

Commission on Taxation Report 2009 – Property Related Issues

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outlines the proposals in the Report which will impact on property*

Introduction

The much anticipated Commission on Taxation Report (“the Report”) was received with a considerable degree of familiarity given the widespread leaking of its main contents in the run up to publication. The Report focuses on the medium to long-term effectiveness of the Irish taxation system, and in particular, on the development of a tax system that provides greater equity and assists in economic growth.

The Commission has stated that it does not advocate an overall increase in the levels of taxation, but rather a broader and less volatile tax base.

This article will focus on the proposals in relation to the taxation of Irish property, and in particular, will analyse the Report’s most significant recommendation – the introduction of an annual property tax.

Annual Property Tax/ Stamp Duty on Residential Property

In light of the current Budget deficit position, which many commentators lay mainly at the door of over-reliance on bumper residential stamp duty receipts in the later years of the boom and in particular those in 2006 (€1.3bn) and 2007 (€1.01bn), it was inevitable that the Commission would recommend a movement away from transactional stamp duty receipts and a movement towards an annual tax levied on property. The Commission’s position is summarised as follows:-

A rebalancing of the existing tax system to provide for a more stable tax base is desirable and an annual property tax will help achieve this. The restructured property tax system that we propose will help reduce economic distortion arising from the present emphasis on transaction based property

taxes. It is appropriate to move away from an undue reliance on stamp duty – where the tax revenues are contingent on the level and value of property transactions. A property tax would provide a reliable revenue stream that cannot be avoided and can therefore provide stable revenue for the Exchequer and, in due course, local government financing. (Pg.7, Commission on Taxation Report)

In essence, the Commission views an annual property tax as a supplement to an amended stamp duty regime, which the Commission believes will deliver stable revenue receipts without the current distortive effects of stamp duty on the residential market.

Annual Property Tax – Key Features

The Report recommends the introduction of an annual property tax (APT) payable in respect of all residential property – both principal and non-principal private residences. The key features of the proposed APT are:-

- Payable by the property owner (as opposed to occupier) by reference to the open market value of the property using valuation bands;
- Limited exclusions including local authority and social housing;
- Administered by Revenue and operating on a self assessment basis – requirement to make a property tax return at least every three to five years with the valuation returned being used to calculate the tax for the following three to five year period;
- General waiver system for those on low incomes;
- Valuations to be supported by an accessible valuation database;
- Exemption for purchasers of principal private residences who paid stamp duty during the previous seven years;
- Excludes housing units held as trading stock.

	Valuation Band	Charge P.A (0.25%)	Charge P.A. (0.3%)
A	0 - 150,000	188	225
B	150,001 - 300,000	563	675
C	300,001 - 450,000	938	1125
D	450,001 - 600,000	1,313	1,575
E	600,001 - 750,000	1,688	2,025
F	750,001 - 1,000,000	2,188	2,625
G	1,000,001 - 1,500,000	3,125	3,750

The Report provides an indication of the level of APT payable at various valuation bands using two indicative rates – 0.25% and 0.3% of open market value as set out in the table below. It is important to note that these are examples only and are not necessarily indicative of the level of APT if implemented.

Annual Property Tax & €200 Charge on Non PPRs

Some residential landlords may argue that they already face an alternative version of an APT in the newly introduced NPPR €200 charge per residential property. In recognition of this fact, the Commission recommends the abolition of the €200 charge on the introduction of the APT.

In effect, the APT would merely extend the charge currently faced by residential landlords to principal private residents albeit that the APT would be calculated differently.

Annual Property Tax & Amended Stamp Duty Regime

The question arises as to how an APT would interact with the existing stamp duty regime. Firstly, it is important to note that the Commission **does not propose the substitution of an APT for the existing stamp duty charge**, but rather the APT is to co-exist alongside an amended stamp duty regime.

The proposed amended stamp duty regime would have the following characteristics:-

- No stamp duty would be payable by owner-occupiers – no distinction between first-time buyers and non-first-time buyers, and no distinction between new and second-hand properties;

- Stamp duty should continue to apply to investors, but at a lower rate. According to the Commission “[a] lower rate, which would not discourage investment, is appropriate”. No indication is given of the likely rate other than that it should be lower than the existing rate on commercial property.
- Stamp duty on commercial property to remain unchanged, however this should take account of corresponding rates in other EU jurisdictions particularly the rate in the UK.

Annual Property Tax - Potential Winners & Losers

So who are the potential winners and losers from the introduction of an APT together with an amended stamp duty regime? The main net beneficiaries are non-first time buyers looking to trade up/down to second-hand properties. This group will save the considerable stamp duty charge, which should more than offset any APT chargeable.

Apart from this group, taxpayers as a whole should benefit from the improved stability of the tax base arising from an APT.

Surprisingly, the main net losers from an APT would be first-time buyers who are exempt from stamp duty under the current regime, but would receive no relief from APT under the scheme proposed by the Commission. Consequently, it is likely that political necessity would require that any scheme to be introduced would contain some element of relief for first-time buyers.

Investors would face a reduced level of stamp duty (no specific rate is proposed in the Report), which should balance with the increased cost of an APT under the current proposal. No relief

from APT is proposed for those Investors who are unable to let their property due to market conditions.

Impact of Uncertainty on Residential Property Market

It is unclear what effect the Commission's proposals will have on the Irish residential property market, however it would be expected that non-first time buyers of second-hand properties would be reluctant to pay a considerable level of stamp duty only to see the stamp duty regime changed on foot of the introduction of an APT. It would therefore be advisable for the Government to commit to refund any stamp duty paid on foot of such a purchase in the event that such a purchase is subsequently exempted within a short period of time.

Abolition of Stamp Duty/CGT Relief on Transfer of Site to a Child

On the grounds of equity the Report recommends the abolition of the existing reliefs from stamp duty and capital gains tax on the transfer of a site from a parent to a child for the purpose of building a principal private residence.

Zoned Development Land – Windfall Gains & Recurrent Tax

The Commission seeks to reduce the benefit accruing to those land owners who gain from a land rezoning by proposing an additional capital gains tax charge on increases in land values which accrue from land rezoning. The Report is silent on the rate of additional tax on such windfall gains and how such a windfall gain could be accurately captured. It is also unclear whether such a windfall tax would apply retrospectively – if not, it is unlikely to have broad application given the existing supply of zoned land throughout the country.

In order to avoid the “hoarding” of so-called “land-banks” by developers, the Commission proposes the introduction of a recurrent property tax on undeveloped land, which is otherwise available for development. The Commission recognises the practical difficulties in designing and implementing such a tax. In practice, it is difficult to see how such a tax could be designed and implemented effectively given the subjective nature of land “hoarding” and the protracted nature of land development in general.

Broadening the Commercial Rates Base

The Report recommends broadening the commercial rates base to include State properties, bed-and-breakfast premises, guesthouses and self-catering accommodation operated on a commercial basis. Other properties currently exempt such as educational institutions should be part-rated having regard to their level of commercial activity.

Summary

The Commission has proposed a number of wide ranging reforms to the taxation of property in Ireland. In many cases it is unclear as to the feasibility of the proposals in practice. In particular, the proposals concerning additional tax on windfall gains on zoned development land and a recurrent tax on undeveloped zoned development land need further clarification.

The Commission recognises the inevitable back-lash from those who believe themselves to be negatively affected by its proposals:-

There will be a natural tendency for all who will be affected – which is almost all of us – to argue that they are a special case and should be exempted. Where such argument is indulged, the inevitable consequence is to increase the burden commensurately on the rest. (Foreword: Commission on Taxation Report)

Only time will tell whether this Report represents the future scope of property taxation in Ireland. Much like the McCarthy report on reductions in public expenditure which preceded it, it remains to be seen what, if any, of the Report's key recommendations will survive to implementation. In spite of this, given the obvious long-term nature of property investment and development, it would be advisable for all those involved in the Irish property sector to be mindful of what may be coming down the track. ■

Darragh McCarthy is a Tax Manager in the Deloitte Real Estate & Infrastructure Group specialising in the Irish property sector. Our Real Estate & Infrastructure Group brings together experts with many years of industry and professional experience in tackling the complex issues surrounding construction, property ownership and leasing. Please contact us on 01-4172200 to discuss how we can assist you in dealing with your property related issues.