

# Revenue Scotland

Presentation to Royal  
Faculty of Procurators in  
Glasgow

26 August 2020



## Welcome

- Thank you for being invited to speak today
- My talk today will cover the following range of areas
  - Historical timeline of LBTT and the basis of the tax
  - COVID-19 operational update
  - COVID-19 legislative update
  - Cover a number of tax specific issues (involving ADS)
  - An update on the Scottish Electronic Tax System (SETS)
  - Questions at the end please (post them through the 'chat' function)

Hello from me.

### **Paul Gilhooley, Head of LBTT Compliance, Revenue Scotland**

*Paul Gilhooley is the Head of Land and Buildings Transaction Tax (LBTT) Compliance at Revenue Scotland. Paul joined Revenue Scotland in March 2019 and is part of the team of tax professionals and tax administration staff supporting the operational delivery of the tax authority's devolved tax functions. Paul has spent most of his career working in personal taxation or debt management through a number of roles at HMRC. These roles have been in areas including technical, strategy, policy, investigations and management.*

Thank you for the chance to speak to you all today. I intend covering the following areas. I'll make sure I leave some time for questions at the end. I apologise now if I cover some ground today that we is well known from some, hope you still achieve something from today. The slides will be issued after the event and there is additional content in the notes pages accompanying each slide.

## Revenue Scotland

- Revenue Scotland is responsible for the management and collection of Scotland's devolved taxes.
- Our website can be found here - <https://www.revenue.scot/>
- We have public guidance related to LBTT which can be found here - <https://www.revenue.scot/land-buildings-transaction-tax>



Revenue Scotland was established as a Non-Ministerial Department on 1 January 2015 and is the tax authority responsible for the administration and collection of Scotland's devolved taxes - Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT). These taxes came into effect on 1 April 2015, replacing their UK equivalents (Stamp Duty Land Tax and UK Landfill Tax respectively)

## Historical timeline for LBTT

- 1 April 2015 – LBTT replaces SDLT (transitional rules)
- LBTT is similar to SDLT in many respects and some of the legislation is a straightforward adoption of the corresponding SDLT law.
- However, there are some significant differences
- The legislation has continued to adapt over the past 5 years (changes to rates and bands, OEICS, Additional Dwelling Supplement (ADS), First Time Buyer Relief and a change to Group Relief (share pledges) and we will see convergence and divergence at times when compared to HMRC and WRA.
- Coronavirus related changes – nil rate band and changes to 18 months rule

**Land and Buildings Transaction Tax (LBTT) replaced Stamp Duty Land Tax (SDLT) on transactions involving land and buildings in Scotland from 1 April 2015. The tax was introduced by the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT(S)A 2013). LBTT is similar to SDLT in many respects and some of the legislation is a straightforward adoption of the corresponding SDLT law. However, there are some significant differences**

Changes of note since 2015

### **2015**

#### **The Land and Buildings Transaction Tax (Open-ended Investment Companies) (Scotland) Regulations 2015**

Provides for exemptions from LBTT on (a) the conversion of an authorised unit trust to an open-ended investment company, and (b) the amalgamation of an authorised unit trust with an open-ended investment company

**2017**

**The Land and Buildings Transaction Tax (Additional Amount - Second Homes Main Residence Relief) (Scotland) Order 2017**

Provides relief from the Additional Dwellings Supplement (ADS) where spouses, civil partners, or cohabitants jointly buy a dwelling as their new sole or main residence but the dwelling disposed of in the 18 months prior to the acquisition, which was previously their sole or main residence, was owned by only one of them. It also allows the ADS to be repaid if, within 18 months of the spouses, civil partners or co-habitants jointly buying a dwelling which is to be their new sole or main residence, one or other of the joint buyers disposes of a dwelling that had been used by both of them as their sole or main residence.

**2018**

**The Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018**

Inserts a new Sch 4A into the Land and Buildings Transaction Tax (Scotland) Act 2013, which provides for a degree of relief from LBTT for first-time buyers.

**2018**

**The Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018**

Modifies the circumstances in which LBTT group relief is denied under LBTT(S)A 2013, Sch 10, para 3. Group relief is not denied if shares in a company are mortgaged by a legal or equitable charge provided the contingency allowing the mortgage to be called up has not arisen. Group relief also continues to be given where there is an arrangement in Scotland analogous to a pledge but with rights (not rights in security) in shares or securities transferred to a creditor subject to the creditor's obligation to retransfer the rights back to the debtor if certain conditions are met.

## Basis of the tax (LBTT Scotland Act 2014)

- Self-assessed tax
- Charged on the consideration given for a land transaction
- Payable by the buyer
- Generally payable within 30 days of the 'effective date'
- But must be paid at the same time as the LBTT return, or a further LBTT return, is filed (see also '...arrangements satisfactory...')
- Exemptions, reliefs and other rules apply
- Revenue Scotland and Tax Powers Act 2014
- LBTT is a self-assessed tax, Revenue Scotland are not able to provide advice or confirm tax calculations and are only able to point you to guidance which may be of help. Revenue Scotland follow the legislation as set out by parliament and we have no discretion in applying it.

LBTT is a self-assessment tax, like SDLT, and is charged on the consideration given for a land transaction. The tax, or additional tax, is payable by the buyer, and it is generally payable within 30 days of the 'effective date' of the transaction, but must be paid at the same time as the LBTT return, or a further LBTT return, is filed (LBTT(S)A 2013, s 40(2) and (3)). For these purposes the tax is treated as paid if '...arrangements satisfactory...' to Revenue Scotland are made for payment of the tax (LBTT(S)A 2013, s 40(4))

## COVID-19 Operational Matters

- Overview of operational changes in Revenue Scotland in response to COVID-19 and subsequent government guidance
- Temporary measures to protect health and wellbeing of staff. This aligns with government advice
- We have changed our processes
- The Scottish Electronic Tax System (SETS) continues to operate as normal.
- Our customer service updates are available at <https://www.revenue.scot/news/covid-19>

I wanted to provide an update on how Revenue Scotland has changed its operational approaches in relation to COVID

### **Contacting Revenue Scotland**

Our telephone Support Desk reopened for service on 1 July; operating revised midweek hours, with experienced staff taking calls and providing support whilst working remotely.

The Support Desk telephone number is: 03000 200 310.

Revised operating hours from 1 July: Monday – Friday, 10:00 – 12:00 and 14:00 – 16:00

**Agents with a query who have access to SETS should contact Revenue Scotland through the secure message service online.**

For taxpayers or agents with no system access, queries will be dealt with by email:

LBTT queries to [lbtt@revenue.scot](mailto:lbtt@revenue.scot)

SLfT queries to [slft@revenue.scot](mailto:slft@revenue.scot)

Any general queries should be sent to [info@revenue.scot](mailto:info@revenue.scot)

Our website will be regularly updated during the period of the COVID-19 pandemic.

**Temporary changes to be introduced from 1 May:**

As Revenue Scotland is temporarily unable to accept incoming post (**paper returns and cheques – thank you for your support!**), all LBTT returns (conveyance, lease, or lease review, claiming repayments) made from 1 May must be submitted online, using the Scottish Electronic Tax System (SETS).

Paper forms, submitted by post can no longer be accepted. You still need to put in your tax return and pay the tax.

SMS is secure and confidential (as opposed to e-mail)

In order to submit tax returns to Revenue Scotland online, firms must be registered for the SETS system.

On our page (<https://www.revenue.scot/news/covid-19/lbtt>) you can see the latest updates on ADS repayment claims and three year lease reviews and the changed processes there.

## LBTT (Tax Rates and Tax Bands) (Scotland) Amendment (No.2) (Coronavirus) Order 2020

- Introduced on 15 July 2020 there will be a temporary increase in the nil rate band for LBTT residential property transactions from £145,000 to £250,000
- It will remain in place until 31 March 2021
- Residential transactions for consideration of £40,000 or more will still require to be notified to Revenue Scotland even if no tax is due.
- Rates for the Additional Dwelling Supplement (ADS) and non-residential LBTT remain unchanged.
- Revenue Scotland guidance is for users not to select and apply First-time Buyer Relief on an LBTT transaction. (we have a number of FAQs on our website)

### **Purchase price - LBTT rate**

- Up to £250,000 - 0%
- Above £250,000 to £325,000 - 5%
- Above £325,000 to £750,000 - 10%
- Over £750,000 - 12%

### **First-time Buyer Relief**

Revenue Scotland guidance is for users not to select and apply First-time Buyer Relief on an LBTT transaction.

As the nil rate band threshold is now higher than the £175,000 limit for First-time Buyer Relief, claiming the relief will not reduce the amount of LBTT due any further. When using the LBTT calculator or completing an LBTT return in SETS, please either set the amount of First-time Buyer Relief to '£0', or do not claim the relief.

In instances where agents believe the relief may have been applied in error, we encourage them to make an amendment. Revenue Scotland will also be undertaking an analysis of returns made where the FTB relief has been applied, but the rate not manually changed to zero, and will contact taxpayers to advise them where an issue is identified.

- [Legislative guidance: LBTT3048: First-time buyer relief](#)
- [Worked examples: First-time buyer relief](#)
- How To guidance: [How To - First time buyer relief - Taxpayer guidance - Aug20.pdf](#)

## Penalties and Debt

- Revenue Scotland is aware of the impact the COVID-19 pandemic is having on taxpayers. During this period, Revenue Scotland is not issuing out any penalty notices, once this work recommences we will update our website.
- If you are having difficulty making payment, you should contact us by email: [rsdebt@revenue.scot](mailto:rsdebt@revenue.scot)

This area continues to evolve – please help your clients meet their obligations

## A spotlight on ADS

- Coronavirus (Scotland) (No.2) Act 2020
- Do I have to pay it?
- If I do pay it, can I reclaim it?

The Additional Dwelling Supplement ('ADS') applies if, at the end of the effective date, the buyer owns more than one dwelling and has not replaced their main residence. To be considered to be 'replacing their main residence', the buyer must have disposed of the ownership of a dwelling in the 18 months prior to purchasing the new property, and that dwelling must have been their main residence at some point during that same 18 month period (see [LBTT10020](#)).

I'll explore some scenarios that we encounter.

## Coronavirus (Scotland) (No.2) Act 2020

- All of the eligibility criteria must be met (see our guidance)
- If the purchase of their new main residence has an effective date of between **24 September 2018 and 24 March 2020**, they have 36 months to sell their previous main residence. In all other cases, the time limit for disposing of their previous main residence is 18 months, starting on the day after the effective date of the purchase of the new main residence.
- Agents claiming repayment of ADS on behalf of a Taxpayer should either amend the original LBTT return in SETS or else complete the new online repayment claim form and email back to Revenue Scotland.
- Taxpayers making a claim for repayment of ADS themselves should use the [new online process](#).

Under new legislation introduced by the Coronavirus (Scotland) (No.2) Act 2020, there will be an increase of 18 months to the period in which some buyers can dispose of a previous main residence and still be eligible for a repayment of the ADS. This will result in some buyers having 36 months rather than 18 months to dispose of their previous main residence and still be eligible for a repayment of ADS.

The new measure will only apply to those buyers who purchased a new main residence *prior* to 25 March 2020, with an effective date for the purchase of between 24 September 2018 and 24 March 2020. Such buyers will have paid ADS and been unable to dispose of their previous main residence, but were still within the 18 month time limit to dispose of the previous main residence as at 25 March 2020.

## **Background to this change**

The Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) was introduced on 1 April 2016. It applies to most purchases of additional dwellings in Scotland over £40,000 by individuals where, at the end of the day that is the effective date of the transaction, a buyer owns two or more dwellings and is not replacing their only or main residence. It also applies to most purchases of dwellings in Scotland over £40,000 by non-natural persons (eg. companies and partnerships). The ADS is charged at 4% of the purchase price and is paid as part of any LBTT due on the relevant purchase.

The arrangements for the ADS recognise that some people may purchase a new home before selling their previous main residence. As such, if the ADS has been paid a buyer can reclaim it if they dispose of the ownership of a previous only or main residence, used as such at any time in the 18 months prior to the effective date of the purchase on which ADS was paid, within the 18 month period commencing on the day following the effective date of the purchase.

Developments related to the COVID-19 pandemic have impacted the housing market. Where sales have been agreed, the temporary closure of the Applications Record by Registers of Scotland on 25 March 2020 and the Scottish Government guidance subsequently published on 31 March 2020, urging buyers not to move whilst stay at home measures are in place, may have resulted in some transactions falling out with the 18 month period for disposing of the ownership of a previous only or main residence, or of such sales falling through completely.

These changes are brought about by the Coronavirus (Scotland) (No.2) Act 2020. The legislation can be found [here](#)

## Some common ADS questions

1. Companies purchasing residential property, ADS is due. Remember the valuation rules.
2. ADS will apply on the transaction as your client will own 2 dwellings at the effective date and they are not selling a previous main residence
3. Family unit rules
4. LBTT is a self-assessed tax, if the return was submitted less than 12 months you can still amend this is you believe that ADS was not due on the original transaction
5. Whilst inherited and gifted properties are not subject to LBTT and ADS when acquired they should be taken in to account when determining properties owned for the purposes of ADS
6. Treatment of mixed residential and commercial interests

**I wanted to give an overview of some of the things that agents and taxpayers contact us about in relation to whether ADS is due (on each occasion, we are able to point them to our guidance)**

1. Our guidance at [LBTT10013](#) confirms that "For purchases by "non-natural persons", such as companies, the "more than one dwelling rule" does not apply. The ADS applies to *every* purchase of a dwelling by a non-natural person." As a result, if a limited company is purchasing a residential property, Additional Dwelling Supplement (ADS) applies irrespective of whether the company or directors own any other property. Remember the market value rules.

2. The Additional Dwelling Supplement ('ADS') applies if, at the end of the effective date, the buyer owns *more than one dwelling* and has not replaced their main residence. To be considered to be 'replacing their main residence', the buyer must have disposed of the ownership of a dwelling in the 18 months prior to purchasing the new property, and that dwelling must have been their main residence at some point during that same 18 month period (see [LBTT10020](#)).

3. Married couples, those in a civil partnership and cohabitants (those living together as though married, including same-sex cohabitants), along with their dependent children (children under 16, including adopted children), are treated as one economic unit for the purposes of determining how many properties a buyer owns at the end of the day that is the effective date of the transaction (LBTT10062), so you are deemed to own any properties your husband owns. The question is therefore, at the end of the effective date of the purchase of a main residence the taxpayer owns more than one property and will not be replacing their main residence as it was rented/parents home.

5. Clients owns 2 properties, one which was gifted and one which was inherited. Our guidance confirms that whilst inherited and gifted properties are not subject to LBTT and ADS when acquired they should be taken in to account when determining properties owned for the purposes of ADS. Please see this link to LBTT10066 which confirms the position. <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/lbtt10001-lbtt-additional-dwell-22>

6. Our guidance at [LBTT4012](#) confirms that a transaction where there is a mixture of residential and commercial interests (for example, a landed estate or a shop with a flat above it) is treated as a non-residential transaction and will therefore be subject to the non-residential LBTT rates and bands.

## Some scenarios (1)

- A taxpayer is involved in the purchase of 6 or more dwellings
  - Should it be treated as residential?
  - What does this mean for ADS?
  - What does it mean for MDR?

### **Scenario 1**

Our legislation at LBTT(S)A 2013, section 59(8) confirms where the transaction includes the purchase of 6 or more dwellings the whole transaction can be treated as non-residential

Furthermore, the ADS legislation at LBTT(A)(S)A 2016 paragraph 9 confirms that any transaction which is entitled to the relief under LBTT(S)A 2013, section 59(8) will also be exempt from Additional Dwelling Supplement (ADS).

Therefore, where we see the purchase of more than 6 dwellings, the provisions in the legislation allow for the whole transaction to be treated as non-residential and full relief from ADS is available as well as multiple dwellings relief.

- [LBTT2008 - Linked Transactions](#) which explains when transactions are treated as linked transactions
- [LBTT4014 - Calculate the amount of tax chargeable: linked transactions](#) which will assist with the calculation
- [LBTT3015 - Multiple dwellings relief](#) which may also apply to the transaction

## Some scenarios (2)

- Purchase of a main house and two small self-contained cottages
  - What is the chargeable consideration?
  - What does this mean for ADS?

### Scenario 2

The property consists of a main house (which will become the main residence) and two small self-contained cottages

[LBTT10030 - Determining the chargeable consideration for ADS](#) which states “When a chargeable transaction involves both the purchase of a replacement main residence and also the acquisition of the ownership of other dwellings, the ADS will be payable on the proportion of the supplement that relates to the dwellings acquired that are not the new main residence. Para 4(4) provides that when someone enters into such a transaction, that the relevant consideration the ADS is charged on excludes the amount that is attributable, on a just and reasonable basis, to the replacement main residence”

[LBTT3015 - Multiple Dwellings Relief](#) and the worked example at [Multiple dwelling relief \(ADS payable\)](#)

## Repayment of ADS

When the Additional Dwelling Supplement (ADS) has been paid, a repayment can be made if ALL of the following criteria is met:

- a) You sold a dwelling which was your main residence at any time during the 18 month period ending with the day that is the effective date of the next main residence purchase transaction,
- b) The sale of that previous main residence is within a period of 18 months beginning with the day after the day that is the effective date of the next main residence purchase transaction,
- c) The dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

Important to note that we will seek evidence for any repayment claim.

## Opinions Service

- In order to allow taxpayers to file with certainty, Revenue Scotland will, in certain circumstances, provide its opinion on the tax consequences of specific transactions.
- Before asking for a Revenue Scotland opinion you must first have consulted the relevant Revenue Scotland guidance to see if this answers your question(s).
- Our guidance can be seen here - <https://www.revenue.scot/support/revenue-scotland-opinions>

## Scottish Electronic Tax System Update

- New system introduced in summer 2019, replacing first Scottish Electronic Tax System (SETS)
- Phased delivery: 'Go-Live' (July 2019); Phase 2 (January 2020)
- User-driven changes, both from feedback to our ICT team and through engagement with end users
- Looking to establish User Group, made up of cross-section of users, more to follow on this
- What would make your life easier?

Thank you for listening: questions welcome



Are there any other topics you would like to hear about?