

Briefing Note

Land and Buildings Transaction
Tax (LBTT)

A New Tax for Scotland

From 1st April 2015 Stamp Duty Land Tax (SDLT) will be replaced in Scotland by Land and Buildings Transaction Tax (LBTT) which will be the first fully devolved Scottish tax. The relevant legislation can be found in the Land and Buildings Transaction Tax (Scotland) Act 2013, which was passed by the Scottish parliament on 25th June 2013.

LBTT - How does it work?

LBTT is based very substantially on the existing SDLT legislation, which is found in Finance Act 2003. Most of the same concepts and definitions have been retained, but with some changes to reflect differences in underlying Scots property law.

LBTT will apply to sales, leases and exchanges of both commercial and residential property in Scotland. It will not apply to licences.

LBTT will apply to each “slice” of the taxable consideration falling within the relevant rate band. This differs from the previous position under SDLT where the rate of tax applicable to the highest part of the consideration applied to the whole of the sale price. On 3rd December 2014 the UK Chancellor announced that SDLT will also move to the “slice” basis. This will avoid distortion in the market around the rate threshold.

Some important differences between LBTT and SDLT are:-

- Leases

Residential leases will be exempt from LBTT unless they exceed 175 years.

Commercial and agricultural leases will be subject to LBTT based on the net present value (NPV) of the lease. The NPV will be based on the actual rent payable each year and LBTT returns will have to be submitted every three years.

- Anti-avoidance

There is no equivalent of the SDLT anti-avoidance provision in the LBTT legislation. However the Scottish parliament has enacted a Scottish general anti-avoidance rule, in the Revenue Scotland and Tax Powers Act 2014 which, when it comes into force, will apply to devolved taxes. The Scottish general anti-avoidance rule is wider in scope than the UK general anti-abuse rule and it remains to be seen how the new Scottish revenue authority will apply it in the context of LBTT.

- Sub sale relief

As originally enacted there was no sub sale relief for LBTT. After consultation the Scottish government is now legislating for a restricted form of sub sale relief. The LBTT sub sale relief will apply where there is significant development of the land which is the subject of the sub sale within 5 years of the sub sale. Relief will be given up front and failure to carry out the development in the required timescale will result in withdrawal of the relief.

Rates of LBTT

The rates of LBTT for 2015/16 were initially announced by the Scottish government in its draft Budget on 9th October 2014. The rates were reviewed and revised for residential property transactions on 21st January 2015 and are now as follows:-

Residential Purchases			
Purchase Price	LBTT rate	e.g. House purchased for £350,000	
		£	LBTT
Up to £145,000	0%	0 - 145k	NIL
£145,001 to £250,000	2%	145k - 250k	2,100
£250,001 to £325,000	5%	250k - 325k	3,750
£325,001 to £750,000	10%	325k - 350k	2,500
£750,001 and over	12%		8,350

Non Residential Purchases			
Purchase Price	LBTT Rate	e.g. Commercial property purchased for £500,000	
		£	LBTT
Up to £150,000	0%	0 - 150k	NIL
Above £150,000 to £350,000	3%	150k - 350k	6,000
Above £350,000	4.5%	350k - 500k	6,750
			12,750

Non Residential Leases			
NPV of rent payable	Rate of tax to apply	Premium	Rate of tax to apply
Up to £150,000	0%	Up to £150,000	0%
Over £150,000	1%	Above £150,000 to £350,000	3%
		Above £350,000	4.5%

Details can be found at www.scotland.gov.uk/Topics/Government/Finance/scottishapproach/lbtt

Reliefs

Many of the existing reliefs for SDLT are reproduced in LBTT including

- sale and leaseback relief
- relief for certain acquisitions of residential property
- multiple dwellings relief
- acquisitions by registered social landlords
- alternative property finance relief
- relief for alternative finance investment bonds
- crofting community right to buy relief
- group relief
- reconstruction relief and acquisition relief
- relief for incorporation of LLPs
- charities relief
- relief for compulsory purchases
- relief for compliance with planning obligations
- public bodies relief

Partnerships

The complex and sometimes problematic SDLT rules for transfers of property into and out of partnerships, and transfers of interests in property owning partnerships, have been reproduced in the LBTT legislation in more or less identical form. There was a suggestion that the Scottish government intended to look at the partnership provisions again but this is not likely to happen before commencement of LBTT in April 2015 so the provisions will continue to have to be considered in the context of Scottish land transactions involving partnerships.

Transitional Provisions

The basic rule is that SDLT will not apply to any Scottish land transactions where the “effective date” of the transaction is on or after 1st April 2015. The effective date of a transaction usually means settlement (or completion), but in some circumstances it can be earlier than that. Scottish land transactions with an effective date on or after 1st April 2015 will no longer be “linked” for SDLT purposes with land transactions elsewhere in the UK or with a Scottish land transaction which is subject to SDLT.

Scottish land transactions with an effective date on or after 1st April 2015 will continue to be subject to SDLT if

- the transaction is pursuant to missives concluded and substantially performed on or before 1st May 2012 (the day on which the Scotland Act 2012 received Royal Assent); or
- the transaction is pursuant to missives concluded on or before 1st May 2012 unless
- there has been a variation or assignation of rights under the missives after 1st May 2012.
- the transaction is effected by the exercise of an option right of pre-emption or similar right after 1st May 2012.
- after 1st May 2012 there has been an assignation, sub-sale or other transaction the effect of which is that someone other than the purchaser is entitled to call for a conveyance.

A variation of the completion date or transfer to a nominee or bare trustee for the purchaser is not regarded as excluding a transaction from the SDLT charge.

The Scottish government will be bringing forward regulations to ensure LBTT applies in certain cases where SDLT no longer applies.

Administration of LBTT

LBTT will be administered by Revenue Scotland, the new tax authority responsible for the administration of Scotland's devolved taxes. It will be supported by The Registers of Scotland.

The LBTT legislation requires the tax to be paid at the time the return is submitted, and before an application for registration of title. Revenue Scotland will be encouraging the submission of online returns but there will continue to be provision for a paper alternative.

If you have any queries about LBTT, SDLT or any other property tax please contact us at enquiries@turcanconnell.com or on 0131 228 8111.

Please note that this briefing note is intended as a short summary of Land and Buildings Tax (LBTT). No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

© Turcan Connell February 2015