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BHP PROPERTY TAX

Case Review

Issue 2



Five new SDLT and LBTT decisions and developments

This second issue brings together five recent decisions and developments across SDLT and LBTT, with practical implications for residential classification, mixed-use property, annexe claims and Scottish commercial leases.

The focus is not academic commentary for its own sake. Each case shows how statutory wording, transactional design, evidence and devolved property law can alter the tax result.

The five reports are designed to support clear, fact-sensitive advice and realistic risk assessment for property transactions.

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Bell Howley Perrotton | Specialist tax advisory firm

BHP provides independent, partner-led written tax opinions on complex property and private-client tax matters. We work alongside clients and their existing professional advisers, with a clearly defined scope that preserves the referring firm's wider client relationship.

Follow Simon Howley and BHP for our continuing **SDLT, LTT and LBTT Case Reports**, **FTT Private Client Tax Watch** and **Beyond Tax: Property Law Developments**. Together, these series provide clear, practical analysis of new decisions affecting property transaction taxes, private-client taxation, trusts and estates, and the wider property-law issues that influence transactions, structures and assets.

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Contents

Issue 2 brings together five property transaction tax decisions and developments. The focus is on the distinction between residential and non-residential property, independent dwellings, mixed-use land and LBTT lease compliance.

No.	Article	Page
	Introduction - why these cases matter	3
1	Bagshaw - former dwelling and non-residential use	4
2	John Smith - annexe, privacy and MDR	6
3	Inngrays - substation and mixed-use classification	8
4	June Kelly Thomson - LBTT termination penalties	10
5	Scoopz - transitional lease-extension penalties	12
	Conclusion - recurring themes	14
	Cases and primary materials	15

Why these cases matter

CLASSIFICATION		SOURCE
Property tax case review	October 2026	Bell Howley Perrotton

Property transaction tax rarely turns on the label in the particulars. It depends on the statutory definition, the actual rights acquired, the property at the effective date and the evidence available to substantiate the return.

This issue considers five developments: Bagshaw on long-disused residential buildings; Smith on the privacy and security of an annexe; Inngrays on a substation within a residential acquisition; Thomson on lease-termination filing penalties; and Scoopz on transitional lease-extension uncertainty.

The decisions have different levels of finality. Bagshaw and Smith are substantive first-tier determinations; Thomson is a penalty decision; Scoopz is a sisted appeal; and Inngrays is included as a preliminary case note pending verification of the full judgment. That distinction is central to responsible advice.

KEY POINT

The recurring message is that classification and compliance require the correct statutory test, contemporaneous evidence and careful attention to the procedural status of each decision.

HOW BHP WORKS

BHP provides independent, partner-led written tax opinions on complex property and private-client matters. We work alongside the client's existing professional advisers, define our scope clearly and do not seek to displace the referring firm.

Bagshaw Ltd v Revenue Scotland

[2026] FTSTC 4 | reviewed decision: 17 September 2026

LBTT / former dwelling / long-term non-residential use / Mudan

Court	First-tier Tribunal for Scotland Tax Chamber
Issue	Whether a former townhouse and mews, long used for non-residential purposes and stripped of facilities, were residential property for LBTT.
Outcome	Appeal allowed in the reviewed decision of 17 September 2026.
Client focus	Purchasers of former institutional buildings, developers, Scottish conveyancers and SDLT/LBTT advisers

BACKGROUND AND CONTEXT

The dispute concerned a Category A listed Glasgow townhouse and mews building acquired in December 2020 for £1.7 million. Although constructed for residential purposes, the properties had spent much of the previous century in institutional, ecclesiastical and office use. The purchaser sought a repayment on the basis that the acquisition was non-residential for LBTT.

The buildings were not merely houses awaiting refurbishment. Their long-standing uses included a nursing home and offices, and the evidence addressed planning history, non-domestic treatment and the removal of services and fittings. At acquisition they were vacant, extensively stripped out and required substantial works before residential occupation could resume.

The Tribunal examined the statutory definition of residential property in section 59 of the Land and Buildings Transaction Tax (Scotland) Act 2013. It considered the Court of Appeal approach in Mudan: the question is not immediate habitability, and a property may retain residential character notwithstanding disrepair. The history and physical character of these particular buildings were central.

The Tribunal had originally issued a decision dated 20 May 2026, which was subsequently set aside on review. The operative reviewed decision is dated 17 September 2026. It allowed the appeal, finding the buildings were not suitable for use as dwellings at the relevant time.

THE LEGAL ISSUE AND DECISION

The case is not a general proposition that a vacant or dilapidated house is non-residential. Rather, the Tribunal examined whether buildings that had long since been adapted to different uses still possessed the objective character of residential property at the effective date. Their history, lawful use and actual condition all mattered.

Bagshaw is an instructive counterpoint to decisions in which a former home remained a dwelling despite extensive disrepair. In Mudan the Court of Appeal rejected a narrow test of immediate occupation. Bagshaw does not displace that authority: it illustrates a different factual route, involving a sustained change of use and a materially altered building.

The distinction is important for advisers applying the materially similar SDLT definition in section 116 Finance Act 2003. Cross-jurisdictional reasoning can be persuasive, but the Scottish Tribunal decision is not binding in an English SDLT appeal.

PRACTICAL IMPLICATIONS

- Document historic occupation and changes of use, not just photographs of present defects.
- Obtain planning, rating, survey, services and building-condition evidence as at acquisition.
- Separate genuine loss of residential character from ordinary renovation or repair.
- Explain any earlier return position and the legal basis for a repayment claim.

WHY IT MATTERS

The case gives advisers a worked example of how long-term non-residential use and physical alteration can affect the statutory dwelling test without contradicting Mudan.

LIMITATIONS AND WATCH POINTS

The decision is fact-sensitive and from a first-tier Scottish tribunal. Check any appeal and the precise factual record before relying on it. The reviewed decision supersedes the earlier May version; the decision does not establish that planning designation or disconnection of utilities is determinative by itself.

KEY TAKEAWAY

Former residential origin is important, but it is not conclusive when the building has objectively lost its residential character.

John Smith v HMRC

[2026] UKFTT 1351 (TC) | 18 September 2026

SDLT / Multiple Dwellings Relief / annexe / privacy and security

Court	First-tier Tribunal (Tax Chamber)
Issue	Whether a detached pool house qualified as a second dwelling for the former MDR regime.
Outcome	Taxpayer appeal dismissed; pool house not a separate dwelling for MDR.
Client focus	Conveyancers, private clients, historic MDR claims and annexe classification advice

BACKGROUND AND CONTEXT

The taxpayer purchased Huntbourne, a substantial country property near Tenterden, in December 2023. The acquisition included a principal residence and a detached building described as a pool house, situated more than 200 feet from the main house. The taxpayer claimed Multiple Dwellings Relief (MDR), contending that the pool house was a second dwelling.

The pool house had features capable of supporting independent domestic life: cooking and washing facilities, a separate heating system, lockable entrances, and its own access arrangements. It also stood next to the outdoor swimming pool and its terrace. The relationship between the pool house and shared pool use was a decisive feature of the evidence.

The dispute fell under the former MDR regime in section 58D and Schedule 6B Finance Act 2003. The issue was whether the additional building was used or suitable for use as a single dwelling at completion, judged objectively. The Tribunal applied the multifactorial approach associated with Fiander, including independence, privacy and security.

The FTT dismissed the appeal. Although several facilities were consistent with residential use, the practical arrangements for use of the swimming pool meant that a separate occupier could not realistically enjoy the necessary privacy and security. The shared meters, address and council tax position were not treated as decisive in isolation.

THE LEGAL ISSUE AND DECISION

The decision illustrates why an annexe does not become a separate dwelling simply because it has a kitchen, shower and its own entrance. The Tribunal looked at the physical setting and the realistic way the building could be occupied independently of the main house. A notional separate tenancy is not enough if its occupation would be materially compromised.

The proximity of the pool and expected movement by other users immediately outside the pool house mattered more than some of the familiar administrative indicators. The decision therefore reinforces the need to examine the entirety of the property, including shared amenities and the location of access routes.

MDR has been abolished for most transactions with an effective date on or after 1 June 2024, subject to transitional rules. Historic claims and enquiries remain live. The separate-dwelling analysis may also be relevant in other SDLT contexts, but the statutory test and relief conditions must be considered separately.

PRACTICAL IMPLICATIONS

- Record the physical layout and practical occupation arrangements at completion.
- Consider privacy, security and shared amenities alongside self-contained facilities.
- Do not treat separate utilities, council tax or marketing descriptions as decisive tests.
- For historic MDR files, preserve contemporaneous plans, photographs and advice.

WHY IT MATTERS

The decision clarifies that genuine independence is a practical, property-wide question. Facilities within the annexe are only part of the enquiry.

LIMITATIONS AND WATCH POINTS

This is a first-tier decision applying the former MDR legislation to a particular pool-house configuration. It is not a universal rule that pool houses or annexes can never be dwellings. For current acquisitions, the abolition and transitional provisions for MDR require a separate check.

KEY TAKEAWAY

A well-equipped outbuilding may still fail the separate-dwelling test where privacy and security cannot realistically be preserved.

Inngrays Ltd v HMRC

[2026] UKFTT 1478 (TC) | 23 October 2026

SDLT / mixed-use / electrical substation / garden or grounds

Court	First-tier Tribunal (Tax Chamber)
Issue	Whether land occupied by an electricity substation was garden or grounds of flats, or a separate non-residential element.
Outcome	Decision reported; full reasoning and outcome not yet independently verified.
Client focus	Developers, mixed-use claim advisers, residential portfolio purchasers and conveyancers

BACKGROUND AND CONTEXT

The reported dispute concerns a property comprising five flats together with an electrical substation. The substation was occupied by an electricity company under a 20-year lease. The SDLT issue was whether the acquisition was wholly residential or mixed-use.

The point arises under section 116(1)(b) Finance Act 2003, which includes within residential property land that forms part of the garden or grounds of a dwelling, including buildings or structures on that land. The character of a third-party occupied utility installation is therefore central.

A long lease to an electricity operator raises distinct questions about occupation, exclusive rights, operational purpose and the relationship of the land to the flats. Those are important facts to investigate, but the mere existence of a commercial lease does not automatically answer the statutory classification question.

The case name, citation, date and issue are recorded in the published tribunal listing. At the date of this Review, the full decision and its operative outcome have not been independently verified against an accessible judgment. This article accordingly identifies the live legal issue and evidence points, not an established holding.

THE LEGAL ISSUE AND DECISION

The statutory enquiry is whether the substation land objectively forms part of the garden or grounds of the dwelling or dwellings. Physical proximity, title boundaries, function, third-party rights, access and actual use may be relevant, but none should be elevated into a free-standing statutory test without reference to the judgment.

Advisers should distinguish land merely situated within the wider property from land that in substance serves the domestic enjoyment of the dwellings. A separately controlled electricity substation is capable of raising a serious mixed-use question; whether it succeeds depends on the precise rights and the Tribunal's findings.

The reported issue is a reminder to examine utility infrastructure in residential development purchases. It is not, without the verified reasons, authority for a blanket rule that all substations make a transaction mixed-use or that all service infrastructure falls within residential grounds.

PRACTICAL IMPLICATIONS

- Obtain the utility lease, plans, access easements and any title reservations.
- Identify who controls, occupies, maintains and accesses the substation land.
- Document the functional relationship between the installation and the residential units.
- Do not amend an SDLT return on a headline report without the complete decision and evidence.

WHY IT MATTERS

Even without relying on an unverified outcome, the dispute identifies a recurrent classification risk in developments with leased or operational utility land.

LIMITATIONS AND WATCH POINTS

Preliminary case note only. The published listing confirms the dispute and citation, but not the full reasoning or outcome independently verified for this edition. The article must be revisited against the judgment before any external publication or case-specific reliance.

KEY TAKEAWAY

A substation lease prompts a proper section 116 analysis; it does not by itself prove mixed-use classification.

June Kelly Thomson v Revenue Scotland

[2026] FTSTC 5 | 3 September 2026

LBTT / lease termination / late return / reasonable excuse

Court	First-tier Tribunal for Scotland Tax Chamber
Issue	Whether late penalties for an omitted LBTT lease-termination return should stand.
Outcome	Appeal allowed on reasonable excuse; no special circumstances found.
Client focus	Scottish tenants, lease administrators, property solicitors and compliance teams

BACKGROUND AND CONTEXT

The taxpayer was a tenant under a commercial lease that ended early following exercise of a break option. The LBTT regime can require a further return when a notifiable lease terminates, even though no additional tax may be payable. The required termination return was not filed on time.

Revenue Scotland imposed late-filing penalties, reported as totalling £1,000. The tenant challenged them, relying on her understanding of the compliance position and the particular circumstances in which the omission occurred.

The appeal concerned the penalty provisions of the Revenue Scotland and Tax Powers Act 2014, including sections 159 to 161, and the application of the statutory reasonable-excuse test. The Tribunal also considered whether special circumstances justified relief.

The Scottish Tax Chamber allowed the appeal, finding a reasonable excuse on the specific evidence, while not finding special circumstances. The case is a reminder that a failure to appreciate a tax obligation can sometimes form part of a reasonable-excuse assessment, but ignorance alone is not an automatic defence.

THE LEGAL ISSUE AND DECISION

The practical trap is that LBTT lease compliance is not a one-off event at grant. Review returns may be due during the lease, and termination or assignment may trigger further reporting requirements. A tenant may assume that a break simply ends the contract, overlooking the separate statutory return obligation.

The Tribunal considered the taxpayer's actual circumstances rather than applying a slogan that ignorance of the law is always fatal. That does not convert an exceptional result into a general concession. Professional representation, prior guidance, earlier filings and the taxpayer's steps once aware may materially alter the analysis.

Reasonable excuse and special circumstances are distinct statutory routes. Advisers should identify which provision is invoked, the evidence supporting it, and whether the explanation covers the entire period of default, including any delay after discovery.

PRACTICAL IMPLICATIONS

- Include LBTT termination and three-year review returns in lease diary systems.
- Explain the return obligation to tenants when drafting or exercising break notices.
- Keep a dated chronology of advice, enquiries and action taken to regularise a default.
- Assess reasonable excuse on evidence; do not promise cancellation of penalties.

WHY IT MATTERS

A modest penalty appeal exposes a recurring operational risk: an LBTT lease can continue generating reporting obligations after the initial return.

LIMITATIONS AND WATCH POINTS

The decision is first-tier, taxpayer-specific and concerns penalties rather than whether LBTT is chargeable on a new lease. It should not be treated as a general exemption from filing or as a blanket reasonable-excuse rule.

KEY TAKEAWAY

Lease completion is not the end of the LBTT compliance calendar; a break or termination needs a return check.

Scoopz Ltd v Revenue Scotland

[2026] FTSTC 6 | 5 October 2026

LBTT / SDLT-era leases / extensions / penalties / Archer

Court	First-tier Tribunal for Scotland Tax Chamber
Issue	Penalties for an LBTT return concerning extension of a pre-2015 lease, against the background of Archer.
Outcome	Appeal sisted pending the Archer position; no final substantive determination.
Client focus	Scottish commercial landlords, tenants, conveyancers and lease-compliance advisers

BACKGROUND AND CONTEXT

Scoopz concerned an extension of a Scottish commercial lease originally granted before LBTT was introduced in April 2015. The tenant later agreed an extension and encountered difficulty filing through Revenue Scotland's online system. A paper return followed after direct contact with the authority.

Revenue Scotland sought late-filing penalties on the footing that the extension triggered a return obligation under the transitional rules. The taxpayer's understanding of the effective date and the point at which the extension period began was part of the practical background.

The legal difficulty is the unresolved effect of article 13 of the Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014. In Archer (UK) Ltd v Revenue Scotland [2025] FTSTC 10, the Scottish Tribunal found that the provision did not produce the deemed new lease asserted by Revenue Scotland.

The Scoopz appeal was sisted pending the position in Archer. A sist is a procedural pause, not a final ruling on whether the taxpayer was required to file, whether tax was due, or whether the penalties were valid.

THE LEGAL ISSUE AND DECISION

The case demonstrates the compliance consequences of unresolved substantive law. Revenue Scotland has maintained its view of transitional lease extensions while the Archer appeal proceeds. Taxpayers may face practical pressure to file or pay to facilitate registration even where the first-tier analysis casts doubt on the charge.

Article 13 draws on the SDLT treatment of a lease extension, but the character of a Scottish minute of variation must be considered in its own property-law context. The dispute should not be simplified into a rule that all lease extensions are taxable or all are exempt.

The procedural pause in Scoopz makes it particularly important to distinguish a live, unresolved legal controversy from an appellate resolution. The outcome of Archer, and any legislative response, may determine how other cases are handled.

PRACTICAL IMPLICATIONS

- Identify whether the original lease predates the commencement of LBTT.
- Review the actual variation, execution date, lease term and article 13 analysis.
- Consider filing, registration, amendment and protective-claim deadlines together.

- Track the Archer appeal before taking a definitive position on liability or penalties.

WHY IT MATTERS	The case shows how a disputed charging provision can create real-world penalties and registration difficulties even before the appeal on the underlying law is resolved.

LIMITATIONS AND WATCH POINTS

Scoopz is a sisted penalty appeal and does not decide the underlying tax charge. Archer remains subject to appeal, and Revenue Scotland has maintained contrary guidance pending resolution. Check the current appellate position and any legislative intervention before acting.

KEY TAKEAWAY	Do not confuse a sist with a taxpayer win: transitional lease-extension compliance remains an active risk pending Archer.

The recurring themes for property tax advisers

These five developments emphasise that statutory language, real-world use, contemporaneous evidence and the procedural status of a case must all be considered before a tax conclusion is drawn. They also show the importance of distinguishing a final decision from a preliminary report or a sisted appeal.

1 Classification is objective

Bagshaw demonstrates the significance of long-term use and physical character when deciding whether a former home remains residential.

2 Independence means practical privacy

Smith shows that an annexe can contain domestic facilities yet fail the separate-dwelling test because of shared use and proximity.

3 Investigate third-party rights

Inngrays highlights the need to inspect utility leases, access rights and the function of land before asserting mixed-use.

4 Lease reporting is a continuing obligation

Thomson demonstrates why a lease break or termination should prompt an LBTT filing check.

5 Procedural status changes the advice

Scoopz remains sisted, and Archer remains under appeal; do not confuse unresolved law with a settled outcome.

Cases and primary materials referred to

- Bagshaw Ltd v Revenue Scotland [2026] FTSTC 4 (reviewed decision 17 September 2026), Scottish Tax Chamber: https://www.taxtribunals.scot/
- John Smith v HMRC [2026] UKFTT 1351 (TC), 18 September 2026; Find Case Law: https://caselaw.nationalarchives.gov.uk/
- Inngrays Ltd v HMRC [2026] UKFTT 1478 (TC), 23 October 2026; BAILII recent decisions listing: https://www.bailii.org/recent-decisions.html
- June Kelly Thomson v Revenue Scotland [2026] FTSTC 5, 3 September 2026, Scottish Tax Chamber: https://www.taxtribunals.scot/
- Scoopz Ltd v Revenue Scotland [2026] FTSTC 6, 5 October 2026, Scottish Tax Chamber: https://www.taxtribunals.scot/

STATUS NOTE

This briefing reflects sources checked on 28 October 2026. The Inngrays article is a preliminary case note because the full judgment and outcome were not independently verified. The Scoopz appeal is sisted. Appeal, guidance and legislative positions may change.

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This publication is general technical commentary, not legal or tax advice. Outcomes depend on the full facts, legal documents, jurisdiction and effective date. First-tier tribunal decisions are fact-sensitive and do not establish binding precedent. BHP provides written advisory opinions within an agreed scope; transaction returns remain the responsibility of the relevant filing professional.