

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

Chapter 3: Profits of property businesses: basic rules

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.