

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Property income

Overview

751. This Part applies to “property income”. That is, income from land. The corresponding rules for income tax are in Part 3 of ITTOIA.
752. This Part covers income that is taxed under different Schedules and Cases in the source legislation. So it covers, for example, income from land both in the United Kingdom and abroad, as well as post-cessation receipts from property businesses.
753. This reflects the approach of grouping types of income which are logically part of the same “family”. In this Part the unifying factor is that all the elements are amounts that are, ultimately, attributable to exploiting an interest in land.
754. As a consequence, this Part groups elements which in the source legislation are separate. But those elements do not lose their identity for all purposes. Loss relief, for example, requires them to be kept apart. For this reason the charge to corporation tax on “property income” has specific components (see section 202).
755. This Part is not an exhaustive statement of the rules for the calculation of property income. Other regimes may affect that calculation. In particular, Parts 8, 11 and 14 of this Act contain rules that may affect property business profits.
756. References to “profits or gains” in the source legislation which relate only to income are rewritten in this Part omitting the reference to “gains”. This continues the tidying up of such references begun in section 46(3) of, and Schedule 7 to, FA 1998.

Chapter 1: Introduction

Section 202: Overview of Part

757. This section is introductory. It is new.

Chapter 2: Property businesses

Section 203: Overview of Chapter

758. This section introduces the Chapter and provides a “road map” to the key provisions. It is new.
759. Chapter 2 sets out the key concepts underlying the main component of income within this Part of this Act by defining “property business” and “generating income from land”.

Section 204: Meaning of “property business”

760. This section defines “property business”. It is new.
761. *Subsection (1)* reflects the fact that section 70A of ICTA applies the same basic rules for income from UK land to income from overseas land. So most of the provisions in this Part apply to both UK and overseas property businesses alike. Where they do not, the particular section makes that clear by, for example, referring to a UK property business only.
762. The term “property business” is not entirely straightforward. The term used in the source legislation, “Schedule A business”, was introduced as part of the 1995 reform of Schedule A for income tax and was applied to corporation tax in 1998. That concept was helpful in providing a vessel to contain all the income from land previously charged under Schedule A and to which the rules for calculating trade profits could be applied. But the concept of a Schedule A business, and a UK property business, is rather more complex than that of a trade. That is reflected in this and the other sections that, together, define the range of income that is assessed as income of a property business.

Section 205: UK property business

763. This section defines “UK property business” and introduces the concept of “generating income from land”. It is based on section 15(1) of ICTA. The corresponding rule for income tax is in section 264 of ITTOIA.
764. It gives a basic “one business per company” rule: that (subject to special cases such as those mentioned in section 203(3) and (4)) all the income from a company’s UK land interests is treated as falling within a single UK property business.
765. Although the Chapter builds on the concept of the “business”, the approach differs from the approach in the source legislation. This Act adopts the same approach as ITTOIA and uses the term “UK property business” rather than “Schedule A business”.

Section 206: Overseas property business

766. This section defines “overseas property business”. It is based on section 70A of ICTA. The corresponding rule for income tax is in section 265 of ITTOIA.
767. The definition is identical to that of “UK property business” except that the land from which the income arises is outside the United Kingdom..
768. For the purpose of deciding whether there is an overseas property business, overseas land law is interpreted in accordance with section 290.

Section 207: Meaning of “generating income from land”

769. This section defines “generating income from land”. It is based on sections 15(1) and 24 of ICTA. The corresponding rule for income tax is in section 266 of ITTOIA.
770. The section defines what may be described as the essence of the property business. That is, exploiting rights of land ownership for profit. But it is not intended to identify everything that must be taken into account in calculating the profits of such a business. The concept of the property business is wider than that. “Property business” includes, for example, amounts specifically charged under other provisions such as certain insurance recoveries (see section 103 applied by section 210(2)).
771. *Subsection (2)* extends the meaning of “rents” and is based on section 24(6)(b) of ICTA. Including this extension in the main section (in the source legislation it is relegated to a “construction” section) keeps all the relevant definitions together.

772. *Subsection (3)* explains “other receipts” in subsection (1). This list is not exhaustive but amounts that are not listed here would have to be of a similar nature to those that are listed to come within the definition.
773. *Subsection (4)* extends the charge to particular types of receipt. The source legislation cross-refers to a definition of “caravan” in the Caravan Sites and Control of Development Act 1960. There is a Act-wide definition of “caravan” in section 1314 (and see *Change 96* in Annex 1). “Houseboat” is defined in section 1319 (other definitions).

Section 208: Activities not for generating income from land

774. This section excludes certain “land-related” income from property income and cross-refers to the trading income provisions under which that income is charged. It is based on section 15(1) of ICTA. The corresponding rule for income tax is in section 267 of ITTOIA.

Chapter 3: Profits of property businesses: basic rules

Section 209: Charge to tax on profits of a property business

775. This section applies the corporation tax charge to the profits of a property business. It is based on sections 9, 15 and 18 of ICTA.

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.

Section 211: Loan relationships and derivative contracts

790. This section defines the relationship of the rules in Parts 5 and 7 to those in this Part. It is based on section 15 of ICTA.
791. *Subsection (1)* drops the words of the source “carried on by a company” in referring to a property business because in the context of corporation tax only legislation, they are redundant.
792. *Subsection (2)* is based on the premise that, in the source legislation, the second sentence of paragraph 2(3) of Schedule A is really about the relationship between that provision and section 80(5) of FA 1996 and paragraph 1(2) of Schedule 26 to FA 2002. The source makes a wide statement about the relationship between “this Schedule [A]” and Part 4 of FA 1996 and Schedule 26 to FA 2002. This Act disposes of the concept of Schedule A so the rewritten references are necessarily more focussed.

Section 212: Items treated as receipts and expenses

793. This section gives signposts to other relevant rules of calculation. It is new.
794. In particular the CAA rules override the rules against the inclusion of capital items in sections 53 and 93 of this Act (applied to this Part by section 210(2)).

Section 213: Certain amounts brought into account under Part 3

795. This section excludes from the profits of a property business certain income from land that, exceptionally, may be taxed as profits of a trade. It is based on section 15 of ICTA. See *Changes 4, 5 and 6* in Annex 1 and the commentary on sections 43, 44 and 45. The corresponding rule for income tax is in section 273 of ITTOIA .

Section 214: Relationship between rules prohibiting and allowing deductions

796. This section determines the interaction between those provisions that prohibit a deduction and those provisions that allow a deduction. It is new. The corresponding rule for income tax is in section 274 of ITTOIA.
797. This section does a similar job in Part 4 to that which section 51 does in Part 3. The general principle is that a rule allowing a deduction takes priority over a rule prohibiting a deduction. But that is subject to the exceptions the section mentions. See *Change 7* in Annex 1.
798. *Subsection (4)* makes it clear that the effect of this priority rule extends to the large number of trading income rules that apply to property income indirectly through section 210.

Chapter 4: Profits of property businesses: lease premiums etc

Overview

799. This Chapter contains rules under which a company may be treated as receiving property business receipts in relation to certain lease premiums, or certain other amounts, which would otherwise generally be amounts of a capital nature. It also contains rules whereby relief can, in certain cases, be given to companies in relation to an earlier property business receipt that another person was treated as receiving. The Chapter is based on sections 34 to 38 and 42 of ICTA. The corresponding provisions for income tax are in Chapter 4 of Part 3 of ITTOIA.
800. See sections 62 to 67 for cases in which trading expenses are treated as incurred and deductible by reference to an earlier deemed lease receipt. See section 136 for a case in which trading receipts are reduced by property business receipts that are treated as arising under sections 217 to 225.

Section 215: Overview of Chapter

801. This section provides an overview of the Chapter. It is new. The corresponding provision for income tax is in section 276 of ITTOIA.

Section 216: Meaning of “short-term lease”

802. This section defines “short-term lease” as “a lease whose effective duration is 50 years or less”. It is new. The corresponding provision for income tax is in section 276 of ITTOIA.
803. The “effective duration” of a lease is its duration for the purpose of this Chapter. This may not be the same as the contractual duration of the lease. See commentary on sections 243 and 244.

Section 217: Lease premiums

804. This section treats a property business receipt as arising if a premium is payable in relation to the grant of a short-term lease. It is based on sections 34(1), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 277 of ITTOIA.

805. *Subsection (2)* treats a company to which the premium is due as receiving an amount as a result of entering into a transaction mentioned in section 205 (UK property business) or section 206 (overseas property business), depending on the location of the land to which the lease relates. The effect is that the amount will be treated as a receipt of the company's UK or overseas property business.
806. The approach adopted in subsection (2) is also followed in sections 219 to 225.
807. *Subsection (3)* requires the company to which the premium is due to bring the amount into account in calculating the profits of the property business for the accounting period in which the lease is granted. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

Section 218: Amount treated as lease premium where work required

808. This section treats a lease premium as payable if a lease places an obligation on the tenant to carry out certain works. It is based on section 34(2) and (3) of ICTA. The corresponding provision for income tax is in section 278 of ITTOIA.
809. Such treatment could lead to a property business receipt, or a greater receipt, being treated as arising to the landlord under section 217.

Section 219: Sums payable instead of rent

810. This section treats a property business receipt as arising in certain cases where a payment is made instead of rent for some or all of the duration of a lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 279 of ITTOIA.
811. *Subsection (1)* makes clear that, irrespective of the length of the lease, the payment of a sum instead of rent for a period of 50 years or less is within the scope of this section. Source legislation is not explicit on this point. See *Change 44* in Annex 1.
812. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the sum is payable. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.
813. In calculating the amount to be treated as received in respect of a sum in lieu of rent within section 34(4) of ICTA, the duration of the lease for the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(4)(a) of ICTA. For this purpose, there is excluded from the duration of the lease any period other than that in respect of which the sum in lieu of rent is paid. *Subsections (4) and (6)* have the same effect as those provisions of section 34(1) and (4)(a) of ICTA.

Section 220: Sums payable for surrender of lease

814. This section treats a property business receipt as arising in certain cases where a sum is payable for the surrender of a short-term lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 280 of ITTOIA.
815. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the sum is payable. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

Section 221: Sums payable for variation or waiver of terms of lease

816. This section treats a property business receipt as arising in certain cases where a payment is made for the variation or waiver of any of the terms of a lease. It is based on section 34(1), (5), (6), (7) and (7A) of ICTA. The corresponding provision for income tax is in section 281 of ITTOIA.
817. *Subsection (1)* makes clear that, irrespective of the length of the lease, the payment of a sum as consideration for the variation or waiver of the terms of a lease for a period of 50 years or less is within the scope of this section. Source legislation is not explicit on this point. See *Change 44* in Annex 1.
818. *Subsection (1)* also provides that this section applies only if the sum is due to the landlord or to a connected company. Source legislation does not contain this restriction. See *Change 45* in Annex 1.
819. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the contract providing for the variation or waiver is entered into. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.
820. *Section 227(1)* extends relief under section 228 (the additional calculation rule) to receipts in respect of sums payable for the variation or waiver of the terms of a lease. This is reflected in *subsection (5)* of this section. See *Change 46* in Annex 1.
821. In calculating the amount to be treated as received in respect of a sum for the variation or waiver within section 34(5) of ICTA, the duration of the lease for the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(5)(a) of ICTA. For this purpose, there is excluded from the duration of the lease any period other than that in respect of which the variation or waiver has effect. *Subsections (4) and (6)* have the same effect as those provisions of section 34(1) and (5)(a) of ICTA.

Section 222: Assignments for profit of lease granted at undervalue

822. This section treats a property business receipt as arising in certain cases where a company makes a profit on the assignment of a lease that had been granted at an undervalue. It is based on sections 35(1), (2) and (2A) and 37(2) of ICTA. The corresponding provision for income tax is in section 282 of ITTOIA.
823. The formula in *subsection (4)* for calculating the deemed receipt if there is an assignment at a profit is based on section 35(2) of ICTA (which refers back to the formula in section 34(1) of ICTA).

Section 223: Provisions supplementary to section 222

824. This section supplements section 222. It is based on section 35(1) and (2) of ICTA. The corresponding provision for income tax is in section 283 of ITTOIA.

Section 224: Sales with right to reconveyance

825. This section treats a property business receipt as arising in certain cases where a property is sold on terms which provide for the property to be reconveyed to the seller, or to a connected person, at less than the sale price. It is based on section 36(1) and (4A) of ICTA. The corresponding provision for income tax is in section 284 of ITTOIA.
826. *Subsection (1)(b)* provides that this section applies only if the period between sale and reconveyance is 50 years or less. Source legislation effectively applies if the period is 51 years or less. See *Change 47* in Annex 1.

Section 225: Sale and leaseback transactions

827. This section treats a property business receipt as arising in certain cases where a company sells property on terms which provide for the grant of a lease to the vendor or to a connected person. It is based on section 36(1), (3), (4) and (4A) of ICTA. The corresponding provision for income tax is in section 285 of ITTOIA.
828. *Subsection (1)(b)* provides that this section applies only if the period between sale and leaseback is 50 years or less. Source legislation effectively applies if the period is 51 years or less. See *Change 47* in Annex 1.

Section 226: Provisions supplementary to sections 224 and 225

829. This section supplements sections 224 and 225. It is based on section 36(2), (3) and (4B) of ICTA. The corresponding provision for income tax is in section 286 of ITTOIA.

Section 227: Circumstances in which additional calculation rule applies

830. This section sets out cases where a deemed business property receipt is to be reduced, under section 228, by reference to an earlier taxed receipt. It is based on section 37(1), (2), (3) and (9) of ICTA. The corresponding provision for income tax is in section 287 of ITTOIA.
831. *Subsection (1)* provides that those cases include a deemed business property receipt arising in relation to payments for a variation or waiver of terms of a lease. See *Change 46* in Annex 1.
832. Amounts within section 218 (amount treated as lease premium where work required) are not specified separately in subsection (1), or in section 228(2), because section 218(2) treats such amounts as premiums within section 217.
833. *Subsection (3)* sets out the connection that must exist between the lease in relation to which the taxed receipt arises and the lease in relation to which the later deemed business property receipt arises.
834. *Subsection (4)*'s definitions of "taxed lease" and "taxed receipt" are based on the definitions of "head lease" and "amount chargeable on the superior interest" in section 37(1) of ICTA. The definition of a taxed lease, and taxed receipt, includes leases of land, and associated receipts, outside the UK. This restores a relief that was incorrectly removed by ITTOIA. See *Change 48* in Annex 1.
835. *Subsection (5)* stipulates that for section 228 to apply there must be at least one taxed receipt with an "unused amount". That is because section 235 (limit on reductions and deductions) prevents relief being given under section 228 by reference to a taxed receipt if that taxed receipt does not have an unused amount. Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 228: The additional calculation rule

836. This section provides for the amount of a deemed business property receipt to be reduced, in cases within section 227, by reference to an earlier taxed receipt. It is based on section 37(2), (3), (7) and (9) of ICTA. The corresponding provision for income tax is in section 288 of ITTOIA.
837. The amount to be reduced is referred to in this section, and in section 229, as "the receipt under calculation".
838. *Section 227* extends relief to deemed business property receipts arising in relation to the variation or waiver of the terms of a lease. *Subsection (2)* reflects this by referring to section 221. See *Change 46* in Annex 1.

839. This section introduces the label “basic relieving amount” for the amount by which the receipt under calculation is to be reduced.
840. *Subsection (3)* requires the basic relieving amount to be restricted under section 229(5) so that it does not exceed the amount of the receipt under calculation. Source legislation is not as explicit about what happens if relief is given in relation to more than one earlier taxed receipt. If there is more than one taxed receipt by reference to which the receipt under calculation may be reduced, it is for the company entitled to the relief to decide the order in which relief is to be taken by reference to those taxed receipts.
841. For subsection (3) to apply there must be at least one taxed receipt with an “unused amount”. That is because section 235 (limit on reductions and deductions) prevents relief under this section being given by reference to a taxed receipt if that taxed receipt does not have an unused amount. Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.
842. *Subsection (4)*’s use of the “unreduced amount” of the taxed receipt (defined in section 230(2)) in the formula makes clear that the basic relieving amount by reference to a taxed receipt is to be calculated according to the amount of that receipt *before* any reductions or deductions.
843. The definition in *subsection (6)* of “receipt period” in relation to a receipt under sections 217 and 219 to 222 is based on the definition of “the period in respect of which an amount arose” in section 37(7)(b) of ICTA.

Section 229: The additional calculation rule: special cases

844. This section:
- modifies the rule in section 228 if the receipt under calculation arises in respect of part only of the premises subject to the taxed lease; and
 - sets limits on the reduction under that section in two cases.

It is based on section 37(2), (3) and (9) of ICTA. The corresponding provision for income tax is in section 289 of ITTOIA.

845. **Section 227** extends relief under section 228 to business property receipts treated as arising in relation to the variation or waiver of the terms of a lease. This is reflected in the reference in *subsection (2)* to section 221. See *Change 46* in Annex 1.
846. But subsection (2) does not apply to receipts under section 222 (assignments for profit of lease granted at undervalue) because it is not possible for a lease to be assigned other than in respect of the whole of the premises subject to the lease.
847. *Subsection (3)* requires the fraction in subsection (2) to be calculated on a “just and reasonable basis”, where section 37(3) of ICTA requires a “just apportionment”. See *Change 12* in Annex 1.
848. *Subsection (4)* restricts the reduction calculated under section 228(4) or subsection (2) of this section to the “unused amount” of the taxed receipt by reference to which it is calculated. That is because giving greater relief would create a conflict with section 235 (limit on reductions and deductions). Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 230: Meaning of “unused amount” and “unreduced amount”

849. This section is based on section 37(1), (8) and (9) of ICTA. The corresponding provision for income tax is in section 290 of ITTOIA.

850. The “unused amount” of a taxed receipt is defined in *subsections (1) and (5)*. That label is used by sections 228 and 229 to ensure that relief given by reference to a taxed receipt under those sections does not conflict with section 235 (limit on reductions and deductions). Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 231: Deductions for expenses under section 232

851. This section provides business property deductions to a company for expenses that it is treated as incurring in respect of an earlier taxed receipt. This section is based on section 37(4) and (9) of ICTA. The corresponding provision for income tax is in section 291 of ITTOIA.
852. *Subsection (2)* provides that a deduction for an expense which the tenant is treated as incurring under section 232 is allowed for each “qualifying day” on which all or part of the premises subject to the taxed lease is either occupied for the purposes of the tenant’s property business or is sublet. A “qualifying day” is defined in section 232(3) as a day which falls within the receipt period of the taxed receipt.
853. *Subsection (3)* provides that a deduction for an expense which a tenant is treated as incurring under section 232 is subject to the application of any provision of Chapter 4 of Part 3 (rules restricting deductions). This is based on the source legislation providing that the amounts, corresponding to those in subsection (2), are treated as rent, whose deductibility is therefore subject to rules corresponding to those in Chapter 4 of Part 3.
854. *Subsection (4)* provides that the deduction allowed in respect of an expense under section 232 may be restricted to prevent the cap in section 235, on the total relief which can be given by reference to a taxed receipt, being exceeded. See *Change 49* in Annex 1.

Section 232: Tenants under taxed leases treated as incurring expenses

855. This section sets out the method of calculating the expense for which a deduction may be allowed under section 231. It is based on section 37(4) of ICTA. The corresponding provision for income tax is in section 292 of ITTOIA.
856. The formula in *subsection (4)* calculates the expense for each qualifying day by spreading the amount of the taxed receipt evenly over the receipt period of that receipt. Defining “A” in that formula as “the unreduced amount of the taxed receipt” makes clear that the amount of the expense which the tenant is treated as incurring for each qualifying day is calculated by reference to the amount of the taxed receipt *before* any reductions or deductions.

Section 233: Restrictions on section 232 expenses: the additional calculation rule

857. This section supplements section 232’s application to a taxed receipt where a lease premium receipt is also reduced by reference to that taxed receipt. It is based on sections 37(5) and (7) and 37A of ICTA. The corresponding provision for income tax is in section 293 of ITTOIA.
858. *Subsections (2) and (3)* provide for a tenant to be treated as incurring an expense for a qualifying day under section 232 only to the extent that the “daily amount of the taxed receipt” exceeds the “daily reduction of the lease premium receipt”. This prevents relief being lost in certain cases where more than one taxed receipt has been used to reduce the lease premium receipt to nil. See *Change 13* in Annex 1.
859. The daily amount of the taxed receipt and the daily reduction of the lease premium receipt are calculated according to the formulas in *subsection (6)*:

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- the formula for calculating the daily amount of the taxed receipt is the same formula used in section 232(4) to calculate the amount of the expense which the tenant is treated as incurring for each qualifying day; and
 - the formula for calculating the daily reduction of the lease premium receipt spreads the reduction calculated under section 228 or the corresponding section in ITTOIA evenly over the receipt period of the lease premium receipt.
860. *Subsection (5)* deals with the case where for a qualifying day a taxed receipt reduces more than one lease premium receipt. In such a case, the tenant is treated as incurring an expense for that day under section 232 only to the extent that the daily amount of the taxed receipt exceeds the *total* of the daily reductions of each of the lease premium receipts. See *Change 13* in Annex 1.

Section 234: Restrictions on section 232 expenses: lease of part of premises

861. This section adapts sections 232 and 233 for cases where the lease premium receipt arises in relation to only a part of the premises in respect of which the taxed receipt arose. It is based on sections 37(6) and 37A of ICTA. The corresponding provision for income tax is in section 294 of ITTOIA.
862. *Section 227* extends relief under section 228 to business property receipts treated as arising in relation to the variation or waiver of the terms of a lease. This is reflected in the reference in *subsection (2)* to section 221. See *Change 46* in Annex 1.
863. *Subsection (4)* applies sections 232 and 233 separately to that part of the premises in relation to which the lease premium receipt arises and to the remainder of the premises. And *subsection (5)* deals with the case where there is more than one sublease which does not extend to the whole of the landlord's premises. See *Change 13* in Annex 1.
864. *Subsection (6)* adapts sections 232 and 233 by multiplying the unreduced amount of the taxed receipt ("A") by the fraction of the premises to which the lease premium relates in the formulas for calculating:
- the expense for a qualifying day in section 232(4); and
 - the daily amount of the taxed receipt in section 233(6).
865. *Subsection (7)* requires the fraction in subsection (6) to be calculated on a "just and reasonable basis", where section 37(6) of ICTA is not explicit about the necessary basis of apportionment. See *Change 12* in Annex 1.

Section 235: Limit on reductions and deductions

866. This section places a limit on the relief that can be given under this Chapter in relation to a taxed receipt. It is based on section 37(9) of ICTA. The corresponding provision for income tax is in section 295 of ITTOIA.
867. The section restricts total relief in respect of a taxed receipt by way of:
- reductions under the additional calculation rule in section 228; and
 - deductions under section 232.
868. The total relief is restricted to the amount of the taxed receipt after the following (so far as given by reference to the taxed receipt):
- any reductions or deductions under sections 288 or 292 of ITTOIA (which correspond to sections 228 and 232 respectively); and
 - any deductions under section 63 (trading expense), or under section 61 of ITTOIA (which corresponds to section 63).

See *Change 49* in Annex 1.

Section 236: Payment of tax by instalments

869. This section provides for corporation tax, attributable to lease premium receipts, to be paid by instalments in certain cases. It is based on section 34(8) of ICTA. The corresponding provision for income tax is in section 299 of ITTOIA.
870. *Subsection (2)* attributes the power to determine the amount and timing of instalments to an officer of Revenue and Customs where the source legislation refers to “the Board” (defined by source legislation to mean “the Commissioners of Inland Revenue”). See *Change 1* in Annex 1.

Section 237: Statement of accuracy for purposes of section 222

871. This section provides for an officer of Revenue and Customs to certify a statement, made in cases where assignment of a lease does or may give rise to a taxed receipt, if satisfied that that the statement is accurate. It is based on section 35(3) of ICTA. The corresponding provision for income tax is in section 300 of ITTOIA.

Section 238: Claim for repayment of tax payable by virtue of section 224

872. This section provides for corporation tax, paid in respect of a receipt under section 224 (sales with right to reconveyance), to be repaid in certain cases. It is based on section 36(2) of ICTA. The corresponding provision for income tax is in section 301 of ITTOIA.
873. *Subsection (3)* refers to a period of four years where the source legislation provides for six years. Schedule 2 preserves the six year period in the source legislation until an order is made by the Treasury reducing the period to four years.

Section 239: Claim for repayment of tax payable by virtue of section 225

874. This section provides for corporation tax, paid in respect of a receipt under section 225 (sale and leaseback transactions), to be repaid in certain cases. It is based on section 36(2) and (3) of ICTA. The corresponding provision for income tax is in section 302 of ITTOIA.
875. *Subsection (3)* refers to a period of four years where the source legislation provides for six years. Schedule 2 preserves the six year period in the source legislation until an order is made by the Treasury reducing the period to four years.

Section 240: Appeals against proposed determinations

876. This section provides for determinations of amounts under this Chapter that may affect the tax liability of more than one person and for appeals against proposed determinations. It is based on section 42(1), (2) and (3) of ICTA.

Section 241: Section 240: supplementary

877. This section supplements section 240. It is based on section 42(6) and (7) of ICTA.

Section 242: Determination by tribunal

878. This section provides for objections to provisional determinations under section 240 to be determined by an independent tribunal. It is based on section 42(4) and (5) of ICTA.

Section 243: Rules for determining effective duration of lease

879. This section contains rules for determining the effective duration of a lease. It is based on section 38(1) and (6) of ICTA. The corresponding provisions for income tax are in section 303 of ITTOIA.
880. *Subsection (1)* sets out various circumstances in which a lease may be treated as ceasing other than on the date specified in the lease. Rules 1, 2 and 3 are based on paragraphs (a), (b) and (c) respectively of section 38(1) of ICTA.
881. Rule 1 provides that the lease is treated as ending on the date beyond which it is unlikely that the lease will continue. See *Change 50* in Annex 1.
882. *Subsection (3)* is new. It ensures that all amounts that may give rise to a charge to tax by reason of sections 218 to 221 are treated as premiums in applying Rule 1 in subsection (1). See *Change 50* in Annex 1.
883. **Schedule 1** to this Act amends section 303 of ITTOIA (rules for determining effective duration of lease) so that the changes also apply for income tax. See *Change 50* in Annex 1.

Section 244: Applying the rules in section 243

884. This section supplements the rules in section 243. It is based on section 38(2), (3) and (4) of ICTA. The corresponding provisions for income tax are in section 304 of ITTOIA.
885. Section 38(4) of ICTA refers to benefits conferred and payments made for the purposes of securing a corporation tax advantage in the application of Part 2 of ICTA (provisions relating to the Schedule A charge) or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA (profits of property businesses: lease premiums etc).
886. Part 2 of ICTA consists of sections 21A to 42 of ICTA. Other than the lease premiums rules in sections 34 to 39, the sections of Part 2 of ICTA which are in force are sections 21A to 21C (calculation of the profits of a Schedule A business), section 24 (construction of Part 2), section 30 (sea walls), sections 31ZA to 31ZC (energy-saving items), section 40 (receipts and outgoings on sale of land) and section 42 (appeals against determinations under sections 34 to 36 of ICTA or Chapter 4 of Part 3 of ITTOIA).
887. Sections 43A to 43G of ICTA were also in Part 2 of ICTA and could have applied to leases granted before 6 June 2006. But where those sections applied they gave rise to taxable receipts, rather than deductions from taxable income.
888. It is considered that the only tax advantage that could be secured in the context of section 38(4) of ICTA would be under sections 34 to 37 of ICTA. So *subsection (4)* refers to a corporation tax advantage under this Chapter or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA.

Section 245: Information about effective duration of lease

889. This section provides for an officer of Revenue and Customs to require, by notice, information relevant to determining the effective duration of a lease. It is based on section 38(5) of ICTA. The corresponding provision for income tax is in section 305 of ITTOIA.

Section 246: Provisions about premiums

890. This section contains rules about sums that may be treated as premiums and the lease to which a premium may be attributed. It is based on section 24(2) to (4) of ICTA. The corresponding provision for income tax is in section 306 of ITTOIA.

Section 247: Interpretation

891. This section provides rules about the interpretation of “premium” and the application of the Chapter to Scotland. It is based on sections 24(1), (4) and (5), 37(10) and 37A(9) of ICTA. The corresponding provision for income tax is in section 307 of ITTOIA.

Chapter 5: Profits of property businesses: other rules about receipts and deductions

Overview

892. This Chapter contains provisions that supplement the basic calculation rules in Chapter 3 of this Part of this Act. The corresponding rules for income tax are in Chapter 5 of Part 3 of ITTOIA.
893. The provisions in this Chapter are about particular receipts or more unusual circumstances.

Section 248: Furnished lettings

894. This section brings the “letting” of furniture, when it is part and parcel of the letting of accommodation, within the property income charge. It is based on section 15 of ICTA. The corresponding rule for income tax is in section 308 of ITTOIA.
895. Without this provision, rent paid for use of the furniture in furnished lettings would not be included in the property income charge because the “rent” for the furniture does not derive from land.
896. The purpose of *subsection (1)(b)* is to make it clear that related revenue expenses such as the expenses of repair and insurance of the furniture are deductible in calculating the profits of the property business.
897. *Subsection (2)* excludes income and expenses where the hiring of the furniture is not simply incidental to exploiting an interest in land.
898. *Subsection (4)(a)* refers to a “caravan and a houseboat”. There is a Act-wide definition of “caravan” in section 1314: see the commentary on section 1314 and *Change 96* in Annex 1. “Houseboat” is defined in section 1319 (other definitions), the corporation tax equivalent of section 878 of ITTOIA.

Section 249: Acquisition of business: receipts from transferor’s UK property business

899. This section sets out what happens if a successor to a property business receives a sum that arose from the business when it was carried on by the predecessor. It is based on sections 21B and 106 of ICTA. The corresponding rule for income tax is in section 310 of ITTOIA.
900. *Subsection (2)* treats the “sum” received as a receipt of the property business. As this rule affects the calculation of the profits of a property business it appears in this Chapter rather than with the post-cessation receipt rules, where it is in the source legislation.
901. The source legislation applies “for all purposes”. This section applies for corporation tax purposes. Section 310 of ITTOIA applies for income tax purposes. Section 37(1) of TCGA (as construed in accordance with section 8(4) of TCGA) ensures that any sums received as a result of the transfer are not charged to corporation tax on a company’s chargeable gains.

Section 250: Reverse premiums

902. This section sets out the rules for taxing reverse premiums as receipts of a property business. It is based on Schedule 6 to FA 1999. The corresponding rule for income tax is in section 311 of ITTOIA.

903. *Subsection (1)* refers to a “reverse premium”. In accordance with *subsection (6)* that expression has the same meaning as in section 96. So this section applies to reverse premiums excluding any of the “excluded cases” within section 97. The subsection also excludes any reverse premium that is charged to tax as a trade receipt by section 98.
904. *Subsections (2)* and *(3)* bring the reverse premium within the scope of the property income rules as United Kingdom or overseas property business even if the recipient is not already carrying on a property business.
905. [Schedule 2](#) to this Act rewrites the transitional provision in section 54(2) of FA 1999. This section does not apply to pre 9 March 1999 reverse premiums.

Section 251: Deduction for expenditure on energy-saving items

906. This section provides a deduction for certain expenditure on energy-saving items where that expenditure would not otherwise be allowable because it is capital. It is based on section 31ZA of ICTA.

Section 252: Restrictions on relief

907. This section imposes certain restrictions on the relief that would otherwise be due under section 251. It is based on section 31ZB of ICTA.

Section 253: Regulations

908. This section provides for the Treasury’s powers to make regulations for the purposes stated. It is based on section 31ZC of ICTA.

Section 254: Deduction for expenditure on sea walls

909. This is the first of four sections that provide relief to a landlord for making a sea wall or other embankment to protect let premises against flooding by the sea or a tidal river. The corresponding rules for income tax are in sections 315 to 318 of ITTOIA.
910. This section states the circumstances in which the relief is given. It is based on section 30(1), (4) and (5) of ICTA. The corresponding rule for income tax is in section 315 of ITTOIA.
911. *Subsection (2)* makes it clear that to obtain a deduction for sea walls expenditure, the person carrying on the property business and the person incurring the sea walls expenditure must be the same person. This may appear to be stating the obvious but section 30(1) of ICTA says merely that the person incurring the expenditure is treated as making a payment “for the purpose of computing the profits of *any* Schedule A business carried on in relation to those premises” (emphasis added). This does not mean literally any such business carried on by someone other than the person incurring the expenditure: there would be no point in deeming the payment to be made by that person if it were otherwise. And the provisions on transfer of interests in section 30(2) to (3) of ICTA reflect the notion that the deemed payment, and hence the right to relief, moves from the former owner to the transferee. There is no suggestion of involvement by any other party.
912. *Subsection (3)* defines the “deduction period” referred to in subsection (2). Qualifying expenditure is deducted over 21 years in calculating the profits of the property business. The “deduction period” is comparable to the “writing-down period” over which expenditure qualifying for capital allowances is written off. This reflects the similarity between the relief given by the sea walls provisions and certain capital allowances provisions. The relief is for expenditure which would otherwise be capital in nature. And the expenditure is not relieved all at once but over a period, even if there are changes in the person who obtains the relief.

913. *Subsection (5)* is based on section 30(4) of ICTA which deals with the unusual fact that for corporation tax purposes sea walls relief is given by reference to a year of assessment (“tax year” in ITTOIA and this Act). A year of assessment is not a term that is normally relevant to corporation tax where the relevant measures of time are financial years and accounting periods. “Tax year” is defined in a section 1319 (other definitions), the equivalent for corporation tax purposes of section 878 of ITTOIA.

Section 255: Transfer of interest in premises

914. This section deals with the case where the person who incurred the sea walls expenditure sells the premises during the 21 year period over which the deduction is due. It is based on section 30(2) and (3) of ICTA. The corresponding rule for income tax is in section 316 of ITTOIA.
915. *Subsection (1)* applies to transfers of the relevant interest “whether by operation of law or otherwise”. These words derive directly from the source legislation. They ensure that the provision applies to, for example, successions to estates as well as the sort of merger of interests envisaged in section 256.
916. *Subsection (2)(b)* requires any apportionment to be “just and reasonable” whereas section 30(2)(a) of ICTA refers simply to an apportionment that is “just”. This change reflects the approach that was adopted in CAA and which has been followed in similar contexts elsewhere for consistency. There is no practical difference between the two forms of words. See *Change 12* in Annex 1.
917. *Subsection (5)* makes explicit what is merely implicit in the source legislation, namely, the extent of the transferor’s entitlement to a deduction in subsequent years. In particular, subsection (5)(a) makes it clear that if the transfer is of only part of the premises, the transferor continues to be entitled to a deduction in relation to the part not transferred.

Section 256: Ending of lease of premises

918. This section deals with the case where the sea walls expenditure is incurred by a lessee and the lease comes to an end before the end of the deduction period. It is based on section 30(3) of ICTA. The corresponding rule for income tax is in section 317 of ITTOIA.
919. The cases to which *subsection (3)* applies include renewals of the lease to the same person. Then the deduction passes to the immediate reversioner.
920. In the source legislation “lease” is defined for the purposes of the sea walls provisions in section 24(6)(a) of ICTA. But that definition is redundant and, since it no longer applies to any other provision, is not rewritten in this Act. It is redundant in the sea walls context for the following reasons.
921. Section 24(6)(a) of ICTA defines references to a lease as extending only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises. It originated as paragraph 16 of Schedule 4 to FA 1963. Notes on Clauses to FA 1963 explain that the reference to possession was to ensure that a “lease” in Schedule A and sections 25 to 31 of ICTA must be one of land and not of incorporeal hereditament. So a lease of sporting rights, or a right of way, would not be covered. However, *Street v Mountford* [1985], AC 809 established that a “lease” of land which does not confer on the tenant exclusive possession is not, in fact, a lease but a licence.
922. Section 30(2) of ICTA does not explain the meaning of the transfer of the whole of a person’s interest in any premises or part of any premises. The transfer of the whole of a person’s interest is significant because it can lead to the transfer of entitlement to a deduction for sea walls expenditure. But entitlement to a deduction for sea walls expenditure does not arise anyway unless a person is the owner or tenant of premises.

A lease which makes a person a tenant of premises is not a lease of an incorporeal hereditament. So, although section 30 of ICTA does not expressly exclude leases of incorporeal hereditaments, to the extent that they might cover leases of incorporeal hereditaments references to “leases” in that provision are simply redundant.

Section 257: Transfer involving person within the charge to income tax

923. This section ensures that entitlement to a deduction for expenditure on sea walls continues properly when the interest in the premises is transferred between a corporation tax payer and an income tax payer. It is based on section 30(2A) of ICTA. The corresponding rule for income tax is in section 318 of ITTOIA.
924. Entitlement to a deduction for expenditure on sea walls can be transferred with ownership of the premises. That transfer can be between a corporation tax payer and an income tax payer. Section 255 deals with transfers between corporation tax payers. But it cannot deal with a transfer from a corporation tax payer to an income tax payer or the reverse because the provisions in this Act apply only to corporation tax payers.
925. **Section 257** allows the seawalls provisions in this Act to work properly in respect of the party to the transfer who is subject to corporation tax.
926. *Subsection (4)* signposts to the provisions in ITTOIA that deal with the party to the transfer who is subject to income tax.

Section 258: Relief in respect of mineral royalties

927. This section provides that only half the net profits received in respect of mineral royalties are charged to corporation tax on income. It is based on section 122 of ICTA. The other half of the profits are charged to corporation tax on chargeable gains by section 201 of TCGA. The corresponding rule for income tax is in section 319 of ITTOIA.
928. The section applies only to mineral royalties that are not taxed under Chapter 7 of this Part. That Chapter taxes rents and royalties from concerns such as mines and quarries. In practice nearly all mineral royalties will be taxed under Chapter 7 of Part 4 of this Act. For this reason this section cross-refers to the definitions in that Chapter.

Section 259: Nature of item apportioned on sale of estate or interest in land

929. This section preserves the capital or revenue nature of an amount due, or payable in arrears, that is apportioned to a seller on the sale of land. It is based on section 40(3)(b) of ICTA. The corresponding rule for income tax is in section 320 of ITTOIA.
930. Most of section 40 of ICTA is not rewritten because it has become redundant following the application of Schedule D Case I principles to Schedule A.
931. The original predecessor of section 40 of ICTA (section 20 of FA 1964) was introduced to deal with a specific problem. That was reflecting, in the calculation of income from land, any apportionments of rent (as a receipt or an expense) that took place between seller and purchaser when land was sold. That required two kinds of rule. The first were calculation rules. They were necessary because at the time section 20 of FA 1964 was introduced the charge on income from land was based on *entitlement* to incoming rent and *payment* of outgoing rent. Where there were apportionments on sale there might be neither entitlement nor payment by the “right” person. The second were timing rules to ensure that the consequential adjustments fell in the right tax year.
932. As a result of the 1995 Schedule A reforms and their application, in 1998, to corporation tax, these rules are no longer necessary. Two main factors lead to this conclusion.
933. The first relates to the object of charge under Schedule A: the profit of a Schedule A business. For there to be a Schedule A business a person has to be exploiting United

Kingdom land for rent (section 15(1)1(1) of ICTA). In order to be a receipt (or outgoing) of the Schedule A business it is enough that an amount relates to a period when the person was exploiting the land.

934. The second factor relates to the time when income within the charge is brought into account. Accounting principles have been imported from Schedule D Case I into Schedule A. These principles bring an item into account in the period to which it relates. So the rules in section 40(1) to (3) of ICTA about the time of receipt and payment are unnecessary.
935. Section 40(4) of ICTA is similarly now unnecessary. It provides that any reference in section 40(1) and (2) of ICTA to a party to a contract includes a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise. Since the test of whether or not an item is to be brought into account under Schedule A is whether it arises from a person's exploitation of land then whether the rights and obligations under the contract pass by assignment or otherwise, the person to whom they pass will be the person exploiting the land.
936. Section 40(4A) of ICTA is not rewritten. It is linked to the parts of section 40 of ICTA that are unnecessary and also gives in certain circumstances the wrong result.
937. Section 40(3)(b) of ICTA has a clear anti-avoidance purpose that is preserved in section 259. But it also contains a timing rule. The timing rule in section 40(3)(b) of ICTA is not rewritten because accounting principles again attribute the apportioned amount to the correct period.
938. This section rewrites the anti-avoidance part of section 40(3)(b) of ICTA which preserves the capital or revenue nature of any amount due or paid in arrears and apportioned by the buyer to the seller on the sale of land.
939. The time of apportionment referred to in the section is normally the time of completion of the sale.

Section 260: Mutual business

940. This section makes it clear that the concept of "mutuality" does not apply in the property income context. It is based on section 21C of ICTA. The corresponding rule for income tax is in section 321 of ITTOIA.
941. Mutuality is a concept that has been developed by the courts over a long period. It derives from the principle that one cannot make a profit by dealing with oneself. It may arise in the trading context where a class of contributors to a common fund are entitled, as a class, to share in the surpluses of that fund.
942. The approach in this section differs from that of the source and is simpler. The approach in section 21C of ICTA is to apply the normal profit calculation rules to any "mutual business" and add the result to the profits of the rest of the Schedule A business. This section on the other hand prevents, from the outset, the concept of mutuality operating on amounts within this Part of this Act.

Section 261: Adjustment on change of basis

943. 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 180. The corresponding rule for income tax is in section 329 of ITTOIA.
944. In the source legislation the change of basis rules apply to a Schedule A business because they are "other rules applicable to Case I of Schedule D" (see section 21B of ICTA). On the other hand, for an overseas property business section 70A(5) of ICTA imports only "the rules applicable to the computation of the profits" (see section 21A of ICTA). So the change of basis rules do not apply to an overseas property business.

Section 262: Giving effect to positive and negative adjustments

945. This section sets out how to calculate an adjustment and how it is treated for tax purposes. It is based on paragraphs 2 and 4 to 7 of Schedule 22 to FA 2002. The corresponding rules for income tax are in sections 330, 333 and 334 of ITTOIA.
946. *Subsection (6)* is a cross-reference to the trading income rule about expenses for which a deduction has already been made.

Section 263: Expenditure on integral features

947. This section draws attention to the rule in section 33A(3) of CAA. There is a signpost to that rule in section 74(1)(da) of ICTA. That subsection is repealed. The signpost is not formally rewritten but it is replaced in this section (and in the trading income section 60).

Chapter 6: Commercial letting of furnished holiday accommodation

Overview

948. The sections in this Chapter define the lettings that can qualify for special tax advantages: “the commercial letting of furnished holiday accommodation”. They are based on section 504 of ICTA. The corresponding rules for income tax are in sections 322 to 327 of ITTOIA.
949. The sections do not, themselves, provide for the tax advantages. That is the function of the particular “relieving” provisions (such as the loss relief provisions) that are cross-referred to.
950. The primary purpose of this Chapter is to provide a central definition of this particular type of letting, income from which benefits from tax advantages provided for in other Acts.
951. This income is part of the single property business denoted in section 205 and chargeable therefore under this Part.

Section 264: Overview of Chapter

952. This section is introductory and explanatory. It is new. It makes clear that the provisions that provide for the tax advantages are to be found elsewhere. The corresponding rule for income tax is in section 322 of ITTOIA.

Section 265: Meaning of “commercial letting of furnished holiday accommodation”

953. This section defines the lettings that can benefit from the special tax treatment. It is based on section 504 of ICTA. The corresponding rule for income tax is in section 323 of ITTOIA.
954. It is not sufficient that the letting is simply of furnished holiday accommodation: it must also be “qualifying holiday accommodation”. *Subsection (3)(b)* provides a signpost to the sections that define “qualifying holiday accommodation”.

Section 266: Meaning of “relevant period” in sections 267 and 268

955. This section defines the period during which certain conditions need to be satisfied in order to benefit from the special tax treatment. It is based on section 504(5) of ICTA. The corresponding rule for income tax is in section 324 of ITTOIA.
956. *Subsection (4)* gives the general rule and identifies the relevant period for the case where there is established and continuing letting. It follows the source legislation (in section 504(5)(c) of ICTA) by putting the general rule covering what is likely to be the

most common case, last. This is because the company still needs to read the first two rules to know whether it falls within the general rule.

Section 267: Meaning of “qualifying holiday accommodation”

957. This section sets out the additional tests the letting must satisfy to qualify for the special treatment. It is based on section 504(3) and (5) of ICTA. The corresponding rule for income tax is in section 325 of ITTOIA.
958. *Subsection (1)*, which is based on section 504(3), introduces the term “qualifying holiday accommodation” and defines it by reference to the three conditions that are set out in the subsequent subsections.
959. Subsection 504(3) of ICTA is particularly complex. The three tests it imposes in paragraphs (a) to (c) are referred to in the subsequent subsections of this section as, respectively, the “availability”, “letting” and “pattern of occupation” conditions. If all three are met, the accommodation is “qualifying holiday accommodation”.
960. *Subsections (4) to (6)* are based on section 504(3)(c) of ICTA. Section 504(3)(c) of ICTA is particularly ambiguous and this section seeks to reduce that ambiguity. The approach differs from that in the source legislation and involves a change that alters the period during which, in order to qualify for the special treatment, the accommodation must not be occupied for more than 31 days at a time. See *Change 51* in Annex 1.

Section 268: Under-used holiday accommodation: averaging elections

961. This section allows accommodation that would be “qualifying holiday accommodation”, were it not simply for insufficient actual letting, nevertheless to qualify if, *on average*, the letting condition in section 267(3) is met. It is based on section 504(6) to (8) of ICTA. The corresponding rule for income tax is in section 326 of ITTOIA.
962. *Subsection (1)* introduces a new term, “under-used accommodation”, to denote this accommodation.
963. *Subsection (4)* introduces a change. This changes the period over which lettings are averaged for the purpose of treating infrequently let property as qualifying holiday accommodation from the accounting period to the relevant period (as defined in section 266). See *Change 52* in Annex 1.

Section 269: Capital allowances and loss relief

964. This section provides for separate calculations in order to give effect to the tax advantages of qualifying holiday lettings. It is new. The corresponding rule for income tax is in section 327 of ITTOIA.
965. There is no explicit requirement for separate furnished holiday lettings calculations in section 503 of ICTA. But it is clearly not possible to give effect to the special corporation tax treatments available to furnished holiday lettings without separating out the relevant income and expenditure. Requiring, where appropriate, separate calculations makes explicit what is only implicit in section 503 of ICTA.
966. This section provides a mechanism to ensure that the special rules that can give tax advantages in respect of these lettings work properly and clearly in the context of a UK property business of which the furnished holiday lettings is part: the profit from such lettings must be identified separately but only when there is a practical need to do so.

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).

Chapter 8: Rent receivable for UK electric-line wayleaves

Overview

990. This Chapter rewrites the Schedule D Case VI charge on rent received for a wayleave granted in the United Kingdom. It is based on section 120 of ICTA.
991. If a landowner receives rent for a UK electric-line wayleave section 120 of ICTA provides that:
- the rent is charged under Schedule A if the landowner receives other rent in respect of the same land; otherwise
 - the rent is charged under Schedule D.
992. In practice this meant that if the landowner carries on a trade on the land the rent can be treated as a trade receipt. Otherwise the rent was taxed under Schedule D Case VI.
993. Section 396 of ICTA gives the rules for dealing with Schedule D Case VI losses. In order to preserve that loss regime it is necessary to isolate the income that ICTA charges under Schedule D Case VI.

Section 277: Charge to tax on rent receivable for a UK electric-line wayleave

994. This section applies the charge to corporation tax to rent receivable for a UK electric-line wayleave. It is based on section 120 of ICTA. The corresponding rule for income tax is in section 344 of ITTOIA.

Section 278: Meaning of “rent receivable for a UK electric-line wayleave”

995. This section provides the definition of “rent receivable for a UK electric-line wayleave”. It is based on section 120 of ICTA. The corresponding rule for income tax is in section 345 of ITTOIA.
996. Section 120(1) of ICTA identifies the right in respect of which the rent is payable as an “easement”. Section 120(5) of ICTA cross-refers to the definition of “easement” in section 119(3) of ICTA. Section 119 of ICTA is rewritten in Chapter 7 of this Part. As explained in the commentary on section 45 both this Chapter and section 45 use the term “wayleave” to describe the right in respect of which the rent is received. In practice this is how most of the payments covered by this section are usually described. But the generality of the words in section 119(3) of ICTA has not been lost. The section also uses the Scottish term for “easement”, “servitude”.
997. *Subsection (2)* clarifies the meaning of “electric, telegraph or telephone wire or cable”. It does not repeat the reference to “transformer” in the source legislation. In its context it is clear that “apparatus” would include “transformer”.

Section 279: Extent of charge to tax

998. This section sets out the two exceptions under which the rent received in respect of a UK electric-line wayleave is not taxed under this Chapter. It is based on section 120 of ICTA. The corresponding rule for income tax is in section 346 of ITTOIA.
999. *Subsections (1) and (2)* deal with the case in which the company receives other rent in respect of the land except rent from another wayleave. The rent from the wayleave is taxed as property income.
1000. *Subsections (3) and (4)* deal with the case in which the company carries on a trade on the land. See *Change 6* in Annex 1 and the commentary on section 45. The rent may be taxed as a trade receipt.

Chapter 9: Post-cessation receipts

Overview

1001. This Chapter applies the rules about post-cessation receipts to UK property businesses, broadly as they apply to trades. The main rules for trades are in Chapter 15 of Part 3 of this Act. The application of the rules to property businesses is based on section 21B of ICTA, which specifically mentions sections 103 to 106 of ICTA.
1002. Although the post-cessation receipt 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 70A of ICTA imports only the computation rules in section 21A and the post-cessation receipt rules do not apply to an overseas property business.
1003. A property business cannot have trading stock. So section 195 (transfer of trading stock) does not have a corresponding rule in this Chapter.
1004. The following trading income rules apply to property businesses but are not in separate sections in this Chapter:
- sections 192 and 193: rules about debts (these rules are applied by section 283(2)); and
 - sections 196 and 197: allowable deductions (these rules are applied by section 285).

Section 280: Charge to tax on post-cessation receipts

1005. This section applies the corporation tax charge on income to post-cessation receipts. It is based on sections 103 and 104 of ICTA, as applied by section 21B of ICTA. The corresponding rule for income tax is in section 349 of ITTOIA.

Section 281: Extent of charge to tax

1006. This section restricts the charge on the post-cessation receipts. It is based on sections 103 and 104 of ICTA, as applied by section 21B of ICTA. The corresponding rule for income tax is in section 350 of ITTOIA.

Section 282: Basic meaning of “post-cessation receipt”

1007. This section defines post-cessation receipts of a UK property business. It is based on sections 103, 104 and 110 of ICTA, as applied by section 21B of ICTA. The corresponding rule for income tax is in section 353 of ITTOIA.
1008. *Subsection (2)* explains that a person permanently ceases to carry on a UK property business if:

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

- a company ceases to be within the charge to income tax in respect of the UK property business; or
- a company or any other person ceases to be a member of a firm which carries on a UK property business.

Section 283: Other rules about what counts as a “post-cessation receipt”

1009. This section brings together signposts to rules that operate so as to treat certain sums as post-cessation receipts and to exclude others from the charge. It is new. The corresponding rule for income tax is in section 354 of ITTOIA.
1010. *Subsection (1)* is a signpost to the section that deals with the transfer of a right to receive a post-cessation receipt to a person who does not carry on a UK property business.
1011. *Subsection (2)* lists the trading income rules that apply to create post-cessation receipts for the purpose of this Chapter.
1012. *Subsection (3)* draws attention to the rule in Chapter 5 of this Part that treats a sum received as not being a post-cessation receipt if the right to it was transferred with a property business. It also mentions the rule in Part 18 of this Act that treats profits of an overseas property business as post-cessation receipts (of a UK property business) if they become remittable after the company has ceased to carry on the business.

Section 284: Transfer of rights if transferee does not carry on UK property business

1013. This section sets out the positions of the transferor and transferee if the right to a post-cessation receipt is transferred for value. It is based on section 106 of ICTA, as applied by section 21B of ICTA. The corresponding rule for income tax is in section 355 of ITTOIA.

Section 285: Allowable deductions

1014. This section applies the trading income rules about allowable deductions. It is based on section 105 of ICTA, as applied by section 21B of ICTA.

Section 286: Election to carry back

1015. This section allows a company to elect to have a post-cessation receipt taxed as though it had been received in the accounting period in which the company ceased to carry on the UK property business. It is based on section 108 of ICTA, as applied by section 21B of ICTA, although section 108 was repealed by ITTIOA. The corresponding rule for income tax is in section 257 of ITTOIA, as applied by section 351(2)(b) of ITTOIA.
1016. See *Change 42* in Annex 1 and the commentary on section 198.

Chapter 10: Supplementary

Section 287: Provisions which must be given priority over this Part

1017. This section provides the rules to determine which Part takes priority in the event of any overlap of the charge on the profits of a trade and the charge on the profits of an overseas property business or the charge under Chapter 7 or 8 of this Part. It is based on sections 18 and 70A of ICTA.
1018. The definitions of Schedule D Cases I and VI are in section 18 of ICTA. Those definitions deal with any overlap between a trade and the profits of a UK concern or the profits of a UK electric line wayleave. Case VI charges income that is not charged under any other case. So this section gives trading income (Case I in the source legislation) priority.

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1019. The section also gives statutory effect to the Crown Option between an overseas property business and a United Kingdom trade. See *Change 55* in Annex 1. The corresponding rules for income tax are in section 261 of ITTOIA.

Section 288: Priority between Chapters within this Part

1020. This section gives an order of priority between Chapters 3, 7 and 8 of this Part. It is based on sections 119 and 120 of ICTA. The corresponding rules for income tax are in section 262 of ITTOIA.
1021. *Subsection (3)* deals with income that falls within both Chapter 7 and Chapter 8 of this Part. See *Change 6* in Annex 1 and the commentary on section 45.

Section 289: Effect of company starting or ceasing to be within charge to corporation tax

1022. This section treats a company as starting or ceasing to carry on a property business in particular circumstances. It is based on section 337 of ICTA. The corresponding rule for income tax is in section 362 of ITTOIA.
1023. This section applies when a company moves into or out of the corporation tax regime. Non-UK resident companies are within the charge to corporation tax only if they are trading, are trading in the United Kingdom, and through a permanent establishment in the United Kingdom. Then they are chargeable to corporation tax on all the profits attributable to that permanent establishment. If those profits include the profits of a property business, first meeting or ceasing to meet those conditions will result in a change of taxing regime from income tax to corporation tax or vice versa.

Section 290: Overseas property businesses and overseas land: adaptation of rules

1024. This section sets out how the rules for United Kingdom property businesses are to be adapted to apply to overseas property businesses. It is based on section 70A of ICTA. The corresponding rule for income tax is in section 363 of ITTOIA.
1025. The section explains how to apply the UK property business rules if foreign property law does not correspond exactly with United Kingdom property law.

Section 291: Meaning of “lease” and “premises”

1026. This section is interpretative. It is based on section 24(1) of ICTA. The corresponding rule for income tax is in section 364 of ITTOIA.