

2017 No. 1263

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment No. 2)
Regulations 2017**

<i>Made</i>	- - - -	<i>13th December 2017</i>
<i>Laid before the House of Commons</i>		<i>18th December 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2018</i>

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.

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2017 and come into force on 6th April 2018.

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

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

3. In regulation 61A(c) (interpretation)—

(a) before the definition of “authorised employer” insert—

““amount foregone” has the meaning given in section 69B(d) of ITEPA;”,

(b) after the definition of “making good payment” insert—

““optional remuneration arrangements” has the meaning given in section 69A(e) of ITEPA;”

“relevant amount” means the amount calculated in accordance with section 87A, 94A, 120A, 154A or 203A(f) of ITEPA, as the case may be;”, and

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- (a) 2003 c. 1. Section 684 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) has been relevantly 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) S.I. 2003/2682.
- (c) Regulations 61A to 61M were inserted by the Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015, S.I. 2015/1927.
- (d) Section 69B was inserted into ITEPA by paragraph 1 of Schedule 2 to the Finance Act 2017 (c. 10).
- (e) Section 69A was inserted into ITEPA by paragraph 1 of Schedule 2 to the Finance Act 2017 (c. 10).
- (f) Sections 87A, 94A, 103A, 120A, 121A, 149A, 154A, 160A and 203A were inserted into ITEPA respectively by paragraphs 5, 6, 15, 22, 23, 35, 37, 40 and 48 of Schedule 2 to the Finance Act 2017 (c. 10).

- (c) in the definition of “specified benefit”(a)—
- (i) after paragraph (a) insert—
 - “(aa) section 87A (benefit of non-cash voucher treated as earnings: optional remuneration arrangements),”
 - (ii) after paragraph (b) insert—
 - “(ba) section 94A (benefit of credit-token treated as earnings: optional remuneration arrangements),”
 - (iii) after paragraph (c) insert—
 - “(ca) section 120A (benefit of car treated as earnings: optional remuneration arrangements),”
 - (iv) after paragraph (d) insert—
 - “(da) section 149A (benefit of car fuel treated as earnings: optional remuneration arrangements),”
 - (v) after paragraph (e) insert—
 - “(ea) section 154A (benefit of a van treated as earnings: optional remuneration arrangements),”
 - (vi) after paragraph (f) insert—
 - “(fa)section 160A (benefit of van fuel treated as earnings: optional remuneration arrangements),”
 - (vii) after paragraph (g) insert—
 - “(ga) section 203A (employment-related benefit provided under optional remuneration arrangements);”
- 4.** In regulation 61D (deduction and repayments of tax: general rule) in paragraph (1) Step 1—
- (a) after the first occurrence of “cash equivalent” insert “, the relevant amount or amount foregone in respect”, and
 - (b) after the second occurrence of “cash equivalent” insert “, the relevant amount or amount foregone in respect”.
- 5.** In regulation 61E (method of calculating the cash equivalent of the benefit of a car or van)—
- (a) in the heading, after “cash equivalent” insert “or relevant amount in respect”, and
 - (b) in paragraph (1) for the words “of that benefit” to “(cash equivalent of the benefit)” substitute “or relevant amount is calculated in accordance with section 121, 121A, 154A or 155 of ITEPA”.
- 6.** In regulation 61F (method of calculating the cash equivalent of the benefit of fuel)—
- (a) in the heading after “cash equivalent” insert “or amount foregone in respect”, and
 - (b) in paragraph (1) for the words “of that benefit” to “cash equivalent)” substitute “or amount foregone in respect of that benefit is calculated in accordance with section 149A, 150, 160A or 161 of ITEPA”.
- 7.** In regulation 61G(b) (method of calculating the cash equivalent of non-cash vouchers, credit-tokens and employment-related benefits)—
- (a) in the heading after “cash equivalent” insert “or relevant amount”, and

(a) The definition of “specified benefit” was substituted by the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2016, S.I. 2016/1137.

(b) Regulation 61G words in heading and paragraph (1) were inserted and substituted by the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations, S.I. 2016/1137.

(b) in paragraph (1) for the words “cash equivalent” to “as earnings).” substitute “cash equivalent or relevant amount of the specified benefit is to be calculated in accordance with section 87, 87A, 94, 94A, 203 or 203A of ITEPA, as the case may be.”.

8. In paragraph (2) of regulation 61H (modification of the general rule: cessation of employment but continuing benefit)—

- (a) after the first occurrence of “cash equivalent” in Step 2 insert “, relevant amount or amount foregone”, and
- (b) after each subsequent occurrence of “cash equivalent” in Steps 2 and 4 insert “, relevant amount or amount foregone in respect”.

9. In regulation 61I (modification of the general rule: in-year adjustments: change to the benefit during the year with effect from the date of the change)—

- (a) in paragraph (1) after “cash equivalent” insert “, relevant amount or amount foregone in respect”, and
- (b) in paragraph (2) Step 1—
 - (i) after the first occurrence of “cash equivalent” insert “, relevant amount or amount foregone in respect”,
 - (ii) in Step 1(a) for the words “cash equivalent” to “of ITEPA” substitute “cash equivalent, relevant amount or amount foregone in respect of the specified benefit that has been provided in the tax year, in accordance with section 87, 87A, 94, 94A, 121, 121A, 149A, 150, 154A, 155, 160A, 161, 203 or 203A of ITEPA”,
 - (iii) in Step 1(b) after “cash equivalent” insert “, relevant amount or amount foregone in respect”, and
 - (iv) in Step 3 after “cash equivalent” insert “, relevant amount or amount foregone in respect”.

10. In regulation 61J (modification of the general rule: in-year adjustments: change to the benefit during the year with effect from the start of tax year and other changes)—

- (a) in paragraph (1) after each occurrence of “cash equivalent” insert “, relevant amount or amount foregone in respect”,
- (b) in paragraph (3) after each occurrence of “cash equivalent” insert “, relevant amount or amount foregone”, and
- (c) in paragraph (4) after “cash equivalent” insert “, relevant amount or amount foregone in respect”.

11. In regulation 61K (modification of the general rule: making good)—

- (a) in paragraph (2) after “cash equivalent” insert “, relevant amount or amount foregone in respect”, and
- (b) in paragraph (3) after “cash equivalent” insert “, relevant amount or amount foregone in respect”.

12. In regulation 61LA(a) (modification of the general rule: failure to make good benefit of credit-token) in paragraph (2)—

- (a) after each occurrence of “cash equivalent” in Step 1 insert “or relevant amount”, and
- (b) after “section 94” insert “or 94A”.

13. In regulation 61M (information to specified employees) in paragraph (1)(b) after “cash equivalent” insert “, relevant amount or amount foregone in respect”.

14. In regulation 86 (information employer must provide for each employee)—

(a) Regulation 61LA was inserted by the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2016, S.I. 2016/1137.

- (a) in paragraph (1)—
 - (i) in sub-paragraph (c) for the words “section” to “as earnings” substitute “section 87(1) (benefit of non-cash voucher treated as earnings) or 87A(1) (benefit of non-cash voucher treated as earnings: optional remuneration arrangements) of ITEPA”,
 - (ii) in sub-paragraph (d) for the words “section” to “as earnings” substitute “section 94(1) (benefit of credit-token treated as earnings) or 94A(1) (benefit of credit-token treated as earnings: optional remuneration arrangements) of ITEPA”, and
 - (iii) in sub-paragraph (f) for the words “section” to “as earnings” substitute “section 102 (benefit of living accommodation treated as earnings) or 103A (accommodation provided pursuant to optional remuneration arrangements: relevant amount) of ITEPA;”,
- (b) in paragraph (3)—
 - (i) substitute the words “577(1) of ICTA” with “356(1) of ITEPA”, and
 - (ii) after “inclusion” omit the words “as mentioned in section 577(1)(a) of that Act”.

15. In regulation 89 (annual return of other earnings: exclusion for notional payments) for the words “required under regulation 73” substitute “required under regulation 67B (real time returns of information about relevant payments)”.

16. In regulation 90 (quarterly return if a car becomes available or unavailable (form P46 (Car))—

- (a) in paragraph (1) for the words “section” to “treats” substitute “section 120 (benefit of car treated as earnings) or 120A (benefit of a car treated as earnings: optional remuneration arrangements) of ITEPA treat”, and
- (b) for the words in paragraph (3)(d) substitute “any provisional sum as calculated pursuant to section 121A(1) of ITEPA;”.

17. For paragraph 22B(a) of Schedule A1(b) (real time returns) substitute—

“**22B.**—(1) If applicable, an indication that comprised within the payment is an amount treated as a payment of PAYE income under regulation 61B (PAYE: benefits in kind) and, if so, the amount of the specified benefit in respect of which tax has been deducted.

(2) If the benefit is a car—

- (a) in the first return in which the benefit of the car is included as a relevant payment, the following information in relation to that car—
 - (i) the make and model of the car,
 - (ii) if the car is a car with a CO2 emission figure within section 134(1) of ITEPA, the car’s CO2 emission figure determined by section 135, 136, 137 or 138 of ITEPA, as the case may be,
 - (iii) the type of fuel or power the car uses,
 - (iv) the calculated price of the car,
 - (v) the cash equivalent of the car or amount foregone in respect of the car, determined under regulation 61E and either section 121 or 121A of ITEPA, as the case may be,
 - (vi) the date on which the car was first made available,
 - (vii) the cash equivalent or the amount foregone in respect of any fuel provided for the car, determined under regulation 61F and either section 149A or 150 of ITEPA as the case may be, and
 - (viii) the date on which fuel has been provided for the car,

(a) Paragraph 22B was inserted by the Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015, S.I. 2015/1927.
 (b) Schedule A1 was inserted by the Income Tax (Pay As You Earn) (Amendment) Regulations 2012, S.I. 2012/822.

- (b) if the car ceases to be available, in the next return following the cessation, the date the car became unavailable,
- (c) if fuel has been provided for the car and ceases to be provided, in the next return following the cessation, the date the fuel ceased to be provided, and
- (d) where an employer becomes aware of an inaccuracy in a return submitted under sub-paragraphs (a) to (c) above, the employer must provide the correct information in the next return for that tax year.

(3) In this paragraph—

“amount foregone” has the meaning given in section 69B(a) of ITEPA,

“available” is to be read in accordance with section 116(1) of ITEPA (meaning of when a car or van is available to an employee),

“calculated price of the car” and “cash equivalent” are to be read in accordance with section 121 of ITEPA (method of calculating the cash equivalent of the benefit of a car), and

“unavailable” is to be read in accordance with section 143(2) of ITEPA (deduction for periods when car unavailable).”.

Justin Holliday
Angela MacDonald

13th December 2017

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE regulations”)—

- so the taxable amount due in respect of optional remuneration arrangements and salary sacrifice arrangements, where a specified benefit is chosen instead of a cash payment and as listed in section 69A of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) can be calculated in accordance with Chapter 3A of the PAYE regulations;
- so employers can report car data information to Her Majesty’s Revenue and Customs (“HMRC”) through PAYE Real Time Information Returns in respect of cars provided to employees as benefits in kind where the employer is voluntarily payrollrolling.

Regulation 3(a) and (b) inserts new definitions into regulation 61A (interpretation): “amount foregone”, “optional remuneration arrangements” and “relevant amount”.

Regulation 3(c) amends the definition of “specified benefit” in regulation 61A by the insertion of new sub-paragraphs (aa), (ba), (ca), (da), (ea), (fa) and (ga). The effect of this amendment is to extend this definition to include a specified benefit which is provided through optional remuneration arrangements. The consequence of this amendment is that employers are obliged to calculate any taxable amount due on a relevant specified benefit in accordance with Chapter 3A of the PAYE regulations.

Regulations 4 to 13 make a number of consequential amendments which relate to the calculation of taxable amounts due on a specific benefit that employers provide through optional remuneration arrangements. In particular—

- regulation 61D is amended to make provision for a specified benefit provided through optional remuneration arrangements to be subject to the general rules of taxation and deduction in accordance with Chapter 3A of the PAYE regulations;

(a) Section 69B was inserted into ITEPA by paragraph 1 of Schedule 2 to the Finance Act 2017 (c. 10).

- regulation 61E is amended to enable the calculation of the taxable amount to be paid on a specified benefit that consists of a car or van that is provided by an employer through optional remuneration arrangements;
- regulation 61F is amended to enable the calculation of the taxable amount to be paid on a specified benefit that consists of fuel provided by an employer through optional remuneration arrangements;
- regulation 61G is amended to enable the calculation of employment-related benefits provided by employers through optional remuneration arrangements as defined by section 203A of ITEPA;
- regulation 61H is amended to make provision for the calculation of specified benefits provided through optional remuneration arrangements in circumstances where an employer continues to provide a specified benefit after the cessation of employment;
- regulation 61I is amended to make provision for the calculation of in-year adjustments of specified benefits that are provided through optional remuneration arrangements that occur during a tax year;
- regulation 61J is amended to make provision for the calculation of in-year adjustments in respect of any change to a specified benefit that is provided through optional remuneration arrangements with effect from the start of a tax year;
- regulation 61K is amended to make provision for a making good payment to be calculated in respect of a specified benefit that is provided through optional remuneration arrangements;
- regulation 61LA is amended to make provision that the general rule applied to the failure to make good in respect of a credit-token includes a credit-token provided through optional remuneration arrangements; and
- regulation 61M is amended to enable an employer to include information in respect of a specified benefit provided through optional remuneration arrangements in end of year statements provided to employees.

Regulation 14 amends regulation 86 to extend the regulation's application to information about a specific benefit provided under section 87A, 94A or 103A of ITEPA.

Regulation 15 makes a consequential amendment to regulation 89 which substitutes regulation 67B for regulation 73 of the PAYE regulations.

Regulation 16 amends regulation 90 to extend the regulation's application to a specified benefit provided under section 120A or 121A of ITEPA.

Regulation 17 substitutes paragraph 22B of Schedule A1 to the PAYE regulations. New sub-paragraph (2)(a) introduces a mandatory requirement that employers provide the data as specified by that paragraph.

New paragraphs 22B(2)(b) and 22B(3) specify information that must be provided by employers from 6th April 2018 both in respect of any cars made available on that date and for cars provided for the first time after that date; in particular—

- new paragraph 22B(2)(b) requires employers to report when a car provided as a benefit in kind to an employee becomes unavailable in the next return following the date that the provision of the car in question ceased;
- new paragraph 22B(2)(c) requires employers to report the date on which any fuel ceases to be provided in the next return following the date that the provision of fuel in question ceased;
- new sub-paragraph 22B(2)(d) requires employers to correct any inaccuracies discovered by them in the next return for the tax year in question; and
- new paragraph 22B(3) sets out definitions of terms used in paragraph 22B.

A Tax Information and Impact Note covering Regulations 3 to 13 of this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

A Tax Information and Impact Note covering regulation 17 of this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

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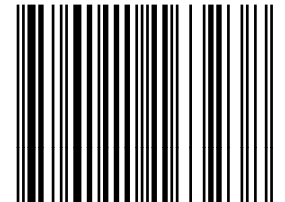
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