LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Schedule 7 – Alternative property finance relief

204. This schedule, introduced by section 27, makes provision for relief from LBTT in the case of certain land transactions connected to alternative property finance arrangements. Islamic (or Shari'a) law prohibits transactions that involve interest, gambling, speculation or unethical investment, therefore alternative property finance arrangements allow for compliance with Shari'a law.

205. The most pronounced difference between alternative property finance arrangements and existing equivalent products is the prohibition on interest. For people wishing to adhere to Shari'a law, this rules out financial products that result in either payment or receipt of interest, such as conventional deposit accounts and loans. However, Shari'a law does not prohibit the making of a return on capital if the provider of the capital is willing to share in the risks of a productive enterprise. Thus profit and loss sharing arrangements are considered acceptable, provided there is shared risk.

206. Alternative property finance arrangements are structured using contracts, or combinations of contracts, that satisfy the requirements of Shari'a law. Financial institutions in the UK offer Shari'a compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

207. Part 2 of the schedule details a series of reliefs from LBTT for the granting of particular transactions, all of which are designed to avoid the charging or payment of interest. Paragraphs 2 to 6 cover arrangements where a financial institution buys an interest in land and then leases it to a person where the person has a right to acquire the land from the institution or have it transferred to another person (or to another financial institution).

208. The "first transaction" that occurs as part of these arrangements (the purchase) will usually be chargeable to LBTT (unless it is a transfer from the person to the institution or from another financial institution to the institution – all effectively being re-mortgaging arrangements). The "second transaction" – the lease to the person – will generally be relieved, provided the provisions of the Act in relation to the first transaction have been complied with. The "third transaction" – the transfer that the person can require the financial institution to make – will also be relieved provided it is a transfer to the person and provided the other conditions in paragraph 5 are met. Paragraph 6 states that sections 12 and 14 do not apply to the agreement mentioned in paragraph 2(c) so that the person's right to require the institution to transfer the interest in land is not treated as an option and so that the agreement, under which the person can require the institution to transfer the interest, is not treated as substantially performed unless and until the third transaction (the transfer to the person) takes place.

209. Paragraphs 7 to 12 cover a different set of arrangements, where the financial institution and the person acquire an interest in land in common, with the person having an exclusive right to occupy the land and with the person and the institution agreeing to transfer the interest to the person (usually in a series of transactions). As before, the "first transaction" – the purchase – will usually be chargeable to LBTT. Paragraph 8 specifies the conditions under which the first transaction is relieved, namely where there is a refinancing arrangement. Paragraph 9 provides for relief for the "second transaction" – the right to occupy – provided the provisions of the Act in relation to the first transaction are complied with. Paragraph 10 allows for relief for "further transactions" – transfers to the person from the financial institution. Paragraph 11 makes similar provision as paragraph 6. Paragraph 12 states the notification requirement of this relief.

210. Paragraphs 13 to 15 cover a third set of arrangements, where the financial institution purchases an interest in land, sells it to the person and, in return, the person grants the institution a standard security over the land. Usually LBTT will be due on the "first transaction" – the purchase by the institution. But paragraph 14 details the specific circumstances in which the first transaction is also exempt from LBTT (i.e. where the acquisition is part of a refinancing arrangement). Paragraph 15 provides for relief from LBTT for the "second transaction" – the sale to the person – where the provisions of the Act in relation to the first transaction are complied with. The grant of the standard security by the person to the institution is not a land transaction, as security interests are exempt interests (see section 5).

211. Part 3 deals with transactions connected to alternative property finance arrangements which are not relieved from LBTT. Paragraph 16 provides that relief under this schedule is not available where group, reconstruction or acquisition relief is available in relation to the first transaction. Paragraphs 17 to 20 contain anti-avoidance provisions and provide that no relief is available under Part 2 where the arrangements involve the acquisition by the person of control of the financial institution.

212. Part 4 provides that an interest held by a financial institution as a result of the "first transaction" within the meaning of paragraph 2(a) or 7(a) is an "exempt interest" for the purposes of LBTT. Paragraph 22 provides that the interest will cease to be an exempt interest if certain specified circumstances prevail. Paragraph 23 provides that the interest held by the financial institution is not an exempt interest if the "first transaction" is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs). Paragraph 24 provides that the exemption provided by paragraph 21 does not make an interest exempt in the case of certain specified transactions.

213. Part 5 defines a number of terms for the purposes of this schedule.