



# Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

## PART 4

### RETURNS AND PAYMENT

#### CHAPTER 1

##### RETURNS

###### *Duty to make return*

#### **29 Duty to make return**

- (1) The buyer in a notifiable transaction must make a return to the Tax Authority.
- (2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

###### *Notifiable transactions*

#### **30 Notifiable transactions**

- (1) A land transaction is notifiable unless it is—
  - (a) an exempt transaction,
  - (b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,

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- (c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or
  - (d) an acquisition specified in subsection (2).
- (2) The following transactions in relation to leases are also not notifiable—
  - (a) the grant of a lease for a period of 7 years or more where—
    - (i) any chargeable consideration other than rent is less than £40,000, and
    - (ii) the relevant rent is less than £1,000,
  - (b) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of 7 years or more, and
    - (ii) the chargeable consideration for the assignation or renunciation is less than £40,000,
  - (c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, and
  - (d) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of less than 7 years, and
    - (ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate tax band applicable to the transaction.
- (3) In subsections (1) and (2), “chargeable consideration”—
  - (a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,
  - (b) includes any amount in respect of which tax would be chargeable but for a relief.
- (4) In subsection (2)(a)(ii), “relevant rent” means—
  - (a) the annual rent (as defined in paragraph 9(7) of schedule 19), or
  - (b) in the case of the grant of a lease to which paragraph 29 of schedule 17 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph).
- (5) The exceptions in subsections (1)(a) to (d) and (2) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).
- (6) This section has effect subject to—
  - (a) section 10(3) (substantial performance without completion),
  - (b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),
  - (c) paragraph 12 of schedule 7 (alternative property finance), and
  - (d) paragraph 41 of schedule 17 (transfer of partnership interests).
- (7) The Scottish Ministers may, by order, amend subsection (1)(b), (2)(a)(i) or (b)(ii) so as to substitute, for the figure for the time being specified there, a different figure.

### *Adjustments and further returns*

## **31 Return where contingency ceases or consideration ascertained**

- (1) The buyer in a land transaction must make a return to the Tax Authority if—

- (a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in subsection (2) occurs, and
  - (c) the effect of the event is that—
    - (i) the transaction becomes notifiable,
    - (ii) additional tax is payable in respect of the transaction, or
    - (iii) tax is payable where none was payable before.
- (2) The events are—
- (a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or
  - (b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.
- (4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)) unless the effect of the event mentioned in subsection (2) is that the transaction becomes notifiable.

### **32 Contingency ceases or consideration ascertained: less tax payable**

- (1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—
- (a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in section 31(2) occurs, and
  - (c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.
- (2) The steps are—
- (a) within the period allowed for amendment of the land transaction return, amend the return accordingly,
  - (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.
- (3) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)).

### **33 Further return where relief withdrawn**

- (1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—

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- (a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),
  - (b) Part 5 of schedule 5 (transfer of multiple dwellings),
  - (c) Part 4 of schedule 8 (relief for alternative finance investment bonds),
  - (d) Part 3 of schedule 10 (group relief),
  - (e) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or
  - (f) paragraph 4 of schedule 13 (charities relief).
- (2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.
- (4) The relevant event is—
- (a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
  - (b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 16(a) or 18(a) of that schedule,
  - (c) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,
  - (d) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
  - (e) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
  - (f) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

### **34 Return or further return in consequence of later linked transaction**

- (1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
- (a) the earlier transaction becomes notifiable,
  - (b) additional tax is payable in respect of the earlier transaction, or
  - (c) tax is payable in respect of the earlier transaction where none was payable before.
- (2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.
- (6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

*Returns: form and content etc.***35 Form and content**

- (1) A return under this Act must—
  - (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (2) The Tax Authority may specify different forms and information for—
  - (a) different kinds of return, and
  - (b) different kinds of transaction.
- (3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.

**36 Declaration**

- (1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer's knowledge, correct and complete.
- (2) However, where the buyer authorises an agent to complete the return—
  - (a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer's knowledge, correct and complete, and
  - (b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent's knowledge, correct.
- (3) The relevant date is—
  - (a) in relation to a return under section 29, the effective date of the transaction,
  - (b) in relation to a return under section 31, the date of the event as a result of which the return is required,
  - (c) in relation to a return under section 33, the date on which the relevant event occurred,
  - (d) in relation to a return under section 34, the effective date of the later transaction,
  - (e) in relation to a return under paragraph 10 of schedule 19 (leases), the review date (see paragraph 10(7)),
  - (f) in relation to a return under paragraph 11 of that schedule, the day on which the lease is assigned or terminated,
  - (g) in relation to a return under paragraph 20 of that schedule, the date on which the 1 year period mentioned in paragraph 20(3) ended,
  - (h) in relation to a return under paragraph 22 of that schedule, the date on which the deemed fixed term mentioned in paragraph 22(2) ended,
  - (i) in relation to a return under paragraph 30 of that schedule, the date from which the variation mentioned in that paragraph takes effect.

**37 Amendment**

- (1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.

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- (2) The notice must—
  - (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

### *Miscellaneous*

## **38 Interpretation**

References in this Act to the making of a return are to the making of a return that—

- (a) complies with the requirements of sections 35 and 36, and
- (b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

## **39 Power to amend period in which returns must be made**

- (1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.
- (2) The provisions are—
  - (a) section 29(3),
  - (b) section 31(3),
  - (c) section 33(3),
  - (d) in schedule 19 (leases)—
    - (i) paragraph 10(3),
    - (ii) paragraph 11(3),
    - (iii) paragraph 20(3)(a),
    - (iv) paragraph 22(2)(a),
    - (v) paragraph 30(2)(a).

## **CHAPTER 2**

### PAYMENT OF TAX

## **40 Payment of tax**

- (1) Tax payable in respect of a land transaction must be paid to the Tax Authority.
- (2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
  - (a) section 29 (land transaction return),
  - (b) section 31 (return where contingency ceases or consideration ascertained),
  - (c) section 33 (further return where relief withdrawn),
  - (d) section 34 (return or further return in consequence of later linked transaction),  
or
  - (e) in schedule 19 (leases)—

- (i) paragraph 10 (return on 3-yearly review),
  - (ii) paragraph 11 (return on assignation or termination of lease),
  - (iii) paragraph 20 (return where lease for fixed term continues after end of term),
  - (iv) paragraph 22 (return in relation to lease for indefinite term),
  - (v) paragraph 30 (transactions which become notifiable on variation of rent or term).
- (3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.
- (4) For the purposes of subsections (2) and (3), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

#### **41 Application to defer payment in case of contingent or uncertain consideration**

- (1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—
- (a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and
  - (b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.
- (2) An application under this section must—
- (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (3) An application under this section does not affect the buyer's obligations as regards payment of tax in respect of chargeable consideration that—
- (a) has already been paid or provided at the time the application is made, or
  - (b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.
- (4) Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.
- (5) Unless the Scottish Ministers provide otherwise by order, this section does not apply to consideration so far as it consists of rent.

#### **42 Regulations about applications under section 41**

- (1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.
- (2) The regulations may in particular—
- (a) specify when an application is to be made,
  - (b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,

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- (c) specify the grounds on which an application may be refused,
  - (d) specify the procedure for reaching a decision on the application,
  - (e) make provision for postponing payment of tax when an application has been made,
  - (f) provide for the effect of accepting an application,
  - (g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.
- (3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—
- (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and
  - (b) instead, any necessary adjustment is to be made in accordance with the regulations.
- (4) The circumstances are—
- (a) a payment is made as mentioned in section 41(3), and
  - (b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

## CHAPTER 3

### REGISTRATION OF LAND TRANSACTIONS ETC.

#### **43      Return to be made and tax paid before application for registration**

- (1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—
  - (a) a land transaction return has been made in relation to the transaction, and
  - (b) any tax payable in respect of the transaction has been paid.
- (2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).
- (3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.
- (4) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).