

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 4 – Returns and Payment

79. Part 4 provides for land transaction returns (Chapter 1) and for the payment of the tax (Chapter 2).

Chapter 1 of Part 4 - Returns

Duty to make return

Section 29 – Duty to make return

80. Section 29 provides that, for every notifiable transaction, a completed land transaction return (tax return), including a self-assessment of liability to LBTT, must be made by the buyer to the Tax Authority within 30 days of the effective date of the transaction. Any tax self-assessed as payable must be paid at the same time as the return is made (see section 40(2)(a)).
81. Further particular rules concerning returns are set out in sections 48(3) (joint buyers) and 57(2) (linked transactions), paragraph 34(3) of schedule 17 (partnerships), paragraph 15 of schedule 18 (trusts) and paragraphs 10(2), 11, 21(3)(a), 23(2)(a), 30 and 32(2)(a) of schedule 19 (leases).
82. Defined terms used in this section:

“chargeable transaction”	section 15
“effective date”	section 63
“make a return”	section 38
“notifiable transaction”	section 30
“Tax Authority”	section 54

Notifiable transactions

Section 30 – Notifiable transactions

83. Section 30 sets out the general rule that all transactions are notifiable unless excluded by subsection (1). If the transaction is the acquisition of ownership in land then it is notifiable unless it is an exempt transaction under schedule 1. This may include cases where no tax is payable. However, notification is not required where the consideration for the transaction falls below a threshold of £40,000. Transactions relating to leases are notifiable unless excluded by subsection (2).

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84. Transactions which do not involve the acquisition of a major interest in land are only notifiable if they are not exempt transactions and the consideration is above the nil rate band. In other words, where some tax is payable.
85. Subsection (5) confers a power on the Scottish Ministers to amend by order the notification threshold of £40,000 in subsections (1)(b), (2)(a)(i) or (b)(ii). Such an order will be subject to the negative procedure (see section 68).
86. Further particular rules concerning notification are set out in section 10(3)(a) (substantial performance without completion) and paragraphs 20(5) and 22(3) of schedule 19 (leases). Other provisions concerning notification may be contained in regulations prescribing concerning non-residential licences to occupy property (see section 53(2)(e)).
87. Defined terms used in this section:

“chargeable consideration”	section 17 and schedule 2
“land transaction”	section 3
“linked transaction”	section 57
“major interest”	section 60
“relevant rent”	paragraph 29 of schedule 17 and paragraph 9(7) of schedule 19

Adjustments and further returns

Section 31 – Return where contingency ceases or consideration ascertained

88. **Section 31** provides for the amount of LBTT payable to be adjusted in cases where LBTT was paid on the basis of the rules in sections 18 or 19 because the whole or part of the consideration for the transaction was contingent, uncertain, or unascertained at the outset. If tax or additional tax is payable, or the transaction becomes notifiable, the section provides that a return must be made (and any tax must be paid at the same time - see section 40(2)(b)). Subsection (6) provides that section 31 should not apply in relation to contingent etc. rent except in the case where an uncertain rent becomes certain and this results in a tax payer having to submit a first tax return. See also section 21(9)(a) in the case of annuities and paragraph 30(2)(a) in the case of the assignment of leases.
89. Defined terms used in this section:

“make a return”	section 38
“Tax Authority”	section 54

Section 32 – Contingency ceases or consideration ascertained: less tax payable

90. **Section 32** is connected with section 31 and provides for a claim to repayment if tax has been overpaid. Subsection (3) disapplies section 32 in so far as the consideration consists of rent (see schedule 19 leases). See also section 21(9)(a) in the case of annuities.
91. Defined terms used in this section:

“land transaction return”	section 65
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Section 33 – Further return where relief withdrawn

92. Section 33 applies where a relief is withdrawn under provisions in schedules 4, 5, 8, 10 11 and 13 which withdraw reliefs in certain circumstances. The buyer must make a further return because the assessment of tax chargeable will have to change (generally, with tax or more tax being payable at the same time as the further return – see section 40(2)(c)).

93. Defined terms used in this section:

“make a return”	section 38
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Section 34 – Return or further return in consequence of later linked transaction

94. Section 34 provides for a requirement to make a return, or a further return, where a transaction becomes notifiable, or tax or additional tax becomes payable, as a result of a later linked transaction. The buyer under the earlier transaction must deliver a return, or a further return, in respect of the earlier transaction, and pay any tax or additional tax due, within 30 days of the effective date of the later transaction (see section 40(2) (d)). See also paragraphs 23(3), 25(4) and (5), 26(2) and (4) and 28(2)(b) of schedule 19 in the case of leases.

95. Defined terms used in this section:

“effective date”	section 63
“make a return”	section 38
“notifiable”	section 30

Example: effect of later linked transaction

Mrs Macdonald is granted an option by Mr Brown to buy his house, Mrs Macdonald pays Mr Brown £150,000 for the option and, for the house, she pays £300,000.

Using scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill at introduction, the LBTT due at the stage Mrs Macdonald acquires the option would be nil, as the consideration for the option falls below the nil rate tax band threshold (£180,000). Mrs Macdonald subsequently exercises the option on 1 December 2016. The exercise of the option by Mrs Macdonald constitutes a separate land transaction and she must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return is also then required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see section 57).

The LBTT payable by Mrs Macdonald will be determined by the total consideration given by her for both the grant of the option and the purchase of the house (£450,000).

Taking scenario 1 as outlined in the Financial Memorandum, the tax due in relation to the option and the house purchase would be calculated as follows:

Applying the calculations in Steps 1 and 2 of section 26(1), the total tax chargeable for both transactions would be—

$$(\text{£}180,000 \times 0\%) + (\text{£}270,000 \times 7.5\%) + (\text{£}0 \times 10\%) = \text{£}20,250$$

The tax chargeable in relation to the option (applying Steps 3 and 4) would now be—

$$\text{£}20,250 \times \text{£}150,000/\text{£}450,000 = \text{£}6,750$$

And the tax chargeable in relation to the purchase would be—

$\pounds 20,250 \times \pounds 300,000 / \pounds 450,000 = \pounds 13,500$
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Returns: form and content etc.

Section 35 – Form and content

96. [Section 35](#) provides for the form of returns and the information to be included within them to be specified administratively by the Tax Authority.
97. Defined terms used in this section:

“Tax Authority”	section 54
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Section 36 – Declaration

98. [Section 36](#) provides that returns must include a declaration by the buyer. Special rules as to declarations by particular types of buyer are set out in section 48(3)(b) (joint buyers), paragraph 9 of schedule 17 (partners) and paragraph 17 of schedule 18 (trustees).
99. Subsection (2) makes provision to allow agents such as solicitors to make declarations (for example using an electronic submission system) on behalf of the buyer.
100. Similarly, a declaration may be given by an attorney pursuant to a power of attorney or factory and commission, for example if a buyer is incapacitated or is out with Scotland and unable to deal with his or her affairs. The position is the same where a representative appointed by a court acts for an incapacitated person. 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.
101. Subsection (3) sets out what is the “relevant date” for the purposes of the declaration being made under section 36.
102. Defined terms used in this section:

“effective date”	section 63
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Section 37 – Amendment

103. [Section 37](#) allows buyers to amend their returns by notice to the Tax Authority within 12 months after the last day of the period within which the return must be made. This might be to correct typographic errors, to claim a relief that the buyer is eligible to claim but did not claim in the initial return or to claim a repayment where a contract which required a conveyance was substantially performed but then rescinded (see section 10(4) and (5)). Any tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made (see section 40(3)). Section 37 is subject to paragraph 35(4) of schedule 17 in the case of partnerships.
104. Defined terms used in this section:

“land transaction”	section 3
“Tax Authority”	section 54

Miscellaneous

Section 38 – Interpretation

105. [Section 38](#) defines the meaning of references to “make a return”.

Section 39 – Power to amend period in which returns must be made

106. Section 39 confers a power on the Scottish Ministers to amend by order the 30 day period set out in various provisions within which returns must be made. Such an order will be subject to the negative procedure (see section 68).

Chapter 2 of Part 4 – Payment of Tax

Section 40 – Payment of tax

107. Section 40 provides that LBTT is payable to the Tax Authority and deals with the due dates for payment of tax where a return is made or amended, or where tax is due following the withdrawal of a relief.
108. Tax must be paid at the same time as a return, further return or amendment of a return is made.
109. Defined terms used in this section:

“land transaction”	section 3
“land transaction return”	section 65
“Tax Authority”	section 54

Section 41 – Application to defer payment in case of contingent or uncertain consideration

110. Section 41 provides that a buyer may make an application for LBTT to be deferred. The application may be made where the whole or part of the chargeable consideration for a transaction is contingent or uncertain and where some or all of the consideration may fall more than 6 months after the effective date of the transaction. Sections 18, 19, 20, 31 and 32 contain provisions about contingent or uncertain consideration. Subsection (5) provides that section 41 does not apply so far as the consideration consists of rent (i.e. in the cases of leases) unless the Scottish Ministers provide otherwise by order. Such orders will be subject to the negative procedure (see section 68). See also section 21(9) (b) in the case of annuities.
111. Defined terms used in this section:

“chargeable consideration”	section 17 and schedule 2
“Tax Authority”	section 54

Section 42 – Regulations about applications under section 41

112. Section 42 is linked to section 41 and confers a power on the Scottish Ministers to make, by regulations, further provision about the circumstances under which an application may be made and the administrative framework to deal with the application procedure and the payments or repayments of LBTT which may result. Such regulations will be subject to the negative procedure (see section 68).

Chapter 3 of Part 4 – Registration of Land Transactions Etc.

Registration of land transactions etc.

Section 43 – Return to be made and tax paid before application for registration

113. Section 43 creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered by, or otherwise reflected in an entry in a register under the management and control of,

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the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid. "Paid" for this purpose does not necessarily mean that the Tax Authority has cleared funds in respect of the tax. The Authority may accept arrangements satisfactory for payment, such as a solicitor's cheque or direct debit instruction.¹ It is for the Authority to decide what will count as satisfactory. If registration proceeds but the arrangement for payment falls through the sum due is still payable to the Tax Authority.

114. This rule will have most relevance to standard conveyancing transactions where the buyer cannot obtain a real right in land until the disposition in the buyer's favour has been registered in the Land Register. But the rule will also have relevance in relation to other registers under the management and control of the Keeper, for example the Books of Council and Session if a short non-residential lease² is registered there voluntarily for preservation and execution.
115. If a document effecting or evidencing a notifiable transaction does not require to be registered and is not registered voluntarily then the link with registration does not apply.
116. Defined terms used in this section:

"land transaction return"	section 65
"notifiable transaction"	section 30
"payment"	section 40

¹ Similar provisions exist in relation the payment of land registration fees - see section 22(1)(e)(ii) of the [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#)

² A "short" lease is a lease of under 20 years. "Long" commercial leases i.e. those over 20 years must be registered in the Land Register. New long residential leases are generally incompetent, subject to exceptions.