

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3: Property income**

#### *Chapter 7: Adjustment income*

#### **Overview**

1352. This Chapter applies the rules about a change of basis to property businesses, broadly as those rules apply to trades. The main rules for trades are in Chapter 17 of Part 2 of this Act.
1353. Section 21A of ICTA provides that “the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D”. And section 21B of ICTA specifically applies the rules for change of accounting basis in FA 1998.
1354. The rules in Schedule 22 to FA 2002 apply to property businesses because they have effect “in place of” the 1998 rules (see section 64(6) of FA 2002), even though the necessary textual amendment to section 21B of ICTA was overlooked.
1355. So the change of basis rules apply to a Schedule A business.
1356. Section 65A(5) of ICTA provides that “the income from an overseas property business shall be computed ... in accordance with the rules applicable to the computation of the profits of a Schedule A business”.
1357. Although the change of basis rules apply to a Schedule A business, they do so by virtue of section 21B of ICTA. That section deals with “other rules applicable to Case I of Schedule D”. On the other hand, section 21A of ICTA deals with rules about the computation of profits of a trade. So section 65A of ICTA imports only the computation rules in section 21A and the change of basis rules do not apply to an overseas property business.
1358. The following trading income rules (in Chapter 17 of Part 2 of this Act) cannot apply to a property business. So there is no corresponding rule in this Chapter:
- Section 226: Professions and vocations;
  - Sections 236 and 237: Change from realisation basis to mark to market (A property business cannot hold assets that are valued on a mark to market basis.);
  - Sections 238 and 239: Barristers and advocates; and

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

- Section 240: Liability of personal representatives if person liable dies. (This section applies if an adjustment income charge is spread: none of the spreading rules applies to a property business.)
1359. The following trading income rules apply to property businesses but are not in separate sections in this Chapter:
- Section 231: Calculation of the adjustment; (This rule is applied by section 330(1).)
  - Section 234: No adjustment for certain expenses previously brought into account; (This rule is applied by section 330(4).)
  - Section 235: Cases where adjustment not required until assets realised or written off. (A property business cannot have trading stock or work in progress; the rule about depreciation is in sections 333 (2) and 334(2).)

### ***Section 329: Application of Chapter***

1360. This section sets out the circumstances in which an adjustment may arise. It is based on section 64 of FA 2002. The equivalent rule for trades is in section 227.

### ***Section 330: Adjustment income and adjustment expense***

1361. This section sets out how to calculate an adjustment and how it is treated for tax purposes. It is based on paragraphs 2, 4, 5 and 6 of Schedule 22 to FA 2002.
1362. *Subsection (4)* is a cross-reference to the trading income rule about expenses for which a deduction has already been made.

### ***Section 331: Income charged***

1363. This section sets out the amount charged to tax. In FA 2002 the charge is under Schedule D Case VI. So section 69 of ICTA applies.

### ***Section 332: Person liable***

1364. This section states who is liable for any tax charged. In FA 2002 the charge is under Schedule D Case VI. So section 59(1) of ICTA applies.

### ***Section 333: Treatment of adjustment income***

1365. This section sets out the rules for the treatment of adjustment income. It is based on paragraphs 4(2) and 7 of Schedule 22 to FA 2002.
1366. *Subsection (3)* treats the income as property income for the purpose of loss relief. So any losses of the property business brought forward can be set against the income.

### ***Section 334: Treatment of adjustment expense***

1367. This section sets out the rules for the treatment of a negative adjustment. It is based on paragraphs 5 and 7 of Schedule 22 to FA 2002.