These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

LAND AND BUILDINGS TRANSACTION Tax
(SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Land and Buildings Transaction Tax (Scotland) Bill introduced in the Scottish Parliament on 29 November 2012:
   
   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 19–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (the 2012 Act) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. The Bill deals with the former responsibility and makes provision for a tax on land transactions in Scotland, to be called the Land and Buildings Transaction Tax (“LBTT”). LBTT is based on UK Stamp Duty Land Tax (SDLT) as enacted in Part 4 of the Finance Act 2003 (c.14). The provisions of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force by a Treasury order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force in April 2015, the day after SDLT is disapplied.

5. Discussion and debate on the provisions of this Bill began with the publication of a consultation document, Taking forward a Land and Buildings Transaction Tax, on 7 June 2012. The consultation document included 17 questions, as follows:
   - Questions 1-8 covered the proposed structure and scope of the tax including the move from a ‘slab’ system to a progressive tax; future amendments to support key Scottish Government policies; exemptions and reliefs; and the treatment of both residential and non-residential leases.
   - Questions 9-13 related to anti-avoidance measures; and proposals for online returns and linking payment of tax with registration.
   - Question 14 sought views on the treatment of partnerships and trusts.
   - Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.
   - Question 17 sought any other views.

6. The consultation document was published to enable a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 56 responses was received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government’s Library (0131 244 4565) or website. ODS Consulting

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1 Link to consultation paper: http://www.scotland.gov.uk/Publications/2012/06/1301
2 Link to non-confidential consultation responses: http://www.scotland.gov.uk/Publications/2012/10/1031/0
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was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and their report has been published on the Scottish Government’s website.  

7. The Bill is intended to inter-operate with a Tax Management Bill to be introduced to the Scottish Parliament in 2013, providing for special powers of the Tax Authority, appeals and other matters of common relevance to devolved taxes. The Scottish Government intends to publish a consultation document on Tax Management matters in mid-December 2012.

THE BILL

Overview

8. The Bill comprises 70 sections and 19 schedules and is divided into 7 Parts as follows:

- Part 1 establishes the LBTT,
- Part 2 makes provision for the key concepts underlying the tax including:
  - which transactions are land transactions,
  - which interests are, and which are not, chargeable interests in land,
  - when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
  - which land transactions are, and which are not, chargeable transactions,
  - what is, and what is not, chargeable consideration in relation to a chargeable transaction,
- Part 3 makes provision for:
  - the amount of tax payable,
  - relief from the tax, and
  - who is liable to pay the tax,
- Part 4 provides for land transaction returns and for the payment of the tax,
- Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts,
- Part 6 contains general provision, including provisions on the Tax Authority and definitions of expressions used in the Bill,
- Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

9. LBTT is a tax on land transactions. A “land transaction” is the acquisition of a chargeable interest (i.e. an interest, right or power in or over land which is not exempt). If a transaction is notifiable (i.e. it is not an exempt transaction and the consideration is above certain thresholds), then a land transaction return must be made, together with payment of any tax due, to the Tax Authority. The amount of tax due is calculated on a progressive basis by reference to the consideration paid but this is subject to special rules for certain cases and the availability of reliefs for certain transactions.

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3 Link to analysis report on consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/8469](http://www.scotland.gov.uk/Publications/2012/10/8469)
10. The operation of LBTT is described in the flow-chart diagram and the example below.

Operation of LBTT

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**Transaction**

Is there a land transaction? i.e. an acquisition (s.6) of a chargeable interest (s.4)?

- **NO**
  - No notification required. No charge to tax.

- **YES**
  
  Is the transaction an exempt transaction (s.16)?
  
  - **YES**
    - No notification required. No charge to tax.
  
  - **NO**
    
    Is the transaction notifiable (s.30)?
    
    - **NO**
      
      Calculate tax (Part 3) on the chargeable transaction (s.15) based on the chargeable consideration (s.17).
      
      - **YES**
        
        Complete land transaction return (s.35) and declaration (s.36).
        
        Submit return (s.29).

    - **YES**
      
      Complete land transaction return and self-assessment (s.35) & declaration (s.36).
      
      Submit return (s.29). Pay tax (if any) (s.40).
Example: Operation of LBTT in relation to a simple house purchase

Justin and Brenda are buying a house from Stacey for £205,000, of which £5,000 is apportioned to moveables such as curtains.

The house purchase is a land transaction (section 3) because it is the acquisition (section 6) of a chargeable interest (section 4), that is to say an interest in land in Scotland that is not an exempt interest (section 5).

Justin and Brenda are the buyers (section 7), Stacey is the seller (section 7). The subject-matter (section 60) of the transaction is the house and any heritable rights included such as rights of way or the right to enforce neighbours’ title conditions (but the moveables are not part of the subject-matter of the transaction). The missives of sale are the contract (section 64) and the disposition by Stacey in favour of Justin and Brenda is the conveyance (section 64). The point at which Justin and Brenda pay the purchase price and receive their keys and the signed disposition is the point of settlement, known as completion (section 63), which fixes the tax point, known as the effective date (section 62).

The house purchase is a chargeable transaction (section 15) because it is not an exempt transaction (schedule 1) or otherwise exempt from charge. The chargeable consideration (schedule 2) is the money given for the subject-matter of the transaction i.e. £200,000 for the land, discounting £5,000 for the moveables.

The transaction is a residential property transaction which will have relevance to the amount of tax chargeable (section 24). It is unlikely that Justin and Brenda can claim any relief (section 27 and schedules 3 to 18).

Justin and Brenda, the buyers, are liable to pay LBTT (section 28). As joint buyers they have joint and several liability (section 48).

The transaction is a notifiable transaction (section 30) because the transaction is not an exempt transaction and the chargeable consideration is over £40,000. Accordingly, Justin and Brenda, the buyers, must make a land transaction return (section 29) to the Tax Authority (section 52) (or to Registers of Scotland if the function of processing returns has been delegated to them (section 53)). The land transaction return must include (i) a self-assessment of the tax chargeable and (ii) a declaration by Justin and Brenda or their solicitor (section 36). As joint buyers, Justin and Brenda have joint responsibility for the return and must both make the required declaration.

Justin and Brenda must make the return within 30 days of the effective date. They may amend the return (for example to correct an error) in the period of 12 months following the deadline for making the return (section 37).

Assuming that the tax bands and rates are such that LBTT is payable on chargeable consideration of £200,000, tax must be paid to the Tax Authority (or Registers of Scotland if the function of processing payments is delegated to them) at the same time
as the land transaction return is made. Tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of tax (section 40).

In order for Justin and Brenda to get ownership of the house, the conveyance (disposition) in their favour must be registered in the Land Register. However, Registers of Scotland will only accept an application for registration if the land transaction return has been made and the self-assessed LBTT has been paid (or is treated as paid) (section 43).

PART 1 – LAND AND BUILDINGS TRANSACTION TAX

11. Part 1 establishes LBTT.

Section 1 – The tax

12. Section 1 introduces LBTT as the replacement for SDLT in Scotland. LBTT is a tax which is charged on land transactions. It clarifies that LBTT will apply irrespective of how a transaction is documented (if at all) and whether the transaction is concluded in Scotland or elsewhere.

13. Defined terms used in this section:
   “land transaction” section 3
   “Tax Authority” section 52

Section 2 – Overview

14. Section 2 provides an overview of the Bill (see paragraph 10 above).

PART 2 – KEY CONCEPTS

15. Part 2 makes provision for the key concepts underlying the tax including:
   • which transactions are land transactions,
   • which interests are, and which are not, chargeable interests in land,
   • when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
   • which land transactions are, and which are not, chargeable transactions,
   • what is, and what is not, chargeable consideration in relation to a chargeable transaction.
CHAPTER 1 OF PART 2 – LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

Section 3 – Land transaction

16. Section 3 defines “land transaction”. If a transaction or other thing involves something other than the acquisition of a chargeable interest then it is not a land transaction and falls outside the scope of LBTT.

17. Defined terms used in this section:
   “acquisition” section 6
   “chargeable interest” section 4

Chargeable interest

Section 4 – Chargeable interest

18. Section 4 defines “chargeable interest”, the acquisition of which constitutes a land transaction under section 3. A chargeable interest is any interest, right or power in or over land in Scotland or the benefit of any obligation, restriction or condition affecting the value of such an interest, right or power. In simple terms, a chargeable interest is an interest in land, so an interest in moveable property such as kitchen “white goods” or furniture falls outside the scope of LBTT. The definition is very broad and captures more than the real rights in land known to Scots law; accordingly options in land, licences to occupy land and statutory rights such as community interests in land are chargeable interests. In some cases, certain interests are treated as being interests in land for the purposes of LBTT (see, for example, Part 6 of schedule 17 (property investment partnerships)).

19. Chargeable interests do not include exempt interests (see section 5). Subsection (3) reflects that under Part 4A of the Scotland Act 1998 (c.46) (as inserted by section 28 of the 2012 Act), a tax on interests in land in Scotland may not be imposed on so much of a transaction as relates to land below mean low water mark - therefore interests in the seabed fall outside the scope of LBTT.

Section 5 – Exempt interest

20. Pursuant to section 4(1), exempt interests are not chargeable interests. Section 5 defines “exempt interest” as a security interest, such as a standard security. In addition, certain interests are exempt if they have been acquired by financial institutions under alternative property finance arrangements (see schedule 7, paragraphs 21 to 24).

21. Power is conferred on the Scottish Ministers to vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure (see section 67).
Section 6 – Acquisition and disposal of chargeable interest

22. Section 6 defines “acquisition” and “disposal”. The section analyses various categories of land transactions in terms of disposals by one party and acquisitions by the other. The creation, renunciation, release or variation of a chargeable interest constitutes an acquisition by one person and a disposal by another.

23. In many cases an acquisition will be where an existing interest is transferred, for example title to a shop is sold and the buyer acquires the property. In other cases acquisition is when a new interest is created, for example a lease of a shop is granted and the tenant acquires the lease. Acquisition also includes where an interest is renounced or released, for example the lease of a shop is surrendered and the owner ceases to be subject to the terms of the lease and acquires free possession.

24. “Disposal” is construed in accordance with the meaning of acquisition. So in the examples given immediately above: the seller of the shop disposes of it when selling it to the buyer; the owner of the shop disposes of the lease in the shop when granting it; and, in the final example, the tenant disposes of the lease when surrendering it.

25. Subsection (4) clarifies that LBTT applies irrespective of how the acquisition is effected, and thus includes transactions arising from a court order or by operation of law, for example transfer by virtue of statute.

Section 7 – Buyer and seller

26. Section 7 defines “buyer” and “seller”. The “buyer” is the person acquiring the subject-matter of the transaction, and “seller” is the person disposing of the subject-matter of the transaction. But a person is not a buyer if they are not a party to or have not provided consideration for the transaction.

27. Defined terms used in this section:
   “subject-matter” section 60

CHAPTER 2 OF PART 2 – PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

Section 8 – Contract and conveyance

28. Sections 8 and 9 establish the general rule that where a contract is to be completed by a conveyance it is the conveyance that represents the land transaction. This rule will apply in the majority of cases and ensures that a transaction is only charged to LBTT once. In a standard house purchase, the missives of sale are the contract and the disposition is the conveyance.

29. Special rules are provided for in sections 9 to 13.

4 The terms used for SDLT are “purchaser” and “vendor”, reflecting English conveyancing practice.
30. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “conveyance” section 64

Section 9 – Completion without substantial performance

31. Section 9 provides for the usual case where a contract is completed by a conveyance without having previously been “substantially performed”. The contract and conveyance comprise a single land transaction. In this case, the “effective date” would be the date of completion (i.e. in a normal house purchase, the date of settlement).

32. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “effective date” section 62
   “substantial performance” section 14

Section 10 – Substantial performance without completion

33. Modifying the general rule in sections 8 and 9, section 10 provides that if a transaction is substantially performed before it is formally completed (or if it is substantially performed but never completed), then the contract and any subsequent completion are treated as two separate land transactions. In this case, the effective date of the contract for the purposes of LBTT would be the date of substantial performance.

34. The rationale for this provision is to remove any tax benefit in a buyer resting on his or her contract and having the effective enjoyment of the interest despite not proceeding to formal completion.

35. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “effective date” section 62
   “land transaction return” section 64
   “substantial performance” section 14

Contract providing for conveyance to third party

Section 11 – Contract providing for conveyance to third party

36. Section 11 makes special provision for where a contract is entered into whereby one party to the contract (B) has the right to direct a conveyance to him/herself or to a third party (C). An example is a development agreement where the developer has the right to enter on the land and build on it and then direct the conveyance of the completed plots. Such a contract is charged to LBTT when it is substantially performed (in the same way as a contract which is to be completed by
a conveyance to B). Section 11 also ensures that it is the consideration that is given or is to be given by B that is charged to LBTT once substantial performance occurs.

37. Where B directs the original seller (A) to convey a plot to C, subsections (9) and (10) apply sections 8 to 10 to the contract between B and C and to the conveyance from A to C. The result is that C is liable to pay LBTT on the consideration paid to B, either on completion or on substantial performance by C.

Example: Contract providing for conveyance to third party

Parties A and B agree in a contract that A will provide land for B to build new homes. A and B agree that A will transfer the homes to buyers found by B. B agrees to pay A £1.5 million with an initial deposit of £150,000. The effective date will be the day that B takes possession of the land and starts building the homes. At that point, LBTT is due to be paid by B on the agreed consideration of £1.5 million. Once the homes are built, A transfers ownership of each one to the buyers, each of whom will pay LBTT at the appropriate rates.

38. Defined terms used in this section:
   “chargeable interest” section 4
   “contract” section 64
   “conveyance” section 64
   “effective date” section 62
   “land transaction” section 3
   “substantial performance” section 14

39. The usual meaning of “completion” in section 63 is modified in subsection (10).

Options etc

Section 12 – Options and rights of pre-emption

40. Section 12 deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal). Where such an option or right is acquired, there is a land transaction chargeable (potentially) to LBTT. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct transaction (although the two transactions may be linked) and chargeable to LBTT in its own right. Options fall within subsection (1)(a) even if the grantor can discharge his or her obligation either by entering into a land transaction or in some other way (e.g. payment of money). The effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable. If an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this section.

41. Defined terms used in this section:
   “acquisition” section 6
   “effective date” section 62
Example: Options and rights of pre-emption

On 1 January 2016, Mrs Macdonald is granted an option by Mr Brown to buy his house on or before 31 December 2016. Mrs Macdonald paid Mr Brown for the grant of the option.

The acquisition of the option by Mrs Macdonald is a land transaction in its own right. Mrs Macdonald may have to make a land transaction return to the Tax Authority in relation to the option depending on what she paid for it and may be liable for LBTT.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction from the grant of the option. The effective date of that land transaction is the date of completion of the sale of the house to Mrs Macdonald or, if earlier, the date of substantial performance.

Mrs Macdonald must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return or further return is also 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 sections 34 and 56).

The final LBTT payable by Mrs Macdonald in respect of both the grant of the option and the purchase of the house will be determined by the total consideration given by her for both the grant of the option and the purchase of the house. See section 26 for how the tax is calculated and attributed between the option and the purchase.

Exchanges

Section 13 – Exchanges

42. Section 13 provides that, where parties enter into transactions that involve an exchange of land, they are treated as if they had entered into two separate land transactions which are not linked. Exchanges are often known as “excambions” in Scotland.

43. Defined terms used in this section:

“buyer” section 7
“linked transaction” section 56
Interpretation

Section 14 – Meaning of substantial performance

44. Section 14 defines “substantial performance”. This is where either the buyer takes possession of the whole or substantially the whole of the subject-matter of the transaction, or where “a substantial amount of the consideration” is paid or provided or where there is an assignation, subsale or other transaction where a third party takes possession of the whole or substantially the whole of the subject-matter of the transaction. Whichever event happens first will trigger the charge to tax even though the contract has not been completed by, say, a conveyance.

45. One of the ways in which a buyer can take possession is if he or she receives or is entitled to receive rent in respect of the property. A buyer is treated as taking possession whether or not the right to possession is documented in the contract or by a licence.

46. Subsection (3) sets out when a substantial amount of the consideration is paid or provided:
   - if none of the consideration is rent, it is when the whole or substantially the whole of the consideration passes,
   - if the only consideration is rent, it is when the first payment of rent is made,
   - if the consideration is partly rent and partly other consideration, it is when the whole or substantially the whole of the consideration passes, or when the first payment of rent is made.

47. Defined terms used in this section:
   - “buyer” section 7
   - “connected persons” section 57
   - “subject-matter” section 60

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 they might not 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 Bill 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” section 3
“exempt transaction” section 16

Section 16 – Exempt transaction

51. Section 16 defines “exempt transaction” by reference to schedule 1. Paragraphs 158 to 163 below comment on that schedule. Where a transaction is an exempt transaction, no tax will be payable and the transaction will not be notifiable (see section 30).

52. As mentioned above, 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. Paragraphs 164 to 181 below comment on that schedule. Chargeable consideration is used to calculate the amount of tax due (see 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 Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

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).

58. See paragraphs 87 to 90, 108 and 109 below for explanations of those sections.

Annuities etc.

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

59. 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 year’s payments. Where the payments vary, the twelve highest payments will be taken into account. LBTT will accordingly be payable as a single payment.

60. 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

61. LBTT is generally calculated by reference to actual and not deemed 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 whose value is less than that of the land, then the section ensures that LBTT is charged on the market value of the land.

62. A special definition of “company” applies for the purposes of this section (the definition is wider than the general definition of “company” in section 64).

63. 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.

64. Defined terms used in this section:

“connected persons” section 57
Section 23 – Exceptions from deemed market value

65. 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.

PART 3 – CALCULATION OF TAX AND RELIEFS

66. Part 3 makes provision for—
   • the amount of tax payable,
   • relief from the tax, and
   • who is liable to pay the tax.

Amount of tax chargeable

Section 24 – Tax rates and tax bands

67. The Bill does not set out the bands and rates for LBTT. These must be specified by the Scottish Ministers by order under section 24. Ministers must specify a nil rate tax band and at least two other tax bands. To ensure that the tax is a progressive one, the percentage tax rate for each tax band must be higher than for the band below it. There must be tax bands and rates for both residential and non-residential property transactions.

68. The first order under this section will be subject to the affirmative procedure. Subsequent orders will be subject to the negative procedure (see section 67).

69. Defined terms used in this section:
   “linked transaction” section 56
   “residential property” section 58

Section 25 – Amount of tax chargeable

70. This section sets out how to calculate the tax due in relation to a single transaction that is not a linked transaction.

71. Under the “slab” system of SDLT, tax is charged at the applicable rate on the whole consideration for the transaction. For example, if a house is sold for £240,000 the SDLT due is 1% of the whole amount while for a house costing £260,000, the SDLT due is 3% of the whole amount. By contrast, this section (read with section 24) provides for a “progressive system” that includes a nil rate band and at least two other bands. This structure will mean that only the proportion of the consideration above the threshold will be liable to the higher rate. LBTT is therefore to be calculated in a similar way to UK Income Tax.
72. The tax rates and bands which are applicable to the transaction will depend on whether it is a residential property transaction or a non-residential property transaction.

73. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “chargeable transaction” section 15

**Example: Amount of tax chargeable on a house bought for £260,000**

**Tax due under SDLT**

The rate of tax under SDLT for such a purchase is 3%. So the tax payable would be—

\[ £260,000 \times 3\% = £7,800 \]

**Tax due under LBTT using scenario 1**

Under scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum, the applicable rates for the transaction would be:

- Not more than £180,000: 0%
- Over £180,000 but not more than £1.5m: 7.5%
- Over £1.5m: 10%

Applying the calculation in section 25(1), the amount of tax payable would be:

\[ (£180,000 \times 0\%) + (£80,000 \times 7.5\%) + (£0 \times 10\%) = £6,000 \]

**Tax due under LBTT using scenario 2**

Under scenario 2 outlined in paragraphs 290 and 291 of the Financial Memorandum, the applicable rates for the transaction would be—

- Not more than £125,000: 0%
- Over £125,000 but not more than £250,000: 2%
- Over £250,000: 9.5%

Applying the calculation in section 25(1), the amount of tax payable would be:

\[ (£125,000 \times 0\%) + (£125,000 \times 2\%) + (£10,000 \times 9.5\%) = £3,450 \]

**Section 26 – Amount of tax chargeable: linked transactions**

74. Section 26 applies instead of section 25 where a chargeable transaction is one of a number of linked transactions. The amount of tax due on the total consideration for all the linked transactions is calculated first and then that tax is apportioned to the transaction in question on the basis of the chargeable consideration for the transaction.

75. Defined terms used in this section:
   “linked transaction” section 56
Example: Amount of tax chargeable on a number of linked transactions

A developer agrees to buy three plots of land from a farmer and buys them in three separate transactions on the same day. The consideration given for each plot is:

<table>
<thead>
<tr>
<th>Plot</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>100,000</td>
</tr>
<tr>
<td>B</td>
<td>200,000</td>
</tr>
<tr>
<td>C</td>
<td>300,000</td>
</tr>
</tbody>
</table>

Because the three transactions are linked, section 26 applies for the purposes of calculating the tax due in relation to each transaction.

Applying the calculation set out in section 26(1) to each transaction in turn gives the following results under the scenario for non-residential property transactions outlined in paragraphs 292 and 293 of the Financial Memorandum. The rates and bands under that scenario are:

- Not more than £150,000: 0%
- Over £150,000 but not more than £250,000: 3%
- Over £250,000: 4.4%

**Plot A**

To calculate the tax on an individual linked transaction, the total tax chargeable on the total consideration for all the linked transactions must be calculated first. Following Steps 1 and 2, the total tax chargeable on £600,000 would be:

\[
(£150,000 \times 0\%) + (£100,000 \times 3\%) + (£350,000 \times 4.4\%) = £18,400
\]

The amount of tax payable in relation to Plot A would therefore be (following Steps 3 and 4)—

\[
£18,400 \times £100,000/£600,000 = £3,067
\]

**Plot B**

Using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot B would be:

\[
£18,400 \times £200,000/£600,000 = £6,133
\]

**Plot C**

Again using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot C would be:

\[
£18,400 \times £300,000/£600,000 = £9,200
\]

Note that, had the three plots been purchased in a single transaction, section 25 would have applied instead and the tax payable (on the same scenario) would have been £18,400, i.e. the same as the total tax payable in the example.
Reliefs

Section 27 – Reliefs

76. Section 27 introduces schedules 3 to 16 concerning reliefs, as described from paragraph 182 below. Reliefs do not apply automatically and must be claimed (see subsection (2)). Subsection (3) provides a power for the Scottish Ministers to add, modify or remove reliefs by order. Orders under this section are subject to the affirmative procedure (see section 67).

77. Defined terms used in this section:
   “land transaction return” section 64

Liability for tax

Section 28 – Liability for tax

78. Section 28 provides that the buyer is liable to pay the LBTT due in respect of a chargeable transaction. Further provision about liability where there is more than one buyer can be found in sections 48 on joint buyers, paragraph 3 of schedule 17 on partnerships and paragraphs 4 to 17 of schedule 18 on trusts.

79. Defined terms used in this section:
   “chargeable transaction” section 15

PART 4 – RETURNS AND PAYMENT

80. 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

81. 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.

82. Defined terms used in this section:
   “chargeable transaction” section 15
   “effective date” section 62
   “make a return” section 38
   “notifiable transaction” section 30
   “Tax Authority” section 52
Notifiable transactions

Section 30 – Notifiable transactions

83. Section 30 specifies which land transactions are notifiable. The general rule is 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 regulations made under section 55.

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 subsection (1)(b). Such an order will be subject to the negative procedure (see section 67).

86. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “land transaction” section 3
   “linked transaction” section 56
   “major interest” section 58

Adjustments and further returns

Section 31 – Return where contingency ceases or consideration ascertained

87. 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 more tax is payable, the section provides that a return must be made and the tax paid.

88. Defined terms used in this section:
   “make a return” section 38
   “Tax Authority” section 52

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

89. Section 32 is connected with section 31 and provides for a claim to repayment if tax has been overpaid.

90. Defined terms used in this section:
   “land transaction return” section 64
Section 33 – Further return where relief withdrawn

91. Section 33 applies where a relief is withdrawn under provisions in schedules 4, 5, 10 and 11 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 more tax being payable).

92. Defined terms used in this section:
   “make a return”  section 38

Section 34 – Return or further return in consequence of later linked transaction

93. 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.

94. Defined terms used in this section:
   “effective date”  section 62
   “make a return”  section 38
   “notifiable”  section 30

Example: effect of later linked transaction

Using the example from section 12 where Mrs Macdonald is granted an option by Mr Brown to buy his house, say that 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, 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). And the transaction would not be notifiable under section 30, so no land transaction return would be required.

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 56).

The LBTT payable by Mrs Macdonald will be determined by reference to the total consideration given by her for both the grant of the option and the purchase of the house.
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:

\[
(£180,000 \times 0\%) + (£270,000 \times 7.5\%) + (£0 \times 10\%) = £20,250
\]

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

\[
£20,250 \times £150,000/£450,000 = £6,750
\]

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

\[
£20,250 \times £300,000/£450,000 = £13,500
\]

Returns: form and content etc.

Section 35 – Form and content

95. Section 35 provides for the form of returns and the information to be included within them to be specified administratively by the Tax Authority.

96. Defined terms used in this section:

“Tax Authority” section 52

Section 36 – Declaration

97. 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 16 of schedule 18 (trustees).

98. 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.

99. 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 outwith 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 (see paragraph 131 below).

100. Defined terms used in this section:

“effective date” section 62
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Section 37 – Amendment

101. 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)).

102. Defined terms used in this section:

   “land transaction” section 3
   “Tax Authority” section 52

Miscellaneous

Section 38 – Interpretation

103. Section 38 defines the meaning of references to “make a return”.

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

104. 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 67).

CHAPTER 2 OF PART 4 – PAYMENT OF TAX

Section 40 – Payment of tax

105. 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.

106. “Paid” 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. It is for the Authority to decide what will count as satisfactory.

107. Defined terms used in this section:

   “land transaction” section 3
   “land transaction return” section 64
   “Tax Authority” section 52

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5 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).
Section 41 – Application to defer payment in case of contingent or uncertain consideration

108. 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, 31 and 32 contain provisions about contingent or uncertain consideration.

109. Defined terms used in this section:

“chargeable consideration” section 17 and schedule 2
“Tax Authority” section 52

Section 42 – Regulations about applications under section 41

110. Section 42 is linked to preceding 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 67).

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

111. 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, the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid. 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 lease is registered there voluntarily for preservation and execution.

112. 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.

113. Defined terms used in this section:

“land transaction return” section 64
“notifiable transaction” section 30
“paid” section 40

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6 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.
PART 5 – APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

114. Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts.

Section 44 – Companies and other organisations

115. Section 44 specifies who is responsible for notifying transactions and paying LBTT in the case of companies (as defined in section 64) and unincorporated associations. It specifies which individuals within such organisations are responsible for:

- making returns under section 29,
- giving declarations under section 36, and
- paying any tax due under section 40.

116. Partnerships are dealt with in section 49 and schedule 17.

117. Defined terms used in this section:

“Tax Authority” section 52

Section 45 – Unit trust schemes

118. Section 45 provides that a unit trust scheme is treated as if it were a company for the purposes of paying LBTT when it acquires land, except in relation to group relief, reconstruction relief and acquisition relief.

119. The section also provides that issues, surrenders and transfers of units are not within the scope of LBTT.

120. Subsection (6) confers a power on the Scottish Ministers to make, by regulations, further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of the Bill. Such regulations will be subject to the negative procedure (see section 67).

Section 46 – Open-ended investment companies

121. Section 46 confers a power on the Scottish Ministers to make, by regulations, further provision to ensure that the LBTT provisions apply to open-ended investment companies (OEICs) in the same way as they apply to unit trust schemes. Such regulations will be subject to the negative procedure (see section 67).

Section 47 – Residential property holding companies

122. Section 47 confers a power on the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. These provisions are aimed at the “enveloping” of residential property in a
holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner. A key feature of the transactions that are covered by this section is that they will carry with them a right to occupy property owned by the company. A broad parallel can be drawn with the rules for LBTT and property investment partnerships (“PIPs”) in Part 6 of schedule 17.

123. Regulations made under this section will be subject to the affirmative procedure if they modify any Act. Otherwise, they will be subject to the negative procedure (see section 67).

124. Defined terms used in this section:

“chargeable transactions” section 15
“land transaction” section 3

Section 48 – Joint buyers

125. Section 48 sets out the treatment of joint buyers (other than partners and trustees, for which see sections 49 and 50). Joint buyers, for example a couple buying a house, have joint and several liability to comply with the LBTT regime. This includes compliance with making returns under section 29 and paying any tax due under section 40. But declarations under section 36 must be made by all the buyers (without prejudice to the ability of agents such as solicitors to give declarations under subsection (2) of that section).

126. The definition of “jointly entitled” in section 64 covers both common ownership and joint ownership.

127. Defined terms used in this section:

“jointly entitled” section 64
“land transaction return” section 64
“notifiable transaction” section 30

Section 49 – Partnerships

128. Section 49 introduces schedule 17 concerning partnerships (see paragraphs 228 to 233 below).

Section 50 – Trusts

129. Section 50 introduces schedule 18 concerning trusts (see paragraphs 234 to 236 below).

Section 51 – Persons acting in a representative capacity etc.

130. Section 51 concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations relating to LBTT arising from a land transaction entered into by the deceased person before he or she died. The section also concerns receivers appointed by a UK court. The person acting in a representative capacity is responsible for making returns under section 29, giving declarations under section 36 and paying any tax due under section 40.
131. No special provision is contained in the Bill 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. For the position of attorneys see paragraph 99 above.

132. Defined terms used in this section:
   “land transaction” section 3

PART 6 – GENERAL AND INTERPRETATION

133. Part 6 contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Bill.

The Tax Authority

Section 52 – The Tax Authority

134. Section 52 defines the “Tax Authority” as the Scottish Ministers. The Tax Authority has the care and management of LBTT (see section 1(3)) and accordingly returns must be made to the Tax Authority (see section 29) and tax must be paid to the Tax Authority (see section 40).

135. Subsection (2) confers a power on the Scottish Ministers to provide by order that another person is the Tax Authority. This provision could be used to allow for Revenue Scotland to become the Tax Authority, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers, subject to Parliamentary agreement of provisions for Revenue Scotland. Such an order will be subject to the affirmative procedure (see section 67).

Section 53 – Delegation of functions to Keeper

136. Section 53 allows for the delegation of Tax Authority functions to the Keeper of the Registers of Scotland. For example, functions around returns and payment may be delegated so that returns would be made to the Keeper and tax paid to the Keeper on behalf of the Tax Authority.

Section 54 – Review and appeal

137. Section 54 confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions. Such regulations will be subject to the affirmative procedure if they modify the Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

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7 Government proposals for Revenue Scotland will be set out in the forthcoming consultation on a Tax Management Bill.
8 The Keeper currently exercises delegated functions in respect of SDLT pursuant to the Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (S.I. 2005/844 as amended by S.I. 2006/3427).
Leases

Section 55 – Application of this Act to leases

138. Section 55 confers a power on the Scottish Ministers to make provision by regulations about the application of this Bill in relation to leases. Such regulations will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

Linked transactions

Section 56 – Linked transactions

139. Section 56 defines “linked transactions”. The section provides that linked transactions can be reported on a single return and imports the rules relating to joint buyers (section 48) if linked transactions with joint buyers are reported on a single return.

140. Defined terms used in this section:

“connected persons” section 57

Example: Linked transactions

A property speculator agrees to buy three new houses from a builder. The builder offers a special price for the houses because the speculator agrees in advance to buy three. It is agreed that the buyer will pay £200,000 for each house once it is complete. The purchases take place in January 2017, February 2017 and March 2018.

The three transactions are linked transactions because they are between the same buyer and seller and form part of a single arrangement. (The length of time between transactions does not in itself affect whether the transactions are linked.)

Separate land transaction returns will be required under section 29 in relation to each transaction because they do not take place on the same date and further returns may be required under section 34 in relation to earlier transactions. See section 26 for the calculation of the amount of tax due.

Connected persons

Section 57 – Connected persons

141. Section 57 defines “connected persons” by reference to section 1122 of the Corporation Tax Act 2010 (c.4). The meaning of “connected persons” is modified in schedule 17 by paragraph 48 of that schedule.
Interpretation

Section 58 – Meaning of “residential property”

142. Section 58 defines “residential property”. Pursuant to section 24, bands and rates for LBTT must be set separately for residential property transactions and non-residential property transactions. If property is not residential property, it is non-residential property (examples of which are commercial and agricultural property). The power in subsection (9) allows for the rules in section 58 to be amended by order so as to change what counts as residential property. Orders will be subject to the affirmative procedure (see section 67).

143. Defined terms used in this section:
   “major interest” section 58

Section 59 – Meaning of “major interest” in land

144. Section 59 defines “major interest”, which has particular relevance to the notification rules in section 30. Major interest means ownership of land or a tenant’s right. Less common interests in land such as real burdens, servitudes and options are not major interests. Now that the feudal system of land tenure has been abolished pursuant to the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5), the interest of a feudal superior - or "feuhold" - is no longer an interest in land recognised in the law of Scotland.

Section 60 – Meaning of “subject-matter” and “main subject-matter”

145. Section 60 provides that “subject-matter” includes the main subject-matter of the transaction and any interest or right pertaining to it. So the acquisition of the ownership of land and the connected right to enforce a real burden over neighbouring property are not to be dealt with as two separate transactions.

Section 61 – Meaning of “market value”

146. Section 61 defines “market value” by reference to UK Capital Gains Tax rules. This is relevant to, among other provisions, section 22.

Section 62 – Meaning of “effective date” of a transaction

147. Section 62 defines “effective date”. This date is the tax point that determines when liability to tax and notification obligations arise. In most cases the effective date will be when the buyer pays the price and settles the transaction. Special rules apply for contracts that are substantially performed before completion and for the grant of options and rights of pre-emption. The power in subsection (1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date. Such regulations will be subject to the negative procedure (see section 67).
Section 63 – Meaning of “completion”

148. Section 63 defines “completion”. Completion generally means settlement. In the case of a routine house purchase that would be the point at which the buyer has paid the purchase price and receives a signed disposition (the “conveyance”) and the keys to the house. In this case, the point of completion is earlier than the point of registration of the disposition in the Land Register, at which point the buyer obtains the real right in land.9

Section 64 – General interpretation

149. Section 64 sets out certain definitions used in the Bill. In particular the section provides broad, inclusive definitions for “contract” and “conveyance”. Whilst for the routine conveyance of a real right in land the terms “missives” and “disposition” would be common, the concept of “chargeable interest” in section 4 is very broad and covers interests other than real rights in land; therefore it is appropriate to use broader terminology. A contract or conveyance might, for example, be subject to the law of a jurisdiction other than Scotland (see section 1(2)). These definitions are sufficiently broad to accommodate electronic documents as referred to in Part 10 of the Land Registration etc. (Scotland) Act 2012 (asp 5).

Section 65 – Index of defined expressions

150. Section 65 introduces schedule 19 which provides an index to definitions used in the Bill.

PART 7 – FINAL PROVISIONS

151. Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 66 – Ancillary provision

152. Section 66 empowers the Scottish Ministers to make ancillary provision by order concerning LBTT. Orders under this section will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

Subordinate legislation

Section 67 – Subordinate legislation

153. Section 67 sets out general provisions for subordinate legislation under the Bill.

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9 As electronic conveyancing practices become more common the process of delivering dispositions, paying tax and obtaining registration will become more streamlined. The “effective date” may then be the same date as the date of registration.
Crown application

Section 68 – Crown application

154. Section 68 provides that the Bill does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Bill otherwise applies to the Crown.

155. For the position of Crown bodies as buyers in land transactions see paragraph 2 of schedule 1.

Commencement and short title

Section 69 – Commencement

156. Section 69 provides for the commencement of the Bill.

Section 70 – Short title

157. Section 70 sets out the short title of the Bill by which it may be cited for legal purposes.

Schedule 1 – Exempt transactions

158. This schedule is introduced by section 16 and lists seven types of land transaction which are exempt from LBTT as well as providing the Scottish Ministers with a power, by regulations, to add to the list of exemptions, modify an exemption or remove an exemption (paragraph 8 of schedule 1). Regulations under paragraph 8 will be subject to the affirmative procedure (see section 67).

159. The first exemption is where there is no chargeable consideration (paragraph 1 of schedule 1).

160. The second exemption covers Crown bodies listed in section 80J of the Scotland Act 1998, who may not be made liable to pay LBTT (paragraph 2 of schedule 1).

161. The third exemption covers leases and licences of residential property (paragraph 3 of schedule 1). Because generally a lease of residential property over 20 years in duration may not be granted in Scotland, this exemption covers leases in Scotland that would be unlikely, because of their short duration, to attract tax. Applying the same exemption to licences ensures uniformity. The only exception that has been made, set out in sub-paragraph (2), is to exclude residential leases that are “qualifying leases” under the Long Leases (Scotland) Act 2012. Pursuant to section 1 of that Act a residential lease is “qualifying” if:

- it is registered in the Register of Sasines or the Land Register;
- it was granted for more than 175 years;
- it has more than 100 years left to run from the appointed day laid down under the Act;
- the annual rent does not exceed £100.
162. The fourth and fifth exemptions cover transactions if effected respectively in matrimonial break-up proceedings and proceedings for dissolution of a civil partnership (paragraphs 4 and 5 of schedule 1).

163. The sixth and seventh exemptions cover transactions if effected in implementation of wills or the variation of testamentary dispositions provided there is no consideration (paragraphs 6 and 7 of schedule 1).

Schedule 2 – Chargeable consideration

164. This schedule, which is introduced by section 17, sets out the provisions for determining the amount of the chargeable consideration in relation to a land transaction.

165. Paragraph 1 defines the chargeable consideration for the transaction to be any consideration given in money or money’s worth for the subject-matter of the transaction, directly or indirectly by the buyer or a connected party.

166. Paragraph 2 clarifies that any VAT due on the consideration is included as chargeable consideration. But where the seller has the option to charge VAT but has not actually made an election to do so by the effective date of the transaction, then any VAT that subsequently becomes payable does not count as chargeable consideration.

167. Paragraph 3 ensures that, where some or all of the consideration is to be paid at a later date, it is the amount agreed that comprises chargeable consideration, and no discount is available for the delay in payment.

168. Paragraph 4 provides for just and reasonable apportionment of consideration where the subject-matter of a transaction does not just consist of a chargeable interest (for example, where a business such as a public house, hotel or care home is sold as a going concern and the consideration includes an element of value attributed to “goodwill”) or where the transaction is part of a bargain including other transactions.

169. Paragraph 5 sets out how the chargeable consideration for each transaction will be calculated when land transactions are entered into as consideration for each other. The rule will depend on whether the subject-matter of any of the transactions is a major interest in land as defined in section 59. If this is the case, the chargeable consideration for each acquisition will be deemed to be the market value of the subject-matter of the transaction together with the rent, if the subject-matter is the grant of a new lease. If the subject-matter of all the transactions are minor interests then the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax. This paragraph is subject to paragraph 6 (Petitions etc.: disregard of existing interest). This paragraph does not apply in a case to which paragraph 17 (Arrangements involving public or educational bodies) applies.

170. Paragraph 6 provides that where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.
171. Paragraph 7 provides a general rule that any non-monetary consideration is to be valued at its market value, unless provided otherwise. Non-monetary consideration comprises all consideration except money and debt.

172. Paragraph 8 ensures that the assumption or release of debt by the buyer counts as chargeable consideration for a transaction, but that the amount so chargeable cannot exceed the market value of the subject-matter of the transaction. The assumption of debt for the purposes of this clause does not include any mortgage or similar security taken out in order to acquire the property.

173. Paragraph 9 sets out how the chargeable consideration will be calculated for transactions where the exemptions provided for at paragraph 6 (Assents and appropriations by personal representatives) and paragraph 7 (Variation of testamentary dispositions etc.) of schedule 1 (Exempt Transactions) do not apply because of paragraph 6(2) and paragraph 7(3) of that schedule.

174. Paragraph 10 provides for consideration in a foreign currency to be translated into sterling on the effective date of the transaction.

175. Paragraph 11 sets out how to calculate chargeable consideration where the buyer or the seller carries out works of construction, improvement or repair of a building or other structure. Where those works are carried out after the effective date on land acquired or to be acquired by the buyer under the transaction (or on any of the buyer’s other land) and it is not a condition of the transaction that the seller carry them out on the buyer’s behalf, then the works do not comprise chargeable consideration. In other cases they do, at their open market value. Where by virtue of section 10(3) (substantial performance of contract without completion) there are two notifiable transactions, the condition in sub-paragraph 2 is treated as being met in relation to the second transaction if it is met in relation to the first. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

176. Paragraph 12 sets out that where the buyer provides services (other than works of construction, improvement or repair of a building or other structure), the chargeable consideration is the open market value of those services. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

177. Paragraph 13 deals with the situation where the seller is an employer and the buyer the employee of that employer. The chargeable consideration is not less than the market value of the subject-matter on the effective date of the transaction.

178. Paragraph 14 ensures that indemnities given by the buyer to the seller for any ongoing liabilities relating to the land do not count as chargeable consideration.

179. Paragraph 15 ensures that where a buyer in a land transaction is required to pay any UK Inheritance Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.
Paragraph 16 ensures that where a buyer in a land transaction is required to pay any UK Capital Gains Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

Paragraph 17 applies in the situation where certain public or educational bodies sell or grant a long lease to another party over land/property and then the other party leases the land back to the public or educational body. The public or educational body is not liable for LBTT because the leaseback by the public or educational body and any money for works or services are not considered as part of the chargeable consideration. The other party also does not have to pay LBTT based on the market value of the land/property that party buys or leases, so the party only has to pay it on the actual cash premium or rent the party pays to the public or educational body in exchange for entering into the deal. Sub-paragraph 2 lists the qualifying bodies. Sub-paragraph 3 confers a power on the Scottish Ministers to modify, by order, the list of qualifying bodies set out at sub-paragraph 2. Orders under paragraph 17 will be subject to the negative procedure (see section 67).

Schedule 3 – Sale and leaseback relief

This schedule, introduced by section 27, provides complete relief from LBTT for the leaseback part of the transaction where there is a sale and leaseback arrangement. The relief is available where the only other consideration for the sale element, other than the leaseback, is money or money equivalent. Where the buyer and seller are both companies, the leaseback will qualify for the relief only where they are not members of the same group.

Schedule 4 – Relief for certain acquisitions of residential property

Paragraph 1 of this schedule, introduced by section 27, provides an overview of Parts 2 to 6 of this schedule.

Paragraphs 2 and 3 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a house-building company from an individual who is also buying a new house from the company. Paragraph 4 sets out the qualifying conditions for the full and partial relief.

Paragraphs 5 and 6 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual who is buying a new house from a house-building company. Paragraphs 7 and 8 set out the qualifying conditions for the relief.

Paragraphs 9 and 10 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual where a chain of transactions involving the individual breaks down. Paragraphs 11 and 12 set out the qualifying conditions for the relief.

Paragraphs 13 to 17 set out the circumstances in which relief under this schedule may be withdrawn.

Part 6 defines various terms used in this schedule.
Schedule 5 – Multiple dwellings relief

189. This schedule, introduced by section 27, provides relief from LBTT in relation to purchases of multiple dwellings to ensure that the single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands. This relief is given only in so far as the transaction relates to dwellings: consideration that relates to property other than dwellings is taxed in the normal way.

190. The relief applies in respect of single transactions involving multiple dwellings and multiple linked transactions which, taken together, involve multiple dwellings.

191. The calculation of the relief is set out in Part 4. It involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

192. However, it is possible, for example, that a number of dwellings bought in a single transaction may have an average price that falls in the nil tax rate band, in which case 100% relief would be provided and no tax would be due. The provisions in paragraphs 13 and 14 enable the Scottish Ministers to make regulations to introduce a “tax floor” to ensure that if the tax on a particular transaction involving multiple dwellings would be lower than a prescribed amount, then the tax payable would be the prescribed amount. The method for calculating the prescribed amount will be set out by order.

193. Part 5 deals with the withdrawal of the relief.

Schedule 6 – Relief for certain acquisitions by registered social landlords

194. This schedule, introduced by section 27, covers provision for relief from LBTT for certain acquisitions by registered social landlords. Paragraph 2 sets out the qualifying conditions for this relief.

Schedule 7 – Alternative property finance relief

195. This schedule, introduced by section 27, makes provision for relief from LBTT in the case of certain land transactions connected to alternative property finance arrangements. The demand for alternative finance products comes mainly from Muslims, although they may be used by any consumer. Islamic (or Shari’a) law prohibits transactions that involve interest, gambling, speculation or unethical investment.

196. The most pronounced difference between Islamic financing and existing equivalent products is the prohibition on interest. For customers wishing to adhere to Shari’a law, this rules out financial products that result in either payment or receipt of interest, such as conventional deposit accounts and loans. However, Shari’a law does not prohibit the making of a return on capital if the
provider of the capital is willing to share in the risks of a productive enterprise. Thus profit and loss sharing arrangements are considered acceptable, provided there is shared risk.

197. Islamic financial transactions are structured using contracts, or combinations of contracts that satisfy the requirements of Shari’a law. Financial institutions in the UK offer Shari’a compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

198. Part 2 of the schedule details a series of reliefs from LBTT for the granting of particular transactions, all of which are designed to avoid the charging or payment of interest. Paragraphs 2 to 6 cover arrangements where a financial institution buys an interest in land and then leases it to a person where the person has a right to acquire the land from the institution or have it transferred to another person (or to another financial institution).

199. The “first transaction” that occurs as part of these arrangements (the purchase) will usually be chargeable to LBTT (unless it is a transfer from the person to the institution or from another financial institution to the institution – all effectively being re-mortgaging arrangements). The “second transaction” – the lease to the person – will generally be relieved, provided the provisions of the Bill in relation to the first transaction have been complied with. The “third transaction” – the transfer that the person can require the financial institution to make – will also be relieved provided it is a transfer to the person and provided the other conditions in paragraph 5 are met. Paragraph 6 states that sections 12 and 14 do not apply to the agreement mentioned in paragraph 2(c) so that the person’s right to require the institution to transfer the interest in land is not treated as an option and so that the agreement, under which the person can require the institution to transfer the interest, is not treated as substantially performed unless and until the third transaction (the transfer to the person) takes place.

200. Paragraphs 7 to 12 cover a different set of arrangements, where the financial institution and the person acquire an interest in land in common, with the person having an exclusive right to occupy the land and with the person and the institution agreeing to transfer the interest to the person (usually in a series of transactions). As before, the “first transaction” – the purchase – will usually be chargeable to LBTT. Paragraph 8 specifies the conditions under which the first transaction is relieved, namely where there is a refinancing arrangement. Paragraph 9 provides for relief for the “second transaction” – the right to occupy – provided the provisions of the Bill in relation to the first transaction are complied with. Paragraph 10 allows for relief for “further transactions” – transfers to the person from the financial institution. Paragraph 11 makes similar provision as paragraph 6. Paragraph 12 states the notification requirement of this relief.

201. Paragraphs 13 to 15 cover a third set of arrangements, where the financial institution purchases an interest in land, sells it to the person and, in return, the person grants the institution a standard security over the land. Usually LBTT will be due on the “first transaction” – the purchase by the institution. But paragraph 14 details the specific circumstances in which the first transaction is also exempt from LBTT (i.e. where the acquisition is part of a refinancing arrangement). Paragraph 15 provides for relief from LBTT for the “second transaction” – the sale to the person – where the provisions of the Bill in relation to the first transaction are complied with. The grant of the standard security by the person to the institution is not a land transaction, as security interests are exempt interests (see section 5).
202. Part 3 deals with transactions connected to alternative property finance arrangements which are not relieved from LBTT. Paragraph 16 provides that relief under this schedule is not available where group, reconstruction or acquisition relief is available in relation to the first transaction. Paragraphs 17 to 20 contain anti-avoidance provisions and provide that no relief is available under Part 2 where the arrangements involve the acquisition by the person of control of the financial institution.

203. Part 4 provides that an interest held by a financial institution as a result of the “first transaction” within the meaning of paragraph 2(a) or 7(a) is an “exempt interest” for the purposes of LBTT. Paragraph 22 provides that the interest will cease to be an exempt interest if certain specified circumstances prevail. Paragraph 23 provides that the interest held by the financial institution is not an exempt interest if the “first transaction” is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs). Paragraph 24 provides that the exemption provided by paragraph 21 does not make an interest exempt in the case of certain specified transactions.

204. Part 5 defines a number of terms for the purposes of this schedule.

**Schedule 8 – Relief for alternative finance investment bonds**

205. This schedule is introduced by section 27 and covers relief for alternative finance investment bonds. Paragraph 1 confers a power on the Scottish Ministers to make regulations setting out the form this relief may take and places a requirement on the Scottish Ministers to consult with certain bodies.

206. Regulations under this schedule will be subject to the negative procedure (see section 67).

**Schedule 9 – Crofting community right to buy relief**

207. This schedule, introduced by section 27, relates to transactions made by virtue of the “crofting community right to buy”, which enables crofting communities to apply to the Scottish Ministers for the right to buy crofting land where they live and work from the landlord who owns it. Paragraph 1 describes the type of transaction to which this schedule applies. Paragraph 2 describes the tax chargeable in relation to the transaction as the prescribed portion of the tax that would be payable but for this paragraph. Paragraph 3 provides for the prescribed portion of the tax to be prescribed by the Scottish Ministers by order. Orders will be subject to negative procedure (see section 67). Paragraph 4 defines “crofting community right to buy” for the purposes of this schedule.

**Schedule 10 – Group relief**

208. The schedule is introduced by section 27. Part 2 provides for relief from LBTT for the intra-group transfer of property held by companies if the relevant conditions are met. Part 3 provides for when relief is wholly or partially withdrawn and Part 4 contains interpretation provisions.

209. Paragraph 2 provides the relief from LBTT for acquisitions of property by companies within groups.
210. Companies are defined as members of a group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company (paragraph 43). Company means a body corporate and therefore as such includes a limited liability partnership. Such a member of a group having no share capital cannot be a subsidiary, only a parent company. Paragraphs 44 and 45 further elaborate that ownership means beneficial ownership of the share capital and can include indirect ownership through another company or companies. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

211. The schedule sets out in paragraphs 3 to 8 specific anti-avoidance rules (with exceptions in paragraphs 9 and 10) which restrict the availability of group relief. Availability is restricted where different types of arrangements are entered into relating to control of the companies, the provision of consideration from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available. Finally, in terms of paragraph 8, relief is unavailable if the transaction itself is not for genuine commercial reasons, or forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to LBTT.

212. Paragraphs 13 to 19 cover the situation where group relief is withdrawn. It is withdrawn if, following a successful claim for group relief, the buyer ceases to be a member of the same group as the seller within three years of the date of the transaction (or under arrangements made during the three-year period).

213. Paragraphs 20 to 31 provide exceptions from the withdrawal of group relief in certain cases where companies leave groups, and related anti-avoidance provisions. These are:

- where the de-grouping arises because of anything done in the course of winding up the seller,
- where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 (c.41) applies (subject to exceptions) and the buyer leaves the group as a result,
- the buyer ceases to be a member of the same group as the seller in the context of the demutualisation of an insurance company, or
- where the seller leaves the group.

214. Paragraphs 32 to 40 provide for withdrawal of relief in certain cases involving successive transactions.

Schedule 11 – Reconstruction relief and acquisition relief

215. This schedule, introduced by section 27, provides for relief from LBTT for land transactions connected to the transfer of the whole or part of an undertaking by a company where the consideration is non-redeemable shares. Relief from all LBTT due is provided if the transfer of the undertaking, including any land held by it, is under a scheme of reconstruction in exchange for non-redeemable shares (“Reconstruction relief”). A key condition is that shareholdings remain the same after the reconstruction. As with group relief, the reconstruction must be for a genuine commercial purpose and must not form part of any arrangement to avoid liability to tax (paragraphs 2 to 5).
216. Separately, under “Acquisition relief” (paragraphs 6 to 10), where a land transaction forms part of the transfer of an undertaking acquired for consideration of shares (but without the shareholdings having to remain the same), the amount of LBTT chargeable is reduced to a proportion (to be prescribed by Scottish Ministers by order) of the tax that otherwise would be chargeable but for the relief. Orders will be subject to the negative procedure (see section 67).

217. Paragraphs 11 to 14 provide for withdrawal of this relief where control of the acquiring company changes within three years, beginning with the effective date of the transaction (or there are arrangements under which control will change after three years which are entered into within the three-year period).

218. Paragraphs 15 to 22 set out situations where reconstruction relief or acquisition relief is not withdrawn despite control of the acquiring company changing. They include:

- where control changes as a result of a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons,
- where control changes as a result of a share transaction in connection with transactions which vary dispositions following death,
- where control changes as result of an exempt intra-group transfer of shares (defined in paragraph 36),
- where control changes as a result of a transfer to another company to which share acquisition relief applies (defined in paragraph 34), and
- where control changes as a result of a loan creditor becoming or ceasing to be treated as having control.

219. Paragraphs 23 to 29 provide for the withdrawal of reconstruction relief or acquisition relief on a subsequent non-exempt transfer and where share acquisition relief applies but control of the company subsequently changes.

**Schedule 12 – Relief for incorporation of limited liability partnership**

220. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT where land is transferred to a limited liability partnership in connection with its incorporation. Paragraph 2 sets out the qualifying conditions that require to be satisfied to attract the relief. Paragraph 3 defines “limited liability partnership” and “relevant time” for the purposes of this schedule.

**Schedule 13 – Charities relief**

221. This schedule, introduced by section 27, provides relief from LBTT for charities and charitable trusts. A charity is defined in paragraph 15 of the schedule as having the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10). That definition encompasses a Scottish Charitable Incorporated Organisation (that is, a special type of charitable entity incorporated under that Act) or any other charity registered with the Office of the Scottish Charities Regulator (“OSCR”). Any charity, including an English or a foreign charity, may register with OSCR at no cost.
Paragraph 1 provides for relief from LBTT if the buyer is a charity, provided that the two conditions in paragraph 2 are met. Firstly, the purchasing charity must intend to hold the land or the greater part of the land for qualifying charitable purposes (within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (paragraph 16)). Secondly, the purchasing charity must not be entering into the land transaction for the purpose of avoiding LBTT.

Paragraph 4 provides for charities relief to be withdrawn wholly or partially where a charity claims the relief in relation to a land transaction and, within three years of the transaction, the buyer ceases to be a charity or the land is used otherwise than for qualifying charitable purposes. Relief may also be lost if these events occur more than three years after the transaction but pursuant to arrangements made during the three-year period.

The relief is also wholly or partially withdrawn if the buyer transfers a major interest in the whole or part of the subject-matter of the transaction or grants a low rental lease at a premium (paragraph 7).

Schedule 14 – Relief for compulsory purchase facilitating development

This schedule is introduced by section 27. Paragraphs 1 and 2 provide for relief from LBTT for acquisitions by certain public bodies of land using compulsory purchase powers and define who may claim the relief. Paragraph 3 sets out the qualifying condition. Paragraph 5 defines the term “development” for the purposes of this schedule.

Schedule 15 – Relief for compliance with planning obligations

This schedule is introduced by section 27. Paragraphs 1 and 2 comprise the main relief provisions. A transaction will be relieved when it is entered into with a public body in order to comply with a planning obligation or a modification of a planning obligation, subject to certain conditions being satisfied. Paragraphs 3 and 4 define “planning obligation” and “modification”. Paragraph 5 lists which bodies fall within the definition of “public bodies” and allows the Scottish Ministers to add bodies to the list by order. Such an order will be subject to the negative procedure (see section 67).

Schedule 16 – Public bodies relief

This schedule is introduced by section 27. Paragraph 1 describes the type of transaction, under a statutory reorganisation, which is relieved under this schedule. Paragraph 2 provides that the Scottish Ministers may by order provide that certain other land transactions which do not fall under paragraph 1 are also relieved from LBTT subject to certain conditions. Orders will be subject to the negative procedure (see section 67). Paragraph 3 defines what is meant by a reorganisation for the purposes of paragraph 1 and paragraph 4 lists those bodies which are to be regarded as “public bodies” for the purposes of this schedule. Paragraph 5 includes, in the reference to a public body for the purposes of this schedule, a company which is wholly owned by such a body or a wholly-owned subsidiary of such a company. Paragraph 6 defines “company” for the purposes of paragraphs 4 and 5 of this schedule.
Schedule 17 – Partnerships

228. This schedule, introduced by section 49, provides for the treatment of partnerships in respect of LBTT. It sets out the responsibilities of partners, how LBTT applies in relation to the acquisition of interests in land by partners or partnerships, and excludes certain transactions relating to partnerships from LBTT.

229. Paragraph 2 defines “partnership” to include the various types of UK partnerships and also firms or entities outside Scotland having similar character.

230. Although a Scottish partnership has legal personality, anything done by the partnership is, for the purposes of LBTT, to be done by or in relation to all the partners (paragraph 8). The partners are jointly and severally liable for payment of the tax (paragraph 9). Chargeable interests held by a partnership are treated as held by the partners, whether or not a partnership has legal personality or is a body corporate. A partnership is also held to have continuity notwithstanding that partners change from time to time.

231. Where a partnership acquires land from a third party (or a third party acquires land from a partnership), the transaction is treated the same as any other transaction for the purposes of LBTT (see Part 3 of the schedule).

232. Where partners or prospective partners introduce land into the partnership and where existing partners take land out of the partnership, the transfer is taken to have a chargeable consideration equal to a proportion of the market value of the land transferred (see Parts 4 and 5 of the schedule). The proportion reflects, in the first case, that the partner or prospective partner retains a share of the land as a partner and, in the second case, that the partner already owned a share of the land as a partner.

233. There are special rules for the transfer of interests in property investment partnerships whose sole or main activity is holding or investing in land. In such cases there is no transfer of land except indirectly through the change of ownership structure of the partnership holding vehicle. In such a case the Bill looks to the underlying land (excluding non-land assets held) attributable to the buyer through the acquisition of the interest in the partnership and deems the chargeable consideration to be the market value of that land.

Schedule 18 – Trusts

234. This schedule, introduced by section 50, provides for the treatment of trusts in respect of LBTT.

235. Trusts are divided into “bare trusts” and “settlements” with settlements defined as trusts which are not bare trusts (paragraph 20). Bare trusts are trusts where the beneficiary is absolutely entitled to the property as against the trustee (paragraph 18) and includes the bilateral type of trust where the bare trustee holds the property as nominee for another.
236. The liability to pay the tax is imposed on the trustees except in the case of bare trustees, where the beneficiaries are liable for the payment of the tax. The tax can be recovered from any one of the trustees where they are liable for the tax.

Schedule 19 – Index of defined expressions

237. Schedule 19 provides an index to definitions used in the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

238. This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 29 November 2012. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

239. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (“the 2012 Act”) which received Royal Assent on 1 May 2012. The Bill will be followed in the current session by a Bill to put in place a Scottish Landfill Tax and later by a Bill to introduce arrangements for Tax Management. The Bill makes provisions for a Scottish tax on transactions involving interests in land, to be called the Land and Buildings Transaction Tax (“LBTT”). The 2012 Act also disapplies in respect of Scotland the UK Stamp Duty Land Tax (“SDLT”) regime, which is largely set out in Part 4 of the Finance Act 2003.

240. The provision of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force with effect from the end of March 2015 by a Treasury order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force as soon as SDLT is disapplied. At that point, in order to ensure the continued collection of tax receipts, the Scottish Government wishes to have in place arrangements for the management and collection of LBTT and, from that day on, the Scottish Consolidated Fund will receive all receipts raised in respect of transactions involving interests in land in Scotland.

241. There will be a loss of receipts to the UK Government from the withdrawal of SDLT in Scotland. The UK Government will consequently make a corresponding adjustment to the Scottish block grant. These arrangements are explained in pages 30 and 31 of the Command Paper, issued by the UK Government when the Scotland Bill was introduced in Westminster on 30 November
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Neither the Bill nor this Memorandum deal with adjustments to the Scottish block grant. The block grant adjustment was discussed by the Scottish and UK Governments prior to the passing by the Scottish Parliament of the Legislative Consent Motion for the (then) Scotland Bill in April 2012. The agreement reached on the process for arriving at block grant adjustments and other matters was set out in an exchange of published letters between the Cabinet Secretary for Parliamentary Business and Government Strategy and the Secretary of State for Scotland, on 20 and 21 March 2012. The relevant passage says:

“We will seek the Scottish Parliament’s agreement to changes to Scotland’s funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland’s interests are being properly considered.”

242. The actual formula for calculating the adjustment in respect of LBTT is due to be discussed and agreed in the first half of 2013.

GENERAL

243. The financial implications of this Bill have been considered under the following headings:
   I The financial implications for the Scottish Administration (paragraphs 244-279)
   II The costs on local authorities and other public bodies (paragraphs 280-282).
   III The costs on other bodies, individuals and businesses (paragraphs 283-293)

I FINANCIAL IMPLICATIONS FOR THE SCOTTISH ADMINISTRATION

244. The financial implications for the Scottish Administration have been considered under three sub-headings:
   i) The benefits to the total Scottish budget which will arise as a result of all tax receipts raised in respect of transactions involving interests in land in Scotland being paid into the Scottish Consolidated Fund and retained in Scotland. This benefit will vary from year to year depending on tax receipts, which in turn will vary depending on the value and volume of land transactions and the tax rates and bands that will be set in subordinate legislation prior to the introduction of the tax in April 2015 (see paragraphs 247-268);
   ii) The costs to the Scottish Government of setting up and running a new Scottish tax administration function (“Revenue Scotland”). The Bill defines the “Tax Authority” as the Scottish Ministers but confers a power on the Scottish Ministers to provide by order that another body is the Tax Authority. The intention is that this provision should be used to establish Revenue Scotland as the Tax Authority, at a future point when Revenue Scotland has a legal personality separate from that of the Scottish Ministers, subject to Parliamentary agreement of the necessary provisions (see paragraphs 269-275); and
   iii) The administrative and compliance costs which will arise as a result of the Registers of Scotland (“RoS”) taking on operational responsibility for the collection of LBTT (see paragraphs 276-279).

10 The UK Government Command Paper is available at: http://www.scotlandoffice.gov.uk/scotlandoffice/14692.394.html
245. The estimated costs cover the implementation of the LBTT Bill from 2013; they do not include the costs of legislating to bring LBTT into existence. In practice, costs of legislating will be borne within the existing administration budgets of the Scottish Government and the Scottish Parliament. Nor do the costs include the anticipated one-off costs associated with the “switch-off” of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government. There may be offsetting savings to HMRC as a result of no longer needing to operate SDLT in Scotland after April 2015. HMRC has been asked to provide an estimate of these likely costs and offsetting savings as soon as possible and these estimates will be provided to the Parliament. However, further planning work needs to be undertaken before estimates are available.

246. There will be some minor ongoing administrative costs on the Scottish Government as a result of this Bill, for example to provide Ministers with advice on LBTT policy. The Scottish Government considers that these costs, which will be met from existing administration cost budgets are not material.

i. **The benefits to the total Scottish budget from LBTT receipts**

247. Paragraphs 248-268 explain that it is not possible at this stage to provide a definitive estimate of future tax receipts. As explained above, this Memorandum does not discuss the block grant adjustment. The net effect on the total Scottish budget depends on tax receipts offset by the block grant adjustment. For budgeting purposes, the replacement of SDLT with LBTT could be assumed to be broadly financially neutral. This is discussed further in paragraph 268 below.

248. It is clear that when replacing one tax system with another with a different tax structure, the tax yield will not be exactly the same as previously. Estimating the change to the tax yield is not possible at this stage as tax rates and bands have not yet been set. Historic HMRC data for the combined SDLT receipts from sale and lease transactions in Scotland, taking into account the cost of existing exemptions and reliefs, shows receipts varying from £565 million in 2007-08, to £250 million in 2009-10, rising to £330 million in 2010-11. Receipts from SDLT in the UK and in Scotland in each of the last four years of available data are provided below.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

**SDLT receipts, UK and Scotland (data from HMRC)**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total UK Receipts (£M)</strong></td>
<td>9,955</td>
<td>4,795</td>
<td>4,885</td>
<td>5,960</td>
</tr>
<tr>
<td><strong>Total Scottish Receipts (£M)</strong></td>
<td>565</td>
<td>320</td>
<td>250</td>
<td>330</td>
</tr>
<tr>
<td><strong>Total Number of Transactions (Scotland)</strong></td>
<td>163,065</td>
<td>97,066</td>
<td>82,564</td>
<td>82,265</td>
</tr>
<tr>
<td><strong>Residential Receipts (£M) (Scotland)</strong></td>
<td>340</td>
<td>185</td>
<td>135</td>
<td>165</td>
</tr>
<tr>
<td><strong>No. of Residential Transactions (Scotland)</strong></td>
<td>150,109</td>
<td>87,148</td>
<td>74,561</td>
<td>73,740</td>
</tr>
<tr>
<td><strong>Non-Residential Receipts (£M) (Scotland)</strong></td>
<td>225</td>
<td>135</td>
<td>115</td>
<td>165</td>
</tr>
<tr>
<td><strong>No. of Non-Residential Transactions (Scotland)</strong></td>
<td>12,956</td>
<td>9,918</td>
<td>8,003</td>
<td>8,525</td>
</tr>
</tbody>
</table>

249. As the table above illustrates, receipts from SDLT are volatile. They depend strongly on the number and value of transactions in the housing, commercial and agricultural property markets. Receipts from LBTT will similarly be volatile and depend on property market conditions in Scotland, including property prices and volume of transactions from 2015-16 onwards. Receipts will also depend on tax rates and bands to be set by Scottish Ministers, with the approval of the Scottish Parliament. Ministers have indicated that they will propose LBTT rates and bands when bringing forward the draft budget for 2015-16 in autumn 2014.

250. Further analysis of SDLT receipts raised in Scotland is provided below.

**Receipts from SDLT - Purchases**

251. The table below sets out SDLT receipts raised from residential and non-residential purchases of land and buildings in Scotland. Such sales accounted for approximately 75.5% of total SDLT receipts in 2009-10 and approximately 78% in 2010-11, the remaining 22-24.5% being made up, primarily, of tax receipts from lease transactions.

<table>
<thead>
<tr>
<th>Year</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Residential sales receipts (£ million)</strong></td>
<td>132.1</td>
<td>160.4</td>
</tr>
<tr>
<td><strong>Non-residential sales receipts (£ million)</strong></td>
<td>54</td>
<td>93.3</td>
</tr>
<tr>
<td><strong>Total receipts from sales in Scotland</strong></td>
<td>186.1</td>
<td>253.7</td>
</tr>
</tbody>
</table>

11 Information in this table is published by HMRC - [http://www.hmrc.gov.uk/stats/stamp_duty/menu.htm](http://www.hmrc.gov.uk/stats/stamp_duty/menu.htm)
12 Note – the figures showing the number of transactions include only those transactions notified to HMRC through an SDLT return. Therefore these figures exclude transactions where no return is required, e.g. because a property is sold for less than £40,000 or given to someone as a gift and where no SDLT is payable.
13 SDLT receipts and LBTT receipts are calculated after exemptions and reliefs have been taken into account.
14 Variations between this information and the table of annual SDLT receipts at paragraph 240 can be attributed to SDLT transactions which are technically neither sales nor leases and so classed as ‘other’.
Receipts from SDLT – Leases

252. The table below shows SDLT receipts on leases in Scotland from 2009-10 to 2010-11:

<table>
<thead>
<tr>
<th>£ million</th>
<th>New Leases</th>
<th>Assigned Leases</th>
<th>Total from Leases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Residential</td>
<td>Non-Residential</td>
<td>Residential</td>
</tr>
<tr>
<td>2009-10</td>
<td>&lt;0.1</td>
<td>19</td>
<td>0.2</td>
</tr>
<tr>
<td>2010-11</td>
<td>&lt;0.1</td>
<td>24.9</td>
<td>0.7</td>
</tr>
</tbody>
</table>

253. The annual receipts from non-residential (i.e. commercial and agricultural) leases, of about £65m per year, are roughly 20% of overall SDLT receipts in 2010-11. As these figures indicate, SDLT receipts from residential leases are low. This is attributable to the reforms introduced in the Land Tenure Reform (Scotland) Act 1974, which ensure that residential leases of over 20 years cannot normally be granted (subject to certain exceptions for residential leases taken by bodies such as local authorities, housing associations and rural housing bodies). Only leases that are over 20 years long can be registered in the Land Register or recorded in the Register of Sasines. The receipts from the taxation of residential leases are likely to become even lower now that the Long Leases (Scotland) Act 2012 has been passed by the Scottish Parliament. That Act will, subject to some exceptions, convert ultra-long residential leases (over 175 years long and with more than 100 years left to run) to ownership.\(^{15}\)

254. The Scottish Government proposed in its consultation paper to simplify the LBTT regime for residential leases in comparison to the existing SDLT structure. The Bill, therefore, exempts from LBTT all transactions involving residential leases (grant of lease, renunciation or assignation), with the exception of ‘qualifying leases’ under the Long Leases (Scotland) Act 2012. The Scottish Government considers that this reduction in receipts, of about £100,000, is not material in the context of total receipts arising from LBTT.

255. As set out in the LBTT consultation paper, the Scottish Government is aware that the current SDLT legislation in relation to the calculation of the tax payable on non-residential leases does not work effectively in the Scottish context. The existing legislation is extremely complex and technical - primarily because non-residential leases are themselves complex, technical arrangements whose purpose and terms vary greatly. There are, for example, significant differences between a lease where an interest in a piece of land or property is awarded on the basis of a pre-agreed and relatively fixed rent and a lease where rent is based on the revenue (“turnover”) that the leaseholder subsequently expects to generate as a result of their having acquired the interest.

256. The Scottish Government’s current position on non-residential leases set out in the Policy Memorandum is that this is a matter which requires further detailed and informed stakeholder and practitioner input in order to finalise the best possible legislative solution. Accordingly, at this stage, the Bill does not make detailed provision in relation to non-residential leases but provides for an order-making power. It is intended that further legislation will be brought forward in due course for approval by the Parliament, either in the form of amendments to the Bill at Stage 2 or of

\(^{15}\) Long leases liable to conversion are referred to as “qualifying leases” in paragraph 3(2) of schedule 1 to the Bill.
statutory instruments. This position is supported by the Law Society of Scotland which said in its response to the LBTT consultation that:

“The committees are of the view that the complexities of the SDLT lease code and the costs incurred by taxpayers in complying with it are out of all proportion to the tax collected. A much simpler system should be introduced for LBTT.”

257. For present purposes, it is assumed that receipts from the taxation of non-residential leases in the LBTT regime in future will be broadly equivalent to those from SDLT at present. A full account of the expected receipts from LBTT on non-residential leases will be provided when the relevant legislation is brought forward.

Exemptions and reliefs

258. Actual SDLT receipts and forecast LBTT receipts reflect exemptions and reliefs claimed by taxpayers. The Bill provides that an exemption will apply where the chargeable consideration is nil and the buyer does not have to make a return to RoS in relation to the transaction – for example, where a property is transferred to someone as part of a divorce settlement. The Bill also provides for reliefs where certain types of buyers of certain types of land or property can submit a claim to reduce the amount of tax payable in part or in full. The Bill provides that where buyer wishes to claim a relief, the buyer must complete an LBTT return. This will enable RoS and/or Revenue Scotland to monitor the use of reliefs and ensure that they are being claimed legitimately. This applies to both partial reliefs and those for 100% of the tax due.

259. The actual value of reliefs and exemptions varies from year to year depending on the overall volume and value of transactions and the relevant rates of tax that are applied. The table below gives information about the value of SDLT reliefs in 2010-11 in Scotland (data provided by HMRC).

<table>
<thead>
<tr>
<th>Relief</th>
<th>Non-residential £ million</th>
<th>Residential £ million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group</td>
<td>24.2</td>
<td>1.7</td>
</tr>
<tr>
<td>Other</td>
<td>10.8</td>
<td>3.4</td>
</tr>
<tr>
<td>Charities</td>
<td>3.5</td>
<td>1.7</td>
</tr>
<tr>
<td>First Time Buyers (withdrawn by UK Government on 25 March 2012)</td>
<td>n/a</td>
<td>4.8</td>
</tr>
<tr>
<td>Certain acquisitions by Registered Social Landlords</td>
<td>0.3</td>
<td>1.1</td>
</tr>
<tr>
<td>Acquisition</td>
<td>1.2</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Certain acquisitions - part exchange (house building company)</td>
<td>n/a</td>
<td>1.2</td>
</tr>
<tr>
<td>Alternative property finance</td>
<td>1.1</td>
<td>nil</td>
</tr>
<tr>
<td>Disadvantaged Area (to be withdrawn by UK Government from April 2013)</td>
<td>&lt;0.1</td>
<td>0.8</td>
</tr>
<tr>
<td>Certain acquisitions - relocation of employment</td>
<td>n/a</td>
<td>0.6</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Compulsory Purchase</th>
<th>0.5</th>
<th>nil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilitating Development</td>
<td>0.3</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Transfers involving public bodies</td>
<td>0.2</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Acquisition by bodies established for national purposes</td>
<td>0.1</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Reconstruction</td>
<td>&lt;0.1</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Incorporation of limited liability partnerships</td>
<td>&lt;0.1</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Complying with Planning Obligations</td>
<td>&lt;0.1</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Zero Carbon Homes (time limited 1 Oct 2007 to 1 Oct 2012)</td>
<td>n/a</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Combination of reliefs</td>
<td>n/a</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Unknown reliefs</td>
<td>n/a</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td><strong>Total cost (excludes &lt;0.1 entries)</strong></td>
<td><strong>42.2</strong></td>
<td><strong>15.3</strong></td>
</tr>
</tbody>
</table>

**Note:** There are a number of other existing UK SDLT reliefs not listed above (for example, demutualisation of an insurance company relief, crofting community right to buy relief) which had zero cost in 2010-11 in Scotland. Relief under the subsale provisions is also not listed as it is not claimed as a relief.

Removing reliefs

260. The Scottish Government has consulted on and examined the case for replicating each of the reliefs currently available under SDLT. It has concluded that, in some instances, the case for retaining specific reliefs is not strong – particularly when considered in the context of the objective to simplify the tax. The Bill proposes fewer reliefs under LBTT than those currently available under SDLT. For reasons set out in the Policy Memorandum, the reliefs which are currently available under SDLT and which will not be replicated, either wholly or partially, under LBTT are as follows:

- Sub-sales (the SDLT rules for sub-sales are considered to be a relief, although it is not claimed as such);
- Certain acquisitions of residential property;
- Demutualisation of insurance companies/building societies;
- Transfer in consequence of reorganisation of Parliamentary constituencies; and
- New zero-carbon homes.

261. The proposal to remove sub-sale relief may lead to an increase in receipts. However, it is not possible to identify the extent of the potential receipts increase because sub-sale rules are not statutorily classed as a relief under SDLT. Buyers taking advantage of the relief do not have to notify HMRC that they are doing so and there is, therefore, no information on which to base an
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

estimate. It will be important to ensure that when LBTT is introduced in April 2015, subject to Parliamentary approval, it is made clear to taxpayers that sub-sale rules do not apply any longer.

262. “Certain acquisitions of residential property” refers to a group of four reliefs. It is proposed to retain two of the reliefs in this group, where property is bought in part-exchange for a new residential property and where a property trader acquires a dwelling after the breakdown of a series of transactions. The other two will be removed, as explained in the table below:

<table>
<thead>
<tr>
<th>Relief Available</th>
<th>Existing Cost (2009-10) Data from HMRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a property trader(^\text{16}) acquires a dwelling from the personal representatives of a deceased person.</td>
<td>£0m</td>
</tr>
<tr>
<td>Where an employer or a property trader purchases a dwelling from an employee who is re-locating.</td>
<td>£0.5m</td>
</tr>
</tbody>
</table>

263. The cost of providing the final three reliefs listed above (Demutualisation of insurance companies, Reorganisation of Parliamentary constituencies and New zero-carbon homes relief) is currently zero – i.e. there have been no claims under these reliefs made in Scotland in recent years. The removal of these reliefs has no financial implications. The reasons for removing these reliefs are set out in the Policy Memorandum accompanying the Bill.

Receipts: economic impacts

264. The UK Government has sought to use SDLT as an instrument to stimulate the property market, or sectors of it, and thus the construction sector and the wider economy. Examples of how the UK Government has sought to use SDLT include the granting of first-time buyer relief and relief for non-residential property transactions in specified disadvantaged areas (the UK Government withdrew the former in March 2012 and plans to end the latter in March 2013). The cost or benefit to the wider economy of such reliefs, and also of changes to tax rates and bands will depend on many factors, including prevailing conditions in different sections of the property market. The effect is likely to vary significantly from year to year. No attempt has been made to estimate the potential wider economic or financial impact of any future adjustments to LBTT. Changes to the tax rates and bands and to reliefs and exemptions will be made by statutory instrument and will require the approval of the Scottish Parliament.

265. Over time, the Scottish Government will develop its analysis of the relationship between LBTT and the wider Scottish economy and will use this information to ensure that there is a good understanding of the linkages between LBTT rates, bands and reliefs and the Scottish property market.

\(^{16}\) In this context a property trader means a company, a limited liability partnership or a partnership whose members are all companies or limited liability partnerships that carries out the business of buying and selling properties.
Receipts: forecasts

266. In March 2012, the Office of Budget Responsibility (OBR) published forecasts for Scottish receipts of SDLT over the five year period from 2010-11 to 2016-17 in the document entitled Economic and Fiscal Outlook – Scottish tax forecasts. A summary of actual data and forecast receipts follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>£ million</td>
<td>330</td>
<td>319</td>
<td>328</td>
<td>369</td>
<td>426</td>
<td>480</td>
<td>536</td>
</tr>
</tbody>
</table>

Average over 5 years = £354 million

267. The Scottish Government expects that additional information will become available during Parliamentary consideration of this Bill. Forecasts for future SDLT receipts depend heavily on assumptions made about future economic growth and conditions in the property market.

Receipts: summary

268. For the purposes of projecting the net effect on the overall Scottish budget, it is reasonable to assume that receipts from LBTT will be equivalent to those from SDLT at present, and that the block grant adjustment will be broadly equal to the level of SDLT receipts. In other words, the financial impact of the Scottish Government introducing LBTT and the UK Government ending SDLT in Scotland and applying a block grant adjustment, can be assumed to be broadly neutral. This assumption is, of course, dependent on the rates and bands of LBTT, to be set, in due course, by the Scottish Government with the approval of the Scottish Parliament. As noted earlier, this Bill does not deal with the block grant adjustment.

ii. Costs to the Scottish Government of establishing and running Revenue Scotland

269. The Cabinet Secretary for Finance, Employment and Sustainable Growth gave notice in his statement to the Parliament on 7 June 2012 of his intention to establish a tax administration function (Revenue Scotland) to administer both LBTT and Landfill Tax in Scotland. The Cabinet Secretary said that:

“We will establish a tax administration function for assessing and collecting both taxes here in Scotland. The function, which I propose to name Revenue Scotland, will be established this year. By 2015, in line with international best practice, it will be operationally independent and its governance enshrined in legislation.”

270. Legislative provision for the establishment of Revenue Scotland will be made, subject to the agreement of the Scottish Parliament, in the Tax Management Bill, to follow this Bill in 2013. As the Cabinet Secretary announced, Revenue Scotland will have a structure and constitution designed so that it is operationally independent of Scottish Ministers. While ultimately it will deliver and respond to Scottish Government policy and will account to the Scottish Ministers and the Scottish

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Parliament for its performance, it is both appropriate and necessary for Revenue Scotland to be operationally independent in dealing with taxpayers and their affairs.

271. The Scottish Government will meet the costs of establishing and running Revenue Scotland. The estimated costs provided below for both Revenue Scotland and RoS are as provided to the Scottish Parliament in June 2012 and placed in the Scottish Parliament Information Centre (SPICe). These costs reflected work done on the various functions needed to operate the tax. Since June, further work has been done during the public consultation period and thereafter to refine the design of LBTT. More detailed planning is now underway on administrative systems and the allocation of tasks between Revenue Scotland and RoS. This work will include development of a more detailed timetable for the tasks required and of a profile for estimated expenditure. Updated costs and timescales will be provided to the Parliament when they are available.

272. Staff costs are based on average costs for Scottish Government staff in summer 2012 and take account of average basic salary for the grades in question, Accruing Superannuation Liability Charge, Earnings-Related National Insurance Contribution and any non-consolidated award.

273. Revenue Scotland will be established to oversee the administration of both LBTT and Landfill Tax. The administration costs attributable to LBTT and, therefore, to this Bill will arise both in Revenue Scotland and in RoS. Estimated RoS costs are described at paragraphs 276-279 below. At this stage in planning there is insufficient information to support an attribution of Revenue Scotland costs between LBTT and Landfill Tax. So although total estimated costs for Revenue Scotland are given below, only a proportion of these will be attributable to LBTT.

274. Costs have been broken down under two headings: set-up costs and running costs. Total set-up costs incurred from June 2013 to March 2015 to implement LBTT and set up Revenue Scotland (which will cover both LBTT and Landfill Tax) are estimated to be as shown in the table below. Costs are rounded to the nearest £5,000. Note that planning work is already underway so some staff and other costs will also be incurred before June 2013.

### Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Cost per year (£000)</th>
<th>Period</th>
<th>Total cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>130</td>
<td>June 2013 to March 2015</td>
<td>240</td>
<td>Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)</td>
</tr>
<tr>
<td>Tax Administration Programme</td>
<td>116</td>
<td>June 2013 to March 2015</td>
<td>210</td>
<td>Programme Manager (Band C) and Programme Officer (Band B)</td>
</tr>
<tr>
<td>Revenue Scotland Development</td>
<td>232</td>
<td>June 2013 to March 2015</td>
<td>425</td>
<td>2 Teams, each 1 Band C and 1 Band B, developing internal systems, procedures, policies, capacity and communications.</td>
</tr>
</tbody>
</table>
Revenue Scotland Appeals, Disputes & Compliance | 289 | October 2014 to March 2015 | 240 | Costed on assumption of around 10 staff, averaging Band B.  
Administrative support | 49 | June 2013 to March 2015 | 85 | 2 Band A staff providing administrative support to all above teams.  
Total | | | | **1200**  

Non-staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>80</td>
<td>This cost includes the hardware set-up costs for the staff together with the costs of establishing the website but assumes a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement.</td>
</tr>
<tr>
<td>Communications and branding</td>
<td>75</td>
<td>Need to promote awareness of Revenue Scotland and devolved taxes.</td>
</tr>
<tr>
<td>Standard running costs for unit from June 2013 - 31 March 2015</td>
<td>200</td>
<td>Training, travel and subsistence and accommodation costs for staff.</td>
</tr>
<tr>
<td>Contingency</td>
<td>100</td>
<td>Allowance for underestimates in above figures.</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>455</strong></td>
<td>No VAT chargeable on this.</td>
</tr>
</tbody>
</table>

275. Total annual running costs incurred from April 2015 onwards for all Revenue Scotland functions, including Land and Buildings Transaction Tax (rounded to the nearest £5,000) are estimated as shown in the table below.

Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>220</td>
<td>Chief Executive SCS Pay Band 2, Chief Operating Officer SCS Pay Band 1.</td>
</tr>
<tr>
<td>Compliance</td>
<td>350</td>
<td>Team of 8 staff, assume 2 band C, 6 band B.</td>
</tr>
<tr>
<td>Disputes and Appeals</td>
<td>280</td>
<td>2 band C solicitors plus band B support.</td>
</tr>
<tr>
<td>Communications and complaints</td>
<td>240</td>
<td>Band C plus 5 band B staff to manage web and print communications, limited helpline and complaints. This may need to be</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and Development</td>
<td>125</td>
<td>Band C plus 2 band B staff covering planning and reporting and further system development.</td>
</tr>
<tr>
<td>Administrative support</td>
<td>100</td>
<td>4 Band A staff supporting all above teams.</td>
</tr>
<tr>
<td>Contingency</td>
<td>155</td>
<td>Allowance for underestimates in all above figures.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1470</strong></td>
<td>No VAT charged on this.</td>
</tr>
</tbody>
</table>

Non Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard running costs</td>
<td>170</td>
<td>Travel training and accommodation.</td>
</tr>
<tr>
<td>IT systems support</td>
<td>50</td>
<td>Assume that receipts will be remitted direct to Scottish Government by collection agents; systems required for case management, appeals administration, performance management of contracts</td>
</tr>
<tr>
<td>Website maintenance and production and updating of on-line guidance</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Appeals against LBTT charges</td>
<td>120</td>
<td>Costed on a basis comparable to SEPA costing for landfill tax appeals; assumption of up to 20 appeals per year. Non-staff cost</td>
</tr>
<tr>
<td>Legal outsourcing/debt recovery contracts</td>
<td>100</td>
<td>Non-staff cost.</td>
</tr>
<tr>
<td>Contingency</td>
<td>250</td>
<td>Allowance for underestimates in all above figures</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>740</strong></td>
<td>No VAT charged on this.</td>
</tr>
</tbody>
</table>

iii. Costs to the Scottish Government of RoS collecting LBTT

276. It is the Scottish Government’s announced intention that Revenue Scotland will delegate operational responsibility for the collection of LBTT to RoS. RoS already collects a proportion of SDLT on behalf of HMRC under a service level agreement.

277. RoS costs, like those for Revenue Scotland, have been broken down under two headings, set-up costs (incurred in 2012 to March 2015) and running costs (i.e. the ongoing costs of collecting LBTT from 1 April 2015). The costs identified by RoS have been prepared on the following assumptions:
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

- that it will have a basic compliance role, with the bulk of responsibility for compliance resting with Revenue Scotland. (Further planning work is required to decide on the respective roles that Revenue Scotland and RoS will have in relation to compliance activity);
- that the tax will be introduced as planned in 2015 and as described in the public consultation documents that have been published; and
- that at least 90% of LBTT will be processed online.

Changes that affect these assumptions may lead to lower or greater actual costs. RoS operates as a Trading Fund and is self-financing from the income it receives for the services it provides. It therefore requires to cover the costs it incurs in respect of the LBTT service it will provide. These costs will be agreed with and met by the Scottish Government. The cost estimates provided below have been rounded to the nearest £5,000.

### Set-up Costs: Registers of Scotland

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Costs (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs of planning, overseeing, and implementing changes prior to April 2015</td>
<td>250</td>
<td>1.5 Grade 7 (C1 equivalent), 1 SEO (B3 equivalent), 1 HEO (B2 equivalent) and 0.3 EO (B1 equivalent)</td>
<td>Includes system preparation, project planning and management costs, and covers work-package effort for legislation and policy, IT, Finance, Registration and implementation. It does not include costs for preparing for compliance and enforcement work - assumed under RS start-up costs</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>250</strong></td>
<td></td>
<td>Excluding VAT – chargeable and recoverable</td>
</tr>
<tr>
<td><strong>Non staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Familiarisation of solicitors with new systems</td>
<td>10</td>
<td></td>
<td>Training and publicity for solicitors and other users to ensure full and effective take up</td>
</tr>
<tr>
<td>Build cost of new LBTT system</td>
<td>75</td>
<td></td>
<td>This represents the capital costs of building the system</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>85</strong></td>
<td></td>
<td>Excluding VAT – chargeable and recoverable</td>
</tr>
</tbody>
</table>
278. Total annual running costs (incurred from 1 April 2015 onwards) are estimated to be as follows:

**Running Costs: Registers of Scotland**

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e-Services Helpdesk</td>
<td>130</td>
<td>1 EO (B1 equivalent) and 3 x AOs (A4 equivalent)                        Estimate is based on providing administrative advice (but not tax advice) to 100 calls per day.</td>
<td></td>
</tr>
<tr>
<td>Provision of complex enquiry helpdesk</td>
<td>60</td>
<td>1 SEO (B3 equivalent)                                                   Referral point from e-Services Helpdesk for complex cases.</td>
<td></td>
</tr>
<tr>
<td>Additional costs associated with system support and new chargeable transactions</td>
<td>20</td>
<td>0.5 HEO (B2 equivalent)                                                 Figure is an estimate to cover system support and possible tax changes.</td>
<td></td>
</tr>
<tr>
<td>Intake process cost</td>
<td>30</td>
<td>1.3 AA (A3 equivalent)                                                  Cost of intake processes in respect of paper applications</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>240</strong></td>
<td></td>
<td>Excluding VAT: chargeable and recoverable.</td>
</tr>
<tr>
<td><strong>Non Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional IT maintenance and support costs</td>
<td>20</td>
<td></td>
<td>Costs associated with IT and e-Services support.</td>
</tr>
<tr>
<td>Annual cost of providing data to HMRC</td>
<td>15</td>
<td></td>
<td>UK Government requirement.</td>
</tr>
<tr>
<td>Additional costs associated with new chargeable transactions</td>
<td>50</td>
<td></td>
<td>Figure is an estimate to cover possible changes.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>85</strong></td>
<td></td>
<td>Excluding VAT: chargeable and recoverable.</td>
</tr>
</tbody>
</table>

279. These costs have been estimated on the basis that major system changes are being introduced as a result of the Land Registration etc. (Scotland) Act 2012, and that the costs of these changes are unavoidable. By building in LBTT requirements from the outset in designing the new systems, the additional cost in respect of LBTT has been minimised. As a result, RoS’s set-up and
running costs, including in relation to IT developments for LBTT, are lower than would otherwise have been the case. As noted above, it is also the case that RoS already undertakes processing and collection of SDLT on behalf of HMRC, and consequently has considerable knowledge and experience of requirements.

II. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

280. Local authorities and other public bodies are of course subject to SDLT at present and will be subject to LBTT in future. Cost implications for them will depend on the extent to which they purchase or lease land and property, and the prices at which purchases etc are made. Costs will also be dependent on the rates and bands set for LBTT and, to an extent, the availability and design of exemptions and reliefs. As discussed above, rates and bands will not be set until closer to the time at which they will come into force. It is not possible to estimate how much local authorities and other public bodies may pay in tax.

281. In terms of any net administrative and compliance costs, the Scottish Government does not expect that there will be a material change in costs falling on these bodies as a result of removing SDLT and introducing LBTT. The Scottish Government expects that RoS will consult end-users of the replacement tax system, such as local authorities, as part of its development of the online system and that it will seek to provide systems that minimise administrative effort and costs.

282. The Scottish Government expects no increase in administrative costs on local authorities and other public bodies in claiming a relief or exemption. As set out in the Policy Memorandum, the Bill expands access to Compulsory Purchase Order relief for local authorities, so that they will be able to claim this relief when they compulsorily purchase an empty home for onward sale. This may reduce some local authorities’ costs.

III. COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

283. Costs to businesses are also examined in the Business and Regulatory Impact Assessment (“BRIA”) which will be published shortly. Individuals and businesses affected would include anyone with an interest in land and property purchase and leases such as:

- People buying a home after April 2015
- Businesses buying or leasing commercial premises
- Farmers buying or leasing agricultural land
- Agents e.g. conveyancing solicitors
- Other tax advisors
- Mortgage and commercial lenders.

284. As with local authorities, the overall cost implications of this Bill for these groups in terms of the tax payable will be dependent on the extent to which they purchase or lease land and property and the prices at which purchases etc. are made. Tax costs are examined further in paragraphs 287-293 below. As many individuals and businesses engage agents to deal with their land and buildings transactions, they will incur professional fees but the fees are not expected to be significantly different from those incurred now in relation to SDLT. The Scottish Government does not expect
that there will be a material change in administrative costs as a result of having to comply with LBTT instead of SDLT. RoS will consult end-users of the new tax system, such as conveyancing solicitors, with a view to designing efficient, easy to use online systems, which help to minimise administrative costs.

285. The amount of tax payable will also be dependent on the rates and bands set for LBTT and, to an extent, the availability and design of exemptions and reliefs, as well as on property market activity. As also discussed above, the rates and bands will not be set until closer to the time at which they will come into force and, therefore, it is not possible to estimate the cost implications. The LBTT consultation paper included three scenarios (two scenarios for residential property purchases and one for non-residential property purchases) to illustrate the possible changes in tax charges when changing from the current ‘slab’ tax structure for SDLT to the more progressive tax structure proposed for LBTT.

286. Scenarios 1 and 2 compare the tax due for SDLT at different residential property values with that due under LBTT using different notional tax rates and bands. The graphs and tables are based on averaging data on residential property transactions in Scotland in 2007 and 2009. For the purposes of a like-for-like comparison of rates and thresholds, the two scenarios are provided on the basis of overall revenue neutrality i.e. the total receipts would be the same in each example. The third scenario looked at the tax payable on non-residential property based on the tax payable on the purchase price or premium component of the tax (rather than rent).

Scenario 1 – Residential property: progressive rate starting at £180,000, revenue neutral

287. This scenario, which is estimated to be broadly revenue neutral, represents a major simplification of the tax structure. There is an added focus on relieving the burden of tax at the lower end of the market with purchases of properties under £180,000 incurring no tax. Based on historical data, no tax would be payable for around 70% of all house purchases in 2007 and 2009.

288. The single rate of 7.5% for purchases between £180,000 and £1.5 million would have the effect of smoothing out the current system and removing distortions in the market. However, exempting a large proportion of the market would mean that the purchase of properties above £300,000 (less than 7% of the market) would incur more tax than under the current SDLT system. Additionally, the smoothing of the rates would mean that properties between £200,000 and £250,000 incur additional tax compared to the current slab system of SDLT.

<table>
<thead>
<tr>
<th>Current Slab rate (%)</th>
<th>Scenario 1 Progressive rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £125,000</td>
<td>0</td>
</tr>
<tr>
<td>Over £125,000 to £250,000</td>
<td>1</td>
</tr>
<tr>
<td>Over £250,000 to £500,000</td>
<td>3</td>
</tr>
<tr>
<td>Over £500,000 to £1m</td>
<td>4</td>
</tr>
<tr>
<td>Over £1m to £2m</td>
<td>5</td>
</tr>
<tr>
<td>Above £2m</td>
<td>7</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012.

<table>
<thead>
<tr>
<th>% of market (Average of 2007 and 2009)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Below £180,000</td>
<td>70</td>
</tr>
<tr>
<td>Above £180,000</td>
<td>30</td>
</tr>
<tr>
<td>Above £1.5m</td>
<td>0.1</td>
</tr>
</tbody>
</table>

289. Based on 2007 and 2009 data, 70% of the Scottish housing market purchases were under £180,000. Under scenario 1, such purchases would not incur any LBTT.

Chart showing tax payable on house purchases up to £750,000

**Amount of tax due by house price**

<table>
<thead>
<tr>
<th>Purchase price (£)</th>
<th>Tax due (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50,000</td>
<td>0</td>
</tr>
<tr>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td>150,000</td>
<td>0</td>
</tr>
<tr>
<td>200,000</td>
<td>0</td>
</tr>
<tr>
<td>250,000</td>
<td>0</td>
</tr>
<tr>
<td>300,000</td>
<td>0</td>
</tr>
<tr>
<td>350,000</td>
<td>0</td>
</tr>
<tr>
<td>400,000</td>
<td>0</td>
</tr>
<tr>
<td>450,000</td>
<td>0</td>
</tr>
<tr>
<td>500,000</td>
<td>0</td>
</tr>
<tr>
<td>550,000</td>
<td>0</td>
</tr>
<tr>
<td>600,000</td>
<td>0</td>
</tr>
<tr>
<td>650,000</td>
<td>0</td>
</tr>
<tr>
<td>700,000</td>
<td>0</td>
</tr>
<tr>
<td>750,000</td>
<td>0</td>
</tr>
</tbody>
</table>

- Original - slab rate
- Revised - Progressive
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012.

Chart showing tax payable on house purchases up to £2,500,000

**Amount of tax due by house price**

<table>
<thead>
<tr>
<th>Purchase price (£)</th>
<th>Tax due (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>100,000</td>
<td>500</td>
</tr>
<tr>
<td>200,000</td>
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<td>300,000</td>
<td>1,500</td>
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<td>400,000</td>
<td>2,000</td>
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<td>500,000</td>
<td>2,500</td>
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<tr>
<td>600,000</td>
<td>3,000</td>
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<td>900,000</td>
<td>4,500</td>
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<td>5,000</td>
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<td>1,100,000</td>
<td>5,500</td>
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<td>6,000</td>
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<td>1,300,000</td>
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<td>1,400,000</td>
<td>7,000</td>
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<td>7,500</td>
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<td>1,600,000</td>
<td>8,000</td>
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<td>8,500</td>
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<td>10,500</td>
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<td>2,200,000</td>
<td>11,000</td>
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<td>2,300,000</td>
<td>11,500</td>
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<td>12,000</td>
</tr>
<tr>
<td>2,500,000</td>
<td>12,500</td>
</tr>
</tbody>
</table>

**Tax payable under Scenario 1 compared with current SDLT system:**

<table>
<thead>
<tr>
<th>House Price</th>
<th>Tax under current system</th>
<th>Tax under Scenario 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>£125,001</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td>£150,000</td>
<td>£1,500</td>
<td>£0</td>
</tr>
<tr>
<td>£180,000</td>
<td>£1,800</td>
<td>£0</td>
</tr>
<tr>
<td>£190,000</td>
<td>£1,900</td>
<td>£750</td>
</tr>
<tr>
<td>£200,000</td>
<td>£2,000</td>
<td>£1,500</td>
</tr>
<tr>
<td>£250,001</td>
<td>£7,500</td>
<td>£5,250</td>
</tr>
<tr>
<td>£300,000</td>
<td>£9,000</td>
<td>£9,000</td>
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<tr>
<td>£350,000</td>
<td>£10,500</td>
<td>£12,750</td>
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<tr>
<td>£400,000</td>
<td>£12,000</td>
<td>£16,500</td>
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<td>£13,500</td>
<td>£20,250</td>
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<tr>
<td>£500,001</td>
<td>£20,000</td>
<td>£24,000</td>
</tr>
<tr>
<td>£550,000</td>
<td>£22,000</td>
<td>£27,750</td>
</tr>
<tr>
<td>£600,000</td>
<td>£24,000</td>
<td>£31,500</td>
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<tr>
<td>£650,000</td>
<td>£26,000</td>
<td>£35,250</td>
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<td>£700,000</td>
<td>£28,000</td>
<td>£39,000</td>
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<td>£800,000</td>
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<td>£46,500</td>
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<tr>
<td>£900,000</td>
<td>£36,000</td>
<td>£54,000</td>
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<td>£1,000,001</td>
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<td>£61,500</td>
</tr>
<tr>
<td>£1,250,000</td>
<td>£62,500</td>
<td>£80,250</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

| £1,500,000 | £75,000 | £99,000 |
| £1,750,000 | £87,500 | £124,000 |
| £2,000,001 | £140,000 | £149,000 |
| £2,500,000 | £175,000 | £199,000 |

(Amounts rounded to the nearest £)

Scenario 2 – Residential property: progressive rates starting at £125,000, revenue neutral

290. This scenario, also revenue neutral and based on historical data, illustrates two progressive rates starting at the current £125,000 level. Under this scenario, no property under £325,000 would incur more tax than under the current slab system of SDLT – this represents around 95% of the market. The smoothing out of the current system would mean that properties just above £250,000 incur around £5,000 less tax but this is compensated for by higher rates for the top 5% of the market.

<table>
<thead>
<tr>
<th>Current Slab rate (%)</th>
<th>Scenario 2 Progressive rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £125,000 0</td>
<td>Up to £125,000 0</td>
</tr>
<tr>
<td>Over £125,000 to £250,000 1</td>
<td>Over £125,000 to £250,000 2</td>
</tr>
<tr>
<td>Over £250,000 to £500,000 3</td>
<td>Above £250,000 9.5</td>
</tr>
<tr>
<td>Over £500,000 to £1m 4</td>
<td></td>
</tr>
<tr>
<td>Over £1m to £2m 5</td>
<td></td>
</tr>
<tr>
<td>Above £2m 7</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>% of market (Average of 2007 and 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below £125,000 45</td>
</tr>
<tr>
<td>Above £125,000 and below £250,000 43</td>
</tr>
<tr>
<td>Above £250,000 12</td>
</tr>
</tbody>
</table>

291. Based on 2007 and 2009 data, 45% of the Scottish housing market purchases were under £125,000. Under scenario 2, such purchases would not incur any LBTT, as is the case under SDLT.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Chart showing tax payable on house purchases up to £750,000

Amount of tax due by house price

Chart showing tax payable on house purchases up to £2,500,000

Amount of tax due by house price
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Tax payable under Scenario 2 compared with current SDLT system:

<table>
<thead>
<tr>
<th>House Price</th>
<th>Tax under current system</th>
<th>Tax under Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>£125,001</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td>£150,000</td>
<td>£1,500</td>
<td>£500</td>
</tr>
<tr>
<td>£180,000</td>
<td>£1,800</td>
<td>£1,100</td>
</tr>
<tr>
<td>£190,000</td>
<td>£1,900</td>
<td>£1,300</td>
</tr>
<tr>
<td>£200,000</td>
<td>£2,000</td>
<td>£1,500</td>
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<tr>
<td>£250,001</td>
<td>£7,500</td>
<td>£2,500</td>
</tr>
<tr>
<td>£300,000</td>
<td>£9,000</td>
<td>£7,250</td>
</tr>
<tr>
<td>£350,000</td>
<td>£10,500</td>
<td>£12,000</td>
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<tr>
<td>£400,000</td>
<td>£12,000</td>
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<tr>
<td>£450,000</td>
<td>£13,500</td>
<td>£21,500</td>
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<tr>
<td>£500,001</td>
<td>£20,000</td>
<td>£26,250</td>
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<tr>
<td>£550,000</td>
<td>£22,000</td>
<td>£31,000</td>
</tr>
<tr>
<td>£600,000</td>
<td>£24,000</td>
<td>£35,750</td>
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<tr>
<td>£650,000</td>
<td>£26,000</td>
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<td>£700,000</td>
<td>£28,000</td>
<td>£42,250</td>
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<td>£800,000</td>
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<td>£54,750</td>
</tr>
<tr>
<td>£900,000</td>
<td>£36,000</td>
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<td>£75,000</td>
<td>£121,250</td>
</tr>
<tr>
<td>£1,750,000</td>
<td>£87,500</td>
<td>£145,000</td>
</tr>
<tr>
<td>£2,000,001</td>
<td>£140,000</td>
<td>£168,750</td>
</tr>
<tr>
<td>£2,500,000</td>
<td>£175,000</td>
<td>£216,250</td>
</tr>
</tbody>
</table>

(Amounts rounded to the nearest £)

Example of an indicative progressive rate scenario for non-residential property transactions

292. These graphs and tables, based on averaging data on non-residential property transactions in Scotland in 2007 and 2009, demonstrate how a progressive LBTT might operate in Scotland, compared to the current slab rates for SDLT. The scenario illustrates the tax payable on the purchase price or premiums for non-residential leases (rather than rent).

293. This scenario initially mirrors the SDLT approach with purchases of properties up to £150,000 incurring no tax. A progressive rate of 3% then follows for properties between £150,001 and £250,000, with no purchases below £225,000 incurring more tax than under the current slab system which would be helpful for small businesses. To achieve overall revenue neutrality, a progressive rate of 4.4% is applied for property purchases above £250,000.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Current SDLT slab rates</th>
<th>Tax rate (%)</th>
<th>Scenario – progressive rates</th>
<th>Tax rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £150,000</td>
<td>0</td>
<td>Up to £150,000</td>
<td>0</td>
</tr>
<tr>
<td>Over £150,000 to £250,000</td>
<td>1</td>
<td>Over £150,000 to £250,000</td>
<td>3</td>
</tr>
<tr>
<td>Over £250,000 to £500,000</td>
<td>3</td>
<td>Above £250,000</td>
<td>4.4</td>
</tr>
<tr>
<td>Above £500,000</td>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chart showing tax payable on purchases up to £750,000
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Chart showing tax payable on purchases up to £5,000,000

<table>
<thead>
<tr>
<th>Purchase Price</th>
<th>Tax payable under SDLT</th>
<th>Tax payable under Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>£150,000</td>
<td>£1,500</td>
<td>£0</td>
</tr>
<tr>
<td>£175,000</td>
<td>£1,750</td>
<td>£750</td>
</tr>
<tr>
<td>£200,000</td>
<td>£2,000</td>
<td>£1,500</td>
</tr>
<tr>
<td>£225,000</td>
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</tr>
<tr>
<td>£250,000</td>
<td>£2,500</td>
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<tr>
<td>£275,000</td>
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<td>£15,000</td>
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<td>£24,000</td>
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<td>£800,000</td>
<td>£32,000</td>
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<td>£400,000</td>
<td>£432,000</td>
</tr>
</tbody>
</table>
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

294. On 29 November 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

295. On 29 November 2012, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”