Universal credit: trading via a company

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LITRG outlines the ‘look through’ rules for universal credit claimants trading via a limited company.

Universal credit award entitlement is assessed on the claimant’s net earnings – broadly, after deduction of income tax, national insurance, pension contributions and certain expenses. Universal credit is affected if the claimant has more than £6,000 in capital. It is not available at all if capital exceeds £16,000 (though certain capital is ‘disregarded’).

The above is in contrast to tax credits (new claims to which are no longer possible for most people), which are calculated on gross income, broadly following taxable income. Tax credits also do not have capital limits but simply take income from capital into account.

Many people trading via a limited company may not previously have claimed universal credit. However, due to the coronavirus pandemic, you might now be seeing clients looking to claim this support.

But how does universal credit apply in this situation?

‘Look through’

Where the claimant’s circumstances are analogous to a self-employed sole trader (or partnership), the Department for Work and Pensions (DWP) ignores the company structure and ‘looks through’ to what is happening within it. Under the Universal Credit Regulations, SI 2013/0376, reg 77(1), a sole shareholder/director of a limited company will therefore find the DWP treats them as if they are self-employed.

To determine whether a company falls into these rules, DWP decision makers are instructed to look at the facts, including the size of the company, its shareholders and what influence the claimant has over the running of the business.

If the company is not analogous to a sole trade or partnership, any shareholding in it will be valued as the claimant's capital. If the claimant works for the company, their earnings will be counted for universal credit in the normal way. This might apply, for example, to an employee of a larger company who has acquired an interest in it via a share ownership scheme.

Attribution of capital and profits

If the look through provisions apply, the claimant is effectively viewed as self-employed. Any income of the company is treated as the claimant's income as if it were self-employed earnings and the company's underlying capital value is attributed to them (unless disregarded). If more than one person is involved in the company, they will be treated as if they are in partnership – that is, the DWP will seek to identify what part of the company's capital and profits for the relevant claim period is attributable to the claimant 'partner'.

The claimant might have been paid money from the company in various forms, such as:

- salary;
- dividends; and
- interest on a director's loan.

For universal credit, any salary received from the company is treated as employed earnings (and HMRC will send the PAYE real time information figure to DWP for inclusion in the claim). To avoid double counting, these employed earnings will be an allowable expense when working out the claimant's 'self-employed' earnings. One point of note is that under universal credit rules, losses from self-employment cannot be offset against other types of income such as employed earnings. Perhaps surprisingly, benefits in kind are not treated as universal credit employed earnings at present (SI 2013/0376, reg 55(2)(a)), though we understand that DWP might in future look to include them in the earnings assessment.

Dividends and loan interest would be ignored for universal credit, because they are a return on capital. It is the capital value itself that is important for the universal

credit assessment, rather than any actual return on it.

The company's capital value attributable to the claimant might mean that they exceed the capital threshold described above. However, where the company is a trading business, assets used for the purposes of the trade are disregarded in the universal credit capital assessment (SI 2013/0376, reg 77(3)(a)).

Note that where the company is carrying on a 'property business' (deriving its income from property, such as in the form of buy-to-let), no such capital disregard applies. So, whilst income generated from the property is not included in the universal credit income assessment as it is a return on capital, the attributed value of capital may be above the threshold, meaning the claimant will not qualify for universal credit. However, if it is an active property business, such as running a hotel, it may be possible to argue that there is a trade and the capital disregard should apply.

Minimum income floor

Gainfully self-employed universal credit claimants are usually subject to the 'minimum income floor', meaning they are deemed to earn a certain amount even if their actual profit falls below that level. Where the look through provisions apply in relation to a company carrying on a trade, and that trade is the claimant's main employment, they are treated as 'gainfully self-employed', which means the minimum income floor potentially applies to them (SI 2013/0376, reg 77(3)(c).

However, at the time of writing, use of the minimum income floor is temporarily suspended due to the effect of the coronavirus pandemic on self-employed claimants' income. It is not clear how long this will last.

Feedback

As the DWP deal with increasing numbers of claimants trading through companies, we suspect some practical issues will arise. While we cannot help with individual cases, feedback on any experiences would be welcome to help inform our engagement with HMRC and DWP. Click here to contact us.

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