
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

PART V

INCOME AND CAPITAL

CHAPTER IV

self-employed earners

Earnings of self-employed earners

37.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(1) to the claimant for the purpose of assisting him in carrying on his business.

(2) “Earnings” shall not include, where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge except where the claimant is a seasonal worker to whom regulation 43 (notional earnings of seasonal workers) applies and the payment is due during the period of his normal employment.

Calculation of net profit of self-employed earners

38.—(1) For the purposes of regulation 30 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his 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), his share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of social security contributions payable under the Social Security Act calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
 - (ii) one-half of any qualifying premium payable.

(2) There shall be disregarded from a claimant’s net profit any sum, where applicable, specified in paragraphs 1 to 13 of Schedule 8.

(3) For the purposes of paragraph (1) (a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 30 (calculation of earnings of self-employed earners) less—

(1) 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the Employment and Training Act 1981 (c. 57).
(2) S.I.1975/529.

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed 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 Social Security Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of any qualifying premium payable.

(4) For the purposes of paragraph (1) (b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the period determined under regulation 30 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(5) Subject to paragraph (6), no deduction shall 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 regulation 30 (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.

(6) A deduction shall 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) An adjudication officer shall refuse to make a deduction in respect of any expenses under paragraph (3) (a) or (4) where he is not satisfied that the expense has been defrayed 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 shall not be made under paragraph (3) (a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under regulation 30 (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 a claimant is engaged in employment as a child minder the net profit of the employment shall 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 Social Security Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and

(b) one-half of any qualifying premium payable.

(10) Notwithstanding regulation 30 (calculation of earnings of self-employed earners) and the foregoing paragraphs, an adjudication officer may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 30 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.

(11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(12) In this regulation "qualifying premium" means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief from income tax may be given.

Deduction of tax and contributions for self-employed earners

39.—(1) The amount to be deducted in respect of income tax under regulation 38 (1) (b) (i), (3) (b) (i) or (9) (a) (i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax less only the personal relief to which the claimant is entitled under sections 8 (1) and (2) and 14 (1) (a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief)(3) as is appropriate to his circumstances; but, if the period determined under regulation 30 (calculation of earnings of self-employed earners) is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 38(1) (b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

(a) the amount of Class 2 contributions payable under section 7 (1) or, as the case may be, (4) of the Social Security Act(4) except where the claimant's chargeable income is less than the amount for the time being specified in section 7 (5) of that Act(5) (small earnings exception); and

(b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act(6) (contributions recoverable under Taxes Acts) in respect of profits or gains equal to the amount of that income.

(3) 1970 c. 10; section 8 (1) was amended by the Finance Act 1971 (c. 68) section 37 Schedule 6 paragraphs 1 and 5, and the Finance Act 1985 (c. 54) section 36, subsection (1A) was added by the Finance (No.2) Act 1975 (c. 45) section 31 and amended by the Finance Act 1977 (c. 36) section 22. Subsection (1B) was added by the Finance (No.2) Act 1975 section 31. Section 8 (2) was amended by the Finance Act 1971 section 37 Schedule 6 paragraphs 1 and 5 and article 2 of S.I. 1985/430; sub-paragraph (b) was substituted by the Finance (No.2) Act 1979 (c. 47) section 12 Schedule 2 paragraph 1; sub-paragraph (b) (i) and (ii) were amended by the Finance Act 1981 (c. 35) section 139 Schedule 19 Part VI and the Finance Act 1982 (c. 39) section 157 Schedule 22 Part IV; sub-paragraph (b) (iii) was added by the Finance Act 1981 (c. 35) section 27 and sub-paragraph (b) (iv) by the Finance Act 1987 (c. 16) section 27. Section 14 (1) was amended by the Finance Act 1970 (c. 24) section 14 Schedule 8 Part VI; section 14 (2) was amended by the Finance Act 1976 (c. 40) section 36, the Finance (No.2) Act 1979 (c. 47) section 11 Schedule 1 paragraph 2 and the Finance Act 1980 (c. 48) section 24.

(4) Section 7 (1) was amended by section 2 (4) of the Education (School-Leaving Dates) Act 1976 (c. 5), section 17 (1) of the Health and Social Security Act 1984 (c. 48) article 3 of S.I. 1986/25 and article 3 of S.I. 1987/46.

(5) Section 9 was amended by sections 4 and 65 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60), the Social Security (Contributions) Act 1982 (c. 2) section 1 and by S.I. 1986/25.

(6) Section 7 (5) was amended by article 3 of S.I. 1986/25 and S.I. 1987/46.

- (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 paragraph (3) (a) or, as the case may be, (4) of regulation 38;
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.