

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 7 – General and Interpretation

140. **Part 7** contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Act.

The Tax Authority

Section 54 – The Tax Authority

141. **Section 54** defines, for the purposes of the Act, the “Tax Authority” as the Scottish Ministers, although in practice, the tax authority is expected to be a new body, Revenue Scotland. The Tax Authority is responsible for the collection and management of LBTT (see section 1(3)) and accordingly returns must be made to the Tax Authority (see section 29) and tax must be paid to the Tax Authority (see section 40).

Section 55 – Delegation of functions to Keeper

142. **Section 55** allows for the delegation of Tax Authority functions to the Keeper of the Registers of Scotland.

Section 56 – Review and appeal

143. **Section 56** confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions.

Section 57 – Linked transactions

144. **Section 58** defines “linked transactions”. The section provides that linked transactions can be reported on a single return and imports the rules relating to joint buyers (section 48) if linked transactions with joint buyers are reported on a single return.
145. Defined terms used in this section:

“connected persons”	section 58
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Example: Linked transactions

A property investor agrees to buy three new houses from a builder. The builder offers a special price for the houses because the investor agrees in advance to buy three. It is agreed that the buyer will pay £200,000 for each house once it is complete. The purchases take place in January 2017, February 2017 and March 2018.

The three transactions are linked transactions because they are between the same buyer and seller and form part of a single arrangement. (The length of time between transactions does not in itself affect whether the transactions are linked.) Separate land transaction returns will be required under section 29 in relation to each transaction because they do not take place on the same date and further returns may be required under section 34 in relation to earlier transactions. See section 26 for the calculation of the amount of tax due.

Connected persons

Section 58 – Connected persons

146. [Section 58](#) defines “connected persons” by reference to section 1122 of the [Corporation Tax Act 2010 \(c.4\)](#) and sets out the provisions in the Act that refer to “connected persons”. The meaning of “connected persons” is modified in schedule 17 by paragraph 49 of that schedule.

Interpretation

Section 59 – Meaning of “residential property”

147. [Section 59](#) defines “residential property”. Pursuant to section 24, bands and rates for LBTT must be set separately for residential property transactions and non-residential property transactions. If property is not residential property, it is non-residential property (examples of which are commercial and agricultural property). The power in subsection (9) allows for the rules in section 59 to be amended by order so as to change what counts as residential property. Orders will be subject to the affirmative procedure (see section 68).

148. Defined terms used in this section:

“major interest”	section 59
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Section 60 – Meaning of “major interest” in land

149. [Section 60](#) defines “major interest”, which has particular relevance to the notification rules in section 30. Major interest means ownership of land or a tenant’s right. Less common interests in land such as real burdens, servitudes and options are not major interests. Now that the feudal system of land tenure has been abolished pursuant to the [Abolition of Feudal Tenure \(Scotland\) Act 2000 \(asp 5\)](#), the interest of a feudal superior is no longer an interest in land recognised in the law of Scotland.

Section 61 – Meaning of “subject-matter” and “main subject-matter”

150. [Section 61](#) provides that “subject-matter” includes the main subject-matter of the transaction and any interest or right pertaining to it. So the acquisition of the ownership of land and the connected right to enforce a real burden over neighbouring property are not to be dealt with as two separate transactions.

Section 62 – Meaning of “market value”

151. [Section 62](#) defines “market value” by reference to UK Capital Gains Tax rules. This is relevant to several provisions in the Act, including section 22, paragraphs 5(4) and (6), 7, 8(4) and 13 of schedule 2 (chargeable consideration), paragraphs 3, 6, 10 and 22 of schedule 4 (relief for certain acquisitions of residential property), paragraph 15 of schedule 7 (alternative property finance relief), paragraphs 11 and 18 of schedule 8 (relief for alternative finance investment bonds), paragraphs 15, 17 and 25 of schedule 10 (group relief), paragraph 14 of schedule 11 (reconstruction relief and acquisition relief) and in paragraphs 13, 17, 18, 21, 28, 32 and 35 of schedule 17 (partnerships).

Section 63 – Meaning of “effective date” of a transaction

152. **Section 63** defines “effective date”. This date is the tax point that determines when liability to tax and notification obligations arise. In most cases the effective date will be when the buyer pays the price and settles the transaction. Special rules apply for contracts that are substantially performed before completion, for the grant of options and rights of pre-emption and for agreements for lease which are substantially performed. The power in subsection (1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date. Such regulations will be subject to the negative procedure (see section 68).

Section 64 – Meaning of “completion”

153. **Section 64** defines “completion”. Completion generally means settlement. For instance, in the case of a routine house purchase, that would be the point at which the buyer has paid the purchase price and receives a signed disposition (the “conveyance”) and the keys to the house. In this case, the point of completion is earlier than the point of registration of the disposition in the Land Register, at which point the buyer obtains the real right in land.¹ The usual rule about completion/settlement would not always work effectively in the particular case of leases, so completion in that context means when the lease is executed by the parties or otherwise constituted.

Section 65– General interpretation

154. **Section 65** sets out certain definitions used in the Act. In particular the section provides broad, inclusive definitions for “contract” and “conveyance”. Whilst for the routine conveyance of a real right in land the terms “missives” and “disposition” would be common, the concept of “chargeable interest” in section 4 is very broad and covers interests other than real rights in land; therefore it is appropriate to use broader terminology. A contract or conveyance might, for example, be subject to the law of a jurisdiction other than Scotland (see section 1(2)). These definitions are sufficiently broad to accommodate electronic documents as referred to in Part 10 of the [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#).

Section 66 – Index of defined expressions

155. **Section 66** introduces schedule 20 which provides an index to definitions used in the Act.

¹ As electronic conveyancing practices become more common the process of delivering dispositions, paying tax and obtaining registration will become more streamlined. The “effective date” may then be the same date as the date of registration.