

Property Tax
Local Government Finance
Department of the Environment, Community and Local Government
Custom House
Dublin 1

16 March 2012

Submission to Inter-Departmental Group on Property Tax

Dear Chairman

We have read the terms of reference for the Inter-Departmental Group and, in formulating this submission to the Group, we have made certain assumptions regarding a number of features of the property tax. Our assumptions are as follows:

- The tax will involve some element of self-assessment of the property value, particularly in the short term (see paragraph 4),
- The establishment of a comprehensive property register, incorporating property value, is the optimal long-term objective (see paragraph 1),
- Liability for payment will be based on property ownership rather than occupation (see paragraph 4),
- The requirement that the tax be “equitable” means that some regard will be had to the level of household income (see paragraph 4),
- The tax will be collected centrally (see paragraph 2), and
- A robust audit / compliance element will be a key component of the infrastructure surrounding the tax (see paragraph 6).

Some of the above assumptions may be worthy of discussion, and we expand on these points in the relevant sections below. However, we are proceeding on the basis of the above assumptions, and within this framework we put forward our views on how to implement and operate a property tax.

As requested, we have structured this submission around the terms of reference areas specified in the Submission Guidelines. We have also outlined at Appendix 2 what we would consider to be the key steps in the development process.

1. Meet the immediate financial requirements of the EU/IMF programme and provide a stable funding base for the local authority sector in the medium and longer terms; incorporating an appropriate element of local authority responsibility subject to any national parameters.

(a) Establishment of a property register

We understand the economic imperative for the introduction of a property tax which will meet the financial requirements of the EU/IMF programme. However, we would stress the importance of also taking this opportunity to design a well-thought-out robust system which will be sustainable long into the future and will prove capable of delivering a stable revenue base over an extended period of time. If such a system can be designed and implemented at the outset, then it should be possible to pre-empt certain issues which could prevent the efficient and effective operation of the tax.

It is likely that a comprehensive property register will be the essential foundation of the tax and we believe that the establishment of such a register should be the medium to long term objective. To that end, we would anticipate that a type of questionnaire or return will need to be completed in relation to every residential property in the country. Our suggestions regarding the essential components of such a document are set out at Appendix 1. Some trade-off may be required here between simplicity and equity i.e. in order to implement a tax which is equitable, it may be necessary to collect a significant level of detail from every household in the country.

(b) Scope of the charge

We assume that commercial rates will remain in existence and that the property tax is confined to residential properties only. If residential type properties such as B&Bs and guesthouses are subject to commercial rates, then they should not also be subject to the new property tax.

In order to ensure the widest possible base, we believe that all habitable residential properties in Ireland should be within the scope of the charge, regardless of the tax residence status of their owner. For this purpose, “habitable” would have to be clearly defined, with appropriate provision for properties under construction and in the process of renovation.

(c) Discontinue a separate NPPR charge

A policy decision will be required as to whether second etc homes are subject to an additional charge (currently the Non-Principal Private Residence charge).

If this is the case, we recommend that the NPPR charge be merged into the property tax in order to reduce both administrative and legislative complexity,. The simultaneous operation of two separate property taxes, with different scopes and definitions, could lead to confusion among taxpayers.

2. *Be collected centrally by the most cost efficient and effective means*

(a) Collected centrally

If the tax is to be collected centrally, rather than directly by local authorities, this could be done by the Local Government Management Agency (which currently administers the household charge and the NPPR charge), by a similar but new dedicated body or by Revenue.

The Commission on Taxation recommended that the tax be administered by Revenue, on the basis that Revenue has “*the appropriate expertise to administer taxes nationally*”. The reasons for nominating Revenue as the appropriate body to administer this tax include:

1. We understand that equity of treatment will be a fundamental principle of the tax. If this is to be determined in any way by the income of the property household, then Revenue must be intrinsically involved with this measurement process.
2. Administration by Revenue would also be particularly appropriate if a facility for payment via the PAYE system were to be allowed or if a credit were to be permitted for stamp duty paid (see our comments on these matters below).
3. Revenue hold detailed information on stamp duty transactions in recent years. This data is likely to be required for the compilation of any property register.
4. Revenue has extensive experience and expertise in conducting tax audits in relation to existing taxes.

Revenue would be uniquely placed to deal with the interaction of these issues and to handle the resulting complexity. However, if Revenue were to be charged with administering the tax, it would need to be adequately resourced to process what would be a significantly increased workload.

If an agency other than Revenue were to administer the tax, data sharing and taxpayer confidentiality issues would need to be considered if householders’ other tax affairs were to have any bearing on the operation of the property tax.

(b) Most cost efficient and effective means

Key to ensuring the efficient and effective collection of the tax will be the promotion of voluntary compliance. The property tax will be payable by a large number of people who are not used to dealing with tax or with Revenue because their income tax liability has been collected under the PAYE system. Just over 600,000 self-assessment returns were filed in 2010. However, the household charge is expected to be paid by 1.6 million householders, the majority of whom are PAYE taxpayers and, as such, are not familiar with the self-assessment process.

A significant advance publicity campaign will therefore be needed, involving helplines, online demonstrations, information leaflets, media advertisements etc, in order to inform taxpayers whether they are subject to the tax, how much they have to pay, how they can pay, and the consequences of not paying.

3. *Facilitate easy and/or phased payments by households*

(a) Paying

Taxpayers should be offered a range of convenient payment options in terms of both how to pay (e.g. online, direct debit, standing order, phone, cheque, An Post, credit card) and when to pay (e.g. monthly, quarterly, annually).

In addition, payment should be possible via the PAYE system as an adjustment to tax credits. This would likely prove very convenient for PAYE workers and would ensure optimal collection of the tax. If payment were to be made possible through the PAYE system, it would probably be necessary for Revenue to administer this process and it would undoubtedly be a very considerable exercise for them to determine and communicate the adjusted tax credits.

Another option may be to facilitate payment through householders' mortgage interest payments, where applicable, in a similar manner to the operation of mortgage interest relief.

(b) Filing

The Commission on Taxation recommended requiring a property tax return at least every three to five years. If a property tax return is required, the following features should be considered:

- The return should be as simple as possible to complete and should be accompanied by clear Explanatory Notes.
- Ease of filing should be a priority, with a facility for filing online via a dedicated website. Provision would also have to be made for those who do not have the facility to file online and the option of filing a paper return would likely be required.
- Certain aspects of the form (both online and paper copies) should be pre-populated, particularly in the second and subsequent years – this would likely require the property details to be registered via a detailed questionnaire in Year 1 (see Appendix 1).

4. *Be easily determined (e.g. on a self assessment basis), and having regard to available information on residential property and/or house ownership details*

(a) Owner or occupant

Liability for the household charge currently falls on the property owner. In designing the property tax, consideration should be given as to whether the owner or the occupant of the property is the most appropriate chargeable person for the tax. In the UK, council tax (which pays for local services) is payable by the occupant and in Northern Ireland domestic rates are payable by the occupant in certain circumstances.

An occupant-focused system may be more consistent with the objective that the tax has as wide a base as possible. It may be seen as more equitable in that it would ensure that every household in the country (rather than every property owner) makes a contribution. It may also incentivise efficient use of vacant property, i.e. property owners, on whom liability for the tax in respect of any vacant property would otherwise fall, may be encouraged to let the property and thereby transfer liability to the tenant. However, the disadvantages of an occupant-focused system include the likelihood that it will make for a more complex administration system with greater risk of non-compliance and a greater drain on resources in pursuing arrears. If the overriding objective is ease of collection and administration then an owner-focused system is preferable.

(b) Long leases and life interests

If it is decided that primary liability for the property tax should fall on the owner, then consideration could be given to transferring liability to the occupant in circumstances where the property is rented under a long lease e.g. for the purposes of the household charge this is defined as a lease for a period exceeding 20 years. Where the occupant has a life interest in the property, then the occupant could be deemed to be the owner for the purposes of the property tax. “Owner” could be defined as it is defined for the purposes of the household charge.

(c) Joint owners and other circumstances

In situations where a property has joint owners, all co-owners could be jointly and severally liable for the tax, as is the case for the household charge, but payment by any one co-owner should discharge the liability of all co-owners.

Consideration will also need to be given to determining the most appropriate chargeable person in situations where a residence is under the control of a receiver or where a mortgagee is in possession.

(d) Property valuations

As outlined in the introduction to our submission, we are assuming that a self-assessed property value will be one of the determining factors of the property tax liability. A self-

assessment system could involve the property owner declaring that his/her property falls within a particular valuation band. This is the approach suggested by the Commission on Taxation. The taxpayer should then be easily able to determine the tax applicable to properties within that valuation band.

It would be important for taxpayers to have access to the valuations or valuation bands for similar properties in their area, in order to prevent distortions. This will require the establishment of a publicly-accessible valuation database containing the valuations or valuation bands of all properties within the scope of the charge. This is the system currently used in Northern Ireland for the purposes of domestic rates.

If householders are required to self-assess the value of their property, they will need detailed guidance throughout this process and online guidelines, helplines etc. should be established to assist with this. Some may wish to procure the services of a professional property valuer in order to obtain some comfort that their valuation is accurate. In these circumstances, we would recommend that such costs be allowed as a credit against the property tax in the first year.

With regard to the frequency of valuations, we would follow the recommendation of the Commission on Taxation that the property valuation should form the basis of the tax for the following three to five years.

(e) Exemptions / waivers

The terms of reference indicate that the tax will have to be equitable. We understand that this will involve an assessment of ability to pay, based on household income. We would anticipate that this may prove difficult to ascertain and it may require collection of this information from every household separately.

While it is important to ensure as wide a tax base as possible, we would recommend considering a waiver / exemption system for the following:

- Low income households
- Households dependent on social welfare type payments, particularly means tested payments
- Properties in unfinished estates
- Householders entitled to mortgage interest supplement
- Property forming part of the trading stock of a business, has never been used as a dwelling and from which no income has been derived since it was constructed
- Property vested in a Government Minister or in the HSE
- Local authority housing
- Property subject to commercial rates
- Property owned by charity
- Property of a person living in nursing home
- Nursing homes and other residential care facilities
- Boarding school accommodation

(f) Deductibility

If the liability for the property tax on rental property falls on the landlord, we would recommend that the expense be deductible in calculating rental profits. This is on the basis that it is a genuine expense of the transaction under which the rents are received. In this regard, it is comparable with commercial rates, which are directly related to providing local services for the rental properties.

(g) Stamp duty

The Commission on Taxation recommended an exemption from their proposed “annual property tax” for purchasers of a principal private residence who paid stamp duty in previous 7 years, i.e. the Commission suggested that such purchasers should be exempt from the property tax for a 7-year period from the year in which they paid stamp duty.

Very significant amounts of stamp duty were paid over the past decade, and much of this tax was generated by purchases of residential property. The purchasers of those properties have therefore made a considerable personal contribution to the Exchequer in the form of what is, in effect, a tax on their property. In the interests of equity, we would suggest that consideration be given to the recommendation of the Commission on Taxation and that credit against the property tax be permitted for stamp duty paid, subject to appropriate verification of the amount paid. The Budget 2012 measures on Mortgage Interest Relief relate back to 2004 and this might be a good base to select.

5. *Ensure the maximum degree of fairness between and across both urban and rural areas*

We have outlined in Appendix 1 the factors which we believe should be taken into account in determining the appropriate property tax liability for a particular property. It should be possible to ascribe weightings to each factor in order to ensure equity across all households, including by reference to their location.

6. *A robust audit function and strong enforcement and penalty provisions for non-compliance.*

(a) Inability to pay

In general, there is a strong tax compliance ethos in Ireland. 80% of income tax self assessment payments were made within 1 month of the due date in 2011. At the time of writing it is not yet possible to ascertain compliance levels with respect to the household charge, as the due date has not yet passed. However, due to the difficult economic circumstances in which taxpayers find themselves currently, ability to pay is likely to be an issue for some.

In order to protect the tax base, it may be necessary to consider operating a deferral system rather than waiving the tax completely in cases where the taxpayer has a liability but is unable to pay the tax. If there were an option to defer the tax, we would recommend limiting any interest charge in “inability to pay” situations to a commercial rate, rather than the penal rates applicable to other late payments of tax. Any interest or penalties imposed should be capped at a maximum percentage of the property’s value.

With a view to preventing indefinite deferral of payment, it may be worth considering attaching the unpaid tax to the property, with the outstanding liability being cleared when the property is sold or transferred. A certificate of discharge (as can currently be availed of from the Local Government Management Agency in respect of the NPPR charge) could be required in order to ensure that the tax is collected on sale or transfer. If no certificate of discharge is produced, the purchaser could be required to deduct the outstanding tax from the consideration and pay it over to Revenue or the collection agency.

(b) Audit

A fair but robust audit function is an essential element of any self-assessed tax. Based on our experience of tax audits carried out by Revenue, it seems to us that the foundation for any audit/enforcement function must be a comprehensive data warehouse containing details of every property within the scope of the tax. This information would be gathered by means of the property tax questionnaire/return, and every piece of data contained on the property tax return must be capable of being checked.

The audit process may involve developing a risk profiling system – so that focus is put on the highest risk cases, for the least possible cost. All non-compliers would be followed up and spot checks could be carried out on compliant taxpayers, based on risk criteria.

The information campaign in advance of commencing the tax should include information on the consequences of not complying with the paying/filing requirements.

If the tax is to be administered by Revenue, we would note again the importance of ensuring that adequate resources are made available. Currently, Revenue audits are generally conducted where large sums are at stake and additional resources would likely be required to enable Revenue to pursue a large number of cases where the amount of unpaid tax may be relatively small.

(c) Penalties

In designing a system for imposing penalties on non-payment or late payment of the tax, the following options could be considered:

- Fixed penalties or tax-geared penalties
- Graded surcharges, such as those used for under-valuations for capital acquisitions tax purposes
- Different penalties for different categories of default – innocent error, careless behaviour, deliberate default etc.

(d) Powers

The powers of the collection agency would need to be clearly defined, i.e. their power to request information from third parties, powers of attachment, power to visit or inspect a property. There may be constitutional issues to consider with regard to inspection of the family home.

Regard should also be had to appropriate safeguards for taxpayers, e.g. in the event that the collection agency disagrees with the property valuation declared by the taxpayer, it should be clear what level of evidence would be considered adequate in support of the taxpayer's valuation.

(e) Appeals

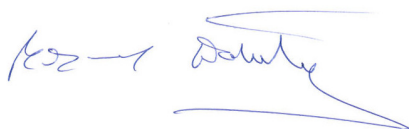
As per the terms of reference, a robust appeals process will be an essential component of the design of the tax. We would anticipate that the majority of appeals in relation to the property tax will arise on the basis of property value. In Northern Ireland, the Valuation Tribunal heard 23 appeals last year on capital value for domestic rates purposes.

The general procedures applicable to appeals against other taxes could apply to the property tax, with appeals being heard by an independent body. The Valuation Tribunal hears appeals in Northern Ireland, and in the UK an appeal (with no charge) may be made in the first instance to the Valuation Office Agency, with a further right of appeal to Valuation Tribunal. It may be necessary for property tax assessments to issue, in order to provide a basis for any appeal.

We are available to the Inter-Departmental Group for further discussions or consultations on any of the matters raised in this letter.

Yours truly

Bernard Doherty



President
Irish Tax Institute

Appendix 1

Indicative outline of elements of property tax questionnaire / return

Address(es) of property / properties
Name(s) and PPS number(s) of property owner(s)
Name(s) and PPS number(s) of property occupant(s)
If multiple properties, indication of which property is the principal private residence
Term of the lease (if applicable)
Property value
Valuation band (if applicable)
Type of dwelling (apartment, semi-detached, terraced etc.)
Floor area
Number of bedrooms
Household income
Household social welfare receipts
Details of stamp duty paid on the property since 2004
Option to pay via adjustment to tax credits
Option to pay via mortgage interest payment (requiring details of mortgage provider)
Option to pay via phased payment
Application for waiver / exemption

Self-assessed property tax liability for the year

Appendix 2

Key Steps in the Development Process

Designing the tax	Systems development	Public information
Public consultation	Policy decision on appropriate collections agency	Public to be kept informed at each stage of the process.
Agree the policy framework		
Government approval	Data integration from multiple sources	
Draft the legislation	Build comprehensive property register	
Consultation on the draft legislation	Design system for collection of the tax	
Enactment of legislation	Test the tax collection system	
	Tax collection system goes live	