

Land and Buildings Transaction Tax (updated 29 January 2015)



From 1 April 2015 stamp duty land tax (SDLT) will be abolished in Scotland and replaced with a new tax – land and buildings transaction tax (LBTT)

LBTT is a devolved tax on land transactions in Scotland. Like SDLT, it applies to the acquisition of a chargeable interest in land, and is payable by the purchaser, regardless of the purchaser's place of residence.

Rates

LBTT will be a 'progressive tax', similar to the new slice system for SDLT on residential property transactions introduced by the Chancellor at Autumn Statement, with the applicable rate of tax applying to so much of the consideration as falls within each band, rather than a single rate applying to a total price paid.

The LBTT rates and bands that will apply, subject to approval by the Scottish Parliament, were initially announced on 9 October 2014. The residential rates were subsequently amended on 21 January 2015 to increase the nil rate band to £145,000, introduce a new 5% rate band, and reduce the point at which the top rate of 12% applies to £750,000.

Bands	%
Residential	
Up to £145,000	0%
£145,001–£250,000	2%
£250,001–£325,000	5%
£325,001–£750,000	10%
Above £750,000	12%
Commercial	
Up to £150,000	0%
£150,001–£350,000	3%
Above £350,000	4.5%
Commercial leases	
Up to £150,000	0%
Above £150,000	1%

For LBTT purposes residential property is defined as it is for SDLT, broadly being a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use.

Commercial or non-residential property is defined by exclusion, being all property that falls outside the definition of residential property.

The tax rates have been designed to be revenue neutral and redistributive, so tax savings for some will be funded by a higher tax contribution payable by others. For the avoidance of doubt, the new SDLT slice system applies to residential property transactions in Scotland from 4 December 2014, as it does in the rest of the UK, until LBTT comes into effect on 1 April 2015.

Under the proposed charging structure –

- a house in Scotland purchased, e.g., for £260,000 prior to 4 December would give rise to an SDLT charge of £7,800, post 4 December to an SDLT charge of £3,000 and from April 2015 the charge under LBTT would be £2,600;
- a house in Scotland purchased, e.g., for £1.5 million prior to 4 December would give rise to an SDLT charge of £75,000, post 4 December to an SDLT charge of £93,750 and from April 2015 the charge under LBTT would be £138,350;
- the rates for commercial properties are broadly similar, but the top rate is higher - 4.5% rather than 4%;
- an office in Scotland purchased, e.g., for £12 million would give rise to an SDLT charge of £480,000, the comparable charge under LBTT would be £530,250 (a 10.5% increase).

As well as the rates of LBTT, there are other key differences between LBTT and SDLT:

Leases

There have been no changes to bands or rates for new commercial leases, with a charge of 1% on the net present value (NPV) of rent payable over the life of the lease in excess of £150,000. However, under LBTT there is a requirement to 'true up' the NPV calculation every three years. This will represent an increase in the compliance burden for occupiers.

The Scottish Government was considering the possibility of charging LBTT on retail licences (licences to occupy are exempt from SDLT) – this proposal has been dropped.

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Sub-sales

As originally drafted, the LBTT legislation did not provide relief in relation to assignments of rights and sub-sales (i.e. where a person other than the original purchaser becomes entitled to call for a conveyance of the property), whereas relief is available from SDLT for the intermediate purchaser where conditions are met. A draft statutory instrument was published on 26 January 2015, introducing LBTT sub-sale development relief.

This order provides relief from LBTT for the 'first buyer' in a land transaction involving sub-sale arrangements in limited circumstances, being where significant development is in prospect within 5 years of the effective date of the transaction. Following a consultation process, the original proposal whereby LBTT had to be paid upfront and then claimed back has been dropped. The relief will now be available at the time of the transaction, however, is subject to clawback if there is no development within five years, and partial clawback if the development has not completed within five years.

Multiple Dwellings Relief (MDR)

The conditions under which MDR applies are the same as those for SDLT. However, due to the progressive nature of the tax, there is no minimum rate that applies as there is with SDLT (being 1%). Rather, there is a minimum prescribed proportion, being 25% of the LBTT that would have been payable had MDR not been available.

Residential property

Provision has been made to impose LBTT on the transfer of shares in unlisted companies that hold residential properties where the transferee acquires the right to occupy some or all of the company's residential properties. We expect this provision to be switched on. At a 12% marginal rate, the incentive to sell property worth over £1 million via selling shares in a company is greater.

In addition, while there is provision to switch off SDLT in Scotland, no such provision has been made for the annual tax on enveloped dwellings (ATED), so ATED will continue to apply to "high value" residential property in Scotland. As ATED was introduced as an alternative to an indirect charge to SDLT on sales of land-rich companies, if such a charge is introduced for LBTT the retention of ATED for property in Scotland may need to be reconsidered to prevent a double charge arising, or relief for ATED given against the corresponding LBTT charge.

Anti-avoidance

There is no general anti-avoidance provision included within the LBTT legislation, as there is with SDLT. Rather, a new general anti-avoidance rule will apply to all devolved taxes.

This Scottish GAAR is more widely drawn than the existing UK GAAR, applying to tax avoidance arrangements that are "artificial", rather than those that are "abusive".

In addition, while the UK GAAR is overseen by an independent GAAR advisory panel, no such panel will exist in Scotland.

Given the wide drafting of the Scottish GAAR - guidance from Revenue Scotland (the Scottish equivalent of HMRC set up specifically to administer devolved taxes) will be key in providing taxpayers with some certainty as to what could be considered "artificial" and what will be acceptable tax planning.

Compliance, filing and payment

As with SDLT, the filing deadline for LBTT returns and the deadline for payment will be 30 days from the effective date of the transaction. But Revenue Scotland will have up to three years from the filing date (or if later the date the return was filed) to raise any enquiries – this compares with HMRC having nine months from the later of the filing deadline and the time at which an SDLT return was filed.

LBTT will be collected by Registers of Scotland.

Transitional arrangements

Generally, LBTT will apply to transactions that complete on or after 1 April 2015. However, land transactions in pursuance of contracts entered into before 1 May 2012, which complete on or after 1 April 2015 will be subject to SDLT, rather than LBTT, provided that:

- the contract has not been varied;
- the transaction does not involve the exercise of an option; and
- the transaction does not comprise an assignment of rights or sub-sale.

What should you do now?

If you are currently contemplating entering into land transactions in Scotland, the terms of your negotiations should reflect the possibility that:

- delays may take a transaction which might otherwise complete before 1 April 2015 within the scope of LBTT; and/or
- the LBTT costs of future planned acquisitions may be higher than SDLT.

The risk of the costs of the transaction increasing due an unforeseen delay should be addressed.

System changes to internal controls may be required to cope with the additional requirement to file LBTT returns for rental leases every three years.

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