

# INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Foreign income: special rules**

#### ***Chapter 3: Relevant foreign income charged on arising basis: deductions and reliefs***

##### **Overview**

3117. This Chapter provides certain deductions and a relief that may affect the calculation of the amount of relevant foreign income charged on the arising basis. “Relevant foreign income” is defined for these purposes in section 830.
3118. The deductions are of limited scope. They were introduced in FA 1914, when the remittance basis was withdrawn from most types of Schedule D Cases IV and V income for persons domiciled and ordinarily resident in the United Kingdom.

#### ***Section 838: Expenses attributable to collection or payment of relevant foreign income***

3119. This section is based on section 65(1) of ICTA. The source legislation makes deductions available only to income not received in the United Kingdom. But in practice the deductions are given whether or not the income in question has been received in the United Kingdom. This section reflects practice, so the words “subject in the case of income not received in the United Kingdom” are not rewritten. See *Change 137* in Annex 1.
3120. The source legislation does not identify exactly what deductions are envisaged. The words used “the same deductions and allowances as if [the income] had been received [in the United Kingdom]” date from FA 1914 when taxpayers found their income taxed on the arising rather than the remittance basis. But it is an unhelpful analogy because the remittance basis does not allow any deductions (except in the case of trading income – see section 65(3) of ICTA). Rather than relying on an analogy, the section therefore specifies the deductions intended. This includes, for example, banking costs involved in the collection and forwarding of dividends. See *Change 138* in Annex 1.
3121. The section applies to all relevant foreign income, including trading profits within the definition of that term. It does not rewrite the restriction in section 65(3) of ICTA denying these deductions to such trading profits. See *Change 138* in Annex 1.
3122. See also Chapter 2 of Part 10 of this Act for further rules that may qualify the deductions available under this section.

***Section 839: Annual payments payable out of relevant foreign income***

3123. This section is based on section 65(1) of ICTA.
3124. By virtue of *subsection (3)*, which refers to a payment that “would have been chargeable” to tax under certain provisions, the range of annual payments falling within condition B is in fact reduced by any that are within the exemption provided by section 727 (certain annual payments by individuals).
3125. *Subsection (6)* reflects differences in the source legislation between the rules for calculating income arising in the Republic of Ireland and those for calculating other relevant foreign income.

***Section 840: Relief for backdated pensions charged on the arising basis***

3126. This section is new. It enacts ESC A55, but adopts the method used in section 836 (and the administrative rules in section 837) as a model for providing relief. That is, the income is treated as arising in an earlier year than the year in which it in fact arose, rather than a tax adjustment being made in the later year. See *Change 139* in Annex 1.
3127. [Paragraph 152](#) of Schedule 2 to the Act ensures that an earlier tax year to which income is attributed because of a claim under this section covers a tax year before 2005-06.