



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 3

#### PROPERTY INCOME

#### CHAPTER 1

#### INTRODUCTION

### 260 Overview of Part 3

- (1) This Part imposes charges to income tax under—
  - (a) Chapter 3 (the profits of a UK property business or an overseas property business),
  - (b) Chapter 7 (amounts treated as adjustment income under section 330),
  - (c) Chapter 8 (rent receivable in connection with a UK section 12(4) concern),
  - (d) Chapter 9 (rent receivable for UK electric-line wayleaves), [<sup>F1</sup> and ]
  - (e) Chapter 10 (post-cessation receipts arising from a UK property business)<sup>F2</sup> ...
  - <sup>F2</sup>(f) .....
- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, the exemptions under sections 769 (housing grants), 777 (VAT repayment supplements) and 778 (incentives to use electronic communications).
- (4) The charges under Chapters 3, 7, 8, 9 and 10 apply to non-UK residents as well as UK residents but this is subject to section 269 (charges on non-UK residents only on UK source income).
- (5) This section needs to be read with the relevant priority rules (see sections 2 and 261).

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### Textual Amendments

- F1** Word in s. 260(1)(d) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 47(a)**
- F2** S. 260(1)(f) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 47(b)**

## 261 Provisions which must be given priority over Part 3

Any receipt or other credit item, so far as it falls within—

- (a) Chapter 3 of this Part so far as it relates to an overseas property business or Chapter 8 or 9 of this Part (rent receivable in connection with a UK section 12(4) concern or for UK electric-line wayleaves), and
  - (b) Chapter 2 of Part 2 (receipts of a trade, profession or vocation),
- is dealt with under Part 2.

## 262 Priority between Chapters within Part 3

- (1) Any receipt, so far as it falls within—
  - (a) Chapter 3 so far as it relates to a UK property business, and
  - (b) Chapter 8 (rent receivable in connection with a UK section 12(4) concern),
 is dealt with under Chapter 8.
- (2) Any receipt, so far as it falls within—
  - (a) Chapter 3 so far as it relates to a UK property business, and
  - (b) Chapter 9 (rent receivable for UK electric-line wayleaves),
 is dealt with under Chapter 9.
- (3) Any receipt, so far as it falls within Chapter 8 (rent receivable in connection with a UK section 12(4) concern) and Chapter 9 (rent receivable for UK electric-line wayleaves), is dealt with under Chapter 9.

## CHAPTER 2

### PROPERTY BUSINESSES

#### *Introduction*

## 263 Introduction

- (1) This Chapter explains for the purposes of this Act what is meant by—
  - (a) a person's UK property business (see section 264), and
  - (b) a person's overseas property business (see section 265).
- (2) Both those sections need to be read with—
  - (a) section 266 (which explains what is meant by generating income from land), and

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- (b) section 267 (which provides that certain activities do not count as activities for generating income from land).
- (3) In the case of the property business of a firm, the basic rules in sections 264 and 265 are explained in section 859(2) and (3).
- (4) References in this Act to an overseas property business are to an overseas property business so far as any profits of the business are chargeable to tax under Chapter 3 (as to which see, in particular, section 269).
- (5) Accordingly, nothing in Chapter 4 or 5 is to be read as treating an amount as a receipt of an overseas property business if the profits concerned would not be chargeable to tax under Chapter 3.
- (6) In this Act “property business” means a UK property business or an overseas property business.

*Basic meaning of UK and overseas property business*

**264 UK property business**

A person's UK property business consists of—

- (a) every business which the person carries on for generating income from land in the United Kingdom, and
- (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.

**265 Overseas property business**

A person's overseas property business consists of—

- (a) every business which the person carries on for generating income from land outside the United Kingdom, and
- (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.

*Generating income from land*

**266 Meaning of “generating income from land”**

- (1) In this Chapter “generating income from land” means exploiting an estate, interest or right in or over land as a source of rents or other receipts.
- (2) “Rents” includes payments by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out.
- (3) “Other receipts” includes—
  - (a) payments in respect of a licence to occupy or otherwise use land,
  - (b) payments in respect of the exercise of any other right over land, and
  - (c) rentcharges and other annual payments reserved in respect of, or charged on or issuing out of, land.

*Status: Point in time view as at 13/08/2009.*

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- (4) For the purposes of this section a right to use a caravan or houseboat at only one location is treated as a right deriving from an estate or interest in land.

## 267 Activities not for generating income from land

For the purposes of this Chapter the following activities are not carried on for generating income from land—

- (a) farming or market gardening in the United Kingdom (but see section 9 (UK farming or market gardening treated as trade)),
- (b) any other occupation of land (but see section 10 (certain commercial occupation of UK land treated as trade)), and
- (c) activities for the purposes of a concern to which section 12 applies (profits of mines, quarries etc.).

## CHAPTER 3

### PROFITS OF PROPERTY BUSINESSES: BASIC RULES

#### *Charge to tax on profits of a property business*

## 268 Charge to tax on profits of a property business

Income tax is charged on the profits of a property business.

## 269 Territorial scope of charge to tax

- (1) Profits of a UK property business are chargeable to tax under this Chapter whether the business is carried on by a UK resident or a non-UK resident.
- (2) Profits of an overseas property business are chargeable to tax under this Chapter only if the business is carried on by a UK resident.

<sup>F3</sup>(3) .....

<sup>F4</sup>(4) .....

### Textual Amendments

**F3** S. 269(3) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), [Sch. 7 para. 48](#)

**F4** S. 269(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), [Sch. 7 para. 48](#)

## 270 Income charged

- (1) Tax is charged under this Chapter on the full amount of the profits arising in the tax year.
- (2) Subsection (1) is subject to Part 8 (foreign income: special rules).

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## 271 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the profits.

### *Calculation of profits*

## 272 Profits of a property business: application of trading income rules

- (1) The profits of a property business are calculated in the same way as the profits of a trade.
- (2) But the provisions of Part 2 (trading income) which apply as a result of subsection (1) are limited to the following—

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*In Chapter 3 (basic rules)—*

section 25	generally accepted accounting practice
section 26	losses calculated on same basis as profits
section 27	receipts and expenses
section 28	items treated under CAA 2001 as receipts and expenses
section 29	interest

*In Chapter 4 (rules restricting deductions)—*

section 33	capital expenditure
section 34	expenses not wholly and exclusively for trade and unconnected losses
section 35	bad and doubtful debts
sections 36 and 37	unpaid remuneration
sections 38 to 44	employee benefit contributions
sections 45 to 47	business entertainment and gifts
sections 48 to [F550B]	car

F6

... hire

F7

F7

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section 52	exclusion of double relief for interest
section 53	social security contributions
section 54	penalties, interest and VAT surcharges
section 55	crime-related payments
[F8section 55A	expenditure on integral features]

*In Chapter 5 (rules allowing deductions)—*

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section 57	pre-trading expenses
sections 58 and 59	incidental costs of obtaining finance
section 68	replacement and alteration of trade tools
section 69	payments for restrictive undertakings
sections 70 and 71	seconded employees
section 72	payroll deduction schemes: contributions to agents' expenses
sections 73 to 75	counselling and retraining expenses
sections 76 to 80	redundancy payments etc.
section 81	personal security expenses
sections 82 to 86	contributions to local enterprise organisations or urban regeneration companies
sections 87 and 88	scientific research
sections 89 and 90	expenses connected with patents, designs and trade marks
section 91	payments to Export Credits Guarantee Department
<i>In Chapter 6 (receipts)—</i>	
section 96	capital receipts
section 97	debts incurred and later released
section 104	distribution of assets of mutual concerns
section 105	industrial development grants
section 106	sums recovered under insurance policies etc.
<i>In Chapter 7 (gifts to charities etc.)—</i>	
section 109	receipt by donor or connected person of benefit attributable to certain gifts
[ <sup>F9</sup> In Chapter 10A (long funding leases)—	
Sections 148A to 148J	Leases of plant or machinery: special rules for long funding leases]
<i>In Chapter 11 (other specific trades)—</i>	
section 155	levies and repayments under FISMA 2000
<i>In Chapter 13 (deductions from profits)—</i>	
sections 188 to 191	unremittable amounts

(3) In those provisions the expression “this Part” is to be read as a reference to those provisions as applied by subsection (2) and to the other provisions of Part 3.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### Textual Amendments

- F5** Word in s. 272(2) Table substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by Finance Act 2009 (c. 10), Sch. 11 para. 41(a)
- F6** Words in s. 272(2) Table omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 11 para. 41(b)
- F7** S. 272(2) Table: entry 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. 507, {Sch. 3 Pt. 1} (with transitional provisions and savings in Sch. 2)
- F8** Words in s. 272(2) Table inserted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 2008 (c. 9), s. 73(5)
- F9** S. 272(2) Table: entry relating to Ch. 10A (long funding leases) inserted (with effect as mentioned in Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), s. 81, Sch. 8 para. 14(2)

## 273 Amounts not brought into account as part of a property business

- (1) The rules for calculating the profits of a property business need to be read with the following provisions of Part 2 (trading income)—
- section 19 (tied premises),
  - section 20 (caravan sites where trade carried on),
  - section 21 (surplus business accommodation), and
  - section 22(3) (payments for wayleaves).
- (2) Those provisions secure that amounts which would otherwise be brought into account in calculating the profits of the business are, or may be, brought into account instead in calculating the profits of a trade.

## 274 Relationship between rules prohibiting and allowing deductions

- (1) Any relevant permissive rule in this Part—
- has priority over any relevant prohibitive rule in this Part, but
  - is subject to [F10section 36 (unpaid remuneration), section 38 (employee benefit contributions), section 48 (car F11 ... hire) and section] 55 (crime-related payments), as applied by section 272.
- (2) In this section “any relevant permissive rule in this Part” means any provision of this Part (apart from sections 291 to 294) which allows a deduction in calculating the profits of a property business.
- (3) In this section “any relevant prohibitive rule in this Part”, in relation to any deduction, means any provision of this Part (apart from sections [F1236, 38,] 48 and 55, as applied by section 272) which might otherwise be read as—
- prohibiting the deduction, or
  - restricting the amount of the deduction.
- (4) In this section any reference to any provision of this Part includes any provision applied by section 272.

*Status: Point in time view as at 13/08/2009.*

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### **Textual Amendments**

- F10** Words in s. 274(1)(b) substituted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(5\)](#)
- F11** Words in s. 274(1)(b) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), Sch. 11 para. 42](#)
- F12** Words in s. 274(3) inserted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(6\)](#)

## *Apportionment of profits*

### **275 Apportionment etc. of profits to tax year**

- (1) This section applies if a period of account of a property business does not coincide with a tax year.
- (2) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the tax year—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different tax years, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (3) The steps must be taken by reference to the number of days in the periods concerned.
- (4) But the person carrying on the business may use a different way of measuring the length of the periods concerned if—
  - (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purposes of the business.

## **CHAPTER 4**

### PROFITS OF PROPERTY BUSINESSES: LEASE PREMIUMS ETC.

#### *Introduction*

### **276 Introduction**

- (1) This Chapter provides for certain amounts (which would otherwise generally be amounts of a capital nature) to be brought into account as receipts in calculating the profits of a property business.
- (2) The amounts relate to short-term leases in the case of—
  - section 277 (lease premiums),
  - section 278 (amount treated as lease premium where work required),
  - section 280 (sums payable for surrender of lease), and
  - section 282 (assignments for profit of lease granted at undervalue).
- (3) The amounts relate to any lease in the case of—



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- section 279 (sums payable instead of rent), and  
section 281 (sums payable for variation or waiver of [F13 terms] of lease).
- (4) The amounts relate to the sale of any estate or interest in land in the case of—  
section 284 (sales with right to reconveyance), and  
section 285 (sale and leaseback transactions).
- (5) This Chapter also permits certain deductions in calculating the profits of property businesses carried on by tenants under certain leases (see sections 291 and 292).
- (6) In this Chapter “short-term lease” means a lease whose effective duration is 50 years or less.

#### Textual Amendments

- F13** Word in s. 276(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 614 (with Sch. 2 Pts. 1, 2)

#### *Amounts treated as receipts: leases*

### 277 Lease premiums

- (1) This section applies if a premium is required to be paid—  
(a) under a short-term lease, or  
(b) otherwise under the terms subject to which a short-term lease is granted.
- (2) The person to whom the premium is due is treated as—  
(a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and  
(b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the lease is granted.
- (4) The amount of the receipt is given by the formula—

$$P \times \left( \frac{50 - Y}{50} \right)$$

where—

P is the premium, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

**Modifications etc. (not altering text)**

- C1** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, **Sch. 6 para. 6(1)**

**278 Amount treated as lease premium where work required**

- (1) This section applies if the terms subject to which a lease is granted impose on the tenant an obligation to carry out work on the premises.
- (2) The lease is treated for the purposes of section 277 (lease premiums) as requiring the payment of a premium to the landlord (in addition to any other premium).
- (3) The amount of the premium is the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its value would have been at that time if the terms of the lease did not impose the obligation on the tenant.
- (4) An obligation, or part of an obligation, that requires the carrying out of excepted work is ignored for the purposes of this section.
- (5) Work is “excepted work” if the payment for carrying it out would, if the landlord and not the tenant were obliged to carry it out, be deductible as an expense in calculating the profits of the landlord's property business.

**Modifications etc. (not altering text)**

- C2** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, **Sch. 6 para. 6(1)**

**279 Sums payable instead of rent**

- (1) This section applies if—
  - (a) under the terms subject to which a lease is granted a sum becomes payable by the tenant instead of the whole or a part of the rent for a period, and
  - (b) the period is 50 years or less.
- (2) The person to whom the sum is due is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists [<sup>F14</sup>of or] includes that transaction for the tax year in which the sum becomes payable.

*Status: Point in time view as at 13/08/2009.*

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(4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

where—

S is the sum payable instead of rent, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period in relation to which the sum is payable.

(5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

(6) In determining for the purposes of this Chapter the duration of the period in relation to which the sum is payable, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

#### Textual Amendments

**F14** Words in s. 279(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 615** (with Sch. 2 Pts. 1, 2)

#### Modifications etc. (not altering text)

**C3** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, **Sch. 6 para. 6(1)**

## 280 Sums payable for surrender of lease

(1) This section applies if, under the terms subject to which a short-term lease is granted, a sum becomes payable by the tenant as consideration for the surrender of the lease.

(2) The person to whom the sum is due is treated as—

- (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
- (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.

(3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the sum becomes payable.

(4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

*Status: Point in time view as at 13/08/2009.*

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where—

S is the sum payable as consideration for the surrender of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

**Modifications etc. (not altering text)**

- C4** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, Sch. 6 para. 6(1)

**281 Sums payable for variation or waiver of [<sup>F15</sup>terms] of lease**

- (1) This section applies if—
- (a) a sum becomes payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of a lease,
  - (b) the sum is due to the landlord or a person who is connected with the landlord, and
  - (c) the period for which the variation or waiver has effect is 50 years or less.
- (2) The person to whom the sum is due is treated as—
- (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the contract providing for the variation or waiver is entered into.
- (4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

where—

S is the sum payable as consideration for the variation or waiver, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period for which the variation or waiver has effect.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (6) In determining for the purposes of this Chapter the duration of the period for which the variation or waiver has effect, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

#### Textual Amendments

- F15** Word in s. 281 title substituted (1.4.2009) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 616](#) (with [Sch. 2 Pts. 1, 2](#))

#### Modifications etc. (not altering text)

- C5** Ss. 277-281 excluded (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) of the amending Act) by [1981 c. 1, s. 774G\(7\)](#) as inserted by [Finance Act 2006 \(c. 25\)](#), s. 76, [Sch. 6 para. 6\(1\)](#)

## 282 Assignments for profit of lease granted at undervalue

- (1) This section applies to an assignment of a short-term lease if—
- the lease was granted at an undervalue, and
  - a profit is made on the assignment.
- (2) The person who assigns the lease is treated as—
- entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the consideration for the assignment becomes payable.
- (4) The amount of the receipt is given by the formula—

$$P \times \left( \frac{50 - Y}{50} \right)$$

where—

P is the lesser of—

- the profit on the assignment, and
- the amount by which the undervalue exceeds the total of the profits (if any) made on previous assignments of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.
- (6) Section 283 explains references in this section to the grant of a lease at an undervalue and the making of a profit on an assignment of a lease.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### **283 Provisions supplementary to section 282**

- (1) This section operates for the purposes of section 282.
- (2) A lease is granted at an undervalue if the terms subject to which it was granted are such that the landlord who granted it could have required the payment of an additional sum by way of premium, or additional premium, for its grant.
- (3) The additional sum is the undervalue.
- (4) The test in subsection (2) must be applied—
  - (a) having regard to values prevailing at the time the lease was granted, and
  - (b) on the assumption that the negotiations for the lease were at arm's length.
- (5) A profit is made on an assignment of a lease if the consideration for the assignment exceeds—
  - (a) if the lease has not previously been assigned, any premium for which it was granted, or
  - (b) in any other case, any consideration for which it was last assigned.
- (6) The amount of the excess is the profit.

*Other amounts treated as receipts*

### **284 Sales with right to reconveyance**

- (1) This section applies if—
  - (a) an estate or interest in land is sold subject to terms which provide that it is to be, or may be required to be, reconveyed on a future date to the seller or a person connected with the seller,
  - (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed is 50 years or less, and
  - (c) the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed.
- (2) The seller is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land is in the United Kingdom) or section 265 (if the land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsection (4) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the estate or interest is sold.
- (4) The amount of the receipt is given by the formula—

$$E \times \left( \frac{50 - Y}{50} \right)$$

where—

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

E is the amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed.

(5) See section 286 for some provisions which are supplementary to this section.

## **285 Sale and leaseback transactions**

(1) This section applies if—

- (a) an estate or interest in land is sold subject to terms which provide for the grant of a lease directly or indirectly out of the estate or interest to the seller or a person connected with the seller,
- (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted is 50 years or less, and
- (c) the price at which the estate or interest is sold exceeds the total of—
  - (i) the amount of any premium for the lease, and
  - (ii) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.

(2) This section does not apply if the lease is granted and begins to run within one month after the sale.

(3) The seller is treated as—

- (a) entering into a transaction mentioned in section 264 (if the land is in the United Kingdom) or section 265 (if the land is outside the United Kingdom), and
- (b) receiving the amount calculated under subsection (5) as a result of that transaction.

(4) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the estate or interest is sold.

(5) The amount of the receipt is given by the formula—

$$E \times \left( \frac{50 - Y}{50} \right)$$

where—

E is the amount by which the price at which the estate or interest is sold exceeds the total of—

- (a) the amount of any premium for the lease, and
- (b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

(6) See section 286 for some provisions which are supplementary to this section.

## **286 Provisions supplementary to sections 284 and 285**

- (1) This section operates for the purposes of sections 284 (sales with right to reconveyance) and 285 (sale and leaseback transactions).
- (2) Subsection (3) explains how to determine for the purposes of section 284 the price at which an estate or interest is to be reconveyed when—
  - (a) the date on which the estate or interest would fall to be reconveyed is not fixed under the terms of the sale, and
  - (b) the price at which it is to be reconveyed varies with the date.
- (3) The price is taken to be the lowest possible under the terms of the sale.
- (4) Subsection (5) explains how to determine for the purposes of section 285 the total of—
  - (a) the amount of any premium for the lease, and
  - (b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run,
 when the date for the grant of the lease is not fixed under the terms of the sale and the total varies with the date.
- (5) The total is taken to be the lowest possible under the terms of the sale.
- (6) For the purposes of sections 284(3) and 285(4) (receipts of property business for tax year in which estate or interest sold) an estate or interest in land is sold when any of the following occurs—
  - (a) an unconditional contract for its sale is entered into,
  - (b) a conditional contract for its sale becomes unconditional, or
  - (c) an option or right of pre-emption is exercised requiring the seller to enter into an unconditional contract for its sale.

*Additional calculation rule for reducing certain receipts*

## **287 Circumstances in which additional calculation rule applies**

- (1) The rule in section 288 (the additional calculation rule) applies in relation to the calculation of receipts under—
  - section 277 (lease premiums),
  - section 279 (sums payable instead of rent),
  - section 280 (sums payable for surrender of lease),
  - section 281 (sums payable for variation or waiver of [F16]terms] of lease), or
  - section 282 (assignments for profit of lease granted at undervalue).
- (2) It applies if conditions A and B are met.
- (3) Condition A is that—
  - (a) in the case of a receipt under section 277, 279 or 280, the lease is granted out of a taxed lease,
  - (b) in the case of a receipt under section 281, the lease was granted out of a taxed lease, and



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- (c) in the case of a receipt under section 282, the assignment is of a taxed lease.
- (4) A lease is a “taxed lease” for the purposes of this Chapter if—
- (a) there is a receipt under any of sections 277 to 282 in respect of the lease, <sup>F17</sup>...
  - (b) there would be such a receipt, but for the operation of the [<sup>F18</sup>rule in section 288 (the additional calculation rule)] in the calculation of its amount.
  - <sup>F19</sup>(c) there is a receipt under any of sections 217 to 222 of CTA 2009 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of terms of lease and assignments) in respect of the lease, or
  - (d) there would be such a receipt, but for the operation of the rule in section 228 of that Act (the additional calculation rule) in the calculation of its amount.]
- In this Chapter [<sup>F20</sup>a receipt falling within paragraph (a), (b), (c) or (d)] is referred to as a “taxed receipt”.
- (5) Condition B is that the taxed receipt, or if there is more than one, at least one of them, has an unused amount.
- (6) See section 290 for an explanation of when a taxed receipt has an “unused amount”.

#### Textual Amendments

- F16** Word in s. 287(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 617(2)** (with Sch. 2 Pts. 1, 2)
- F17** Word in s. 287(4) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 617(3)(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F18** Words in s. 287(4)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 617(3)(b)** (with Sch. 2 Pts. 1, 2)
- F19** S. 287(4)(c)(d) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 617(3)(c)** (with Sch. 2 Pts. 1, 2)
- F20** Words in s. 287(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 617(3)(d)** (with Sch. 2 Pts. 1, 2)

## 288 The additional calculation rule

- (1) The rule in this section applies if the conditions mentioned in section 287 are met.
- (2) The additional calculation rule is that the amount given by the formula in section 277, 279, 280, 281 or 282 must be reduced by the amount calculated in accordance with this section in order to give the amount of the receipt under calculation.
- (3) The amount of the reduction is—
- (a) if there is one taxed receipt which has an unused amount, the basic relieving amount by reference to that receipt, and
  - (b) if there is more than one taxed receipt which has an unused amount, the total of the basic relieving amounts by reference to each receipt,
- adjusted, if necessary, in the light of section 289(5) (reduction not to exceed amount being reduced).
- (4) The basic relieving amount by reference to a taxed receipt is given by the formula—

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

$$\frac{A \times LRP}{TRP}$$

where—

A is the unreduced amount of the taxed receipt (which is, generally, the amount given by the formula in section 277, 279, 280, 281 or [F21 282 above, or in section 217, 219, 220, 221 or 222 of CTA 2009,] but see section 290(2) to (4) [F22 above]),

LRP is the receipt period of the receipt under calculation, and

TRP is the receipt period of the taxed receipt.

- (5) But the basic relieving amount is different if section 289(2) or (4) applies (certain special cases).
- (6) For the purposes of this Chapter, the “receipt period” of a receipt is—
- (a) in the case of a receipt under section 277 or 280, the effective duration of the lease,
  - (b) in the case of a receipt under section 279, the period in relation to which the sum payable instead of rent is payable,
  - (c) in the case of a receipt under section 281, the period for which the variation or waiver has effect, <sup>F23</sup>...
  - (d) in the case of a receipt under section 282, the effective duration of the lease remaining at the date of the assignment<sup>F24</sup>, and
  - (e) in the case of a receipt under Chapter 4 of Part 4 of CTA 2009 (profits of property businesses: lease premiums etc), its receipt period within the meaning of that Chapter (see section 228(6) of that Act).]

#### Textual Amendments

- F21** Words in s. 288(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 618\(2\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F22** Word in s. 288(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 618\(2\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F23** Word in s. 288(6) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 618\(3\)\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F24** S. 288(6)(e) and word inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 618\(3\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 289 The additional calculation rule: special cases

- (1) This section explains how section 288 operates in some special cases.
- (2) If—
- (a) the receipt under calculation is under any of sections 277 to 281, and
  - (b) the lease does not extend to the whole of the premises subject to the taxed lease,

the basic relieving amount by reference to a taxed receipt is calculated by multiplying the amount given by the formula in subsection (4) of section 288 by the fraction of those premises which is subject to the lease.

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

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- (3) This fraction is calculated on a just and reasonable basis.
- (4) If the basic relieving amount given by section 288(4) or subsection (2) above by reference to a taxed receipt would otherwise exceed the unused amount of the taxed receipt, the basic relieving amount is the unused amount.
- (5) If the amount of the reduction under section 288 would otherwise exceed the amount given, in respect of the receipt under calculation, by the formula in section 277, 279, 280, 281 or 282, the amount of the reduction is equal to the amount given by the formula.

## **290 Meaning of “unused amount” and “unreduced amount”**

- (1) For the purposes of this Chapter, a taxed receipt has an “unused amount” if the unreduced amount exceeds the total of the reductions and deductions referred to in subsection (5).
- (2) In this Chapter the “unreduced amount” of a taxed receipt is the amount given, in respect of the taxed receipt, by the <sup>[F25]</sup>formula in—
  - (a) section 277, 279, 280, 281 or 282 above, or
  - (b) section 217, 219, 220, 221 or 222 of CTA 2009 (corporation tax provisions corresponding to those listed in paragraph (a)).]

<sup>[F26]</sup>(3) Subsection (4) applies—

- (a) to a taxed receipt under section 277 (lease premiums) as a result of section 278 (amount treated as lease premium where work required), and
  - (b) to a taxed receipt under section 217 of CTA 2009 (lease premiums) as a result of section 218 of that Act (amount treated as lease premium where work required).]
- (4) If the obligation to carry out work included the carrying out of work which gives, or will give, rise to qualifying expenditure under CAA 2001, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.
  - (5) The reductions and deductions mentioned in subsection (1) are—
    - (a) the reductions under section 288 <sup>[F27]</sup>above or section 228 of CTA 2009 (the additional calculation rule)] by reference to the taxed receipt,
    - (b) the deductions allowed in calculating the profits of a trade, profession or vocation for expenses under section 61 <sup>[F28]</sup>above or section 63 of CTA 2009] (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt, and
    - (c) the deductions allowed in calculating the profits of a property business for expenses under section 292 <sup>[F29]</sup>below or section 232 of CTA 2009] (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt.
  - (6) For the purposes of this Chapter references to a reduction under section 288 <sup>[F30]</sup>above or section 228 of CTA 2009] by reference to a taxed receipt are to a reduction under <sup>[F31]</sup>the section concerned] so far as attributable to the taxed receipt.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### **Textual Amendments**

- F25** Words in s. 290(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(2\)](#) (with Sch. 2 Pts. 1, 2)
- F26** S. 290(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(3\)](#) (with Sch. 2 Pts. 1, 2)
- F27** Words in s. 290(5)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F28** Words in s. 290(5)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(b\)](#) (with Sch. 2 Pts. 1, 2)
- F29** Words in s. 290(5)(c) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(c\)](#) (with Sch. 2 Pts. 1, 2)
- F30** Words in s. 290(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(5\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F31** Words in s. 290(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(5\)\(b\)](#) (with Sch. 2 Pts. 1, 2)

### *Deductions in relation to certain receipts*

#### **291 Deductions for expenses under section 292**

- (1) Section 292 (tenants under taxed leases treated as incurring expenses) applies in calculating the profits of a property business carried on by the tenant under a taxed lease for the purpose of making deductions for the expenses of the property business.
- (2) A deduction is allowed for an expense under section 292 for a qualifying day on which the whole or part of the premises subject to the taxed lease is—
  - (a) occupied by the tenant for the purpose of carrying on the property business, or
  - (b) sublet.
- (3) But any deduction for an expense under section 292 is subject to the application of any provision of Chapter 4 of Part 2 (as applied to property businesses by section 272).
- (4) The amount of the deduction for an expense under section 292 for a qualifying day by reference to a taxed receipt may be reduced in order to comply with section 295 (limit on reductions and deductions).
- (5) For the meaning of expressions used in this section, see in particular—
  - section 287(4) (“taxed lease”), and
  - section 287(4) (“taxed receipt”).

#### **292 Tenants under taxed leases treated as incurring expenses**

- (1) The tenant under a taxed lease is treated as incurring an expense of a revenue nature in respect of the premises subject to the taxed lease for each qualifying day.
- (2) If there is more than one taxed receipt, this section applies separately in relation to each of them.
- (3) A day is a “qualifying day”, in relation to a taxed receipt, if it falls within the receipt period of the taxed receipt.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (4) The amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt.

- (5) This section is subject to sections 293 and 294 (restrictions on expenses where the additional calculation rule is relevant).
- (6) For the meaning of expressions used in this section, see in particular—  
section 288(6) (“receipt period”), and  
section 290(2) to (4) (“unreduced amount”).

### **293 Restrictions on section 292 expenses: the additional calculation rule**

[<sup>F32</sup>(1) This section applies if—

- (a) in calculating the amount of a receipt under this Chapter there is a reduction under section 288 (the additional calculation rule) by reference to a taxed receipt, or
- (b) in calculating the amount of a receipt under Chapter 4 of Part 4 of CTA 2009 (profits of a property business: lease premiums etc) there is a reduction under section 228 of that Act (the additional calculation rule) by reference to a taxed receipt.

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.]

- (2) Subsections (3) to (5) provide for the application of section 292 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 292 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.
- (4) If the condition in subsection (3) is met, the amount of the expense under section 292 for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt periods of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—  
the “daily amount” of the taxed receipt is given by the formula—

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt (see section 290(2) to (4)), and

TRP is the number of days in the receipt period of the taxed receipt, and the “daily reduction” of a lease premium receipt is given by the formula—

$$\frac{\text{AR}}{\text{RRP}}$$

where—

AR is the reduction under section 288 [<sup>F33</sup>above or section 228 of CTA 2009] by reference to the taxed receipt (see section 290(6)), and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) Section 294 explains how this section operates if the lease premium receipt is in respect of a lease that has been granted out of the taxed lease and does not extend to the whole of the premises subject to the taxed lease.

#### Textual Amendments

- F32** S. 293(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 620\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F33** Words in s. 293(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 620\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 294 Restrictions on section 292 expenses: lease of part of premises

(1) This section applies if—

- (a) a lease has been granted out of the taxed lease,
- (b) the lease does not extend to the whole of the premises subject to the taxed lease, and
- <sup>F34</sup>(c) the condition in subsection (1A) is met.

(1A) The condition is that—

- (a) in calculating the amount of a receipt under any of sections 277 to 281 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 288 by reference to a taxed receipt, or
- (b) in calculating the amount of a receipt under any of sections 217 to 221 of CTA 2009 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 228 of that Act (the additional calculation rule) by reference to a taxed receipt.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.]

- (2) Subsections (3) to (5) apply for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) Sections 292 and 293 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (4) If—
  - (a) more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - (b) the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,sections 292 and 293 apply separately in relation to each part of the premises subject to a lease to which such a receipt relates and to the remainder of the premises.
- (5) Where sections 292 and 293 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (6) This fraction is calculated on a just and reasonable basis.

#### Textual Amendments

**F34** S. 294(1)(c)(1A) substituted for s. 294(1)(c) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 621** (with Sch. 2 Pts. 1, 2)

#### *Limit on effect of additional calculation rule and deductions*

### **295 Limit on reductions and deductions**

- (1) The total of—
  - (a) the reductions under section 288 by reference to a taxed receipt, and
  - (b) the deductions allowed in calculating the profits of a property business for expenses under section 292 (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt,must not exceed the amount referred to in subsection (2).
- (2) The amount mentioned in subsection (1) is the difference between—
  - (a) the unreduced amount of the taxed receipt, and
  - <sup>F35</sup>(b) the total of the amounts mentioned in subsection (3).
- (3) Those amounts are—
  - (a) the reductions under section 228 of CTA 2009 (the additional calculation rule) by reference to the taxed receipt,
  - (b) the deductions allowed in calculating the profits of a property business for expenses under section 232 of CTA 2009 (tenant under taxed lease which uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt, and



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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (c) the deductions allowed in calculating the profits of a trade, profession or vocation for expenses under section 61 above or section 63 of CTA 2009 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt.]

#### **Textual Amendments**

**F35** S. 295(2)(b)(3) substituted for s. 295(2)(b) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 622** (with Sch. 2 Pts. 1, 2)

#### *Relationship with ICTA*

### **296 Corporation tax receipts treated as taxed receipts**

- (1) This section applies if in respect of a lease—
- (a) there is a receipt of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) as a result of section 34 or 35 of ICTA (treatment of premiums etc. as rent and assignments for profit of lease granted at an undervalue) for an accounting period ending after 5th April 2005 [<sup>F36</sup>but before 1st April 2009], or
  - (b) there would be such a receipt, but for the operation of section 37(2) or (3) of ICTA (reductions in certain receipts under section 34 or 35 of ICTA).

In this Chapter such a receipt is referred to as a “corporation tax receipt”.

- (2) For the purposes of this Chapter—
- (a) the lease is treated as a taxed lease, and
  - (b) the corporation tax receipt is treated as a taxed receipt.
- (3) For the purposes of this Chapter, the “receipt period” of a taxed receipt which is a corporation tax receipt is—
- (a) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
  - (b) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.
- (4) For the purposes of this Chapter the “unreduced amount” of a taxed receipt which is a corporation tax receipt is the amount of the corporation tax receipt as a result of section 34 or 35 of ICTA, before the operation of section 37(2) or (3) of ICTA.
- (5) Subsection (6) applies to a taxed receipt which is a corporation tax receipt arising as a result of section 34(2) of ICTA (obligation on tenant to carry out work under lease).
- (6) If the obligation to carry out work includes the carrying out of work which gives, or will give, rise to qualifying expenditure under CAA 2001, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.



*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### Textual Amendments

**F36** Words in s. 296(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 623** (with Sch. 2 Pts. 1, 2)

## 297 Taking account of reductions in corporation tax receipts

- (1) This section applies if—
  - (a) in calculating the amount of a corporation tax receipt, there is a reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
  - (b) the amount chargeable on the superior interest is the taxed receipt for the purposes of this Chapter.
- (2) For the purposes of this Chapter references to a reduction under section 37(2) or (3) of ICTA in a corporation tax receipt by reference to the amount chargeable on the superior interest are to the difference between—
  - (a) the amount of the corporation tax receipt before the operation of section 37(2) or (3) of ICTA, and
  - (b) the amount of the receipt after the operation of that subsection,so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.
- (3) In sections 290(5)(a) (meaning of “unused amount”) and 295(1)(a) (limit on reductions and deductions) references to reductions under section 288 by reference to the taxed receipt include references to reductions under section 37(2) or (3) of ICTA in corporation tax receipts by reference to the amount chargeable on the superior interest.
- (4) Sections 292 to 294 apply as follows—
  - (a) the corporation tax receipt is treated as if it were a lease premium receipt for the purposes of sections 293 and 294,
  - (b) references in those sections to the reduction under section 288 by reference to the taxed receipt are, in relation to the corporation tax receipt, to the reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest, and
  - (c) for the purposes of those sections the receipt period of the corporation tax receipt is—
    - (i) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
    - (ii) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.

## 298 Taking account of deductions for rent as a result of section 37(4) or 87(2) of ICTA

- (1) Subsection (2) applies if—
  - (a) in calculating the profits of a trade, profession or vocation for an accounting period ending after 5th April 2005 [<sup>F37</sup>but before 1st April 2009], a company is

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- treated as paying rent under section 87(2) of ICTA by reference to the amount chargeable for the purposes of that section, and
- (b) the amount chargeable is the taxed receipt for the purposes of this Chapter.
- (2) References in sections 290(5)(b) and [F38 295(3)(c)] to the deductions allowed for expenses under section 61 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the trade, profession or vocation for the rent that the company is treated as paying under section 87(2) of ICTA by reference to the amount chargeable.
- (3) Subsection (4) applies if—
- (a) in calculating the profits of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) for an accounting period ending after 5th April 2005 [F39 but before 1st April 2009], a company is treated as paying rent as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
- (b) the amount chargeable on the superior interest is the taxed receipt for the purposes of this Chapter.
- (4) References in sections 290(5)(c) and 295(1)(b) to the deductions allowed for expenses under section 292 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the Schedule A business or overseas property business (within the meaning of section 70A(4) of ICTA) for the rent that the company is treated as paying as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest.

#### **Textual Amendments**

- F37** Words in s. 298(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 624(a)** (with [Sch. 2 Pts. 1, 2](#))
- F38** Word in s. 298(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 624(b)** (with [Sch. 2 Pts. 1, 2](#))
- F39** Words in s. 298(3)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 624(a)** (with [Sch. 2 Pts. 1, 2](#))

#### *Certain administrative provisions*

### **299 Payment of tax by instalments**

- (1) This section applies if—
- (a) there is a receipt under section 277 (lease premiums) in respect of a premium which is payable by instalments, or
- (b) there is a receipt under any of sections 279 to 281 (sums payable instead of rent, for surrender of lease or for variation or waiver of [F40 terms] of lease) in respect of a sum which is payable by instalments.
- (2) The person who is liable to pay tax by reference to the receipt may choose to pay the tax by such instalments as [F41 an officer of Revenue and Customs] may allow.
- (3) The period over which the instalments of tax must be paid—
- (a) must be 8 years or less, and

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- (b) must end before, or at the same time as, the time when the last of the instalments mentioned in subsection (1)(a) or (b) is payable.

#### Textual Amendments

- F40** Word in s. 299(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 625** (with Sch. 2 Pts. 1, 2)
- F41** Words in s. 299(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(2)}; **S.I. 2005/1126, art. 2(h)**

### 300 Statement of accuracy for purposes of section 282

- (1) This section applies if any of the persons mentioned in subsection (3) provides [<sup>F42</sup>an officer of Revenue and Customs] with a statement showing—
- whether or not there is, or may be, a receipt under section 282 (assignments for profit of lease granted at undervalue), and
  - the amount of any receipt.
- (2) [<sup>F42</sup>an officer of Revenue and Customs] must certify the accuracy of the statement, if satisfied as to its accuracy.
- (3) The persons referred to in subsection (1) are—
- the landlord who granted the lease,
  - a person who assigned it, or
  - a person to whom it was assigned.

#### Textual Amendments

- F42** Words in s. 300(1)(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(1)}; **S.I. 2005/1126, art. 2(h)**

### 301 Claim for repayment of tax payable by virtue of section 284

- (1) This section applies if—
- there is a receipt under section 284 (sales with right to reconveyance), and
  - the date on which the estate or interest would fall to be reconveyed was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
- A is the amount of tax paid by the seller which was payable by virtue of section 284, and
- B is the amount of tax that would have been so payable if the date on which the estate or interest was reconveyed had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within 6 years after the day on which the estate or interest was reconveyed.

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### **302 Claim for repayment of tax payable by virtue of section 285**

- (1) This section applies if—
  - (a) there is a receipt under section 285 (sale and leaseback transactions), and
  - (b) the date for the grant of the lease was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
  - A is the amount of tax paid by the seller which was payable by virtue of section 285, and
  - B is the amount of tax that would have been so payable if the date on which the lease was granted had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within 6 years after the day on which the lease was granted.

#### *Effective duration of lease*

### **303 Rules for determining effective duration of lease**

- (1) The following rules apply for determining the effective duration of a lease for the purposes of this Chapter.

*[<sup>F43</sup>Rule 1: If-*

- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond a date before the end of the term for which the lease was granted, and
- (b) the premium was not substantially greater than it would have been had the term been one ending on that date,]

*Rule 2: If the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.*

*Rule 3: If the tenant or a person connected with the tenant is, or may become, entitled to a further lease or the grant of a further lease (whenever commencing)—*

- (a) of the same premises, or
- (b) of premises including the whole or part of the same premises,

*the term of the lease may be treated as continuing until the end of the term of the further lease.*

- (2) The rules are to be applied in accordance with section 304.

*[<sup>F44</sup>(2A) In Rule 1 “premium” includes—*

- (a) an amount treated as a premium under section 278 (amount treated as lease premium where work required),
- (b) a sum payable by the tenant under the terms subject to which the lease is granted instead of the whole or a part of the rent for a period,
- (c) a sum payable by the tenant under the terms subject to which the lease is granted as consideration for the surrender of the lease, and
- (d) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of the lease.]

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- (3) In this section and section 304, in relation to Scotland, “term”, where referring to the duration of a lease, means period.

#### Textual Amendments

- F43** Words in s. 303 substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 626(2)** (with Pts. 1, 2, Sch. 2 para. 44)
- F44** S. 303(2A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 626(3)** (with Pts. 1, 2, Sch. 2 para. 44)

#### Modifications etc. (not altering text)

- C6** S. 303 applied by 2001 c. 2, s. 360I(3)(a) (as inserted (7.4.2005 with effect in relation to expenditure incurred on or after 11.4.2007) by Finance Act 2005 (c. 7), s. 92, {Sch. 6 para. 1}; S.I. 2007/949, **art. 2**

### 304 Applying the rules in section 303

- (1) The rules in section 303 apply by reference to the facts known or ascertainable—
- at the time of the grant of the lease, or
  - if the determination is for the purposes of section 281 (sums payable for variation or waiver of [<sup>F45</sup>terms] of lease), at the time when the contract for the variation or waiver is entered into.
- (2) In applying those rules, it is assumed that all parties concerned, whatever their relationship, act as if they were at arm's length.
- (3) Subsection (5) applies if—
- special benefits were conferred by the lease or in connection with its grant, or
  - payments were made which one would not expect to be made by parties acting at arm's length unless such benefits had been conferred.
- (4) But subsection (5) does not apply if it can be shown that the special benefits were not conferred nor the payments made for the purpose of [<sup>F46</sup>securing—
- an income tax advantage in the application of this Chapter, or
  - a corporation tax advantage in the application of Chapter 4 of Part 4 of CTA 2009 (profits of property business: lease premiums etc).]
- (5) In applying [<sup>F47</sup>paragraph (b) of] rule 1 in section 303, it is assumed that the special benefits would not have been conferred nor the payments made if the lease had been granted for a term ending on the date mentioned in that rule.
- (6) In this section “special benefits” means benefits other than—
- vacant possession and beneficial occupation of the premises, or
  - the right to receive rent at a reasonable commercial rate in respect of the premises.

#### Textual Amendments

- F45** Word in s. 304(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(2)** (with Sch. 2 Pts. 1, 2)
- F46** Words in s. 304(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(3)** (with Sch. 2 Pts. 1, 2)

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**F47** Words in s. 304(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(4)** (with Sch. 2 Pts. 1, 2)

**F48 305 Information about effective duration of lease**

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**Textual Amendments**

**F48** S. 305 omitted (13.8.2009) by virtue of *The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035)*, art. 1, **Sch. para. 44**

*Other interpretative provisions*

**306 Provisions about premiums**

- (1) For the purposes of this Chapter, the presumption is that a sum paid on or in connection with the granting of a tenancy has been paid by way of premium.
- (2) This does not apply if the sum is rent.
- (3) This also does not apply so far as other sufficient consideration for the payment can be shown to have been given.
- (4) In this section “sum” includes the value of any consideration.
- (5) Where rule 3 in section 303 (rules for determining effective duration of lease) applies, the premium, or an appropriate part of it, payable for or in connection with either lease mentioned in that rule may be treated for the purposes of this Chapter as having been required under the other.

**307 Interpretation**

- (1) In this Chapter “premium” includes any similar sum payable to the immediate or a superior landlord or to a person connected with such a person.
- (2) In subsection (1) “sum” includes the value of any consideration.
- (3) In the application of this Chapter to Scotland—
  - “premium” includes, in particular, a grassum payable to the landlord under the lease in respect of which the grassum is payable or the landlord under any other lease of the property, and
  - “reversion” means the interest of the landlord in the property subject to the lease.
- (4) In the application of this Chapter to Scotland—
  - (a) references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and
  - (b) references to the lease so granted are to be read as references to the sublease.

## CHAPTER 5

### PROFITS OF PROPERTY BUSINESSES: OTHER RULES ABOUT RECEIPTS AND DEDUCTIONS

#### *Furnished accommodation: receipts and deductions*

#### **308 Furnished lettings**

- (1) In calculating the profits of a property business which consists of or includes a furnished letting—
  - (a) any sum payable for the use of furniture is brought into account as a receipt, and
  - (b) a deduction is allowed for expenses incurred in connection with the provision of furniture.
- (2) But subsection (1) does not apply to receipts or expenses brought into account in calculating the profits of a trade which consists of, or involves, making furniture available for use in premises.
- (3) A furnished letting is a lease or other arrangement under which—
  - (a) a sum is payable in respect of the use of premises, and
  - (b) the person entitled to the use of the premises is also entitled, in connection with that use, to the use of furniture.
- (4) In this section—
  - (a) “premises” includes a caravan and a houseboat, and
  - (b) “sum” includes the value of any consideration.

#### **309 Rent-a-room relief**

- (1) The rules for calculating the profits of an individual's UK property business are subject to Chapter 1 of Part 7 (rent-a-room relief).
- (2) That Chapter provides relief on income from the use of furnished accommodation in the individual's only or main residence (see, in particular, sections 793 and 797).

#### *Treatment of receipts on acquisition of business*

#### **310 Acquisition of business: receipts from transferor's UK property business**

- (1) This section applies if—
  - (a) a person (“the transferor”) permanently ceased to carry on a UK property business at any time,
  - (b) at that time the transferor transferred to another (“the transferee”) the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
  - (c) the transferee subsequently carries on the transferred business.
- (2) Sums—
  - (a) which the transferee receives as a result of the transfer, and

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- (b) which are not brought into account in calculating the profits of the transferor's UK property business for any period before the cessation, are brought into account in calculating the profits of the transferee's UK property business in the period of account in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the cessation of the transferor's property business are not post-cessation receipts (see Chapter 10).
- (4) This section has effect as if it were contained in Chapter 10.

#### *Reverse premiums as receipts*

### **311 Reverse premiums**

- (1) This section applies if—
  - (a) a person receives a reverse premium, and
  - (b) the reverse premium is not brought into account under section 101(2) in calculating the profits of any trade carried on by the person.
- (2) The person is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the property transaction relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the reverse premium as a result of that transaction.
- (3) Accordingly, the reverse premium is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction.
- (4) Subsection (5) applies if—
  - (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.
- (5) The whole amount or value of the reverse premium is brought into account in the period of account in which the property transaction is entered into.
- (6) Expressions used in this section and sections 99 to 103 have the same meaning in this section as they do in those sections.

#### *Deductions for expenditure on energy-saving items*

### **312 Deduction for expenditure on energy-saving items**

- (1) This section applies if—
  - (a) a person carries on a property business in relation to land which consists of or includes a dwelling-house,
  - (b) the person incurs expenditure in acquiring and installing [<sup>F49</sup>an energy-saving item in the dwelling-house or in a building containing the dwelling-house [(see subsections (5) to (7)),
  - (c) the expenditure is incurred before 6th April [<sup>F50</sup>2015] ,



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- (d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and
  - (e) no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (2) In calculating the profits of the business, a deduction for the expenditure is allowed.
- (3) But any deduction is subject to—
- (a) section 313 (restrictions on the relief), and
  - (b) any provision made by regulations under section 314.
- (4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.
- (5) “Energy-saving item” means—
- (a) cavity wall insulation,
  - (b) loft insulation, or
  - (c) such other descriptions of items of an energy-saving nature as are for the time being specified in regulations made by the Treasury.
- (6) The Treasury may by regulations provide for an item to be treated as an energy-saving item only if it satisfies such conditions as may be—
- (a) specified in, or
  - (b) determined in accordance with,
- the regulations.
- (7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (8) In this section—
- “the capital prohibition rule” means the rule in section 33 (capital expenditure), as applied by section 272, and
  - “the wholly and exclusively rule” means the rule in section 34 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 272.

#### Textual Amendments

- F49** Words in s. 312(1)(b) substituted (19.7.2007 with effect as stated in s. 18(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 18\(2\)](#)
- F50** Word in s. 312(1)(c) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 18\(3\)](#)

### 313 Restrictions on relief

- (1) This section restricts deductions that would otherwise be allowable under section 312.
- (2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—
- (a) is in the course of construction, or
  - (b) is comprised in land in which the person does not have an interest or is in the course of acquiring an interest or further interest.

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- (3) No deduction is allowed in respect of expenditure in a tax year if—
- (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the tax year.
- (4) No deduction is allowed if—
- (a) the person derives rent-a-room receipts from the dwelling-house, and
  - (b) those receipts are brought into account in calculating the profits of the business in accordance with section 793 or 797 (rent-a-room relief).
- (5) No deduction is allowed in respect of expenditure treated by section 57 (as applied by section 272) as incurred on the date on which the person starts to carry on the business unless the expenditure was incurred not more than 6 months before that date.
- [<sup>F51</sup>(6) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.]

#### Textual Amendments

- F51** S. 313(6) inserted (19.7.2007 with effect as stated in s. 18(6) of the amending Act) by Finance Act 2007 (c. 11), s. 18(4)

### 314 Regulations

- (1) In relation to any deduction under section 312, the Treasury may make regulations for—
- (a) restricting or reducing the amount of expenditure for which the deduction is allowable,
  - (b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,
  - (c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,
  - (d) making apportionments if the property business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.
- (2) The apportionments that may be made include apportionments to companies within the charge to corporation tax.
- [<sup>F52</sup>(3) Regulations under this section may—
- (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).]

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### Textual Amendments

- F52** S. 314(3) inserted (retrospectively with effect as stated in s. 18(7)(8) of the amending Act) by Finance Act 2007 (c. 11), s. 18(5)

## *Deductions for expenditure on sea walls*

### **315 Deduction for expenditure on sea walls**

- (1) This section applies if in a tax year a person —
  - (a) is the owner or tenant of any premises, and
  - (b) incurs expenditure in making a sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river.
- (2) In calculating the profits of any property business carried on by the person in relation to the premises, a deduction is allowed for the expenditure in each tax year in the deduction period.
- (3) The deduction period comprises—
  - (a) the tax year in which the expenditure is incurred, and
  - (b) the next 20 tax years.
- (4) The amount of the deduction is 1/21 of the expenditure.
- (5) No deduction is allowed for any expenditure in respect of which a capital allowance has been made.
- (6) Section 316 deals with the case of an interest in the premises being transferred (and this section applies in that case as if the reference to the person in subsection (2) above included the transferor and the transferee).

### **316 Transfer of interest in premises**

- (1) This section applies if, during the deduction period, the whole of the person's interest in the premises or in any part of them is transferred, whether by operation of law or otherwise.
- (2) For the tax year in which the transfer takes place—
  - (a) the transferor and the transferee are entitled to a part of any deduction under section 315, and
  - (b) the amount of the deduction is determined by what is just and reasonable.
- (3) For subsequent tax years in the deduction period, the entitlement to any deduction under section 315 depends on whether the interest transferred is in the whole of the premises or in part of them.
- (4) If the interest transferred is in the whole of the premises, the transferee (but not the transferor) is entitled to any deduction under section 315.
- (5) If the interest transferred is in part of the premises—
  - (a) the transferor and the transferee are entitled to a part of any deduction under section 315, and

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(b) the amount of the deduction is determined by reference to what is properly referable to the part of the premises.

(6) This section is supplemented by sections 317 (ending of lease of premises) and 318 (transfer involving company within the charge to corporation tax).

### **317 Ending of lease of premises**

(1) If a person's interest in the premises is a lease that comes to an end before the end of the deduction period, the interest is treated as if transferred to the following persons.

(2) If a new lease of the premises is granted and the new tenant makes a payment in respect of the embankment in question to the old tenant, the transferee is the new tenant.

(3) Otherwise the transferee is the owner of the interest in immediate reversion on the lease (or, in Scotland, the landlord).

### **318 Transfer involving company within the charge to corporation tax**

(1) This section explains how section 316 works if—

(a) the transferor is a person within the charge to income tax and the transferee is a company within the charge to corporation tax, or

(b) the transferor is a company within the charge to corporation tax and the transferee is a person within the charge to income tax.

(2) Section 316 applies only for the purpose of determining—

(a) whether the person within the charge to income tax is entitled to a deduction (or part of a deduction) under section 315, and

(b) the amount of any such deduction.

(3) Accordingly, any reference to—

(a) whether a person is entitled to a deduction (or part of a deduction) under section 315, or

(b) the amount of any such deduction,

is ignored if the person is a company within the charge to corporation tax.

(4) For any entitlement of a company within the charge to corporation tax to a deduction for any of the expenditure, see [<sup>F53</sup>sections 255 to 257 of CTA 2009] (corresponding corporation tax provision).

#### **Textual Amendments**

**F53** Words in s. 318(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 628** (with Sch. 2 Pts. 1, 2)

### *Mineral royalties*

### **319 Relief in respect of mineral royalties**

(1) This section applies if in a tax year a person who is UK resident, or ordinarily UK resident, carries on a UK property business the receipts of which consist of or include mineral royalties—

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- (a) which the person is entitled to receive under a mineral lease or agreement, and
  - (b) which are not chargeable to tax under Chapter 8 (rent receivable in connection with a UK section 12(4) concern).
- (2) In calculating the profits of the business, the person is treated as—
- (a) entitled to receive only half of the total of the mineral royalties arising under the lease or agreement in the tax year, and
  - (b) making in the tax year only half of the total of the payments made in respect of the management of the property concerned.
- (3) Sections 341 to 343 (meaning of “mineral lease or agreement” and “mineral royalties”) apply for the purposes of this section as they apply for the purposes of Chapter 8.

#### *Apportionments on sale of land*

### **320 Nature of item apportioned on sale of estate or interest in land**

- (1) This section applies if—
- (a) a person sells an estate or interest in land,
  - (b) on the sale a part of a receipt or outgoing in respect of the estate or interest is apportioned to the seller, and
  - (c) the receipt or outgoing is receivable or to be paid by the buyer after the apportionment is made.
- (2) In calculating the profits of the seller's property business, the part apportioned is treated as being of the same nature as the receipt or outgoing.

#### *Mutual business*

### **321 Mutual business**

- (1) Nothing in this Part is to be read as applying the rules relating to mutual business to property businesses.
- (2) Accordingly, receipts and expenses are to be brought into account in calculating the profits of a person's property business even if a relationship of mutuality exists between that person and another.

## **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).

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (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) <sup>F54</sup> .....
  - (c) <sup>F54</sup> .....
  - (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),
  - <sup>F55</sup>(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).]
- (3) This Chapter also supplements the above provisions 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).

#### **Textual Amendments**

- F54** 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)
- F55** 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)

### *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
  - (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.

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- (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 140 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 70 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.

### **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 70.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (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.

### *Separate profit calculations*

## **327 Capital allowances and loss relief**

- (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 <sup>F56</sup>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**

**F56** 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](#))

## **328 <sup>F57</sup> . . . Relevant UK earnings for pension purposes**

- (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 <sup>F58</sup>relevant UK earnings within section 189(2)(ba) of FA 2004.]



*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (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

- F57** Words in s. 328 sidenote 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. 510\(3\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F58** 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](#))

## CHAPTER 7

### ADJUSTMENT INCOME

#### *Adjustment on change of basis*

#### **329 Application of Chapter**

- (1) This Chapter applies if—
- a person carrying on a UK property business changes, from one period of account to the next, the basis on which profits of the business are calculated for income tax purposes,
  - the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - the new basis accords with the law and practice applicable in relation to the period of account after the change.
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a UK property business should be calculated for income tax purposes.
- (3) Subsections (3) to (6) of section 227 (what is meant by a person changing the basis on which profits are calculated) apply for the purposes of this section as they apply for the purposes of that section (but as if any reference to a trade were to a UK property business).

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

- (1) An amount by way of adjustment must be calculated in accordance with section 231, which applies in relation to a UK property business as it applies in relation to a trade.
- (2) If the amount produced by the calculation is positive, it is treated as income and charged to income tax under this Chapter.

It is referred to in this Chapter as “adjustment income”.

- (3) If the amount produced by the calculation is negative, a deduction is allowed for it in calculating the profits of the business.

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

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It is referred to in this Chapter as an “adjustment expense”.

- (4) This section is subject to section 234 (no adjustment for certain expenses previously brought into account), which applies in relation to a UK property business as it applies in relation to a trade.

### **331 Income charged**

Tax is charged under this Chapter on the full amount of any adjustment income arising in the tax year.

### **332 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the adjustment income.

#### *Treatment of adjustment income and adjustment expense*

### **333 Treatment of adjustment income**

- (1) Adjustment income is treated as arising on the last day of the first period of account for which the new basis is adopted.
- (2) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, adjustment income is treated as arising only when the asset to which it relates is realised or written off.
- (3) Adjustment income is treated for the purposes of [F59Part 4 of ITA 2007](loss relief) as profits of the UK property business for the tax year in which tax is charged on it.

#### **Textual Amendments**

**F59** Words in s. 333(3) 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. 511](#) (with transitional provisions and savings in [Sch. 2](#))

### **334 Treatment of adjustment expense**

- (1) An adjustment expense is treated as an expense of the business arising on the last day of the first period of account for which the new basis is adopted.
- (2) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, an adjustment expense is treated as arising only when the asset to which it relates is realised or written off.

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

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## CHAPTER 8

### RENT RECEIVABLE IN CONNECTION WITH A UK SECTION 12(4) CONCERN

#### *Charge to tax on rent receivable in connection with a UK section 12(4) concern*

#### **335 Charge to tax on rent receivable in connection with a UK section 12(4) concern**

Income tax is charged on rent receivable in connection with a UK section 12(4) concern.

#### **336 Meaning of “rent receivable in connection with a UK section 12(4) concern”**

- (1) For the purposes of this Chapter rent is receivable in connection with a UK section 12(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom, and
  - (b) the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 12(4).
- (2) For the purposes of this Chapter rent is also receivable in connection with a UK section 12(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom,
  - (b) the lease or other agreement under which it is receivable provides for its recoupment by reducing royalties or payments of a similar nature, and
  - (c) the reduction applies if the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 12(4).
- (3) In this Chapter “rent” includes—
  - (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.

#### **337 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the profits arising in the tax year.
- (2) This is subject to—
  - section 339 (deduction for management expenses of owner of mineral rights), and
  - section 340 (relief in respect of mineral royalties).

#### **338 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the rent.

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*Status:* Point in time view as at 13/08/2009.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)

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### *Management expenses of owner of mineral rights*

#### **339 Deduction for management expenses of owner of mineral rights**

- (1) This section applies if in a tax year—
  - (a) a person lets a right to work minerals in the United Kingdom, and
  - (b) the person pays a sum wholly and exclusively as an expense of management or supervision of the minerals in the tax year.
- (2) In calculating the amount of rent receivable in connection with a UK section 12(4) concern, a deduction is allowed for the sum for the tax year.
- (3) This is subject to section 340 (relief in respect of mineral royalties).

### *Mineral royalties*

#### **340 Relief in respect of mineral royalties**

- (1) This section applies if in a tax year—
  - (a) a person who is UK resident, or ordinarily UK resident, is entitled to receive mineral royalties under a mineral lease or agreement, and
  - (b) the royalties are chargeable to tax under this Chapter.
- (2) In calculating the amount of the royalties so chargeable, the person is treated as—
  - (a) entitled to receive only half of the total of the royalties arising under the lease or agreement in the tax year, and
  - (b) paying in the tax year only half of the total of the expenses mentioned in section 339(1)(b) (deduction for management expenses of owner of mineral rights).
- (3) As to the meaning of “mineral lease or agreement” and “mineral royalties”, see sections 341 to 343.

#### **341 Meaning of “mineral lease or agreement” and “mineral royalties”**

- (1) In this Chapter “mineral lease or agreement” means—
  - (a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom,
  - (b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom, and
  - (c) a grant of a right under section 1 of the Mines (Working Facilities and Support) Act 1966 (c. 4) other than an ancillary right (within the meaning of that Act).
- (2) In this Chapter “mineral royalties” means so much of any rent receivable under a mineral lease or agreement as relates to the winning and working of minerals.
- (3) For the purposes of this section and section 343 “minerals” means all minerals and substances in or under land which are ordinarily worked for removal—
  - (a) by underground working, or
  - (b) by surface working,
 but excluding water, peat, top-soil and vegetation.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### **342 Extended meaning of “mineral royalties” etc. in Northern Ireland**

- (1) In the application of this Chapter to Northern Ireland references to mineral royalties include the following periodical payments.
- (2) The payments are—
  - (a) payments of compensation under section 29 or 35 of the Mineral Development Act (Northern Ireland) 1969 (c. 35 (N.I.)) (“the 1969 Act”),
  - (b) payments of compensation under section 4 of the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)) (“the 1964 Act”),
  - (c) payments made as mentioned in section 37 of the 1969 Act,
  - (d) payments made under section 55(4)(b) of the 1969 Act, and
  - (e) payments made under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the Irish Land Act 1903 (c. 37)).
- (3) In the application of this Chapter to Northern Ireland references to the mineral lease or agreement under which mineral royalties are receivable include the enactment under which those payments are made.

### **343 Power of [<sup>F60</sup>Commissioners] to determine what counts as “mineral royalties”**

- [<sup>F61</sup>the Commissioners for Her Majesty’s Revenue and Customs] may by regulations—
- (a) provide whether, and to what extent, rents receivable under a mineral lease or agreement which relate both to the winning and working of minerals and to other matters are treated as mineral royalties, and
  - (b) provide for treating the whole of such rents as mineral royalties if the extent to which they relate to matters other than the winning and working of minerals is small.

#### **Textual Amendments**

**F60** Word in [s. 343](#) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(3)(a)}; [S.I. 2005/1126, art. 2\(h\)](#)

**F61** Words in [s. 343](#) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(2)}; [S.I. 2005/1126, art. 2\(h\)](#)

## **CHAPTER 9**

### **RENT RECEIVABLE FOR UK ELECTRIC-LINE WAYLEAVES**

#### *Charge to tax on rent receivable for UK electric-line wayleaves*

### **344 Charge to tax on rent receivable for a UK electric-line wayleave**

Income tax is charged on rent receivable for a UK electric-line wayleave.

### **345 Meaning of “rent receivable for a UK electric-line wayleave”**

- (1) For the purposes of this Chapter rent is receivable for a UK electric-line wayleave if—

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

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- (a) it is receivable in respect of an easement, servitude or right in or over land in the United Kingdom, and
  - (b) the easement, servitude or right is enjoyed in connection with an electric, telegraph or telephone wire or cable.
- (2) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
- (a) a pole or pylon supporting such a wire or cable, or
  - (b) apparatus used in connection with such a wire or cable.
- (3) In this Chapter “rent” includes—
- (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.

### **346 Extent of charge to tax**

- (1) Rent receivable for a UK electric-line wayleave is not chargeable to tax under this Chapter for a tax year if—
- (a) a person carries on a UK property business in relation to some or all of the land to which the wayleave relates, and
  - (b) receipts (other than rents receivable for UK electric-line wayleaves) in respect of some or all of that land are brought into account in calculating the profits of the business for the tax year.
- (2) In such a case, the rent receivable for the UK electric-line wayleave is brought into account in calculating the profits of the person's UK property business.
- (3) The rules for determining whether an amount is chargeable to tax under this Chapter also need to be read with section 22(2) (payments for wayleaves if person carries on a trade).
- (4) That subsection secures that an amount which would otherwise be chargeable to tax under this Chapter may be brought into account instead in calculating the profits of a trade.

### **347 Income charged**

Tax is charged under this Chapter on the full amount of the profits arising in the tax year.

### **348 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the rent.

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

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## CHAPTER 10

### POST-CESSATION RECEIPTS

#### *Charge to tax on post-cessation receipts*

#### **349 Charge to tax on post-cessation receipts**

Income tax is charged on post-cessation receipts arising from a UK property business.

#### **350 Extent of charge to tax**

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as the receipt is not otherwise chargeable to income or corporation tax.
- (2) Accordingly, a post-cessation receipt arising from a UK property business is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the business for any period.

#### **351 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the receipts received in the tax year.
- (2) This is subject to—
  - (a) sections 254 and 255 (allowable deductions), and
  - (b) section 257 (election to carry back),which apply for the purposes of this Chapter as they apply for the purposes of Chapter 18 of Part 2 (but as if any reference to a trade were to a UK property business).

#### **352 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the receipts.

#### *Meaning of “post-cessation receipts”*

#### **353 Basic meaning of “post-cessation receipt”**

- (1) In this Chapter “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a UK property business, and
  - (b) which arises from the carrying on of the business before the cessation.
- (2) Subsection (3) applies if—
  - (a) a firm carries on a UK property business,
  - (b) a person ceases to be a partner in the firm, and
  - (c) at least one of the persons with whom the partner carried on the business before ceasing to be a partner continues to carry it on afterwards.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

- (3) The partner is treated for the purposes of this Chapter as permanently ceasing to carry on the business.

**Modifications etc. (not altering text)**

C7 Ss. 353-368 modified (7.4.2005) by Finance Act 2005 (c. 7), s. 51(2)

**354 Other rules about what counts as a “post-cessation receipt”**

- (1) Section 355 (transfer of rights if transferee does not carry on UK property business) treats certain amounts as being, or not being, post-cessation receipts for the purposes of this Chapter.
- (2) The following provisions (which treat certain amounts as post-cessation receipts) apply for the purposes of this Chapter as they apply for the purposes of Chapter 18 of Part 2 (but as if any reference to a trade were to a UK property business)—
- section 82(6) (contributions to local enterprise organisations or urban regeneration companies),
  - section 104(3) (distribution of assets of mutual concerns),
  - section 109(2) (receipt by donor or connected person of benefit attributable to certain gifts),
  - section 248 (debts paid after cessation) [<sup>F62</sup>(reading the reference in subsection (3) to section 96 of ITA 2007 as a reference to section 125 of that Act)] ,
  - section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car <sup>F63</sup>... hire), and
  - section 250 (receipts relating to post-cessation expenditure) [<sup>F64</sup>(reading the reference in subsection (1) to section 96 of ITA 2007 as a reference to section 125 of that Act)] .
- (3) This Chapter also needs to be read with—
- (a) section 310(3) (which treats certain amounts as not being post-cessation receipts), and
  - (b) section 844 (which treats certain income as a post-cessation receipt: unremittable income).

**Textual Amendments**

- F62** Words in s. 354(2) inserted (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. 512(a) (with transitional provisions and savings in Sch. 2)
- F63** Words in s. 354(2) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 11 para. 43
- F64** Words in s. 354(2) inserted (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. 512(b) (with transitional provisions and savings in Sch. 2)

**Modifications etc. (not altering text)**

C8 Ss. 353-368 modified (7.4.2005) by Finance Act 2005 (c. 7), s. 51(2)



*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

### 355 Transfer of rights if transferee does not carry on UK property business

- (1) This section applies if—
- (a) a person (“the transferor”) permanently ceases to carry on a UK property business,
  - (b) the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
  - (c) the transferee does not subsequently carry on the transferred business.
- (2) The transferor is treated as receiving a post-cessation receipt.
- (3) The amount of the receipt is—
- (a) the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
  - (b) the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.
- (4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the property business are not post-cessation receipts.

#### Modifications etc. (not altering text)

**C9** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

### Supplementary

### 356 Application to <sup>F65</sup>businesses within the charge to corporation tax]

- (1) In this Chapter (except in section 355) any reference to a UK property business includes <sup>F66</sup>one within the charge to corporation tax] .
- (2) In this Chapter (except in section 355) any reference to a person permanently ceasing to carry on a UK property business <sup>F67</sup>includes, in the case of a company, the occurrence of an event treated under section 289 of CTA 2009 (company starting or ceasing to be within the charge to corporation tax) as the company permanently ceasing to carry on the business.]
- (3) In applying any provision of Chapter 18 of Part 2 for the purposes of this Chapter references to the calculation of the profits of a trade for corporation tax purposes are to be read as references to the calculation of the profits of a <sup>F68</sup>UK property business] for corporation tax purposes.

#### Textual Amendments

- F65** Words in s. 356 title substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(5\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F66** Words in s. 356(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F67** Words in s. 356(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

**F68** Words in s. 356(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 629(4)** (with Sch. 2 Pts. 1, 2)

**Modifications etc. (not altering text)**

**C10** Ss. 353-368 modified (7.4.2005) by **Finance Act 2005 (c. 7), s. 51(2)**

**F69** **CHAPTER 11**

**OVERSEAS PROPERTY INCOME**

**Textual Amendments**

**F69** Pt. 3 Ch. 11 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of **Finance Act 2008 (c. 9), Sch. 7 para. 49**

**F69** **357 Charge to tax on overseas property income**

.....

**F69** **358 Meaning of “overseas property income”**

.....

**F69** **359 Income charged**

.....

**F69** **360 Person liable**

.....

**CHAPTER 12**

**SUPPLEMENTARY**

**361 Changes in trustees and personal representatives**

- (1) This section applies if there is a change—
  - (a) in the trustees of a trust, or
  - (b) in the personal representatives of a person, at a time when they are carrying on a property business.
- (2) For income tax purposes, the change does not result in—
  - (a) any of the trustees or personal representatives before the change permanently ceasing to carry on the business, or
  - (b) any of the trustees or personal representatives after the change starting to carry on the business.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3. (See end of Document for details)*

**Modifications etc. (not altering text)**

C11 Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**362 Effect of company starting or ceasing to be within charge to income tax**

- (1) This section applies if a company starts or ceases to be within the charge to income tax under Chapter 3 of this Part in respect of a UK property business.
- (2) The company is treated for the purposes of this Part—
  - (a) as starting to carry on the business when it starts to be within the charge, or
  - (b) as permanently ceasing to carry on the business when it ceases to be within the charge.

**Modifications etc. (not altering text)**

C12 Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**363 Overseas property businesses and overseas land: adaptation of rules**

- (1) This section applies if a provision of this Part—
  - (a) applies to an overseas property business or land outside the United Kingdom, but
  - (b) is expressed by reference to a domestic concept of law.
- (2) In relation to that business or land, the provision is to be read so as to produce the result most closely corresponding with that produced by the provision in relation to a UK property business or land in the United Kingdom.

**Modifications etc. (not altering text)**

C13 Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**364 Meaning of “lease” and “premises”**

- (1) In this Part “lease” includes—
  - (a) an agreement for a lease (so far as the context permits), and
  - (b) any tenancy,but does not include a mortgage.
- (2) In this Part “premises” includes land.

**Modifications etc. (not altering text)**

C14 Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 3.