

# INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Example 3*

*Ne = £5,000; Da = 183; De = 183; Smg = 0*

### Part 9: Pension Income

#### Overview

#### *Chapter 4: Foreign Pensions: general rules*

#### Overview

2299. This Chapter applies to pensions paid by or on behalf of a person who is outside the United Kingdom.

#### *Section 573: Foreign pensions*

2300. This section identifies pensions paid by or on behalf of a person who is outside the United Kingdom as pension income. Taken together with section 569 this section ensures that all pensions paid by or to persons in the United Kingdom are taxed. It derives from sections 18(3) and 58(1) of ICTA, both of which create a charge under Schedule D Case V.

2301. *Subsection (1)* identifies the income that is within the section. It includes the restriction that the section applies only if the pension is paid to a person resident in the United Kingdom. As is the case for United Kingdom pensions there is no definition of “pension”. The word has its ordinary meaning.

2302. *Subsection (2)* limits the scope of the section. The section applies only to pensions not identified in one of the specific provisions of the pension income Part. This is a similar structure to section 569 which covers pensions paid by or on behalf of a person who is in the United Kingdom. There are two reasons why the general charge on foreign pensions is subordinate to the specific charging provisions of the pension income Part.

2303. First, as for United Kingdom pensions, each section should identify a discrete source of pension income. To achieve this it is necessary to remove the overlap of the charging provisions in ICTA.

2304. Second, there are two sorts of pension paid by or on behalf of a person who is outside the United Kingdom that ICTA taxes under Schedule E rather than Schedule D Case V. The pension income Part has to deal specifically with those pensions in order to maintain the effect of ICTA. The two sorts affected are those taxed by section 580 (approved retirement benefits schemes) and section 615 (certain overseas government pensions).

2305. It is possible for an approved retirement benefits scheme to be operated by or on behalf of a person outside the United Kingdom. A pension or annuity paid by such a scheme is taxed by section 580. The payer is obliged to operate PAYE. The 10% deduction in section 65(2) of ICTA is not available for these pensions.
2306. Section 615 applies to a pension paid in the United Kingdom by or on behalf of certain overseas governments for service to those governments. In practice these pensions are paid by the Crown Agents. The Crown Agents operate PAYE when paying the pensions.
2307. *Subsection (3)* is a signpost to Chapter 3, which gives the general rules for United Kingdom pensions. It is not possible for a pension to be a foreign pension as defined in section 573(1) and a United Kingdom pension as defined in section 569(1). This is because the qualifying conditions are mutually exclusive.

***Section 574: “Pension”: interpretation***

2308. This section ensures the charge applies to voluntary pensions. It derives from section 58(2) of ICTA.
2309. *Subsection (1)* identifies voluntary pensions using the same language that section 570 uses to identify United Kingdom voluntary pensions. But the rules for foreign voluntary pensions are slightly different from the rules for United Kingdom voluntary pensions. For a foreign voluntary pension there is no equivalent of section 133(2) of ICTA (see paragraph 2291). A foreign pension paid on a voluntary basis will be taxable only if it meets the conditions in section 58(2) of ICTA.
2310. *Subsections (2) and (3)* set out the conditions in section 58(2) of ICTA. The effect of the Interpretation Act 1978 is that the reference to “widow” in section 58(2)(b) of ICTA includes “widower”. Subsection (2)(b) makes this effect explicit.
2311. *Subsection (4)* gives the meaning of “office”. It applies section 5 in Part 2 (Employment Income: charge to tax).

***Section 575: Taxable pension income***

2312. This section deals with the basis of assessment. It identifies the amount of taxable pension income, which feeds into the computation of net taxable pension income in section 567. The section invokes sections 65, 68, 584 and 585 of ICTA. It is new.
2313. In ICTA the basis of assessment for a foreign pension is given by the rules of Schedule D Case V. The pension income Part does not repeat those rules but cross-refers the reader to them. The rules are in section 65 of ICTA and include the remittance basis. Section 65 is modified by the rules for Irish income in section 68 of ICTA. Sections 584 and 585 of ICTA are also relevant. Section 584 gives relief for income taxed on an arising basis if that income cannot be remitted to the United Kingdom. Section 585 gives relief for income taxed on a remittance basis if the remittances are delayed. There is a specific reference to retrospective payments of pension income in section 585(2) of ICTA.

***Section 576: Person liable for tax***

2314. This section identifies the person chargeable. It derives from section 59(1) of ICTA.