

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No. 3) REGULATIONS
2016

2016 No. 1137

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”) to extend the voluntary framework in Chapter 3A of the PAYE Regulations to allow employers to opt to collect income tax on non-cash vouchers and credit-tokens through Pay As You Earn (“PAYE”).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Amendments were made to section 684 of the Income Tax (Earnings and Pensions) Act 2003 ITEPA (“ITEPA”) by section 15 of the Finance Act 2016. The changes extended existing powers which enable the Commissioners of HMRC to make regulations authorising employers to collect, and repay, income tax through PAYE in respect of certain benefits-in-kind that they provide to their employees (“payrolling”). The power, which initially applied to benefits treated as earnings under Chapters 3 and 5 to 10 of Part 3 of ITEPA (“the benefits code”), was extended to also include Chapter 4 (vouchers and credit-tokens) of the benefits code.
- 4.2 The PAYE Regulations govern the operation of the PAYE system under which employers deduct income tax at source from employees’ pay. Chapter 3A of Part 3 of the PAYE Regulations sets out the detailed framework for voluntary payrolling. The framework enables employers to opt to collect income tax on benefits treated as earnings under Chapter 6 (cars, vans and related benefits) or Chapter 10 (residual liability to charge) of the benefits code. It applies to those benefits provided to employers from 6th April 2016.
- 4.3 This instrument amends the PAYE Regulations by extending voluntary payrolling to include non-cash vouchers and credit-tokens provided by employers from 6th April 2017. Non-cash vouchers and credit-tokens are treated as earnings under Chapter 4 of the benefits code.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 From 6 April 2016, employers can choose to payroll some or all of the benefits-in-kind (“BiKs”) that they provide to their employees. Currently, all BiKs can be payrolled except employer provided accommodation, beneficial loans, credit-tokens and non-cash vouchers. Where an employer opts to payroll, their obligation to make a return of these benefits on form P11D is disapplied. Employers, instead, report the value through Real Time Information (RTI).
- 7.2 At Budget 2016, the government announced its intention to extend voluntary payrolling to enable employers to payroll non-cash vouchers and credit-tokens.
- 7.3 Non-cash vouchers are exchanged for goods or services; a common example is a high street retail voucher. The chargeable amount is the ‘cash equivalent’ cost to the person providing the voucher less any amount made good by the employee.
- 7.4 A credit-token can be used to obtain money, goods and services without being exchanged, and includes credit, debit and store cards provided for an employee by reason of their employment. A tax charge arises every time the token is used by an employee to meet a private expense. The chargeable amount is usually the balance on the credit card bill, excluding any credit card charges, less any part made good by the employee.
- 7.5 This instrument amends the PAYE Regulations to enable employers to payroll non-cash vouchers provided to, and credit-tokens used by, employees by:
 - extending the definition of ‘specified benefits’ in regulation 61A to include benefits treated as earnings under section 87 (benefit of non-cash voucher treated as earnings) and section 94 (benefit of credit token treated as earnings) of ITEPA. This extension does not cover non-cash vouchers or credit tokens which are regarded as, or are exchangeable for, readily convertible assets and are subject to payrolling obligations set out in sections 694 and section 695 of ITEPA;
 - amending the method for calculating the cash equivalent of benefits at the start of the year, set out in regulation 61G, to include non-cash vouchers and credit-tokens. This method ensures any amount made good by an employee is taken into account;
 - amending the method for calculating in-year adjustments to the cash equivalent of the benefit, as set out in regulation 61I, to include non-cash vouchers and credit-tokens; and

- introducing new regulation 61LA, which deals with situations where an employee has not paid the full amount expected to be made good on the cost of a credit token by 1 June, following the end of the tax year (tax year 1). The provision ensures the value of the benefit not payrolled in tax year 1 is brought into account when the employee is next paid in the following tax year.
- 7.6 From 6 April 2017, employers opting to payroll non-cash vouchers provided to, and credit-tokens used by, employees will be able to collect tax from their employee's pay on those benefits and report the value of the benefits to HMRC through RTI.
- 7.7 This will bring the treatment of these BiKs in line with others, such as car benefit, car fuel benefit, private medical insurance etc. Businesses will benefit from reduced reporting obligations to HMRC and the risk of employees under or over-paying tax on these BiKs will be reduced.

Consolidation

- 7.8 There are currently no plans to consolidate the PAYE Regulations.

8. Consultation outcome

- 8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations were published on gov.uk for comment from 9 August 2016 to 3 October 2016. There was a limited response to the technical consultation. Both respondents welcomed the extension of voluntary payrolling and supported the technical detail of the draft instrument.

9. Guidance

- 9.1 Guidance will be made available before this instrument comes into effect.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is a further reduction in their administrative burden. Where an employer adopts voluntary payrolling in relation to non-cash vouchers and credit-tokens, they will no longer need to report these benefits to HMRC on form P11D. Employers who volunteer to payroll these benefits will be required to provide an annual statement to their employees of the total taxable amount of the benefit on which PAYE has been operated. This replaces rather than adds to an existing administrative requirement for employers to provide a statement to every employee in respect of which they have submitted a P11D to HMRC.
- 10.2 The impact on the public sector is the same administrative saving as set out above.
- 10.3 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.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses who will benefit from the same administrative savings as other businesses.

12. Monitoring & review

- 12.1 The changes introduced by this instrument will be monitored and reviewed as appropriate within the context of the wider tax framework.

13. Contact

- 13.1 Nicholas Chipperfield at HM Revenue & Customs, Tel: 03000 520166 or email: employmentincome.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.