

Land transactions in Scotland

Transitional guidance on the introduction of Land and Buildings Transaction Tax

The introduction of Land and Buildings Transaction Tax (LBTT) on 1 April 2015 is contingent on the making of an order by HM Treasury under section 29 Scotland Act 2012.

References to LBTT legislation in this guidance have been provided by the Scottish Government. For further information about these provisions (including LBTT rates and bands), go to the [Revenue Scotland](http://www.revenue.scot.nhs.uk) website.

Table of Contents

1. Application of SDLT to Scotland.....	1
2. Transitional provisions (section 29(5) and (6) Scotland Act 2012)	3
3. Land and Buildings Transaction Tax (LBTT)	4
4. Effect of transitional provisions for Scottish land transactions.....	4
5. Examples	6
6. Conveyance to a third party (section 44A FA 2003)	8
7. Pre-completion transactions (section 45 and Schedule 2A FA 2003)	9
8. Options (section 46 FA 2003).....	9
9. Exchanges (section 47 FA 2003)	10
10. Contingent, uncertain or unascertained consideration (section 51 FA 2003).	11
11. Sale and leaseback arrangements (section 57A FA 2003).	11
12. Multiple dwellings relief (section 58D / Schedule 6B FA 2003).	11
13. Group relief, reconstruction and acquisition reliefs (section 62 / Schedule 7 FA 2003).....	12
14. Charities relief (section 68 / Schedule 8 FA 2003).	12
15. Shared ownership leases (section 70/Schedule 9 FA 2003).	12
16. Alternative property finance (sections 72-72A FA 2003).	13
17. Alternative Finance Investment Bonds (section 73C FA 2003 and Schedule 61 Finance Act 2009).	13
18. Anti-avoidance (section 75A FA 2003).....	13
19. Later linked transactions (section 81A FA 2003).....	14
20. Partnerships (section 104 and Schedule 15 FA 2003).	14
21. Leases (section 120 and Schedule 17A FA 2003).	15

1. Application of SDLT to Scotland

- 1.1 Subject to the transitional rules set out in section 2 below, SDLT will not apply to a transaction where the effective date is on or after 1 April 2015 where the subject-matter of the transaction consists of, or to the extent that it includes, interests in land situated in Scotland. Such a transaction will not be an acquisition of a chargeable interest and so will not be a land transaction for SDLT purposes (section 43 FA 2003).
- 1.2 Transactions with an effective date on or after this date which are (or would be) linked transactions (section 108 FA 2003) will no longer be linked for SDLT purposes, to the extent that they include interests in land situated in Scotland, with

either

- a transaction the subject-matter of which is land elsewhere in the UK, or
- a transaction the subject-matter of which is land in Scotland and which is subject to SDLT

- 1.3 Where a transaction with an effective date on or after this date includes interests in land in both Scotland and the remainder of the United Kingdom, the former interest(s) must be excluded for SDLT purposes and only the latter interest(s) included in a return.
- 1.4 When submitting a land transaction return for SDLT you must enter a valid local authority code in each place where this is required. For transactions with an effective date on or after 1 April 2015 this will normally be a code relating to a local authority in England, Wales or Northern Ireland.
- 1.5 Exceptionally, special codes will be provided for transactions involving land in Scotland covered by the transitional rules set out in para. 2 below and in certain other circumstances – see paras. 19(2), 21(1) and 21(5) below.
- 1.6 If in any case you do not enter a valid code, you will not be able to submit an online return. A paper return will be rejected.

2. Transitional provisions (section 29(5) and (6) Scotland Act 2012)

2.1 Exceptionally, SDLT will continue to apply to transactions where the effective date is on or after 1 April 2015, where the subject-matter of the transaction consists of or includes interests in land situated in Scotland and which are

(a) effected in pursuance of a contract entered into and substantially performed on or before 1 May 2012 (the day on which the Scotland Act received the Royal Assent) or

(b) effected in pursuance of a contract entered into on or before that date and not excluded by any of the following:

- any variation of the contract, or assignation of rights under the contract, after that date,
- the exercise after that date of any option, right of pre-emption or similar right, or
- an assignation, sub-sale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

2.2 HMRC will not regard the following as excluding the transaction from a charge to SDLT under the transitional rules:

- a variation of the completion date specified in the contract,
- a transfer to the nominee or bare trustee of the purchaser under the contract.

2.3 Purchasers claiming the benefit of the transitional rules should enter code 8999, not a Scottish local authority code, where required in the land transaction return for SDLT, (including any supplementary paper returns).

3. Land and Buildings Transaction Tax (LBTT)

3.1 A transaction with an effective date on or after 1 April 2015 will be subject to Land and Buildings Transaction Tax (LBTT) to the extent that it includes interests in land situated in Scotland, provided the acquisition of such interests in land is not subject to SDLT under the transitional rules set out in parts 1 and 2.

3.2 Details regarding LBTT are available on the [Revenue Scotland](#) website and set out in legislation in the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT Act”).

3.3 The Scottish Parliament has passed legislation (The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014) to make provision for certain transactions that began under SDLT but have an effective date on or after commencement of LBTT. The intention is to ensure that, through the transitional period where SDLT is disapplied in Scotland and LBTT is introduced, such transactions are not taxed twice (by both SDLT and LBTT) but are subject to one of the taxes or to ensure that, where no tax would otherwise be payable, it is payable under LBTT if it would have been payable under SDLT. The order makes provision to achieve that purpose for 13 different types of land transactions or arrangements involving land transactions.

4. Table to demonstrate the effect of the transitional provisions for land transactions in Scotland

On or before 1 May 2012	2 May 2012 – 31 March 2015	1 April 2015 and after	Tax charge
Conclusion of Missives		Settlement	SDLT on Settlement
Conclusion of Missives + Substantial Performance		Settlement	SDLT on Substantial Performance + SDLT on Settlement*
Conclusion of Missives + Substantial Performance	Variation	Settlement	SDLT on Substantial Performance + SDLT on Settlement*
Conclusion of Missives	Substantial Performance	Settlement	SDLT on Substantial Performance + SDLT on Settlement*
Conclusion of Missives	Variation	Settlement	LBTT on Settlement
Conclusion of Missives	Substantial Performance + Variation	Settlement	SDLT on Substantial Performance + LBTT on Settlement*
Conclusion of Missives		Substantial Performance + Settlement	SDLT on Substantial Performance + SDLT on Settlement*
Conclusion of Missives		Substantial Performance + Variation + Settlement	SDLT on Substantial Performance + LBTT on Settlement*
	Conclusion of Missives	Settlement	LBTT on Settlement
	Conclusion of Missives + Substantial Performance	Settlement	SDLT on Substantial Performance + LBTT on Settlement*
	Conclusion of Missives + Substantial Performance	Variation + Settlement	SDLT on Substantial Performance + LBTT on Settlement*
	Conclusion of Missives	Substantial Performance + Settlement	LBTT on Settlement
	Conclusion of Missives	Substantial Performance + Variation + Settlement	LBTT on Settlement

* An SDLT or LBTT charge on Settlement following Substantial Performance applies only to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract which was substantially performed.

In this table “variation” means a disqualifying event prescribed by section 29(6) Scotland Act 2012 and includes *inter alia* an assignation of rights under the contract or the exercise of an option.

5. Examples

5.1 Cross-border transactions

A business acquires ownership of a chain of shops from another business in a single transaction. Some of the shops are in Scotland and some in England. The effective date of the transaction (the date of settlement) is on or after 1 April 2015.

The acquisition of the shops in Scotland is chargeable to LBTT and a return must be made to Revenue Scotland. The acquisition of the shops in England is chargeable to SDLT and a return must be made to HMRC. The consideration given for the acquisitions is apportioned on a just and reasonable basis.

5.2 Linked transactions (1)

A business acquires ownership of two office buildings from a company and its subsidiary on the same date. One of the buildings is in Newcastle and the other is in Glasgow. The effective date of the transactions (the date of settlement) is on or after 1 April 2015.

The acquisition of the building in Glasgow is chargeable to LBTT and a return must be made to Revenue Scotland. The acquisition of the building in Newcastle is chargeable to SDLT and a return must be made to HMRC. The two transactions are not linked with each other for SDLT or LBTT purposes.

5.3 Linked transactions (2)

The same business negotiates the acquisition of ownership of two office buildings in Edinburgh from the same company. The negotiations were entered into in August 2014. Acquisition of the first building is completed before 1 April 2015 but negotiations for the acquisition of the second building are not yet concluded so acquisition of this building is completed in a separate transaction on or after 1 April 2015.

The first acquisition is chargeable to SDLT and a return must be made to HMRC. The second acquisition is chargeable to LBTT and a return must be made to Revenue Scotland. The two transactions are not linked with each other for SDLT or LBTT purposes.

5.4 Transitional rules (1)

Missives are concluded for the purchase of a house on 5 January 2015. The effective date of the transaction (the settlement date) is on or after 1 April 2015.

The purchase is not subject to SDLT. The transitional rules at section 29(5) and (6) of the Scotland Act do not apply because the contract was not entered into (i.e. missives were not concluded) on or before 1 May 2012. The purchase is subject to LBTT and a return must be made to Revenue Scotland.

5.5 Transitional rules (2)

Missives are concluded for the purchase of a block of flats before construction begins on 1 May 2012. The settlement date is agreed as 1 May 2014. Building delays mean that settlement is not made (by agreement) until after 1 April 2015.

The transaction is subject to SDLT as it falls within the transitional rules. The delayed settlement date is not treated as a variation of the contract which would exclude the transaction from the effect of those rules by virtue of section 29(6) of the Scotland Act.

5.6 Transitional rules (3)

A rent-only business lease is agreed under a verbal contract and substantially performed by the first annual rent payment on 15 April 2012 (before the Scotland Act came into force). Para. 19(3) Schedule 17A FA 2003 treats the agreement as the grant of a lease, beginning with the date of substantial performance.

The lease remains subject to SDLT after 1 April 2015 for as long as it continues from year to year, or until the lease is executed, and a return must be submitted if SDLT becomes payable or additional tax becomes due (para. 4 Schedule 17A FA 2003).

Where the lease is executed, or a successive lease is treated as granted, after 1 April 2015, these transactions will not be subject to SDLT.

Specific Provisions

Notes

(a) The following guidance applies to the extent that the subject-matter of a land transaction is land in Scotland. The existing rules will continue to apply to the extent that the subject-matter of a transaction is land in England, Wales or Northern Ireland. Where necessary, the consideration for the transaction must be apportioned on a just and reasonable basis.

(b) In all cases references to

- a land transaction where the effective date is before 1 April 2015 include a transaction which remains subject to SDLT by virtue of the transitional provisions at section 29(5) and (6) Scotland Act 2012 and
- a land transaction where the effective date is on or after that date exclude such a transaction.

6. Conveyance to a third party (section 44A FA 2003)

- 6.1 Section 44A applies where a contract (the first contract) is entered into under which a chargeable interest in land is to be conveyed by one party to the contract (A), at the request of another (B), either to B or to a third person (C) who is not party to the contract.
- 6.2 If the first contract is substantially performed on or before 1 May 2012 (the day on which the Scotland Act came into force), an obligation referred to at section 44A(6)(b) and a contract between B and C referred to at section 44A(7) will be subject to SDLT, even if the effective date of the transaction concerned is on or after 1 April 2015.
- 6.3 If the first contract is entered into but not substantially performed on or before 1 May 2012, an obligation referred to at section 44A(6)(b) and a contract between B and C referred to at section 44A(7) will be subject to SDLT if the effective date of the transaction concerned is on or after 1 April 2015 and none of the exclusions at section 29(6) Scotland Act 2012 applies to it.
- 6.4 If the first contract is entered into after 1 May 2012, an obligation referred to at section 44A(6)(b) and a contract between B and C referred to at section 44A(7) will not be subject to SDLT if the effective date of the transaction concerned is on or after 1 April 2015. The contract between B and C will be subject to LBTT and a return must be made to Revenue Scotland.

7. Pre-completion transactions (section 45 and Schedule 2A FA 2003)

- 7.1 Section 45 and Schedule 2A FA 2003 apply where a contract is to be completed by a conveyance but, before it is substantially performed or completed, the purchaser under that contract enters into a further agreement as a result of which another person is entitled to call for the conveyance of all or part of the subject-matter of the original contract. Such an agreement may take the form of an assignment of the rights under the contract or a sub-sale or other free-standing transaction.
- 7.2 If the assignment or free-standing transaction is completed or substantially performed by the transferee on or after 1 April 2015, neither the completion of the assignment or free-standing transaction, nor a transaction or notional transaction entered into by the transferor, will be subject to SDLT.
- 7.3 Unless the original contract was substantially performed on or before 1 May 2012, the transitional rules at section 29(5) and (6) Scotland Act 2012 will not apply in these circumstances as the assignment of rights or free-standing transaction will exclude the transaction by virtue of section 29(6).
- 7.4 Instead, as the LBTT Act currently stands, LBTT will be chargeable on both the contract entered into by the initial buyer when they enter into a further agreement under which another person is entitled to call for a conveyance and on the completion of the further agreement. This is because section 14(1)(c) of the LBTT Act provides that substantial performance is constituted when there is an assignation, sub-sale or another transaction under which a person other than the original buyer becomes entitled to call for the conveyance.

8. Options (section 46 FA 2003)

- 8.1 The acquisition of an option binding the grantor to enter into a land transaction, or a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction is treated as a land transaction separate from the exercise of the option or right.
- 8.2 If an option or right is acquired before 1 April 2015, the exercise of the option or right on or after 1 April 2015 is not subject to SDLT, regardless of whether or not the grant and the exercise are linked transactions.
- 8.3 If an option or right is acquired on or after 1 April 2015, it will be subject to LBTT and a return must be made to Revenue Scotland. The exercise of the option will also be subject to LBTT and a return must be made to Revenue Scotland. The acquisition of the option or right and the exercise of the option are separate land transactions. However, they may be linked transactions for LBTT purposes.

9. Exchanges (section 47 FA 2003)

- 9.1 For SDLT purposes an exchange is treated as two separate transactions, each wholly or partly in consideration of the other. Where any of the interests transferred is a major interest in land, the chargeable consideration for each transaction is the market value of the interest acquired (para. 5 Schedule 4 FA 2003).
- 9.2 The exchanges rules in section 47 FA 2003 only apply where both transactions are subject to SDLT. Where, on or after 1 April 2015, land in England, Wales or Northern Ireland is exchanged for land in Scotland, only the acquisition of the land in England, Wales or Northern Ireland is subject to SDLT and (as the acquisition of the land in Scotland is not a land transaction for SDLT purposes) the exchanges rules will not apply to the transaction.
- 9.3 The same principles apply where the transfer of land in England, Wales or Northern Ireland takes place before 1 April 2015 and the transfer of the land in Scotland takes place on or after 1 April 2015.
- 9.4 In these cases the chargeable consideration for the transfer of land in England, Wales or Northern Ireland will be determined according to the normal rules, not the special rules at paragraph 5 of Schedule 4. The chargeable consideration is likely to be the market value of the interest disposed of, plus any equality payment or other consideration given.
- 9.5 Where, on or after 1 April 2015, land in England, Wales or Northern Ireland is exchanged for land in Scotland, the acquisition of the land in Scotland will be chargeable to LBTT and a return must be made to Revenue Scotland. For the purposes of the Scottish land transaction, the LBTT Act applies and it is likely that the chargeable consideration will be based on the market value of the property being disposed of in England, Wales or Northern Ireland, in addition to any other consideration given.
- 9.6 If an exchange involves subjects in Scotland, and the first part of the exchange is prior to 1 April 2015 and the second part is on or after 1 April 2015, then SDLT will be payable on the first part and a return must be made to HMRC. LBTT will be payable on the second part and a return must be made to Revenue Scotland. For both parts of the exchange, the normal rules will apply for determining the chargeable consideration for SDLT and LBTT purposes, and the exchange rules in both para. 5 of Schedule 4 Finance Act 2003 and in para. 5 of Schedule 2 to the LBTT Act do not apply.
- 9.7 If an exchange takes place on or after 1 April 2015 and the land involved in both parts of the exchange is in Scotland, then the exchange rules in para. 5 of Schedule 2 to the LBTT Act apply. Returns must be made to Revenue Scotland.
- 9.8 Where the transfer of land in Scotland takes place before 1 April 2015 and the transfer of the land in England, Wales or Northern Ireland takes place on or after 1 April 2015, SDLT will apply to both transactions and the Exchanges rules in section 47 FA 2003 will apply.

10. Contingent, uncertain or unascertained consideration (section 51 FA 2003)

- 10.1 The provisions for contingent, uncertain or unascertained consideration, including the provisions for adjustment where a contingency ceases or consideration is ascertained (section 80 FA 2003) and applications to defer payment (section 90 FA 2003) remain unchanged for transactions which are subject to SDLT. This means that additional payments of SDLT may have to be made to HMRC after 1 April 2015 where a contingency ceases or consideration is ascertained.
- 10.2 For land transactions that are subject to LBTT, the provisions for contingent, uncertain or unascertained consideration, including where a contingency ceases or consideration is ascertained, are contained in sections 18, 19, 20, 31 and 32 of the LBTT Act. It is also possible to apply to Revenue Scotland to defer payment under section 41 of the LBTT Act. Further provision on such applications is made in Part 2 of The Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014.

11. Sale and leaseback arrangements (section 57A FA 2003)

- 11.1 Subject to conditions, the leaseback element of a sale and leaseback arrangement is exempt from charge to SDLT.
- 11.2 Where a sale of land in Scotland takes place before 1 April 2015 and the leaseback takes place on or after 1 April 2015, the sale element will be chargeable to SDLT but the leaseback will not. The chargeable consideration for the sale element will be the market value of the leaseback and any other consideration given for the sale in money or money's worth. Schedule 3 to the LBTT Act makes sale and leaseback relief available under LBTT, so any leaseback on or after 1 April 2015 will be relieved from LBTT despite the fact that the sale took place prior to 1 April 2015.

12. Multiple dwellings relief (section 58D / Schedule 6B FA 2003)

- 12.1 Where a transaction (or linked transactions) include interests in multiple dwellings situated in Scotland and elsewhere in the UK, the amount of SDLT payable under multiple dwellings relief (MDR) is calculated according to the number of dwellings, the acquisition of which is subject to SDLT.

12.2 Example

A person purchases six new houses from the same developer in a single transaction on 1 August 2015. Three of the houses are on a development in Newcastle and three are on a separate development in Edinburgh. The houses cost £250,000 each.

Only the acquisition of the three houses in Newcastle is subject to SDLT. If MDR is claimed under SDLT, the "total dwellings consideration" for this purpose is £750,000 and the number of dwellings taken into account ("total dwellings") is three.

Where MDR is claimed in respect of an SDLT transaction (or linked transactions) which includes an interest or interests in dwellings situated in Scotland, the provisions of paragraph 6 of Schedule 6B (adjustment for change of circumstances) will continue to apply to the transaction, even if the event which gives rise to the adjustment occurs on or after 1 April 2015.

The acquisition of the three houses in Edinburgh will be subject to LBTT. Multiple dwellings relief is available under LBTT and is set out at Schedule 5 to the LBTT Act.

13. Group relief, reconstruction and acquisition reliefs (section 62 / Schedule 7 FA 2003)

- 13.1 Where group relief, reconstruction relief or acquisition relief are claimed in respect of an SDLT transaction which includes an interest or interests in land in Scotland, the relevant provisions for withdrawal of relief will apply even where the event giving rise to the withdrawal takes place on or after 1 April 2015. In this case a further return must be submitted by letter to Birmingham Stamp Office in accordance with SDLTM50400 and any payment of SDLT made to HMRC.

Group relief is available under LBTT and is provided for in Schedule 10 to the LBTT Act. Reconstruction and acquisition reliefs are also available under LBTT, and are provided for in Schedule 11 to the LBTT Act.

14. Charities relief (section 68 / Schedule 8 FA 2003)

- 14.1 Where charities relief is claimed in respect of an SDLT transaction which includes an interest or interests in land in Scotland, the relevant provisions for withdrawal of relief will apply even where the event giving rise to the withdrawal takes place on or after 1 April 2015. In this case a further return must be submitted by letter to Birmingham Stamp Office in accordance with SDLTM50400 and any payment of SDLT made to HMRC.

Charities relief is available under LBTT and is provided for in Schedule 13 to the LBTT Act.

15. Shared ownership leases (section 70/Schedule 9 FA 2003)

- 15.1 Where the grant of a shared ownership lease is an SDLT transaction (and a market value election has **not** been made), any staircasing transaction following which the lessee does not hold a total share of the dwelling which exceeds 80% is exempt from charge to SDLT.
- 15.2 Any staircasing transaction in respect of a dwelling situated in Scotland which takes the lessee's total share of the dwelling over 80%, or the acquisition of the reversion, will be exempt from SDLT if the effective date of the transaction is on or after 1 April 2015.

16. Alternative property finance (sections 72-72A FA 2003)

- 16.1 Para. 10 of Schedule 3 to the Scotland Act 2012 omits sections 72 and 72A FA 2003 with effect from 1 April 2015. This means that the third transaction (section 72) or the further transaction (section 72A) under arrangements which fall within those sections will be neither a chargeable nor a notifiable transaction for SDLT if the effective date of the transaction is on or after 1 April 2015.
- 16.2 Alternative property finance relief is also available under LBTT and is provided for in Schedule 7 to the LBTT Act. To ensure that a party entering into a land transaction in connection with an alternative property finance arrangement prior to 1 April 2015 is not disadvantaged by the switch from SDLT to LBTT in Scotland, under Article 5 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 neither the third transaction under section 72 FA 2003 nor a further transaction under section 72A will be chargeable to LBTT.

17. Alternative Finance Investment Bonds (section 73C FA 2003 and Schedule 61 Finance Act 2009)

- 17.1 A land transaction, the subject-matter of which is an interest in land in Scotland and which is a 'first transaction' for the purposes of para. 6 of Schedule 61 FA 2009, will be exempt from charge to SDLT if the effective date of the transaction is before 1 April 2015 and the conditions for relief are met. In this case SDLT will become chargeable under para. 7(3) of Schedule 61 if relief is withdrawn at any time, even if this withdrawal occurs on or after 1 April 2015.
- 17.2 Such a transaction which is a 'second transaction' for the purposes of para. 8 of Schedule 61 will be exempt from charge to SDLT if the effective date of the transaction is before 1 April 2015 and conditions in that paragraph are met.
- 17.3 In either case, the transaction will not be subject to SDLT if the effective date is on or after 1 April 2015.
- 17.4 Relief for alternative finance investment bonds is also available under LBTT and is provided for in Schedule 8 to the LBTT Act. To ensure that a party entering into a land transaction in connection with an alternative finance investment bond prior to 1 April 2015 is not disadvantaged by the switch from SDLT to LBTT in Scotland, under Article 6 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 the second transaction for the purposes of para. 8 of Schedule 61 FA 2009 will not be chargeable to LBTT when the conditions in para. 8(1)(a) and (b) of Schedule 61 FA 2009 have been met.

18. Anti-avoidance (section 75A FA 2003)

- 18.1 The provisions of section 75A apply to a disposal and acquisition of a chargeable interest in land in Scotland where the effective date of the notional transaction (section 75(6)) is before 1 April 2015.

19. Later linked transactions (section 81A FA 2003)

19.1 Where

- a land transaction, the subject-matter of which is an interest in land in Scotland, has an effective date before 1 April 2015 but is not notifiable for SDLT purposes and
- the transaction becomes notifiable on or after 1 April 2015 by reason of a later SDLT transaction which is linked to it

the earlier transaction remains subject to SDLT and a return must be submitted in accordance with section 81A.

- 19.2 In these circumstances a paper return (SDLT1) must be submitted to Birmingham Stamp Taxes with a covering letter – see SDLTM50350 para. 3. The effective date entered at Box 4 must be the effective date of the later linked transaction. In this case the special LA code 8998 (not a Scottish LA code) must be entered in the return.
- 19.3 If the earlier transaction has been notified but tax or more tax becomes due as a result of the later linked transaction, then a further return must be submitted by letter to Birmingham Stamp Taxes in accordance with SDLTM50350 paras. 1 and 2.

20. Partnerships (section 104 and Schedule 15 FA 2003)

- 20.1 A transfer of a partnership interest which falls to be treated as a land transaction by virtue of para. 17 of Schedule 15 will not be subject to SDLT, to the extent that the transfer of land to the partnership referred to in that paragraph includes land in Scotland and the effective date of the later deemed land transaction is on or after 1 April 2015. This applies even if the transfer of land to the partnership took place before that date.
- 20.2 Under Article 7 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, any partnership transfer under para. 17(1)(c) of Schedule 15 FA 2003 that takes place on or after 1 April 2015 will be chargeable to LBTT.
- 20.3 A 'qualifying event' (e.g. a withdrawal of money from the partnership) which falls to be treated as a land transaction by virtue of para. 17A of Schedule 15 will not be subject to SDLT, to the extent that the transfer of land to the partnership referred to in that paragraph includes land in Scotland, where the effective date of later deemed transaction is on or after 1 April 2015. This applies even if the transfer of land to the partnership took place before that date.
- 20.4 Under Article 8 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, a qualifying event referred to in para. 17A(2) of Schedule 15 FA 2003 that takes place on or after 1 April 2015 will be chargeable to LBTT.

21. Leases (section 120 and Schedule 17A FA 2003)

21.1 Leases that continue after a fixed term (para. 3 of Schedule 17A)

Paragraph 3 provides that, where a lease continues after a fixed term, it is treated as a lease for the fixed term plus one year (and so on). Where as a result tax, or more tax, becomes due, a return or further return must be submitted within 30 days of the end of the one-year period concerned (see para. 3(4)).

Where a lease of land in Scotland is granted before 1 April 2015 and in accordance with this provision tax, or more tax, becomes due on or after that date, the lease remains subject to SDLT.

If as a result the grant of the lease becomes notifiable for the first time, a return must be submitted in the usual way – see SDLTM12050 para. 1. The last day of the one year period giving rise to the notification requirement (not the date on which the lease was granted) must be entered at Box 4. In this case the special LA code 8998 (not a Scottish LA code) must be entered in the return.

If the grant of the lease has already been notified and additional tax becomes due, notification should be made by letter to Birmingham Stamp Taxes – see SDLTM 12050 para. 2ff.

21.2 Leases for an indefinite term (para. 4 of Schedule 17A)

A lease for an indefinite term (e.g. a lease for life – see SDLTM18715) is treated in the first instance as if it were a lease for a fixed term of a year. If the lease continues after the end of that term it is treated as a lease for a fixed term of two years, and so on.

A lease for an indefinite period of land in Scotland which is granted before 1 April 2015 will continue to be subject to SDLT even if it continues after the end of such a term on or after 1 April 2015.

21.3 Successive linked leases (para. 5 of Schedule 17A)

The provisions of para. 5 do not apply in respect of leases of land in Scotland granted after 1 April 2015, because in this case the grant is not subject to SDLT and such a lease cannot be linked with any transaction where the effective date is before 1 April 2015. Where a lease is granted with an effective date on or after 1 April 2015, it will be chargeable to LBTT under Schedule 19 to the LBTT Act.

21.4 Adjustment where rent ceases to be uncertain (para. 8 of Schedule 17A)

Where a lease of land in Scotland is granted before 1 April 2015 and in accordance with this provision tax, or more tax, becomes due on or after that date, the lease remains subject to SDLT. A return or further return must be submitted within 30 days of the end of the fifth year of the period of the lease or, if earlier, the date on which the amount of rent payable in the first five years ceases to be uncertain (see para. 8(4)).

If as a result the grant of the lease becomes notifiable for the first time, a return must be submitted in the usual way. The date prescribed by para. 8(1) (not the date on which the lease was granted) must be entered at Box 4. In this case the special LA code code 8998 (not a Scottish LA code) must be entered in the return.

If the grant of the lease has already been notified and additional tax becomes due, notification should be made by letter to Birmingham Stamp Taxes – see SDLTM 18525.

21.5 Overlap relief (para. 9 of Schedule 17A)

Where a lease of land in Scotland granted before 1 April 2015 is renounced or terminated and a new lease granted in its place on or after that date, the new lease will not be subject to SDLT.

The new lease will be chargeable to LBTT under Schedule 19 to the LBTT Act. Paragraph 25 of Schedule 19 makes provision to discount the LBTT chargeable when a new lease has been granted in place of an old lease in any of the circumstances set out in paragraph 24(1) of Schedule 19. To ensure that a party that is entering into a new lease when the old lease had an effective date prior to 1 April 2015 is not disadvantaged by the switch from SDLT to LBTT, under Article 10 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, where an old lease is granted prior to 1 April 2015 the chargeable consideration for the new lease will be discounted to reflect the rent that would have been payable under the old lease.

21.6 Backdated leases granted to tenant holding over (para. 9A of Schedule 17A)

The grant of a lease of land in Scotland where the effective date is on or after 1 April 2015 will not be subject to SDLT even where the term of the lease is expressed to begin before 1 April 2015.

The grant of a new lease of land in Scotland where the effective date is on or after 1 April 2015 will be subject to LBTT under Schedule 19 to the LBTT Act.

21.7 Assignment of lease after 1 April 2015 where lease was granted prior to 1 April 2015.

Where a lease of land in Scotland is entered into prior to 1 April 2015, and is assigned on or after 1 April 2015, the assignment may be subject to LBTT if there is a premium paid for the assignment.

21.8 Assignment of lease treated as grant of lease (para. 11 of Schedule 17A)

Where a lease of land in Scotland is granted before 1 April 2015, an assignation of the lease on or after that date will not be subject to SDLT and the provisions of para. 11 will not apply to treat that assignation as a grant of a lease.

Under Article 11 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, where a lease was granted prior to 1 April 2015 and it was relieved or exempt from SDLT, it will be treated as the grant of a new lease for LBTT purposes.

21.9 Variations of leases - Increases of rent treated as grant of new lease (para. 13 of Schedule 17A); Increase in the term of a lease or the extension of premises treated as the grant of a new lease

A variation of a lease of land in Scotland which falls within the terms of para. 13 will not be treated as the grant of a lease for SDLT purposes where the effective date of such a grant would be on or after 1 April 2015.

Under Article 12 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, a variation of a lease of land in Scotland involving an increase of rent will be treated as the grant of a new lease for LBTT purposes.

Under English law and SDLT legislation, the increase in the term of a lease or the extension of the premises counts as the grant of a new lease. This is not the case under Scottish law. This means that (in the absence of a transitional provision), if such an event happened after 1 April 2015, such a lease would leave the SDLT regime but not enter the LBTT regime. Accordingly Article 13 of The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 provides that such an event is to be treated for the purpose of LBTT as the grant of a new lease and therefore chargeable to LBTT. However, because SDLT will have already been charged on the rent to that date of the grant of the new lease, LBTT is charged only on any increase in rent.

21.10 Missives of let (para. 19(2) of Schedule 17A)

Paragraph 19 is omitted by Schedule 3 Scotland Act 2012 for transactions where the effective date is on or after 1 April 2015.

Where a lease ('the first lease') is constituted by concluded missives of let before 1 April 2015 and a lease ('the second lease') is executed on or after that date, the provisions of para. 19(2) do not apply as the second lease is not subject to SDLT and cannot be linked with the first.

The second lease will be subject to LBTT under Schedule 19 to the LBTT Act. Paragraph 26 of Schedule 19 to the LBTT will apply to the second lease despite the fact that the first lease was constituted by concluded missives of let prior to 1 April 2015.