

Car benefits (Lecture P1262 – 21.17 minutes)

One of the best known benefits in kind relates to the provision of a car for a director or employee by an employer. The relevant part of S114(1) ITEPA 2003 states:

‘This Chapter applies to a car . . . in relation to a particular tax year if in that year the car:

- (a) is made available . . . to an employee or a member of the employee’s family;
- (b) is so made available by reason of the employment; and
- (c) is available for the employee’s or member’s private use.’

The three requirements quoted in (a), (b) and (c) above can be classified, respectively, as Condition A, Condition B and Condition C.

The First Tier Tribunal decision in *Tim Norton Motor Services Ltd v HMRC* (2020) deals with an important aspect of this legislation. The appellant company (TNMS) runs a Ford dealership. TNMS buys and sells cars and does some repair work. Several years ago, the company bought two rare (and expensive) high performance cars: a Maserati and a Ford GT40.

Following a PAYE audit in 2016, HMRC concluded that these two cars had been made available to the company’s main director (Mr Norton) for periods longer than those in respect of which a benefit in kind had been declared. They therefore raised income tax assessments on Mr Norton for the tax years 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17 in respect of the Maserati and the Ford GT40.

The company’s premises were situated in Oakham, Rutland. There would generally be 25 – 30 new cars on the premises and about the same number of used cars which were for sale. In addition, the Maserati and the Ford GT40 were kept there.

Mr Norton and his wife (who was also a director of TNMS) lived some 10 miles from the company’s showroom and drove to work, but neither the Maserati nor the Ford GT40 was used for commuting. The keys for the two cars were kept in a locked box in a safe in Mr Norton’s office.

Because the two cars were only driven relatively infrequently, they were subject to a SORN (Statutory Off Road Notification) which meant that they did not need to be taxed or insured. In fact, both cars were insured (presumably because of their value), but, if Mr Norton wanted to take one of them on the road, duty had to be paid before it could be used and Mr Norton would have to check that the vehicle had a current MOT.

The Ford GT40 had the words ‘Tim Norton’ painted on its bonnet. In his evidence, Mr Norton said that the Ford GT40 ‘acted as an attraction to the dealership, both when at the premises and when taken to various shows’. He added – perhaps unsurprisingly – that ‘it was a crowd puller and led to conversations and sales’. Mr Norton did not make similar statements about the Maserati.

The three conditions mentioned in S114(1) ITEPA 2003 were referred to above. By virtue of S117(1) ITEPA 2003, a car which has been made available to an employee is treated as having been made available by reason of the employee’s employment. There are two exceptions to this rule, but neither of them is relevant in the present case. As a result, if Condition A is satisfied, Condition B will also be satisfied. This was the case with Mr Norton.

We therefore need to examine Condition C. An extract from S118(1) ITEPA 2003 states:

‘For the purposes of this Chapter a car . . . made available in a tax year to an employee . . . is to be treated as available for the employee’s . . . private use unless in that year:

- (a) the terms on which it is made available prohibit such use; and
- (b) it is not so used.’

Consequently, if Condition A is satisfied (i.e. by reason of the car being made available), Condition C will also be satisfied unless the taxpayer can show that both the let-outs in S118(1) ITEPA 2003 are in point.

Ss121 – 142 ITEPA 2003 deal with the computation of the car’s taxable benefit. In this case, there was no dispute about how the figures for Mr Norton arose.

We now turn to S143 ITEPA 2003. The key part of this section states that ‘a deduction is to be made from the amount (in the computation) if the car has been unavailable on any day during the tax year in question’. Subsection (2) goes on to say:

‘For the purposes of this section a car is unavailable on any day if the day:

- (a) falls before the first day on which the car is available to the employee;
- (b) falls after the last day on which the car is available to the employee; or
- (c) falls within a period of 30 days or more throughout which the car is not available to the employee.’

The final subsection provides for a reduction in the taxable benefit on a pro rata basis by reference to the number of unavailable days. In other words, even though the legislation applies for a tax year, there is an appropriate switching on and off procedure where the car is not available for the whole of the year.

In addition to the fact that the two cars were subject to a SORN for much of the year, there was another constraint on their use. TNMS’s staff handbook contained the following paragraph:

‘It may be necessary to use a company vehicle in the course of your duties with the company. You may not use a company vehicle without the expression permission of management. At all times, all employees and officers of the company must ensure that any vehicle used is taxed unless covered for use by trade plates, has adequate insurance cover and (has) a valid MOT, if appropriate.’

In his evidence before the First-Tier Tribunal, Mr Norton confirmed that he regarded these restrictions as imposing clear obligations on officers and employees of TNMS in relation to both the business and the private use of a company car.

The company’s barrister argued that cars were not ‘available’ when subject to a SORN declaration, given that their use would be illegal. During the times when the cars were under a SORN, driving them on the roads (other than with trade plates or to an MOT test) would be a criminal offence. It was wrong, he said, to equate potential availability – the potential to pay duty so as to make the car’s use legal – with actual availability. One of the cases which he used in support of this contention was *Golding v HMRC* (2011) – this was won by the taxpayer before the First-Tier Tribunal, but HMRC

have gone on record as saying that, although they did not appeal the finding, they considered that it 'does not set any precedent of any kind' (see 'Taxation', 22 September 2011).

Judge Charles Hellier dismissed the barrister's arguments. On the subject of the SORN, he asserted that the declaration did not prevent a car being available to an employee, in view of the fact that it could easily be remedied. As far as the need for management permission was concerned, he felt that this requirement did not represent an 'effective constraint' for Mr Norton, given that he was the owner of the business and that his wife, as a fellow director, would almost certainly acquiesce in his decisions to use the Maserati or the Ford GT40. He therefore decided that Condition C was satisfied and the benefit in kind charges were correct. As a result, Mr Norton derived no benefit from the reductions in S143 ITEPA 2003.

An intriguing side-issue was that this conclusion appeared to mean that, as well as the Maserati and the Ford GT40, the 40 – 50 cars in the TNMS forecourt would be equally available to Mr Norton and that he should be charged a benefit in kind tax on all of them! As a director of the company, Mr Norton certainly had the authority to make all of them available for his use. However, the judge said that 'such a charge would not arise unless in fact Mr Norton did use the cars for private use'.

Is there not some inconsistency here? Mr Norton did not make use of the Maserati and the Ford GT40 other than occasionally, but the judge confirmed that a benefit charge still arose in respect of them on the ground of availability.

In the end, the words in S114(1)(c) ITEPA 2003 state that the car 'is' available for the employee's private use. The test is not that 'the car, despite being unavailable, could easily be made available'.

Hopefully, the taxpayer may be allowed to take this case further.

Contributed by Robert Jamieson