Credit for the self-employed will rise by €200 to €1,150 a year.
- **Reduction in seven-year period for owners to enjoy full relief from Capital Gains Tax to four years.**

The Living City Initiative (LCI)– What is it?

The LCI scheme is a tax incentive scheme to assist and encourage people to live in the historic inner city areas of Dublin City. It allows owners and investors to claim tax relief for money spent on refurbishment and/or conversion of residential property either as income tax relief (for owner-occupied residential) or capital allowance (for rented residential). It also focuses on the regeneration of retail and commercial districts by allowing owners to claim an accelerated capital allowance on money spent on refurbishment and/or conversion of commercial property.

It aims to incentivise owners/Investors to carry out the necessary refurbishment and/or conversion works to upgrade existing accommodation or bring derelict/disused properties back into use. Examples include bringing vacant upper floors above a shop into residential/office use or carrying out refurbishment work to your own home.

A property can be a house, apartment, shop or any kind of structure and can include all or part of a property, but it must be located within the designated 'Special Regeneration Area' to qualify for the relief under the initiative. The exact locations are available to view on the Dublin City Council website through bit.ly/LivingCityInitiativeMap

There are three types of TAX Relief available and the qualifying periods are as follows;

Type of Relief:	Commencement date:	Cessation date:
Owner-Occupier Residential	5th May 2015	4th May 2020
Retail/Commercial	5th May 2015	4th May 2020
Rented Residential	1st January 2017	4th May 2020

Only Refurbishment and/or conversion work carried out during the above time periods will qualify for relief.

Further details of the scheme and an application form are available on the DCC website or by contacting the Living City Initiative unit directly.

Standards for Rented Houses Regulations

The Housing Standards for Rented Houses Regulations changed on the 1st July 2017. New obligations came into effect on property owners.

Heating Facilities

6. (1) Every room used, or intended for use, by the tenant of the house as a habitable room, and any bathroom, or shower-room shall contain a permanently fixed:

(a) heat emitter,

(b) heat distribution system, or

(c) heat producing appliance, capable of providing effective heating.

(2) Every room referred to in Regulation 6(1) shall contain suitable and adequate facilities for the safe and effective removal of fumes and other products of combustion to the external air where a heat producing appliance is used.

(3) A heat producing appliance referred to in Regulation 6(1)(c) shall be so installed that there is an adequate supply of air to it for combustion, to prevent overheating and for the efficient working of any flue pipe or chimney serving the appliance.

(4) The operation of any:

(a) heat emitter,

(b) heat distribution system, or

(c) heat producing appliance
as referred to in Regulation 6(1) shall be capable of being independently manageable by the tenant.

(5) All appliances under Regulation 6(1) shall be maintained in a safe condition and in good working order and good repair.

(6) Each house shall contain, where necessary, suitably located devices for the detection and alarm of carbon monoxide.

Tenancies that commenced before 24/12/16 have a 4 year right.

Tenancies commencing after 24/12/16 have a 6 year right.

LPT DATES

The date for paying your 2018 LPT depends on the payment method you select:

- **10 January 2018:** Latest date for paying in full by cash, cheque, credit card or debit card.
- **January 2018:** Phased payments by deduction at source and regular cash. payments through a payment service provider commence in January.
- **15 January 2018:** Monthly direct debit payments commence in January and continue on 15th each month.
- **21 March 2018:** Deduction date for Annual Debit Instruction or a Single Debit Authority payment.

Extracts from Minister Eoghan Murphy's address at the publication of the Residential Tenancies Board's Rent Index for the Second Quarter of 2017 and further Rental Sector Measures

Eoghan Murphy T.D. Minister for Housing, Planning and Local Government

Tuesday, 19th September 2017

National Ploughing Championships, Tullamore

- RPZs are having an effect in moderating rent increases, it's not yet clear whether these measures are fully achieving their desired effect.
- Anecdotal evidence, which seems to be borne out by some of the data returns, is that the RPZ legislation is not being complied with by some landlords, who are looking to get around the increase limits imposed, for example, by using the refurbishment exemption to charge higher rents or reset the market rent.
- I am pleased to be able to take action to designate two new areas that now meet the qualifying criteria to be designated as RPZs – these are Drogheda and Greystones.
- We know that there has been some concern about landlords using the "substantial refurbishment" exemption to step around the RPZ legislation and to use minor, cosmetic works to change a tenancy or seek a rent increase outside of the 4% cap.
- We also know that landlords have sought guidance on interpretation of the measure so as to ensure their compliance with this new law.
- A new licensing system may be needed to properly regulate this relatively new "home-sharing" market. A cross-Government working group including, amongst others, the Department of Transport, Tourism and Sport and Fáilte Ireland as well as my own officials, is working to design and establish an appropriate licensing and regulatory system for short-term lettings.
- This will take more time to develop. In the meantime, I have instructed my Department to prepare specific guidance and advice for local authorities, which should issue in the coming weeks, to inform their decision-making on planning applications related to short-term lettings.

A Proper Regulator for the Rental Sector

- The RTB needs to be given the powers and the resources to take on a regulatory responsibility in the rental sector.
- Because of the scale of such a task, this can't happen overnight, but we are now exploring the changes needed in legislation and in the Board's financing arrangements. Together, we will put together a two-year change management plan, essentially beginning now, that will progressively see the RTB become the sector's regulator over the next year or two.

What exactly will this look like?

- We'll make it an offence to implement rent increases that contravene the law and the RTB will be given the powers to investigate and prosecute landlords who implement such increases. The onus will no longer be exclusively on the tenant.
- The RTB will move towards annual registration, rather than one-off registration when a tenancy is registered; this will enable the RTB to move eventually to a self-financing model where their income can fund their regulatory and advisory services.
- This will also improve the Board's data capturing abilities, which is key to understanding trends and behaviours in the rental market, and informing future policy decisions.
- The RTB will undertake detailed analysis of the rent data they gather to provide benchmark rents for different property types. Given the varying market conditions across the country, this will be a challenging undertaking, but one that I know the RTB is ready to take on.
- Enhanced data will also allow us to deal with the problem of those currently charging abnormally low rents and who have been caught by the RPZ laws. I want to legislate to allow landlords in these circumstances an increase that is greater than the 4% standard rent increase and that takes into account the level of rent they are currently charging.
- A Deposit Protection Scheme will be established, operated by the Residential Tenancies Board, to handle deposits and to manage disputes efficiently so that decisions are delivered and money is returned quickly. Under this new scheme, the RTB will be able to define a deposit at one month's rent.
- This is not an exhaustive list of the changes needed, but an indicative one, and priorities for legislation will be determined as part of the change management plan.
- We won't be waiting until 2019 for the RTB to take on these enhanced roles – rather, additional powers and functions will be rolled out in the intervening period according to priority.

Homelessness and Prevention

- At the Housing and Homelessness Summit earlier this month, I announced a number of targeted measures aimed at sustaining tenancies, so that people facing difficulties in their tenancies do not end up in homelessness. These include:
- The requirement that landlords notify the RTB when they issue a notice of termination;
- An awareness campaign informing people of the services available to them, including the Tenancy Protection Service; and
- The strengthening and national roll-out of the HAP Place-Finder Service to help HAP recipients to find tenancies and support homeless households by paying their deposit and first month's rent.
- I am also very conscious of the precarious position that some tenants are finding themselves in where their landlord's property is taken over by a receiver. Unfortunately, this is the case for many small-scale and "accidental" landlords who bought their rental properties with mortgages, that are now in significant arrears. In these circumstances, the financial institutions holding these non-performing mortgages may look to appoint receivers to the rented properties and institute proceedings to take possession, with the intention of selling the property, particularly in the current property market where prices are rising.
- Under current legislation, a receiver appointed to the rental property is not regarded as a landlord and is therefore not required to fulfil the landlord's obligations under the legislation, which can leave the tenant in a very difficult and vulnerable position, especially where normal rent setting procedures or the notice period to vacate a property are not respected.
- A working group, established by my Department to examine the feasibility of amending legislation to ensure that tenants' rights are protected during receivership, considers that there is a sound

legal basis for addressing this anomaly through amending legislation.

- I have therefore asked the group to submit their report to me as quickly as possible with specific recommendations on the legislative amendments required to ensure that tenants' rights under the Residential Tenancies Act are maintained when buy-to-let properties are taken into receivership. I will act quickly to bring in these protections.

Landlord specific measures

- I will be announcing further measures over the coming weeks that will have a positive supply impact on the rental sector.
- These will include actions on getting more vacant properties back into use, especially in our cities and town centres where there is strong demand for rental accommodation. I am also devising a range of measures to increase the supply of new homes to rent at more affordable levels, particularly for working families on moderate incomes.
- In addition, I have been working with Minister Donohoe to review the tax and fiscal treatment of rental accommodation providers with a view to ensuring that it is appropriate and fit for purpose.
- Our Departments have been working closely with Revenue and the RTB, exploring options for consideration in the context of Budget 2018 that could have the potential to support supply in the rental market.
- Minister Donohoe is currently examining the report of the Working Group established to undertake this review, and is considering the potential options set out therein.
- Both Minister Donohoe and I are mindful of the need to move forward in a considered, sure-footed manner, to bring greater stability and consistency to a market which relies on long-term investment decisions.
- We need to recognise and value the critical contribution that private landlords make to meeting the housing needs of our people.
- I am very conscious that there has been a lot of change for landlords over the last number of years and that this is still going on, as we strive to deliver a well-functioning rental sector that works for both landlords and tenants.
- As we indicated when we launched Rebuilding Ireland, all of these policy areas are being kept under review, to ensure that the existing measures are having the desired impact and to identify new initiatives where more concerted action is warranted.

Rebuilding Ireland Guidance on Planning Applications for Short Term Lettings

A circular letter was issued to the City and County Councils in respect of guidance on planning applications for short term letting. This was issued by Terry Sheridan, Principal, Planning Policy and Earnan Ó'Cléirigh, Principal, Rental Market & AHB Regulations at the request of Mr. Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government.

The circular contains:

- Strategy for the Rental Sector – Working Group on Short Term Letting
- Statement of the policy basis protection of residential rental stock in areas of high housing demand/need.
- Amenity and nuisance issues – apartment and flats
- Relevant planning provisions
- Referral and An Board Pleanála Decision
- Guidance for planning applications related to short term lettings.
- Guidance for specific types of planning applications
- Conditions required for individual applying for change of use to short-term letting in single apartment.
- Individual applying in relation to a non-exempt house
- Change of use to short-term letting of entire or part of an existing apartment building.
- Planning Enforcement.
- Raising awareness with Management Companies
- On-going Monitoring.

The document can be viewed on www.housing.gov.ie.

Rent Calculator for Rent Pressure Zone

There is a rent calculator for use where a property is being let or the rent is being reviewed in a Rent Pressure Zones. This is useful and helps to ensure that the calculation is done correctly.

Where a landlord is setting the rent in a Rent Pressure Zone the amount cannot be greater than the amount determined by the below formula, the existing requirement that the rent set is not above the local market rents for similar properties still applies and three examples of rents for similar properties in the locality must be presented to demonstrate this.

R x (1 + 0.04 x t/m) *please note that you should do your calculations working from right to left

R = The amount of rent last set under a tenancy for the dwelling (the current rent amount)

t = The number of months between the date the current rent came in to effect and the date the new rent amount will come in to effect.

m = you must enter 24 OR 12

For tenancies that are already in existence a review is only permitted 24 months after the tenancy came in to existence or 24 months from the date the rent was last set. In this instance m = 24. For this initial rent review after the 24 month period as specified above a maximum rent increase of 4% will apply. (This amounts to 2% per annum applied pro-rata for the period since the rent was last increased).

Following on from this initial review after 24 months, a landlord is now entitled to review the rent every 12 months. New tenancies from 24th December 2016: Landlords of all new tenancies within a Rent Pressure Zone commencing on or after 24th December 2016 are entitled to review the rent annually. In this instance m = 12.

Property Day 2017: The Right to Property should remain a living right!

The International Union of Property Owners (UIPI) reiterated the importance of the Property Right and the need to guarantee its constitutional and practical observance.

The UIPI met in Warsaw for its annual Property Day designed to celebrate the fundamental Human Right to one's private ownership. Hosted by the Polish member of UIPI, PUWN (Polska Unia Właścicieli Nieruchomosci - Polish Union of Property Owners), the Property Day celebration brought together representatives of property owners' associations from all over Europe.

The purpose of this year's event was to highlight the importance of the constitutional guarantee of this right in contemporary Europe, notably in light of a potential revision of the Polish Constitution, and the occasion to reflect on how this right is exercised in line with the principle of equality in modern times.

The keynote speeches were held by Dr. Marcin Swiecicki, a Member of the Polish Parliament and Former Minister as well as Former Mayor of Warsaw, and Prof. Geoffrey Grandjean, Lecturer at the University of Liège in Belgium.

Barbara Grzybowska-Kabanska, President of the Polish Union of Property Owners, said: *"The right to one's property, as any other Human Rights, is a pillar of our democracy, an enshrined constitutional right that needs to be continuously guaranteed."*

The UIPI President, Stratos Paradias said: *"The Right to one's Property is a living right that needs to be scrupulously and constitutionally preserved and exercised. It should not overbalanced by competing rights or disproportionate and ill-conceived attempt to act in the general interest as the European Court of Human Right reminded us in the Hutten-Czapska cases."*

Stratos Paradias President UIPI

Vereniging Eigen Huis Re-joined UIPI

During the meeting in Warsaw, Poland, the members of the International Union of Property Owners unanimously approved the membership request of Vereniging Eigen Huis – VEH.

Vereniging Eigen Huis is a not-for-profit association that protects and serves the interests of home owners in the Netherlands. With more than 740.000 individual members, VEH is a powerful and well-known consumer organisation and very active in the Dutch political debate. Founded in 1974 by Henny Van Herwijnen, former President of UIPI (2000-2004), the association was an active member of the International Union of Property Owners until mid-2000. The creation of UIPI's office in Brussels and the intensification of its public affairs activities to defend property owners' interests at EU level have convinced VEH to re-join.

Cindy van de Velde-Kremer, General Director of Vereniging Eigen Huis, said: *"We are happy to rejoin UIPI and we are looking forward to work with UIPI representatives in Brussels to defend the interests of present and future Dutch homeowners at European level including, for example, taking on the immense challenge of reducing energy consumption in European homes."*

Stratos Paradias, President of UIPI, added: *"We are also absolutely delighted to have VEH back in the UIPI. They are a large association and very active in the Netherlands. Having been one of the leading members in the past, I have no doubt, that they will have a strong role in supporting UIPI's future efforts to defend European owner-occupiers interests. Their presence also reinforces our position in Brussels as the largest European association of property owners and the only one that speaks on behalf of a large majority of Europeans who live in their own houses. Welcome back!"*

VACANT HOUSING REFURBISHMENT BILL 2017

The second stage of the Vacant Housing Refurbishment Bill 2017 was completed on the 4th October 2017.

The bill seeks to establish an expedited process for building control and planning administration in each local authority, (1) to accelerate the supply of dwellings in existing buildings, where there are changes of use and/or limited building works to certain classes of development, and (2) to ensure compliance with safety standards in existing multioccupancy residential buildings, and (3) to regularise existing unauthorized developments.

The bill expands a limited category of exempted development (subject to confirmation by the planning authority) and amends building control administrative procedures while requiring direct inspection of the design plans before construction and on site by an independent 'authorised person', as defined by legislation.

It is intended this 'One-Stop-Shop' Approval system will reduce administrative delay, align existing administrative systems for planning and building control and ensure greater compliance in the conversion and refurbishment of existing structures in urban areas to residential use.

This bill provides a mechanism to regularise existing unauthorised residential developments (including sub-division of existing buildings and changes of use).

Tax Bites

Cathal Lawlor, Alan Moore Tax consultants

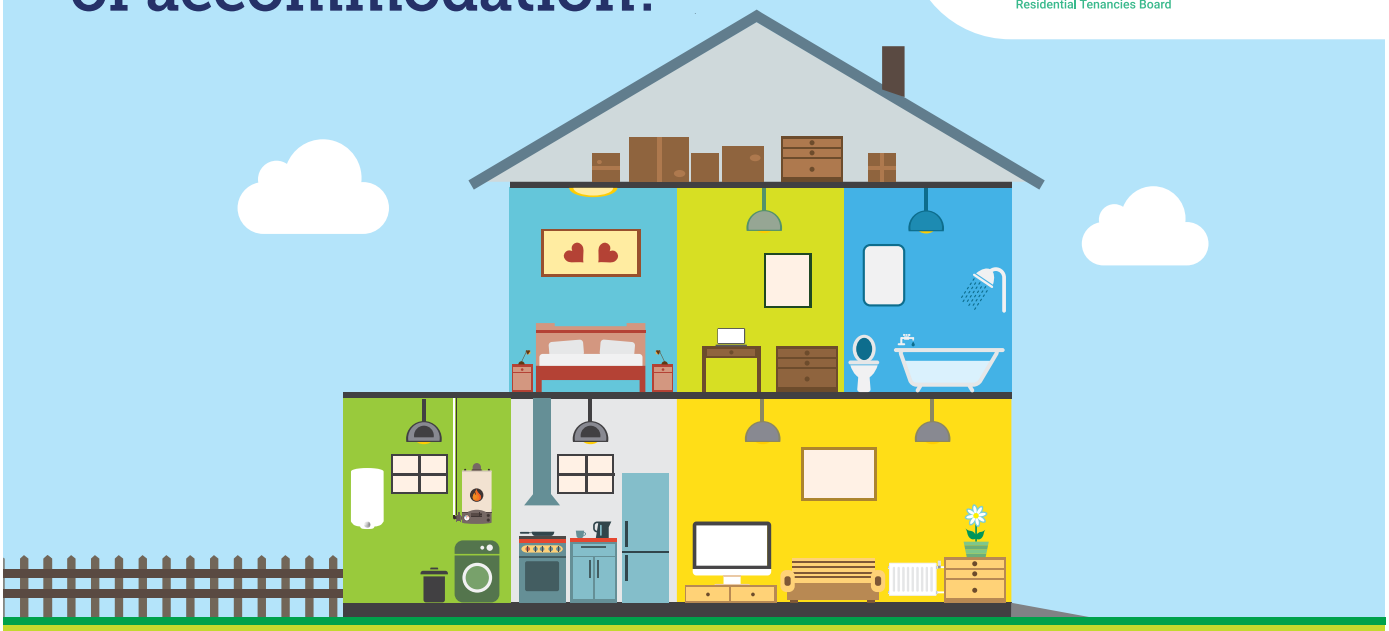
Where assets are disposed of for a gain in the period between 1 January 2017 and 30 November 2017, the Capital Gains Tax liability arising is due 15 December 2017. This can confuse members as it is not declared until the member's tax return is filed in 2018.

Where a member incurs losses on the disposal of an asset, that Capital Loss can be carried forward to offset against Capital gains arising in the future. However, Capital losses cannot generally be carried back. As we approach the end of the year, some landlords may have crystallised gains on the disposal of a property earlier in the year. If these landlords had other loss bearing assets, either in property or shares, and can arrange for the disposal of these assets before the year end, the loss that may arise in respect of those assets is off settable against the gain that may have arisen early in the year, even though the gain arose prior to the loss crystallising. Therefore, any taxpayers who find themselves with a gain should review their asset portfolio to see if they can crystallise any losses before the year end. Importantly in this context, where a property is contracted to sell, the date the contract is signed is the date that the loss will crystallise, even in circumstances where the sale does not complete until after the year end. Therefore, if an individual manages to get a signed contract in place on a loss bearing property, even if the sale does not close until some time in 2018, the loss will be available in 2017 against any gains arising in 2017. The sale must ultimately close.

Tax Bites is a tax information section in the IPOA newsletter that will appear each quarter and is prepared by Cathal Lawlor, Alan Moore Tax Consultants. He can be contacted at Cathal@alanmoore.ie or 01-8728881.

What is a substantial change in the nature of accommodation?

RTB
Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board



Likely to constitute a substantial change

Structural alterations or major renovation works
Note that a combination of a number of improvements would be required

Indicative examples
- Attic conversion
- Alterations for the addition of bedroom(s)
- Garage conversion
- Work on load bearing walls
- Change of interior floorplan e.g. ground floor/bedroom to improve the layout of the property
- Alterations for disability access

Substantially reducing energy usage and improving the property BER rating
Note that a combination of a number of improvements would be required

Insulation upgrade
- Attic insulation
- Cavity wall or dry lining
- External wall insulation

Services
- Replacement boiler *(more energy efficient)*
- Replacement pipework and radiators
- Replacement cylinder

Windows and doors
- Replacement of external windows and doors

Unlikely to constitute a substantial change

General upkeep/ upgrade repairs and maintenance in line with meeting minimum standards.

Indicative examples
- Mandatory repairs and replacements for the maintenance of the interior and fittings.
- Upgrade of electrical installations including smoke alarms

Modernisation/ Cosmetic improvement
Note a combination of a number of improvements may, in certain circumstances, be a substantial change

Internal upgrades – on an individual basis
- Upgrade of kitchen
- Upgrade of bathroom(s)
- Painting and decoration
- Plaster repairs
- Replacement of carpets/flooring
- Painting, tiling, decorating

External works
- Works to garden and boundaries

Thursday 26th October 2017
Written Questions Private Rented Accommodation

27. Deputy Clare Daly asked the Minister for Housing, Planning and Local Government his views on the workability of the policy proposal in the strategy for the rental sector to move towards tenancies of indefinite duration in the absence of proposals to amend section 34 of the Residential Tenancies Acts to provide for security of tenure; and if he will make a statement on the matter. [45294/17]

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): A number of measures have been introduced in recent years with the objective of moving towards tenancies of indefinite duration and improving security of tenure for tenants.

The Residential Tenancies (Amendment) Act 2015, enacted on 4 December 2015, provided that notice periods for the termination of further Part 4 tenancies, i.e. tenancies that extended beyond 4 years, be extended pro rata in line with the length of the tenancy, subject to caps of 224 days for termination by landlords and 112 days for terminations by tenants (previously 112 days for landlords and 56 days for tenants).

The Strategy for the Rental Sector, published in December 2016, recognises rapidly increasing rent prices as the most significant challenge to security of tenure in the rental sector at present. Where tenants cannot afford their rents, their tenancies are not secure and evictions for non-payment of rent may ensue.

To address this, the Government introduced the Rent Predictability Measure, which was provided for through the Planning and Development (Housing) and Residential Tenancies Act 2016, introducing the concept of Rent Pressure Zones (RPZs) to moderate the rate of rent increases in those areas of the country where rents are highest and rising quickly.

The 2016 Act also gave effect to other actions to address tenants' security, including:

- The abolition of a landlord's right, during the first 6 months of a further Part 4 tenancy, to end that tenancy for no stated ground; and
- The extension of the term of Part 4 tenancies from 4 to 6 years.

The so-called 'Tyrrelstown amendment', included in the 2016 Act, already limits the ability of landlords to use the grounds of sale to terminate tenancies, provided for in section 34 of the Residential Tenancies Act. Where a landlord proposes to sell 10 or more units within a single development at the same time, that sale will now be subject to the existing tenants remaining in situ, other than in exceptional circumstances.

I have recently announced a series of further measures in relation to the rental sector, including a two- year change plan to develop and strengthen the role of the RTB as a pro-active regulator for the sector.

One of the first measures will be for the RTB to provide clear guidance, for both landlords and tenants, on what constitutes the "substantial" refurbishment or renovation which can be cited as a section 34 ground for termination of a tenancy. More generally, the RTB will be given enhanced powers to ensure that section 34 grounds are properly used and that the statutory obligations on landlords who use them are fully met.