

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. 2) REGULATIONS**  
**2017**

**2017 No. 1263**

**1. Introduction**

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

**2. Purpose of the instrument**

This instrument makes amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2001/2682) (the "PAYE Regulations") which make provision for the assessment, charge, collection and recovery of income tax under the PAYE system. The changes have effect from 6 April 2018. The amendments cover:-

- Provisions for the reporting of Company Car Information data where employers are payrolling the related Benefits in Kind.
- Provisions for the calculation and reporting of a Benefit in Kind where the benefit is chosen instead of a cash payment under a salary sacrifice or Optional Remuneration Arrangements (OpRA).

**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 the negative 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**

*Car Data Reporting Requirements*

- 4.1 The PAYE Regulations govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted from payments made to employees and pensioners.
- 4.2 From April 2018 HMRC are introducing a requirement for employers to report car and car fuel data where they provide car Benefits in Kind to their employees.
- 4.3 The amendments to the PAYE Regulations set out what information is required and how employers submit it to HMRC.

### ***Reporting Taxable Amounts due under OpRA***

- 4.4 The Finance Act 2017 introduced legislation to remove the tax advantages of salary sacrifice arrangements.
- 4.5 The amendments to the PAYE legislation will clarify the taxable amounts due under OpRA and how to calculate them.

### **5. Extent and Territorial Application**

- 5.1 The instrument extends to all of the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom

### **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedures and does not amend primary legislation, no statements are required.

### **7. Policy background**

#### ***What is being done and why***

#### ***Car Data Reporting***

- 7.1 Since April 2016 employers can choose to tax most Benefits in Kind (BiKs) through their payroll rather than at the end of the year. This is reported through Real Time Information and removes the need to submit a return after the end of the tax year.
- 7.2 However, for company cars HMRC still require employers to provide car data regarding CO2 submissions, fuel type and list price which is essential for the maintenance and development of Government policy.
- 7.3 A reporting mechanism has been developed to allow employers to submit the required data on their Real Time Information (RTI) submission thus avoiding the need for a separate return.
- 7.4 The amendments to the PAYE Regulations specify what information is required and how to submit it.

#### ***Salary Sacrifice and Optional Remuneration Arrangements (OpRA)***

- 7.5 Schedule 2 of the Finance Act 2017 introduced a new section 69A into the Income Tax (Earnings and Pensions) Act 2003 that provided for legislation to be made for the recording and assessment of Benefits in Kind. This legislation removes the tax advantages of salary sacrifice arrangements.
- 7.6 OpRA and salary sacrifice arrangements are where an employee gives up cash pay in return for a Benefit in Kind (BiK) which was usually taxed at a rate lower than the amount given up.
- 7.7 Under new legislation where a BiK is provided in conjunction with salary sacrifice, the taxable amount will be the greater of the BiK calculated under normal rules or the amount of salary sacrificed.
- 7.8 The new legislation has not removed the exempted BiKs that previously existed which are Cycle to Work and Ultra Low Emission Cars, pensions and childcare. Primary

legislation sets out the protected benefits, the transitional rules and the method of calculating the taxable benefit where these rules apply.

- 7.9 The amendments to the PAYE Regulations clarify the taxable amounts that need to be reported either via Real Time Information (RTI), where employers are payrolling BiKs, or at the end of the year for non-payrolling employers.

## **8. Consultation**

- 8.1 Employers who have already updated their software in respect of car data reporting have been able to voluntarily submit information to HMRC since April 2017. We published a technical paper for a two week consultation period and received a consolidated response from The Chartered Institute for Payroll Professionals (CIPP). CIPP also issued a survey that provided a platform for employer feedback.

## **9. Guidance**

- 9.1 Guidance has been published on Gov.UK to support employers who are already reporting car data. This will be updated to reflect the changes to the PAYE Regulations. <https://www.gov.uk/guidance/sending-car-data-to-hmrc-payrolling-car-benefit>.
- 9.2 Guidance has been published on Gov.UK. <https://www.gov.uk/guidance/payrolling-tax-employees-benefits-and-expenses-through-your-payroll>

## **10. Impact**

- 10.1 Car Data Reporting will affect businesses, charities and voluntary bodies where such employers payroll company car benefits in kind. Anticipated one-off burdens arise from familiarisation with the change in rules and on-going burdens arise from these employers being required to report details of company cars on the first payments submission in the tax year and subsequent payment submissions if there is a change to the company car benefit provided. The changes in respect of OpRA will have a negligible impact on these employers involving familiarisation and updating systems.
- 10.2 Car Data Reporting will affect public bodies where such employers payroll company car benefits in kind. Anticipated one-off burdens arise from familiarisation with the change in rules and on-going burdens arise from these employers being required to report details of company cars on the first payments submission in the tax year and subsequent payment submissions if there is a change to the company car benefit provided. The changes in respect of OpRA will have a negligible impact on these employers involving familiarisation and updating systems.
- 10.3 TIINs will be published alongside the changes to the PAYE Regulations in respect of both Car Data Reporting and OpRA.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The updated PAYE Regulations apply to all employers who are providing their employees with Car and Fuel Benefits in Kind.
- 11.3 The updated PAYE Regulations apply to all employers who operate a salary sacrifice arrangement for Benefits in Kind that are not protected benefits or covered by the transitional rules.

## **12. Monitoring & review**

- 12.1 HMRC will monitor the operation and administration of these changes through continued communication with employers and external stakeholder groups.

## **13. Contact**

- 13.1 For Car Data Reporting Requirements contact Wendy Carey at HMRC Tel: 03000 518069 or email [wendy.carey1@hmrc.gsi.gov.uk](mailto:wendy.carey1@hmrc.gsi.gov.uk)
- 13.2 For Optional Remuneration Payments contact Alex Raisen at HMRC Tel: 03000 542663 or email [alexander.raisen@hmrc.gsi.gov.uk](mailto:alexander.raisen@hmrc.gsi.gov.uk)