

LBTT and LTT: the differences from SDLT (Lecture P1260 – 12.46 minutes)

Land and Buildings Transaction Tax

Land and Buildings Transaction Tax (LBTT) was introduced in Scotland in 2015.

The following is worth noting:

- The overall concept of LBTT shares much in common with SDLT. There are features in the LBTT regime that are different from SDLT, principally in respect of its administration and general anti-tax avoidance provisions, which are outlined below. However, there are some differences linked to the different wording of the LBTT legislation and a decision by Revenue Scotland (who administer LBTT) to accept a different analysis of the provisions.
- As regards partnerships, the LBTT regime adopts the same (and complex) structure as that of the SDLT. In so doing, the distinctive feature of a Scottish partnership as having a separate legal personality is therefore not reflected in the legislative design for LBTT.
- In respect of trusts, the basic principles of trusts in Scots law are derived from the Roman Law concept that a right *in personam* (a personal right) is distinct from a right *in rem* (a real right). Under Scots law, a trustee has the right *in rem* and a beneficiary has the right *in personam* against the trustee. In contrast, under English law, the distinction is drawn between legal ownership and equitable interests. A trustee has the legal ownership of the trust property at common law, and the beneficiary has the equitable interests in equity. This is the most significant theoretical difference for a trust constituted under Scots law from one constituted under English law. Though any differences emanating from this conceptual divergence are often smoothed out or removed in the drafting of modern trust deeds, they can still have practical implications on intestacy, on the interpretation of old deeds or home-drafted wills. For the purposes of LBTT however, trusts are to be treated as if they were constituted under English law, and a trustee is regarded as the legal owner of a land interest with a beneficiary holding the equitable interests in the land.

The rates of LBTT are as follows:

Residential property

Relevant consideration	Percentage rate of tax
Up to £145,000	0%
Next £105,000	2%
Next £75,000	5%
Next £425,000	10%
The remainder	12%

The LBTT supplement for second property (called the additional dwelling supplement (ADS)) is 4% and the time limit for the main residence relief for these purposes is 18 months rather than the 3 years which applies for SDLT purposes, although it was temporarily increased to 36 months for transactions between 24 September 2018 and 24 March 2020.

There is also no subsidiary dwelling exemption where more than one dwelling is bought in a single transaction. There was an increased nil rate band to £250,000 from 15 July 2020 to 31 March 2021. At the time of writing this had not been extended. First-time buyers' relief for LBTT purposes is only £175,000.

Non-residential property

Relevant consideration	Percentage rate of tax
Up to £150,000	0%
Next £100,000	1%
The remainder	5%

For non-residential leases, the nil rate band is £150,000 with 1% duty being paid up to £2m and 2% beyond this.

Land Law operates differently in Scotland. There are three key stages in the conveyance of property:

1. Conclusion of missives (which is equivalent to the exchange in English law) where the parties agree to be bound by the terms of the contract, but the seller remains the owner.
2. Settlement and delivery of disposition (which is equivalent to completion in English law) where the consideration is passed although the seller remains the owner. The purchaser would normally be able to take occupation from this date.
3. Registration of disposition (registration of title in English law) when the buyer assumes title and becomes the owner.

For LBTT purposes, the effective date of the transaction is the settlement date although it is still possible to have substantial performance as it is for SDLT purposes.

The three key stages in the tax administration for a land transaction are:

1. Filing of return
2. Payment of tax
3. Registration of title

For a purchaser, the registration of title is the ultimate goal of the transaction. Under SDLT, title registration is predicated on the issue of the SDLT5 certificate by HMRC, which in turn hinges on the submission of a satisfactorily completed SDLT return. As the registration of title is not dependent on payment of the requisite tax, it is possible in theory that a title could have been registered before the associated tax is paid.

Under LBTT, the three stages are tied up more closely, making title registration dependent on both return submission *and* payment of tax:

- The submission of the return and the payment of the tax are joined up as a one-stage process, and at the point of return submission, 'arrangements satisfactory' have to be in place for the payment of LBTT due.
- Registration of title is effected via automatic data-feed from the LBTT return system.
- There is no equivalent of SDLT5 certificate in the LBTT regime for the registration of title.
- *Arrangements satisfactory* mean payment methods under the terms as directed by Revenue Scotland, and include Direct Debit, BACS or CHAPS for returns submitted online, or payment by cheque to accompany the submission of a paper return.

Leases and licences

It is in the areas of leases where the biggest differences exist between SDLT and LBTT. This is largely as result of the differences between Scots law and English law governing leases. In particular, variations of leases are not treated as the disposal and acquisition of a new lease. This means that there needs to be greater consideration given for anti-avoidance provisions to makes sure that value cannot be enhanced after the LBTT has been paid by varying the lease terms.

Under SDLT, the net present value (NPV) for the purposes of determining the chargeable rental for both residential and commercial leases is calculated on the basis that the rent for any year after the end of year 5 is at the highest annual rate payable over the first 5 years, regardless of whether the lease has in fact fixed the rent at a higher rate from year 6 onwards. There is effectively a capping of the NPV for SDLT purposes.

Under LBTT, the rates and bands are very similar to those for SDLT, but significant differences exist for residential and commercial leases, and not for the same reasons.

- **Residential leases** are largely exempted from LBTT. Only residential leases of more than 20 years' duration will be subject to LBTT. As a feature of Scots law, residential 'freehold' is the norm, and residential leases of over 20 years are extremely rare, since the *Land Tenure Reform (Scotland) Act 1974* (ss.8–9) prohibits the grant of long leases of more than 20 years for private dwelling houses. (Any existing leases of more than 20 years' duration would have pre-dated the enactment of the 1974 Act.) Furthermore, the *Long Leases (Scotland) Act 2012* deals with existing long leases by converting the tenant's interest under certain long leases to outright ownership on 28 November 2015. For these combined reasons, residential leases are by and large outwith the LBTT charging provisions.
- For **commercial leases**, the charging structure is similar to SDLT on rent, but tenants are required to submit LBTT returns every three years; there is no cut-off of assessment at the end of five years as with SDLT. LBTT is therefore effectively re-assessed at three-year intervals based on the actual rentals paid in the preceding three years; LBTT payable will then be adjusted accordingly. Any capital payment (i.e. premium) made for a lease will be assessed at the same rates as for a commercial purchase.

Licences to occupy are exempt under both SDLT and LBTT, but certain non-residential licences are likely to be brought within the ambit of LBTT.

Reliefs

Most reliefs under SDLT are replicated in LBTT with the additional of Crofting Community Right to Buy relief at 100%. The most notable difference between the regimes relates to sub-sale relief which is not replicated in LBTT. It is replaced with Sub-sale Development Relief (SDR).

SDR is available in the same type of cases as when the relief applies for SDLT purposes but with one additional condition. It only applies where there is significant development of the land or buildings. Development includes redevelopment but only where it is significant which is to be judged by the nature of extent of the work done in comparison to the pre-existing building. It is effectively targeted at genuine property development projects.

There are also some differences for Multiple Dwellings Relief purposes. The basic conditions are the same but there is a different minimum charge. For SDLT purposes, the rate of duty cannot fall below 1% of the chargeable consideration but for LBTT purposes, there is a 'minimum prescribed amount' which is 25% of the duty which would be paid without the relief being claimed.

There is also an interesting difference in interpretation of the rules where six or more dwellings are bought in one transaction. This would attract non-residential rates (as it does for SDLT purposes) but MDR is also available (using the non-residential rates) and no additional dwelling supplement is due. HMRC has confirmed that this interpretation does not apply for SDLT purposes.

Land Transactions Tax

Land Transactions Tax (LTT) was brought in for Welsh property transactions from 1 April 2018.

The rates of tax on residential-property transactions are (with an additional rate supplement of 4% being due on second homes):

<u>Relevant consideration</u>	<u>Rate of tax</u>
First £180,000	0%
Next £70,000	3.5%
Next £150,000	5%
Next £350,000	7.5%
Next £750,000	10%
Balance over £1,500,000	12%

There was an extension of the nil rate band up to £250,000 applying for transactions from 27 July 2020 and this has been extended so it applies up to 30 June 2021. This does not apply to transactions where the higher rate for supplementary dwellings applies. The subsidiary dwellings

exemption does apply for LTT purposes, with the same conditions as for SDLT purposes. There is no first-time buyers' relief.

The non-residential rates (which also apply for mixed use property too) are as follows:

<i>Relevant consideration</i>	<i>Percentage rate of tax</i>
First £150,000	0
Next £100,000	1
Next £750,000	5
Balance over £1,000,000	6

There are differences for leases. LTT is only payable on the premium element of residential lease transaction, with the rent not being taken into account.

For non-residential leases, there is a nil rate band up to £225,000 with 1% being paid above this up to £2m and 2% above £2m. The 0% band which would apply to premiums is increased to 1% where the rent exceeds £13,500 (from 4 February 2021, with the previous figure being £9,000).

Contributed by Ros Martin