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### The Coca Cola 'Van' Case

#### The result of the case

- The Court of Appeal found in favour of HMRC that certain types of modified crew cab vehicles should not be classed as 'vans' for income tax and national insurance purposes but as cars instead.

<https://www.judiciary.uk/wp-content/uploads/2020/07/HMRC-v-Payne-Ors-Approved-Judgment-002.pdf>

#### What does the tax legislation say a van is?

- It is a goods vehicle and has a design weight not exceeding 3,500 kilograms and is not a motor cycle.
- A 'goods' vehicle is defined as one **of a construction primarily suited** for the conveyance of goods or burden of any description.
- Legislation is S115 ITEPA 2003.

#### What important points came out of the Court of Appeal ruling?

- When deciding whether it is a 'van' or a 'car' **it is not the original design of it but the construction/adaptation of it when it is made available** to the employee.
- Although the look of the vehicle is a factor, it is not a significant one.
- The fact that a vehicle is used for private purposes is, in itself, irrelevant in deciding whether or not, for income tax/NI purposes, it is a 'van'.
- The importance is whether or not the vehicle fits the definition of a 'car' or a 'van'.
- The Court placed great emphasis on what is meant by **'primarily'** suited for the conveyance of goods.
- The Court felt that multipurpose vehicles would be deemed to be a 'car' if the construction of the vehicle, when looking at it as a whole, was only 'marginally' in favour of it being a goods vehicle than a car. 'Primarily' means more than that.
- The three vehicles in question were originally constructed as panel vans but were modified.
- One vehicle was modified to incorporate a second row of seats which could be removed (using tools) and a window added at the side of the seats.
- The other two vehicles already had a second row of seats, removable (without using tools), with windows either side of them, behind the driver and front passenger seat. Racking was required to be installed by the driver when the vehicle was used on business.
- All 3 vehicles were modified to provide added protection for those sitting in the second row of seats to prevent loose items from entering their area if the vehicle had to brake suddenly.



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### **Why does it matter whether a vehicle is classed as a car or a van for tax purposes?**

- The current benefit in kind charge for a 'van' is £3,490 (£2,792 - no CO2 emissions).
- If treated as a 'car', the benefit in kind charge could be considerably higher as it is normally calculated based upon the car price, graduated according to the level of CO2 emissions.
- If regarded as a 'car' this could have a knock-on negative impact on the level of Class 1A national insurance for a business to pay.
- If private fuel is paid for by the business, the car fuel benefit in kind figure is likely to be considerably higher than the fixed van fuel charge of £666 where CO2 emissions come into play.
- Vans are potentially eligible for the annual investment allowance whereas cars are not. Capital allowances relief is likely to be spread over a longer period for cars.
- Input tax can be claimed in part or in full on the purchase of a vehicle classed as a 'van' for VAT purposes, but the recovery is generally blocked if a car is purchased, where private use maybe involved.

### **It is worth knowing:**

- That, a combi-vehicle with a payload of 1 tonne or more is not a car for VAT purposes.
- Double cab pickups (but no other type of dual purpose vehicle), HMRC (now only up to 1 July 2024) accept that where the vehicle meets the 'van' payload test for VAT purposes, they will apply the same treatment for benefit in kind purposes.
- HMRC produced a list of combi vehicles which they felt were, for VAT purposes, either a 'car' or a 'van'. The list has not been updated since May 2015.

<https://www.gov.uk/government/publications/hm-revenue-and-customs-car-derived-vans-and-combi-vans>

### **Looking forward**

- On the basis that Coca Cola don't appeal against this judgement & win, HMRC are now reviewing any employees they can see with 'vans'. The worst case scenario is that they could try and open up earlier years, where HMRC believe they can apply this precedent.
- Some vehicles you use will be clear cut panel vans or will fit the current double-cab HMRC concession. But, if you have adapted the original construction to include additional seats and side windows, your vehicle will almost certainly be in line for an attack by HMRC, as no longer being '**primarily suited**' for the conveyance of goods.