

Vacant Home Tax (VHT)

Introduction:

A new ‘property tax’ was announced in Budget 2023 targeting under-used residential properties to encourage owners to put them into ‘full-time use’ by either renting them or selling them. This new tax is generally labelled ‘the Vacant Home Tax’ (VHT). VHT is a self-assessment tax so **it is important that all house owners explore their obligations**.

For the purposes of this summary, the term ‘house’ is used but remember that the tax applies to any property in use or suitable for use as a dwelling, e.g. an apartment. Likewise, the summary deals with individual owners but corporate owners have the same obligations, as do Trusts or any other legal entities that own a residential property.

The legislation was introduced via S.96 Finance Act 2022 and is contained in Part 22B TCAs. **The first VHT submissions will be due in November 2023** and will capture taxable properties – or ‘Vacant Homes’ – for the 12 months ended 31st October 2023. (The VHT regime draws heavily on the LPT regime for definitions - in crude terms any house liable to LPT will be liable to VHT).

The rate of VHT is quite high and is payable in addition to the existing LPT liability, so anyone potentially liable to the VHT should explore their position **as soon as possible** as they have until 31st October next to, if relevant, take action to mitigate their exposure.

Note that **even if not liable to VHT, all house owners are obliged to retain certain records** and can be requested by the Revenue to submit a VHT Return and/or to provide certain information. **In short, this new property tax imposes obligations on all house owners even if they are not actually liable to the tax itself.** (See S.653B for details of the types of records that must be maintained).

VHT Rate:

The rate of VHT is the property’s “Basic LPT” x 3, the Basic LPT being the rate of LPT as determined by the LPT Valuation bands but before the Local Authority Adjustment.

As you may recall, LPT is calculated on the house’s valuation and the rate of LPT depends on which of the 19 rate bands the property falls into – for example a house valued at €360k falls into LPT Rate Band 4 and the LPT arising is €405. Properties valued at > €1.75m are assessed separately and based on a tiered % rate.

However, the Local Authority has the option to increase or decrease the Basic LPT by 15%. Therefore, a house valued at €360k could be liable to LPT of anything from €344.25 to

€465.75 depending on the Local Authority's decision. Full details of the LPT rate bands and the different approaches by local authorities can be found at -

<https://www.revenue.ie/en/property/local-property-tax/valuing-your-property/determining-lpt-charge.aspx>

For VHT purposes, the Local Authority Adjustment is ignored, so a Vacant House valued at €360k will be liable to VHT of €1,215 even if their final LPT exposure was slightly higher or lower than €405. The following is a sample of potential VHT liabilities:

<u>Vacant Home Value</u>	<u>VHT Payable</u>
€0 - €200,000	€270
€200,001 - €262,500	€675
€262,501 - €350,000	€945
€350,001 - €437,500	€1,215
€437,501 - €525,000	€1,485
€525,501 - €612,500	€1,755

Don't forget that the house is still liable to LPT. Therefore, a Vacant Home valued at, for example, €275,000 could face property taxes of > €1,300 each year.

Incidentally, the VHT will not be a deductible expense for other taxes (*S.653BQ – “Notwithstanding any provision of the Tax Acts or Capital Gains Tax Acts, in computing the amount of profit or gains to be charged to income tax, corporation tax or capital gains tax, no sum shall be deducted in respect of any amount of vacant homes tax.”*).

Compliance:

The VHT compliance year runs from 1st November to 31st October each year, with the actual payment date being the following 21st March (the payment instruction must be in place by 1st January).

The first 'chargeable period' began on 1st November 2022. If you are liable for VHT for this period, then you must submit a VHT Return on/before 7th November 2023. If paying via Annual Debit Instruction, the instruction must be made to Revenue before 1st January 2024 but VHT payment will not be taken until 21st March 2024.

Further details of the VHT Return will be published in due course but it will be an on-line submission. Payment of the tax can be via DD or Debit Instruction.

Where there are multiple owners, only one Return is required – the chargeable person is usually the same person responsible for the LPT submissions but all owners remain jointly and severally liable for the VHT.

There will be the usual sanctions for non-compliance, e.g. late interest on unpaid tax, a late submission surcharge of 5% or 10%, possible fixed penalties etc. At present, VHT will not

become a charge of the property (and thus, unlike LPT for example, VHT clearance is not part of the sale process of the house).

It is worth noting that the legislation gives the Revenue the power to request the house-owner to prepare and deliver a VHT Return, even if VHT is not payable. **Therefore, all owners of residential properties are required to retain certain records, including for example proof of how the property was used during the year.** These records can include utility bills, waste collection bills, evidence of short-term lettings, etc.

‘Vacant Home’.

The VHT is only payable if (i) the property is regarded as a ‘Vacant Home’ and (ii) it is not covered by one of the exemptions.

The legislation defines a “Vacant Home” as a *residential property* subject to VHT as per S.653AO TCAs. The term ‘*residential property*’ is linked to the LPT legislation and basically deals with a property in use or suitable for use as a dwelling (in general if the property is liable to LPT then it will probably be a ‘residential property’ for VHT).

S.653AO basically applies VHT to any residential property that “*is in use as a dwelling for less than 30 days*”, but then goes on to provide specific exclusions from the VHT:

- the *LPT Exemption* - the property was not liable to LPT for that period.
- the *Letting Exemption* - the property was let via a ‘relevant tenancy’ for 30 days or more during that period.
- the *Sale Exemption* - property was subject to a Sale during that period.

In addition to the above four exclusions in S.653AO, there are other exemptions contained in S.635BC (note the S.635BC exemptions need to be claimed via the submission of a VHT Return whereas the S.653AO exclusions remove the property from the VHT regime altogether). As with any new tax, VHT will evolve over time as practice meets theory but for now the following appear to be the main exclusions/exemptions:

The “In Use” Exemption:

VHT will not apply if the house was in use for > 30 days. The term ‘*in use as a dwelling*’ is problematic and surfaces in LPT debates - e.g. if the owner lets her holiday home for Summer months, then it is ‘in use’ but is its use ‘as a dwelling’? The Revenue’s guidance includes an example of a person staying in her second home over various weekends during the year which would imply that seasonable occupation is acceptable. It is important to remember that the onus rests with the owner to prove that the property was ‘*in use as a dwelling*’, so records such as electricity usage, gas usage, waste collections, etc should be retained for at least 6 years.

The LPT Exemption:

Properties not liable to LPT are also excluded from VHT. This ensures for example that derelict properties are excluded from the VHT, as well as other LPT-exempt properties e.g. houses unoccupied because of long-term illness, houses for permanently incapacitated individuals, etc.

The Sale Exemption v *For Sale* Exemption:

If the property is sold during the chargeable period then it is not a 'Vacant Home' as per S.653AO. In this context a *Sale* would appear to include a gift or other sale for less than market value. There is a separate exemption via S.635BC if the property is 'up for sale' but this has a 'market value' element.

A 'For Sale' house remains a 'Vacant Home' but can avoid paying VHT if it is being actively marketed for sale on a reasonable basis – e.g:

- Fiachra advertises his vacant apartment for sale at €500k. Other similar apartments are available for €250k. As the price exceeds the MV, the VHT exemption will not apply.
- Suilta is selling his sea-side house but it is a condition of the sale that Suilta and his family retain the right to camp or put a mobile home in the garden each summer. This condition would impede a sale and thus the VHT exemption will not apply.

The Letting Exemption v 'For Let' Exemption:

A property that is subject to a 'relevant tenancy' is not a Vacant Home for that period – see below but this does not mean all rented units are excluded. If the property is vacant but seeking a tenant, then it is a Vacant Home but it may be possible to claim an exemption via S.635BC if the Revenue accept that the property is being actively marketed on reasonable terms.

- Brigid is advertising her duplex for rent but wants 9 month's rent paid in advance. This would not qualify for the VHT exemption.
- Boann is advertising her apartment for rent for €1,200 per month. Other similar apartments in that building and nearby are available for €800pm. This would not qualify for the VHT exemption.

It is worth noting that the legislation defines a ‘relevant tenancy’ as one that is (i) registered as per the Residential Tenancies Act 2004, (ii) is not between connected parties and (iii) the rent reflects market value rates. Therefore, letting to a family member will not qualify, any letting at < market value will not qualify, and short-term holiday letting will not qualify (these are not subject to the RTA 2004).

This raised questions about situations where the tenant does not qualify via the Letting Exemption but does occupy the property so it is ‘in use’. Does the occupation of the house by a non-qualifying tenant mean that the house is ‘*in use as a dwelling*’? What about holiday makers whose combined use of the house is for > 30 days? Again, we await clarity on these and other matters.

The Renovations Exemption:

Where the property was unavailable for 6+ months because of on-going renovations, an exemption may be claimed via S.635BC. The ‘works’ must have been carried out without undue delay, must last for 6 or more months and must fall into one of these two categories:

(i) A registered professional (architect, surveyor or QS) certifies that occupation would have posed a threat while the works were on-going and, if required, planning permission was obtained before the works commenced.

OR

(ii) The cost of the works was 20% or more of the value of the property.

The works must involve “*structural works, substantial repairs or substantial refurbishment*”. The Revenue’s guidance includes an example wherein the owner’s expenditure did not qualify as ‘works’ as he merely replaced windows, serviced the boiler and bought some furniture.

Other Exemptions:

S.635BC contains further exemptions from VHT, which again appear to require a claim being made as part of the VHT submission. These include:

- The person that owned and lived in the house died during this or the previous period. If for example Brian passed away and left behind his house and a vacant apartment, his house would qualify for the VHT exemption but not his apartment.
- A Grant of Representation was issued to the Estate of the property owner and the deceased has lived in the property prior to their death.
- There is a Court Order preventing the property from being occupied.

- The property is unoccupied due to the owner's serious illness, e.g.:
 - Alannah was living alone in her house when she suffered a stroke. She was released from hospital but advised that she cannot live alone so she moved in with her sister, Lauren. Alannah will be entitled to the VHT exemption for her home.
 - Had Lauren moved in with Alannah instead, Lauren would NOT be entitled to the VHT exemption for her home.

In all of the above cases, **the onus of proof rests with the owner to show that they are entitled to the exemption.** Therefore, records showing, for example, that the house was for sale or for rent should be retained for at least 6 years.

What Next:

In crude terms, house owners have until the 31st October next to either budget for their VHT or to consider taking steps to mitigate their VHT, for example to ensure that their property is not regarded as a "Vacant Home" for this period.

This means that owners should consider selling or renting any vacant properties, or taking steps to ensure that they are 'in use' for at least 30 days. The absence of guidance around the meaning of 'in use as a dwelling' is unhelpful.

In addition, anyone that owns a residential property are now obliged to retain certain records as the Revenue may request that they submit a Return and/or prove certain claims, such as how that property is being used. This could for example require all home owners, even if their only property is their own home, to retain utility bills etc for at least 6 years!

Basically, all homeowners need to monitor developments over the coming months and evaluate what this new tax means for them. WATCH THIS SPACE!

Please note that the above is for information purposes only and seeks to provide general guidance on what is a complex subject. As such brevity and clarity are prioritised over accuracy and technical exploration. It is essential that proper professional advice be obtained and further examination be carried out before any action is taken and/or any decisions are made about this matter. MK Brazil do not deal with this matter and accept no responsibility for the accuracy of the information contained therein as the data is merely an edited and condensed version of information published by various sources.