

SCOTTISH STATUTORY INSTRUMENTS

**2012 No. 303**

**The Council Tax Reduction (Scotland) Regulations 2012**

**PART 6**

Income and capital

CHAPTER 5

Self-employed earners

**Earnings of self-employed earners**

<sup>F1</sup>36. ....

**F1** Regulations revoked (except regs. 2 (in part), 37, 38, sch. 4 paras. 37, 38) (1.4.2022) by [The Council Tax Reduction \(Scotland\) Regulations 2021 \(S.S.I. 2021/249\)](#), reg. 1, [sch. 6](#) (with regs. 2, 97-101)

**Calculation of net profit of self-employed earners**

**37.**—(1) For the purposes of regulation 30 (average weekly earnings of self-employed earners) the earnings of an applicant to be taken into account are—

- (a) in the case of a self-employed earner who is engaged in employment on that earner's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 <sup>M1</sup>, that earner's 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 regulation 38 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) Any sum, where applicable, specified in Schedule 3 is to be disregarded when calculating a self-employed earner's net profit.

(3) For the purposes of paragraph (1)(a) the net profit of the employment is, except where paragraph (9) applies, to be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) to (8), any expenses wholly and exclusively incurred 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; and
  - (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.
- (4) For the purposes of paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of the 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 assessment period;
  - (e) the repayment of capital on any loan taken out for the purposes of the employment;
  - (f) any expenses incurred in providing business entertainment; or
  - (g) any debts, except bad debts proved to be bad, but this sub-paragraph does not apply to any expenses incurred in the recovery of a debt.
- (6) A deduction is to be made under 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) The relevant authority is to refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (8) For the avoidance of doubt—
- (a) a deduction is not to be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the employment;
  - (b) a deduction is to be made under paragraph (3)(a) or (4) in respect of—
    - (i) the excess of any value added tax paid over value added tax received in the assessment period;
    - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where an applicant is engaged in employment as a child minder the net profit of the employment is to be 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 regulation 38 (deduction of tax and contributions of self-employed earners); and
  - (b) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(10) For the avoidance of doubt where an applicant is engaged in employment as a self-employed earner and is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of those employments is not to be offset against earnings in any other of the applicant's employments.

(11) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying premium is to be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365; and
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(12) In this regulation “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is payable on or after the date of the application.

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

**C1** Regs. 37, 38 applied (with modifications) (1.4.2022) by [The Council Tax Reduction \(Scotland\) Regulations 2021 \(S.S.I. 2021/249\)](#), regs. 1, **51(9)** (with regs. 2, 3, 97-101)

**Marginal Citations**

**M1** [S.I. 1975/529](#).

**Deduction of tax and contributions of self-employed earners**

**38.**—(1) The amount to be deducted in respect of income tax under regulation 37(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income was assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance for those aged under 65) as is appropriate to the applicant's circumstances, but, if the assessment period is less than one year the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph are to be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 37(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section [F<sup>2</sup>11(2)] or, as the case may be, [F<sup>3</sup>11(8)] of the 1992 Act <sup>M2</sup> at the rate applicable to the assessment period except where the applicant's chargeable income is [F<sup>4</sup>equal to or] less than the amount specified in [F<sup>5</sup>section 11(4)(a)] of that Act <sup>M3</sup>[F<sup>6</sup>([F<sup>7</sup>lower profits threshold])] for the tax year applicable to the assessment period, but if the assessment period is less than one year, the amount specified for that tax year is to be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the 1992 Act <sup>M4</sup> (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period, but if the assessment period is less than one year those limits are to be reduced pro rata.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 37(3)(a) or, as the case may be, (4); and
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

- F2** Word in reg. 38(2)(a) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **11(a)**
- F3** Word in reg. 38(2)(a) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **11(b)**
- F4** Words in reg. 38(2)(a) inserted (with effect from 6.4.2022) by [The Social Security \(Class 2 National Insurance Contributions Increase of Threshold\) Regulations 2022 \(S.I. 2022/1329\)](#), regs. 1, **5(2)(a)**
- F5** Words in reg. 38(2)(a) substituted (with effect from 6.4.2022) by [The Social Security \(Class 2 National Insurance Contributions Increase of Threshold\) Regulations 2022 \(S.I. 2022/1329\)](#), regs. 1, **5(3)(a)**
- F6** Words in reg. 38(2)(a) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **11(c)**
- F7** Words in reg. 38(2)(a) substituted (with effect from 6.4.2022) by [The Social Security \(Class 2 National Insurance Contributions Increase of Threshold\) Regulations 2022 \(S.I. 2022/1329\)](#), regs. 1, **5(1)(m)**

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

- C1** [Regs. 37, 38](#) applied (with modifications) (1.4.2022) by [The Council Tax Reduction \(Scotland\) Regulations 2021 \(S.S.I. 2021/249\)](#), regs. 1, **51(9)** (with regs. 2, 3, 97-101)

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**Marginal Citations**

- M2** Section 11(1) was amended by [S.I. 2012/807](#). Section 11(3) was amended by paragraph 12 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#).
- M3** Section 11(4) was amended by paragraph 12 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#) and [S.I. 2012/807](#).
- M4** Section 15 was amended by section 13 of the [Limited Liability Partnerships Act 2000 \(c.12\)](#), [section 3\(1\)](#) of the [National Insurance Contributions Act 2002 \(c.19\)](#), [paragraph 420](#) of Schedule 1 and Schedule 3 to the [Income Tax \(Trading and Other Income\) Act 2005 \(c.5\)](#), [section 2\(1\)](#) of the [National Insurance Contributions Act 2011 \(c.3\)](#), and [S.I. 2011/938](#) and [2012/807](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, CHAPTER 5.