FIELD COURT TAX CHAMBERS

# Vans: benefits in kind [1]

*If it looks like a van and drives like a van, is it still a van for tax purposes?*

The recent case of *HMRC v Coca-Cola European Partners Great Britain Ltd and others* [2019] UKUT 90 explains everything you want to know about the distinction between cars and vans. I guess that may not be a whole lot.

However, it may be of some interest because the distinction between a car and a van is important not only to whether the employee is subject to income tax on a benefit in kind, but also to the employer because of the possible liability to Class 1A NICs. You can just imagine that for a large employer with a fleet of vans, that could be a serious liability.

The distinction is also relevant to VAT and, in particular, the entitlement to reclaim input tax on the cost of the vehicle. Unfortunately, the definition of a van for the purposes of VAT is not the same as that for income tax (no, I don't understand either) but the principles explained in this case may still have a wide application.

Coco-Cola European Partners Great Britain Ltd (I think we can assume that it is a substantial organisation) provided its technicians with vehicles for the purposes of doing their work.

Coca-Cola clearly thought that these vehicles were vans and not subject to a benefit in kind charge on their employees, or indeed to a Class 1A NICs charge on the company. I bet the technicians did too. However, HMRC disagreed, saying that the vehicles were cars and their provision was therefore subject to income tax and NICs.

ITEPA 2003 s 115 defines a van for this purpose. The relevant part of the definition is that the vehicle is:

> "a vehicle of a construction primarily suited for the conveyance of goods or burden of any description".

The company provided three types of vehicle, a Vivaro, a VW 'Kombi 1' and a VW 'Kombi 2'.

The First-tier Tribunal said that the key question was not whether a vehicle would be regarded as a van in ordinary parlance or by reference to the commonly understood meaning of 'van'. It considered that if Parliament had wished to rely on commonly understood meanings, it could simply have left the terms undefined. Instead, Parliament enacted prescriptive definitions of car and van and it was therefore necessary to consider whether the primary suitability of the vehicle was for the conveyance of goods or burden. The FTT decided that if the vehicle is of a construction marginally more suitable for the conveyance of goods than it is for any other use, its primary suitability is for conveying goods.

---

[1] This article was first published in the InBrief section of Tax Journal published by LexisNexis on 10th May 2019

The FTT acknowledged that vehicles which are primarily suited for the conveyance of goods will share features with vehicles primarily suited to the conveyance of passengers. However, after an exhaustive analysis of all its characteristics, the FTT decided that on balance, the Vivaro should properly be described as a van within the meaning of s 115. The Upper Tribunal upheld this conclusion.

The finely balanced nature of the test was demonstrated by a similar analysis of the Kombi vehicles. The slightly different configuration of these vehicles, including the fact that they had seats in the front for the driver and a passenger (I am not kidding), caused the FTT to conclude that they were not vans.

The Upper Tribunal said that the FTT had decided as a question of fact that the Kombi vehicles were equally suitable for the conveyance of goods and passengers, and declined to interfere with their decision.

This may not be entirely satisfactory for a number of reasons, not least that the Kombi range of vehicles definitely look like vans and anybody buying one would almost certainly think that they were buying a van – even though it had a seat for the driver. However, we know from the tribunal that the way in which an ordinary person might view the position is irrelevant. Maybe the vans (sorry, cars) should have a health warning stuck on the side, or something to warn taxpayers of the tax implications.

**Peter Vaines**

**Field Court Tax Chambers**