
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Paragraph 5. (See end of Document for details)

SCHEDULES

SCHEDULE 4

SALE AND LEASE-BACK ETC: NEW PART 12A OF ITA 2007

5 After section 681CG insert—

“CHAPTER 4

LEASED ASSETS: CAPITAL SUMS

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

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

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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
 - (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.

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- (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—
 - (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—

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- (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 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

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- (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).

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.

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- (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.
- (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.

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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),
- (c) a deduction under section 76 of ICTA (insurance companies),
- (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 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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