



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 8

#### FOREIGN INCOME: SPECIAL RULES

#### CHAPTER 1

#### INTRODUCTION

#### 829 Overview of Part 8

This Part provides for—

- [<sup>F1</sup>(a) the charging of relevant foreign income of a person to whom section 809B, 809D or 809E of ITA 2007 applies (remittance basis),]
- (b) certain deductions in calculating relevant foreign income where that basis does not apply (see Chapter 3), and
- (c) relief where a person is prevented from transferring income to the United Kingdom (see Chapter 4).

#### Textual Amendments

- F1** S. 829(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 50](#)

#### 830 Meaning of “relevant foreign income”

- (1) In this Act “relevant foreign income” means income [<sup>F2</sup>which—
- (a) arises from a source outside the United Kingdom, and

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- (b) is chargeable under any of the provisions specified in subsection (2) (or would be so chargeable if section 832 did not apply to it).]
- (2) The provisions are—
- (a) Chapter 2 of Part 2 (trade profits),
  - (b) Chapter 17 of Part 2 (adjustment income),
  - (c) Chapter 3 of Part 3 (profits of property business),
  - <sup>F3</sup>(d) .....
  - (e) Chapter 2 of Part 4 (interest),
  - (f) Chapter 4 of Part 4 (dividends from non-UK resident companies),
  - (g) Chapter 7 of Part 4 (purchased life annuity payments),
  - (h) Chapter 8 of Part 4 (profits from deeply discounted securities),
  - (i) Chapter 13 of Part 4 (sales of foreign dividend coupons),
  - (j) section 579 (royalties and other income from intellectual property),
  - (k) Chapter 3 of Part 5 (films and sound recordings: non-trading businesses),
  - (l) Chapter 4 of Part 5 (certain telecommunication rights: non-trading income),
  - (m) section 649 (estate income),
  - (n) Chapter 7 of Part 5 (annual payments not otherwise charged), and
  - (o) Chapter 8 of Part 5 (income not otherwise charged).
- (3) But “relevant foreign income” does not include income chargeable as a result of section 844 (unremittable income: income charged on withdrawal of relief after source ceases).
- (4) For the treatment of other income as relevant foreign income, see—
- (a) section 857(3) (a partner's share of a firm's trading income),
  - <sup>F4</sup>(aa) regulation 19 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001),]
  - (b) paragraph 6(3) of Schedule 3 to the Commonwealth Development Corporation Act 1999 (c. 20) (distributions by the Commonwealth Development Corporation),
  - (c) section 575(3) of ITEPA 2003 (taxable pension income: foreign pensions),
  - (d) section 613(4) of that Act (taxable pension income: foreign annuities),
  - (e) section 631(3) of that Act (pre-1973 pensions paid under the Overseas Pensions Act 1973 (c. 21)),
  - (f) section 635(4) of that Act (taxable pension income: foreign voluntary annual payments), <sup>F5</sup>...
  - (g) section 679(2) of that Act (taxable social security income: foreign benefits).
  - <sup>F6</sup>(h) section 670A of ITA 2007 (accrued income profits),]<sup>F7</sup>and
  - (i) sections 726, 730 and 735 of that Act (transfer of assets abroad: foreign deemed income).]

#### Textual Amendments

- F2** Words in s. 830(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 51\(2\)](#)
- F3** S. 830(2)(d) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 51\(3\)](#)
- F4** S. 830(4)(aa) substituted (1.12.2009) (with effect in accordance with art. 1(2)(3) of, Sch. 1 to the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [128\(4\)](#)

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- F5** Word in s. 830(4)(f) omitted (with effect in accordance with Sch. 7 para. 160 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 156\(a\)](#)
- F6** S. 830(4)(h) inserted (with effect in accordance with Sch. 7 para. 160 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 156\(b\)](#)
- F7** S. 830(4)(i) and word inserted (with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 162](#)

## CHAPTER 2

### RELEVANT FOREIGN INCOME CHARGED ON REMITTANCE BASIS

#### *Remittance basis*

#### **<sup>F8</sup>831 Claims for relevant foreign income to be charged on the remittance basis**

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##### **Textual Amendments**

- F8** S. 831 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 52](#)

#### **[<sup>F9</sup>832 Relevant foreign income charged on remittance basis**

- (1) This section applies to an individual's relevant foreign income for a tax year (“the relevant foreign income”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.
- (2) For any tax year in which—
  - (a) the individual is UK resident, and
  - (b) any of the relevant foreign income is remitted to the United Kingdom, income tax is charged on the full amount of the relevant foreign income so remitted in that year.
- (3) Subsection (2) applies whether or not the source of the income exists when the income is remitted.
- (4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

##### **Textual Amendments**

- F9** Ss. 832-832B substituted for s. 832 (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 53](#) (with [Sch. 7 para. 83](#))

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

- C1** S. 832 applied by 2007 c. 3, s. 809F(3) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with [s. 809F\(6\)](#)))

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### **832A Section 832: temporary non-residents**

- (1) This section applies if—
  - (a) an individual satisfies the residence requirements for any tax year (“the year of return”),
  - (b) the individual did not satisfy those requirements for one or more tax years immediately before the year of return but did satisfy those requirements for an earlier tax year,
  - (c) there are fewer than 5 tax years between—
    - (i) the last tax year before the year of return for which the individual satisfied those requirements (“the year of departure”), and
    - (ii) the year of return, and
  - (d) the individual satisfied those requirements for at least 4 out of the 7 tax years immediately before the year of departure.
- (2) Treat any of the individual's relevant foreign income within subsection (3) which is remitted to the United Kingdom after the year of departure and before the year of return as remitted to the United Kingdom in the year of return.
- (3) Relevant foreign income is within this subsection if—
  - (a) it is for the year of departure or any earlier tax year, and
  - (b) section 832 applies to it.
- (4) For the purposes of subsection (1) an individual “satisfies the residence requirements” for a tax year if—
  - (a) at any time in that year, the individual is UK resident and not Treaty non-resident, or
  - (b) the individual is ordinarily UK resident, and is not Treaty non-resident, for that year.
- (5) For the purposes of subsection (4) an individual is “Treaty non-resident” at any time if, at that time, he is regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.
- (6) In subsection (5) “double taxation relief arrangements” means arrangements specified in an Order in Council making any such provisions as are referred to in section 788 of ICTA.

#### **Textual Amendments**

- F9** Ss. 832-832B substituted for s. 832 (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 53](#) (with [Sch. 7 para. 83](#))

### **832B Section 832: deductions from remitted income**

- (1) The only case in which deductions are allowed from the income mentioned in section 832(2) is where the income is from a trade, profession or vocation carried on outside the United Kingdom.
- (2) In that case the same deductions are allowed as are allowed under the Income Tax Acts where the trade, profession or vocation is carried on in the United Kingdom.]

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**Textual Amendments**

- F9** Ss. 832-832B substituted for s. 832 (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 53** (with [Sch. 7 para. 83](#))

**F10 833 Income treated as remitted: repayment of UK-linked debts**

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**Textual Amendments**

- F10** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 54**

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

- C2** S. 833 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **ss. 735(6), 1034** (with transitional provisions and savings in [Sch. 2](#))

**F10 834 Arrangements treated as repayment of UK-linked debts**

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**Textual Amendments**

- F10** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 54**

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

- C3** S. 834 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **ss. 735(6), 1034** (with transitional provisions and savings in [Sch. 2](#))

*Relief for delayed remittances*

**F10 835 Relief for delayed remittances**

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**Textual Amendments**

- F10** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 54**

**F10 836 Relief for delayed remittances: backdated pensions**

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#### Textual Amendments

**F10** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 54**

### **F10 837 Claims for relief on delayed remittances**

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#### Textual Amendments

**F10** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 54**

## CHAPTER 3

### RELEVANT FOREIGN INCOME CHARGED ON ARISING BASIS: DEDUCTIONS AND RELIEFS

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

- (1) In calculating the amount of relevant foreign income to be charged to income tax for a tax year, a deduction is allowed for expenses incurred outside the United Kingdom that are attributable to the collection or payment of the income.
- (2) Subsection (1) does not apply to income charged for the tax year in accordance with section 832 (relevant foreign income charged on the remittance basis).

#### **839 Annual payments payable out of relevant foreign income**

- (1) In calculating the amount of relevant foreign income to be charged to income tax for a tax year, a deduction is to be allowed for an annual payment other than interest if it meets conditions [F11A, B1 or B2 and C].
- (2) Condition A is that the payment is payable out of the relevant foreign income.
- (3) Condition [F12B1] is that, had the payment arisen in the United Kingdom, it would have been chargeable to income tax under one of the following provisions <sup>F13</sup>...—
  - Chapter 10 of Part 4 (distributions from unauthorised unit trusts),
  - section 579 (charge to tax on royalties and other income from intellectual property),
  - Chapter 4 of Part 5 (certain telecommunication rights: non-trading income), or
  - Chapter 7 of Part 5 (annual payments not otherwise charged).

[F14(3A) Condition B2 is that, had the payment arisen in the United Kingdom it would have been—

- (a) required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit, or
- (b) chargeable to corporation tax under Chapter 5 of Part 10 of that Act (distributions from unauthorised unit trusts) or Chapter 7 of that Part (annual payments not otherwise charged).]

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- (4) Condition C is that the payment is made to a non-UK resident.
- (5) Subsection (1) does not apply if—
  - (a) the relevant foreign income is received in the United Kingdom, or
  - (b) it is charged for the tax year in accordance with section 832 (relevant foreign income charged on remittance basis).

<sup>F15</sup>(6) .....

**Textual Amendments**

- F11** Words in s. 839(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 637(2)** (with Sch. 2 Pts. 1, 2)
- F12** Word in s. 839(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 637(3)(a)** (with Sch. 2 Pts. 1, 2)
- F13** Words in s. 839(3) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 637(3)(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F14** S. 839(3A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 637(4)** (with Sch. 2 Pts. 1, 2)
- F15** S. 839(6) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 67**

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

- (1) This section applies if—
  - (a) as a result of section 575(3), 613(4) or 635(4) of ITEPA 2003 a pension or annuity or an increase in a pension or annuity is treated as relevant foreign income,
  - (b) the pension, annuity or increase is paid in respect of a tax year (“the earlier year”) before the tax year in which the pension, annuity or increase arose, and
  - (c) the income is not charged in accordance with section 832 (relevant foreign income charged on the remittance basis).
- (2) If the person liable for the income tax makes a claim for relief under this section for the tax year in which the pension, annuity or increase paid in respect of the earlier year arises, that pension, annuity or increase is treated as income arising in the earlier year from a source that the person possessed in the earlier year.
- (3) But subsection (2) does not affect the calculation of the full amount of the income so arising under section 575(2), 613(3) or 635(3) of ITEPA 2003 (under which the full amount of that income is to be calculated on the basis that the pension or annuity is 90% of its actual amount).

<sup>F16</sup>(4) .....

**Textual Amendments**

- F16** S. 840(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 68**

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## [<sup>F17</sup>840A Claims under section 840

- (1) A claim under section 840 must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which the relief is claimed.
- (2) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to section 840.
- (3) Those adjustments may be made at any time, despite anything to the contrary in the Income Tax Acts.
- (4) A person's personal representatives may make any claim under section 840 which the person might have made.
- (5) If a person dies—
  - (a) any tax paid by the person and repayable because of a claim under section 840 is to be repaid to the personal representatives, and
  - (b) the person's personal representatives are liable for any additional tax which arises because of a claim under that section.
- (6) If subsection (5)(b) applies, the additional tax—
  - (a) is to be assessed on the personal representatives, and
  - (b) is a debt due and payable out of the estate.]

### Textual Amendments

**F17** [S. 840A](#) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 69](#)

## CHAPTER 4

### UNREMITTABLE INCOME

#### 841 Unremittable income: introduction

- (1) This Chapter applies if—
  - (a) a person is liable for income tax on income arising in a territory outside the United Kingdom, and
  - (b) the income is unremittable.
- (2) For the purposes of this Chapter, income is unremittable if conditions A and B are met.
- (3) Condition A is that the income cannot be transferred to the United Kingdom by the person who is liable for income tax in respect of the income because of—
  - (a) the laws of the territory where the income arises,
  - (b) executive action of its government, or
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.
- (4) Condition B is that the person who is liable for income tax in respect of the income has not realised it outside that territory for an amount in sterling or in another currency which the person is not prevented from transferring to the United Kingdom.



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[<sup>F18</sup>(5) This Chapter does not apply to accrued income profits which a person is treated as making under Chapter 2 of Part 12 of ITA 2007, but see sections 668 and 669 of that Act (which make similar provision).]

#### Textual Amendments

**F18** S. 841(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 578](#) (with transitional provisions and savings in [Sch. 2](#))

### 842 Claim for relief for unremittable income

- (1) If a person liable for income tax on unremittable income makes a claim for relief under this section in respect of that income, it is not taken into account for income tax purposes.
- (2) Subsection (1) is subject to section 843.
- (3) No claim under this section may be made in respect of any income so far as an ECGD payment has been made in relation to it.
- (4) In subsection (3) “ECGD payment” means a payment made by the Export Credit Guarantee Department under an agreement entered into as a result of arrangements made under—
  - (a) section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
  - (b) section 11 of the Export Guarantees and Overseas Investment Act 1978 (c. 18).
- (5) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the income would be charged to tax if no claim were made.

### 843 Withdrawal of relief

- (1) This section applies if—
  - (a) a claim under section 842 has been made in relation to any income, and
  - (b) either—
    - (i) the income ceases to be unremittable, or
    - (ii) an ECGD payment is made in relation to it.
- (2) In this section “ECGD payment” has the meaning given by section 842(4).
- (3) If income ceases to be unremittable, the income is treated as arising on the date on which it ceases to be unremittable.
- (4) If an ECGD payment is made in relation to income, the income is treated, to the extent of the payment, as arising on the date on which the ECGD payment is made.
- (5) The income treated as arising under subsection (3) or (4), and any tax payable in respect of it under the law of the territory where it arises, are taken into account for income tax purposes at their value at the date on which the income is treated as arising.
- (6) Subsections (3) to (5) do not apply so far as the income has already been treated as arising as a result of this section.

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- (7) If a person who would have become liable for income tax as a result of this section has died—
- (a) the personal representatives are liable for the tax instead, and
  - (b) the tax is a debt due from and payable out of the estate.

#### **844 Income charged on withdrawal of relief after source ceases**

- (1) This section applies if—
- (a) income is treated as arising as a result of section 843, and
  - (b) at the time it is so treated the person who would have become liable for income tax as a result of that section—
    - (i) has permanently ceased to carry on the trade, profession, vocation or property business from which the income arises, or
    - (ii) in the case of income from another source, has ceased to possess that source.
- (2) In the case of income from a trade, profession or vocation—
- (a) the income is treated as a post-cessation receipt for the purposes of Chapter 18 of Part 2 (trading income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 243 (extent of charge to tax) is omitted.
- (3) In the case of income from a property business—
- (a) the income is treated as a post-cessation receipt from a UK property business for the purposes of Chapter 10 of Part 3 (property income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 350 (extent of charge to tax) is omitted.
- (4) In the case of income from another source, the income is taxed as if the person continued to possess that source.

#### **845 Valuing unremittable income**

- (1) If no claim is made under section 842 in relation to unremittable income arising in a territory outside the United Kingdom, the amount of the income to be taken into account for income tax purposes is determined as follows.
- (2) If the currency in which the income is denominated has a generally recognised market value in the United Kingdom, the amount is determined by reference to that value.
- (3) In any other case, the amount is determined according to the official rate of exchange of the territory where the income arises.

**Status:**

Point in time view as at 01/12/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 8.