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

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Miscellaneous income

Chapter 8: Income not otherwise charged

Overview

2627. This Chapter charges to tax any income that is not charged by any other income tax provision, whether elsewhere in this Act or in any other part of the Tax Acts, including ITEPA. It is based on section 18 of ICTA.

2628. Schedule D is the residual Schedule into which income falls for income tax purposes if neither ITEPA nor another Schedule of ICTA applies to it. Section 18(1)(a) of ICTA charges "annual profits or gains arising or accruing… from any kind of property whatever…". Section 18(1)(b) of ICTA charges "…other annual profits or gains not charged under Schedule A or under ITEPA 2003 as employment income, pension income or social security income, and not specially exempted from tax". Schedule F (rewritten in Chapter 3 of Part 4 of this Act) has sole charging rights over the amounts within its scope. Tax is charged under Schedule D Case VI "in respect of annual profits or gains not falling under any other Case of Schedule D and not charged by virtue of Schedule A or by virtue of ITEPA 2003 as employment income, pension income or social security income".

2629. Case VI is itself the residual Case under Schedule D. Schedule D Case V includes an identical function for "relevant foreign income" (see the definition in section 830) of this Act. The scope of Case V is "tax in respect of income arising from possessions out of the United Kingdom not being employment income, pension income or social security income on which tax is charged under ITEPA 2003". Case law has established the comprehensive scope of Case V in relation to "income from possessions out of the United Kingdom" (see the commentary on the overview to Part 8 of this Act). So far as any amount is "income from possessions out of the United Kingdom", Case V is the "last resort" charging provision, not Case VI. And a corollary of that rule is that income charged by Case VI (other than amounts which are directed to be taxed under Case VI) can only derive from a source in the United Kingdom.

2630. So far as is practicable, income charged by the source legislation under Schedule D Cases IV to VI is the subject of separate charges in this Act. See, for example:

- Chapter 4 of Part 4 of this Act, taken from Case V, which deals with dividends from non-UK resident companies;
- Chapter 3 of Part 5 of this Act, taken from Cases V and VI, which deals with films and sound recordings (non-trade businesses); and

- Chapter 4 of Part 5 of this Act, partly taken from Cases V and VI, which deals with certain telecommunication rights (non-trading income).

2631. This Chapter brings together the "sweep up" functions of Cases IV to VI. And it contains the charge to tax on two types of income where, in most cases, income will be wholly covered by relief. See section 688(2)(a) and (b).

2632. The charge under this Chapter is restricted to amounts that are "income" on first principles. That is, they are "annual profits or gains" under section 18(1) of ICTA, as that phrase has been interpreted by case law, and are not profits or gains of a capital nature (although some amounts of that nature have been treated as income charged to income tax, whether under a Case of Schedule D or otherwise). This is indicated by the use in section 687(1) of the words "from any source" and by the disapplication of the definition of "income" in section 878(1) of this Act by section 687(4). (For the significance of the reference to "any source", see the commentary on the overview to Part 8 of this Act on recent judicial remarks on "source".)

2633. Although some charges to income tax, whether in ICTA or elsewhere in the Tax Acts, are not rewritten in this Act or ITEPA, none of them overlaps with the charge under this Chapter. Nor is there any overlap with any other charges which themselves are limited to income not otherwise chargeable.

2634. Under the source legislation, Case VI losses may be set against Case VI profits or gains (see section 392 of ICTA). Paragraph 168 of Schedule 1 to this Act amends that section so that, in conjunction with section 836B to ICTA (inserted by that Schedule), where a loss arises in circumstances that, had there been income rather than a loss (other than relevant foreign income) the income would have been charged under this Chapter, the same loss relief applies. The only equivalent loss relief for relevant foreign income is under section 391 of ICTA. But this relief is restricted to losses from a trade, profession or vocation carried on wholly abroad. Any income from such a source would be charged under Part 2 of this Act. Section 391 of ICTA does not, therefore, apply to losses from a source where any income would be charged by this Chapter.