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Land & Buildings Transaction Tax (LBTT)

Tenants take Note!

On 1 April 2015 Land & Buildings Transaction Tax ('LBTT') replaced Stamp Duty Land Tax ('SDLT') in Scotland. A major difference between LBTT and SDLT is that under LBTT tenants of commercial leases need to submit subsequent LBTT returns to Revenue Scotland every third anniversary of the lease. This means that the first three-yearly returns for leases will come into effect from 1 April 2018.

There is a simple rationale behind these three-yearly returns: in many cases commercial leases last long periods of time and their terms, such as rent payable can be subject to periodic review or may be turnover or index-linked. Increase in rents will increase the LBTT payable and this must be paid when the three-yearly return is submitted. In some cases tenants may find that LBTT has been overpaid and following their three-yearly return a repayment will be issued by Revenue Scotland.

Is a three-yearly return required for all leases?

In short, no, only where an LBTT return was required on the grant of the lease. SDLT leases, such as those that commenced prior to 1 April 2015, low value leases or for properties situated in England are outwith the scope. In addition, if a lease benefitted from full LBTT relief, such as those granted to charities or group companies, a three-yearly return will not be required.

On the other hand, even if there are no changes in the lease terms and therefore no additional LBTT is due, a three-yearly return will still be required.

Assigned leases

Tenants, who have taken on assigned leases should take particular care, as they are deemed to take on the assignor's terms and responsibilities. This means that the start of the three-year period will be determined when the lease started, rather than when the lease was assigned to them.

Deadlines and penalties

Tenants have 30 days to submit their returns to Revenue Scotland and pay any additional LBTT. This 30-day period starts from the "relevant date", which is the third anniversary of the "effective date" of the lease. In most cases the effective date is the date of entry.

Penalties are levied for delays in making a return and for late payment of any additional tax due. Tenants face an initial penalty of £100 for failing to submit the return on time, which can increase to around £1,000 after six months. Penalties will still apply where there is no change in the lease and no further tax due.

Warnings from Revenue Scotland

Revenue Scotland has indicated that it will send out reminders to tenants prior to the three-yearly return becoming due. However, tenants should not rely on these reminders. The absence of a reminder will not absolve them from their filing responsibilities, nor will it be seen as a valid excuse to mitigate any penalties levied for late submission or payment.

How can tenants prepare?

Tenants should check, when they are required to submit three-yearly returns and take steps to complete the forms in good time prior to the deadline. Further returns will be required every three years during the course of the lease.

For further information, please contact:
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- Information correct at April 2018