

# **Land and Buildings Transaction Tax (Amendment) (Scotland) Bill**

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 85-EN. A Policy Memorandum is printed separately as SP Bill 85-PM.

Land and Buildings Transaction Tax  
(Amendment) (Scotland) Bill  
[AS INTRODUCED]

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

**1 Land and buildings transaction tax: second homes etc.**

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

(2) After section 26 insert—

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

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

(3) After schedule 2 insert—

“SCHEDULE 2A

*(introduced by section 26A)*

ADDITIONAL AMOUNT: TRANSACTIONS RELATING TO SECOND HOMES ETC.

**PART 1**

OVERVIEW

*Overview*

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

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 sets out the additional amount of tax,

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

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

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

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

## PART 2

### TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

#### *Transactions relating to second homes etc.*

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

- 10 (a) the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
- (b) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and
- (c) the buyer is not replacing the buyer's only or main residence.

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

- 20 (a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months, and
- (c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the main subject-matter of the transaction as the buyer's only or main residence.

#### *Transactions where buyer is a non-individual etc.*

25 3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

- (a) the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling, and
- 30 (b) the buyer—
  - (i) is not an individual, or
  - (ii) is an individual and sub-paragraph (2) applies.

(2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual that consists of or includes acquiring dwellings.

**PART 3**

## THE ADDITIONAL AMOUNT

*Additional amount*

- 5 4 (1) Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount.
- (2) The additional amount is an amount equal to 3% of the relevant consideration.
- (3) The relevant consideration is—
- 10 (a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or
- (b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling or dwellings that form part of the subject-matter of the transaction.
- 15

**PART 4**

## CERTAIN TYPES OF BUYER

*Joint buyers*

- 20 5 (1) This paragraph applies to a chargeable transaction which satisfies the condition in paragraph 2(1)(a) or 3(1)(a) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.
- (2) The conditions set out in paragraph 2(1)(b) and (c) or, as the case may be, 3(1)(b) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

*Spouses, civil partners, cohabitants and children*

- 25 6 (1) For the purposes of paragraph 2(1)(b), a dwelling which is owned by—
- (a) the buyer's spouse or civil partner,
- (b) the buyer's cohabitant,
- (c) a person aged under 16 who is a child of—
- 30 (i) the buyer,
- (ii) the buyer's spouse or civil partner, or
- (iii) the buyer's cohabitant,
- is to be treated as being owned by the buyer.
- (2) Sub-paragraphs (1)(a) and (1)(c)(ii) do not apply if the buyer and the buyer's spouse or civil partner have separated.
- 35 (3) For the purposes of sub-paragraph (2), the parties have separated if—
- (a) they no longer live together, and
- (b) they do not intend to live together again.

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

*Trustees in certain trusts*

- 5 7 (1) This paragraph applies to a chargeable transaction which satisfies the condition in paragraph 2(1)(a) if—
- (a) the buyer is acting as trustee of a settlement, and
- (b) the beneficiary under the settlement has a relevant interest in a dwelling forming part of the trust property.
- 10 (2) In paragraphs 2(1)(b) and (c), 2(2)(b) and (c), 5, 6 and 8(1)(b) and (c), references to the buyer are to be read as if they were references to the beneficiary.
- (3) In paragraphs 2(2)(a) and 8(1)(a), references to the buyer are to be read as including references to the beneficiary.
- 15 (4) A beneficiary under a settlement has a relevant interest in a dwelling forming part of the trust property if, under the terms of the settlement, the beneficiary is entitled to—
- (a) occupy the dwelling for life,
- (b) income earned in respect of the dwelling, or
- 20 (c) repayment of the capital value of the dwelling.

**PART 5**

REPAYMENT OF THE ADDITIONAL AMOUNT

*Repayment of additional amount in certain cases*

- 25 8 (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
- (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was the main subject-matter of the chargeable transaction),
- 30 (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and
- (c) the dwelling that was the main subject-matter of the transaction has been occupied as the buyer's only or main residence.
- 35 (2) Where this sub-paragraph applies—
- (a) the chargeable transaction is to be treated as having been exempt from the additional amount, and
- (b) the buyer may take one of the steps mentioned in sub-paragraph (3).
- (3) The steps are—

- (a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or
- (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.
- (4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

## PART 6

### OWNERSHIP OF DWELLINGS

#### *What counts as a dwelling owned by a person?*

- (1) This paragraph applies to determine what counts as a dwelling owned by a person for the purposes of this schedule.
- (2) Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.
- (3) A dwelling with a market value of less than £40,000 is not to be counted.

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

- (1) This paragraph applies to determine, for the purposes of this schedule, when a person owns any dwelling where ownership of the dwelling is or has been the main subject-matter or part of the main subject-matter of a land transaction.
- (2) Where the person is the buyer in relation to the transaction, the person is to be treated for the purposes of this schedule as owning the dwelling as from the end of the day that is the effective date of the transaction.
- (3) Where the person is the seller in relation to the transaction, the person is to be treated for the purposes of this schedule as ceasing to own the dwelling as from the end of the day that is the effective date of the transaction.
- (4) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “land transaction” and “effective date” have the same meanings as they have in Part 4 of the Finance Act 2003 (stamp duty land tax).
- (5) In the application of this paragraph to a dwelling situated outside the United Kingdom—
- (a) “land transaction” means any transaction for the transfer of ownership of the dwelling, and
- (b) “effective date” means the date of settlement or completion of the transaction (or of any event that is equivalent to settlement or completion of the transaction).

#### *Deemed ownership: beneficiaries under certain trusts*

- (1) This paragraph applies where—
- (a) a person is the beneficiary under a settlement, and

- (b) under the terms of the settlement, the beneficiary has a relevant interest in any dwelling forming part of the trust property.
- (2) For the purposes of this schedule, the beneficiary is to be treated as the owner of the dwelling.
- 5 (3) A beneficiary under a settlement has a relevant interest in a dwelling forming part of the trust property if, under the terms of the settlement, the beneficiary is entitled to—
- (a) occupy the dwelling for life,
- (b) income earned in respect of the dwelling, or
- 10 (c) repayment of the capital value of the dwelling.

*Deemed ownership: joint owners and owners of shares*

- 12 (1) This paragraph applies where two or more persons are jointly entitled to the ownership of a dwelling.
- 15 (2) For the purposes of this schedule, each of the persons is to be treated as the owner of the dwelling.
- (3) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “jointly entitled” has the meaning given in section 121 of the Finance Act 2003 (minor definitions).
- 20 (4) In the application of this paragraph to a dwelling situated outside the United Kingdom, “jointly entitled” means having an interest equivalent to being jointly entitled within the meaning of this Act or the Finance Act 2003.

*Dwellings outside Scotland: what counts as “ownership”*

- 25 13 (1) In the case of a dwelling situated in England, Wales or Northern Ireland, a person owns the dwelling for the purposes of this schedule if the person has a major interest in the dwelling within the meaning of section 117 of the Finance Act 2003 (meaning of “major interest” in land).
- (2) In the case of a dwelling situated outside the United Kingdom, a person owns the dwelling for the purposes of this schedule if the person has an interest in it that is equivalent to—
- 30 (a) ownership in Scotland, or
- (b) a major interest within the meaning of the Finance Act 2003.
- (3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

**PART 7**

GENERAL PROVISION

*Power of Scottish Ministers to modify schedule*

- 35 14 (1) The Scottish Ministers may by order amend paragraph 4(2) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure.

- (2) The Scottish Ministers may by order amend paragraph 9(3) so as to substitute, for the figure for the time being specified there, a different figure.
- (3) The Scottish Ministers may by order modify this schedule so as to make provision for or about reliefs from the additional amount and, in particular, may—
- (a) add a relief,
- (b) modify any relief,
- (c) remove any relief.
- (4) An order under sub-paragraph (3) may modify any other enactment that the Scottish Ministers consider appropriate.

### *Interpretation*

- (1) In this schedule, “settlement” means a trust that is not a bare trust within the meaning given in paragraph 19 of schedule 18.
- (2) Part 6 of schedule 5 (what counts as a “dwelling”) applies for the purposes of this schedule as it applies for the purposes of schedule 5.”.

## **2 Consequential amendments**

- (1) In the Land and Buildings Transaction Tax (Scotland) Act 2013—
- (a) in section 25(3) (amount of tax chargeable), before paragraph (a) insert—
- “(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
- (b) in section 26(4) (amount of tax chargeable: linked transactions), before paragraph (a) insert—
- “(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
- (c) in section 68 (subordinate legislation)—
- (i) in subsection (2), after paragraph (j) insert—
- “(ja) paragraph 14(3) of schedule 2A,”,
- (ii) in subsection (5), after “The order is” insert “an order under paragraph 14(1) of schedule 2A or”.
- (2) In section 108(3) of the Revenue Scotland and Tax Powers Act 2014 (claim for repayment if order changing tax basis not approved), in column 1 of the table, in the entry for the LBTT(S) Act 2013, after paragraph (a) insert—
- “(aa) an order under paragraph 14(1) of schedule 2A,”.

## **3 Transitional provision: application of this Act**

- (1) This Act applies in relation to a chargeable transaction where—
- (a) the contract for the transaction was entered into on or after 16 December 2015, and
- (b) the effective date of the transaction is on or after the day on which section 1 comes into force.

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

#### **4 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act.
- (2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
  - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

#### **5 Commencement**

- (1) This section and sections 4 and 6 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on whichever is the later of—
- (a) the day after Royal Assent,
  - (b) 1 April 2016.

#### **6 Short title**

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



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[AS INTRODUCED]

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

Introduced by: John Swinney  
On: 27 January 2016  
Bill type: Government Bill

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