



Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016

2016 asp 11

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2016 and received Royal Assent on 24th March 2016

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—

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016. (See end of Document for details)

“SCHEDULE 2A

(introduced by section 26A)

ADDITIONAL AMOUNT: TRANSACTIONS
RELATING TO SECOND HOMES ETC.

PART 1

OVERVIEW

Overview

- 1 (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 and relief from 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—
 - (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
 - (b) the relevant consideration for the transaction is £40,000 or more,
 - (c) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and
 - (d) either—
 - (i) the buyer is not replacing the buyer's only or main residence, or
 - (ii) the buyer is replacing the buyer's only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in

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addition to the one that the buyer intends to occupy as the buyer's only or main residence.

- (2) A buyer is replacing the buyer's only or main residence if—
- (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 subject-matter of the transaction as the buyer's only or main residence.

Transactions where buyer is a non-individual etc.

- 3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—
- (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
 - (b) the relevant consideration for the transaction is £40,000 or more, and
 - (c) the buyer—
 - (i) is not an individual, or
 - (ii) is an individual and sub-paragraph (2) or (5) applies.
- (2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual the sole or main activity of which is investing or dealing in chargeable interests.
- (3) Sub-paragraph (2) of paragraph 31 of schedule 17 applies for the purposes of sub-paragraph (2) of this paragraph as it applies for the purposes of paragraph 31(1) of that schedule.
- (4) In sub-paragraph (2), the reference to a business of the individual includes a reference to a business of a partnership of which the individual is a partner.
- (5) This sub-paragraph applies if the individual is making the acquisition as trustee under a settlement and, in relation to any dwelling that is or forms part of the subject-matter of the transaction, there is no interested beneficiary.
- (6) For the purposes of sub-paragraph (5), a beneficiary under the settlement is an interested beneficiary in relation to a dwelling if the beneficiary has or will have a relevant interest in the dwelling.

PART 3

THE ADDITIONAL AMOUNT

Additional amount

- 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.

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- (3) The relevant consideration is—
- (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 (including any interest or right pertaining to ownership of the dwelling) that is or forms part of the subject-matter of the transaction.
- (4) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), the relevant consideration is to exclude so much of the chargeable consideration as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that the buyer intends to occupy as the buyer's only or main residence.

PART 4

CERTAIN TYPES OF BUYER

Joint buyers

- 5 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) or 3(1)(a) and (b) 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)(c) and (d) or, as the case may be, 3(1)(c) 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

- 6 (1) For the purposes of paragraph 2(1)(c), 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—
 - (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.
- (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.

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- (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

- 7 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) if—
- (a) the buyer is acting as trustee of a settlement, and
 - (b) a beneficiary under the settlement has or will have a relevant interest in a dwelling that is or forms part of the subject-matter of the transaction.
- (2) In paragraphs 2(1)(c) and (d), 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.

PART 5

REPAYMENT OF AND RELIEF FROM THE ADDITIONAL AMOUNT

Repayment of additional amount in certain cases

- 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 or formed part of the subject-matter of the chargeable transaction),
 - (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 or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.
- (2) Where this sub-paragraph applies—
- (a) the chargeable transaction is to be treated as having been exempt from the additional amount, and
 - (b) if the buyer has made a land transaction return in respect of the transaction, 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