

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

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

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.