Revaluation –

The Experience So Far

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The long-awaited revaluation process is now underway – it has been completed in South Dublin; Fingal will be issued at the end of the year, to be effective for 2010; and in Dun Laoghaire Rathdown the Valuation Order has been issued, and the new list will come into effect for 2011. It is anticipated that Dublin City Council will be the 4th local authority on the Valuation Office list.

Seven years have now passed since the introduction of the Valuation Act 2001. The main thrust of this Act was the revaluation of the entire country within a reasonable timeframe. The questions now are – "Is it working?", and "What is a realistic time-scale for its completion countrywide, when it has taken seven years since the passing of the Act to complete one revaluation?"

The purpose of the revaluation process is to ensure that up-to-date valuation lists exist for all rateable properties in the state.

Basis of Valuation

For the purposes of a revaluation, the basis of valuation is NAV (Net Annual Value), i.e. the open market rental value of the property at the specified date outlined in the valuation order.

Valuation Date

The valuation date selected for South Dublin, Fingal and Dun Laoghaire was September 2005. Currently, this date is causing concern among ratepayers affected by a revaluation, who question why the date was chosen at the "height of the boom". This is a constant query from clients, who mistakenly perceive that their rates bill is or will be higher than it should be, given the contrast between current market conditions and conditions in 2005. It must be pointed out that the base valuation date is essentially irrelevant, as the local authority "annual rate on valuation" (ARV) alters to ensure the same levels of rates are payable, regardless of when the base date is set. It is argued that a valuation date of 2005 is beneficial to the process, as at that time there was significant market activity allowing for sufficient comparisons to ensure a fair and equitable valuation list. In the event that a valuation order was signed today for a valuation date of September 2009, there would be effectively no market evidence available to valuers which would, in my opinion, result in a highly contentious revaluation involving unrealistic levels of resources from a Valuation Office point of view.

The valuation date chosen for the revaluation of Dublin City will be interesting. On the one hand, from a practical point of

view, I believe it is sensible that the valuation date of September 2005 be chosen so that the four local authorities in Dublin would have the same valuation date. On the other hand, there will be cries from many sectors (eg. the licensed trade & retailers), for a more up-to-date valuation date to reflect the downturn in the market, with the subsequent difficulties of a lack of market evidence to support valuations.

Representation Stage

Following the making of a Revaluation Order, a Proposed Valuation Certificate is issued, offering the ratepayer an opportunity to lodge "representations" within 28 days. This is a new phase in the rating process since the introduction of the Valuation Act 2001. Effectively, this is an informal way for the ratepayer to challenge a proposed valuation, and allows an opportunity for negotiation before the final valuation is issued.

In my opinion, this useful provision was not used to its maximum potential during the South Dublin Revaluation resulting in a significant number of first appeals. It is to be hoped that we will see an improvement in this over the coming weeks during the representation phase of the Fingal revaluation. Basically, if the representation phase works the number of appeals should reduce significantly.

First Appeals

If a ratepayer is not satisfied after the representation stage, an appeal against a final valuation must now be lodged within 40 days of the Valuation Certificate being issued (previously 28 days). All Appeals must be in writing, accompanied by the relevant appeal fee, and must specify an opinion of what the valuation ought to be, with at least two comparisons from within the relevant local authority area. This list of requirements for a valid appeal is a new requirement under the Valuation Act 2001. In my opinion these provisions are onerous on the ratepayer, as there is a degree of valuation experience now required to provide the obligatory alternative valuation. An appeal form submitted without an alternative valuation or comparisons may be deemed invalid and rejected. Therefore, great care is now required in lodging appeals. It should also be noted that the appeals process is the same for revaluations and general revisions. The Commissioner is then required to make a decision on appeals within 6 months of having received the appeal.

Valuation Tribunal

In the event that an appellant is not satisfied after the first appeal process to the Commissioner of Valuation, a further appeal may be lodged to the Valuation Tribunal. The appeal must be lodged within 28 days with the prescribed appeal form and the appropriate appeal fee. All Tribunal appeals must be dealt with within six months. The Tribunal decision is final in relation to quantum, however, there are further rights of appeal to the High Court and Supreme Court on a point of law only.

In the revaluation of South Dublin, 227 appeals were lodged to the Valuation Tribunal. However, only 45 appeals went to full hearing. Essentially, a new methodology of valuation was applied by the Valuation Office to a number of different types of property and in some cases the approach taken was only agreed with agents during negotiations prior to Valuation Tribunal hearings. Interestingly, in one Tribunal case in relation to a number of nursing homes, the approaches taken by both the revising officer and the valuer acting on behalf of the appellant were not accepted by the Tribunal, and the parties were asked to revisit the case again with a view to agreeing a new methodology and in the event that they failed to do so, to re-enter the case before the Tribunal. In my opinion the low level of Tribunal appeal hearings indicates that the South Dublin revaluation was a success from a valuation point of view.

Material Change of Circumstances (MCC)

One of the most important changes wrought by the 2001 Act relates to the means by which property can now be listed for revision. Once a revaluation (or a revision) has taken place, it is now no longer possible to list the property for revision unless some MCC can be proven to have affected the property. A MCC occurs with the erection of new buildings, an amalgamation or subdivision of property, physical changes to property which result in a change in the value of that property, and a change of rateable status. This provision has caused concern from the start, which has been borne out by countless examples of obvious inequities. For example, under this provision, a public house or a petrol station which have been by-passed, and whose turnover is adversely affected as a result, may not qualify for a revision. Likewise a worked-out quarry, where further quarrying is impossible, may also appear to be excluded. The unfairness of these type of situations is clear to all, and requires change if the Act is to be safeguarded

from legal challenge. It is also of vital importance that the agent must be aware of the implications of the provision when advising clients at revision stage, with the most pertinent question being – "Is there an MCC?"

You will therefore note the importance of investigating a valuation under a revaluation to ensure it is fair and reasonable. As a result of the MCC provision, it may not be possible to have the case revised until the next revaluation no matter how incorrect the valuation may be.

Notifications

Under the Valuation Act 2001, the Valuation Office has been exonerated of all responsibility for ensuring that Valuation Certificates are despatched, and received by the appropriate person. Unlike previously, when the VO had to prove that the Certificate had been sent, there is no longer any requirement for proof of despatch. This particularly causes problems in the case of vacant buildings, where the Certificate may be sent to the unoccupied premises, and lie ignored until after the representation or appeal date. Because of MCC, essentially there is now only one opportunity to fight a rates assessment and even if the assessment can subsequently be proven to be excessive, in the absence of an MCC, a request for a revision to rectify the situation is not possible. This introduces an extra requirement for vigilance on the part of the Agent to ensure that certificates are received and dealt with, so as to ensure that deadlines are not missed.

It is also apparent to me that in the current economic climate prudent landlords are more aware of the rating assessments for their investment properties. The fact is that in the event they loose a tenant they are responsible for the rates payable and the level of rates payable may have an influence on the ability to attract a new tenant in the future. While landlords have a right of appeal they are not part of the notification process, there is a slight contradiction here. In my opinion it would be prudent for landlords to request their tenants to advise them of new rating assessments either in an informal way or possibly by insisting they are notified as a condition of their lease.

The Future of Revaluation

There is no time constraint on the Valuation Office to complete the first revaluation of any rating authority. However, it would appear to me that as we now have the first one completed in South Dublin, involving a steep learning-curve for all concerned, lessons have been learned from that experience, and will be reflected in subsequent revaluations. There is now no reason why the pace and number of revaluations cannot increase significantly.

An area of concern for the revaluation process is the timescale which has been involved. Firstly, it was 6 years after the Act came into effect in 2002 that the first revaluation in South Dublin was completed. Secondly, since the revaluation process commenced, we are now operating at a rate of one revaluation per year. With 88 local authorities throughout the country, the poorest of mathematicians will appreciate the unworkable nature of the current timescale. This is further complicated by the provision in the Act which stipulates that 2nd revaluations must be carried out within 5 – 10 years of the first. This could therefore easily lead to a bizarre situation where 2nd revaluations in certain local authority areas will fall due, while many first revaluations remain undone.

The obvious answer to this problem is that the speed at which revaluations are being rolled out must be increased considerably. To support this point of view it is interesting to note recommendation 11.1 in the recent Commission on Taxation Report 2009 which states:

> *"The revaluation initiative should be expedited to ensure that a transparent nationwide valuation system, including a cost-effective route of appeal, is in place as soon as possible. Regular revaluations should be carried out thereafter, in order to ensure that the valuation base remains up-to-date. This should be done as provided for in legislation, at intervals of not more than 10 years."*

Of course, the Valuation Office will, not unreasonably, argue that the pace of revaluations is dictated by the resources available to them to carry out the work. Given the current state of the property market, there are many qualified valuers currently unemployed or facing the prospect of it. Also, over the coming few years there will be many graduates from property courses facing the prospect of no employment within our industry. Therefore, it is clear to me that there is now an ideal opportunity for the Valuation Office to look to the private sector and/or the employment of additional valuers to expedite the revaluation process in an efficient and cost effective way. The employment of the private sector would be a new initiative in the rating process and this concept of outsourcing is in my opinion a real option as outlined in the social partnership agreement "Towards 2016". ■