

LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Land and buildings transaction tax: second homes etc.

Part 6 of schedule 2A – Ownership of dwellings

Paragraph 11 of schedule 2A – What counts as a dwelling owned by a person?

55. Paragraph 11 clarifies that dwellings situated outside Scotland are to be counted for the purposes of schedule 2A, in particular paragraph 2. This ensures that a buyer's property holdings throughout the world are taken into account when considering if the additional amount is payable on the purchase of a dwelling in Scotland, and not only those in Scotland or the rest of the UK.
56. Paragraph 11 also provides that an ownership interest in a dwelling with a market value of less than £40,000 is disregarded. This is relevant to properties owned other than the property being purchased as part of the chargeable transaction. The relevant date for whether an ownership interest has a value of £40,000 is the effective date of the chargeable transaction. In the case where the buyer is not selling an existing dwelling or dwellings, for example where they are not replacing their only or main residence, they must make a reasonable estimate of the market value of the ownership interest. This will have to be an estimate since in these circumstances the dwelling or dwellings are not on the market. The market value includes the market value of subordinate real rights pertaining to the ownership interest.
57. In the case of certain trusts and proper liferents, the deemed ownership interest would not have a market value because it cannot be sold. In those cases, sub-paragraph (6) and (7) provide that it is the market value of the dwelling that is relevant, having no regard to the economic impact of the trust or liferent interest. Again, this will have to be a reasonable estimate.
58. Paragraph 11 also provides that if a dwelling has been subject to the additional amount because the purchase of it was relevant to paragraph 3, then the dwelling is not relevant to paragraph 2. So, for example, an individual has a sole trade business of property trading, and the additional amount has been paid on the purchase of a dwelling by that business then it is not counted as being owned by the individual for the purpose of paragraph 2. Similarly if such a business purchases a property outside of Scotland, and that purchase would have been relevant to paragraph 3 had the dwelling been in Scotland, that property is not included as being owned by the individual for the purposes of paragraph 2.
59. Interpretative provisions of the 2013 Act relevant to Paragraph 11—

“dwelling”	Part 6 of schedule 5
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These notes relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 (asp 11) which received Royal Assent on 24 March 2016

“market value”	section 62
what counts as a dwelling owned	Part 6 of schedule 2A.