

# LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

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## EXPLANATORY NOTES

### THE ACT

#### *Schedule 17 – Partnerships*

251. This schedule, introduced by section 49, provides for the treatment of partnerships in respect of LBTT. Section 49(2) contains a regulation making power to allow the Scottish Ministers to amend schedule 17. Schedule 17 sets out the responsibilities of partners, how LBTT applies in relation to the acquisition of interests in land by partners or partnerships, and how reliefs, most notably group relief and charities relief, apply to partnerships.
252. [Part 1](#) sets out an overview of schedule 17.
253. [Part 2](#) sets out general provisions that are relevant to schedule 17. Paragraph 2 defines “partnership” to include the various types of UK partnerships and also firms or entities outside Scotland having similar character.
254. Although a Scottish partnership has legal personality, anything done by the partnership is for the purposes of LBTT, to be done by or on behalf of the partners rather than the partnership. Paragraph 3 provides that chargeable interests held by a partnership are treated as being held by or on behalf of the partners. Similarly, a land transaction entered into by a partnership is treated as if it has been entered into by or on behalf of the partners. A partnership is also held to have continuity notwithstanding that partners change from time to time, as set out in paragraph 5.
255. [Part 3](#) sets out the provisions that are relevant to an ordinary partnership transaction i.e. a land transaction to which Parts 4 to 6 of schedule 17 do not apply. Where a partnership acquires land from a third party (or a third party acquires land from a partnership), the transaction is treated the same as any other transaction for the purposes of LBTT.
256. [Paragraph 8](#) stipulates the responsibility of the partners and paragraph 9 provides that anything required or authorised to be done by the responsible partners can be done by representative partners. Paragraph 10 provides that the partners are jointly and severally liable for payment of the tax. Part 4 (transactions involving transfer to a partnership) and Part 5 (transactions involving transfer from a partnership) make special provision for the scenarios where partners or prospective partners introduce land into the partnership and where existing partners take land out of the partnership, the transfer is taken to have a chargeable consideration equal to a proportion of the market value of the land transferred. The proportion reflects, in the case of a transaction involving a transfer to a partnership, that the partner or prospective partner retains a share of the land as a partner. The formula used to calculate the chargeable consideration is set out in paragraph 13, and the provisions in paragraphs 14 to 16 are also relevant.
257. [Part 5](#) sets out provision for the case of a transaction involving a transfer from a partnership. The proportion of the market value that is used to determine the chargeable

consideration in this case takes account of the share of the land already owned by the partner. In order to calculate the chargeable consideration, paragraph 21 contains the relevant formula and paragraphs 22 to 24 make provision relevant to the formula in paragraph 21. The calculation of the chargeable consideration is more complex for a transaction involving a transfer from a partnership, as no adjustment to LBTT is available if the chargeable interest was not subject to LBTT when it was initially acquired by the partnership (paragraph 22(2)) or when a person ceases to be a partner prior to the effective date (paragraph 22(3)). Moreover, in such a transfer, determining the partnership share attributable to the partner who is acquiring the chargeable interest is complicated by the fact that the share could be either the share when the chargeable interest entered the partnership or, if the partner entered the partnership at a later date, their share on that date. See paragraphs 25 and 26. Increases and decreases in the partner's partnership share are also relevant – see paragraph 26.

258. [Paragraph 27](#) sets out special provision for a transfer of a chargeable interest from a partnership to a partnership. Such a transfer is one to which Parts 4 and 5 of schedule 17 apply, as there is a transfer from a partnership (Part 5) and a transfer to a partnership (Part 4). As this is in essence one transaction, there is only one LBTT charge. Therefore, paragraphs 13(1) and 21(1) are disappplied. These paragraphs contain the formula for calculating the chargeable consideration in a transfer to a partnership and from a partnership respectively. Instead, the chargeable consideration is taken to be the greater of paragraph 13(1) or 21(1) had they both applied (paragraph 27(3)).
259. [Parts 4 and 5](#) also contain anti-avoidance provisions. In particular, paragraph 17 sets out provisions to deal with a transfer of a partnership interest pursuant to earlier arrangements. It deems a partnership transfer to be a land transaction, and a chargeable transaction, when the partnership transaction is subsequent to a land transfer and falls within paragraph 12(1)(a) when a partner transfers a chargeable interest to the partnership or 12(1)(b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or if the land transfer falls within paragraph 12(1)(c), a person connected with a partner, or a person who becomes a partner as a result of or in connection with the transfer, by the partner concerned.
260. [Paragraph 18](#) also contains anti-avoidance provision and deems that a chargeable land transaction is constituted when a “qualifying event”, such as withdrawal of money from a person's capital account, occurs within 3 years of the transfer of a chargeable interest. A qualifying event also occurs when a loan is made to the partnership and it is repaid, however, the “outstanding purchase price” that has not been paid to a person by a partnership in respect of a chargeable interest does not constitute a loan that would trigger a qualifying event under paragraph 18(2)(b).
261. [Paragraph 28](#) contains a special rule for a transfer of a chargeable interest from a partnership consisting of wholly bodies corporate. Therefore, when parties are bodies corporates, and the sum of lower proportions as determined by paragraph 22 exceeds 75, the chargeable consideration will always be based on the full market value of the chargeable interest. However, such transfers out of a partnership of corporate bodies may be eligible for group relief under schedule 10, as modified by paragraphs 38 and 39 of Part 8 of schedule 17.
262. [Part 6](#) makes provision for the application of Parts 3 to 5 of schedule 17 to leases and it modifies schedule 19 for this purpose accordingly.
263. [Part 7](#) contains special rules for the transfer of interests in property investment partnerships whose sole or main activity is holding or investing in land. When such partnerships acquire a chargeable interest, there is no legal transfer of land except indirectly through the change of ownership structure of the partnership holding vehicle. In such a case, the Act looks to the underlying land (excluding non-land assets held) attributable to the buyer through the acquisition of the interest in the partnership and deems the chargeable consideration to be the market value of that land (paragraph 32).

*These notes relate to the Land and Buildings Transaction Tax (Scotland)  
Act 2013 (asp 11) which received Royal Assent on 31 July 2013*

264. [Paragraph 35](#) allows for a property investment partnership to disapply Part 4 of schedule 17, which provides for transactions involving transfer to a partnership. Such an election has the effect of removing any LBTT discount the property investment partnership may have been entitled to under paragraph 13. Instead, the LBTT is calculated on the basis of paragraph 31(4) and is taken to be equal to a proportion of the market value of the relevant partnership property.
265. [Part 8](#) makes particular provision for the application to schedule 17 of exemptions, reliefs and notifications. Paragraph 37 clarifies that paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) is not applicable to transactions to which Parts 4 and 5 apply, and nor does the exemption apply to a transfer of an interest in a partnership which is deemed to be a land transaction by virtue of paragraphs 17 or 31.
266. [Paragraphs 38 and 39](#) modify group relief as set out in schedule 10 for the purposes of partnership transactions. Paragraph 40 modifies charities relief for the purposes of partnership transactions.