

Introduction to Leases

20 April 2023

Housekeeping

- Today's session should run for around 45 minutes to an hour.
- 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

- Adam Vygus – LBTT Tax Specialist
- Luke Phipps – LBTT Tax Officer

Our work

- The Lease Improvement Team's objectives are to improve the quality of lease return data and to improve the rate at which lease review returns are submitted on time.
- The team recognises the significant wider impact that lease return rates have on the rest of the organisation, from penalties and debt enforcement, through to review requests.
- We are an operational team as opposed to a technical one, therefore we may not be able to answer all questions today.

Introduction

- “A non-residential lease that is granted, or is treated as having been granted, for the first time on or after 1 April 2015 is potentially chargeable to Land and Building Transactions Tax (LBTT). The legislative provisions relating to leases can be found in [Part 6](#) and [Schedule 19 to the LBTT\(S\)A 2013](#).”
- “The application of LBTT to leases reflects the principle that the transfer of an effective economic interest via a leasing arrangement or a conventional sale should be taxed in a similar way. In other words, the tax position should not distort commercial choices as to whether to lease or purchase property.”

Glossary of terms

Effective date - the date a transaction is completed. This will never change and should be the same on every return relating to the lease.

Premium – Any additional payment made to the landlord outside of the rent.

Original return reference – This is the reference of the original lease.

Net Present Value (NPV) – This calculation is based on the annual rental figures. The NPV determines how much tax is due on rent.

Relevant date - more to follow

Types of lease transaction for LBTT

- **Grant of a lease** – a lease agreed for the first time
- **3-year reviews** – every third anniversary of the effective date
- **Assignment** – the act of an existing lease passing from the current tenant to a new tenant
- **Termination** – when a lease ends, whether that be early or at the end of the agreed term
- **Transitional Lease** – where a lease started under Stamp Duty or Stamp Duty Land Tax (SDLT) regime and moves in to LBTT following a variation to the lease or an assignment transaction.



Role for Agents?

- Recognising that there is a notifiable LBTT lease
- Be aware of Secure Messaging Service (SMS) received in SETS
- Educate tenants
- Diarise events for clients
- Ensure mandate is up to date to allow us to discuss changes
- Add LBTT process to your checklists
- Help dispel misconceptions

What is a Three Year Review (3YR)?

A 3-year review is a tenant's opportunity to update Revenue Scotland on the current status of their lease.

Tenant's obligations

- Submit a review on every 3rd anniversary of the effective date
- Submit an assignation return if they transfer the lease
- Submit a termination return either at the natural end or earlier

The review return will include

- Term
- Actual rent paid for the previous 3-year period
- Future rental payments

Any variation to the term or rent may lead to additional LBTT being paid. If there are no changes, no additional tax will be due.

Taxpayer portal - https://portal.revenue.scot/rslive/en/returns/lbtt/public_landing

How to submit a lease return - <https://www.youtube.com/watch?v=8rRkLDELpRQ>

What is a Three Year Review - [Three-Year Review of Leases for Land and Buildings Transaction Tax - YouTube](#)

Example

- A flower shop was let to a tenant for 15 years from 2015. The annual rent paid by the tenant was £45,000. Tenant submitted an LBTT lease return and their payment of £3,682 was paid to Revenue Scotland within 5 days of submission.
- The first 3-year review was due in 2018. Tenant submitted their 3-year review return in 2018, the next one being due in 2021.
- In 2020 (i.e. between 3-year cycles), the landlord increased the rent to £70,000 pa. The tenant submitted their next 3-year review return in 2021 and included the details of the variation. The net present value (NPV) needs to be re-calculated to see if there is any additional tax due. As the annual rent was increased in 2020, the calculation shows that additional LBTT of £1,751 is due on this transaction.
- Once submitted, the LBTT payment (here, £1,751) must be paid within 5 days.



Known errors

Common errors

- Non-notifiable Returns
- Returns with incorrect Relevant date
- Returns where the tax already paid is wrong

Less common errors

- Lease end date
- Effective date
- Overwritten NPV
- Missed out premiums
- Original return reference

Why are we addressing this?

- 3-yearly reviews may not be required
- Incorrect data can trigger penalties for inaccuracies
- Agents less likely to hear from clients regarding penalties
- Better experience for all involved

What isn't notifiable

“the grant of a lease for a period of 7 years or more where **both** of the below apply.
(i) any chargeable consideration other than rent is less than £40,000 (for example the premium)
(ii) the relevant rent is less than £1,000 (the relevant rent is the average annual rent)

Or

the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction

If the relevant rent is £1,000 or more, the nil rate band does not apply in relation to the consideration other than rent (a premium). Any such consideration is taxed at the next band and does not benefit from the nil tax rate.”

Section 30(4) of the LBTT Act 2013

Examples of transactions

Term in years	Annual Rent	Premium	NPV	Notifiable or not?	Reason
6	£30,000	£0	£159,856.59	Notifiable	6-year lease with NPV over the nil band rate, therefore the return is notifiable.
6	£20,000	£0	£106,571.06	Non-notifiable	6-year lease with chargeable consideration below the nil rate band, the return is non-notifiable.
7	£20,000	£0	£122,290.88	Notifiable	Lease is exactly 7 years, relevant rent is higher than £1000 per annum, the return is notifiable.
10	£500	£0	£4,158.30	Non-notifiable	Lease is over 7 years, relevant rent below £1,000 per annum, chargeable consideration under \$40,000 – return is non-notifiable
10	£500	£50,000	£4,158.30	Notifiable	Lease is over 7 years, premium over £40,000, return is notifiable.
10	£1,000	£30,000	£8,316.61	Notifiable	Lease is over 7 years, relevant rent of exactly £1,000 per annum, return is notifiable

Registers of Scotland

Assumptions

“From 1 April 2015, it became mandatory for a C&S1 Form to accompany any application for the registration in the Books of C&S of a deed effecting or evidencing a notifiable transaction in terms of Land and Buildings Transaction Tax.

While submission of the form is only mandatory for notifiable transactions, the Keeper strongly encourages applicants to use it for all applications submitted for registration in the Books of Council and Session. Where it is not clear from the terms of the deed that the transaction is not notifiable, it is particularly important that the applicant confirms the position on the application form.”

[Do I need a C&S1 form when submitting deeds for registration?](#)

Changes made to SETS for non-notifiable returns

[< Back](#)

Non-notifiable return

The lease is for 7 years or more and the rent is less than £1000 per annum or any premium is less than £40000

Current values indicate this is a non-notifiable return. See guidance on [notifiable lease transactions \(opens in a new window\)](#) for further details.

Go [back to return summary](#) to review the values on this return or to save as draft

Do you still want to submit the return?

If you don't submit the return your changes won't be saved

☐ Yes ☐ No

Continue

Why are you submitting a non-notifiable return

Submit return

Relevant date incorrect

- Errors have been found in 3-Year Reviews, Assignations and Terminations
- The relevant date is the event date;
 - 3-year reviews – 3-year anniversary date
 - Assignations – date of assignation
 - Termination – lease end date
- As returns appear to be late, penalties will be issued and further communication is required between agent and RS to correct the return and cancel penalties

Changes made in SETS for Relevant date field

Relevant date

This date will be the 3 year anniversary of the effective date and every subsequent three years for the duration of the lease. See guidance on [the relevant date \(opens in a new window\)](#) for further details

dd/mm/yyyy 

Relevant date

This is the date the lease was assigned. See guidance on [the relevant date \(opens in a new window\)](#) for further details

dd/mm/yyyy 

Relevant date

This is the date the lease was terminated or came to an end. See guidance on [the relevant date \(opens in a new window\)](#) for further details

dd/mm/yyyy 

Tax already paid is incorrect

This error is found with 3-year reviews, assignments and terminations.

- The error frequently occurs when the “amount already paid” field is left blank.
- Tax is then shown as due (incorrectly).
- If no payment it made this will result in a debt (incorrectly).
- It may also result in a potential refund being missed.

You must include any additional payments or refunds made during all previous returns.

Changes made in SETS for tax already paid field

About the calculation

[Edit calculation](#)

The amount of tax already paid below will show as £0.00. You will need to change this field to show the correct amount of tax already paid in order for the correct amount of tax due to show. For all other fields, the amounts in this section will be automatically calculated when you create or update the transaction section. You can edit them before you submit the return.

Future changes – July onwards

Changes specific to lease returns

You will no longer be able to change:

- Premium
- Tax already paid
- Effective date
- Lease start date
- Relevant date (for 3-year reviews only)
- Taxpayer name/s
- Rental figures from previous 3/6/9-year period

Changes affecting all return types

- Taxpayer contact details
- Hyperlink for return PDF

Q&A Section



Ways to interact with Revenue Scotland

Contact us:



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Revenue.Scot

Follow our social media channels

