



Understanding VAT treatment of vehicles

A Lamborghini for everyone?

In a previous issue of **Topical Tips**, we highlighted the different tax treatment that arises when a business buys vans for employees to use privately rather than cars. One area of difference is VAT. Generally, input VAT charged on the acquisition of a car is not recoverable but that incurred on the acquisition of a van is recoverable. The blocking of VAT recovery on cars is something that Customs enforce as rigorously as possible.

Prior to August 1995, there was a blanket blocking order but from August 1995 the law was changed so that VAT is now only blocked if the car is, or is intended to be, made available to someone for private use. Thus, cars acquired by commercial leasing companies now qualify for full input tax credit (although the lessees of the cars are subject to a restriction).

A VAT Tribunal decision recently hit the headlines because it featured a sole trader (a certain Mr Upton trading as Fagomatic) who was successful in persuading the Tribunal that an esoteric sports car (a Lamborghini Diablo) should qualify for input tax credit on the grounds that he did not intend to use the car for private purposes and no private use had taken place. It was claimed that he needed the car for business image purposes on the grounds that he needed to visit night clubs etc where his cigarette vending machines were located. The press comment indicated that the blocking order had been breached with the implication that most if not all businesses should be able to put forward equally successful arguments as Mr Upton.

Sadly no, but there is good news...

Unsurprisingly, Customs appealed against the decision of the Tribunal and the High Court allowed their appeal. It was held that if there is a possibility of the car being used privately then it is available and so the blocking order applies. It is not possible to avoid the blocking order simply by choosing not to use a car privately.

The upshot of all this is that VAT generally cannot be reclaimed on the acquisition of cars unless private use is impossible due to the nature of the car or its use. Thus, the blocking order does not apply to cars acquired by leasing companies for the purposes of a leasing trade, nor does it apply to certain cars used in the motor industry for, say, research and development purposes, or to cars used as courtesy cars at an airport. Perhaps more importantly, the blocking order does not apply to vans (as defined). These include vehicles like the luxurious five door double-cab L200 pick-up from Mitsubishi and the commercial version of the Land Rover Discovery.

CAN YOU GET THE VAT BACK?



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- The much reported Lamborghini case is not still good law following the successful appeal by Customs.
- Certain cars can attract input tax recovery, but only in extreme circumstances.
- The input tax on leased cars is 50% disallowable if the lease is post July 1995. This is a point that frequently gets overlooked.
- Consider acquiring vans rather than cars - see Topical Tips No. 1.

Consult your Barnes Roffe contact partner for detailed guidance in this important area.