

SCHEDULES

SCHEDULE 4

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

2 After section 681 insert—

“PART 12A

SALE AND LEASE-BACK ETC

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
 - (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.

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- (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,
 - (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—

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- (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.

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

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- (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) (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.

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- (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.

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—

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- (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—
- (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

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- (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.”