

2014 No. 377

LAND AND BUILDINGS TRANSACTION TAX

The Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014

Made - - - - - *17th December 2014*

Laid before the Scottish Parliament *19th December 2014*

Coming into force - - - *1st April 2015*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 67(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013(a) and all other powers enabling them to do so.

Citation, and commencement

1. This Order may be cited as the Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 and comes into force on 1st April 2015.

Interpretation

2.—(1) In this Order—

“the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013;

“the 2003 Act” means the Finance Act 2003(b), as amended up to the commencement date;

“the commencement date” means such day as is appointed by order by the Treasury under section 29(4) of the Scotland Act 2012(c);

“HMRC” means Her Majesty’s Revenue and Customs (within the meaning of section 4 of the Commissioners for Revenue and Customs Act 2005(d)); and

“a section 29(6) event” means one of the events listed in paragraphs (a) to (c) of section 29(6) of the Scotland Act 2012.

(2) In this Order any reference to a transaction, a land transaction, a land transfer or an arrangement are in respect of land situated in Scotland.

Contracts entered into before 1st May 2012

3.—(1) This article applies to contracts entered into before 1st May 2012 for a land transaction under which the transaction is to be completed by a conveyance and there is an effective date in relation to the transaction after the commencement date.

(a) 2013 asp 11.
(b) 2003 c.14.
(c) 2012 c.11.
(d) 2005 c.11.

(2) Where this article applies and the transaction is excluded by a section 29(6) event, sections 9 and 10 of the Act apply subject to paragraph (3).

(3) This paragraph applies where there has been substantial performance of the contract under section 44(4) of the 2003 Act and tax in respect of the substantial performance has been paid to HMRC under the 2003 Act.

(4) Where paragraph (3) applies, section 10(3)(b) of the Act shall apply except that the tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract under the 2003 Act and paid to HMRC (as referred to in paragraph (3)).

Contracts entered into after 1st May 2012 but before the commencement date

4.—(1) This article applies to contracts entered into after 1st May 2012 but before the commencement date for a land transaction under which the transaction is to be completed by a conveyance and there is an effective date in relation to the transaction after the commencement date.

(2) Where this article applies and there is substantial performance of the contract under section 44(4) of the 2003 Act prior to the commencement date, sections 9 and 10 of the Act apply subject to paragraph (3).

(3) Where paragraph (2) applies and tax in respect of the substantial performance has been paid to HMRC under the 2003 Act, paragraph (4) applies.

(4) Where this paragraph applies, section 10(3)(b) of the Act shall apply except the tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract under the 2003 Act and paid to HMRC (as referred to in paragraph (3)).

Alternative property finance relief

5.—(1) This article applies to arrangements entered into prior to the commencement date under sections 72(1) or 72A(1) of the 2003 Act.

(2) Where this article applies and the first and second transactions under sections 72 or 72A of the 2003 Act are completed prior to the commencement date, neither the third transaction under section 72 of that Act nor a further transaction under section 72A shall be chargeable transactions under the Act if their effective date is after the commencement date, provided that the conditions mentioned respectively in sections 72(4) and 72A(4) of the 2003 Act have been met.

Alternative finance investment bonds

6.—(1) This article applies where arrangements referred to in paragraph 5(2) of Schedule 61 to the Finance Act 2009(a) are entered into with the effective date of the first transaction referred to in paragraph 5(2)(a) of that Schedule prior to the commencement date and the effective date of the second transaction referred to in paragraph 5(11)(a) of that Schedule after that date.

(2) Where this article applies, the second transaction referred to in paragraph (1) shall not be a chargeable transaction under the Act, provided that the conditions mentioned in paragraph 8(1)(a) and (b) of Schedule 61 to the Finance Act 2009 have been met.

Transfers of partnership interest pursuant to earlier arrangements

7.—(1) This article applies where paragraph 17(1) of Schedule 15 to the 2003 Act applies and—

- (a) the effective date of the land transfer referred to in paragraph 17(1)(a) of that Schedule is prior to the commencement date; and

(a) 2009 c.10.

- (b) the partnership transfer referred to in paragraph 17(1)(c) of that Schedule is after the commencement date.

(2) Where this article applies, the land transfer referred to in paragraph (1) shall be treated for the purposes of paragraph 17 of schedule 17 to the Act as if it were a land transfer mentioned in paragraph 17 of that schedule.

Withdrawal of money etc. from partnership after transfer of a chargeable interest

8.—(1) This article applies where paragraph 17A(1) of Schedule 15 to the 2003 Act applies and—

- (a) the effective date of the land transfer referred to in paragraph 17A(1)(a) of that Schedule is prior to the commencement date; and
- (b) the qualifying event referred to in paragraph 17A(1)(c) of that Schedule occurs after the commencement date.

(2) Where this article applies—

- (a) the land transfer referred to in paragraph (1) shall be treated for the purposes of paragraph 18 of schedule 17 to the Act as if it were a land transfer mentioned in paragraph 18(1) of that schedule; and
- (b) a qualifying event referred in paragraph 17A(2) of Schedule 15 to the 2003 Act shall be treated as if it were a qualifying event for the purposes of paragraph 18(2) of schedule 17 to the Act.

Partnership share attributable to partner

9. Paragraphs 25 and 26 of schedule 17 to the Act have effect notwithstanding that the relevant date for the purposes of paragraph 26(1) of that schedule is prior to the commencement date, but any references to obligations to pay tax under the Act in respect of land transactions prior to that date have no effect.

Overlapping leases

10.—(1) Paragraph 24(1)(a) to (c) of schedule 19 to the Act applies notwithstanding that the old lease referred to in paragraph 24(1)(a) to (c) of that schedule has been granted prior to the commencement date.

(2) Where the old lease referred to in in paragraph 24(1)(a), (b) or (c) of schedule 19 to the Act has been granted prior to the commencement date, the rent that would have been payable under the old lease for the purposes of paragraph 24(4) of that schedule shall be taken to mean the amount that was taken into account in determining the tax chargeable under the provisions of Schedule 5 to the 2003 Act in respect of the acquisition of the old lease.

Assignment of lease granted prior to the commencement date /withdrawal of relief

11.—(1) This article applies where paragraph 11(1) of Schedule 17A to the 2003 Act applies and—

- (a) the effective date of the grant of a lease referred to in paragraph 11(1) of that Schedule is prior to the commencement date; and
- (b) the first assignment of the lease referred to in paragraph 11(2) of that Schedule occurs after the commencement date.

(2) Where this article applies—

- (a) the grant of a lease referred to in paragraph (1) shall be treated as the grant of a lease for the purposes of paragraph 27(1) of schedule 19 to the Act;
- (b) the first assignment of a lease referred to in paragraph (1) shall be treated as the first assignment of a lease for the purposes of paragraph 27(2) of schedule 19 to the Act; and

- (c) the provisions in paragraph 11(3) and (5) of Schedule 17A to the 2003 Act shall be treated for the purposes of paragraph 27 of schedule 19 to the Act as if they were the corresponding provisions in paragraph 27(3) and (5) of schedule 19 to the Act.

Variation of lease treated as grant of new lease

12.—(1) This article applies to a lease granted prior to the commencement date (to which the provisions of Schedule 17A to the 2003 Act apply) where there is a variation of the lease after the commencement date to increase the amount of rent, which, if it had been before that date, would have been a variation to which paragraph 13(1) of that Schedule would have applied.

(2) Where this article applies—

- (a) the variation of a lease referred to in paragraph (1) shall be treated as the grant of a lease; and
- (b) the chargeable consideration (other than in respect of any premium) shall be the additional rent.

Extension of lease treated as grant of new lease

13.—(1) This article applies to a lease granted prior to the commencement date (to which the provisions of Schedule 17A to the 2003 Act apply) where there is a variation of the lease after the commencement date to increase the term of the lease or extend premises let, which, if it had been before the commencement date, would have been for the purposes of that Schedule the grant of a new lease.

(2) Where this article applies—

- (a) the variation of a lease referred to in paragraph (1) shall be treated as the grant of a lease; and
- (b) the chargeable consideration (other than in respect of premium) shall be the additional rent.

JOHN SWINNEY
A member of the Scottish Government

St Andrew's House,
Edinburgh
17th December 2014

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions in respect of the introduction of land and buildings transaction tax (“LBTT”) in Scotland by the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”). LBTT will replace stamp duty land tax (“SDLT”) in Scotland. The legislation underpinning SDLT is contained in Part 4 of the Finance Act 2003. The date when LBTT becomes chargeable (“the commencement date”) will be set out in a commencement order made by Scottish Ministers under section 70(2) of the LBTT(S)A 2013. Commencement of LBTT will take place after SDLT has been dis-applied in Scotland, on a date to be appointed by order by the Treasury under section 29(4) of the Scotland Act 2012. This Order defines “the commencement date” by reference to the date appointed by that order.

Section 29(5) of that 2012 Act, makes particular provision for certain land transactions to which SDLT will continue to apply, namely a land transaction for which the contract for the transaction was entered into or was substantially performed prior to Royal Assent of that Act on 1st May 2012. Section 29(6) makes particular provision for certain land transactions to which SDLT will no longer apply. For instance, where there has been an assignation or sub-sale in a contract entered into prior to 1st May 2012, LBTT will apply to the assignation or sub-sale or substantial performance and/or completion of the assignation or sub-sale in the terms of the LBTT(S)A 2013 if it falls on or after the commencement date. This Order makes provision in respect of certain transactions that began under SDLT but have an effective date on or after commencement of LBTT.

Article 3 makes provision in respect of certain contracts entered into before 1st May 2012 for a land transaction under which the transaction is to be completed by a conveyance and section 29(6) of the Scotland Act 2012 applies because there has been an intervening event that dis-applies SDLT in respect of the land transaction where the effective date is on or after the commencement date.

Article 4 makes provision in respect of certain contracts entered into after 1st May 2012 but before the commencement date for a land transaction under which the transaction is to be completed by a conveyance and there is an effective date in relation to the transaction after the commencement date, but there was also substantial performance of the contract prior to the commencement date. Article 4 ensures that sections 9 and 10 of the LBTT(S)A 2013 apply to the completion of the land transaction if the effective date for the completion of the contract is on or after the commencement date.

Article 5 makes provision where alternative finance arrangements that give rise to a series of land transactions are entered into. It ensures that arrangements entered into prior to the commencement date will keep the relief (although instead from LBTT under schedule 7 to the LBTT(S)A 2013), despite the fact it was SDLT that would have been payable at that future date when the alternative finance arrangement was entered into.

Article 6 makes provision where alternative finance bonds that give rise to a series of land transactions are entered into. It ensures that bonds entered into prior to the commencement date will again keep the relief (although instead from LBTT under schedule 8 to the LBTT(S)A 2013), despite the fact it was SDLT that would have been payable at that future date when the alternative finance bond was entered into.

Article 7 makes provision to ensure that LBTT is payable in respect of a transfer of an interest in a partnership pursuant to earlier arrangements involving a land transaction under paragraph 17 of schedule 17 to the LBTT(S)A 2013 although the earlier land transaction was in fact prior to the commencement date.

Article 8 makes provision to ensure that LBTT is payable in respect of any withdrawal of money etc. from a partnership after the transfer of a chargeable interest under paragraph 18 of schedule 17 to the LBTT(S)A 2013 although the withdrawal of money etc. took place prior to the commencement date.

Article 9 ensures that step 1 of paragraph 26(1) of schedule 17 to the LBTT(S)A 2013 can apply notwithstanding the fact that the relevant date for the purposes of paragraph 26 was prior to the commencement date.

Article 10 ensures that the discount in respect of overlapping leases under paragraph 24 of schedule 19 to the LBTT(S)A 2013 can apply, notwithstanding that the old lease was entered into prior to the commencement date.

Article 11 makes provision for any lease with an effective date prior to the commencement date that was entitled to a relief under SDLT that was later withdrawn. Article 11 ensures that paragraph 27 of schedule 19 to the LBTT(S)A 2013 applies so that an assignation of such a lease on or after the commencement date is treated as a new lease for LBTT purposes.

Articles 12 and 13 provide that variations and extensions of leases that were initially granted prior to the commencement date are to be treated as grants of a new lease for LBTT purposes with schedule 19 to the LBTT(S)A 2013 applying.

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£6.00

S2014121819 12/2014 19585

<http://www.legislation.gov.uk/id/ssi/2014/377>

ISBN 978-0-11-102573-4



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