

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 2 – Key Concepts

Chapter 1 of Part 2 – Land Transactions and Chargeable Interests

Land transaction

Section 3 – Land transaction

16. Section 3 defines “land transaction” as the acquisition of a chargeable interest.
17. Defined terms used in this section:

“acquisition”	section 6
“chargeable interest”	section 4

Chargeable interest

Section 4 – Chargeable interest

18. Section 4 defines “chargeable interest”, the acquisition of which constitutes a land transaction under section 3. A chargeable interest is a real right or other interest, in or over land in Scotland or the benefit of any obligation, restriction or condition affecting the value of any such right or interest. In simple terms, a chargeable interest is an interest in land, so an interest in moveable property such as kitchen “white goods” or furniture falls outside the scope of LBTT. The definition is very broad and captures more than the real rights in land known to Scots law; accordingly options to buy or sell land, licences to occupy land and certain statutory rights are chargeable interests. In some cases, certain interests are treated as being interests in land for the purposes of LBTT (see, for example, Part 6 of schedule 17 (property investment partnerships)).
19. Chargeable interests do not include exempt interests (see section 5). Subsection (3) reflects that under Part 4A of the [Scotland Act 1998 \(c.46\)](#) (as inserted by section 28 of the 2012 Act), a tax on interests in land in Scotland may not be imposed on so much of a transaction as relates to land below mean low water mark - therefore interests in the seabed fall outside the scope of LBTT.

Section 5 – Exempt interest

20. Pursuant to section 4(1), exempt interests are not chargeable interests. Section 5 defines “exempt interest” as a security interest, such as a standard security. In addition,

*These notes relate to the Land and Buildings Transaction Tax (Scotland)
Act 2013 (asp 11) which received Royal Assent on 31 July 2013*

certain interests are exempt if they have been acquired by financial institutions under alternative property finance arrangements (see schedule 7, paragraphs 21 to 24).

21. Power is conferred on the Scottish Ministers to vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure (see section 68).

Section 6 – Acquisition and disposal of chargeable interest

22. **Section 6** defines “acquisition” and “disposal”. The section sets out various categories of land transactions in terms of disposals by one party and acquisitions by the other. The creation, renunciation, release or variation of a chargeable interest constitutes an acquisition by one person and a disposal by another. Subsection (2) clarifies that the variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 applies (reduction of rent or term or other variation of lease) applies.
23. In many cases an acquisition will be where an existing interest is transferred, for example title to a shop is sold and the buyer acquires the property. In other cases acquisition is when a new interest is created, for example a lease of a shop is granted and the tenant acquires the lease. Acquisition also includes where an interest is renounced or released, for example the lease of a shop is surrendered and the owner ceases to be subject to the terms of the lease and acquires free possession.
24. “Disposal” is construed in accordance with the meaning of acquisition. So in the examples given immediately above: the seller of the shop disposes of it when selling it to the buyer; the owner of the shop disposes of the lease in the shop when granting it; and, in the final example, the tenant disposes of the lease when surrendering it.
25. Subsection (5) clarifies that LBTT applies irrespective of how the acquisition is effected, and thus includes transactions arising from a court order or by operation of law, for example transfer by virtue of statute.

Section 7 – Buyer and seller

26. **Section 7** defines “buyer” and “seller”.¹ The “buyer” is the person acquiring the subject-matter of the transaction, and “seller” is the person disposing of the subject-matter of the transaction. But a person is not a buyer if they are not a party to or have not provided consideration for the transaction.
27. Defined terms used in this section:

“subject-matter”	section 61
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¹ The terms used for SDLT are “purchaser” and “vendor”, reflecting English conveyancing practice.