



TC01958

Appeal number: TC/2011/07149

INCOME TAX – Mobile motor technician – Provided with specially modified vehicle by employer – Whether a goods vehicle – No – Appeal dismissed – s 115 Income Tax (Earnings and Pensions) Act 2003

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TIMOTHY JONES

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
NORAH CLARKE**

**Sitting in public at Eastgate House, Newport Road, Cardiff CF24 0YP on 13
February 2012**

The Appellant in person

Jack Lloyd of HM Revenue and Customs, for the Respondents

DECISION

1. Mr Timothy Jones is a mobile technician for Jaguar Land Rover who, by reason of his employment, has been supplied with a new Land Rover Discovery 4 2.7 TDV6 GS Auto. He objects to his Notice of Coding for 2011-12 which was determined by HM Revenue and Customs (“HMRC”) on the basis of information provided by his employer that, despite the Land Rover having been specially modified to carry engine components and tools for his job, the vehicle, which is available for his private use, was a car.

10 *Background*

2. The provision of the Jaguar Land Rover roadside assistance service is put out to tender every three years. Until 2009 this service had been provided by Mondial Assistance UK (“Mondial”). Mr Jones had been employed by Mondial which provided him with a new Land Rover Discovery every year. However, in 2009 the Automobile Association (“AA”) successfully tendered for the contract to run the service and Mr Jones, who had been employed by Mondial for nine years, was transferred, in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006, to the AA.

3. Although the AA continued to provide Mr Jones with a new Land Rover Discovery each year, as had been the case when he was employed by Mondial, the tax treatment of the vehicle for tax purposes changed. Instead of the Land Rover Discovery being treated as a van for tax purposes, as it had been when he worked for Mondial, the AA notified HMRC that as from 27 September 2010 Mr Jones had a company car.

4. Mr Jones explained that the change in the in tax treatment of the vehicle, from a van to a car, was because HMRC had granted Mondial a “special dispensation” which had not been transferred when the Jaguar Land Rover contract was awarded to the AA in 2009. The difference between the vehicle being treated as a van and car for tax purposes is illustrated in the following table, included in a letter sent to Mr Jones and his colleagues by the AA’s Dedicated Assistance Operations Manager:

	20% Tax	40% Tax		20% Tax	40% Tax
Van Benefit £3,000	£600	£1,200	Car Benefit £10,189	£2,037.80	£4,075.60
Van Fuel Benefit	£110	£220	Car Fuel Benefit £6,300	£1,260	£2,520

The letter also explains that the AA unsuccessfully “argued the case extensively [with HMRC] for a special dispensation to be granted due to the use and modifications made” to the vehicles.

The Vehicle

5. Not only did Mr Jones describe and produce photographs of the Land Rover Discovery at the hearing, but as he was able to park in the Tribunal car park we, along with Mr Jones and Mrs Jones (who was present at the hearing) and Mr Lloyd of HMRC were able to see the vehicle for ourselves.

6. The entire boot area of the Land Rover was filled with racking and tool boxes which are bolted to the structure of the vehicle. In addition, although the rear seats and seat belt fittings are in place the seats are impossible to use as extra tool boxes have been securely fixed over them. Mr Jones explained that when he was employed by Mondial it had been possible to use the rear seats of the Land Rover but extra tool boxes had been fitted to the vehicles provided by the AA. Although it was technically possible for these to be removed, he is not permitted to do so by his employer.

7. The modifications to the vehicle also include additional lighting, electrics and special control systems. Despite these modifications taking two days to fit using special lifting equipment and the services of trained electricians there is no fundamental alteration to the structure of the vehicle. This is because it has to be returned to Jaguar Land Rover for re-sale after one year when it is replaced by a new vehicle.

Relevant Legislation

8. Section 115 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”), which has the heading Meaning of “car” and “van”, provides:

(1) In this Chapter [of ITEPA dealing with cars, vans and related benefits] –

“**car**” means a mechanically propelled road vehicle which is not-

- (a) a goods vehicle,
- (b) a motor cycle,
- (c) an invalid carriage, or
- (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;

“**Van**” means a mechanically propelled road vehicle which-

- (a) is a goods vehicle, and
- (b) has a design weight not exceeding 3,500 kilograms, and which is not a motor cycle

(2) For the purpose of subsection (1)

...

“**goods vehicle**” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description;

...

Discussion and Conclusion

9. For HMRC, Mr Lloyd contended that if s 115 ITEPA is constructed in accordance with the guidance contained in HMRC's Employment Income Manual (EIM 23115), the vehicle should be treated as a car as the modifications made to it are not sufficiently permanent and substantial in scale to have altered its original manufactured construction. He pointed out that in HMRC's view, as stated in their Manual (at EIM 23110), if a vehicle has side windows, which the Land Rover Discovery does, behind the driver and passenger doors, it is unlikely to be a goods vehicle and only if the primary purpose for which it is constructed is the carriage of goods will it escape from being a car.

10. Mr Jones accepted that there has not been any fundamental alteration to the structure of the Land Rover but argues that it is unfair that the dispensation that applied when the vehicle was supplied by Mondial was not continued when the AA took over the Jaguar Land Rover contract especially as the vehicle now has fewer usable seats than before and he is not permitted to remove any of the modifications.

11. Although Mr Jones understood that the dispensation was granted by HMRC because of modifications to the vehicle it appears, from papers that he provided at the hearing, to have arisen as the result of an agreement between HMRC and Mondial following a successful appeal, by a mobile technician employed by Mondial, to the General Commissioners in September 1999. They had found that a Land Rover Discovery provided to him did not fall within the statutory definition of a "car".

12. HMRC (or rather the Inland Revenue as it then was) expressed dissatisfaction with the decision and requested that a case be stated for the opinion of the High Court (which was the appropriate appeal procedure at the time). However, as the appeal (like the present case) was against a notice of coding, and it was possible for either the taxpayer or HMRC to re-open the issue via the self-assessment regime whatever the outcome of appeal, HMRC decided not to take the case to the High Court. Instead a meeting was held between the Inland Revenue, representatives of Mondial and two of its mobile technicians during which an agreement was reached. The terms of the agreement were described in the letter of 10 July 2002 from the Inland Revenue to the technician who had successfully appealed to the General Commissioners as follows:

Whilst the Revenue still maintains that your vehicles are cars which, if made available to you for private use, should attract the normal car and fuel scale charge it accepts that to uphold this view would require recourse to the General Commissioners and the Courts. In order to minimise the cost to the public purse, to Mondial and to yourselves the Revenue is prepared to offer a compromise.

Without prejudice to the legal position, which if this agreement does not hold will be argued before the Commissioners, the Revenue will for the years 1998-99 to 2004-05 inclusive treat your vehicles as if they were company assets rather than cars. The agreement will be subject to review for years subsequent to 2004-05 or earlier if the Chancellor materially alters the way car and fuel benefits are taxed.

13. It would seem that this arrangement, which was "without prejudice to the legal position", continued until Mondial was replaced by the AA as the provider of the Jaguar Land Rover roadside assistance contract in 2009.

14. However, as the AA was not a party to the agreement between HMRC and Mondial it is necessary for us to consider the legal position to ascertain whether the Land Rover Discovery supplied to Mr Jones has been properly described by his employer as a car. In doing so we note that the guidance published in HMRC's
5 Manuals is their view of the law not necessarily what the law is.

15. Mr Jones accepts that the Land Rover is a mechanically propelled road vehicle and that it is not a motor cycle, invalid carriage or a vehicle of a type not commonly used as a private vehicle and not suitable for such use. Therefore, unless it is a "goods vehicle" it is a car as defined by s 115(1) ITEPA.

10 16. A "goods vehicle" is defined by s 115(2) ITEPA as a "vehicle **of a construction** primarily suited for the conveyance of goods or burden of any description" (emphasis added).

15 17. Although the Land Rover Discovery supplied to Mr Jones may have become primarily suited for the conveyance of goods or burden this is as a result of modifications, which have been made to the vehicle so as not to fundamentally alter its structure, and not because it was "of a construction" for such a purpose.

20 18. In the circumstances we are unable to find that the Land Rover Discovery is a "goods vehicle" within the definition of s 115(2) ITEPA. As it does not fall within any of the other exceptions contained in s 115(1) it must follow that the vehicle supplied to Mr Jones by his employer is a "car" and that his 2011-12 Notice of Coding was correctly determined by HMRC.

19. Accordingly we dismiss the appeal.

25 20. 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 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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JOHN BROOKS

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TRIBUNAL JUDGE

RELEASE DATE: 16 April 2012