



# LAND AND BUILDINGS TRANSACTION TAX (SCOTTISH STAMP DUTY) AND LEASES

A HANDY GUIDE

# Land and Buildings Transaction Tax (Scottish Stamp Duty) and Leases

Land and Buildings Transaction Tax (LBTT) replaced Stamp Duty Land Tax (SDLT) on transactions involving land in Scotland from 1 April 2015. The LBTT regime for leases is significantly different from the SDLT regime. Revenue Scotland (the devolved Scottish tax authority) administers LBTT in Scotland. HMRC has no jurisdiction over LBTT, and LBTT lease returns have to be notified to Revenue Scotland.

LBTT is only chargeable on commercial and agricultural leases – leases of residential property are exempt from LBTT. However, leases of six or more properties are treated as non-residential property, as are quasi-residential properties such as those used as care homes or old style student accommodation, so LBTT is chargeable on these types of leases.

## Is LBTT more than SDLT?

The rates of LBTT are lower than SDLT, as LBTT is charged at 1% of the net present value (NPV) of the lease rent (including VAT if payable), to the extent that it exceeds the available lease nil rate band (currently £150,000). There is no equivalent to the SDLT 2% band applicable to more expensive leases.

- LBTT returns have to be made every three years and the NPV recalculated. If more LBTT is payable, this has to be paid to Revenue Scotland, and if less a refund can be claimed.

The calculation of LBTT is also different from SDLT because SDLT is based on the rent for the first five years of the lease, with the highest rent in the first five years being used for year six onwards. Rent increases after year five are ignored for SDLT.

For LBTT, by contrast, the NPV is based on the rent payable across the whole term of the lease. LBTT returns have to be made every three years and the NPV recalculated. If more LBTT is payable, this has to be paid to Revenue Scotland, and if less a refund can be claimed. This means that if there are rent increases after year five, additional LBTT will be payable, and if the rent decreases, a refund of LBTT can be obtained.

Because LBTT is based more closely on the rent actually payable, in some cases the LBTT will be more than SDLT on an equivalent lease would be, since SDLT ignores the rent actually payable after year five. Likewise it may be lower than SDLT on high value leases. If a lease is terminated early the LBTT for the wasted years can be reclaimed.

Where a premium is paid by the tenant, LBTT is also payable on the premium (plus VAT if it is chargeable) at the rates which apply to purchases of land. Unlike SDLT, if the average rent per year is £1,000 then no LBTT nil rate band will apply to the premium. A calculator is available on [Revenue Scotland's website](#).



## More information

You can follow the latest developments on tax, including the latest guidance about Entrepreneurs' Relief, on our tax blog: [brodies.com/blog/scottish-tax](https://brodies.com/blog/scottish-tax)



## When is LBTT payable on leases?

The effective date on which LBTT becomes payable on a lease transaction is the earliest of the following:

- the date on which first payment of rent is made;
- the date on which the tenant takes entry to the property; and
- the last date of signing of the lease.

This is similar to the position for SDLT. However, the payment arrangements are different. The LBTT has to be paid, or arrangements satisfactory to Revenue Scotland must be made to pay, when the LBTT return is made. It is not possible to submit the return and pay the tax later, as is the case with SDLT.

## When does a lease have to be notified to Revenue Scotland?

Every lease must be notified to Revenue Scotland within 30 days unless the lease is:

- a residential lease; or
- for a term of fewer than seven years and there is no LBTT payable; or
- for a term of seven years or more but any premium does not exceed £40,000 and the annual rent does not exceed £1,000 per annum.

## Initial LBTT return

The initial LBTT return has to be submitted within 30 days of the effective date. When completing the initial LBTT return, the Net Present Value (NPV) is based on the estimated annual rent for each year of the lease. It is essential to keep a record of the NPV computation, the rent on which it was based, and details of any variations to the lease such as rent increases or extensions to the term of the lease in order to complete the three yearly LBTT returns.

## LBTT three yearly returns

Following the initial LBTT return, further returns have to be submitted to Revenue Scotland:

- every three years;
- when the lease is assigned; and



- when the lease terminates for any reason, including when the lease expires, as well as if it is renounced or irritated (forfeited).

Although returns have to be submitted more regularly under LBTT, the returns themselves and the rules governing them are simpler. The LBTT return requires very little information in relation to the lease - there is no requirement to include the non-tax related details which are required for SDLT lease returns. The LBTT review returns take into account any changes in the amount of rent payable and any variations in the lease to extend the term or to increase the area, and leases continuing by tacit relocation.

Each time a further return is made, the LBTT payable for the lease must be recalculated. The LBTT computation for further returns is based on the LBTT rates and bands in force at the effective date of the lease (i.e. at the time the lease is granted, the first rent is paid or entry taken). If additional LBTT is due, a payment has to be made to Revenue Scotland. If the recalculated LBTT is less, a repayment can be requested.

Revenue Scotland are sending reminders to tenants approximately three months before review returns are due, however tenants should keep records themselves to ensure that the three yearly returns are submitted on time. There are penalties for failure to submit three yearly returns of up to £1,500, even if there is no change in the rent, and there are also late payment penalties if additional LBTT on a lease is paid late.

## Assignations

Where a lease subject to LBTT is assigned, the outgoing tenant has to complete an LBTT return and pay any additional LBTT to Revenue Scotland. The incoming tenant assumes responsibility for future three yearly returns in relation to the lease. It is likely that the incoming tenant will require the outgoing tenant to warrant in the assignation contract that all LBTT due by the outgoing tenant has been paid and to provide details of the LBTT returns submitted and the NPV calculations in order to deal with future returns.

If a premium is paid by the incoming tenant, they may also have to submit an LBTT return and pay LBTT depending on the level of the premium.

An extension of the term of an SDLT lease is treated as the grant of a new lease for LBTT. This deemed LBTT lease is subject to the three yearly return regime.

🗨️ It is likely that the incoming tenant will require the outgoing tenant to warrant in the assignation contract that all LBTT due by the outgoing tenant has been paid and to provide details of the LBTT returns submitted.

## Renunciations

When a lease is renounced, the tenant has to submit an LBTT return relating to the lease to Revenue Scotland and pay any additional LBTT due. In addition, if a premium is paid by the landlord for the renunciation, LBTT may be payable by the landlord on the premium (plus VAT if the tenant has opted to tax) so the landlord may need to submit an LBTT return as well. If a premium is paid by the tenant to the landlord, a reverse premium, no LBTT is payable by either the landlord or the tenant in relation to that premium.

## Transitional arrangements

In very brief and general terms, we note below which tax may be payable under the transitional arrangements for lease transactions which straddle the LBTT implementation date of 1 April 2015. Reference to conclusion of missives includes entering into an agreement for lease.

- Missives concluded before 1 May 2012 and not varied or assigned – SDLT is payable.
- Missives concluded and lease signed before 1 April 2015 – SDLT (LBTT may become payable if the lease is assigned or varied to increase the term or rent).
- Missives concluded before 1 April 2015 but formal lease signed on or after 1 April 2015 – LBTT (and the three yearly lease regime applies to the formal lease).
- Missives concluded, entry taken or rent paid before 1 April 2015 but lease signed on or after 1 April 2015, SDLT applies to initially, but LBTT will also be payable if the LBTT is higher than the SDLT.
- Extensions of the term and variations to increase the rent of SDLT leases after 1 April 2015 – LBTT.

The transitional rules relating to leases are complex. Specialist advice should be taken to establish which tax is payable and the possible tax repercussions if a lease transaction occurred on or around 1 April and if an SDLT lease is to be varied, extended or assigned. If you would like any advice or further information on LBTT, please contact Isobel d'Inverno or Bob Langridge.

## Key contacts



**Isobel d'Inverno**  
**DIRECTOR OF**  
**CORPORATE TAX &**  
**INCENTIVES**

+44 (0)131 656 0122  
isobel.dinverno@brodies.com



**Bob Langridge**  
**ASSOCIATE**  
**CORPORATE TAX &**  
**INCENTIVES**

+44 (0)141 656 0277  
bob.langridge@brodies.com



---

**BRODIES**<sup>LLP</sup>



brodies.com

