

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (TAX RATES AND TAX BANDS) (SCOTLAND) AMENDMENT ORDER 2020

SSI 2020/24

This Order was made in exercise of the powers conferred by section 24(1) and paragraph 3 of schedule 19 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT(S)A 2013). The making of this Order is subject to the provisional affirmative procedure.

Purpose of the instrument.

This instrument provides for the addition of a new Land and Buildings Transaction Tax (LBTT) band in relation to non-residential leases, where the net present value (NPV) of the rent payable under the lease is above £2 million, as announced in the Scottish Budget 2020-21.

Policy Objectives

The Land and Buildings Transaction Tax (Tax Rates and Tax Bands)(Scotland) Order 2015 sets the tax bands and percentage tax rates for LBTT. The details are set out in three tables, for residential property transactions, non-residential property transactions and, with respect to leases, tax rates for each band applicable to chargeable consideration which consists of rent.

This instrument amends Table C of the 2015 Order to provide for the additional non-residential band for leases announced in the Scottish Budget 2020-21 on 6 February 2020.

This involves the introduction of a new second tax band of 2%, payable where the NPV of the rent payable under the lease is above £2 million, and an adjustment to the first tax band to make clear it applies only up to £2 million. The effect of this set out in the table below

Table C: Rent

	<i>Net present value (NPV) of rent payable</i>	<i>Percentage</i>
<i>nil rate band</i>	Not more than £150,000	0%
<i>first tax band</i>	More than £150,000 but not more than £2 million	1%
<i>second tax band</i>	More than £2 million	2%

The instrument will come into force on 7 February 2020. It will however only remain in force permanently if the Scottish Parliament approves the Order within 28 days of it having been made.

A transitional provision provides that the new band will not apply where the effective date of a transaction is on or after 7 February 2020 if the contract for the land transaction had been entered into prior to 6 February 2020.

In addition, the change made by this instrument will not apply to any further returns made in connection with the three year review, assignation or termination of a lease where the effective date is between 1 April 2015 and 6 February 2020.

Consultation

There is no statutory requirement to consult on this instrument. The inclusion of a new band was published in the Scottish Budget 2020-21 on 6 February 2020.

Impact Assessments

Equal opportunities - This Order does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights – This Order does not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). We have not identified differential impact on human rights nor any impact on any individual’s civil liberties.

Privacy impacts – No privacy impacts resulting from this legislation have been identified.

Island communities – No new impacts have been identified in relation to the provisions of this Order.

Local government – There will not be any additional administrative or compliance burdens specifically affecting local government beyond those duties local authorities are already subject to under the LBTT legislation.

Sustainable development – The Order will have no impact on sustainable development.

A Business and Regulatory Impact Assessment has been published for the regulations and orders associated with the LBTT(S)A 2013.

Financial Implications

The Scottish Fiscal Commission has set out its assessment of the impact of the change to non-residential rates and bands for leases as part of Scotland’s Economic and Fiscal Forecasts February 2020, published on 6 February 2020 at:

<https://www.fiscalcommission.scot/forecast>

Scottish Government Tax Division
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