



F3B17-19 CL7: OPTIONAL REMUNERATION ARRANGEMENTS FOR CARS AND VANS

Issued 3 January 2019

Text of briefing submitted on 3 January 2019 MPs by ICAEW Tax Faculty on Clause 7: *Optional remuneration arrangements: arrangements for cars and vans* in **Finance (No.3) Bill 2017-19** updated on 11 December 2018.

This briefing submitted on 3 January 2019 in advance of the Finance Bill Report Stage debates was prepared by the ICAEW Tax Faculty. For further details on who we are please see Appendix 1.

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FINANCE (NO.3) BILL 2017-19: CLAUSE 7: OPTIONAL REMUNERATION ARRANGEMENTS FOR CARS AND VANS

Report Stage Briefing for MPs by ICAEW Tax Faculty

WHO WE ARE

1. Please see Appendix 1.

EXECUTIVE SUMMARY

2. This clause is intended to rectify mistakes in recently-enacted legislation but will impose unexpected costs on businesses and their employees which in the interests of fairness we feel should be mitigated.
 - a) *Taxpayers in existing contracts for cars and vans:* Businesses customarily buy new vehicles under three year contracts and businesses and employees would have assessed the financial implications prior to entering into the contracts. However the clause will impose tax charges that would not have been foreseen. We therefore feel that vehicles acquired by employers under contracts entered into before the date the measure was announced, i.e. 6 July 2018, should be grandfathered, i.e. not affected by the changes to be imposed by this clause, until the end of 2021/22.
 - b) *Emergency repairs etc:* We also believe that an existing exemption which is being removed by this clause should be continued; so that, where for example, emergency repairs to a company car or van are initially paid for or arranged by an employee and then met by the employer, no benefit-in-kind charge should arise.

DESCRIPTION OF THE MEASURE

3. This clause is to address two mistakes in the optional remuneration arrangements (OpRA) rules introduced in section 7 and Schedule 2 to Finance Act 2017. It introduces legislation to:
 - ensure that when a taxable car or van is provided through OpRA, the amount foregone, which is taken into account in working out the amount reportable for tax and NIC purposes, includes costs connected with the car or van (such as insurance) which are regarded as part of the benefit-in-kind under normal rules, and
 - adjust the value of any capital contribution towards a taxable car when the car is made available for only part of the tax year.
4. This clause has effect from 2019/20.
5. As noted in our previous representations, the clause introduces new defects and itself needs amending.

OUR CONCERNS

Taxpayers in existing contracts

6. Where vehicles with allowed private use are provided to employees under OpRA, this clause will impose unexpected increases in the tax and NIC charges on employees and employers respectively. The only way to avoid the charges in any particular case will be for the employer to dispose of the vehicle. This is likely to result in the employer receiving lower than expected proceeds if the vehicle is owned outright or suffering financial penalties if the vehicle was acquired under an ongoing contract. It could also upset the employer/employee relationship.

7. Many businesses which remunerate their employees using OpRA will have calculated and worked with their employees to help them to understand the financial implications of a company car or van where private use is allowed, explaining the option and consequences of making a capital contribution to obtain a better vehicle. Employers will have invested in vehicles in good faith on the basis of these calculations, together with comments from HMRC that this was the correct way to calculate the charges.
8. Many businesses acquire cars and vans on hire purchase or contract hire or leases rather than pay for them outright. The new clause introduces additional costs which will change the cost model on which the acquisition finance model was based, however it may not be financially viable for businesses which have bought new vehicles or which have entered into agreements with third parties, to return or sell on the vehicle for the first three years.
9. We welcome the fact that the clause is not retrospective, but we consider that imposing a charge on existing circumstances entered into in good faith and which may be costly to reverse is not in accordance with our *Ten Tenets for a Better Tax System* (summarized in Appendix 2), in particular Tenets 2: *Certain* and 6 *Constant*.

Emergency repairs etc

10. This draft clause will lead to a tax charge where, for example, emergency repairs are initially paid for or arranged by an employee and then met by the employer. This is because subsection (6) of the proposed clause will disapply s239(1) and s239(2) ITEPA 2003 (which exempt from an income tax charge reimbursements by employers to employees for expenses they incur in connection with a company car or van).

COMMENT

11. Paragraph 13 of the Explanatory Note to this clause observes that neither of the mistakes being corrected by the current draft clause was identified during consultation on the original legislation. The mistakes in the original measure were due to the legislation being introduced with inadequate time allowed for proper consultation and discussion. The potential danger of this was explained to HMRC at that time. This area is complex and we note that there have also been two iterations in the discussions on this amending legislation; the first included omitting to deal with the interaction of OpRA with the payrolling of benefits. We welcome the opportunity for earlier and more frequent discussion on draft provisions, and hope that lessons are learnt and that future policy changes and legislation are given more time for consideration.
12. Our recommendation at the time was to delay the introduction of the OpRA provisions until 6 April 2018, which would have given HMRC time to make employers aware and ensure that official guidance, including P11D calculation worksheets, had been field-tested to ensure that common variants were covered. As it was, guidance was published only two weeks (20 March 2017) before the date from which employers had to implement the provisions, and for which legislation had still not been enacted (Royal Assent was in fact granted on 27 April 2017).
13. There was consultation and we were grateful to be involved, but in contrast to Tenet 7: *Consultation* of our *Ten Tenets for a Better Tax System* (outlined in Appendix 2), comments from representatives were not taken into account. Our comments were in ICAEW REPs 156/16, 16/17 and 51/17 and at meetings in September 2016 and January 2017 where the topics that are the subject of the draft clause were raised by representatives. At that time, the discussion went little further than HMRC noting that these were matters that needed to be considered and on which guidance would be provided in its *Employer Bulletin*.

OUR RECOMMENDATIONS

Taxpayers in existing contracts

14. As new vehicles are normally kept by businesses for at least three years, we consider that there should be grandfathering until the end of 2021/22 for vehicles acquired under contracts entered into before the date that the measure was announced, ie, 6 July 2018.

Emergency repairs etc

15. The draft clause should be amended so that an employee is not penalised for paying for or for arranging emergency repairs. Sections 239(1) and (2) should continue to apply to OpRA cars and vans.

SUGGESTED AMENDMENTS

Taxpayers in existing contracts

16. In sub-section (7), after 'subsequent tax years' insert:

Clause 7, page 5, line 2, after "subsequent tax years" insert "save that for vehicles acquired by employers under contracts entered into before 6 July 2018 the amendments made by this clause have effect for 2022/23 and subsequent tax years."

Emergency repairs

17. Delete sub-section (6):

Clause 7, page 4, line 29, leave out subsection (6)

HELP US TO HELP YOU

Our concern

18. The clause amends existing ss120A, 121A, 132A, 154A and 239 ITEPA 2003. However, the published documentation does not include amended versions of the existing legislation which is to be changed. This lacuna not only discourages involvement with the policy and law-making process but also makes it difficult for commentators and advisers to help businesses to get their tax right.

Our recommendation

19. Where legislation will make other than minor changes to existing legislation (as in this case), the existing legislation amended in track changes should be published so all can see how the existing legislation will read once proposed legislation is enacted.

FURTHER INFORMATION

20. As part of our Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).