

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

#### **Chapter 5: Settlements: amounts treated as income of settlor**

#### **Section 625: Settlor's retained interest**

2402. This section explains when a settlor is treated as having an interest in property for the purposes of section 624 and exceptions to this. It is based on section 660A of ICTA.
2403. *Subsection (1)* explains what is meant by a settlor having an interest in property. The interests may also be those of the settlor's spouse.
2404. *Subsections (2)* and *(3)* give occasions where a settlor does not have an interest in property. The exceptions cover instances when the settlor may by inadvertence or circumstances likely to be outside his or her control have an interest in property which he or she has settled or an interest in property derived from that property. These circumstances include bankruptcy, where the settlor may obtain an interest in property as a result of the bankruptcy of another person who has an interest in that property. This might occur where the beneficiary of a settlement, who is also the creditor of the settlor, becomes bankrupt and the debt is settled by a payment of settlement income from the bankrupt's estate.
2405. The settlor is also excluded from having an interest in property as long as someone under the age of 25 years is alive during whose lifetime that property cannot be payable to the settlor other than in a bankruptcy or by assigning or charging the individual's interest in the property. While there is no requirement that the person under 25 years should have an interest in that property it may generally be expected that they will.
2406. *Subsection (5)* provides the meaning of "related property" ("derived property" in section 660A(10) of ICTA). When this clause was drafted the House of Lords' decision in *West v Trennery* (2005), TL 3747<sup>1</sup> on the interpretation of "derived property" in section 77(8) of TCGA was not available. The definition of "derived property" in that section is the same as in section 660A(10) of ICTA. In consequence the section closely follows the source legislation.