

Three yearly returns for LBTT leases – are you ready to review?



Land and Buildings Transaction Tax (LBTT) is a tax on property transactions in Scotland, and applies to purchases of both residential and commercial properties, and leases of commercial premises granted on or after 1 April 2015. LBTT is a tax similar in a number of ways to Stamp Duty Land Tax, which applies to the remainder of the UK (until 1 April 2018, when Land Transaction Tax is introduced in Wales), but it differs in several significant respects.

One of the components of the LBTT regime, as it applies to leases, is the requirement for three yearly reviews of the tax chargeable. The approach to taxation of leases that the Scottish Government has taken, is for leases to be reviewed for tax purposes on a regular basis over their lifetime, so that the tax payable more accurately reflects the amount of rent actually paid over the entire period of the lease.

The requirement for three yearly returns

Since 1 April 2015, any commercial lease granted on or after that date is potentially liable to LBTT. A tax return and payment of any LBTT due will normally have been made by the tenant to Revenue Scotland at the time of granting the lease (unless it is a low value lease which is not notifiable).

The LBTT regime requires the tenant of the lease to make further returns to Revenue Scotland every three years during the currency of the lease. The first third anniversaries of early LBTT leases will start to occur from 1 April 2018.

A return must be made by the tenant every three years (i.e. in year 3, year 6, year 9 and so on) even if there have been no changes to the rent, meaning there is no further tax payable. However, if a relief was claimed when the lease was granted (such as group relief or charities relief), and the conditions for the relief are still met, the tenant is not required to submit a review return.

The relevant date is the third anniversary of the effective date of the lease. Accordingly, if the lease has been assigned to a new tenant during the three year period (or at any other time for that matter) the three year filing date is still calculated by reference to the original effective date of the lease, not the date of assignment.

What is the effective date of the lease?

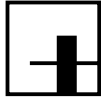
The effective date of the lease for the purposes of LBTT is either:

- The last date of signing of the lease; or
- The date of conclusion of missives of let, if that is how the lease itself is constituted; or
- If earlier, the date of substantial performance of an agreement for lease e.g. when the tenant takes possession of the premises or makes the first payment of rent or any premium.

Making a return

It is the responsibility of the current tenant under the lease to make the three yearly return, and pay any tax that is due. Returns can be made online or by submission of a paper return. Revenue Scotland's online filing system will be updated in advance of 1 April 2018, to cater for the requirements of three yearly returns.

The return must be filed within 30 days of the date of the three year anniversary. That 30-day period starts on the day after the review date, so if the effective date of the lease was 1 August 2015, the review date will be 1 August 2018, and the return must be submitted by not later than 31 August 2018.



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The third (and subsequent) anniversary of the effective date will be the usual trigger for making the returns, but there are other circumstances which may determine the date of the review. Guidance on these other triggers is available on the [Revenue Scotland website](#).

The return must calculate the amount of the tax (if any) due at the review date. This is calculated using the rates and bands that were in force at the effective date.

To make the three yearly review return, the tenant will need details of the information submitted in the original return. Accordingly, when taking an assignation of an existing LBTT lease, the assignee should ask for full details of the information given in the original return (and

in any intervening returns) to be sure of inputting accurate information in the form.

If there is any additional tax due, this must be paid at the same time as making the return. Interest will be charged on any late payment of tax, and a penalty will apply as well, if any tax due is not paid after the expiry of 30 days from the filing date. There is also a penalty for late filing. See below for the details of the penalties Revenue Scotland can impose.

The return can also be used to make a claim for repayment of overpaid tax, if for example the rental payment under the lease has been reduced, because the extent of the premises has been reduced.

Penalties for late payment

Failure to make payment within 30 days of the submission date (penalty date)

5% of the unpaid tax amount

Failure to make payment after a further 5 months

Additional penalty of 5% of the unpaid tax amount

Failure to make payment for 11 months after the penalty date

Additional penalty of 5% of the unpaid tax amount.

Penalties for late filing

Failure to make return within 30 days of the effective date (penalty date)

Fixed penalty of £100

Failure to make return after a further 3 months

Additional penalty of £10 a day for up to 90 days

Failure to make return for 6 months after the penalty date

Additional penalty of the greater of £300, and 5% of any tax liability which would have arisen had the return been made.

Failure to make return for 12 months after the penalty date

Additional penalty of the greater of £300, and 5% of any tax liability which would have arisen had the return been made, unless the tax payer is deliberately withholding information, in which case the penalty will be the greater of £300, and 100% of any tax liability which would have arisen had the return been made.

If you have become a tenant of a commercial lease within the last three years, you are likely to be affected by this requirement. For further advice, please get in touch with your usual contact at Shepherd and Wedderburn or Stephen Miller or Douglas Sinclair.



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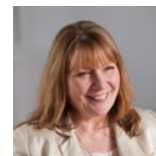
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