



**AN BILLE LUACHÁLA (LUASÚ) (UIMH. 2), 2012
VALUATION (AMENDMENT) (NO. 2) BILL, 2012**

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Bill proposes to amend existing valuation legislation in a number of areas and is designed to accelerate the revaluation of all rateable property in the country for which provision was made in the Valuation Act, 2001; to facilitate the adoption of new approaches to valuation including self-assessment and external service delivery options, through the outsourcing of elements of the valuation function, where appropriate. The amendments are formulated with the intention of making the valuation code more transparent, to correct deficiencies in the Valuation Act 2001 and to streamline aspects of the Act, especially with regard to the appeal procedures.

The Bill consists of 31 sections.

Section 1 defines words used in the Bill, most notably the “Principal Act”.

Section 2 provides for new definitions and for deletions, substitutions and extensions of existing definitions in the Act of 2001. The section redefines rating authority to provide for the revaluation of fisheries. The section also adopts for rating purposes the definition of charitable organisation in section 2 of the Charities Act 2009.

Section 3 provides for an amendment to section 4 of the Act of 2001 which enables the Commissioner of Valuation and the Valuation Tribunal to charge fees. Arising from the removal of the appeal to the Commissioner, it is now necessary to remove such enablement; the enablement is preserved in respect of the appeal to the Valuation Tribunal.

Section 4 provides for the deletion of sub-section 15(3) of the Act of 2001 in relation to relevant property directly occupied by the State that is non-rateable. In this regard, such property in future will be exempt from valuation and described in more specific terms in paragraph 12A of Schedule 4 — Relevant Property Not Rateable (see sections 28 and 29).

Section 5 enables the Commissioner, in connection with the process of an application under section 28 of the 2001 Act, to appoint an officer of his Office to be known as a revision manager and to delete the references, where they appear, to the officer known as “revision officer”, specifically in relation to the meaning of “officer” as provided for in section 17(3) of the 2001 Act. This amendment has the effect of enabling the Commissioner to delegate this function

to a designated officer to be known as a revision manager in order to exercise this statutory obligation in a more uniform manner. Heretofore, this delegation would have been made to a large number of the Commissioner's officials.

Section 6 provides for an amendment to section 19 of the 2001 Act to allow the Commissioner the option of appointing a person who is not an officer of the Commissioner to organise and secure the carrying out of valuation work in a rating authority area, as specified in a valuation order. The person so appointed may be contracted by the Commissioner to carry out valuation work as part of an external services delivery arrangement through the outsourcing of elements of the valuation function. A further amendment provides for the option of valuations being carried out by way of self-assessment by the ratepayer.

Section 7 provides for distinguishing between the publication of the new valuation list following a valuation of all relevant property in a rating area as provided for in section 19 of the 2001 Act (revaluation) and it becoming effective for rates purposes. This arrangement allows the Commissioner the option of publishing the new valuation list some time in advance of it becoming effective for rates purposes, thereby facilitating appeals before the new valuation list becomes effective for rates purposes. This provision is advantageous to all parties by widening the timeframe for completing the valuation process.

Section 8 provides for a change to section 23 of the Act of 2001 to the effect that where the Commissioner has published a valuation list, the valuation list will replace the existing valuation list on the effective date, rather than on the publication date. This provision is advantageous to all parties by bringing forward the date of the new valuation list.

Section 9 provides that whereas Part 6 of the Act of 2001 at section 28 (11) contains a provision for the correction of errors in the valuation list, without having to initiate a revision request to make the correction, a similar provision is necessary to correct errors which may appear in the valuation list published following a general valuation of all relevant properties (revaluation) carried out under section 19 of the Act. Accordingly, an amendment of section 24 addresses this issue. A clerical error includes an electronic error, an arithmetical error, the transposition of figures, a typographical error or any similar type of error, and also includes any erroneous insertion or omission or any mis-description. In effect, the correction facility contained in the 2001 Act would now be extended.

Section 10 provides for the period of time, under Section 26(2) of the Act of 2001, in relation to the right of an occupier to make representations in relation to a proposed valuation made under section 19, to be extended from 28 days to 40 days. The section also provides for an amendment to Section 26(3) to enable the valuation manager, if he thinks it appropriate to do so, to amend the terms of the proposed valuation certificate regardless of whether a representation was received or not.

Section 11 provides for the insertion of a new Part 5A dealing with self assessment. Provision is made for the Commissioner to make regulations providing for the carrying out of the valuation of property by self assessment by the ratepayer and for such option to be exercised in accordance with regulations set out in this section.

It provides that the Commissioner or his officer may make enquiries or seek information or records at any time in order to satisfy himself or herself as to the accuracy of a valuation submitted by an occupier of a property under the self assessment method of valuation and may request the occupier to submit an alternative valuation within 28 days. The officer may then enter this valuation or substitute a valuation of his or her own on the valuation list. The valuation determined will be effective for rates purposes from the effective date determined under section 7 of this Act and, where appropriate, for interest to be paid from that date at the court rates of interest.

Where an occupier fails to submit a valuation under this section, the officer of the Commissioner may determine the valuation of the relevant property and enter it on the valuation list. Where an owner or occupier fails to submit a valuation, that person shall be guilty of an offence and where a person knowingly or recklessly submits a false valuation to the Commissioner, that person shall be guilty of an offence.

Section 12 provides that section 28 of the Act of 2001 be replaced by a new section 28(1) to (15) to enable the Commissioner of Valuation to appoint a revision manager to carry out revisions of valuation in accordance with the Act and with such guidelines on relevant matters as may be issued by the Commissioner from time to time. This amendment has the effect of enabling the Commissioner to delegate this function to a designated officer in order to exercise his statutory obligation in a more uniform manner.

Section 13 provides that section 29 of the Act of 2001 be amended by substituting “revision manager” for “revision officer” in each place where it occurs. It also amends section 29(2) to allow for a representation period of 40 days instead of the 28 day period which applied heretofore.

Section 14 provides that where a revision manager decides not to revise a valuation on the basis that a material change of circumstances which warrants the carrying out of a revision has not occurred, the occupier has a right to make representations to the Commissioner within 40 days of the revision manager’s decision and the Commissioner may, depending on the particular circumstances, amend the valuation or any other detail appearing on the list that in the opinion of the Commissioner is inaccurate. This is a new provision for ratepayers.

Section 15 provides for the repeal of sections 30 to 33 of the 2001 Act relating to a right of appeal to the Commissioner of Valuation in relation to a determination made by the Commissioner under section 19 (Revaluation) or under section 28 (Revision) of the Act of 2001. The period within which representations can be made to the Commissioner in relation to a proposed valuation has been extended from 28 to 40 days in recognition of the new approach.

Section 16 amends section 34 of the 2001 Act and specifies the circumstances in which a person may appeal to the Valuation Tribunal, the time period during which an appeal can be made and the definition of a “specified person” who may lodge such an appeal.

Section 17 amends the grounds on which an appeal to the Tribunal may be made, provides that reference must be made to comparable properties or where no comparable properties exist, the appellant is required to submit a valuation determined by reference to the valuation levels of other properties stated in the valuation list.

Section 18 provides for the amendment of section 37 to provide that an appeal under section 34 (as amended) be determined by reference to values of comparable properties stated in the valuation list or if no such comparable properties exist by reference to the valuation levels of other properties appearing on the valuation list relating to the same rating authority area in which that property is situated and for the manner in which the Valuation Tribunal should deal with appeals.

Section 19 provides that a person other than an officer of the Commissioner may serve notice on an occupier of a relevant property, to supply information deemed necessary to carry out their functions under the Act, within 28 days and in the form requested. This is necessary in order to underpin the external service delivery arrangements.

Section 20 amends section 46 of the 2001 Act and provides that when a person goes into occupation of an existing property during a revaluation, they shall provide specified particulars in respect of that property to the Commissioner. This will provide the Commissioner with relevant information ensuring that the valuation list is up-to-date and accurate and ensure that the occupier is notified promptly in relation to the new valuation.

Section 21 provides in relation to section 47 of the 2001 Act, that a person other than an officer of the Commissioner may enter a relevant property and if necessary enter any other property in order to determine a valuation for the relevant property in question. There is provision to give 3 days notice should entry be initially refused. This power is necessary in respect of the external service delivery arrangements.

Section 22 provides for an amendment to section 48 of the 2001 Act, to allow the Commissioner scope to direct the manner in which the net annual value of a relevant property may be estimated. The inclusion of a new sub-head 1A allows, in the revaluation of a local authority area under Part 5 of the Act, the use of general market data, or aggregated data (including statistical and computer-aided techniques) to estimate the net annual values of groups, classes or categories of properties under Part 5 of the Act, where the Commissioner is satisfied that the use of such techniques is appropriate. This provision is without prejudice to the right of the Commissioner to adopt other approaches to establishing valuations and underpins the possible future use of statistical and other methodologies by the Commissioner in order to accelerate valuation.

Section 23 provides that where a further global valuation in relation to a public utility undertaking is carried out in accordance with the provisions of subsection 53(6), any value in relation to any property that comprised part of the previous global valuation of that undertaking (being its value immediately before it was comprised in the global valuation) but which property does not comprise part of the further global valuation, shall be entered in a valuation list or an existing valuation list on the same date as the further global valuation is entered in the central valuation list under section 55. It also provides for the addition of a new sub-section 53(7A) to ensure that after the determination of a global valuation in relation to a public utility undertaking and prior to the carrying out of a further global valuation, any property or properties comprised in that public utility undertaking shall not be subject to a valuation under Part 5 — Valuations and Part 6 — Revision of Valuations.

A new section 53(7B) is provided which, notwithstanding the above, provides that after the carrying out of a global valuation in relation to a public utility undertaking and prior to the carrying out of a further global valuation, any property or properties comprised in that valuation that are disposed of by such an undertaking or are no longer occupied by that undertaking, may be subject to a valuation under Parts 5 and 6 of this Act, unless they are further occupied by another undertaking which has been the subject of a global valuation under this section.

Section 53(9) of the 2001 Act is amended to provide for an increase from 2 months to 4 months of the time within which a public utility will supply to the Commissioner such information as he or she may require for the purpose of the performance of his or her functions under this section.

Section 24 provides for the amendment of section 60(1) of the 2001 Act so that a copy of a valuation list or a part of such list shall be taken to be a true copy if certified by a person authorised to do so who is not an officer of the Commissioner. This provision is necessary where valuation work may be carried out as part of an external service delivery arrangement. The section provides that the Valuation Office is not obliged to supply a witness at a judicial hearing for the purposes of validating the authenticity of a valuation list or certificate.

Section 25 provides for an amendment to section 62 of the 2001 Act to allow the Commissioner to revoke the appointment(s) of a person other than an officer of the Commissioner and appoint substitutes. This provision is necessary in an external services delivery context.

Section 26 provides for the amendment of the 2001 Act in so far as a person guilty of an offence under the Act (other than section 26H or Schedule 2) shall be liable to a Class A fine. A person guilty of an offence under section 26H or paragraph 9 of Schedule 2 shall be liable to a Class A fine or imprisonment for a term not exceeding 6 months or both.

Section 27 provides for the prohibition against disclosure of confidential information unless such disclosure is authorised by the Commissioner; is made to the Commissioner or the Tribunal; is made to the Minister by or on behalf of the Commissioner or is in compliance with the Act of 2001 or is otherwise permitted by law.

It also provides for the Commissioner to supply and charge fees for copies and extracts of the Valuation Lists and Revaluations thereof, and of all Field Books, and copies from maps and portions thereof in his custody, to all courts, public bodies and Individuals requiring the same, and to charge for the same according to a Scale of Fees to be approved of by the Minister for Public Expenditure and Reform. The fees shall be accounted for in a manner that the Commissioner may direct from time to time.

Section 28 provides for the amendment of paragraph 1 of Schedule 3 to the 2001 Act which relates to the categories of relevant property which are the subject of rates by the deletion of subparagraph (o) in relation to property directly occupied by the State. This results in such properties being no longer subject to valuation.

Section 29 provides for the amendment of Schedule 4 of the 2001 Act which lists categories of property which are to be treated as not rateable by inserting after paragraph 12 at 12A a description of

property, being a building or part of a building, land or a waterway or a harbour directly occupied by the State. This will clarify the definition of what constitutes State property by providing for a narrower definition of State occupied property, limiting the rates exemption that accrues to State occupied property to property directly occupied by:

- a Department of State,
- an office or branch of the public service specified in the schedule to the Public Service Management Act 1997,
- the Defence Forces or
- the Garda Síochána,

or used as a prison or place of detention.

Section 30 provides for an eventuality whereby a valuation list has been published under section 23 of the 2001 Act or a certificate/notice has issued under section 28 of that Act before the commencement of this amending Act. In such circumstances, the provisions in the 2001 Act shall apply in respect of that list, certificate or notice as though this amending Act had not been enacted. This is a transitional provision.

Section 31 provides for the short title, collective citation and commencement.

Financial Implications

External service delivery of valuation services would have additional costs, such as the cost of contracting private sector valuation service providers, which would fall to be borne by the Exchequer. There would be a requirement for clear specifications in the tender documents (in line with public procurement requirements), a robust quality control mechanism and additional management resources within the Valuation Office to manage the contract and its deliverables. The IT systems within the Valuation Office would also require enhancement to accommodate an outsourced component and to underpin self-assessment by ratepayers. Any additional expenditure would be dealt with as part of the Estimates process, and funding will be made available for the purpose of pilot programmes for external delivery of valuation services and self assessment by ratepayers.

While the enactment of sections 4 and 29 of the legislation will increase costs for some bodies, the expansion of the rates base should allow for reductions in the overall rates burden on businesses while maintaining the rates income of local authorities.

*An Roinn Caiteachais, Phoiblí agus Athchóirthe,
Lúnasa, 2012.*