

LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Land and buildings transaction tax: second homes etc.

Part 2 of schedule 2A – Transactions to which this schedule applies

Paragraph 2 of schedule 2A – Transactions relating to second homes etc.

13. Paragraph 2 is relevant to the standard case where the buyer of a dwelling is an individual or couple. It applies where the subject-matter of a chargeable transaction consists of, or includes, the acquisition of ownership of a dwelling in Scotland. This would cover the standard purchase of a house or flat. “Ownership” in this context will often mean ordinary ownership but an extended meaning of ownership (covering, for example, liferents) is provided in Part 6 (ownership of dwellings). In the particular case of long leases, acquisitions of residential long leases are exempt from LBTT unless the lease is a “qualifying lease” (paragraph 3 of schedule 1 to the 2013 Act).
14. Paragraph 2 only applies if the relevant consideration (defined in paragraph 4, usually the purchase price) for the transaction is £40,000 or more. £40,000 is the notification threshold for acquisitions of the ownership of land under section 30(1)(b) of the 2013 Act. Where a second home in Scotland is bought for the bona fide sum of £35,000 there is no ordinary LBTT payable, nor is any additional tax payable. However, as mentioned, were the relevant consideration £45,000 the additional amount will be payable on the whole of the consideration including the first £40,000 (resulting in a tax charge of £1,350).
15. Paragraph 2 also only applies the additional tax in schedule 2A where at the end of the day that is the effective date of the transaction (the tax point; usually the date of settlement) the buyer owns more than one dwelling **and** the buyer is not replacing the buyer’s only or main residence. Therefore where the buyer is replacing their only or main residence the additional amount of tax does not apply even though they may own two or more dwellings at the end of the effective date.
16. The meaning of replacing the buyer’s only or main residence is provided in subparagraph (2). This requires the buyer to have sold their previous residence within the 18 months preceding the effective date **and** requires the buyer to intend to occupy the new residence as their only or main residence.
17. In cases where the buyer is replacing their main residence but the subject matter of the transaction involves the purchase of other dwellings, the supplement will be payable on the amount of consideration attributable to those other dwellings. That is, the supplement will be payable on the relevant consideration payable for the chargeable transaction, except for the amount attributable to the buyer’s new main residence. Paragraph 4 contains the rules for attributing consideration when the chargeable

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transaction involves the purchase of more than one dwelling and one of the dwellings purchased is to be a replacement main residence.

18. In most cases where paragraph 2 applies, the transaction will be a residential property transaction within the meaning of section 24(3) of the 2013 Act¹. However, paragraph 2 potentially also applies in cases where the acquisition of a dwelling is taxed as a non-residential property transaction in terms of section 24(4) (so called “mixed” transactions). Where section 59(8) (the “six plus” rule for purchases of multiple dwellings) applies, paragraph 2 also potentially applies, though relief under paragraph 8A will be available.
19. Where it has not been possible to sell a previous main residence, but that happens within the 18 months following the effective date, paragraph 8 provides that repayment of the additional tax paid may be claimed.
20. Interpretative provisions of the 2013 Act relevant to paragraph 2—

“buyer”	section 7
“chargeable transaction”	section 15
“dwelling”	Part 6 of schedule 5
“effective date”	section 63
“relevant consideration”	paragraph 4 of schedule 2A
“subject-matter”	section 61
what counts as a dwelling owned/disposed of	Part 6 of schedule 2A.

21. “Only or main residence” is not a defined term and in most cases where there are multiple dwellings it will be straightforward to determine which is the main residence, for example where additional residences are clearly holiday homes. Revenue Scotland will publish guidance on the factors it will look to for the smaller number of cases that are less straightforward.

Paragraph 3 of schedule 2A – Transactions where buyer is a non-individual etc.

22. Paragraph 3 is relevant to less standard cases where the buyer of a dwelling is not an individual or couple² purchasing for their domestic interests. It applies therefore to purchases by companies and sub-paragraph (2) concerns purchases by individuals acting as sole traders, if the sole or main activity of that business is the buying or investing in property.
23. When an individual buys a dwelling with the intention of renting it out, it will not necessarily be the case that this transaction is considered to be undertaken in the course of a business, the sole or main activity of which is buying or investing in property³. If an individual works away from home, for example in the armed forces, and buys their first residential home to rent out, at least initially, then the purchase made by that individual will not be within paragraph 3, unless there are other characteristics of the transaction, for example business accounts drawn up, or a business plan, that bring it within it. The transaction will therefore be relevant to paragraph 2, and if the individual does not own an existing dwelling, the supplement will not be payable.
24. However, if an individual does not own an existing dwelling and buys a dwelling through a business they run and the sole or main activity of the business is buying

¹ Tables of rates and bands for residential and non-residential property transactions respectively are set out in the [Land and Buildings Transaction Tax \(Tax Rates and Tax Bands\) \(Scotland\) Order 2015 \(S.S.I. 2015/126\)](#).

² The singular “individual” includes the plural “individuals” by virtue of section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010.

³ This definition is similar to the definition of “property investment partnership” in paragraph 31 of schedule 17 to the 2013 Act.

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or investing in property, then the purchase will be relevant to paragraph 3 and so the supplement will be payable. For example, the individual’s business could already own a number of non-residential properties and when that business purchases its first dwelling, the supplement will be payable on the purchase price.

25. Paragraph 3 of schedule 17 to the 2013 Act (chargeable interests treated as being held by partners etc.) applies to schedule 2A as it applies to the rest of the 2013 Act, where the buyer is a partnership within the meaning of paragraph 2 of schedule 17. Chargeable transactions where the purchaser is a partnership will, therefore, be relevant to paragraph 3 if they are made in the course of the business mentioned in paragraph 22, and if they are not made in the course of such a business, such purchases will be relevant to paragraph 2.
26. Purchases by trustees, unless a beneficiary of the trust has an interest in the dwelling bought (or, if more than one is bought in the same transaction, all of them) that is similar to that of an owner of the dwelling, will be relevant to paragraph 3. If the trust beneficiary does have an interest similar to that of an owner of the dwelling, that beneficiary will be treated as the buyer and (unless other conditions in paragraph 3 apply) the transaction will be relevant to paragraph 2.
27. As with paragraph 2, paragraph 3 only applies if the relevant consideration (usually the purchase price) for the transaction is £40,000 or more.
28. Also as with paragraph 2, the reference to “chargeable transaction” means that, where a transaction is exempt or where 100% relief applies, the transaction will not be subject to schedule 2A. For example, charities relief under schedule 13 to the 2013 Act provides for 100% relief.
29. The key difference from paragraph 2 is for cases that fall within paragraph 3 the additional amount of tax in schedule 2A is relevant even where the legal buyer only owns one dwelling at the end of the effective date. In other words, the replacement of main residence test is not relevant. This is principally for anti-avoidance reasons because if schedule 2A were to apply to individuals only there would be an incentive for individuals to purchase dwellings via a corporate “wrapper” or “envelope”.
30. Interpretative provisions of the 2013 Act relevant to paragraph 3—

“buyer”	section 7
“chargeable transaction”	section 15
“dwelling”	Part 6 of schedule 5
“relevant consideration”	paragraph 4 of schedule 2A
“subject-matter”	section 61.