

2006 No. 766

TAX CREDITS

The Tax Credits (Miscellaneous Amendments) Regulations 2006

<i>Made</i> - - - -	<i>14th March 2006</i>
<i>Laid before Parliament</i>	<i>15th March 2006</i>
<i>Coming into force</i> - -	<i>6th April 2006</i>

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs(a).

The powers exercised by the Treasury are those contained in sections 3(7), 7(8) and (9), 8(2) and (4), 10, 12, 65(1), (3), (7) and (9) and 66 of the Tax Credits Act 2002(b).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in sections 22(2), 65(2) and 66 of that Act.

Citation and commencement

1. These Regulations may be cited as the Tax Credits (Miscellaneous Amendments) Regulations 2006 and shall come into force on 6th April 2006.

Amendment of the Tax Credits (Claims and Notifications) Regulations 2002

2.—(1) The Tax Credits (Claims and Notifications) Regulations 2002(c) are amended as follows.

- (2) In regulation 11(3)(a)(d) for “30th September” substitute “31st August”.
- (3) In regulation 33(a)(e) for “30th September” substitute “31st August”.

Amendment of the Child Tax Credit Regulations 2002

3. In regulation 5(2) of the Child Tax Credit Regulations 2002(f) for “date of leaving education” substitute “relevant leaving date”.

(a) The functions of the Commissioners of Inland Revenue (“the former Commissioners”), including those under which this instrument is made, were transferred to the Commissioners for Her Majesty's Revenue and Customs (“the new Commissioners”) by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 12). Section 50 of that Act provides that a reference in any other enactment to the former Commissioners is to be construed as reference to the new Commissioners in so far as is appropriate in consequence of section 5.

(b) 2002 c.21. Section 67 is cited, both in relation to the Treasury and the Commissioners for Her Majesty's Revenue and Customs because of the definition of “prescribed”.

(c) S.I. 2002/2014.

(d) Regulation 11 was amended by regulation 3 of S.I. 2004/762.

(e) Regulation 33 was amended by regulation 3 of S.I. 2004/762.

(f) S.I. 2002/2007. Regulation 5 was amended by regulation 4 of S.I. 2006/222.

Amendment of the Tax Credits (Residence) Regulations 2003

4.—(1) The Tax Credits (Residence) Regulations 2003(a) are amended as follows.

(2) In regulation 3(4)—

- (i) after “No 1612/68” insert “as amended by Council Directive No 2004/38/EC(b),”
- (ii) for “Council Directive No 68/360/EEC” onwards substitute “Council Directive No 2004/38/EC.”

Amendment of the Tax Credits (Residence)(Amendment) Regulations 2004

5. Regulation 1(2) of the Tax Credits (Residence)(Amendment) Regulations 2004(c) shall cease to have effect, and accordingly regulation 3(5) of the Tax Credits (Residence) Regulations 2003 shall not lapse on 1st May 2006.

Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002

6. The Tax Credits (Definition and Calculation of Income) Regulations 2002(d) are amended as follows.

7.—(1) Regulation 2(2) (interpretation) is amended as follows.

(a) for the definition of “the Board” substitute—

““the Board” means the Commissioners for Her Majesty’s Revenue and Customs;”;

(b) for the definition of “employment zone” substitute—

““employment zone” means an area within Great Britain—

- (i) subject to a designation for the purposes of the Employment Zones Regulations 2003(e) by the Secretary of State, or
- (ii) listed in the Schedule to the Employment Zones (Allocation to Contractors) Pilot Regulations 2005(f),

pursuant to section 60 of the Welfare Reform and Pensions Act 1999(g);”;

(c) after the definition of “ITEPA” insert—

““ITTOIA” means the Income Tax (Trading and Other Income) Act 2005(h);”;

(d) omit the definition of “Schedule D;”.

8.—(1) Regulation 3 (calculation of income of claimant) is amended as follows.

(2) In paragraph 1, Step Four, after the third sentence insert—

“A loss shall not be available for tax credits purposes, unless the trade was being carried on upon a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.”.

(3) In paragraph (3)(b) for “section 584 of the Taxes Act,” substitute “Chapter 4 of Part 8 of ITTOIA,”.

(4) In paragraph (8)—

(a) in sub-paragraph (a) for “Schedule A business” substitute “UK property business”; and

(b) at the end, for —

(a) S.I. 2003/654.

(b) OJ No. L 158, 30.4.04.

(c) S.I. 2004/1243.

(d) S.I. 2002/2006 as amended by S.I. 2005/2919, 2003/732, 2003/2815, 2004/762 and 2004/2663.

(e) S.I. 2003/2438 as amended by S.I. 2005/1744 and 2004/1043.

(f) S.I. 2005/1125.

(g) 1999 c. 30.

(h) 2005 c. 5.

“In this paragraph “Schedule A business” and “overseas property business” have the same meanings as they have in the Taxes Act.”

substitute—

“In this paragraph “UK property business” and “overseas property business” have the same meanings as they have in Chapter 2 of Part 3 of ITTOIA.”.

9.—(1) Regulation 4 (employment income) is amended as follows.

(2) Omit paragraphs (2A) and (2B)(a).

(3) In Table 1, after item 16 insert—

“**16A.** A payment made by the Department for Employment and Learning in Northern Ireland under section 1 of the Employment and Training Act (Northern Ireland) 1950(b) by way of Return to Work Credit.”.

10.—(1) Regulation 5(1) (pension income) is amended as follows.

(2) At the end add—

“(n) any social security pension lump sum to which section 7 of the Finance (No. 2) Act 2005(c) applies; and

(o) any lump sum payment to which section 636B or 636C(d) of ITEPA applies.”.

11.—(1) Regulation 6 (trading income) is amended as follows.

(2) For the second sentence substitute—

“Here “taxable profits” has the same meaning as it has in Part 2 of ITTOIA but disregarding Chapter 16 of that Part (averaging profits of farmers and creative artists).”.

12.—(1) Regulation 8 (student income) is amended as follows.

(2) For paragraph (a) substitute—

“(a) in England, any adult dependants’ grant payable—

(i) under regulation 17 of the Education (Student Support) Regulations 2005(e) in relation to an academic year which begins on or after 1st September 2005 but before 1st September 2006; or

(ii) under regulation 41 of the Education (Student Support) Regulations 2006(f) in relation to an academic year which begins on or after 1st September 2006;”.

(3) In paragraph (b), at the end omit “and”.

(4) In paragraph (c), at the end add “and”.

(5) After paragraph (c) add—

“(d) in Wales, any adult dependants’ grant payable—

(i) under regulation 17 of the Education (Student Support) Regulations 2005 in relation to an academic year which begins on or after 1st September 2005 but before 1st September 2006; or

(a) These paragraphs were inserted by regulation 14(1) and (2) of S.I. 2004/762.

(b) 1950 c. 29. Certain functions of the Department of Economic Development under the Employment and Training Act (Northern Ireland) 1950 were transferred to the Department of Higher and Further Education, Training and Employment (“DHFETE”) by Article 4 of, and Part II of Schedule 2, to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481). DHFETE was renamed as the Department for Employment and Learning by section 1 of the Employment and Learning Act (Northern Ireland) 2001 (c. 15).

(c) 2005 c. 22.

(d) Sections 636B and 636C were inserted by paragraph 11 of Schedule 31 to the Finance Act 2004 (c. 12) and section 636B was amended by paragraph 59 of Schedule 10 to the Finance Act 2005 (c. 7).

(e) S.I. 2005/52, to which there are no relevant amendments.

(f) S.I. 2006/119.

- (ii) under regulation 22 of the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006^(a) in relation to an academic year which begins on or after 1st September 2006.”.

13. For regulation 9 (payments of income in connection with students to be disregarded for the purposes of regulation 3) substitute—

“Payments of income in connection with students to be disregarded for the purposes of regulation 3

9 Income which is exempt from income tax by virtue of section 753 or 776 of ITTOIA (which deal respectively with interest on the repayment of student loans and scholarship income) is disregarded in calculating a claimant’s income under regulation 3.”.

14.—(1) Regulation 10 (investment income) is amended as follows.

(2) In paragraph (1)(e) for “section 547(1)(a) of the Taxes Act.” substitute—

“Chapter 9 of Part 4 of ITTOIA disregarding section 535 (top slicing relief).”.

(3) In paragraph (2)—

(a) in sub-paragraph (c) for “section 46 of the Taxes Acts” substitute “section 692, 693 or 750 of ITTOIA”;

(b) in sub-paragraph (d) for—

“section 325 of the Taxes Act (interest on deposits with National Savings and Investments).”

substitute “section 691 of ITTOIA (National Savings Bank ordinary account interest).”; and

(c) in sub-paragraph (e) for the words following “by virtue of” substitute—

“section 727 of ITTOIA (certain annual payments by individuals).”.

(4) In Table 4—

(a) in item 1, for “section 333 of the Taxes Act” substitute “Chapter 3 of Part 6 of ITTOIA”;

(b) omit item 2;

(c) for item 3 substitute—

“3. Any interest payable under a certified SAYE savings arrangement for the purposes of Chapter 4 of Part 6 of ITTOIA.”;

(d) in item 8—

(i) omit “in respect of interest”;

(ii) for paragraph (a) substitute—

“(a) section 751 of ITTOIA (interest on damages for personal injury), or” and

(iii) in paragraph (b) for “section 329AA of the Taxes Act” substitute “section 731 of ITTOIA (periodical payments of personal injury damages)”.

(e) in item 9—

(i) for “section 329AB(2) of the Taxes Act” substitute “section 732(3) of ITTOIA”; and

(ii) in the entry in column 2 for “section 329AA of the Taxes Act” substitute “section 731 of ITTOIA”;

(f) in item 12—

(i) for “section 656 of the Taxes Act” substitute “Chapter 7 of Part 4 of ITTOIA”; and

(ii) for the entry in column 2 substitute—

(a) S.I. 2006/126 (W.19).

“The amount exempted under section 717 of ITTOIA as calculated under section 719 of that Act.”; and

(g) after item 12 add—

13. Any payments which are exempt from income tax by virtue of— (a) section 725 of ITTOIA (annual payments under immediate needs annuities), or (b) section 735 of ITTOIA (health and employment insurance payments).	The whole amount.
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15.—(1) Regulation 11 (property income) is amended as follows.

(2) In paragraph (1)—

- (a) for “section 15 of the Taxes Act” substitute “Part 3 of ITTOIA”; and
- (b) for “that section” wherever it occurs substitute “that Part”.

(3) For paragraph (2) substitute—

“(2) In calculating property income there shall be disregarded any profits—

- (a) treated as nil by section 791 to 794 of ITTOIA (full rent-a-room relief); or
- (b) excluded from profits by section 795 to 798 of ITTOIA (alternative calculation of profits if amount exceeds limit).”.

(4) In paragraph (3) for “Where a Schedule A business (as defined within Schedule A set out in section 15 of the Taxes Act)” substitute “Where a property business (as defined in Part 3 of ITTOIA)”.

16.—(1) Regulation 12 (foreign income) is amended as follows.

(2) In paragraph (1) for “possessions or from securities out of the United Kingdom” substitute “a source outside the United Kingdom or from foreign holdings”.

(3) For paragraph (2) substitute—

“(2) The reference in paragraph (1) to “foreign holdings” shall be construed in accordance with section 571 of ITTOIA.”.

(4) In paragraph (3)—

(a) for sub-paragraph (b) substitute—

“(b) the amount authorised to be deducted by the relevant provision if the claimant’s foreign income comprises or includes a pension to which the following provisions of ITEPA apply—

- (i) section 567(5) and 617 (deduction allowed from taxable pension income);
- (ii) section 575(2)(a) (taxable pension income: foreign pensions);
- (iii) section 613(3)(b) (taxable pension income: foreign annuities); and
- (iv) section 635(3)(c) (taxable pension income: foreign voluntary annual payments); and”;

(b) in sub-paragraph (c)—

- (i) in paragraph (iii) for “Extra Statutory Concession A30” substitute “section 751(1)(c) of ITTOIA” and omit “or”; and
- (ii) at the end add—

(a) Subsections (2) to (5) were substituted for sub-section (2) as originally enacted by paragraph 606 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) (“ITTOIA”).

(b) Subsections (3) to (6) were substituted for sub-sections (3) and (4) as originally enacted by paragraph 607 of Schedule 1 to ITTOIA.

(c) Subsections (3) to (6) were substituted for sub-section (3) as originally enacted by paragraph 609 of Schedule 1 to ITTOIA.

“or

(v) section 730 of ITTOIA (foreign maintenance payments).”.

(5) In paragraph (4) for “(within the meaning of the Taxes Act)” substitute “(within the meaning of Part 3 of ITTOIA)”.

17.—(1) Regulation 14 (claimants treated for any purpose as having income by virtue of the Income Tax Acts) is amended as follows.

(2) In paragraph (2)(a) omit sub-paragraphs (i) to (viii).

(3) For paragraph (b) substitute—

“(b) the following provisions of ITTOIA—

- (i) sections 277 to 283 (amounts treated as receipts: leases);
 - (ii) Chapter 5 of Part 4 (stock dividends from UK resident companies);
 - (iii) Chapter 6 of Part 4 (release of loan to participator in close company);
 - (iv) section 427 (charge to tax on profits from deeply discounted securities);
 - (v) Chapter 11 of Part 4 (transactions in deposits);
 - (vi) sections 624 to 628 (income treated as income of settlor: retained interests);
 - (vii) sections 629 to 632 (income treated as income of settlor: unmarried children);
 - (viii) section 633 (capital sums paid to settlor by trustees of settlement);
 - (ix) section 641 (capital sums paid to settlor by body connected with settlement);
 - (x) section 652 (estate income: absolute interests in residue); and
 - (xi) sections 654 to 655 (estate income: interests in residue); and
- (c) section 84 and Schedule 15 to the Finance Act 2004 (charge to income tax by reference to enjoyment of property previously owned).”.

18. In regulation 18 (miscellaneous income) for “Case VI of Schedule D.” substitute “Part 5 of ITTOIA.”.

19.—(1) Regulation 19 (general disregards in the calculation of income) is amended as follows.

(2) In Table 6—

- (a) in item 9 for “Schedule 36 to the Finance Act 2003.” Substitute “Chapter 2 of Part 7 of ITTOIA.”; and
- (b) in item 11(a) for “section 327A of the Taxes Act;” substitute “sections 744 to 746 of ITTOIA;”.

(3) In Table 8, in items 3 and 4, in the entries in column 2—

- (a) in paragraph (a)—
 - (i) omit “or gains”; and
 - (ii) for “paragraph 9 of Schedule 10 to the Finance (No. 2) Act 1992” substitute “section 791 to 794 of ITTOIA (full rent-a-room relief);” and
- (b) in paragraph (b) for “or gains by paragraph 11 of that Schedule” substitute “by section 795 to 798 of ITTOIA (alternative calculation of profits if amount exceeds limit)”.

Amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

20.—(1) The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(a) are amended as follows.

(2) In regulation 2(1) (interpretation) for the definition of “employment zone” substitute—

““employment zone” means an area within Great Britain—

(a) S.I. 2002/2005, amended by S.I. 2004/762, there are other amending instruments but none is relevant.

- (a) subject to a designation for the purposes of the Employment Zones Regulations 2003(a) by the Secretary of State, or
- (b) listed in the Schedule to the Employment Zones (Allocation to Contractors) Pilot Regulations 2005(b),

pursuant to section 60 of the Welfare Reform and Pensions Act 1999(c);”.

(3) In regulation 4(2)(f) for “the Employment Zones Regulations 2000” substitute “the Employment Zones Regulations 2003 and the Employment Zones (Allocation to Contractors) Pilot Regulations 2005”.

(4) In regulation 14(1A)(d) (charges not included in the definition of child care charges) after (b) add—

“(c) a provider mentioned in regulation 14(2)(c)(v), in circumstances where the care is excluded from being qualifying child care by Article 4(2)(c) of the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006(e).”.

(5) In regulation 14(2)(b) (definition of child care in Scotland) after (i) add—

“(ia) by a child care agency where the service consists of or includes supplying, or introducing to persons who use the service, child carers within the meaning of sections 2(7) and (8) of the Regulation of Care (Scotland) Act 2001(f); or”.

(6) In regulation 14(2)(c) (definition of child care in Northern Ireland) after (iv) add—

“(v) by a child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006.”.

Gillian Merron

Dave Watts

14th March 2006

Two of the Lords Commissioners for Her Majesty’s Treasury

David Varney

Mike Hanson

13th March 2006

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014), the Child Tax Credit Regulations 2002 (S.I. 2002/2007), the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654), the Tax Credits (Residence)(Amendment) Regulations 2004 (S.I. 2004/1243), the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) and the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005).

Regulation 1 provides for citation and commencement.

Regulation 2 amends the Tax Credits (Claims and Notifications) Regulations 2002 to change the date when a claim for Tax Credit is treated as made for the purposes of regulation 11 of those regulations, and to change the specified date in regulation 33 for the purposes of a notice under section 17 of the Tax Credits Act 2002 (c. 21).

(a) S.I. 2003/2438 as amended by 2005/1744 and 2004 /1043.

(b) S.I. 2005/1125.

(c) 1999 c. 30.

(d) Paragraph (1A) was inserted by The Working Family Tax Credits (Entitlement and Maximum Rate) (Amendment) Regulations 2003 (S.I. 2003/701) and amended by The Working Family Tax Credits (Entitlement and Maximum Rate) (Amendment) Regulations 2005 (S.I. 2005/769).

(e) S.R. 2006 No.64.

(f) 2001 asp.8.

Regulation 3 amends regulation 5 of the Child Tax Credit Regulations 2002 which prescribes conditions and maximum age for a person who has either left full-time education, or approved training.

Regulation 4 amends regulation 3 of the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) to reflect the fact that Council Directive 2004/38/EC has amended Council Regulation (EEC) No 1612/68 and has repealed Council Directives No 68/360/EEC and No 73/148/EEC.

Regulation 5 amends regulation 1(2) of the Tax Credits (Residence)(Amendment) Regulations 2004 (S.I. 2004/1243) to remove the date limitation on the effect of regulation 3(5) of the Tax Credits (Residence) Regulations 2003. This means that the time limit has been removed on the requirement to have a right to reside in the United Kingdom for the purposes of Part 1 of the Tax Credits Act 2002.

Regulation 6 introduces the amendments to the Tax Credits (Definition and Calculation of Income) Regulations 2002(“the Definition and Calculation Regulations”). The principal effect of the amendments to the Definition and Calculation Regulations is to update references to taxable income derived from tax legislation as a result of the entry into force of the Income Tax (Trading and Other Income) Act 2005 (c. 5) (“ITTOIA”).

Regulation 7 amends definitions in the Definition and Calculation Regulations.

Regulation 8 provides that for tax credit purposes a trading loss shall not be available unless the trade is carried on on a commercial basis and with a view to realising a profit.

Regulation 9 introduces a disregard in the calculation of employment income for the Return to Work Credit being piloted in Northern Ireland under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29).

Regulation 10 extends the definition of “pension income” to include certain lump sum payments following changes to pensions introduced by the Finance Act 2004 (c. 12) and the Finance (No. 2) Act 2005 (c. 22).

Regulation 11 updates the definition of trading income.

Regulation 12 updates references to any adult dependants’ grant in relation to student income to take account of new student support regulations in England and Wales, namely the Education (Student Support) Regulations 2006 (S.I. 2006/119) and the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006 (S.I. 2006/126 (W.19)).

Regulations 13 to 19 update references in relation to income which is exempt from income tax, and references in the definitions of various types of different income and in the provisions under which claimants are treated as having income by virtue of the Income Tax Acts as a result of changes introduced by ITTOIA.

Regulation 20 amends the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“the 2002 Regulations”). The amendments in paragraphs (2) and (3) substitute updated references to the most recent regulations dealing with Employment Zones, namely the Employment Zones Regulations 2003 (S.I. 2003/2438) and the Employment Zones (Allocation to Contractors) Pilot Regulations 2005 (S.I. 2005/1125). The amendments in paragraphs (4), (5) and (6) add child care agencies as defined in section 2 of the Regulation of Care (Scotland) Act 2001 (asp.8) and child care providers who have been approved by the Northern Ireland Child Care Approval Scheme (introduced by the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006 (S.R. 2006 No. 64) to the list of eligible child care in regulation 14 of the 2002 Regulations.

These Regulations do not impose any new costs on business.