

*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 2 – Key Concepts

#### *Chapter 3 of Part 2 – Chargeable Transactions and Chargeable Consideration*

#### Chargeable transaction

#### *Section 15 – Chargeable transaction*

48. [Section 15](#) defines “chargeable transaction”. Chargeable transactions will give rise to a charge to LBTT although that might not mean that any tax is payable if, for example, they fall within the nil rate tax band referred to in [section 24](#).
49. Where a transaction is not exempt but [section 27](#) (and a schedule referred to in it) provides for a 100% relief from the tax, the Act uses the words “exempt from charge” to make clear that no tax is payable. (The difference between a relief and an exemption is that a relief will have to be claimed in a land transaction return (see [section 29](#))).
50. Defined terms used in this section:

“land transaction”	<a href="#">section 3</a>
“exempt transaction”	<a href="#">section 16</a>

#### *Section 16 – Exempt transaction*

51. [Section 16](#) defines “exempt transaction” by reference to [schedule 1](#). Where a transaction is an exempt transaction, no tax will be payable and the transaction will not be notifiable (see [section 30\(1\)\(a\)](#)).
52. If a transaction falls outside the scope of LBTT (for example, a transaction involves only moveable property) then it is not liable to charge or to notification.

#### Chargeable consideration

#### *Section 17 – Chargeable consideration*

53. [Section 17](#) defines “chargeable consideration” by reference to [schedule 2](#). The chargeable consideration is used to calculate the amount of tax due, as determined by [sections 25](#) and [26](#).
54. Subsection (2) confers a power on the Scottish Ministers to amend by regulations the definition of chargeable consideration with respect to what is to count as chargeable consideration and as to how chargeable consideration should be calculated in specific

cases. Such regulations will be subject to the affirmative procedure if they amend the Act itself. Otherwise, they will be subject to the negative procedure (see section 68).

## **Contingent, uncertain or unascertained consideration**

### ***Section 18 – Contingent consideration***

55. **Section 18** provides that where the whole or part of the chargeable consideration for a transaction is contingent, the amount of consideration should be calculated on the assumption that the amount relating to the contingency will be payable, whether or not the occurrence of the contingency means that the amount will be payable or cease to be payable. So where a contingency affects the eventual amount of consideration, buyers must calculate the consideration on the basis that the amount relating to the contingency will be payable. “Contingent” is defined in subsection (3).

### ***Section 19 – Uncertain or unascertained consideration***

56. **Section 19** provides that where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, the amount of consideration should be calculated on the basis of a reasonable estimate of the outcome. So where the consideration is uncertain or has not yet been ascertained – for example, where it is based on profits in accounts which have not yet been drawn up – buyers must make a reasonable estimate of the final consideration as at the effective date of the transaction.

### ***Section 20 – Contingent, uncertain or unascertained consideration: further provision***

57. **Section 20** clarifies that sections 18 and 19 on contingent, uncertain or unascertained consideration are to be read with sections:

- 31 (return where contingency ceases or consideration ascertained),
- 32 (contingency ceases or consideration ascertained: less tax payable), and
- 41 (application to defer payment in case of contingent or uncertain consideration).

## **Annuities etc.**

### ***Section 21 – Annuities etc.: chargeable consideration limited to 12 years’ payments***

58. **Section 21** determines how LBTT will apply where the chargeable consideration is in the form of an annuity. Where an annuity is paid as consideration for a land transaction, the chargeable consideration will be taken to be a one-off payment comprising twelve years’ payments. Where the payments vary, the twelve highest payments will be taken into account. LBTT will accordingly be payable as a single payment.

59. Subsection (9) clarifies that there is no provision for LBTT payments to be deferred, or for an adjustment of the amount of tax paid if, at a later date, an actual payment differs from a reasonable estimate, say, of the payment made when the tax was assessed.

## **Deemed market value**

### ***Section 22 – Deemed market value where transaction involves connected company***

60. LBTT is generally calculated by reference to actual consideration and not market values. However, section 22 provides that LBTT will be charged on the full market value of any land purchased by a company with which the seller is “connected” (within the meaning of UK Corporation Tax law) if the consideration involves the issue or transfer of certain shares. For example, if land is purchased by a company from another company which is connected with the buyer in consideration for the issue of securities

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whose value is less than that of the land, then the section ensures that LBTT is charged on the market value of the land.

61. A special definition of “company” applies for the purposes of this section (the definition is wider than the general definition of “company” in section 65).
62. The general rule that transactions with zero chargeable consideration are exempt does not apply to transactions falling within this section. Otherwise, this section does not affect situations where specific exemptions or reliefs apply. It is also subject to the exceptions provided for in section 23.
63. Defined terms used in this section:

“connected persons”	section 58
“market value”	section 62

***Section 23 – Exceptions from deemed market value***

64. [Section 23](#) provides three exceptions from the connected company rules in section 22 for transfers to independent corporate trustees and distributions of land, including distributions on liquidation, to corporate shareholders, other than in specific circumstances. Where the exceptions apply, the charge to LBTT will only apply to any chargeable consideration paid for the transaction.