



Car / Van / Cash Allowance update including EVs

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Today's agenda

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Glossary

- AER – Advisory Electricity Rate
- AFR – Advisory Fuel Rate
- AMAP – Approved Mileage Allowance Payment
- BIK – Benefit in Kind
- Deduction – normally a deduction from earnings for IT purposes
- Disregard – something taken out of the calculation of employed earner's earnings
- EV – Electric Vehicle
- IT – Income Tax
- ITEPA – Income Tax (Earnings and Pensions) Act 2003
- MAR – Mileage Allowance Relief
- Payrolling – paying tax at source via payroll on a notional BIK value
- P11D – End of year return to report BIKs
- QA – Qualifying Amount (45p x business miles)
- RME – Relevant Motoring Expenditure – by the employer
- SI 2001/1004 – Social Security (Contributions) Regulations 2001

EV landscape, Incredibly tax efficient, Will they last? Are they moral or green?

CO2 (g/km)	Electric range (miles)	2022-23 (%)	2023/24 (%)	2024/25 (%)	2025/26 (%)	2026/27 (%)	2027/28 (%)
0	N/A	2	2	2	3	4	5
1-50	>130	2	2	2	3	4	5
1-50	70-129	5	5	5	6	7	8
1-50	40-69	8	8	8	9	10	11
1-50	30-39	12	12	12	13	14	15
1-50	<30	14	14	14	15	16	17

Van benefit charge

- The van benefit charge only arises if the company van is not an electric van and private use of the van is not limited to home-to-work travel. The amount is set each tax year and increases in line with the increase in the consumer price index. The taxable amount is £3,960 for 2023/24, up from £3,600 for 2022/23. The rise means that a basic rate taxpayer will pay £792 a year in tax and a higher rate taxpayer will pay £1,584 on the benefit of their company van for 2023/24

Electric vans

- The benefit in kind for an electric van is nil. Consequently, employees with electric company vans can, where permitted to do so by their employer, use their company van for unrestricted private use without any associated tax charge. This makes an electric company van a tax-free benefit.

EVs and Electricity - Cars

- In short – for cars - Electricity is Not a fuel as originally defined in ITEPA
- *[References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.]*
- *But law since changed.*
- S149 – Private fuel BIK
- (4)References in this section to fuel do not include any facility or means for supplying electrical energy or any energy for a car which cannot in any circumstances emit CO₂ by being driven.
FA2010 S58 Zero and low emission vehicles

So no Fuel BIK if you provide any electricity (be it business or private) to staff in Company Electric cars

So if you provide private electricity to hybrid car drivers then that electricity is caught by S149.

EVs and Electricity - Vans

Interestingly same definition of fuel / electricity not found in S160 etc.

Normal definition of fuel:

“food, drink, or drugs as a source of energy”

“a thing that sustains or inflames passion, argument, or other intense emotion”

S160 Benefit of van fuel treated as earnings

(1) If in a tax year—

(a) fuel is provided for a van by reason of an employee’s employment,

(b) that person is chargeable to tax in respect of the van by virtue of section 154 or 154A, **and**

(c) the cash equivalent of the van for that year is that under section 155(1B)(b),

the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.

155(1B)(b) applies to vans taxed at £3,960.

Since Electric Van is taxed at £Nil under S155(1B)(aa) there cannot be a fuel BIK for providing electricity.

S239 – HMRC U-Turn

- 239 Payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles [Note even if rate is £Nil it is nonetheless taxable at £Nil]
- (1)**No liability to income tax arises in respect of the discharge of any liability of an employee in connection with a taxable car or van** or an exempt heavy goods vehicle.
- (2)**No liability to income tax arises in respect of a payment to an employee in respect of expenses incurred by the employee in connection with a taxable car or van** or an exempt heavy goods vehicle.
- (3)Subsections (1) and (2) **do not apply** to liability arising by virtue of section 120A (**optional remuneration arrangements: benefit of a car**), **section 149 149A (benefit of car fuel treated as earnings)**, section 154A (optional remuneration arrangements: benefit of a van) or section 160 or 160A (benefit of van fuel treated as earnings).
- (4)No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit connected with a taxable car or van or an exempt heavy goods vehicle.
- (5)Subsection (4) does not apply to the provision of a driver.....

Personal EVs and Electricity – workplace charging

- 237A Vehicle-battery charging
 - (1) No liability to income tax arises in respect of the provision, at or near an employee's workplace, of facilities for charging a battery of a vehicle used by the employee (including a vehicle used by the employee as a passenger).
 - (2) Subsection (1) applies only if the facilities are made available generally to the employer's employees at that workplace.
 - (3) In this section—
 - "facilities"—
 - (a) includes electricity, but
 - (b) does not include workplace parking,
 - "taxable", in relation to a car or van, has the meaning given by section 239(6),
 - "vehicle" means a vehicle—
 - (a) to which Chapter 2 applies (see section 235 [Vehicles to which this chapter applies]), and
 - (b) which is neither a taxable car nor a taxable van, and
 - "workplace parking" has the meaning given by section 237(3).
- Because totally ignored means you can provide workplace charging AND also pay AER at 9p a mile tax and NIC free

S237 Parking provision and expenses

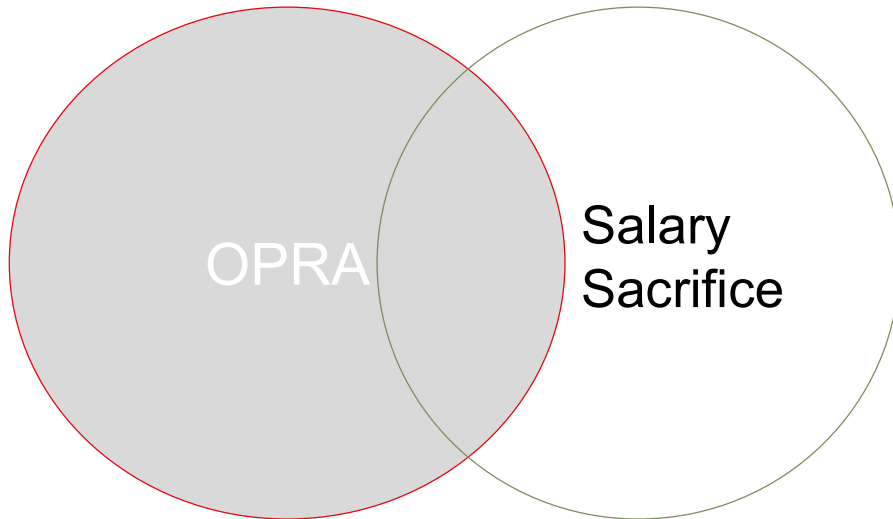
- (1) No liability to income tax arises in respect of the provision of workplace parking for an employee.
- (2) No liability to income tax arises by virtue of the payment or reimbursement of expenses incurred in connection with the provision for or the use by an employee of workplace parking.
- (3) In this section “workplace parking” means—
 - (a) a parking space for a car or van,
 - (b) a motor cycle parking space, or
 - (c) facilities for parking a cycle other than a motor cycle, at or near the employee’s workplace.

World's fastest U-Turn on Double Cab Pick-ups



- Just means rear seats and a Skip on the back
- For VAT the vehicle is treated as a Van if payload is 1 Tonne per 12 February notice
- Coca Cola case clarified meaning of “PRIMARYLY” in the sentence ‘primarily constructed for the conveyance of goods’.
- Double cabs clearly NOT constructed primarily for conveyance of goods but by concession HMRC treated then as vans – not cars – for P11D purposes provided one tonne payload
- On Monday February 12 2024, HMRC updated its guidance on the tax treatment of double cab pick-ups saying concession was ending 1 July 2024
- 19 February complete volte face, presumably lobbying from farmers etc.
- 20 February Coincidentally Rishi talking to Farmer’s Union Conference

Care as ever with OpRA / Salary Sacrifice



See 289A(5) for definition of Relevant salary sacrifice arrangements and see 69A for OpRA definition

Willmott, Laing, Total People, Donnelly

- *Donnelly (Inspector of Taxes) -v- Williamson* [1982] STC 88
- WALTON J read the following judgment: Believe it or not, this appeal by the Crown is in respect of tax at the basic rate on a sum of £13, assessable in two different years. This is not merely a case of taking a sledge hammer to crack a nut; it effectively ensures that the nut itself, and a good deal more, will wholly disappear in the operation.

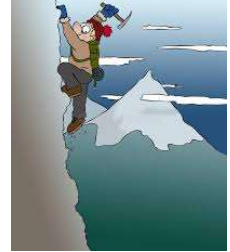
Total People

- Did it the hard way
- Claimed the whole car allowance was NOT earnings



Total People

- There was a much easier option
- Simply invoke Para 7A which mandates disregard of first 45p a mile
- SI 2001/1004 Schedule 3 Part VIII Para 7A



Total People first won in 2010

- 250 protective claims submitted following TP, by corporates
- C. 200 withdrawn – OUCHHHHHH
- Many companies waited for another case to finally conclude



Willmott Dixon and Laing – HMRC U-Turn

- Car Allowances were held to be RME
- Therefore both held to have **WRONGLY** deducted and paid NIC – in error in respect of car allowance recipients
- HMRC were effectively ordered to pay back all the NIC that had been paid in error
- Agent Update 114 November 23
- Employer Bulletin December 23
- HMRC now **ENCOURAGE** all employers to reclaim NIC paid in error
- HMRC even encourage staff to claim if employer does not
- But they could not help but goof up on OpRA, sal sac and the law relating to RMEs
- Good that HMRC has admitted it was wrong for 20 years
- Bad that their guidance is still woefully defective and wrong when it comes to the detail

Advice

- Cost benefit in claiming a refund
- Is it material?
 - More than 10 staff?
 - More than £10k refund?
- Everyone seems to be jumping on the bandwagon without necessarily understanding the nuances and background (c. 8,000 pages of evidence)
- You still need mileage records
- Care with HMRC suggesting that refunds be processed via RTI
- Get proper advice re retro claims
- GET IT RIGHT GOING FORWARD!

Payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions

- Reg 25. Schedule 3 specifies payments which are to be disregarded in the calculation of earnings from employed earner's employment for the purpose of earnings-related contributions.

Amounts to be treated as earnings in connection with the use of qualifying vehicles other than cycles

- Reg 22A.—(1) To the extent that it would not otherwise be earnings, the amount specified in paragraph (2) shall be so treated.
- (2) The amount is that produced by the formula— $RME - QA$
- Here—
- **RME is the aggregate of relevant motoring expenditure within the meaning of paragraph (3) in the earnings period; and QA is the qualifying amount calculated in accordance with paragraph (4).**
- (2A) But the amount in paragraph (2) is taken to be RME (without the subtraction of QA) so far as the aggregate of relevant motoring expenditure is paid pursuant to optional remuneration arrangements.
- **(3) A payment is relevant motoring expenditure if—**
- **(a) it is a mileage allowance payment within the meaning of section 229(2) of ITEPA 2003;**
- **(b) it would be such a payment but for the fact that it is paid to another for the benefit of the employee; or**
- **(c) it is any other form of payment, except a payment in kind, made by or on behalf of the employer, and made to, or for the benefit of, the employee in respect of the use by the employee of a qualifying vehicle.**
- Here “qualifying vehicle” means a vehicle to which section 235 of ITEPA 2003 applies, but does not include a cycle within the meaning of section 192(1) of the Road Traffic Act 1988.
- (4) The qualifying amount is the product of the formula— $M \times R$

RME and Mileage

- Here—
- M is the sum of—
 - (a) the number of miles of business travel undertaken, at or before the time when the payment is made—
 - (i) in respect of which the payment is made, and
 - (ii) in respect of which no other payment has been made; and
 - (b) the number of miles of business travel undertaken—
 - (i) since the last payment of relevant motoring expenditure was made, or, if there has been no such payment, since the employment began, and
 - (ii) for which no payment has been, or is to be, made; and
- R is the rate applicable to the vehicle in question, at the time when the payment is made, in accordance with section 230(2) of ITEPA 2003 and, if more than one rate is applicable to the class of vehicle in question, is the higher or highest of those rates.

AMAPS v RMEs - Differences between NIC and IT re any employees using a car or van and receiving business mileage at less than 45p a mile

- For IT you make an AMAP claim (SA, P87, On-line) for tax relief on difference.
- IT claim against whole salary – not restricted to car allowance
- After 10,000 business miles the AMAP ceiling drops to 25p
- For NIC the car allowance (or fuel card) is the RME (salary is not RME) and Para 7A Part VIII Schedule 3 of SI2001/1004 says **THOUGH MUST DISREGARD** the QA part of the RME
- Employer's responsibility to get the NIC accounting right (NOT THE EMPLOYEE'S)
- Para 7A disregards the QA. QA defined in Reg 22A(3) as $M \times R$
 - M = number of business miles undertaken (very different definition from tax rules)
 - R = Rate is always 45p
 - No 10,000 limit
- In short you **MUST** split car allowance into 2 elements. A NIC free element to take account of business mileage plus a balancing amount which is NI'able and Taxable
- **EASY!!!!!!!!!!!!!!** BUT OpRA and other mantraps

Employment Rights Act 1996



- S13 Right not to suffer unauthorised deductions.
- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

VAT Another HMRC U-turn in the pipeline

- HMRC conceded to ICAEW and CIOT at least 12m ago that their guidance in this area was wrong, said they would update guidance. We are still waiting.
- Electric cars – no difference to normal cars, 50% restriction on lease costs etc.
- Vans (electric or normal) – say 33% business use, 33% commute, 34% private.
- Electricity itself
 - Home / Domestic 5%
 - Work or public charging 20%
 - You can recover the Business % or business portion
 - Means you NEED MILEAGE RECORDS from an APP such as Traxmiles (Tolley 2022 Best Digital Innovation)
 - All you need to recover VAT is evidence not necessarily fuel or charging receipts.
 - Same goes for paying staff at AFR/AER
 - Myth that you need petrol receipts

Payrolling of benefits



- HMRC may introduce from April 2026
- To save HMRC heads
- More burden on already stretched taxpayers
- Many mantraps e.g.
 - To avoid Fuel BIK (P, D, Hybrids) currently have to make good in full by 6 July
 - With payrolling you have to make good by 1 June
 - Which means May payroll entry
 - Which mean getting mileage records, all fuel spend, calculating total usage and apportioning costs between private and business and then getting the calculation checked and sent to payroll before May payroll cut-off date.



AFRs

- Note / reminder AER and indeed AFR ONLY apply to cars not vans
- Only apply to reimbursing business mileage and paying back private
- So cannot strictly use AER to pay for private mileage
- For vans you have to reimburse actual
- Or have driver pay back actual fuel spend (P,D,Hybrid) to avoid VAN fuel BIK
 - That said VAN fuel BIK is so low it is tax efficient to provide van fuel if you are also providing a VAN BIK

Other tit bits

- To get a car private use reduction against P11D value it MUST be a payment by the employee for private use
- S151 Making good private full to avoid BIK – it must be a requirement that the employee makes good (not just voluntary) and making good must be made in full and by deadline (6 July or 1 June)
- Numerous tax cases re late making good – but 30 day concession
- Van private use restriction – again it must be a requirement that the van not be used privately and must be the case that any private usage is insignificant – albeit NOT defined – say 40,000 total of which 2,000 is private i.e. 5%. Is 5% insignificant?

Other tit bits and mantraps

- Some recent cases on cars and whether available for use – e.g. Car dealer had keys to ALL cars so were they all reportable on his P11D?
- Recent VAT case on temporarily converting a Landrover ‘van’ into a car
- Unavailability for use private use has to be at least 30 days before it is effective
- If fuel for private use provided part way through the year you are actually taxed for the whole year unless the fuel is later withdrawn – e.g. Promoted on 1 April, and now qualify for a fuel card which you use for 5 days in the tax year – but actually taxed on 365 days (assuming you had the car for 365 days)
- Care with OpRA and making good fuel. If there is a cash alternative you are taxed on that alternative even if you 100% made good all fuel used



***Any
questions?***

Upcoming Tax Faculty webinars

- 8 March: Essential Tax Faculty Budget update
- 13 March: EU Carbon Border Adjustment Mechanism – what does it mean for UK businesses?
- 10 April: Payroll & Rewards update 2024
- 18 April: Cash Basis
- 24 April: MTDtalk

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