

This document relates to the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 13 November 2017

Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill

Explanatory notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill, introduced in the Scottish Parliament on 13 November 2017.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 22–FM);
 - a Policy Memorandum (SP Bill 22–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 22–LC).
3. 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.
4. 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 a part of a section, does not seem to require any explanation or comment, none is given.

Background

5. The Bill gives retrospective effect to the amendments made to the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”) by the Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief) (Scotland) Order 2017 (“the 2017 Order”). Under the 2013

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Act, as amended through the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 (“the 2016 Amendment Act”), an additional amount of Land and Buildings Transaction Tax (“LBTT”) is chargeable in respect of certain transactions relating to second homes¹. This came into effect on 1 April 2016. It applies to transactions where the contract for the transaction was entered into on or after 28 January 2016 (the date when the Bill for the 2016 Act was introduced in the Parliament) and for which the effective date (usually the date of settlement) was on or after 1 April 2016.

6. In determining whether the additional amount is chargeable, married couples, civil partners and cohabitants (those living as a married couple), along with their dependent children, are treated as one economic unit. They are treated as one economic unit to reduce the risk of properties being moved between individuals for the purposes of avoiding tax.

7. The additional amount of LBTT is chargeable in, for example, a scenario where one spouse owns the existing marital home and then the other spouse purchases an additional residential property. In this scenario the married couple has the same LBTT liability as a married couple who jointly own the home they currently live in and then jointly buy an additional residential property together.

8. The additional amount of LBTT is not chargeable if the buyer is replacing the buyer’s only or main residence. However, before the 2017 Order came into force, the additional amount was chargeable if spouses, civil partners or co-habitants were jointly buying a home to replace a home that was owned by only one of them. They were liable to pay the additional amount due to the fact that only one name was listed on the title deeds.

9. The 2017 Order amended the 2013 Act to provide relief from the additional amount in this scenario for all qualifying future transactions and if buyers entered into the contract to purchase a new main residence on or after

¹ The Additional Amount applies to transactions where at the end of the day that is the effective date of the transaction (usually the date of settlement), the buyer owns more than one dwelling and is not replacing their only or main residence. Replacing in this context means selling a current main residence and buying a new main residence.

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20 May 2017 and the effective date of the transaction was on or after 30 June 2017.

10. This Bill aims to give retrospective effect to the 2017 Order, enabling qualifying buyers who have paid the additional amount of LBTT prior to the Order being made to claim a repayment. The Bill seeks to provide this relief regardless of the date when joint buyers entered into the contract and regardless of the effective date of the transaction, therefore covering the period and transitional arrangements as provided for by the 2016 Amendment Act and the 2017 Order.

11. The Bill consists of four sections, of which section 1 is the principal measure. It gives retrospective effect to amendments made to the 2013 Act by the 2017 Order.

12. An explanation of the Bill's purpose can be found in the Policy Memorandum.

Commentary on sections

Section 1 – Retrospective effect of amendments made by the 2017 Order

13. Section 1 provides that the amendments made by articles 3 and 4 of the 2017 Order are to be treated as having had effect since 1 April 2016. It also provides that article 5 of the 2017 Order is to be treated as having had effect since that date and that, in article 5, the reference to 20 May 2017 is to be read as a reference to 28 January 2016 and the reference to 30 June 2017 is to be read as a reference to 1 April 2016 (those being the dates which determine the transactions to which the additional amount of LBTT potentially applies – see above).

14. This addresses the situation in which an additional amount of LBTT has been charged in respect of a transaction with an effective date before the date on which the 2017 Order came into force. If the additional amount would not have been charged, or would have been able to be reclaimed, had the effective date been on or after the date when the 2017 Order came into force, the taxpayer may reclaim the additional amount despite the effective date being earlier than that.

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Sections 2, 3 and 4 – Interpretation, Commencement and Short title

15. These are self-explanatory.

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