

# **INCOME TAX (TRADING AND OTHER INCOME) ACT 2005**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3: Property income**

#### **Chapter 4: Profits of property businesses: lease premiums etc.**

##### **Overview**

1104. This Chapter contains rules for the taxation of premiums, and certain other amounts paid in respect of leases, which would otherwise generally be amounts of a capital nature. It is based on sections 34 to 38 of ICTA.
1105. The effect of section 34 of ICTA is that premiums for leases with an effective duration of 50 years or less, and certain other amounts treated as premiums, are treated wholly or partly as income in the hands of the recipient. Premiums in respect of leases with a duration of one year or less are treated wholly as income. For premiums in respect of leases with a duration of between one and 50 years, the amount treated as income is calculated on a sliding scale according to the duration of the lease. Similar provision is made for amounts treated as premiums under section 34(4) and (5) of ICTA. See sections 277 to 281.
1106. Section 35 of ICTA applies when a lease for 50 years or less is granted for a premium less than market value and is then reassigned at a profit. The assignor is treated as receiving as income an amount calculated on a sliding scale according to the duration of the lease. See sections 282 and 283.
1107. Section 36(1) and (2) of ICTA apply when an estate or interest in land is sold with a condition that it may be required to be sold back to the vendor. The vendor is treated under section 36(4A) of ICTA as receiving as income an amount calculated on a sliding scale according to the earliest date on which the interest could fall to be reconveyed. Section 36(3) makes similar provision where the terms of the sale provide for the grant of a lease to the vendor. See sections 284 to 286.
1108. Section 37 of ICTA contains rules under which:
- there may, in certain circumstances, be a reduction in the amount of another receipt under section 34 or 35 of ICTA – see sections 287 to 290; and/or
  - the tenant under the lease may be entitled to a deduction in calculating the profits of his or her property business – see sections 291 to 294.
1109. A tenant who uses land subject to a lease in respect of which there is a receipt under section 34 or 35 of ICTA in connection with a trade, profession or vocation may be entitled under section 87 of ICTA to a deduction in computing the profits of that trade, profession or vocation. Section 87 of ICTA is rewritten in sections 60 to 65 of this Act.

1110. Section 38 of ICTA contains rules for determining the duration of a lease for the purposes of sections 34 to 36 of ICTA. See sections 303 to 305.

### **Section 276: Introduction**

1111. This section is new.
1112. *Subsection (3)* refers to “any lease” in the case of sums payable instead of rent or for the variation or waiver of the term of a lease. See commentary on sections 279 and 281 and *Change 68* in Annex 1.
1113. *Subsection (6)* defines a “short-term” lease as “a lease whose effective duration is 50 years or less”. The “effective duration” of a lease is its duration for the purpose of the lease premium rules. This may not be the same as the contractual duration. See commentary on sections 303 and 304.

### **Section 277: Lease premiums**

1114. This section contains the basic rule for the amount treated as a receipt if a premium is paid on the grant of a short-term lease. It is based on sections 34(1), (6) and (7A) and 37(2) of ICTA.
1115. Section 34(1) of ICTA treats a landlord who receives a premium as receiving an amount by way of rent. Section 34(6) of ICTA treats a person other than a landlord who receives a premium as receiving income as a result of entering into a transaction within paragraph 1(2) of Schedule A in section 15(1) of ICTA.
1116. This section instead treats both landlords and non-landlords as entering into a transaction mentioned in section 264 of this Act (if the land to which the lease relates is in the United Kingdom) or section 265 of this Act (if the land to which the lease relates is outside the United Kingdom).
1117. **Section 264** in Chapter 2 of Part 3 of this Act provides that a person’s UK property business consists of:
- “(a) every business which the person carries on for generating income from land in the United Kingdom, and
  - (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.
1118. Section 269(1) of this Act provides that the profits of a UK property business are charged to tax under Chapter 3 of Part 3 of this Act whether the business is carried on by a UK resident or a non- UK resident.
1119. **Section 265** in Chapter 2 of Part 3 of this Act provides that a person’s overseas property business consists of:
- “(a) every business which the person carries on for generating income from land outside the United Kingdom, and
  - (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.
1120. **Section 269(2)** and **(3)** provides that the profits of an overseas property business are charged to tax under Chapter 3 of Part 3 of this Act only if the business is carried on by a UK resident but in the case of a UK resident to whom the remittance basis applies, only in respect of land in the Republic of Ireland.
1121. The effect of sections 264 and section 265 is that the transaction which subsection (2) of this section treats the person as entering will be included in the person's UK or overseas property business, or will constitute the person's UK or overseas property business if that person is not already carrying on such a business.

1122. The approach adopted in subsections (2) to (4) of section 277 is also followed in rewriting the rules on:
- sums payable instead of rent in section 279;
  - sums payable for the surrender of a lease in section 280;
  - sums payable for the variation or waiver of the term of a lease in section 281;
  - assignments for profit of lease granted at undervalue in section 282;
  - sales with right to reconveyance in section 284; and
  - sale and leaseback transactions in section 285.
1123. Section 34(1) of ICTA treats rent treated as received by a landlord as received when the lease is granted. Section 34(7A) of ICTA provides that an amount treated as received as rent must be taken into account for the chargeable period in which it is treated as received. There is no corresponding rule for non-landlords in section 34(6).
1124. *Subsection (3)* requires the person to whom the premium is due (both landlord and non-landlord) to bring an amount into account in calculating the profits of the property business for the tax year in which the lease is granted. See *Change 69* in Annex 1.

***Section 278: Amount treated as lease premium where work required***

1125. This section is based on section 34(2) and (3) of ICTA.

***Section 279: Sums payable instead of rent***

1126. This section deals with cases where a payment is made instead of rent for some or all of the duration of a lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA.
1127. Section 34(1) of ICTA applies if the duration of the lease is not more than 50 years. But section 34(4)(a) of ICTA provides that any period other than that in relation to which the sum is payable in lieu of rent must be ignored in arriving at the duration of the lease. So for the purposes of section 34(4) of ICTA the duration of a lease cannot be longer than the period in respect of which the sum is payable instead of rent. *Subsection (1)* makes clear that –irrespective of the length of the lease – the payment of a sum instead of rent for a period of not more than 50 years is within the scope of this section. See *Change 68* in Annex 1.
1128. Subsections (2) to (4) of this section are drafted on the same basis as subsections (2) to (4) of section 277.
1129. *Subsection (2)* treats a person to whom a sum is due instead of rent as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1130. Section 34(1) of ICTA treats income in the hands of a landlord as received when the lease is granted. There is no corresponding rule for non-landlords in section 34(6) of ICTA. This section instead requires the person carrying on the property business (whether or not that person is the landlord) to bring an amount into account in calculating the profits of that business for the tax year in which the sum instead of rent is payable. See *Change 69* in Annex 1.
1131. The formula in section 34(1) of ICTA calculates the amount treated as received by way of rent by reference to the duration of the lease. Section 34(4)(a) of ICTA says that in computing the profits of the business any period other than that in respect of which the sum is paid instead of rent must be ignored. So in calculating the amount to be treated as rent in respect of a sum within section 34(4) of ICTA, the duration of the lease for

the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(4)(a) of ICTA.

1132. *Subsection (6)* combines the requirements at sections 34(1) and (4)(a) of ICTA so that the period used in the formula in *subsection (5)* is the shorter of the period for which the payment is made and the period from the beginning of that period to the end of the effective duration of the lease.

### ***Section 280: Sums payable for surrender of lease***

1133. This section deals with cases where a sum is payable for the surrender of a lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA.
1134. Subsections (2) to (4) of this section are drafted on the same basis as subsections (2) to (4) of section 277.
1135. *Subsection (2)* treats a person to whom a sum is due as consideration for the surrender of the lease as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1136. Section 34(1) of ICTA treats income in the hands of a landlord as received when the lease is granted. There is no corresponding rule for non-landlords in section 34(6) of ICTA. This section instead requires the person carrying on the property business (whether or not that person is the landlord) to bring an amount into account in calculating the profits of that business for the tax year in which the sum for the surrender of the lease is payable. See *Change 69* in Annex 1.

### ***Section 281: Sums payable for variation or waiver of term of lease***

1137. This section deals with the case where a payment is made for the variation or waiver of any of the terms of a lease. It is based on section 34(1), (5), (6), (7) and (7A) of ICTA.
1138. Section 34(1) of ICTA applies if the duration of the lease is not more than 50 years. Section 34(5)(a) of ICTA provides that any period before or after the period for which the variation or waiver has effect must be ignored in arriving at the duration of the lease. So for the purposes of section 34(4) of ICTA, the duration of a lease cannot be longer than the period for which the variation or waiver has effect. *Subsection (1)* makes clear that – irrespective of the length of the lease – the payment of a sum as consideration for the variation or waiver of the terms of a lease for a period of not more than 50 years is within the scope of this section. See *Change 68* in Annex 1.
1139. Section 34(6) of ICTA says that sums due to a person other than a landlord under:
- section 34(1) of ICTA (premiums);
  - section 34(4) of ICTA (sums payable instead of rent or for the surrender of a lease); and
  - section 34(5) of ICTA (sums payable for the variation or waiver of the terms of a lease),
- are charged on that person.
1140. Section 34(7) of ICTA disapplies section 34(6) of ICTA if the payment is due to a person not connected with the landlord. But section 34(7) of ICTA does not explicitly set aside the requirement in section 34(5) of ICTA to treat sums payable for the variation or waiver of the terms of a lease as the payment of a premium to the landlord if that payment is made to a person unconnected with the landlord. So it is not clear whether section 34(6) of ICTA catches a person unconnected with the landlord who receives

a consideration in connection with the variation or waiver of the terms of a lease (eg a person living above a shop who receives a payment in consideration of the landlord waiving a term in the shop lease which restricts the hours during which the shop may open).

1141. *Subsection (1)* deals with this by providing that this section applies only if the sum is due to the landlord or a connected person. “Connected person” is defined in section 839 of ICTA (see section 878(5) of this Act). See *Change 70* in Annex 1.
1142. Subsections (2) to (4) of this section are drafted on the same basis as subsections (2) to (4) of section 277.
1143. *Subsection (2)* treats a person to whom a sum is due as consideration for the variation or waiver of the terms of a lease as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1144. Section 34(1) of ICTA treats income in the hands of a landlord as received when the lease is granted. There is no corresponding rule for non-landlords in section 34(6) of ICTA. This section instead requires a person carrying on the property business (whether or not that person is the landlord) to bring an amount into account in calculating the profits of that business for the tax year in which the sum is payable. See *Change 69* in Annex 1.
1145. Section 37(2) of ICTA provides for the reduction of amounts treated as rent under section 34 or 35 of ICTA which arise in respect of the “grant or disposition” of a lease. It is arguable that section 37(2) of ICTA does not apply to an amount treated as income under section 34(5) of ICTA in respect of a sum payable for the variation or waiver of the terms of a lease because the amount does not arise in respect of the grant or disposition of a lease.
1146. [Section 287\(1\)](#) extends relief under section 288 to receipts in respect of sums payable for variation or waiver. This is reflected in *subsection (5)* of this section. See *Change 71* in Annex 1.
1147. The formula in section 34(1) of ICTA calculates the amount treated as received by way of rent by reference to the duration of the lease. Section 34(5)(a) of ICTA says that in computing the profits of the business any period other than that in relation to which the variation or waiver has effect must be ignored. So in calculating the amount to be treated as rent in respect of a sum within section 34(5) of ICTA, the duration of the lease for the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(5)(a) of ICTA.
1148. *Subsection (6)* combines the requirements in section 34(1) and (5)(a) of ICTA so that the period used in the calculation is the shorter of the period for which the variation or waiver has effect and the period from the beginning of that period to the end of the effective duration of the lease.

### ***Section 282: Assignments for profit of lease granted at undervalue***

1149. This section treats a person who assigns, at a profit, a lease granted to him or her at less than its true value as receiving an amount calculated by reference to the smaller of the discount at which the lease was granted and the profit on the assignment. It is based on sections 35(1), (2) and (2A) and 37(2) of ICTA.
1150. Subsections (2) to (4) of this section are drafted on the same basis as subsections (2) to (4) of section 277.

*These notes refer to the Income Tax (Trading and Other Income)  
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

1151. *Subsection (2)* treats a person who assigns the lease at undervalue as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1152. Section 35(2A) of ICTA treats income deemed to have been received under section 35 of ICTA as received when the consideration for the assignment of the lease becomes payable. This section instead brings an amount into account as a receipt in calculating the profits of the property business for the tax year in which the consideration for the assignment is payable. See *Change 69* in Annex 1.
1153. The formula in *subsection (4)* for calculating the deemed receipt if there is an assignment at a profit is based on section 35(2) of ICTA (which refers back to the formula in section 34(1) of ICTA).

**Section 283: Provisions supplementary to section 282**

1154. This section is based on section 35(1) and (2) of ICTA.

**Section 284: Sales with right to reconveyance**

1155. This section brings a deemed receipt into account if property is sold on terms which provide for the property to be reconveyed to the seller, or to a connected person, at less than the sale price. It is based on section 36(1) and (4A) of ICTA.
1156. "Connected person" is defined in section 839 of ICTA (see section 878(5) of this Act).
1157. Section 36(1) of ICTA does not specify any limit on the time between sale and reconveyance. But because section 36(1) of ICTA reduces the amount of the deemed income by 1/50th for each complete year between sale and reconveyance, no charge arises if the property is reconveyed more than 51 years after the sale. So this section applies only if the period between sale and reconveyance is not more than 50 years. See *Change 72* in Annex 1.
1158. Subsections (2) to (4) of this section are drafted on the same basis as subsections (2) to (4) of section 277.
1159. *Subsection (2)* treats the person who sells the land as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1160. Section 36(4A) of ICTA treats income deemed to have been received under section 36 of ICTA as received when the property is sold. This section instead brings an amount into account as a receipt in calculating the profits of the property business for the tax year in which the property is sold. See *Change 69* in Annex 1.
1161. The formula in *subsection (4)* is based on section 36(1) of ICTA. Section 36(1) of ICTA deems the person by whom the property is sold to receive an amount equal to the excess, if any, of the sale price over the price at which the property is to be reconveyed or, if the earliest date on which the property can be reconveyed is two or more years after the sale, the excess reduced by 1/50th for each complete year between the sale and that date.
1162. If a property is reconveyed within two years of sale, the amount given by the formula in subsection (4) is equal to the excess of the sale price over the price at which the property is reconveyed. So it is not necessary to prescribe different rules for properties reconveyed before and after the two year period.

**Section 285: Sale and leaseback transactions**

1163. This section brings a deemed receipt into account if property is sold on terms which provide for the grant of a lease to the seller, or to a connected person, at less than the sum of any premium for the lease and the value on the date of sale of the right to lease back the property. It is based on section 36(1), (3), (4) and (4A) of ICTA.
1164. “Connected person” is defined in section 839 of ICTA (see section 878(5) of this Act).
1165. Section 36(1) of ICTA does not specify any limit on the time between sale and leaseback. But because section 36(1) of ICTA reduces the amount of the deemed income by 1/50th for each complete year between sale and leaseback, no charge arises if the property is leased back more than 51 years after the sale. So this section applies only if the period between sale and leaseback is not more than 50 years. See *Change 72* in Annex 1.
1166. Subsections (3) to (5) of this section are drafted on the same basis as subsections (2) to (4) of section 277.
1167. *Subsection (3)* treats the person who sells the land as entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if the land to which the lease relates is outside the United Kingdom). The effect of sections 264 and 265 is that the transaction will be included in, or will constitute, the person's UK or overseas property business.
1168. Section 36(4A) of ICTA treats income deemed to have been received under section 36 of ICTA as received when the property is sold. This section instead brings an amount into account as a receipt in calculating the profits of the property business for the tax year in which property is sold. See *Change 69* in Annex 1.
1169. The formula in *subsection (5)* is based on section 36(1) and (3) of ICTA. Section 36(1) of ICTA, as adapted by section 36(3) of ICTA, deems the person by whom the property is sold to receive an amount equal to the excess, if any, of the sale price over the sum of any premium for the lease and the value on the date of sale of the right to lease back the property or, if the earliest date on which the property can be leased back is two or more years after the sale, the excess reduced by 1/50th for each complete year between the sale and that date.
1170. If a property is leased back within two years of sale, the amount given by the formula in subsection (5) is equal to the excess of the sale price over the sum of any premium for the lease and the value on the date of sale of the right to lease back the property. So it is not necessary to prescribe different rules for calculating the amount of the receipt for properties leased back before and after the two year period.

**Section 286: Provisions supplementary to sections 284 and 285**

1171. This section is based on section 36(2)(a), (3) and (4B) of ICTA.

**Section 287: Circumstances in which additional calculation rule applies**

1172. This section and the next eight sections (all based on section 37 of ICTA) contain special rules giving a tenant relief by reference to the amount of a premium or other sum brought into account as a receipt in calculating the profits of a property business of his or her landlord under section 277 or sections 279 to 282:
- sections 287 to 290 provide for the amount of a premium or other sum brought into account as a receipt in the hands of a tenant *who is also a landlord* to be reduced if the tenant's own landlord has received a premium or other amount within section 277 or sections 279 to 282 in respect of the same property;
  - sections 291 to 294 allow a tenant under a lease in respect of which the landlord has received a premium or other amount within section 277 or sections 279 to 282

a deduction in calculating the profits of any property business carried on by the tenant; and

- section 295 caps the total relief which can be given by reference to a premium or other sum brought into account in calculating the profits of a property business under section 277 or sections 279 to 282 to the amount of that receipt.

1173. **Section 287** is based on section 37(1), (2), (3) and (9) of ICTA.

1174. Section 37(2) of ICTA provides for the reduction of amounts treated as rent under section 34 or 35 of ICTA which arise in respect of the “grant or disposition” of a lease. But section 37(2) does not provide for the reduction of an amount in respect of a sum paid under section 34(5) for the variation or waiver of the terms of a lease because a variation or waiver is not in respect of the grant or disposition of a lease. This section extends relief to payments for variation or waiver. See *Change 71* in Annex 1.

1175. The definitions of “taxed lease” and “taxed receipt” in *subsection (4)* are based on the definitions of “head lease” and “amount chargeable on the superior interest” in section 37(1) of ICTA.

1176. Section 37(9) of ICTA contains the following prohibition against excess relief:

“An amount or part of an amount shall not be deducted under this section more than once from any sum, or from more than one sum, and shall not in any case be so deducted if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

1177. But section 37 of ICTA does not give rules for calculating deductions if there is more than one premium under section 34 of ICTA, or more than one amount treated as a premium under section 35 of ICTA, and gives taxpayers no guidance as to how deductions under section 37 of ICTA are to be calculated in order not to breach the limit in section 37(9) of ICTA.

1178. *Subsection (5)* stipulates that for section 288 to apply there must be at least one taxed receipt with an “unused amount”. See *Change 73* in Annex 1.

1179. Amounts within section 278 (amount treated as lease premium where work required) are not specified separately in this section, or in section 288, because section 278(2) treats such amounts as premiums within section 277.

### ***Section 288: The additional calculation rule***

1180. This section provides for the amount of a receipt calculated under section 277 or sections 279 to 282 of this Act to be reduced if there is an earlier taxed receipt in relation to the same property. It is based on section 37(2), (3), (7) and (9) of ICTA.

1181. The amount to be reduced is referred to in this section, and in section 289, as “the receipt under calculation”.

1182. Section 37(2) of ICTA provides for the reduction of amounts treated as rent under section 34 or 35 of ICTA which arise in respect of the “grant or disposition” of a lease. But section 37(2) of ICTA does not provide for the reduction of an amount in respect of a sum paid under section 34(5) of ICTA for the variation or waiver of the terms of a lease because a variation or waiver is not in respect of the grant or disposition of a lease.

1183. **Section 287** extends relief to payments for variation or waiver. This is reflected in the reference to section 281 in *subsection (2)* of this section. See *Change 71* in Annex 1.

1184. This section introduces the label “basic relieving amount” for the amount by which the receipt under calculation is to be reduced.

1185. *Subsection (3)* requires the basic relieving amount to be restricted under section 289(5) so that it does not exceed the amount of the receipt under calculation. This means that



if the basic relieving amount exceeds the amount of the later taxed receipt, the excess is not available to offset against other receipts. See *Change 73* in Annex 1.

1186. If there is more than one taxed receipt by reference to which the receipt under calculation may be reduced, it is for the person entitled to the relief to decide the order in which relief is to be taken by reference to those receipts. And where a basic relieving amount has been calculated by reference to more than one taxed receipt, subsection (3) provides for the *total* of the basic relieving amounts to be restricted under section 289(5).
1187. The use of the “unreduced amount” of the taxed receipt (defined in section 290(2) of this Act) in the formula in *subsection (4)* makes clear that the basic relieving amount by reference to a taxed receipt is to be calculated according to the amount of that receipt *before* any reductions or deductions.
1188. The definition of “receipt period” in relation to a receipt under section 277 and sections 279 to 282 in *subsection (6)* is based on the definition of “the period in respect of which an amount arose” in section 37(7)(b) of ICTA.

### ***Section 289: The additional calculation rule: special cases***

1189. This section modifies the rule in section 288 for cases within sections 277 to 281 if a sub-lease is granted in respect of part only of the premises subject to the taxed lease. It is based on section 37(2), (3) and (9) of ICTA.
1190. Section 37(2) of ICTA provides for the reduction of amounts treated as rent under section 34 or 35 of ICTA which arise in respect of the “grant or disposition” of a lease. But section 37(2) of ICTA does not provide for the reduction of an amount in respect of a sum paid under section 34(5) of ICTA for the variation or waiver of the terms of a lease because a variation or waiver is not in respect of the grant or disposition of a lease.
1191. *Section 287* extends relief to amounts brought into account in respect of sums payable for the variation or waiver of the terms of a lease. This is reflected in the reference in *subsection (2)* of this section to the receipt under calculation “under any of sections 277 to 281”. See *Change 71* in Annex 1.
1192. But this section does not apply to receipts under section 282 (assignments for profit of lease granted at undervalue) because it is not possible for a lease to be assigned other than in respect of the whole of the premises subject to the lease.
1193. Section 37(3) of ICTA requires a “just apportionment” of the amount chargeable on the superior interest to be made if the whole of the premises are not subject to the lease. This section instead requires the basic relieving amount by reference to a taxed receipt to be calculated by reference to the fraction of the premises which is subject to the lease calculated on a “just and reasonable basis”. See *Change 14* in Annex 1.
1194. *Subsection (4)* restricts the reduction calculated under section 288(4) or subsection (2) of this section to the “unused amount” of the taxed receipt by reference to which it is calculated. This is based on the general prohibition against excess relief in section 37(9) of ICTA. See *Change 73* in Annex 1.

### ***Section 290: Meaning of “unused amount” and “unreduced amount”***

1195. This section is based on section 37(1), (8) and (9) of ICTA.
1196. The “unused amount” of a taxed receipt is defined in *subsections (1)* and *(5)*. See *Change 73* in Annex 1.

### ***Section 291: Deductions for expenses under section 292***

1197. This section and the next three sections give a tenant relief in calculating the profits of his or her property business by reference to the amount of the premium or other

sum brought into account by the landlord (the “taxed receipt”) in respect of the same property. This section is based on section 37(4) and (9) of ICTA.

1198. Section 37(4) of ICTA treats a tenant under a lease in respect of which a chargeable amount arose under section 34 or 35 of ICTA as paying rent for the purpose of computing the profits of a Schedule A business.
1199. A deduction for rent which a tenant is treated as paying under section 37(4) of ICTA is allowed only in respect of premises used in the Schedule A business. So *subsection (2)* provides that a deduction for an expense which a tenant is treated as incurring under section 292 is allowed for each “qualifying day” on which all or part of the premises subject to the taxed lease is either occupied for the purposes of the tenant’s property business or is sublet.
1200. A “qualifying day” is defined in section 292(3) as a day which falls within the receipt period of the taxed receipt.
1201. The amount which the tenant can deduct in respect of the rent which he or she is treated as paying under section 37(4) of ICTA is qualified by:
- the general rules as to deductions not allowable in computing the profits of a trade in section 74(1) of ICTA; and
  - rules prohibiting or restricting the deduction of expenditure elsewhere in ICTA.
1202. In this Act, the rules restricting deductions are in Part 2 of Chapter 4. Section 74(1)(a) of ICTA is rewritten in section 34. *Subsection (3)* of this section preserves the interaction of section 37(4) of ICTA and the general and specific rules restricting deductions in ICTA by providing that a deduction for an expense which a tenant is treated as incurring under section 292 is subject to the application of any provisions of Chapter 4 of Part 2 of this Act.
1203. *Subsection (4)* provides that the deduction allowed in respect of an expense under section 292 may be restricted to prevent the cap in section 295 on the total relief which can be given by reference to a taxed receipt being exceeded. See *Change 73* in Annex 1.

### ***Section 292: Tenants under taxed leases treated as incurring expenses***

1204. This section sets out the method of calculating the expense for which a deduction may be allowed under section 291. It is based on section 37(4) of ICTA.
1205. Section 37(4) of ICTA treats a tenant as paying rent for the purposes of making deductions in respect of the expenses of his or her Schedule A business. In this section, the tenant is treated instead as incurring an expense for each qualifying day in the receipt period of the taxed receipt. This corresponds to the treatment of premiums and other sums payable in respect of leases in section 277 and sections 279 to 282 of this Act, and of amounts treated as receipts in sections 284 and 285 of this Act, as amounts to be brought into account in calculating the profits of a property business rather than as rent.
1206. The formula in *subsection (4)* calculates the expense for each qualifying day by spreading the amount of the taxed receipt evenly over the receipt period of that receipt. Defining “A” in that formula as “the unreduced amount of the taxed receipt” makes clear that the amount of the expense which the tenant is treated as incurring for each qualifying day is calculated by reference to the amount of the taxed receipt *before* any reductions or deductions.

### ***Section 293: Restrictions on section 292 expenses: the additional calculation rule***

1207. This section supplements section 292 where a tenant is entitled under section 288 to a reduction in a receipt within section 277 or sections 279 to 282. It is based on section 37(5) of ICTA.

1208. If an amount treated under section 34 or 35 of ICTA as income of a Schedule A business has been reduced under section 37(2) of ICTA, a tenant is entitled under section 37(5) of ICTA to a deduction in respect of deemed rent under section 37(4) of ICTA only if the appropriate fraction of the amount chargeable on the superior interest exceeds the later chargeable amount. The deduction is then allowed in the same proportion as the excess bears to the appropriate fraction of the amount chargeable on the superior interest.
1209. This section provides instead for a tenant to be treated as incurring an expense for a qualifying day under section 292 only to the extent that the “daily amount of the taxed receipt” exceeds the “daily reduction of the lease premium receipt”.
1210. The daily amount of the taxed receipt and the daily reduction of the lease premium receipt are calculated according to the formulas in *subsection (6)*:
- the formula for calculating the daily amount of the taxed receipt is the same formula used in section 292(4) to calculate the amount of the expense which the tenant is treated as incurring for each qualifying day; and
  - the formula for calculating the daily reduction of the lease premium receipt spreads the reduction calculated under section 288 evenly over the receipt period of the lease premium receipt.

See *Change 15* in Annex 1.

1211. It is not clear how the rule in section 37(5) of ICTA governing the interaction of section 37(2) and (4) of ICTA is intended to apply if there is more than one later chargeable amount falling to be reduced under section 37(2) of ICTA by reference to an amount chargeable on the superior interest or a later chargeable amount falls to be reduced under section 37(2) of ICTA by reference to more than one amount chargeable on the superior interest.
1212. *Subsection (5)* provides that where there is more than one lease premium receipt by reference to which the tenant may be treated as incurring an expense for the same qualifying day, the tenant is treated as incurring an expense for that day only to the extent that the daily amount of the taxed receipt exceeds the *total* of the daily reductions of each of the lease premium receipts. See *Change 15* in Annex 1.

#### ***Section 294: Restrictions on section 292 expenses: lease of part of premises***

1213. This section adapts sections 292 and 293 for cases where the tenant’s lease does not extend to the whole of the property in respect of which the landlord received a premium. It is based on section 37(6) of ICTA.
1214. [Section 287\(1\)](#) extends relief under 288 to sums payable for variation or waiver brought into account under section 281. This is reflected in *subsection (1)(c)* of this section. See *Change 71* in Annex 1.
1215. Section 37(6) of ICTA says that where section 37(3) of ICTA applies (ie if the tenant’s lease extends to part only of the premises subject to the landlord’s lease) section 37(4) and (5) of ICTA are to be applied separately to that part of the premises subject to the tenant’s lease and to the rest of the premises. But it is not clear how the rule in section 37(6) of ICTA is intended to apply if the premises subject to the landlord’s lease are subject to more than one sublease in respect of different parts of those premises.
1216. *Subsection (3)* applies sections 292 and 293 separately to that part of the premises which is subject to the tenant’s lease and to the remainder of the premises. And *subsection (4)* deals with the case where there is more than one sublease which does not extend to the whole of the landlord’s premises. See *Change 15* in Annex 1.
1217. *Subsection (5)* adapts sections 292 and 293 where the lease does not extend to the whole of the premises by multiplying the unreduced amount of the taxed receipt (“A”) by the fraction of the premises to which the sublease relates in the formulas for calculating:

*These notes refer to the Income Tax (Trading and Other Income) Act 2005 (c.5) which received Royal Assent on 24 March 2005*

- the expense for a qualifying day in section 292(4); and
  - the daily amount of the taxed receipt in section 293(6).
1218. Section 37(6) of ICTA requires the amount chargeable on the superior interest to be “proportionately adjusted” where the tenant’s lease does not extend to the whole of the premises. This section instead requires the fraction in subsection (5) to be calculated “on a just and reasonable basis”. See *Change 14* in Annex 1.

### ***Section 295: Limit on reductions and deductions***

1219. This section is based on the general prohibition against excess relief in section 37(9) of ICTA. It restricts total relief allowed by reference to a taxed receipt by way of:
- reductions under the additional calculation rule in section 288 in the amount brought into account by a tenant who is also a landlord; and
  - deductions in calculating the profits of a tenant’s property business under section 292,
- to the amount of the taxed receipt *after* any deductions calculated by reference to that receipt for expenses incurred under section 61 of this Act in calculating the profits of a tenant who uses the property subject to the lease for the purposes of his or her trade. See *Change 73* in Annex 1.

### ***Section 296: Corporation tax receipts treated as taxed receipts***

1220. This section and the next two sections ensure that a tenant is entitled to relief under sections 287 to 295 by reference to an amount treated under section 34 or 35 of ICTA as a receipt of a Schedule A business, or an overseas property business, of a landlord liable to corporation tax in the same way as if the landlord was liable to income tax on an equivalent amount as a receipt of his or her property business under sections 277 to 282.
1221. This section adapts certain concepts used in sections 287 to 290 to give relief by reference to an amount taken into account for income tax purposes under sections 277 to 282 to give relief by reference to amounts treated as receipts under section 34 or 35 of ICTA for the purposes of corporation tax. The section is new.
1222. Section 37(1) of ICTA refers to an amount treated as a receipt of a Schedule A business under section 34 or 35 of ICTA, or which would be so treated other than for relief under section 37(2) or (3) of ICTA, as “the amount chargeable on the superior interest”. The “superior interest” is the interest in the property held by the tenant’s immediate landlord.
1223. **Paragraph 20** of Schedule 1 to this Act amends section 37(1) of ICTA by extending the definition of “the amount chargeable on the superior interest” to include any amount treated as a receipt of a property business under sections 277 to 282 of this Act, or which would be treated as such a receipt other than for relief under the additional calculation rule in section 288 of this Act.

### ***Section 297: Taking account of reductions in corporation tax receipts***

1224. This section is new. It ensures that any relief given for corporation tax purposes under section 37(2) or (3) of ICTA for an accounting period ending after 5 April 2005 to a tenant who is also a landlord by reference to:
- a receipt brought into account under this Chapter where the tenant's landlord is liable to income tax; or
  - a receipt brought into account under section 34 or 35 of ICTA where the tenant's landlord is liable to corporation tax,
- is taken into account in the same way as any relief under sections 287 to 290 of this Act.

*These notes refer to the Income Tax (Trading and Other Income)  
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

1225. *Subsections (1) and (2)* refer to a reduction under section 37(2) or (3) of ICTA in “the amount chargeable on the superior interest”. The amount chargeable on the superior interest here refers to an amount:

- treated as a receipt under section 34 or 35 of ICTA for any tax year; or
- treated as a receipt under this Chapter for an accounting period ending after 5 April 2005 as a result of the amendments to section 37(1) of ICTA made under paragraph 20 of Schedule 1 to this Act.

***Section 298: Taking account of deductions for rent as a result of section 37(4) or 87(2) of ICTA***

1226. This section is new. It ensures that any deduction for corporation tax purposes for rent which a tenant is deemed to pay under section 37(4) or 87(2) of ICTA for an accounting period ending after 5 April 2005 by reference to:

- a receipt brought into account by the landlord under this Chapter where the landlord is liable to income tax; or
- a receipt brought into account by the landlord under section 34 or 35 of ICTA where the landlord is liable to corporation tax,

is taken into account in the same way as any deduction for an expense incurred under sections 61 or 292 of this Act.

1227. *Subsections (3) and (4)* refer to amounts treated as rent under section 37(4) of ICTA by reference to “the amount chargeable on the superior interest”. The amount chargeable on the superior interest here refers to an amount:

- treated as a receipt under section 34 or 35 of ICTA for any tax year; or
- treated as a receipt under this Chapter for an accounting period ending after 5 April 2005 as a result of the amendments to section 37(1) of ICTA made under paragraph 20 of Schedule 1 to this Act.

***Section 299: Payment of tax by instalments***

1228. This section is based on section 34(8) of ICTA.

1229. Section 34(8) of ICTA entitles a taxpayer who receives an amount chargeable to tax under section 34 of ICTA in instalments to pay the tax chargeable by reference to that amount “by such instalments as the Board may allow...”. Section 832(1) of ICTA defines “the Board” as the Commissioners of Inland Revenue.

1230. This section instead attributes the power to determine the amount and timing of the instalments to “the Inland Revenue”. “The Inland Revenue” is defined in section 878(1) of this Act as “any officer of the Board of Inland Revenue”. See *Change 149* in Annex 1.

***Section 300: Statement of accuracy for purposes of section 282***

1231. This section is based on section 35(3) of ICTA.

1232. Section 35(3) of ICTA requires “the inspector” to certify the accuracy of a statement submitted to him or her showing the amount of a chargeable receipt (if any) on the assignment of a lease granted at undervalue if he or she is satisfied as to the statement’s accuracy. “Inspector” is defined in section 832(1) of ICTA as “any inspector of taxes”.

1233. This section provides instead for the statement to be submitted to, and certified by “the Inland Revenue”. “Inland Revenue” is defined in section 878(1) of this Act as “any officer of the Board of Inland Revenue”. See *Change 149* in Annex 1.

***Section 301: Claim for repayment of tax payable by virtue of section 284***

1234. This section provides that if a property is reconveyed on a date *other than* the date by reference to which tax was paid under section 284 of this Act, the seller must be repaid the difference between the tax paid and the tax which would have been due if the tax had been calculated on the basis of the actual date of reconveyance. It is based on section 36(2)(b) of ICTA.

***Section 302: Claim for repayment of tax payable by virtue of section 285***

1235. This section provides that if a lease is granted on a date *other than* the date by reference to which tax was paid under section 285 of this Act, the seller must be repaid the difference between the tax paid and the tax which would have been due if the tax had been calculated on the basis of the actual date on which the lease was granted. It is based on section 36(2)(b) and (3) of ICTA.

***Section 303: Rules for determining effective duration of lease***

1236. This section contains the rules for determining the effective duration of a lease. It is based on section 38(1) and (6) of ICTA.
1237. *Subsection (1)* sets out various circumstances in which a lease may be treated as ceasing other than on the date specified in the lease. Rules 1, 2 and 3 in subsection (1) are based on section 38(1)(a), (1)(b) and (1)(c) of ICTA respectively.

***Section 304: Applying the rules in section 303***

1238. This section is based on section 38(2), (3) and (4) of ICTA.
1239. Section 38(4) of ICTA refers to benefits conferred and payments made for the purposes of securing a tax advantage “in the application of this Part”. Section 38 of ICTA is in Part 2 of ICTA (provisions relating to the Schedule A charge), which consists of sections 21 to 43G of ICTA.
1240. Other than the lease premiums rules in sections 34 to 39 of ICTA, the sections of Part 2 of ICTA which are in force are sections 21 to 21C (calculation of the profits of a Schedule A business), section 24 (construction of Part 2), section 30 (sea walls), sections 31A and 31B (deductions for expenditure by landlords on energy-saving items), section 40 (receipts and outgoings on sale of land), section 42 (appeals against determinations under sections 34 to 36), section 42A (regulations about non-residents) and sections 43A to 43G (rent factoring).
1241. It is considered that the only tax advantage that could be secured in the context of section 38(4) of ICTA would be under sections 34 to 39 of ICTA. So *subsection (4)* refers instead to a tax advantage “in the application of this Chapter or sections 34 to 39 of ICTA”.

***Section 305: Information about effective duration of lease***

1242. This section is based on section 38(5) of ICTA.
1243. Section 38(5) of ICTA says that an inspector may issue a notice requiring a person having information relevant to ascertaining the duration of a lease to supply that information within a specified time. “Inspector” is defined in section 832(1) of ICTA as “any inspector of taxes”.
1244. This section provides instead for a notice to be issued by “the Inland Revenue”. “Inland Revenue” is defined in section 878(1) of this Act as “any officer of the Board of Inland Revenue”. See *Change 149* in Annex 1.

*These notes refer to the Income Tax (Trading and Other Income)  
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

***Section 306: Provisions about premiums***

1245. This section is based on section 24(2), (3) and (4) of ICTA. The definitions in section 24(2) to (4) of ICTA are rewritten in this Chapter as they apply only to the lease premiums rules.

***Section 307: Interpretation***

1246. This section is based on section 24(1), (4) and (5) of ICTA.

1247. *Subsection (1)* defines “premium” so as to include payments to a person “connected with” the landlord. “Connected person” is defined in section 839 of ICTA (see section 878(5) of this Act).