

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

Chapter 2: Property businesses

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

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

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.