

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

EXPLANATORY NOTES

THE ACT

Part 5 – Application of Act to Certain Persons and Bodies

117. **Part 5** contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts.

Section 44 – Companies and other organisations

118. **Section 44** specifies who is responsible for notifying transactions and paying LBTT in the case of companies (as defined in section 64) and unincorporated associations. It specifies which individuals within such organisations are responsible for:

- making returns under section 29,
- giving declarations under section 36, and
- paying any tax due under section 40.

119. Partnerships are dealt with in section 49 and schedule 17.

120. Defined terms used in this section:

“Tax Authority”	section 54
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Section 45 – Unit trust schemes

121. **Section 45** provides that a unit trust scheme is treated as if it were a company for the purposes of paying LBTT when it acquires land, except in relation to group relief (schedule 10), reconstruction relief and acquisition relief (schedule 11).

122. The section also provides that issues, surrenders and transfers of units are not within the scope of LBTT.

123. Subsection (6) confers a power on the Scottish Ministers to make, by regulations, further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of the Act. Such regulations will be subject to the negative procedure (see section 68).

Section 46 – Open-ended investment companies

124. **Section 46** confers a power on the Scottish Ministers to make, by regulations, further provision to ensure that the LBTT provisions apply to open-ended investment companies (OEICs) in the same way as they apply to unit trust schemes. Such regulations will be subject to the negative procedure (see section 68).

Section 47 – Residential property holding companies

125. Section 47 confers a power to the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. These provisions are aimed at the “enveloping” of residential property in a holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner.
126. A key feature of the transactions that are covered by this section, the “qualifying transaction” as set out in subsection (4), is that they will carry with them a right to occupy property owned by the company. A broad parallel can be drawn with the rules for LBTT and property investment partnerships (“PIPs”) in Part 6 of schedule 17.
127. For the purposes of this section, “residential property” includes such other kind of property as may be specified in regulations. Regulations made under this section will be subject to the affirmative procedure if they modify any Act. Otherwise, they will be subject to the negative procedure (see section 68).
128. Defined terms used in this section:

“chargeable transactions”	section 15
“land transaction”	section 3

Section 48 – Joint buyers

129. Section 48 sets out the treatment of joint buyers (other than partners and trustees, for which see schedules 17 and 18). Joint buyers, for example a couple buying a house, have joint and several liability to comply with the LBTT regime. This includes compliance with making returns under section 29 and paying any tax due under section 40. But declarations under section 36 must be made by all the buyers (without prejudice to the ability of agents such as solicitors to give declarations under subsection (2) of that section).
130. The definition of “jointly entitled” in section 64 covers both common ownership and joint ownership. See section 57(3) in the case of linked transactions.
131. Defined terms used in this section:

“jointly entitled”	section 65
“land transaction return”	section 65
“notifiable transaction”	section 30

Section 49 – Partnerships

132. Section 49 introduces schedule 17 concerning partnerships. Subsection (2) confers a power on the Scottish Ministers to make provision by regulations to modify schedule 17. This regulation making power will be subject to affirmative procedure (see section 68).

Section 50 – Trusts

133. Section 50 introduces schedule 18 concerning trusts. Subsection (2) confers a power on Scottish Ministers to make provision by regulations to modify schedule 18. This regulation making power will be subject to affirmative procedure (see section 68).

Section 51 – Persons acting in a representative capacity etc.

134. Section 51 concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations relating to LBTT arising from a land

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transaction entered into by the deceased person before he or she died. The section also concerns receivers appointed by a UK court. The person acting in a representative capacity is responsible for making returns under section 29, giving declarations under section 36 and paying any tax due under section 40.

135. No special provision is contained in the Act for incapacitated persons or minors. The general legal framework for assisting people who lack capacity, including the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#), will operate in relation to LBTT. For the position of attorneys see section 36.
136. Defined terms used in this section:

“land transaction”	section 3
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