
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

36.—(1) Subject to paragraph (2), “earnings” means in the case of employment as a self-employed earner, the gross income of the employment.

(2) “Earnings” does not include any payment to which paragraph 30 or 31 of Schedule 4 refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant’s care) nor does it include any sports award.

(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; and
- (b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982⁽¹⁾; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(4) Where the applicant’s earnings consist of any items to which paragraph (3) applies, those earnings are to be taken into account over a period equal to the number of weeks equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax reduction to which the applicant would have been entitled had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the applicant’s case.

(1) The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1982/719, 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001, 1986/2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/1618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

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⁽²⁾, 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—

(2) [S.I. 1975/529](#).

- (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.

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 11(1) or, as the case may be, 11(3) of the 1992 Act(3) at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act(4) (small earnings exception) 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(5) (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.

(3) 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).

(4) 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](#).

(5) 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](#).