

Draft Order laid before the Scottish Parliament under section 68(2)(c) of the Land and Buildings Transaction Tax (Scotland) Act 2013, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

LAND AND BUILDINGS TRANSACTION TAX

The Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018

Made - - - - 2018
Coming into force - - 30th June 2018

The Scottish Ministers make the following Order in exercise of the powers conferred by section 27(3) (b) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 68(2)(c) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018 and comes into force on 30th June 2018.

(2) In this Order “the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

Amendment of schedule 10 of the Act

2.—(1) Schedule 10 of the Act (group relief) is amended as follows.

(2) In paragraph 4 for “9 or 10” substitute “9, 10 or 10A”.

(3) After paragraph 10 (restrictions of availability of relief), insert—

“**10A.**—(1) This paragraph applies to arrangements if and for so long as—

(a) they are—

(i) a mortgage under the law of England and Wales or Northern Ireland secured by way of shares or securities in a company which, on default or the happening of any other event, allows the mortgagee to exercise its rights against the mortgagor;

- (ii) an arrangement under the law of Scotland by which shares or securities in a company are transferred to a person (the “transferee”) subject to an obligation on the transferee to retransfer the shares or securities back to the transferor if certain conditions are met by the transferor but under which, on default by the transferor in meeting the conditions or the happening of any other event, the transferee is relieved of the obligation to retransfer the shares or securities back to the transferor, and
 - (b) the relevant circumstance described in sub-paragraph (2) applies.
- (2) The relevant circumstance is that—
- (i) in the case of arrangements described in sub-paragraph (1)(a)(i), the mortgagee has not exercised its rights against the mortgagor; or
 - (ii) in the case of arrangements described in sub-paragraph (1)(a)(ii), the transferee has not exercised its right in terms of the arrangement to retain the shares or securities and refuse to transfer them back to the transferor on the conditions mentioned in that sub-paragraph not having been met.
- (3) This paragraph does not apply to arrangements if the mortgagee or, as the case may be, transferee—
- (a) possesses greater rights in respect of the shares or securities which are the subject of the arrangements than it requires to protect its interest as mortgagee or transferee; or
 - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor or to relieve it of the obligation to retransfer the shares or securities.
- (4) For the purposes of sub-paragraph (3)(b) a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.
- (5) In this paragraph—
- “connected” has the same meaning as in section 1122 of the Corporation Tax Act 2010;
 - “mortgage” means any legal or equitable charge under the law of England and Wales or Northern Ireland.
- (6) This paragraph applies to an arrangement under the law of a country or territory outside the United Kingdom that is analogous to either of the arrangements described in sub-paragraph (1) as it applies to the arrangement to which it is analogous and, in relation to such an arrangement, references to the mortgagor, mortgagee, transferor and transferee are to be read accordingly.”
- (4) In paragraph 13, for “paragraphs 14 and 15 apply.” insert—
- “(a) paragraphs 14 and 15 apply, or
 - (b) paragraph 15A applies.”.
- (5) After paragraph 15 insert—
- “**15A.** This paragraph applies where—
- (a) the relief under this schedule was available solely by virtue of the application of paragraph 10A to arrangements referred to in paragraph 3, and
 - (b) before the end of the period of three years beginning with the effective date, paragraph 10A ceases to apply to the arrangements.”.

Transitional provision

3. The modifications made by this Order apply only in relation to a chargeable transaction in respect of which the effective date is on or after 30th June 2018.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the Act”) to modify schedule 10 of the Act which provides for group relief. In terms of paragraph 3 of that schedule relief is not available if at the effective date there are in place arrangements by virtue of which a person or persons get control of or could obtain control of the buyer but not the seller. In terms of the amendment group relief is not lost if shares in the company are mortgaged by a legal or equitable charge provided the contingency allowing the mortgage to be called up does not arise. The modification also gives the same relief in the case an arrangement in Scotland analogous to a pledge but with rights (not rights in security) in shares or securities transferred to a creditor subject to the creditor’s obligation to retransfer the rights back to the debtor if certain conditions are met.