



## **Threshold's Submission to the Consultation on the Tax and Fiscal Treatment of Landlords**

**7 April 2017**

### **Introduction**

Threshold is a national housing charity that is a key provider frontline advice and support services to people with housing problems in the private rented sector (PRS) in Ireland. Threshold's experience of over 40 years in this sector is that the most effective way to prevent homelessness is by ensuring that households can remain in their current rented home.

Threshold's highly successful Tenancy Protection Service (TPS) which is operated nationally on behalf of the local authorities and in partnership with the Department of Social Protection (DSP), provides a targeted response that prevents households from becoming homeless.<sup>1</sup> Since its inception in 2014 to the present day, over 12,500 clients have contacted the services. For example, Dublin TPS, which commenced in June 2014, has helped 10,710 households, 5632 of whom were at risk of homelessness and prevented 3159 households (including 5645 children) from becoming homeless. Since establishment in June 2016 Galway TPS has supported 387 families who where there was a risk of homelessness. The service prevented 334 households (including 454 children) from becoming homelessness.

These daily interactions with tenants give us an unparalleled understanding of this sector and allow us to identify growing trends which directly inform our policy and research. Threshold has consistently advocated for a proper functioning, stable and affordable rental market which is fair to both landlords and tenants.

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<sup>1</sup> The Dublin TPS commenced in June 2014, Cork TPS in January 2015, TPS in the Commuter Counties in April 2016 and Galway in June 2016. The national TPS rollout took effect in 1 January 2017. As part of the service, an Interim Tenancy Sustainment Protocol (ITSP) was put in place by the DSP. This allows Threshold to make an application on behalf of clients, who are in receipt of rent supplement (RS) and facing an unaffordable rent increase, for a payment in excess of existing RS limits. This payment initially last for 26 weeks (6 months) but may be renewed if the household circumstances have not changed.

As highlighted by the National Economic and Social Council (NESC) an efficient private rental sector “requires a balanced combination of tenant protection and tax incentives to stimulate both demand for and supply of private rental housing.”<sup>2</sup>

Maintaining supply in the PRS is paramount in the current housing and homelessness crisis and tax reform for landlords is one element of this strategy. While conscious of the need for measures to incentivise new investment for good landlords, this submission will focus on maintaining existing supply in the sector by providing supports for small scale landlords who let only one or two units. Threshold urges that any considerations on tax measures for landlords should be underpinned by the overall objective to promote an efficient and affordable rental market in Ireland. We should learn from the lessons of the past and ensure that any new measures ultimately increase supply and construction quantities rather than further stimulating demand and rent inflation in an already dysfunctional PRS.

Threshold strongly believes that tax measures should be targeted at small scale landlords, people with one or two properties, who house the overwhelming majority of vulnerable tenants in Ireland. Such tax measures should assist in meeting the housing needs of those on the brink of homelessness, tenants on the social housing list, tenants on housing supports, low income families and the working poor.

Regardless of the tax concessions granted to incentivise supply in the PRS, landlords must be tax compliant. Threshold has been advocating for some time for the introduction of a certifications scheme or ‘NCT’ for rented housing whereby a landlord would be required to provide a certificate to the local authority proving compliance with a range of obligations.<sup>3</sup> Central to this would be proof of tax compliance along with obligations relating to minimum physical standards, energy efficiency, fire safety, and registration with the Residential Tenancy Board (RTB). The integration of such a scheme would, in our view, promote greater compliance across the board.

Finally, tax treatment of landlords should be part of a wider package of reforms and policy development in the PRS in which tenants are given greater secure occupancy, and other factors influencing the supply of affordable rental homes are addressed.

## Recommendations

In light of the above Threshold makes the following recommendations:

### Recommendations:

- Threshold urges that any considerations on tax measures for landlords should be underpinned by the overall objective to promote an efficient and affordable rental market in Ireland.
- Lessons should be learned from the past to ensure that any new tax measures ultimately increase supply and construction quantities rather than further stimulating demand and rent inflation in an already dysfunctional PRS.

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<sup>2</sup> NESC, “Homeownership and Rental: What Road is Ireland On?” (No. 140 December, 2014).

<sup>3</sup> See Threshold, *Submission to the Strategy for the Rental Sector*, (November 2016)

- Any new subsidies or tax incentives should be based on the tax principle of conditionality (e.g. enhanced energy efficiency) and subject to both compliance with existing tax incentives and regular review. The introduction of a certifications scheme or 'NCT' for rented housing would ensure greater tax compliance.
- Threshold strongly urges the introduction of new tax initiatives which specifically target and support small scale landlords who house the overwhelming majority of tenants in Ireland, in particular, those on the brink of homelessness, tenants on the social housing list, tenants on housing supports, low income families and the working poor.
- Any changes in the classification of rental income as business activity status for tax purposes must correspond with the legal obligations of landlords and focus on the provision of housing for those most in need.
- Tax incentives in the form of expenses deductibility should focus on upgrading existing rental stock above minimum standards and in line with energy efficiency standards.
- A mortgage-to-rent type scheme for landlords with encumbered buy-to-let mortgages should be created drawing on best practices and lessons learned from the existing mortgage-to-rent scheme for homeowners.
- Create an information and advice support service for landlords with encumbered buy-to-let properties akin to Ábhaile, the National Mortgage Arrears Resolution Service.
- Tax relief for the Rent-a-Room scheme should include a corresponding amendment to the Residential Tenancies Act 2004-2016 to bring licensees under the remit of the Residential Tenancies Board and introduce mandatory standard license agreements with minimum rights for licensees.
- Introduce an increased rate of vacant property tax that ensures a higher activation of vacant properties.
- Threshold could support the introduction of a lower rate of CGT if legal safeguards are introduced to give residential tenants similar rights to the tenants of commercial properties, meaning they are allowed to continue in their tenancy during and after the sale of a rented property.
- Tax treatment of landlords should be part of a wider package of reforms and policy development in the PRS in which tenants are given greater secure occupancy, and other factors influencing the supply of affordable rental homes are addressed
- Any changes to the classification must ensure income and corporation tax codes are clear, consistent and updated.

## Context

State intervention in the rented sector is not a novel innovation. As NESC pointed out in its 2014 report, *“Homeownership and Rental: What Road is Ireland On?”*, the supply of rental accommodation in Ireland has been underpinned by tax incentives and by various Government schemes such as Section 23 for urban renewal which supported construction of housing to let and Section 50 tax break for student accommodation. The tax and fiscal treatment of rental income has also been an ongoing consideration of the State with the introduction of much higher rates of tax due on rental income in 2008.<sup>4</sup> Against the current backdrop of a housing and homelessness crisis Threshold welcomes any State intervention which aims to increase the supply of affordable rental homes in Ireland.

The recent Daft Rental Price Report figures put the lack of supply in context. The report highlights that there were less than 4,000 properties available to rent nationwide at the start of February 2017.<sup>5</sup> This number is even more worrying when you compare it with the February 2017 homelessness figures which state that almost 7,500 people are homeless, this figure includes 1,239 families and more than 2,500 children. There has been a 28 per cent increase in homelessness over the previous 12 months. About 70 per cent of the country’s adult homeless population are based in Dublin, but the figures reflect a nationwide problem with 293 homeless adults in Cork, 267 in Limerick, 182 in Galway and 118 in Kildare.<sup>6</sup>

Threshold’s clients are heavily reliant on small scale, part-time individual landlords. The vast majority of these tenants are vulnerable, low income households or working poor. Our Annual Tenancy Protection Service Report from Cork in 2015 showed that 46 per cent of those categorised at risk of homelessness were working.<sup>7</sup>

According to FEANTSA, the European Observatory on Homelessness, households with dependent children in Ireland are four to five times more likely to face severe housing deprivation than households without children.<sup>8</sup> Any further decrease in the supply will impact vulnerable clients the most. FEANSTA has highlighted that people living below the poverty threshold are being put under severe strain by the housing market.

*“They are being increasingly marginalised by a private rental market that feeds off a systematic lack of affordable housing; their financial security and wellbeing are being endangered by housing expenditure that is taking up an increasingly large proportion of their*

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<sup>4</sup> NESC, *“Homeownership and Rental: What Road is Ireland On?”*, (No. 140 December, 2014) at p.35.

<sup>5</sup> Daft.ie, *“Irish Rent Price Report Q1 2017”* (March 2017). Available at <https://www.daft.ie/report>

<sup>6</sup> Department of Housing, Planning, Community and Local Government, *Homeless Report-February 2017* <http://www.housing.gov.ie/housing/rebuilding-ireland/needs-assessment/summary-social-housing-assessments-2016>

<sup>7</sup> Threshold, Cork Tenancy Protection Service Annual Report 2015 <http://www.threshold.ie/download/pdf/thresholdcorktptsreport1782016.pdf>

<sup>8</sup> Feantsa, *Second Overview of Housing Exclusion in Europe*, March 2017 at p.60.

*budget. The most vulnerable sections of the population are being ignored and left with nowhere to turn.*<sup>9</sup>

Many small scale landlords are in financial difficulty or are leaving the market due to poor financial returns. The change in the tax treatment in 2008, which introduced a much higher rate of tax due on rental income, is having an impact on these landlords. The dearth of properties available to rent nationwide is a stark reminder of the need to support these landlords and promote supply.

Although stated government policy may ostensibly seek to bring about tenure neutrality and ease mobility between different tenures, the reality is that a two-tiered social housing system is developing in Ireland with Housing Assistance Payment (HAP) as the lower form of social housing. *“Rebuilding Ireland: Action Plan for Housing and Homelessness”*, places a strong emphasis on the PRS as an alternative vehicle for addressing housing need:

*“The Government’s long-term approach for assisting households living in the rental sector requiring support is through the HAP scheme and so all rent supplement recipients with a long-term housing need will transition to HAP.”*<sup>10</sup>

Recent figures provided by the Minister for Housing, Planning, Community and Local Government in a reply to a Parliamentary Question on 28 February 2017 states that there are currently over 18,000 households being supported by the Housing Assistance Payment. The target is to add a further 15,000 new HAP supported tenancies nationally by the end of 2017.<sup>11</sup> A recent update from the Department of Housing, Planning, Community and Local Government (DHPCLG) on its response to the homelessness crisis states that the Department views HAP as the primary means by which homeless families will be moved out of commercial hotels and B&Bs.<sup>12</sup>

Threshold has some significant reservations about the HAP scheme. HAP results in a serious dilution in security of tenure for social housing tenants. Traditional social housing provided by local authorities and Authorised Housing Bodies provides real security of tenure to tenants (essentially housing for life) and a differential rent ensures that rent is based on household income. In contrast HAP tenancies are with private landlords and covered by the Residential Tenancies Acts 2004-2016, which provides for more limited security of tenure. A landlord may for example terminate such a tenancy if s/he decides to sell the property or require it for the use of a family member.

In addition to providing for HAP tenancy the PRS has been consistently overburdened with the housing needs of those social housing lists. *Rebuilding Ireland* commits to providing 47,000 new social housing units by 2021. Minister Coveney has acknowledged that *“progress has been at times*

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<sup>9</sup> Feantsa, *Second Overview of Housing Exclusion in Europe*, March 2017 at p.3. Available at <http://www.feantsa.org/en/report/2017/03/21/the-second-overview-of-housing-exclusion-in-europe-2017?bcParent=27>

<sup>10</sup> Department of Housing, Planning, Community and Local Government *“Rebuilding Ireland: Action Plan for Housing and Homelessness”* (July 2016). Available at [http://rebuildingireland.ie/Rebuildingpercent20Ireland\\_Actionpercent20Plan.pdf#page=70](http://rebuildingireland.ie/Rebuildingpercent20Ireland_Actionpercent20Plan.pdf#page=70)

<sup>11</sup> Ref No: 9857/17, 9858/17, 9859/17, 9860/17, 9861/17, 9862/17, 9863/17, 9864/17, 9865/17 <http://oireachtasdebates.oireachtas.ie/debatespercent20authoring/debateswebpack.nsf/takes/dail2017022800076?opendocument#WRX02400>

<sup>12</sup> Available at <http://rebuildingireland.ie/news/how-we-are-meeting-the-challenge-of-homelessness/>

slow on the build side of the social housing programme.”<sup>13</sup> The Social Housing Construction Status Report, published in February 2017, highlights that there are 8,430 units at some stage of development, only 1,829 are actually being built as of 31 December 2016. 2,687 of those 8,430 (32 per cent) are at the capital appraisal stage, which means they may or may not even be approved for funding and construction.<sup>14</sup> The disconnect between the Government’s target numbers and the level of new social housing being built, means we are looking to a future with more and more tenants living in HAP tenancies in the PRS.

## **Differentiation Between Small Scale and Large Scale Landlords**

Threshold recognises that the tax treatment of landlords is complex area. In the context of the current affordability and accessibility crisis Threshold believes that targeted tax incentives are required not only to maintain existing supply but also to stimulate increased investment in the sector. At the heart of any considerations on tax measures for landlords should be the vision outlined in the *Strategy for the Rental Sector*:

*“Our vision is for a strong, viable and attractive rental sector supported by a policy and regulatory framework that delivers long-term affordable and high quality accommodation solutions to meet diverse tenant needs, and a secure, predictable investment environment for landlords and accommodation providers.”<sup>15</sup>*

Threshold strongly urges the introduction of new tax initiatives which specifically target and enhance the financial returns of small scale landlords who house the overwhelming majority of Irish tenants. Small scale landlords, who make up of 91 per cent of the private rental market, are the lynchpin for supply, yet they have not benefitted from the kind of advantageous tax treatment afforded to large scale landlords.

Institutional landlords such as Real Estate Investment Trusts (REITs) and non-institutional landlords such as foreign investment funds have benefited richly from the existing tax system. REITs have used special-purpose vehicles under the Section 110 loophole in the Taxes Consolidation Act 1997 as a successful tax avoidance mechanism. Such a loophole should not be allowed to happen again. The growth of investment in the sector by non-bank entities or so-called ‘vulture funds’ is a cause for concern. The business model of these non-resident funds, built on short-term gains and high returns, is not the answer to promoting long term supply in the Irish rental stock. Notwithstanding recent legislation to prevent mass evictions within multi-unit dwellings, the large scale evictions in Tyrellstown are a startling reminder of the business model employed and of the lack of respect for tenant’s rights by vulture funds.

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<sup>13</sup> Press release, “Minister Coveney publishes status of Social Housing Projects nationwide, (February 2017). Available at <http://rebuildingireland.ie/news/social-housing-developments/>

<sup>14</sup> Department of Housing, Planning, Community and Local Government, *Social Housing Construction Status Report Q4-2016* (February 2017). Available at [http://rebuildingireland.ie/install/wp-content/uploads/2017/02/Social-Housing\\_Construction-Status-Report\\_Q4-2016.pdf](http://rebuildingireland.ie/install/wp-content/uploads/2017/02/Social-Housing_Construction-Status-Report_Q4-2016.pdf)

<sup>15</sup> Department of Housing, Planning, Community and Local Government, *Strategy for the Rental Sector*, (December 2016) at p.7.

[http://www.housing.gov.ie/sites/default/files/publications/files/strategy\\_for\\_the\\_rental\\_sector\\_final.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/strategy_for_the_rental_sector_final.pdf)

**Recommendation:**

- Threshold strongly urges the introduction of new tax initiatives which specifically target and support small scale landlords who house the overwhelming majority of tenants in Ireland, in particular, those on the brink of homelessness, tenants on the social housing list, tenants on housing supports, low income families and the working poor.

**Landlords Exiting the Rental Market**

There are an increasing number of indicators highlighting the continuing trend of growth in the rental sector. Statistics from the RTB Annual Report 2015 highlight that the numbers of landlords registered with the RTB rose 6 per cent from approximately 160,000 in 2014 to approximately 170,000 in 2015.<sup>16</sup> Recent figures published from Census 2016 show that there were 497,111 households in Ireland renting on census night 2016. This is an increase of 22,323 since Census 2011 when 474,788 households were renting.<sup>17</sup> This highlights that a larger number of households rent than are registered with the RTB. The RTB 2015 Annual Report only reflects 319,609 registered tenancies.<sup>18</sup>

The 2014 Report by DKM Economic Consultants shows that over 68 per cent of landlords have a single tenancy, and over 91 per cent of landlords have three or fewer tenancies. Large professional landlords – such as REITs, corporate vehicles and investment funds – accounted for just over 2 per cent of residential tenancies. A representative survey of landlords in the same report showed that 70 per cent have an outstanding debt on their property and for 71 per cent of these the rent did not cover their debt repayments. 29 per cent planned to exit the sector as soon as possible.<sup>19</sup>

From January 2016 to date Threshold has dealt with 1601 client cases in relation to tenancy terminations, 1183 client cases regarding invalid notices and 406 related to illegal eviction both threatened and actioned. These statistics are indicative of the growing number of landlords leaving the market. The high number of rented households facing a loss of their home due to the proposed sale of the property by the landlord is a growing concern.

Recent house price inflation is an attractive incentive for landlords to terminate leases and exit the market, especially those with encumbered buy-to-lets. The figures from the latest Daft.ie House Price Report show a strengthening of house price inflation across the country. The average price of a house in the State is now €230,000, some 9.4 per cent higher than this time last year, and more than €65,000 higher than four years ago. In both Galway and Limerick, average asking prices were 16 per

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<sup>16</sup> Residential Tenancies Board, “*Annual Report and Accounts 2015*”, (March 2017) at pp.10 &11.

<https://www.rtb.ie/docs/default-source/annual-reports/annual-report-and-accounts-2015.pdf?sfvrsn=>

<sup>17</sup> CSO, Census 2016 Summary Result-Part 1 -Chapter 9 Housing. Available at

[http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter\\_9\\_Housing.pdf](http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf)

<sup>18</sup> Residential Tenancies Board, “*Annual Report and Accounts 2015*”, (March 2017) at pp.10 &11.

<https://www.rtb.ie/docs/default-source/annual-reports/annual-report-and-accounts-2015.pdf?sfvrsn=2>

<sup>19</sup> DKM Economic Consultants on behalf of Private Residential Tenancies Board, “*Future of the Private Rented Sector*” (October 2014) See *Executive Summary* at p.ii. Available at

[http://dkm.ie/en/news/dkm\\_reports\\_on\\_private\\_rented\\_sector\\_published1](http://dkm.ie/en/news/dkm_reports_on_private_rented_sector_published1)

cent up on last year, while in Waterford and Cork prices were up 13.9 per cent and 10.7 per cent respectively.<sup>20</sup>

The introduction of attractive tax measures for small scale landlords is necessary to reverse the trend of market exits. Lessons need to be learned from the past whereby tax measures on rental income had a detrimental effect on small scale landlords, who by their very nature were treated less advantageously than institutional landlords, REITS or non-bank entities. Previous general changes to the tax code such as the introduction of USC and PRSI obligations on rental income and the removal of the mortgage interest tax relief<sup>21</sup> have made it more difficult for small scale landlords to survive in this sector. In Threshold we have seen alternative approaches by these landlords to bolster their incomes such as switching to Air B&B or allowing overcrowding in their properties which has serious health and safety risks for occupants.

### **Income from Rental Property classed as Business Activity**

Threshold has long called for the professionalisation of the provision and management of rented accommodation. Improved expense deductibility and the treatment of residential property rental as a business activity for tax purposes in certain prescribed circumstances are important elements in achieving such professionalisation. However any such incentives must be tied to tax compliance, the principle of conditionality and the respect of tenants' rights.

In July 2000 the *Report of the Commission on the Private Rented Residential Sector ("Commission")* reviewed the tax classification of landlords in Ireland.<sup>22</sup> It is over 20 years since the Commission made its recommendations but many of the issues remain the same. The taxation classification of rental income continues to distinguish between trading and non-trading income.

Any elevated tax treatment for landlords must be linked to their corresponding obligations as a professional landlord:

*"A landlord could be considered to be operating as a residential business when Revenue Commissioners are satisfied that there is a legitimate business whereby the properties are being 'actively managed'."*

Threshold also supports the principle of limitations proposed by the Commission on those entitled to business activity status for tax purposes.<sup>23</sup> Given the role played by the PRS in housing those on brink of homelessness, people who would traditionally have accessed social housing, tenants entitled housing supports, low income families and the working poor, tax measures should be prioritised for landlords who house those most in need.

Any elevated tax treatment for landlords, must be linked to their corresponding obligations as a professional landlord and must not become just an alternative source of government income:

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<sup>20</sup> Daft.ie, *Irish House Price Report Q1 2017*, March 2017. Available at <http://www.daft.ie/report>

<sup>21</sup> This restriction has been removed for landlords who accept HAP

<sup>22</sup> *Report of the Commission on the Private Rented Residential Sector*, July 2000

<sup>23</sup> *Ibid.*

*“The Commission is strongly of the view that any tax incentive or reliefs being introduced should, as is the case with regards to exemptions from anti-speculative property tax, be dependent upon compliance with the regulatory controls applicable to the PRS and to the registering of tenancies”<sup>24</sup>*

**Recommendation:**

- Any changes in the classification of rental income as business activity status for tax purposes must correspond with the legal obligations of landlords and focus on the provision of housing for those most in need.

## **Expenses Deductibility**

### **Tax incentives linked to Minimum Standards and Energy Efficiency**

Threshold has a strong preference for the introduction of a broader system of expense deductibility for small scale landlords which would allow them to off-set certain non-capital expenses and costs incurred as part of renting a property. The Home Renovation Scheme is a welcome tax incentive, having been introduced about 5 years ago for home owners and extended one or two years later to landlords to support renovation.

Such expenses should focus on upgrading existing rental stock above minimum standards and in line with energy efficiency standards. It is estimated that around 20 per cent of rented dwellings in Ireland have a Building Energy Rating (BER) of F or G, and more than 55 per cent of private rented dwellings are considered to have poor energy efficiency, with BERs between D and G.<sup>25</sup> It is our experience that the most vulnerable tenants who are on low incomes live in the least energy efficient accommodation leading to health and safety concerns and energy poverty.<sup>26</sup>

Threshold strongly urges that tax relief should be a contingent on the habitability of the property and living conditions for tenants and not merely nominal refurbishment or redecorating. In 2016 substandard accommodation was Threshold’s number one issue with 1,432 cases nationally. We have found that many clients live in substandard properties that lack the basic necessities including freedom from dampness and condensation, proper heating facilities and hot and cold running water. The introduction of a certifications scheme or ‘NCT’ for rented housing could ensure greater tax compliance.

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<sup>24</sup> *Ibid.* at pp. 127-128

<sup>25</sup> As highlighted in the Department of Communications, Energy & Natural Resources Strategy to Combat Energy Poverty 2016-2019, and based on research by the SEAI working with independent external consultants.

<sup>26</sup> Research by the ESRI has found that households living in relatively energy inefficient properties spend €160-€419 per annum more on energy than households in a home rated with a BER of B. The research also found that in percentage terms, a one grade improvement in BER is associated with a 4-10per cent change in household energy expenditure. See Curtis & Pentecost, *Changes in Household Fuel Expenditure Associated with Improvements in Building Energy Efficiency*, ESRI Working Paper No.478 (February 2014). <https://www.esri.ie/pubs/WP478.pdf>

When creating such tax reliefs drafters must be mindful of landlords obligations under the Housing (Standards for Rented Houses) Regulations 2008<sup>27</sup> as amended by the Housing (Standards for Rented Houses) (Amendment) Regulations 2009.<sup>28</sup> In addition, new minimum standards measures covering heating appliances, carbon monoxide and window safety, will be introduced with effect from 1 July 2017.<sup>29</sup> Drafters should avoid a situation whereby landlords are rewarded or benefit financially for bringing their accommodation in line with existing standards prescribed by law. Furthermore landlords should not pass on any renovation costs to tenants in the form of rent increases or illegal charges.

Drafters should also be mindful not to create any perverse incentives that could impact supply. For example a landlord who gets tax relief to renovate may also benefit for a corresponding increase the value of the property. This could lead to a greater incentive for landlords to sell than remain in the PRS. The recent legislative changes, which provide for the introduction of rent certainty measures in Rent Pressure Zone, provides an exemption for the 4 per cent maximum rent increases if a *'substantial change in the nature of the property'* has occurred. The precise meaning of the provision is unclear but it should be kept in mind as a potential avoidance mechanism. Both of these scenarios would push properties out of the reach of lower income groups.

**Recommendation:**

- Tax incentives in the form of expenses deductibility should focus on upgrading existing rental stock above minimum standards and in line with energy efficiency standards. A certifications scheme or 'NCT' for rented housing should be introduced to ensure greater tax compliance.

### **Mortgage Interest Relief linked to Security of Tenure**

Interest relief on borrowings is an issue which can significantly influence decision-making for small scale landlords and potential investors. Threshold supports the current 100 per cent mortgage interest relief offered to landlords who participate in the Housing Assistance Payment.

While generally welcoming further developments in Budget 2017 around mortgage interest relief Threshold would strongly urge that any amount of interest deduced as an expense against rental income should be related to the length of time that the property will be in the rental market or to the level of rent charged.

### **Landlords with Distressed Rentals and Negative Equity**

All landlords, even so called 'accidental landlords,' are subject to the same regulatory and legal requirements and obligations. Deciding to become a landlord is an investment decision and with this

<sup>27</sup> <http://www.irishstatutebook.ie/eli/2008/si/534/made/en/print>

<sup>28</sup> <http://www.irishstatutebook.ie/eli/2009/si/462/made/en/print>

<sup>29</sup> <http://www.housing.gov.ie/housing/private-rented-housing/minimum-standards/coveney-signs-new-regulations-standards-rental>

comes the growing responsibilities of a professional business. A tenant should never lose their basic rights just because their landlord is in financial difficulty.

Threshold does recognise the particular difficulties facing small scale landlords with distressed rentals and who are in negative equity. The legacy of encumbered buy-to-let mortgages and the corresponding appointment of receivers to those properties are clearly highlighted in the latest Central Bank Mortgage Arrears and Repossession Statistics published in March 2017. At the end of December 2016, there were 130,710 residential mortgage accounts for buy-to-let properties in Ireland. Some 19 per cent of these, totalling 25,218 accounts, were in arrears. Most worrying of all is the fact that 14,028 buy-to-let accounts were arrears of almost two years.<sup>30</sup>

The day to day reality of encumbered buy-to-let properties has a detrimental impact on both landlords and tenants. This impact is particularly acute on rented households facing a loss of their home and potential homelessness. This is clearly reflected through our services. From January 2016 to March 2017 Threshold has dealt with 226 client cases relating to receivership. From 2012 to date Threshold has dealt with 1,786 cases relating to receivership.

In order to prevent landlords with distressed rentals exiting the market as property prices rise, Threshold suggests the creation of a government initiative taking the best practices and learning from the mortgage-to-rent scheme for owner occupiers. The aim of such a scheme would be to help landlords with encumbered buy-to-let mortgages which would also align with the governments existing objective of preventing further risk of homelessness for tenants in the PRS. The scheme could be administered by a NAMA type institution and would entail the development of incentives for eligible landlords, for example a reasonable payment along with debt write-off. Similar to the scheme for owner occupiers, medium to large Approved Housing Bodies could act as intermediaries taking over the properties and renting them to those on the social housing list or in receipt of social housing supports such as HAP or RAS.

Threshold would also recommend the creation of an information and advice support service for landlords with encumbered buy-to-let properties akin to Ábhaile, the National Mortgage Arrears Resolution Service. Ábhaile offers financial advice and legal advice on owner occupied mortgage arrears.<sup>31</sup> Threshold is a strong believer in the importance of information and advice as a preventative tool for our clients<sup>32</sup> and we believe that the same general principle is relevant in the context of preventing or alleviating arrears on distressed incomes for this category of landlord. In addition to the housing advice Threshold provides tenants, the creation of a corresponding service for landlords to manage the debt of encumbered rental properties could help keep landlords in the PRS. There is cost benefit of providing this debt advice and keeping these landlords in the PRS market to offset the growing cost provision of emergency accommodation for those who become homeless as a result of lack of supply.

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<sup>30</sup> Central Bank of Ireland, *Residential Mortgage Arrears and Repossessions Statistics: Q4 2016*, (March 2017). Available at <https://www.centralbank.ie/news/article/mortgage-arrears-and-repossessions-statistics-q4-2016>

<sup>31</sup> See <https://www.welfare.ie/en/Pages/Abhaile---Mortgage-Arrears-Resolution-Service.aspx>

<sup>32</sup> Brooke, Simon, *“Does Housing Advice Work? An impact study of the work of Threshold”* (2010) at p.36. An impact study of the role of advice in the prevention of homelessness in 2010 found that 83 per cent of Threshold’s clients who were at risk of homelessness when they first contacted Threshold were not homeless between one and three months later demonstrating the effectiveness of the role of advice in preventing homelessness.

**Recommendation:**

- Mortgage-to-rent type scheme for landlords with encumbered buy-to-let mortgages should be created drawing on best practices and lessons learned from the existing mortgage-to-rent scheme for homeowners.
- Create an information and advice support service for landlords with encumbered buy-to-let properties akin to Ábhaile, the National Mortgage Arrears Resolution Service.

## Licenses and Rent-a Room scheme

Threshold strongly urges that any tax breaks made available under the Rent-a-Room scheme should be contingent on certain minimum rights for an individual who rents a room in their landlord's home.<sup>33</sup> Due to the current shortage of rental accommodation, a growing number of people are taking up this type of arrangement, in particular students and younger people on social welfare or low incomes.

This group is more vulnerable than traditional tenants as they are considered to have a licensee agreement with their landlord as opposed to a standard tenancy agreement. License arrangements are very informal in nature with little if any meaningful protection for the licensee under the law. Licensees are not entitled to the same protection as tenants under the residential tenancies legislation. License arrangements can be terminated with little if any notice and with no recourse for those affected.<sup>34</sup> Such arrangements may not be subject to minimum physical standards legislation with recent examples of egregious overcrowding becoming a significant concern.<sup>35</sup>

Tax relief for the Rent-a-Room scheme should include a corresponding amendment to the Residential Tenancies Act 2004-2016 to bring licensees under the remit of the Residential Tenancies Board, thereby making a dispute resolution mechanism available. Furthermore, standard license agreements with minimum rights for licensees, for example in terms of minimum notice, should be mandatory.

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<sup>33</sup> Threshold, *Submission to the Strategy for the Rental Sector*, (November 2016) at pp.14-15. In an effort to encourage more households to rent out rooms in their homes the ceiling for exemption from income tax under the Rent-a-Room scheme was recently increased from €12,000 to €14,000 in Budget 2017.

<sup>34</sup> Threshold, *Submission to the Strategy for the Rental Sector*, November 2016 at pp.14-15.

<sup>35</sup> Threshold, *Submission to the Strategy for the Rental Sector*, November 2016 at pp.28-29. See also "Homeowner renting 16 beds in three rooms for up to €445 each" <http://www.irishtimes.com/news/social-affairs/homeowner-renting-16-beds-in-three-rooms-for-up-to-445-each-1.2975618?mode=sample&auth-failed=1&pw-orig=httpper cent3Aper cent2Fper cent2Fwww.irishtimes.comper cent2Fnewspers cent2Fsocial-affairsper cent2Fhomeowner-renting-16-beds-in-three-rooms-for-up-to-445-each-1.2975618>; "Dozens living in south Dublin 'unauthorised hostel' must leave" <http://www.irishtimes.com/news/crime-and-law/courts/circuit-court/dozens-living-in-south-dublin-unauthorised-hostel-must-leave-1.2953672>

**Recommendation:**

- Tax relief for the Rent-a-Room scheme should include a corresponding amendment to the Residential Tenancies Act 2004-2016 to bring licensees under the remit of the Residential Tenancies Board and introduce mandatory standard license agreements with minimum rights for licensees

**Vacant Residential Property**

Despite the housing and homelessness crisis, latest figures from the Central Statistics Office show that up to 240,000 residential properties are currently empty in Ireland. More than 20,000 apartments and houses, excluding holiday homes, are vacant in Dublin city and suburbs, with nearly 9,000 of those in the city centre. Similarly, in areas of Cork and Galway city the vacancy rate is in excess of 25 per cent of the total housing stock.<sup>36</sup>

The Urban Regeneration and Housing Act 2015 requires planning authorities to establish a Vacant Sites Register. The aim of the Register is to allow local authorities to impose a levy on property owners who fail to develop prime housing land.<sup>37</sup> While legislation in this area is welcome the vacant sites levy prescribed, 3 per cent of the market value of a site, is too low and needs to be elevated to rate that ensures higher activation of vacant properties.<sup>38</sup>

**Recommendation:**

- Introduce an increased rate of vacant property tax that ensures a higher activation of vacant properties.

**Capital Gains Tax**

Threshold supports the suggested approach in the consultation paper of any reduction of Capital Gains Tax (CTG) being contingent on the property being sold with a tenant in situ and/or a requirement for the property to continue in use as a rental property. A reduction in CGT without such conditionality would incentivise more landlords to finish tenancies and leave the market.

Threshold has advocated for continuation of tenancy upon sale of rented property for a long time particularly in the context of repossession and receivership. There is clear evidence available to us from our services that when vacant possession is obtained for sales purposes, for example where receivers are appointed, properties are left unoccupied for a considerable time.

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<sup>36</sup> CSO, *Census of Population 2016 - Preliminary Results- Housing*  
<http://www.cso.ie/en/releasesandpublications/ep/p-cpr/censusofpopulation2016-preliminaryresults/housing/>  
<sup>37</sup> <http://www.irishstatutebook.ie/eli/2015/act/33/enacted/en/html>. This Act came into effect on 1st January 2017. Under the legislation, property owners will then have 28 days to make a submission regarding the inclusion of the site on the register.

<sup>38</sup> Countries like Scotland, England and France penalise long-term vacancies by dramatically increase tax once your house is vacant for more than a year in an area of high population.

The sale of a rented property should not automatically lead to the termination of tenancy, especially if the property is to be sold to another landlord or investor. We are of the view that section 34 of the Residential Tenancies Act should be amended to remove the right of a landlord to terminate a tenancy, for the purpose of sale, where the property is in the possession of an institutional landlord or where the landlord in question works as a property professional. The protection of tenancy rights in such a scenario could be achieved by way of relatively straightforward amendment to the Residential Tenancies Act, mirroring longstanding provisions relating to the transfer of commercial property. It is suggested that this amendment could take place in the context of the consolidation and restatement of the Residential Tenancies Act due in Q417 as part of the Rental Strategy.<sup>39</sup>

**Recommendation:**

- Threshold could support the introduction of a lower rate of CGT if legal safeguards are introduced to give residential tenants similar rights to the tenants of commercial properties, meaning they are allowed to continue in their tenancy during and after the sale of a rented property.

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<sup>39</sup> Threshold, *Submission to the Strategy for the Rental Sector*, (November 2016) at pp.12



An Roinn Tithíochta, Pleanála,  
Pobail agus Rialtais Áitiúil  
Department of Housing, Planning,  
Community and Local Government

