

# **INCOME TAX (TRADING AND OTHER INCOME) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7: Income charged under this Act: rent-a-room and foster-care relief**

##### **Chapter 2: Foster-care relief**

###### **Overview**

2987. The sections in this Chapter are based on section 176 of and Schedule 36 to FA 2003. These provisions are entitled “Foster carers” in the source legislation.
2988. They give relief in one of two forms for individuals who provide foster care. One form is complete tax exemption for their foster-care income provided their gross receipts do not exceed a certain level - the “full” form of relief. If gross receipts do exceed that level the income is taxable. But taxpayers can choose to have it calculated by deducting a fixed amount as expenses, rather than their actual expenses, if that is advantageous - the “alternative method of calculation” form of the relief.
2989. Foster-care relief shares certain features with rent-a-room relief (see Chapter 1 of this Part) on which the source legislation was modelled.

##### **Section 803: Overview of Chapter 2**

2990. This section introduces the relief. It is based on paragraph 1 of Schedule 36 to FA 2003.
2991. *Subsection (2)* introduces the key factor in determining the form of relief available: the level of gross foster-care receipts, that is receipts before any deductions for expenses.
2992. *Subsection (3)* introduces the full form of the relief where gross receipts are modest: they are simply not charged to tax.
2993. *Subsection (4)* introduces the alternative method of calculation form of the relief where gross receipts are larger.
2994. Not all taxpayers prepare accounts to 5 April. *Subsection (5)* alerts the reader to the fact that special rules apply in that case.
2995. The nature of the activity requires a rather different approach to capital allowances than that in rent-a-room. *Subsection (5)(b)* introduces the special provisions.

##### **Section 804: Person who qualifies for relief**

2996. This section states the basic condition that an individual must satisfy to obtain the relief. It is based on paragraph 2 of Schedule 36 to FA 2003.

2997. *Subsection (1)* is a general condition that is satisfied only if the taxpayer claiming foster-care relief satisfies the more detailed conditions in the sections that follow.
2998. *Subsection (1)(b)* refers to an “arrangement” as well as a trade. This covers cases where the foster care does not amount to a trade and where any profits from it would be taxed, in the source legislation, under Schedule D Case VI as profits from the contractual provision of services.
2999. *Subsection (1)(b)* prevents relief in cases where the foster care that would otherwise qualify for relief is combined with activities that would not. In so doing it limits the relief to the simpler cases.

### ***Section 805: Meaning of “foster-care receipts”***

3000. This section defines “foster-care receipts”. It is based on paragraph 3 of Schedule 36 to FA 2003.

### ***Section 806: Meaning of providing foster care***

3001. This section explains what is meant by references in this Chapter to the provision of foster care. It is based on paragraph 4 of Schedule 36 to FA 2003.
3002. Foster care is regulated by a number of non-tax laws. These are cited in the source legislation as a part of the qualifying conditions to benefit from the relief: an individual will qualify only if he or she is a foster carer by virtue of those non-tax laws.
3003. *Subsections (3)* and *(4)* list the relevant non-tax tax laws. They do not reproduce the references in paragraph 4(3)(a) and (b)(i) of Schedule 36 to FA 2003 to the particular provision of the regulations at 9 April 2003. Those references are of no substantive effect and if the regulations are altered the references will not be helpful.

### ***Section 807: Calculation of “total foster-care receipts”***

3004. This section clarifies the meaning of a key term, “total foster-care receipts”. It is based on paragraph 5 of Schedule 36 to FA 2003.
3005. “Total foster-care receipts” is a key term because the level of an individual’s “total foster-care receipts” determines which form of relief the individual is entitled to: full relief or the alternative method of calculation.

### ***Section 808: The individual’s limit***

3006. This section defines the individual’s “limit” for the tax year. It is based on paragraphs 7 and 9 of Schedule 36 to FA 2003.
3007. This section is the first of a group of four sections which explain how to work out an individual’s limit for a tax year. The “limit” is the maximum amount of foster-care income that is not charged to tax. It is the amount with which the taxpayer’s “total foster-care receipts” are compared to determine which type of relief is due.
3008. *Subsection (1)* introduces the two elements that make up the limit. One is a fixed amount (apportioned between foster carers in a single residence) and the other varies according to the number and ages of the children fostered.

### ***Section 809: Share of fixed amount: residence used by more than one foster carer***

3009. This section reduces the fixed amount when a residence is used by more than one foster carer. It is based on paragraph 7 of Schedule 36 to FA 2003.
3010. *Subsection (2)* apportions the fixed amount equally between each foster carer in the same residence.

3011. *Subsections (3) and (4)* define “residence”. The definition refers to a “caravan or houseboat”. There is an Act-wide definition of “caravan”: see the commentary on section 875 of this Act and *Change 148* in Annex 1.
3012. There is also an Act-wide definition of “houseboat”: see the commentary on section 878(1) of this Act and *Change 150* in Annex 1.

***Section 810: Share of fixed amount: income period not a year***

3013. This section reduces the fixed amount when the foster-care period is for less than a year. It is based on paragraph 7 of Schedule 36 to FA 2003.
3014. *Subsection (2)* makes it clear that the reduction applies to an individual’s *share* of the fixed amount if section 809 applies because there is more than one foster carer in the same residence.

***Section 811: The amount per child***

3015. This section determines the variable component in calculating the individual’s “limit” for the tax year: “the amount per child”. It is based on paragraphs 8 and 9 of Schedule 36 to FA 2003.
3016. The amount per child for a tax year depends on the duration of the foster care and the age of the child fostered.
3017. The duration of the foster care is measured in weeks. *Subsections (4) to (6)* give rules that identify relevant weeks.

***Section 812: Full foster-care relief: introduction***

3018. This section provides for the full form of the relief when the individual’s foster-care receipts do not exceed his or her limit. It is based on paragraph 10 of Schedule 36 to FA 2003.
3019. The reference to the limit is in terms that make it clear that foster-care receipts that equal the individual’s limit are within the full relief.
3020. The majority of foster carers who are trading prepare accounts to 5 April. There are special rules for those who do not, which are located later in the Chapter. *Paragraph (c) excludes such cases from the main full relief provisions and signposts the reader to the other relevant provisions.*

***Section 813: Full foster-care relief: trading income***

3021. This section authorises the full form of the relief when the foster-care income is trading income. It is based on paragraph 10 of Schedule 36 to FA 2003.

***Section 814: Full foster-care relief: income chargeable under Chapter 8 of Part 5.***

3022. This section authorises the full form of the relief when the income derives from foster care that does not amount to a trade. It is based on paragraph 10 of Schedule 36 to FA 2003.
3023. *Subsection (2)* limits the effect of the relief to the foster-care income and associated expenses.

***Section 815: Alternative calculation of profits: introduction***

3024. This section is the first of five sections that provide for the alternative form of the relief. It is based on paragraph 11 of Schedule 36 to FA 2003.

*These notes refer to the Income Tax (Trading and Other Income)  
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

3025. The alternative calculation form of the relief applies when the individual's foster-care receipts exceed his or her limit.
3026. Unlike the full form of the relief the alternative calculation form applies only if the individual elects for it.
3027. As in the case of the full form of the relief (see the commentary on section 812) there are special rules for those who do not prepare trading accounts to 5 April. These are located later in the Chapter.

***Section 816: Alternative calculation of profits: trading income***

3028. This section sets out the basis of calculation when the foster-care income is trading income and it exceeds the individual's limit. It is based on paragraph 12 of Schedule 36 to FA 2003.

***Section 817: Alternative calculation of profits: income chargeable under Chapter 8 of Part 5***

3029. This section sets out the basis of calculation when the income is from foster care that does not amount to trading and it exceeds the individual's limit. It is based on paragraph 13 of Schedule 36 to FA 2003.

***Section 818: Election for alternative method of calculating profits***

3030. This section provides for a foster carer to elect for the alternative form of the relief. It is based on paragraph 14 of Schedule 36 to FA 2003.
3031. This section also provides explicitly for a procedure to withdraw an election within the stated time limit. The absence of such a procedure in the source legislation for foster-care relief is in contrast to the source legislation for rent-a-room on which the former is otherwise closely modelled. It was not considered necessary in the source foster-care relief legislation because, unlike the rent-a-room relief election, a foster-care relief election is made only for one year. It was implicit in the year by year approach that the foster-care election could be withdrawn within the Self Assessment time limits by, for example, an amendment to a return. This Part puts these similar reliefs side by side and a contrast in approach might wrongly suggest a different intended legal effect. To make the position clear this section provides explicitly for the withdrawal of an election.
3032. *Subsection (2)* makes it clear that the election applies only to the year for which it is made.
3033. *Subsection (3)* converts references, in the source legislation, to the Board of Inland Revenue into references to the Inland Revenue. See *Change 149* in Annex 1.

***Section 819: Adjustment of assessment***

3034. This section provides for an election for the alternative form of relief to be made following an adjustment to an individual's return of foster-care profit. It is based on paragraph 14 of Schedule 36 to FA 2003.
3035. Without this section an individual might be prevented from electing for the alternative form of relief if his or her return of foster-care profits were adjusted after the normal election time limit in section 818.
3036. *Subsection (3)* makes it clear that the election applies only to the year for which it is made.
3037. *Subsections (3)* and *(4)* follow the approach described in the commentary on section 818 in providing for the withdrawal of an election under this section.

**Section 820: Periods of account not ending on 5th April**

3038. This section is the first of four sections that deal with cases where the foster-care activities amount to a trade and accounts are prepared to a date other than 5 April. It is based on paragraph 15 of Schedule 36 to FA 2003.
3039. The rules that apply to this sort of case have been extracted from the main body of the rules and grouped together in a place of less prominence as they are believed to apply only to a minority of foster carers.

**Section 821: Meaning of “relevant limit”**

3040. This section introduces and defines the term “relevant limit”. It is based on paragraph 15 of Schedule 36 to FA 2003.
3041. For cases where the foster-care activities amount to a trade and accounts are prepared to a date other than 5 April, the amount with which the individual’s total foster-care receipts are compared to determine what form of relief is available is the individual’s “relevant limit” (and not, as normally, “the limit”). The calculation of the relevant limit reflects the fact that the basis period of the trade will not coincide with the periods (tax years) for which the “fixed amount” and the “amount per child” are determined. This section give rules to link the “fixed amount” and the “amount per child” for tax years to basis periods.

**Section 822: Full relief**

3042. This section provides for full relief in “accounting date other than 5 April” cases. It is based on paragraph 15 of Schedule 36 to FA 2003.
3043. It achieves the same effect for these cases as section 812 and section 813 together achieve for other cases.

**Section 823: Alternative method of calculating profits**

3044. This section provides for the alternative form of relief in “accounting date other than 5 April” cases. It is based on paragraphs 14 and 15 of Schedule 36 to FA 2003.
3045. It achieves the same effect for these cases as section 815 and section 816 together achieve for other cases.
3046. *Subsection (3)* applies the election and adjustment of assessment provisions in section 818 and section 819. In so doing it imports (through section 818(3) and section 819(4)) the conversion of references, in the source legislation, to the Board of Inland Revenue into a reference to the Inland Revenue. See *Change 149* in Annex 1. It expresses the time limits by reference to the Self Assessment rules.

**Section 824: Capital allowances: introduction**

3047. This section is the first of four sections that deal with the capital allowances aspects of foster-care relief. It is based on paragraphs 16 and 20 of Schedule 36 to FA 2003.
3048. The section introduces key terms and links the language of this Chapter with that of CAA: the language and concepts have to link directly with those of CAA. The “chargeable period” mentioned in *subsection (2)(a)* is an example. In CAA “chargeable period” does not necessarily mean, for individuals, “tax year”. It can mean (for trades) “period of account” (section 6(1) of CAA). *Subsection (3)* provides the link so that the provisions work properly.
3049. The overall effect of the four capital allowances sections is that, in tax years when either form of foster-care relief applies, capital allowances and balancing charges are not relevant.

3050. Unlike paragraph 16 of Schedule 36 to FA 2003, the capital allowances sections in this Chapter make no reference to the rules that apply when the foster care does not amount to a trade and the foster-care receipts are chargeable under Schedule D Case VI. That is because an arrangement to provide foster care is not a qualifying activity within section 15(1) of CAA and therefore the question of capital allowances and balancing charges cannot arise.
3051. Dropping these references will have no practical effect because entitlement to an allowance or liability to a balancing charge does not arise from Schedule 36 to FA 2003 but from CAA. The references in Schedule 36 to FA 2003 are, however, potentially confusing and removing them makes the rewritten legislation clearer.

***Section 825: Carried forward unrelieved qualifying expenditure***

3052. This section provides for the temporary suspension of allowances and charges in respect of pool expenditure during tax years when foster-care relief applies. It is based on paragraph 17 of Schedule 36 to FA 2003.
3053. *Subsection (3)* deals with the transition from a year when foster-care relief does not apply to a year when it does.
3054. *Subsection (4)* deals with the transition from a year when foster-care relief does apply to a year when it does not.

***Section 826: Excluded capital expenditure***

3055. This section prevents an allowance for capital expenditure incurred at a time when foster-care relief applies. It is based on paragraph 18 of Schedule 36 to FA 2003.

***Section 827: Excluded capital expenditure: subsequent treatment of asset***

3056. This section provides for an allowance, when foster-care relief ceases to apply, in respect of capital expenditure incurred at a time when foster-care relief did apply (and for which therefore no allowance was due in accordance with section 826). It is based on paragraph 19 of Schedule 36 to FA 2003.

***Section 828: Overlap profit***

3057. This section preserves entitlement to overlap relief when the foster-care activities are a trade. It is based on paragraphs 10 and 15 of Schedule 36 to FA 2003.
3058. *Subsection (2)(a)* allows relief for overlap profit against foster-care profits calculated under the rules in this Part. That may include relief for overlap profit that was created before the introduction of foster-care relief. If foster-care profits are treated as nil (because full foster-care relief under section 813 or section 822 applies) the overlap relief can create a loss.
3059. *Subsection (2)(b)* allows the creation of overlap profit when the foster-care alternative basis of calculation applies (no overlap profit can be created when full foster-care relief applies). The overlap profit is calculated by reference to the profit after the foster-care rules have applied.