
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 4

PAYMENTS, RETURNS AND INFORMATION

CHAPTER 2

OTHER RETURNS AND INFORMATION

Returns involving PAYE income other than payments

Employers: annual return of other earnings (Forms P11D and P9D)

85.—(1) Before 7th July following the end of a tax year, the employer must provide the Inland Revenue—

- (a) with the information listed in regulation 86 for each employee, and
- (b) with the additional information listed in regulation 87 for each employee whose employment is subject to the benefits code.

(2) At the same time and in the same manner as the employer provides that information, the employer must also provide a declaration stating that—

- (a) all information required to be provided has been provided, and
- (b) the information is complete and accurate to the best of the employer's knowledge and belief.

(3) For the purposes of this regulation an employment is "subject to the benefits code" if, for the purposes of the benefits code in ITEPA, it is a taxable employment under Part 2 of ITEPA (as defined by section 66(3) of ITEPA) which is not an excluded employment under section 216(1) of ITEPA (lower-paid employment and certain types of company director).

Information employer must provide for each employee

86.—(1) Particulars of the following information must be provided in the case of each employee—

- (a) any earnings which the employee receives from the employer or related third party otherwise than in money, including the amount of those earnings;
- (b) any payments made on behalf of the employee by the employer or related third party and not repaid, including the amounts;
- (c) any non-cash voucher provided by the employer or related third party by reason of which the employee is treated by section 87(1) of ITEPA (benefit of non-cash voucher treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;

- (d) any use of a credit-token provided by the employer or related third party by reason of which the employee is treated by section 94(1) of ITEPA (benefit of credit-token treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;
 - (e) the due amount in respect of any notional payment where that amount is treated by section 222 of ITEPA(1) (payments on account of tax where deduction not possible) as earnings of the employee received in that tax year;
 - (f) any living accommodation which has been provided for the employee or a member of the employee's family or household by the employer or related third party, including the amount that is treated as earnings for that tax year by section 102 of ITEPA (benefit of living accommodation treated as earnings);
 - (g) any earnings consisting of the amount by which the value of the exemption under subsection (2) of section 287 of ITEPA (limit on exemption of removal expenses and removal benefits) exceeds the limit specified in subsection (1) of that section and having effect in relation to the employee.
- (2) Particulars of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies are required—
- (a) only under paragraph (1)(g), and
 - (b) only to the extent that they exceed the limit in section 287(1) of ITEPA which applies to the change of residence of the employee in question.
- (3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA(2), the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.
- (4) "Related third party" means a person making payments or providing benefits to an employee, if the making or provision of the payments or benefits by that person has been arranged, guaranteed or in any way facilitated by the employer.

Information employer must also provide for benefits code employees

- 87.—(1) Particulars of the following information must also be provided in the case of each employee whose employment is subject to the benefits code—
- (a) any payments made by the employer or related third party to the employee by reason of the employment in respect of expenses;
 - (b) any sums put by the employer or related third party at the disposal of the employee by reason of the employment and paid away by the employee;
 - (c) any benefits provided by the employer or related third party for the employee such as give rise to any amount treated by Chapters 6 to 10 of Part 3, and section 223, of ITEPA(3) (cars and vans, loans, shares, other benefits and payments on account of director's tax) as earnings of the employee received in that tax year, including the amount of those earnings.
- (2) Particulars are not required under paragraph (1) of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies (as to which see regulation 86(2)).

(1) Section 222 was amended by section 144 of the Finance Act 2003 (c. 14).

(2) Section 577 was amended by Part 4 of Schedule 14 to the Finance Act 1988 (c. 39), paragraph 1 of Schedule 7 and Part 3(4) of Schedule 27 to the Finance Act 1998 (c. 36), paragraph 51 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), section 73 of the Finance Act 2001 (c. 9) and paragraph 62 of Schedule 6 to ITEPA.

(3) Relevant amendments were made to Chapters 8 and 9 of Part 3 of ITEPA by paragraphs 22 and 23 of Schedule 22 to the Finance Act 2003 (c. 14).

(3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA, the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.

(4) “Related third party” has the meaning given in regulation 86(4).

(5) Regulation 85(3) (meaning of employment “subject to benefits code”) applies for the purposes of this regulation.

Annual return of other earnings: amounts

88.—(1) Paragraph (2) applies if an employer is required by regulations 85 to 87 to provide an amount which is or is treated as earnings.

(2) The employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer’s possession or otherwise available to the employer, are authorised or required by Part 3 of ITEPA (earnings and benefits etc treated as earnings).

Annual return of other earnings: exclusion for notional payments

89. The employer is not required to provide particulars in the return under regulation 85 of any notional payment which is a relevant payment made by the employer to the employee (as particulars of it may be required under regulation 73 or 74 (annual returns of relevant payments)).

Quarterly return if a car becomes available or unavailable (Form P46 (Car))

90.—(1) This regulation applies if—

- (a) section 120 of ITEPA (benefit of car treated as earnings) treats the benefit of a car as giving rise to an amount as earnings of an employee received in a tax year, and
- (b) one or more of the following occurs in a tax quarter—
 - (i) the car becomes available;
 - (ii) the car becomes unavailable;
 - (iii) the car is available and the employee’s employment becomes subject to the benefits code (as defined by regulation 85(3)).

(2) The employer must provide the Inland Revenue with the following information in respect of the employee not later than 28 days after the end of the tax quarter.

(3) The information is—

- (a) the employee’s name,
- (b) the employee’s national insurance number, if known,
- (c) details of the car in question,
- (d) the interim sum determined at step 4 of section 121(1) of ITEPA (method of calculating cash equivalent of benefit of a car),
- (e) any capital sum contributed by the employee to expenditure on the provision of the car or on any qualifying accessory which is taken into account in so determining the interim sum in respect of the car,
- (f) any amount which, as a condition of the car being available for the employee’s private use, the employee is required to pay in the tax year concerned for that use (whether by way of deduction from relevant payments or otherwise),
- (g) whether any fuel is provided for private use.

(4) In this regulation—

“available” and “unavailable” are to be read in accordance with sections 116(1) and 143(2) of ITEPA (meaning of when car is available and unavailable to employee);

“qualifying accessory” has the meaning given in section 125 of ITEPA (meaning of accessory etc).

Termination awards: information to be provided

91.—(1) Before 7th July following the end of the tax year, an employer must, in respect of each employee who received a termination award, provide the Inland Revenue with the information specified in paragraph (3) relating to that award.

(2) “Termination award” means an award consisting of payments combined with other benefits, or consisting solely of other benefits—

- (a) which were awarded in that tax year in connection with the termination of the employee’s employment with the employer, or any change in the duties of or earnings from that employment,
- (b) which when provided (whether in that or a subsequent tax year) would constitute payments and other benefits received to which Chapter 3 of Part 6 of ITEPA applies (payments and benefits on termination of employment etc), and
- (c) the total amount of which is estimated by the employer to exceed £30,000, when aggregated with other payments and other benefits provided or to be provided (whether in that or a subsequent tax year) in respect of the same person as mentioned in section 404(1) of ITEPA (aggregation of payments in respect of other related employments).

(3) The information to be provided is—

- (a) the total amount of the payments and other benefits awarded;
- (b) the total amount of the payments made in that tax year in connection with the award;
- (c) details of the non-cash benefits provided in that tax year in connection with the award, other than benefits previously contained in a return for that tax year under regulation 85, and the total amount of their amounts calculated in accordance with section 415(2) of ITEPA (valuation of benefits);
- (d) the estimated total number of the tax years in which payments and non-cash benefits are to be provided in connection with the award and, if the duration of any of those payments and non-cash benefits is capable of being reduced in certain circumstances, details of those circumstances;
- (e) the estimated total amount of the payments to be made in subsequent tax years in connection with the award;
- (f) a description of each of the other benefits to be provided in subsequent tax years in connection with the award, and the terms of their provision.

(4) In calculating the cash equivalents of non-cash benefits for the purposes of this regulation, the employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer’s possession or otherwise available to the employer, are authorised or required by any of the provisions of the benefits code as applied by section 415 of ITEPA.

(5) In calculating the total amount of payments and other benefits for the purposes of paragraphs (2)(c) and (3)(a), the employer—

- (a) must have regard to the provisions of Chapter 3 of Part 6 of ITEPA,
- (b) must take into account the matters referred to in paragraph (3)(d),(e) and (f), and

(c) in valuing the amount of non-cash benefits for future tax years in connection with the award, must assume that the provisions of ITEPA relating to those benefits will remain unchanged with respect to those years.

(6) Information required to be provided by an employer in accordance with paragraphs (1) and (3) may be provided after the termination award is made but before the end of the tax year in which it is made.

(7) If information is provided in accordance with paragraph (6), paragraph (3)(b) and (c) have effect, so far as concerns the providing of information relating to the tax year, as if they required the amounts and benefits there specified to be estimated by the employer as accurately as possible.

(8) This regulation is subject to regulation 93 (return if more than one employer).

(9) In this regulation and regulations 92, 93 and 96 (further provisions about termination awards)

“employee” includes a former employee; and

“employer” includes a former employer.

Termination awards: return if award changes

92.—(1) Paragraph (3) applies if—

(a) information has not been provided by the employer under regulation 91(1) solely because either—

(i) the total amount of payments and other benefits awarded in the tax year in respect of the employee is estimated in accordance with regulation 91(2)(c) not to exceed £30,000, or

(ii) the award made in the tax year consisted of payments only, and

(b) there is a change in the award in a subsequent tax year.

(2) “Change in the award” means—

(a) that there is a change in—

(i) the amount of the payments awarded, or

(ii) the nature and amounts of the other benefits awarded,

so that the total amount of those payments and other benefits is estimated in accordance with regulation 91(2)(c) to exceed £30,000; or

(b) that the nature of the award is changed so that it consists—

(i) of payments combined with other benefits, or

(ii) solely of other benefits,

estimated in accordance with regulation 91(2)(c) to exceed £30,000.

(3) The employer must, before 7th July following the tax year in which the change in the award occurred, provide the Inland Revenue with the information specified in regulation 91(3) with respect to those payments and other benefits.

(4) Paragraph (5) applies if, after the employer has provided information in accordance with regulation 91(1) or paragraph (3) above, there is a material change—

(a) in the amount of the payments awarded, or

(b) in the nature and amounts of the other benefits awarded,

in relation to the employee.

(5) The employer must, before 7th July following the end of the tax year in which the material change occurred, give details of the material change to the Inland Revenue.

(6) For the avoidance of doubt, an employer is not required to provide details under this regulation of a change which arises solely because of amendments to the provisions of ITEPA which relate to non-cash benefits.

(7) This regulation is subject to regulation 93 (return if more than one employer).

Termination awards: return if more than one employer

93.—(1) This regulation applies if the payments and other benefits aggregated in accordance with regulation 91(2)(c) include amounts in respect of different employments with more than one employer.

(2) The person who must provide information to the Inland Revenue under regulation 91 or 92, or to the employee under regulation 96, is the employer providing the greatest amount of payments and other benefits so aggregated.

Information to be given to employees

Employers: information to employees of other earnings (Forms P11D and P9D)

94.—(1) Before 7th July following the end of a tax year, the employer must give a statement to every current employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for that tax year.

(2) The statement must contain the particulars provided under regulations 86 and 87 in so far as they relate to the employee.

(3) If a person who was a current employee ceases to be an employee at any time before 7th July following the end of the tax year, the statement is given to the employee if it is sent or delivered to, or left at, that person's usual or last known address.

(4) A former employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for a tax year may by notice require the employer to give the statement specified in paragraph (2) to that former employee—

- (a) before 7th July following the end of the tax year, or
- (b) within 30 days of receiving the notice,

whichever is the later.

(5) The notice may be given to the employer at any time up to 3 years after the end of the tax year.

(6) A former employee who has received a statement from the employer under paragraph (4) in respect of a tax year may not require a further statement from the employer under that paragraph in respect of the same tax year.

(7) In this regulation—

“current employee” means a person who was an employee on 5th April in the tax year to which the particulars provided under regulation 85(1) relate;

“former employee” means a person who was an employee during a part of the tax year to which the particulars provided under regulation 85(1) relate, but who was no longer an employee on 5th April in that tax year.

Third parties: information to employees of other earnings

95.—(1) This regulation applies if a person (“the third party”) has, in a tax year—

- (a) made any unrelated payments to, or on behalf of, another person's employee, or
- (b) provided any unrelated benefits to, or in respect of, another person's employee.

(2) Before 7th July following the end of the tax year, the third party must give the employee a statement containing such of the particulars specified by regulations 86 and 87 as relate to the unrelated payments or unrelated benefits.

(3) A benefit or payment is “unrelated” if—

- (a) the employee’s employer is not required to provide particulars about it under regulation 85(1), and
- (b) the third party would have been required to provide particulars about it under regulation 85(1) had the third party been the employee’s employer.

Termination awards: information to employees

96.—(1) This regulation applies if an employer is required to provide the information specified in regulation 91(3) to the Inland Revenue by—

- (a) regulation 91(1) (termination award), or
- (b) regulation 92(3) (change in termination award).

(2) The employer must also give a copy of that information to the employee before 7th July following the end of the tax year.

(3) A copy of the information is given to the employee if it is sent or delivered to, or left at, the employee’s usual or last known address.

(4) As to the person who is the employer in cases where there is more than one employer, see regulation 93.