

Land and Buildings Transaction Tax

Lease Reviews

Why do leases need to be reviewed

Land and Buildings Transaction Tax (LBTT) was introduced on 1 April 2015 and it may apply to anyone leasing non-residential land or property in Scotland. Where a notifiable lease has been granted on or after 1 April 2015 then an LBTT return must be submitted by the tenant.

Leases are treated quite differently to standard purchases of land and buildings for tax purposes. In most cases, when a purchase is completed, any LBTT is paid and the title is registered and there is no likelihood of change to the tax position. Leases, however, often continue over a period of years and can be subject to change through, for example, variations, extensions, assignments, rent reviews and tacit relocation, and the tax position must be reviewed to give effect to these changes.

The Land and Buildings Transaction Tax (Scotland) Act 2013 applies differently to how Stamp Duty Land Tax applies in the rest of the UK as it requires the tenant in a lease that has been subject to an LBTT return to submit a further return to Revenue Scotland on certain future events, including:

- Every third anniversary of the lease;
- Assignment of the lease; and
- Termination of the lease (whether the lease is terminated early or on natural expiry).

These further returns will inform Revenue Scotland of any changes that have occurred since the last LBTT return was submitted and will allow Revenue Scotland to review the amount of tax chargeable on the lease taking account of those changes.

The tenant must recalculate the tax using the rates and bands in force at the effective date of the lease. If the tenant calculates that more tax is due, they must make payment of the additional tax at the same time as the LBTT return is made. If it is calculated that less tax is payable, a claim for repayment of tax should be submitted in the LBTT return.

Please note that a further return must still be submitted even if there have been no changes to the lease or if no additional tax is payable.

The obligation to submit further returns does not apply to any leases that have been exempt from charge by virtue of a full relief from LBTT being claimed on the first return which continues to apply.

Three-yearly review

LBTT legislation does not require a further return to be submitted to Revenue Scotland every time a change to the lease takes place. Instead, it requires that, unless the lease has been terminated, a

further return is to be submitted by the tenant on every three year review date. Ordinarily this will be every third anniversary of the effective date of the lease (i.e. year 3, year 6, year 9 etc.).

The basic rule is that the effective date of a lease will be the date that the lease was granted. However, there are many circumstances where the effective date may be a different date. Further information on the date leases are granted, and effective dates for leases generally, can be found in the section **LBTT6002** on the Revenue Scotland website.

Example 1 – More tax payable at three-year review

An LBTT return is submitted for a ten year lease with a variable rent (for example a turnover rent) which is projected to be £100,000 per annum. Tax of £6,816 was paid at the time the LBTT return was submitted.

As the effective date for this transaction was 1 May 2015, the date of the first three-year review will be 1 May 2018.

The actual amount of rent paid in the first three years was £120,000 per annum and the estimate of the rent payable for the remainder of the duration of the term has been reassessed in line with this. This gives rise to tax of £8,479.

As tax of £6,816 was paid on the original transaction the further tax of £1,663 must be paid on the three-year review return.

Example 2 – Less tax payable at three-year review

An LBTT return was submitted for a 20 year lease with a variable rent (for example a turnover rent) which is projected to be £250,000 per annum. Tax of £34,031 was paid at the time the LBTT return was submitted.

As the effective date for this transaction was 1 August 2015, the date of the first three-year review will be 1 August 2018.

The actual amount of rent paid in the first three years was only £200,000 per annum and the estimate of the rent payable for the remainder of the duration of the term has been reassessed in line with this. This gives rise to tax of £26,924.

As tax of £34,031 was paid on the original transaction, a repayment claim for tax of £7,107 can be made on the three-year review return.

Assignment

An assignment of a lease is the transfer by the tenant of their interest under the lease to another party. Where a lease is assigned, the outgoing tenant (the 'assignor') must complete a further return. The new tenant (the 'assignee') may also be required to file an LBTT return, but this depends in the normal way on whether they have made any form of payment to acquire the lease.

After the effective date of the assignment, the assignee assumes the assignor's duties in relation to LBTT. Anything that was done by the assignor in relation to the lease is to be treated as if it was done by the assignee.

It is important to note that in the case of an assignment, the assignee will still be required to make an further return on every third anniversary of the effective date of the lease, and that this cycle does not start again upon assignment. An assignment made in year two, for example, will still require a further return in year three, unless it is terminated before then. As explained below, the termination would itself also trigger the requirement for the submission of a further return.

Where a lease has been assigned before the end of the agreed term, a claim for repayment of tax cannot be made in relation to the reduction of the term of the lease arising from the assignment of the lease itself.

Example 3 – Lease assigned to new tenant

Tenant A submitted an LBTT return for a 10 year lease with a rent of £10,000 per annum. Whilst no tax is payable on the transaction, it was still notifiable so an LBTT return was submitted on the effective date of 1 November 2015.

On 31 July 2017, the lease was assigned to a new tenant, **Tenant B**. At the point the lease is assigned, the outgoing tenant (the 'assignor') must complete a further LBTT return to reflect any changes in the rent or other chargeable consideration payable by the assignor under the lease since the original LBTT return was submitted.

The obligation to file LBTT returns now passes to the new tenant (the 'assignee'). As the further LBTT return made upon assignment does not affect the cycle on which three-yearly review returns are due, **Tenant B** will be required to submit a further return for the three-year review on 1 November 2018.

Termination

Where a lease has been terminated, whether through renunciation or the natural expiry of a lease, or for any other reason (such as irritancy) the tenant must complete a further LBTT return.

When to submit a review return

A further return must be submitted within 30 days of the day after the 'relevant date'. This is known as the 'filing date'.

The relevant date is:

- the date of the third anniversary of the effective date of the transaction (and on each subsequent third anniversary of that date);
- the date the lease was assigned; or
- the date the lease was terminated.

How to submit a further LBTT return

There are three ways to file a further LBTT return:

Scottish Electronic Tax System (SETS) - The online portal used by solicitors and agents to file LBTT returns will be updated from 1 April 2018 to make it easier to submit further returns. It can be accessed from the homepage of the Revenue Scotland website. This option is not available to private individuals acting in an individual capacity.

Online lease review return - This option will be available from 1 April 2018. It will also be accessible from the Revenue Scotland website. This option should be used by tenants only.

Paper return - The updated paper LBTT return will be available from the 'Forms' section of the Revenue Scotland website - www.revenue.scot/land-buildings-transaction-tax/forms.

Guidance on how to submit these returns will be available on the Revenue Scotland website – www.revenue.scot/leases.

Failure to submit a return and/or pay tax

LBTT is a self-assessed tax and it remains the responsibility of the taxpayer to complete and submit an accurate LBTT return and, where required, pay any tax due.

A tenant (or in the case of an assignation, the assignor) who fails to make an LBTT return to Revenue Scotland by the filing date is liable to a penalty.

Similarly, a tenant (or in the case of an assignation, the assignor) who fails to pay tax within 30 days of the date payment is due (the day the LBTT return is made) is liable to a penalty. Interest will also be charged on the amount of any unpaid tax from the filing date until the date it is paid.

Further information can be found within the penalties and interest factsheets available at www.revenue.scot/penalties and www.revenue.scot/interest.

Contacting us

The Revenue Scotland website contains both legislative and practical guidance to assist you in filing LBTT returns and paying LBTT – www.revenue.scot.

If you need further assistance, you can contact us by:

- Phone – 03000 200 310 (Monday to Friday 9:00 - 16:00. Please note that lines will be closed from 9:00 – 10:00 every Thursday for staff training).
- Email – LBTT@revenue.scot.
- Post – Revenue Scotland, PO BOX 24068, EH6 9BR.