

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 2 – Key Concepts

Chapter 2 of Part 2 – Provision about Particular Transactions

Options

Section 12 – Options and rights of pre-emption

39. **Section 12** deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal). An option or right of pre-emption falls within the category of “other interest in or over land in Scotland” in section 4(2)(a). Therefore, where such an option or right is acquired, a land transaction is constituted. The land transaction will be chargeable to LBTT, depending on the consideration paid.
40. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct transaction (although the two transactions may be linked) and chargeable to LBTT in its own right. Options fall within subsection (1)(a) even if the grantor can discharge his or her obligation either by entering into a land transaction or in some other way (e.g. payment of money). The effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable. If an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this section.
41. See also paragraphs 6(b) and 11(b) of schedule 7 in relation to alternative property finance relief. Defined terms used in section 12:

“acquisition”	section 6
“effective date”	section 63
“land transaction”	section 3
“linked transaction”	section 57

Example: Options and rights of pre-emption

On 1 January 2016, Mrs Macdonald is granted an option by Mr Brown to buy his house on or before 31 December 2016. Mrs Macdonald paid Mr Brown for the grant of the option.

The acquisition of the option by Mrs Macdonald is a land transaction in its own right. Mrs Macdonald may have to make a land transaction return to the Tax

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

Authority in relation to the option depending on what she paid for it and may be liable for LBTT.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction from the grant of the option. The effective date of that land transaction is the date of completion of the sale of the house to Mrs Macdonald or, if earlier, the date of substantial performance.

Mrs Macdonald must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return or further return is also required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see sections 34 and 57).

The final LBTT payable by Mrs Macdonald in respect of both the grant of the option and the purchase of the house will be determined by the total consideration given by her for both the grant of the option and the purchase of the house. See section 26 for how the tax is calculated.