



TC01909

Appeal number: TC/2011/4892

NIC – Exemption – Pooled cars – Whether provision of car satisfies the conditions for exemption – ITEPA 2003 s.167(3)

**FIRST-TIER TRIBUNAL
TAX**

TIME FOR GROUP LTD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: SIR STEPHEN OLIVER QC
DUNCAN McBRIDE**

Sitting in public in Reading on 8 February 2012

K Green, of Barter Durgan, chartered accountants, for the Appellant

David Lewis for the Respondents

DECISION

1. Time for Group Ltd (“TFG”) appeals against charges to Class IA National Insurance Contributions for the years 2006/07 to 2009/10. The total amount charged is £6,602.

2. TFG is owned by Mr P Jeffries and Mrs Jeffries, his wife. Both are employed by TFG. Its principal activity is arranging specialist holidays tailor-made to individual requirements.

3. During the years to which this appeal relates, TFG owned a succession of company cars; a Landrover TD5 and a Volvo V70D SEst (and later another Volvo). Each of these cars was provided with company fuel for mileage incurred in those cars. Following an investigation, HMRC contended that the company cars and the fuel were made available to Mr and Mrs Jeffries for private mileage and therefore TFG was liable for the Class 1A NICs on the resultant benefit.

4. TFG, represented by Mr K Green, contends that the company cars and fuel had not been provided for private travel. It contended that the cars were used as “pooled cars” and they had only been used for business travel. On that basis it was contended that no taxable benefit arises and that the company is not therefore liable to the NICs.

5. TFG relies on sections 167 and 168 of IT(E&P) Act 2003 as the grounds for excluding any taxable benefit in respect of the use of the cars and therefore any consequent NIC charges. They relied particularly on section 167(3). That subsection imposes five conditions, all of which have to be satisfied for pooled car relief to apply. The issue in this appeal turns on conditions (a), (c) and (d).

6. We are satisfied from the evidence that conditions (a) and (c) are fulfilled in the present case. The cars were each made available to and actively used by more than one of the employees of TFG. They were used by both Mr and Mrs Jeffries. The cars were not ordinarily used by one of those employees to the exclusion of the other. The cars were used by both Mr and Mrs Jeffries. Thus even though a Mr Ralph (the third employee of TFG) never used the cars, condition (c) is satisfied and does not exclude relief.

7. The problem arises with condition (d). That provides that in the case of each of those employees (i.e. Mr and Mrs Jeffries) any private use of the car in question made by those employees was merely incidental to that employee’s other, business, use of the car. The question for us is whether, on the evidence, there was an element of private use of the cars and, if so, whether the use was merely incidental to the business use.

8. The facts are that Mr and Mrs Jeffries used the cars in question when carrying on the business of TFG. The cars were used to transport them to occasions at which they “networked” and sought to get business for TFG. They were used to take one or

both of Mr and Mrs Jeffries to sports events, such as home and away matches, involving the schools at which their children are studying, being matches in which the children were playing. In the course of those, Mr and Mrs Jeffries networked with other parents and supporters, some of whom were or became customers of TFG.

5 There was one occasion when one of the cars was used to transport Mr and Mrs Jeffries and the children to a lodge in Scotland that they had rented; they had invited two of TFG's customers to holiday with them. There were further occasions where Mr and Mrs Jeffries used one of the cars to take them to events such as a polo series at Cowdrey Park where there were known to be people with possible interests in

10 engaging TFG to create a bespoke holiday for them. On another occasion the cars were used when Mr and Mrs Jeffries were visiting customers. The cars were used, said Mr Jeffries, because they were of the right level of prestige to demonstrate the quality of TFG. There were many other occasions when one of the cars had been used for more prosaic purposes such as distributing brochures and taking mail to the

15 post.

9. We are not satisfied as regards the journeys to sports events, to Scotland and to other events (such as the polo) that the private non-business purposes were really incidental to the business purpose. The private purpose of, for example, seeing their

20 children compete, being at the polo event and having a family holiday in Scotland, was, we think, a purpose in its own right. In each case it was more than incidental to "doing business" by networking. The "family event" characteristics of those uses of the cars can only be displaced with the strongest evidence. The evidence in the circumstances is not strong enough to satisfy us that condition (d) is fulfilled here.

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10. For those reasons we have to dismiss the appeal.

11. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal

30 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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40 **SIR STEPHEN OLIVER QC**
TRIBUNAL JUDGE

RELEASE DATE: 21 March 2012