

SCHEDULE 2

Calculation of earnings

Calculation of net profit of self-employed earners

12.—(1) For the purposes of paragraphs 2 (calculation of earnings) and 10 (calculation of earnings of self-employed earners), the earnings of an individual to be taken into account are, in the case of a self-employed earner—

- (a) who is engaged in employment on their own account, the net profit derived from that employment,
- (b) whose employment is carried on in partnership or is that of a share fisherman, their share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and social security contributions payable under the 1992 Act calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (ii) one half of any premium paid in the period that is relevant under paragraph 10 in respect of a retirement annuity contract or a personal pension scheme,
- (c) in sub-paragraph (b), “share fisherman” means any person who—
 - (i) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is remunerated in respect of that employment in whole or in part by a share of profits or gross earnings of the fishing boat, or
 - (ii) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Great Britain, otherwise than under a contract of service, performing any services ancillary to or in connection with a fishing boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in that employment.

(2) There is to be disregarded or deducted as appropriate from an individual's net profit—

- (a) any sum, where applicable, specified in paragraph 14 (sums to be disregarded in the calculation of earnings), and
- (b) any care charge to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their net profit less those sums, if any, specified in paragraph 14 which are disregarded.

(3) For the purposes of sub-paragraph (1)(a), the net profit of the employment is, except where sub-paragraph (9) applies, calculated by taking into account the earnings of the employment over the period determined under paragraph 10 (calculation of earnings of self-employed earners), less—

- (a) subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid in that period for the purposes of that employment,
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and

- (c) one half of any premium paid in the period that is relevant under paragraph 10 (calculation of earnings of self-employed earners) in respect of a retirement annuity contract or a personal pension.
- (4) For the purposes of sub-paragraph (1)(b), the net profit of the employment is calculated by taking into account the earnings of the employment over the period determined under paragraph 10 less, subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid in that period for the purposes of that employment.
- (5) Subject to paragraph (6), no deduction is to be made under paragraph (3)(a) or (4) in respect of—
 - (a) any capital expenditure,
 - (b) the depreciation of any capital asset,
 - (c) any sum employed or intended to be employed in the setting up or expansion of the employment,
 - (d) any loss incurred before the beginning of the period determined under paragraph 10 (calculation of earnings of self-employed earners),
 - (e) the repayment of capital on any loan taken out for the purposes of the employment,
 - (f) any expenses incurred in providing business entertainment,
 - (g) where the individual provides accommodation to another person in the dwelling the individual occupies as their home, any expenses paid by the individual in providing the accommodation to that person.
- (6) A deduction is made under sub-paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—
 - (a) the replacement in the course of business of equipment or machinery, and
 - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) A deduction is not made in respect of any expenses under sub-paragraph (3)(a) or (4) where the Scottish Ministers are not satisfied that the expenses have been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—
 - (a) a deduction is not made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business,
 - (b) a deduction is made under sub-paragraph (3)(a) or (4) in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under paragraph 10 (calculation of earnings of self-employed earners),
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair,
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where an individual is engaged in employment as a child minder the net profit of the employment is one-third of the earnings of that employment, less—
 - (a) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and

(b) one half of any premiums paid in respect of a retirement annuity or personal pension scheme.

(10) Notwithstanding paragraph 10 (calculation of earnings for self-employed earners) and subparagraphs (1) to (5) of this paragraph, the Scottish Ministers may assess any item of an individual's earnings or expenditure over a period other than that determined under paragraph 10 as may, in the particular case, enable the weekly amount of that item of earnings or expenditure to be determined more accurately.