

# LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

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## EXPLANATORY NOTES

### THE ACT

#### *Schedule 19 – Leases*

#### **Part 6 – Other Provisions about Leases**

#### **Agreement for lease substantially performed etc.**

296. Paragraph 25 deals with the situation where parties enter into an agreement (referred to as a “notional lease”) under which a lease is to be executed and the agreement is substantially performed without a lease having been executed. In such cases, the agreement is treated as if it were the grant of a lease that started on the date it was substantially performed in accordance with the agreement between the parties. Sub-paragraph (2) clarifies that the effective date of the transaction is the date when the agreement was substantially performed.
297. Sub-paragraph (3) provides that if at a later time a lease is formally executed (referred to as the ‘actual lease’), then the Act applies as if the notional lease was granted on the date it was substantially performed, for a term that begins and ends in accordance with the dates set out in the actual lease and in consideration for the total rent payable over that term and any other consideration given for the agreement of the actual lease. Sub-paragraph (4) provides that where sub-paragraph (3) applies, the grant of the actual lease is disregarded unless it is treated as a later linked transaction under section 34 of the Act.
298. Sub-paragraph (5) sets out how paragraph 25 of schedule 19 works with section 34 of the Act. Sub-paragraph (5)(a) links the grant of the notional lease and the grant of the actual lease, regardless of whether the provisions of section 57 would have linked them in any case. Sub-paragraph (5)(b) provides that the tenant under the actual lease is liable for any tax or additional tax due in relation to the notional lease where sub-paragraph (3) applies. Sub-paragraph (5)(c) clarifies that in section 34(2) the reference to the buyer in the earlier transaction is to be read in relation to the notional lease as a reference to the tenant under the actual lease.
299. Sub-paragraphs (6) and (7) allow the tenant to amend their tax return to claim for a repayment of tax by the Tax Authority where an agreement under sub-paragraph (1) is annulled or not carried into effect.