Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016

2016 asp 11

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2016 and received Royal Assent on 24th March 2016

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

1 Land and buildings transaction tax: second homes etc.

(1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is amended as follows.

(2) After section 26 insert—

"**26A Additional amount: transactions relating to second homes etc.**

Schedule 2A makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.".

(3) After schedule 2 insert—

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"SCHEDULE 2A

(introduced by section 26A)

ADDITIONAL AMOUNT: TRANSACTIONS RELATING TO SECOND HOMES ETC.

PART 1

OVERVIEW

Overview

1 (1) This schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 sets out the additional amount of tax,

Part 4 contains provision about the application of this schedule in relation to certain types of buyer,

Part 5 provides for repayment of and relief from the additional amount of tax in certain cases,

Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of this schedule,

Part 7 contains general provision including powers to modify this schedule.

PART 2

TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

Transactions relating to second homes etc.

2 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(b) the relevant consideration for the transaction is £40,000 or more,

(c) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and

(d) either—

(i) the buyer is not replacing the buyer's only or main residence, or

(ii) the buyer is replacing the buyer's only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in

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addition to the one that the buyer intends to occupy as the buyer's only or main residence.

(2) A buyer is replacing the buyer's only or main residence if—

(a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

(b) that dwelling was the buyer's only or main residence at any time during the period of 18 months, and

(c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer's only or main residence.

Transactions where buyer is a non-individual etc.

3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(b) the relevant consideration for the transaction is £40,000 or more, and

(c) the buyer—

(i) is not an individual, or

(ii) is an individual and sub-paragraph (2) or (5) applies.

(2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual the sole or main activity of which is investing or dealing in chargeable interests.

(3) Sub-paragraph (2) of paragraph 31 of schedule 17 applies for the purposes of sub-paragraph (2) of this paragraph as it applies for the purposes of paragraph 31(1) of that schedule.

(4) In sub-paragraph (2), the reference to a business of the individual includes a reference to a business of a partnership of which the individual is a partner.

(5) This sub-paragraph applies if the individual is making the acquisition as trustee under a settlement and, in relation to any dwelling that is or forms part of the subject-matter of the transaction, there is no interested beneficiary.

(6) For the purposes of sub-paragraph (5), a beneficiary under the settlement is an interested beneficiary in relation to a dwelling if the beneficiary has or will have a relevant interest in the dwelling.

PART 3

THE ADDITIONAL AMOUNT

Additional amount

4 (1) Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount.

(2) The additional amount is an amount equal to 3% of the relevant consideration.

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(3) The relevant consideration is—

(a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or

(b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that is or forms part of the subject-matter of the transaction.

(4) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), the relevant consideration is to exclude so much of the chargeable consideration as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that the buyer intends to occupy as the buyer's only or main residence.

PART 4

CERTAIN TYPES OF BUYER

Joint buyers

5 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) or 3(1)(a) and (b) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.

(2) The conditions set out in paragraph 2(1)(c) and (d) or, as the case may be, 3(1)(c) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

Spouses, civil partners, cohabitants and children

6 (1) For the purposes of paragraph 2(1)(c), a dwelling which is owned by—

(a) the buyer's spouse or civil partner,

(b) the buyer's cohabitant,

(c) a person aged under 16 who is a child of—

(i) the buyer,

(ii) the buyer's spouse or civil partner, or

(iii) the buyer's cohabitant,

is to be treated as being owned by the buyer.

(2) Sub-paragraphs (1)(a) and (1)(c)(ii) do not apply if the buyer and the buyer's spouse or civil partner have separated.

(3) For the purposes of sub-paragraph (2), the parties have separated if—

(a) they no longer live together, and

(b) they do not intend to live together again.

(4) For the purposes of sub-paragraphs (1)(b) and (1)(c)(iii), a person is the buyer's cohabitant if the two of them live together as though married to one another.

Trustees in certain trusts

7 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) if—

(a) the buyer is acting as trustee of a settlement, and

(b) a beneficiary under the settlement has or will have a relevant interest in a dwelling that is or forms part of the subject-matter of the transaction.

(2) In paragraphs 2(1)(c) and (d), 2(2)(b) and (c), 5, 6 and 8(1)(b) and (c), references to the buyer are to be read as if they were references to the beneficiary.

(3) In paragraphs 2(2)(a) and 8(1)(a), references to the buyer are to be read as including references to the beneficiary.

PART 5

REPAYMENT OF AND RELIEF FROM THE ADDITIONAL AMOUNT

Repayment of additional amount in certain cases

8 (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),

(b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and

(c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

(2) Where this sub-paragraph applies—

(a) the chargeable transaction is to be treated as having been exempt from the additional amount, and

(b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of

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the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

(5) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).

Relief for purchases of 6 or more dwellings

9 A chargeable transaction is exempt from the additional amount if it is a transaction to which section 59(8) applies.

Relief: supplemental

10 (1) A relief under paragraph 9 must be claimed in the first return made in relation to the transaction or in an amendment of that return.

(2) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

PART 6

OWNERSHIP OF DWELLINGS

What counts as a dwelling owned by a person?

11 (1) This paragraph applies to determine what counts as a dwelling owned by a person for the purposes of this schedule.

(2) Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.

(3) A dwelling owned by a person is not to be counted for the purposes of paragraph 2(1)(c) if the acquisition of ownership of the dwelling by the person—

(a) is or was a chargeable transaction to which this schedule applies by virtue of paragraph 3, or

(b) would have been such a chargeable transaction but for the fact that the dwelling is situated outside Scotland.

(4) Ownership of a dwelling (other than one that is or forms part of the subject-matter of the chargeable transaction) is not to be counted if the market value of the ownership interest is less than £40,000.

(5) In determining the market value of the ownership interest in a dwelling for the purposes of sub-paragraph (4), the market value of any interest or right pertaining to ownership of the dwelling is to be included.

(6) Where the ownership interest in a dwelling is one of deemed ownership by virtue of paragraph 13 or 16 then, for the purposes of sub-paragraph (4), the market value of the interest is taken to be the market value of the dwelling.

(7) In determining the market value of a dwelling for the purposes of sub-paragraph (6)—
  (a) the market value of any interest or right pertaining to ownership of the dwelling is to be included, and
  (b) no account is to be taken of the effect of the existence of the interest referred to in sub-paragraph (6).

Deemed ownership: cases where title is not yet registered etc.

12 (1) This paragraph applies to determine, for the purposes of this schedule, when a person owns any dwelling where ownership of the dwelling is or has been the subject-matter or part of the subject-matter of a land transaction.

(2) Where the person is the buyer in relation to the transaction, the person is to be treated for the purposes of this schedule as owning the dwelling as from the end of the day that is the effective date of the transaction.

(3) Where the person is the seller in relation to the transaction, the person is to be treated for the purposes of this schedule as ceasing to own the dwelling as from the end of the day that is the effective date of the transaction.

(4) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, "land transaction" and "effective date" have the same meanings as they have in Part 4 of the Finance Act 2003 (stamp duty land tax).

(5) In the application of this paragraph to a dwelling situated outside the United Kingdom—
  (a) "land transaction" means any transaction for the transfer of ownership of the dwelling, and
  (b) "effective date" means the date of settlement or completion of the transaction (or of any event that is equivalent to settlement or completion of the transaction).

Deemed ownership: beneficiaries under certain trusts

13 (1) This paragraph applies where a person is the beneficiary under—
  (a) a bare trust, or
  (b) a settlement under the terms of which the beneficiary has a relevant interest in any dwelling that is or forms part of the trust property.

(2) For the purposes of this schedule, the beneficiary is to be treated as the owner of the dwelling.

(3) References in this schedule to "ownership" and "acquisition of ownership" are to be read accordingly.

Dwellings owned by trustees or personal representatives

14 (1) This paragraph applies where a person owns a dwelling as—

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(a) a trustee, or
(b) a personal representative of another.

(2) For the purposes of this schedule, the person is to be treated as not being the owner of the dwelling.

(3) Sub-paragraph (2) does not affect the operation of any other provision of this schedule by which the person is to be treated as the owner of the dwelling.

Deemed ownership: long leases

15 (1) This paragraph applies where a person ("the tenant") is the tenant under a lease of a dwelling for a term of more than 20 years.

(2) For the purposes of this schedule—
(a) the tenant is to be treated as the owner of the dwelling, and
(b) the landlord under the lease is to be treated as not being the owner.

(3) References in this schedule to "ownership" and "acquisition of ownership" are to be read accordingly.

Deemed ownership: proper liferents

16 (1) This paragraph applies where a person ("the liferenter") holds a liferent over a dwelling under a proper liferent.

(2) For the purposes of this schedule—
(a) the liferenter is to be treated as the owner of the dwelling, and
(b) the granter of the liferent and the fiar are to be treated as not being the owner.

(3) References in this schedule to "ownership" and "acquisition of ownership" are to be read accordingly.

Deemed ownership: joint owners and owners of shares

17 (1) This paragraph applies where two or more persons are jointly entitled to the ownership of a dwelling.

(2) For the purposes of this schedule, each of the persons is to be treated as the owner of the dwelling.

(3) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, "jointly entitled" has the meaning given in section 121 of the Finance Act 2003 (minor definitions).

(4) In the application of this paragraph to a dwelling situated outside the United Kingdom, "jointly entitled" means having an interest equivalent to being jointly entitled within the meaning of this Act or the Finance Act 2003.

Dwellings outside Scotland: what counts as "ownership"

18 (1) In the case of a dwelling situated outside Scotland, a person owns the dwelling for the purposes of this schedule if the person has an interest in it that is equivalent to ownership in Scotland.

(2) References in this schedule to "ownership" and "acquisition of ownership" are to be read accordingly.

PART 7

GENERAL PROVISION

Power of Scottish Ministers to modify schedule

19 (1) The Scottish Ministers may by order amend paragraph 4(2) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure.

(2) The Scottish Ministers may by order amend paragraph 2(1)(b), 3(1)(b) or 11(4) so as to substitute, for the figure for the time being specified there, a different figure.

(3) The Scottish Ministers may by order modify this schedule so as to make provision for or about reliefs from the additional amount and, in particular, may—

(a) add a relief,

(b) modify any relief,

(c) remove any relief.

(4) The Scottish Ministers may by regulations modify the following provisions of this schedule—

(a) Parts 2 (except paragraphs 2(1)(b) and 3(1)(b)) and 4 so far as relating to the application of this schedule in relation to—

(i) partnerships,

(ii) trusts,

(b) Part 6 (except paragraph 11(4)),

(c) paragraph 20.

(5) An order under sub-paragraph (3) may modify any other enactment that the Scottish Ministers consider appropriate.

Interpretation

20 (1) In this schedule—

"bare trust" has the meaning given in paragraph 19 of schedule 18,

"relevant consideration" is to be construed in accordance with paragraph 4(3) and (4),

"settlement", except in paragraph 12(5)(b), has the meaning given in paragraph 21 of schedule 18.

(2) Part 6 of schedule 5 (what counts as a "dwelling") applies for the purposes of this schedule as it applies for the purposes of schedule 5.

(3) For the purposes of this schedule, a beneficiary under a settlement has a relevant interest in a dwelling that is or forms part of the trust property or the subject-matter of a transaction if the beneficiary is entitled to—

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(a) occupy the dwelling for life, or
(b) income (whether net or gross) in respect of the dwelling.”.

2 Consequential amendments

(1) In the Land and Buildings Transaction Tax (Scotland) Act 2013—
(a) in section 25(3) (amount of tax chargeable), before paragraph (a) insert—
“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
(b) in section 26(4) (amount of tax chargeable: linked transactions), before paragraph (a) insert—
“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
(c) in section 68 (subordinate legislation)—
(i) in subsection (2), after paragraph (j) insert—
“(ja) paragraph 19(3) or (4) of schedule 2A,”,
(ii) for subsection (5) substitute—
“(5) The order is an order under—
(a) section 24(1),
(b) paragraph 19(1) or (2) of schedule 2A, or
(c) paragraph 3 of schedule 19.”,
(d) in schedule 5 (multiple dwellings relief)—
(i) in paragraph 10, after “relevant transaction” insert “ other than one to which schedule 2A applies ”,
(ii) after paragraph 10 insert—
“10A The amount of tax chargeable in relation to a relevant transaction to which schedule 2A applies is—
(iii) in paragraph 11, after “DT x ND” insert “ or, as the case may be, ΣDT ”,
(iv) in paragraph 13, after Step 3 insert— “ *Step 4* In the case of a relevant transaction to which schedule 2A applies, carry out Step 3 (taking account of any relief applicable to the transaction under paragraph 9 of that schedule) in relation to each dwelling that is, or is part of, the main subject-matter of the transaction to find the tax due in relation to each dwelling. ”.

(2) In section 108(3) of the Revenue Scotland and Tax Powers Act 2014 (claim for repayment if order changing tax basis not approved), in column 1 of the table, in the entry for the LBTT(S) Act 2013, after paragraph (a) insert—
“(aa) an order under paragraph 19(1) or (2) of schedule 2A,”.

3 Transitional provision: application of this Act

(1) This Act applies in relation to a chargeable transaction where—
(a) the contract for the transaction was entered into on or after 28 January 2016, and
(b) the effective date of the transaction is on or after the day on which section 1 comes into force.

(2) For the purposes of this section, "chargeable transaction", "contract" and "effective date" have the same meanings as in the Land and Buildings Transaction Tax (Scotland) Act 2013.

4 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act.

(2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
- (b) make different provision for different purposes.

(3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) otherwise, are subject to the negative procedure.

5 Commencement

(1) This section and sections 4 and 6 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on whichever is the later of—
- (a) the day after Royal Assent,
- (b) 1 April 2016.

6 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016.

Changes to legislation:
There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016.