

LAND AND BUILDINGS TRANSACTION TAX

ADDITIONAL DWELLING SUPPLEMENT

LEGISLATIVE GUIDANCE

16 MARCH 2016

Subject to Royal Assent, the LBTT(A)(S)A 2016 will come into force on 1 April 2016 and will introduce an additional amount of Land and Buildings Transaction Tax ("LBTT") on the purchase of additional dwellings in Scotland, such as buy-to-let properties and second homes. This additional amount of LBTT will be known as the Additional Dwelling Supplement ("the ADS").

The Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 ("the LBTT(A)(S) 2016") amends the [Land and Buildings Transaction Tax \(Scotland\) Act 2013](#) ("the LBTT(S)A 2013").

Part 1 of the LBTT(A)(S)A 2016 introduces a new schedule 2A into the LBTT(S)A 2013 and the key provisions of the LBTT(A)(S)A 2016 are included in this new schedule.

The ADS applies to most purchases of additional dwellings by individuals in Scotland where, at the end of the day that is the effective date of the transaction, a buyer owns two or more dwellings and is not replacing their main residence. It also applies to most purchases of dwellings by non-natural persons (e.g. companies, partnerships) in Scotland.

The guidance is structured as follows:

- [ADS-A: How the ADS works](#)
- [ADS-B: Determining the chargeable consideration for the ADS](#)
- [ADS-C: Exemptions and reliefs from the ADS](#)
- [ADS-D: Chapter D: Payment of ADS and making an LBTT return](#)
- [ADS-E: Rules for particular buyers/transactions relating to the ADS](#)
- [ADS-F: Amendments to returns/repayment claims for the ADS](#)
- [ADS-G: Transitional Arrangements](#)

ADS-A- How the ADS works

The guidance in this chapter is set out as follows:

- [ADS-A1: How the ADS is applied](#)
- [ADS-A2: Meaning of "owner"](#)
- [ADS-A3: Transactions to which the ADS applies](#)
 - [ADS-A3A: Transactions involving residential properties](#)
 - [ADS-A3B: Transactions involving non-residential properties](#)
 - [ADS-A3C: Transactions by individuals](#)
 - [ADS-A3D: Transactions by non-individuals](#)
 - [ADS-A3E: What counts as a dwelling](#)
- [ADS-A4: What is the effective date of a transaction](#)
- [ADS-A5: How to determine if an "only or main residence" is being replaced](#)

ADS-A1 How the ADS is applied

For purchases by individuals, the LBTT(A)(S)A 2016 charges an additional 3% to the LBTT liability for each transaction with a relevant consideration of £40,000 or more where the subject-matter of that transaction consists of or includes the acquisition of ownership of a dwelling in Scotland and a) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling in Scotland or elsewhere and b) the buyer is not replacing their only or main residence.

Note: The "two dwelling rule" does not apply to purchases by an individual acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property. The LBTT(A)(S)A 2016 treats such purchases in the same manner as it treats purchases by "non-natural persons".

Further details relating to transactions by individuals can be found in part [ADS-A3C](#) of this guidance.

For purchases by "non-natural persons", such as companies, the "two dwelling rule" does not apply. The ADS applies to *every* purchase of a dwelling by a non-natural person (other than certain trust transactions as detailed in part [ADS-E3](#) of this guidance) where the subject matter of the transaction consists of or includes the acquisition of a dwelling in Scotland. The LBTT(A)(S)A 2016 adds an additional 3% to the LBTT liability for each transaction with a relevant consideration of £40,000 or more by a non-natural person where the subject-matter of that transaction consists of or includes the acquisition of ownership of a dwelling in Scotland regardless of how many properties are owned at the end of the effective date.

Note: A non-natural person is not regarded as replacing their only or main residence under the LBTT(A)(S)A 2016.

Full relief from the ADS is available, however, for any transaction in which an individual or non-natural person purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

Further details relating to transactions by non-individuals can be found in part [ADS-A3D](#) of this guidance.

The most common scenario in which buyers are likely to pay the ADS will be where they are purchasing a buy-to-let dwelling or a second home (or holiday home) in addition to their main home.

The vast majority of residential property transactions, such as first time buyers purchasing their first property or homeowners moving from one main residence to another, will not be liable to the ADS.

The ADS will, therefore, apply to certain residential property purchases. It will also apply to mixed transactions, i.e. transactions that include both residential and non-residential

property. For example: A shop with a flat above it may also attract the ADS. Further details relating to how transactions involving residential and non-residential property may be affected and how the ADS will be calculated for such transactions are included in parts [ADS-A3B](#) and [ADS-B](#) of this guidance.

The ADS payable for a residential property transaction within the scope of the additional amount of LBTT will therefore be charged on the **whole** relevant consideration for that transaction, effectively meaning that the amount of ADS payable in respect of such a transaction will be 3% of the entire purchase price.

LBTT(A)(S)A 2016 schedule 2A paragraphs 2, 3, 4 and 8A.

Transitional arrangements

Transitional arrangements apply, with the effect that the ADS will only apply to a transaction involving a purchase of additional property where the contract for the transaction was entered into on or after 28 January 2016 (the date that the Bill and was published on the Scottish Parliament's website) and the effective date of the transaction is on or after 1 April 2016.

However, the ADS will not apply where a contract for a transaction was entered into before 28 January 2016 but not completed until on or after 1 April 2016. Further details on the transitional arrangements can be found in part [ADS-G](#) of this guidance.

LBTT(A)(S)A 2016 - section 3.

Calculating the ADS payable

Example 1: Acquisition of a second home

In December 2015, Liz purchased a dwelling for a consideration of £350,000. It was the first and only dwelling she owned. The LBTT payable under standard residential LBTT rates was calculated as follows:

0% on the first £145,000	= £0
2% on the next £105,000	= £2,100
5% on the next £75,000	= £3,750
10% on the next £25,000	= £2,500
LBTT due	= £8,350

In May 2016, Liz purchases an additional dwelling for a consideration of £350,000 and does not dispose of her first dwelling. The ADS will therefore apply to the purchase of this additional dwelling and is calculated on the whole purchase price of the transaction.

The overall LBTT that will be payable for the purchase of her additional dwelling is calculated as follows:

LBTT payable under standard residential LBTT rates:

0% on the first £145,000	= £0
2% on the next £105,000	= £2,100
5% on the next £75,000	= £3,750
10% on the next £25,000	= £2,500
	= £8,350

ADS payable on **whole** purchase price of £350,000:

3% of £350,000 = £10,500

Total LBTT including ADS due (£8,350 + £10,500) = £18,850

Example 2: Acquisition of a second home within the nil rate band

Robin purchases a dwelling for a consideration of £45,000. It is the first and only dwelling owned by him. ADS does not apply to an individual's first purchase of residential property and LBTT only becomes payable for transactions over £145,000, so no LBTT is due for this transaction.

Robin then purchases an additional dwelling for a consideration of £50,000 and does not dispose of his first dwelling. The ADS will therefore apply to the purchase of this additional dwelling and is calculated on the whole purchase price of the transaction.

The overall LBTT that will be payable for the new purchase is worked out as follows:

LBTT payable under standard residential LBTT rates:

£0 (as purchase price is within the nil rate band for residential property transactions)

ADS payable on **whole** purchase price of £50,000:

3% of £50,000 = £1,500

Total LBTT including ADS due (£0 + £1,500) = £1,500

ADS-A2: Meaning of "owner"

For the purposes of assessing ownership of dwellings in Scotland in relation to the LBTT(A)(S)A 2016, an "owner", includes:

- someone (or some *body*) who has completed title as proprietor, either individually, jointly or in common pro indiviso (i.e. where ownership of a dwelling is to be held by two or more parties in individual shares), by registration in the Land Register or Register of Sasines (registered ownership);
- the buyer in a land transaction, either individually, jointly or in common pro indiviso, at the end of the day that is the effective date of that transaction (deemed ownership).* (Further details on the effective date of a land transaction in Scotland can be found in part [ADS-A4](#) of this guidance and part [LBTT1004](#) of the LBTT guidance);
- someone who has not completed title but who is entitled/has right, either individually, jointly or in common pro indiviso, to be the owner (such as a beneficiary who has inherited ownership of a dwelling) (uninfert ownership) and
- someone who is the beneficiary under a bare trust or who has a relevant interest in a dwelling comprising settlement trust (liferent trust) property. (Further details on transactions involving trust property can be found in part [ADS-E3](#) of this guidance).
- someone who holds a liferent in a dwelling under a proper liferent. (Further guidance on transactions involving proper liferents can be found in part [ADS-E4](#) of this guidance).
- the very rare case in Scotland of someone who is the tenant under a continuing long residential lease of a dwelling for a term of more than 20 years. (Further guidance on transactions involving residential leases can be found in part [ADS-E5](#) of this guidance).

*In Scots law, a buyer does not own a property until their title is registered in the Land Register of Scotland. The corollary is that the seller is not divested of their title until that point also. The effective date for a standard residential property transaction is generally the date of settlement, which date is the day on which the buyer pays the purchase price and receives the keys and a signed disposition from the seller. For practical purposes, at this point, the buyer will consider themselves to be the owner and the seller will consider themselves to no longer be the owner. Paragraph 10 to schedule 2A of the LBTT(A)(S)A 2016 treats this practical position as "deemed ownership" - for the purposes of that Act, as from the end of the day that is the effective date of the transaction, the buyer is treated as being the owner of the dwelling, and the seller is treated as ceasing to own the dwelling.

For properties situated in the rest of the UK, the meanings of "effective date" and "land transaction" have the same meanings as in [Part 4](#) of the Finance Act 2003 (UK Stamp Duty Land Tax (SDLT) legislation). For properties outside of the UK, the same concepts apply and the meanings of "effective date" and "land transaction" are to be read according to the prevailing law and practice in the country in which the dwelling is situated. Additionally, all forms of ownership in the legal systems of the rest of the UK which are equivalent to ownership in Scotland are treated as ownership for the purposes of the 2016 Act.

The prevailing Scottish concepts regarding ownership apply across the foreign legal systems and must also be read in accordance with the prevailing law and practice of the country in which the dwelling is situated when determining whether an individual owns a dwelling outside Scotland.

An "owner" under the LBTT(A)(S)A 2016 can therefore comprise a tenant under certain types of lease both in the rest of the UK and the rest of the world. Further details on the application of the LBTT(A)(S)A 2016 to leases in Scotland can be found in part [ADS-E5](#) of this guidance.

Land Registration etc. (Scotland) Act, 2012 sections 43, 50, 52, 53 and 113

Registration Act 1617

LBTT(A)(S)A 2016, see schedule 2A paragraphs 10, 11, 12 and 13

Finance Act 2003 Part 4

LBTT(S)A 2013 schedule 1 paragraph 3(3)

ADS-A3 Transactions to which the ADS applies

For purchases by individuals, the ADS applies where the subject-matter of a transaction consists of or includes the acquisition of ownership of a dwelling in Scotland and a) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling and b) the buyer is not replacing their only or main residence.

For purchases by non-natural persons such as companies, the "two dwelling rule" will not apply. The ADS will therefore apply to *every* purchase by a non-natural person (other than certain trust transactions as detailed in part [ADS-E3](#) of this guidance) where the subject matter of the transaction consists of or includes the acquisition of a dwelling in Scotland.

The ADS also applies to all purchases by an individual, acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.

Note: the ADS will not apply where a buyer is an individual who purchases a first buy-to-let dwelling and that individual:

- a) does *not* own any other existing dwellings at the end of the effective date of the transaction and
- b) is *not* acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.

Full relief is available from the ADS, however, for any transaction in which a buyer (whether an individual or a non-natural person) purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

Further guidance on what comprises the effective date of a transaction can be found in part [ADS-A4](#) of this guidance and part [LBTT1004](#) of the LBTT guidance.

LBTT(A)(S)A 2016, see schedule 2A paragraphs 2,3 and 8A.

- **ADS-A3A Transactions involving residential properties**

Residential property transactions are transactions where the main subject-matter of the transaction consists entirely of an interest in land that is residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

All transactions involving residential properties have the potential to be affected by the ADS.

LBTT(S)A 2013 section 24(3)

- **ADS-A3B Transactions involving non-residential properties**

Generally, transactions involving non-residential properties will be unaffected by the ADS. The ADS will, however, apply to any transaction where the subject matter of the transaction consists of or includes the acquisition of ownership of a dwelling.

There is therefore the potential for some transactions involving dwellings to be taxed as non-residential property transactions for the purposes of the LBTT(S)A 2013 and for the ADS to apply, at least in part, to those transactions.

The LBTT(S)A 2013 provides for two separate "non-residential property transaction" scenarios for the purposes of the application of LBTT:

1) Where either the main subject-matter of the transaction consists of or includes an interest in land that is not a residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest, such a transaction will comprise a "non-residential property transaction".

In the majority of cases, a non-residential property transaction will have no residential property aspect. There will be some non-residential transactions, however, which involve a residential property aspect, such as the purchase of a shop with a flat above.

2) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in them, then those dwellings are to be treated as non-residential property for the purposes of the LBTT(S)A 2013.

In both of the above scenarios, LBTT is charged on such transactions at non-residential rates.

However, as the LBTT(A)(S)A 2016 provides for the subject-matter of a transaction to *consist of or include* the acquisition of ownership of a dwelling, the ADS will apply to any qualifying transaction involving residential and non-residential property or one involving the purchase of 6 or more dwellings. Full relief is available from the ADS, however, for any transaction in which a buyer (whether an individual or non-natural person) purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

Where applicable to non-residential property transactions, the amount of ADS that will apply as a result of the LBTT(A)(S)A 2016 will be equal to 3% of that part of the chargeable consideration for that transaction attributable on a just and reasonable apportionment to the dwelling or dwellings (including any interest or right pertaining to ownership of the dwelling or dwellings) purchased.

Where a process of just and reasonable apportionment determines that less than £40,000 of the chargeable consideration paid for a transaction involving residential and non-residential property relates to the dwelling or dwellings purchased, the ADS will not apply.

Further details on how the ADS will affect certain non-residential property transactions are included part [ADS-B](#) of this guidance.

LBTT(S)A 2013 sections 24(4) and 59(8)

LBTT(A)(S)A 2016, see schedule 2A paragraphs 3, 4 and 8A

- **ADS-A3C Transactions by individuals**

In this section of the guidance, reference to a "buyer" or "buyers" is in the context of a buyer or buyers who are an individual or individuals i.e. natural persons as opposed to non-natural persons or bodies and does not include an individual who purchases a dwelling either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.

Partnerships are included in this definition of buyer because Schedule 17 to the LBTT(S)A 2013 provides that a chargeable interest held by a partnership is treated as being held by the individual partner and a land transaction entered into by a partnership is treated as having been entered into by the individual partners.

The ADS will only apply where a buyer (or any one of a group of buyers) owns *two or more* dwellings at the end of the day that is the effective date of a transaction and is *not* replacing their only or main residence.

The ADS will never apply if, at the end of the day that is the effective date of the transaction, a buyer (or group of buyers) owns only one dwelling, unless that dwelling is acquired in the course of a business, the sole or main activity of which is investing or dealing in property.

The ADS will not apply where an individual purchases a first buy-to-let dwelling and that individual:

- a) does *not* own an existing dwelling at the end of the effective date of the transaction and
- b) is *not* acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.

When determining how many dwellings a buyer (or group of buyers) owns for the purposes of the LBTT(A)(S)A 2016, all dwellings which have:

- a) previously been acquired by the buyer (or each individual buyer) in the course of a business, the sole or main activity of which is investing or dealing in property, and
 - b) been subject to the ADS (as a result of a)
- can be discounted.

This also applies to dwellings purchased outside of Scotland which, had they been purchased *in* Scotland, would have been subject to the ADS as a result of having been acquired in the course of a business, the sole or main activity of which is investing or dealing in property.

Full relief is available from the ADS for any transaction in which a buyer (or group of buyers) purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

Replacing a main residence after a gap period

If, at the end of the day that is the effective date of the transaction, a buyer owns two or more dwellings, whether that buyer pays the ADS or not for that transaction will depend on whether they have replaced their main residence. Further details on how to determine if an "only or main residence" has been replaced is included in part [ADS-A5](#) of this guidance.

In order to have "replaced an only or main residence", a buyer must have sold their previous main residence within the 18 month period ending with the day that is the effective date of the next main residence purchase transaction and must intend to occupy the dwelling in that transaction as their only or main residence.

Where a buyer has simply replaced a main residence, the ADS will not apply, irrespective of how many dwellings the buyer owns.

However, if a buyer has *not* replaced a main residence (either because they have not sold a previous main residence within the 18 month period ending with the day that is the effective date of the next main residence purchase transaction or the dwelling being acquired in that transaction is not intended to be used as their main residence), and at the effective date of the transaction the buyer owns more than one dwelling, the ADS will apply.

It is possible that as part of a chargeable transaction, a buyer will acquire ownership of more than one dwelling, and that one of the dwellings acquired will be the replacement of a previous main residence. If that is the case, the ADS will not be payable on the consideration attributable to the next main residence, but will be payable on the consideration attributable to the other dwellings acquired. Paragraph 4(4) of the LBTT(A)(S)A 2016 explains that the consideration must be attributed on a just and reasonable basis between the dwellings acquired.

Details relating to how to determine if a main residence is being replaced can be found in Part [ADS-A5](#) of this guidance.

Delayed sale of a main residence

There will be instances where a buyer may not have been able to sell their previous main residence by the end of the day that is the effective date of a next main residence purchase transaction, either because missives have not yet been concluded, there has been a break in the property chain or due to an inability to find a buyer.

That buyer will find that, at the end of the day that is the effective date of the next main residence purchase transaction, they are the owner of two dwellings.

In such a case, the ADS will apply to the next main residence purchase transaction but the buyer may be eligible to claim a repayment of the additional LBTT paid for the next main residence purchase transaction if they sell their previous main residence within an 18 month period beginning with the day after the effective date of the next main residence purchase transaction. Further details of when such a repayment may be claimed is contained in part [ADS-F](#) of this guidance.

Where the sale of the previous main residence occurs after the effective date of the purchase of the buyer's next main residence, but before an LBTT return has been made, the ADS does not require to be paid. Further guidance on making returns is provided in part [ADS-D](#) of this guidance.

LBTT(S)A 2013, schedule 17

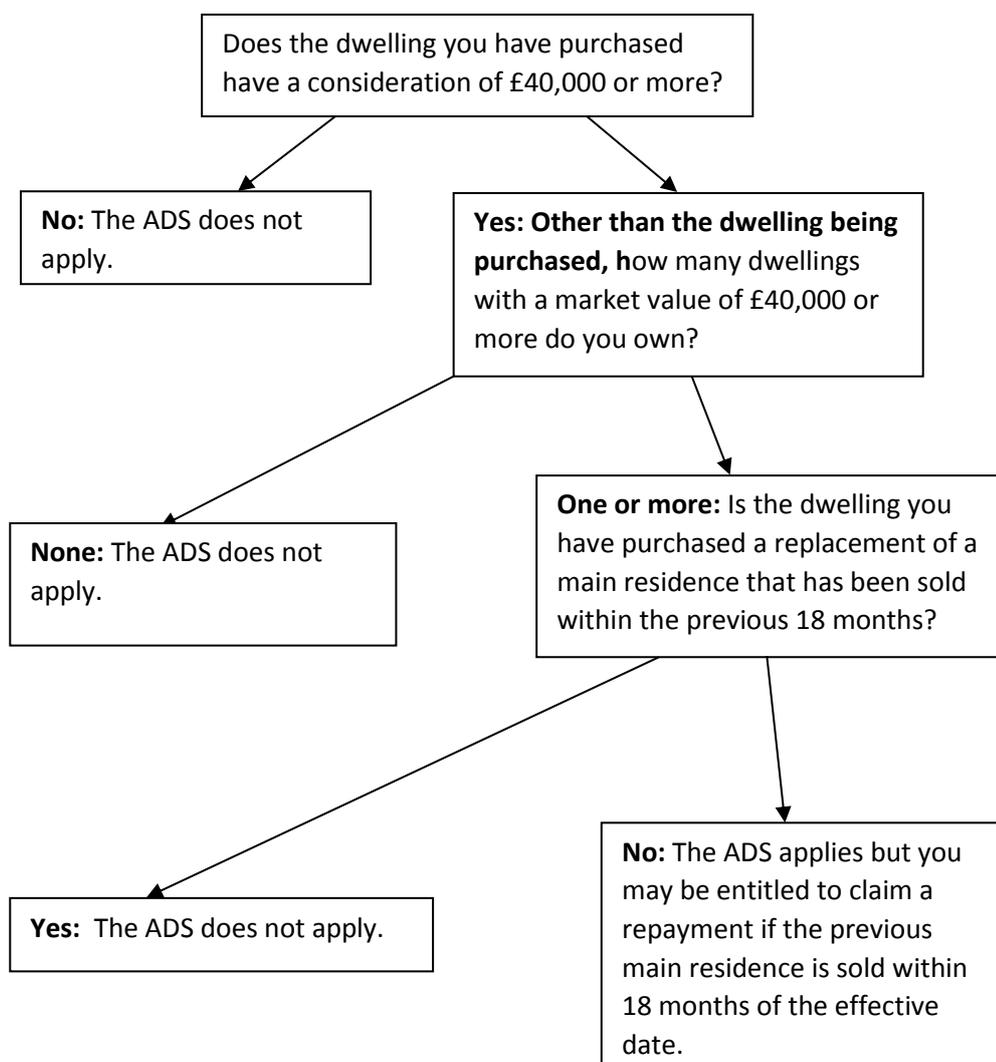
LBTT(A)(S)A 2016, see schedule 2A paragraphs 2, 8 and 9.

Diagram 1 below provides both a basic description of how the ADS may affect the purchase of a dwelling by an individual and a simple means of determining whether such a purchase is liable for the ADS. It should be noted that other factors can have an effect on the determination process dependent upon the facts and circumstances in the case of each transaction. This guidance contains full details of these other factors therefore this Diagram cannot be read in isolation.

Diagram 1

Simple ADS "Purchase by Individual*" Transaction Flowchart

*Does not apply to purchases by an individual who is purchasing either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.



Example 3: Standard "Buy-Sell" transaction: buying one main residence, selling another

Johnny and Steven are selling the dwelling which is their main residence and they are purchasing a dwelling to be used as their next main residence. At the end of the day that is the effective date of the transaction, Johnny and Steven own one dwelling, so they will not pay the ADS.

Example 4: Main residence owner purchasing first rental dwelling

Russell already owns a dwelling which is his main residence and is purchasing a dwelling that will be used as a buy-to-let. At the end of the day that is the effective date of the transaction, he owns two dwellings and has not replaced his main residence, so the ADS will apply.

Example 5: First-time buyer

Roni is purchasing her first dwelling. Because she works away from home, she rents it out with the view to possibly moving in there one day if her work situation allows. At the end of the day that is the effective date of the transaction, Roni owns one dwelling, so she will not pay the ADS.

However the "two dwelling rule" does not apply to purchases made by an individual in the course of a business the sole or activity of which is investing or dealing in property (see Example 19 in part [ADS-A3D](#) of this guidance).

Example 6: Portfolio owner replacing main residence

Dave owns two dwellings - a main residence and a buy-to-let dwelling. He sells his main residence and purchases his next main residence on the same day. Although he owns two dwellings at the end of the day that is the effective date of the transaction, as he has replaced his main residence, the ADS will not apply.

Example 7: Holiday home owner replacing main residence

Three months ago, Martine sold a dwelling which was her main residence. She still owns another dwelling which she uses as a holiday home. Since the sale of her main residence she has lived in rented accommodation.

Martine then purchases a dwelling which she intends to use as her next main residence. At the end of the day that is the effective date of the transaction, Martine owns two dwellings, but as she is replacing her main residence (she is purchasing her next main residence within 18 months of selling her previous main residence), the ADS will not apply.

Example 8: Buyer buying their next main residence but not replacing old main residence

Alan owns a dwelling that is his main residence. He is purchasing his next main residence, but rather than selling his previous main residence he will rent it out. At the end of the day that is the effective date of the transaction, Alan owns two dwellings and is not replacing a main residence (as he is not selling his previous main residence), and therefore the ADS will apply.

Example 9: Buyer buys first dwelling followed by a later rental purchase

Andrew purchases his first dwelling, which he will use as a buy-to-let whilst he lives at home with his parents. At the end of the day that is the effective date of the transaction, Andrew owns one dwelling. He does not own any other dwelling and does not run a property investment or property trading business, so he will not pay the ADS, even though he is not using it as his main residence.

However, if Andrew purchased his first dwelling acting as a sole trader or in a partnership of which that he is a partner, in the course of a business the sole or main activity of which is investing or dealing in property, the ADS *would* apply.

Two years later, Andrew purchases a dwelling which he will use as his main residence, but he also decides to keep his buy-to-let dwelling. In this instance, as he owns two dwellings at the end of the day that is the effective date of the transaction and has not replaced a main residence (as he has not sold a previous main residence), the ADS will apply.

Example 10: Holiday home owner potentially replacing a main residence

Precious owns two properties, a main residence and a holiday home. She decides to move into her holiday home as her next main residence, keeping her old main residence to let out.

3 months later, Precious sells her previous main residence and purchases a smaller dwelling. At the end of the day that is the effective date of the transaction, Precious owns two dwellings, and whether the ADS will apply will depend on whether she is replacing a main residence.

If Precious intends to move into the newly purchased dwelling as her next main residence, the ADS will not apply because she sold her previous main residence within the previous 18 months. If she does not intend to occupy the newly purchased dwelling as her next main residence, the ADS will apply. Further guidance on this issue is provided in part [ADS-A5](#) of this guidance.

Example 11: Portfolio owner acquiring next main residence having sold previous main residence

12 months ago, Lou sold the house that was his main residence and left Scotland to travel the world. He bought three flats to provide rental income to fund his travels. Lou then returns to Scotland and decides to purchase a new dwelling as his main residence.

At the end of the day that is the effective date of the transaction, Lou owns four dwellings but, as he has sold a previous main residence within the previous 18 months and is buying a next main residence, the ADS will not apply to the next main residence purchase transaction.

Example 12: Portfolio owner selling one rental dwelling and buying another

Maureen lives in rented accommodation and owns two buy-to-let dwellings. She decides to sell one buy-to-let dwelling and buy another buy-to-let dwelling. At the end of the day that is the effective date of the transaction, she owns two dwellings. Because she has not replaced a main residence, the ADS will apply.

Example 13: Portfolio owner acquiring a main residence

Sterling lives with his parents and owns three buy-to-let dwellings. He decides that it is time to move out and buy a new dwelling as a main residence. At the end of the day that is the effective date of the transaction, he owns four dwellings. Because he has not replaced a main residence, the ADS will apply.

Example 14: Large portfolio owner replacing a main residence

John and Nico are buy-to-let investors with 10 dwellings in their portfolio. They also own another dwelling which they use as their main residence. They decide to sell their previous main residence and purchase their next main residence. At the end of the day that is the effective date of the transaction, John and Nico own 11 dwellings – their next main residence and their 10 buy-to-let dwellings. However, as they have replaced their previous main residence they will not pay the ADS.

Example 15: Owner of two dwellings - sale of previous main residence delayed

Ray is selling his only dwelling which is his main residence and purchasing his next main residence. Due to mortgage complications with the purchaser of his existing main residence, this sale is delayed but the purchase of his next main residence goes ahead on time. At the end of the day that is the effective date of the transaction, Ray owns two dwellings and has not replaced his main residence. As a result, the ADS will apply.

However, if Ray sells his previous main residence at any time within an 18 month period beginning on the day after the effective date for her next main residence purchase transaction, he will be able to claim a repayment of the ADS he paid, with interest.

Details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

Example 16: Deliberate ownership of two dwellings - existing main residence to be sold in near future

Venus and Jane are buying their next main residence which will require to undergo repair works before it is of a habitable standard. They will not therefore be selling their existing main residence until some months after their next main residence purchase transaction completes.

At the end of the day that is the effective date of that transaction, Venus and Jane, deliberately, own two dwellings and have not replaced a main residence. As a result, the ADS will apply. The date that the ADS becomes due is not related to their move-in date.

However, Venus and Jane will be able to reclaim the ADS paid with interest if they sell their previous main residence at any time within an 18 month period beginning on the day after the effective date for their next main residence purchase transaction.

Details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

Example 17: Purchase of next main residence plus other dwelling, previous main residence being sold:

Stephanie owns her existing main residence and decides to sell this and purchase a next main residence which comprises a house with a separate holiday cottage.

At the end of the day that is the effective date of the transaction, even though Stephanie has replaced her main residence, her purchase of an additional dwelling as part of this transaction means that she owns two dwellings. The ADS will therefore apply.

The ADS payable will, however, only be based on the consideration paid for the additional dwelling purchased and not that paid for the next main residence as a main residence has been replaced. Further details regarding how the ADS is charged in such an instance can be found in part [ADS-B](#) of this guidance.

Example 18: Buyer buys first dwelling as individual, buyer already owns dwellings as part of sole trader property investment business

Jonathon is a developer who runs a sole trader property investment business, Mercury Revivals, which currently owns two dwellings. Each of the purchase transactions for these two dwellings were subject to the ADS. Jonathon lives in rented accommodation but decides that it is time to stop renting and buy a house to live in.

At the end of the day that is the effective date of the transaction, Jonathon owns three dwellings and has not replaced a main residence. However, as two of the dwellings were bought through the business and were each subject to the ADS, they are not counted as being owned by Jonathon for the purpose of the LBTT(A)(S)A 2016, therefore the ADS will not apply to the transaction.

LBTT(A)(S)A 2016, see schedule 2A paragraph 9(2)(a)

- **ADS-A3D Transactions by non-individuals**

As explained in part [ADS-A3C](#) of this guidance, where an individual (or group of individuals) purchase their first, or only, dwelling, the ADS will not apply. The "two dwelling rule" does not, however, apply to purchases of dwellings by a non-natural person, such as a company, investment trust or any other corporate entity, or to purchases made by an individual, acting either as a sole trader or in a partnership of which that individual is a partner, the sole or main activity of which is investing or dealing in property.

Special rules apply, however, in relation to transactions by trustees of certain types of trust. Further details relating to trusts can be found in part [ADS-E3](#) of this guidance.

The ADS will therefore apply to *every* purchase of a dwelling in Scotland by a non-natural person other than certain trust transactions as noted above. The ADS will also apply to all purchases by an individual, acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business the sole or main activity of which is investing or dealing in property.

This provision is primarily intended to counter a potential tax avoidance opportunity whereby an individual could purchase an additional dwelling via a company or business in order to avoid the ADS.

Full relief is available from the ADS, however, for any transaction in which a buyer (or group of buyers) purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

LBTT(A)(S)A 2016, see schedule 2A paragraphs 3 and 8A

Example 19: First purchase of dwelling by a company

PATD Limited currently operate out of rented premises. As part of an investment plan, the company decides to purchase a dwelling to generate buy-to-let income. At the end of the day that is the effective date of the transaction, the company owns one dwelling. However, as *every* purchase (i.e. including the first) of a dwelling by a non-natural person (for instance, a company) is subject to the ADS, the ADS will apply to this purchase.

Example 20: First purchase of a dwelling by property investment sole trade

Brian runs a sole trader property investment business, Placebo Properties, that currently owns only non-residential property. Brian decides to buy a residential property through the business to rent out. Brian lives in rented accommodation and so the dwelling bought by his business will be the first dwelling that he owns. As the dwelling has been acquired in the course of a property investment business, the ADS will be payable.

- **ADS-A3E What counts as a "dwelling"?**

Three separate elements must be taken into account when assessing whether a dwelling should be counted when determining what counts as a dwelling owned by a buyer for the purposes of the LBTT(A)(S)A 2016. These are i) What is it?; ii) Where is it? and iii) What is it worth?

i) What does the dwelling comprise of?

The Multiple Dwellings Relief definition of "dwelling" contained in [Part 6 of schedule 5](#) to the LBTT(S)A 2013 applies for the purposes of determining what counts as a "dwelling" for the purposes of the LBTT(A)(S)A 2016.

A building or part of a building counts as a dwelling if it (a) is used or is suitable for use as a single dwelling or (b) it is in the process of being constructed or adapted for such use. This therefore means that where a house is split into three flats, that house will comprise three dwellings.

Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken, together with land that subsists or is to subsist, for the benefit of a dwelling, to be part of that dwelling.

Such a definition of "dwelling" will cover the standard purchase of a house or flat in Scotland.

Full details of the rules around determining what counts as a dwelling for the purposes of the LBTT(A)(S)A 2016 can be found in Part 6 of schedule 5 of the LBTT(S)A 2013 and in part [LBTT4010](#) of the LBTT guidance.

Most property transactions that will be liable for the ADS will be "residential property transactions".

Residential property transactions are transactions where the main subject-matter of the transaction consists entirely of an interest in land that is residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

However, in some cases, a transaction will comprise a "non-residential property transaction".

Non-residential property transactions are where either:

- 1) the main subject-matter of the transaction consists of or includes an interest in land that is not a residential property or b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest) or
- 2) where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in them.

Full relief is available from the ADS, however, for any transaction in which a buyer (whether an individual or a non-natural person), purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

Certain transactions of non-residential property will be liable for the ADS. Further details relating to these transactions can be found in parts [ADS-A3B](#) and [ADS-B](#) of this guidance.

LBTT(S)(A) 2013 schedule 5 Part 6 and sections 24(3), 24(4) and 59(8)
LBTT(A)(S)A 2016, see schedule 2A, paragraph 8A

ii) Where is the dwelling?

Dwellings owned outside of Scotland, either in the rest of the UK or the rest of the world, (as well as dwellings owned within Scotland) will be counted when determining what counts as a dwelling owned by an individual (in addition to the dwelling being purchased in the new transaction).

All forms of ownership in the legal systems of the rest of the UK which are equivalent to ownership in Scotland are treated as ownership for the purposes of the LBTT(A)(S)A 2016.

For instance, a dwelling for which an individual holds a tenant's interest under certain types of lease in the rest of the UK would count towards dwellings owned by an individual for the purposes of the LBTT(A)(S)A 2016.

Additionally, the prevailing UK concepts regarding ownership apply across the foreign legal systems and must be read in accordance with the prevailing law and practice of the country in which the dwelling is situated when determining whether an individual owns a dwelling overseas.

Ownership of a dwelling on a "freehold" or "leasehold" (for certain types of lease) basis outside of the UK would therefore count towards dwellings owned by an individual.

Where an individual owns a main residence *out with* Scotland and wishes to purchase a dwelling *in* Scotland, the ADS may be payable, even where that individual owns no other dwellings in Scotland.

LBTT only applies to purchases of land and property in Scotland. A purchase of residential property located outside of Scotland will not attract LBTT liability, though it may be liable for any property transaction tax in that jurisdiction.

LBTT(A)(S)A 2016, see schedule 2A paragraph 9(2) and paragraph 13

Example 21: Main residence owned elsewhere in UK, additional dwelling purchased in Scotland

Brian owns his main residence in London. His employer has seconded him to a post in Glasgow for two years. Brian decides to sell his main residence in London and buy a dwelling in Glasgow which will be his main residence for the duration of his secondment. Although the "chain" breaks down on the sale of his previous main residence in London, his next main residence purchase transaction goes ahead as planned.

At the end of the day that is the effective date of the transaction, Brian owns two dwellings, one in England and one in Scotland and has not replaced his main residence therefore the ADS will apply (irrespective of the fact that he owns no other dwelling in Scotland).

Example 22: Dwelling owned overseas being retained as a main residence, holiday home being purchased in Scotland

Dennis has a main residence in Los Angeles and decides to buy a holiday home in Edinburgh. At the end of the day that is the effective date of the transaction, Dennis owns two dwellings, one in America and one in Scotland, and because he has not replaced a main residence, the ADS will apply.

Example 23: Overseas main residence being sold, next main residence being purchased in Scotland

Carl has a dwelling in Berlin which is his main residence. He decides to sell his main residence and move to Scotland where he buys a dwelling which will be his main residence. At the end of the day that is the effective date of the transaction, Carl owns one dwelling therefore the ADS will not apply.

Example 24: Dwelling owned overseas being retained as a rental property, next main residence being purchased in Scotland, existing main residence was rented

Ann and Barbara own a dwelling in California which they rent out and they rent another dwelling in Carolina which they use as their main residence. They decide to move back home to Scotland and buy a main residence there whilst keeping their rental dwelling. At the end of the day that is the effective date of the transaction, Ann and Barbara own two dwellings. Although they have purchased their next main residence, they have not replaced their existing main residence, therefore the ADS will apply.

If Ann and Barbara had decided to buy a dwelling in Scotland as a buy-to-let property to rent out instead of as a main residence, the ADS would still apply as they would not be replacing their existing main residence.

Example 25: Main residence owned in Scotland, holiday home being bought in England

Rhonda owns a dwelling in Scotland which is her main residence. She decides to purchase a holiday home in Scarborough. LBTT only applies to Scotland so she will not pay LBTT, but SDLT may be chargeable on the purchase of the holiday home in England. The rates and structure for SDLT are set by the UK Government.

Example 26: Two dwellings owned overseas, one rented out and one main residence, next main residence being purchased in Scotland, existing main residence being replaced.

William and Antonia own two dwellings in Malta, one which they rent out and another which they use as their main residence. They decide to sell their existing main residence and to move to South Queensferry, buying a new main residence there. They intend to keep their rental property for use as a holiday home.

At the end of the day that is the effective date of the transaction, William and Antonia own two dwellings but, as they have replaced their existing main residence, the ADS will not apply.

iii) What is the value of the dwelling?

The ownership interest in a dwelling with a market value of less than £40,000 will not be counted as owned by the buyer when determining the number of dwellings owned for the purposes of the LBTT(A)(S)A 2016. Consequently, any existing dwelling or dwellings owned by the buyer acquiring the dwelling which has or have a market value of less than £40,000 can therefore be discounted.

The relevant date at which the market value of the ownership interest in the dwelling must be determined is the effective date of the transaction. Further details on the effective date of a land transaction in Scotland can be found in part [ADS-A4](#) of this guidance and part [LBTT1004](#) of the LBTT guidance. This will be particularly relevant if a dwelling already owned by the purchaser is considered to have a market value of under £40,000. Evidence to support a valuation of less than £40,000 may be requested by us.

Where a buyer owns a dwelling or dwellings that they are not selling, they must make a reasonable estimate of the market value of that existing dwelling or dwellings as at the end of the effective date of the next main residence purchase transaction. As the existing dwelling or dwellings will not be on the market, this will be an estimate and must be supported by evidence.

In determining the market value of an existing dwelling, the market value of any interest or right pertaining to ownership of the dwelling, such as enforcement rights in relation to title conditions or servitude rights of access, must not be artificially severed.

For the avoidance of doubt, where a buyer owns more than one existing dwelling, the £40,000 limit applies to each separate dwelling rather than to the aggregate value of all of the dwellings owned by that buyer.

The LBTT(A)(S)A 2016 refers to an ownership interest in a dwelling. In most cases this will equate to outright ownership of the dwelling. However there are cases where a person may not own the dwelling outright, but instead have a form of ownership interest in it. For example, if a person is a tenant under a long lease of more than 20 years, they are deemed for the purposes of the ADS to own that dwelling and it is the value of that ownership interest, rather than the value of the dwelling itself that is relevant in working out whether the market value is £40,000 or more.

The exceptions to the rule of looking at the value of the ownership interest are cases where beneficiaries under certain trusts and individuals who hold liferents over properties are deemed to own them. See parts [ADS-E3](#) and [ADS-E4](#) of this guidance for further detail of these concepts. When someone is deemed to own a dwelling because they have either of these two interests in that dwelling, it is the value of the actual dwelling that is relevant in establishing the market value, rather than the value of the ownership interest.

Transactions with a relevant consideration under £40,000 do not require an LBTT return to be made to us. This remains the case for purchases of additional dwellings with a market value of less than £40,000. However where the ADS applies to any transaction with a consideration of £40,000 or more, an LBTT return must be made.

**LBTT(A)(S)A 2016. see schedule 2A paragraph 9(3), 9(4), 9(5) and 9(6)
LBTT(S)A 2013 sections 30(1)(b) and 62 and schedule 2 paragraph 12**

Example 27: Buy-to-let purchase, consideration less than £40,000

Kurt owns a dwelling which he uses as a main residence. He then purchases a dwelling for £25,000 which he will rent out. At the end of the day that is the effective date of the transaction, although Kurt owns two dwellings, as the consideration for that transaction is less than £40,000, the ADS will not apply.

Example 28: First portfolio purchase, existing main residence worth less than £40,000

Dave currently owns a main residence worth less than £40,000 which he does not intend to sell. He decides to purchase another dwelling as a buy-to-let property. At the end of the day that is the effective date of the transaction, Dave is deemed to own one dwelling (the new purchase) as his ownership of his existing dwelling worth less than £40,000 is not taken into account. Therefore, the ADS will not apply.

However, if Dave purchased this additional dwelling acting as a sole trader or in a partnership of which that he is a partner, in the course of a business the sole or main activity of which is investing or dealing in property, the ADS *would* apply.

Example 29: Portfolio dwellings each worth less than £40,000, main residence being replaced

Chris currently owns four holiday apartments in Cyprus, each worth less than £40,000 and a main residence in Glasgow. She decides to replace her main residence. At the end of the day that is the effective date of the transaction, Chris is deemed to own one dwelling (her next main residence) as her ownership of the four other dwellings, although worth £160,000 cumulatively, are each worth less than £40,000 and are therefore not taken into account. As a result, the ADS will not apply to Chris's next main residence purchase transaction.

Example 30: Holiday home purchase, main residence not being replaced, main residence has high value title conditions enforcement right

Courtney owns a small cottage in Inverness which she lives in as her main residence. She decides to purchase a holiday home in Oban for £60,000.

At the end of the day that is the effective date of the transaction, Courtney owns two dwellings therefore the ADS will be payable unless her cottage in Inverness has a market value of less than £40,000. A market value of less than £40,000 will mean that it is discounted as being owned by Courtney for the purposes of the LBTT(A)(S)A 2016.

A reasonable estimate of the market value of her cottage on its own is determined to be £35,000. However, Courtney, as proprietor of the cottage, has a right of pre-emption over a field adjacent to the cottage, which field is at the edge of current housing development. As the field has the potential to have lucrative development value, Courtney's right of pre-emption is valued at £50,000.

As the overall market value of the cottage plus the right pertaining to the cottage is £85,000, the ADS will apply to Courtney's holiday home purchase transaction.

ADS-A4 What is the effective date of a transaction?

The date at which the liability to LBTT arises is known as the effective date of the transaction. The effective date is also used to determine when other obligations in relation to the tax must be fulfilled, for example when a LBTT return must be made.

In the majority of cases, the effective date of the transaction is the date that the land transaction is completed (in other words, the date of settlement).

In a standard purchase of residential property (such as a house), the date of settlement is the date that the purchase price is paid by the buyer in exchange for the seller delivering the keys and disposition.

Circumstances where the effective date of a land transaction is **not** the date that the land transaction is completed include when the effective date is the date of substantial performance of a contract without completion or the date of substantial performance of a contract requiring conveyance to a third party.

Further details on how to determine the effective date of a transaction can be found in part [LBTT1004](#) of the LBTT guidance.

LBTT(S)A 2013 sections 63 and 64

ADS-A5 How to determine whether or not an "only or main residence" is being replaced.

The question regarding whether an "only or main residence" is being replaced applies only to purchases by an individual who is not acting either as a sole trader or in a partnership of which that individual is a partner, in the course of a business, the sole or main activity of which is investing or dealing in property. It also does not apply to purchases by non-natural persons.

Where a buyer (or, in the case of joint buyers, all buyers collectively, each being considered individually) only owns one dwelling at the end of the day that is the effective date of a transaction, they will not pay the ADS therefore the question of whether or not a main residence is being replaced does not arise.

Buyers will only need to determine whether they have replaced a main residence if they own two or more properties at the end of the day that is the effective date of a transaction.

Where a main residence is being replaced, the ADS *will not* apply. This is likely to be the case in the vast majority of standard residential transactions as, in most cases, an individual moving house will purchase and sell property on the same day.

Where a main residence is not being replaced, the ADS *will* apply. In some cases, it is likely that this will be the case where an individual has been unable to sell an existing dwelling before the end of the day that is the effective date of the transaction for the purchase of a new dwelling. This situation is considered in more detail in part [ADS-F](#) of this guidance.

For the purposes of determining the liability for the ADS, individuals can only have one main residence at any given time. Therefore, although the term "only or main residence" is not a term that is defined in the LBTT(A)(S)A 2016, in most cases where an individual owns more than one dwelling it will be clear which one is that individual's main residence.

There is no provision in the LBTT(A)(S)A 2016 to allow an individual to elect which of the dwellings they own is their main residence. In this respect, the treatment of a main residence for the purposes of the ADS may differ from the treatment of a main residence for the purposes of Capital Gains Tax. Instead we will use the same factual test as is applied to decide where a person lives within the UK for the purposes of determining whether the Scottish Rate of Income tax (SRIT) will apply. If HMRC has already made a determination in this regard and the circumstances have not changed, Revenue Scotland will accept the same position.

An individual's main residence is usually where that individual lives and spends most of their time. It does not matter whether that individual owns or rents their main residence or lives in it for free.

An individual's main residence may be the residence where they spend *less* time if that's where:

- Most of their possessions are;
- Where their family lives, if they are married or in a civil partnership;
- Where they are registered with various organisations such as a bank, GP or an insurance company;
- Where they are a member of clubs and societies.

An individual may spend less time in their main residence than in another residence if they live away because of work commitments e.g. a lorry driver, offshore worker or member of the armed forces.

We will therefore consider whether a dwelling is an individual's main residence or not on the basis of fact. Other factors which we may look to in order to make a determination include:

- If the individual has children, where they go to school;
- At which residence the individual is registered to vote;
- Where the individual works.

In most cases the position will be clear and few factors will need to be considered. For example, where a married couple own two dwellings, one of which is convenient for work and their children's school and where they spend most of their time, and the other a holiday home which they visit occasionally, the first of these is their main residence for the purposes of the ADS.

LBTT(A)(S)A 2016, see Schedule 2A paragraphs 2 and 3

Example 31: Individual has two homes but spends more time at main residence

Jarvis is single and has lived in a flat in Dundee for many years. He is a member of various clubs and social groups in the city. However, he also own a house in Dunkeld, where he goes walking and fishing most weekends and for longer in the summer holidays. Both dwellings are furnished with his possessions but his doctor, dentist and optician registration are all in Dundee.

Jarvis has two dwellings he lives in that he could call home but his main residence is in Dundee, as this is the place with which he has the closest connection, both in terms of social and functional links and in which he spends the most time.

Example 32: Individual has two homes but spends less time at main residence

Candida has a family home in Troon with her husband and children but works in Sheffield. To avoid the commute, Candida rents a flat in Sheffield where she stays during the week and keeps some of her possessions, returning to the family home in Troon each weekend. All of the friends that Candida sees socially live in or around Troon, she's a member of various sports and social groups in there and her doctor and dentist are both in the town.

Candida has two dwellings where she lives during the year that could be looked at as her home. Despite spending more time in terms of days in Sheffield through the year, her main residence is in Troon because of the family, social and other links that she has there.

Replacing a main residence - the two stage test

The LBTT(A)(S)A 2016 contains provision for a two stage test to determine whether a purchase of dwelling is a replacement of a main residence or not.

The first is whether, at the time of the transaction, a dwelling sold in the last 18 months was the only or main residence of the buyer. The second is whether the buyer of the new dwelling intends to occupy that dwelling as their only or main residence.

When considering the first stage of the test, the dwelling being sold must have been an only or main residence of the buyer in this purchase transaction at some point in the 18 month period prior to the day that is the effective date of the next main residence purchase transaction. In the majority of cases, an individual owns only one residence throughout a period, and it is this residence that will be their only or main residence.

Where a buyer has more than one residence, which of these was their main residence will be a question of fact.

The second stage of the test is prospective and based on whether the buyer intends to use the newly purchased dwelling as their only or main residence. Where an individual has made plans at purchase date to move into the new dwelling as their only residence, it will be obvious that the intention test is met. In such a case, the ADS will not apply.

Where evidence clearly shows that either another dwelling will continue to be the buyer's main residence or that the newly purchased dwelling is purchased for some other purpose (such as in the course of a business the sole or main activity of which is investing or dealing in property), the transaction will not be a replacement of a main residence. In such a case, the ADS will apply.

[LBTT\(A\)\(S\)A 2016, see schedule 2A paragraph 2](#)

ADS-B - Determining the chargeable consideration for the ADS

Under the LBTT(S)A 2013, the amount of LBTT to be paid in relation to a chargeable transaction is calculated by applying the tax rates and bands to the amount of chargeable consideration for the transaction. Detailed guidance relating to how the chargeable consideration for a transaction should be determined is contained in part [LBTT2001](#) of the LBTT guidance.

The guidance contained in [LBTT2001](#) will help you establish the chargeable consideration for a land transaction. Details are also given on what constitutes the chargeable consideration in a land transaction ([LBTT2002](#)), what items are not included in the chargeable consideration in a land transaction ([LBTT2009](#)) and what is meant by "market value" ([LBTT2016](#)).

In determining the amount of consideration that is chargeable to the ADS, a different mechanism applies. This mechanism is detailed in paragraph 4(3) of schedule 2A to the LBTT(A)(S)A 2016 and it is a mechanism that relies on the concept of "relevant consideration".

"Relevant consideration" is the proportion of a chargeable consideration for a transaction that is attributable to the residential element of a transaction.

The ADS that will be payable under the LBTT(A)(S)A 2016 will be charged at 3% of the "*relevant consideration*" for a transaction.

For transactions relating to a residential property transaction, the "relevant consideration" to which the ADS will be applied will be the chargeable consideration for that transaction.

A residential property transaction is a transaction where the main subject-matter of the transaction consists entirely of an interest in land that is residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

For the vast majority of residential property transactions, the "relevant consideration" will therefore be the purchase price. For those residential property transactions where the chargeable consideration is not the purchase price, the guidance contained in part [LBTT2001](#) of the LBTT guidance may be helpful.

For affected residential property transactions, the ADS will therefore result in an additional 3% LBTT being charged on the full purchase price of the transaction. Examples 1 and 2 in part [ADS-A1](#) of this guidance demonstrate how the ADS affects residential property transactions.

For those non-residential property transactions affected by the LBTT(A)(S)A 2016, the ADS that will require to be paid will be charged on the proportion of the chargeable consideration for a transaction attributable to the residential element only.

Para 4(3)(b) provides that the "relevant consideration" will comprise 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 (including any interest or right pertaining to ownership of the dwelling or dwellings) that is or forms part of the subject-matter of the transaction.

Where a process of just and reasonable apportionment determines that less than £40,000 of the chargeable consideration paid for a transaction involving residential and non-residential property relates to the dwelling or dwellings purchased, the ADS will not apply.

The LBTT(S)A 2013 provides for two separate "non-residential property transaction" scenarios for the purposes of the application of LBTT:

1) Where either the main subject-matter of the transaction consists of or includes an interest in land that is not a residential property or, where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest, such a transaction will comprise a "non-residential property transaction".

In the majority of cases, a non-residential property transaction will have no residential property aspect. There will be some non-residential transactions, however, which involve a residential property aspect, such as the purchase of a shop with a flat above.

2) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in them, then those dwellings are to be treated as non-residential property for the purposes of the LBTT(S)A 2013.

In both the above scenarios, LBTT is charged on such transactions at non-residential rates (subject to a claim for Multiple Dwellings Relief being made in scenario 2 above).

However, the "relevant consideration" mechanism will mean that, effectively, a separate charge (the ADS) will be made on any applicable non-residential property transaction when the subject matter of that transaction includes the acquisition of the ownership of a dwelling. That separate charge will be on top of the charge made as a result of the application of the non-residential LBTT rates and bands.

The separate charge (the ADS) will result in a 3% charge being applied to so much of the chargeable consideration for that transaction as is attributable, on a just and reasonable apportionment, to the acquisition of the dwelling or dwellings (including any interest or right pertaining to ownership of the dwelling or dwellings) that is or forms part of the subject-matter of the transaction.

Where a process of just and reasonable apportionment determines that less than £40,000 of the chargeable consideration paid for a transaction involving residential and non-residential property relates to the dwelling or dwellings purchased, the ADS will not apply. The LBTT liability for a non-residential property transaction that includes the acquisition of a dwelling and transactions of 6 or more dwellings will therefore be the sum of the

application of the non-residential LBTT rates and bands (subject to a claim for Multiple Dwellings Relief being made) to that transaction plus 3% of that part of the chargeable consideration for that transaction which relates, on a just and reasonable apportionment basis, to the acquisition of a dwelling or dwellings.

Full relief from the ADS is available, however, for any transaction in which a buyer (whether an individual or non-natural person) purchases six or more residential properties in one transaction. Further details on the ADS reliefs available can be found in part [ADS-C](#) of this guidance.

When a chargeable transaction involves both the purchase of a replacement main residence and also the acquisition of the ownership of other dwellings, the ADS will be payable on the proportion of the supplement that relates to the dwellings acquired that are not the new main residence. Para 4(4) provides that when someone enters into such a transaction, that the relevant consideration the ADS is charged on excludes the amount that is attributable, on a just and reasonable basis, to the replacement main residence.

LBTT(S)A 2013, schedule 2 and sections 24(3), 24(4) and 59(8)
LBTT(A)(S)A 2016, see schedule 2A paragraphs 4 and 8A

Example 33: Transactions involving the purchase of residential and non-residential property

JAMC Limited decides to purchase licensed premises which includes a separate flat above the licensed premises. The company intend to rent this flat out. The total purchase price is £1,100,000. The ADS will apply to the transaction, but only on the amount of the purchase price relating to the residential element (i.e. the flat) of the transaction and only if this figure is £40,000 or more.

A just and reasonable apportionment of the purchase price results in the licensed premises being valued at £800,000, stock, fixtures and fittings valued at £200,000 and the flat being valued at £100,000.

In this case, the non-residential rates of LBTT will apply to the total consideration (excluding the value of the fixtures and fittings and the stock) of £900,000, resulting in £21,750 of LBTT being due.

As that part of the transaction comprising the flat has been valued at £100,000, the "relevant consideration" for the purposes of the ADS is £100,000. ADS at a rate of 3% is therefore payable on the whole of this £100,000 resulting in an ADS of £3,000 being due in addition to the standard LBTT.

The overall LBTT liability for the transaction is therefore £24,750 (£21,750 plus £3,000).

Example 34: Purchase of multiple dwellings

BRMC Developers Limited decides to purchase 5 flats in one transaction to add to their portfolio. The overall purchase price is £2 million. As the whole transaction comprises dwellings, a just and reasonable apportionment of the purchase price for the purposes of applying the ADS is not necessary. The whole purchase price of the transaction will therefore be considered to be "relevant consideration" for the purposes of the ADS.

In this case, residential rates of LBTT will apply to the total consideration of £2 million, resulting in £198,350 being charged.

Additionally, a 3% charge is made on the whole of the purchase price (the "relevant consideration") resulting in an ADS charge of £60,000 being made.

The overall LBTT liability for the transaction is therefore £258,350 (£198,350 plus £60,000), before multiple dwellings relief, which may be claimed.

Example 35: Purchase of next main residence plus other dwelling, previous main residence being sold:

Gillian and Gilbert own their existing main residence and decide to sell this and purchase a next main residence which comprises a large house with a separate gatehouse.

At the end of the day that is the effective date of the transaction, even though Gillian and Gilbert have replaced their main residence, their purchase of an additional dwelling as part of this transaction means that they own two dwellings; therefore the ADS will apply.

As the transaction involves both the purchase of a replacement main residence and another dwelling, the relevant consideration upon which the ADS is charged is the chargeable consideration for the transaction under exclusion of that part that relates to the next main residence. In other words: that proportion of the chargeable consideration for the transaction that relates to the gatehouse. The determination of the relevant consideration that relates to the next main residence must be made on a just and reasonable apportionment basis.

The overall consideration paid for the transaction was £1.4 million. A just and reasonable apportionment of the consideration paid for the next main residence is determined to be £1.1 million.

As a result, the relevant consideration upon which the ADS will be charged is £300,000 (£1.4 million (overall consideration paid) minus £1.1 million (next main residence)). The ADS payable for the gatehouse is therefore £9,000.

ADS-C Exemptions and reliefs from the ADS

Those existing exemptions and reliefs which apply to standard LBTT transactions will continue to apply to transactions involving the purchase of additional dwellings. Consequently, where a transaction is exempt from LBTT, or benefits from 100% relief, it will not be subject to the ADS.

For example, the full relief from LBTT for certain acquisitions by registered social landlords and for certain compulsory purchases by local authorities provided for in schedules [6](#) and [14](#) to the LBTT(S)A 2013 also extend to the ADS.

Part [LBTT3001](#) of the LBTT guidance contains full details on those exemptions and reliefs available under the LBTT(S)A 2013.

Transactions which do not benefit from any of the ordinary LBTT exemptions or reliefs, or that only enjoy partial relief, will otherwise be potentially affected by the ADS, though if partial relief is claimed from LBTT, the ADS payable will be reduced in the same proportion to the underlying LBTT.

Relief from ADS for purchases of 6 or more dwellings

Only one new relief is introduced by the LBTT(A)(S)A 2016. Full relief is available for any transaction to which section 59(8) LBTT(S)A 2013 applies. Therefore any transaction treated by that section as being non-residential, because it involves the acquisition of 6 or more dwellings in one transaction, will not be subject to the ADS if the relief is claimed.

The relief must be claimed in the first LBTT return made in relation to a transaction to purchase six or more residential properties or in an amendment of that LBTT return.

LBTT(A)(S)A 2016, see schedule 2A paragraphs 8A and 8B

LBTT(S)A 2013 section 59(8) and schedules 5, 6 and 14

RSTPA 2014 section 83(2)

The interaction of ADS with LBTT Multiple Dwellings Relief

The rules for Multiple Dwellings Relief (MDR) are set out in schedule 5 of the LBTT(S)A 2013. Further details relating to this can be found at part [LBTT3015](#) of the LBTT guidance. These rules are amended slightly for transactions on which the ADS is payable.

In cases where the ADS is payable, the steps needed to calculate the amount of tax payable when MDR is claimed are fundamentally unchanged. The difference for cases in which the ADS is payable is that once the calculation of 'DT' (tax due in relation to a dwelling) has been made, rather than multiply this amount by the number of dwellings you have to work out the tax due, DT, on each dwelling and then add them all together. The calculation therefore becomes $\sum DT$, rather than $DT \times ND$ in paragraph 10 of schedule 5 LBTT(S)A 2013, where ND is the number of dwellings.

In the majority of cases, DT will be the same for each dwelling as it is calculated on the basis of average consideration (total consideration divided by the number of dwellings purchased), and so the calculation will produce the same result.

The difference will come when a chargeable transaction involves the purchase of multiple dwellings, and the supplement is payable on some, but not all of those dwellings (i.e. one of the dwellings may be the replacement of a main residence and the supplement therefore would not be payable on it).

When this is the case, DT is worked out individually for each dwelling. The ADS is applied to the calculation of DT for the dwellings on which the ADS payable, but not to the calculation of DT when it is not. Example 38 of this section of this guidance illustrates such a case.

When relief is claimed for a purchase that is treated as non-residential by section 59(8) LBTT(S)A 2013, the calculation of DT must reflect the fact that relief has been claimed. So when calculating DT at residential rates, the ADS will normally be part of that calculation (unless as explained above that one dwelling is part of a multiple purchase but is also the replacement of a main residence), but the ADS is not part of the calculation for DT when relief has been claimed for transactions that are treated as non-residential by section 59(8).

Example 36: Purchase of 8 dwellings

Electronic Limited are purchasing a house split into 8 flats in one transaction for £800,000. The company does not own any other dwellings. As the house has been split into 8 parts, each of which can be used as a single dwelling, at the end of the day that is the effective date for the transaction, the company owns 8 dwellings.

The ADS applies to every purchase of a dwelling in Scotland by a company.

However, as 100% relief from ADS is available for any transaction in which a buyer purchases six or more residential properties in that one transaction, the ADS will not apply to the company's purchase if relief is claimed because the transaction involves the purchase of 6 or more dwellings in one transaction. Electronic Limited will however pay 'standard' LBTT at non-residential rates based on the total consideration for the 8 flats.

The company may also claim MDR. To calculate the LBTT payable if MDR was claimed, see part [LBTT3015](#) of the LBTT guidance.

Example 37: Purchase involving 5 dwellings

OM Developments, a sole trader property investment business, purchases 5 dwellings in one transaction for £1m. The ADS will apply to the purchase but OM Developments can claim Multiple Dwellings Relief. The LBTT due in relation to a dwelling is calculated using the average consideration, £200,000. Applying residential rates means tax payable is £1,100. As no relief is available, the calculation of DT takes account of the ADS, meaning 3% of £200,000, or £6,000 must be added to DT for each dwelling, meaning DT is £7,100. Applying the formula $\sum DT$ gives £35,500.

This is the LBTT payable unless this is less than the minimum prescribed amount. The minimum prescribed amount is 25% of the LBTT that would be payable absent of the relief. Applying residential rates to the consideration of £1 million gives £78,350. Adding the 3% ADS to this gives £108,350. 25% of this is £27,088 and therefore the LBTT payable is £35,350.

Example 38: Purchase of 4 properties, with the ADS applying to some but not all

Ennio buys 4 properties for £600,000. He will move into one of these as his next main residence and has also sold his previous main residence.

The ADS will apply to the purchase of 3 of the 4 dwellings and Ennio can claim MDR. When calculating MDR DT, the LBTT due in relation to each dwelling, is calculated by attributing the average consideration for the transaction to each of the 4 dwellings and working out the tax due at residential LBTT rates. The average consideration is £150,000 and so LBTT due at residential rates is £100.

For 3 of the 4 dwellings, the 3% ADS has to be taken account of in the calculation of DT, so £4500 is added to the calculation. Therefore, for 3 of the dwellings, DT is £4600, but for one of the dwellings, the replacement main residence, DT is £100. This means that Σ DT is £13,900.

If this is greater than the minimum prescribed amount, this will be the LBTT payable for the transaction. The minimum prescribed amount is 25% on what the LBTT would have been absent of relief. LBTT of £33350 is payable on a consideration of £600,000 at residential rates, and the ADS of £18,000 would also be payable. This gives a total of £51,350 and so a minimum prescribed amount of £12,838. Total LBTT payable is therefore £13,900.

Example 39: Purchase of 4 dwellings followed shortly after by another purchase of 4 dwellings

BM Associates are purchasing 4 flats in a new development in one transaction. At the end of the day that is the effective date for the transaction, the company owns 4 dwellings.

As the ADS applies to every purchase of a dwelling in Scotland by a non-natural person other than certain trust transactions, the ADS will apply to the full purchase price of the transaction.

Two months later, the developer approaches the company and offers them the opportunity to purchase another 4 flats in same development. Again, as the ADS applies to every purchase of a dwelling in Scotland by a non-natural person other than certain trust transactions, the ADS will apply to the full purchase price of the transaction.

BM Associates make a claim for repayment of the ADS for both purchases as they consider that, as they have purchased 8 dwellings from the same developer, the 100% relief available for any transaction in which a buyer purchases six or more residential properties in that one

transaction, will apply. However, as BM Associates Limited have purchased the 8 dwellings in two separate transactions, neither of which comprised a transaction of six or more residential properties, relief will not be available for either transaction.

Details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

ADS-D Payment of the ADS and making an LBTT return

Paying the ADS and making an LBTT return for a transaction within the scope of the LBTT(A)(S)A 2016 follows the same process as making a standard LBTT return. Only one LBTT return and payment will be required for a transaction. The structure of the LBTT return has been changed with effect from 1 April 2016 to capture information about the ADS where it is payable.

Part [LBTT4002](#) of the LBTT guidance contains details of all rules regarding notifiable transactions and payment of tax.

Separate guidance is also available covering:

- [How to make an online LBTT Return;](#)
- [How to make a paper LBTT Return and](#)
- [How to pay LBTT](#)

Making an LBTT return where a previous main residence has not yet been sold

A buyer in a transaction must make an LBTT return to us for a notifiable transaction within 30 days of the effective date of that transaction and calculate and pay any LBTT due at the same time. The date the LBTT return is required to be made by is the filing date.

Further details relating to the requirement to make an LBTT return, notifiable transactions, the effective date of a transaction and the filing date for that transaction can be found in parts [LBTT4005](#), [LBTT4003](#), [LBTT1004](#) and [LBTT1000](#) respectively of the LBTT guidance.

In terms of section 43 of the LBTT(S)A 2013, the Keeper of the Registers of Scotland (the Keeper) may not accept an application for registration, in any of her registers, of a document effecting or evidencing a notifiable transaction unless an LBTT return has been made to us and any LBTT due has been paid.

In a standard residential purchase transaction, this means that the Disposition cannot be registered unless the LBTT position is in order.

In practice, an LBTT return is generally made for a standard residential purchase transaction shortly after the effective date for that transaction and the application to register the Disposition is then immediately submitted to the Keeper for registration.

Sale of previous main residence settles after the effective date

There may be instances, however, where, in a standard "sale of previous main residence / purchase of next main residence" situation, there is a delay in the sale of the previous main residence, meaning that the previous main residence has not been sold by the end of the day that is the effective date of the next main residence purchase transaction.

That buyer will find that, as at the end of the day that is the effective date of the next main residence purchase transaction, they are the owner of two dwellings. In such an instance, the ADS will apply to the next main residence purchase transaction.

The effect of paragraph 8 to schedule 2A to the LBTT(A)(S)A 2016, however, is that, where a previous main residence is sold within an 18 month period beginning with the day after the effective date of a next main residence purchase transaction, then that next main residence purchase transaction is treated as having been exempt from the ADS.

Where an LBTT return has already been made for the next main residence purchase transaction prior to the subsequent sale of a previous main residence and the ADS paid, the ADS may be reclaimed provided the previous main residence was sold within an 18 month period beginning with the day after the effective date of the next main residence purchase transaction. Further details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

Sale of previous main residence settles after the effective date but before an LBTT return has been made

In practice, LBTT returns are made for standard residential property transactions shortly after the effective date for that transaction, generally within a few days, due to the requirement to timeously register the document for that notifiable transaction.

Where the sale of the previous main residence settles before an LBTT return has been made for the next main residence purchase transaction, the ADS does not require to be paid and the return may be made on the basis that ADS is not due on the transaction.

Where the sale of a previous main residence is significantly delayed, has broken down irrevocably or is not yet underway, the ADS will apply to the next main residence purchase transaction as normal and an LBTT return should be made within 30 days of the effective date of that transaction. The buyer may then be eligible to claim a repayment of the additional LBTT paid for that next main residence purchase transaction if the previous main residence is then sold within an 18 month period beginning with the day after the day that is the effective date of that next main residence purchase transaction. Further details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

LBTT(S)(A) 2013 sections 29 and 43

LBTT(A)(S)A 2016, see schedule 2A paragraphs 2 and 8

Example 40: Next main residence purchase transaction delayed by a few days

Matt and Chris are selling their existing main residence and purchasing a dwelling together which they will use as their next main residence. Both transactions are due to complete on the same day. A few days before the sale of their existing main residence completes, the buyer advises that his mortgage will be delayed by a week. Matt and Chris's next main residence purchase transaction cannot, however, be delayed and this duly completes on the expected day.

Matt and Chris's next main residence purchase comprises a notifiable transaction therefore an LBTT return requires to be made and any LBTT due paid within 30 days of the effective date of that transaction. As the sale of their previous main residence will only be delayed for a few days and as they will have no mortgage over the dwelling being purchased, Matt, Chris and their solicitor decide to delay making the LBTT return (and also registration of the Disposition in their favour) until the sale of their previous main completes.

The sale of their previous main residence duly completes three days later, at which point an LBTT return is made for the next main residence purchase transaction, within the 30 day filing period, and an application to register the Disposition in favour of Matt and Chris is submitted to the Keeper.

At the end of the day that was the effective date of their next main residence purchase transaction, Matt and Chris owned two dwellings and had not replaced a main residence. However, as their previous main residence was sold within an 18 month period beginning with the day after the effective date of their next main residence purchase transaction and an LBTT return had not been made for the next main residence purchase transaction before the sale completed, Matt and Chris did not have to pay the ADS.

Example 41: Next main residence purchase transaction significantly delayed/cancelled

Dominique is purchasing a flat as her next main residence and selling her existing main residence. Both transactions are due to complete on the same day. A week before the sale of her existing main residence completes, the buyer loses his job and pulls out of the transaction to buy Dominique's existing main residence. Dominique does not want to delay the completion of her next main residence purchase transaction and this duly completes on the expected day. This next main residence purchase transaction comprises a notifiable transaction.

At the end of the day that is the effective date of the transaction, Dominique owns more than one dwelling and has not replaced her main residence. The ADS will therefore apply. As the sale of her existing main residence has irrevocably broken down, and as Dominique's next main residence purchase transaction comprises a notifiable transaction, Dominique's solicitor makes an LBTT return and pays the LBTT due. An application to register the Disposition in Dominique's favour is then sent to the Keeper for registration.

Six months later, Dominique sells her previous main residence. As she is disposing of a previous main residence within a period of 18 months beginning with the day after the day that is the effective date of her next main residence purchase transaction, Dominique is

eligible for a repayment of the ADS paid. Dominique or her solicitor can then claim repayment of the ADS. Further details on claiming repayment of the ADS can be found in part [ADS-F](#) of this guidance.

ADS-E Rules for particular transactions and bodies relating to the ADS

The LBTT(A)(S)A 2016 contains specific provisions relating to, and has certain effects on, certain transactions involving different types of buyer and different types of property.

The guidance in this chapter is set out as follows:

- [ADS-E1: Transactions involving joint buyers](#)
- [ADS-E2: Transactions involving spouses/civil partners/cohabitants and their dependent children](#)
- [ADS-E3: Transactions involving trusts](#)
- [ADS-E4: Transactions involving proper liferents](#)
- [ADS-E5: Transactions involving certain leases](#)
- [ADS-E6: Transactions involving inherited dwellings](#)
- [ADS-E7: Transactions involving dwellings for children to live in](#)

ADS-E1 Transactions involving joint buyers

There are many scenarios where two or more people may own or buy a dwelling together. The term "joint buyers" relates to both couples purchasing a dwelling jointly and to every other scenario where two or more parties purchase a dwelling, almost always on a common, or pro indiviso basis (i.e. where ownership of a property is to be held by two or more parties in individual shares).

Where, at the end of the day that is the effective date of a transaction, *any* of the joint buyers owns two or more dwellings and is/are not replacing their main residence, the ADS will apply to the entire consideration for the transaction.

Where two or more buyers each take a share of the ownership of a dwelling, each buyer who is jointly entitled to the ownership of the dwelling is deemed for the purposes of the LBTT(A)(S)A 2016 to be the owner of the dwelling ("deemed ownership" - each is deemed to be the sole owner). The definition of "jointly entitled" in section 65 of LBTT(S)A 2013 covers common property in Scots law.

Equally, where two or more buyers are entitled/have a right to the ownership of a dwelling but have not taken title to that dwelling, each buyer who is jointly entitled to the ownership of the dwelling is deemed to be the owner of the dwelling for the purposes of the LBTT(A)(S)A 2016 ("deemed ownership"). For example, if siblings were to inherit equal shares in the ownership of a dwelling, each sibling would be treated as the owner of the dwelling ("deemed ownership").

The overall effect is that each joint buyer is classed as the "buyer" in a property transaction.

Consequently, where there are joint buyers of a dwelling and, at the end of the day that is the effective date of the transaction, one or more of those joint buyers owns more than one dwelling then, if the main residence of each joint buyer who owns more than one dwelling is not being replaced, the ADS will apply.

In other words, where there are joint buyers of a dwelling and either or both own an existing main residence, unless both of the joint buyers have sold (replaced) their previous main residence before (or on the same day that) they acquire the new dwelling, the ADS will apply.

Where one of the joint buyers in a transaction to purchase a dwelling is a non-natural person, the ADS will automatically apply to every residential transaction (other than certain trust transactions as detailed in part [ADS-E3](#) of this guidance) and the position relating to the replacement of a previous main residence will not apply.

LBTT(A)(S)A 2016, see schedule 2A paragraphs 2, 3, 5, 10 and 12

Example 42: Joint buyers, no replacement of main residence

Susie lives at home with her parents and Steve owns a flat which he lives in and is not replacing. They decide to purchase a buy-to-let dwelling together. At the end of the day that is the effective date of the transaction, as Steve owns two dwellings and has not replaced his main residence, the ADS will apply. It does not matter that this is the only dwelling that Susie owns.

Example 43: Joint buyers, one a first-time buyer, no replacement of main residence

David and Tina are purchasing a dwelling together. This will be David's first dwelling, but Tina owns another dwelling that she is not selling. For Tina, the new purchase will be an additional dwelling. As, at the end of the day that is the effective date of the transaction, Tina "owns" two dwellings and has not replaced a main residence, the ADS will apply. The fact that David does not own any other dwelling is not relevant as, for the purposes of the LBTT(A)(S)A 2016, Tina is treated as if she is the owner of the newly purchased dwelling ("deemed ownership").

Example 44: Joint buyers, each have a main residence, only one main residence being replaced

Vince and Andy are purchasing a dwelling together. They each currently own a dwelling and each currently use their own dwelling as their main residence. Vince is selling his old main residence but Andy is not. For Andy, the new purchase will be an additional dwelling. As, at the end of the day that is the effective date of the transaction, Andy will "own" two dwellings and has not replaced a main residence, the ADS will therefore apply to this purchase.

The fact that Vince is replacing his main residence does not matter as, for the purposes of the LBTT(A)(S)A 2016, Chris is treated as if he is the owner of the newly purchased dwelling ("deemed ownership") and he has *not* replaced his main residence.

Example 45: Joint buyers, one of which is a company

Nick and TBS limited are jointly purchasing a dwelling. Nick owns another dwelling that he is using as a main residence but he is selling this and will use the new dwelling as his main residence. Although at the end of the day that is the effective date of the transaction, Nick owns one dwelling, and will have disposed of a main residence, the ADS will apply.

This is because, for the purposes of the LBTT(A)(S)A 2016, TBS Limited is treated as if it is the owner of the newly purchased dwelling (deemed ownership) and all purchases of dwellings, including the first purchase, by a company will be liable for the ADS.

ADS-E2 Transactions involving spouses/civil partners/cohabitants and their dependent children

Married couples, those in a civil partnership and cohabitants (those living together as though married, including same-sex cohabitants), along with their dependent children (children under 16, including adopted children), are treated as one economic unit for the purposes of the application of the ADS.

The LBTT(A)(S)A 2016 applies the same logic to spouses, civil partners, cohabitants and their dependent children as it does to joint buyers. Married couples, those in a civil partnership and cohabitants, and their dependent children, may therefore own only one main residence between them at any time without the ADS applying.

Any dwelling which is owned by a buyer's spouse, civil partner, cohabitant or dependent child of either the buyer or the buyer's spouse, civil partner or cohabitant is treated as being owned by the buyer him/herself.

Dwellings owned by a spouse, civil partner, cohabitant or their dependent children must therefore be taken into account when determining how many properties a buyer owns at the end of day that is the effective date of the transaction.

Equally, where a buyer's spouse, civil partner, cohabitant or a dependent child is entitled/has a right to the ownership of a dwelling but has not taken title to that dwelling, that buyer will be deemed to be the owner of that dwelling for the purposes of the LBTT(A)(S)A 2016 ("deemed ownership"). For example, if a buyer's spouse were to inherit the ownership of a dwelling, that buyer would be treated as the owner of the dwelling ("deemed ownership").

The ADS will therefore apply to the situation where one spouse owns the existing marital home and the other spouse purchases an additional dwelling. The ADS would be chargeable on the additional purchase, so a married couple would have the same LBTT liability as a married couple who jointly own the home they live in and then jointly or individually buy an additional dwelling.

The ADS will also apply to the purchase by an individual who does not own an existing dwelling but who has a spouse, civil partner, cohabitant, dependent child or dependent child of their spouse, civil partner or cohabitant who *does* own an existing dwelling and a main residence is not being replaced.

The above provisions do not apply where the buyer and the buyer's spouse or civil partner have separated. Parties will be considered to have separated where they no longer live together and they do not intend to live together again.

Separation in this context does not require to be formal separation, of the types referenced in [paragraphs 4 and 5](#) of schedule 1 to the LBTT(S)A 2013, but such formal separation would be relevant evidence of practical separation.

Note: Where title to a dwelling is jointly owned by both parties and there is no deemed ownership of either party, any separation would not stop that dwelling from being counted as being owned by both parties.

There will be instances where a married couple, civil partners or cohabitants will sometimes live apart although their relationship has not broken down, for example, due to work commitments. In such a case, which dwelling is a couple's main residence will need to be determined by the facts. Further details relating to how to determine what is an only or main residence can be found in part [ADS-A5](#) of this guidance.

The inclusion of children under 16 within the meaning of "buyer" for the purposes of the LBTT(A)(S)A 2016 reflects the fact that such a child's ownership of residential property is practically the responsibility of their parent(s), and is an anti-avoidance measure to disincentivise avoidance of the ADS by artificially registering title in such a child's name.

For the avoidance of doubt, the whole provisions of this part [ADS-E2](#) of the guidance relate to each individual buyer equally.

LBTT(A)(S)A 2016, see schedule 2A paragraphs 6 and 10
LBTT(S)A 2013 schedule 1 paragraphs 4 and 5

Example 46: Spouses buy second home, no replacement of main residence

Mr and Mrs White own a main residence together which they are not selling. They decide to purchase a second home jointly. At the end of the day that is the effective date of the transaction, they own more than one dwelling and are not replacing their main residence, so the ADS will apply.

Example 47: Spouses own two homes, but only one is main residence

Mr and Mrs Butler own two dwellings jointly. Although they spend time in both, only one of these dwellings is their main residence. If they sell the dwelling that is their main residence and purchase their next main residence, they will not pay the ADS, as, at the end of the day that is the effective date of the transaction, they own two dwellings but are replacing their main residence.

However, if they sell the dwelling that is not their main residence and purchase another second dwelling to become their main residence, they will pay the ADS, as, at the end of the day that is the effective date of the transaction, they own two dwellings and have not replaced their main residence.

Example 48: One spouse owns marital main residence, the other spouse buys a buy-to-let dwelling

Mr and Mrs Wainwright are married. Mr Wainwright owns a dwelling (which he purchased on his own before he was married) where the couple live as their main residence. Mrs Wainwright then buys a dwelling to be rented out. At the end of the day that is the effective date of the transaction, Mrs Wainwright "owns" two dwelling (she is the owner of the newly purchased dwelling and, for the purposes of the LBTT(A)(S)A 2016, is deemed to be the owner of her spouse's existing dwelling ("deemed ownership")) and is not replacing her main residence, so the ADS will apply.

Example 49: Cohabitants each own dwellings, one cohabitant purchases buy-to-let dwelling, no replacement of main residence

Mr Cash and Ms Carter are cohabitants. They each own separate dwellings (which they purchased individually before they began cohabiting and used as their respective main residences). Mr Cash then sells his previous main residence and purchases a new dwelling to rent out.

At the end of the day that is the effective date of the transaction, Mr Cash "owns" more than one dwelling (he is the owner of the newly purchased dwelling and, for the purposes of the LBTT(A)(S)A 2016, is deemed to be the owner of his cohabitant's existing dwelling ("deemed ownership")) and is not replacing his main residence so the ADS will apply.

Example 50: One civil partner owns main residence and the other purchases a rental dwelling

Neil and Chris are in a civil partnership. Chris owns the house that they live in as their main residence and Neil is purchasing a buy-to-let dwelling.

At the end of the day that is the effective date of the transaction, Neil "owns" two dwellings (he is the owner of the newly purchased dwelling and, for the purposes of the LBTT(A)(S)A 2016, is deemed to be the owner of his civil partner's existing dwelling ("deemed ownership")) and is not replacing a main residence. As a result, the ADS will apply.

Example 51: Civil partners separate

Sarah and Andrea are in a civil partnership. Sarah owns a dwelling (which she purchased on her own before her civil partnership) where they live together as their main residence. However, Sarah and Andrea decide to separate. After they have separated and no longer intend to live together as civil partners, Andrea decides to purchase a dwelling. At the end of the day that is the effective date of the transaction Andrea owns one dwelling, so the ADS will not apply.

ADS-E3 Transactions involving trusts

Property is sometimes held in trust by trustees and, to ensure the fairness, integrity and consistency of the LBTT regime to all, the ADS will apply to certain purchases made by trusts.

Currently, for the purposes of LBTT, only the beneficiaries of bare trusts are treated as the buyer when a trustee or trustees on behalf of a trust purchases a property. This treatment continues to apply to the provisions of the LBTT(A)(S)A 2016.

A bare trust:

- (a) is a trust under which the property is held by a person as trustee-
 - (i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or
 - (ii) for two or more persons who are or would be jointly so entitled, and
- (b) includes a case in which a person holds property as nominee for another.

"Absolutely entitled" refers to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee -

- (a) to resort to the property for payment of duty, taxes, costs or other outgoings, or
- (b) to direct how the property is dealt with.

Where the buyer in a transaction to purchase a dwelling is the trustee of a bare trust, the beneficiary is treated by the LBTT(A)(S)A 2016 as the buyer in that transaction for the purposes of determining whether the ADS will apply.

Where title to a dwelling in such a transaction is taken by the trustee under a bare trust, the buyer of the dwelling is deemed to be the beneficiary under that trust. This is the case irrespective of whether the trustee registers the title in the Land Register or not.

Other types of trust can have beneficiaries with ownership interests in property held by the trust that are similar to the interests of the owner of a property. Such trusts may not be bare trusts, but the beneficiaries' interests are such that it is appropriate for the purposes of the LBTT(A)(S)A 2016 to treat the beneficiary as the buyer.

Consequently, the LBTT(A)(S)A 2016 extends the treatment of bare trusts to purchases of property by the trustees of certain other trusts.

In particular, this treatment is extended to transactions where the buyer is the trustee of a settlement (being a trust that is not a bare trust) and the beneficiary under the settlement has a relevant interest in a dwelling that is or forms part of the trust property. A "Liferent Trust" in Scotland is an example of such a settlement trust.

Note: Liferent Trusts create "improper (or beneficial) liferents" whereby the liferenter enjoys the benefit of property by way of a trust. These differ from "proper liferents", whereby the liferenter is vested directly with an interest in property. Further details on "proper liferents" can be found in part [ADS-E4](#) of this guidance.

A relevant interest in a dwelling that comprises or forms part of the trust property, in respect of a beneficiary under a settlement, exists where, under the terms of that settlement, the beneficiary is entitled to:

- (a) occupy the dwelling for life; or
- (b) income earned, whether net or gross, in respect of the dwelling.

Where the buyer in a transaction to purchase a dwelling is the trustee of a trust under a settlement where the beneficiary has such a relevant interest in a dwelling, such a beneficiary is treated by the LBTT(A)(S)A 2016 as the buyer for the purposes of that Act.

Where title to a dwelling is taken by the trustee under such a settlement, and the beneficiary under that trust has a relevant interest in the dwelling, the owner of the dwelling is deemed to be that beneficiary. This is the case irrespective of whether the trustees register the title in the Land Register or not.

Additionally, the rules that apply to transactions involving individual or joint buyers, with regard to the existence of a spouse, civil partner, cohabitant or dependent children in determining the number of dwellings owned by a buyer at the end of the day that is the effective date of a transaction also apply to transactions involving the purchase of a dwelling by a trustee on behalf of either a bare trust or a settlement in which there is a beneficiary with a relevant interest.

Any dwelling owned by a spouse, civil partner, cohabitant or child under the age of 16 of a beneficiary under either a bare trust or a settlement trust in which they hold a relevant interest will therefore potentially count towards the number of dwellings owned by the buyer (essentially, the beneficiary) when a transaction involves the purchase of a dwelling by a trustee on behalf of either a bare trust or a settlement trust in which there is a beneficiary with a relevant interest.

As with those provisions relating to purchase transactions by individuals, where a beneficiary under either a bare trust or a settlement trust in which they hold a relevant interest owns no other dwelling, or the dwelling being purchased is the replacement of a beneficiary's only or main residence, the ADS will not apply.

Purchases by a trustees on behalf of trusts that are not bare trusts and where the beneficiaries have no relevant interest will, however, always be liable for the ADS, irrespective of whether the trustees own an existing property or not. This means acquisition by such trustees are treated in the same way as acquisitions by companies etc.

[LBTT\(S\)A 2013 schedule 18 paragraph 19](#)

[LBTT\(A\)\(S\)A 2016, see schedule 2A paragraphs 3, 7, 10, 11, 15\(1\) and 15\(3\)](#)

Example 52: Trust purchase of first dwelling for beneficiary, beneficiary then buys another dwelling

Elizabeth is the trustee of a settlement trust for the benefit of Frazer in liferent, with the fee to Simon. Elizabeth, as trustee, purchases a dwelling. Frazer is an individual who owns no existing dwelling. As Frazer is entitled to occupy the purchased dwelling under the terms of the trust settlement and this will be Frazer's only dwelling at the end of day that is the effective date of the transaction, the ADS will not apply. This is the case regardless of whether Simon or Elizabeth own an existing dwelling.

Sometime later, Frazer purchases a dwelling in his own right. At the end of the day that is the effective date of the transaction, Frazer "owns" two dwellings (one in his own name and another, the trust dwelling, in which he has a "relevant interest" and is therefore deemed to be the owner ("deemed ownership")); therefore the ADS will apply to Frazer's purchase transaction.

If Simon goes on to purchase a dwelling, the dwelling owned by the trust (of which Frazer is deemed to be owner ("deemed ownership")) will not be counted when determining how many dwellings is owned by Simon for the purposes of the LBTT(A)(S)A 2016.

Example 53: Beneficiary under Trust purchases dwelling, Trust already owns dwelling

Alex, the trustee of a discretionary settlement for the benefit of individuals, Nicholas, Paul and Robert, purchases a dwelling as trustee. None of the beneficiaries have a right to occupy the dwelling under the settlement trust, nor can they require Alex to pay them any income from the dwelling.

As there are no beneficiaries with a relevant interest in the trust dwelling, the ADS will apply. Six months later, Nicholas purchases his first dwelling. At the end of the day that is the effective date of the transaction, Nicholas owns one dwelling and, because his possible future benefit from the trust does not amount to a relevant interest in any dwelling, the ADS will not apply.

Example 54: Trust replaces main residence for beneficiary, Trust already owns rental dwelling

Kate and Fred are the trustees of a bare trust for the benefit of Cindy. Kate and Fred, as trustees, own a dwelling which is Cindy's only residence. Kate and Fred also own, as trustees, a dwelling which they use as a buy-to-let investment to generate income for the trust. The trustees sell Cindy's main residence and then purchase another dwelling, as trust property, that Cindy intends to occupy as her only residence.

For the purposes of the LBTT(S)A 2013, Cindy is treated as the buyer in the next main residence purchase transaction (as beneficiaries of bare trusts are treated as the buyer when a trustee enters into a land transaction). At the end of the day that is the effective date of that transaction, she also "owns" the buy-to-let dwelling (although title to the buy-to-let dwelling is registered in the Land Register in the name of the trustees, for the

purposes of the LBTT(A)(S)A 2016, Cindy, as beneficiary, is deemed to be the owner ("deemed ownership"). However, as Cindy's main residence has been replaced, the ADS will not apply to the next main residence purchase transaction.

Example 55: Trust purchases first dwelling for beneficiary, beneficiary's spouse already owns main residence which is not being replaced

Peter is the trustee of a settlement trust for the benefit of Stephen in liferent, with the fee to Bernard. Stephen lives in rented accommodation, funded by the trust and the trust owns no dwellings. Stephen marries Gillian and decides that he will ask the trust to purchase a main residence for him and his wife to live in. Gillian already owns a main residence and decides to retain this to use as a buy-to-let dwelling.

For the purposes of the LBTT(A)(S)A 2016, Stephen is treated as the buyer in the next main residence purchase transaction (as he is a beneficiary who has a "relevant interest" in his main residence trust property). At the end of the day that is the effective date of that transaction, he is also deemed to own the dwelling belonging to his wife.

As there has been no replacement of a main residence, the ADS will apply to the trust purchase transaction.

ADS-E4 Transactions involving proper liferents

Sometimes, when residential property is purchased, the buyer grants a proper liferent to a third party ("the liferenter"). This liferent is a right to enjoy the use and benefit of the property for the lifetime of the liferenter (or some other time period as set out in the deed which creates the liferent). On termination of the liferent, title will vest in another person known as the "fiar".

Note: Proper liferents differ from "improper (or beneficial) liferents" which are created by Settlement Trusts (Liferent Trusts), whereby the liferenter enjoys the benefit of property by way of a trust. Further details on "improper (or beneficial) liferents" can be found in part [ADS-E3](#) of this guidance.

For the purposes of determining whether the ADS is applicable, the LBTT(A)(S)A 2016 provides that the liferenter is treated as the owner of the dwelling ("deemed ownership"), and that both the granter of the liferent and the fiar are to be treated as *not* being the owner. This is the case irrespective of whether the fiar registers their title in the Land Register or not.

LBTT(A)(S)A 2016, see schedule 2A paragraph 11C

Example 56: Dwelling purchased with liferent, purchasers already own main residence

Johnny and Willie own a dwelling which is their main residence. They decide to purchase an investment property in which they will grant a liferent interest to Johnny's father, Waylon, who currently lives in rented accommodation.

At the end of the day that is the effective date of the transaction, Johnny and Willie are regarded as owning one dwelling (their main residence) and Waylon is regarded being the 100% owner of one dwelling by virtue of his liferent interest in the purchased dwelling ("deemed ownership"). Therefore, the ADS will not apply.

Example 57: Dwelling purchased under liferent, purchaser already owns two dwellings

Thurston owns two dwellings - a main residence and a buy-to-let property. He decides to purchase a further investment property in which he will grant a liferent interest to his mother, Kim. Kim currently owns a dwelling which is her main residence, but intends to sell this dwelling to free up capital, with the sale coinciding with the purchase of the new dwelling.

At the end of the day that is the effective date of the transaction, the ADS is not applicable as, despite the fact that Thurston owns more than one dwelling, he is not deemed to be the owner of the newly purchased dwelling. The owner of the newly purchased dwelling is deemed to be Kim ("deemed ownership").

Example 58: Liferenter purchases a dwelling

David retires and gifts the ownership of his existing main residence to his son, Duncan. In return, Duncan grants David a liferent over the dwelling. This dwelling is worth £100,000.

David then buys a second home for £125,000. At the end of the day that is the effective date of the transaction, David "owns" two dwellings (the second home plus the dwelling in which he holds a liferent interest and of which he is deemed to be the owner ("deemed ownership")) and has not replaced a main residence. As the market value of the dwelling of which David is the deemed owner is over £40,000, the ADS will apply to the second home transaction.

ADS-E5 Transactions involving certain long leases

Standard residential leases, such as short assured tenancies, are exempt from LBTT therefore any dwelling for which a buyer has a tenant's interest under a standard residential lease is not counted when determining what counts as a dwelling owned by a buyer for the purposes of the LBTT(A)(S)A 2016. Where a buyer is a tenant of a dwelling under a "long residential lease" (a lease of residential property for a term in excess of 20 years), however, this may require to be counted as a dwelling owned by that buyer for the purposes of the LBTT(A)(S)A 2016.

The LBTT(A)(S)A 2016 provides that, where a tenant has an interest in a dwelling held under a long residential lease, that tenant is treated as being the owner of the dwelling ("deemed ownership") and the landlord under that lease is treated as not being the owner.

The Land Tenure Reform (Scotland) Act 1974 (the 1974 Act) in effect prevents the creation of new long residential leases. Leases of residential property for a term of more than 20 years cannot therefore be granted in Scotland.

All long residential leases granted prior to the commencement of the 1974 Act which comprised a "qualifying lease" of residential property, as defined in [paragraph 3\(3\) of schedule 1](#) to the LBTT(S)A 2013 and section 1 of the Long Leases (Scotland) Act 2012 (the Long Leases Act), automatically converted to ownership on 28 November 2015 by virtue of the Long Leases Act.

A "qualifying lease" under the Long Leases Act, in respect of residential property, is generally, a lease which, immediately before 28 November 2015, was:

- (a) registered;
- (b) granted for a period of more than 175 years and had more than 100 years remaining;
- (c) had an annual rent of under £100.

Broadly, qualifying leases are analogous to "leasehold" title in England and Wales.

However, where a buyer in a transaction has an interest in a dwelling held under a long residential lease which either did not fulfil the statutory conditions for conversion to ownership required by the Long Leases Act or was exempt from conversion under that Act, that dwelling will require to be counted as a dwelling owned by that buyer for the purposes of the LBTT(A)(S)A 2016.

Further, any dwelling in either the rest of the UK or the rest of the world in which a buyer in a transaction has an interest on a leasehold basis equivalent to ownership in Scotland will require to be counted as a dwelling owned by that buyer for the purposes of the LBTT(A)(S)A 2016. Long residential leases are much more common in England and Wales and similar legal systems where the tenant's interest is known as "leasehold". Further details relating to leasehold interests outside of Scotland can be found in part [ADS-A2](#) of this guidance.

For the avoidance of doubt, the provisions of the LBTT(A)(S)A 2016 directly apply to any transaction in which the buyer acquires a "qualifying lease" of residential property. Where a buyer acquires such an interest in a dwelling held under a qualifying lease, the interest acquired is not a tenant's interest, but an ownership interest. Accordingly, the transaction will attract both LBTT at the standard residential rates and, if applicable, the ADS. Where the new acquisition is of a long residential lease that is not, for technical reasons, a 'qualifying lease', the transaction will be exempt under schedule 1 to the LBTT(S)A 2013, although as mentioned the interest acquired will be counted as ownership for the purposes of counting owned properties under schedule 2A where purchases of additional dwellings are made.

[LBTT\(S\)A 2013 schedule 1 paragraph 3\(3\)](#)

[Long Leases \(Scotland\) Act 2012 section 1](#)

[LBTT\(A\)\(S\)A 2016, see schedule 2A paragraphs 11\(B\) and 13\(2\)](#)

Example 59: Purchase of long residential lease dwelling which has converted to ownership

Ian is purchasing a dwelling as a buy-to-let property and is keeping his existing main residence. The sellers in his next main residence purchase transaction have a registered title to the dwelling as tenants under a 900 year long residential lease. This lease converted to ownership on 28 November 2015 as a result of the provisions of the Long Leases (Scotland) Act 2015.

At the end of the day that is the effective date of the transaction, Ian owns two dwellings, his existing main residence and the buy-to-let property which is no longer owned on a leasehold basis. As he has not sold a previous main residence, the ADS will apply.

Example 60: Purchase of dwelling, existing main residence held under an unconverted long residential lease

Wilma is tenant of a dwelling held under a 150 year long residential lease which has a term of 80 years remaining. She uses this dwelling as her main residence. She decides to purchase a flat in Fife to use as a holiday home.

At the end of the day that is the effective date of the transaction, it is deemed that Wilma owns two dwellings and has not sold a previous main residence. She is deemed to be the owner of the dwelling for which she is tenant as the lease for this dwelling was for a term of more than 20 years and she also owns a holiday home. As a result, the ADS will apply.

Example 61: Purchase of next main residence, existing main residence held under a short residential lease

Pete and Les are tenants of a dwelling held under a 10 year residential lease. They use this as their main residence. Pete and Les decide to sub-let their existing main residence and to purchase a next main residence.

At the end of the day that is the effective date of the transaction, Pete and Les own only one dwelling as, because the lease of their previous main residence was for a term of less than 20 years, they are not deemed to be the owners of that dwelling. As a result, the ADS will not apply.

ADS-E6 Transactions involving inherited dwellings

Individuals do not pay LBTT on dwellings that they inherit, and this treatment will not change with the introduction of the ADS. However, inherited dwellings will be relevant when determining if a buyer is purchasing an additional dwelling or not.

Where a buyer is entitled/has right to the ownership of a dwelling but has not taken title to that dwelling, that buyer is deemed to be the owner of the dwelling for the purposes of the LBTT(A)(S)A 2016 ("deemed ownership").

If an individual owns a dwelling in their capacity as a personal representative (i.e. an executor) then they are deemed for the purposes of the LBTT(A)(S)A 2016 not to be the owner of that dwelling.

[LBTT\(A\)\(S\)A 2016, see schedule 2A paragraphs 10 and 11A](#)

Example 62: Inherited dwelling sold and second dwelling purchased, no replacement of main residence

Craig owns a dwelling which he uses as a main residence. He inherits another dwelling from his parents. An inheritance is not chargeable to LBTT or ADS, so he will not pay LBTT or ADS, even though after the inheritance he owns two dwellings (his main residence and the inherited dwelling, in respect of which he is deemed to be the owner ("deemed ownership")). Craig decides to sell the inherited dwelling and purchase a buy-to-let dwelling with the proceeds.

At the end of the day that is the effective date of the transaction, Craig owns two dwellings and has not replaced his main residence. Therefore, he will pay the ADS on the newly purchased buy-to-let dwelling.

ADS-E7 Transactions involving dwellings for children to live in

It is not uncommon for parents, either individually or jointly, to assist their children with taking their first steps onto the property ladder. In some instances, transactions involving the purchase of dwellings for children to live in will attract the ADS.

Whether the ADS will be payable will depend on the structure of a transaction, and in particular, who will be the owner of the dwelling that is purchased.

Example 63: Acquiring dwellings for children to live in

Mr and Mrs Moore own a main residence together. They decide to purchase an additional dwelling for their son to live in whilst he is at university. At the end of the day that is the effective date of the transaction, Mr and Mrs Moore own more than one dwelling and are not replacing their main residence, so the ADS will apply. It does not matter that the additional dwelling is not being rented out and is kept for family use only.

If, however, Mr and Mrs Moore were to give their son money to purchase the dwelling and he was to take title in his own name then, provided their son did not already own another dwelling, then the ADS would not apply.

If their son took title to the dwelling and was under 16, however, as both Mr and Mrs Moore and their son would be treated as one economic unit for the purposes of the LBTT(A)(S)A 2016, the ADS would apply by virtue of Mr and Mrs Moore already owning another dwelling.

Example 64: Acquiring dwellings jointly with children

Tim owns one dwelling which is his main residence and which he is not selling. He decides to purchase another dwelling jointly with his son, Jeff. The dwelling will be the first that Jeff will own and Jeff intends to live in the dwelling. At the end of the day that is the effective date of the transaction, Tim owns more than one dwelling and has not replaced his main residence, so the ADS will apply.

Example 65: Supporting relatives to purchase dwellings

Johnny helps his daughter, Roseanne, purchase her first dwelling. He gives her money towards a deposit and acts as a guarantor on the mortgage, but will not jointly own the dwelling with her. At the end of the day that is the effective date of the transaction, Roseanne owns one dwelling, so the ADS will not apply.

Example 66: Acquiring dwellings for disabled adult children

Brian owns a main residence which he lives in with his son, Wilson, who is grown up but has special needs. Brian then decides to purchase a dwelling for Wilson to live in on his own as his main residence. Brian takes legal advice and decides that Wilson will take title to the dwelling in his own name, although Brian will pay for it.

At the end of the day that is the effective date of the transaction, Wilson owns only one dwelling therefore the ADS will not apply.

Example 67: Acquiring dwellings for adults with incapacity

Kim has formal guardianship responsibility for her brother, Gordon, who is an adult with incapacity. Kim decides to purchase a dwelling for Gordon to live in as his main residence, using Gordon's funds, for which Kim has responsibility. Kim takes legal advice and a trust is set up for Gordon. The trust then purchases the dwelling on behalf of Gordon.

At the end of the day that is the effective date of the transaction, Gordon "owns" only one dwelling (for the LBTT(A)(S)A 2016, Gordon is deemed to be the owner of the dwelling) therefore the ADS does not apply.

ADS-F Amendments to returns and claims for repayments of the ADS

Where the ADS has been paid and the buyer has been able to dispose of their previous main residence within an 18 month period beginning with the day after the effective date of the next main residence purchase transaction, the buyer (or their solicitor acting on their behalf) may claim a repayment of the ADS paid.

In any scenario where, *after* the end of the day that is the effective date for the next main residence purchase transaction;

- (a) the buyer sells a dwelling which was their main residence at any time during the 18 month period ending with the day that is the effective date of the next main residence purchase transaction, and
 - (b) the sale of that previous main residence is within a period of 18 months beginning with the day *after* the day that is the effective date of the next main residence purchase transaction then
- a repayment of the ADS may be claimed.

Where a previous main residence is sold after the period of 18 months beginning the day after the day that is the effective date of the next main residence purchase transaction, no repayment may be claimed.

Claiming repayment of the ADS

A repayment can be claimed by either:

- (a) amending the original LBTT Return for the transaction if within the statutory 12 month amendment period set by [section 83\(2\)](#) of the RSTPA 2014 or,
- (b) where the statutory amendment period has ended by making a claim for repayment of an overpayment of tax to us under [section 107](#) of the RSTPA 2014.

The specific procedure for making claims for repayment are detailed in sections [114 to 118](#) (inclusive) and in [schedule 3](#) of the RSTPA 2014.

Detailed guidance on amending returns and claiming repayments can be found in parts [LBTT4006](#) and [RSTP7003](#) respectively of the LBTT guidance and in our separate guidance on that explains how to claim a repayment.

LBTT(A)(S)A 2016, see [schedule 2A paragraph 8](#)
RSTPA 2014 sections [83\(2\)](#), [107](#) and [schedule 3 sections 114 to 118 \(inclusive\)](#)

Example 68: Reclaiming ADS paid, previous main residence sold within 18 months

Andrew and Patricia own one dwelling, which is their main residence. They decide to purchase another dwelling, which they will use as their main residence, but decide not to sell their previous main residence immediately. At the end of the day that is the effective date of the transaction, they own two dwellings and have not replaced their main residence, so the ADS will apply. They make an LBTT return and pay the LBTT and ADS due.

Two months after this purchase, they sell their previous main residence. As Andrew and Patricia have disposed of a previous main residence within 18 months of purchasing their next main residence, they will be eligible to claim a repayment of the ADS paid. They can claim the repayment by amending the original LBTT return.

Example 69: Reclaiming ADS paid, no replacement of a main residence

Alice owns a buy-to-let dwelling which she rents out. She decides to purchase a dwelling to use as her main residence, but does not sell the existing buy-to-let dwelling. At the end of the day that is the effective date of the transaction, she owns two dwellings and has not replaced her main residence, so she must pay the ADS.

Five months later, Alice sells her buy-to-let dwelling and attempts to claim repayment of the ADS paid. As this buy-to-let dwelling was not her main residence, she has not replaced her main residence. Therefore, she will not be entitled to claim for a repayment of the ADS paid.

Example 70: Reclaiming ADS paid after sale falls through

Marian lives in Liverpool and is selling her main residence there and purchasing her next main residence in Dundee. However, her property chain unexpectedly breaks down, meaning that, at the end of the day that is the effective date of the transaction for the Dundee residence, she owns two dwellings and has not replaced her main residence. Therefore, she will pay the ADS.

A month later, she sells her previous main residence. At this point, Marian will be eligible to claim a repayment of the ADS paid.

Marian, or her solicitor acting on her behalf, can claim the repayment of the ADS paid by amending the LBTT return made for her next main residence purchase transaction within the 12 month amendment period.

Example 71: Reclaiming ADS paid after all joint buyers sell main residences

Jim and William are purchasing a dwelling jointly which is intended to be their main residence. Jim already owns a dwelling, which was previously used as a main residence, which he will not have sold at the time of purchase.

Upon purchase, as Jim will own two dwellings and has not replaced his main residence, the ADS will apply. However, Jim then sells his previous main residence 13 months later. At this point, Jim and William will be eligible to claim a repayment of the ADS they paid.

It will not be possible for Jim and William to amend the original LBTT Return made for their next main residence transaction because the 12 month amendment period will have ended. Jim and William or their solicitor can, however, write to us to make a claim for the repayment of the ADS paid. Any claim would, however, require to be made within 5 years of the filing date of their original LBTT Return.

Example 72: Reclaiming ADS paid, previous main residence sold after 20 months

Douglas and Bobbie are purchasing a dwelling which they intend will be their main residence. Douglas and Bobbie each already own a dwelling which they decide to keep as buy-to-let properties. The ADS will therefore apply to this next main residence purchase transaction.

20 months later, Douglas and Bobbie both sell their previous main residences and make claims for repayment of the ADS paid. Although they have each sold a previous main residence, as they did not dispose of these residences within an 18 month period beginning with the day after the day that was the effective date of their next main residence purchase transaction, they will not be eligible for a repayment of the ADS paid.

Example 73: Reclaiming ADS paid, previous main residence sold within 18 months

April and Candy purchase an additional dwelling for £300,000 which they intend to live in as their main residence, before they sell their previous main residence.

As, at the end of the day that is the effective date of the transaction, April and Candy own more than one dwelling and have not replaced their main residence, the ADS will apply. The total amount of LBTT and ADS paid is £13,600.

April and Candy use their newly purchased dwelling as a main residence, and six months later, sell their previous main residence. As they are disposing of a previous main residence within a period of 18 months beginning with the day after the day that is the effective date of their next main residence purchase transaction, April and Candy are eligible to claim a repayment of the ADS paid.

April and Candy, or their solicitor acting on their behalf, can reclaim the ADS paid by amending the LBTT return made for that transaction.

April and Candy will be repaid £9,000, which is the difference between the LBTT and the ADS they have paid (£13,600) and the LBTT due under 'standard' residential LBTT rates (£4,600).

Example 74: Reclaiming ADS paid, previous main residence not main residence at time of next main residence purchase

Honey owns the main residence that she lives in. She decides to rent out this dwelling and moves into rented accommodation. She then buys a new dwelling to live in as her next main residence and keeps ownership of her existing dwelling that she is renting out.

At the end of the day that is the effective date of her next main residence purchase transaction, Honey owns two dwellings and she had not replaced a next main residence. The ADS will therefore apply to this transaction.

Nine months later, Honey then sells the dwelling that she has been renting out. As this dwelling had been Honey's main residence at some point in the 18 month period before she bought her next main residence, she will be able to claim repayment of the ADS.

ADS-G - Transitional arrangements relating to the ADS

The ADS will only apply to a transaction involving a purchase of additional property where (a) the contract for the transaction was entered into on or after 28 January 2016 (the date the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill and accompanying documents were published on the Scottish Parliament's website) and (b) the effective date of that transaction is on or after 1 April 2016.

Where a contract for such a transaction was entered into on or after 28 January 2016 and completed before 1 April 2016, the ADS will *not* apply.

Where a contract for such a transaction was entered into *before* 28 January 2016 but not completed until *on or after* 1 April 2016, the ADS will *not* apply.

Further details on how to determine the effective date of a transaction can be found in part [LBTT1004](#) of the LBTT guidance.

Example 75: Transitional arrangements, contract entered into before 28 January 2016

Ralf already owns a main residence and enters into a contract to purchase a dwelling on 15 December 2015. Ralf will use this new dwelling for buy-to-let purposes. The effective date of the transaction is 3 April 2016.

Although the effective date of the transaction is after 1 April 2016, as Ralf entered into a contract for the transaction before 28 January 2016, the ADS will not apply as it is covered by the transitional arrangements.

Example 76: Transitional arrangements, contract entered into on or after 28 January 2016

Florian lives in Dusseldorf and enters into a contract on 30 March 2016 to purchase an additional dwelling in Barra which he will use as a holiday home. The effective date of the transaction is 2 April 2016. Florian does not intend to sell his main residence in Dusseldorf.

At the end of the day that is the effective date of his holiday home purchase transaction, Florian will own two dwellings and will not have replaced a main residence.

As the contract for the purchase transaction was entered into after 28 January 2016 and the effective date of the transaction was on or after 1 April 2016, the ADS will therefore apply.