



# Income Tax Act 2007

## 2007 CHAPTER 3

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

#### SALE AND LEASE-BACK ETC]

### [<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—
  - (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.

*Status: Point in time view as at 19/07/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)*

### *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.
- (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—
 

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- (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).

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- (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.
- (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.

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- (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.
- (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.

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### **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
  - (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).

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

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**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)

**Status:**

Point in time view as at 19/07/2012.

**Changes to legislation:**

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