

# CORPORATION TAX ACT 2009

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Property income**

##### **Overview**

#### ***Chapter 7: Rent receivable in connection with a UK section 39(4) concern***

##### **Overview**

967. This Chapter charges as property income rent receivable in connection with a section 39(4) concern. It also provides for certain deductions and reliefs to be given from that income.
968. This Chapter makes the relationship between the rules derived from sections 119 (rent payable in connection with mines, quarries and similar concerns) and 122 (relief in respect of mineral royalties) of ICTA clear. So section 201(2) of TCGA (mineral leases: royalties) is omitted, see Part 2 of Schedule 1 to this Act.

#### ***Section 270: Charge to tax on rent receivable in connection with a UK section 39(4) concern***

969. This section applies the charge to corporation tax to rent receivable in connection with a “UK section 39(4) concern”. It is based on section 119 of ICTA. The corresponding rule for income tax is in section 335 of ITTOIA.
970. The loss regime in section 396 of ICTA applies to income charged under this Chapter and not the regime in section 392A of ICTA.
971. The charge under Schedule D Case III imposed by section 119(2) of ICTA is not rewritten. It is otiose. See *Change 53* in Annex 1. This Change reproduces Change 158 in ITTOIA in relation to section 119(2) of ICTA and so brings the income and corporation tax codes back into line.

#### ***Section 271: Meaning of “rent receivable in connection with a UK section 39(4) concern”***

972. This section clarifies:
- what is meant by “UK section 39(4) concern”;
  - what is meant by “rent”; and
  - when rent is treated as “receivable in connection with” such a concern.
973. It is based on section 119 of ICTA. The corresponding rules for income tax are in section 336 of ITTOIA.

974. *Subsection (1)* identifies when rent is receivable in connection with a “UK section 39(4) concern”. It uses the language of section 207(1) (meaning of “generating income from land”) to rewrite the phrase “in respect of any land or easement” in section 119(1) of ICTA. Section 207 is based on paragraph 1(1) of Schedule A (section 15(1) of ICTA). The concept in section 207 of “generating income from land” serves to determine the scope of Schedule A. The approach in this section assumes that the income taxed by section 119 of ICTA would otherwise have been taxed under Schedule A.
975. The justification for this assumption is that section 119 of ICTA can have no application to income that is already taxed under Schedule D Case VI. Neither is there any question that the rent would go untaxed if it were not for section 119 of ICTA. Rents are clearly annual profits or gains as described in Schedule D Case VI of ICTA. The effect of section 119 of ICTA is to take income that would be taxed under Schedule A and tax it under Schedule D. So in identifying the scope of the charge it is possible to use the ordinary property business definitions and avoid the need to rewrite the complicated definitions of “easement” and “rent” in section 119(3) of ICTA.
976. The section makes explicit a territorial restriction to the United Kingdom that is implicit in section 119(1) of ICTA. If a “UK section 39(4) concern” is located outside the United Kingdom it would be a foreign possession for the purposes of the charge under Schedule D Case V. Any income arising from such a possession would have been taxed under Schedule D Case V. Section 119 of ICTA could have had no application to income that was already taxed under Schedule D.
977. *Subsection (3)* provides the definition of rent. It is based on section 119(3) of ICTA. As explained in the commentary on subsection (1), this section is based on the assumption that the rents taxed by section 119 of ICTA would otherwise have been taxed under Schedule A. This means it is not necessary to reproduce the definition of “rent” in section 119(3) of ICTA.

### ***Section 272: Deduction for management expenses of owner of mineral rights***

978. This section allows a deduction for the expenses of managing mineral rights. It is based on section 121 of ICTA. The corresponding rule for income tax is in section 339 of ITTOIA.
979. *Subsection (1)* sets out the conditions for the section to apply. It does not reproduce the condition that the expenses must be incurred “necessarily”. See *Change 54* in Annex 1. The “necessarily” test is impractical in this context. This change reproduces Change 78 in ITTOIA and so brings the income and corporation tax codes back into line.
980. *Subsection (2)* provides that a deduction is allowed for the qualifying expenses paid in the accounting period. This rewrites the requirement that the expenses are “disbursed” in the period.
981. The relief applies only to rents received from a “UK section 39(4) concern”. If the income is taxed as income from a UK property business there is no need for special rules identifying what deductions are allowable. The normal rules apply.

### ***Section 273: Relief in respect of mineral royalties***

982. This section provides that only half of the net profit earned in respect of mineral royalties is charged to corporation tax. It is based on section 122 of ICTA. The other half of the net profit is charged to corporation tax on chargeable gains by section 201 of TCGA. The corresponding rule for income tax is in section 340 of ITTOIA.
983. *Subsection (1)* limits the relief to royalties taxed under this Chapter of this Act. If the royalty is not taxed under this Chapter the same relief is given by section 135 or section 258.

***Section 274: Meaning of “mineral lease or agreement” and “mineral royalties”***

984. This section defines various terms used in section 273. It is based on section 122 of ICTA. The corresponding rules for income tax are in section 341 of ITTOIA.
985. **Section 291** includes a definition of “lease” that applies for the purposes of this Part. It is based on section 24 of ICTA, which applies for the purposes of Schedule A in the source legislation. Because the definition applies only for Schedule A in strictness it does not extend to the income taxed under section 273. But the definition of “mineral lease or agreement” in section 122(6) of ICTA applies to any agreement conferring a right to win and work minerals in the United Kingdom. Such an agreement would also satisfy the definition in section 24 of ICTA so there is no change in the law.
986. The legislation rewritten by *subsection (2)* does not include any rent receivable before 6 April 1970. This limitation is preserved in Schedule 2 (transitionals and savings).

***Section 275: Extended meaning of “mineral royalties” etc in Northern Ireland***

987. This section modifies the definition of “mineral royalties” to deal with the different rules that apply to the ownership of mineral rights in Northern Ireland. It is based on section 122 of ICTA. The corresponding rule for income tax is in section 342 of ITTOIA.
988. The right to win, and win and work, most minerals in Northern Ireland is vested in the Department of Enterprise, Trade and Investment (DETI). The DETI will grant licences to work the minerals and make compensatory payments to the former owners of the mineral rights under various Acts of the Northern Ireland Parliament. This section treats those payments as mineral royalties for the purposes of section 273.

***Section 276: Power to determine what counts as “mineral royalties”***

989. This section allows the Commissioners to make regulations concerning the application of the relief in section 273. It is based on section 122 of ICTA. The corresponding rule for income tax is in section 343 of ITTOIA. Any regulations made under this power would apply also to sections 135 and 258 through sections 135(3) and 258(3).