Neutral Citation: [2025] UKFTT 01553 (TC)

Case Number: TC09724

FIRST-TIER TRIBUNAL
TAX CHAMBER

[Taylor House]

Appeal reference: TC/2022/01579

CLOSURE NOTICE – refusal of claim for overpayment relief – rental income – rent invoiced but not received – credit note issued for the unpaid rent – calculation of profits – accrual basis – contrast between the way that the quantum of 'property income' charged for a tax year is calculated ("profits arising in the tax year") and the way that the quantum of 'trading income' charged for a tax year is calculated ("full amount of the profits of the tax year") – whether tax charge depends on when the profit/income 'arises' or when it 'accrues' – section 270 of the Income Tax (Trading and Other Income) Act 2005 – the meaning of "profits arising in the tax year" – Appeal dismissed

Heard on: 16 to 17 September 2025
Judgment date: 12 December 2025

Before

JUDGE NATSAI MANYARARA
HELEN MYERSCOUGH

Between

RAO MOHAMMED HASSAN KHAN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Michael Firth KC

For the Respondents: Mr Max Simpson, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the interpretation of s 270 of the Income Tax (Trading and Other Income) Act 2005 ("**ITTOIA**"). In particular, the meaning of "profits arising in the tax year" in relation to property rental income.

2. The Appellant ('Rao Mohammed Khan') purchased the long lease to a property situated at 48-49 Russell Square ("**the Property**"). He subsequently leased the Property to a limited liability partnership, known as "The Khan Partnership LLP" ("**the LLP**"), of which he was the 'designated partner'. The LLP did not, however, pay the full amounts due under the lease, nor the full amounts invoiced. The effect of the underpayments was that the LLP was indebted to the Appellant. The Appellant then submitted self-assessment tax returns declaring the income. Following the opening of an enquiry by HMRC, and having concluded that he no longer expected to receive the rent owed to him by the LLP, the Appellant issued a credit note to the LLP for the unpaid rent and then submitted claims for overpayment relief ("**the Claims**") under Schedule 1AB of the Taxes Management Act 1970 ("**TMA**"), at a point when he was out of time to amend his tax returns.

3. The Appellant appeals against two closure notices ("**the Closure Notices**") issued by HMRC on 29 April 2021, under para. 7, Schedule 1A TMA, for the 2016-17 and 2017-18 tax years ("**the relevant years**"):

> (1) The Closure Notice in respect of the tax year ended 5 April 2017 refused the Claim in the amount of £149,095.35.
>
> (2) The Closure Notice in respect of the tax year ended 5 April 2018 refused the Claim in the amount of £56,421.80.

4. HMRC submit that the Appellant's income from the Property had been returned correctly and, therefore, there was no overpayment of tax in the relevant years. HMRC further submit that rental income is charged under s 270 ITTOIA, and that the tax charge depends on when the profit/income arises, not when it accrues (in contrast to the 'trading income' rules at s 7 ITTOIA which simply tax the amount of the profit). HMRC's case is, essentially, that:

> (1) "**profits arising**" is a single-stage test; and
>
> (2) where the profits are calculated on the "**accrual basis**", in accordance the Generally Accepted Accounting Principles ("**GAAP**"), "profits arising in a tax year" means profits accruing in *that* tax year.

5. The Appellant, alternatively, submits that much of his declared taxable property income for the relevant years (as returned) related to rent that was never *actually* paid to him, or received by him. In further amplification of this submission, the Appellant's case is that the word 'arising' imposes an additional step in determining the amounts to be charged to tax, beyond the calculation of profits in accordance with GAAP. In this respect, the Appellant's case is that there are two steps to the calculation of profits arising, as follows:

> (1) Calculate the profit of the property business; and
>
> (2) Establish how much of that profit arose in the tax year (this is the amount charged for that tax year).

ISSUES

6. There is, in truth, one live issue in this appeal. That is whether the Appellant's self-assessment was excessive in the relevant years such that HMRC are liable to give effect to the Claims. This point turns, solely, on the interpretation of s 270 ITTOIA.

7. As confirmed by the Upper Tribunal ('UT') in *Shinelock Ltd v HMRC* [2023] UKUT 107 (TCC) ('*Shinelock*'), the matter in issue in relation to an appeal against a closure notice is the conclusion notified in the closure notice - albeit not limited to a stated reason for that conclusion - and the associated amendment arising from such conclusion. In *Daarasp LLP & Anor v HMRC* [2021] UKUT 87 (TCC) ("*Daarasp*"), at [24], the UT made clear that although there is a nexus between the conclusions in a closure notice and the consequential amendments implementing the conclusions, the two are distinct.

BURDEN AND STANDARD OF PROOF

8. The burden of proof is on HMRC to show that the Closure Notices were validly issued. The burden of proof is on the Appellant to show that the Closure Notices are incorrect, or excessive.

9. The standard of proof is the ordinary civil standard; that of a balance of probabilities.

DOCUMENTS

10. The documents to which we were referred included: (i) the Hearing Bundle consisting of 1800 pages; (ii) the Authorities Bundle consisting of 533 pages; (iii) HMRC's Skeleton Argument dated 1 September 2025; and (iv) the Appellant's Skeleton Argument dated 8 September 2025.

BACKGROUND FACTS

11. In September 2006, the Appellant acquired the long lease to the Property for £3,500,000. Initially, the Property was occupied by the Appellant's sole trade solicitor practice, "Hassan Khan & Co".

12. In November 2007, the Appellant became a designated partner in the LLP.

The lease agreement

13. In 2009, the Appellant leased the Property to the LLP.

14. In September 2014, a ten-year lease agreement for the Property was entered into by the Appellant and the LLP ("**the Lease**"). Rent was agreed at £515,947 per annum, reviewable every five years. The Appellant invoiced the LLP £515,000 (net of VAT) per annum.

15. In the tax year ending 5 April 2017, the LLP only paid the Appellant £386,535.76 towards rent.

16. In the tax year ending 5 April 2018, the LLP paid the Appellant £375,786.50 towards the rent.

The Appellant's tax returns for the relevant years

17. On 1 March 2018, the Appellant filed a self-assessment tax return for the year ending 5 April 2017; which included the gross rental income of £515,000 in respect of the Property. The Appellant returned the following income:

Dividends from UK companies	£50.00
Share of Partnership profit	£418,450.00
Losses brought forward	(£128,970.00)
Taxable profit	£349,480.00
Share of losses from UK property	(£5,337.00)

Income from property (two properties)	£519,484.00
Taxable profits	£359,347.00
Income Tax and National Insurance Contributions ("NICs") payable	**£311,152.80**

18. On 28 February 2019, the Appellant filed a self-assessment tax return for the year ending 5 April 2018, which also included gross rental income of £515,000 in respect of the Property. In "Box 20.2" of the tax return, the Appellant indicated that he had used the 'GAAP basis', rather than the 'cash basis', to calculate income and expenditure. The Appellant returned the following income:

Dividends from UK companies	£5,000.00
Share of Partnership profit	£147,970.00
Taxable profit	£147,970.00
Income from property (four properties)	£530,383.00
Taxable profit	£126,592.00
Income Tax and NICs payable	**£88,291.84**

HMRC's enquiries and the Appellant's amended tax returns

19. On 4 January 2019, HMRC informed the Appellant that they were opening an enquiry into his tax return for tax year ended 5 April 2017, under s 9A TMA.

20. On 20 January 2020, HMRC informed the Appellant that they were opening an enquiry into his tax return for tax year ended 5 April 2018, under s 9A TMA.

21. On 12 March 2020, HMRC served a "statutory demand", under s 268(1)(a) of the Insolvency Act 1986, on the Appellant in respect of outstanding income tax and VAT relating to the periods ended 5 April 2013 to 5 April 2018 (inclusive).

22. On 23 March 2020, the Appellant issued a credit note to the LLP for the unpaid rent ("**the Credit Note**"). The Credit Note was in the following amounts:

Details of Credit Note	**Cost**	**VAT**
Licence fee for occupancy of 48-49 Russell Square 1 February 2016 to 31 January 2017	£245,488.82	£49,097.76
Licence fee for occupancy of 48-49 Russell Square 1 February 2017 to 31 March 2017	£85,833.35	£17,166.67
Licence fee for occupancy of 48-49 Russell Square 1 April 2017 to 31 January 2018 (Total unpaid rent of £401,069.04 – 75%)	£300,801.78	£60,160.36
Licence fee for occupancy of 48-49 Russell Square 1 February 2018 to 31 March 2018 (Total unpaid rent of £85,833.35 – 75%)	£64,375.01	£12,875.00

	Fees	£696,498.96
	VAT	£139,299.78
	Total	**£835,798.75**

23. In the Grounds of Appeal, it is stated that:

> "*The reason why the Appellant was required to issue a credit note was because his property rental business, Hassan Khan & Co, the supplier of the office building spaces charging rent to its tenant, The Khan Partnership LLP, operates under the VAT cash accounting scheme. In order to make a bad debt relief claim, the first condition to satisfy is that the supplier must have already accounted for VAT on the supplies and paid it to HMRC.*"

24. On 27 March 2020, the Appellant applied for the statutory demand to be set aside. On the same date, the Appellant filed amended tax returns for the relevant years. These were received by HMRC on 30 March 2020, as follows:

(1) The amended tax return for the tax year ended 5 April 2017 reduced the income from property from £519,484 to £188,161 (tax reduced by £149,095.35); and

(2) The amended tax return for the tax year ended 5 April 2018 reduced the income from property from £530,383 to £165,206, resulting in losses to carry forward of £238,585 (tax reduced by £56,421.80).

25. By an email dated 17 July 2020, HMRC informed the Appellant's representative that the amended tax returns had not been accepted as they were submitted outside of the statutory time-limit for amendments.

26. By a letter dated 27 August 2020, HMRC confirmed that the deadline for submitting the amended tax return for tax year ended 5 April 2017 was 31 January 2019. This letter also advised the Appellant that he may be able to claim overpayment relief, and provided details of the information that should be included in such a claim.

27. By a letter dated 29 September 2020, HMRC confirmed that the deadline for submitting an amended tax return in respect of the tax year ended 5 April 2018 was 31 January 2020.

The claims for overpayment relief

28. By a letter dated 30 October 2020, the Appellant submitted the Claims under Schedule 1AB TMA, in respect of the relevant years and in the sums of £149,095.35 and £56,421.80, respectively. The Claims included a copy of the Credit Note, noting that the unpaid rent for the tax year ended 5 April 2018 was only credited on a 75% basis. The Claims further outlined the revised tax due in the relevant years in the amended returns (as set out above).

29. By a letter dated 8 March 2021, HMRC informed the Appellant that a check into the Claims was being conducted. The letter enclosed copies of notices of enquiry under para. 5, Schedule 1A TMA, dated 10 March 2021. HMRC requested further information and queried why the Credit Note had been issued, rather than making a deduction for a 'bad debt'.

30. By a letter dated 13 April 2021, the Appellant's representative confirmed that the LLP rents the Property from the Appellant. The representative further confirmed that the LLP then sublets the areas it does not occupy; therefore, no rental payments were made by third-party tenants to the Appellant directly. The letter also included:

(1) a copy of "the Lease" between the Appellant and the LLP;

(2) an "Aged Creditors Report", dated 30 April 2020, showing an outstanding rent balance owed by the LLP to the Appellant, in the sum of £2,512,492.77, up to January 2021; and

(3) a "Schedule" of all rental payments made by the LLP to the Appellant.

31. The Schedule showed total rent payments received by the Appellant from the LLP in the relevant tax years, as follows:

(1) Tax year ended 5 April 2017 = £377,539.86. Of this amount, £220,413.40 gross of VAT (£183,677.83 net of VAT) had been allocated to rent due and invoiced in the year. The remainder was allocated to unpaid rent invoiced in earlier years; and

(2) Tax year ended 5 April 2018 = £375,796.50. Of this amount, £33,717.14 gross of VAT (£28,097.62 net of VAT) had been allocated to rent due and invoiced in the year. The remainder was allocated to unpaid rent invoiced in earlier years

32. The letter further advised that the financial impact of the Covid-19 pandemic, and the forced closure of the building from March 2020 to July 2020, had caused the Appellant to review the position regarding unpaid rent. The Appellant's representative explained that with regard to the sublets, one tenant had ceased trading, another had gone into liquidation and others had requested a reduction in rent. In addition, the letter advised that as a result of the general stays issued by the Tribunal on 26 March 2020 and 20 April 2020, alongside other court closures, the LLP had been unable to progress appeals and, thus, fee income dropped by approximately 90%. Therefore, the Appellant had concluded that the outstanding rent was irrecoverable.

33. In respect of the query regarding the issuing of the Credit Note rather than making a deduction for a bad debt, the Appellant's representative explained that, in their opinion, while the mechanics may be different, the accounting consequences of either approach resulted in the same overall position. The letter also confirmed that the Credit Note had been recorded in the LLP's accounts in the period during which it had been issued.

HMRC's decision

34. On 29 April 2021, HMRC issued the Closure Notices. On the same date, HMRC issued correspondence explaining the reasons for refusing the Claims, as follows:

(1) A subsequent change in circumstances resulting in an unpaid debt becoming irrecoverable does not mean that the earlier years' returns are incorrect, or that there has been an overpayment of tax in those years.

(2) There are exclusions to the availability of overpayment relief, including, amongst others, 'Case B' under which HMRC are not liable to give effect to a claim where there are other formal means of recovering an overpayment of tax or reducing an excessive assessment.

(3) A person cannot make a claim for overpayment relief where they have made a deliberate choice between alternatives allowed under the Taxes Acts that, with hindsight, leads them to pay more tax than had they made a different choice.

(4) The Credit Note was issued in March 2020 and should, therefore, be accounted for in the tax year during which it was issued. The issuing of the Credit Note does not alter the position for earlier years.

(5) The issuing of the Credit Note and a deduction for an irrecoverable debt are different mechanisms, with each being appropriate in different circumstances. In this circumstance, a bad debt provision rather than a credit note was appropriate.

35. On 10 June 2021 the Appellant appealed to HMRC.

36. On 24 June 2021, HMRC issued their "View of the Matter" letter, upholding the Closure Notices and making the offer of a statutory review. The letter repeated HMRC's view that there had been no overpayment in the relevant years, and that relief in respect of an irrecoverable debt is correctly given in the tax year in which that debt is determined to be irrecoverable.

37. On 26 July 2021, the Appellant accepted the offer of a statutory review.

38. By letter dated 8 December 2021, HMRC informed the Appellant that the statutory review had been completed. The conclusion was that the Closure Notices were upheld.

39. On 7 January 2022, the Appellant notified his appeal to the First-tier Tribunal ('FtT').

RELEVANT LAW

40. In order to put the parties' respective contentions into context, we start with the relevant statutory provisions. The relevant law, so far as is material to the issues in this appeal, is as follows:

Income Tax (Trading and Other Income) Act 2005

41. Section 268 ITTOIA provides that:

> "**268 Charge to tax on profits of a property busines**
>
> Income tax is charged on the profits of a property business."

42. "**Rental income**" is charged under s 270 ITTIOA, which provides that:

> "**270 Income charged**
>
> (1) Tax is charged under this Chapter on the full amount of the profits arising in the tax year.

43. Section 270 is the key provision in this appeal.

44. In relation to the "**calculation of profits**", s 271A provides that:

> "*Basis of calculation of profits*
>
> **271A Basis of calculation of profits: GAAP required**
>
> (1) The profits of a property business for a tax year must be calculated in accordance with GAAP if condition A, B, C, D or E is met.
>
> (2) Condition A is that the business is carried on at any time in the tax year by—
>
> (a) a company,
>
> (b) a limited liability partnership,
>
> (c) a corporate firm, or
>
> (d) the trustees of a trust.
>
> (3) For the purposes of subsection (2) a firm is a "corporate firm" if a partner in the firm is not an individual.
>
> (4) Condition B is that the cash basis receipts for the tax year exceed £150,000.
>
> (5) In subsection (4) "the cash basis receipts for the tax year" means the total of the amounts that would be brought into account as receipts in calculating the profits of the property business for the tax year on the cash basis (see section 271D).
>
> (6) If the property business is carried on for only part of the tax year, the sum given in subsection (4) is proportionately reduced.
>
> (7) Condition C is that—

(a) the property business is carried on by an individual ("P"),

(b) a share of joint property income is brought into account in calculating the profits of the business for the tax year,

(c) a share of that joint property income is brought into account in calculating the profits for the tax year of a property business carried on by another individual ("Q's property business"), and

(d) the profits of Q's property business for the tax year are calculated in accordance with GAAP.

…

(9) Condition D is that—

(a) an allowance under Part 3A of CAA 2001 (business premises renovation allowances) is made at any time in calculating the profits of the property business, and

(b) if the profits of the business were to be calculated in accordance with GAAP for the tax year, there would be a day in the tax year on which the occurrence of a balancing event (within the meaning of that Part) would give rise to a balancing adjustment for the tax year (see section 360M of that Act).

(10) Condition E is that an election under this subsection made by the person who is or has been carrying on the property business has effect in relation to the business for the tax year."

45. Section 271C provides that:

"**271C Basis of calculation of profits: cash basis required**

The profits of a property business for a tax year must be calculated on the cash basis if none of conditions A, B, C, D or E in section 271A is met.

46. Section 272 (in relation to the 2017 tax year) provides that:

"**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-

In Chapter 3 (basic rules)—

section 25 generally accepted accounting practice

…

section 27 receipts and expenses

…

In Chapter 4 (rules restricting deductions)—

…

section 35 bad and doubtful debts ..."

47. In relation to the 2018 tax year, s 272 provides that:

"272 Application of trading income rules: GAAP

(1) …

(2) In relation to a property business whose profits are calculated in accordance with GAAP, the provisions of Part 2 (trading income) which apply as a result of section 271E(1) are limited to the following—

…

section 27 receipts and expenses

…

section 35 bad and doubtful debts …"

48. Section 25 provides that:

"**25 Generally accepted accounting practice**

(1) The profits of a trade to which the cash basis does not apply must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law in calculating profits for income tax purposes…"

49. Section 27, in turn, provides that:

"**27 Receipts and expenses**

(1) In the Income Tax Acts, in the context of the calculation of the profits of a trade, references to receipts and expenses are to any items brought into account as credits or debits in calculating the profits.

(2) There is no implication that an amount has been actually received or paid.

(3) This section is subject to any express provision to the contrary."

50. Section 35 then provides that:

"**35 Bad and doubtful debts**

(1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as—

(a) the debt is bad,

(b) the debt is estimated to be bad, or

(c) the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.

(2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the purposes of subsection (1)(b), except so far as any amount may reasonably be expected to be received on the debt."

Taxes Management Act 1970

51. Schedule 1AB TMA provides for the recovery of overpaid tax, as follows:

" *Claim for relief for overpaid tax etc*

(1) This paragraph applies where—

(a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or

(b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.

(3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.

(4) Paragraphs 3 to 7 (and sections 42 to 43C and Schedule 1A) make further provision about making and giving effect to claims under this Schedule.

(5) Paragraph 8 makes provision about the application of this Schedule to amounts paid under contract settlements.

(6) The Commissioners are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—

(a) by this Schedule and Schedule 1A (following a claim under this paragraph), or

(b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.

(7) For the purposes of this Schedule an amount paid by one person on behalf of another is treated as paid by the other person.

52. Paragraph 2 provides for cases where HMRC are not liable to give effect to a claim, as follows:

"**2 Cases in which Commissioners not liable to give effect to claim**

(1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraphs 3A and 4(5)).

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—

(a) a mistake in a claim, election or notice,

(b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains.

(4) Case C is where the claimant—

(a) could have sought relief by taking such steps within a period that has now expired, and

(b) knew, or ought reasonably to have known, before the end of that period that such relief was available.

(5) Case D is where the claim is made on grounds that—

(a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or

(b) have been put to Her Majesty's Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 (settling of appeals by agreement)). …

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—

(a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "relevant appeal") was determined by a court or tribunal (or is treated as having been so determined),

(b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and

(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal…"

53. Paragraph 5 of Schedule 1A TMA provides HMRC with the "**power to enquire**" into claims, as follows:

"**5 Power to enquire into claims**

(1) An officer of the Board may enquire into—

(a) a claim made by any person, or

(b) any amendment made by any person of a claim made by him,

if, before the end of the period mentioned in sub-paragraph (2) below, he gives notice in writing of his intention to do so to that person or, in the case of a partnership claim, any successor of that person.

(2) The period referred to in sub-paragraph (1) above is whichever of the following ends the latest, namely—

(a) the period ending with the quarter day next following the first anniversary of the day on which the claim or amendment was made;

(b) where the claim or amendment relates to a year of assessment, the period ending with the first anniversary of the 31st January next following that year; and

(c) where the claim or amendment relates to a period other than a year of assessment, the period ending with the first anniversary of the end of that period;

and the quarter days for the purposes of this sub-paragraph are 31st January, 30th April, 31st July and 31st October.

(3) A claim or amendment which has been enquired into under sub-paragraph (1) above shall not be the subject of—

(a) a further notice under that sub-paragraph; or

(b) if it is subsequently included in a return, a notice under section 9A(1) or 12AC(1) of this Act or paragraph 24 of Schedule 18 to the Finance Act 1998**]**.

54. Paragraph 7 provides for the "**completion of an enquiry**", as follows:

"7 Completion of enquiry into claim

(1) An enquiry under paragraph 5 above is completed when an officer of the Board by notice (a "closure notice") informs the claimant that he has completed his enquiries and states his conclusions.

(2) In the case of a claim for discharge or repayment of tax, the closure notice must either—

(a) state that in the officer's opinion no amendment of the claim is required, or

(b) if in the officer's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

In the case of an enquiry falling within paragraph 5(1)(b) above, paragraph (b) above only applies so far as the deficiency or excess is attributable to the claimant's amendment.

(3) In the case of a claim that is not a claim for discharge or repayment of tax, the closure notice must either—

(a) allow the claim, or

(b) disallow the claim, wholly or to such extent as appears to the officer appropriate.

(4) A closure notice takes effect when it is issued…"

EVIDENCE AND KEY SUBMISSIONS

55. The documents for the hearing, set out at [10] above, comprised pleadings, correspondence relating to HMRC's enquiry and appeal correspondence.

56. Mr Simpson's submissions can be summarised as follows:

(1) The Appellant submitted the Claims on 30 October 2020; which fell into the quarter ending 31 October 2020. This means that HMRC had until 31 October 2021 to enquire into the Claims.

(2) At all times (and for the relevant years), the Appellant calculated his profits in accordance with GAAP, and there is no dispute as to the level of profits. Under GAAP, income is recognised on the 'accrual basis' as it is earned in the tax year. It follows that income may need to be brought into account before that income has actually been received. In respect of a property business, it is the proportion of the rent which is earned in the year from the tenant's use of the property in the year that should be accounted for. Rent should not be excluded because it is received, or due, outside of the tax year. The Appellant invoiced the LLP for use of the Property, in accordance with the Lease. This is income earned in the tax year, and which the Appellant was entitled to receive. The Appellant was correct to return the property business income in his tax returns for the relevant years, in accordance with the statutory provisions in respect of income from property at Part 3 ITTOIA.

(3) The purpose of Chapter 3 of Part 3 ITTOIA is to charge the profits of a property business to tax. The amounts that are to be charged to tax are provided for at s 270 ITTOIA. Profits must be calculated in accordance with GAAP, i.e., on the 'accrual basis' in contrast with the 'cash basis', for the relevant years. Both years are covered by Chapter 3 of Part 3, ITTOIA. However, the Finance (No.2) Act 2017 introduced an option for taxpayers who meet certain criteria to choose between calculating profits on the 'cash basis', or calculating profits in accordance with GAAP (i.e., 'the accrual basis'). The profits of the Appellant's property business have been calculated correctly in accordance with GAAP and s 271A ITTOIA on the basis that both 'Condition B' and 'Condition E' were met.

(4) Restrictions apply in respect of claims for overpayment relief including, amongst others, 'Case B', where the person can correct the overpayment by other means, or where the person has made a 'deliberate choice' between alternatives allowed under the Taxes Acts that, with hindsight, leads then to pay more tax.

(5) The legislation is clear that a deduction for a 'bad debt' is only permitted in calculating the profits of a trade where that debt is bad, is estimated to be bad, or is released. This is a clear indication that the deduction is only allowable in the tax year in which the debt becomes 'bad' or 'doubtful'. In accordance with s 35 ITTIOA, a deduction in respect of the irrecoverable debt would only be allowable in the tax year ended 5 April 2020 (in the circumstances of this appeal). A deduction could not have been allowable before this time as the unpaid rent had not been determined to be a bad debt or doubtful debt, to any extent, until March 2020. The issuing of a credit note is not an appropriate mechanism by which to write-off an irrecoverable debt. A credit note would be appropriate where there has been a re-negotiating, or change, in the value of goods or services supplied. Even if a credit note were to be considered an acceptable mechanism by which to write-off an irrecoverable debt, the issuing of a credit note should correctly be accounted for in the tax year in which it is issued. Neither the writing-off of a bad debt, nor the issuing of a credit note, would have the effect of reducing the income returned in the relevant years.

(6) The value of the services supplied in the present appeal is contained in the Lease. The rent was accepted as being a fair market rent. The Appellant has provided no evidence to indicate that there was a re-negotiation or change in the value of the services supplied by the Appellant.

(7) It is irrelevant that Hassan Khan & Co. operates under the VAT cash accounting system in determining whether the arrears of rental income should be dealt with by way of a bad debt or credit note as the income is that of the Appellant. Routing any payment through an intermediary does not change the characteristics of the payment. Any legal action to recover the rental arrears, or to determine that the arrears were irrecoverable, would be down to the legal entity; which in this appeal is the Appellant, and not Hassan Khan & Co.

57. In essence, HMRC submit that the Appellant's tax returns for the relevant years did not become excessive as a result of the Credit Note issued to the LLP by way of writing-off an unpaid debt in respect of the rent due to the Appellant in the relevant years.

58. Mr Firth submits, in summary, that:

(1) The issue of whether the rental income arose in the relevant years does not depend on whether the Appellant should have made a deduction for a bad debt, or issued a credit note. The Appellant issued the Credit Note because his property rental business operates under the VAT cash accounting system. The Appellant was advised that he could not satisfy the conditions for a bad debt relief claim because VAT had not been accounted for on the supplies. Whether the Appellant issued a credit note, or made a deduction for a bad debt, the result would have been the same.

(2) The profit in respect of the unpaid rent did not arise in the tax years in which it was due because the LLP was struggling and did not pay the rent. Therefore, paying tax on that rental income amounts to an overpayment.

(3) The exclusion at 'Case B' does not apply because the Appellant has no other formal means of reducing the excessive assessments as the deadlines for making and/or amending the self-assessment tax returns have passed.

(4) The principle of 'deliberate choice' is not relevant to the Appellant's case as the Appellant did not make a deliberate choice between alternatives available under the Taxes Acts.

59. We also heard detailed submissions on the interpretation of s 270 ITTOIA, which we will return to consider in our "Discussion" below. At the conclusion of the hearing, we reserved our decision, which we now give with reasons.

FINDINGS OF FACT

60. Both representatives were in agreement that the underlying/background facts are not in issue between the parties. We, therefore, adopt the "Background Facts at [11] to [31] above as our "Findings of Fact".

DISCUSSION

61. The Appellant appeals against Closure Notices issued by HMRC, pursuant to para. 7, Schedule 1A TMA and for the 2017 and 2018 tax years (i.e., the relevant years), refusing the Claims made by the Appellant at a point in time when he was out of time to amend his self-assessment tax returns, and following an enquiry into his tax returns for the relevant years. Section 8 TMA provides that, for the purposes of establishing the amounts in which a person is chargeable to tax for a year of assessment, an officer may require a person to make a return. Subject to exceptions, s 9(1)(a) provides that every return shall include a self-assessment. That is to say:

> "an assessment of the amounts in which, on the basis of the information contained in the return and taking into account any relief or allowance a claim for which is included in the

return, the person making the return is chargeable to income tax and capital gains tax for the year of assessment."

62. Where a claim is included in a return made under s 8 or 8A TMA, the enquiry must be under s 9A TMA.

63. The Appellant made the Claims at a point when he was out of time to amend his self-assessment tax returns. Under Schedule 1A TMA, HMRC can enquire into a claim which is not included in a return and the time-limit is, in broad terms, 12 months from the date of the claim. The Appellant made the Claims on 30 October 2020 and the enquiry was opened on 8 March 2021, which is within the time-limit. The Closure Notices were issued on 29 April 2021.

64. The jurisdiction of the FtT is fixed, and defined, by the terms of the Closure Notices, as confirmed by the UT in *Daarasp*, at [25(7)]. In *Shinelock*, the UT pointed out that *Daarasp* had set out ten principles which could be drawn from the leading authorities in relation to the issue of "the matter in question" in a closure notice. Consistent with the decision of the UT in *Shinelock*, we adopt the summary of the essential workings of the enquiry and closure notice process set out in *Daarasp*:

> "22. An enquiry, begun by way of an enquiry notice, is concluded by a closure notice. The closure notice comprises two elements:
>
> (1) A statement of the officer's conclusions; and
>
> (2) A statement of what, if anything, must be done to give effect to those conclusions.
>
> 23. The whole point of tax returns and enquiries into them is to ensure that the public interest in taxpayers paying the correct amount of tax is met. To that end, HMRC must have an appropriate ability to examine the return, but the taxpayer must have a fair opportunity to challenge (by way of appeal) either (i) the conclusions of HMRC or (ii) the manner in which those conclusions have been given effect to (by way of amendments to the return) ...
>
> 24. It is important to appreciate that the conclusions of a closure notice are distinct from the amendments that may arise out of those conclusions. Obviously, there is a nexus between the two – the amendments implement the conclusions reached – but they are very different things. The conclusions in a closure notice consist of a statement why the taxpayer's return is incorrect (if it is), whereas the amendments set out how the return must be corrected in order to give effect to those conclusions. A closure notice must state the officer's conclusions; and having issued a closure notice, HMRC has no power to amend the relevant return other than to give effect to the conclusions: *Bristol & West* at [24]; *Investec* at [51]."

65. We also adopt the principles set out in *Daarasp*, at [25], as having been provided by the authorities which have considered closure notices. In this respect, we agree that:

> "(5) It is desirable that the statement by the officer of his conclusions should be as informative as possible: *Tower MCashback* at [83]; *Fidex* at [42]. Furthermore, notices are given at the conclusion of an enquiry, and must be read in context. It will be rare for a notice to be sent without some previous indication during the enquiry of the points that have attracted the officer's attention: *Tower MCashback* at [84]; *Fidex* at [42], [45]; *Lavery* at [37]. That said, a narrowly drawn closure notice – properly construed – cannot be widened by reference to the scope of the enquiry which preceded it: *Lavery* at [34].
>
> (6) It is not appropriate to construe a closure notice as if it were a statute: *Fidex* at [51]; *Lavery* at [28]. The ordinary rules of construction apply to closure notices, and the question of construction is a mixed question of fact and law: the identification of the relevant circumstances and context in which the document is to be construed is a question of fact, whilst the meaning of the document – construed within that context, as found – is a question of law: *Lavery* at [36]. Essentially, when approaching the question of construction, it is

appropriate to consider how the reasonable recipient of the notice, standing in the shoes of the taxpayer, would have construed it: *Lavery* at [42]."

66. We further agree with the UT in *Daarasp* at [36(4)(c)] that:

> "…we must bear in mind that it is perfectly possible for the consequential adjustment in a closure notice itself to be in error, in that it fails to articulate the adjustment required by the conclusion articulated by the officer."

67. As the UT decided, the amendment made by the officer needs to be considered, but it does not in itself determine the matter in question where the evidence of a closure notice and its conclusions, as understood by the parties, casts a different light on the nature of the dispute.

68. The UT decision in *Fidex Ltd v HMRC* [2015] STC 702 ('*Fidex*') was affirmed in the Court of Appeal in *Fidex Ltd v HMRC* [2016] STC 1920. At [45], Kitchin LJ set out the following principles:

> "45. In my judgment the principles to be applied are those set out by Henderson J as approved by and elaborated upon by the Supreme Court. So far as material to this appeal, they may be summarised in the following propositions: (i) The scope and subject matter of an appeal are defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions. (ii) What matters are the conclusions set out in the closure notice, not the process of reasoning by which HMRC reached those conclusions. (iii) The closure notice must be read in context in order properly to understand its meaning. (iv) Subject always to the requirements of fairness and proper case management, HMRC can advance new arguments before the FTT to support the conclusions set out in the closure notice."

69. The Closure Notices arose as a result of HMRC's conclusion that the Appellant's self-assessments were not excessive in respect of the Claims made for the relevant years. The amounts in dispute are:

(1) £149,095.35 for the tax year ending on 5 April 2017; and

(2) £56,421.80 for the tax year ending on 5 April 2018.

70. The dispute in this appeal relates to the tax treatment of rental income under s 270 ITTOIA that was invoiced by, but not paid to, the Appellant. It is not in dispute that:

(1) the Appellant was out of time to amend his self-assessment tax returns; and

(2) the Claims were made in time and were in the required form.

71. The parties are also in agreement that the issue of the Credit Note by the Appellant to the LLP has no effect on the amounts chargeable to tax. The dispute between the parties is purely one related to statutory interpretation, with no dispute arising from the underlying facts.

Section 270 ITTIOA: Meaning of 'profits arising in the tax year'

72. The key provision which is in issue in this appeal is s 270 ITTOIA. Mr Firth submits, on behalf of the Appellant, that the structure of the legislation requires two steps in calculating the profits arising in the tax year, as follows:

(1) Firstly, you calculate the profit or loss in accordance with GAAP ('Stage 1'); and

(2) Secondly, you apply s 270 ITTOIA to work out how much of that profit arises in that tax year ('Stage 2').

73. In further amplification of the Appellant's position, Mr Firth submits that:

(1) Established principles of statutory interpretation show that the same wording used in two or more different places in the same piece of legislation is presumed to have the same meaning (particularly where the legislation is tax re-write legislation whose purpose is to clarify and guide taxpayers with clear and accessible text). Conversely a difference in wording points to a difference of meaning.

(2) The structure of the charge to tax on property income is clear. Whilst the profit of the business is calculated in accordance with GAAP ('Stage 1'), the amount of such profit that is charged to tax for a particular tax year is the profit that arises in that tax year ('Stage 2').

(3) Binding authority, the explanatory notes, and HMRC's own manuals establish that income arises when it is paid or is immediately accessible (e.g., in the taxpayer's bank account). If the income has not been paid to the taxpayer, or credited to his/her bank account, it has not yet arisen. Accordingly, on the facts of this case, the unpaid rental income did not represent profit that had arisen to the Appellant.

(4) The contrast with the charge to tax on trading income is clear and instructive: for trading income, the charge is on the full profit for the year, without any reference to whether the profit arose. The different wording in s 270 ITTOIA - as well as several other charges in ITTOIA - confirms that a different meaning applies in those other provisions.

74. Mr Firth submits that it is a basic principle of statutory interpretation that a difference in wording between provisions in the same legislation usually indicates a difference of meaning. In this respect, he refers to the decision in *Plevin v Paragon Personal Finance Ltd* [2017] UKSC 23 ('*Plevin*'), at [22]:

> "22. …In the ordinary course, there is a presumption that the same expression used in different provisions of a statute has the same meaning wherever it appears. There is also a presumption that differences in the language used to describe comparable concepts are intended to reflect differences in meaning. But the latter presumption is generally weaker than the former, because the use of the same expression is more likely to be deliberate. It will readily be displaced if there is another plausible explanation of the difference."

75. He adds that, conversely, where the same wording is used in two or more different places in the same piece of legislation, the presumption is that the same meaning is intended, in reliance on *Assange v Swedish Prosecution Authority* [2012] UKSC 22; [2012] 2 AC 471 ('*Assange*') (per Lord Phillips of Worth Matravers PSC, at [75], as follows:

> "75. When considering the meaning of a word or phrase that is used more than once in the same instrument one starts with a presumption that it bears the same meaning wherever it appears. That is not, however, an irrebuttable presumption. It depends upon the nature of the word or phrase in question and the contexts in which it appears in the instrument..."

76. He also refers to *R (Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin) ('*Good Law Project*'), where Leggatt LJ said this, at [33]:

> "Save for one point, there is no dispute about the principles of statutory interpretation. The basic principles are that the words of the statute should be interpreted in the sense which best reflects their ordinary and natural meaning and accords with the purposes of the legislation. It is generally reasonable to assume that language has been used consistently by the legislature so that the same phrase when used in different places in a statute will bear the same meaning on each occasion - all the more so where the phrase has been expressly defined."

77. Mr Firth relies on *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 ('*For Women Scotland*'), at [192]:

> "192. As Lord Nicholls explained in *Spath Holme*, p 397: "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament…"

78. He submits that that presumption is based on the idea that (i) the drafters of the statute were seeking to create a coherent statutory text; (ii) the weight to be given to the presumption depends upon the context in which the word or phrase appears in the instrument; and (iii) the presumption may be stronger where a word is defined in the Act. In essence, he submits that whether Parliament intended a word to have a different meaning in different sections of an Act must be determined by looking at the context of the section in question, and the Act as a whole. He adds that that is particularly so in the context of tax re-write legislation where a well-known phrase is used in multiple places, in reliance on *HMRC v Centrica Overseas Holdings Limited* [2022] EWCA Civ 1520 (Singh LJ) ('*Centrica*'), at [60], as follows:

> "60. First, the phrases are to be found in the same Act. It would be surprising if Parliament intended to give them different meanings in the same Act. Parliament did not give the phrase a special or different meaning in section 1219(3)(a): it simply amended the equivalent predecessor legislation by introducing what is a short phrase. Moreover, that phrase was already well known from other parts of the tax code, in particular what is now section 53(1). It should also be recalled that the CTA 2009 was enacted as part of the Tax Law Rewrite project. One of the purposes of that project was to set out tax legislation in a comprehensive way that could be understood by a reasonably informed taxpayer: see *R (Derry) v HMRC* [2019] UKSC 19; [2019] 1 WLR 2754, at paras. 7-10 (Lord Carnwath JSC). I note that, at para. 10, Lord Carnwath said that the purpose of the project was "in particular to give clear pointers to each stage of the taxpayer's journey to fiscal enlightenment."

79. Mr Firth also submits that certain phrases may become "terms of art", and Parliament is assumed to use them in that way (in reliance on *re a Debtor* [1992] Ch 554 (per Hoffmann J)):

> "Decisions of the court upon the meanings of phrases used in Acts of Parliament may come, in the course of time, to give them the quality of terms of art which Parliament may well be assumed to have intended them to bring with them when used in subsequent legislation. In section 265, for example, terms such as "domiciled," "personally present," "ordinarily resident," have had attributed to them, both in the context of bankruptcy and in that of civil procedure generally, a wealth of refined construction which it is difficult to suppose Parliament did not intend equally to apply when those words were used in the Act of 1986. Is there any reason why that should not apply equally to the words "has carried on business?" There does not seem to me to be anything in the policy of the new Act which suggests that in this provision Parliament was intending to give those words a different meaning from those which they had been held to bear under the Act of 1914."

80. He submits that this principle applies to the word 'arising', in relation to income in a tax statute.

81. Mr Firth further contends that there is, accordingly, no way for HMRC to get around the explicit statutory statement that only profits that arise in the tax year are taxable in that tax year. He adds that several other charges to tax in ITTOIA depend on when the income arises, including the charge on 'interest'. In this respect, he referred us to s 370 and s 403 ITTOIA, by way of example, as follows:

> "**370 Income charged**
>
> (1) Tax is charged under this Chapter on the full amount of the interest arising in the tax year."
>
> **…**

403 Income charged

(1) Tax is charged under this Chapter on the amount of the dividends arising in the tax year."

82. In this respect, he submits that: (i) the commonality of the framing of each of these provisions with the framing of s 270 ITTOIA is obvious; and (ii) the inference is that the same interpretation of 'arising' applies in each case, and there is nothing to suggest that Parliament intended a different meaning. In further amplification these submission, Mr Firth's position is that as ITTOIA is the product of the tax re-write project, it would be "*truly astonishing*" if the resulting legislation used the same, well-known phrase to perform the same function (identify the income chargeable for a tax year) in multiple charging provisions but, without any indication, meant different things in different charging provisions. He concludes that that would directly contradict the function of the project to:

> "*set out tax legislation in a comprehensive way that could be understood by a reasonably informed taxpayer*."

83. This, he submits, is strongly supported by the explanatory note to s 370, as follows:

> "[1507] The word "arising" has been the subject of a number of tax cases. "Arising" includes received and also credited to a bank account (*Parkside Leasing v Smith* (1984), 58 TC 282 HC). However, "arising" has a wider meaning than this. For example, it was held in *Dunmore v McGowan* (1978), 52 TC 307 CA, to include the "swelling of a person's assets", even where the person had no immediate right of access to the income. In view of the wide meaning given to "arising", and the fact that it is a term with which practitioners are familiar, the word has been retained."

84. And the explanatory note to s 403, as follows:

> "[1636] *Subsection (1)* charges tax on the full amount of the dividends arising in the tax year. The term "arising" has been retained (see the commentary on income charged in Chapter 2 of Part 4 of this Act [i.e. s.370]). The arising basis is different from the paid basis which applies to the charge to tax on dividends and other distributions from UK resident companies (for a discussion of the paid basis see the commentary on Chapter 3 of Part 4 of this Act) and, given they do not mean exactly the same, "paid" has not been used in this context."

85. He, essentially, submits that the principle that emerges is that income arises when it inures for the taxpayer's benefit. He adds that that will, most obviously, be the case where it has been paid, but can also be satisfied where:

(1) the taxpayer could "immediately access" the income; or

(2) the income is held to be applied in discharge of the taxpayer's own liabilities.

86. In this respect, he refers to the conclusions of Neuberger J in *Girvan v Orange Personal Communications Services Ltd* [1998] STC 567 ('*Girvan*'). In that case, the dispute was as to whether the interest income arose quarterly (the Revenue's argument), or whether it arose when paid in December 1992 (the taxpayer's argument). The taxpayer had opened two deposit accounts whose terms provided that interest would be paid quarterly in arrears; but that was varied by agreement such that the interest would not be credited to the taxpayer's account but, instead, compounded and paid at a later date unless the taxpayer asked for payment to be made earlier (see 582). In the event, the interest was paid in full about two and a half years later, in December 1992. Under ICTA 1988, tax was charged on:

> "the full amount of the income arising within the year preceding the year of assessment" (s 64)

87. At 583 and 584, Neuberger J said this:

> "It is true that the interest was accruing, and indeed was being compounded on a quarterly basis, but it was being retained by the bank. To my mind, therefore, while it may have been a debt which was accruing, and could be called by Orange at any time on notice, it was not, as a matter of ordinary language, income, until it was paid.
>
> …
>
> In the present case, the interest may have been 'accruing' until 18 December 1992, but I do not think one can say that 'every penny of that interest inured' to Orange's benefit until it was paid on that day."

88. And, at 584 and 585, he said this:

> "I appreciate that in *Dunmore v McGowan* (*Inspector of Taxes*) [1978] STC 217 at 219, [1978] 1 WLR 617 at 618 Stamp LJ (with whom the other members of the Court of Appeal agreed) said that 'the doctrine that "receivability without receipt is nothing" is a doctrine which can be pressed too far'. However, that was in a case where the taxpayer was arguing that payment of interest by the bank into an account at the bank, set up by agreement between the taxpayer and the bank, for the taxpayer's own benefit, was not 'income arising' when it was paid, because the account was charged to the bank to support a guarantee given by the taxpayer to the bank. Despite the fact that, because of the existence of the charge, the taxpayer could not do what he liked with the interest, on the date that the interest was paid into the account 'every penny of that interest enured to the taxpayer's benefit in any event; it swelled the assets of the taxpayer on that day' (see [1976] STC 433 at 439, [1976] 1 WLR 1086 at 1090per Brightman J) which Stamp LJ fully endorsed (see [1978] STC 217 at 219, [1978] 1 WLR 617 at 619). In the present case, the interest may have been 'accruing' until 18 December 1992, but I do not think one can say that 'every penny of that interest inured' to Orange's benefit until it was paid on that day.
>
> …
>
> Following the initial agreement in correspondence between Orange and the bank, no interest was credited to any account in the name of Orange, or in favour of Orange. Furthermore, while Orange had the right at any time to 'get' the interest, either by asking for it or by closing the deposit account, it would not, as a matter of ordinary language, 'get' the interest until it asked for it or closed the account or until January 1993."

89. Neuberger J was satisfied that his conclusion accorded with the Revenue's internal guidance, at 585, as follows:

> "I also derive comfort from an extract to which I have been referred in the Revenue's Assessment Procedures Manual. At para 2180, one finds the following under the heading 'Assessment Procedure schedule Case III/general/date when income "arises"'—
>
> > '... In the following particular cases, the year in which interest arises is determined by the date on which the interest is paid to the customer or *credited* to his account, irrespective of the period of accrual: (a) Where interest on a deposit account is not credited regularly at periodical intervals but is allowed to accrue either at the customer's request or under a bank's practice whereby crediting is deferred until the customer makes application ..."

90. Mr Firth submits that the situation of income accruing in one year but not arising until a later year is what happened in *Girvan*.

91. At 587, Neuberger J referred to the decision of Lord Hanworth *in Dewar v IRC* 19 TC 561 ('*Dewar*'). In *Dewar*, the legatee under a will was entitled to a legacy that carried interest at 4% but, despite receiving parts of the legacy, did not ask for (or receive) the interest and had not decided whether he would claim interest. The Revenue sought to tax him on the interest. The Court of Appeal held that the income had not arisen, as follows:

> "Under Section 100 of the Income Tax Act, 1918, provision is made that there shall be a return made by "every person chargeable under this Act", and the correct statement in writing is to contain "the amount of the profits or gains arising to him, from each and every source chargeable according to the respective schedules". Observe it says "arising to him". If it has not arisen to him, if he has not become the dominus of this sum, if it does not lie to his order in the hands of his agent, can it be said that it has arisen to him? I think the answer definitely upon the facts must be: No, it has not."

92. To further illustrate the point being made, Mr Firth refers to HMRC's internal manuals. He refers to "SAIM2440", which he submits is pertinent to the present appeal:

> "In January 2017, Jennifer makes a loan of £5,000 to her cousin to help him set up a business. They agree that interest will be payable quarterly in arrears at a rate of 5% per annum. But the business initially struggles, and Jennifer does not receive any interest until June 2018 when, after she threatens legal action, her cousin repays the debt along with interest arrears of £875. Jennifer is not required to pay any tax on the interest until 2018/19 when it arises. However, the whole £875 is taxable when she receives it. She cannot spread the arrears of interest over the years in which it accrued."

93. He, similarly, refers to the guidance on the charge for dividends from foreign companies "SAIM5020":

> **"The tax charge**
>
> The charge to tax on foreign dividends is on the full amount of the dividends arising in the tax year - ITTOIA05/403. This is different from the paid basis that applies to dividends and other distributions from other UK companies."

94. Mr Simpson disagrees. He submits that there is a single-test, and profits accruing in the tax year means profits arising in that tax year. He contends that property income is calculated in accordance with GAAP, and GAAP brings income into account when it accrues. Mr Firth submits that this conflates 'arising' with 'accruing' and is inconsistent with the statutory language. He adds that whilst it is true that the profit of the property business is calculated in accordance with GAAP, the question of how much of that profit - calculated in accordance with GAAP - is charged to tax in a tax year depends on how much of the profit arises in that tax year. Mr Firth contrasts the wording of s 270 with s 7 (trading profits) and draws a parallel with s 370 (interest). HMRC take no issue with the principle that income arises when "it inures for the taxpayer's benefit". HMRC however disagree with how the Appellant has applied this principle to the facts of this appeal. The effect of the Appellant's construction is that any time a payment is made in one tax year relating to a different tax year, that amount will not be chargeable to income tax.

95. There is, therefore, a significant divergence between the parties' views as to the calculation or 'profits arising in the tax year'. We have considered the key points of disagreement in determining our conclusions below:

96. It is settled that the correct modern approach to the interpretation of tax statutes is that the court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. In this regard, controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment. In seeking the purpose of a statutory provision, the interpreter is not confined to a literal interpretation of the words, but must have regard to the context and scheme of the relevant Act as a whole.

97. The general principles of statutory interpretation were explained by Lord Hodge in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, at [29] to [32]:

"29. The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context."

(*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, 397:

> "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity...

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme*, 396, in an important passage stated:

> "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. … Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

32. ... Such references are not a legitimate aid to statutory interpretation unless the three conditions set out by Lord Browne-Wilkinson in *Pepper v Hart* [1993] AC 593, 640 are met. The three conditions are (i) that the legislative provision must be ambiguous, obscure or, on a conventional interpretation, lead to absurdity; (ii) that the material must be or include one or more statements by a minister or other promoter of the Bill; and (iii) the statement must be clear and unequivocal on the point of interpretation which the court is considering. It was not argued, and I am not satisfied, that the first and third conditions are met in this case. The court was not referred to any relevant provision of primary legislation that was said to be

ambiguous and the statements in any event did not meet the stringent requirements of the third condition…"

98. The task is to identify the meaning of the words that Parliament has used. Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole, and in the wider context of a *relevant* group of sections. Other provisions in a statute - and the statute as a whole - may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are, therefore, the primary source by which meaning is ascertained. Explanatory Notes - prepared under the authority of Parliament - may cast light on the meaning of particular statutory provisions. External aids to interpretation must, however, play a secondary role. We shall return to these principles later.

99. The appeal before us concerns property income. As with all other income chargeable to income tax, the calculation of taxable rental profits will generally be based on profits from 6 April to the following 5 April (i.e., for the tax year).

100. The 'cash basis' is used, by default, for all UK resident individuals where the gross property income in the tax year is £150,000, or less. The cash basis involves calculating the profits to be taxed on the basis of *actual* receipts and expenses during the tax year, with subsequent adjustments to profit for income tax purposes. If the landlord is entitled to receive accrued rent, but this rent has not yet been received, it will not be counted or, therefore, taxed. This means that "bad debt relief" is achieved automatically. "Gross property income" is the total of all the rental income received by the individual in the tax year calculated on a cash basis. If the gross property income does not exceed £150,000, there is an option to elect to use the alternative method of calculation; i.e., the accruals or GAAP basis.

101. The 'accruals' or 'GAAP' basis will apply if the gross rental income exceeds £150,000, or (where the profits are lower) if the taxpayer has elected it. The accruals basis must also be used if the landlord is a company, an LLP, a mixed partnership (where at least one partner is not an individual), or a trustee. The accruals basis taxes the income accruing (and the expenses incurred) during the tax year, irrespective of whether the actual amounts have been collected or paid over. The income and expenditure are, thus, matched to the period to which they relate. If rents have accrued and are due to the landlord, but have not yet been received, these will still be included and taxed under the 'accruals' basis. If, eventually, the rents receivable go unpaid, an adjustment may be made in future years to recognise the bad debt, reducing tax payable in that future tax year.

102. There are some occasions when a landlord must change between the cash and the accruals basis, e.g., if the gross rental income from the rental business increases to above £150,000, or if the receipts fall to £150,000 (or less) and the landlord does not wish to continue to use the accruals basis. In both cases, adjustments may be required to ensure that income is charged to tax (but only once) and that expenses are relieved (again, only once).

103. At all times, and for the relevant years (i.e., 2017 and 2018), the Appellant calculated his profits in accordance with GAAP. This matter is not in issue between the parties. Furthermore, we note that there is no dispute between the parties as to the level of profits. The Appellant invoiced the LLP for rent, in the amount of £515,000, for its use of the Property. This was in accordance with the Lease. The Appellant then included this rental income in his tax returns for the relevant years. We are satisfied that this was income that the Appellant was entitled to receive, albeit that he did not receive the income within the relevant tax years. The relevant statutory provisions are as follows:

104. Section 271 provides that:

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

105. In terms of how much of the profit is charged to tax in a particular tax year, we have regard to the fact that the trading income rule does not depend upon the profit "arising":

"7 Income charged

(1) Tax is charged under this Chapter on the full amount of the profits of the tax year."

106. There is, however, a clear contrast between the way that the quantum of property income charged for a tax year is calculated ("profits arising in the tax year") and the way that the quantum of trading income charged for a tax year is calculated (tax charged on "full amount of the profits of the tax year"). For the latter, the methods of calculation are specified:

"**25 Generally accepted accounting practice**

(1) The profits of a trade must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law in calculating profits for income tax purposes…"

(s 25 ITTOIA as in force in 2016-17)

107. By virtue of s 25 ITTOIA, this means that profits of a property business must be calculated in accordance with GAAP.

108. Section 270 ITTOIA (the key provision in this appeal) provides that:

"tax is charged under this chapter on the full amount of the profits arising in the tax year."

109. The reason that s 270 is worded differently to s 7(1) can be seen from s 7(2), which provides that:

(2) For this purpose the profits of a tax year are the profits of the basis period for the tax year (including amounts treated as profits of the tax year under section 23E(1))."

110. It can also be seen from s 275, which provides that:

"**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."

111. And the explanatory notes for s 275, which provide that:

"**Section 275: Apportionment of profits to tax year**

1100. This section deals with cases where the period of account does not coincide with a tax year. It is based on sections 21A, 72 and 65A of ICTA.

1101 This section is necessary because the charge under section 270 is on the property business profits arising in the tax year.

1102 In the source legislation section 72 of ICTA is one of the provisions applied to Schedule A specifically by section 21A(2) of ICTA. Section 72 of ICTA is rewritten for trade profits in section 203. But simple cross-reference to that trading income section would not work very well for property income because that section is drafted in terms of basis periods and basis periods are not relevant to property income. So section 275 is a specific property income version.

1103 Subsection (4) adopts the approach of section 203(4) in permitting an alternative basis of apportionment if its use is reasonable and consistent. See Change 52 in Annex 1. The wording of subsection (4) makes it clear that the option to choose an alternative basis of apportionment is exercisable only by the taxpayer, not the Inland Revenue."

112. For the year ending 5 April 2017, s 272(1) provided that:

"**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"

113. Section 272(2) ITTOIA provides limitations as to the provisions of Part 2 ITTOIA that apply to the profits of a property business. The relevant provisions of Part 2 ITTOIA in the present appeal, in respect of the tax year ended 5 April 2017, are s 25 (GAAP), s 27 (receipts and expenses) and s 35 (bad and doubtful debts) (supra).

114. Section 25A ITTOIA provides for an election to calculate profits using the cash basis (where income is recognised when it is received and expenditure when it is paid). However, s 25A is not included in the table of provisions in Part 2 ITTOIA that apply to the profits of a property business. Under GAAP, income is recognised on the accruals basis as it is earned in the tax year. Therefore, income may need to be brought into account before that income has *actually* been received. In respect of a property business, it is the proportion of the rent which is earned in the year from the tenant's use of the property in the year that should be accounted for. We agree that rent should not be excluded because it is received or due outside the tax year.

115. Legislative changes to the provisions concerning the basis of calculation of the profits of a property business were introduced from tax year 2017-18 onwards. Section 271A provides that:

"(1) The profits of a property business for a tax year must be calculated in accordance with GAAP if condition A, B, C, D or E is met

...

(4) Condition B is that the cash basis receipts for the tax year exceed £150,000.

(5) In subsection (4) "the cash basis receipts for the tax year" means the total of the amounts that would be brought into account as receipts in calculating the profits of the property business for the tax year on the cash basis (see section 271D)

…

(10) Condition E is that an election under this subsection made by the person who is or has been carrying on the property business has effect in relation to the business for the tax year.

…

(11) An election under subsection (10) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election is made."

116. Section 271A provides that the profits of a property business must be calculated in accordance with GAAP.

117. Section 271C ITTOIA provides that the profits of a property business for a tax year must be calculated on the cash basis if none of Conditions A, B, C, D or E in s 271A are met. It is clear from the context, particularly of s 272(1) and s 271C, that "profits arising" in a tax year, where those profits are to be calculated on the accrual basis, means profits accruing in a tax year.

118. For the year ended 5 April 2018, the Appellant declared the rental income that he received on the UK property page of his tax return, placing an "X" in Box 20.2. The notes to completing the UK property page provide that:

> "***Box 20.2 Traditional accounting or cash basis***
>
> *Put "X" in box 20.2 if you used traditional accounting instead of cash basis.*"

119. By placing an "X" in Box 20.2 of the UK property page to his tax return, the Appellant was electing to use the traditional accounting method for declaring his property income.

120. The Appellant's representative confirmed that the LLP paid the Appellant a total of £375,795.50 in respect of rent, with £33,717.14 gross of VAT being allocated against invoices issued in the tax year ended 5 April 2018. Although only £28,097.62 net of VAT of these payments were allocated against invoices issued in respect of the tax year ended 5 April 2018, the full amount of the payments received by the Appellant would be treated as cash basis receipts in calculating the profits of the property business under the cash basis. Although the correspondence of 13 April 2021 does not specify whether the payments included VAT, the total of the cash basis receipts would be £313,163.75. This exceeds £150,000 in the tax year. 'Condition B' is that the cash basis receipts for the tax year exceed £150,000. This Condition is met in this appeal.

121. 'Condition E' is that an election to calculate the profits of the property business in accordance with GAAP has been made and has effect in relation to the business in the tax year. Both the Appellant's original and amended returns show that the Appellant has made such an election by checking Box 20.2 in the "Property Income" section of the return indicating that he has used traditional accounting rather than the cash basis to calculate income and expenses. This Condition is, therefore, also met.

122. The profits of the Appellant's property business have been calculated correctly in accordance with GAAP (s 217A ITTOIA) on the basis that both Condition B and Condition E were met.

123. Returning to statutory interpretation and the key provision in this appeal, Mr Firth seeks to draw an analogy between s 270 and s 370 (which provides for interest). He refers to principles that emerge from case law (which we have quoted above) as to when interest should be accounted for, for tax purposes, and suggests that such principles apply equally to income from property. We are not in agreement with these submissions and give our reasons.

124. Firstly, in contrast to the provisions at Part 4 ITTOIA (relating to savings and investment income), the legislation at Part 3 ITTOIA makes *specific* provision for the profits of a property business to be calculated in accordance with GAAP. Where profits are required to be calculated in accordance with GAAP, s 272 provides that s 27 applies in respect of receipts and expenses.

125. Section 27 ITTOIA provides that:

> "(1) In the Income Tax Acts, in the context of the calculation of the profits of a trade, references to receipts and expenses are to any items brought into account as credits or debits in calculating the profits.
>
> (2) There is no implication that an amount has been actually received or paid.
>
> (3) This section is subject to any express provision to the contrary."

126. Consequently, we are satisfied that rent that has accrued as a result of the tenant's use of the building in the tax year should not be excluded because it has not been received or become due for payment within the tax year. The fact that a proportion of the rent was not received in the tax year does not result in an excessive assessment such that a claim for overpayment relief would be appropriate. As outlined above, s 27 provides that references to 'receipts' and 'expenses' are to "items brought into account as credits or debits in calculating the profits", and there is no implication that an amount has been *actually* received or paid.

127. Secondly, when ITTOIA first came into force (and throughout the relevant years), the timing of the charging of profits of a trade depended on the trade accounting date; which did not have to be 5 April. In contrast, the profits of a property business did not use basis periods. Instead, profits of an accounting period that straddled multiple tax years were apportioned between the two years, in accordance with s 275. We find force in Mr Simpson's submission that this fundamental difference between the timing of charging to tax profits of a trade and profits of a property business fully explains the difference in wording between s 7 and s 270. We further find force in Mr Simpson's submission that charging amounts to tax in the year they "arose" as opposed to the year they "accrued" is the cash basis.

128. In respect of the case law relied on by Mr Firth, in relation to the appeal in *Dewar*, firstly, we are satisfied that the legatee made no demand for the interest or the legacy. The difference between that appeal and the appeal before us is that the Appellant has made a demand by invoicing the LLP. Secondly, in *Dewar*, the court was referring to 'income arising' and not 'profits arising'. Similarly, in *Girvan*, the issue was not 'profits' but 'income'. The court looked at whether debts formed part of income and found that they do not. Income is solely concerned with receipts. Profits, on the other hand, consider 'expenses'. Consequently, we are satisfied that 'profits arising' is different to 'income arising'.

129. It is clear from our consideration of the authorities referred to by Mr Firth that the presumption that the same word used in legislation has the same meaning is a rebuttable one: *Assange*. Furthermore, the appeal in *Plevin* shows that there may be a plausible explanation for any differences in meaning when the same word is used. The examples to which we were taken by Mr Firth related to interest. In this appeal, we are concerned with property income. This is the context within which the relevant statutory provision must be viewed, in its context.

130. Accordingly, therefore, the appeal is dismissed and the Closure Notices are confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

131. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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