

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Savings and investment income

Chapter 10: Distributions from unauthorised unit trusts

Section 547: Charge to tax under Chapter 10

2141. This section is based on sections 18(1) and (3) and section 469(3) and (4) of ICTA.
2142. This section refers to “schemes to which section 469 of ICTA applies” as a definition of “unauthorised unit trusts” would involve setting out a number of provisions used in ICTA.
2143. For the purposes of this Act unit holders liable to income tax are treated as receiving “income” rather than “annual payments”. But for other tax purposes, for example sections 348 and 349 of ICTA, unit holders continue to be treated as receiving annual payments which are subject to deduction of tax. This is achieved by consequential amendment to section 469(3) of ICTA. This is a temporary measure until those provisions which impact on distributions from unauthorised unit trusts which are not rewritten in this Act are rewritten.

Section 548: Income charged

2144. This section sets out the amount of income treated as received by a unit holder from an unauthorised unit trust scheme which is charged to tax. It is based on section 469 of ICTA.
2145. *Subsection (2)* contains a method statement setting out the steps to be taken to calculate the amount of income on which the investor is charged to tax. The definition of “distribution period” in section 469(6) of ICTA has been provided in *subsection (5)* to assist in the calculation.

Section 549: Person liable

2146. This section states who is liable for any tax charged. It is based on sections 59(1) and 469(3) of ICTA.

Section 550: Income tax treated as paid

2147. This section is based on sections 348(1)(d) and 469(3) of ICTA.
2148. Where the unit trust has been treated as making annual payments under section 348 of ICTA (payment out of profits or gains brought into charge to income tax) or under

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

section 349 of ICTA (payment not out of profits or gains brought into charge to income tax) the tax deducted will be treated as tax paid by the unit holder.

2149. Under section 348(1)(d) of ICTA tax deducted from annual payments under section 348(1)(b) of ICTA is treated as paid by the recipient. Case law extends this to tax deducted under section 348(2) of ICTA and section 349 of ICTA. In allowing all tax deducted under sections 348 and 349 of ICTA to be treated as tax paid by the unit holder section 550 fills a gap otherwise filled by case law. For more detail see the commentary on section 426.