

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Property income

Overview

Chapter 3: Profits of property businesses: basic rules

Section 210: Profits of a property business: application of trading income rules

776. This is the main rule for calculating the profits of a property business. It is based on section 21A of ICTA. The corresponding rule for income tax is in section 272 of ITTOIA.
777. The same basic rules apply to the calculation of both UK and overseas property businesses.
778. From 1998, the profits of a Schedule A business charged to corporation tax are calculated by treating the business as similar to a trade and applying the calculation rules of Schedule D Case I.
779. In the source legislation this is achieved by section 21A of ICTA. But, at the margins, the application of certain of the Case I rules to Schedule A is not altogether clear.
780. First, the relationship of section 21A(2) of ICTA to section 21A(1) of ICTA is uncertain. Section 21A(2) of ICTA refers to provisions that apply “in accordance” with section 21A(1). It is open to debate whether section 21A(2) of ICTA merely contains examples of the Schedule D Case I provisions that apply in accordance with the general rule in section 21A(1) of ICTA or whether it contains an exhaustive list of those provisions. The former appears the better view and the one best reflecting the underlying policy.
781. Second, some Schedule D Case I provisions that are applied to Schedule A are inherently incapable of applying to income from land. The “herd basis” provisions in section 97 of, and Schedule 5 to, ICTA (rewritten in Chapter 8 of Part 3 of this Act) are an example. They are among the provisions of Chapter 5 of Part 4 of ICTA that are applied to Schedule A specifically (subject to stated exceptions) by section 21A(2) of ICTA. But they are not among the exceptions referred to in section 21A(4) of ICTA. On the other hand, some Schedule D Case I provisions outside Chapter 5 of Part 4 of ICTA that seem potentially more relevant, such as the car hire provisions in sections 578A and 578B of ICTA, are not applied specifically.
782. *Section 210* clarifies these matters by listing all the trading income provisions in Part 3 of this Act that are relevant to property business profits.
783. Some of the sections in Part 3 of this Act that are applied to a property business contain rewrite changes. Those changes are carried through to property income. Details of those changes are recorded in the Annex 1 notes on the particular sections in Part 3.

784. *Subsection (2)* lists all the provisions in Part 3 that are relevant to property business income. It reflects the principle that section 21A(1) of ICTA applies all Schedule D Case I calculation provisions to Schedule A unless they are expressly disapplied elsewhere. Provisions that are expressly disapplied in the source legislation are excluded from the list.
785. Also excluded are provisions which are attracted to Schedule A in the source legislation either expressly by section 21A(2) of ICTA or under the general principle expressed in section 21A(1) of ICTA, but which are incapable of applying once carried over to the context of the property business. Exclusion is achieved simply by omitting them from the list of provisions that do apply.
786. The majority of the provisions in Part 3 that can apply to a property business are applied by subsection (2). But in some cases later sections set out the provisions specifically (sections 261 and 262 (adjustment on change of basis) and the sections in Chapter 9 of this Part (post-cessation receipts)).
787. The following sections that are applied by subsection (2) merit specific mention. These are:
- sections 56 to 58: expenses of car hire; and
 - sections 172 to 175: deduction for unremittable amounts.
788. Including these accurately reflects the effect of section 21A(1) of ICTA.
789. Although the list in subsection (2) excludes trading income provisions that are inherently incapable of applying to a property business it does not exclude those that are merely unlikely to apply. This recognises the possibility of certain provisions applying in unusual circumstances. Examples are sections 87 and 88 (scientific research). Although their relevance to a property business is unlikely, it is not inconceivable and they are needed to cater for the possibility of a landlord funding an activity that would qualify as “scientific research”. An example might be research on the decontamination of brown land with a view to building an investment property on it.