

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

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.