

## Input tax on cars

### (Lecture B1160 – 10.36 minutes)

#### *Input tax and cars – basic rules*

A basic rule of VAT that has been in place since the 1970s is that input tax cannot be claimed on the cost of buying a new car unless it is exclusively used for business purposes and is not intended to be made available for private use (Legislation - Article 7, Value Added Tax (Input Tax) Order 1992). So, in basic terms, there is no problem claiming input tax if the car is a tool of trade e.g. for a driving school, taxi driver or car hire business. And there is no problem with a genuine pool car that is available to all employees and not kept overnight at the home of any specific employee (VAT Notice 700/64, para 3.7). But apart from that, opportunities to claim input tax are few and far between.

#### *Barry Graham (TC7313) - the case*

Mr Graham was a sole trader who traded in the computer industry, and with daily fees earned between £3,000 and £5,000, he decided that his business needed to own prestige cars to show he was running a successful venture. He even had a contract in place to pay his children £1,000 per day for any work they did. Input tax of £20,805 was therefore claimed on his March 2017 VAT return, in relation to three cars, an Audi A8, Mini Cooper S and a Porsche Cayenne. HMRC challenged the claim and disallowed input tax on the basis that the vehicles were available for private use.

The taxpayer claimed that the cars were used exclusively for business purposes by he, his wife and children and never made available for private purposes. That had always been the intention since they were purchased. Each family member had a separate car for their private journeys and the keys were kept in a locked safe and only retrieved for business trips. A mileage log proved that 93% of trips were carried out for long business journeys, with the other 7% being for shorter trips, which Mr Graham said he could also analyse if necessary. There was also a contract in place with his daughter which “expressly forbid” private use of the cars.

The appeal was allowed - it seems the main factors in the taxpayer’s favour were the fact that each individual owned a separate car which they used for private purposes plus a persuasive argument from Mr Graham that private use was completely blocked for all three cars. He was described as an ‘honest witness’ in the case report.

#### *Previous case law*

Despite this verdict, the odds of a taxpayer winning appeals about input tax and cars are very limited. The last major taxpayer success in the courts was the case of Zone Contractors Ltd (TC5330), where the arguments were helped by the fact that the employees had strict contracts of employment in place that prevented private use of the vehicles and the cars were kept overnight either on site or at the company offices i.e. rather than at the home address of individual employees. It is fair to say that it is harder for an unincorporated business to win the input tax argument than a limited company where everyone is an employee.

There was a famous VAT case back in 2002 when a sole trader Mr Upton ([2002] EWCA Civ 520) managed to persuade the lower courts that his Lamborghini car was used exclusively for business purposes and was not available for private use. However, HMRC eventually triumphed in the Court of Appeal and it has been very difficult ever since for sole traders to convince either HMRC or the courts that a motor car they have bought is not available for private use.

In the Graham case, the judge picked up on some subtle wording in the legislation (Value Added Tax (Input Tax) Order 1992, Article 7), namely that the test was whether the business 'intended to make it available.....for private use' i.e. a focus on intentions rather than actual outcomes. However, it was still a surprise victory – the taxpayer represented himself at the hearing and was described as an “honest witness” by the court, which was probably the key factor in his win.

As a final comment, the court dismissed the fact that the three cars in the Graham case were only insured for social domestic and pleasure purposes, seeing this as an oversight on the part of Graham's wife, who was ill at the time she dealt with the insurance policies.

Overall, it is still very difficult to justify an input tax claim on the purchase of a new car in most situations – an alternative might be to lease a car instead where 50% input tax can be claimed on the leasing charges, as long as there is some business use of the vehicle in question.

*Contributed by Neil Warren*