



# LAND AND BUILDINGS TRANSACTION TAX

A HANDY GUIDE

# Land and Buildings Transaction Tax (LBTT)

From April 2015, Stamp Duty Land Tax (SDLT) ceased to apply to transactions involving land in Scotland and was replaced by Land and Buildings Transaction Tax (LBTT). LBTT applies wherever the purchaser is based, so long as the land is in Scotland. The Scottish Government has control over the tax base as well as the rates, and LBTT is collected by Revenue Scotland, Scotland's devolved tax authority. The administrative arrangements for LBTT are different from the SDLT regime, for example LBTT has to be paid (or arrangements satisfactory to Revenue Scotland entered into) when the LBTT return is submitted, rather than within 30 days as for SDLT. In addition, LBTT returns are simpler than SDLT returns, and the online system is more modern and user friendly.

Although LBTT is broadly based on SDLT, there are many significant differences between the two regimes, and it cannot be assumed that LBTT will operate in the same way as SDLT.

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## Progressive rates

LBTT is a progressive tax (like Income Tax) and slices of the price are charged at different rates on both residential and non-residential purchases. The LBTT rates are different from the rates of SDLT, and the rates of LTT (the Land Transaction Tax, which applies to transactions involving land in Wales from 1 April 2018).

If VAT is payable on the price, LBTT, SDLT and LTT are payable on the price plus VAT.

## How much tax is payable?

The current LBTT rates are as follows:

### Residential

- 0% up to £145,000
- 2% between £145,001 and £250,000

- 5% between £250,001 and £325,000
- 10% between £325,001 and £750,000
- 12% on remainder of the price over £750,000

For purchases below £333,000, the LBTT cost is lower than SDLT, but at higher prices LBTT is more. Comparisons of SDLT and LBTT at different prices are set out in Appendix 2. First Time Buyers' Relief is being introduced from summer 2018.

A 3% surcharge called the Additional Dwelling Supplement or ADS is chargeable on house purchases where the purchaser already owns a dwelling, or is a non-natural person, such as a company or similar.



## 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)



## Commercial (including agricultural and mixed)

0% up to £150,000

3% between £150,001 and £350,000

4.5% on the remainder of the price over £350,000

Based on these rates, the LBTT on a £70 million purchase of a non-residential property would be £3,140,250 compared with SDLT at £2,800,000; an increase of £340,250. On a £15 million purchase, the LBTT would be £65,250 more than the SDLT and at £10 million it would be £40,250 more.

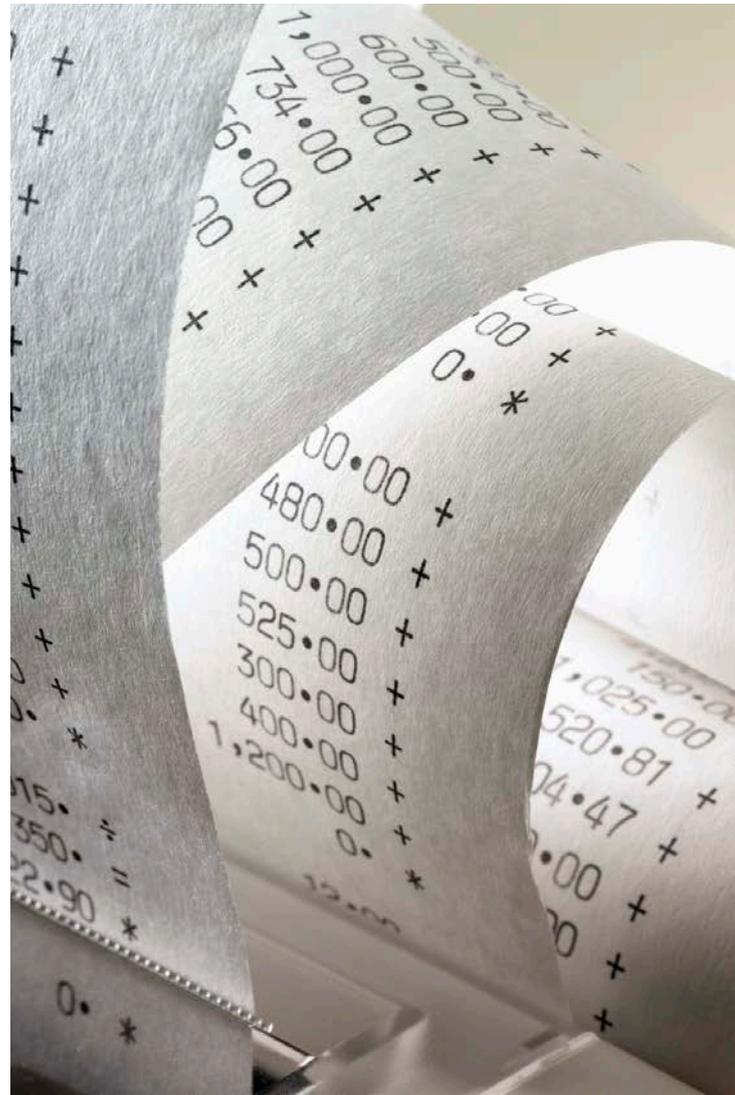
## Residential or non-residential?

The LBTT rates for commercial, agricultural and other non-residential properties are lower than the residential rates and the residential/non-residential divide is a significant issue in LBTT. Farms and agricultural property are taxed at the lower non-residential rates, as are purchases of 'mixed' residential and non-residential property, i.e., where the purchase includes some non-residential property. This could include a shop with a flat above, or a landed estate where some of the land is used for business purposes, for example commercial woodlands or fields used for agricultural purposes. Only land and buildings which are purely residential are subject to the residential rates. The purchase of six or more residential properties as part of a single transaction is taxed at the non-residential rates, as are purchases of student accommodation, care homes and similar quasi-residential buildings.

## The Additional Dwelling Supplement (ADS) 3% Surcharge

The rules surrounding the ADS are complex but in simplified terms the position is as follows:

- An individual buying a residential property in Scotland for a price of more than £40,000 has to pay the 3% ADS on the whole of the price if he, his spouse, civil partner or cohabitant, their minor children ( or step children) and other connected parties already own (or are treated as owning) a residential property anywhere in the world with a value of £40,000 or more, unless the individual is replacing his main residence.
- A company has to pay ADS on the purchase of any residential property, as do trusts (unless they are bare trusts, or there is a beneficiary with a life interest in the property)



Previously, where spouses, civil partners or cohabitants owned more than one residential property they could not claim replacement of main residence relief where only one of them held legal title to the residence being replaced. New legislation came into force on 23 June 2018 which allows couples who were previously caught by this gap in the legislation to reclaim the 3% ADS paid on all purchases since ADS was introduced.

The 3% ADS surcharge applies to residential property and also the price attributable to dwellings in a mixed purchase. This is different from the way the SDLT 3% surcharge works – it does not apply to mixed purchases.

There is a relief from ADS on the purchase of six or more residential properties in a single transaction. This is different from SDLT as it means multiple dwellings relief can be claimed on any large residential purchase (such as a build to rent development) without triggering the 3% surcharge. Professional advice should be taken in relation to transactions where the ADS could be payable, as the amounts involved are significant.

## Commercial and agricultural leases

The LBTT charge on leases is based on a Net Present Value (NPV) calculation, although more closely based on the actual rents for each year, rather than on the highest rent in the first five years. Tenants have to submit multiple returns under the LBTT regime:

- at the beginning of a lease;
- on a three yearly basis throughout its duration;
- when a lease terminates; and
- on assignment of a lease.

Following the initial return, the NPV is recalculated when each further “review” return is submitted and any additional LBTT paid, or overpayment of LBTT reclaimed. Because LBTT is based on the actual rents, rather than the rent in the first five years, the LBTT on leases can be different from the SDLT on a lease with an equivalent term and rent.

Existing sub-sale contracts should be reviewed, and consideration should be given to structuring transactions in a different way to avoid the double LBTT charge.

In some cases the LBTT will be higher because LBTT accounts for increases in rents due to rent reviews or other variations after the first five years of a lease whereas they are ignored for SDLT. In other cases LBTT will be lower, as there is no LBTT 2% band applicable to leases, and a refund can be claimed if the rent goes down or the lease terminates early.

### LBTT Lease rates

Up to £150,000	nil
Above £150,000	1%

## No general sub-sale relief

For the most part the reliefs and exemptions under LBTT are the same as those under SDLT. However there is no general sub-sale relief in LBTT.

LBTT includes a development sub-sale relief for developers involved in forward funding transactions and other transactions where there is a sub-sale of land and significant development (those requiring planning permission) is in prospect. This relief can be claimed up front by the developer but the relief is clawed back if the development does not take place within five years of completion.

In other cases where LBTT development sub-sale relief is not available there will be a double LBTT charge on sub-sales. Existing sub-sale contracts should be reviewed, and consideration should be given to structuring transactions in a different way to avoid the double LBTT charge.

## Transfer of shares in companies owning residential property

The LBTT Act provides for regulations to be introduced to allow LBTT to be charged on the transfer of shares in residential property holding companies, where the transfer gives the transferee the right to occupy the property. No regulations to trigger this measure have been made so far. This measure will not apply to quoted companies, and will only apply to companies holding residential (and not commercial property). It is not expected that this measure will be introduced for the time being.



## Multiple Dwellings Relief (MDR)

The LBTT multiple dwellings relief (for purchases of multiple residential properties) works differently from the equivalent SDLT relief. SDLT has a minimum 1% rate for MDR, but under LBTT the tax payable on a purchase with MDR cannot be less than a minimum prescribed percentage (25%) of the LBTT payable without the relief. MDR can be claimed as well as taking advantage of the 6+ rule, which can make Scottish MDR more beneficial.

## First-time buyer relief

An LBTT relief for first-time buyers is being introduced from summer 2018. The effect of the relief will be to increase the zero rate band of LBTT from £145,000 to £175,000. First-time buyers who buy a residential property for a price above £175,000 will also benefit from the zero rating on the amount of the price below £175,000. The result is that all first-time buyers will benefit from the relief up to a maximum of £600.

## Which tax will apply?

Which tax will apply will be decided as follows:

- With the exception of options, if the contract was concluded before 1 May 2012, and has not been varied or assigned, SDLT will apply no matter when the transaction completes.
- If the contract is concluded and completes before April 2015, SDLT will apply.
- If the contract is concluded before April 2015, but completes after April 2015, LBTT will apply.
- If the contract is concluded and substantially performed before April 2015, then completes after April 2015, SDLT will be payable at the date of substantial performance. But, if the LBTT charge calculated at completion is more than the SDLT, the additional amount has to be paid to Revenue Scotland.
- If an option contract is concluded before April 2015 but the option is not exercised and the transaction not completed until after April 2015, LBTT will apply.

- LBTT will apply to new leases where a tenant takes entry after April 2015, and to the extension or variation of existing leases after April 2015.

The structuring of complex transactions should be considered carefully to identify which regime will apply.

## LBTT group relief and share pledges

The LBTT legislation is currently being amended to make it clear that companies which have granted share pledges to banks can claim LBTT group relief on intergroup transfers of property. The change will initially apply to transfers after the change takes effect, which is expected to be in summer 2018, however the Scottish Government has confirmed that they will introduce legislation to make this change have retrospective effect, so that all intergroup transactions since the introduction of LBTT will benefit from the revised rules.

## Key contacts



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## More information

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