

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Property income

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.