



Neutral Citation: [2024] UKFTT 00079 (TC)

Case Number: TC09044

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/14083

VALUE ADDED TAX-conversion of commercial vehicle to “car”-whether qualifying or non-qualifying car-self-supply-charge to output tax

Heard on: 11 December 2023

Judgment date: 17 January 2024

Before

**TRIBUNAL JUDGE MARILYN MCKEEVER
MR JAMES ROBERTSON**

Between

THREE SHIRES TRAILERS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Martin Kaney of X-VAT Ltd, tax adviser

For the Respondents: Mr Andrew Smith, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal against HMRC's decision on 14 March 2022 to reduce the VAT repayment credit due on the Appellant's 08/21 VAT return as a result of an increase in output tax following the alleged self-supply of two Land Rover Discovery vehicles (the vehicles). The amount of the additional output tax is £22,497.66.
2. HMRC's case was that the vehicles had been converted from commercial vehicles to non-qualifying cars which triggers an irreversible self-supply under Article 5 of the Value Added Tax (Cars) Order 1992 (the Order).
3. The Appellant argues that the vehicles were not converted to cars, if they were cars, they were qualifying cars and if they were non-qualifying cars, the use was only temporary and they were converted back to commercial vehicles.
4. The form of the hearing was V (video). All parties attended remotely. The hearing was held on the Tribunal's VHS platform. The documents to which we were referred are a Document Bundle of 361 pages and the skeleton arguments of both parties. We also heard oral evidence from Mr William Bennett, a director of the Appellant, Mr Richard Merson, HMRC's decision maker and Mr Richard Spencer, a Tax Specialist in HMRC's Motor Unit of Expertise Team (MUE).
5. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
6. The Appellant's skeleton argument was only submitted on the morning of the hearing and introduced a new matter to which HMRC objected. The Appellant sought to argue that if the vehicles had been converted to non-qualifying cars, the conversion was temporary and that therefore constituted a supply of services such that the output tax should be apportioned.
7. We concluded that the new argument went to the quantum of any output tax which was due. We allowed the skeleton argument to be admitted on the basis that the Appellant could make submissions only on the grounds of appeal set out in the Notice of Appeal and any issue of quantum would be for the parties to address, depending on the outcome of the hearing.

THE FACTS

8. The Appellant's business was the resale of trailers.
9. The Appellant purchased two Land Rover Discovery vehicles on 11 August 2021. The purpose of buying the vehicles was for the transportation of trailers to customers, the collection of trailers from suppliers and to enable personnel of the Appellant to attend trade fairs all over the country.
10. It is common ground that the vehicles were commercial vehicles when they were purchased.
11. A few days after the purchase, three fold up seats with seat belts were installed behind the driver and passenger seats and the side windows and back windows, which had been blacked out, were cleared. The installation had been carried out by a specialist company which had advised the Appellant that the addition of the seats to the vehicle to expand on its use within the business did not affect its commercial status for VAT purposes.
12. At the hearing, Mr Bennett explained that each vehicle could tow up to three or four trailers stacked on top of each other. When they went to trade shows six to eight people would

attend. The extra seats meant that they could reduce the number of vehicles they needed in the business as each vehicle could carry more people.

13. Mr Bennett also gave evidence that the vehicles were used only for business purposes. The employees were aware that they could not use the vehicles for private purposes and did not do so. The vehicles were kept at the business's premises.

14. We found Mr Bennett to be an honest and straightforward witness and we accept his evidence. We find as a fact that the vehicles were intended for use, and were used, only for business purposes. Mr Bennett did not intend that the vehicles should be used for private purposes and so far as he was aware, there was no private use.

15. The Appellant's 08/21 VAT return claimed a repayment of £37,520.85. Officer Sharma of HMRC opened an enquiry into the repayment claim on 4 October 2021. The Appellant was surprised by the enquiry, given the advice they had received from the installer, but provided the information and documents requested.

16. The Appellant provided further information and photographs showing the installation which had been carried out. In an email of 3 November 2021, the Appellant attached the advice from the installer which included an email from HMRC (relating to another customer) which stated:

“...the installation of a new bulkhead with foldaway seats does not inherently change the purpose of the vehicle as the seats are not permanent. Such an addition on its own would not affect the status of the vehicle for tax purposes”.

17. The Appellant stated that if they had been misled about the changes they would make arrangements for the work to be reversed. HMRC did not comment on the proposal to reverse the changes and in July 2022, the Appellant took the decision to remove the extra seats and reinstate the vehicles to their original condition, which was done.

18. Officer Sharma considered that the vehicles had been converted from commercial vehicles to cars and that as a result, the appellant was unable to recover the input tax on the purchase of the vehicles. She referred the matter to the MUE where it was considered by Mr Spencer who agreed with the Officer Sharma's conclusions. Mr Spencer considered further referrals throughout the course of the matter.

19. On 25 November 2021, Mr Merson took over the case from Officer Sharma. He communicated Mr Spencer's advice to the Appellant in a decision letter of 7 December 2021 which disallowed the input tax on the vehicles.

20. Mr Kaney requested a statutory review on 2 February 2022. A review conclusion letter was issued on 11 March 2022 which cancelled the original decision and allowed the input tax deduction on the basis that the vehicles were commercial vehicles when bought. The officer pointed out that output tax might be due on the conversion of the vehicles into cars.

21. Officer Merson issued a new decision on 14 March 2022 allowing the input tax but charging output tax.

22. Mr Kaney applied for a statutory review of the new decision on 12 April 2022. The review conclusion letter issued on 17 May 2022 upheld the output tax decision.

23. On 23 July 2022 Mr Kaney emailed HMRC explaining that the conversions had been reversed, together with evidence of this and attaching an Error Correction Notice on the basis that the conversion had only been temporary and the output tax was not due.

24. On 26 July, Mr Merson emailed Mr Kaney rejecting the ECN in the following terms:

“VIT52100 (an HMRC VAT manual, available online) sets out our position that a business can claim input tax relief on the purchase of a qualifying car used for a relevant purpose. It then defines a qualifying car as a car on which the input tax block has not been incurred by the current or any previous owner. Therefore, once the block has been applied (whether by restricting the input tax or by accounting for output tax on a self-supply) it has ceased to be a qualifying car and it’s too late to then go back and recover the blocked input tax or reverse the self-supply.’

Your Error Correction application is therefore rejected.”

25. Mr Kaney responded on 9 August 2022 stating that in his view the temporary seating did not convert the vehicles into non-qualifying cars. However, as HMRC considered that it did, he submitted that HMRC should treat the temporary conversion (now reversed) as minimal private use of a business asset not subject to an input tax block and requested that the ECN, reversing the output tax charge, be implemented.

26. Mr Merson responded on 16 August 2022, having taken further advice from Mr Spencer. The advice was that the self-supply cannot be reversed and the output tax remained due. In response to Mr Kaney’s argument that following removal of the temporary seating there was minimal private use (on the basis of HMRC’s interpretation), Mr Spencer said “...following the conversion the test is that the car must be used exclusively for the purposes of your business and it must not be made available for the private use of anyone.”

27. Mr Kaney sought a further statutory review of the decision to reject the ECN but this was refused.

28. The Appellant appealed to the Tribunal on 23 November 2022. Strictly, the review conclusion letter of 17 May 2022 was the appealable decision, so the appeal to the Tribunal is late. HMRC did not take the point and to the extent that our permission to appeal out of time is needed, we grant such permission.

DISCUSSION

29. HMRC argue that the vehicles were subject to a self supply by virtue of Article 5(3) of the Order. Article 5 provides, so far as material:

“Self-supplies

5.—(1) This article applies to any motor car—

(a) which has been produced by a taxable person otherwise than by the conversion of a vehicle obtained by him;

(b) which has been produced by the taxable person by the conversion of another vehicle (whether a motor car or not) and in relation to which the condition in paragraph (2) below is satisfied;

...

(2) The condition referred to in paragraph (1)(b) ... above is that the tax on the supply to, ... the taxable person of the motor car or the vehicle from which it was converted, as the case may be, was not wholly excluded from credit under section 25 of the Act.

(3) Where a motor car to which this article applies—

(a) has not been supplied by the taxable person in the course or furtherance of a business carried on by him; and

(b) is used by him such that had it been supplied to him at that time his entitlement to credit under section 25 of the Act in respect of the VAT

chargeable on such a supply would have been wholly excluded by virtue of article 7 of the Value Added Tax (Input Tax) Order 1992, it shall be treated for the purposes of the Act as both supplied to him for the purposes of a business carried on by him and supplied by him for the purposes of that business.”

30. “Motor Car” is defined by Article 2(1) of the Order as

“any motor vehicle of a kind used on public roads which has three or more wheels and either:

- (a) is constructed or adapted solely or mainly for the carriage of passengers; or
- (b) has to the rear of the driver’s seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows...”

31. Section 25 of the Value Added Tax Act 1994 gives a taxable person the right to a credit for input tax.

32. Article 7 of the Value Added Tax (Input tax) Order 1992 (Article 7) provides that the input tax on the supply of a motor car to a taxable person is to be disallowed unless the motor car is a “qualifying motor car”. Article 7 provides so far as material:

“7

(1) Subject to paragraph (2) [to (2H)] below tax charged on—

(a) the supply [(including a letting on hire)] to a taxable person;

(b) . . .

of a motor car shall be excluded from any credit under section [25] of the Act.

[(2) Paragraph (1) above does not apply where—

(a) the motor car is—

(i) a qualifying motor car;

(ii) [supplied (including on a letting on hire) to], . . . or imported by, a taxable person; and

(iii) the relevant condition is satisfied;

...

[(2A) Subject to paragraph (2B) and (2C) below, for the purposes of paragraph (2)(a) [and (b)] above a motor car is a qualifying motor car if—

(a) it has never been supplied. . . or imported in circumstances in which the VAT on that supply. . . or importation was wholly excluded from credit as input tax by virtue of paragraph (1) above; or

(b) a taxable person has elected for it to be treated as such.

...

(2E) For the purposes of paragraph (2)(a) above the relevant condition is that the letting on hire, supply. . . or importation (as the case may be) is to a taxable person who intends to use the motor car either—

(a) exclusively for the purposes of a business carried on by him, but this is subject to paragraph (2G) below; or

...

(2G) A taxable person shall not be taken to intend to use a motor car exclusively for the purposes of a business carried on by him if he intends to—

(a) let it on hire to any person either for no consideration or for a consideration which is less than that which would be payable in money if it were a commercial transaction conducted at arms length; or

(b) make it available (otherwise than by letting it on hire) to any person (including, where the taxable person is an individual, himself, or where the taxable person is a partnership, a partner) for private use, whether or not for a consideration.

...”

33. Applying these provisions in the present case.

34. Article 5 of the Order applies where a taxable person converts a vehicle into a motor car and input tax was deductible on the supply of the original vehicle to the taxable person. The Appellant acquired commercial vehicles on which input tax was deductible. Mr Merson, on Mr Spencer’s advice initially disallowed the input tax. Mr Spencer said he gave this advice because the vehicles were converted within days of their acquisition. That advice was clearly wrong. At the time when the vehicles were acquired, they were indisputably commercial vehicles and the Appellant was entitled to deduct the input tax on them. The reviewing officer disagreed with Mr Spencer on this point and allowed the input tax, but charged output tax on the basis that the commercial vehicles were converted into non-qualifying cars.

35. The definition of a motor car is set out above. A commercial vehicle will become a motor car if seats are fitted behind the driver’s seat and/or if there are clear side windows. Although the seats fitted in the present case were described as temporary, and folded up so that they were only used for passengers when a number of people need to use the vehicle, e.g. when going to a trade show, they still constituted “roofed accommodation to the rear of the driver’s seat. In addition, the side and rear windows which had been blacked out were cleared. Mr Spencer was therefore correct to conclude that the commercial vehicle had been converted to a car.

36. The vehicles were therefore motor cars to which Article 5 of the Order applied.

37. Article 5(3)(b) is phrased in a roundabout way, but what it means is that:

- (1) if the motor car is used in such a way that
- (2) had it been so used when it was originally supplied to the taxable person
- (3) the input tax would have been disallowed, then
- (4) the motor car will be treated as supplied by the taxable person for the purposes of the business. In other words, output tax will be charged on a self-supply.

38. The question whether the use of the motor car post-conversion is such that input tax would have been disallowed had it been used in that way when initially supplied depends on whether Article 7 applies.

39. Article 7, set out above, blocks the input tax on the supply of a motor car to a taxable person unless the motor car is a “qualifying motor car”. That is, if the car is a qualifying car, the input tax is not blocked and there is no self-supply and no charge to output tax.

40. The first requirement is that the vehicle has never been subject to an input tax block. That condition is satisfied in the present case so the vehicles were “qualifying motor cars”.

41. The next condition is that the vehicles were supplied to a taxable person, which is the case.

42. The final requirement is that the “relevant condition” is satisfied. The relevant condition is that the taxable person intends to use the motor car exclusively for the purpose of a business

carried on by him (Article 7(2E)(a)). Article 7(2G)(b)) provides that this will not be the case if the taxable person intends to make it available to any person for private use.

43. We have found as a fact that the Appellant intended to use, and did use, the vehicles solely for business purposes and that it did not permit any private use of the vehicles.

44. We therefore find that the vehicles, after conversion, were qualifying cars for the purposes of Article 7. It follows that, had the vehicles been acquired in their converted state, no input block would have been imposed and accordingly, there would be no self-supply under Article 5(3)(b) of the Order.

45. The Appellant is entitled to recover its input tax on the vehicles and, as there has been no self-supply, no output tax is due on the vehicles.

DECISION

46. For the reasons set out above we have decided that the vehicles were converted to qualifying cars and that no output tax is due by reference to the conversion.

47. Accordingly, we allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

48. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

Release date: 17th JANUARY 2024