



Income Tax Act 2007

2007 CHAPTER 3

[^{F1}PART 12A

SALE AND LEASE-BACK ETC

CHAPTER 1

PAYMENTS CONNECTED WITH TRANSFERRED LAND

[^{F1}Interpretation 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)

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.

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- (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—
- (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—

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- (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).
- (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.]

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