



SCOTTISH LEASES – THREE YEARLY LBTT (SCOTTISH STAMP DUTY) RETURNS

A HANDY GUIDE

Introduction

If you are a tenant under a Scottish lease which is subject to Land and Buildings Transaction Tax (LBTT), the Scottish almost-equivalent to SDLT, you may have to submit further LBTT returns every three years throughout the duration of the lease.

LBTT and leases

When LBTT replaced SDLT in Scotland on 1 April 2015, several changes were made to the taxation of commercial leases. One significant change from SDLT is the requirement for tenants to submit multiple returns throughout the duration of the lease. The idea is that over the term of the lease, LBTT is charged on the amount of rent actually paid.

Tenants falling within the LBTT regime are required to submit further returns within 30 days of:

- every third anniversary of the start of the lease (or, if different, when it became notifiable to Revenue Scotland);
- an assignment of the lease; and
- the lease ending.

The three yearly regime applies to most commercial leases that fall within LBTT. It can also apply when the term of an SDLT lease has been extended.

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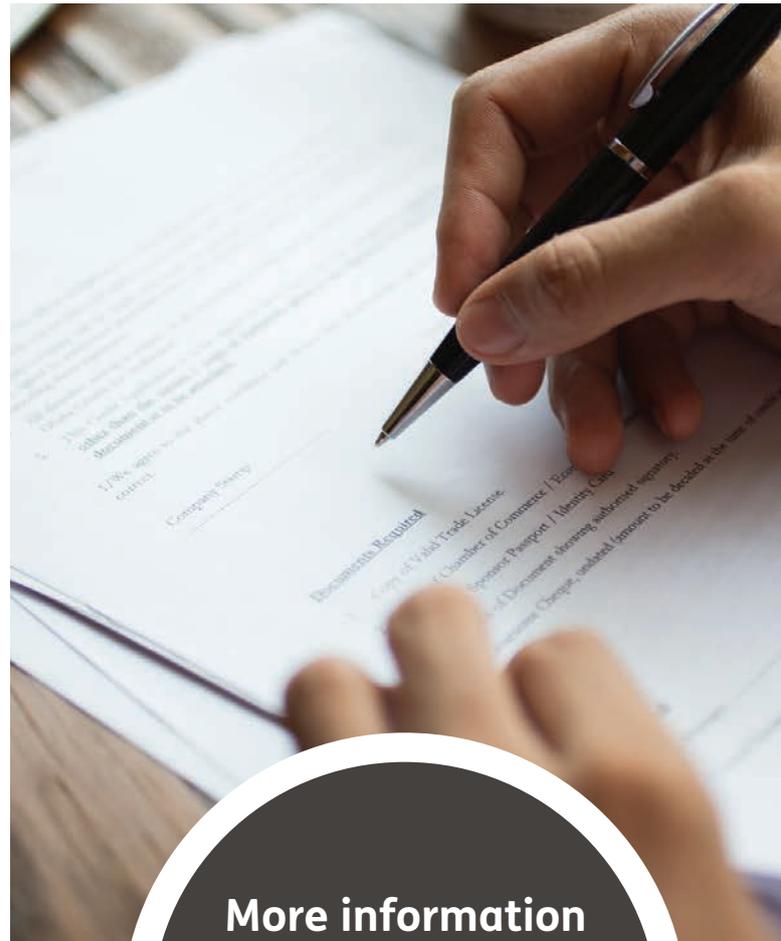
What is involved in the further returns?

The LBTT payable when a lease is granted is based on the rent payable in all years of the lease (not just the first five years) so the initial return normally includes estimates of the rent payable in some years of the lease.

In the review return, the tenant must recalculate the LBTT payable on the lease, taking into account any changes to the rent (or estimated rent) used in earlier returns and to the duration of the lease since

the date of the previous return (e.g., because of a rent review or because there is a turnover based rent or because the lease has been extended).

If additional LBTT is due when a review return is submitted, the additional amount has to be paid to Revenue Scotland. If the initial LBTT paid was too much, Revenue Scotland will refund the difference. The LBTT rates and bands used at each review are those in force when the lease was granted. So if the applicable rates of LBTT rise over the course of a lease, this should not (by itself) trigger any additional LBTT charges.



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



What if you have taken assignment of a lease?

Incoming tenants may be liable to submit further returns, depending on how the assignment itself is treated for LBTT purposes.

- On the ordinary assignment of an SDLT or stamp duty lease, the rents payable under the lease will not be subject to LBTT, so there will be no further returns required by the tenant (unless the lease has been extended after 1 April 2015).
- On the ordinary assignment of an LBTT lease (i.e., one commencing post 1 April 2015), an incoming tenant will inherit the LBTT position of the outgoing tenant.
- The outgoing tenant must submit an assignment return accounting for any changes to the LBTT position up to the date of assignment.
- The incoming tenant will be responsible for any further returns from that date, and for any changes from the LBTT position set out in the assignment return.
- The timetable for three yearly returns will follow on from the initial return (or last three yearly return) submitted by the outgoing tenant.
- Incoming tenants should fully check the outgoing tenant's LBTT position as part of their due diligence to ensure they can comply with any inherited reporting obligations.
- The incoming tenant may also have to pay LBTT on any premium paid to the outgoing tenant for the assignment.

In some cases the assignment of an LBTT or SDLT lease will be treated as the grant of a new LBTT lease by the outgoing tenant to the incoming tenant. In these cases, the incoming tenant does not step into the outgoing tenant's shoes. Instead, the assignment is treated as the grant of a new lease, so the incoming tenant may be required to submit an initial LBTT return on the basis of the passing rents under the remaining term of the lease. Any obligations to submit further returns (including the timing of three yearly returns) will flow from the new return submitted by the incoming tenant.

When the term of an SDLT lease is extended, this is treated as the grant of a new lease for LBTT purposes, and the three yearly regime will apply.



What do you need to do?

Revenue Scotland is sending reminders to tenants approximately three months before the three yearly review return has to be submitted.

However, in some cases, the Revenue Scotland reminders are inaccurate. This is because three yearly reviews are done every third anniversary of the relevant lease becoming reportable, while Revenue Scotland's reminder system uses the effective date. In some circumstances, these dates will not be the same. If the date on the reminder letter is not correct, the tenant should advise Revenue Scotland that no review return is required.

Despite the Revenue Scotland reminder system, you should ensure that you have internal systems in place to remind you of your three yearly reporting obligations as there are penalties for failure to submit the review returns, even if the rent hasn't changed and no additional LBTT is payable.





Additionally, you should ensure that you maintain records which provide you with the information required to submit further returns or to provide to an incoming tenant if the lease is assigned.

Brodies can steer you through this process (and submit the relevant returns on your behalf). Get in touch with Isobel d'Inverno or Bob Langridge or your usual Brodies contact to discuss further.

Key contacts



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More information

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