

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (ANCILLARY PROVISIONS) (SCOTLAND) ORDER 2014

SSI 2014/376

The instrument above was made in exercise of the powers conferred by section 67(1) and (2) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”). It is subject to the negative procedure.

Policy background

To ensure prompt payment and deliver administrative efficiencies, the LBTT(S)A 2013 requires agents to submit a complete Land and Buildings Transaction Tax (“LBTT”) return and pay any tax due before any application to RoS in respect of the Land Register or Books of Council and Session can be accepted. The Scottish Government understands that for residential transactions, solicitors receive funds from their clients before settlement to cover any UK Stamp Duty Land Tax (“SDLT”) due.

Section 43 of the Act creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered by, or otherwise reflected in an entry in a register under the management and control of the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid.

This rule will have most relevance to standard conveyancing transactions where the buyer cannot obtain a real right in land until the disposition in the buyer’s favour has been registered in the Land Register. But the rule will also have relevance in relation to other registers under the management and control of the Keeper, for example the Books of Council and Session, which is a Court Register, if a non-residential lease or other transaction is registered there voluntarily for preservation and execution. However, there is no statutory requirement to apply to register documents in the Books of Council and Session and no statutory requirement to complete the application form.

The purpose of the order is to introduce a mandatory requirement to submit the appropriate application form (and to answer the associated questions) when applying for registration in Books of Council and Session of any deed implementing a notifiable transaction. This will better enable the Keeper to fulfil the duty in subsection 43(1) of the LBTT(S)A 2013 not to accept the application for registration of documents in the Books of Council and Session until a tax return and payment have been made. A similar requirement has already been prescribed by the Land Register Rules etc. (Scotland) Regulations 2014 (S.S.I. 2014/150) in terms of which applications for registration under the Land Registration etc. (Scotland) Act 2012 include:

Is the transaction to which this application relates a notifiable transaction in terms of section 30 of the Land and Buildings Transaction Tax (Scotland) Act 2013?

If yes, has a land transaction return been made, and have arrangements satisfactory to the tax authority been made for the payment of any tax payable in respect of the transaction?

Consultation

Discussions have taken place with representatives of the Law Society about the need for and impact of this order. However, as these are technical changes which have no substantive impact, the order was not included in the public consultation process during 2014.

The order has the approval of the Lord President of the Court of Session (approval not being a statutory requirement).

Impact Assessments

A Business and Regulatory Impact Assessment¹ (“BRIA”) has been published for the regulations and orders associated with the LBTT(S)A 2013. An Equalities Impact Assessment² (“EQIA”) was also published in December 2014. No significant financial effect or impact on the private, voluntary or public sector is anticipated as a consequence of this order.

The order will have no impact on equality or environmental issues.

Scottish Government
Finance Directorate
Fiscal Responsibility Division

¹ ‘Land and Buildings Transaction Tax - Business and Regulatory Impact Assessment’, published December 2014, available at: www.scotland.gov.uk/lbtt-bria2014

² ‘Land and Buildings Transaction Tax - Equalities Impact Assessment’, published December 2014, available at: <http://www.scotland.gov.uk/Publications/2014/12/5671>