

2014 No. 375

LAND AND BUILDINGS TRANSACTION TAX

**The Land and Buildings Transaction Tax (Administration)
(Scotland) Regulations 2014**

Made - - - - *17th December 2014*

Laid before the Scottish Parliament *19th December 2014*

Coming into force - - *1st April 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 42(1) of, and paragraphs 11(1), 20 and 21(5) and (6) of schedule 8 to, the Land and Buildings Transaction Tax (Scotland) Act 2013(a) and all other powers enabling them to do so.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014 and come into force on 1st April 2015.

Interpretation

2.—(1) In these Regulations—

“the 2014 Act” means the Revenue Scotland and Tax Powers Act 2014(b); and

“the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

(2) In these Regulations, except where otherwise stated a reference to a numbered section is a reference to the section of the Act bearing that number and a reference to a numbered schedule is a reference to a schedule to the Act bearing that number.

(a) 2013 asp 11; see the definition of “prescribed” in paragraph 3 of Schedule 8.

(b) 2014 asp 16.

PART 2

Applications to defer payment of tax

Interpretation

3. In this Part—

“application” means an application under section 41;

“relevant event” means an event on the occurrence of which the whole or any part of the consideration to which an application relates will—

- (a) cease to be contingent; or
- (b) become certain; and

“Revenue Scotland” means Revenue Scotland as established by section 2 of the 2014 Act.

When application to be made

4. An application must be made on or before the last day of the period within which the land transaction return relating to the transaction in question must be made.

Contents of application where contingent or uncertain consideration consists of works or services

5.—(1) This regulation applies where the contingent or uncertain consideration to which an application relates, or any element of that consideration, consists of—

- (a) the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land; or
- (b) the provision of services (other than the carrying out of such works).

(2) The application must contain a scheme of payment of tax which must include—

- (a) a proposal for the payment of tax in respect of the consideration, or element of the consideration, consisting of the carrying out of such works or the provision of such services within 30 days after the carrying out or provision is substantially completed;
- (b) if the carrying out of such works or the provision of such services is expected to last for more than 6 months, proposals for a scheme of payment of tax at intervals of not more than 6 months.

Provision of information

6. An application under these Regulations is subject to the powers of Revenue Scotland contained in Part 7 of the 2014 Act (investigatory powers of Revenue Scotland).

Recovery of tax not postponed by application

7.—(1) This regulation applies where an application has been made but has not been accepted by Revenue Scotland (including where there is an appeal under section 241(1) of the Revenue Scotland and Tax Powers Act 2014 against the refusal of the application).

(2) The tax in respect of the chargeable consideration to which the application relates remains due and payable as if there had been no application (and, if relevant, no appeal).

(3) Payment of an amount of such tax as would not be due and payable if the application were accepted shall be postponed pending the reaching of a decision on the application.

(4) If an application is refused by Revenue Scotland, and there is no appeal under section 241(1) of the Revenue Scotland and Tax Powers Act 2014 against the refusal of the application, the date

on which any tax the payment of which had been postponed under paragraph (3) is due and payable is to be determined as if it were charged by an assessment of which notice was issued on the date on which Revenue Scotland issues to the applicant a notice of the total amount payable in consequence of the refusal of the application.

Notice of decision on an application

8.—(1) Revenue Scotland must give notice to the person by whom the application was made of its decision whether to accept or refuse an application.

(2) Where Revenue Scotland accept an application, the notice must set out the terms on which the application has been accepted and, in particular, must—

- (a) specify—
 - (i) any tax payable in accordance with a land transaction return relating to the transaction in question;
 - (ii) the nature of any relevant event; and
 - (iii) the date of any relevant event (if known); and
- (b) state that tax is payable within 30 days after the occurrence of a relevant event and in accordance with these Regulations.

(3) Where Revenue Scotland refuse an application, the notice must set out—

- (a) the grounds for the refusal; and
- (b) the total amount of tax payable in consequence of the refusal.

Grounds on which application may be refused

9. An application may be refused by Revenue Scotland if—

- (a) the conditions for making an application specified in section 41(1) are not met;
- (b) the application has not been submitted in the form specified by Revenue Scotland under section 37A(2)(a) or does not contain the information specified by Revenue Scotland under section 37A(2)(b)(a);
- (c) there are artificial tax avoidance arrangements in relation to the transaction in question (see regulation 10);
- (d) the application, or information provided in connection with it, is incorrect; or
- (e) information required to be provided under regulation 6 is not provided within such time as Revenue Scotland has reasonably required in the notification.

Tax avoidance arrangements

10. For the purposes of regulation 9(c)—

- (a) an arrangement is ‘a tax avoidance arrangement’ if it comes within the definition of a tax avoidance arrangement in section 63 of the 2014 Act; and
- (b) a tax avoidance arrangement is ‘artificial’ if it comes within the definition of artificial in section 64(1) of the 2014 Act.

Payment and returns

11.—(1) This regulation applies where Revenue Scotland accepts an application.

(2) If the application relates to deferring the payment of tax that has already been paid, the amount already paid must be repaid together with any interest payable as from the date of payment.

(a) Section 37A was inserted by paragraph 9(8) of Schedule 4 to the Revenue Scotland and Tax Powers Act 2014 (asp 16).

- (3) The buyer must make a return or further return (“the return”) to Revenue Scotland—
- (a) within 30 days after the occurrence of a relevant event;
 - (b) if relevant—
 - (i) within the period of 30 days mentioned in regulation 5(2)(a);
 - (ii) subject to regulation 14, in accordance with the scheme of payment mentioned in regulation 5(2)(b); or
 - (iii) after the final payment has been made in accordance with that scheme, within 30 days after the buyer obtains new information the effect of which is that additional tax or less tax is payable in respect of the transaction than has already been paid.
- (4) Payment of any tax or additional tax payable must be made at the same time as a return is made.
- (5) If the effect of the return is that less tax is payable in respect of a transaction than has already been paid, the amount overpaid must on a claim by the buyer be repaid together with interest as from the date of payment.

Adjustment of payments made as mentioned in section 41(3)

12. Sections 31 and 32 apply where—
- (a) a payment is made as mentioned in section 41(3); and
 - (b) an application is accepted in respect of other chargeable consideration taken into account in calculating the amount of payment.

Applications accepted by Revenue Scotland having no effect

13. For the purposes of the Act and of these Regulations, an application which has been accepted by Revenue Scotland—
- (a) has no effect if—
 - (i) it contains false or misleading information; or
 - (ii) any facts or circumstances relevant to it are not disclosed to Revenue Scotland; and
 - (b) ceases to have any effect if the facts and circumstances relevant to it materially change.

Returns and payments where consideration consists of works or services

14.—(1) This regulation applies where a return or further return is required to be made in accordance with regulation 11(3)(b)(ii) and the carrying out of the works or provision of the services in question is expected to be substantially completed within a period of less than 6 months after the date on which the return or further return is required.

(2) Where this regulation applies, the buyer and Revenue Scotland may agree that the scheme of payment mentioned in regulation 5(2)(b) should be varied so that the next return or further return due to be made in respect of the consideration, or element of the consideration, consisting of the carrying out of such works or the provision of such services may be made within 30 days after the substantial completion of the carrying out of the works or the provision of the services.

(3) If the carrying out of the works or provision of the services in question is not substantially completed within a period of less than 6 months after the date on which, apart from the variation of the scheme of payment, the return or further return would have been required—

- (a) the variation ceases to have effect; and
- (b) returns or further returns must continue to be made in accordance with regulation 11(3)(b)(ii).

PART 3

Alternative finance investment bonds/prescribed evidence

Interpretation

15. In this Part—

“the Keeper” means the Keeper of the Registers of Scotland;

“LBTT” means land and buildings transaction tax;

“the original owner” is “P” as provided for by paragraph 8 of schedule 8; and

“URN” means the unique reference number allocated by Revenue Scotland to a land transaction for the purposes of LBTT.

Prescribed evidence for the purpose of paragraph 11(1) of schedule 8

16. For the purpose of paragraph 11(1) of schedule 8 (condition D for operation of reliefs) the prescribed evidence is—

- (a) any document provided by the Keeper confirming the creation and registration of a standard security in favour of Revenue Scotland; and
- (b) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the original owner to the bond-issuer.

Prescribed evidence for the purpose of paragraph 20 of schedule 8

17. For the purpose of paragraph 20 of schedule 8 (discharge of security when conditions for relief met) the prescribed evidence is—

- (a) a statement from the bond-issuer, or a person authorised to act on behalf of the bond-issuer, that all of conditions A to C and E to G in Part 3 of schedule 8 have been met;
- (b) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the original owner to the bond-issuer;
- (c) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the bond-issuer to the original owner; and
- (d) any document as provided by the Keeper confirming that the land has been registered in the name of the original owner.

Prescribed evidence for the purpose of paragraph 21(5) of schedule 8

18. For the purposes of paragraph 21(5) of schedule 8 (substitution of asset) the prescribed evidence is—

- (a) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the original owner to the bond-issuer;
- (b) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the bond-issuer to the original owner; and
- (c) any document as provided by the Keeper confirming that the land has been registered in the name of the original owner.

Prescribed evidence for the purpose of paragraph 21(6) of schedule 8

19. For the purposes of paragraph 21(6) of schedule 8 (substitution of asset) the prescribed evidence is—

- (a) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the original owner to the bond-issuer;

- (b) the URN for the LBTT land transaction return on which relief from the tax was claimed on the transfer of the land from the bond-issuer to the original owner;
- (c) any document that confirms that the replacement land is not in the United Kingdom and that conditions A to C in Part 3 of schedule 8 have been met in relation to that land; and
- (d) any document as provided by the Keeper confirming that the land has been registered in the name of the original owner.

St Andrew's House,
Edinburgh
17th December 2014

JOHN SWINNEY
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations deals with the circumstance in which an application may be made to Revenue Scotland by a buyer to defer payment of tax that is otherwise due.

Regulation 4 provides for when an application is to be made.

Regulation 5 provides for contents of an application where the contingent or uncertain consideration, or an element of it, consists of the carrying out of works or provision of services.

Regulation 6 provides for information to be provided to Revenue Scotland for the purposes of determining whether to accept an application.

Regulation 7 provides for the postponement in certain circumstances of tax pending the making of a decision on an application.

Regulation 8 provides for notice to be given of a decision on an application.

Regulation 9 sets out the grounds on which an application may be refused.

Regulation 10 supplements regulation 9 by providing for what is meant by artificial tax avoidance arrangements.

Regulation 11 provides for the payments and returns required to be made by the applicant where an application is accepted.

Regulation 12 provides for the adjustment of payments made as mentioned in section 41(3) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”).

Regulation 13 provides for applications which have been accepted to have no effect in certain circumstances.

Regulation 14 provides for the time at which returns and payments are to be made under regulation 11 to be varied at the agreement of the applicant and Revenue Scotland in certain circumstances where the consideration, or an element of it, consists of the carrying out of works or provision of services.

Part 2 of these Regulations prescribes evidence required for certain transactions relating to underlying assets consisting of land for the purposes of relief for alternative finance investment bonds.

Regulation 16 prescribes evidence in relation to land and buildings transaction tax which should be provided to Revenue Scotland for the purpose of paragraph 11(1) of schedule 8 to the 2013 Act and applies to the operation of reliefs relating to the transfer of a land asset.

Regulation 17 prescribes evidence in relation to land and buildings transaction tax which should be provided to Revenue Scotland for the purpose of paragraph 20 of schedule 8 to the 2013 Act and applies to the discharge of the security over the land when the conditions for relief are met.

Regulation 18 prescribes evidence in relation to land and buildings transaction tax which should be provided to Revenue Scotland for the purpose of paragraph 21(5) of schedule 8 to the 2013 Act and applies to the substitution of asset when the replacement land is in Scotland.

Regulation 19 prescribes evidence in relation to land and buildings transaction tax which must be provided to Revenue Scotland for the purpose of paragraph 21(6) of schedule 8 to the 2013 Act and applies to the substitution of asset when the replacement land is not in Scotland.

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