



# Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

## PART 2

### KEY CONCEPTS

#### CHAPTER 1

##### LAND TRANSACTIONS AND CHARGEABLE INTERESTS

###### *Land transaction*

### **3 Land transaction**

A land transaction is the acquisition of a chargeable interest.

###### *Chargeable interest*

### **4 Chargeable interest**

- (1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.
- (2) The interests are—
  - (a) a real right or other interest in or over land in Scotland, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such right or interest.
- (3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

**5 Exempt interest**

- (1) An interest is exempt if it is a security interest.
- (2) In subsection (1) a “security interest” means a real right or other interest in or over land held for the purpose of securing the payment of money or the performance of any other obligation.
- (3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).
- (4) The Scottish Ministers may, by regulations, modify this section so as to—
  - (a) provide that a description of a real right or other interest in or over land is an exempt interest,
  - (b) provide that a description of a real right or other interest in or over land is no longer to be an exempt interest,
  - (c) vary a description of an exempt interest.

*Acquisition and disposal of chargeable interest***6 Acquisition and disposal of chargeable interest**

- (1) Each of the following is an acquisition and a disposal of a chargeable interest—
  - (a) the creation of the interest,
  - (b) the renunciation or release of the interest,
  - (c) the variation of the interest (but not the variation of a lease).
- (2) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 (reduction of rent or term or other variation of lease) applies.
- (3) A person acquires a chargeable interest where—
  - (a) the person becomes entitled to the interest on its creation,
  - (b) the person’s interest or right is benefitted or enlarged by the renunciation or release of the interest, or
  - (c) the person benefits from the variation of the interest.
- (4) A person disposes of a chargeable interest where—
  - (a) the person’s interest or right becomes subject to the interest on its creation,
  - (b) the person ceases to be entitled to the interest on its being renounced or released, or
  - (c) the person’s interest or right is subject to or limited by the variation of the interest.
- (5) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.

**7 Buyer and seller**

- (1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

- (2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.
- (3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

## CHAPTER 2

### PROVISION ABOUT PARTICULAR TRANSACTIONS

#### *General rules for contracts requiring conveyance*

#### **8 Contract and conveyance**

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract.
- (3) But see sections 9 and 10.

#### **9 Completion without substantial performance**

- (1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.
- (2) In this case the effective date of the transaction is the date of completion.

#### **10 Substantial performance without completion**

- (1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.
- (2) In this case the effective date of the transaction is when the contract is substantially performed.
- (3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—
  - (a) both the contract and the transaction effected on completion are notifiable transactions, and
  - (b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.
- (4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.
- (5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

- (6) Where paragraph 25 of schedule 19 (leases) applies, it applies in place of this section.

*Contract providing for conveyance to third party*

**11 Contract providing for conveyance to third party**

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
- (a) to a person (C) who is not a party to the contract, or
  - (b) either to C or to B.
- (2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
- (3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.
- (4) In such a case, the effective date of the transaction is when the contract is substantially performed.
- (5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.
- (6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.
- (8) Where—
- (a) this section applies by virtue of subsection (1)(b), and
  - (b) by reason of B's direction or request, A becomes obliged to convey a chargeable interest to B,
- sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.
- (9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.
- (10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

*Options etc.*

**12 Options and rights of pre-emption**

- (1) The acquisition of—
- (a) an option binding the grantor to enter into a land transaction, or
  - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,

is a land transaction distinct from any land transaction resulting from the exercise of the option or right.

- (2) They may be linked transactions (see section 57).
- (3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor's obligations under the option in some other way.
- (4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

### *Exchanges*

## **13 Exchanges**

- (1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 57).
- (2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.
- (3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
  - (a) paragraphs 5 and 6 of schedule 2,
  - (b) paragraph 17 of that schedule.

### *Interpretation*

## **14 Meaning of “substantial performance”**

- (1) A contract is substantially performed when—
  - (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
  - (b) a substantial amount of the consideration is paid or provided, or
  - (c) there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance to that person.
- (2) For the purpose of subsection (1)(a)—
  - (a) possession includes receipt of rent or the right to receive it, and

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- (b) it is immaterial whether possession is taken under the contract or under a licence.
- (3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—
  - (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
  - (b) if the only consideration is rent, when the first payment of rent is made,
  - (c) if the consideration includes both rent and other consideration, when—
    - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
    - (ii) the first payment of rent is made.
- (4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.

### CHAPTER 3

#### CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

##### *Chargeable transaction*

#### 15 **Chargeable transaction**

A land transaction is a chargeable transaction unless it is—

- (a) an exempt transaction, or
- (b) otherwise exempt from charge.

#### 16 **Exempt transaction**

A transaction is exempt if schedule 1 provides that it is so exempt.

##### *Chargeable consideration*

#### 17 **Chargeable consideration**

- (1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
- (2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—
  - (a) what is to be treated as chargeable consideration,
  - (b) the determination of the amount or value of chargeable consideration.

##### *Contingent, uncertain or unascertained consideration*

#### 18 **Contingent consideration**

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.

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- (2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (3) In this Act, “contingent”, in relation to consideration, means—
  - (a) that it is to be paid or provided only if some uncertain future event occurs, or
  - (b) that it is to cease to be paid or provided if some uncertain future event occurs.

## **19 Uncertain or unascertained consideration**

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
- (2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
- (3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.

## **20 Contingent, uncertain or unascertained consideration: further provision**

Sections 18 and 19 have effect subject to—

- (a) section 31 (return where contingency ceases or consideration ascertained),
- (b) section 32 (contingency ceases or consideration is ascertained: less tax payable), and
- (c) section 41 (application to defer payment in case of contingent or uncertain consideration).

*Annuities etc.*

## **21 Annuities etc.: chargeable consideration limited to 12 years’ payments**

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—
  - (a) for life,
  - (b) in perpetuity,
  - (c) for an indefinite period, or
  - (d) for a definite period exceeding 12 years.
- (2) The consideration to be taken into account is limited to 12 years’ annual payments.
- (3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.
- (4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index.
- (5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.

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- (6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).
- (7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.
- (8) References to payment are to be read accordingly.
- (9) Where this section applies—
  - (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
  - (b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

### *Deemed market value*

## **22 Deemed market value where transaction involves connected company**

- (1) This section applies where the buyer is a company and—
  - (a) the seller is connected with the buyer, or
  - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.
- (2) The chargeable consideration for the transaction is to be taken to be not less than—
  - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
  - (b) if the acquisition is the grant of a lease, the rent.
- (3) In this section—
  - “company” means a body corporate,
  - “shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.
- (4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (5) But this section has effect subject to any other provision affording exemption or relief from the tax.
- (6) This section is subject to the exceptions provided for in section 23.

## **23 Exceptions from deemed market value**

- (1) Section 22 does not apply in the following cases.
- (2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.
- (3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (4) Case 2 is where—



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- (a) immediately after the transaction the company holds the property as trustee, and
  - (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).
- (5) Case 3 is where—
- (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
  - (b) it is not the case that—
    - (i) the subject-matter of the transaction, or
    - (ii) an interest from which that interest is derived,has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.