

# Introduction to Transitional leases

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27 April 2023

# Housekeeping

- Today's session should run for around 45 minutes.
- There will be a Q&A at the end of the session. If you have questions, please pop these in the chat and we will aim to answer them in the Q&A.
- The presentation section of this session will be recorded and this will be available on our YouTube channel afterwards.
  - People's identities will not be shown on the recording.

# Today's Speakers

- Mollie Johnson – Head of LBTT
- Cara Woods – LBTT Tax Officer

# What this session will cover

- The Transitional Provisions Order (TPO) and when leases transition into the LBTT regime
- Providing links to useful sources of information
- Provide an opportunity for the audience to ask questions on the topic

# Links to sources of information

- [Gov.UK Transitional Guidance](#)
- [LBTT6050 - Transitional provisions | Revenue Scotland](#)
- [Schedule 19, LBTT\(S\)A](#)
- [The TPO](#)
- [The TPO Policy Note](#)

# Gov.UK Transitional Guidance

- Leases that continue after a fixed term
- Leases for an indefinite term
- Successive linked leases
- Adjustment where rent ceases to be uncertain
- Overlap relief
- Backdated leases granted to tenant holding over
- Assignment of lease after 1/4/2015 where granted prior to 1/4/2015
- Assignment of a lease treated as grant of a lease
- Variations of leases
- Missives of let

# What is a transitional lease?

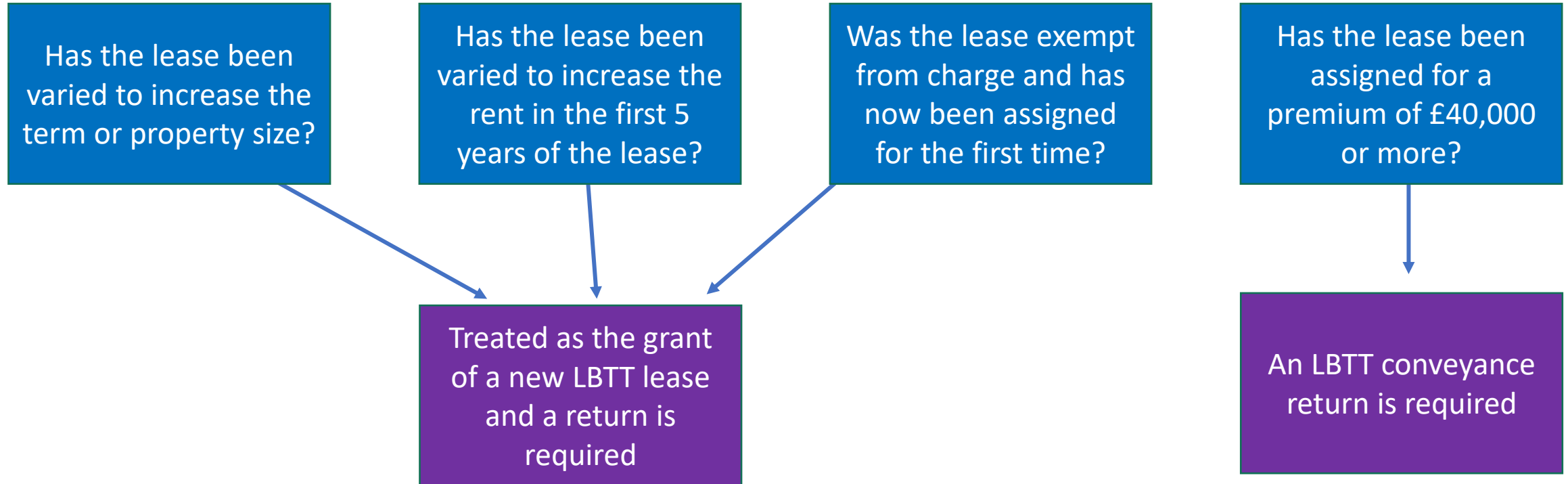
# Purpose of the Transitional Provisions Order

The purpose of the TPO (as set out in the [Policy Note](#)) is to ensure that different types of land transactions or arrangements involving land transactions in Scotland are not taxed twice but are subject to one tax or the other where appropriate, rather than no tax at all.

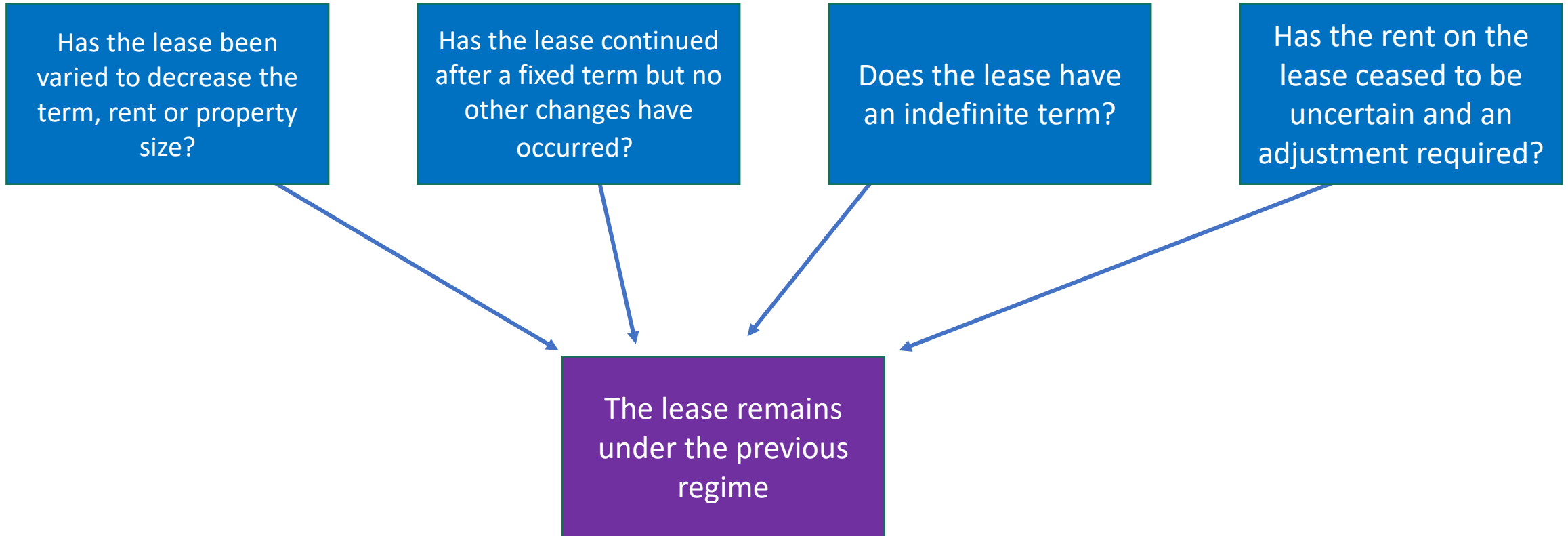
The Order ensures transactions that would have been chargeable prior to LBTT's introduction are chargeable to LBTT after the 1 April 2015 if certain circumstances arise. It ensures that existing Scottish leases do not fall out of tax when they move between the different regimes.



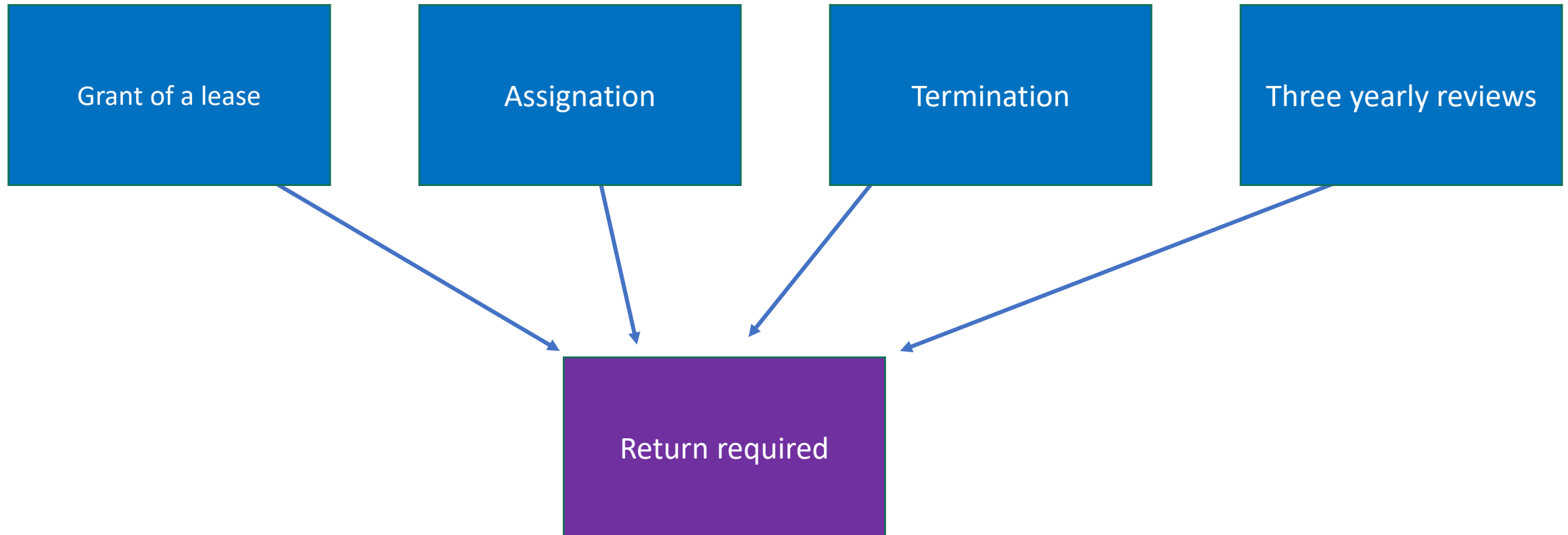
# Transitional Leases – Leases transitioning into LBTT



# Transitional Leases – Leases not transitioning into LBTT



# LBTT lease filing requirements



# Table to demonstrate the effect of the 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 + SLDT on settlement
Conclusion of Missives + Substantial performance	Variation	Settlement	SDLT on Substantial performance + SLDT on settlement
Conclusion of Missives	Substantial performance	Settlement	SDLT on Substantial performance + SLDT on settlement
Conclusion of Missives	Variation	Settlement	<b>LBTT on settlement</b>
Conclusion of Missives	Substantial performance + variation	Settlement	SDLT on Substantial Performance + <b>LBTT on Settlement</b>
Conclusion of Missives		Substantial performance + Settlement	SDLT on Substantial performance + SLDT on settlement
Conclusion of Missives		Substantial performance + Variation + Settlement	SDLT on Substantial Performance + <b>LBTT on Settlement</b>
	Conclusion of Missives	Settlement	<b>LBTT on settlement</b>
	Conclusion of Missives + Substantial performance	Settlement	SDLT on Substantial Performance + <b>LBTT on Settlement</b>
	Conclusion of Missives + Substantial performance	Variation + Settlement	SDLT on Substantial Performance + <b>LBTT on Settlement</b>
	Conclusion of Missives	Substantial performance + Settlement	<b>LBTT on settlement</b>
	Conclusion of Missives	Substantial performance + Settlement	<b>LBTT on settlement</b>

# Stamp Duty leases

- Revenue Scotland's view on Stamp Duty leases falling with the TPO is provided for in our guidance at [LBTT6050 - Transitional provisions | Revenue Scotland](#) and Revenue Scotland's [LBTT Technical Bulletin 1](#)
- Put simply, the wording at Articles 12 and 13 of the TPO state that they apply to leases “*which the provisions of Schedule 17A to the 2003 Act apply*” which, in Revenue Scotland’s view, includes leases granted prior to the introduction of SDLT.

# Variation or extension of a lease

- Articles 12 and 13 of the TPO provide that certain variations and extensions of leases that were granted prior to 1 April 2015 are to be treated as the grant of a new lease for LBTT purposes.
- Variation of lease – Article 12 applies where the lease is varied after the commencement date to increase the amount of rent within the first five years of the grant of the original lease.
- Extension of lease – Article 13 applies where there is an extension of the term or premises of a lease.

# Variation or extension of a lease – general principles

- Where Schedule 17A FA03 would have applied before 1 April 2015 to a relevant variation or extension (but can no longer apply due to Sections 29(5) of the Scotland Act 2012 disapplying SDLT after 1 April 2015), LBTT applies.
- The new lease is an acquisition of a new chargeable interest. Therefore, all of the rules that follow from the creation of a new lease follow this (such as the availability of the nil rate band).

# Variation or extension of a lease – general principles

- **The subject matter of the lease:** The relevant part of the varied lease contract that is treated as a new lease under the LBTT rules is *the part related to the variation or extension*.
- **The effective date:** is normally the date of signature of the variation. This is in accordance with Sections 63 and 64 of the LBTT(S)A.
- **The rent:** As the original lease will already have been subject to SDLT, LBTT will only be liable on the *additional rent which results from the variation or extension*.

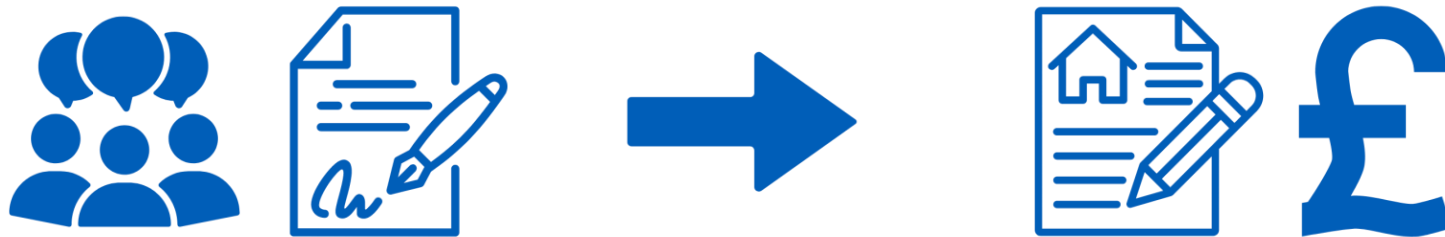


# Variation or extension of a lease – general principles

- **The term:** The term of the new lease is the period in which possession of the property or rent in relation to the new terms can be linked under LBTT.
- **The relevant date:** is usually the effective date as per [LBTT6002 - Effective date for lease transactions | Revenue Scotland](#)

# Variation of a lease – Article 12

- A 15-year lease with an annual rent of £50,000 was executed on 1 September 2014. An SDLT return was submitted, and resultant tax paid to HMRC.



# Variation of a lease – Article 12

- On 1 September 2015, a minute of variation was executed to increase the rent from £50,000 to £75,000 per annum from the date of execution of the minute. The rent increase was not pursuant to a rent review clause in the original lease. Under the SDLT rules (Paragraph 13(1), Schedule 17A FA 2003), an increase in rent within the first five years of the grant of the lease would have been treated as a grant of a new lease. As this applies in this case, the increase in rent is treated as the grant of a new lease under Article 12 of TPO.



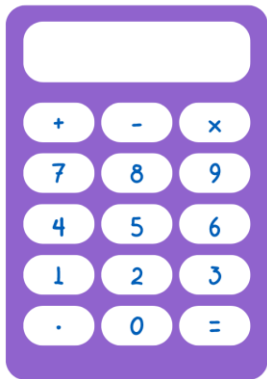
# Variation of a lease – Article 12

- The effective date will be the date the minute of variation was executed, 1 September 2015. An LBTT return is required by the filing date of 1 October 2015.
- The effective date is used to determine when the three yearly review return will be due. This will be based on the third anniversary of the effective date and every three years thereafter. The third anniversary of the effective date of the transaction is 1 September 2018. The three yearly review return must be made by the filing date of 1 October 2018.



# Variation of a lease – Article 12

- The chargeable consideration will be all of the **additional** rent payable in the remaining years of the lease.
- The NPV is calculated using the **additional £25,000** payable in each of the 14 remaining years. This results in a NPV of £273,013.01.
- Using the rates and band for leases, the total tax chargeable would be:
- $(£150,000 \times 0\%) + (£123,013.01 \times 1\%) = \mathbf{£1,230}$



# Variation of a lease – Article 12

- The term of the deemed new lease is the term over which the rent has been increased. This is 1 September 2015 – 31 August 2029.
- It is important to note that the variation is treated as a new LBTT lease and it is not treated as a variation of an existing lease.
- **Note:** If the lease is varied after the 1 April 2015 to increase the amount of rent after the first five years of the grant of the lease then the lease will not enter the LBTT regime (unless one of the other TPO provisions apply). Therefore, there should be no new deemed LBTT leases created by Article 12 from 31 March 2020.
- Where there is an increase in rent as a result of a periodic rent review, the TPO is not triggered.

# Variation of a lease – Article 12

- If there are subsequent rent increases applying to the extended period, the full rent in this period is taken into account for LBTT. Any increase in rent in relation to this period will be taken into account in the next 3 year review.

# Variation of a lease – Article 12

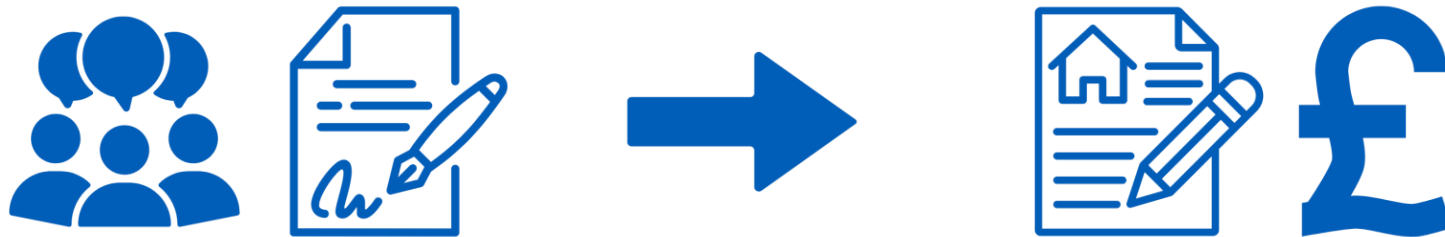
## Summary:

- **The subject matter of the lease:** This is the part of the lease relates to the rent increase.
- **The effective date:** This is the 1 September 2015.
- **The rent:** This is the additional £25,000 for the remaining 14 years due as a result of the rent increase.
- **The term:** The term of the deemed new lease is the term over which the rent has been increased. This is 1 September 2015 – 31 August 2029. The start date of the new lease is the start date of the relevant term i.e. 1 September 2015.
- **The relevant date:** is usually the effective date as per [LBTT6002 - Effective date for lease transactions | Revenue Scotland](#) which, in this case, is 1 September 2015.



# Extension of a lease – Article 13

- A 10-year lease with an annual rent of £100,000 was executed on 1 August 2013. An SDLT return was submitted, and resultant tax paid.



# Extension of a lease – Article 13

- On 1 August 2015, a minute of variation was executed to extend the lease for a further 5 years. This is treated for LBTT purposes as the grant of a new lease under Article 13 of the TPO. The lease will now end on 31 July 2028.



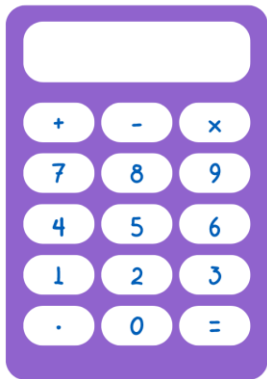
# Extension of a lease – Article 13

- The effective date will be the date the minute of variation was executed, 1 August 2015. An LBTT return is required by the filing date of 31 August 2015.
- The effective date is used to determine when the three yearly review return will be due. This will be based on the third anniversary of the effective date **and every three years thereafter**. The third anniversary of the effective date of the transaction is 1 August 2018. The three yearly review return must be made by the filing date of 31 August 2018. There will be further three yearly review returns due in August 2021, August 2024, August 2027 and then a termination return due when the lease expires on 31 July 2028. Under LBTT rules, no termination return will be required at the end of the original SDLT lease, but only on expiry of the LBTT lease.



# Extension of a lease – Article 13

- The NPV is calculated using the £100,000 payable in each of the **five extended years**. This results in a NPV of £451,505.24. The start date of the LBTT lease is 1 August 2023.
- Using the rates and band for leases at the effective date, the total tax chargeable would be:
- $(£150,000 \times 0\%) + (£301,505.24 \times 1\%) = \mathbf{£3,015}$
- You therefore need to input the term of the lease as 1 August 2023 – 31 July 2028 on the return and enter £100,000 each year for the 5-year lease. You don't put the start date of the lease as the effective date (1 August 2015) and you don't enter 0's into the return.



# Extension of a lease – Article 13

<b>Values Entered:</b>		
Effective Date:	01/08/2015	
Lease Start Date:	01/08/2023	
Lease End Date:	31/07/2028	
Chargeable consideration other than rent:	N/A	
Year 1 Rent:	£100000	
Year 2 Rent:	£100000	
Year 3 Rent:	£100000	
Year 4 Rent:	£100000	
Year 5 Rent:	£100000	
Relevant rental figure:	£100,000.00	
Term of Lease:	5	
<b>Results:</b>		
Net Present Value:	£451,505.24	
LBTT on Rent:	£3,015.00	
LBTT on consideration other than rent:	£0.00	
LBTT already paid:	N/A	
Land and Buildings Transaction Tax Due:	£3015	

# Extension of a lease – Article 13

- Where a lease is varied by an extension to its term, the “term” for the purposes of the new LBTT lease is the period by which the lease contract has been extended. The new lease starts when the original SDLT term ends.

# Extension of a lease – Article 13

## Summary:

- **The subject matter of the lease:** This is the part of the lease related to the extension. It only covers the additional 5 years added to the end of the already existing SDLT lease.
- **The effective date:** The effective date will be the date the minute of variation was executed, 1 August 2015.
- **The rent:** The chargeable consideration will be **all** the additional rent payable under the term of the lease. As stated above, the term of the new LBTT lease is the extended five-year period (1 August 2023 – 31 July 2028).
- **The term:** Although the effective date is 1 August 2015, the term of the lease will not start until the tenant takes possession under the LBTT lease, which will be under the extended term starting on 1 August 2023.
- **The relevant date:** is usually the effective date as per [LBTT6002 - Effective date for lease transactions | Revenue Scotland](#) which, in this case, is 1 August 2015.

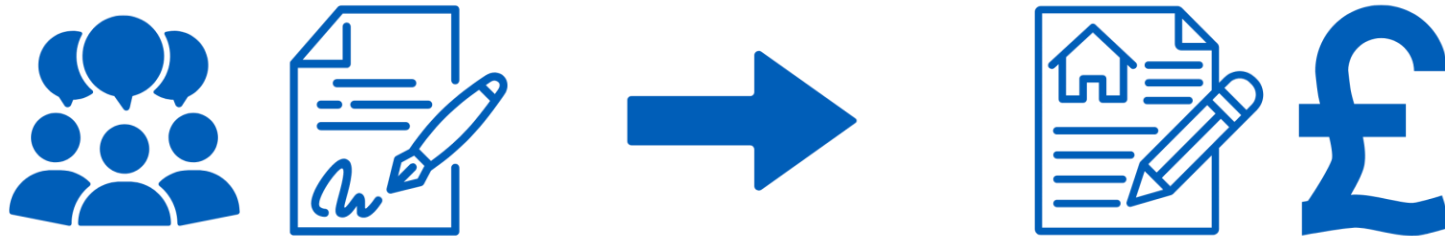
# Articles 12 & 13 applying

- If the rent is varied within the first five years of the lease and a minute of variation also extends the lease, this is likely to give rise to two deemed leases under the TPO.
- The successive linked lease provisions in LBTT(S)A 2013 Paragraph 23, Schedule 19 apply to the two leases.
- Therefore, the two new leases are treated as the grant of a single lease, at the time of the grant of the first deemed lease, for a term equal to the aggregate of the terms of both leases and in consideration of the rent payable under both leases.



# Articles 12 & 13 applying

- A 10-year lease with an annual rent of £100,000 was executed on 1 May 2012. An SDLT return was submitted, and resultant tax paid.



# Articles 12 & 13 applying

- On 1 May 2015, a minute of variation was executed to extend the lease for a further 10 years and increase the annual rent from the effective date by £20,000. Each variation is treated as a grant of a new lease, for LBTT purposes, under Articles 12 and 13 of the TPO. The LBTT leases are part of a single arrangement. They are successive linked leases. They are treated as a single lease for LBTT purposes.



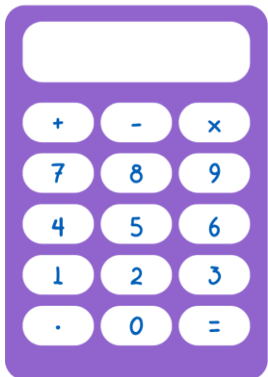
# Articles 12 & 13 applying

- The effective date will be the date the minute of variation was executed, 1 May 2015. An LBTT return is required by the filing date of 31 May 2015.
- The effective date is used to determine when the three yearly review return will be due. This will be based on the third anniversary of the effective date and every three years thereafter. The third anniversary of the effective date of the transaction is 1 May 2018. The three yearly review return must be made by the filing date of 31 May 2018.



# Articles 12 & 13 applying

- The term of the deemed new lease is the term over which the rent has been increased which is 1 May 2015 – 30 April 2032 (due to the extension).
- The chargeable consideration will be the increased rent during the term of the LBTT lease. That is, £20,000 per annum from May 2015 to April 2022 and £120,000 from May 2022 to April 2032.
- The NPV is calculated from 7 years' annual rent of £20,000 and 10 years' annual rent payable of £120,000. This results in a NPV of £906,704.
- Using the rates and bands for leases, the total tax chargeable would be:
- $(£150,000 \times 0\%) + (£906,704 \times 1\%) = \mathbf{£7567}$



# Articles 12 & 13 applying

## Summary:

- **The subject matter of the lease:** This is the part of the lease related to the extension and variation. It covers the extension to the lease for the additional 10 years and the immediate increase to the rent.
- **The effective date:** The effective date will be the date the minute of variation was executed, 1 May 2015.
- **The rent:** The chargeable consideration will be the increased rent during the term of the LBTT lease. That is, £20,000 per annum from May 2015 to April 2022 and £120,000 from May 2022 to April 2032.
- **The term:** The term of the new LBTT lease is 1 May 2015 – 30 April 2032.
- **The relevant date:** is usually the effective date as per [LBTT6002 - Effective date for lease transactions | Revenue Scotland](#) which, in this case, is 1 May 2015.

# 3-year lease reviews

- The three-year LBTT review returns will inform Revenue Scotland of any changes that have occurred since the effective date or last review date. These start from the effective date, which is usually the date of variation. This allows Revenue Scotland to review the amount of tax chargeable on the lease and take account of those changes.
- This would only take account of changes to the LBTT lease and not those related to the pre-LBTT lease. There may be one or more three-year lease review returns due before the extended lease period actually begins.
- Review returns will be required until the termination of the lease contract.

# Net Present Value (NPV) Calculation

- NPV of the rent payable over the term of a lease is calculated by applying the following formula –

$$\text{NPV} = \sum_{i=1}^n \frac{r_i}{(1+T)^i}$$

- where -

$r$  is the **rent payable** in respect of year  $i$ ,

$i$  is the **first, second, third etc. year of the term of the lease**,

$n$  is the **term** of the lease, and

$T$  is the **temporal discount rate**.

- The term, where Articles 12 and/or 13 of the TPO apply, is the duration of the new LBTT lease. The lease starts when there is possession under the new LBTT lease and so the lease start date may be different from the effective date.
- The tenant may have possession of the premises during the period between the effective date and the start of the term of the new lease but this possession is linked to the SDLT lease.
- Rent will be rent under the new LBTT lease i.e. the additional rent payable over and above that due under the SDLT lease.

# Tacit Relocation

- Revenue Scotland are internally reviewing leases that started under SDLT and SD that have continued on tacit relocation and how they interact with the LBTT regime.
- Our guidance will be updated when we come to a view.



# Assignment of an exempt lease

- Article 11 applies where there is:
  - the grant of a pre-LBTT lease that is exempt from charge by virtue of a certain provision/relief applying, and;
  - the effective date of that lease is prior to the commencement of LBTT, and;
  - the lease is assigned after 1 April 2015 whereby the new tenant is not entitled to any of the provisions listed on the following page.
- Article 11 ensures that Paragraph 27, Schedule 19 LBTT(S)A applies so that the assignment of the lease is treated as a new lease for LBTT purposes.

# Assignment of an exempt lease

- Applicable provisions:
  - Sale and leaseback relief
  - Group relief or reconstruction or acquisition relief
  - PAIF seeding relief and COACS seeding relief
  - Transfers involving public bodies
  - Charities relief
  - Alternative finance investment bond relief
  - Regulations reproducing in relation to SDLT the effect of enactments providing for exemption from SD.

# Assignment of an exempt lease

- Article 11 brings the lease into the scope of Paragraph 27 LBTT(S)A so those provisions can apply.
- Paragraph 27 treats the lease as the grant of a lease by the assignor for a term equal to the unexpired term of the lease and on the same terms as those on which the assignee holds that lease after the assignment.
- Further details of the SDLT rules related to Paragraph 11, Schedule 17A FA 2003 can be found in the HMRC SDLT manual at [SDLTM17090](#).

# Overlapping leases

- Article 10 of the TPO applies where the old lease has been granted prior to 1 April 2015 (and the rent was taken into account for calculating SDLT), and **one** of the following has taken place:
  - party A renounces an existing lease to party B (the old lease) and in consideration of that renunciation party B grants a lease to party A of the same or substantially the same premises (the new lease);
  - on termination of a lease (the head lease) a sub-tenant is granted a lease (the new lease) of the same or substantially the same premises as the tenant's old lease in pursuance of a contractual entitlement arising in the event of the head lease being terminated; or
  - a person who has guaranteed the obligations of a tenant under a lease that has been terminated (the old lease) is granted a lease of the same or substantially the same premises (the new lease) in pursuance of the guarantee.
- Article 10 ensures that the discount in respect of overlapping leases under Paragraph 24, Schedule 19 of the LBTT(S)A can apply, even though the lease was granted prior to the 1 April 2015.

# Overlapping leases

- The overlap period is the period between the date of the grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- The rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that *would have* been payable in respect of that period under the old lease (it cannot be a negative amount). This is the actual rent during this period even where this is different from the rent which was payable when the old lease was granted.
- The rent paid during an “overlap period” is treated as paid under the old lease and not the new lease. Under the transitional rules the rent that would have been payable under the old lease is the amount of rent taken into account in determining the tax chargeable under HMRC rules in respect of the acquisition of the old lease.

# Q&A Section

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# Ways to interact with Revenue Scotland

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