

POLICY NOTE

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

SSI 2014/377

Using the power in section 67(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”), this instrument makes provision to ensure that through the transitional period when Stamp Duty Land Tax (“SDLT”) is disapplied in Scotland and Land and Buildings Transaction Tax (“LBTT”) is introduced, 13 different types of land transactions or arrangements involving land transactions are not taxed twice (by both SDLT and LBTT) but are subject to one tax or the other where appropriate, rather than no tax at all.

Policy background

LBTT will replace SDLT in Scotland from 1 April 2015. The date when LBTT becomes chargeable (“the commencement date”) will be set in a Commencement Order made by Scottish Ministers under section 70(2) of the LBTT(S)A 2013. SDLT will be dis-applied in Scotland on a date to be appointed by order by the Treasury under section 29(4) of the Scotland Act 2012. This order defines the commencement date for LBTT by reference to the day after the date appointed by Treasury Order under section 29(4) Scotland Act 2012 for the disapplication of SDLT.

Sections 29(5) of the Scotland Act 2012 makes provision for certain land transactions to which SDLT will continue to apply, namely a land transaction for which the contract for the transaction was entered into or was substantially performed prior to Royal Assent of the Scotland Act 2012 on 1 May 2012.

Section 29(6) makes provision for certain land transactions to which SDLT will no longer apply, for instance, where there has been an assignation or sub-sale in a contract entered into prior to 1 May 2012.

The purpose of this order is to make provision for certain transactions that began under SDLT but have an effective date on or after commencement of LBTT. The intention is to ensure that through the transitional period where SDLT is disapplied in Scotland and LBTT is introduced, such transactions are not taxed twice (by both SDLT and LBTT) but are subject to one of the taxes or to ensure that where no tax would otherwise be payable, it is payable under LBTT if it would have been payable under SDLT. The order makes provision to achieve that purpose for 13 different types of land transactions or arrangements involving land transactions:

- i. Contracts entered into before 1 May 2012 for a land transaction under which the transaction is to be completed by a conveyance and section 29(6) of the Scotland Act 2012 applies as there has been an intervening event that disapplies SDLT from the land transaction where the effective date is on or after the commencement date (Article 3).

- ii. Land transactions where the contracts were entered into after 1 May 2012 but before the commencement date and where substantial performance of the contract occurred prior to the commencement date - Article 4 ensures that sections 9 and 10 of the LBTT(S)A 2013 applies to these transactions.
- iii. Alternative finance arrangements that give rise to a series of land transactions are entered into - Article 5 ensures that arrangements entered into prior to the commencement date will continue to benefit from the relief from LBTT under schedule 7 to the LBTT(S)A 2013, despite the fact that it was in fact SDLT that was payable when the alternative finance arrangement was entered into.
- iv. Alternative finance bonds that give rise to a series of land transactions are entered into - Article 6 ensures that bonds entered into prior to the commencement date will continue to benefit from the relief from LBTT under schedule 8 to the LBTT(S)A 2013, despite the fact that it was in fact SDLT that was payable when the alternative finance bond was entered into.
- v. A transfer of an interest in a partnership pursuant to earlier arrangements involving a land transaction under paragraph 17 of schedule 17 to the LBTT(S)A 2013 where the earlier land transaction was in fact prior to the commencement date - Article 7 makes provision to ensure that LBTT is payable.
- vi. Any withdrawal of money etc. from partnership after the transfer of a chargeable interest under paragraph 18 of the schedule 17 to the LBTT(S)A 2013 - Article 8 makes provision to ensure that LBTT is payable in despite the fact that the withdrawal of money etc. took place prior to the commencement date.
- vii. Partnership share attributable to partner - Article 9 ensures that step 1 of paragraph 26 of schedule 17 to the LBTT(S)A 2013 can apply notwithstanding the fact that the relevant date for the purposes of paragraph 26 was prior to the commencement date.
- viii. Overlapping leases - Article 10 ensures that the discount in respect of overlapping leases under paragraph 24 of schedule 19 to the LBTT(S)A 2013 can apply, notwithstanding that the old lease was entered into prior to the commencement date.
- ix. Assignment of a leases granted prior to the commencement date / withdrawal of relief - Article 11 makes provision for any lease with an effective date prior to the commencement date that were entitled to a relief under SDLT that was later withdrawn. Article 11 ensures that paragraph 27 of schedule 19 to the LBTT(S)A 2013 applies so that an assignment of such a lease on or after the commencement date is treated as a new lease for LBTT purposes.
- x. Variations and extensions of the term or premises of leases - Articles 12 and 13 provide that variations and extensions of leases that were initially granted prior to the commencement date are to be treated as grants of a new lease for LBTT purposes with schedule 19 to the LBTT(S)A 2013 applying.

Consultation

Discussions have taken place with representatives of the Law Society of Scotland about the need for and impact of this order. However, as these are technical changes that do not have a general application for all types of land transaction, the order was not included in the public consultation process during 2014.

Impact Assessments

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

An Equality Impact Assessment (“EQIA”) has been published². 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>