

## Clause 1: Optional remuneration arrangements: arrangements for cars and vans

### Summary

1. This clause introduces amendments to the optional remuneration arrangements (OpRA) legislation introduced in section 7 and Schedule 2 to the Finance Act 2017. The changes ensure that when a taxable car or van is provided through OpRA, the amount foregone includes costs connected with the car or van which are regarded as part of the benefit in kind under normal rules. In addition, the changes adjust the value of any capital contribution towards a taxable car when the car is made available for only part of the year.

### Details of the clause

2. Subsection (1) introduces amendments to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).
3. Subsection (2) amends section 120A(3)(b) ITEPA (benefit of car treated as earnings: optional remuneration arrangements) and introduces new subsection 120A(4). This provides that the total amount foregone, which is to be taken into account in calculating the amount reportable for tax and NICs purposes, includes both the amount foregone with respect to being provided with the car and the amount foregone with respect to the costs connected with the car (such as insurance) which are regarded as part of the benefit in kind under normal rules. The cost of a driver and fuel are not to be included as these are chargeable under separate provisions.
4. Subsection (3) amends sections 121A(1) and (2) ITEPA (optional remuneration arrangements: method of calculating relevant amount) to substitute a revised Step 1 which references the total foregone amount in connection with the car for the year. Where it is not possible to separate out the total amounts foregone in connection with the car from a number of benefits the amendment provides for an apportionment to be made on a just and reasonable basis. The calculation reflects the value of “a benefit mentioned in section 120A(4)(a) or (b)”, that is, the car and any benefits connected to its provision.
5. Subsection (4) provides for amendments to be made to section 132A ITEPA (capital contributions by employee: optional remuneration arrangements). This puts the deduction for a capital contribution for a taxable car by an employee on a similar footing to the normal rules by providing for the amount of the deduction in any tax year to be reduced on a pro-rata basis if the car is not made available for the whole of the relevant tax year. Section 132A(3) sets out the overall method of calculating the amount of the deduction for a capital contribution by reference to an “availability factor”. New subsection 132A(4A) sets out a formula for calculating the “availability factor” taking into account the number of days in the tax year, and the number of days in the tax year during which the car is not available. New subsection 132A(4B) then defines what is meant by a day on which the car is unavailable.
6. Subsection (5) amends section 154A (benefit of van treated as earnings: optional remuneration

arrangements) by revising subsections (2)(b), (3) and (7) to introduce the concept of “total foregone amount” in respect of taxable vans. It also introduces new subsection 154A(8) which mirrors the provisions of new subsection 120A(4) as outlined in paragraph 3 above.

7. Subsection (6) amends section 239 ITEPA (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles). This removes the exemption provided by sections 239(1) and (2) when liability in respect of a taxable car or van arises by virtue of section 120A or section 154A.
8. Subsection (7) provides that the amendments have effect from the tax year 2019-20 onwards.

## Background note

9. Under current rules, where the benefit of the availability of a taxable car or van is made through OpRA, the amount foregone by the employee in respect of the benefit is compared to the modified cash equivalent of the car or van – the greater value is reportable as the value of the benefit for tax and NICs purposes.
10. When ITEPA was originally introduced, the explanatory note was explicit that connected costs were regarded as part of the car benefit charge (and now also applies to the van benefit charge). During the introduction of section 7 and schedule 2 to the Finance Act 2017, which introduced the OpRA provisions, an oversight meant that no provision was made to ensure the calculation of the amount foregone for a taxable car or van should be the total amount foregone, including any connected costs.
11. In most instances information on the level of benefits from the benefit of the car and connected benefits are readily available and there should be no need to artificially disaggregate amounts foregone for the purpose of calculating the aggregate total amount foregone if so.
12. The deduction in any tax year for a capital contribution towards a taxable car is automatically reduced on a pro-rata basis under the normal car benefit charge rules if the car is made available for only part of a tax year. Similar provisions were not included in section 7 and Schedule 2 to the Finance Act 2017 for calculating the relevant amount when a taxable car is provided through OpRA. This means that currently, where a taxable car is provided through OpRA, the amount deductible for capital contributions is overstated where a car is available only for a part year.
13. Introduction of the OpRA legislation was announced at Autumn Statement 2016 and Finance Bill legislation was published in December 2016 for technical consultation. Neither of the issues subject to amendment in Finance Bill 2018-19 was identified in the responses to the consultation.
14. Following introduction of the new OpRA rules in Finance Act 2017, HMT and HMRC were made aware of these anomalies. The government decided to take action to protect the Exchequer at the first opportunity.
15. If you have any questions about this change, or comments on the legislation, please contact Su McLean-Tooke on 03000 586404 (email: [su.mclean-tooke@hmrc.gsi.gov.uk](mailto:su.mclean-tooke@hmrc.gsi.gov.uk) or [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk)).

