

LAND AND BUILDINGS TRANSACTION TAX (LBTT)

3 YEARLY REGULAR REVIEW RETURNS

INTRODUCTION

LBTT was introduced with effect from 1 April 2015.

A feature of the LBTT regime in relation to leases (and one which is not present in SDLT) is the requirement for tenants to review the LBTT position on every 3rd anniversary of the lease and submit an updated LBTT return. The idea behind this approach is to ensure that LBTT is charged on the actual rents paid over the life of the lease. However, rather than asking tenants to submit a return every time there is a rent review, extension or variation, tenants are instead required to review the lease every 3 years and update their LBTT liability to take account of all of those factors.

The tenant is required to submit a review return and pay any additional LBTT at that time or, if there has been an overpayment, to claim a refund.

THE ISSUE

The first of the 3 year reviews will start to fall due from April 2018. For example, a lease granted on 1 April 2015 will have a review date of 1 April 2018 and the review return will be due for submission no later than 1 May 2018.

This review process was not a feature of the SDLT legislation and tenants will not be familiar with the requirement to review their LBTT position. Many will not realise that they are under an obligation to submit review returns which are required in all cases - even where there has been no change to the lease terms and no further LBTT is due. Failure to comply with the review requirements could be potentially costly as there are penalties for late filing and late payment.

Therefore, it is important that tenants understand their obligations and take steps now to comply with them to avoid incurring unexpected penalties.

WHEN IS AN LBTT REVIEW RETURN REQUIRED?

A review return will be required where an LBTT return has been submitted (or ought to have been submitted) in relation to a lease and, at the review date, the lease has not been assigned or terminated.

In most cases, the event which will have triggered the requirement to submit an LBTT return will have been the grant of a non-residential lease on or after 1 April 2015. However, there are a number of other situations which could have triggered the requirement to submit an LBTT return including lease variations made on or after 1 April 2015 (eg to extend the lease term) to a lease granted before 1 April 2015 under the SDLT regime.

WHAT ABOUT ASSIGNATIONS?

When an LBTT lease is assigned, the outgoing tenant is required to submit an LBTT return taking account of any changes in the lease between the most recent 3 year review and the date of assignment. The outgoing tenant will pay any additional LBTT due at that time.

Thereafter, the incoming tenant takes over responsibility for making the 3 year review returns. It should be noted that the review returns will still be required at 3 yearly intervals based on the effective date of the original lease - not the date of assignment.

Therefore, if a lease was granted on 1 January 2016 and assigned to a new tenant on 31 July 2017, the first review date would still be 1 January 2019. The incoming tenant would be required to submit a review return by 31 January 2019 taking account of any changes in the period from 1 August 2017 (because the outgoing tenant will have submitted a return up to the date of assignment) to 1 January 2019.

WHAT IF THE LEASE WAS TERMINATED BY A 3 YEAR REVIEW DATE?

When a lease is terminated the tenant is required to submit a "final" LBTT return covering the period from the date of the last 3 year review up to the date of termination and to pay any additional LBTT due at that time.

Once this has been done there is no requirement to make any further 3 year review returns.

HOW IS THE ADDITIONAL LBTT CALCULATED?

The LBTT due under the lease should be calculated using the actual rents due for the periods that are known and a best estimate of the rents due for the future periods and should use the same LBTT bands and allowances that were in force on the effective date of the original lease/deemed lease.

WHAT IS THE DEADLINE FOR THE REVIEW RETURN?

The review return must be submitted within 30 days beginning with the day after the review date. Any LBTT due should be paid when the return is submitted.

It should be remembered that a return is required even if no additional LBTT is due. This is important as Revenue Scotland will charge penalties where there has been a failure to submit an LBTT return.

WHAT ARE THE PENALTIES FOR FAILING TO FILE OR PAY ON TIME?

Revenue Scotland can charge penalties where an LBTT return is filed late. An initial fixed penalty of £100 will be imposed for late filing. However, if the return is more than 3 months late Revenue Scotland may impose a daily penalty of £10 for up to 90 days. Therefore, a penalty of up to £1,000 could be charged for late filing even if no LBTT is actually due. Further tax-gear penalties may be charged if the return is still outstanding more than 6 months and more than 12 months after the filing date.

If the LBTT is paid late, Revenue Scotland will charge interest on the sums outstanding. In addition, if the LBTT is late by more than 30 days, Revenue Scotland may impose a penalty equivalent to 5% of the unpaid LBTT liability. A further 5% penalty may be levied if the tax remains unpaid 6 months after the due date and again if the tax remains unpaid after 12 months.

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