

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

Overview

1029. This Part charges “property income”. That is, income from land.
1030. This Part taxes income that is taxed under different Schedules and Cases in the source legislation. So it covers, for example, income from land in the United Kingdom and abroad as well as post-cessation receipts and certain charges arising from changes in the basis on which a taxpayer calculates property business profits.
1031. This reflects the rewrite approach of grouping charges which are logically part of the same “family”. In Part 3 the unifying factor is that all the charges are on amounts that are, ultimately, attributable to exploiting an interest in land.
1032. But although the charges that are, in the source legislation, distinct, are here grouped in one Part, they do not lose their identity for all purposes. Loss relief for example (not dealt with in this Act) requires them to be kept apart. For this reason the charge on “property income” has specific components (see the commentary on section 260).
1033. References to “profits or gains” in the source legislation which relate only to income are rewritten in this Part omitting the reference to “gains”. This continues the tidying up of such references started in section 46(3) of and Schedule 7 to FA 1998.

Chapter 1: Introduction

Section 260: Overview of Part 3

1034. This section is introductory. It is new.
1035. *Subsection (1)* sets out the components of “property income”.
1036. *Subsection (1)(a)* refers to the main component. That is income from land that is taxed in the source legislation under Schedule A if it is land in the United Kingdom and under Schedule D Case V if it is foreign land. Central to the charge is the concept of the “property business”. That is discussed in more detail in the commentary on sections 264 and 265.
1037. *Subsection (1)(e)* refers to post-cessation receipts of a UK property business. In the source legislation they are charged under Schedule D Case VI. This Act deals with the income where it logically belongs. In this case, the income is property income.

Section 261: Provisions which must be given priority over Part 3

1038. This section provides the rules to determine which Part takes priority in the event of any overlap of the charge on the profits of a trade and the charge on the profits of an overseas property business or the charge under Chapters 8 and 9 of this Part.
1039. It is based on section 18 of ICTA and section 65A(1) of ICTA as regards overlap between an overseas property business and a foreign trade. It gives statutory effect to the Crown Option as regards overlap between an overseas property business and a UK trade. See *Change 66* in Annex 1.
1040. It is based on the definitions of Schedule D Cases I and VI in section 18 of ICTA as regards overlap between a trade and the profits of a UK concern or the profits of a UK electric line wayleave. Case VI charges income that is not charged under any other case. So it is correct to give trading income (Case I in the source legislation) priority.

Section 262: Priority between Chapters within Part 3

1041. This section gives an order of priority between Chapter 3 and Chapters 8 and 9 of this Part of this Act and between Chapters 8 and 9. It is based on sections 119(1) and 120(1) of ICTA.
1042. *Subsection (3)* deals with income that falls within both Chapter 8 and Chapter 9 of this Part of this Act. See *Change 5* in Annex 1.

Chapter 2: Property businesses

Section 263: Introduction

1043. This section introduces the Chapter and provides a “road map” to the key provisions. It is new.
1044. [Chapter 2](#) sets out the key concepts underlying the main component of income within this Part of this Act by defining “property business” and “generating income from land”.

Section 264: UK property business

1045. This section defines “UK property business” and introduces the concept of “generating income from land”. It is based on section 15(1) of ICTA.
1046. It makes it clear that all the income from a person’s UK land interests is treated as falling within a single UK property business.
1047. The term “property business” is not entirely straightforward. The term used in the source legislation – “Schedule A business” – was introduced as part of the 1995 reform of Schedule A. That concept was helpful in providing a vessel to contain all the income from land previously charged under Schedule A and to which the rules for calculating trade profits could be applied. But the concept of a Schedule A business – and a UK property business – is rather more complex than that of a trade. That is reflected in this and the other sections that, together, define the range of income that is assessed as income of a property business.
1048. First, the income has to be defined by reference to land law. There are only limited possibilities for simplifying terms which have to link directly with the concepts and language of current land law.
1049. Second, the concept of the “property business” is, to a certain extent, an artificial one. Unlike the term “trade” it may not always correspond to an activity organised in a way that the proprietor would necessarily describe as a business. As such, the term has to cover:
- “real” businesses where the lettings are organised in a professional way;

- lettings which are not so organised; and
- casual and one-off transactions which may have very little of the qualities normally associated with a business.

Then all of these lettings of different types must be treated as part of the same, single business.

1050. Although the Chapter builds on the concept of the “business”, the approach to defining a “UK property business” differs from the approach in the source legislation. This Act uses the term “UK property business” rather than “Schedule A business”. Although the terms “UK property business” and “Schedule A business” are defined differently they have the same tax effect.
1051. Paragraph 1(1) of Schedule A (see section 15(1) of ICTA) provides for tax to be charged on “the annual profits arising from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom”. Under paragraph 1(2) of Schedule A, “to the extent that any transaction is entered into for [that purpose], it is taken to be entered into in the course of such a business”. Paragraph 1(3) of Schedule A treats all businesses and transactions carried on or entered into by a particular person, so far as they are carried on or entered into for that purpose, as together forming a single business for the purposes of Schedule A.
1052. Section 832(1) of ICTA provides:
- ““Schedule A business” means any business the profits or gains of which are chargeable to income tax under Schedule A, including the business in the course of which any transaction is by virtue of paragraph 1(2) of that Schedule to be treated as entered into.
1053. Each of the individual businesses carried on (or, by virtue of paragraph 1(2) of Schedule A, notionally carried on) for the purpose mentioned in Schedule A is thus a “Schedule A business”. Under paragraph 1(1) and (3) of Schedule A, the charge to tax is on the profits of the single notional business consisting of all the Schedule A businesses carried on by a single person. It is that notional business that is defined as the person’s “UK property business” in section 264.
1054. [Section 859](#) explains how the “one business per person” rule applies in the case of a business carried on (or a transaction entered into) in partnership.

Section 265: Overseas property business

1055. This section defines “overseas property business”. It is based on section 65A of ICTA.
1056. The definition is identical to that of “UK property business” except that the land from which the income arises is outside the United Kingdom. That is the only difference between a UK and an overseas property business: income from land outside the United Kingdom can arise only in an overseas property business; income from land in the United Kingdom can arise only in a UK property business.
1057. For the purpose of deciding whether there is an overseas property business, overseas land law is interpreted in accordance with section 363.
1058. The priority rules in the trading income Part of this Act (section 4) make it clear that a charge under Part 3 of this Act as United Kingdom property income has priority over a charge under Part 2 as trading income. This reflects the rule in Schedule D Case I (section 18(3) of ICTA). The sort of receipt to which this rule might apply is rent received by a property developer from the temporary letting of land awaiting development. The rent is taxed as property income, even if it could properly be regarded as a trade receipt.

1059. In the case of a foreign trade and foreign property, the rule in section 65A(1)(b) of ICTA is the reverse of that in section 18(3) of ICTA. An overseas property business does not include “income to which section 65(3) of ICTA applies (income immediately derived from carrying on a trade ...)”. So the priority rule in section 261 preserves this position.

Section 266: Meaning of “generating income from land”

1060. This section defines “generating income from land”. It is based on sections 15(1), 24 and 65A of ICTA.
1061. The section defines what may be described as the essence of the property business. That is, exploiting rights of land ownership for profit. But it is not intended to identify everything that must be taken into account in calculating the profits of such a business. The concept of the property business is wider than that. “Property business” includes, for example, amounts specifically charged under other provisions such as certain insurance recoveries (see section 106 applied by section 272(2)).
1062. *Subsection (1)* states the basic definition of “generating income from land”.
1063. *Subsection (2)* extends the meaning of “rent” and is based on section 24(6)(b) of ICTA. It applies to payments by tenants, whether made to the landlord or to someone else, in respect of maintenance or repair of the leased premises that the tenant is not required by the lease to carry out. Including this extension in the main section (in the source legislation it is relegated to a “construction” section) keeps all the relevant definitions together.
1064. *Subsection (3)* explains “other receipts” in subsection (1). This list is not exhaustive but amounts that are not listed here would have to be of a similar nature to those that are listed to come within the definition.
1065. *Subsection (4)* extends the charge to particular types of receipt. The source legislation cross-refers to a definition of “caravan” in the Caravan Sites and Control of Development Act 1960. There is an Act-wide, uniform definition of “caravan”: see the commentary on section 875 and *Change 148* in Annex 1.
1066. There is also a new Act-wide, uniform definition of “houseboat” which introduces changes in the law: see the commentary on section 878(1) and *Change 150* in Annex 1.

Section 267: Activities not for generating income from land

1067. This section excludes certain “land-related” income from property income and cross-refers to the trading income provisions under which that income is charged. It is based on sections 15(1) and 65A of ICTA.

Chapter 3: Profits of property businesses: basic rules

Section 268: Charge to tax on profits of a property business

1068. This section charges the profits of a property business to tax. It is based on sections 15 and 18 of ICTA.

Section 269: Territorial scope of charge to tax

1069. This section sets out the limitations on the charge to tax on a UK property business and an overseas property business. It is based on sections 18 and 65A of ICTA.
1070. *Subsection (1)* establishes that the profits of a UK property business are charged to tax whatever the residence status of the taxpayer.
1071. *Subsection (2)* establishes that the profits of an overseas property business are charged to tax only if the taxpayer is a UK resident.

1072. Income from an overseas property business is assessable under Schedule D Case V. So the charge to tax is subject to the territorial restriction in Schedule D. A non-resident person is taxable only on income from “property” in the United Kingdom (see paragraph (a)(iii) of Schedule D in section 18(1) of ICTA). So a non-resident is not charged to tax on the income from overseas property.
1073. *Subsection (3)* is the special rule for Irish income. It is based on section 68 of ICTA. Even if a person is entitled to the remittance basis for other foreign income Irish income is assessable on the basis of the income arising. But it is not clear how the rules in sections 65(4) and 68 of ICTA interact. This section makes it clear that the rules for an overseas property business are used in calculating the income from Irish property. See *Change 67* in Annex 1.
1074. *Subsection (4)* is a signpost to the special rule in Chapter 11 of Part 2 of this Act for the non-Irish foreign income of a person who is assessable on the remittance basis. The overseas property business rules in section 65A of ICTA are disapplied in the case of a remittance basis person by section 65(4) of ICTA.

Section 270: Income charged

1075. This section states the amount charged to tax. It is based on sections 21 and 65 of ICTA.
1076. The section refers simply to “profits” rather than “annual profits” used in the source legislation. Omitting “annual” is consistent with the approach adopted for trading and savings and investment income - the word adds nothing to the meaning of “profits”.

Section 271: Person liable

1077. This section states who is liable for any tax charged. It is based on sections 21 and 59 of ICTA.

Section 272: Profits of a property business: application of trading income rules

1078. This is the main rule for calculating the profits of a property business. It is based on sections 21A and 65A of ICTA.
1079. The same basic rules apply to the calculation of both UK and overseas property businesses.
1080. From 1995, the profits of a Schedule A business charged to income tax are calculated by treating the business as similar to a trade and applying the calculation rules of Schedule D Case I.
1081. In the source legislation this is achieved by section 21A of ICTA. But, at the margins, the application of certain of the Case I rules to Schedule A is not altogether clear.
1082. First, the relationship of section 21A(2) of ICTA to section 21A(1) of ICTA is uncertain. Section 21A(2) of ICTA refers to provisions that apply “in accordance” with section 21A(1). It is open to debate whether section 21A(2) of ICTA merely contains examples of the Schedule D Case I provisions that apply in accordance with the general rule in section 21A(1) of ICTA or whether it contains an exhaustive list of those provisions. The former appears the better view and the one best reflecting the underlying policy.
1083. Second, some Schedule D Case I provisions that are applied to Schedule A are inherently incapable of applying to income from land. The “herd basis” provisions in section 97 of and Schedule 5 to ICTA (rewritten in Chapter 8 of Part 2 of this Act) are an example. They are among the provisions of Chapter V of Part 4 of ICTA that are applied to Schedule A specifically (subject to stated exceptions) by section 21A(2) of ICTA. But they are not among the exceptions referred to in section 21A(4) of ICTA.

1084. On the other hand, some Schedule D Case I provisions outside Chapter V of Part 4 of ICTA that seem potentially more relevant, such as the car hire provisions in sections 578A and 578B of ICTA, are not applied specifically.
1085. [Section 272](#) clarifies these matters by listing all the sections in Part 2 of this Act that are relevant to property business profits.
1086. Some of the sections in Part 2 of this Act that are applied to a property business contain rewrite changes. Those changes are carried through to property income. Details of those changes are recorded in the Annex 1 notes on the particular sections in Part 2 of this Act.
1087. *Subsection (1)* states the general principle that the profits of a property business are calculated in the same way as the profits of a trade. This reflects the fact that there are provisions not included in Part 2 of this Act which may affect the calculation of profits. For example, the pension contributions deductions provisions in FA 2004 and certain anti-avoidance provisions in ICTA that apply to all income types.
1088. *Subsection (2)* lists all the sections in Part 2 of this Act that are relevant to property business income. It reflects the principle that section 21A(1) of ICTA applies all Schedule D Case I calculation provisions to Schedule A unless they are expressly disapplied elsewhere. Provisions that are expressly disapplied in the source legislation are excluded from the list.
1089. Also excluded are provisions which are attracted to Schedule A in the source legislation either expressly by section 21A(2) of ICTA or under the general principle expressed in section 21A(1) of ICTA, but which are incapable of applying once carried over to the context of the property business. Exclusion is achieved simply by omitting them from the list of provisions that do apply.
1090. The majority of the provisions in Part 2 of this Act that can apply to a property business are applied by subsection (2). But in some cases later sections set out the provisions specifically (Chapter 7 (adjustment income) and Chapter 10 (post-cessation receipts)).
1091. The following sections that are applied by subsection (2) merit specific mention. These are:
- sections 48 to 50: expenses of car hire;
 - sections 188 to 191: deduction for unremittable amounts.
1092. Including these accurately reflects the effect of section 21A(1) of ICTA.
1093. Although the list in subsection (2) excludes sections in Part 2 of this Act that are inherently incapable of applying to a property business it does not exclude those that are merely unlikely to apply. This recognises the possibility of certain provisions applying in unusual circumstances. Examples are section 87 and section 88 (scientific research). Although their relevance to a property business is unlikely, it is not inconceivable and they are needed to cater for the possibility of a landlord funding an activity that would qualify as “scientific research”. An example might be research on the decontamination of brown land with a view to building an investment property on it.
1094. *Subsection (3)* ensures that the trading income provisions cross-referred to in subsection (2) work properly in the context of the property business.

Section 273: Amounts not brought into account as part of a property business

1095. This section excludes from the profits of a property business certain income from land that, exceptionally, may be taxed as profits of a trade. It is based on sections 15 and 65A of ICTA.
1096. *Subsection (1)* signposts to the relevant provisions.
- See *Change 3* in Annex 1 in respect of caravans.

- See *Change 4* in Annex 1 in respect of surplus business accommodation.
- See *Change 5* in Annex 1 in respect of payments for wayleaves.

Section 274: Relationship between rules restricting and permitting deductions

1097. This section determines the interaction between those provisions that allow a deduction and those provisions that prohibit a deduction. It is new. See *Change 6* in Annex 1.
1098. This section does a similar job in the property income Part to that which section 31 does in the trading income Part. The general principle is that a rule allowing a deduction takes priority over a rule prohibiting a deduction. But that is subject to the exceptions the section mentions.
1099. *Subsection (4)* makes it clear that the effect of this priority rule extends to the large number of trading income rules that apply to property income indirectly through section 272.

Section 275: Apportionment of profits to tax year

1100. This section deals with cases where the period of account does not coincide with a tax year. It is based on sections 21A, 72 and 65A of ICTA.
1101. This section is necessary because the charge under section 270 is on the property business profits arising in the *tax year*.
1102. In the source legislation section 72 of ICTA is one of the provisions applied to Schedule A specifically by section 21A(2) of ICTA. Section 72 of ICTA is rewritten for trade profits in section 203. But simple cross-reference to that trading income section would not work very well for property income because that section is drafted in terms of basis periods and basis periods are not relevant to property income. So section 275 is a specific property income version.
1103. *Subsection (4)* adopts the approach of section 203(4) in permitting an alternative basis of apportionment if its use is reasonable and consistent. See *Change 52* in Annex 1. The wording of subsection (4) makes it clear that the option to choose an alternative basis of apportionment is exercisable only by the taxpayer, not the Inland Revenue.

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.
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:
- 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.
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.

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).

Chapter 5: Profits of property businesses: other rules about receipts and deductions

Overview

1248. This Chapter contains provisions that supplement the basic calculation rules in Chapter 3 of this Part of the Act.
1249. The provisions in this Chapter are about particular receipts or more unusual circumstances.

Section 308: Furnished lettings

1250. This section brings the “letting” of furniture, when it is part and parcel of the letting of accommodation, within the property income charge. It is based on sections 15 and 65A of ICTA.
1251. Without this provision, rent paid for use of the furniture in furnished lettings would not be included in the property income charge because the “rent” for the furniture does not derive from land.
1252. The purpose of *subsection (1)(b)* is to make it clear that related revenue expenses such as the expenses of repair and insurance of the furniture are deductible in calculating the profits of the property business.
1253. *Subsection (2)* excludes income and expenses where the hiring of the furniture is not simply incidental to exploiting an interest in land.
1254. *Subsection (4)* refers to a “caravan and a houseboat”. There is a new Act-wide, uniform definition of “caravan”: see the commentary on section 875 and *Change 148* in Annex 1.
1255. There is also a new Act-wide, uniform definition of “houseboat”: see the commentary on section 878(1) and *Change 150* in Annex 1.

Section 309: Rent-a-room relief

1256. This section modifies the normal profit calculation rules in Part 3 of this Act when a property business consists of, or includes, rent-a-room lettings as defined in Chapter 1 of Part 7 of this Act. It is new.
1257. When the lettings meet the conditions for rent-a-room relief in Part 7 of this Act the income from these lettings may, depending on the total amount, either be exempt from tax or subject to a special calculation rule. This section ensures that the rent-a-room rules take priority over the usual calculation rules in the property income Part.

Section 310: Acquisition of business: receipts from transferor's UK property business

1258. This section taxes certain receipts when a continuing UK property business is transferred from one person to another along with the right to receive future business sums to which the transferor is entitled. It is based on sections 21B and 106 of ICTA.
1259. *Subsection (1)* sets out the circumstances in which the section applies and states the three conditions necessary for it to apply.
1260. *Subsection (2)* treats the “sum” received as a receipt of the property business. As this rule affects the calculation of the profits of a property business it appears in this Chapter rather than with the post-cessation receipt rules of which, in the source legislation, it forms part.
1261. The source legislation applies “for all purposes”. This section applies for income tax purposes. Section 106(2) of ICTA (as amended by paragraph 85 of Schedule 1 to this Act) applies for corporation tax purposes. Section 37(1) of TCGA ensures that any sums received as a result of the transfer are not charged to capital gains tax.
1262. *Subsection (3)* makes it clear that these sums are not post-cessation receipts.

Section 311: Reverse premiums

1263. This section sets out the rules for taxing reverse premiums as receipts of a property business. It is based on Schedule 6 to FA 1999.
1264. *Subsection (1)* refers to a “reverse premium”. In accordance with *subsection (6)* that expression has the same meaning as in section 99. So this section applies to reverse premiums excluding any of the “excluded cases” within section 100. The subsection also excludes any reverse premium that is charged to tax as a trade receipt by section 101.
1265. *Subsections (2) and (3)* bring the reverse premium within the scope of the property income rules. The subsections treat the recipient as entering into a transaction for generating income from land (see sections 264 and 265). So, even if the recipient is not already carrying on a property business, the reverse premium is treated as a receipt of a property business.
1266. If a property business is deemed to be carried on, it is a UK property business if the land is in the United Kingdom or an overseas property business if the land is outside the United Kingdom. So the territorial restrictions on the scope of the charge in section 269 for non-resident or remittance basis persons may apply.
1267. *Paragraph 72* of Schedule 2 to this Act rewrites the transitional provision in section 54(2) of FA 1999. These sections do not apply to pre-1999 reverse premiums.

Section 312: Deduction for expenditure on energy saving items

1268. This section provides a deduction for certain expenditure on energy saving items where that expenditure would not otherwise be allowable because it is capital. It is the first of three sections that are based on sections 31A and 31B of ICTA.
1269. The source legislation is a closely targeted relieving provision that provides for a deduction for specified energy-saving items installed in let residential property. It applies to all income tax payers including:
- non-resident companies liable to income tax;
 - those with lettings of overseas property, the income from which is charged in the source legislation under Schedule D, Case V; and
 - income tax paying members of partnerships.
1270. But it is not available in respect of “rent-a-room” properties or furnished holiday lettings (see Part 7 of this Act).
1271. *Subsection (1)* sets out the basic conditions. *Subparagraph (a)* makes it clear that relief is available only against property business income in respect of a let dwelling house. “Dwelling house” is not a defined term so it takes its ordinary meaning.
1272. *Subsection (1)(c)* states the date by which the expenditure must be incurred. Expenditure incurred before that date (and on or after 6 April 2004) is deductible in what is the appropriate period of account on normal accountancy principles.
1273. *Subsection (1)(d)* states the essence of the relief: it is for expenditure that is incurred wholly and exclusively for the purposes of the property business but which would not otherwise be allowable because it is capital expenditure.
1274. *Subsection (2)* provides for the deduction and in so doing introduces a change. In the source legislation the relief is given only when a formal claim is made. Section 312 provides for the relief as a simple deduction in calculating the profits of the property business that includes the dwelling house in question. See *Change 74* in Annex 1.
1275. *Subsection (4)* allows an apportionment of the expenditure where only part of it, for whatever reason, falls within the scope of the relief. Examples are when only a part of a single amount of capital expenditure is incurred on qualifying energy saving items or when part of the otherwise qualifying capital expenditure is incurred on a let building other than a dwelling house.

Section 313: Restrictions on relief

1276. This section imposes certain restrictions on the relief that would otherwise be due under section 312. It is based on sections 31A and 31B of ICTA.
1277. *Subsection (2)* prevents relief when the expenditure is simply part of the build cost of a new property or the purchase price of an acquired one.
1278. *Subsection (3)* prevents relief in respect of let property that is within Chapter 6 of Part 3 of this Act (commercial letting of furnished holiday accommodation). It makes explicit two aspects that are only implicit in section 31A(11) of ICTA.
1279. The first is that section 31A(11) of ICTA excludes any properties (a) that meet the definition of “commercial letting of furnished holiday accommodation” in section 504 of ICTA and (b) could therefore benefit from the concessions that section 503 of ICTA offers even if they do not, in fact, do so.
1280. The second is that it makes clear the duration of the exclusion. The purpose of the source legislation is to prevent people getting the relief if they are using the property for furnished holiday lettings. A property falls within section 504(4) of ICTA for a year

of assessment. Because of the stringency of the conditions in section 504 of ICTA the property can drop in and out of qualifying section 504 of ICTA status from one year to the next. The restriction on relief under these provisions is intended to apply only if the expenditure is incurred in a year of assessment for which the property is within section 504 of ICTA (as described in the previous paragraph) and only for that or those years. So section 313(3) refers specifically to “the tax year”.

- 1281. *Subsection (4)* makes it clear that the relief cannot apply when rent-a-room relief is given (see Chapter 1 of Part 7 of this Act). This prohibition does not apply however if neither form of rent-a-room relief is, in fact, taken.
- 1282. *Subsection (5)* adapts the general preliminary expenditure deduction rules to the specific circumstances of this relief: the expenditure window is reduced to prevent claims in respect of past expenditure when the dwelling may have been the landlord’s own home and it is later let.

Section 314: Regulations

- 1283. This section provides for the Treasury’s powers to make regulations for the purposes stated. It is based on section 31A(13) of ICTA.
- 1284. The relief applies potentially to all income tax payers, including those non-resident companies liable to income tax. *Subsection (2)* reflects, among other things, the fact that it is not available to companies in respect of their liability to corporation tax.

Section 315: Deduction for expenditure on sea walls

- 1285. This is the first of four sections that provide relief to a landlord for expenditure on making a sea wall or other embankment to protect let premises against flooding by the sea or a tidal river. They are based on section 30 of ICTA.
- 1286. **Section 315** states the circumstances under which the relief is given. It is based on sections 30 and 65A of ICTA.
- 1287. *Subsection (1)(b)* states the subject of the relief. Repair and maintenance of an existing sea wall normally qualify for relief as revenue expenses of a property business but the making of a new wall is capital expenditure and would not qualify for relief without special provision.
- 1288. *Subsection (2)* makes it clear that to obtain a deduction for seawalls expenditure, the person carrying on the property business and the person incurring the seawalls expenditure must be the same person. This may appear to be stating the obvious but section 30(1) of ICTA says merely that the person incurring the expenditure is treated as making a payment “for the purpose of computing the profits of *any* Schedule A business carried on in relation to those premises” (emphasis added). This cannot be taken literally to mean any such business carried on by someone other than the person incurring the expenditure. There would be no point in deeming the payment to be made by that person if it were otherwise. And the provisions on transfer of interests in section 30(2) and (3) of ICTA reflect the notion that the deemed payment, and hence the right to relief, moves from the former owner to the transferee. There is no suggestion of involvement by any other party.
- 1289. *Subsection (3)* defines the “deduction period” referred to in subsection (2). Qualifying expenditure is deducted over 21 years in calculating the profits of the property business. The “deduction period” is comparable to the “writing-down period” over which expenditure qualifying for capital allowances is written off. This reflects the similarity between the relief given by the sea walls provisions and certain capital allowances provisions. The relief is for expenditure which would otherwise be capital in nature. And the expenditure is not relieved all at once but over a period, even if there are changes in the person who obtains the relief.

Section 316: Transfer of interest in premises

1290. This section deals with the case where the person who incurred the sea walls expenditure sells the premises during the 21 year period over which the deduction is due. It is based on section 30(2) and 30(3) of ICTA.
1291. *Subsection (1)* applies to transfers of the relevant interest “whether by operation of law or otherwise”. These words derive directly from the source legislation. They ensure that the provision applies to, for example, successions to estates as well as the sort of merger of interests envisaged in section 317.
1292. *Subsection (2)(b)* requires any apportionment to be “just and reasonable” whereas section 30(2)(a) of ICTA refers simply to an apportionment that is “just”. This change reflects the approach that was adopted in CAA and which has been followed in similar contexts elsewhere for consistency. There is no practical difference between the two forms of words. See *Change 14* in Annex 1.
1293. *Subsection (5)* makes explicit what is merely implicit in the source legislation, namely, the extent of the transferor’s entitlement to a deduction in subsequent years. In particular, subsection (5)(a) makes it clear that if the transfer is of only part of the premises, the transferor continues to be entitled to a deduction in relation to the part not transferred.

Section 317: Ending of lease of premises

1294. This section deals with the case where the sea walls expenditure is incurred by a lessee and the lease comes to an end before the end of the deduction period. It is based on section 30(3) of ICTA.
1295. The cases to which *subsection (3)* applies include renewals of the lease to the same person. Then the deduction passes to the immediate reversioner.
1296. In the source legislation “lease” is defined for the purposes of the sea walls provisions in section 24(6)(a) of ICTA. But that definition is redundant and, since it no longer applies to any other provisions, is not rewritten in this Act. It is redundant in the sea walls context for the following reasons.
1297. Section 24(6)(a) of ICTA defines references to a lease as extending only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises. It originated as paragraph 16 of Schedule 4 to FA 1963. Notes on Clauses to FA 1963 explain that the reference to possession was to ensure that a “lease” in Schedule A and sections 25 to 31 of ICTA must be one of land and not of incorporeal hereditament. So a lease of sporting rights, or a right of way, would not be covered. However, *Street v Mountford* [1985], AC 809 established that a “lease” of land which does not confer on the tenant exclusive possession is not, in fact, a lease but a licence.
1298. Section 30(2) of ICTA does not explain the meaning of the transfer of the whole of a person’s interest in any premises or part of any premises. The transfer of the whole of a person’s interest is significant because it can lead to the transfer of entitlement to a deduction for sea walls expenditure. But entitlement to a deduction for sea walls expenditure does not arise anyway unless a person is the owner or tenant of premises. A lease which makes a person a tenant of premises is not a lease of an incorporeal hereditament. So, although section 30 of ICTA does not expressly exclude leases of incorporeal hereditaments, to the extent that they might cover leases of incorporeal hereditaments references to “leases” in that provision are simply redundant.

Section 318: Transfer involving company within the charge to corporation tax

1299. This section ensures that entitlement to a deduction for expenditure on seawalls continues properly when the interest in the premises is transferred between an income tax payer and a corporation tax payer. It is based on section 30(2) of ICTA.
1300. Entitlement to a deduction for expenditure on seawalls can be transferred with ownership of the premises. That transfer can be between an income tax payer and a corporation tax payer. Section 316 deals with transfers between income tax payers. But it cannot deal with a transfer from a corporation tax payer to an income tax payer or the reverse because the provisions in this Act apply only to income tax payers.
1301. **Section 318** allows the seawalls provisions in this Act to work properly in respect of the party to the transfer who is subject to income tax.
1302. *Subsection (4)* signposts the reader to the source provision in ICTA that deals with the party to the transfer who is subject to corporation tax.

Section 319: Relief in respect of mineral royalties

1303. This section provides that only half the net profits received in respect of mineral royalties are charged to income tax. It is based on section 122 of ICTA. The other half of the profits are charged to capital gains tax by section 201 of TCGA.
1304. The section applies only to mineral royalties that are not taxed under Chapter 8 of this Part of the Act. That Chapter taxes rents and royalties from concerns such as mines and quarries. In practice nearly all mineral royalties will be taxed under Chapter 8 of Part 3 of this Act. For this reason this section cross-refers to the definitions in that Chapter.

Section 320: Nature of item apportioned on sale of estate or interest in land

1305. This section preserves the capital or revenue nature of an amount due, or payable in arrears, apportioned to a seller on the sale of land. It is based on section 40(3)(b) of ICTA.
1306. Most of section 40 of ICTA is not rewritten because it has become redundant following the application of Schedule D Case I principles to Schedule A.
1307. The original predecessor of section 40 of ICTA (section 20 of FA 1964) was introduced to deal with a specific problem. That was reflecting, in the calculation of income from land, any apportionments of rent (as a receipt or an expense) that took place between seller and purchaser when land was sold. That required two kinds of rule. The first were calculation rules. They were necessary because at the time section 20 of FA 1964 was introduced the charge on income from land was based on *entitlement* to incoming rent and *payment* of outgoing rent. Where there were apportionments on sale there might be neither entitlement nor payment by the “right” person. The second were timing rules to ensure that the consequential adjustments fell in the right tax year.
1308. As a result of the 1995 Schedule A reforms these rules are no longer necessary. Two main factors lead to this conclusion.
1309. The first relates to the object of charge under Schedule A: the profit of a Schedule A business. For there to be a Schedule A business a person has to be exploiting United Kingdom land for rent (section 15(1)(1) of ICTA). In order to be a receipt (or outgoing) of the Schedule A business it is enough that an amount relates to a period when the person was exploiting the land.
1310. The second factor relates to the time when income within the charge is brought into account. The accruals principle of accounting has been imported from Schedule D Case I into Schedule A. The accruals principle brings an item into account in the period to which it relates. So the rules in section 40(1) to (3) of ICTA about the time of receipt and payment are unnecessary.

- 1311. Section 40(4) of ICTA is similarly now unnecessary. It provides that any reference in section 40(1) and (2) of ICTA to a party to a contract includes a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise. Since the test of whether or not an item is to be brought into account under Schedule A is whether it arises from a person's exploitation of land then whether the rights and obligations under the contract pass by assignment or otherwise, the person to whom they pass will be the person exploiting the land.
- 1312. Section 40(4A) of ICTA is not rewritten. It is linked to the parts of section 40 of ICTA that are unnecessary and also gives in certain circumstances the wrong result.
- 1313. Section 40(3)(b) of ICTA has a clear anti-avoidance purpose that is preserved in section 320. But it also contains a timing rule. The timing rule in section 40(3)(b) of ICTA is not rewritten because the accruals principle again attributes the apportioned amount to the correct period.
- 1314. [Section 320](#) rewrites the anti-avoidance part of section 40(3)(b) of ICTA which preserves the capital or revenue nature of any amount due or paid in arrears and apportioned by the buyer to the seller on the sale of land.
- 1315. This rule was originally introduced to deal with the common (at the time) practice whereby, under normal conditions of sale, that part of any rent paid in arrears, apportioned to the seller and to be paid to him or her by the purchaser, was adjusted by means of an addition to the sale price. As capital gains tax did not exist the apportioned rent taken as increased sale price escaped tax altogether.
- 1316. Capital gains tax now takes away much of the incentive to deal with rent in this way. But this rule may still serve a useful deterrent purpose and needs to be preserved.
- 1317. The time of apportionment referred to in the section is normally the time of completion of the sale.

[Section 321: Mutual business](#)

- 1318. This section makes it clear that the concept of "mutuality" does not apply in the property income context. It is based on section 21C of ICTA.
- 1319. Mutuality is a concept that has been developed by the courts over a long period. It derives from the principle that one cannot make a profit out of oneself. It may arise in the trading context where a class of contributors to a common fund are entitled, as a class, to share in the surpluses of that fund.
- 1320. The approach in section 321 is different from that in section 21C of ICTA and simpler. The approach in section 21C of ICTA is to apply the normal profit calculation rules to any "mutual business" and add the result to the profits of the rest of the Schedule A business. Section 321 on the other hand prevents, from the outset, the concept of mutuality operating on amounts within Part 3 of this Act.

[Chapter 6: Commercial letting of furnished holiday accommodation](#)

Overview

- 1321. The sections in this Chapter define the lettings that can qualify for special tax advantages: "the commercial letting of furnished holiday accommodation". They are based on section 504 of ICTA.
- 1322. The sections do not themselves provide the tax advantages. That is the function of the particular "relieving" provisions (such as the loss relief provisions) that are cross-referred to.

1323. The primary purpose of this Chapter is to provide a central definition of this particular type of letting, income from which benefits from tax advantages provided for in other Acts.
1324. The location of these sections in a separate Chapter of Part 3 of this Act reflects detailed consideration of the concept of “the commercial letting of furnished holiday accommodation” in the source legislation.
1325. When the provisions which were the predecessors of what are now sections 503 and 504 of ICTA were first introduced they were complete and free-standing in a way which is no longer the case. That is, at that time they:
- imported a then very valuable “use trade profits calculation rules” principle; and
 - set out the full range of the “trading” treatment that lettings qualifying as the commercial letting of furnished holiday accommodation enjoyed, including the equally valuable capital gains tax reliefs.
1326. Since then however the practical significance of sections 503 and 504 of ICTA has been progressively eroded by changes elsewhere:
- all property letting now attracts most trade profits calculation rules anyway; and
 - the detail of the main benefits of furnished holiday letting status is set out elsewhere (in the capital allowances and capital gains tax provisions).
1327. Section 504 of ICTA merely defines the commercial letting of furnished holiday accommodation for the purposes of particular rules, the detail of which is set out elsewhere. And section 503 of ICTA refers only to what might be considered rather less significant advantages: trade-type loss relief and the treatment of profits as earned income and “relevant earnings” for pension etc relief.
1328. Where best to locate the definition of “commercial letting of furnished holiday accommodation” was therefore carefully considered. The conclusion was that readers will intuitively expect to find the central definition of a particular type of letting with the property income rules. And that is so even if the tax advantages are not prescribed in the same place. So it is located in Part 3 of this Act.
1329. This income remains part of the single property business in section 264 and chargeable therefore under this Part.

Section 322: Introduction

1330. This section is introductory and explanatory. It is new. It makes clear that the provisions that provide for the tax advantages are to be found elsewhere.
1331. *Subsection (2)(f)* refers to “relevant earnings”. There are transitional rules in paragraphs 74 and 75 of Schedule 2 to this Act which ensures that the ICTA rules about “relevant earnings” apply until 5 April 2006.

Section 323: Meaning of “commercial letting of furnished holiday accommodation”

1332. This section defines the lettings that can benefit from the special tax treatment. It is based on section 504 of ICTA.
1333. It is not sufficient that the letting is simply of furnished holiday accommodation: it must also be “qualifying holiday accommodation”. *Subsection (3)(b)* signposts to the sections that define “qualifying holiday accommodation”.

Section 324: Meaning of “relevant period” in sections 325 and 326

1334. This section defines the period during which certain conditions need to be satisfied in order to benefit from the special tax treatment. It is based on section 504(4) of ICTA.

- 1335. *Subsection (1)* introduces the concept of “the relevant period”.
- 1336. *Subsection (2)* gives the rule for identifying the relevant period for the tax year in which the letting (as furnished accommodation) begins.
- 1337. *Subsection (3)* gives the rule for identifying the relevant period for the tax year in which the letting (as furnished accommodation) ends.
- 1338. *Subsection (4)* gives the general rule and identifies the relevant period as the tax year for the case where there is established and continuing letting. It follows the source legislation (in section 504(4)(c) of ICTA) by putting the general rule covering what is likely to be the most common case, last. This is because a person still needs to read the first two rules to know whether he or she falls within the general rule.
- 1339. Subsection (4) defines the “relevant period” by reference to the tax year for non-resident companies liable to income tax in respect of furnished holiday accommodation. See *Change 75* in Annex 1.

Section 325: Meaning of “qualifying holiday accommodation”

- 1340. This section sets out the additional tests the letting must satisfy to qualify for the special treatment. It is based on section 504(3) and section 504(4) of ICTA.
- 1341. Subsection 504(3) of ICTA is particularly complex. The three tests it imposes in paragraphs (a) to (c) are referred to in this section as, respectively, the “availability”, “letting” and “pattern of occupation” conditions. If all three are met, the accommodation is “qualifying holiday accommodation”.
- 1342. *Subsection (1)* introduces the term “qualifying holiday accommodation” and defines it by reference to the three conditions that are set out in the subsequent subsections.
- 1343. *Subsections (4) to (6)* are based on section 504(3)(c) of ICTA. Section 504(3)(c) of ICTA is particularly ambiguous and this section seeks to reduce that ambiguity. The approach is different from that in the source legislation and involves a change. See *Change 76* in Annex 1.

Section 326: Under-used holiday accommodation: averaging elections

- 1344. This section allows accommodation that would be “qualifying holiday accommodation”, were it not simply for insufficient actual letting, nevertheless to qualify if, *on average*, the letting condition in section 325(3) is met. It is based on section 504(6) to (8) of ICTA.
- 1345. *Subsection (1)* introduces a new term to denote this accommodation: “under-used accommodation”.
- 1346. *Subsection (4)* introduces a change. This changes the period over which lettings are averaged for the purpose of treating infrequently let property as qualifying holiday accommodation from the tax year to the relevant period (as defined in section 324). See *Change 77* in Annex 1.
- 1347. *Subsection (5)* prevents the same accommodation from being used more than once in an averaging calculation.
- 1348. *Subsection (6)* reflects the rewrite approach to aligning time limits with the Self Assessment cycle.

Section 327: Capital allowances and loss relief

- 1349. This is the first of two sections that provide for separate calculations in order to give effect to the tax advantages of qualifying holiday lettings. It is new.

1350. There is no explicit requirement for separate furnished holiday lettings calculations in section 503 of ICTA. But it is clearly not possible to give effect to the special income tax treatments available to furnished holiday lettings without separating out the relevant income and expenditure. Requiring, where appropriate, separate calculations makes explicit what is only implicit in section 503 of ICTA. Section 327 and section 328 provide a mechanism to ensure that the special rules that can give tax advantages in respect of these lettings work properly and clearly in the context of a UK property business of which the furnished holiday lettings is part: the profit from such lettings must be identified separately but only when there is a practical need to do so.

Section 328: Earned income and relevant UK earnings for pension purposes

1351. This is the second of two sections that provide for separate calculations to give effect to the tax advantages of qualifying holiday lettings. It is new.

Chapter 7: Adjustment income

Overview

1352. This Chapter applies the rules about a change of basis to property businesses, broadly as those rules apply to trades. The main rules for trades are in Chapter 17 of Part 2 of this Act.
1353. Section 21A of ICTA provides that “the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D”. And section 21B of ICTA specifically applies the rules for change of accounting basis in FA 1998.
1354. The rules in Schedule 22 to FA 2002 apply to property businesses because they have effect “in place of” the 1998 rules (see section 64(6) of FA 2002), even though the necessary textual amendment to section 21B of ICTA was overlooked.
1355. So the change of basis rules apply to a Schedule A business.
1356. Section 65A(5) of ICTA provides that “the income from an overseas property business shall be computed ... in accordance with the rules applicable to the computation of the profits of a Schedule A business”.
1357. Although the change of basis rules apply to a Schedule A business, they do so by virtue of section 21B of ICTA. That section deals with “other rules applicable to Case I of Schedule D”. On the other hand, section 21A of ICTA deals with rules about the computation of profits of a trade. So section 65A of ICTA imports only the computation rules in section 21A and the change of basis rules do not apply to an overseas property business.
1358. The following trading income rules (in Chapter 17 of Part 2 of this Act) cannot apply to a property business. So there is no corresponding rule in this Chapter:
- Section 226: Professions and vocations;
 - Sections 236 and 237: Change from realisation basis to mark to market (A property business cannot hold assets that are valued on a mark to market basis.);
 - Sections 238 and 239: Barristers and advocates; and
 - Section 240: Liability of personal representatives if person liable dies. (This section applies if an adjustment income charge is spread: none of the spreading rules applies to a property business.)
1359. The following trading income rules apply to property businesses but are not in separate sections in this Chapter:

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

- Section 231: Calculation of the adjustment; (This rule is applied by section 330(1).)
- Section 234: No adjustment for certain expenses previously brought into account; (This rule is applied by section 330(4).)
- Section 235: Cases where adjustment not required until assets realised or written off. (A property business cannot have trading stock or work in progress; the rule about depreciation is in sections 333 (2) and 334(2).)

Section 329: Application of Chapter

1360. This section sets out the circumstances in which an adjustment may arise. It is based on section 64 of FA 2002. The equivalent rule for trades is in section 227.

Section 330: Adjustment income and adjustment expense

1361. This section sets out how to calculate an adjustment and how it is treated for tax purposes. It is based on paragraphs 2, 4, 5 and 6 of Schedule 22 to FA 2002.
1362. *Subsection (4)* is a cross-reference to the trading income rule about expenses for which a deduction has already been made.

Section 331: Income charged

1363. This section sets out the amount charged to tax. In FA 2002 the charge is under Schedule D Case VI. So section 69 of ICTA applies.

Section 332: Person liable

1364. This section states who is liable for any tax charged. In FA 2002 the charge is under Schedule D Case VI. So section 59(1) of ICTA applies.

Section 333: Treatment of adjustment income

1365. This section sets out the rules for the treatment of adjustment income. It is based on paragraphs 4(2) and 7 of Schedule 22 to FA 2002.
1366. *Subsection (3)* treats the income as property income for the purpose of loss relief. So any losses of the property business brought forward can be set against the income.

Section 334: Treatment of adjustment expense

1367. This section sets out the rules for the treatment of a negative adjustment. It is based on paragraphs 5 and 7 of Schedule 22 to FA 2002.

Chapter 8: Rent receivable in connection with a UK section 12(4) concern

Overview

1368. This Chapter charges as property income rent receivable in connection with a section 12(4) concern. It also provides for certain deductions and reliefs to be given from that income.

Section 335: Charge to tax on rent receivable in connection with a UK section 12(4) concern

1369. This section charges rent receivable in connection with a UK section 12(4) concern to tax. It is based on section 119(1) of ICTA.
1370. The loss regime in section 392 of ICTA applies to income charged under this Chapter and not the regime in sections 379A and 379B of ICTA.

1371. The charge under Schedule D Case III imposed by section 119(2) of ICTA is not rewritten.
1372. Section 119(2) of ICTA provides for the rent to be taxed under Schedule D Case III if the rent is paid in produce of the concern. If section 119(2) of ICTA does not apply the rent is charged under Schedule D Case VI.
1373. When section 119 of ICTA was introduced as section 34 of FA 1934 the lessee was required to deduct income tax when paying rent to the lessor. This was achieved by treating the rent as a royalty paid in respect of the user of a patent. But it would be impractical to deduct income tax if the rent were paid in kind. So what is now section 119(2) of ICTA charged rent paid in kind under Schedule D Case III. This avoided the requirement to deduct income tax because these rents are not a category of income from which tax is deducted.
1374. Since the requirement to deduct income tax from rents taxable under section 119 of ICTA was repealed by FA 1995 a separate charge on rents paid in kind is no longer required.

Section 336: Meaning of “rent receivable in connection with a UK section 12(4) concern”.

1375. This section clarifies:
- what is meant by “UK section 12(4) concern”;
 - what is meant by “rent”; and
 - when rent is treated as “receivable in connection with” such a concern.
1376. It is based on section 119(1) and (3) of ICTA.
1377. *Subsection (1)* identifies when rent is receivable in connection with a section 12(4) concern. It uses the language of section 266(1) (meaning of “generating income from land”) to rewrite the phrase “in respect of any land or easement” in section 119(1) of ICTA. Section 266 is based on paragraph 1(1) of Schedule A (section 15(1) of ICTA). That provision identifies the scope of Schedule A. The approach in section 336 assumes that the income taxed by section 119 of ICTA would otherwise be taxed under Schedule A.
1378. The justification for this assumption is that section 119 of ICTA can have no application to income that is already taxed under Schedule D Case VI. Neither is there any question that the rent would go untaxed if it were not for section 119 of ICTA. Rents are clearly annual profits or gains as described in Schedule D Case VI of ICTA. The effect of section 119 of ICTA is to take income that would be taxed under Schedule A and tax it under Schedule D. So in identifying the scope of the charge it is possible to use the ordinary property business definitions and avoid the need to rewrite the complicated definitions of “easement” and “rent” in section 119(3) of ICTA.
1379. The section makes explicit a territorial restriction to the United Kingdom that is implicit in section 119(1) of ICTA. If a section 12(4) concern is located outside the United Kingdom it would be a foreign possession for the purposes of the charge under Schedule D Case V. Any income arising from such a possession would be taxed under Schedule D Case V. Section 119 of ICTA can have no application to income that is already taxed under Schedule D.
1380. *Subsection (2)* provides that the section applies also to “dead rents”. It is based on section 119(1)(b) of ICTA.
1381. A “dead rent” is usually paid only for the lease of mineral rights. It is a flat rent that is payable whether the minerals are worked or not. The rent is recoverable from the

rent due when the minerals are worked. It acts as an economic incentive to work the minerals.

1382. *Subsection (3)* provides the definition of rent. It is based on section 119(3) of ICTA. As explained in the commentary on subsection (1), this section is based on the assumption that the rents taxed by section 119 of ICTA would otherwise be taxed under Schedule A. This means it is not necessary to reproduce the definition of “rent” in section 119(3) of ICTA.

Section 337: Income charged

1383. This section sets out the amount charged to tax. It is based on section 69 of ICTA.
1384. *Subsection (2)* is a signpost to the deductions and reliefs that are available against this income.

Section 338: Person liable

1385. This section states who is liable for any tax charged. It is based on section 59 of ICTA.

Section 339: Deduction for management expenses of owner of mineral rights

1386. This section allows a deduction for the expenses of managing mineral rights. It is based on section 121(1) of ICTA.
1387. *Subsection (1)* sets out the conditions for the section to apply. It does not reproduce the condition that the expenses must be incurred “necessarily”. See *Change 78* in Annex 1.
1388. *Subsection (2)* provides that a deduction is allowed for the qualifying expenses paid in the tax year. This rewrites the requirement that the expenses are “disbursed” in the tax year.
1389. The relief applies only to rents received from a UK section 12(4) concern. If the income is taxed as income from a UK property business, there is no need for special rules identifying what deductions are allowable. The normal rules apply.

Section 340: Relief in respect of mineral royalties

1390. This section provides that only half of the net profit earned in respect of mineral royalties is charged to income tax. It is based on section 122 of ICTA. The other half of the net profits is charged to capital gains tax by section 201 of TCGA.
1391. The provision was introduced in FA 1970 to give relief from the high marginal rates of tax that could arise if the income was liable to betterment levy, surtax and income tax. It has been retained despite the abolition of the first two of those taxes.
1392. *Subsection (1)* limits the relief to royalties taxed under Chapter 8 of Part 3 of this Act. If the royalty is not taxed under this Chapter the same relief is given by section 157 or section 319.

Section 341: Meaning of “mineral lease or agreement” and “mineral royalties”

1393. This section defines various terms used in section 340. It is based on section 122(5) and (6) of ICTA.
1394. *Section 364* includes a definition of “lease” that applies for the purposes of the property income Part. It is based on section 24 of ICTA, which applies for the purposes of Schedule A in the source legislation. Because the definition applies only for Schedule A in strictness it does not extend to the income taxed under section 340. But the definition of “mineral lease or agreement” in section 122(6) of ICTA applies to any agreement to win and work minerals in the United Kingdom. Such an agreement would also satisfy the definition in section 24 of ICTA so there is no change in the law.

Section 342: Extended meaning of “mineral royalties” etc. in Northern Ireland

1395. This section modifies the definition of “mineral royalties” to deal with the different rules that apply to the ownership of mineral rights in Northern Ireland. It is based on section 122(7) of ICTA.
1396. The right to win, and win and work, most minerals in Northern Ireland is vested in the Department of Enterprise, Trade and Investment (DETI). The DETI will grant licences to work the minerals and make compensatory payments to the former owners of the mineral rights under various Acts of the Northern Ireland Parliament. This section treats those payments as mineral royalties for the purposes of section 340.

Section 343: Power of Board to determine what counts as “mineral royalties”

1397. This section allows the Board of Inland Revenue to make regulations concerning the application of the relief in section 340. Any regulations made under this power would apply also to sections 157 and 319 through sections 157(3) and 319(3).

Chapter 9 Rent receivable for UK electric-line wayleaves

Overview

1398. This Chapter rewrites the Schedule D Case VI charge on rent received in respect of a wayleave granted in the United Kingdom. It is based on section 120 of ICTA.
1399. If a landowner receives rent in respect of a UK electric-line wayleave section 120 of ICTA provides that:
- the rent is charged under Schedule A if the landowner receives other rent in respect of the same land; otherwise
 - the rent is charged under Schedule D.
1400. In practice this means that if the landowner carries on a trade on the land the rent can be treated as a trade receipt. See *Change 5* in Annex 1. Otherwise the rent is taxed under Schedule D Case VI.
1401. Section 392 of ICTA gives the rules for dealing with Schedule D Case VI losses. In order to preserve that loss regime it is necessary to isolate the income that ICTA charges under Schedule D Case VI.

Section 344: Charge to tax on rent receivable for a UK electric-line wayleave

1402. This section charges to tax rent receivable for a UK electric-line wayleave to tax. It is based on section 120 of ICTA.

Section 345: Meaning of “rent receivable for a UK electric-line wayleave”

1403. This section provides the definition of “rent receivable for a UK electric-line wayleave”. It is based on section 120(1) and (5) of ICTA.
1404. Section 120(1) of ICTA identifies the right in respect of which the rent is payable as an “easement”. Section 120(5) of ICTA cross-refers to the definition of “easement” in section 119(3) of ICTA. Section 119 of ICTA is rewritten as Chapter 8 of this Part. As explained in the commentary on section 22 both this Chapter and section 22 use the term “wayleave” to describe the right in respect of which the rent is received. In practice this is how most of the payments covered by this section are usually described. But the generality of the words in section 119(3) of ICTA has not been lost. The section also uses the Scottish term for “easement”, “servitude”.

1405. *Subsection (2)* clarifies the meaning of “electric, telegraph or telephone wire or cable”. It does not repeat the reference to “transformer” in the source legislation. In its context it is clear that “apparatus” would include “transformer”.

Section 346: Extent of charge to tax

1406. This section sets out the two exceptions under which the rent received in respect of a UK electric-line wayleave is not taxed under this Chapter. It is based on section 120(1A) of ICTA.
1407. *Subsections (1)* and *(2)* deal with the case in which the taxpayer receives other rent in respect of the land except rent from another wayleave. The rent from the wayleave is taxed as property income.
1408. *Subsections (3)* and *(4)* deal with the case in which the taxpayer carries on a trade on the land. See *Change 5* in Annex 1. The rent may be taxed as a trade receipt.

Section 347: Income charged

1409. This section sets out the amount charged to tax. It is based on section 69 of ICTA.

Section 348: Person liable

1410. This section states who is liable for any tax charged. It is based on section 59 of ICTA.

Chapter 10: Post-cessation receipts

Overview

1411. This Chapter applies the rules about post-cessation receipts to property businesses, broadly as they apply to trades. The main rules for trades are in Chapter 18 of Part 2 of this Act. The application of the rules to property businesses is based on section 21B of ICTA, which specifically mentions sections 103 to 106 of ICTA.
1412. Section 65A(5) of ICTA provides that “the income from an overseas property business shall be computed ... in accordance with the rules applicable to the computation of the profits of a Schedule A business”.
1413. Although the post-cessation receipt rules apply to a Schedule A business, they do so by virtue of section 21B of ICTA. That section deals with “other rules applicable to Case I of Schedule D”. On the other hand, section 21A of ICTA deals with rules about the computation of profits of a trade. So section 65A of ICTA imports only the computation rules in section 21A and the post-cessation receipt rules do not apply to an overseas property business.
1414. The following trading income rules (in Chapter 18 of Part 2 of this Act) cannot apply to a property business. So there is no corresponding rule in this Chapter:
- Section 241: Professions and vocations;
 - Section 252: Transfer of trading stock or work in progress; (A property business cannot have trading stock or work in progress.)
 - Section 253: Lump sums paid to personal representatives for copyright etc; (Such sums cannot arise from a property business.) and
 - Section 256: Treatment of post-cessation receipts. (Property income cannot be relevant UK earnings or earned income.)
1415. The following trading income rules apply to property businesses but are not in separate sections in this Chapter:

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

- Sections 248, 249 and 250: Rules about debts and post-cessation expenditure; (These rules are applied by section 354(2).)
- Sections 254 and 255: Allowable deductions; (These rules are applied by section 351(2)(a).) and
- Section 257: Election to carry back. (This rule is applied by section 351(2)(b).)

Section 349: Charge to tax on post-cessation receipts

1416. This section charges post-cessation receipts to tax. It is based on sections 103 and 104 of ICTA, as applied by section 21B.

Section 350: Extent of charge to tax

1417. This section restricts the charge on the post-cessation receipts. It is based on sections 103 and 104 of ICTA.

Section 351: Income charged

1418. This section sets out the amount charged to tax. In ICTA the charge is under Schedule D Case VI. So section 69 of ICTA applies.

Section 352: Person liable

1419. This section states who is liable for any tax charged. In ICTA the charge is under Schedule D Case VI. So section 59(1) of ICTA applies.

Section 353: Basic meaning of “post-cessation receipt”

1420. This section defines post-cessation receipts of a property business. It is based on sections 103 and 104 of ICTA, as applied by section 21B of ICTA.
1421. *Subsections (2) and (3)* set out the position if a property business is carried on in partnership. It is based on section 110(2) (and sections 111 and 113) of ICTA. A partner who leaves a firm may receive a post-cessation receipt that is charged to tax.

Section 354: Other rules about what counts as a “post-cessation receipt”

1422. This section brings together signposts to rules that operate so as to treat certain sums as post-cessation receipts and to exclude others from the charge. It is new.
1423. *Subsection (1)* is a signpost to the section that deals with the transfer of a right to receive a post-cessation receipt to a person who does not carry on a property business.
1424. *Subsection (2)* lists the trading income rules that apply to create post-cessation receipts for the purpose of this Chapter.
1425. *Subsection (3)* draws attention to the rule in Chapter 5 of this Part of the Act that treats a sum received as not being a post-cessation receipt if the right to it was transferred with a property business. It also mentions the rule in Part 8 of this Act that can treat profits of an overseas property business as post-cessation receipts if they become remittable after the taxpayer has ceased to carry on the business.

Section 355: Transfer of rights if transferee does not carry on UK property business

1426. This section sets out the positions of the transferor and transferee if the right to a post-cessation receipt is transferred for value. It is based on section 106 of ICTA, as applied by section 21B of ICTA.

Section 356: Application to Schedule A businesses

1427. This section deals with the case of a person who receives a sum that arises from a Schedule A business that was carried on before 2005-06. It is new.
1428. *Subsection (1)* sets out the general rule. The business from which a sum arises for the purpose of section 353 may be either a UK property business (as defined in this Act for 2005-06 and later years) or a Schedule A business. The Schedule A business may be one carried on by an income tax payer before 2005-06 or one carried on by a company.
1429. *Subsection (2)* deals with the case of a non-resident company liable to income tax. If a company ceases to be liable to corporation tax it is treated as ceasing to carry on its Schedule A business. A post-cessation from that business may be charged to income tax.

Chapter 11: Overseas property income

Section 357: Charge to tax on overseas property income

1430. This section charges overseas property income to tax. It is based on Schedule D Case V in section 18 of ICTA.

Section 358: Meaning of “overseas property income”

1431. This section defines “overseas property income”, in cases where the remittance basis applies. It is new.
1432. Section 65(4) of ICTA provides that, for a person to whom the remittance basis applies, section 65A of ICTA does not apply. This means that there cannot be an overseas property business. And there are no rules in ICTA for calculating the income.
1433. This Chapter uses the expression “overseas property income” to describe income from land outside the United Kingdom which would usually be treated as part of an overseas property business (see section 265) but is not treated in that way because the overseas property business of a remittance basis taxpayer includes only profits from land in the Republic of Ireland (see section 269(3)). So overseas property income does not include any Irish income.

Section 359: Income charged

1434. This section sets out the amount charged to tax and takes the form of a signpost to the remittance basis of assessment in section 832. It is based on section 65(5) of ICTA.

Section 360: Person liable

1435. This section states who is liable for any tax charged on overseas property income when the remittance basis applies. It is based on section 59(1) of ICTA.

Chapter 12: Supplementary

Section 361: Changes in trustees and personal representatives

1436. This section sets out what happens if there is a change in the trustees or personal representatives who are carrying on a property business. It is based on section 113(7) of ICTA, as applied by section 21B of ICTA.
1437. In section 113(1) of ICTA the phrase “change in the persons engaged in carrying on any trade” is wide enough to include a change in trustees. There is no need to treat a property business as ceasing solely on account of a change of trustees. So in section 113 of ICTA subsection (7) overrides subsection (1) “for the purposes of this section”. The same rule applies to personal representatives as to trustees.

1438. The property business is treated as continuing even if there is a complete change of trustees or personal representatives. And, in the case of a partial change of trustees or personal representatives, this section makes it clear that for the purposes of the property income Part no person is treated as ceasing to carry on the property business. There is a similar rule for trading income in section 258.

Section 362: Effect of company starting or ceasing to be within charge to income tax

1439. This section applies only to companies and deems a commencement or cessation of a UK property business to take place in particular circumstances. It is based on section 337 of ICTA.
1440. Section 337 of ICTA is primarily a corporation tax rule. It applies only to companies and originates from the introduction of corporation tax. However it can be relevant to income tax.
1441. That is because non-resident companies are within the charge to income tax in respect of United Kingdom trade profits (when the trade is not carried on through a United Kingdom permanent establishment) and UK property business income. Section 337 of ICTA applies in cases of either inward or outward company migration. Where that involves a continuing trade or UK property business there will be a change of taxing regime from income tax to corporation tax or vice versa.
1442. **Section 362** says what happens when a company enters or leaves the income tax regime: then its UK property business income is calculated as though it had commenced or discontinued the business.

Section 363: Overseas property businesses and overseas land: adaptation of rules

1443. This section sets out how the rules for United Kingdom property businesses are to be adapted to apply to overseas property businesses. It is based on section 65A(8) of ICTA.
1444. The section explains how to apply the UK property business rules if foreign property law does not correspond exactly with United Kingdom property law. This is particularly useful when applying the lease premium rules in Chapter 4 of this Part of the Act to foreign leases.

Section 364: Meaning of “lease” and “premises”

1445. This section is based on sections 24 and 65A(5) of ICTA.