STATUTORY INSTRUMENTS

2015 No. 1927

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015

Made - - - -	*23rd November 2015*
Laid before the House of Commons - - - -	*23rd November 2015*
Coming into force - -	*14th December 2015*

These Regulations are made by the Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred by section 113(1) of the Taxes Management Act 1970(**1**), section 133(1) of the Finance Act 1999(**2**) and section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003(**3**), and now exercisable by them(**4**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015 and come into force on 14th December 2015.

(2) Regulations 4 and 5 have effect in relation to relevant payments(**5**) made in the tax year 2016-17.

(3) Regulations 7(a), 7(b), 8, 10, 11, 12, 13, and 14(b) have effect in relation to any returns and information provided for the tax year 2016-17 and subsequent tax years.

(4) Regulations 6, 7(c), 9 and 14(a) have effect in relation to specified benefits(**6**) provided on or after 6th April 2016.

(**1**) 1970 c. 9.
(**2**) 1999 c. 16.
(**3**) 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) and S.I. 2014/992.
(**4**) 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. The functions of the Board of Inland Revenue under section 113(1) of the Taxes Management Act 1970 and section 133 of the Finance Act 1999 were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of 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.
(**5**) Relevant payments are defined by regulation 4 of S.I. 2003/2682.
(**6**) Specified benefit is defined by regulation 61A, inserted by regulation 6 of these Regulations.

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

2. The Income Tax (Pay As You Earn) Regulations 2003(**7**) are amended as provided for in regulations 3 to 14.

3. In regulation 2 (interpretation)(**8**) omit the definition of "Scottish rate".

4. In regulation 4 (relevant payments)—

(a) omit sub-paragraph (1)(d);

(b) in paragraph (2) omit the definition of "excluded business expenses".

5. Omit regulation 5 (excluded business expenses).

6. In Part 3 (deduction and repayment of tax) after Chapter 3 (new pensioners: forms P45 and P46) insert—

"CHAPTER 3A

BENEFITS IN KIND

Interpretation

61A. In this Chapter—

"authorised employer" has the meaning given by regulation 61C;

"main relevant payment" means the relevant payment normally made to the specified employee at regular intervals of a week or more;

"making good payment" means the payment referred to in regulation 61E(2) or 61G(2)(b);

"specified benefit" means any benefit treated as earnings under Chapter 6 (cars, vans and related benefits) or Chapter 10 (residual liability to charge) of Part 3 of ITEPA(**9**) (employment income: earnings and benefits etc. treated as earnings);

"specified employee" means an employee to whom an authorised employer provides a specified benefit;

"Taxable Amount of the Benefit" has the meaning given in regulation 61D(1).

PAYE: benefits in kind

61B.—(1) This Chapter applies where during a tax year an authorised employer provides a specified benefit to a specified employee.

(2) Where this Chapter applies—

(**7**) S.I. 2003/2682 ("the principal Regulations"); relevant amending instruments are 2007/1077, 2007/2969, 2008/2601, 2009/588, 2012/822, 2013/521, 2014/472, 2014/2689, 2015/2 and 2015/1667.

(**8**) Regulation 2 has been relevantly amended by S.I. 2015/1667.

(**9**) ITEPA is defined in the principal Regulations as meaning the Income Tax (Earnings and Pensions) Act 2003. Chapter 6 of Part 3 of ITEPA has been amended by s138(4) of the Finance Act 2003 (c. 14); Schedule 14 and Schedule 42 to the Finance Act 2004 (c. 12); section 59 of the Finance Act 2006 (c. 25); section 54 of, and Schedule 28 to, the Finance Act 2009 (c. 10); section 58 and section 59 of the Finance Act 2010 (c. 13); section 51(1) of the Finance Act 2011 (c. 11); section 14 and section 17(1) of the Finance Act 2012 (c. 14); SI 2012/266; section 23 of the Finance Act 2013; section 23(1), section 24 and section 25 of the Finance Act 2014 (c. 26) ("FA 2014"); SI 2014/2896 and sections 7, 8, 9(1), 10 and 13 of, and Schedule 1 to, the Finance Act 2015 (c. 11) ("FA 2015"). The amendments made to Chapter 6 of Part 3 of ITEPA by: section 24 of FA 2014 and section 13 of, and Schedule 1 to, FA 2105 have effect for the tax year 2016-17 and subsequent tax years; section 7 of FA 2015 have effect for the tax year 2017-18 and subsequent tax years; and section 8 of FA 2015 have effect for the tax year 2018-19 and subsequent tax years. Chapter 10 of Part 3 of ITEPA has been amended by section 17 of the Finance Act 2005 (c. 2); paragraphs 584 and 590 of Schedule 1 to the Taxation (International and Other Provisions) Act 2010 (c. 5) and paragraphs 297 to 299 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(a) the specified benefit is to be treated as a payment of PAYE income for the purposes of these Regulations; and

(b) any reference (howsoever expressed) in these Regulations to relevant payment includes an amount in respect of the provision of a specified benefit, such amount to be determined in accordance with regulations 61D, 61H, 61I, 61J, 61K and 61L, as the case may be;

but this is subject to paragraph (3).

(3) An amount determined in accordance with regulation 61D, 61H, 61I, 61J, 61K or 61L, as the case may be, is not to be included as a relevant payment for the purpose of calculating whether the deduction of tax would exceed the overriding limit(**10**).

Authorised employer

61C.—(1) An employer is an authorised employer in respect of a specified employee for a tax year for the purposes of this Chapter if—

(a) HMRC has authorised that employer to make—

(i) deductions of income tax in respect of the provision of a specified benefit from payments which that employer actually makes of, or on account of, PAYE income of that employee; or

(ii) repayments of such income tax; and

(b) such authorisation has not been withdrawn.

(2) An employer will be authorised by HMRC if the conditions set out in paragraph (3) are met.

(3) The conditions are that—

(a) before the start of the tax year the employer has made an application for authorisation in respect of one or more specified employees to HMRC; and

(b) such an application identifies the specified benefit or benefits that will be provided to the specified employees.

(4) But in cases falling within paragraph (5), an employer may make an application for authorisation in respect of one or more specified employees during a tax year.

(5) The cases are that—

(a) a specified benefit or benefits is to be provided to the specified employees referred to in the application for the first time during the tax year;

(b) a specified benefit or benefits is to be provided to an employee upon commencement of employment and the employer is already an authorised employer for the purposes of this Chapter; or

(c) the application made before the start of the tax year contained an error.

(6) If during the tax year an authorised employer notifies HMRC that the application for authorisation is withdrawn in respect of the specified employees identified in the notification, then the employer will cease to be an authorised employer in respect of those specified employees from the end of the tax year in which that notice is given.

(7) But in cases falling within paragraph (8), where an authorised employer notifies HMRC the application for authorisation is withdrawn in respect of the specified employees identified in the notification, then the employer will cease to be an authorised employer in respect of those employees from the date that the notification is received by HMRC.

(**10**) Overriding limit is defined by regulation 2 of the principal Regulations. The definition was substituted by S.I. 2014/2689.

(8) The cases are—

(a) the relevant payment actually made to the specified employee named in the withdrawal notification will be insufficient to enable the authorised employer to deduct the full amount of tax due in respect of the relevant payment;

(b) that during the tax year the authorised employer stops providing a specified benefit or benefits to the specified employees identified in the withdrawal notification and the Revised Taxable Amount of the Benefit provided is nil; or

(c) the application made before the start of the year contained an error.

(9) Any application or notice must be made to HMRC using an approved method of electronic communication(**11**) unless the employer is one to whom regulation 67D applies.

(10) For the purposes of this regulation, "Revised Taxable Amount of the Benefit" means the result of the calculation at step 3 of regulation 61I(2), as applied by regulation 61J(2).

Deduction and repayments of tax: general rule

61D.—(1) Where this Chapter applies an authorised employer must take the following steps—

Step 1

Before making the first main relevant payment to a specified employee in a tax year, the cash equivalent of the specified benefit or benefits to be provided in that tax year must be determined in accordance with regulation 61E, 61F or 61G (methods of calculating the cash equivalent of specified benefits), as the case may be.

Step 2

Determine the number of main relevant payments to be made to the specified employee in that tax year.

Step 3

Divide the amount obtained from step 1 by the number obtained from step 2.

The resulting amount is the Taxable Amount of the Benefit.

Step 4

Add the Taxable Amount of the Benefit to the first main relevant payment.

Step 5

Deduct or repay tax on the amount obtained at step 4 in accordance with these Regulations by reference to the employee's code if the employer has one for the employee, even if the code is the subject of an objection or appeal.

(2) On making any subsequent main relevant payment in the tax year the authorised employer must add the Taxable Amount of the Benefit to that payment and apply step 5 of paragraph (1) to that amount.

(3) This regulation is subject to regulations 61H, 61I, 61J, 61K and 61L (modifications to the general rule).

(**11**) Approved method of electronic communications is defined by regulation 189 of the principal Regulations.

Method of calculating the cash equivalent of the benefit of a car or van

61E.—(1) Where the specified benefit is the provision of a car or a van the cash equivalent of that benefit is calculated in accordance with section 121 or 155 of ITEPA (cash equivalent of the benefit)(**12**), as the case may be.

(2) For the purposes of paragraph (1), the authorised employer may take into account payments that the specified employee is required to make in the tax year as a condition of the car or van being available for that employee's private use.

Method of calculating the cash equivalent of the benefit of fuel

61F.—(1) Where the specified benefit is the provisions of car fuel or van fuel the cash equivalent of that benefit is calculated in accordance with section 150 or 161 of ITEPA (car fuel and van fuel: cash equivalent)(**13**), as the case may be.

(2) For the purposes of paragraph (1), the authorised employer may take into account payments that the specified employee is required to make during the tax year in connection with the provision of fuel for that employee's private use.

Method of calculating the cash equivalent of employment-related benefits

61G.—(1) Where the specified benefit is any employment-related benefit(**14**) the cash equivalent of the specified benefit is to be calculated in accordance with section 203 of ITEPA (cash equivalent of benefit treated as earnings).

(2) For the purposes of paragraph (1), the authorised employer may make reasonable assumptions about—

(a) the cost of a specified benefit to be incurred in a tax year where the cost is not known at the start of the tax year; and

(b) payments that a specified employee is expected to make in the tax year to make good any part of the cost incurred in providing the benefit to that employee.

Modification of the general rule: cessation of employment but continuing benefit

61H.—(1) This regulation applies instead of regulation 61D(2) if during a tax year the employment of a specified employee ceases but the authorised employer continues to provide the specified benefit to that employee.

(2) Before the employment ceases the authorised employer must take the following steps —

Step 1

Determine at that time the number of remaining main relevant payments to be made in the employment.

Step 2

If the cost to the authorised employer of the specified benefit has changed, redetermine the cash equivalent in accordance with regulations 61E, 61F or 61G, as the case may be, otherwise the cash equivalent of the specified benefit is that previously determined for the tax year under step 1 of regulation 61D(1).

(**12**) Section 121 has been amended by section 54(3) of, and Schedule 28 to, the Finance Act 2009 and SI 2012/266. Section 155 has been amended by paragraph 5 of Schedule 14 to the Finance Act 2004 and section 10(2) of the Finance Act 2015.
(**13**) Section 150 has been amended by S.I. 2014/2896. Section 161 has been amended by paragraph 5 of Schedule 14 to the Finance Act 2004.
(**14**) Employment-related benefit is defined by section 201 of ITEPA.