
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 ^{F1}[^{F2}or section 2 of the Enterprise and New Towns (Scotland) Act 1990] to the claimant for the purpose of assisting him in carrying on his business.

[^{F3}(2) “Earnings” shall not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any payment to which paragraph 26 of Schedule 9 refers (payments in respect of a person accommodated with the claimant under arrangements made by a local authority or voluntary organisation).]

Textual Amendments

- F1** 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 \(c. 57\)](#).
- F2** Words in reg. 37(1) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, [Sch.](#)
- F3** Reg. 37(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), [16](#)

Commencement Information

- I1** Reg. 37 in force at 11.4.1988, see reg. 1

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;

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- (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^{F4}, 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) [^{F5}one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme].
- (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—
- (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) [^{F5}one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme].
- (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) [^{F5}one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme].
- (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.
- [^{F6}(12) In this regulation, “retirement annuity contract” means an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision of a life annuity in old age or the provision of an annuity for a partner or dependant and in respect of which relief from income tax may be given on any premium.]

Textual Amendments

- F4** S.I. 1975/529.
- F5** Words in reg. 38 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **13(2)**
- F6** Reg. 38(12) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **13(3)**

Commencement Information

- I2** Reg. 38 in force at 11.4.1988, see reg. 1

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

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of the amount of chargeable income and as if that income were assessable to income tax at [^{F7}the lower rate or, as the case may be, the lower rate and 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) ^{F8} 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, [^{F9}the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and] 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—

[^{F10}(a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and]

[^{F10}(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim 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 in which the date of claim falls; but if the assessment period is less than a year, those limits shall 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 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.

Textual Amendments

F7 Words in reg. 39(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **17(a)**

F8 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.

F9 Words in reg. 39(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **17(b)**

F10 Reg. 39(2)(a)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(a), **14**

Commencement Information

I3 Reg. 39 in force at 11.4.1988, see reg. 1

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