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## Commercial Vehicles

Our May 2019 factsheet highlighted the First Tier Tribunal (FTT) case of *HMRC v Payne Ors [2019]* which provided further guidance on two key elements of the definition of a van for Benefit in Kind (BIK) rules: 'of a construction' and 'primarily suited'.

To recap, three different modified vehicles were provided to employees – two VW Transporter T5 Kombi and a Vauxhall Vivaro.

The Vivaro had left the assembly line as a panel van but was subsequently modified by the employer to add a second row of seats. The two Kombi vans also left the assembly line as panel vans but were subsequently modified by the manufacturer to include a second row of seats.

Firstly, it was established that the vehicle's construction should be considered **after** adaptations and when it is supplied to the employee.

Secondly, it was established that where a vehicle is equally capable of being suited to moving passengers or goods, then there is no 'primary suitability'.

Therefore, it was held the Kombi vehicles were deemed to be cars for BIK rules, as they were equally capable of carrying goods or passengers.

However, it was held, on narrow grounds, the Vivaro was considered a van for BIK rules. This was based on the vehicle having extra storage space to the side of the second row of seats, deeming it 'primarily suited' for the conveyance of goods.

Recently, the Court of Appeal has now determined that **all** vehicles in the case, including the Vivaro, are cars for BIK rules.



The reasoning is they are multi-purpose vehicles (i.e. equally capable of carrying goods or passengers) and could not be deemed 'primarily suited' for carrying goods.

Depending on the tax involved, HM Revenue and Customs (HMRC) has differing definitions of a car, which are often overlooked by employers when provided for use by employees.

### Benefits in Kind (BIK)

Where an employer provides an employee or director with a company-owned car or van, which is **available** for their private use, a benefit in kind arises.

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The monetary value of this benefit must be reported by the employer and has NIC implications for the employer plus tax implications for the employee.

For BIK purposes, a car is defined as a mechanically propelled road vehicle that is not; a motor cycle, a vehicle of a construction primarily suited for the conveyance of goods (e.g. a van) and a vehicle of a type not commonly used as a private vehicle.

A flat rate benefit value applies for all HMRC defined 'vans', which is generally significantly lower than the benefit applicable to a company car, which is calculated based on the list price and the vehicle's CO2 emissions.

### **Capital Allowances**

The definition of a car for Capital Allowance purposes is similar to the one for BIK, so the decision in the recent case could just as easily be applied.

A van is treated as Plant and Machinery (P&M) for Capital Allowances and may qualify for the Annual Investment Allowance (AIA). In contrast, cars do not qualify for AIA and the level of the claim for Capital Allowances depends on the vehicle's CO2 emissions.

### **VAT**

The definition of a car for VAT differs to the one for the BIK and Capital Allowances rules. According to VAT legislation, a car includes a vehicle which has seats behind the driver together with side windows. However, there are a number of exclusions to this definition, most notably a vehicle which can carry a payload of one tonne or more is deemed not to be a car for VAT purposes.

To reclaim VAT on a new car, it must only be used for business and must not be available for private use. Given the primary purpose of a car is to carry passengers, it is often difficult to argue there is no private use and provide sufficient evidence of this. Therefore reclaiming VAT is generally blocked.

VAT registered businesses can generally reclaim the VAT when buying a commercial vehicle (e.g. a van), as it mainly has business use. HMRC views any incidental private use of most types of commercial vehicle as 'de minimis'.

However, where a commercial vehicle is suitable for private use and its use is more than 'de minimis' it would be necessary to apportion the tax on purchase for the business element or recover the VAT in full and account for output tax each period for the private element.

To reiterate and with reference to the above case, despite the vehicles being reported at the FTT as having payloads of one tonne or more, they are not vans for BIK rules which shows the conflicting definitions between the taxes.

### **Double cab pick-up**

Since 2002/03, when deciding whether double cab pick-ups count as cars or vans for BIK purposes, HMRC interpret the legislation that defines a car and van in line with the definition used for VAT purposes. Therefore, provided the double cab pick-up has a payload of one tonne or more it is accepted as a van for BIK purposes.

Double cab pick-ups are generally the only type of dual purpose vehicle accepted as a van in line with the above, which makes it vital for employers to obtain advice about the payload of a potential purchase of a particular model from the manufacturer or dealer.

**Does this topic raise any questions in your mind? Please speak to one of our experts:**

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