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Optional Remuneration Arrangements – the mystery unravelled

The Learn Centre

Contents

Optional Remuneration Arrangements – the mystery unravelled

Optional Remuneration Arrangements OpRA EIM44010

So what is OpRA, how do they work, what changes do they mean and should you already be doing something?

Just a few of the questions that are being asked about this change to legislation

In really simple terms – no point in being complex about this stuff – this is a change to the way we need to deal with Benefits in kind (BIK), a new name, but a replacement (mostly) for salary sacrifice.

Introduced from 6th April 2017 – yes that's last year, it changes legislation so that the Tax and NIC advantages where benefits are provided where the employee gives up the right to an amount of earnings in return for a benefit (salary sacrifice) are largely removed.

Why – let's be honest here, with the success of SS and the amount of savings being made via this route, and as such, the cost to the revenue, there was always going to be a review at some point. This change has been made – in HMRCs words 'to redress the advantages that use of these arrangements allowed'

Under such schemes employees would pay less income tax and NICs when compared to what they would have paid if they had been paid entirely in cash – and as we know, cash is taxable and NICable.

This change means that benefits provided under OPRA will no longer benefit from these Tax/NIC advantages, which have been available - this will also impact any BIK with a cash allowance option, as well as any flexible benefits packages where there is a cash option available.

The definition and regulations are included in the Employment Income Manual EIM44010 – Optional Remuneration Arrangements – issued by HMRC

There are 2 types of benefits under OpRA, Type A and Type B – how original of HMRC

Type A

These are arrangements where an employee gives up the right to (or future right to) an amount of earnings ie salary, which would normally attract tax/nics in return for a benefit

Type B

Where an employee agrees to be provided with a benefit rather than an amount of earnings (the option of a cash allowance) – examples of this could be medical benefit, flexible benefits package – you receive X benefits instead of £5k in cash earnings

Where the taxable value of the benefit provided is greater than the amount of cash given up the value of the benefit should be used to calculate the tax due.

Example – a medical benefit is provided to an employee. The cash value given up is £50, but the actual value of the benefit is £65, this is the value if the employee bought the benefit direct, not the amount the employer is paying for it (due to bulk purchase) then the taxable value to be used is £65

So, first off, before we get too far ahead of ourselves, we need to determine if an OpRA arrangement exists.

- If Cash Allowance – no OpRA
- If Benefit only – No OpRA
- If Benefit is offered with no Cash option – no OpRA
- If there is cash/benefit choice – OpRA
- If there is a change in an arrangement that is covered under the transitional provisions – OpRA

If there is OpRA then in order to be able to determine the value to use, you will need to know what the cash value would be and/or the value of the benefit……this is not always clear, nor, in some instances, is it easily available

There is also some different terminology that has been introduced, and it is causing some confusion.

The term 'amount foregone' is used within these regulations (EIM44020)

A specific quote from HMRC guidelines reads….

'the amount foregone in relation to the benefit that is provided means the amount of earnings mentioned in EIM44010. This is the amount of cash pay given up by the employee in return for the provision of the benefit or the amount of cash pay that the employee could have received instead of that benefit'

Transitional provisions EIM44030

Most arrangements that were entered into prior to the 6th April 2017 will continue to be dealt with under the old benefit valuation rules until the earlier of either:

- There is a variation, renewal or modification of the arrangement
- 6th April 2018

As ever there are exceptions to this, nothing is ever as simple as it at first seems, so in this case the exceptions are

- Where there is a provision of a car with emissions of more than 75g CO_2/KM
- Living accommodation
- School fees

For these cases, where there is no change in the arrangement, that is the car remains the same, the child is in the same school, then the transitional provisions are extended until 6th April 2021.

In my opinion is would still be good practise to explain to those individuals impacted by this, what the change will mean to them when it arrives or if they are thinking about making a change/variation within that period

Break in Transitional arrangements

As ever there are exceptions to these transitional arrangements

HMRC is clear that an arrangement is not varied for the purposes of the transitional rules if the variation of the arrangement is only in connection with a replacement because of accidental damage or otherwise for reasons beyond the control of the parties – for example if a car is replaced due to accident damage – this is beyond the control of the indiviudal.

There is also no variation of an arrangement if the variation is in connection with an employee's entitlement to:

- Statutory Sick Pay,

- Statutory Maternity Pay,
- Statutory Adoption Pay,
- Statutory Paternity Pay, or
- Statutory Shared Parental Pay.

However, where employees change or renew their arrangements on or after 6 April 2017, the transitional rules mean that the date of change or renewal is taken as the date the revised legislation applies from. You will need to watch for this, as it could mean you are required to report on both the old and new rules during one year – somehow you will need to put a process in place that will flag up such changes so you can communicate with, or ensure that someone has communicated with the individual and informed them of the impact of the change – possibly more critical if you are payrolling the benefit. This won't be easy as we, within payroll, are often not informed of such changes

Vouchers and credit tokens EIM44040

Cash vouchers

Where an OpRA is used to provide cash vouchers to an employee, the amount to treat as earnings from the employment is the greater of:

- the cash equivalent (the sum of money for which the voucher is capable of being exchanged), and
- the amount the employee has foregone (given up) to receive the voucher

Non-cash vouchers

Where OpRA is used to provide non-cash vouchers to an employee, the relevant amount to treat as earnings from the employment is the greater of:

- the cost of providing the voucher, and
- the amount the employee has foregone in relation to the benefit of the voucher

Transitional provisions i.e. for School Fees apply.

Credit tokens

The amount to treat as earnings from the employment is the greater of:

- the cost of providing the credit token, and
- 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.

Example

An employer provides employees with the opportunity to enter into an optional remuneration arrangement in which they give up £50 of salary each month in return for £50 in non-cash vouchers. The employer has entered into a deal with the voucher supplier to purchase vouchers at a discounted cost of £45. Under the optional remuneration arrangement rules, the value of the benefit for the tax year is £600. This is the greater of the cost of providing the vouchers - £540 (£45 × 12) - and the amount of salary sacrificed by the employee - £600 (£50 × 12).

Amounts made good…………

Whether the benefit is provided through a cash voucher, non-cash voucher or credit token, when determining the taxable value of the benefit and whether to use the cost of providing the benefit or the amount foregone, any amount made good by the employee is not taken into account. However, once the taxable value has been established, if any amount has been made good before 6 July following the end of the tax year in which the benefit is provided, this should be deducted from the relevant amount.

Actually, this applies to all calculations where employees have made contributions (made good)

Living accommodation EIM44000

Transitional provisions apply for living accommodation as already mentioned 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 in determining the relevant amount. However, if any amount has been paid this should be deducted from the relevant amount.

Example

An employer rents a property for an employee to occupy. The rent paid by the employer is £12,000 each year. The employee is required to pay a contribution of £3,000 per year towards that rental and on top of that sacrifices salary of £3,000. The modified cash equivalent is the rent paid by the employer of £12,000, without taking into account anything paid by the employee. The amount foregone in relation to the provision of the living accommodation is £3,000. The modified cash equivalent of £12,000 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.

Where it's necessary to apportion the benefit charge on the provision of living accommodation under an optional remuneration arrangement, the apportionment should be made on a just and reasonable basis.

The exemptions under section 98 ITEPA (accommodation provided by local authority) and section 99 (accommodation provided for performance of duties) do not apply where the living accommodation is provided as part of optional remuneration arrangements.

Cars with CO_2 emissions of 75g/KM or less EIM44060

The OpRA do not apply to cars with CO_2 emissions of 75 grams or less per kilometre. These cars continue to be taxed on the cash equivalent of the benefit without having to make a comparison with the salary foregone.

Cars made available for private use EIM44070

Cars made available for private use with CO_2 emissions of more than 75 grams per KM are within the scope of OpRA rules.

The relevant amount to treat as earnings from the employment is the greater of:

- the modified cash equivalent of the benefit, and
- the amount foregone in relation to the provision of the benefit

The modified cash equivalent of a car means the amount which would be the cash equivalent under the normal method, ignoring any capital contributions made by the employee and any payments the employee is required to make for private use.

Once the benefit amount has been determined, a deduction is then made for any capital contribution. This is given by multiplying any capital contribution (up to the maximum of £5,000) by the relevant percentage. A deduction is then given for any private use contribution.

Example 1

An employee has a car made available to them in the tax year 2017 to 2018 under the terms of an optional remuneration arrangement under which they give up £300 salary per month. The employee also makes a capital contribution of £1,500 for a higher specification vehicle. The car has a list price of £20,000 and an appropriate percentage of 17% (based on CO_2 emissions and adjusted where applicable e.g. diesel). The cash equivalent value of the vehicle would normally be £3,145 (£20,000 minus capital contribution £1,500 = £18,500 × 17%. The modified cash equivalent will, however, be £3,400 as no account is taken of the capital contribution.

The modified cash equivalent is then compared with the amount foregone. The amount foregone (£3,600) is greater than the modified cash equivalent (£3,400) so £3,600 is used to determine the relevant amount. The relevant amount to treat as earnings is £3,600 minus £255 (capital contribution of £1,500 × 17%) = £3,345.

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.

Where a number of separate benefits are provided to an employee in conjunction with optional remuneration arrangements, usually the employer and the employee are well aware of the value of the salary or cash given up for each respective benefit and the employer should be able to report the appropriate value. However, where the amount given up for each benefit is not separately identified the value should be apportioned on a just and reasonable basis taking into account the facts and circumstances, as long as the total equals the total of the amount foregone.

Where the amount forgone by the employee is in return for the provision of the car and also

for the provision of connected benefits then an apportionment should be made on a just and reasonable basis between the amount relating to the car and the amount relating to those benefits (see EIM44095).

Classic cars

Where a classic car is made available for an employee's private use and under an optional remuneration arrangement, work out the modified cash equivalent value without reference to any capital contributions made by the employee.

Trading up

Employees may be provided with a car partly through optional remuneration arrangements and partly through a personal contribution out of net pay. When determining the relevant amount, only account for the amount foregone under the optional remuneration arrangements.

Example 2

An employee has the option of a cash allowance of £5,000 which she gives up for a car with a modified cash equivalent of £3,000 and an appropriate percentage 17%. However, the employee wanted a higher specified model with leather seats costing a further £500. So, she made a payment of £500 to her employer out of her taxed pay. The amount foregone is £5,000 which is compared with the modified cash equivalent of £3,000. The relevant amount is £5,000. The payment of £500 is treated as a capital contribution. A relevant amount is reduced by £85 (17% × £500).

Car fuel - for private use EIM080

Where fuel for a car is made available to an employee who is chargeable to tax in respect of a car under an optional remuneration agreement, 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

Where a number of separate benefits are provided to an employee in conjunction with optional remuneration arrangements, usually the employer and the employee will be well aware of the value of the salary or cash given up for each respective benefit and the employer should be able to report the appropriate value. However, where the amount given up for each benefit is not separately identified the value should be apportioned on a just and reasonable basis taking into account the facts and circumstances, as long as the total equals the total of the amount foregone.

No deduction is given from the relevant amount in respect of the fuel benefit for any private use payments.

Example

An employee has a car, with an appropriate percentage of 20%, made available to him for the whole of the tax year 2017 to 2018. The employee also enters into an optional remuneration arrangement with his employer under which he gives up a £400 per month cash allowance offered by his employer in return for car fuel. The £400 is calculated at the start of the employee's arrangement to reflect an expected average annual mileage of 35,000.

The cash equivalent of the benefit of the fuel is £4,520 (the fixed fuel benefit chare multiplier amount of £22,600 multiplied by the appropriate percentage of 20%). The cash allowance foregone of £4,800 (£400 × 12) is the relevant amount to treat as earnings.

Vans made available for private use EIM44090

Where a van is made available to an employee, the relevant amount to treat as earnings from the employment is the greater of:

- the modified cash equivalent of the benefit of the van, and
- the amount foregone with respect to the benefit of the van

The modified cash equivalent in relation to the benefit of a van means the amount which would be the cash equivalent under the normal benefit in kind rules but ignoring any payments made by the employee for the private use of the van.

Once the relevant amount has been determined a deduction is then made for any private use contribution made by the employee that he or she was required to make as a condition of being able to use the van privately.

Example

An employee has a van made available to them under OpRA 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 2017 to 2018 as £3,230. The relevant amount to treat as earnings is the higher of the modified cash equivalent of the benefit (£3,230) and the amount foregone (£3,600 (£300 x 12)) in this case £3600

Van fuel made available for private use EIM44100

Where fuel for a van is made available to an employee who is chargeable to tax in respect of a van in the tax year under an optional remuneration arrangement, 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.

Example

The employee in the example in EIM44090 also has fuel made available to him, and under an optional remuneration arrangement he gives up £60 per month as a payment towards his private use. The cash equivalent of the benefit of the fuel is £610, whilst the amount foregone with respect to the benefit of the fuel is £720 (£60 × 12). As the amount foregone is the greater of the two sums, this will be the amount to treat as earnings.

Payments and benefits connected with taxable cars, vans and exempt heavy good vehicles

Benefits that are provided through OpRA from 6 April 2017 are not covered by existing exemptions within Part 4 of ITEPA 2003 unless the exemption is an excluded exemption. Excluded exemptions include the exemption for payments and benefits connected with taxable cars, vans and heavy good vehicles under section 239 ITEPA 2003.

Cars made available for private use with CO_2 emissions of more than 75 grams per kilometre and vans available for private use are within the scope of the OpRA rules.

When a car is made available to an employee, the employee is often provided with connected benefits such as insurance, servicing, vehicle tax and breakdown recovery. When this is the case, an apportionment should be made on a just and reasonable basis between the amount relating to the availability of the car and the amount relating to the connected benefits. The exemption under section 239 ITEPA 2003 means that there is no separate charge to tax under the benefits code in respect of those connected benefits.

The taxable value of the benefit of the availability of the car should be worked out applying the guidance in EIM44070. The benefit of the connected benefits is exempt from income tax.

Administrative expenses linked to the provision of a car or its return at the end of the employee's use should be treated as part of the costs of making the car available and not as part of connected benefits. These might include monthly fees to cover the costs of operating the lease, costs for collecting the car at the end of the lease and auction charges.

Example

An employee sacrifices £6,000 in exchange for the availability of a car and connected benefits. £5,200 is in respect of the availability of the car and £800 is in respect of servicing, vehicle tax, insurance and breakdown recovery. The modified cash equivalent of the benefit of the car is £5,000. Comparing the amount foregone with the modified cash equivalent, the relevant amount of the benefit of the car is £5,200. The connected benefits are exempt and the taxable value of those benefits remains nil.

When the connected benefits and their underlying costs have been separately identified then you should use those figures provided they have been worked out on a commercial basis. Where the connected benefits have not been separately identified then you should accept an apportionment on a just and reasonable basis, having regard to the nature of the benefits in question.

Taxable cheap loans EIM44110

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 the :

- the amount of salary or cash pay foregone, less
- the 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.

Example

An employee has an interest-free loan of £15,000 made available by their employer outstanding for the tax year 2017 to 2018, 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 have to 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.

Replacement loans

Where a taxable cheap loan is made available via OpRA, and it is a replacement for a previous loan, the relevant amount to treat as earnings from the employment is worked out as before with the benefit of the replacement loan being the greater of:

- the modified cash equivalent of the benefit of the loan, and
- the amount foregone with respect to the benefit

A loan provided under OpRA cannot replace a previously held taxable cheap loan. From 6 April 2017, make the calculation as if the loan is a new loan.

Aggregated loans

Where from 6 April 2017 a taxable cheap loan is made available to an employee under an OpRA and might previously have been aggregated with earlier loans, the relevant amount to treat as earnings from the employment is worked out as before with the benefit of the loan being the greater of:

- the modified cash equivalent of the benefit of the loan, and
- the amount foregone with respect to the benefit

A loan made available under OpRA cannot be aggregated with other taxable cheap loans.

Employment-related benefits EIM44120

Where a taxable cheap loan is made available via OpRA, and it is a replacement for a previous loan, the relevant amount to treat as earnings from the employment is worked out as before with the benefit of the replacement loan being the greater of:

- the modified cash equivalent of the benefit of the loan, and
- the amount foregone with respect to the benefit

A loan provided under OpRA cannot replace a previously held taxable cheap loan. From 6 April 2017, make the calculation as if the loan is a new loan.

Aggregated loans

Where from 6 April 2017 a taxable cheap loan is made available to an employee under an OpRA and might previously have been aggregated with earlier loans, the relevant amount to treat as earnings from the employment is worked out as before with the benefit of the loan being the greater of:

- the modified cash equivalent of the benefit of the loan, and
- the amount foregone with respect to the benefit

A loan made available under OpRA cannot be aggregated with other taxable cheap loans.

A question was raised about Season Ticket Loans during the webinar – these are usually repaid from Net Pay and as such, OpRA does not apply.

Example 1

An employer provides an employee with medical insurance costing £500. The employee is required to sacrifice salary of £600. The relevant amount is £600, being the greater of the cost of providing the benefit and the amount foregone. If the employee then made good an amount of £100 within the time permitted, the amount chargeable to tax would be reduced to £500.

If it becomes necessary to apportion an amount of earnings to the benefit, make the apportionment on a just and reasonable basis.

Section 221 ITEPA covers payments where an employee is absent because of sickness or disability. Section 202 treats the provision of a right to receive such payments as an excluded benefit so it is not charged to tax as a benefit in kind in the normal course of events. However, where provided under OpRA, the right to receive sickness absence payments is not treated as an excluded benefit. The relevant amount to treat as earnings from the employment is worked out as set out above.

Example 2

An employer arranges sickness absence cover for its employees through an insurance policy in favour of its employees to pay out an amount to them as sick pay. The employer arranges a basic level of cover for its employees without requiring its employees to contribute. However, the employer arranges a higher level of sick pay that costs it £40 for employees who sacrifice salary of £50 to cover the additional premium. The basic level of cover is an excluded benefit. However, the employee will pay tax on £50 for the higher level of cover. Since that part of the benefit is provided under OpRA, it's not an excluded benefit.

Employment related benefits – transfer of assets

Where employment related benefits that are taxable as general benefits are provided to employees under OpRA, the normal method of working out the cash equivalent for those benefits does not apply. The relevant amount to treat as earnings from the employment for that tax year is the greater of:

- the cost of the benefit, and
- the amount foregone with respect to the benefit

This includes situations where an asset is transferred to an employee after having been provided for the employee's use as an employment-related benefit.

Where the asset was provided for the employee's use as an employment-related benefit, compare the cost of the benefit with the amount foregone to determine the relevant amount – the amount chargeable to tax and liable for Class 1A NICs.

Where an asset is subsequently transferred to the employee, follow the guidance in EIM21640.

Where the special rule in section 206(3) applies, then compare the market value of the asset at the time the asset was first provided with the amount foregone. Then deduct from that amount the cost of the benefit (20% of the market value when first provided for private use) for the years during which it was provided for the employee's private use.

Example 3

An employer provides its employee with the use of a computer for 3 years. The employee sacrifices £300 each year. The market value of the computer when first provided for the employee's private use was £1,200. The annual value is £240. The employee makes a payment of £300 under salary sacrifice and is given the computer at the start of year 4.

In years 1, 2 and 3, the amount foregone in each of those years (£300) is compared with the cost of the benefit (£240). The relevant amount is the greater of the two - £300.

In year 4, when the asset has a market value of £300, the employee is given the asset in return for foregoing £300. To work out the benefit for year 4 take the higher of the market value at the date of transfer (£300) and the market value when first applied as an employment-related benefit (£1,200) less the cost of the benefit in each of the tax years when provided as an employment-related benefit (3 X £240 = £720). This gives the cost of the benefit as £480 (£1,200 - £720). This is higher than the amount foregone so the relevant amount treated as earnings from the employment in year 4 is £480.

General exclusion from exemptions EIM44130

Value of the benefit

When a benefit which is subject to OpRA would otherwise be exempt from tax, the value of the benefit to compare with the amount foregone in determining the taxable amount is deemed to be nil. Therefore, the taxable value of the benefit is the amount foregone.

Example

An employee sacrifices salary of £360 per year for a mobile phone. The benefit would otherwise be exempt from Income Tax under section 319 ITEPA 2003. 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.

A question was raised during the webinar regarding phones for business use – there is a simple rule, is there a Cash Alternative, if so then OpRA applies, if there is no option, then OpRA will not apply.

Special case exemptions

There are also a number of exemptions that already have specific salary sacrifice rules and you should continue to apply those rules, rather than the OpRA rules, in determining whether the benefit is exempt. These are known as special case exemptions.

Benefits that are provided through OpRA are not covered by existing exemptions from Income Tax unless the exemption is an 'excluded exemption'.

A special case exemption means an exemption conferred by any of the following provisions:

- Section 289A ITEPA 2003 - exemption for paid or reimbursed expenses
- Section 289D ITEPA 2003 - exemption for other benefits
- Section 308B ITEPA 2003 - exemption for independent advice in respect of conversions and transfers of pension schemes
- Section 312A ITEPA 2003 - limited exemption for qualifying bonus payments
- Section 317 ITEPA 2003 - exemption for subsidised meals
- Section 320C ITEPA 2003 - exemption for recommended medical treatment
- Section 323A ITEPA 2003 - exemption for trivial benefits provided by employers

Special case exemptions already have specific salary sacrifice rules and you should continue to apply those when considering whether an exemption continues to apply. Then work out the amount to treat as earnings from the employment for any benefit that would otherwise be covered by such an exemption.

The special case rules are only relevant for determining whether to the exemption does not apply. If, having applied the specific special case exemption there is a taxable benefit, then apply the OpRA rules in the usual way. The amount to compare with the amount foregone is deemed to be nil, so the taxable value of the benefit will be equal to the amount foregone.

Example

An employee is provided with a benefit that would otherwise be exempt as a trivial benefit under section 323A ITEPA 2003 under salary sacrifice arrangements. The employee sacrifices £55 for the benefit. Because the benefit has been provided under 'relevant salary sacrifice arrangements', condition C of the exemption is not satisfied so the benefit is not exempt from Income Tax. The cost of the benefit is treated as nil and the employee is taxed on an amount equal to the salary foregone of £55.

Particular issues

Mileage allowance payments

Employees are sometimes provided with mileage allowance payments under optional remuneration arrangements. The employer makes a payment that is less than the maximum tax-free mileage allowance payment that can be paid and then tops this up to 45 pence under optional remuneration arrangements.

The payment to the employee in respect of the amount paid under salary sacrifice represents a benefit which is covered by the optional remuneration arrangement rules. The exemption for mileage allowance payments is a relevant exemption and so it does not apply to the extent that the payment is made under those arrangements. The taxable amount is the amount foregone by the employee.

Example

An employer pays 20 pence a mile to its employees when they use their own cars for business journeys. The employees then sacrifice salary of 25 pence and the employer tops up the mileage allowance payment to make a total payment of 45 pence per mile. The amount of 25 pence paid to the employee under salary sacrifice is taxable.

Under some arrangements, an employee is entitled to a cash allowance each month. That allowance is varied each month so part is automatically allocated to a mileage allowance payment to match the number of business miles driven by the employee during that period. Although the allocation is determined each month by the number of business miles driven, the employee is likely to have had to have entered into an agreement with the employer to vary the payment each month. So, the allocation to mileage payments falls within the optional remuneration arrangement rules.

Charitable giving

Employees sometimes enter into arrangements under which their employer makes a charitable donation matched by a similar amount under salary sacrifice. Under the arrangements, the employer may make a contribution to a charity named by the employee or to a charity of its own choosing. Whichever this might be, the employee is benefiting from ensuring that a charity will receive a donation as a result of their own salary sacrifice. The arrangements are therefore subject to the optional remuneration arrangement rules.

Shares

Employees may have the option of an annual bonus that could be taken as earnings that are chargeable within Chapter 1 of Part 3 ITEPA or an award of shares. The rules can be complex and whether the OpRA rules apply and the tax treatment depend on the particular arrangements and the shares in question.

Section 418(1) specifically provides that the benefits code, and consequently the OpRA rules may have effect in relation to securities and interests in securities. However, as provided under section 418(1A), the benefits code does not have effect in relation to:

- The acquisition of employment-related securities options (with the meaning of Chapter 5 of part 7)
- Chargeable events (within the meaning of section 477) occurring in relation to such option

The exemption is not in Part 4 of ITEPA and so is not switched off by the OpRA rules.

Detailed rules on the taxation of employment related securities are set out in Part 7 ITEPA and these are covered in the Employment Related Securities Manual (ERSM).

Pre-employment negotiations

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

Example

An individual accepts a job offer from a new employer. Under the terms and conditions of the new employment setting out his remuneration package from the employment, the individual is offered the option of a cash allowance of £5,000 or a company car. The individual decides to opt for the company car. The benefit is under optional remuneration arrangements since the individual has agreed to be provided with the car benefit rather than an amount of earnings within Chapter 1 of Part 3.

Summary

To Summarise then – if there is no cash alternative, there is NO OpRA

OpRA only applies if there is a cash alternative, beware though, this does not mean the employee has to have taken the cash alternative, just that there is one available.

Now for the bad news……………………you need that information from LAST April, yes 6th April 2017

It applies to payrolled benefits, as well as those due to be reported on this years P11D's, so you may well have some work to do, collecting that information – and remember you will need this BEFORE you complete P11D's

You may also need to communicate with recipients of the benefits to inform them of the change, and that there may be tax implications for them

To summarise then, OpRA applies only where a cash alternative is available, and then the reportable value is the greater of the benefit value or the cash alternative

Some individuals are likely to find themselves worse off under the new regimen, and may well, once aware of this, make different choices

You should consider, if you haven't already done so, how to communicate the changes to employees, remembering that this was actually effective from 6th April 2017, so will already be having an impact

It may well be prudent for companies to review their offerings and perhaps consider removing cash alternatives

Slides

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Payroll Alliance
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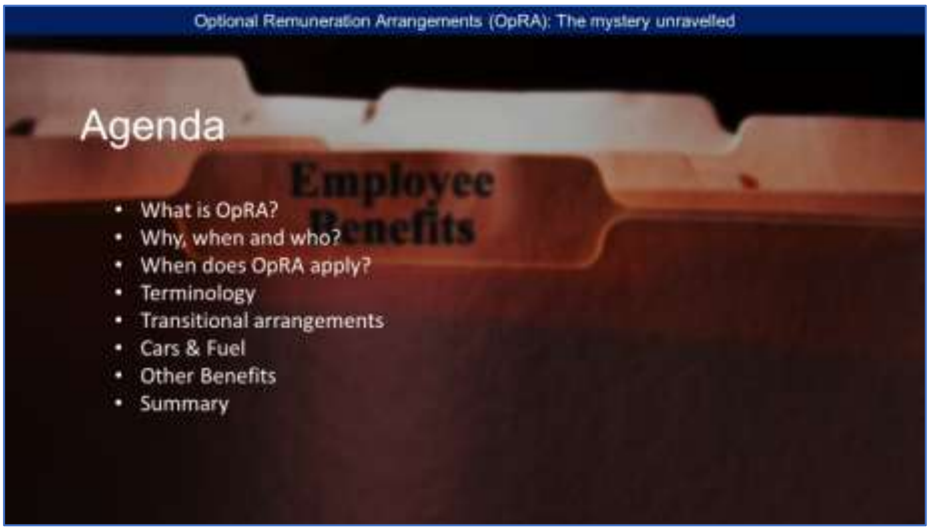
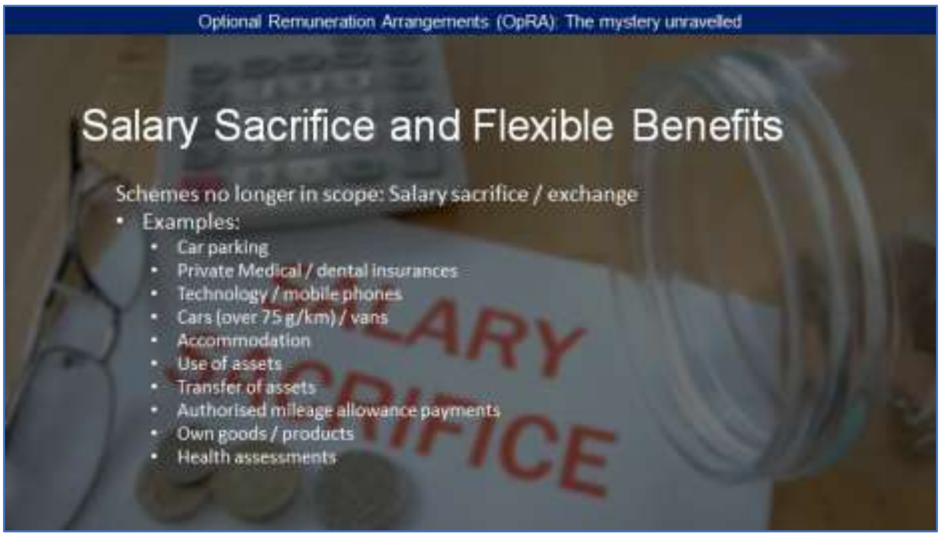
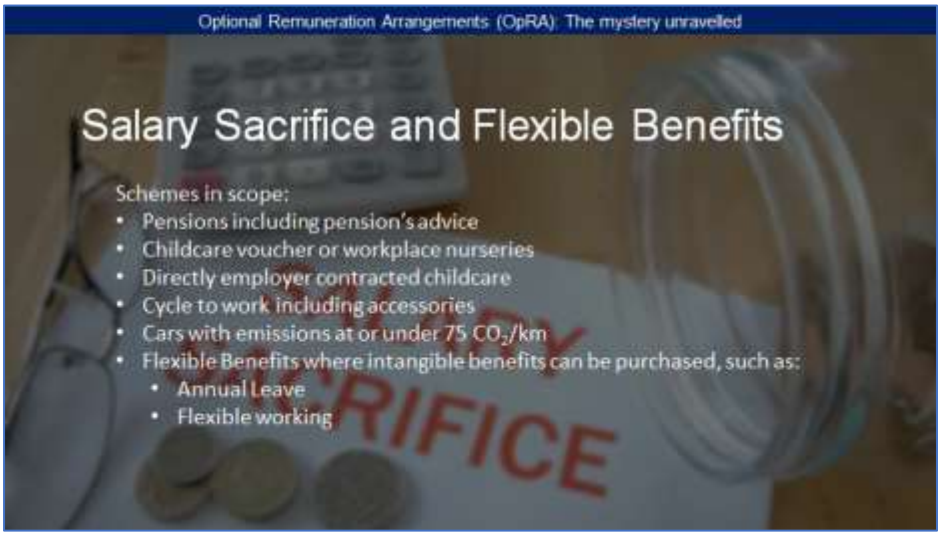
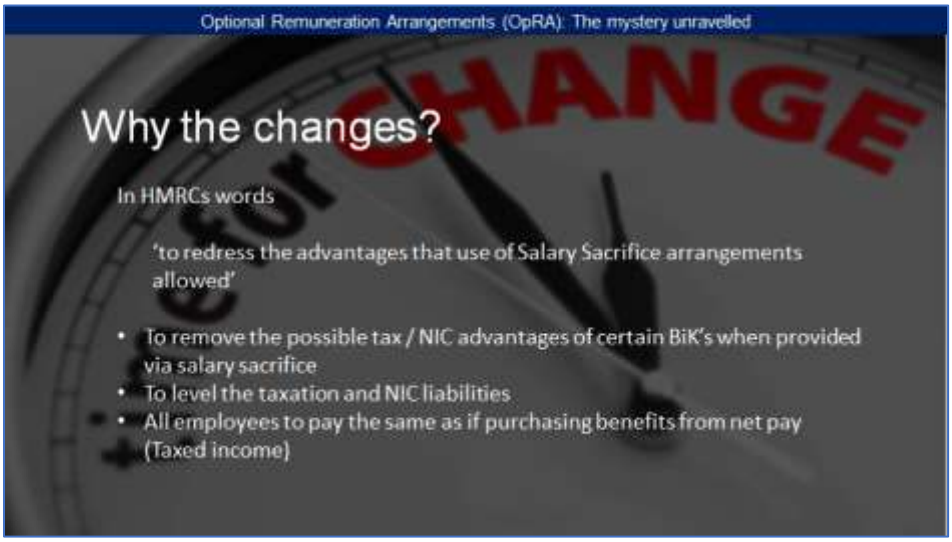


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Agenda
Employee
Benefits
What is OpRA?
Why, when and who?
When does OpRA apply?
Terminology
Transitional arrangements
Cars & Fuel
Other Benefits
Summary


Optional Remuneration Arrangements (OpRA): The mystery unravelled
What are Occupational Remuneration Arrangements (OpRA)?
Employee Benefits
New term for Salary Sacrifice & BIK treatment?
New method for calculating taxable benefit value

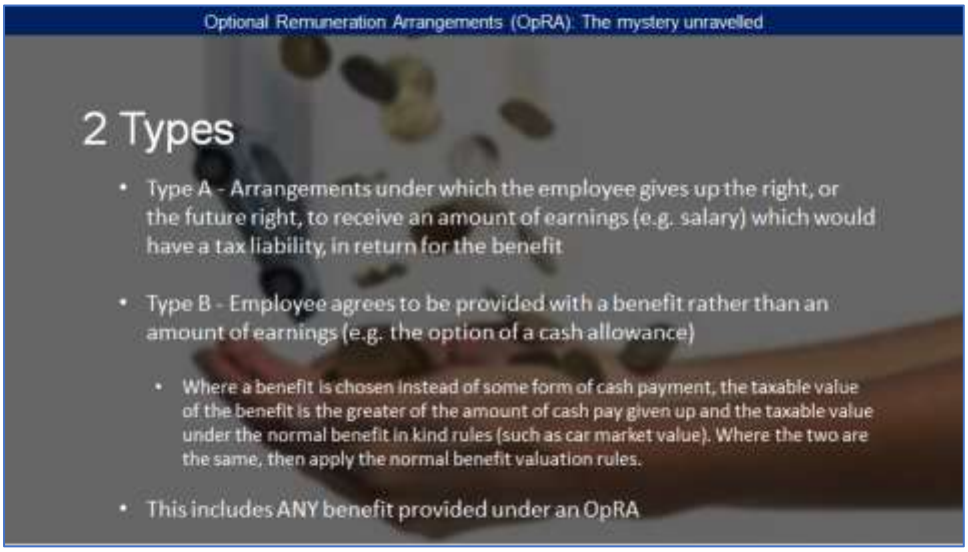

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Salary Sacrifice and Flexible Benefits
Schemes no longer in scope: Salary sacrifice / exchange
Examples:
Car parking
Private Medical / dental insurances
Technology / mobile phones
Cars (over 75 g/km) / vans
Accommodation
Use of assets
Transfer of assets
Authorised mileage allowance payments
Own goods / products
Health assessments
SALARY SACRIFICE


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Salary Sacrifice and Flexible Benefits
Schemes in scope:
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

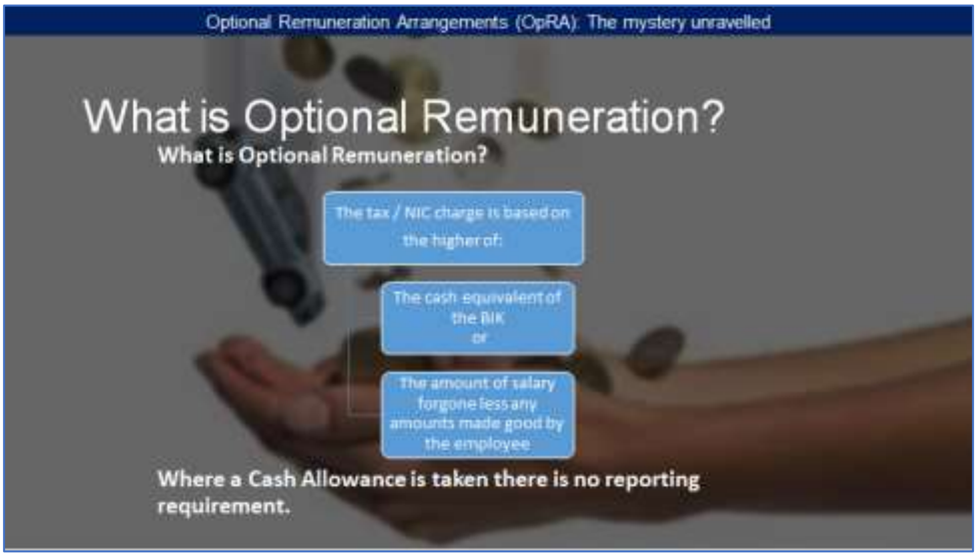

Optional Remuneration Arrangements (OpRA): The mystery unravelled
CHANGE
Why the changes?
In HMRCs words
'to redress the advantages that use of Salary Sacrifice arrangements allowed'
• To remove the possible tax / NIC advantages of certain BiK's when provided via salary sacrifice
• To level the taxation and NIC liabilities
• All employees to pay the same as if purchasing benefits from net pay (Taxed income)

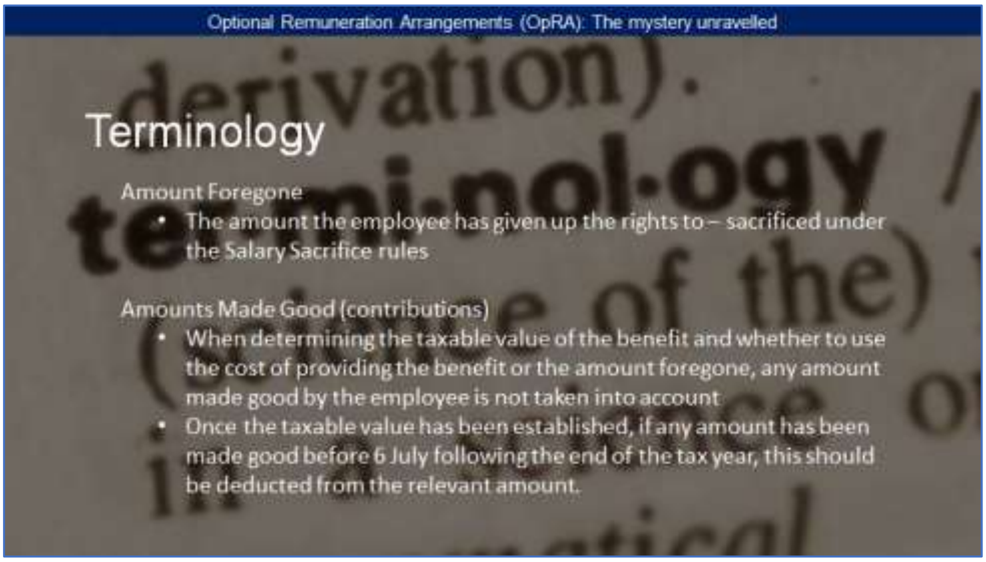

Optional Remuneration Arrangements (OpRA): The mystery unravelled
When?
First mentioned in the 2016 Autumn Statement:
"...the tax and employer National Insurance advantages of salary sacrifice schemes will be removed..."
Effective from 6th April 2017
Schemes arranged prior to April 2017 received 'Grandfather' protection until April 2018 – unless there is variation, modification or renewal
Some transitional arrangements for current car, accommodation and school fee schemes protected until 2021 – or until end or renewal


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Who?
• Employees in receipt of certain benefits
• Employers providing benefits
• Payroll – processing payrolled benefits
• Payroll – when completing P11Ds
• Benefit package suppliers

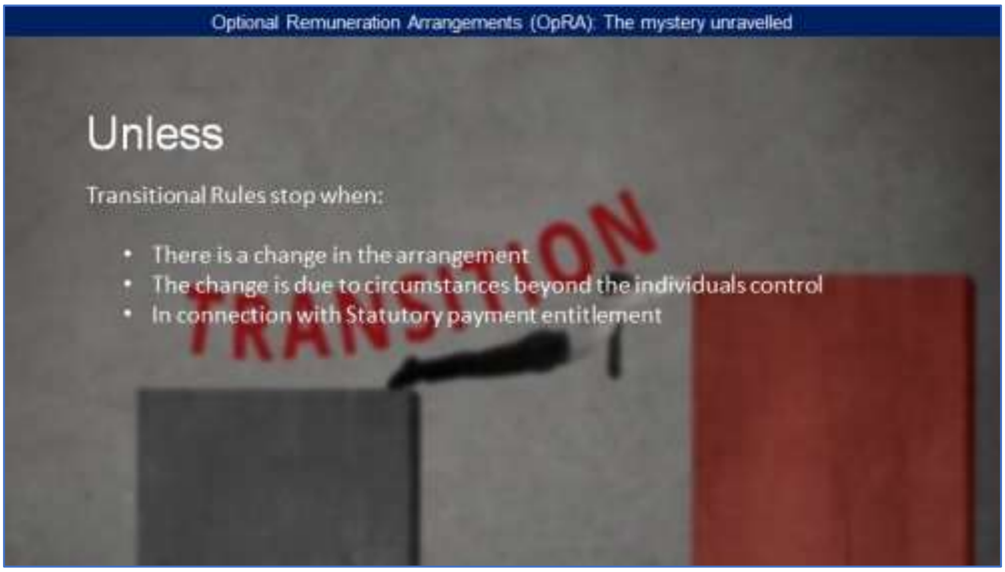

Optional Remuneration Arrangements (OpRA): The mystery unravelled
2 Types
• Type A - Arrangements under which the employee gives up the right, or the future right, to receive an amount of earnings (e.g. salary) which would have a tax liability, in return for the benefit
• Type B - Employee agrees to be provided with a benefit rather than an amount of earnings (e.g. the option of a cash allowance)
• 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 (such as car market value). Where the two are the same, then apply the normal benefit valuation rules.
• This includes ANY benefit provided under an OpRA

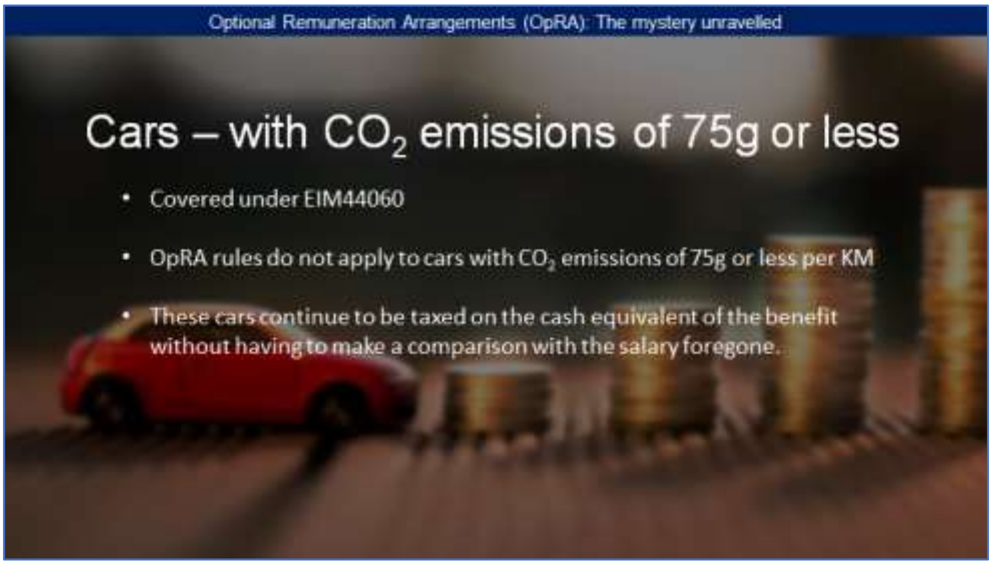

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Does OpRA apply?
Cash Allowance
No Benefit
Benefit Only
No OpRA
Cash or Benefit
OpRA Applies
Change in Benefit
OpRA Applies


Optional Remuneration Arrangements (OpRA): The mystery unravelled
What is Optional Remuneration?
What is Optional Remuneration?
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
Where a Cash Allowance is taken there is no reporting requirement.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Terminology
Amount Foregone
• The amount the employee has given up the rights to – sacrificed under the Salary Sacrifice rules
Amounts Made Good (contributions)
• When determining the taxable value of the benefit and whether to use the cost of providing the benefit or the amount foregone, any amount made good by the employee is not taken into account
• Once the taxable value has been established, if any amount has been made good before 6 July following the end of the tax year, this should be deducted from the relevant amount.

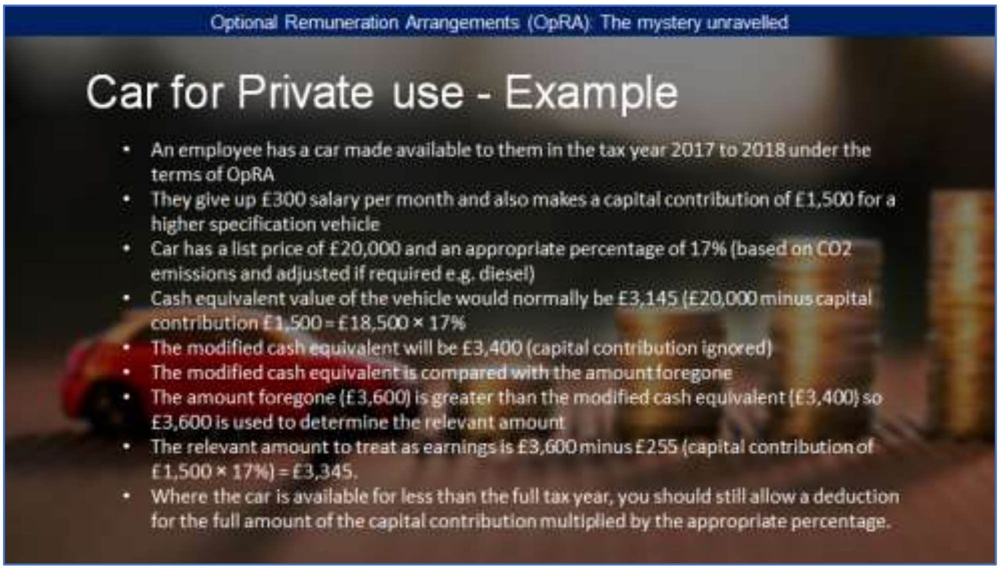

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Transitional Provisions
Some exceptions to the rules
• Covered in EIM44030
• Cars with emissions higher than 75g CO2/KG
• Living Accommodation
• School Fees
• Under transition rules until 6th April 2021

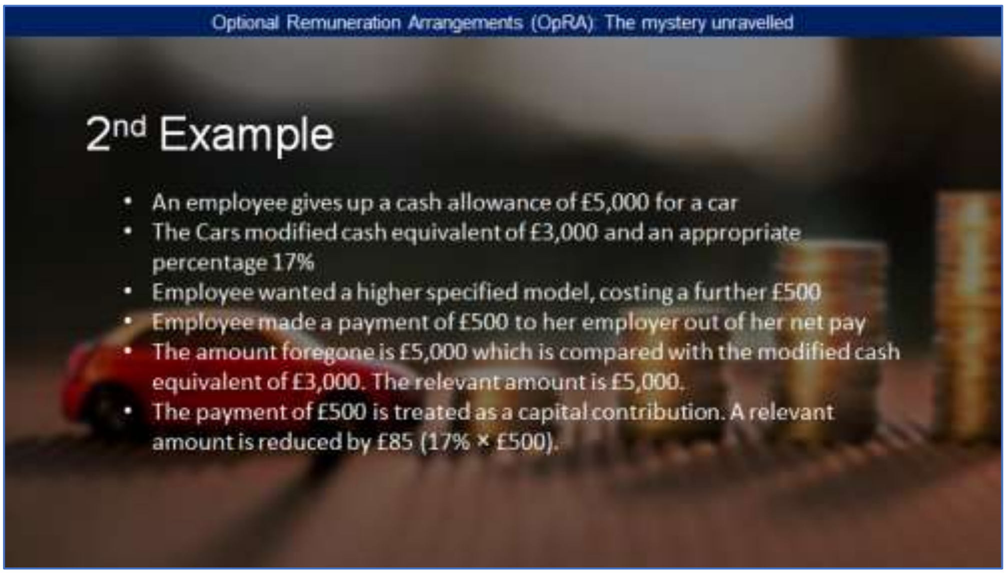

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Unless
Transitional Rules stop when:
• There is a change in the arrangement
• The change is due to circumstances beyond the individuals control
• In connection with Statutory payment entitlement

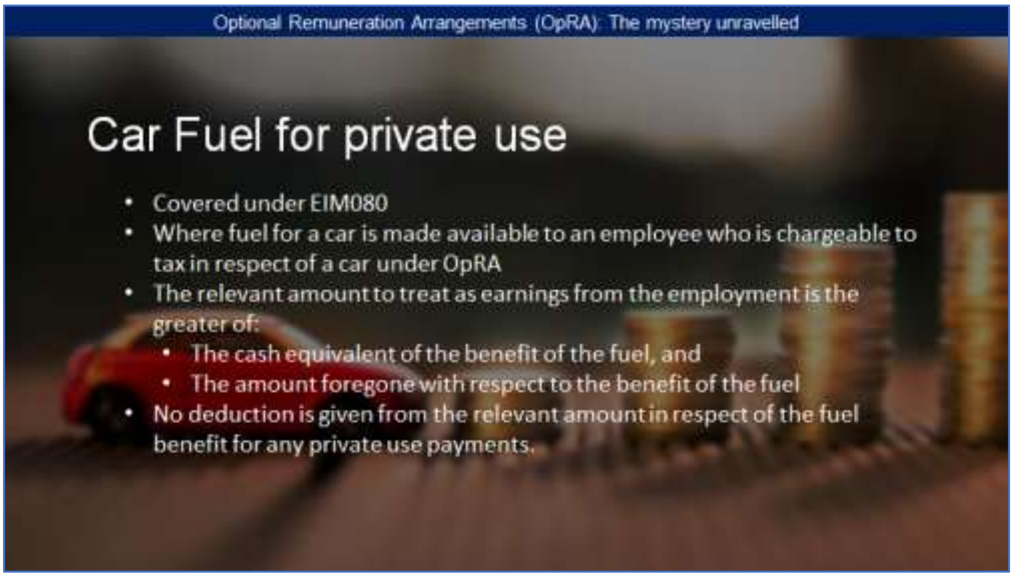

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Cars – with CO2 emissions of 75g or less
• Covered under EIM44060
• OpRA rules do not apply to cars with CO2 emissions of 75g or less per KM
• These cars continue to be taxed on the cash equivalent of the benefit without having to make a comparison with the salary foregone.

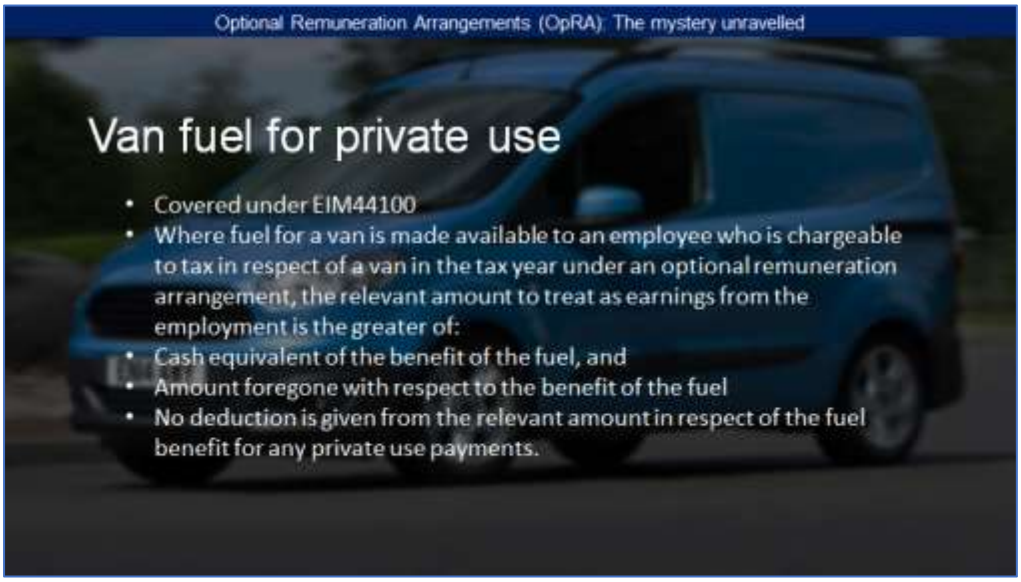

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Cars – available for private use
• Covered under EIM44070
• Cars made available for private use with CO2 emissions of more than 75 g/KM are within scope of OpRA rules.
• The relevant amount to treat as earnings from the employment is the greater of:
• The modified cash equivalent of the benefit
• The amount foregone in relation to the provision of the benefit
• Modified cash equivalent of a car is the amount which would be the cash equivalent under the normal method, ignoring any capital contributions made by the employee and any payments the employee is required to make for private use.
• Once the benefit value has been determined, a deduction can then be made for any capital contribution.
• This is given by multiplying any capital contribution (up to the maximum of £5,000) by the relevant percentage. A deduction is then given for any private use contribution.

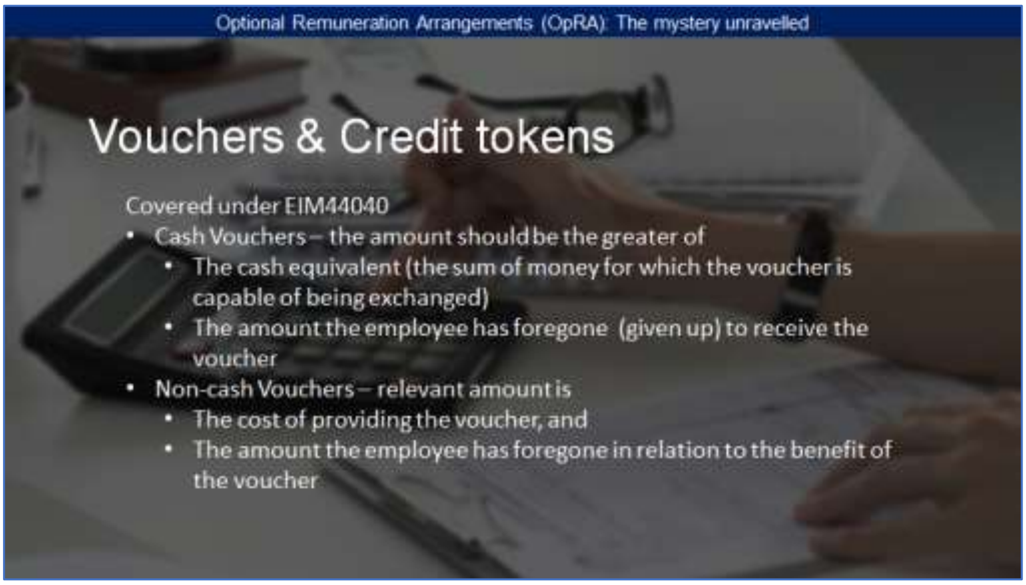

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Cars
• List price - £25,000
• CO2 emissions - 23%, 24%, 25%
• Cash allowance - £6,000
• Signed up to the car on 6 April 2017
2017/18
Cash equivalent - £5,750
Cash forgone - £6,000
Use Cash forgone
2018/19
Cash equivalent - £6,000
Cash forgone - £6,000
Use Cash equivalent
2019/20
Cash equivalent - £6,250
Cash forgone - £6,000
Use cash equivalent


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Car for Private use - Example
An employee has a car made available to them in the tax year 2017 to 2018 under the terms of OpRA
They give up £300 salary per month and also makes a capital contribution of £1,500 for a higher specification vehicle
Car has a list price of £20,000 and an appropriate percentage of 17% (based on CO2 emissions and adjusted if required e.g. diesel)
Cash equivalent value of the vehicle would normally be £3,145 (£20,000 minus capital contribution £1,500 = £18,500 × 17%
The modified cash equivalent will be £3,400 (capital contribution ignored)
The modified cash equivalent is compared with the amount foregone
The amount foregone (£3,600) is greater than the modified cash equivalent (£3,400) so £3,600 is used to determine the relevant amount
The relevant amount to treat as earnings is £3,600 minus £255 (capital contribution of £1,500 × 17%) = £3,345.
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.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
2nd Example
An employee gives up a cash allowance of £5,000 for a car
The Cars modified cash equivalent of £3,000 and an appropriate percentage 17%
Employee wanted a higher specified model, costing a further £500
Employee made a payment of £500 to her employer out of her net pay
The amount foregone is £5,000 which is compared with the modified cash equivalent of £3,000. The relevant amount is £5,000.
The payment of £500 is treated as a capital contribution. A relevant amount is reduced by £85 (17% × £500).

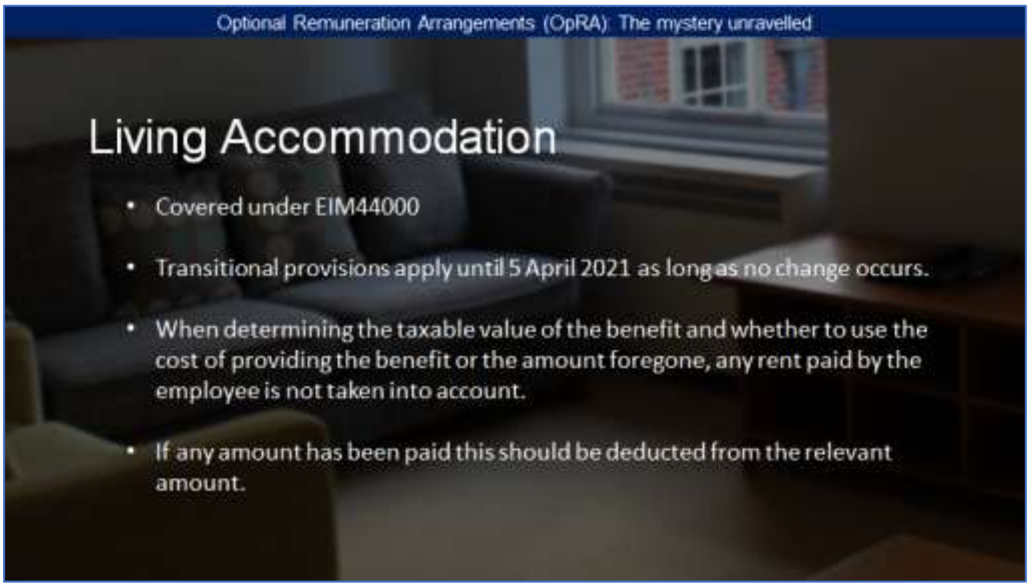

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Car Fuel for private use
Covered under EIM080
Where fuel for a car is made available to an employee who is chargeable to tax in respect of a car under OpRA
The relevant amount to treat as earnings from the employment is the greater of:
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.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Van fuel for private use
• Covered under EIM44100
• Where fuel for a van is made available to an employee who is chargeable to tax in respect of a van 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 fuel, and
• 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.

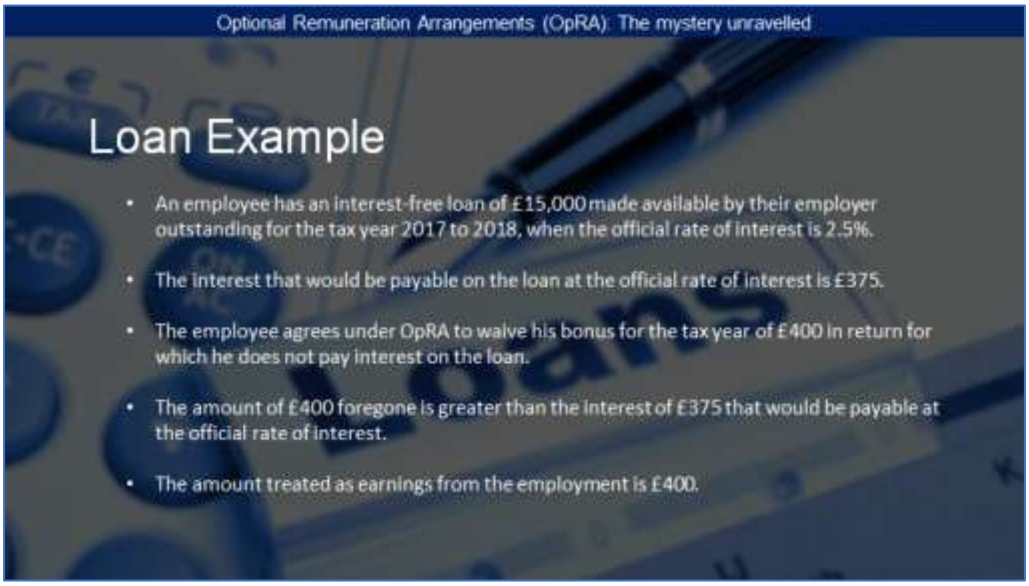

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Vouchers & Credit tokens
Covered under EIM44040
• Cash Vouchers – the amount should be the greater of
• The cash equivalent (the sum of money for which the voucher is capable of being exchanged)
• The amount the employee has foregone (given 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


Optional Remuneration Arrangements (OpRA): The mystery unravelled
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.

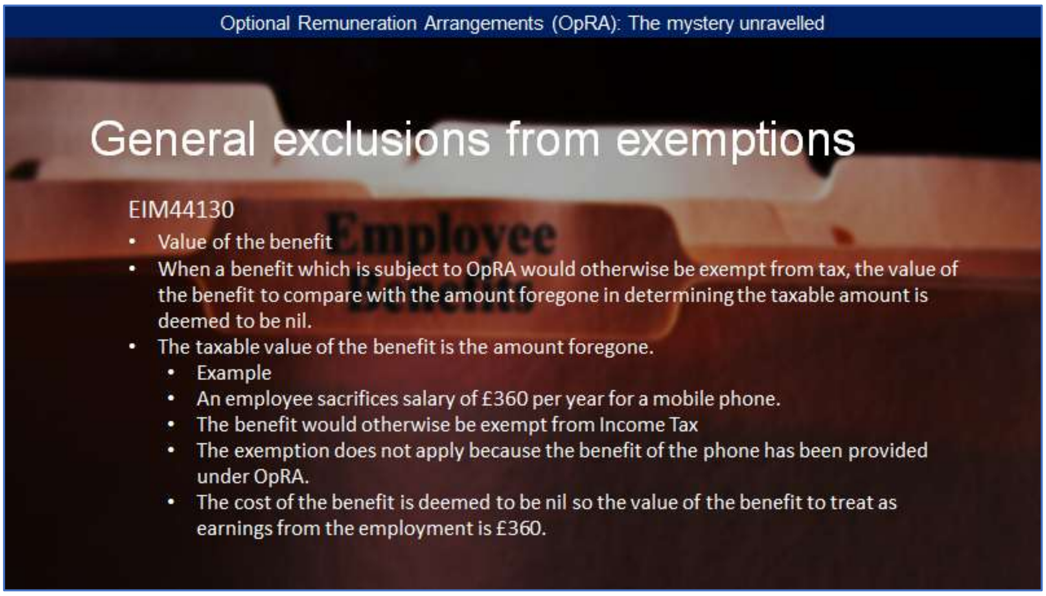

Optional Remuneration Arrangements (OpRA): The mystery unravelled
Voucher Example
• An employer provides employees with the opportunity to enter into an OpRA
• They give up £50 of salary each month in return for £50 in non-cash vouchers.
• Employer has entered into a deal with the voucher supplier to purchase vouchers at a discounted cost of £45.
• Under the OpRA rules:
• Value of the benefit for the tax year is £600.
• The greater of the cost of providing the vouchers - £540 (£45 × 12) - and the amount of salary sacrificed by the employee - £600 (£50 × 12).


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Living Accommodation
• Covered under EIM44000
• 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.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Taxable cheap loans
Covered EIM44110
• 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.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Loan Example
An employee has an interest-free loan of £15,000 made available by their employer outstanding for the tax year 2017 to 2018, 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.


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Employment related benefits
Employment related Benefits (EIM44120)
General Benefits
Transfer of assets


Optional Remuneration Arrangements (OpRA): The mystery unravelled
General exclusions from exemptions
EIM44130
Value of the benefit
When a benefit which is subject to OpRA would otherwise be exempt from tax, the value of the benefit to compare with the amount foregone in determining the taxable amount is deemed to be nil.
The taxable value of the benefit is the amount foregone.
Example
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.

Optional Remuneration Arrangements (OpRA): The mystery unravelled

General exclusions from exemptions

EIM44130

- Value of the benefit
- When a benefit which is subject to OpRA would otherwise be exempt from tax, the value of the benefit to compare with the amount foregone in determining the taxable amount is deemed to be nil.
- The taxable value of the benefit is the amount foregone.
  - Example
  - 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.

Optional Remuneration Arrangements (OpRA): The mystery unravelled

Changes to P11D

There are some wording changes to the P11D for 2018:

- Cost/Market value – Cost/Market value or amount forgone
- Cash equivalent or relevant amount for each car
- Cash equivalent or amount forgone in respect of fuel for each car

The Introduction of Working Sheet 2b (WS2b)

- Car and car fuel benefit provided via Optional Remuneration Arrangements

Changes to the following Working Sheets

- WS1 Living Accommodation
- WS4 Interest-free and low interest loans.

Optional Remuneration Arrangements (OpRA): The mystery unravelled

Impact?

- 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


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Pre-employment negotiations?
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


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Pre-employment negotiations?
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


Optional Remuneration Arrangements (OpRA): The mystery unravelled
Summary
• Effective since April 2017
• Transitional rules for some until 2021
• Review payrolling benefits for impact
• No cash alternative – No OpRA
• OpRA ONLY applies if there is a cash alternative
• Prudent to review benefits packages
Employee
Benefits