

LBTT Technical Bulletin 3

28 December 2017

This bulletin provides the latest information about LBTT, including recent updates to guidance and clarifications about the application of the legislation. The bulletin includes links to the relevant section of the guidance on the Revenue Scotland website.

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1. Group relief and share pledges

Revenue Scotland recently received an Opinion request which highlighted differences between LBTT and SDLT legislation in terms of the availability of group relief in a transaction where a parent company transfers property to a subsidiary and the parent company grants security to a lender over the shares in the subsidiary.

For transactions chargeable to LBTT, group relief is provided for through schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013 and, subject to certain rules, is available where, at the effective date of the transaction, the seller and buyer are both companies in the same group. However, paragraph 3 of schedule 10 restricts the availability of group relief where, at the effective date of the transaction, there are arrangements in place which mean that a person has or could obtain control of the buyer but not of the seller.

The view of Revenue Scotland is that the pledging of the shares constitutes an ‘arrangement’ under which a person (i.e. the lender holding the share pledge) could obtain control of the subsidiary but not the parent. Therefore, paragraph 3 of schedule 10 is engaged, which means that group relief is not available in this instance. As a result, LBTT is payable on the market value of the property transferred.

The reason for the difference between LBTT and SDLT is that the equivalent SDLT legislation contains specific provision which means that share pledges do not affect entitlement to group relief.

If there is any uncertainty about the tax treatment as a result of the details of a specific transaction, an Opinion request should be made and copies of all relevant documented facts provided to support the request. The “Contact Us” section of the Revenue Scotland website (www.revenue.scot) provides guidance on submitting an Opinion request.

2. Pension fund *in specie* transfers

A transaction in which a pension fund purchases property is subject to LBTT where there is chargeable consideration in the same way as any other transaction. There are no special rules that apply to pension funds and the Revenue Scotland LBTT legislative guidance therefore does not make specific reference to them.

In its [October 2016](#) LBTT Bulletin Revenue Scotland published a brief statement to clarify its view of the treatment for LBTT purposes of *in specie* transfers between pension funds. This indicated that, in the tax authority’s view, these will generally give rise to an LBTT charge because (a) such a transfer is a land transaction and (b) the assumption of liability by the receiving pension fund is debt as consideration.

Following further representations on the matter, Revenue Scotland has concluded that while such transfers are still considered to be land transactions, debt in the form of the liability assumed to pay benefits to pension scheme beneficiaries will not generally be considered to be given as chargeable consideration in relation to such transactions. However, any consideration given in the form of money or money's worth for the transfer of the properties will be chargeable to LBTT.

This view applies both prospectively and retrospectively and Revenue Scotland will consider claims to repayment of tax from any taxpayers who have filed and paid LBTT on the basis of the view as stated in the October 2016 bulletin. Such claims can be submitted by amending a previously submitted return, if within time to do so, or through written correspondence in accordance with the guidance on making a claim under section 107 of RSTPA 2014 provided at [RSTP7003](#).

3. Early Termination of a Lease

The Revenue Scotland guidance [LBTT6017](#) has been updated to reflect that the early termination of a lease may give rise to a repayment if less rent has become payable than was originally returned due to a reduction in the term of the lease.

4. Additional Dwelling Supplement (ADS)

4.1 Changes to legislation around family units and replacing main residences

The ADS rules around family units and replacing a main residence were amended following the introduction of [The Land and Buildings Transaction Tax \(Additional Amount - Second Homes Main Residence Relief\) \(Scotland\) Order 2017](#) on 30 June 2017.

Before the legislative change, transactions in the following circumstances would be liable to ADS because both buyers were not replacing their main residence:

- where spouses, civil partners or cohabitants jointly bought a dwelling, and
- prior to the purchase they sold a dwelling that they both used as a main residence but it was owned by only one of them, and
- at the effective date of the new joint purchase either buyer owned or was deemed to own a further dwelling.

This resulted from the fact that the previous main residence was owned by only one of the buyers.

For purchase transactions occurring after the Order came into force, the introduction of the new relief means that, under the same set of circumstances, the purchase made by the joint

buyers who meet the conditions for the relief will not attract the ADS because both buyers will be treated as replacing their main residence.

Before the Order came into force, ADS would be payable on the purchase:

- where spouses, civil partners or cohabitants jointly bought a dwelling, and
- after that purchase, but within 18 months of it, they sold a dwelling that they both used as a main residence which was owned by only one of them.

This is due to both buyers being treated as owning (at least) two properties at the effective date of the purchase transaction and the buyers would not be able to reclaim the ADS paid when the previous dwelling owned by only one of them was sold because they were not both replacing their main residence.

For purchase transactions made after the Order came into effect, and using the same set of circumstances, ADS will still be due and payable. This is due to the fact that, at the end of the day on which the purchase is made, one of the buyers owns more than one dwelling. However, when the previous main residence is sold (within 18 months of the purchase), the buyers will be able to reclaim the ADS paid.

The changes introduced by the Order only apply to transactions where the contract to purchase the new main residence jointly is entered into on or after 20 May 2017 and where the transaction completes on or after 30 June 2017.

Revenue Scotland is aware that the Scottish Government has recently introduced a new Bill to the Scottish Parliament which would give retrospective effect to the Order. However, until this has been approved by the Scottish Parliament and formally commenced, the previous legislation still applies to transactions which completed before 30 June 2017, or after that date under a contract entered into before 20 May 2017. Further guidance will be issued if and when retrospective relief is confirmed, including information about how a claim can be made for any tax which would now be repayable.