



## Benefits in Kind (BIK) – Commercial Vehicles

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.

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.

The taxable benefit from a van can be significantly lower than the benefit from a company car. In particular, if the van is made available to the employee mainly for business travel and private use is prohibited, other than for 'ordinary commuting', the benefit is nil. 'Ordinary commuting' includes routine commuting and other work related journeys from home. Therefore it is often preferable for an employee to be provided with a vehicle which qualifies as a van.

A van is defined for these purposes as 'a goods vehicle with a design weight not exceeding 3,500kg'. A 'goods vehicle' is further defined as a 'vehicle of a construction primarily suited for the conveyance of goods' and 'design weight' is defined as being 'designed or adapted not to exceed 3,500kg when in normal use and travelling on road'.

The difficulty for employers is that this legal definition can be interpreted in many ways.

The recent Tribunal case of *HMRC v Payne Ors [2019]* has provided an illustration of this.

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 and was subsequently modified by Coca-Cola, the provider, to add a second row of two seats behind the driver together with a single window, leaving some storage space to the side. The extra seats could only be removed with tools.

The two Kombi vans also left the assembly line as panel vans but arrived from the manufacturer with a second row of seats already fitted. The second row of seats could be removed without tools.

The Tribunal looked in detail at two elements of the definition: 'of a construction' and 'primarily suited'.

To establish whether the vehicle was 'of a construction' for the conveyance of goods, it was necessary to determine whether 'construction' was when the vehicle either left the factory, or after adaptations, as supplied to the employee.

It was held the vehicle's construction should be considered after adaptations and when supplied to the employee.

Secondly, the next stage was to consider whether each vehicle was 'primarily' suited for the conveyance of goods. Where a vehicle is equally suitable for both goods and passengers, then it has no primary suitability and thus cannot be a goods vehicle.

On the basis of the above, it was held the Kombi vehicles were deemed to be cars for BIK rules. This was due to the vehicles being equally suited to moving passengers or goods and having no primary suitability. The seats could be removed for goods or reinstated for passengers.

It was held the Vivaro was a van for BIK rules as, despite having a second row of seats, it was more suited for goods (having extra space to the side).

This case, whilst providing some clarity on how the definition should be applied, also demonstrates that an employer should consider carefully the qualification of any commercial vehicle which has been modified before it is provided to an employee. It might look like a van, and be used as a van, but HMRC may still be able to treat it as a car.

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