OpRA: 12 months on
A benefits update

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What is Optional Remuneration?

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- Where a benefit is chosen instead of some form of cash payment, the taxable value of the benefit is the greater of the amount of cash pay given up and the taxable value under the normal benefit in kind rules .
- Where the two are the same, then apply the normal benefit valuation rules.
- This includes ANY benefit provided under an OpRA

The tax / NIC charge is based on the higher of:

- The cash equivalent of the BiK
  or
- The amount of salary forgone less any amounts made good by the employee

Schemes no longer in scope

- Examples:
  - Car parking
  - Private Medical / dental insurances
  - Technology / mobile phones
  - Cars (over 75 g/km) / vans
  - Accommodation
  - Use of assets
  - Transfer of assets
  - Authorised mileage allowance payments
  - Own goods / products
  - Health assessments

Schemes in scope

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- Pensions including pension’s advice
- Childcare voucher or workplace nurseries
- Directly employer contracted childcare
- Cycle to work including accessories
- Cars with emissions at or under 75 CO_2/km
- Flexible Benefits where intangible benefits can be purchased, such as:
  - Annual Leave
  - Flexible working

Types of arrangement

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- **Type A** - Arrangements under which the employee gives up the right, or the future right, to receive an amount of earnings (e.g. salary) which would have a tax liability, in return for the benefit
- **Type B** - Employee agrees to be provided with a benefit rather than an amount of earnings (e.g. the option of a cash allowance)
- Some employees have both type A and type B arrangements, where this is the case, the amount foregone is the total value of the type A and type B arrangements.

Does OpRA apply?

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Cash Allowance	No Benefit
Benefit Only	No OpRA
Cash or Benefit	OpRA Applies
Change in Benefit	OpRA Applies

Transitional Provisions

- Under transition rules until 6th April 2021
  - Cars with emissions higher than 75g CO_2/KG
  - Living Accommodation
  - School Fees
- Transitional Rules stop when:
  - There is a change in the arrangement
  - The change is due to circumstances beyond the individuals control
  - In connection with Statutory payment entitlement
- Grandfather’ protection for schemes arranged prior to April 2017
  - Transitional provision ended on 5th April 2018

Car Example using OpRA

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List price - £30,000
CO_2 emissions - 23%, 24%, 25%
Cash allowance - £7,000
Signed up to the car on 6 April 2018

2018/19	Cash equivalent - £6,900	Cash forgone - £7,000	Use Cash forgone
2019/20	Cash equivalent - £7,200	Cash forgone - £7,000	Use Cash equivalent
2020/21	Cash equivalent - £7,500	Cash forgone - £7,000	Use cash equivalent

Car for Private use – Example

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- An employee has a car made available to them in the tax year 2018 to 2019 under the terms of OpRA
  - They give up £500 salary per month and also make a capital contribution of £2,000 for a higher specification vehicle
  - Car has a list price of £30,000 and an appropriate percentage of 17% (based on CO_2 emissions)
  - Cash equivalent value of the vehicle would normally be £3,145 (£30,000 minus capital contribution £2,000 × 17% = £4,760)
- The modified cash equivalent will be £5,100 (capital contribution ignored)
- The modified cash equivalent is compared with the amount foregone
- The amount foregone (£6,000) is greater than the modified cash equivalent (£5,100) so £6,000 is used to determine the relevant amount
- The relevant amount to treat as earnings is £6,000 minus £340 (capital contribution of £2,000 × 17%) = £5,660.
- Where the car is available for less than the full tax year, you should still allow a deduction for the full amount of the capital contribution multiplied by the appropriate percentage.

Car Benefit combined A & B

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- An employee has the option of a cash allowance of £6,000 (type B) which he decides to give up for a car
- However, the employee wants a higher specified model costing a further £1,000. So, he also gives up £1,000 of salary (type A)
- The amount foregone is £6,000 plus £1,000.

Car Fuel for private use

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- Where fuel for a car is made available to an employee who is chargeable to tax in respect of a car under OpRA
- The relevant amount to treat as earnings from the employment is the greater of:
  - The cash equivalent of the benefit of the fuel, and
  - The amount foregone with respect to the benefit of the fuel
- No deduction is given from the relevant amount in respect of the fuel benefit for any private use payments

Van available for private use

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- Where a van is made available to an employee in the tax year under an optional remuneration arrangement, the relevant amount to treat as earnings from the employment is the greater of:
  - Cash equivalent of the benefit of the van, and
  - Amount foregone with respect to the benefit
- No deduction is given from the relevant amount in respect of the van benefit for any private use payments

Van Example

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- An employee has a van made available to them under an optional remuneration arrangement that does not meet the restricted private use condition as the van is available for the employee's private use.
- As part of the arrangement, the employee has agreed to give up £300 salary each month. The employee makes no further payments for the private use of the van.
- The modified cash equivalent of the benefit of the van is worked out under the normal method for the tax year 2018 to 2019 as £3,350. The relevant amount to treat as earnings is the higher of the modified cash equivalent of the benefit (£3,350) and the amount foregone (£3,600 (£300 x 12)).

Medical Insurance Example

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- An employee is entitled to a cash allowance of £700 which they give up for the benefit of private medical insurance. They entered into these arrangements before 6 April 2017 and the transitional provisions apply.
- Under the terms of their original optional remuneration arrangement and their original medical insurance contract, the level of cover is automatically increased to the next higher level of cover in the event that they are promoted.
- The employee is promoted and their insurance cover increases. The insurance cover is provided under the terms of the original arrangement which has not been varied.
- The employee is provided with benefits under the terms of the original arrangement and the transitional rules can continue to apply to the higher level of cover.

Vouchers & Credit tokens

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- Cash Vouchers – the amount should be the greater of
  - The cash equivalent (the sum of money for which the voucher is capable of being exchanged)
  - The amount the employee has foregone (given up) to receive the voucher
- Non-cash Vouchers – relevant amount is
  - The cost of providing the voucher, and
  - The amount the employee has foregone in relation to the benefit of the voucher

Credit tokens

- The amount to treat as earnings from the employment is the greater of:
  - The cost of providing the credit token
  - A just and reasonable proportion of the amount foregone in relation to the benefit of the credit token to reflect the use of the credit token in the tax year to obtain money, goods and services
- The cost of provision is the sum of the individual costs of provision with respect to each occasion when the credit token is used by the employee in the tax year to obtain money, goods or services.

Voucher Example

- An employer provides employees with the opportunity to enter into an OpRA
- They give up £75 of salary each month in return for £75 in non-cash vouchers
- Employer has entered into a deal with the voucher supplier to purchase vouchers at a discounted cost of £65
- Under the OpRA rules:
  - Value of the benefit for the tax year is £900
  - The greater of the cost of providing the vouchers - £780 (£65 × 12) - and the amount of salary sacrificed by the employee - £900 (£75 × 12)

Living Accommodation

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- Transitional provisions apply until 5 April 2021 as long as no change occurs
- When determining the taxable value of the benefit and whether to use the cost of providing the benefit or the amount foregone, any rent paid by the employee is not taken into account
- If any amount has been paid this should be deducted from the relevant amount

Living Accommodation Example

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- An employer rents a property for an employee to occupy. The rent paid by the employer is £10,000 each year. The employee is required to pay a contribution of £2,000 per year towards that rental and on top of that sacrifices salary of £2,000.
- The modified cash equivalent is the rent paid by the employer of £10,000, without taking into account anything paid by the employee.
- The amount foregone in relation to the provision of the living accommodation is £2,000. The modified cash equivalent of £10,000 is used as the relevant amount as it's the greater figure. The rent paid by the employee is then deducted from the relevant amount.

Taxable cheap loans

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- Where a taxable cheap loan is made available to an employee under OpRA and the amount of salary or cash pay foregone is greater than the interest that would have been payable on the loan at the official rate of interest, the relevant amount to treat as earnings from the employment for the tax year is:
  - Amount of salary or cash pay foregone, less
  - Amount of any interest paid on the loan for the tax year.
  - If the amount foregone is less than the interest that would have been payable on the loan at the official rate of interest, then apply the normal rules for determining the amount treated as earnings from the employment.

Loan Example

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- An employee has an interest-free loan of £15,000 made available by their employer outstanding for the tax year 2018 to 2019, when the official rate of interest is 2.5%
  - The interest that would be payable on the loan at the official rate of interest is £375
  - The employee agrees under OpRA to waive his bonus for the tax year of £400 in return for which he does not pay interest on the loan
  - The amount of £400 foregone is greater than the interest of £375 that would be payable at the official rate of interest
  - The amount treated as earnings from the employment is £400

Example Mobile Phone

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- An employee sacrifices salary of £360 per year for a mobile phone.
- The benefit would otherwise be exempt from Income Tax
- The exemption does not apply because the benefit of the phone has been provided under OpRA.
- The cost of the benefit is deemed to be nil so the value of the benefit to treat as earnings from the employment is £360.

Apportioning Benefits

- Some employers can provide a number of separate benefits to employees
- Where this is the case an apportionment of the amount of earnings to the benefit will suffice
- As long as the total equals the total of the amount foregone, the apportionment can be made on a just and reasonable basis

Apportionment Example

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- An employer provides its employees with a package of benefits including medical insurance/dental insurance, life assurance and gift vouchers for a national retailer with a face value of £250.
- These are bought by the employer in bulk at a discount to face value.
- Employees are required to sacrifice salary of £500 in order to access these benefits.
- In these circumstances, if it becomes necessary to apportion the amount foregone, it may be reasonable to apportion by reference to the cost to the employer of providing the underlying benefit.

OpRA & TUPE

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- A company's business is taken over by another company and all of its staff are transferred under the TUPE transfer rules.
- The optional remuneration arrangements entered into with the first company are transferred to the new employer.
- The arrangements are amended to reflect the new employer. The original employer entered into the arrangements with the employee before 6 April 2017. The variation was beyond the control of the employee and the transitional arrangements continue to apply.
- If these arrangements were amended on or after 6 April 2018, OpRA will apply.

Associated Costs

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- Clause 7 of the Finance (No.3) Bill Explanatory Notes set out the amendments to include associated costs when a taxable vehicle is provided through OpRA
- Under normal rules associated costs are considered a benefit in kind
- This point was made clear within the explanatory notes when section 7 schedule 2 of the Finance Act 2017 introduced OpRA
- Associated costs were not considered, and so no provision was made where part of the amount forgone included such costs
- This clause now addresses that oversight
- The amendments provide for the effective date from 6th April 2019

Case Study

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Company car with a list price of £25,000 and an benefit charge of 20%

£25,000 x 20% = £5,000.

	Month	Annual
Lease	£500	£6,000
Insurance	£35	£420
Maintenance	£40	£480
Total cost to company	£575	£6,900
Salary Sacrifice	£575	£6,900

	Before OpRA	Tax Year 2018/19	Tax Year 2019/20
Car Benefit	£5,000	£5,000	£5,000
Salary Sacrifice	£6,900	£6,000*	£6,900
Taxable Benefit	£5,000	£6,000	£6,900

** Of the total £575 salary sacrifice, a flaw in the legislation enabled £75 to be matched with the insurance and maintenance costs with only £500 to be compared to the car benefit.*

Impact?

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- All OpRA benefits are reportable on P11D forms, and may attract Class 1A NIC payable
- Most benefits can be payrolled to relax the P11D requirements
- Class 1A NIC's where applicable will still need to be calculated and returned on the P11D(b) by 19th July
- Employers will need to register the BiK as payrolled before the start of the tax year payrolling starts
- Employees have until 6 July to 'make good' the benefit for the previous tax year

Pre-employment negotiations?

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- Before starting a job, an individual may be provided with an offer of a remuneration package with the option of a right to some form of monetary earnings or one or more benefits in kind. If the individual chooses the benefit then this will be provided under OpRA
- The individual is giving up a future right to receive an amount of earnings – you should certainly be explaining the possible tax implications of this, or within some companies the choice of a cash alternative may be removed to stop this eventuality occurring

Pre-employment negotiations?

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- An individual accepts a job offer
- Under the T&Cs they are offered the option of a cash allowance of £5,000 or a company car
- They opt for the company car
- The benefit falls under OpRA since there was a choice between cash/car
- Good practise would be to advise of the tax implications of this decision
- Some employers will remove the choice

Summary

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- Transitional rules for some until 6th April 2021
- Check payrolling benefits for impact
- No cash alternative – No OpRA
- OpRA ONLY applies if there is a cash alternative
- Prudent to review benefits packages