

€100 HOUSEHOLD CHARGE

Introduction:

The EU/IMF support programme effectively commits Ireland to introducing some form of property tax. The plan is to introduce a more nuanced residential property tax in the near future but in the interim the Government have introduced a simpler flat-rate charge and registration system for owners of residential property.

The Local Government (Household Charge) Act 2011 formally introduces the €100 "Household Charge" with effect from 1st January 2012 for each individual residential property located in the State. Residential Property owners are obliged to register and pay the tax before 31st March 2012.

The following is a brief summary of this new levy. It is intended to be a general guide only.

Who is Liable?

The Act applies the charge to "owners" of Irish residential property, and goes on to define what constitutes an "owner". The definition excludes a mortgagee not in possession.

See attached extract from Section 1 of the Local Government (Household Charge) Act 2011 (definition of "owner").

It is also important to note that it is the owner, as defined, on 1st January 2012 – the "Liability Date" – that is liable to the charge. If, for example, X sells a house to Y on 2nd January 2012, then it is X who is liable to the €100 charge in 2012 as he owned the house on the 'liability date'. X, as the owner of the house on the liability date, must register and discharge the liability before 31st March 2012.

Effectively, the Act defines the 'owner' of a property to be the person who is entitled to receive the rent payable under a lease or tenancy that runs for less than 20 years, or would be so entitled if such a letting existed. However if the property is let under a lease for a term exceeding 20 years, **then the tenant is regarded as the 'owner' for the purposes of the Act.** Therefore, if the owner granted a 21-year lease on a house to the tenant in 2011, then it is the tenant who is liable to the charge in 2012. However if the lease was for a term of 5 years, then the owner would be liable to the charge.

If the property is co-owned, the owners are jointly and severally liable for the charge so the payment of €100 by any one of them is sufficient to discharge the liability.

What is Liable?

The charge applies to Residential property and effectively defines a residential property as one suitable for occupation as a "separate dwelling" regardless of whether or not it is so occupied.

See attached Section 2 of the Local Government (Household Charge) Act 2011 (meaning of residential property)

In effect, all residential properties are liable, whether occupied as the family home, rented to tenants, or vacant.

The Act makes it clear that not only houses, but also flats, bedsits, maisonettes and apartments could be liable to the charge. However letting separate bedrooms in a shared

amenity situation may not automatically make the bedroom liable. Therefore, if a property consists, for example, of 4 separate apartments, then all four are separately liable to the €100 levy. However if a large 4-bedroomed house is occupied by four tenants, then only one charge arises as it is still a single residential unit even if the tenants have separate letting agreements.

Exemptions & Waivers:

Certain individuals and/or properties are specifically exempted from the 2012 household charge, while the rules indirectly exclude others. Therefore, the following are not liable to the €100 in 2012:

- Houses held as trading stock provided they are not generating income. The Act seems to indicate **that houses temporarily let by property developers are liable to the charge.**
- Voluntary and co-operative housing.
- Residential Property vested in a Minister of Government.
- Residential Property vested in the HSE.
- Properties liable to commercial rates.
- Residential properties owned by a charity.
- The Home of a person forced to move due to illness, such as people who move into nursing homes.
- People in receipt of mortgage interest supplement.
- Residential properties located outside of Ireland.
- Mobile Homes are not liable.
- Tenants are not liable, only owners (but see above for > 20-year tenancies).
- People living in certain unfinished housing estates (effectively estates which are incomplete and not being acted upon).
- Residential properties owned by a discretionary trust.

Administration:

Apart from the above exceptions, owners of residential property on "the liability date" are obliged to register and pay the charge before the 'due date'. For 2012, the 'liability date' is 1st January 2012 and the "due date" is 31st March 2012.

Further information regarding the Household Charge is available from your local City/County Council or from www.householdcharge.ie .

-----0-----

Local Government (Household Charge) Act 2011

Section 1

owner", in relation to a residential property, means—

- (a) a person (other than a mortgagee not in possession) who—
- (i) in the case of a residential property that is let under a lease or held under a tenancy for a term not exceeding 20 years, is entitled to receive the rent under that lease or tenancy whether in his or her own right or as trustee or agent for another person,
or
 - (ii) in the case of a residential property that is not so let or so held, would, subject to paragraph (b), be so entitled if the residential property were so let or so held, whether in that person's own right or as trustee or agent for another person,
or

(b) where the property is let under a lease or held under a tenancy for a term exceeding 20 years, the person (other than a mortgagee not in possession) who is the lessee under that lease or tenant under that tenancy;

Section 2

(1) In this Act “residential property” means, subject to subsection (2), a building that is situated in the State and that is occupied, or suitable for occupation, as a separate dwelling, whether or not the occupier shares, or would be entitled to share, in connection therewith, any accommodation, amenity or facility with any other person, and includes—

- (a) a house, maisonette, flat or apartment (including the form of accommodation commonly known as a bedsit), and
- (b) a building containing a bedroom to which paragraph (e) of subsection (2) applies.

(2) For the purposes of this Act, none of the following is a residential property:

- (a) a building—
 - (i) from which no income has been derived since the building’s construction,
 - (ii) that, since the building’s construction, has never been used as a dwelling, and
 - (iii) that forms part of the trading stock of a business;
- (b) a building vested in a Minister of the Government, a housing authority (within the meaning of the Act of 1992) or the Health Service Executive;
- (c) a building owned by a body standing approved for the purposes of section 6 of the Act of 1992;
- (d) a building that—
 - (i) is wholly used as a dwelling (other than a dwelling that forms part of a mixed hereditament within the meaning of the Local Government (Financial Provisions) Act 1978), and
 - (ii) in respect of which local authority rates are payable;
- (e) a bedroom that is let under a letting arrangement whereby the occupier of the bedroom is entitled to share with any other individual any other accommodation, amenity or facility in the building of which the bedroom forms part.

(3) In this section “business” includes—

- (a) the business of a company to which—
 - (i) an examiner, liquidator or receiver has been appointed under the Companies Acts,
 - (ii) a statutory receiver has been appointed under the National Asset Management Agency Act 2009, or
 - (iii) a receiver has been appointed under any other enactment,and
- (b) the business of an individual—
 - (i) who is a bankrupt or an arranging debtor within the meaning of the Bankruptcy Act 1988, all or part of whose property vests in a receiver, manager or the Official Assignee in Bankruptcy in accordance with that Act, or
 - (ii) where, in respect of all or part of the trading stock of the business, a statutory receiver has been appointed under the National Asset Management Agency Act 2009.

-----0-----

If you have any questions in relation to any of the above, please contact McCullagh Higgins & Co. Solicitors.

McCullagh Higgins & Co.
Solicitors
1-2 Cois Mara
Dungarvan
Co. Waterford

Tel: 058 44166 / 44167

Email: info@mccullaghiggins.com
kieran@mccullaghiggins.com
gerard@mccullaghiggins.com

Web: www.mccullaghiggins.com