

HOTSPOTS

April 2018

Three Yearly LBTT Returns – A Trap for the Unwary

Most tenants of commercial property will now be familiar with Land and Buildings Transaction Tax (LBTT) in Scotland which replaced Stamp Duty Land Tax (SDLT) which applies within the rest of the UK. Most tenants of commercial premises are aware (depending on the length of the lease and the rent payable) that an LBTT Return to Revenue Scotland should be made and LBTT paid at the point of entering into the lease. Many tenants, however, may not be aware that an LBTT Return may also be required to be submitted after three years or where the initial rent has been increased.

The Three Yearly Return: An LBTT Return should be submitted on the third anniversary (or within 30 days thereof) of the “effective date” which will normally be the date of entry. LBTT came into force on 01 April 2015. The first cycle of three yearly returns will therefore begin on 1 April 2018. Because leases can change over a period of years e.g. by variation, extension, assignment, rent reviews etc. tenants are required to bear in mind that the three yearly Return may result in an additional payment of LBTT falling due. Not every commercial tenant will require to complete the three yearly Return. As a rule of thumb, if LBTT was payable at the commencement of the lease a three yearly Return will be required. Returns are not required where:-

- (a) Entry under the lease predates 01 April 2015 and SDLT was payable at the time (these leases do not fall within the LBTT Scheme).
- (b) Leases are not notifiable for LBTT (usually where there is a short lease with a low rent).
- (c) Where full LBTT relief applies (e.g. for Charities or group relief).

Assignment of Lease: Tenants who have taken on assignments of leases need to be particularly careful. The new tenant assumes the responsibilities in relation to LBTT. This means that a three yearly Return may require to be made based on the original date of entry. In addition, where there have been variations of rent under the lease the new tenant may be liable for additional LBTT at the point the three yearly Return is submitted.

Reminders: It is expected that Revenue Scotland will send out three yearly reminders to tenants which will be helpful. However, the onus will be on the tenant to submit the appropriate Return and tenants should not rely on receiving reminders.

Penalties: Since LBTT came into force there have been penalties imposed for late submission of Returns. This will include the three yearly Returns and applies even where no further tax is due. Penalties for failing to submit the Return timeously start at £100 and can increase to £1,000. There may also be penalties for late payment of LBTT.

Diary Forward: All tenants should make sure that they have diarised forward to complete and submit an LBTT every 3 years as appropriate.

New National Minimum and Living Wage Rates

The National Minimum Wage (NMW) is the minimum pay per hour most workers under the age of 25 are entitled to by law. The National Living Wage (NLW) is the minimum pay per hour most workers aged 25 and over are entitled to by law. Both a worker's age and whether or not they are an apprentice affects the rate payable.

On 01 April 2018, the rate per hour for those ages 25 and over increased from £7.50 to £7.83. For those ages 21 – 24, the hourly rate increased from £7.05 to £7.38. The hourly rate for those ages 18 – 20 increased from £5.60 to £5.90. Those under 18 years of age saw an hourly increase from £4.05 to £4.20. The rate for apprentices increased from £3.50 to £3.70 per hour.

A new rate will apply to the next pay reference period that begins on or after the date:

- A rate increase begins
- An employee reaches a new age bracket

Employers can be taken to court by HM Revenue & Customs for not paying the NMW/NLW.

There are, however, a number of people who are not entitled to the NMW or NLW, such as:

- Volunteers or voluntary workers
- Members of the Armed Forces
- Company Directors
- Self employed people
- Work experience students (depending on the length of their placement)
- Family members, or those who live in the family home of the employer who undertake household tasks

Sexual Harassment in the Workplace

All workers are protected from sexual harassment in the workplace. This protection comes from both Employment Law and Criminal Law, depending on the circumstances involved. Sexual harassment is unwanted conduct of a sexual nature which has the purpose or effect of violating the dignity of a worker, or creating an intimidating, degrading, humiliating, hostile or offensive environment for them. Something can still be considered sexual harassment even if it was not intentionally directed at a specific person. It is irrelevant whether or not the alleged harasser meant for the conduct in question to be sexual harassment. Employers should make clear to workers what sort of behaviour would be considered sexual harassment and that it is unacceptable.

Examples of sexual harassment include: Written or verbal comments of a sexual nature, such as remarks about an employee's appearance; Unwanted physical contact and touching; Emails with content of a sexual nature; Questions about the employee's sex life or offensive jokes; Sexual assault; Displaying pornographic or explicit images.

Complaints of sexual harassment will usually only be considered at an employment tribunal if the worker makes a claim within three months of when the incident took place. Sometimes, however, a complaint of sexual harassment will be reported much later than this. Such a complaint should always be taken very seriously by the employer. It is normally useful for the worker and the employer to discuss what outcome is desired in these circumstances. Where complaints of sexual harassment include sexual assault or physical threats, they could be considered under criminal law and this can involve different time limits. Workers should seek further advice in these circumstances. Any worker who considers that they have been sexually harassed, or who feels they have seen sexual harassment take place, can make a complaint of sexual harassment. This being the case, a worker should check any policies their organisation might have on sexual harassment in order to find out to whom their complaint should be addressed. Employers should always take complaints of sexual harassment very seriously and handle them fairly, sensitively and in line with their existing policies and procedures.

First and Foremost

Your Interests

Miller Hendry is a long established legal and estate agency practice which has served individuals and businesses in the Tayside and Strathearn area for generations. The firm has grown to be one of the largest legal practices in the area. Our staff include highly professional solicitors and legal staff, trust and tax specialists, property valuation managers and sales negotiators who are all equipped to provide a complementary blend of specialist and more general expertise in various fields. We continue to try to shape in a proactive way the services we provide to meet the ever changing needs of our clients. Whatever the problem, be it personal or business, large or small, routine or complex, it will be given individual attention and will be handled according to the highest professional standards.

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This leaflet is a general discussion document and is for guidance only. It is not a substitute for legal or financial advice.

Each situation must be looked at its own right. You cannot rely upon points raised and should always seek advice specific to your own circumstances.



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