

**2016 No. 1137**

**INCOME TAX**

**The Income Tax (Pay As You Earn) (Amendment No. 3)  
Regulations 2016**

*Made* - - - - 23rd November 2016  
*Laid before the House of Commons* 24th November 2016  
*Coming into force* - - 19th December 2016

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003(a), and now exercisable by them(b).

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2016 and come into force on 19th December 2016.

(2) Regulations 3 to 9 have effect for tax year 2017-18 and subsequent tax years.

**Amendment of the Income Tax (Pay As You Earn) Regulations 2003**

2. The Income Tax (Pay As You Earn) Regulations 2003(c) are amended as follows.

**Amendment of regulation 61A**

3. In regulation 61A (interpretation), for the definition of “specified benefit” substitute—

““specified benefit” means any benefit treated as earnings under any of the following provisions of Part 3 of ITEPA(d) (employment income: earnings and benefits etc. treated as earnings)—

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- (a) 2003 c. 1. Section 684 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) has been amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(1),(2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA”), section 94(3) of the Finance Act 2006 (c. 25), paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10), section 85(2) of the Finance Act 2011 (c. 11), section 225 of, and paragraph 5(4) of Schedule 1 to, the Finance Act 2012 (c. 14), section 17(2) of the Finance Act 2015 (c. 11), section 15 of the Finance Act 2016 (c. 24) and S.I. 2014/992.
- (b) The powers of the Board of Inland Revenue under section 684 of ITEPA were transferred to the Commissioners for Revenue and Customs by paragraph 102(2) of Schedule 4 to CRCA. Section 50(1) of that Act provides that, in so far as appropriate, in consequence of section 5 a reference in an enactment, instrument or other document to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (c) S.I. 2003/2682 (“the principal Regulations”); relevant amending instruments are S.I. 2015/1927, 2016/747.
- (d) ITEPA is defined in the principal Regulations as meaning the Income Tax (Earnings and Pensions) Act 2003.

- (a) section 87 (non-cash vouchers)(a) except where section 694 (non-cash vouchers: treated as payments of PAYE income) of ITEPA applies,
- (b) section 94 (credit-tokens) except where section 695 (credit-tokens: treated as payments of PAYE income) of ITEPA applies,
- (c) section 120 (car)(b),
- (d) section 149 (car fuel)(c),
- (e) section 154 (van)(d),
- (f) section 160 (van fuel)(e),
- (g) section 203 (employment-related benefit);”

#### **Amendment of regulation 61B**

4. In regulation 61B (PAYE: benefits in kind)—

- (a) in paragraph (2)(b), for “61K and 61L” substitute “61K, 61L and 61LA”, and
- (b) in paragraph (3), for “61K or 61L” substitute or “61K, 61L or 61LA”.

#### **Amendment of regulation 61D**

5. In regulation 61D(3) (deduction and repayments of tax: general rule), for “61K and 61L” substitute “61K, 61L and 61LA”.

#### **Amendment of regulation 61G**

6. In the heading to regulation 61G (method of calculating the cash equivalent of employment-related benefits), before “employment-related benefits” insert “non-cash vouchers, credit-tokens and”.

7. In regulation 61G(1)—

- (a) before “any” insert “a non-cash voucher, credit-token or”, and
- (b) for “section” substitute “sections 87, 94 or”.

#### **Amendment of regulation 61I**

8. In regulation 61I(2) (modification of the general rule: in-year adjustments: change to benefit during the year with effect from the date of change), in paragraph (a) of step 1 after “sections” insert “87, 94,”.

#### **Insertion of regulation 61LA**

9. After regulation 61L (modification of the general rule: failure to make good fuel benefit) insert—

##### **“Modification of the general rule: failure to make good benefit of credit-token**

**61LA.**—(1) This regulation applies where the specified benefit is a credit-token and the specified employee has not made all of the making good payments referred to in regulation

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- (a) Section 87 of ITEPA has been amended by paragraph 2(3) of Schedule 13 to the Finance Act 2004 (c. 12) and paragraph 50(2) of Part 7 of Schedule 39 to the Finance Act 2012.
  - (b) Section 120 of ITEPA has been amended by section 7 of the Finance Act 2016.
  - (c) Section 149 of ITEPA has been amended by section 58 of the Finance Act 2010 (c. 13).
  - (d) Section 154 of ITEPA has been amended by section 7 of the Finance Act 2016.
  - (e) Section 160 of ITEPA has been amended by paragraph 5 of Schedule 14 to the Finance Act 2004, section 58 of the Finance Act 2010 and section 10 of the Finance Act 2015.

61G(2)(b) before 1st June following the end of the tax year (“tax year 1”) in which the credit-token was used.

(2) Before making the first main relevant payment after 1st June in the following tax year (“the first main relevant payment in tax year 2”) the authorised employer must take the following steps—

*Step 1*

Calculate the outstanding taxable amount of the benefit of the credit-token used in tax year 1 by-

- (a) determining the cash equivalent of the benefit of the credit-token used in that tax year in accordance with section 94 ITEPA;
- (b) subtracting from that amount the cash equivalent of the benefit of the credit-token used as determined under step 1 of regulation 61I(2) as modified by regulation 61J(3) during that tax year.

*Step 2*

Add the amount obtained from step 1 to the first main relevant payment in tax year 2 and apply step 5 of regulation 61D(1) to that amount.

(3) Where this regulation applies regulation 61G(2)(b) does not apply in respect of credit-tokens used in tax year 2.”

**Amendment of regulation 87**

10. In regulation 87(4) (interpretation)—

- (a) at the beginning insert “In this regulation—”, and
- (b) for “Related” substitute “related”.

*Justin Holliday  
Nick Lodge*

23rd November 2016

Two of the Commissioners for Her Majesty’s Revenue and Customs

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the principal Regulations”) which make provision for the assessment, charge, collection and recovery of income tax in respect of pay as you earn income (“PAYE income”).

Chapter 3A (Benefits in Kind) of Part 3 of the principal Regulations, sets out a scheme to authorise employers to deduct tax from employees’ pay in respect of certain benefits in kind that they provide to their employees through PAYE.

Regulations 3 to 8 amend regulations 61A, 61B, 61D, 61G and 61I of the principal Regulations so that an employer can payroll the benefit of non-cash vouchers received, and credit-tokens used, by employees from 6 April 2017 onwards. An employer cannot voluntarily payroll the benefit of non-cash vouchers and credit-tokens where those benefits are treated as payments of PAYE income under sections 694 and 695 of the Income Tax (Earnings and Pensions) Act 2003.

Regulation 9 inserts new regulation 61LA to deal with situations where the employee has not paid the full amount expected to make good the cost of the credit-token by 1 June following the end of the tax year.

Regulation 10 amends regulation 87 of the principal Regulations to correct a minor error.

A Tax Information and Impact Note covering this instrument was published on 16 March 2016 alongside the draft clauses and explanatory notes for the Finance Bill 2016 and are available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

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