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## VAT issues - smelly and adapted cars do not qualify as vans

It is possible for the VAT-registered farmer to claim input VAT on vans, including twin cab pick-ups. However, motor cars have to have no private usage in order to qualify for the input VAT claim and the claim is all or nothing. The problem is, however, that it is difficult to distinguish between 'available for private use' and 'used for private purposes'.

There have been three recent cases that have involved farmers, input VAT claims and cars. They have all failed. The VAT planning point (linked to possible capital allowances advantages) has to be to advise farmers of the VAT advantages of vans and distinct disadvantages of cars, whether they are too smelly to take off the farm or not in the eyes of the VAT inspector.

### **The smelly and adapted car**

The first case involved the argument that the smell of the vehicle from farm use made it obviously unavailable for private use. The taxpayer claimed that although the vehicle had been purchased as a car, it had been adapted to give it the appearance and functionality of a van. The Tribunal questioned both of these statements, saying that despite the alterations, the vehicle was still classified as a car for VAT purposes, and that the 'smell' of the vehicle was insufficient to put the vehicle beyond being 'available' for private use. The input VAT could not be claimed, but it could have been claimed on a van.

### **The available and adapted Discovery**

In the second case there were no physical or legal restrictions – not even the smell. It would appear that a car can have no private use but nevertheless if the private use is available, the input VAT claim is not allowed. In *Alex Paton & Son*, HMRC disallowed the taxpayer's claim to recover VAT on a Land Rover Discovery. The taxpayer appealed to the Tribunal on the grounds that the vehicle was used solely for a business purpose, and had been especially adapted to allow for the taxpayer's disability.

The main issue of the case was that of availability. The relevant legislation – VAT (Input Tax) Order SI

1992 No 3222, articles 7(2E)(a) and 7(2G)(b) - demands that the vehicle is not for business use only, but that it is also incapable of private use. Article 7(2G)(b) says, 'A taxable person shall not be taken to intend to use a motor car exclusively for the purposes of a business ... if he intends to ... make it available otherwise than by letting it on hire to any person.' Most cases fail on the grounds that the vehicle is available, even if not intended, for private use. If this is proven, then no input VAT can be claimed.

The Tribunal found that the farmer had not taken sufficient steps to ensure that the vehicle was incapable of private usage. While the taxpayer had attempted to obtain business-use only insurance, the insurance company in question declined to provide it. The input VAT claim on the Discovery was therefore disallowed.

## **More availability**

In Robert and Lillian Waddell, the taxpayer tried to reclaim VAT on his new vehicle. Once again, the Tribunal refused the appeal on the grounds that the vehicle was available for private usage. Input tax is blocked simply if the vehicle is 'available for private use' rather than 'used for private purposes'.

## **Farmers argue loudly for no private life**

Farmers' views on the subject of a private life are strong. Farming is a way of life; the hours are so long that there is no private life; the work is hard and long; and no VAT inspector would want to travel in a farming vehicle. But presenting the argument in a loud voice does not make for a stronger case.

The advice to farmers must be that if their aim is to claim input VAT on the van, playing the game by the rules can work in the taxpayer's favour. Input VAT can be claimed on a van, so buy a van!

## **Capital allowances**

The van also qualifies for 40% first-year allowances, whereas the car does not. Similarly, a van can qualify for the annual investment allowance (AIA).

The Finance Act 2009 includes some important amendments to the capital allowances code for equipment and vehicles. These include a 40% first-year allowance for purchases made in 2009/10 (the year 1 April 2009 to 31 March 2010 for companies and the 2009/10 tax year for unincorporated businesses). This sits on top of the £50,000 AIA.

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