

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

# LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

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## EXPLANATORY NOTES

### THE ACT

#### **Part 3 – Calculation of Tax and Reliefs**

65. **Part 3** makes provision for—
- the amount of tax payable,
  - relief from the tax, and
  - who is liable to pay the tax.

#### **Amount of tax chargeable**

##### **Section 24 – Tax rates and tax bands**

66. The Act does not set out the bands and rates for LBTT. These must be specified by the Scottish Ministers by order under section 24 (and in the case of leases, paragraph 3 of schedule 19). Ministers must specify a nil rate tax band and at least two other tax bands for non-lease transactions (and in the case of leases see the text under the schedule 19 heading in this document). To ensure that the tax is a progressive one, the percentage tax rate for each tax band must be higher than for the band below it. There must be tax bands and rates for both residential and non-residential property transactions.
67. The first order under this section will be subject to the affirmative procedure. Subsequent orders will be subject to a form of provisional affirmative procedure (see section 68)<sup>1</sup>.
68. Defined terms used in this section:

“linked transaction”	section 57
“residential property”	section 59

##### **Section 25 – Amount of tax chargeable**

69. This section sets out how to calculate the tax due in relation to a single transaction that is not a linked transaction.

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<sup>1</sup> Provisional affirmative procedure is relatively common in UK tax legislation but is relatively uncommon in legislation enacted by the Scottish Parliament. The exact form of the procedure can vary but its essence is that statutory instruments can be made to come into force very quickly and neither the 28 day rule applicable to negative instruments nor the 40 day rule applicable to standard affirmative instruments will apply. The form of provisional affirmative procedure for the purposes of the Act is set out in section 68(4) and (6) – orders must be laid before the Scottish Parliament and they cease to have effect unless affirmed by resolution of the Parliament within 28 days.

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70. Under the “slab” system of SDLT, tax is charged at the applicable rate on the whole consideration for the transaction. For example, if a house is sold for £240,000 the SDLT due is 1% of the whole amount while for a house costing £260,000, the SDLT due is 3% of the whole amount. By contrast, this section (read with section 24) provides for a “progressive system” that includes a nil rate band and at least two other bands. This structure will mean that only the portion of the consideration above the threshold and within the band will be liable to the higher rate of the band. LBTT is therefore to be calculated in a similar way to UK Income Tax.
71. The tax rates and bands which are applicable to the transaction will depend on whether it is a residential property transaction or a non-residential property transaction.
72. Defined terms used in this section:

“chargeable consideration”	section 17 and schedule 2
“chargeable transaction”	section 15

**Example: Amount of tax chargeable on a house bought for £260,000**

*Tax due under SDLT*

The rate of tax under SDLT for such a purchase is 3%. So the tax payable would be—

$$£260,000 \times 3\% = £7,800$$

*Tax due under LBTT using scenario 1*

Under scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the applicable rates for the transaction would be:

Not more than £180,000	0%
Over £180,000 but not more than £1.5m	7.5%
Over £1.5m	10%

Applying the calculation in section 25(1), the amount of tax payable would be:

$$(\text{£}180,000 \times 0\%) + (\text{£}80,000 \times 7.5\%) + (\text{£}0 \times 10\%) = \text{£}6,000$$

*Tax due under LBTT using scenario 2*

Under scenario 2 outlined in paragraphs 290 and 291 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the applicable rates for the transaction would be—

Not more than £125,000	0%
Over £125,000 but not more than £250,000	2%
Over £250,000	9.5%

Applying the calculation in section 25(1), the amount of tax payable would be:

$$(\text{£}125,000 \times 0\%) + (\text{£}125,000 \times 2\%) + (\text{£}10,000 \times 9.5\%) = \text{£}3,450$$

**Section 26 – Amount of tax chargeable: linked transactions**

73. Section 26 applies instead of section 25 where a chargeable transaction is one of a number of linked transactions. The amount of tax due on the total consideration for

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all the linked transactions is calculated first and then that tax is apportioned to the transaction in question on the basis of the chargeable consideration for the transaction.

74. Defined terms used in this section:

“linked transaction”	section 56
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**Example: Amount of tax chargeable on a number of linked transactions**

A developer agrees to buy three plots of land from a farmer and buys them in three separate transactions on the same day. The consideration given for each plot is:

Plot A	£100,000
Plot B	£200,000
Plot C	£300,000

Because the three transactions are linked, section 26 applies for the purposes of calculating the tax due in relation to each transaction.

Applying the calculation set out in section 26(1) to each transaction in turn gives the following results under the scenario for non-residential property transactions outlined in paragraphs 292 and 293 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction. The rates and bands under that scenario are:

Not more than £150,000	0%
Over £150,000 but not more than £250,000	3%
Over £250,000	4.4%

*Plot A*

To calculate the tax on an individual linked transaction, the total tax chargeable on the total consideration for all the linked transactions must be calculated first. Following Steps 1 and 2, the total tax chargeable on £600,000 would be:

$$(\text{£}150,000 \times 0\%) + (\text{£}100,000 \times 3\%) + (\text{£}350,000 \times 4.4\%) = \text{£}18,400$$

The amount of tax payable in relation to Plot A would therefore be (following Steps 3 and 4)—

$$\text{£}18,400 \times \text{£}100,000/\text{£}600,000 = \text{£}3,067$$

*Plot B*

Using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot B would be:

$$\text{£}18,400 \times \text{£}200,000/\text{£}600,000 = \text{£}6,133$$

*Plot C*

Again using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot C would be:

$$\text{£}18,400 \times \text{£}300,000/\text{£}600,000 = \text{£}9,200$$

Note that, had the three plots been purchased in a single transaction, section 25 would have applied instead and the tax payable (on the same scenario) would have been £18,400, i.e. the same as the total tax payable in the example.

## **Reliefs**

### ***Section 27 – Reliefs***

75. [Section 27](#) introduces schedules 3 to 16 concerning reliefs, as described from paragraph 190 below. Reliefs do not apply automatically and must be claimed (see subsection (2)). Subsection (3) provides a power for the Scottish Ministers to add, modify or remove reliefs by order. Orders under this section are subject to the affirmative procedure (see section 68).
76. Defined terms used in this section:

“land transaction return”	section 65
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## **Liability for tax**

### ***Section 28 – Liability for tax***

77. [Section 28](#) provides that the buyer is liable to pay the LBTT due in respect of a chargeable transaction. Further provision about liability where there is more than one buyer can be found in sections 48 on joint buyers, paragraph 3 of schedule 17 on partnerships and paragraphs 4 to 17 of schedule 18 on trusts.
78. Defined terms used in this section:

“chargeable transaction”	section 15
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