

# **INCOME TAX (TRADING AND OTHER INCOME) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5: Miscellaneous income**

##### **Part 5: Chapter 1: Introduction**

##### **Section 575: Provisions which must be given priority over Part 5**

2240. This section provides rules which determine which Part will take priority in the case of any overlaps in the charging provisions. It is based on sections 18 and 20 of ICTA, and section 9D of TMA.
2241. *Subsection (1)* ensures that if any amount falls within a charge in Part 5 of this Act and the charge on trade profits, Chapter 2 of Part 2 of this Act will charge that amount as a trade receipt.
2242. It also reflects the decision to give effect to the Crown Option. See *Change 66* in Annex 1.
2243. *Subsection (2)* ensures that if any amount falls within a charge in Part 5 of this Act and the charge on a UK property business, Chapter 3 of Part 3 of this Act will charge that amount as a receipt of a UK property business. This reflects the priority of Schedule A over Schedule D and is based on section 18(1)(b) of ICTA and Schedule D Cases III(a) and VI.
2244. Particular types of income which, in the source legislation, are charged to tax under Schedule D Case III have been given separate charges to tax in Parts 4 and 5 of this Act. As the general annual payments charge in Chapter 7 of Part 5 of this Act takes effect only if an amount is not otherwise charged to income tax there can be no overlap between this charge and the ex-Case III charges in Part 4 of this Act.
2245. *Subsection (3)*, therefore, provides a rule where there could potentially be an overlap between Chapters within Parts 4 and 5 of this Act. It ensures that the interest charge in Chapter 2 of Part 4 takes priority over any of the charges in Part 5 that are based on Schedule D Case VI. This maintains the priority in the source legislation of Case III over Case VI which charges amounts that do not fall under any other Case of Schedule D.
2246. It also provides the priority between Chapter 3 of Part 4 of this Act (dividends etc. from UK resident companies) and Part 5 of this Act. This rewrites the effect of section 20(2) of ICTA which provides specifically for Schedule F to take priority over the other Schedules.
2247. *Subsection (4)* ensures that if any amount falls within a charge in Part 5 and any of the charging provisions in ITEPA, ITEPA has priority. This reflects the priority of ITEPA over Schedule D and is based on section 18(1)(b) of ICTA and Schedule D Case VI.

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

2248. The non-schedular charges rewritten in Part 5 of this Act in Chapter 5 (Settlements: amounts treated as income of the settlor) and section 656 (Beneficiaries' income from estates in administration: Income charged: UK estates) do not have the potential to overlap with Chapter 2 of Part 2 of this Act (trade profits) or Chapter 3 of Part 3 of this Act (UK property business) or any of the charges in Part 4 of this Act or ITEPA. There is therefore no need to exclude these charges from the priority rules.