

# 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 6 of schedule 2A – Ownership of dwellings**

Paragraph 12 of schedule 2A – Deemed ownership: cases where title is not yet registered etc.

60. In Scots law, a buyer does not own a property until the change of ownership is registered in the Land Register. The corollary is that the seller is not divested of the title until that point<sup>1</sup>.
61. Under the 2013 Act the tax point is known as the “effective date” and for a standard residential transaction is likely to be the date of settlement which is the date on which the buyer has paid the purchase price and receives the keys and a signed disposition from the seller<sup>2</sup>. At this point the buyer will for practical purposes consider themselves to be the owner of the property (they will be able to move in) and the seller (who will no longer have keys) will consider themselves to no longer be the owner. Paragraph 12 treats the practical position as a deemed ownership – or non-ownership – for the purposes of schedule 2A, notwithstanding the technical position of Scots law. This is particularly relevant for the purposes of paragraph 2 of schedule 2A and the question of how many dwellings the buyer “owns” at the end of the effective date.
62. For properties situated in the rest of the UK the appropriate definitions from UK Stamp Duty Land Tax legislation are imported in sub-paragraph (4); and for properties outside of the UK the same concepts are applied across and to be read according to the prevailing law and practice there. For jurisdictions that follow the civil law there is likely to be similarity to Scots law in terms of registration being key to transferring ownership; and for jurisdictions that follow the common law there is likely to be a similarity to English law in terms of which equitable or beneficial interests can transfer at the point of completion.
63. Interpretative provisions of the 2013 Act relevant to Paragraph 12—

“buyer”	section 7
“dwelling”	Part 6 of schedule 5
“effective date”	section 63
“subject-matter”	section 61.

<sup>1</sup> Section 50 of the Land Registration (Scotland) Act 2002 states: “Registration of a valid disposition transfers ownership; An unregistered disposition does not transfer ownership.”

<sup>2</sup> E-conveyancing is not at the time of writing widely adopted so these Explanatory Notes describe the Scottish conveyancing process according to the traditional paper-based process.

*These notes relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 (asp 11) which received Royal Assent on 24 March 2016*

64. “Seller” takes its common sense meaning here and therefore would mean “vendor” in legal systems where that is the prevailing terminology. “Settlement” also takes its common meaning for the purposes of paragraph 12, and not the meaning in paragraph 20(1).