

Compulsory Purchase in Scotland

Guidance for Acquiring Authorities



Scottish Government
Riaghaltas na h-Alba
gov.scot

To	Acquiring Authorities Land Owners Planning Authorities
Subject	Land and Building Transaction Tax associated with Compulsory Purchase Orders
Issued by	Scottish Government: Planning and Architecture Division
Reference	LBTTGN/001
Page	1 of 8

The Scottish Government considers powers to purchase land compulsorily to be an important tool for local authorities and other public bodies (collectively referred to as Acquiring Authorities) to use to acquire land needed to enable projects that are in the public interest to proceed, where this would otherwise not be possible.

In particular Ministers consider compulsory purchase powers to be important for helping to deliver housing, development and regeneration that create high quality places where people want to live, work and invest. Such projects will deliver social, economic and environmental improvement for the public benefit and, used properly, these powers can aid effective and efficient regeneration, the revitalisation of communities, and the promotion of inclusive economic growth.

Authorities are therefore encouraged to consider using their powers pro-actively when necessary and appropriate to ensure real gains are brought to communities without delay.

The Scottish Government vision for compulsory purchase is for:

“A clear, accessible, consistent, effective and efficient system of legislation and policy which allows for the compulsory acquisition and purchase of legal interests in land and property for the public benefit. The provisions relating to any compensation should be fair and transparent and allow for timeous settlement.”



This technical note, which has been developed in consultation with Revenue Scotland, provides Acquiring Authorities (such as a local authorities or utility suppliers) information in relation to the payment of Land and Building Transaction Tax (LBTT) associated with compulsory purchase orders and associated compensation calculations.

This guidance is not intended to be either prescriptive or definitive. It is also not intended to replace professional legal advice.

In this technical note, we use:

- Land to describe all property, land or business which is subject to a Compulsory Purchase Order and LBTT;
- Land Owner to describe the owner of a property, land, or business;
- Acquiring Authority to describe those bodies specifically empowered by an act of Parliament to purchase land compulsorily for purposes related to their function¹;
- Chargeable Consideration to describe sums of money or money's worth which are subject to LBTT.

¹ See. <https://beta.gov.scot/publications/guidance-acquiring-authorities-use-compulsory-purchase/pages/2/> for detailed explanation

Content

1. Land and Building Transaction Tax Overview
2. Calculating LBTT Charges
3. When LBTT becomes payable
4. Chargeable consideration uncertain on Land Tribunal decision or future events
5. Late Payments
6. Overpayment of LBTT
7. Relief
8. Further Information

1. Land and Building Transaction Tax Overview

- 1.1. Land and Buildings Transaction Tax (LBTT) is a tax charged in Scotland. It replaced the United Kingdom Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015. Revenue Scotland is the tax authority responsible for the collection and management of the tax.
- 1.2. LBTT is a tax applied to residential and commercial land and buildings transactions (including commercial purchases and commercial leases) in Scotland.
- 1.3. LBTT is a self-assessed tax so the buyer is responsible for ensuring their return is accurate. Buyers don't need to provide any supporting information when submitting their return to Revenue Scotland but they do have a duty to keep and preserve records that may be needed to evidence that they have made a correct and complete return.
- 1.4. An LBTT return is required for all Compulsory Purchase Order transactions where the chargeable consideration is £40,000 or more.
- 1.5. Where an Acquiring Authority makes a Compulsory Purchase Order to acquire land for the purposes of development by a third party relief from LBTT **may** be available (see Section 6 on Relief).

2. Calculating LBTT Charges

- 2.1. Revenue Scotland has developed online calculators which work out the amount of LBTT payable on residential and non-residential land and property transactions (see www.revenue.scot/land-buildings-transaction-tax/tax-calculators).
- 2.2. An additional amount of LBTT, known as the Additional Dwelling Supplement (ADS), is payable on every purchase of a residential dwelling by a 'non-natural person', such as a local authority. Where the ADS applies, an additional 3% of LBTT is applied to the chargeable consideration.

3. When LBTT becomes payable

- 3.1. The date at which the liability to LBTT arises (the tax point) is known as the effective date of the transaction. The effective date is also used to determine when other obligations in relation to the tax must be fulfilled, for example when a LBTT return must be made.
- 3.2. In the majority of cases the effective date of a land transaction is the date that the land transaction is completed (in other words the date of settlement). The effective date may also be where substantial performance of the contract occurs, for example:
 - A substantial amount of the chargeable consideration is paid by the Acquiring Authority to the land owner; or
 - The Acquiring Authority takes possession of the land/property.
- 3.3. LBTT returns must be submitted to Revenue Scotland within 30 days from the effective date. Payment of any tax due **must** be made at the same time as the LBTT return.

4. Chargeable consideration uncertain on Land Tribunal decision or future events

4.1. The chargeable consideration for LBTT is usually based on the amount the Acquiring Authority has paid to acquire the land. However, in circumstances where:

- The Acquiring Authority has acquired the land; and
- A dispute exists with the land owner and a final settlement figure for the land is uncertain, or cannot be ascertained at the time of the transaction,

then a reasonable estimate of the chargeable consideration figure must be provided on the LBTT return.

Deferring part of an LBTT payment

4.2. Where the chargeable consideration is uncertain or unascertained and it will not be certain or ascertained within 6 months from the effective date, the Acquiring Authority may apply to Revenue Scotland to defer payment of the remaining LBTT that may become payable.

4.3. The application to defer payment of tax must be made on or before the date the LBTT return is due to be filed by (see 3.3). It will not be accepted if it is made on a later date.

4.4. Revenue Scotland's guidance at [LBTT4016](#)² provides more information on applications to defer payment, and [LBTT4018](#)³ sets out the content of the application that must be submitted to Revenue Scotland.

4.5. If the application is accepted by Revenue Scotland, payment of any tax due on the **uncertain** element of the transaction is deferred until this becomes known.

4.6. The acceptance of an application does not affect the Acquiring Authority's obligation to pay LBTT on any consideration that:

- Has already been paid when the application is made; or
- Has not yet been paid but is not uncertain and the amount is known at the time the application is made.

4.7. Once the chargeable consideration becomes ascertained (for example, the Land Tribunal rules on the value of the land or where the Acquiring Authority settles any land dispute privately) then the Acquiring Authority must submit a further LBTT return to Revenue Scotland.

4.8. This return must be submitted within 30 days of the date the chargeable consideration was ascertained, and the tax, or any additional tax, must be paid at the same time as the return is submitted.

4.9. If the application to defer LBTT is refused – for example, where final settlement figure is expected to be known within 6 months – then the full LBTT due on the full chargeable consideration remains due and payable.

² See <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/tax-return/lbtt4016>

³ See <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/tax-return/lbtt4016/lbtt4018>

Deferring part of LBTT payment worked example

A Compulsory Purchase Order was made by an Acquiring Authority to purchase a derelict commercial property so it may build a new school.

The Acquiring Authority's reasonable estimate of the value of the property was £250,000. However, this valuation is subject to a dispute by the owner, who believes a more realistic estimate is £500,000. The owner has referred the matter to the Lands Tribunal for a ruling which will be heard within 18 months.

Meanwhile, using the General Vesting Declaration (GVD) process, the Acquiring Authority takes possession of the property and makes a payment to the owner of £225,000 (equal to 90% of the Acquiring Authority's valuation of the land). Within 30 days, the Acquiring Authority submits an LBTT return and uses the reasonable estimate of £250,000 as the chargeable consideration for the transaction.

Concurrently, the Acquiring Authority makes an application to Revenue Scotland to defer any additional LBTT which may become due as a result of the chargeable consideration being uncertain. Revenue Scotland agree that the payment of LBTT due on the uncertain element of chargeable consideration can be deferred until the Lands Tribunal provides its decision. This means that:

- Payment of LBTT on the proportion of the chargeable consideration that has already been paid to the land owner (the 'initial consideration') must be made to Revenue Scotland; and
- The LBTT due on the remaining proportion of the chargeable consideration, as well as any additional amount which may be payable pending the outcome of the Lands Tribunal (the 'contingent consideration'), is deferred until the amount is ascertained.

The LBTT due on the initial consideration is calculated as a proportion of the tax due on the total chargeable consideration:

- LBTT on total consideration of £250,000 (non-residential rates and bands) = **£3,000**
- LBTT on initial consideration ($\frac{£225,000}{£250,000} \times £3,000$) = **£2,700**
- LBTT on contingent consideration ($\frac{£25,000}{£300,000} \times £3,000$) = **£300**

At a future date the Lands Tribunal value the land at £350,000. Within 30 days, the Acquiring Authority submits a further LBTT return and pays the additional LBTT due on the revised chargeable consideration:

- LBTT on £350,000 (non-residential rates and bands) = **£6,000**
- Less LBTT paid on the initial consideration = **£2,700**
- Additional LBTT now due – ($£6,000 \text{ minus } £2,700$) = **£3,300**

5. Late returns and payments

5.1. If a return or payment is made late, then the Acquiring Authority will be liable to penalties and interest. Revenue Scotland's guidance at [RSTP3006](#)⁴ provides further information on this.

6. Overpayment of LBTT

6.1. In the event that less tax is payable than has already been paid, the Acquiring Authority may submit a claim for overpayment of tax by:

- Amending the LBTT return, if within the period allowed for the amendment of a return (see [LBTT4006](#)⁵); or
- If out with this period, making a claim under section 107 of the Revenue Scotland and Tax Powers Act 2014 no later than five years after the date the original return was required to be made (see [RSTP7003](#)⁶).

6.2 Any tax overpaid will be repaid together with any interest accrued since the date of payment.

7. Relief

7.1. A relief from LBTT is available to an Acquiring Authority where it makes a Compulsory Purchase Order to acquire land which is then to be transferred to and developed by a third party (commonly referred to as a back to back CPO). For this relief to apply:

- The Acquiring Authority must make a Compulsory Purchase Order specifically for the purpose of facilitating the undertaking or achievement of an activity or purposes defined in Section 189 of the Town and Country Planning (Scotland) Act 1997⁷ - for example:
 - to secure the carrying out of development, redevelopment or improvement;
 - for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- The land is then transferred to a third party to develop the land, with the third party remaining liable for any LBTT payable on the latter transaction.

7.2. This relief is only available where a party other than a local authority develops the land. If the developer is the local authority, the relief is not available.

7.3. The relief must be claimed in the first LBTT return made in relation to the transaction, or in an amendment to that return, even if no tax is due. Before making a claim to relief, the Acquiring Authority must satisfy themselves that the relief is due and that all the relevant conditions have been met.

⁴ See <https://www.revenue.scot/legislation/rstpa-legislation-guidance/penalties/rstp3005/rstp3006>

⁵ See <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/tax-return/lbtt4002/lbtt4006>

⁶ See <https://www.revenue.scot/legislation/rstpa-legislation-guidance/claims-not-return/rstp7003>

⁷ See <http://www.legislation.gov.uk/ukpga/1997/8/section/189>

LBTT Relief worked Example

An Acquiring Authority has agreed to use its compulsory purchase powers to acquire land to allow a Developer to regenerate an area of land for new houses and local amenities, in accordance with an agreed Master Plan for the area.

Using a GVD the Acquiring Authority takes possession of the land. However, 14 days later it transfers title of the land to the Developer.

Within 30 days from initially taking title, the Acquiring Authority makes an LBTT return and claims 'Relief for certain compulsory purchases' which provides full relief from LBTT.

Within 30 days of title being transferred from the Acquiring Authority to the Developer, the Developer submits an LBTT return and pays the necessary LBTT due on the chargeable consideration paid by the Developer to acquire the land.

8. Further information

- 8.1. For any further information, please contact Revenue Scotland. Details of how to do so can be found at www.revenue.scot/contact-us.

© Crown copyright 2018

ISBN: 978-1-78781-196-6 (web only)

Published by The Scottish Government, September 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS465806 (09/18)

W W W . G O V . S C O T