



# Income Tax Act 2007

## 2007 CHAPTER 3

### [<sup>F1</sup>PART 12A

#### SALE AND LEASE-BACK ETC

#### Textual Amendments

- F1** Pt. 12A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 4 para. 2](#) (with Sch. 9 paras. 1-9, 22)

## CHAPTER 1

### PAYMENTS CONNECTED WITH TRANSFERRED LAND

#### *Overview*

#### **681A Overview**

This Chapter provides that in certain circumstances where a transfer is made regarding land, and the transferor or an associate becomes liable to make a payment connected with the land, income tax relief for the payment is restricted.

#### *Application of the Chapter*

#### **681AA Transferor or associate becomes liable for payment of rent**

- (1) Section 681AD has effect if—
- (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and

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*Status: Point in time view as at 15/09/2016.*

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- (c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.
- (2) Section 681AE has effect if—
- (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and
  - (c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
- (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.
- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
- (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from—
- (a) a lease, of the land or part of it, granted (at the time of the transfer or later) by the transferee to the transferor, or
  - (b) another transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

### **681AB Transferor or associate becomes liable for payment other than rent**

- (1) Section 681AD has effect if—
- (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - (c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.
- (2) Section 681AE has effect if—
- (a) land, or an estate or interest in land, is transferred,

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- (b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - (c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
- (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.
- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
- (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from a transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

### **681AC Relevant income tax relief and relevant deduction from earnings**

- (1) For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—
- (a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
  - (b) a deduction in calculating the profits of a UK property business for income tax purposes, and
  - (c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies.
- (2) For the purposes of this Chapter each of the following is a relevant deduction from earnings—
- (a) a deduction under section 336 of ITEPA 2003 (expenses), and
  - (b) a deduction from earnings in calculating losses in an employment for income tax purposes.

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*Relief: restriction and carrying forward*

### **681AD Relevant income tax relief: deduction not to exceed commercial rent**

(1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—

- (a) for the non-excluded element of the payment within section 681AA(1) or 681AB(1), or
- (b) if there are two or more such payments, for the non-excluded elements of those payments.

(2) For the purposes of this section—

- (a) in relation to a deduction within section 681AC(1)(a) “relevant period” means—
  - (i) a period of account of the trade, profession or vocation concerned, or
  - (ii) if no accounts of the trade, profession or vocation are drawn up for a period, the basis period of a tax year,
- (b) in relation to a deduction within section 681AC(1)(b) or (c) “relevant period” means—
  - (i) a period of account of the business or person concerned, or
  - (ii) if no accounts of the business are drawn up for a period or the person does not draw up accounts for a period, a tax year, and
- (c) the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).

(3) The rules are—

*Rule 1 — meaning of amount E* For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

- (a) the non-excluded element of the payment, or
- (b) the non-excluded elements of the payments.

*Rule 2 — calculations* For every relevant period—

- (a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the transfer mentioned in section 681AA(1)(a) or 681AB(1)(a),
- (b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after the date of that transfer, and
- (c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

*Rule 3 — meaning of post-spread period* A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681AA(1) or 681AB(1).

*Rule 4 — the deduction allowed in a relevant period* If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681AJ or 681AK).

*Rule 5 — relevant periods in which no deduction allowed* If a relevant period is a post-spread period, no deduction is allowed for the period.

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*Certain deductions from earnings: restriction and carrying forward of relief*

**681AE Deduction from earnings not to exceed commercial rent**

- (1) Subsection (3) applies to the calculation of the relevant deduction from earnings allowed for the non-excluded element of the payment within section 681AA(2) or 681AB(2).
- (2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).
- (3) The deduction must not exceed the commercial rent for the period for which the payment is made (see section 681AJ or 681AK).

**681AF Carrying forward parts of payments**

- (1) This section applies if—
  - (a) section 681AE has effect, and
  - (b) conditions A and B are met.
- (2) Condition A is that under section 681AE part of a payment which would otherwise be allowed as a relevant deduction from earnings is not allowed.
- (3) Condition B is that one or more later payments are made, by the transferor or a person associated with the transferor, under—
  - (a) the lease (if section 681AE has effect because of section 681AA(2)), or
  - (b) the rentcharge or other transaction mentioned in section 681AB(2)(b) (if section 681AE has effect because of section 681AB(2)).
- (4) The part of the payment mentioned in subsection (2) may be carried forward and treated for the purposes of a relevant deduction from earnings as if it were made—
  - (a) when the next of the later payments is made, and
  - (b) for the period for which that later payment is made.
- (5) So far as a part of a payment carried forward under this section is not allowed as a relevant deduction from earnings, it may be carried forward again under this section.

**681AG Aggregation and apportionment of payments**

- (1) This section applies for the purposes of section 681AE.
- (2) If more than one payment is made for the same period, the payments must be taken together.
- (3) If payments are made for periods which overlap—
  - (a) the payments must be apportioned, and
  - (b) the apportioned payments which belong to the common part of the overlapping periods must be taken together.
- (4) References in subsections (2) and (3) to payments include references to parts of payments which under section 681AF are treated as if made later than they were made.

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### **681AH Payments made for later periods**

- (1) This section applies for the purposes of sections 681AE to 681AG.
- (2) For the purposes of this section the relevant year, in relation to a payment, is the year which begins with the date it is made.
- (3) If a payment is made for a period all of which is after the relevant year, it must be treated as made for the relevant year.
- (4) If a payment is made for a period part of which is after the relevant year, it must be treated as if a corresponding part of it was made for the relevant year (and no part for a later period).

*Interpretation etc*

### **681AI Exclusion of service charges etc**

- (1) This section applies for the purposes of sections 681AD and 681AE.
- (2) A payment must be excluded so far as it is in respect of any of the following—
  - (a) services,
  - (b) the use of relevant assets, and
  - (c) rates usually borne by the tenant.
- (3) The amount excluded must be just and reasonable.
- (4) If a lease or agreement contains provisions fixing the payments or parts of payments which are in respect of services or the use of assets, those provisions are not conclusive.
- (5) A relevant asset is any description of property or rights other than land or an interest in land.

### **681AJ Commercial rent: comparison with rent under a lease**

- (1) Subsection (3) applies—
  - (a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AA(1), and
  - (b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AA(2).
- (2) In this section “the actual lease” means the lease mentioned in section 681AA(1)(b) or (2)(b).
- (3) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AA(1)(b) or (2)(b) is made, which—
  - (a) was negotiated in the open market when the actual lease was created,
  - (b) is of the same duration as the actual lease,
  - (c) is subject to the terms and conditions of the actual lease as respects liability for maintenance and repairs, and
  - (d) provides for rent payable at uniform intervals and at an appropriate rate.
- (4) Rent is payable at an appropriate rate if—

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- (a) it is payable at a uniform rate, or
- (b) in a case where the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for a year is never less than the amount payable for a previous year), it progresses by gradations proportionate to those provided by the actual lease.

### **681AK Commercial rent: comparison with payments other than rent**

- (1) Subsection (2) applies—
  - (a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AB(1), and
  - (b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AB(2).
- (2) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AB(1)(b) or (2)(b) is made, which—
  - (a) was negotiated in the open market when the rentcharge or other transaction mentioned in section 681AB(1)(b) or (2)(b) was effected,
  - (b) is a tenant's repairing lease, and
  - (c) is of an appropriate duration.
- (3) A tenant's repairing lease is a lease where the lessee is under an obligation to maintain and repair the whole (or substantially the whole) of the premises comprised in the lease.
- (4) To see whether a lease is of an appropriate duration, take the period over which payments are to be made under the rentcharge or other transaction, and—
  - (a) if that period is 200 years or more (or the obligation to make the payments is perpetual) an appropriate duration is 200 years, or
  - (b) if that period is less than 200 years, an appropriate duration is the same duration as that period.

### **681AL Lease and rent**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a lease includes a reference to any of the following—
  - (a) an underlease, sublease, tenancy or licence, and
  - (b) an agreement for a lease, underlease, sublease, tenancy or licence, and
  - (c) in the case of land outside the United Kingdom, an interest corresponding to a lease (as defined here).
- (3) A reference to rent includes a reference to any payment under a lease.
- (4) A reference to rent under a lease includes a reference to expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under any of—
  - (a) sections 61 to 67 of ITTOIA 2005 (land occupied for trade purposes), and
  - (b) sections 292 to 297 of that Act (taxed leases).

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- (5) Expenses within subsection (4) must be treated as having been paid as soon as they were incurred.

### **681AM Associated persons**

- (1) This section applies for the purposes of this Chapter.
- (2) The following persons are associated with one another—
  - (a) the transferor in an affected transaction and the transferor in another affected transaction, if the two persons are acting in concert or if the two transactions are in any way reciprocal, and
  - (b) any person who is an associate of either of those associated transferors.
- (3) Two or more bodies corporate are associated with one another if they participate in, or are incorporated for the purposes of, a scheme—
  - (a) for the reconstruction of any body or bodies corporate, or
  - (b) for the amalgamation of any two or more bodies corporate.
- (4) Persons are associated with one another if they are associates as defined in section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).
- (5) In subsection (2) “affected transaction” means a transaction within—
  - (a) section 681AA(1) or (2) or 681AB(1) or (2), or
  - (b) section 835(1) or (2) or 836(1) or (2) of CTA 2010.

### **681AN Land outside the UK**

In the case of land outside the United Kingdom, expressions in this Chapter relating to interests in land and their disposition must be taken to relate to corresponding interests and dispositions.]

## [<sup>F2</sup>CHAPTER 2

### NEW LEASE OF LAND AFTER ASSIGNMENT OR SURRENDER

#### **Textual Amendments**

- F2** Pt. 12A Ch. 2 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 4 para. 3](#) (with [Sch. 9 paras. 1-9, 22](#))

#### *Overview*

### **681B Overview**

- (1) This Chapter provides that in certain circumstances where a lease of land is assigned or surrendered and another lease is granted or assigned—



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- (a) consideration received for the assignment or surrender of the first lease is taxed as a receipt of a trade, profession or vocation or charged to income tax, and
  - (b) tax relief is allowed for rent under the other lease.
- (2) The Chapter provides that in certain circumstances where a lease is varied it is treated as surrendered and another lease is treated as granted.

### *Application of the Chapter*

#### **681BA New lease after assignment or surrender**

- (1) This Chapter has effect if each of conditions A to E is met.
- (2) Condition A is that—
- (a) a person (“L”) is a lessee of land under a lease which has 50 years or less to run (“the original lease”), and
  - (b) L is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.
- (3) Condition B is that—
- (a) L assigns the original lease to another person or surrenders it to L's landlord, and
  - (b) the consideration for the assignment or surrender would not (apart from this Chapter) be taxable except as capital in L's hands.
- (4) Condition C is that—
- (a) another lease (“the new lease”) is granted, or assigned, to L or a person linked to L, and
  - (b) the new lease is for a term of 15 years or less.
- (5) Condition D is that the new lease—
- (a) is of all or part of the land which was the subject of the original lease, or
  - (b) includes all or part of the land which was the subject of the original lease.
- (6) Condition E is that neither L nor a person linked to L had, before 22 June 1971, a right enforceable at law or in equity to the grant of the new lease.
- (7) If each of conditions A to D is met but condition E is not met, see the relevant provisions in Schedule 2 to CTA 2010 and Schedule 9 to TIOPA 2010.

### *Taxation of consideration*

#### **681BB Taxation of consideration**

- (1) An appropriate amount must be found under subsection (3) or (4) of—
- (a) the consideration received by L for the assignment or surrender, or
  - (b) each instalment of the consideration (if it is paid in instalments).
- (2) For the purposes of the Income Tax Acts the appropriate amount must be treated in accordance with subsections (6) to (8) and not as a capital receipt.

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- (3) If the term of the new lease is one year or less, the appropriate amount of the consideration or instalment is the whole of it.
- (4) If the term of the new lease is more than one year, the appropriate amount of the consideration or instalment is the proportion of it found by the formula—
- 16—N15
- (5) In subsection (4) N is the term of the new lease expressed in years (taking part of a year as an appropriate proportion of a year).
- (6) The way the appropriate amount must be treated depends on whether the following conditions are met—
- (a) the consideration is received by L in the course of a trade, profession or vocation, and
  - (b) the rent payable by L, or a person linked to L, under the new lease is allowable as a deduction in calculating profits or losses of a trade, profession or vocation for tax purposes.
- (7) If the conditions are met the appropriate amount must be treated as a receipt of the trade, profession or vocation mentioned in subsection (6)(a).
- (8) If the conditions are not met the appropriate amount must be treated as an amount chargeable to income tax.
- (9) If income tax is charged under subsection (8)—
- (a) it must be charged on the proportion of the appropriate amount arising in the tax year,
  - (b) the person liable for the tax is L, and
  - (c) the amount charged must be treated for income tax purposes as an amount of income.

### **681BC Position where new lease does not include all original property**

- (1) This section applies for the purposes of section 681BB if the property which is the subject of the new lease does not include all the property which was the subject of the original lease.
- (2) The consideration received by L must be treated as reduced to the portion of it found under subsection (3).
- (3) The portion is that which is reasonably attributable to such part of the original property as—
  - (a) consists of the property which is the subject of the new lease, or
  - (b) is included in the property which is the subject of the new lease.
- (4) The original property is the property which was the subject of the original lease.

### *Relief for rent under new lease*

### **681BD Relief for rent under new lease**

- (1) This section applies if the rent under the new lease is payable by a person within the charge to income tax.

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- (2) This section also applies if—
  - (a) Chapter 2 of Part 19 of CTA 2010 (provision for corporation tax corresponding to this Chapter) has effect, and
  - (b) the rent under the new lease is payable by a person within the charge to income tax.
- (3) The provisions of ITTOIA 2005 providing for deductions or allowances by way of income tax relief in respect of payments of rent apply in relation to the rent under the new lease.
- (4) In subsection (2), and in subsection (3) as applied by subsection (2), references to the new lease and rent are to be read as in Chapter 2 of Part 19 of CTA 2010.

*New lease treated as ending*

**681BE New lease treated as ending**

- (1) Sections 681BF to 681BH treat the new lease as ending in certain circumstances for the purposes of this Chapter.
- (2) If any of those provisions apply in a given case, and the new lease is treated as ending on different dates, it must be treated as ending on the earlier or earliest of them.

**681BF Position where rent reduces**

- (1) If the rent for a relevant period exceeds the rent for the following comparable period, the term of the new lease must be treated as ending on the date when the relevant period ends.
- (2) For the purposes of this section—
  - (a) a relevant period is a rental period of the new lease ending before its fifteenth anniversary,
  - (b) the following comparable period (in relation to a relevant period) is the rental period which is of the same duration as the relevant period and which begins on the day following the end of the relevant period,
  - (c) the rent for a period is the total rent payable under the new lease in respect of the period,
  - (d) a rental period is a period in respect of which a payment of rent is to be made, and
  - (e) the fifteenth anniversary of the new lease is the fifteenth anniversary of the date on which its term begins.
- (3) For the purposes of this section—
  - (a) all rental periods of a quarter must be treated as being of the same duration, and
  - (b) all rental periods of a month must be treated as being of the same duration.

**681BG Position where lease may be ended**

- (1) This section applies if under the new lease the lessor, or L or a person linked to L, has power to end the lease before the end of the term for which it was granted.

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- (2) The term of the lease must be treated as ending on the earliest date with effect from which the lessor, or L or a person linked to L, could end the lease by exercising the power.

#### **681BH Position where lease may be varied**

- (1) This section applies if under the new lease L, or a person linked to L, has power to vary, in a manner beneficial to L or a person linked to L, obligations under the lease that are obligations of L or a person linked to L.
- (2) The term of the lease must be treated as ending on the earliest date with effect from which L, or a person linked to L, could vary the obligations by exercising the power.

#### **681BI Lease treated as ending: rentcharge**

- (1) Subsection (2) applies if a rentcharge payable by L, or a person linked to L, is secured on all or part of the property subject to the new lease.
- (2) For the purposes of sections 681BF to 681BH the rent payable under the new lease must be treated as equal to the sum of the rentcharge and the rent payable under the lease.

*Lease varied to provide for increased rent*

#### **681BJ Lease varied to provide for increased rent**

- (1) This section applies if each of conditions A to D is met.
- (2) Condition A is that—
- (a) a person (“the lessee”) is a lessee of land under a lease which has 50 years or less to run (“the original lease”), and
  - (b) the lessee is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.
- (3) Condition B is that (by agreement with the landlord) the lessee varies the original lease.
- (4) Condition C is that under the variation—
- (a) the lessee agrees to pay a rent greater than that payable under the original lease, and
  - (b) the lessee agrees to pay the greater rent in return for a consideration which would not (apart from this Chapter) be taxable except as capital in the lessee's hands.
- (5) Condition D is that under the variation the period during which the greater rent is to be paid ends 15 years or less after the date on which—
- (a) the consideration is paid to the lessee, or
  - (b) the last instalment of the consideration is paid to the lessee (if it is paid in instalments).
- (6) If this section applies the lessee must be treated for the purposes of this Chapter—
- (a) as having surrendered the original lease for the consideration mentioned in subsection (4)(b), and

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- (b) as having been granted a new lease for a term of 15 years or less but otherwise on the terms of the original lease varied as mentioned in subsection (3).

### *Interpretation*

#### **681BK Relevant income tax relief**

For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—

- (a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
- (b) a deduction in calculating the profits of a UK property business for income tax purposes,
- (c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and
- (d) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.

#### **681BL Linked persons**

- (1) In this Chapter references to a person linked to L are to a person who is—
  - (a) a partner of L,
  - (b) an associate of L, or
  - (c) an associate of a partner of L.
- (2) “Associate” must be read in accordance with section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).

#### **681BM Lease, lessee, lessor and rent**

- (1) This section applies for the purposes of this Chapter.
- (2) “Lease” includes—
  - (a) an agreement for a lease, and
  - (b) any tenancy.
- (3) “Lease” does not include a mortgage.
- (4) A reference to a lessee or lessor—
  - (a) is to be read in accordance with subsections (2) and (3), and
  - (b) includes a reference to the successors in title of a lessee or lessor.
- (5) “Rent” includes a payment by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out; and “premises” here includes land.
- (6) In the application of this section to Scotland “mortgage” means—
  - (a) a standard security, or

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- (b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924, but including a security constituted by ex facie absolute disposition or assignation.]

**Modifications etc. (not altering text)**

- C1** S. 681BM applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 9 para. 41\(4\)](#) (with Sch. 9 paras. 1-9, 22)

[<sup>F3</sup>CHAPTER 3

LEASED TRADING ASSETS

**Textual Amendments**

- F3** Pt. 12A Ch. 3 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 4 para. 4](#) (with Sch. 9 paras. 1-9, 22)

*Overview*

**681C Overview**

This Chapter provides that, in certain circumstances where a payment is made under a lease of a trading asset, income tax relief for the payment is restricted.

*Application of the Chapter*

**681CA Professions and vocations**

In this Chapter a reference to a trade includes a reference to a profession or vocation.

**681CB Leased trading assets**

- (1) Section 681CC has effect if—
  - (a) condition A is met, and
  - (b) condition B or C is met.
- (2) Condition A is that—
  - (a) a payment is made by a person under a lease of a relevant asset, and
  - (b) a deduction is allowed for the payment in calculating the profits of a trade for income tax purposes.
- (3) Condition B is that—
  - (a) at a time before the lease's creation the asset was used for the purposes of the trade, and
  - (b) when it was so used it was owned by the person then carrying on the trade.

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- (4) Condition C is that—
- (a) at a time before the lease's creation the asset was used for the purposes of another trade,
  - (b) when it was so used it was owned by the person then carrying on the other trade, and
  - (c) when it was so used, or later, that person was carrying on the trade mentioned in subsection (2).
- (5) The reference in subsection (2)(a) to a lease does not include a lease created on or before 14 April 1964.
- (6) In this section references to a person carrying on a trade are to the person carrying on the trade for the time being.

*Relief: restriction and carrying forward*

#### **681CC Tax deduction not to exceed commercial rent**

- (1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—
- (a) for the non-excluded element of the payment within section 681CB(2), or
  - (b) if there are two or more such payments, for the non-excluded elements of those payments.
- (2) For the purposes of this section—
- (a) “relevant period” means—
    - (i) a period of account of the trade, or
    - (ii) if no accounts of the trade are drawn up for a period, the basis period of a tax year, and
  - (b) the non-excluded element of a payment is the element of the payment not excluded under section 681CD (long funding finance leases).
- (3) The rules are—
- Rule 1 — meaning of amount E* For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—
- (a) the non-excluded element of the payment, or
  - (b) the non-excluded elements of the payments.
- Rule 2 — calculations* For every relevant period—
- (a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the creation of the lease mentioned in section 681CB(2)(a),
  - (b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after that date, and
  - (c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.
- Rule 3 — meaning of post-spread period* A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681CB(2).

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*Rule 4 — the deduction allowed in a relevant period* If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681CE).

*Rule 5— relevant periods in which no deduction allowed* If a relevant period is a post-spread period, no deduction is allowed for the period.

### **681CD Long funding finance leases**

- (1) This section applies for the purposes of section 681CC.
- (2) A payment must be excluded so far as, in the case of the lessee, it is to be regarded in accordance with Chapter 6A of Part 2 of CAA 2001 as a payment under a lease which is a long funding finance lease for the purposes of that Part.

### **681CE Commercial rent**

- (1) Subsection (3) applies for the purpose of making a comparison under rule 4 of section 681CC(3).
- (2) In this section “the actual lease” means the lease mentioned in section 681CB(2)(a).
- (3) The commercial rent is the rent which might at the relevant time be expected to be paid under a lease of the asset if—
  - (a) the lease were for the rest of the asset's expected normal working life,
  - (b) the rent were payable at uniform intervals and at a uniform rate, and
  - (c) the rent gave a reasonable return for the asset's market value at the relevant time, taking account of the actual lease's terms and conditions.
- (4) The relevant time is the time when the actual lease was created.
- (5) An asset's expected normal working life is the period which might be expected, when it is first put into use, to pass before it is finally put out of use as being unfit for further use.
- (6) In applying subsection (5) it must be assumed that the asset will be used in the normal way, and to the normal extent, throughout the period.
- (7) If the asset is used at the same time partly for the purposes of the trade mentioned in section 681CB(2)(b) and partly for other purposes, the commercial rent as defined in subsection (3) is to be determined by reference to what would be paid for such partial use.

### *Interpretation*

### **681CF Lease**

- (1) This section applies for the purposes of this Chapter.
- (2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.
- (3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.



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## 681CG Relevant asset

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.]

## [<sup>F4</sup>CHAPTER 4

### LEASED ASSETS: CAPITAL SUMS

#### Textual Amendments

- F4** Pt. 12A Ch. 4 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 4 para. 5](#) (with [Sch. 9 paras. 1-9, 22](#))

#### *Overview*

## 681D Overview

This Chapter provides that in certain circumstances where a payment is made under a lease of an asset, and a capital sum is obtained in respect of an interest in the asset, income tax is charged on an amount not greater than the capital sum.

#### *Application of the Chapter*

## 681DA Application of the Chapter

This Chapter applies if—

- (a) condition A is met (see section 681DB), and
- (b) condition B, C, D or E is met (see section 681DC).

## 681DB Payment under lease

(1) Condition A is that—

- (a) a payment is made under a lease of a relevant asset, and
- (b) the payment is one for which a deduction by way of relevant tax relief is allowed.

(2) Condition A is not met if section 681CC (leased trading assets: tax deductions)—

- (a) applies to the payment, or
- (b) would apply to it but for its being excluded under section 681CD (long funding finance leases).

(3) Condition A is not met if section 865 of CTA 2010 (provision for corporation tax corresponding to section 681CC)—

- (a) applies to the payment, or
- (b) would apply to it but for its being excluded under section 866 of that Act (long funding finance leases).

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- (4) The reference in subsection (1)(a) to a lease does not include a lease created on or before 14 April 1964.

### **681DC Sum obtained**

- (1) Condition B is that the person making the payment—
- (a) obtains a capital sum in respect of the lessee's interest in the lease, and
  - (b) is within the charge to income tax.
- (2) Condition C is that an associate of the person making the payment—
- (a) obtains a capital sum by way of consideration in respect of the lessee's interest in the lease, and
  - (b) is within the charge to income tax.
- (3) Condition D is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
  - (b) the associate obtains a capital sum in respect of the interest, and
  - (c) the associate is within the charge to income tax.
- (4) Condition E is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
  - (b) an associate of that associate obtains a capital sum by way of consideration in respect of the interest, and
  - (c) the associate obtaining the sum is within the charge to income tax.
- (5) Condition B, C, D or E may be met before, at or after the time when the payment is made.
- (6) Condition B or C is not met if—
- (a) the lease is a hire-purchase agreement for plant or machinery, and
  - (b) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.
- (7) Condition D or E is not met if—
- (a) the capital sum is obtained in respect of the lessee's interest in the lease,
  - (b) the lease is a hire-purchase agreement for plant or machinery, and
  - (c) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

### *Charge to income tax*

### **681DD Charge to income tax**

- (1) The person obtaining the capital sum is charged to income tax, for the tax year in which the sum is obtained, on the amount given by subsection (2).
- (2) That amount is—
- (a) the amount of the payment for which a deduction by way of relevant tax relief is allowed, or

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- (b) the total amount of such payments (if more than one).
- (3) But subsections (1) and (2) have effect subject to—
  - (a) subsections (4) to (7), and
  - (b) section 681DE(3) (hire-purchase agreements).
- (4) The amount on which tax is charged under this section is not to exceed the capital sum obtained (but see section 681DE(4)).
- (5) Subsection (6) applies if—
  - (a) income tax is charged under this section in respect of a capital sum, and
  - (b) a payment or part of a payment is taken into account in deciding the amount on which the tax is charged.
- (6) The payment or part must be left out of account in deciding—
  - (a) whether income tax is to be charged under this section in respect of another capital sum, and
  - (b) the amount on which the tax is to be charged (if any is to be charged).
- (7) The order in which subsections (5) and (6) are applied is the order in which capital sums are obtained.
- (8) An amount on which income tax is charged under this section is treated for income tax purposes as an amount of income.

#### **681DE Hire-purchase agreements**

- (1) This section applies if—
  - (a) the lease is a hire-purchase agreement (as defined in section 998A), and
  - (b) the capital sum is obtained in respect of the lessee's interest in the lease (whether it is obtained by the person making the payment or by an associate).
- (2) Find the total of the following amounts—
  - (a) so much of any payment made under the lease by the person obtaining the capital sum as is not a payment for which a deduction by way of relevant tax relief is allowed, and
  - (b) if the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the total of the amounts found under subsection (2) is equal to or greater than the capital sum, income tax is not charged under section 681DD in respect of the capital sum.
- (4) If the total of those amounts is less than the capital sum, in applying section 681DD(4) that total must be deducted from the capital sum.
- (5) If the capital sum is the consideration for part only of the lessee's interest in the lease—
  - (a) any amount found under subsection (2) (and still unallowed) must be reduced to a just and reasonable proportion of it, and
  - (b) in calculating that proportion account must be taken of the degree to which the payments mentioned in subsection (2) have contributed to the value of what is disposed of in return for the capital sum.
- (6) Subsection (7) applies if—

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- (a) more than one capital sum is (or is treated as) obtained by the same person in respect of the lessee's interest in the lease, and
  - (b) in arriving at a total under subsection (2) a payment is taken into account in respect of one of the capital sums.
- (7) So far as the payment is so taken into account it must not be taken into account in applying subsection (2) to another of the capital sums.
- (8) The order in which subsections (6) and (7) are applied is the order in which capital sums are obtained.
- (9) If the capital sum is obtained by the personal representatives of a deceased person, the reference in subsection (2)(a) to any payment made under the lease by the person obtaining the capital sum includes any payment made under the lease by the deceased.

#### **681DF Adjustments where sum obtained before payment made**

- (1) This section applies if a capital sum is obtained as mentioned in section 681DC and later a payment is made as mentioned in section 681DB.
- (2) Adjustments must be made if they are needed to give effect to a charge to income tax under section 681DD in respect of the capital sum.
- (3) An adjustment may be made within the period ending with the fifth anniversary of the 31 January following the tax year in which the payment is made.
- (4) Subsection (3) applies despite any time limit specified in the Income Tax Acts.

#### *Obtaining of sum*

#### **681DG Sum obtained in respect of interest**

A reference in this Chapter to a sum obtained in respect of an interest in an asset (whether the lessee's interest in a lease of the asset or the lessor's interest or any other interest) includes a reference to—

- (a) insurance money obtained in respect of the interest, and
- (b) sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions disposing of it.

#### **681DH Sum obtained in respect of lessee's interest**

- (1) This section applies to a reference in this Chapter to a sum obtained in respect of the lessee's interest in a lease of an asset.
- (2) The reference includes a reference to sums representing the consideration in money or money's worth obtained on any of the following occasions—
  - (a) a surrender of the interest to the lessor,
  - (b) an assignment of the lease, and
  - (c) the creation of a sublease or another interest out of the lease.
- (3) The reference also includes a reference to sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions under which

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the lessee's rights are merged in any way with the lessor's rights or with any other rights as respects the asset.

- (4) Subsection (3) applies so far as the money or money's worth is attributable to the lessee's rights under the lease.

#### **681DI Disposal of interest to associate**

- (1) This section applies for the purposes of this Chapter if a person disposes of an interest in an asset to a person who is the first person's associate (and the interest may be the lessee's interest in a lease of the asset or the lessor's interest or any other interest).
- (2) The person disposing of the interest must be treated as obtaining in respect of it the greatest of—
- (a) the sum in fact obtained by the person,
  - (b) the value of the interest in the open market, and
  - (c) the value of the interest to the person to whom it is in effect transferred.
- (3) The disposal—
- (a) may be direct or indirect, and
  - (b) may be effected by a transaction or series of transactions described in section 681DG(b) or 681DH(3).

#### *Apportionment*

#### **681DJ Apportionment of payments made and of sums obtained**

- (1) This section applies for the purposes of this Chapter.
- (2) Subsection (3) applies if—
- (a) a payment is made,
  - (b) it is one for which a deduction by way of relevant tax relief is allowed, and
  - (c) it is made by persons carrying on a trade or profession in partnership.
- (3) The payment must be apportioned in a manner which is just and reasonable.
- (4) Subsection (5) applies if—
- (a) a sum is obtained in respect of an interest in an asset,
  - (b) the sum is obtained by persons carrying on a trade or profession in partnership, and
  - (c) the asset is and continues to be used for the purposes of the trade or profession.
- (5) The sum must be apportioned between the partners in the shares in which they are entitled to the profits of the trade or profession at the time the sum is obtained.
- (6) Subsection (7) applies if—
- (a) a sum is obtained in respect of an interest in an asset, and
  - (b) the sum is obtained by persons jointly entitled to the interest.
- (7) The sum must be apportioned according to their respective rights in the interest.
- (8) Subsections (6) and (7) are subject to subsections (4) and (5).

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### **681DK Manner of apportionment**

- (1) Subsections (2) and (3) apply if—
  - (a) a payment or sum is to be apportioned under section 681DJ or under section 880 of CTA 2010,
  - (b) at the time of the apportionment it appears that it is material to the liability to tax (whether income tax or corporation tax, and for whatever period) of two or more persons (in this section referred to collectively as “the set”),
  - (c) a question arises as to the manner in which the payment or sum is to be apportioned, and
  - (d) at the time of the apportionment, it appears that the apportionment is material to the income tax liability (for whatever period) of—
    - (i) a person, or some two or more persons, in the set, or
    - (ii) all the persons in the set.
- (2) For the purposes of income tax of the person or persons mentioned in subsection (1) (d), the question is to be determined in the same way as an appeal.
- (3) All the persons in the set are entitled to be a party to the proceedings.

#### *Interpretation*

### **681DL Associates**

- (1) This section applies for the purposes of this Chapter.
- (2) Persons are associates if they are associated with each other.
- (3) The following are associated with each other—
  - (a) an individual and the individual's spouse or civil partner or relative,
  - (b) an individual and a spouse or civil partner of a relative of the individual,
  - (c) an individual and a relative of the individual's spouse or civil partner,
  - (d) an individual and a spouse or civil partner of a relative of the individual's spouse or civil partner.
- (4) The following are associated with each other—
  - (a) a person as trustee of a settlement and an individual who (in relation to the settlement) is a settlor,
  - (b) a person as trustee of a settlement and a person associated with an individual who (in relation to the settlement) is a settlor.
- (5) The following are associated with each other—
  - (a) a person and a body of persons of which the person has control,
  - (b) a person and a body of persons of which persons associated with the person have control,
  - (c) a person and a body of persons of which the person and persons associated with the person have control,
  - (d) two or more bodies of persons associated with the same person under paragraphs (a) to (c).
- (6) In relation to a disposal by joint owners, the joint owners and any person associated with any of them are associated with each other.

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(7) For the purposes of this section—

- (a) a relative is a brother, sister, ancestor or lineal descendant,
- (b) a body of persons includes a partnership, and
- (c) “settlement” and “settlor” have the meanings given by section 620 of ITTOIA 2005.

### **681DM Capital sum**

For the purposes of this Chapter a capital sum is any sum of money, or any money's worth, except so far as it or any part of it—

- (a) is to be treated for income tax purposes as a receipt to be taken into account in calculating the profits or losses of a trade, profession or vocation, or
- (b) is (apart from this Chapter) chargeable to income tax under or by virtue of any provision to which section 1016 applies.

### **681DN Lease**

- (1) This section applies for the purposes of this Chapter.
- (2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.
- (3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

### **681DO Relevant asset**

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.

### **681DP Relevant tax relief**

For the purposes of this Chapter each of the following is a deduction by way of relevant tax relief—

- (a) a deduction in calculating profits or losses of a trade for corporation tax purposes,
- (b) a deduction in calculating any loss for which relief is given under section 91 of CTA 2010 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 of CTA 2010 applies (miscellaneous charges),
- [<sup>F5</sup>(c) a deduction of an amount which for the purposes of section 73 of FA 2012 is adjusted BLAGAB management expenses of an insurance company for an accounting period,]
- (d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business),
- (e) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
- (f) a deduction in calculating any loss for which relief is allowed under section 152 (losses from miscellaneous transactions), or in calculating profits

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or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and

- (g) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.]

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**Textual Amendments**

**F5** S. 681DP(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 134](#)



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**Changes to legislation:**

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