



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 3

PROPERTY INCOME

CHAPTER 6

COMMERCIAL LETTING OF FURNISHED HOLIDAY ACCOMMODATION

Introduction

322 Introduction

- (1) This Chapter explains for the purposes of this Part what is meant by the commercial letting of furnished holiday accommodation (see sections 323 to 326).
- (2) It matters whether a UK property business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of—
 - (a) section 312 (deduction for expenditure on energy-saving items: see section 313(3)),
 - (b) ^{F1}
 - (c) ^{F1}
 - (d) certain provisions of TCGA 1992 (see section 241 of that Act),
 - (e) CAA 2001 (see, for example, sections 248 and 249 of that Act),
 - [^{F2}(f) section 189(2)(ba) of FA 2004 (meaning of “relevant UK earnings” for pension purposes),
 - (g) Part 4 of ITA 2007 (loss relief: see section 127 of that Act), and
 - (h) section 836(3) of ITA 2007 (jointly held property: see exception D).]

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- [^{F3}(2A) It matters whether an overseas property business consists of or includes the commercial letting of furnished holiday accommodation in one or more EEA states for the purposes of—
- (a) section 312 (deduction for expenditure on energy-saving items: see section 313(3)),
 - (b) certain provisions of TCGA 1992 (see section 241A of that Act),
 - (c) CAA 2001 (see, for example, sections 250 and 250A of that Act),
 - (d) section 189(2)(bb) of FA 2004 (meaning of “relevant UK earnings” for pension purposes),
 - (e) Part 4 of ITA 2007 (loss relief: see section 127ZA of that Act), and
 - (f) section 836(3) of ITA 2007 (jointly held property: see exception DA).]
- (3) This Chapter also supplements [^{F4} the provisions mentioned in subsection (2)] by providing in certain circumstances for the profits of the furnished holiday lettings part of a UK property business to be calculated separately (see sections 327 and 328).
- [^{F5}(4) This Chapter also supplements the provisions mentioned in subsection (2A) by providing in certain circumstances for the profits of the EEA furnished holiday lettings part of an overseas property business to be calculated separately (see sections 328A and 328B).]

Textual Amendments

- F1** S. 322(2)(b)(c) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 508\(a\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F2** S. 322(2)(f)-(h) substituted for s. 322(2)(f) and preceding word (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1](#) para. 508(b)} (with transitional provisions and savings in [Sch. 2](#))
- F3** [S. 322\(2A\)](#) inserted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(a\)](#)
- F4** Words in [s. 322\(3\)](#) substituted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(b\)](#)
- F5** [S. 322\(4\)](#) inserted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(c\)](#)

Definition

323 Meaning of “commercial letting of furnished holiday accommodation”

- (1) A letting is a lease or other arrangement under which a person is entitled to the use of accommodation.
- (2) A letting of accommodation is commercial if the accommodation is let—
 - (a) on a commercial basis, and
 - (b) with a view to the realisation of profits.
- (3) A letting is of furnished holiday accommodation if—
 - (a) the person entitled to the use of the accommodation is also entitled, in connection with that use, to the use of furniture, and

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(b) the accommodation is qualifying holiday accommodation (see sections 325 and 326).

(4) This section applies for the purposes of this Chapter.

324 Meaning of “relevant period” in sections 325 and 326

(1) For the purposes of sections 325 and 326 “the relevant period” for accommodation let by a person in a tax year is determined as follows.

(2) If the accommodation was not let by the person as furnished accommodation in the previous tax year, “the relevant period” is 12 months beginning with the first day in the tax year on which it is let by the person as furnished accommodation.

(3) If the accommodation—

(a) was let by the person as furnished accommodation in the previous tax year, but

(b) is not let by the person as furnished accommodation in the following tax year,

“the relevant period” is 12 months ending with the last day in the tax year on which it is let by the person as furnished accommodation.

(4) Otherwise “the relevant period” is the tax year.

325 Meaning of “qualifying holiday accommodation”

(1) Accommodation which is let by a person during a tax year is “qualifying holiday accommodation” for the tax year if the availability, letting and pattern of occupation conditions are met.

(2) The availability condition is that, during the relevant period, the accommodation is available for commercial letting as holiday accommodation to the public generally for at least [^{F6}210 days].

(3) The letting condition is that, during the relevant period, the accommodation is commercially let as holiday accommodation to members of the public for at least [^{F7}105 days].

(4) For the purposes of the letting condition, a letting of accommodation for a period of longer-term occupation (see subsection (6)) is not a letting of it as holiday accommodation.

(5) The pattern of occupation condition is that, during the relevant period, not more than 155 days fall during periods of longer-term occupation.

(6) For the purposes of this section a “period of longer-term occupation” is a continuous period of more than 31 days during which the accommodation is in the same occupation otherwise than because of circumstances that are not normal.

Textual Amendments

F6 Words in s. 325(2) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 2(3)(a)**

F7 Words in s. 325(3) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 2(3)(b)**

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326 Under-used holiday accommodation: averaging elections

- (1) This section applies if during a tax year a person lets both—
 - (a) qualifying holiday accommodation, and
 - (b) accommodation that would be qualifying holiday accommodation if the letting condition (see section 325(3)) were met in relation to it (“under-used accommodation”).
- (2) The person may make an election for the tax year specifying—
 - (a) the qualifying holiday accommodation, and
 - (b) any or all of the under-used accommodation.
- (3) The under-used accommodation so specified is treated as qualifying holiday accommodation for the tax year if the average of the number of let days for the tax year of all the accommodation specified in the election is at least [^{F8}105].
- (4) “The number of let days” for a tax year of any accommodation is the number of days during the relevant period for which it is commercially let by the person as holiday accommodation to members of the public.
- (5) Qualifying holiday accommodation may not be specified in more than one election for a tax year.
- (6) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- [^{F9}(7) This section is to apply separately in relation to accommodation in the United Kingdom and accommodation in EEA states other than the United Kingdom.]

Textual Amendments

- F8** Word in s. 326(3) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(4\)\(a\)](#)
- F9** S. 326(7) inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(4\)\(b\)](#)

[^{F10}326A Under-used holiday accommodation: letting condition not met

- (1) This section applies if—
 - (a) during a tax year a person lets qualifying holiday accommodation,
 - (b) the accommodation is let by the person—
 - (i) during the next tax year, or
 - (ii) during the next two tax years,
 - (c) the accommodation would (apart from this section) not be qualifying holiday accommodation—
 - (i) during the tax year mentioned in paragraph (b)(i), or
 - (ii) during both of the tax years mentioned in paragraph (b)(ii),
 only because of a failure to meet the letting condition (see section 325(3)), and
 - (d) there was a genuine intention to meet the letting condition for the tax year within subsection (1)(c)(i) or each of the tax years within subsection (1)(c)(ii) (as the case may be).

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- (2) If the person makes an election in respect of that accommodation for any tax year in respect of which the failure mentioned in subsection (1)(c) occurs, the accommodation is to be treated as qualifying holiday accommodation for that tax year.
- (3) Subsection (2) does not apply for the purposes of section 326 or subsection (1)(a).
- (4) If an election is not made for the first of the tax years within subsection (1)(c)(ii), an election may not be made for the second.
- (5) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- (6) References in subsection (1)(a) and (c) to qualifying holiday accommodation include accommodation treated as such under section 326.]

Textual Amendments

- F10** S. 326A inserted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(5\)](#)

Separate profit calculations

327 Capital allowances and loss [^{F11}relief: UK property business]

- (1) If a UK property business consists of both—
 - (a) the commercial letting of furnished holiday accommodation (“the furnished holiday lettings part”), and
 - (b) other businesses or transactions (“the other part”),this section requires separate calculations to be made of the profits of the furnished holiday lettings part and the other part.
- (2) The calculations must be made if—
 - (a) section 248 or 249 of CAA 2001 (giving effect to allowances and charges) applies to the furnished holiday lettings part or the other part, or
 - (b) any provision of [^{F12}Part 4 of ITA 2007](loss relief) applies in relation to a loss made in either of those parts.^[F13], or
 - (c) a wear and tear allowance is allowed in relation to the business under section 308C of this Act.]
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

Textual Amendments

- F11** Words in s. 327 heading substituted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(6\)](#)
- F12** Words in s. 327(2)(b) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 509](#) (with transitional provisions and savings in [Sch. 2](#))

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F13 S. 327(2)(c) and word inserted (with effect in accordance with art. 13(1) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, **11(3)**

328 Relevant UK earnings for pension [^{F14} purposes: UK property business]

- (1) If a UK property business consists of both—
 - (a) the commercial letting of furnished holiday accommodation (“the furnished holiday lettings part”), and
 - (b) other businesses or transactions,
 this section requires a separate calculation to be made of the profits of the furnished holiday lettings part.
- (2) The calculation must be made if the profits of the furnished holiday lettings part are [^{F15}relevant UK earnings within section 189(2)(ba) of FA 2004.]
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

Textual Amendments

- F14** Words in s. 328 heading substituted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 2(7)**
- F15** Words in s. 328(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 510(2)** (with transitional provisions and savings in Sch. 2)

[^{F16}328A Capital allowances and loss relief: overseas property business]

- (1) If an overseas property business consists of both—
 - (a) the commercial letting of furnished holiday accommodation in one or more EEA states (“the EEA furnished holiday lettings part”), and
 - (b) other businesses or transactions (“the other part”),
 this section requires separate calculations to be made of the profits of the EEA furnished holiday lettings part and the other part.
- (2) The calculations must be made if—
 - (a) section 250 or 250A of CAA 2001 (giving effect to allowances and charges) applies to the EEA furnished holiday lettings part or the other part, or
 - (b) any provision of Part 4 of ITA 2007 (loss relief) applies in relation to a loss made in either of those parts.
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

Textual Amendments

- F16** Ss. 328A, 328B inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 2(8)**

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328B Relevant UK earnings for pension purposes: overseas property business

- (1) If an overseas property business consists of both—
 - (a) the commercial letting of furnished holiday accommodation in one or more EEA states (“the EEA furnished holiday lettings part”), and
 - (b) other businesses or transactions,this section requires a separate calculation to be made of the profits of the EEA furnished holiday lettings part.
- (2) The calculation must be made if the profits of the EEA furnished holiday lettings part are relevant UK earnings within section 189(2)(bb) of FA 2004.
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.]

Textual Amendments

- F16** Ss. 328A, 328B inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(8\)](#)

Status:

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Changes to legislation:

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