Companies and directors – gainful self-employment: Guidance

Contents

Companies and directors

Universal Credit claimants trading through a limited company who are in a position similar to a sole trader, are treated as self-employed for Universal Credit purposes.

Any claimant trading through a limited company must attend a gateway interview. This includes claimants who:

- register their business as a company
- make themselves a director
- pay themselves as an employee of the company, through shares and dividends, or by other means

Some claimants do not need to attend a Gateway Interview and will not be considered for gainful self-employment See: Claimants not required to attend a Gateway Interview.

The gateway interview is used to determine the claimant:

- has very few shareholders, significant influence over the company and a significant say on the day to day running of the business
- effectively operates as a self-employed person carrying on a business of their own

If a claimant meets the above tests, they are self-employed for Universal Credit purposes and the work coach should determine if they are in gainful self-employment.

If they are, the minimum income floor or start-up period must be applied in the normal way.

For other gainfully self-employed claimants:

- business assets that are being used for trading and the value of the claimant’s shares in the company are ignored as capital
- business profit (net profit after allowable deductions) is treated as the claimant’s self-employed earnings
- pay as an employee or director of the company is separate, and may show on the Real Time Information feed, but should also be taken into account as employed earnings for Universal Credit

Claimants who trade through a limited company and are not in a position similar to a sole trader are employed earners for Universal Credit purposes. The earnings and capital of the business are not treated as their own and should not be reported as self-employed earnings.

Any pay as an employee or director will be taken into account as employed earnings, and any dividends they receive will be taken into account as capital.

Exceptions

Care is needed with the treatment of property businesses. The above rules only apply to a company which carries on a trade, such as a hotel or bed and breakfast. In these cases, the company structure is ignored and the usual gainful self-employment tests apply.

A company which just owns a small number of buy–to-lets or holiday properties that produce rental income is not carrying on a trade in tax legislation, and the above rules do not apply.

Some claimants may receive income from renting out rooms or properties on online platforms such as Airbnb, and this may be treated as self-employed earnings or capital depending on the circumstances. For more information, see ‘Income from rental properties (such as Airbnb)' in the Treatment of earnings guidance.

Special rules also apply to claimants with income paid to them:

- as a worker by an intermediary company
- from a managed service company

These workers are employees for Universal Credit and tax purposes.

A person who trades through a limited company which has a large number of shareholders would not meet the test of being a sole owner or one of few partners / shareholders and is an employee.

A person who owns shares in a company alongside a large number of other shareholders is an investor and Universal Credit capital rules would apply. See Treatment of capital.

As a Community Interest Company (CIC) requires the assets and profits of the company to be used to primarily benefit the community rather than the individual, claimants trading through a CIC cannot rightly be considered as in a position similar to a sole trader and should not be treated as self-employed for Universal Credit purposes.

Reporting income and earnings

A company director may pay themselves a salary using the Pay As You Earn (PAYE) system. All earnings processed through PAYE are reported automatically through the Real Time Information (RTI) feed.

Claimants must also declare any additional self-employed earnings generated by their business - on a cash-in and cash-out basis. This must be done at the end of each assessment period in exactly the same way as any other self-employed claimant. See Self-employed earnings.

Business deductions must be incurred reasonably, wholly and exclusively for the purpose of the business. See Self-employed earnings, permitted expenses.

Any money paid to the claimant as an employee or director of the company can be deducted from any net profits, so that it is not counted twice, as both PAYE and self-employed earnings.