



Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

PART 5

APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

44 Companies and other organisations

- (1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—
 - (a) the proper officer of the organisation, or
 - (b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.
- (2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.
- (3) For the purposes of this Act—
 - (a) the proper officer of a company is the secretary, or person acting as secretary, of the company,
 - (b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.
- (4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.
- (5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—
 - (a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or
 - (b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.
- (6) In this section, “organisation” means—
 - (a) a company,

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- (b) an unincorporated association.

45 Unit trust schemes

- (1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—
 - (a) the trustees were a company, and
 - (b) the rights of the unit holders were shares in the company.
- (2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.
- (3) An “umbrella scheme” means a unit trust scheme—
 - (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (5) In this Act—
 - “unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and
 - “unit holder” means a participant in a unit trust scheme.
- (6) The Scottish Ministers may, by regulations, provide 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 this Act.
- (7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.
- (8) A unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

46 Open-ended investment companies

- (1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—
 - (a) open-ended investment companies of such description as may be prescribed in the regulations, and
 - (b) transactions involving such companies,
 in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.
- (2) The regulations may, in particular, make provision—
 - (a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of

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such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,

- (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.

(3) In this section—

“open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),

“umbrella scheme” has the same meaning as in section 45.

47 Residential property holding companies

(1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—

- (a) to be treated as land transactions, and
- (b) to be chargeable transactions.

(2) A “residential property holding company” means a company—

- (a) whose sole or main activity is holding or investing in chargeable interests in residential property,
- (b) whose property consists of or includes chargeable interests in residential property, and
- (c) whose shares are not listed on a recognised stock exchange.

(3) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

(4) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.

(5) Regulations under subsection (1) may in particular make provision, or further provision, about—

- (a) the kinds of interest, transfer of which is a qualifying transfer,
- (b) the kinds of transfers which are and are not qualifying transfers,
- (c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,
- (d) the chargeable consideration in the case of such transfers,
- (e) the tax bands and tax rates that are to apply to such transfers (including specifying tax bands and tax rates for such transfers),
- (f) the person who is to be liable to pay the tax,
- (g) the application or disapplication of any reliefs in relation to such transfers.

(6) Regulations under subsection (1) may also provide that, for the purposes of this section, “residential property” includes such other kinds of property as may be specified in the regulations.

(7) Regulations under subsection (1) may modify any enactment (including this Act).

48 Joint buyers

- (1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.
- (2) The general rules are that—
 - (a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
 - (b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
 - (c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.
- (3) The general rules are subject to the following provisions—
 - (a) if a return is required in relation to the transaction, a single return must be made,
 - (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.
- (4) This section has effect subject to—
 - (a) the provisions of schedule 17 (partnerships), and
 - (b) paragraphs 15 to 18 of schedule 18 (trusts).

49 Partnerships

- (1) Schedule 17 makes provision about the application of this Act in relation to partnerships.
- (2) The Scottish Ministers may, by regulations, modify schedule 17.

50 Trusts

- (1) Schedule 18 makes provision about the application of this Act in relation to trusts.
- (2) The Scottish Ministers may, by regulations, modify schedule 18.

51 Persons acting in a representative capacity etc.

- (1) The personal representatives of a person who is the buyer in a land transaction—
 - (a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and
 - (b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.
- (2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.