

LBTT Technical Bulletin 1

14 October 2016

This bulletin provides the latest information about LBTT, including recent updates to guidance and clarifications about the application of the legislation. The bulletin includes links to the relevant section of the guidance on the Revenue Scotland website.

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1. Partial charities relief

We have revised our view on relief in cases where a charity is one of a number of buyers who become common owners. We now accept that Charities relief from LBTT may be claimed for the charity's *pro indiviso* share of the relevant land transaction.

In reaching this view, we have considered matters raised in the Upper Tribunal (Tax and Chancery Chamber) and at the Court of Appeal in the case of (1) The Pollen Estate Trustee Company Limited and (2) King's College London v HMRC ('Pollen'), in relation to the UK Stamp Duty Land Tax. We have reviewed the potential implications of the matters discussed in Pollen and the application of LBTT(S)A Schedule 13 in cases of common ownership. We have concluded that the preferred reading of Schedule 13 allows the application of its provisions to one or more, but not all, parties entering into common ownership, based on the individual interests of the different parties.

We will no longer refuse claims to partial Charities relief in such cases where appropriate criteria are met. Where partial Charities relief could have been claimed but was not, this may be claimed now by amending the previously submitted return or by writing to us, setting out the basis and the amount of relief that is claimed.

(Please see [LBTT3035](#))

2. Residential/Non-residential

2.1 Holiday homes and lets

We have recently updated our guidance at [LBTT4010](#) to make clear that holiday homes and lets, including those which cannot be used all year round, are residential property.

These types of properties are also considered as dwellings for the purposes of ADS (see [LBTT10018](#)).

2.2 Change of use and planning

Where a residential property has been granted conditional planning permission for change of use to commercial premises, it remains residential until a completion notice is granted for planning consent and a completion certificate is given for any work requiring building warrants. If a land transaction is made at an earlier point, residential rates will apply.

(Please see [LBTT4010](#))

3. The Prudential Case – Chargeable consideration for Sale and Development Agreements

We accept that the principles established in *Prudential Assurance Co Ltd v IRC* 1993 1 WLR 211 in relation to stamp duty, apply to LBTT. We will consider whether or not a contract for the sale of land and a contract for building services properly constitutes the sale of land with completed buildings such that the chargeable consideration for the transaction will be the aggregate consideration for the contracts. Generally, unless the purchase and development contracts are so inter-related that default of one will prevent completion of the other or would otherwise render one invalid, LBTT should be charged only on the consideration attributable to the land transferred (where necessary, apportioned on a just and reasonable basis.)

(Please see [LBTT2004](#))

4. Pension fund *in specie* transfers

We have considered the application of LBTT legislation to pension fund *in specie* transfers and have concluded that generally such transfers give rise to an LBTT liability, on the basis that (a) such a transfer is a land transaction and (b) the assumption of the liability by the receiving pension fund is debt as consideration.

We are aware that HMRC has longstanding guidance that land transactions involving *in specie* transfers between pension funds are not chargeable to SDLT. We understand that there is concern, because of the HMRC position.

If you are unsure about the application of the legislation to the circumstances of a specific transaction, you may wish to ask for a [Revenue Scotland Opinion](#).

(Please also see [LBTT2003](#) – ‘debt as consideration’)

5. Leases

5.1 Stamp duty leases

Leases varied after July 2004 provide an effective date after July 2004 so the provisions of Schedule 17A of the Finance Act 2003 can be considered to apply. Variations from April 2015 would have been subject to SDLT but for the introduction of LBTT (even if these were not previously varied by March 2015). Although Article 12 of the Transitional Provisions Order does not bring variations of rent alone in a Stamp Duty lease into charge for LBTT (because of the five year rule), variations within the scope of Article 13 are potentially chargeable to LBTT on the additional amount of rent.

(Please see [HMRC transitional guidance](#))

5.2 Additional rent

In articles 12 and 13 of the Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, the ‘additional rent’ is the difference between the rent as it is provided for within the new contract and the rent as it stands at the time the new contract is executed. So, if the original lease started off at £1000 per month, but included terms for a rise to £1200 per month (or provided for rent reviews within parameters), and subsequently an amendment was made to the lease to set the rent at £1500 per month, the additional rent would be the difference between the £1500 and the £1200, that is, £300.

(Please see [Transitional lease – variation to increase rent](#))

5.3 Transitional Provisions / Three Year Review

Where an agreement to enter into a lease has been substantially performed prior to 1 April 2015 (for SDLT) and the lease is signed after 1 April 2015, there is a land transaction for LBTT. There is a requirement to make a return, and further returns in relation to three yearly reviews.

On completion, the relevant return is a section 29 (land transaction) return, as this is the first LBTT event. Article 4 of the Transitional Provisions (and through it section 10(3)(b) of the Act) is engaged for the calculation of the tax liability. Paragraph 10 of Schedule 19 provides for the three year review for section 29 returns.

(Please see [LBTT6014](#))

6. Substantial performance

6.1 Entitled to call for a conveyance

Concern has been raised that section 14(1)(c) of the LBTT(S)A has the effect that in a series of transactions where A contracts to sell to B and before completion B contracts to sell to C, on conclusion of missives between parties B and C, C becomes ‘entitled to call for a conveyance’ thereby triggering ‘substantial performance’ of the A to B transaction and creating a tax point. The main objection to this provision appears to be on timing and cash flow grounds, where B might not have the funds to pay the tax on the A to B transaction.

While we acknowledge these objections, we believe that the interpretation stated above is the proper interpretation of section 14(1)(c).

(Please see [LBTT1005](#))

6.2 Substantial Amount

We will consider what constitutes a 'substantial amount' of the consideration paid or provided or possession of 'substantially the whole' of the subject-matter of the contract on a case by case basis. Noting that HMRC has published that 90% represents a 'substantial amount' for SDLT, we would comment that amounts less than 90% might be substantial. Parliament did not set a figure or a percentage, so the words have their plain English meaning.

7. ADS

7.1 Inherited dwellings – timing of ownership

We have received queries about when an individual who is to inherit a property (whether *via* specific bequest or residue) will be counted as owning that property for the purposes of liability to ADS in respect of later transactions.

Schedule 2A, paragraphs 12 to 17 make provision about deemed ownership of dwellings for the purposes of ADS. We consider that an inherited dwelling is to be counted as being owned by a beneficiary from the earlier of:

- (a) the date that the period of administration of the estate ends – generally, this is the date the residue of the estate has been ascertained, rather than when the executor has carried out all work in relation to the estate; and
- (b) the date that the dwelling is transferred to the beneficiary – that is the date the executor grants a disposition or a docket transfer in favour of the beneficiary (whether or not registration of title is at a later date).

(Please see [LBTT10066](#))

7.2 Acquisition of a further share in a property already owned

Paragraph 17 of schedule 2A to LBTT(S)A 2013 provides that where an individual jointly owns a property, they are treated as being the owner of the whole property. We consider that ADS will not apply to transactions where an individual is acquiring a further part of a property which they already jointly own. However, the transaction may still be notifiable and chargeable to LBTT (without ADS) if any consideration is paid, or debt assumed.

We will challenge any transaction or series of transactions involving joint ownership where the main purpose, or one of the main purposes, of the arrangement is the avoidance of tax.

(Please see [LBTT10061](#))

7.3 Replacement of a Main Residence

We believe there has been some misunderstanding about what is meant by replacement of a main residence. While someone can have a main residence that they do not own, moving from rented accommodation into a purchased dwelling does not constitute replacement of a main residence for the purposes of ADS. If someone moves their main residence from rented accommodation to a dwelling they purchase, and they own another dwelling, ADS **does** apply. And it may not be reclaimed even if they subsequently sell the other dwelling.

We believe that this position is clear in legislation and in our guidance, but we acknowledge that there has been some confusion about this. If there are particular parts of our guidance that some have felt unhelpful on this point, we would be happy to review these.

(Please see [LBTT10016](#))

If you have any comments or queries about the information provided in the update, or would like to be removed from the subscription list, please contact LBTT@revenue.scot