

2003 No. 2815

TAX CREDITS

**The Tax Credits (Miscellaneous Amendments No.2) Regulations
2003**

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| <i>Made</i> | - - - - | <i>4th November 2003</i> |
| <i>Laid before Parliament</i> | | <i>5th November 2003</i> |
| <i>Coming into force</i> | - - | <i>26th November 2003</i> |

The Treasury, in exercise of the powers conferred upon them by sections 4(1), 6, 7(8) and (9), 8, 9, 10, 11, 12, 22(1)(b) and (2), 65(1), (7) and (9) and 67 of the Tax Credits Act 2002(a) make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Tax Credits (Miscellaneous Amendments No.2) Regulations 2003 and shall come into force on 26th November 2003.

Amendments to the Tax Credits (Definition and Calculation of Income) Regulations 2002

2. The Tax Credits (Definition and Calculation of Income) Regulations 2002(b) are amended as follows.

3. In regulation 2(2)(c) in the definition “claim”, for “section 4(6)” substitute “section 3(8)”.

4.—(1) Amend regulation 3(d) as follows.

(2) In paragraph (1) at the end add—

“Any trading loss in the year not set off as a result of the calculations in Steps One to Four above due to an insufficiency of income may be carried forward and set off against trading income (if any) of the same trade, profession or vocation in subsequent years (taking earlier years first) for the purposes of calculation of income under this regulation.”.

(3) Amend paragraph (4) as follows—

(a) in sub-paragraph (a) omit “or”,

(b) in sub-paragraph (b) at the end add “or”,

(c) after sub-paragraph (b) add—

“(c) resident but neither ordinarily resident nor domiciled in the United Kingdom.”.

(4) In paragraph (7)—

(a) 2002 c.21.

(b) S.I. 2002/2006, which was amended by S.I. 2003/732.

(c) This regulation was amended by regulation 4 of S.I. 2003/732.

(d) This regulation was amended by regulation 5 of S.I. 2003/732.

- (a) at the end of sub-paragraph (b) omit “and”,
- (b) at the end of sub-paragraph (c)(iii) add “and”,
- (c) after sub-paragraph (c) add—
 - “(d) any contribution made by the claimant, or in the case of a joint claim, by either or both of the claimants, if made in accordance with Inland Revenue Extra Statutory Concession A9.”.

(5) At the end add—

“(8) If—

- (a) a claimant has sustained a loss in relation to a Schedule A business or an overseas property business; and
- (b) the relief to which he is entitled in accordance with section 379A(2) and (3) of the Taxes Act(a) exceeds the amount of his property income or foreign income for tax credits purposes, for the year in question;

the amount of his total income for tax credit purposes, computed in accordance with the preceding provisions of this regulation, shall be reduced by the amount of the excess.

In this paragraph “Schedule A business” and “overseas property business” have the same meanings as they have in the Taxes Act.”.

5.—(1) Amend regulation 4(b) as follows.

(2) In paragraph (1) after sub-paragraph (k) add—

“(l) any amount charged to income tax for that year under Part 7 of ITEPA.”.

(3) For paragraph (3) substitute—

“(3) This paragraph applies if (apart from section 64 of ITEPA) the same benefit would give rise to two amounts (“A” and “B”)—

- (a) “A” being an amount of earnings from a claimant’s employment as defined in section 62 of ITEPA, and
- (b) “B” being an amount to be treated as earnings under any provision of Chapter 10 of Part 3 of ITEPA.

In such a case, the amount to be taken into account in computing the claimant’s employment income is the greater of A and B, and the lesser amount shall be disregarded.”.

(4) In Table 1—

(a) in item 11D, for “Part 4 of ITEPA” to the end of the sentence, substitute “Part 3 of ITEPA, by virtue of any provision of Chapter 6 of Part 4 of ITEPA”;

(b) after item 14B, insert—

“**14C.** The discharge of any liability of an employee in connection with a taxable car if no liability to income tax arises by virtue of section 239(1) of ITEPA.

14D. A benefit connected with a taxable car if no liability to income tax arises by virtue of section 239(4) of ITEPA.”;

(c) in item 16, for “Project” substitute “Scheme”;

(d) after item 16 insert—

(a) Section 379A was inserted by paragraph 19 of Schedule 6 to the Finance Act 1995, amended by paragraphs 2 and 9 of Schedule of Schedule 15, and partly repealed by Part VI(II) of Schedule 18, to the Finance Act 1997, further amended by paragraph 1 of Schedule 7 to the Finance Act 1998, paragraph 28 of Schedule 2 to the Capital Allowances Act 2001 and paragraph 35(2) of Schedule 29 to the Finance Act 2001. Section 379A is applied for the purposes of overseas property businesses by section 379B of the Taxes Act, which was inserted by paragraph 27 of Schedule 5 to the Finance Act 1998.

(b) This regulation was amended by regulation 6 of S.I. 2003/732.

“17. The payment or reimbursement of reasonable additional household expenses incurred by an employee who works from home, within the meaning of section 316A of ITEPA.

18. The payment or reimbursement of retraining course expenses within the meaning of section 311 of ITEPA.”.

(5) In regulation 4(5) after “provision of sections” insert “231 to 232,”.

6.—(1) Amend regulation 7(a) as follows.

(2) In Table 3, in item 24, for the words from “housing benefit” to the end substitute “or housing benefit”.

7. For regulation 8, substitute—

“Student Income

8. “Student income” means, in relation to a student—

(a) in England and Wales, any grant—

(i) under regulation 15 of the Education (Student Support) Regulations 2002(b) other than a grant under paragraph (1)(c) or (8) of that regulation or

(ii) under regulation 15 of the Education (Student Support) (No.2) Regulations 2002(c) other than a grant for Parents Learning Allowance as defined in regulation 15(7) of those Regulations;

(b) in Scotland, any dependant’s grant payable under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 1999(d); and

(c) in Northern Ireland, any grant which corresponds to income treated as student income in England and Wales by virtue of paragraph (a).”.

8.—(1) Amend regulation 10(e) as follows.

(2) In Table 4 after item 11 insert—

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|---|---|
| 12. A purchased life annuity to which section 656 of the Taxes Act applies. | The capital element of the annuity as defined and calculated in section 656 of the Taxes Act. |
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9.—(1) Amend regulation 11 (property income) as follows.

(2) In paragraph (1) for “qualification” substitute “qualifications”.

(3) After paragraph (2) add—

“(3) Where a Schedule A business (as defined within Schedule A set out in section 15 of the Taxes Act) makes a loss to which the relief provisions of section 379A of the Taxes Act apply, then such relief as may arise under subsection (1) of that section shall be applied in calculating property income for the purposes of this regulation.”.

10.—(1) At the end of regulation 12 (foreign income) add—

“(4) Where an overseas property business (within the meaning of the Taxes Act) makes a loss to which the relief provisions of section 379A of the Taxes Act apply, by virtue of section 379B of that Act, then such relief as may arise under section 379A(1) shall be applied in calculating foreign income for the purposes of this regulation.”.

(a) This regulation was amended by regulation 8 of S.I. 2003/732.
(b) S.I.2002/195.
(c) S.I. 2002/3200 as amended by S.I. 2003/1065.
(d) S.I. 1999/1131 (S. 91).
(e) This regulation was amended by regulation 9 of S.I. 2003/732.

11.—(1) Amend regulation 19(a) as follows.

(2) For Item 9 of Table 6, substitute—

“9. Any payment by way of foster care receipts to the extent that those receipts qualify for relief under Schedule 36 to the Finance Act 2003(b).”

(3) For Item 11(a) of Table 6, substitute—

“(a) to adopters which is exempt from income tax by virtue of section 327A of the Taxes Act(c);”

(4) For item 14, substitute—

“14. Any payment under the Community Care (Direct Payments) Act 1996(d), section 57 of the Health and Social Care Act 2001(e), section 12B of the Social Work (Scotland) Act 1968(f), Article 15A of the Health and Personal Social Services (Direct Payments) (Northern Ireland) Order 1996(g) or section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(h).”

Amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

12. The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(i) are amended as follows.

13. In regulation 2(j) at the end of the definition of “employed” add—

“otherwise than by reason of Chapter 8 of Part 2 of that Act (deemed employment in respect of arrangements made by intermediaries).”

14.—(1) Amend regulation 9 as follows.

(2) In paragraph (3)—

(i) for “for whom the applicable amount” substitute “for whom at least one of the following benefits has been payable and for whom the applicable amount”.

(ii) after “disability premium” insert “in respect of him”.

(iii) in sub-paragraph (a) for “paragraphs 10(1)(b) or (2)(b) or 11, and 12,” substitute “paragraphs 10(1)(b) or (2)(b) or 11, and where applicable, 12,”.

(iv) in sub-paragraph (b) for “paragraph 12(1)(a), (b)(ii) or (c) or 13, and 14 of” substitute “paragraphs 12(1)(a), or (b)(ii), or (c), or 13, and where applicable 14 of Part 3 of”.

(v) in sub-paragraph (c) for “paragraphs 10(1)(b) or (2)(b) or 11, and 12” substitute “paragraphs 10(1)(b) or (2)(b) or 11, and where applicable, 12”.

(vi) in sub-paragraph (d) for “paragraphs 11(1)(b) or (2)(b) or 12, and 13” substitute “paragraphs 11(1)(b) or (2)(b) or 12, and where applicable, 13”.

(3) In paragraph (8)(k) after “was entitled”, omit “on the preceding day” and substitute “for at least one day in the preceding 56 days”.

(a) This regulation was amended by regulation 11 of S.I. 2003/732.

(b) 2003 c 14.

(c) Section 327A was inserted by section 175 of the Finance Act 2003.

(d) 1996 c.30.

(e) 2001 c.15.

(f) 1968 c. 49 as amended by section 70 of the Regulation of Care (Scotland) Act 2001 (asp 8) and section 7 of the Community Care and Health (Scotland) Act 2002 (asp 5).

(g) S.I. 1996/1923 (N.I. 19).

(h) 2002 c. 6.

(i) S.I. 2002/2005 as amended by S.I. 2003/701.

(j) This regulation was amended by regulation 3 of S.I. 2003/701.

(k) This regulation was substituted by regulation 8 of S.I. 2003/701.

15. In regulation 14(2)(a)(iii)(a) for “and the day preceding the first Tuesday in September following his twelfth birthday” substitute “and the last day he is treated as a child for the purposes of this regulation,”.

16.—(1) Amend regulation 18 as follows.

(2) For paragraphs (3)(a) and (b), substitute—

“(a) he is aged at least 50; and

(b) he starts qualifying remunerative work; and”.

(3) In paragraphs (4)(a), (4)(b), (6) and (7) respectively, after “starting” add “qualifying remunerative”.

(4) In paragraph (9)(a) for “invalid care”, substitute “carer’s”.

Amendment to the Child Tax Credit Regulations 2002

17.—(1) Amend regulation 2 of the Child Tax Credit Regulations 2002(b) as follows.

(2) In regulation 2(1)(b)—

(i) omit “or the Scottish Qualifications Authority”.

(ii) for the words from “a Scottish Certificate” to the end of the sub-paragraph, substitute “or Scottish national qualifications at higher or advanced higher level”.

Amendment to the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002

18. At the end of regulation 4 of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(c) add—

“(d) state pension credit within the meaning of the State Pension Credit Act 2002(d) or the State Pension Credit Act (Northern Ireland) 2002(e)”.

Amendments to the Tax Credits (Claims and Notifications) Regulations 2002

19. The Tax Credits (Claims and Notifications) Regulations 2002(f) are amended as follows.

20. In regulation 8(2)(c) for “paragraph (2) of regulation 9”, substitute “paragraph (1)(c) of regulation 9”.

21.—(1) Amend regulation 26 as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (b) for “element” substitute “credit”; and

(b) in sub-paragraph (c) for “regulation 9(2)” substitute “regulation 9(1)(c)”.

(3) In paragraph (3)(c) for “regulation 9(2)” substitute “regulation 9(1)(c)”.

22. In regulation 33 after “relates” (in both cases where it occurs), add “or 30 days after the date of the notice, if later”.

(a) This regulation was amended by regulation 13 of S.I. 2003/701.

(b) S.I. 2002/2007.

(c) S.I. 2002/2008.

(d) 2002 c.16.

(e) 2002 c.14 (N.I.).

(f) S.I. 2002/2014.

4th November 2003

Nick Ainger
Derek Twigg
Two of the Lords Commissioners of the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend five sets of Tax Credit Regulations: namely

- (a) the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I.2002/2006),
- (b) the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005),
- (c) the Child Tax Credit Regulations 2002 (S.I. 2002/2007),
- (d) the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 (S.I. 2002/2008) and
- (e) the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014).

Regulation 1 provides for citation, commencement and effect.

Regulations 2 to 11 make further amendments to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006), which define income for the purposes of working tax credit and child tax credit under the Tax Credits Act 2002 (c. 21). The Tax Credits (Definition and Calculation of Income) Regulations 2002 were previously amended by the Tax Credits (Definition and Calculation of Income) (Amendment) Regulations 2002 (S.I. 2003/732).

Regulation 2 introduces amendments to the Regulations.

Regulation 3 amends the definition of “claim” in regulation 2.

Regulation 4 amends the formula used in regulation 3 for calculating a claimant’s income, to provide for the carrying forward of trading losses to future years, and to allow losses to be taken into account where the relief provisions of section 379A and 379B of the Income and Corporation Taxes Act 1988 (“The Taxes Act”) apply. It adds a third category of person to those whose foreign income is to be taken into account when making a tax credit claim. It also adds Extra Statutory Concession A9 (“ESC A9”) as a basis for deductible contributions for the purposes of calculating income.

Regulation 5 clarifies the scope of regulation 4 (employment income) and amends it to include any gain that is chargeable to income tax under Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1). It also adds categories of employment income that are to be disregarded for the purposes of income calculation, and makes some minor drafting changes.

Regulation 6 amends regulation 7 (social security income) to remove a reference to housing benefit supplement, a social security benefit that is no longer payable.

Regulation 7 amends regulation 8 to reflect the changes made to the student support system in England and Wales by the Education (Student Support) (No. 2) Regulations 2002 (S.I. 2002/3200) as amended by the Education (Student Support) (Amendment) Regulations 2003 (S.I. 2003/1065).

Regulation 8 amends regulation 10 (investment income) by adding the capital element of certain types of purchased life annuities to the table of tax credit disregards for the purpose of calculating investment income.

Regulations 9 and 10 amend regulation 11 (property income) and 12 (foreign income) so that losses to which the relief provisions of section 379A and 379B of the Taxes Act apply are taken into account in calculating property income and foreign income for tax credit purposes.

Regulation 11 amends regulation 19 (general disregards in the calculation of income) to reflect new legislative provisions in relation to foster care receipts, adoption allowances and community care payments made by local authorities.

Regulations 12 to 16 further amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, which were amended by the Working Tax Credit (Entitlement and Maximum

Rate) (Amendment) Regulations 2003 (S.I. 2003/701). Regulation 12 introduces the amendments to those Regulations.

Regulation 13 amends regulation 2 (interpretation) to limit the definition of “employed”.

Regulation 14 amends regulation 9 (disability element) to clarify the conditions of eligibility for the disability element of working tax credit. It also provides continuity of entitlement to the disability element in circumstances where a claimant’s entitlement may temporarily cease.

Regulation 15 amends regulation 14 so as to remove the upper age limit in respect of eligible childcare in England and Wales provided out of school hours by a school, on school premises or by a local authority, and reflects the definition of “child” set out in regulation 14(3).

Regulation 16 amends regulation 18 (50 plus element) to clarify the conditions for entitlement to the 50 plus element of tax credit.

Regulation 17 amends regulation 2 of the Child Tax Credit Regulations 2002 to clarify the definition of advanced education in Scotland.

Regulation 18 amends regulation 4 of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 to add state pension credit to the list of prescribed social security benefits for the purposes of section 7(2) of the Act.

Regulations 19 to 22 amend the Tax Credits (Claims and Notifications) Regulations 2002. Regulation 19 introduces the amendments to those Regulations.

Regulations 20 and 21 amend regulations 8 and 26 respectively, making minor corrections of a clerical and drafting nature.

Regulation 22 amends regulation 33 to provide for circumstances where notices under section 17 of the Act have been issued late.

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