

**THE EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX PAY AS YOU EARN (AMENDMENTS) REGULATIONS 2017**  
**[Year] No. [XXXX]**

**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.
- 1.2 Purpose of the instruments
- 1.3 These instruments makes amendments to the Income Tax Pay As You Earn (PAYE) Regulations 2003 (S. I. 2001/1004 (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 employers to provide company car and fuel information to HMRC where employers are payrolling the related Benefits in Kind. Employers can pay their employees in different ways including cash, shares and non-cash goods and services. These non-cash forms of remuneration are commonly known as Benefits in Kind (BiKs). Where employers provide their employees with BiKs they are required to report the details, including the type of benefit and the taxable amount, to HMRC after the end of the tax year or through the payroll when they pay their employees. The latter option means that tax due on BiKs will be deducted in real time and is referred to as payrolling. When a company car is provided as a BiK HMRC require employers to provide data regarding the cars and the changes to the PAYE Regulations set out what information employers, who choose to payroll car and car fuel benefit, are required to report and how it will be submitted to HMRC.
  - Provisions for the calculation and reporting of a Benefit in Kind where the benefit is chosen instead of a cash payment under an Optional Remuneration Payment (OpRA) (also known as salary sacrifice.) A salary sacrifice arrangement is where an employee gives up cash in return for a BiK which was usually taxed on an amount lower than the pay given up, or left untaxed. The Finance Act 2017 introduced legislation to remove the tax and National Insurance advantages of salary sacrifice arrangements so where a BiK is provided under such arrangements the taxable amount will be the greater of the BiK calculated under normal rules or the amount sacrificed. The changes to the PAYE Regulations will clarify the taxable amounts that need to be reported.

## **2. Matters of special interest to Parliament**

### ***Matters of special interest to the Select Committee on Statutory Instruments***

2.1 None.

### ***Other matters of interest to the House of Commons***

2.2 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.

## **3. Legislative Context**

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

3.1 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.

3.2 From April 2018 HMRC are introducing a requirement for employers to report car and car fuel data where they provide cars as Benefits in Kind to their employees.

3.3 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***

3.4 The Finance Act 2017 introduced legislation to remove the tax advantages of salary sacrifice arrangements.

3.5 The amendments to the PAYE legislation will clarify the taxable amounts due under salary sacrifice and how to calculate them.

## **4. Extent and Territorial Application**

4.1 The extent of this instrument is the United Kingdom.

4.2 The instrument applies to all of the United Kingdom.

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

5.1 As the instruments are subject to negative resolution procedures and do not amend primary legislation, no statements are required.

## **6. Policy background**

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

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

- 6.1 Since April 2016 employers can choose to tax most BiKs through their payroll rather than at the end of the year. This is reported via the payroll in real time and removes the need to submit a return after the end of the tax year.
- 6.2 However, for company cars HMRC still require employers to provide car data regarding CO2 emissions, fuel type and list price and the changes to the PAYE Regulations will allow employers to submit this information in real time rather than having to submit a separate return after the end of the year.
- 6.3 The amendments to the PAYE Regulations explain what information is required and how to submit it.

#### ***Salary Sacrifice Arrangements***

- 6.4 Schedule 2 of the Finance Act 2017 introduced a new section 69A into the Income Tax (Earnings and Pensions) Act 2003 which removes the tax and employer National Insurance advantages of salary sacrifice arrangements.
- 6.5 Salary sacrifice is 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.
- 6.6 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.
- 6.7 The amendments to the PAYE Regulations clarify the taxable amounts that need to be reported.

## **7. Consultation**

- 7.1 We previously published technical consultation papers relating to voluntary payrolling and limiting the advantages of salary sacrifice arrangements (OpRA) in 2015 and 2016 respectively.
- 7.2 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. A survey issued by The Chartered Institute for Payroll Professionals (CIPP) provided a platform for employer feedback.

## **8. Guidance**

- 8.1 Guidance has been published on Gov.UK to support employers who are already reporting car data.
- 8.2 [Further guidance will be published in respect of the Salary Sacrifice measure in advance of the legislation being laid.]

## **9. Impact**

- 9.1 A Tax Information and Impact Note (TIIN) relating to Real Time collection of tax on Benefits in Kind was published at Autumn Statement 2014 which set out the savings of voluntary payrolling.
- 9.2 The impacts of OpRA were included in the TIIN “Income tax; Limitation of Salary Sacrifice” published at Autumn Statement 2016.
- 9.3 Further TIINs will be published alongside the changes to the PAYE Regulations.

## **10. Regulating small business**

- 10.1 The updated PAYE Regulations apply to all employers who are providing their employees with Car and Fuel Benefits in Kind.
- 10.2 The updated PAYE Regulations apply to all employers who operate Optional Remuneration Arrangements for Benefits in Kind that are not protected benefits or covered by the transitional rules.

## **11. Monitoring & review**

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

## **12. Contact**

- 12.1 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)
- 12.2 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)