Solicitor Guide

# When Private Client Work Becomes SDLT Advice

*Recognising the warning signs, protecting your client and knowing when to involve an expert.*

020 7129 1432

www.bhptax.law

# Table of contents

# Why should you read this guide?

Private Client solicitors are increasingly encountering SDLT, LTT or LBTT issues, according to where the land is situated.

Rarely does a client arrive asking whether SDLT, LTT or LBTT is payable or even considering that it might be. Instead, they ask questions such as:

**"Can my daughter keep the family home if she pays her brother his share?"**

**"I've inherited a property – will that affect my first-time buyer status?"**

**"Would it be better to transfer the property into a trust?"**

**"The mortgage is already in place, so that won't affect anything, will it?"**

**Each appears to be a Private Client question. Each may, however, have significant SDLT, LTT or LBTT implications.**

The difficulty is that many SDLT, LTT or LBTT issues arise long before a conveyancer becomes involved. By that stage, decisions about ownership, beneficiaries, trusts or estate administration may already have been made.

Early specialist input helps you:

- Give the client a complete, holistic answer;
- Avoid reworking documents;
- Reduce time spent on tax issues outside your expertise;
- Retain control of the client relationship;
- Keep a written specialist tax conclusion on file;

Bell Howley Perrotton specialises in property taxation. Our team advises solicitors, accountants, trustees, executors and private clients on complex SDLT, LTT or LBTT issues arising throughout England,Wales and Scotland. Because we are involved in these transactions every day, we regularly see situations where apparently straightforward Private Client matters require specialist land transaction tax analysis long before a conveyancer becomes involved.

Throughout this guide we refer to our Private Client SDLT, LTT or LBTT Advice Note. This is a structured written advice note prepared specifically for your client, analysing the SDLT, LTT or LBTT consequences of the proposed transaction and providing practical conclusions that support both your legal advice and your client's decision-making.

**PURPOSE OF THIS GUIDE**

This guide is not intended to teach SDLT, LTT or LBTT. Its purpose is to help you recognise the situations where specialist SDLT, LTT or LBTT advice should be considered, understand why those issues matter and know when to recommend that your client seeks specialist SDLT, LTT or LBTT consequences of the proposed transaction and providing practical conclusions that support both your legal advice and your client's decision-making. Our role is not to replace your relationship with your client - it is to support it. This guide will explain how.

# Private Client work and SDLT – why the overlap is growing

Modern Private Client work extends far beyond preparing Wills and administering estates:

- Executors are appropriating property.
- Beneficiaries are buying out siblings.
- Families are restructuring ownership.
- Trusts are acquiring, holding and distributing residential property.
- Clients are increasingly asking whether they qualify for First-Time Buyer Relief or whether the Higher Rates for Additional Dwellings apply.

As these conversations become more common, so too does the risk that an apparently straightforward Private Client matter may involve specialist SDLT analysis.

Importantly, the risk is not simply reaching the wrong answer. It is failing to recognise that a tax question exists in the first place.

Strong Private Client teams should not require every fee earner to become a tax specialist. They give their solicitors a clear process for recognising and referring specialist issues.

## Where Private Client Advice and SDLT, LTT or LBTT advice work together

Private Client solicitors are experts in succession, trusts and estate administration. Specialist SDLT, LTT or LBTT advice is a different discipline. The two should work together.

A clear division of responsibility ensures that your client receives specialist SDLT, LTT or LBTT advice directly from BHP, whilst you continue to advise on the legal aspects of the matter. It also supports your firm's risk-management process and helps ensure that the legal documents accurately reflect the tax analysis.

# The conversations that should make you pause

| | |
|---|---|
| "I would like my son to keep the house." | Immediately consider whether he is simply receiving his entitlement under the estate, whether money will change hands, whether a mortgage is involved and whether the arrangement could give rise to chargeable consideration. |
| "We will just sort it out between ourselves." | Family arrangements can involve equalisation payments, changes to beneficial ownership, deeds of variation or appropriations. What appears to be an informal agreement may have important SDLT, LTT or LBTT consequences. |
| "The mortgage is already on the property." | Sometimes that changes nothing. Sometimes it changes everything. Whether existing debt forms part of the chargeable consideration requires analysis of the transaction as a whole. |
| "I have inherited a property, but I am still a first-time buyer." | Perhaps — but not necessarily. Inherited interests, beneficial ownership and trust rights can affect First-Time Buyer Relief and the higher rates in different ways, under Schedule 6ZA, Paragraph 6 of the Finance Act 2003. |
| "There isn't a sale – we're simply equalising the estate between the beneficiaries." | That may be true from an estate administration perspective, but equalisation payments, assumptions of debt or changes to beneficiaries' entitlements can still create SDLT, LTT or LBTT issues. The absence of a conventional sale does not necessarily mean SDLT, LTT or LBTT cannot arise. |

# Five situations where Private Client work becomes land transaction tax advice

The following examples are intended to demonstrate where specialist advice is commonly required. They are not a substitute for advice on the full facts.

## 1. Estate administration

A qualifying assent or appropriation in or towards satisfaction of a beneficiary's entitlement can be exempt from SDLT, LTT or LBTT, including assumption of debt secured on the property immediately after death. The position changes where the beneficiary receives more than the entitlement being satisfied, gives additional consideration, buys out another beneficiary or accepts a new or different liability.

**Questions worth asking include:**

- Is this simply an assent?
- Is an appropriation being used?
- Is anyone paying money to the estate or to another beneficiary?
- Has the transaction changed from inheritance into acquisition?

Do not assume that because a transfer arises under a Will there can be no SDLT, LTT or LBTT consequences.

**REFERRAL TRIGGER**

**Where the estate administration involves payments between beneficiaries, appropriations or assumptions of debt, recommend specialist SDLT, LTT or LBTT advice before the estate accounts and transfer documentation are finalised.**

## 2. Beneficiary buy-outs

One of the most common misconceptions in estate administration is that SDLT, LTT or LBTT cannot arise because a beneficiary is simply receiving an inheritance.

The key question is:

**Has the beneficiary provided anything of value beyond their entitlement under the estate?**

Under Schedule 4 to the Finance Act 2003, chargeable consideration is not limited to cash paid to another beneficiary. It is a much broader concept and may include payments made into the estate, the assumption of secured debt or other forms of consideration. HMRC's guidance at SDLTM04010 provides further detail on what may constitute chargeable consideration.

**Worked Example**

A property forms part of an estate and is worth £700,000.

Under the Will, the beneficiary is entitled to £300,000 of the estate.

Rather than selling the property, the beneficiary wishes to retain it and pays £400,000 into the estate so that the remaining beneficiaries receive their entitlement.

Although the beneficiary is inheriting part of the property, they are also acquiring an additional interest by making a payment beyond their entitlement.

The element received under a qualifying estate entitlement can remain exempt from the applicable land tax. However, the £400,000 paid to acquire the additional interest can represent chargeable consideration for SDLT, LTT or LBTT purposes, depending on the property's location.

#### What the client says

"I'm inheriting the house. I'm only paying my sister what she would otherwise receive."

#### What needs to be examined

Before concluding that no SDLT, LTT or LBTT arises, consider:

- the beneficiary's entitlement under the estate;
- the additional interest being acquired;
- whether any payment is being made to the estate or directly to another beneficiary;
- whether an appropriation has taken place; and
- whether mortgage borrowing or the assumption of existing debt forms part of the arrangement.

#### Why early advice matters

The way an estate is administered and documented can significantly affect the SDLT, LTT or LBTT analysis. Encouraging your client to obtain specialist SDLT, LTT or LBTT advice before the parties commit to the arrangement allows the legal documentation, payment flows and tax analysis to be considered together, reducing the risk of unexpected SDLT, LTT or LBTT liabilities or the need to revisit the transaction later.

**REFERRAL TRIGGER**

**Where one beneficiary is compensating another, specialist SDLT, LTT or LBTT advice should usually be obtained before the appropriation, assent or transfer is documented.**

## 3. Mortgages and secured borrowing

Mortgage debt frequently creates uncertainty. Under the qualifying estate-assent exemption in all three regimes, assuming debt secured on the property immediately after death need not disturb the exemption. New borrowing, a beneficiary buy-out, a release or indemnity, or debt assumed outside that exemption can still be chargeable consideration.

The important question is not simply whether a mortgage exists. It is how the debt interacts with the transfer, whether liabilities are being assumed and whether new borrowing is being used to fund payments.

Existing borrowing frequently causes uncertainty because the existence of a mortgage does not, in itself, determine the SDLT, LTT or LBTT position. The relevant question is whether responsibility for the debt is changing and whether that assumption of debt forms part of the chargeable consideration.

In practice, mortgage refinancing, beneficiary buy-outs and transfers between family members often involve both existing borrowing and new lending. Understanding the sequence of events is therefore just as important as understanding the amount of debt involved.

**PRACTICE POINT**

**Analyse the entire transaction, including the original debt, any new borrowing, the destination of funds and the sequence of steps.**

## 4. Reliefs

Clients increasingly ask about first-time buyer relief and additional-property rates. SDLT and LBTT have different first-time buyer reliefs; LTT has no separate first-time buyer relief. SDLT, LTT higher residential rates and LBTT ADS also apply different statutory tests.

For example, an inherited property interest may prevent a purchaser from qualifying for First-Time Buyer Relief, yet the same inherited interest may be temporarily disregarded when considering the Higher Rates for Additional Dwellings. Similar facts can therefore produce very different SDLT outcomes, depending on which part of the legislation applies.

This distinction arises because section 57B and Schedule 6ZA to the Finance Act 2003 (First-Time Buyer Relief) and paragraph 16 of Schedule 4ZA to the Finance Act 2003 (Higher Rates for Additional Dwellings) apply different statutory tests.

**Worked Example**

A client inherits a 50% interest in their late mother's property and, two years later, purchases their first home. Whilst the inherited interest may be disregarded for the purposes of the Higher Rates for Additional Dwellings, it may still prevent the purchaser from qualifying for First-Time Buyer Relief.

**REFERRAL TRIGGER**

**Seek specialist advice where a client has inherited or previously owned property, owns property overseas or is relying on a relief or exception. The interaction between reliefs, surcharges and inherited interests is rarely straightforward.**

## Other specialist reliefs

Whilst First-Time Buyer Relief and the Higher Rates for Additional Dwellings are the reliefs most frequently encountered in Private Client work, they are not the only reliefs that may be relevant.

Where executors, beneficiaries or connected businesses are acquiring residential property, SDLT Schedule 4A reliefs such as Property Trader Relief, Property Development Relief and Property Rental Business Relief may also require consideration.

For example, Property Trader Relief can assist genuine property trading businesses acquiring inherited residential property for resale, supporting the efficient disposal of estate assets, although conditions apply and excessive refurbishment or retaining the property for an extended period may jeopardise the relief. Similarly, Property Development Relief and Property Rental Business Relief can prevent the SDLT Schedule 4A 17% higher-threshold rate applying where the statutory conditions are satisfied.

These are SDLT reliefs; Wales and Scotland have different company and higher-rate rules and no direct generic equivalent. Where SDLT applies, the reliefs can significantly reduce the charge, they each contain detailed qualifying conditions and ongoing compliance requirements. Applying the wrong relief—or inadvertently losing it through the way a property is refurbished, developed or retained—can have costly consequences.

## 5. Trusts

Trusts frequently require careful SDLT, LTT or LBTT analysis. Identifying the legal owner is only the starting point. The real question is who the legislation treats as the purchaser or owner for the particular charging provision or relief under consideration. The SDLT position can differ significantly depending on the type of trust.

Under a bare trust, an absolutely entitled beneficiary will commonly be treated as purchaser or owner under the applicable regime. Interest in Possession (IIP), Immediate Post-Death Interest (IPDI) and discretionary trusts require separate SDLT, LTT or LBTT statutory analysis. For SDLT higher rates, paragraph 11 of Schedule 4ZA to the Finance Act 2003 can treat a beneficiary with a relevant right to occupy or enjoy income as an owner; the Welsh and Scottish trust provisions must be checked separately.

Case in Point – Pearson v IRC [1981]

In Pearson v IRC [1981], the House of Lords confirmed that an interest in possession requires a “present right to present enjoyment.” It is not enough for a beneficiary to hope that trustees may exercise their discretion in their favour at some point in the future.

This distinction remains important when considering SDLT, LTT or LBTT. A beneficiary with an immediate right to occupy or enjoy trust property may be treated very differently from a beneficiary who is merely one of a discretionary class.

The key point is that the same property can produce very different SDLT, LTT or LBTT outcomes depending on how the trust is structured and who has the beneficial interest. Understanding the trust instrument is therefore just as important as understanding the Land Registry title.

**Worked Example**

A widow's Will leaves her home on Immediate Post-Death Interest (IPDI) Trust for her surviving spouse, with the property ultimately passing to her children. Several years later, the trustees and beneficiaries wish to rearrange the ownership of the property. Whilst the Land Registry title shows the trustees as the legal owners, the SDLT, LTT or LBTT analysis requires consideration of the surviving spouse's beneficial rights under the trust before the tax consequences can be determined.

**Why early advice matters**

Trust transactions often involve a number of interdependent decisions about occupation, beneficial ownership, succession planning and tax. Considering the SDLT, LTT or LBTT position at the outset allows the trust arrangements, legal documentation and tax analysis to be developed together, reducing the risk of unexpected SDLT, LTT or LBTT liabilities or documents having to be revisited after implementation.

**PRACTICE POINT**

**Before advising on a property transaction involving a trust, ask:**

- **Is the property held by trustees?**
- **Is the beneficiary absolutely entitled?**
- **Does anyone have an immediate right to occupy the property?**
- **Is the trust discretionary?**

**The answers to these questions can significantly affect the SDLT, LTT or LBTT position. Where trust arrangements are involved, recommend that your client obtains specialist SDLT, LTT or LBTT advice before the transaction proceeds.**

# What early specialist and expert involvement will give you

Where your client obtains early specialist SDLT, LTT or LBTT advice, you have a clear basis on which to advise on the legal aspects of the estate or trust arrangements. It also reduces the risk of documents having to be revisited and provides a written specialist tax opinion that can be retained with the file.

**Specialist SDLT, LTT or LBTT advice should be considered where:**

- A beneficiary will compensate another beneficiary.
- A mortgage or secured debt is involved.
- Property is moving into or out of a trust.
- An appropriation or deed of variation is proposed.
- First-Time Buyer Relief or the Higher Rates may be relevant.
- Ownership structures are changing.
- A transfer between family members is proposed.
- The arrangement feels commercially unusual or does not fit a familiar pattern.

If in doubt, ask the question before documents are prepared. Early advice is almost always simpler — and less expensive — than correcting an issue after implementation.

Specialist support allows you to give a more complete service, retain control of the matter, save time, and provide your client with a clear written answer. Benefits include:

- Less time spent researching an unfamiliar specialist area;
- Fewer difficult fee conversations about unrecoverable research time;
- Less risk of drafting documents around an incorrect tax assumption;
- A written specialist tax report for the file;
- Greater confidence when explaining the transaction to executors, trustees and beneficiaries;
- Fewer last-minute problems when the conveyancer becomes involved;
- A consistent escalation route for the whole Private Client department;
- Support for junior fee earners who may not recognize the risks associated with providing unqualified and uninsured tax advice;
- Preservation of the client relationship

# Working with Bell Howley Perrotton

Our role is not to replace your relationship with your client. It is to support it.

We work alongside Private Client solicitors, providing specialist SDLT, LTT or LBTT advice directly to their clients where tax issues arise during estate administration, property transfers and trust matters. This allows you to continue to advise on the legal aspects of the transaction, whilst we provide the specialist tax advice within an agreed scope.

Our advice is provided **to your client** in the form of a written SDLT, LTT or LBTT Advice Note, with you copied into correspondence throughout (unless instructed otherwise). This ensures there is a clear distinction between the legal and tax advice being provided. Our Private Client SDLT, LTT or LBTT Advice Notes typically include:

- an executive summary;
- analysis of the proposed transaction;
- consideration of relevant reliefs and exemptions;
- identification of assumptions and information gaps;
- practical implementation points; and
- written conclusions that can be retained on file.

Where appropriate, we are also happy to discuss our conclusions with both you and your client following delivery of the advice.

| Step | What happens | What you receive |
|---|---|---|
| 1 - Initial Enquiry | You send us a brief summary of the proposed transaction or your client's circumstances. | We confirm whether specialist SDLT, LTT or LBTT advice is likely to be required and provide an indication of fees. |
| 2 – Information Gathering | Clear guidance on the documents and information required. | Clear guidance on the documents and information required. |
| 3 - Engagement | We issue our Letter of Engagement directly to your client, complete onboarding and AML requirements, and agree the scope of our advice. | A fixed-fee quotation, agreed scope of work and anticipated turnaround time. |
| 4 – Advice | We review the information provided and prepare our written SDLT, LTT or LBTT Advice Note. | A written advice note, normally delivered by email within 3–5 working days of receiving all information and payment. |
| 5 – Ongoing Support | If any questions arise following delivery of the advice, we are happy to discuss our conclusions with you and your client. | Practical support to assist implementation of the advice, within the bounds of the agreed scope. |

## Fees

Our SDLT, LTT or LBTT Advice Notes are generally provided on a **fixed-fee basis,** with fees typically ranging from **£425 to £1,250 plus VAT**, depending on the complexity of the matter and the scope of advice required.

A bespoke quotation is provided before any work begins, ensuring both you and your client know exactly what to expect.

## Before the appropriation, transfer or refinancing is documented, send us:

The will or trust instrument;
The proposed division of the estate;
The property value;
Details of any payments and mortgage debt; and
The client's other property interests/

We will confirm the information required, the proposed scope, and the fee before substantive work begins.

# Who we are

## Amanda Perrotton - Partner

Amanda is a solicitor with almost 30 years' experience, a full member of STEP (TEP) and a member of the Stamp Taxes Practitioners Group. She regularly advises clients and professional advisers where tax, property, trusts, family wealth and professional risk intersect, and is known for making difficult technical issues practical and understandable.

## Simon Howley - Managing Partner and Chartered Tax Adviser

Simon is a Chartered Tax Adviser specialising in property and private-client tax matters.

His work includes SDLT, LTT and LBTT, company and partnership structures, incorporations, reliefs, exemptions and HMRC enquiries. His approach is direct, forensic and focused on giving clients and professional advisers a route they can use.

# Point of Contact


## Amanda Perrotton

amanda@bhptax.law

07795 930 659

www.bhptax.law


**THE RIGHT ADVICE AT THE RIGHT TIME**

**BThe purpose of this guide is not to make you an SDLT specialist. It is to help you recognise when Private Client work has become SDLT advice.**

**Recognising that moment — and involving the right specialist at the right time — protects your client, protects your firm and helps ensure that complex property transactions proceed with confidence.**

**Recognise the issue early, identify when specialist advice is needed and help your client obtain it before the transaction is implemented.**

# UK land transaction tax technical update

Which tax applies is determined by where the land is situated: Stamp Duty Land Tax (SDLT) applies in England and Northern Ireland, Land Transaction Tax (LTT) in Wales, and Land and Buildings Transaction Tax (LBTT) in Scotland. An estate containing land in more than one territory may require separate analysis, returns and engagement with HMRC, the Welsh Revenue Authority (WRA) and Revenue Scotland.

## Assents, appropriations and beneficiary buy-outs

A qualifying acquisition in or towards satisfaction of a beneficiary's entitlement is exempt under Finance Act 2003, Schedule 3 paragraph 3A; Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, Schedule 3 paragraph 5; and Land and Buildings Transaction Tax (Scotland) Act 2013, Schedule 1 paragraph 6.

In each regime, assuming debt that was secured on the property immediately after death is specifically permitted within that assent or appropriation exemption. The exemption can nevertheless be lost, or a separate taxable acquisition can arise, where the beneficiary gives additional money or money's worth, accepts a newly created liability, buys out another beneficiary, or receives more than the entitlement being satisfied.

Cash paid into the estate or directly to another beneficiary, a release or indemnity from debt, an acknowledgement of indebtedness and the assumption of existing liabilities can all be relevant consideration. The documents, sequence, legal and beneficial ownership and exact entitlement must be analysed together.

## Deeds of variation: an important territorial difference

For SDLT, Finance Act 2003, Schedule 3 paragraph 4 can exempt a qualifying variation made within two years of death. HMRC SDLTM00560 confirms that secured debt assumed is not consideration for this exemption.

For LTT, the two-year exemption in the 2017 Welsh Act, Schedule 3 paragraph 6 requires that no money or money's worth is given other than another variation. It contains no equivalent secured-debt disregard, so mortgage liability needs separate consideration.

For LBTT, the two-year exemption in the 2013 Scottish Act, Schedule 1 paragraph 7 requires no compensation. Revenue Scotland LBTT3009 expressly treats assumption of mortgage liability as compensation.

A variation that is effective for Inheritance Tax or Capital Gains Tax under Inheritance Tax Act 1984 section 142 and Taxation of Chargeable Gains Act 1992 section 62(6) is not automatically exempt from SDLT, LTT or LBTT; each land-tax exemption has its own conditions.

## Reliefs, surcharges and inherited interests

SDLT first-time buyers' relief is governed by Finance Act 2003 section 57B and Schedule 6ZA. LTT has no separate first-time buyer relief and instead applies its general main residential bands. LBTT first-time buyer relief is in the 2013 Scottish Act, Schedule 4A; it extends the nil-rate band to £175,000, with a maximum saving of £600. Previous gifted or inherited ownership can prevent SDLT or LBTT first-time buyer relief.

For SDLT, Finance Act 2003, Schedule 4ZA paragraph 16 can disregard for three years a jointly inherited interest that, together with a spouse's or civil partner's interest, does not exceed 50%. LTT has a broadly corresponding rule in the 2017 Welsh Act, Schedule 5 paragraph 34.

LBTT has no general three-year/50% inherited-share disregard. For transactions from 1 April 2024, the value of the buyer's share is tested against £40,000 and there is a narrow exclusion where a dwelling is inherited between contract and completion of a new main-residence purchase. Do not carry the SDLT rule into Scotland.

The additional-dwelling regimes are also different: SDLT applies rates five percentage points above the standard bands; LTT has a separate higher residential rate table; and LBTT Additional Dwelling Supplement is 8%. Replacement, repayment, spouse, trust and retained-interest tests must be checked in the applicable legislation.

## Trusts, companies and wider estate taxes

Bare trusts and present rights to occupy or receive property income can cause a beneficiary to be treated as the owner; discretionary interests are treated differently. The precise SDLT, LTT and LBTT statutory tests are not interchangeable, and Scottish liferent and succession concepts require local legal analysis. Pearson v IRC [1981] AC 753 remains the leading authority for the 'present right to present enjoyment' concept, but the current land-tax statutes must be applied.

Company and other non-natural-person acquisitions also diverge. The SDLT 17% higher-threshold rate in Finance Act 2003, Schedule 4A is not a UK-wide rate: Wales applies LTT rates and Scotland applies LBTT plus any ADS. Reliefs for property rental, development or trading are condition-based and must not be presented as generic UK reliefs.

The land-tax answer should be coordinated with estate Inheritance Tax, Capital Gains Tax rebasing and disposals during administration, income tax and estate completion statements, Trust Registration Service obligations, beneficiary and trustee duties, lender consent, insolvency, title and registration requirements. A tax-efficient land transfer must still be valid under the will, intestacy rules and the relevant succession and property law.

## Core legislation, guidance and cases

Finance Act 2003, Schedule 3 paragraphs 3A and 4, Schedule 4 paragraph 8, Schedule 4A, Schedule 4ZA paragraph 16 and Schedule 6ZA; HMRC SDLTM00560, SDLTM00570, SDLTM00570A, SDLTM04040 and SDLTM09795.

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, Schedule 3 paragraphs 5 and 6, Schedule 4 paragraph 9 and Schedule 5 paragraph 34; WRA technical guidance on higher rates and trusts.

Land and Buildings Transaction Tax (Scotland) Act 2013, Schedule 1 paragraphs 6 and 7, Schedule 2 paragraph 9, Schedule 2A and Schedule 4A; Revenue Scotland LBTT2003, LBTT3008, LBTT3009, LBTT3048 and ADS technical guidance.

Inheritance Tax Act 1984 section 142; Taxation of Chargeable Gains Act 1992 section 62(6); Pearson v IRC [1981] AC 753; HMRC IHTM16062. Law, published guidance and reported decisions checked to 18 August 2026.