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**Changes to legislation:** There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 18. (See end of Document for details)

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## SCHEDULE 18 (introduced by section 50)

### TRUSTS

#### PART 1

##### OVERVIEW

###### *Overview*

- 1 (1) This schedule makes provision about the application of this Act in relation to trusts.
- (2) It is arranged as follows—
- Part 2 makes provision for the application of this Act to trusts generally,
  - Part 3 makes provision for the treatment of certain transactions involving bare trusts,
  - Part 4 makes provision for the treatment of certain transactions involving settlements,
  - Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations,
  - Part 6 defines expressions used in this schedule.

#### **Annotations:**

##### **Commencement Information**

- I1** Sch. 18 para. 1 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

#### PART 2

##### TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY

###### *Interests of beneficiaries under certain trusts*

- 2 Paragraphs 3 and 4 apply where property is held in trust—
- (a) under the law of Scotland, or
  - (b) under the law of a country or territory outwith the United Kingdom,
- on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.

#### **Annotations:**

##### **Commencement Information**

- I2** Sch. 18 para. 2 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

- 3 The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.

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**Annotations:****Commencement Information**

**I3** Sch. 18 para. 3 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

- 4 An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.

**Annotations:****Commencement Information**

**I4** Sch. 18 para. 4 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

**PART 3**

## TRANSACTIONS INVOLVING BARE TRUSTS

*Acquisition of chargeable interest by bare trustee*

- 5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.

**Annotations:****Commencement Information**

**I5** Sch. 18 para. 5 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

- 6 However, any tax due by the person or persons may, without prejudice to any other method of recovery, be recovered from T.

**Annotations:****Commencement Information**

**I6** Sch. 18 para. 6 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

- 7 Paragraphs 5 and 6 do not apply in relation to the grant of a lease.

**Annotations:****Commencement Information**

**I7** Sch. 18 para. 7 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Grant of lease to bare trustee*

- 8 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

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**Annotations:**

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**Commencement Information**

**I8** Sch. 18 para. 8 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Grant of lease by bare trustee*

- 9 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.

**Annotations:**

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**Commencement Information**

**I9** Sch. 18 para. 9 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

## PART 4

### TRANSACTIONS INVOLVING SETTLEMENTS

*Acquisition by trustees of settlements*

- 10 Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in a partnership, they are to be treated for the purposes of this Act, as it applies to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

**Annotations:**

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**Commencement Information**

**I10** Sch. 18 para. 10 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Consideration for exercise of power of appointment or discretion*

- 11 Paragraph 12 applies where a chargeable interest is acquired by virtue of—  
(a) the exercise of a power of appointment, or  
(b) the exercise of a discretion vested in trustees of a settlement.

**Annotations:**

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**Commencement Information**

**I11** Sch. 18 para. 11 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

- 12 Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated for the purpose of this Act as the consideration for the acquisition of the interest.

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**Annotations:****Commencement Information**

**I12** Sch. 18 para. 12 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

*Reallocation of trust property as between beneficiaries*

- 13 Paragraph 14 applies where—
- (a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and
  - (b) the beneficiary consents to ceasing to have an interest in that other property.

**Annotations:****Commencement Information**

**I13** Sch. 18 para. 13 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

- 14 The fact that the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

**Annotations:****Commencement Information**

**I14** Sch. 18 para. 14 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

**PART 5**

## SETTLEMENTS: PAYMENT OF TAX AND RETURNS

*Liability to pay the tax*

- 15 Where the trustees of a settlement are liable to pay the tax, the payment may be recovered (but only once) from any one or more of the responsible trustees.

**Annotations:****Commencement Information**

**I15** Sch. 18 para. 15 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

*Liability to make returns*

- 16 A return in relation to a land transaction may be made by any one or more of the responsible trustees in relation to the transaction (the “relevant trustees”).

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**Annotations:**

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**Commencement Information**

**I16** Sch. 18 para. 16 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Duty to make declaration*

- 17 The declaration required by section 36(1) or (2)(a) must be made by all the relevant trustees.

**Annotations:**

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**Commencement Information**

**I17** Sch. 18 para. 17 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Responsible trustees*

- 18 The responsible trustees, in relation to a land transaction, are—
- (a) the persons who are trustees at the effective date of the transaction, and
  - (b) any person who subsequently becomes a trustee.

**Annotations:**

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**Commencement Information**

**I18** Sch. 18 para. 18 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

## PART 6

### INTERPRETATION

*Meaning of “bare trust”*

- 19 In this schedule, a “bare trust”—
- (a) is a trust under which the property is held by a person as trustee—
    - (i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or
    - (ii) for two or more persons who are or would be jointly so entitled, and
  - (b) includes a case in which a person holds property as a nominee for another.

**Annotations:**

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**Commencement Information**

**I19** Sch. 18 para. 19 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

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*Meaning of “absolutely entitled”*

- 20 The references in paragraph 19 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—
- (a) to resort to the property for payment of duty, taxes, costs or other outgoings, or
  - (b) to direct how the property is to be dealt with.

**Annotations:**

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**Commencement Information**

**I20** Sch. 18 para. 20 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

*Meaning of “settlement”*

- 21 In this schedule, “ settlement ” means a trust that is not a bare trust.

**Annotations:**

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**Commencement Information**

**I21** Sch. 18 para. 21 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

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