

EXPLANATORY NOTES

Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11)

£11.00

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act¹ and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule or part of a section or schedule does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Land and Buildings Transaction Tax (Scotland) Act 2013 (“the Act”) is the first of three related Acts being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (“the 2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. This Act deals with the former responsibility and makes provision for a tax on land transactions in Scotland, to be called the Land and Buildings Transaction Tax (“LBTT”). LBTT is based on UK Stamp Duty Land Tax (“SDLT”) as enacted in Part 4 of the Finance Act 2003 (c.14). The provisions of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force by a Treasury order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force in April 2015, the day after SDLT is disappplied.

4. Discussion and debate on the provisions of this Act began with the publication of a consultation document, *Taking forward a Land and Buildings Transaction Tax*², on 7 June 2012. The consultation document included 17 questions, as follows:

- Questions 1-8 covered the proposed structure and scope of the tax including the move from a “slab” system to a progressive tax; future amendments to support key Scottish Government policies; exemptions and reliefs; and the treatment of both residential and non-residential leases.
- Questions 9-13 related to anti-avoidance measures; and proposals for online returns and linking payment of tax with registration.
- Question 14 sought views on the treatment of partnerships and trusts.

¹ Link to Land and Buildings Transaction Tax (Scotland Act) 2013:

<http://www.legislation.gov.uk/asp/2013/11/contents/enacted>

² Link to consultation paper: <http://www.scotland.gov.uk/Publications/2012/06/1301>

- Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.
- Question 17 sought any other views.

5. The consultation document was published to enable a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 56 responses was received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government's Library (0131 244 4565) or website.³ ODS Consulting was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and their report has been published on the Scottish Government's website.⁴

6. The Act is intended to inter-operate with the Revenue Scotland and Tax Powers Act 2014⁵ which was introduced to the Scottish Parliament on 12 December 2013 and passed on 19 August 2014, providing for the powers of the Tax Authority (Revenue Scotland), appeals and other matters of common relevance to devolved taxes.

THE ACT

Overview

7. The Act comprises 71 sections and 20 schedules and is divided into 8 Parts as follows:
- Part 1 establishes the LBTT,
 - Part 2 makes provision for the key concepts underlying the tax including:
 - which transactions are land transactions;
 - which interests are, and which are not, chargeable interests in land;
 - when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction;
 - which land transactions are, and which are not, chargeable transactions; and
 - what is, and what is not, chargeable consideration in relation to a chargeable transaction.
 - Part 3 makes provision for:
 - the amount of tax payable;
 - relief from the tax; and
 - who is liable to pay the tax.
 - Part 4 provides for land transaction returns and for the payment of the tax.
 - Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts.

³ Link to non-confidential consultation responses: <http://www.scotland.gov.uk/Publications/2012/10/1031/0>

⁴ Link to analysis report on consultation responses: <http://www.scotland.gov.uk/Publications/2012/10/8469>

⁵ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70929.aspx>

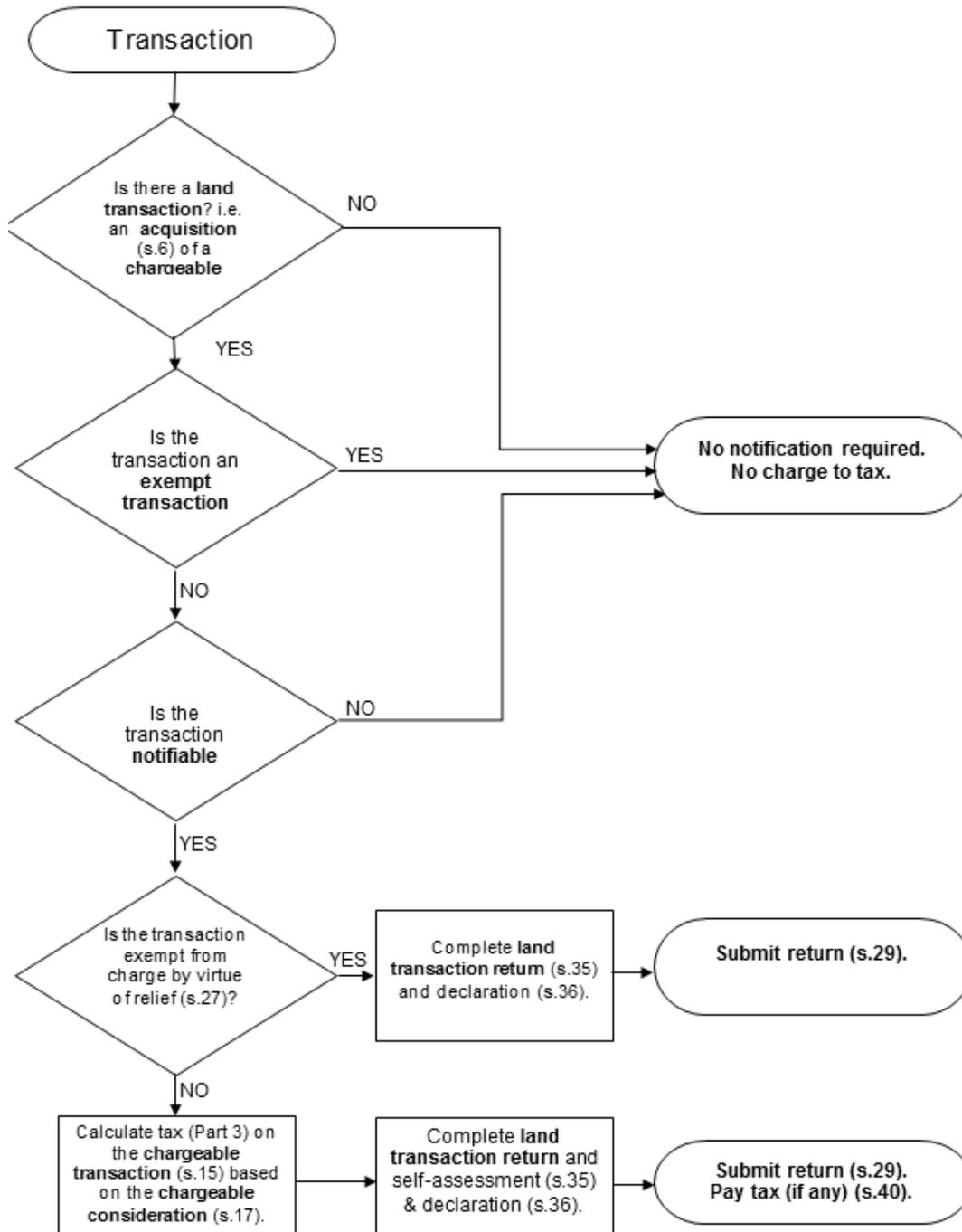
*These notes refer to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11)
which received Royal Assent on 31 July 2013*

- Part 6 contains provision about the application of the Act in relation to leases and licences.
- Part 7 contains general provision, including provisions on the Tax Authority and definitions of expressions used in the Act.
- Part 8 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

8. LBTT is a tax on land transactions. A “land transaction” is the acquisition of a chargeable interest (i.e. a real right or other interest in or over land which is not exempt). If a transaction is notifiable (i.e. it is not an exempt transaction and the consideration is above certain thresholds), then a land transaction return must be made, together with payment of any tax due, to the Tax Authority. The amount of tax due is calculated on a progressive basis by reference to the consideration paid but this is subject to special rules for certain cases and the availability of reliefs for certain transactions.

9. The operation of LBTT is described in the flow-chart diagram and the example below.

Operation of LBTT



Example: Operation of LBTT in relation to a simple house purchase

Justin and Brenda are buying a house from Stacey for £205,000, of which £5,000 is apportioned to moveables such as curtains.

The house purchase is a **land transaction** (section 3) because it is the **acquisition** (section 6) of a chargeable **interest** (section 4), that is to say an interest in land in Scotland that is not an **exempt interest** (section 5).

Justin and Brenda are the **buyers** (section 7), Stacey is the **seller** (section 7). The **subject-matter** (section 61) of the transaction is the house and any heritable rights included such as rights of way or the right to enforce neighbours' title conditions (but the moveables are not part of the subject-matter of the transaction). The missives of sale are the **contract** (section 65) and the disposition by Stacey in favour of Justin and Brenda is the **conveyance** (section 65). The point at which Justin and Brenda pay the purchase price and receive their keys and the signed disposition is the point of settlement, known as **completion** (section 64), which fixes the tax point, known as the **effective date** (section 63).

The house purchase is a **chargeable transaction** (section 15) because it is not an **exempt transaction** (schedule 1) or otherwise exempt from charge. The **chargeable consideration** (schedule 2) is the money given for the subject-matter of the transaction i.e. £200,000 for the land, discounting £5,000 for the moveables.

The transaction is a residential **property transaction** which will have relevance to the amount of tax chargeable (section 24). It is unlikely that Justin and Brenda can claim any **relief** (section 27 and schedules 3 to 18).

Justin and Brenda, the buyers, are **liable** to pay LBTT (section 28). As **joint buyers** they have joint and several liability (section 48).

The transaction is a **notifiable transaction** (section 30) because the transaction is not an exempt transaction and the chargeable consideration is over £40,000. Accordingly, Justin and Brenda, the buyers, must make a **land transaction return** (section 29) to the **Tax Authority** (section 54). The land transaction return must include (i) a self-assessment of the tax chargeable and (ii) a **declaration** by Justin and Brenda or their solicitor (section 36). As joint buyers, Justin and Brenda have joint responsibility for the return and must both make the required declaration.

Justin and Brenda must make the return within 30 days of the effective date (section 29). They may **amend** the return (for example to correct an error) in the period of 12 months following the deadline for making the return (section 37).

Assuming that the tax bands and rates are such that LBTT is payable on chargeable consideration of £200,000, tax must be paid to the Tax Authority at the same time as the land transaction return is made. Tax is treated as paid if **arrangements satisfactory** to the Tax Authority are made for payment of tax (section 40).

In order for Justin and Brenda to get ownership of the house, the conveyance (disposition) in their favour must be registered in the Land Register. However, Registers of Scotland will only accept an application for registration if the land transaction return has been made and the self-assessed LBTT has been paid (or if arrangements satisfactory to the Tax Authority are made for payment) (section 43).

PART 1 – LAND AND BUILDINGS TRANSACTION TAX

10. Part 1 establishes LBTT.

Section 1 – The tax

11. Section 1 introduces LBTT as the replacement for SDLT in Scotland. LBTT is a tax which is charged on land transactions. It clarifies that LBTT will apply irrespective of how a transaction is documented (if at all) and whether the transaction is concluded in Scotland or elsewhere.

12. The reference to the Tax Authority’s responsibility for “collection and management” of LBTT has, by virtue of section 51(3) of the Commissioners for Revenue and Customs Act 2005 (c.11), the same meaning as references to responsibility for “care and management” in historical UK tax statutes. This means that a jurisprudence concerning the proper bounds of the tax authority’s role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions.

13. Defined terms used in this section:

“land transaction”	section 3
“Tax Authority”	section 54

Section 2 – Overview

14. Section 2 provides an overview of the Act.

PART 2 – KEY CONCEPTS

15. Part 2 makes provision for the key concepts underlying the tax including:

- which transactions are land transactions,
- which interests are, and which are not, chargeable interests in land,
- when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
- which land transactions are, and which are not, chargeable transactions,
- what is, and what is not, chargeable consideration in relation to a chargeable transaction.

CHAPTER 1 OF PART 2 – LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

Section 3 – Land transaction

16. Section 3 defines “land transaction” as the acquisition of a chargeable interest.
17. Defined terms used in this section:
- | | |
|-----------------------|-----------|
| “acquisition” | section 6 |
| “chargeable interest” | section 4 |

Chargeable interest

Section 4 – Chargeable interest

18. Section 4 defines “chargeable interest”, the acquisition of which constitutes a land transaction under section 3. A chargeable interest is a real right or other interest, in or over land in Scotland or the benefit of any obligation, restriction or condition affecting the value of any such right or interest. In simple terms, a chargeable interest is an interest in land, so an interest in moveable property such as kitchen “white goods” or furniture falls outside the scope of LBTT. The definition is very broad and captures more than the real rights in land known to Scots law; accordingly options to buy or sell land, licences to occupy land and certain statutory rights are chargeable interests. In some cases, certain interests are treated as being interests in land for the purposes of LBTT (see, for example, Part 6 of schedule 17 (property investment partnerships)).

19. Chargeable interests do not include exempt interests (see section 5). Subsection (3) reflects that under Part 4A of the Scotland Act 1998 (c.46) (as inserted by section 28 of the 2012 Act), a tax on interests in land in Scotland may not be imposed on so much of a transaction as relates to land below mean low water mark - therefore interests in the seabed fall outside the scope of LBTT.

Section 5 – Exempt interest

20. Pursuant to section 4(1), exempt interests are not chargeable interests. Section 5 defines “exempt interest” as a security interest, such as a standard security. In addition, certain interests are exempt if they have been acquired by financial institutions under alternative property finance arrangements (see schedule 7, paragraphs 21 to 24).

21. Power is conferred on the Scottish Ministers to vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure (see section 68).

Section 6 – Acquisition and disposal of chargeable interest

22. Section 6 defines “acquisition” and “disposal”. The section sets out various categories of land transactions in terms of disposals by one party and acquisitions by the other. The creation, renunciation, release or variation of a chargeable interest constitutes an acquisition by one person and a disposal by another. Subsection (2) clarifies that the variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 applies (reduction of rent or term or other variation of lease) applies.

23. In many cases an acquisition will be where an existing interest is transferred, for example title to a shop is sold and the buyer acquires the property. In other cases acquisition is when a new interest is created, for example a lease of a shop is granted and the tenant acquires the lease. Acquisition also includes where an interest is renounced or released, for example the lease of a shop is surrendered and the owner ceases to be subject to the terms of the lease and acquires free possession.

24. “Disposal” is construed in accordance with the meaning of acquisition. So in the examples given immediately above: the seller of the shop disposes of it when selling it to the buyer; the owner of the shop disposes of the lease in the shop when granting it; and, in the final example, the tenant disposes of the lease when surrendering it.

25. Subsection (5) clarifies that LBTT applies irrespective of how the acquisition is effected, and thus includes transactions arising from a court order or by operation of law, for example transfer by virtue of statute.

Section 7 – Buyer and seller

26. Section 7 defines “buyer” and “seller”.⁶ The “buyer” is the person acquiring the subject-matter of the transaction, and “seller” is the person disposing of the subject-matter of the transaction. But a person is not a buyer if they are not a party to or have not provided consideration for the transaction.

27. Defined terms used in this section:

“subject-matter” section 61

⁶ The terms used for SDLT are “purchaser” and “vendor”, reflecting English conveyancing practice.

CHAPTER 2 OF PART 2 – PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

Section 8 – Contract and conveyance

28. Sections 8 and 9 establish the general rule that where a contract is to be completed by a conveyance it is the conveyance that represents the land transaction. This rule will apply in the majority of cases and ensures that a transaction is only charged to LBTT once. In a standard house purchase, the missives of sale are the contract and the disposition is the conveyance.

29. Special rules are provided for in sections 9 to 13.

30. Defined terms used in this section:

“completion”	section 64
“contract”	section 65
“conveyance”	section 65

Section 9 – Completion without substantial performance

31. Section 9 provides for the usual case where a contract is completed by a conveyance without having previously been “substantially performed”. The contract and conveyance comprise a single land transaction. In this case, the “effective date” would be the date of completion (i.e. in a normal house purchase, the date of settlement).

32. Defined terms used in this section:

“completion”	section 64
“contract”	section 65
“effective date”	section 63
“substantial performance”	section 14

Section 10 – Substantial performance without completion

33. Modifying the general rule in sections 8 and 9, section 10 also provides that if a transaction is substantially performed and then is formally completed, the contract and any subsequent completion are treated as two separate land transactions but tax is chargeable on the second transaction to the extent only that the consideration exceeds that on the first transaction. On the other hand if a contract is substantially performed but not completed, the contract is treated as the transaction.

34. The rationale for this provision is to remove any tax benefit in a buyer resting on his or her contract and having the effective enjoyment of the interest despite not proceeding to formal completion. Subsection (6) disapplies the section 10 provisions in a case where paragraph 25 of schedule 19 (agreement for lease substantially performed etc.) applies.

35. Defined terms used in this section:

“completion”	section 64
“contract”	section 65
“effective date”	section 63
“land transaction return”	section 65
“substantial performance”	section 14

Contract providing for conveyance to third party

Section 11 – Contract providing for conveyance to third party

Section 11 makes special provision for where a contract is entered into whereby one party to the contract (B) has the right to direct a conveyance to him/herself or to a third party (C). An example is a development agreement where the developer has the right to enter on the land and build on it and then direct the conveyance of the completed plots. The effective date of the contract is the date that the contract is substantially performed by B. Transactions within subsection (3) are always notifiable (see section 30(5)). Section 11 also ensures that it is the consideration that is given or is to be given by B that is charged to LBTT once substantial performance occurs.

36. Where B directs the original seller (A) to convey a plot to C, subsections (9) and (10) apply sections 8 to 10 to the contract between B and C and to the conveyance from A to C. The result is that C is liable to pay LBTT on the consideration paid to B, either on completion or on substantial performance by C.

Example: Contract providing for conveyance to third party

Parties A and B agree in a contract that A will provide land for B to build new homes. A and B agree that A will transfer the homes to buyers found by B. B agrees to pay A £1.5 million with an initial deposit of £150,000. The effective date will be the day that B takes possession of the land and starts building the homes. At that point, LBTT is due to be paid by B on the agreed consideration of £1.5 million. Once the homes are built, A transfers ownership of each one to the buyers, each of whom will pay LBTT at the appropriate rates.

37. Defined terms used in this section:

“chargeable interest”	section 4
“contract”	section 65
“conveyance”	section 65
“effective date”	section 63
“land transaction”	section 3
“substantial performance”	section 14

38. The usual meaning of “completion” in section 64 is modified in subsection (10). This modification allows for a land transaction between B and C to be completed by a conveyance from A to C.

Options

Section 12 – Options and rights of pre-emption

39. Section 12 deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal). An option or right of pre-emption falls within the category of “other interest in or over land in Scotland” in section 4(2)(a). Therefore, where such an option or right is acquired, a land transaction is constituted. The land transaction will be chargeable to LBTT, depending on the consideration paid.

40. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct transaction (although the two transactions may be linked) and chargeable to LBTT in its own right. Options fall within subsection (1)(a) even if the grantor can discharge his or her obligation either by entering into a land transaction or in some other way (e.g. payment of money). The effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable. If an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this section.

41. See also paragraphs 6(b) and 11(b) of schedule 7 in relation to alternative property finance relief. Defined terms used in section 12:

“acquisition”	section 6
“effective date”	section 63
“land transaction”	section 3
“linked transaction”	section 57

Example: Options and rights of pre-emption

On 1 January 2016, Mrs Macdonald is granted an option by Mr Brown to buy his house on or before 31 December 2016. Mrs Macdonald paid Mr Brown for the grant of the option.

The acquisition of the option by Mrs Macdonald is a land transaction in its own right. Mrs Macdonald may have to make a land transaction return to the Tax Authority in relation to the option depending on what she paid for it and may be liable for LBTT.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction from the grant of the option. The effective date of that land transaction is the date of completion of the sale of the house to Mrs Macdonald or, if earlier, the date of substantial performance.

Mrs Macdonald must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return or further return is also required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see sections 34 and 57).

The final LBTT payable by Mrs Macdonald in respect of both the grant of the option and the purchase of the house will be determined by the total consideration given by her for both the grant of the option and the purchase of the house. See section 26 for how the tax is calculated.

Exchanges

Section 13 – Exchanges

42. Section 13 provides that, where parties enter into transactions that involve an exchange of land, they are treated as if they had entered into two separate land transactions which are not linked. Exchanges are often known as “excambions” in Scotland. Paragraphs 5 and 6 of schedule 2 are also relevant to exchanges.

43. Defined terms used in this section:

“buyer”	section 7
“linked transaction”	section 57

Interpretation

Section 14 – Meaning of substantial performance

44. Section 14 defines “substantial performance”. This is where either the buyer takes possession of the whole or substantially the whole of the subject-matter of the transaction, or where “a substantial amount of the consideration” is paid or provided or where there is an assignation, subsale or other transaction whereby a third party is entitled to call for a conveyance to the third party. Whichever event happens first will trigger the charge to tax even though the contract has not been completed by, say, a conveyance.

45. One of the ways in which a buyer can take possession is if he or she receives or is entitled to receive rent in respect of the property. A buyer is treated as taking possession whether or not the right to possession is documented in the contract or by a licence.

46. Subsection (3) sets out when a substantial amount of the consideration is paid or provided:

- if none of the consideration is rent, it is when the whole or substantially the whole of the consideration passes,
- if the only consideration is rent, it is when the first payment of rent is made,
- if the consideration is partly rent and partly other consideration, it is when the whole or substantially the whole of the consideration passes, or when the first payment of rent is made.

47. See also paragraphs 6(a) and 11(a) of schedule 7 in relation to alternative property finance relief. Defined terms used in section 14:

“buyer”	section 7
“connected persons”	section 58
“subject-matter”	section 61

CHAPTER 3 OF PART 2 – CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

Section 15 – Chargeable transaction

48. Section 15 defines “chargeable transaction”. Chargeable transactions will give rise to a charge to LBTT although that might not mean that any tax is payable if, for example, they fall within the nil rate tax band referred to in section 24.

49. Where a transaction is not exempt but section 27 (and a schedule referred to in it) provides for a 100% relief from the tax, the Act uses the words “exempt from charge” to make clear that no tax is payable. (The difference between a relief and an exemption is that a relief will have to be claimed in a land transaction return (see section 29)).

50. Defined terms used in this section:

“land transaction”	section 3
“exempt transaction”	section 16

Section 16 – Exempt transaction

51. Section 16 defines “exempt transaction” by reference to schedule 1. Where a transaction is an exempt transaction, no tax will be payable and the transaction will not be notifiable (see section 30(1)(a)).

52. If a transaction falls outside the scope of LBTT (for example, a transaction involves only moveable property) then it is not liable to charge or to notification.

Chargeable consideration

Section 17 – Chargeable consideration

53. Section 17 defines “chargeable consideration” by reference to schedule 2. The chargeable consideration is used to calculate the amount of tax due, as determined by sections 25 and 26.

54. Subsection (2) confers a power on the Scottish Ministers to amend by regulations the definition of chargeable consideration with respect to what is to count as chargeable consideration and as to how chargeable consideration should be calculated in specific cases. Such regulations will be subject to the affirmative procedure if they amend the Act itself. Otherwise, they will be subject to the negative procedure (see section 68).

Contingent, uncertain or unascertained consideration

Section 18 – Contingent consideration

55. Section 18 provides that where the whole or part of the chargeable consideration for a transaction is contingent, the amount of consideration should be calculated on the assumption that the amount relating to the contingency will be payable, whether or not the occurrence of the contingency means that the amount will be payable or cease to be payable. So where a contingency affects the eventual amount of consideration, buyers must calculate the consideration on the basis that the amount relating to the contingency will be payable. “Contingent” is defined in subsection (3).

Section 19 – Uncertain or unascertained consideration

56. Section 19 provides that where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, the amount of consideration should be calculated on the basis of a reasonable estimate of the outcome. So where the consideration is uncertain or has not yet been ascertained – for example, where it is based on profits in accounts which have not yet been drawn up – buyers must make a reasonable estimate of the final consideration as at the effective date of the transaction.

Section 20 – Contingent, uncertain or unascertained consideration: further provision

57. Section 20 clarifies that sections 18 and 19 on contingent, uncertain or unascertained consideration are to be read with sections:

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

Annuities etc.

Section 21 – Annuities etc.: chargeable consideration limited to 12 years’ payments

58. Section 21 determines how LBTT will apply where the chargeable consideration is in the form of an annuity. Where an annuity is paid as consideration for a land transaction, the chargeable consideration will be taken to be a one-off payment comprising twelve years’ payments. Where the payments vary, the twelve highest payments will be taken into account. LBTT will accordingly be payable as a single payment.

59. Subsection (9) clarifies that there is no provision for LBTT payments to be deferred, or for an adjustment of the amount of tax paid if, at a later date, an actual payment differs from a reasonable estimate, say, of the payment made when the tax was assessed.

Deemed market value

Section 22 – Deemed market value where transaction involves connected company

60. LBTT is generally calculated by reference to actual consideration and not market values. However, section 22 provides that LBTT will be charged on the full market value of any land purchased by a company with which the seller is “connected” (within the meaning of UK Corporation Tax law) if the consideration involves the issue or transfer of certain shares. For example, if land is purchased by a company from another company which is connected with the buyer in consideration for the issue of securities whose value is less than that of the land, then the section ensures that LBTT is charged on the market value of the land.

61. A special definition of “company” applies for the purposes of this section (the definition is wider than the general definition of “company” in section 65).

62. The general rule that transactions with zero chargeable consideration are exempt does not apply to transactions falling within this section. Otherwise, this section does not affect situations where specific exemptions or reliefs apply. It is also subject to the exceptions provided for in section 23.

63. Defined terms used in this section:

“connected persons”	section 58
“market value”	section 62

Section 23 – Exceptions from deemed market value

64. Section 23 provides three exceptions from the connected company rules in section 22 for transfers to independent corporate trustees and distributions of land, including distributions on liquidation, to corporate shareholders, other than in specific circumstances. Where the exceptions apply, the charge to LBTT will only apply to any chargeable consideration paid for the transaction.

PART 3 – CALCULATION OF TAX AND RELIEFS

65. Part 3 makes provision for—
- the amount of tax payable,
 - relief from the tax, and
 - who is liable to pay the tax.

Amount of tax chargeable

Section 24 – Tax rates and tax bands

66. The Act does not set out the bands and rates for LBTT. These must be specified by the Scottish Ministers by order under section 24 (and in the case of leases, paragraph 3 of schedule 19). Ministers must specify a nil rate tax band and at least two other tax bands for non-lease transactions (and in the case of leases see the text under the schedule 19 heading in this document). To ensure that the tax is a progressive one, the percentage tax rate for each tax band must be higher than for the band below it. There must be tax bands and rates for both residential and non-residential property transactions.

67. The first order under this section will be subject to the affirmative procedure. Subsequent orders will be subject to a form of provisional affirmative procedure (see section 68)⁷.

68. Defined terms used in this section:

“linked transaction”	section 57
“residential property”	section 59

Section 25 – Amount of tax chargeable

69. This section sets out how to calculate the tax due in relation to a single transaction that is not a linked transaction.

70. Under the “slab” system of SDLT, tax is charged at the applicable rate on the whole consideration for the transaction. For example, if a house is sold for £240,000 the SDLT due is 1% of the whole amount while for a house costing £260,000, the SDLT due is 3% of the whole amount. By contrast, this section (read with section 24) provides for a “progressive system” that includes a nil rate band and at least two other bands. This structure will mean that only the portion of the consideration above the threshold and within the band will be liable to the higher rate of the band. LBTT is therefore to be calculated in a similar way to UK Income Tax.

⁷ Provisional affirmative procedure is relatively common in UK tax legislation but is relatively uncommon in legislation enacted by the Scottish Parliament. The exact form of the procedure can vary but its essence is that statutory instruments can be made to come into force very quickly and neither the 28 day rule applicable to negative instruments nor the 40 day rule applicable to standard affirmative instruments will apply. The form of provisional affirmative procedure for the purposes of the Act is set out in section 68(4) and (6) – orders must be laid before the Scottish Parliament and they cease to have effect unless affirmed by resolution of the Parliament within 28 days.

71. The tax rates and bands which are applicable to the transaction will depend on whether it is a residential property transaction or a non-residential property transaction.

72. Defined terms used in this section:

“chargeable consideration” section 17 and schedule 2

“chargeable transaction” section 15

Example: Amount of tax chargeable on a house bought for £260,000

Tax due under SDLT

The rate of tax under SDLT for such a purchase is 3%. So the tax payable would be—

$$£260,000 \times 3\% = £7,800$$

Tax due under LBTT using scenario 1

Under scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the applicable rates for the transaction would be:

Not more than £180,000	0%
Over £180,000 but not more than £1.5m	7.5%
Over £1.5m	10%

Applying the calculation in section 25(1), the amount of tax payable would be:

$$(£180,000 \times 0\%) + (£80,000 \times 7.5\%) + (£0 \times 10\%) = £6,000$$

Tax due under LBTT using scenario 2

Under scenario 2 outlined in paragraphs 290 and 291 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the applicable rates for the transaction would be—

Not more than £125,000	0%
Over £125,000 but not more than £250,000	2%
Over £250,000	9.5%

Applying the calculation in section 25(1), the amount of tax payable would be:

$$(£125,000 \times 0\%) + (£125,000 \times 2\%) + (£10,000 \times 9.5\%) = £3,450$$

Section 26 – Amount of tax chargeable: linked transactions

73. Section 26 applies instead of section 25 where a chargeable transaction is one of a number of linked transactions. The amount of tax due on the total consideration for all the linked transactions is calculated first and then that tax is apportioned to the transaction in question on the basis of the chargeable consideration for the transaction.

74. Defined terms used in this section:

“linked transaction” section 56

Example: Amount of tax chargeable on a number of linked transactions

A developer agrees to buy three plots of land from a farmer and buys them in three separate transactions on the same day. The consideration given for each plot is:

Plot A	£100,000
Plot B	£200,000
Plot C	£300,000

Because the three transactions are linked, section 26 applies for the purposes of calculating the tax due in relation to each transaction.

Applying the calculation set out in section 26(1) to each transaction in turn gives the following results under the scenario for non-residential property transactions outlined in paragraphs 292 and 293 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction. The rates and bands under that scenario are:

Not more than £150,000	0%
Over £150,000 but not more than £250,000	3%
Over £250,000	4.4%

Plot A

To calculate the tax on an individual linked transaction, the total tax chargeable on the total consideration for all the linked transactions must be calculated first. Following Steps 1 and 2, the total tax chargeable on £600,000 would be:

$$(\text{£}150,000 \times 0\%) + (\text{£}100,000 \times 3\%) + (\text{£}350,000 \times 4.4\%) = \text{£}18,400$$

The amount of tax payable in relation to Plot A would therefore be (following Steps 3 and 4)—

$$\text{£}18,400 \times \text{£}100,000/\text{£}600,000 = \text{£}3,067$$

Plot B

Using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot B would be:

$$\text{£}18,400 \times \text{£}200,000/\text{£}600,000 = \text{£}6,133$$

Plot C

Again using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot C would be:

$$\text{£}18,400 \times \text{£}300,000/\text{£}600,000 = \text{£}9,200$$

Note that, had the three plots been purchased in a single transaction, section 25 would have applied instead and the tax payable (on the same scenario) would have been £18,400, i.e. the same as the total tax payable in the example.

Reliefs

Section 27 – Reliefs

75. Section 27 introduces schedules 3 to 16 concerning reliefs, as described from paragraph 190 below. Reliefs do not apply automatically and must be claimed (see subsection (2)). Subsection (3) provides a power for the Scottish Ministers to add, modify or remove reliefs by order. Orders under this section are subject to the affirmative procedure (see section 68).

76. Defined terms used in this section:

“land transaction return” section 65

Liability for tax

Section 28 – Liability for tax

77. Section 28 provides that the buyer is liable to pay the LBTT due in respect of a chargeable transaction. Further provision about liability where there is more than one buyer can be found in sections 48 on joint buyers, paragraph 3 of schedule 17 on partnerships and paragraphs 4 to 17 of schedule 18 on trusts.

78. Defined terms used in this section:

“chargeable transaction” section 15

PART 4 – RETURNS AND PAYMENT

79. Part 4 provides for land transaction returns (Chapter 1) and for the payment of the tax (Chapter 2).

CHAPTER 1 OF PART 4 - RETURNS

Duty to make return

Section 29 – Duty to make return

80. Section 29 provides that, for every notifiable transaction, a completed land transaction return (tax return), including a self-assessment of liability to LBTT, must be made by the buyer to the Tax Authority within 30 days of the effective date of the transaction. Any tax self-assessed as payable must be paid at the same time as the return is made (see section 40(2)(a)).

81. Further particular rules concerning returns are set out in sections 48(3) (joint buyers) and 57(2) (linked transactions), paragraph 34(3) of schedule 17 (partnerships), paragraph 15 of schedule 18 (trusts) and paragraphs 10(2), 11, 21(3)(a), 23(2)(a), 30 and 32(2)(a) of schedule 19 (leases).

82. Defined terms used in this section:

“chargeable transaction”	section 15
“effective date”	section 63
“make a return”	section 38
“notifiable transaction”	section 30
“Tax Authority”	section 54

Notifiable transactions

Section 30 – Notifiable transactions

83. Section 30 sets out the general rule that all transactions are notifiable unless excluded by subsection (1). If the transaction is the acquisition of ownership in land then it is notifiable unless it is an exempt transaction under schedule 1. This may include cases where no tax is payable. However, notification is not required where the consideration for the transaction falls below a threshold of £40,000. Transactions relating to leases are notifiable unless excluded by subsection (2).

84. Transactions which do not involve the acquisition of a major interest in land are only notifiable if they are not exempt transactions and the consideration is above the nil rate band. In other words, where some tax is payable.

85. Subsection (5) confers a power on the Scottish Ministers to amend by order the notification threshold of £40,000 in subsections (1)(b), (2)(a)(i) or (b)(ii). Such an order will be subject to the negative procedure (see section 68).

86. Further particular rules concerning notification are set out in section 10(3)(a) (substantial performance without completion) and paragraphs 20(5) and 22(3) of schedule 19 (leases). Other provisions concerning notification may be contained in regulations prescribing concerning non-residential licences to occupy property (see section 53(2)(e)).

87. Defined terms used in this section:

“chargeable consideration”	section 17 and schedule 2
“land transaction”	section 3
“linked transaction”	section 57
“major interest”	section 60
“relevant rent”	paragraph 29 of schedule 17 and paragraph 9(7) of schedule 19

Adjustments and further returns

Section 31 – Return where contingency ceases or consideration ascertained

88. Section 31 provides for the amount of LBTT payable to be adjusted in cases where LBTT was paid on the basis of the rules in sections 18 or 19 because the whole or part of the consideration for the transaction was contingent, uncertain, or unascertained at the outset. If tax or additional tax is payable, or the transaction becomes notifiable, the section provides that a return must be made (and any tax must be paid at the same time - see section 40(2)(b)). Subsection (6) provides that section 31 should not apply in relation to contingent etc. rent except in the case where an uncertain rent becomes certain and this results in a tax payer having to submit a first tax return. See also section 21(9)(a) in the case of annuities and paragraph 30(2)(a) in the case of the assignation of leases.

89. Defined terms used in this section:

“make a return”	section 38
“Tax Authority”	section 54

Section 32 – Contingency ceases or consideration ascertained: less tax payable

90. Section 32 is connected with section 31 and provides for a claim to repayment if tax has been overpaid. Subsection (3) disapplies section 32 in so far as the consideration consists of rent (see schedule 19 leases). See also section 21(9)(a) in the case of annuities.

91. Defined terms used in this section:

“land transaction return”	section 65
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Section 33 – Further return where relief withdrawn

92. Section 33 applies where a relief is withdrawn under provisions in schedules 4, 5, 8, 10 11 and 13 which withdraw reliefs in certain circumstances. The buyer must make a further return because the assessment of tax chargeable will have to change (generally, with tax or more tax being payable at the same time as the further return – see section 40(2)(c)).

93. Defined terms used in this section:

“make a return” section 38

Section 34 – Return or further return in consequence of later linked transaction

94. Section 34 provides for a requirement to make a return, or a further return, where a transaction becomes notifiable, or tax or additional tax becomes payable, as a result of a later linked transaction. The buyer under the earlier transaction must deliver a return, or a further return, in respect of the earlier transaction, and pay any tax or additional tax due, within 30 days of the effective date of the later transaction (see section 40(2)(d)). See also paragraphs 23(3), 25(4) and (5), 26(2) and (4) and 28(2)(b) of schedule 19 in the case of leases.

95. Defined terms used in this section:

“effective date” section 63

“make a return” section 38

“notifiable” section 30

Example: effect of later linked transaction

Mrs Macdonald is granted an option by Mr Brown to buy his house, Mrs Macdonald pays Mr Brown £150,000 for the option and, for the house, she pays £300,000.

Using scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the LBTT due at the stage Mrs Macdonald acquires the option would be nil, as the consideration for the option falls below the nil rate tax band threshold (£180,000). Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction and she must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return is also then required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see section 57).

The LBTT payable by Mrs Macdonald will be determined by the total consideration given by her for both the grant of the option and the purchase of the house (£450,000).

Taking scenario 1 as outlined in the Financial Memorandum, the tax due in relation to the option and the house purchase would be calculated as follows:

Applying the calculations in Steps 1 and 2 of section 26(1), the total tax chargeable for both transactions would be—

$$(\pounds 180,000 \times 0\%) + (\pounds 270,000 \times 7.5\%) + (\pounds 0 \times 10\%) = \pounds 20,250$$

The tax chargeable in relation to the option (applying Steps 3 and 4) would now be—
 $£20,250 \times £150,000/£450,000 = £6,750$

And the tax chargeable in relation to the purchase would be—
 $£20,250 \times £300,000/£450,000 = £13,500$

Returns: form and content etc.

Section 35 – Form and content

96. Section 35 provides for the form of returns and the information to be included within them to be specified administratively by the Tax Authority.

97. Defined terms used in this section:

“Tax Authority” section 54

Section 36 – Declaration

98. Section 36 provides that returns must include a declaration by the buyer. Special rules as to declarations by particular types of buyer are set out in section 48(3)(b) (joint buyers), paragraph 9 of schedule 17 (partners) and paragraph 17 of schedule 18 (trustees).

99. Subsection (2) makes provision to allow agents such as solicitors to make declarations (for example using an electronic submission system) on behalf of the buyer.

100. Similarly, a declaration may be given by an attorney pursuant to a power of attorney or factory and commission, for example if a buyer is incapacitated or is out with Scotland and unable to deal with his or her affairs. The position is the same where a representative appointed by a court acts for an incapacitated person. No special provision is contained in the Act for incapacitated persons or minors. The general legal framework for assisting people who lack capacity, including the Adults with Incapacity (Scotland) Act 2000 (asp 4), will operate in relation to LBTT.

101. Subsection (3) sets out what is the “relevant date” for the purposes of the declaration being made under section 36.

102. Defined terms used in this section:

“effective date” section 63

Section 37 – Amendment

103. Section 37 allows buyers to amend their returns by notice to the Tax Authority within 12 months after the last day of the period within which the return must be made. This might be to correct typographic errors, to claim a relief that the buyer is eligible to claim but did not claim in the initial return or to claim a repayment where a contract which required a conveyance was substantially performed but then rescinded (see section 10(4) and (5)). Any tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made (see section 40(3)). Section 37 is subject to paragraph 35(4) of schedule 17 in the case of partnerships.

104. Defined terms used in this section:

“land transaction”	section 3
“Tax Authority”	section 54

Miscellaneous

Section 38 – Interpretation

105. Section 38 defines the meaning of references to “make a return”.

Section 39 – Power to amend period in which returns must be made

106. Section 39 confers a power on the Scottish Ministers to amend by order the 30 day period set out in various provisions within which returns must be made. Such an order will be subject to the negative procedure (see section 68).

CHAPTER 2 OF PART 4 –PAYMENT OF TAX

Section 40 – Payment of tax

107. Section 40 provides that LBTT is payable to the Tax Authority and deals with the due dates for payment of tax where a return is made or amended, or where tax is due following the withdrawal of a relief.

108. Tax must be paid at the same time as a return, further return or amendment of a return is made.

109. Defined terms used in this section:

“land transaction”	section 3
“land transaction return”	section 65
“Tax Authority”	section 54

Section 41 – Application to defer payment in case of contingent or uncertain consideration

110. Section 41 provides that a buyer may make an application for LBTT to be deferred. The application may be made where the whole or part of the chargeable consideration for a transaction is contingent or uncertain and where some or all of the consideration may fall more than 6 months after the effective date of the transaction. Sections 18, 19, 20, 31 and 32 contain provisions about contingent or uncertain consideration. Subsection (5) provides that section 41 does not apply so far as the consideration consists of rent (i.e. in the cases of leases) unless the Scottish Ministers provide otherwise by order. Such orders will be subject to the negative procedure (see section 68). See also section 21(9)(b) in the case of annuities.

111. Defined terms used in this section:

“chargeable consideration”	section 17 and schedule 2
“Tax Authority”	section 54

Section 42 – Regulations about applications under section 41

112. Section 42 is linked to section 41 and confers a power on the Scottish Ministers to make, by regulations, further provision about the circumstances under which an application may be made and the administrative framework to deal with the application procedure and the payments or repayments of LBTT which may result. Such regulations will be subject to the negative procedure (see section 68).

CHAPTER 3 OF PART 4 – REGISTRATION OF LAND TRANSACTIONS ETC.

Registration of land transactions etc.

Section 43 – Return to be made and tax paid before application for registration

113. Section 43 creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered by, or otherwise reflected in an entry in a register under the management and control of, the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid. “Paid” for this purpose does not necessarily mean that the Tax Authority has cleared funds in respect of the tax. The Authority may accept arrangements satisfactory for payment, such as a solicitor’s cheque or direct debit instruction.⁸ It is for the Authority to decide what will count as satisfactory. If registration proceeds but the arrangement for payment falls through the sum due is still payable to the Tax Authority.

114. This rule will have most relevance to standard conveyancing transactions where the buyer cannot obtain a real right in land until the disposition in the buyer’s favour has been registered in the Land Register. But the rule will also have relevance in relation to other registers under the management and control of the Keeper, for example the Books of Council and Session if a short non-residential lease⁹ is registered there voluntarily for preservation and execution.

115. If a document effecting or evidencing a notifiable transaction does not require to be registered and is not registered voluntarily then the link with registration does not apply.

116. Defined terms used in this section:

“land transaction return”	section 65
“notifiable transaction”	section 30
“payment”	section 40

PART 5 – APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

117. Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts.

⁸ Similar provisions exist in relation the payment of land registration fees - see section 22(1)(e)(ii) of the Land Registration etc. (Scotland) Act 2012 (asp 5)

⁹ A “short” lease is a lease of under 20 years. “Long” commercial leases i.e. those over 20 years must be registered in the Land Register. New long residential leases are generally incompetent, subject to exceptions.

Section 44 – Companies and other organisations

118. Section 44 specifies who is responsible for notifying transactions and paying LBTT in the case of companies (as defined in section 64) and unincorporated associations. It specifies which individuals within such organisations are responsible for:

- making returns under section 29,
- giving declarations under section 36, and
- paying any tax due under section 40.

119. Partnerships are dealt with in section 49 and schedule 17.

120. Defined terms used in this section:

“Tax Authority” section 54

Section 45 – Unit trust schemes

121. Section 45 provides that a unit trust scheme is treated as if it were a company for the purposes of paying LBTT when it acquires land, except in relation to group relief (schedule 10), reconstruction relief and acquisition relief (schedule 11).

122. The section also provides that issues, surrenders and transfers of units are not within the scope of LBTT.

123. Subsection (6) confers a power on the Scottish Ministers to make, by regulations, further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of the Act. Such regulations will be subject to the negative procedure (see section 68).

Section 46 – Open-ended investment companies

124. Section 46 confers a power on the Scottish Ministers to make, by regulations, further provision to ensure that the LBTT provisions apply to open-ended investment companies (OEICs) in the same way as they apply to unit trust schemes. Such regulations will be subject to the negative procedure (see section 68).

Section 47 – Residential property holding companies

125. Section 47 confers a power to the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. These provisions are aimed at the “enveloping” of residential property in a holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner.

126. A key feature of the transactions that are covered by this section, the “qualifying transaction” as set out in subsection (4), is that they will carry with them a right to occupy property owned by the company. A broad parallel can be drawn with the rules for LBTT and property investment partnerships (“PIPs”) in Part 6 of schedule 17.

127. For the purposes of this section, “residential property” includes such other kind of property as may be specified in regulations. Regulations made under this section will be subject to the affirmative procedure if they modify any Act. Otherwise, they will be subject to the negative procedure (see section 68).

128. Defined terms used in this section:

“chargeable transactions”	section 15
“land transaction”	section 3

Section 48 – Joint buyers

129. Section 48 sets out the treatment of joint buyers (other than partners and trustees, for which see schedules 17 and 18). Joint buyers, for example a couple buying a house, have joint and several liability to comply with the LBTT regime. This includes compliance with making returns under section 29 and paying any tax due under section 40. But declarations under section 36 must be made by all the buyers (without prejudice to the ability of agents such as solicitors to give declarations under subsection (2) of that section).

130. The definition of “jointly entitled” in section 64 covers both common ownership and joint ownership. See section 57(3) in the case of linked transactions.

131. Defined terms used in this section:

“jointly entitled”	section 65
“land transaction return”	section 65
“notifiable transaction”	section 30

Section 49 – Partnerships

132. Section 49 introduces schedule 17 concerning partnerships. Subsection (2) confers a power on the Scottish Ministers to make provision by regulations to modify schedule 17. This regulation making power will be subject to affirmative procedure (see section 68).

Section 50 – Trusts

133. Section 50 introduces schedule 18 concerning trusts. Subsection (2) confers a power on Scottish Ministers to make provision by regulations to modify schedule 18. This regulation making power will be subject to affirmative procedure (see section 68).

Section 51 – Persons acting in a representative capacity etc.

134. Section 51 concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations relating to LBTT arising from a land transaction entered into by the deceased person before he or she died. The section also concerns receivers appointed by a UK court. The person acting in a representative capacity is responsible for making returns under section 29, giving declarations under section 36 and paying any tax due under section 40.

135. No special provision is contained in the Act for incapacitated persons or minors. The general legal framework for assisting people who lack capacity, including the Adults with Incapacity (Scotland) Act 2000 (asp 4), will operate in relation to LBTT. For the position of attorneys see section 36.

136. Defined terms used in this section:

“land transaction” section 3

PART 6 – APPLICATION OF ACT TO LEASES AND LICENCES

Section 52 – Application of this Act to leases

137. Section 52 introduces schedule 19 concerning leases. See also paragraph 3(1)(a) of schedule 1, which exempts the grant, assignation or renunciation of most leases of residential property. Subsection (2) provides that the Scottish Ministers may, by regulations, modify schedule 19. Such regulations will be subject to the affirmative procedure (see section 68).

Section 53 – Application of this Act to licences

138. Section 53 confers a power on the Scottish Ministers to prescribe in regulations particular types of non-residential licences to occupy property which for the purposes of this Act are to be treated as land transactions and will therefore be subject to the tax. Such regulations will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 68).

139. See also paragraph 3(1)(b) of schedule 1, which exempts the grant, assignation or renunciation of licences other than prescribed non-residential licences.

PART 7 – GENERAL AND INTERPRETATION

140. Part 7 contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Act.

The Tax Authority

Section 54 – The Tax Authority

141. Section 54 defines, for the purposes of the Act, the “Tax Authority” as the Scottish Ministers, although in practice, the tax authority is expected to be a new body, Revenue Scotland. The Tax Authority is responsible for the collection and management of LBTT (see section 1(3)) and accordingly returns must be made to the Tax Authority (see section 29) and tax must be paid to the Tax Authority (see section 40).

Section 55 – Delegation of functions to Keeper

142. Section 55 allows for the delegation of Tax Authority functions to the Keeper of the Registers of Scotland.

Section 56 – Review and appeal

143. Section 56 confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions.

Section 57 – Linked transactions

144. Section 58 defines “linked transactions”. The section provides that linked transactions can be reported on a single return and imports the rules relating to joint buyers (section 48) if linked transactions with joint buyers are reported on a single return.

145. Defined terms used in this section:

“connected persons” section 58

Example: Linked transactions

A property investor agrees to buy three new houses from a builder. The builder offers a special price for the houses because the investor agrees in advance to buy three. It is agreed that the buyer will pay £200,000 for each house once it is complete. The purchases take place in January 2017, February 2017 and March 2018.

The three transactions are linked transactions because they are between the same buyer and seller and form part of a single arrangement. (The length of time between transactions does not in itself affect whether the transactions are linked.)

Separate land transaction returns will be required under section 29 in relation to each transaction because they do not take place on the same date and further returns may be required under section 34 in relation to earlier transactions. See section 26 for the calculation of the amount of tax due.

Connected persons

Section 58 – Connected persons

146. Section 58 defines “connected persons” by reference to section 1122 of the Corporation Tax Act 2010 (c.4) and sets out the provisions in the Act that refer to “connected persons”. The meaning of “connected persons” is modified in schedule 17 by paragraph 49 of that schedule.

Interpretation

Section 59 – Meaning of “residential property”

147. Section 59 defines “residential property”. Pursuant to section 24, bands and rates for LBTT must be set separately for residential property transactions and non-residential property transactions. If property is not residential property, it is non-residential property (examples of which are commercial and agricultural property). The power in subsection (9) allows for the rules in section 59 to be amended by order so as to change what counts as residential property. Orders will be subject to the affirmative procedure (see section 68).

148. Defined terms used in this section:

“major interest” section 59

Section 60 – Meaning of “major interest” in land

149. Section 60 defines “major interest”, which has particular relevance to the notification rules in section 30. Major interest means ownership of land or a tenant’s right. Less common interests in land such as real burdens, servitudes and options are not major interests. Now that the feudal system of land tenure has been abolished pursuant to the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5), the interest of a feudal superior is no longer an interest in land recognised in the law of Scotland.

Section 61 – Meaning of “subject-matter” and “main subject-matter”

150. Section 61 provides that “subject-matter” includes the main subject-matter of the transaction and any interest or right pertaining to it. So the acquisition of the ownership of land and the connected right to enforce a real burden over neighbouring property are not to be dealt with as two separate transactions.

Section 62 – Meaning of “market value”

151. Section 62 defines “market value” by reference to UK Capital Gains Tax rules. This is relevant to several provisions in the Act, including section 22, paragraphs 5(4) and (6), 7, 8(4) and 13 of schedule 2 (chargeable consideration), paragraphs 3, 6, 10 and 22 of schedule 4 (relief for certain acquisitions of residential property), paragraph 15 of schedule 7 (alternative property finance relief), paragraphs 11 and 18 of schedule 8 (relief for alternative finance investment bonds), paragraphs 15, 17 and 25 of schedule 10 (group relief), paragraph 14 of schedule 11 (reconstruction relief and acquisition relief) and in paragraphs 13, 17, 18, 21, 28, 32 and 35 of schedule 17 (partnerships).

Section 63 – Meaning of “effective date” of a transaction

152. Section 63 defines “effective date”. This date is the tax point that determines when liability to tax and notification obligations arise. In most cases the effective date will be when the buyer pays the price and settles the transaction. Special rules apply for contracts that are substantially performed before completion, for the grant of options and rights of pre-emption and for agreements for lease which are substantially performed. The power in subsection (1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date. Such regulations will be subject to the negative procedure (see section 68).

Section 64 – Meaning of “completion”

153. Section 64 defines “completion”. Completion generally means settlement. For instance, in the case of a routine house purchase, that would be the point at which the buyer has paid the purchase price and receives a signed disposition (the “conveyance”) and the keys to the house. In this case, the point of completion is earlier than the point of registration of the disposition in the Land Register, at which point the buyer obtains the real right in land.¹⁰ The usual rule about completion/settlement would not always work effectively in the particular case of leases, so completion in that context means when the lease is executed by the parties or otherwise constituted.

Section 65– General interpretation

154. Section 65 sets out certain definitions used in the Act. In particular the section provides broad, inclusive definitions for “contract” and “conveyance”. Whilst for the routine conveyance of a real right in land the terms “missives” and “disposition” would be common, the concept of “chargeable interest” in section 4 is very broad and covers interests other than real rights in land; therefore it is appropriate to use broader terminology. A contract or conveyance might, for example, be subject to the law of a jurisdiction other than Scotland (see section 1(2)). These definitions are sufficiently broad to accommodate electronic documents as referred to in Part 10 of the Land Registration etc. (Scotland) Act 2012 (asp 5).

¹⁰ As electronic conveyancing practices become more common the process of delivering dispositions, paying tax and obtaining registration will become more streamlined. The “effective date” may then be the same date as the date of registration.

Section 66 – Index of defined expressions

155. Section 66 introduces schedule 20 which provides an index to definitions used in the Act.

PART 8 – FINAL PROVISIONS

156. Part 8 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 67 – Ancillary provision

157. Section 67 empowers the Scottish Ministers to make ancillary provision by order concerning LBTT. Orders under this section will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 68).

Subordinate legislation

Section 68 – Subordinate legislation

158. Section 68 sets out general provisions for subordinate legislation under the Act.

Crown application

Section 69 – Crown application

159. Section 69 provides that the Act does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Act otherwise applies to the Crown.

160. For the position of Crown bodies as buyers in land transactions see paragraph 2 of schedule 1.

Commencement and short title

Section 70 – Commencement

161. Section 70 provides for the commencement of the Act.

Section 71 – Short title

162. Section 71 sets out the short title of the Act by which it may be cited for legal purposes.

Schedule 1 – Exempt transactions

163. This schedule is introduced by section 16 and lists seven types of land transaction which are exempt from LBTT. Where a land transaction is exempt under this schedule, section 30(1)(a) provides that no land transaction return is required. Paragraph 8 provides Scottish Ministers with a power, by regulations, to add to the list of exemptions, modify an exemption or remove an exemption. Regulations under paragraph 8 will be subject to the affirmative procedure (see section 67).

164. The first exemption is where there is no chargeable consideration (paragraph 1 of schedule 1). However, this exemption is subject to various provisions across the Act relating to market value. Section 62 of the Act provides that market value is to be determined by reference to sections 272 to 274 of the Taxation of Chargeable Gains Act 1992. There are several references to market value in the Act (see the explanatory note for section 62). In particular, market value is relevant to the formula that is used to calculate the chargeable consideration for transfers of chargeable interests from a partner to a partnership (paragraph 13 of schedule 17) and for transfers of a chargeable interest from a partnership to a partner (paragraph 21 of schedule 17).

165. The second exemption covers Crown bodies listed in section 80J of the Scotland Act 1998, who may not be liable to pay LBTT (paragraph 2 of schedule 1).

166. The third exemption covers leases and licences of residential property (paragraph 3 of schedule 1). Because generally a lease of residential property over 20 years in duration may not be granted in Scotland, this exemption covers leases in Scotland that would be unlikely, because of their short duration, to attract tax. For the purposes of sub-paragraph (1)(a) a transaction relating to a lease of a residential property is exempt only where the main subject-matter consists entirely of an interest in land that is residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

167. One category of lease that is not exempt is “qualifying leases” under the Long Leases (Scotland) Act 2012. Pursuant to section 1 of that Act a residential lease is “qualifying” if:

- it is registered in the Register of Sasines or the Land Register;
- it was granted for more than 175 years;
- it has more than 100 years left to run from the appointed day laid down under the Act; and
- the annual rent does not exceed £100.

168. A licence to occupy property (which is not prescribed as a non-residential licence within the meaning of section 53(1)) is also an exempt transaction for the purposes of this schedule.

169. The fourth and fifth exemptions cover transactions if effected respectively in matrimonial break-up proceedings and proceedings for dissolution of a civil partnership (paragraphs 4 and 5 of schedule 1).

170. The sixth and seventh exemptions cover transactions if effected in implementation of wills or the variation of testamentary dispositions provided there is no consideration (paragraphs 6 and 7 of schedule 1).

Schedule 2 – Chargeable consideration

171. This schedule, which is introduced by section 17, sets out the provisions for determining the amount of the chargeable consideration in relation to a land transaction.

172. Paragraph 1 defines the chargeable consideration for the transaction to be any consideration given in money or money's worth for the subject-matter of the transaction, directly or indirectly by the buyer or a connected party.

173. Paragraph 2 clarifies that any VAT due on the consideration is included as chargeable consideration. But where the seller has the option to charge VAT but has not actually made an election to do so by the effective date of the transaction, then any VAT that subsequently becomes payable does not count as chargeable consideration.

174. Paragraph 3 ensures that, where some or all of the consideration is to be paid at a later date, it is the amount agreed that comprises chargeable consideration, and no discount is available for the delay in payment.

175. Paragraph 4 provides for just and reasonable apportionment of consideration where the subject-matter of a transaction does not just consist of a chargeable interest (for example, where a business such as a public house, hotel or care home is sold as a going concern and the consideration includes an element of value attributed to "goodwill") or where the transaction is part of a bargain including other transactions. Another scenario in which paragraph 4 is relevant is when a land transaction involves a contract for the sale of land and an agreement for construction of buildings on the land. If the land transaction comprises two severable agreements, the cost of the building works can be discounted when determining the chargeable consideration. If there is only one agreement, then the chargeable consideration will include some or all of the costs of the building, and paragraph 4 provides that the apportionment between the cost of the land and the cost of the development works must be just and reasonable.

176. Paragraph 5 determines how the chargeable consideration for exchanges of interest in land should be calculated. The calculation will depend on whether the subject-matter of any of the transactions is a major interest in land as defined in section 59. If this is the case, where a single relevant acquisition or two or more relevant acquisitions are made then the chargeable consideration for each relevant acquisition will be the greater of the market value of the subject-matter of the acquisition, or if the acquisition is the grant of a lease, the rent and the amount which would be the chargeable consideration for the acquisition if this paragraph was not applied.

177. If the subject-matter of none of the relevant transactions is a major interest in land then where a single relevant acquisition is made in consideration of one or more relevant disposals, in calculating the chargeable consideration for each relevant acquisition, the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax. Where two or more relevant acquisitions are made in consideration of one or more relevant disposals, in calculating the chargeable consideration for each relevant acquisition the appropriate proportion of the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax. Sub-paragraph (6) sets out the formula for calculating the appropriate proportion. This paragraph is subject to paragraph 6 (*Partition etc.: disregard of existing interest*). This paragraph does not apply in a case to which paragraph 17 (*Arrangements involving public or educational bodies*) applies.

178. Paragraph 6 provides that where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.

179. Paragraph 7 provides a general rule that any non-monetary consideration is to be valued at its market value, unless provided otherwise. Non-monetary consideration comprises all consideration except money and debt.

180. Paragraph 8 ensures that the assumption or release of debt by the buyer counts as chargeable consideration for a transaction, but that the amount so chargeable cannot exceed the market value of the subject-matter of the transaction. The assumption of debt for the purposes of this paragraph does not include any mortgage or similar security taken out in order to acquire the property.

181. Paragraph 9 sets out how the chargeable consideration will be calculated for transactions where the exemptions provided for at paragraph 6 (assents and appropriations by personal representatives) and paragraph 7 (variation of testamentary dispositions etc.) of schedule 1 (exempt transactions) do not apply because of paragraph 6(2) and paragraph 7(3) of that schedule

182. Paragraph 10 provides for consideration in a foreign currency to be converted into sterling on the effective date of the transaction.

183. Paragraph 11 sets out how to calculate chargeable consideration where the buyer or the seller carries out works of construction, improvement or repair of a building or other structure. Where those works are carried out after the effective date on land acquired or to be acquired by the buyer under the transaction (or on any of the buyer's other land) and it is not a condition of the transaction that the seller carry them out on the buyer's behalf, then the works do not comprise chargeable consideration. In other cases they do, at their open market value. Where by virtue of section 10(3) (substantial performance of contract without completion) there are two notifiable transactions, the condition in sub-paragraph (2) is treated as being met in relation to the second transaction if it is met in relation to the first. This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

184. Paragraph 12 sets out that where the buyer provides services (other than works of construction, improvement or repair of a building or other structure), the chargeable consideration is the open market value of those services. This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

185. Paragraph 13 deals with the situation where the seller is an employer and the buyer the employee of that employer. The chargeable consideration is not less than the market value of the subject-matter on the effective date of the transaction.

186. Paragraph 14 ensures that indemnities given by the buyer to the seller for any on-going liabilities relating to the land do not count as chargeable consideration.

187. Paragraph 15 ensures that where a buyer in a land transaction is required to pay any Inheritance Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

188. Paragraph 16 ensures that where a buyer in a land transaction is required to pay any Capital Gains Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

189. Paragraph 17 applies in the situation where certain public or educational bodies sell or grant a long lease to another party over land/property and then the other party leases the land back to the public or educational body. The public or educational body is not liable for LBTT because the leaseback by the public or educational body and any money for works or services are not considered as part of the chargeable consideration. The other party also does not have to pay LBTT based on the market value of the land/property that party buys or leases, so the party only has to pay it on the actual cash premium or rent the party pays the public or educational body in exchange for entering into the deal. Sub-paragraph (2) lists the qualifying bodies. Sub-paragraph (3) confers a power on the Scottish Ministers to modify, by order, the list of qualifying bodies set out at sub-paragraph (2). Orders under paragraph 17 will be subject to the negative procedure (see section 67).

Schedule 3 - Sale and leaseback relief

190. This schedule, introduced by section 27, provides complete relief from LBTT for the leaseback part of the transaction where there is a sale and leaseback arrangement. The relief is available where the only other consideration for the sale element, other than the leaseback, is money or money equivalent. Where the buyer and seller are both companies, the leaseback will qualify for the relief only where they are not members of the same group.

Schedule 4 – Relief for certain acquisitions of residential property

191. Paragraph 1 of this schedule, introduced by section 27, provides an overview of Parts 2 to 6 of this schedule.

192. Paragraphs 2 and 3 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a house-building company from an individual who is also buying a new house from the company. Paragraph 4 sets out the qualifying conditions for the full and partial relief.

193. Paragraphs 5 and 6 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual who is buying a new house from a house-building company. Paragraphs 7 and 8 set out the qualifying conditions for the relief.

194. Paragraphs 9 and 10 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual where a chain of transactions involving the individual breaks down. Paragraphs 11 and 12 set out the qualifying conditions for the relief.

195. Paragraphs 13 to 17 set out the circumstances in which relief under this schedule may be withdrawn. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

196. Part 6 defines various terms used in this schedule.

Schedule 5 – Multiple Dwellings Relief

197. This schedule, introduced by section 27, provides relief from LBTT in relation to purchases of multiple dwellings to ensure that the single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands.

198. The relief applies in respect of single transactions (other than a transaction to which schedule 19 (leases) applies) involving multiple dwellings and multiple linked transactions (other than a transaction to which schedule 19 (leases) applies) which, taken together, involve multiple dwellings.

199. The calculation of the relief is set out in Part 4. Paragraph 10 sets out the formula for calculating the amount of tax chargeable in relation to a relevant transaction $(DT \times ND) + RT$. Paragraphs 13 and 14 set out how to calculate DT (tax due in relation to a dwelling) and RT (tax due in relation to remaining property) respectively. ND is the number of dwellings that are, or are part of, the main subject-matter of the transaction. This involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

200. It is possible that a number of dwellings bought in a single transaction may have an average price that falls in the nil rate tax band, in which case 100 per cent relief would be provided and no tax would be due. Paragraph 11 provides that where the relief, as calculated under paragraph 10, would result in the tax chargeable in relation to the transaction being less than “the minimum prescribed amount” then the tax chargeable will be the minimum prescribed amount. Therefore, in order to determine whether tax chargeable in the land transaction is at least the minimum prescribed amount, it is necessary to calculate the tax that would be due in the absence of the relief.

201. Paragraph 12 enables the Scottish Ministers to prescribe by order, subject to the negative procedure (see section 68), “the minimum prescribed amount”.

202. Part 5 deals with the withdrawal of the relief. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 6 – Relief for certain acquisitions by Registered Social Landlords

203. This schedule, introduced by section 27, covers provision for relief from LBTT for certain acquisitions by registered social landlords. Paragraph 2 sets out the qualifying conditions for this relief.

Schedule 7 – Alternative property finance relief

204. This schedule, introduced by section 27, makes provision for relief from LBTT in the case of certain land transactions connected to alternative property finance arrangements. Islamic (or Shari’a) law prohibits transactions that involve interest, gambling, speculation or unethical investment, therefore alternative property finance arrangements allow for compliance with Shari’a law.

205. The most pronounced difference between alternative property finance arrangements and existing equivalent products is the prohibition on interest. For people wishing to adhere to Shari’a law, this rules out financial products that result in either payment or receipt of interest, such as conventional deposit accounts and loans. However, Shari’a law does not prohibit the making of a return on capital if the provider of the capital is willing to share in the risks of a productive enterprise. Thus profit and loss sharing arrangements are considered acceptable, provided there is shared risk.

206. Alternative property finance arrangements are structured using contracts, or combinations of contracts, that satisfy the requirements of Shari’a law. Financial institutions in the UK offer Shari’a compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

207. Part 2 of the schedule details a series of reliefs from LBTT for the granting of particular transactions, all of which are designed to avoid the charging or payment of interest. Paragraphs 2 to 6 cover arrangements where a financial institution buys an interest in land and then leases it to a person where the person has a right to acquire the land from the institution or have it transferred to another person (or to another financial institution).

208. The “first transaction” that occurs as part of these arrangements (the purchase) will usually be chargeable to LBTT (unless it is a transfer from the person to the institution or from another financial institution to the institution – all effectively being re-mortgaging arrangements). The “second transaction” – the lease to the person – will generally be relieved, provided the provisions of the Act in relation to the first transaction have been complied with. The “third transaction” – the transfer that the person can require the financial institution to make – will also be relieved provided it is a transfer to the person and provided the other conditions in paragraph 5 are met. Paragraph 6 states that sections 12 and 14 do not apply to the agreement mentioned in paragraph 2(c) so that the person’s right to require the institution to transfer the interest in land is not treated as an option and so that the agreement, under which the person can require the institution to transfer the interest, is not treated as substantially performed unless and until the third transaction (the transfer to the person) takes place.

209. Paragraphs 7 to 12 cover a different set of arrangements, where the financial institution and the person acquire an interest in land in common, with the person having an exclusive right to occupy the land and with the person and the institution agreeing to transfer the interest to the person (usually in a series of transactions). As before, the “first transaction” – the purchase – will usually be chargeable to LBTT. Paragraph 8 specifies the conditions under which the first transaction is relieved, namely where there is a refinancing arrangement. Paragraph 9 provides for relief for the “second transaction” – the right to occupy – provided the provisions of the Act in relation to the first transaction are complied with. Paragraph 10 allows for relief for “further transactions” – transfers to the person from the financial institution. Paragraph 11 makes similar provision as paragraph 6. Paragraph 12 states the notification requirement of this relief.

210. Paragraphs 13 to 15 cover a third set of arrangements, where the financial institution purchases an interest in land, sells it to the person and, in return, the person grants the institution a standard security over the land. Usually LBTT will be due on the “first transaction” – the purchase by the institution. But paragraph 14 details the specific circumstances in which the first transaction is also exempt from LBTT (i.e. where the acquisition is part of a refinancing arrangement). Paragraph 15 provides for relief from LBTT for the “second transaction” – the sale to the person – where the provisions of the Act in relation to the first transaction are complied with. The grant of the standard security by the person to the institution is not a land transaction, as security interests are exempt interests (see section 5).

211. Part 3 deals with transactions connected to alternative property finance arrangements which are not relieved from LBTT. Paragraph 16 provides that relief under this schedule is not available where group, reconstruction or acquisition relief is available in relation to the first transaction. Paragraphs 17 to 20 contain anti-avoidance provisions and provide that no

relief is available under Part 2 where the arrangements involve the acquisition by the person of control of the financial institution.

212. Part 4 provides that an interest held by a financial institution as a result of the “first transaction” within the meaning of paragraph 2(a) or 7(a) is an “exempt interest” for the purposes of LBTT. Paragraph 22 provides that the interest will cease to be an exempt interest if certain specified circumstances prevail. Paragraph 23 provides that the interest held by the financial institution is not an exempt interest if the “first transaction” is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs). Paragraph 24 provides that the exemption provided by paragraph 21 does not make an interest exempt in the case of certain specified transactions.

213. Part 5 defines a number of terms for the purposes of this schedule.

Schedule 8 – Relief for alternative finance investment bonds

214. This schedule is introduced by section 27 and makes provision for relief from LBTT for land transactions undertaken in relation to the issue of alternative finance investment bonds (“AFIBs”). In a normal securitisation the investor does not have a direct ownership in the underlying asset but merely an interest-bearing certificate. With AFIBs, however, the investors own part of the underlying asset. This necessary change in ownership of the underlying asset may involve LBTT issues. Part 1 of the schedule provides an overview of the schedule and at paragraph 2 sets out the meaning of AFIBs in this schedule. Paragraph 3 defines a number of terms for the purposes of this schedule.

215. Part 2 of the schedule makes provision for the issue, transfer and redemption of rights under a bond not to be treated as a chargeable transaction for the purposes of LBTT. Specifically at paragraph 4, the bond holder under an AFIB is not treated as having an interest in the bond assets and the bond issuer under such a bond is not treated as a trustee of the bond assets. Paragraph 5(1) states that the tax treatment of AFIBs outlined at paragraph 4 is not available where a bond holder, or a group of connected bond-holders, acquire control of the underlying asset. Paragraph 5(2) sets out the circumstances in which it may be possible for a single bond-holder or a group of connected bond-holders, to acquire control of the underlying asset.

216. Paragraph 6 outlines two instances where paragraph 5(1) does not apply. The first is where, at the time the rights under the bond were acquired, a bond holder, or all of a group of connected bondholders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise control. The second instance is available for persons acting as underwriters of the bond issuance providing they do not exercise control and management of the bond asset.

217. Part 3 of the schedule introduces 7 conditions (A to G) for the application of paragraphs 15 to 21 of the schedule to provide relief from LBTT. Paragraph 8 provides condition A. This is that a person (“P”) transfers a qualifying interest in land to another person (“Q”) and P and Q agree that at a later time (when Q ceases to hold that interest as a

bond asset in relation to an AFIB of which Q is the issuer) Q will transfer that interest to P. The transfer of the qualifying interest to Q is described in the schedule as “the first transaction”. Paragraph 9 provides condition B. This is that Q acts as bond issuer in relation to an AFIB, and holds the interest in land as a bond asset. Paragraph 10 provides condition C. This is that Q and P enter into a leaseback agreement to generate income and gains for the AFIB. Sub-paragraph (1)(b) provides that the Scottish Ministers may, by regulations extend the scope of condition C to include financing structures other than those involving a sale and leaseback. Sub-paragraph (2) explains what is meant by “leaseback arrangement” in condition C. This is that Q grants P a lease or sub-lease out of the interest acquired in the first transaction.

218. Paragraph 11 provides condition D. This is that, the bond issuer (Q) is required to provide prescribed evidence that a satisfactory standard security has been entered in the Land Register of Scotland. The evidence needs to be provided to the Tax Authority within 120 days of the first transaction. “Prescribed evidence” is evidence prescribed by regulations made by the Scottish Ministers. Sub-paragraph (2) provides rules relating to the security over the land referred to in sub-paragraph (1). Sub-paragraph (3)(a) provides that the amount of the charge is to include the amount of the LBTT that would be due on the market value of the transfer of the interest at the date of transfer. Sub-paragraph 3(b) provides that the charge also includes any interest and penalties that would be payable if the tax had been due (but not paid) on the first transactions.

219. Paragraph 12 provides condition E. This is that over the life of the AFIB, Q receives payments of capital of at least 60 per cent of the value of the interest in land at the time of the first transaction. The purpose of condition D is to ensure that the main use of the interest in land is as a bond asset. Paragraph 13 provides condition F. This is that throughout the life of the AFIB, Q holds the interest in land as a bond asset. Paragraph 14 provides condition G. This is that at the termination of the bond, when the interest in land ceases to be a bond asset, the interest is transferred to P by Q (this transfer is described as “the second transaction”), and that the second transaction takes place no later than 10 years after the first transaction. This effectively puts a term of 10 years on the AFIB. Sub-paragraph (2) provides that the period of 10 years referred to in condition G may be altered by the Scottish Ministers by way of regulations.

220. Part 4 of the schedule makes provision for relief from LBTT for certain transactions. Paragraph 15(1) sets out the requirements for relief from LBTT on the first transaction. These are that the interest acquired is of land in Scotland and that each of the conditions A to C are met within 30 days of the date of the transfer of interest in land from P to Q. Paragraph 15(2)(a) provides that the relief is subject to conditions relating to asset substitution at paragraphs 21 and 22. Paragraph 15(2)(b) provides that relief on the first transaction is also subject to the provisions of paragraph 24 which provides that relief on the first transaction is not available where a bond-holder, or group of connected bond-holders, acquires control of the underlying asset.

221. Paragraph 16 details the circumstances where the relief on the first transaction will be withdrawn. Sub-paragraph (1)(a) provides for the first circumstance, where the asset is returned to P but the requirement to issue bonds to the value of 60 per cent of the asset is not satisfied and the asset is not held as a bond asset until the termination of the bond. Sub-

paragraph (1)(b) provides that the relief is also withdrawn where a period of 10 years has elapsed since the first transaction without conditions E and F having been satisfied. Sub-paragraph (1)(c) provides that relief is also withdrawn if at any time it becomes evident that any of conditions E to G cannot or will not be met. Sub-paragraph (2) provides that relief is withdrawn where Q fails to provide prescribed evidence to the Tax Authority that they have registered a standard security within 120 days of the transaction (see paragraph 212 above). Paragraph 17 provides that where relief is withdrawn under paragraph 16 then the tax chargeable is calculated in accordance with paragraph 18. Paragraph 18 provides that the amount of LBTT chargeable is the tax that would have been charged on the market value of the subject-matter of the transaction or if the acquisition was a lease, the rent. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

222. Paragraph 19 provides relief from LBTT on the transfer of the land asset from Q back to P. Sub-paragraph (1) provides that this second transaction is exempt from charge if conditions A to G described above have been met and the provisions of this Act in relation to the first transaction have been complied with. Sub-paragraph (2)(a) provides that the relief is subject to conditions relating to asset substitution at paragraphs 21 and 22. Sub-paragraph (2)(b) provides that relief is not available in respect of the second transaction if paragraph 24 applies because a bond-holder or a group of connected bond-holders acquires control of the underlying assets. Paragraph 20 provides that if following the transfer of the land asset back from Q to P, Q provides prescribed evidence to the Tax Authority that conditions A to C and E to G have been met then the land ceases to be subject to the security registered in pursuance of condition D.

223. Part 5 covers a number of supplementary provisions. Paragraph 21 sets out rules for the case where the interests in land that was subject of the first transaction ceases to be a bond asset (before the end of the bond) and is replaced as bond asset by an interest in other land. These rules allow such a substitution of bond assets to take place without disturbing the reliefs under paragraphs 15 to 20. Sub-paragraph (1) lists the circumstances in which this paragraph applies. Sub-paragraph (2) provides modifications to the application of paragraphs 15 to 20 to the original land and the replacement land.

224. The modifications in respect of the original land are in sub-paragraph (3), and those in respect of the replacement land in sub-paragraph (4). Sub-paragraph (3) provides that condition F (the requirement that Q should hold the original land as a bond asset throughout the life of the bond) need not be met in relation to the original land, provided that conditions A, B, C, F and G (taking account of the modifications made by sub-paragraph (4)) are met in relation to the replacement land. Sub-paragraph (4) provides that following the substitution of the replacement land (a) condition E continues to apply by reference to the value of the original land at the time of the first transaction relating to that land (so that the amount of capital that Q must receive to satisfy condition E is unchanged by the substitution of land); and (b) the ten year time limit for condition G continues to apply by reference to the first transaction relating to the original land.

225. Sub-paragraph (5) provides that, if the replacement land is in Scotland, the security on the original land will be discharged when, Q provides the Tax Authority with the prescribed evidence that the original land has been returned to P and a security has been registered in

relation to the replacement land. Sub-paragraph (6) provides that, if the replacement land is not in Scotland, the security on the original land will be discharged when Q provides the Tax Authority with the prescribed evidence that all of conditions A to C are met for the replacement land and that the original land had been returned to the original owner. Paragraph 22 provides for the rules in relation to asset substitution to apply where there is more than one substitution of land during the lifetime of a bond.

226. Paragraph 23 provides that, where a security on the land is discharged because the land has ceased to be a bond asset, either at the expiration of the bond with all of conditions A to G having been met, or because of a substitution of land to which paragraph 21 applies, the Tax Authority must take the necessary action to remove the security from the land register. This must be done within 30 days of Q providing the prescribed evidence that enables the security to be removed.

227. Paragraph 24 provides rules for the situation where a bond-holder, or a group of connected bond-holders, acquires control of the bond assets. The circumstances in which the paragraph applies are the same as for paragraphs 5 and 6 of the schedule.

228. Paragraph 25 provides that paragraph 24 does not prevent relief being available in 2 instances. Sub-paragraph (2) provides that where, at the time the rights under the bond were acquired, a bond-holder, or all of a group of connected bond-holders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise such control. Sub-paragraph (3) provides for a second exclusion for persons acting as underwriters of the bond issuance providing they do not exercise the right of control and management of the bond asset.

229. Paragraph 26 provides that the reliefs under paragraphs 15 and 19 (extended where appropriate by paragraph 21 in relation to substitutions of land) are only available where the arrangements are (a) entered into for genuine commercial reasons; and (b) are not part of arrangements whose main purpose, or one of whose main purposes is the avoidance of liability to pay the tax.

Schedule 9 - Crofting community right to buy relief

230. This schedule, introduced by section 27, relates to transactions made by virtue of the "crofting community right to buy", which enables crofting communities to apply to the Scottish Ministers for the right to buy crofting land where they live and work from the landlord who owns it. Paragraph 1 describes the type of transaction to which this schedule applies. Paragraph 2 describes the tax chargeable in relation to the transaction as the prescribed portion of the tax that would be payable but for this paragraph. Paragraph 3 provides for the prescribed portion of the tax to be prescribed by the Scottish Ministers by order. Orders will be subject to negative procedure (see section 67). Paragraph 4 defines "crofting community right to buy" for the purposes of this schedule.

Schedule 10 - Group relief

231. The schedule is introduced by section 27. Part 2 provides for relief from LBTT for the intra-group transfer of property held by companies if the relevant conditions are met. Part 3 provides for when relief is wholly or partially withdrawn and Part 4 contains interpretation provisions.

232. Paragraph 2 provides the relief from LBTT for acquisitions of property by companies within groups.

233. Companies are defined as members of a group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company (paragraph 43). Company means a body corporate and therefore as such includes a limited liability partnership. Such a member of a group having no share capital cannot be a subsidiary, only a parent company. Paragraphs 44 and 45 further elaborate that ownership means beneficial ownership of the share capital and can include indirect ownership through another company or companies. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

234. The schedule sets out in paragraphs 3 to 8 specific anti-avoidance rules (with exceptions in paragraphs 9 and 10) which restrict the availability of group relief. Availability is restricted where different types of arrangements are entered into relating to control of the companies, the provision of consideration from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available. Finally, in terms of paragraph 8, relief is unavailable if the transaction itself is not for genuine commercial reasons, or forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to LBTT.

235. Paragraphs 13 to 19 cover the situation where group relief is withdrawn. It is withdrawn if, following a successful claim for group relief, the buyer ceases to be a member of the same group as the seller within three years of the date of the transaction (or under arrangements made during the three-year period).

236. Paragraphs 20 to 31 provide exceptions from the withdrawal of group relief in certain cases where companies leave groups, and related anti-avoidance provisions. These are:

- where the de-grouping arises because of anything done in the course of winding up the seller,
- where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 (c.41) applies (subject to exceptions) and the buyer leaves the group as a result,
- the buyer ceases to be a member of the same group as the seller in the context of the demutualisation of an insurance company, or
- where the seller leaves the group.

237. Paragraphs 32 to 40 provide for withdrawal of relief in certain cases involving successive transactions. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn. Schedule 10 is modified by paragraphs 38 and 39 of schedule 17 in the case of partnerships.

Schedule 11 – Reconstruction relief and acquisition relief

238. This schedule, introduced by section 27, provides for relief from LBTT for land transactions connected to the transfer of the whole or part of an undertaking by a company where the consideration is non-redeemable shares. Relief from all LBTT due is provided if the transfer of the undertaking, including any land held by it, is under a scheme of reconstruction in exchange for non-redeemable shares (“Reconstruction relief”). A key condition is that shareholdings remain the same after the reconstruction. As with group relief, the reconstruction must be for a genuine commercial purpose and must not form part of any arrangement to avoid liability to tax (paragraphs 2 to 5).

239. Separately, under “Acquisition relief” (paragraphs 6 to 10), where a land transaction forms part of the transfer of an undertaking acquired for consideration of shares (but without the shareholdings having to remain the same), the amount of LBTT chargeable is reduced to a proportion (to be prescribed by the Scottish Ministers by order) of the tax that otherwise would be chargeable but for the relief. Orders will be subject to the negative procedure (see section 67).

240. Paragraphs 11 to 14 provide for withdrawal of this relief where control of the acquiring company changes within three years, beginning with the effective date of the transaction (or there are arrangements under which control will change after three years which are entered into within the three-year period).

241. Paragraphs 15 to 22 set out situations where reconstruction relief or acquisition relief is not withdrawn despite control of the acquiring company changing. They include:

- where control changes as a result of a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons,
- where control changes as a result of a share transaction in connection with transactions which vary dispositions following death,
- where control changes as result of an exempt intra-group transfer of shares (defined in paragraph 36),
- where control changes as a result of a transfer to another company to which share acquisition relief applies (defined in paragraph 34), and
- where control changes as a result of a loan creditor becoming or ceasing to be treated as having control.

242. Paragraphs 23 to 29 provide for the withdrawal of reconstruction relief or acquisition relief on a subsequent non-exempt transfer and where share acquisition relief applies but control of the company subsequently changes. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 12 – Relief for incorporation of limited liability partnership

243. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT where land is transferred to a limited liability partnership. The relief is available only when a chargeable interest is being transferred as a result of incorporation of a limited liability partnership for the first time. Previously the chargeable interest would have been held by either an ordinary partnership within the Partnership Act 1890 or a limited partnership registered under the Limited Partnerships Act 2000 to a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002. Paragraph 2 sets out the qualifying conditions that must be satisfied to attract the relief, including the requirement that the transferor must comprise those that are to be members of the limited liability partnership and nobody else. Paragraph 3 defines “limited liability partnership” and “relevant time” for the purposes of this schedule.

Schedule 13 – Charities relief

244. This schedule, introduced by section 27, provides relief from LBTT for charities and charitable trusts. For the purposes of this schedule a charity is defined at paragraph 15(1) as a body registered in the Scottish Charity Register or a body which is established under the law of a relevant territory, managed or controlled mainly or wholly out with Scotland and which meets at least one of the conditions set out in subsection (2). The conditions are: (i) that the body is registered in a register corresponding to the Scottish Charity Register, (ii) the body’s purposes consist only of one or more of the charitable purposes. Sub-paragraph (3) provides that a “relevant territory” is England and Wales, Northern Ireland, a member State of the European Union other than the United Kingdom or a territory specified in regulations made by the Scottish Ministers. Paragraph 16 provides that in this schedule “charitable purposes” has the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

245. Paragraph 1 provides for relief from LBTT if the buyer is a charity, provided that the two conditions in paragraph 2 are met. Firstly, the purchasing charity must intend to hold the land or the greater part of the land for qualifying charitable purposes (within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (paragraph 16)). Secondly, the purchasing charity must not be entering into the land transaction for the purpose of avoiding LBTT.

246. Paragraph 4 provides for charities relief to be withdrawn wholly or partially where a charity claims the relief in relation to a land transaction and, within three years of the transaction, the buyer ceases to be a charity or the land is used otherwise than for qualifying charitable purposes. Relief may also be lost if these events occur more than three years after the transaction but pursuant to arrangements made during the three-year period.

247. The relief is also wholly or partially withdrawn if the buyer transfers a major interest in the whole or part of the subject-matter of the transaction or grants a low rental lease at a premium (paragraph 7). See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn. Schedule 13 is modified by paragraph 40 of schedule 17 in the case of partnerships.

Schedule 14 – Relief for certain compulsory purchases

248. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT for the acquisition of a chargeable interest in land by a local authority using its compulsory purchase powers subject to the qualifying condition set out at paragraph 2 being met. The purposes mentioned in section 189 of the Town and Country Planning (Scotland) Act 1997 are: the development, redevelopment or improvement of land, or any other purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. This relief is available only where a party other than the local authority develops the land.

Schedule 15 – Relief for compliance with planning obligations

249. This schedule is introduced by section 27. Paragraphs 1 and 2 comprise the main relief provisions. A transaction will be relieved when it is entered into with a public body in order to comply with a planning obligation or a modification of a planning obligation, subject to certain conditions being satisfied. Paragraphs 3 and 4 define “planning obligation” and “modification”. Paragraph 5 lists which bodies fall within the definition of “public bodies” and allows the Scottish Ministers to add bodies to the list by order. Such an order will be subject to the negative procedure (see section 67).

Schedule 16 – Public bodies relief

250. This schedule is introduced by section 27. Paragraph 1 describes the type of transaction, under a statutory reorganisation, which is relieved under this schedule. Paragraph 2 provides that the Scottish Ministers may by order provide that certain other land transactions which do not fall under paragraph 1 are also relieved from LBTT subject to certain conditions. Orders will be subject to the negative procedure (see section 67). Paragraph 3 defines what is meant by a reorganisation for the purposes of paragraph 1 and paragraph 4 lists those bodies which are to be regarded as “public bodies” for the purposes of this schedule. Paragraph 5 includes, in the reference to a public body for the purposes of this schedule, a company which is wholly owned by such a body or a wholly-owned subsidiary of such a company. Paragraph 6 defines “company” for the purposes of paragraphs 4 and 5 of this schedule.

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).

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.

Schedule 18 – Trusts

267. This schedule, introduced by section 50, provides for the treatment of trusts in respect of LBTT. Section 50(2) contains a regulation making power to allow the Scottish Ministers to amend schedule 18.

268. Trusts are divided into “bare trusts” and “settlements” with settlements defined as trusts which are not bare trusts (paragraph 20). Bare trusts are trusts where the beneficiary is absolutely entitled to the property as against the trustee (paragraph 18) and includes the bilateral type of trust where the bare trustee holds the property as nominee for another. All trusts are caught by these provisions if they have land in Scotland as trust property. Accordingly off-shore trusts will be liable to pay LBTT if they acquire Scottish land. Also if beneficiaries of trusts transfer their interest in the trust property (to the extent it is land in Scotland) there will be a liability on the acquirer to pay LBTT. Because however this type of transaction depends on a developed trust law as in England, English law is applied to Scottish trusts and those of other jurisdictions (other than the United Kingdom) to the effect that if in England a beneficiary has an equitable interest, the beneficiary in the Scottish trust and those in the other jurisdictions are held to have an interest (paragraph 2) and someone acquiring the beneficiary’s interest is also treated as acquiring an interest in the trust property (to the extent it is land in Scotland).

269. The liability to pay the tax is imposed, subject to one exception, on the trustees, with the tax able to be recovered from any one of the trustees. The exception is where there is a bare trust, in which case the beneficiaries are liable for the payment of the tax. Paragraph 6, however, provides for a right of recovery also against the “bare trustee” when the beneficiary has failed to make a return or payment.

Schedule 19 – Leases

270. This schedule, introduced by section 52, provides for the tax treatment of leases under this Act. Section 52 also contains a regulation making power to allow the Scottish Ministers to amend schedule 19. Part 2 of schedule 19 provides for the amount of tax chargeable on rent. Part 3 provides for the amount of tax chargeable in respect of consideration other than rent. Part 4 provides for review of the tax chargeable. Part 5 provides for the chargeable consideration in relation to rent and consideration other than rent and Part 6 covers other provisions about leases. For leases held by partnerships, schedule 19 is modified by Part 6 of schedule 17.

PART 1 - INTRODUCTORY

271. Paragraph 2 provides that where the chargeable consideration for a chargeable transaction consists of both a rental element and other consideration (e.g. a premium) then the tax due on the two elements of the consideration should be calculated separately and added together to determine the total tax to be paid.

PART 2 – AMOUNT OF TAX CHARGEABLE: RENT

272. The schedule does not set out the bands and rates for the chargeable consideration which consists of rent. As set out in paragraph 3, these must be specified by the Scottish Ministers by order. Ministers must specify a nil rate band and at least one other tax band. To ensure the tax is a progressive one, the percentage rate tax band for each tax band must be higher than for the band below it. The first order made under this paragraph will be subject to the affirmative procedure, whilst all subsequent orders will be subject to the provisional affirmative procedure (see section 68). Paragraph 4 sets out how the tax on the rental element of the chargeable consideration should be determined. Paragraph 5 makes specific provision for the same calculation in relation to linked transactions. Paragraph 6 sets out the formula for calculating the net present value (“NPV”) of the rent payable over the term of a lease. That formula is used in the calculations under paragraphs 4 and 5. Paragraph 7 provides that the “temporal discount rate”, which forms part of the NPV formula set out in paragraph 6, is 3.5 per cent and empowers the Scottish Ministers to vary this rate by order. This order will be subject to the affirmative procedure (see section 68).

PART 3 – AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

273. Paragraphs 8 and 9 set out the rules for calculating the tax chargeable for consideration other than rent e.g. where a premium is paid for the lease. Essentially, the provisions of the Act on chargeable consideration generally apply for the purposes of calculating the tax due on consideration other than rent. Paragraph 9(2) provides that the nil rate tax band does not apply in relation to the consideration other than rent where the relevant rental is at least £1,000. Paragraph 9(3) provides for the conditions that must pertain for sub-paragraphs (4) and (5) to apply. Sub-paragraph (4) provides for the determination of the tax chargeable in respect of transactions that are linked and sub-paragraph (5) provides that the apportionment of the chargeable consideration between the linked transactions should be carried out on a just and reasonable basis. Sub-paragraphs (6) and (8) define the terms “the relevant rent”, and “relevant land” respectively for this paragraph and sub-paragraph (7) defines “annual rent” for the purposes of sub-paragraph (6).

PART 4 – REVIEW OF TAX CHARGEABLE

274. Paragraph 10 makes provision for a system of reviews of the tax chargeable to ensure that the correct amount of tax is paid in relation to the lease, taking account of any variations in rent or other terms made during the course of the lease. In most cases, the tax chargeable will be reviewed on every third anniversary of the effective date of the lease.

275. Sub-paragraph (1) provides that paragraph 10 applies where a buyer (i.e. the tenant) has made a land transaction return (in terms of section 29(1)) or where a return has been made under section 31 (return where contingency ceases or consideration ascertained) or under various paragraphs of this schedule, namely: paragraph 20 (return where lease for fixed term continues after end of term), paragraph 22 (return in relation to lease for an indefinite term) or paragraph 30 (return where transaction becomes notifiable on variation of rent or term).

276. Sub-paragraph (2) requires the buyer to make a return to the Tax Authority on the review date, unless the lease has been assigned or terminated. (Wherever returns are required under schedule 19, any tax or additional tax payable must be paid at the same time the return is made – see section 40(2)(e)).

277. Sub-paragraphs (3) and (4) require the buyer to assess the amount of tax that is chargeable at the review date and submit a return within 30 days, beginning with the day after the review date. Sub-paragraph (5) clarifies that the tax rates and bands to be applied at the review of the tax chargeable are to be those that were in force at the effective date of the transaction.

278. Sub-paragraph (6) provides that where at a review date it is calculated that less tax is now due in relation to the lease, the overpaid tax is to be repaid by the Tax Authority. Sub-paragraph (7) defines what the “review date” is in the case of each of the returns referred to in sub-paragraph (1).

279. Separate from the provisions of paragraph 10, paragraph 11 makes provision for the buyer to submit a return where the lease is assigned or terminated. Sub-paragraphs (2), (3) and (4) provide that the buyer must calculate the tax chargeable and make a further return to the Tax Authority within 30 days, beginning with the day after the relevant day (which is the day the lease is assigned or terminated). Sub-paragraph (5) clarifies that the tax rates and bands to be applied at the review of the tax chargeable are to be those that were in force at the effective date of the transaction.

280. Sub-paragraph (6) provides that where a lease is assigned or terminated and it is calculated that less tax is now due in relation to the lease, the overpaid tax is to be repaid by the Tax Authority. If it is calculated that less tax payable is at the date of the assignment or termination because of changes that have been made to the lease since the last return was made, then a claim for overpayment of tax should be submitted to the Tax Authority. Such overpayments may arise, for example, because since the last return was submitted, the lease has been varied to reduce the spatial area of the premises subject to the lease and the rent has been reduced accordingly.

PART 5 – CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

281. Part 5 makes provision about what counts, or does not count as chargeable consideration when calculating the tax chargeable for a lease. Paragraph 12 makes provision about certain aspects of rent generally, although “rent” is not as such defined.

282. Paragraph 13 sets out the rules for determining the rent payable under a lease where the rent varies in accordance with provisions in the lease or where a rent is contingent, uncertain or unascertained. This will be necessary for the purposes of calculating the tax due on the rent under, for example, paragraphs 4, 5, 10 and 11. The effect of sub-paragraph (5) is limited to just paragraph 13 (variable or uncertain rent) itself.

283. Paragraph 14 provides that, in the case of the grant, assignation or renunciation of a lease, a reverse premium does not count as chargeable consideration. Sub-paragraph (2) defines what a “reverse premium” means.

284. Paragraph 15 sets out a list of tenants’ obligations (for example, any undertaking by the tenant to repair, maintain or insure the leased premises) which in the case of the grant of a lease do not count as part of the chargeable consideration.

285. Paragraph 16 clarifies that where there is an assignation of a lease, then the assumption of the responsibilities by the assignee (the person to whom the lease is assigned) to pay rent or any other obligation of the tenant under the lease do not count as chargeable consideration for the assignation.

286. Paragraph 17(1) provides that where a tenant, or any person connected with or acting on behalf of the tenant, makes a loan or pays a deposit (whether to the landlord or to a third party), the repayment of which is contingent on anything to be done or not to be done by the tenant or on the death of the tenant, then the amount of the loan or the deposit is to be treated as consideration other than rent paid by the tenant for the grant of the lease. Sub-paragraph (2) makes similar provision to sub-paragraph (1) in relation to arrangements in connection with the assignation of a lease. Sub-paragraph (3) provides that sub-paragraphs (1) and (2) do not apply where the deposit does not exceed twice the relevant maximum rent. Sub-paragraph (4) defines the relevant maximum rent in relation to the grant of a lease as the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease - and in relation to the assignation of a lease, it is the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding at the date of the assignation. Sub-paragraph (5) makes further provision for determining the highest amount of rent for the purposes of sub-paragraph (4). Sub-paragraph (6) provides that tax is not chargeable under this paragraph if it would be chargeable only because of the effect of paragraph 9(2). Paragraph 9(2) excludes the nil rate tax band where the relevant rent attributable to non-residential property is less than £1,000 per year.

287. Paragraph 18 makes provision for the renunciation of an existing lease in return for a new lease between the same parties. In such cases, the grant of the new lease does not count as chargeable consideration for the renunciation and the renunciation does count as chargeable consideration for the grant of the new lease. Sub-paragraph (2) provides that paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

PART 6 – OTHER PROVISIONS ABOUT LEASES

288. Part 6 makes provision for dealing with a number of different and specific circumstances relating to leases that are not covered elsewhere in the schedule.

289. Paragraph 19 defines a lease for a fixed term.

Leases that continue after a fixed term

290. Paragraph 20 applies to leases that continue after a fixed term either by agreement between the parties or by operation of law (such as the Scots law principle of *tacit relocation*). Under sub-paragraph (2), such a lease is treated as if it were a lease for the original fixed term and no longer. If it continues after the end of the term, it is treated as if it were a lease for 1 year longer. As it continues, each year a further year is added to the term of the lease.

291. Sub-paragraph (3) provides that where a lease transaction that was not previously notifiable to the Tax Authority becomes notifiable because of the continuation of the lease beyond its fixed term, a return will be required. The return must be made within 30 days of the day at the end of the 1 year period as a result of which it became notifiable. Sub-paragraph (3)(c) clarifies that the tax rates and bands to be applied in calculating the tax chargeable are those that were in force at the effective date of the transaction.

292. Where a lease continues beyond its fixed term and paragraph 20 would apply but during the 1 year period beyond the fixed term a new lease is granted to the tenant for the same (or substantially the same) premises, then paragraph 21 disapplies the provisions of paragraph 20. The new lease is treated as beginning immediately after the end of the fixed term of the original lease. Sub-paragraph (4) of paragraph 21 provides that any rent which was payable under the original lease after the end of the fixed term is treated as payable under the new lease. Sub-paragraph (5) provides that if the original lease has been extended more than once under the provisions of paragraph 20, then paragraph 21 disapplies paragraph 20 from the end of the last 1 year period when the lease was extended.

Leases granted for an indefinite term

293. Paragraph 22 makes provision for leases which are granted for an indefinite term, in particular for the determination of how long the lease lasts. This may trigger notification of the lease, and may result in tax being chargeable, if the lease continues. Specifically, sub-paragraph (2)(a) provides that a return will be required when a lease becomes notifiable when it was not previously notifiable. In accordance with sub-paragraph (2)(a), the buyer must submit a return within 30 days of the end of the 1 year period at which the transaction became notifiable. Sub-paragraph (2)(c) clarifies that the tax rates and bands to be applied at the review of the tax chargeable are to be those that were in force at the effective date of the transaction.

Successive linked leases

294. Paragraph 23 is an anti-avoidance provision which treats successive leases of the same premises between the same parties (or are otherwise linked transactions) as one lease for the purposes of the Act. The successive linked leases are treated as being granted at the time of the grant of the first lease in the series, for a term equal to the aggregate of the terms of all the leases and in consideration of the rent payable under all the leases.

Rent for overlap period in case of grant of further lease

295. Paragraph 24 treats rent paid during an “overlap period” between the end of one lease and the grant of another as, in certain circumstances, paid under the old lease and not the new lease. Sub-paragraph (1) sets out the three circumstances where this will apply.

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.

Missives of let followed by execution of formal lease

300. Paragraph 26 makes similar provision to that of paragraph 25 but covers the circumstances where a lease is agreed by concluded missives of let (referred to as the ‘first lease’), and the execution of a formal lease (the ‘second lease’) takes place at a later date. In accordance with sub-paragraph (1), the missives of let are treated as a lease granted on the date the missives of let were concluded, for a term which begins with that date but ends at the end of the term of the second lease and in consideration of the total rent payable over that term, plus any other consideration given for the first or the second lease.

301. Sub-paragraph (2) disregards the second lease for the purposes of the Act except for section 34 (which requires a tax return where there is a second transaction that is linked to the first transaction and makes the first transaction notifiable).

302. Sub-paragraph (3) applies the provisions of sections 63 and 64 to decide the effective dates of the first lease and the second lease.

303. Sub-paragraph (4) sets out how paragraph 26 of schedule 19 works with section 34 of the Act. Sub-paragraph (4)(a) links the grant of the first lease and the grant of the second lease, regardless of whether the provisions of section 57 would have linked them in any case. Sub-paragraph (4)(b) provides that the tenant under the second lease is liable for any tax or additional tax due in relation to the first lease where sub-paragraph (1) applies. Sub-paragraph (4)(c) clarifies that in section 34(2) the reference to the ‘buyer in the earlier transaction’ is to be read in relation to the first lease as a reference to the tenant under the second lease.

Cases where assignment of lease treated as grant of a lease

304. Paragraph 27(1) applies the provisions of that paragraph where one of the following tax reliefs were claimed for the grant of a lease: sale and leaseback relief, relief for alternative finance investment bonds, group relief, charities relief and public bodies relief (as set out in sub-paragraph (3)).

305. Sub-paragraph (2) provides that where the lease is assigned to a different tenant and none of those tax reliefs would apply, then the lease is subject to LBTT and is considered to be the grant of a lease by the assignor for the remaining term of the lease and on the terms agreed to by the assignee.

306. Sub-paragraph (4) disapplies paragraph 27 where group relief, reconstruction relief, acquisition relief or charities relief has been withdrawn prior to the effective date of the assignment. Sub-paragraph (5) refers to the relevant provisions in the Act in relation to the withdrawal of each of those reliefs.

Assignment of lease: responsibility of assignee for returns etc.

307. Paragraph 28 makes clear that where a lease is assigned, then after the effective date of the assignment, the assignee assumes the assignor's duties in relation to LBTT. Sub-paragraph (2) sets out the relevant provisions of the Act which apply to the assignee. These include the requirement to submit a tax return on every third anniversary of the effective date, in accordance with paragraph 10 of schedule 19. Sub-paragraph (3) requires that anything that was done by the assignor is to be treated as if it was done by the assignee. Sub-paragraph (4) disapplies paragraph 28 in the event that paragraph 27 applies.

Reduction of rent or term or other variation of lease

308. Variations are not, generally, treated under Scots law as creating new leases. However paragraph 29 specifies three variations of leases which are treated for the purposes of the tax as acquisitions of chargeable interests.

Increase of rent or term: notification

309. Paragraph 30 applies where a lease is varied so as to extend its term or increase the rent payable, the effect of which is that the transaction becomes notifiable to the Tax Authority when it was not previously notifiable. In accordance with sub-paragraph (2), the buyer must submit a tax return within 30 days of the 'relevant date' which sub-paragraph (3) specifies, is the date from which the variation takes effect. Sub-paragraph (2)(c) clarifies that the tax rates and bands to be applied in calculating the tax chargeable are those that were in force at the effective date of the transaction.

Schedule 20 – Index of defined expressions

310. Schedule 20 provides an index to definitions used in the Act.

PARLIAMENTARY HISTORY

311. The table below sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place, the reference to the Official Report of those proceedings and the dates on which the committee reports and other papers relating to the Bill were published.

INTRODUCTION		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Bill as introduced	18 April 2013	<u>SP Bill 19</u>
Spice Briefing	30 May 2013	<u>SB 13-02</u>
Policy Memorandum	3 December 2012	<u>ISBN 978-1-4061-9386-2</u>
Delegated Powers Memorandum	3 December 2012	<u>SP Bill 19–DPM</u>

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

STAGE 1		
FINANCE COMMITTEE		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Evidence Session 2	23 January 2013	<u>ISBN 978-1-78307-215-6</u>
Evidence Session 3	30 January 2013	<u>ISBN 978-1-78307-277-4</u>
Evidence Session 4	6 February 2013	<u>ISBN 978-1-78307-347-4</u>
Evidence Session 5	20 February 2013	<u>ISBN 978-1-78307-418-1</u>
Evidence Session 6	27 February 2013	<u>ISBN 978-1-78307-476-1</u>
Evidence Session 7	20 March 2013	<u>ISBN 978-1-78307-645-1</u>
Finance Committee Stage 1 Report	27 March 2013	Session 4 - <u>SP Paper 295</u>
DELEGATED POWERS AND LAW REFORM COMMITTEE		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Official Report	29 January 2013	<u>ISBN 978-1-78307-273-6</u>
Official Report	19 February 2013	<u>ISBN 978-1-78307-409-9</u>
PUBLIC AUDIT COMMITTEE		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Official Report	16 January 2013	<u>ISBN 978-1-78307-158-6</u>
Stage 1 Report	25 April 2013	<u>ISBN 978-1-78307-870-7</u>
CONSIDERATION BY PARLIAMENT		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Stage 1 Debate	25 April 2013	Official Report - <u>SP Paper 295</u>

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

STAGE 2		
FINANCE COMMITTEE		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Day 1 Official Report	29 May 2013	<u>ISBN 978-1-78351-177-8</u>
List of Amendments	23 May 2013	<u>SP Bill 19-ML1</u>
Day 2 Official Report	5 June 2013	<u>ISBN 978-1-78351-253-9</u>
2 nd List of Amendments	3 June 2013	<u>SP Bill 19-ML2</u>
Bill as Amended	7 June 2013	<u>SP Bill 19 (As Amended at Stage 2)</u>
DELEGATED POWERS AND LAW REFORM COMMITTEE		
The Committee considered the Bill on the 22 May		
STAGE 3		
Spice Briefing	20 June 2013	<u>SPICE Briefing 13/02</u>
CONSIDERATION BY PARLIAMENT		
<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
List of Amendments	20 June 2013	<u>SP Bill 19-ML3</u>
Stage 3 Debate- Official Report	25 June 2013	<u>ISBN 978-1-78351-473-1</u>
Bill as passed	25 June 2013	<u>SPPB 190</u>
THE BILL RECEIVED ROYAL ASSENT ON 31 JULY 2013		
Act as published	31 July 2013	<u>2013 Asp 11</u>
Summary Process Paper	31 July 2013	<u>http://www.scottish.parliament.uk/S4_Bills/LBTTBill_summary.pdf</u>

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