



# When is a van not a van? The definition could cost

**B** BLICK  
**R** ROTHENBERG  
a Cogital company

What are the implications of vans not being regarded as vans for those employers who provide ‘vans’ to their employees for work purposes?

In a recent Upper Tribunal (“UT”) case, HM Revenue & Customs (“HMRC”) was able to successfully argue that certain vans are actually ‘multi-purpose vehicles’ rather than vans for the purposes of the tax legislation. This has resulted in the affected vehicles being subject to ‘car benefit’ charges, where employees are also using the vehicle for private purposes, rather than the less costly van charge that would have arisen otherwise.

The case specifically focussed on the situation regarding the VW Transporter T5 Kombi Vans - vehicles which the UT decided were not primarily designed for the transporting of goods, because they included a second row of (removable) seats within the standard, factory configuration. In particular, whilst the seats were removable, key factors in the UT decision were:

- a) The seats in the vans covered the whole of the 2nd row of the van layout; and
- b) The vans came with glass windows in the middle of the layout (rather than blocked out sides).

As well as looking at the VW T5 Kombi, the case also considered the position of the Vauxhall Vivaro, which the UT accepted, despite the inclusion of some limited seating in the 2nd row area was a van for the purposes of the tax legislation. Unlike in the T5 Kombi, the seating in the Vivaro didn’t cover the whole width of the van.

## What does this mean for employers and their staff?

This decision will potentially create challenges and issues for both employers and employees using such combi-style vans.

### The position for employees

Employees may now have an Income Tax liability, if there is any ‘private use’ element associated with their use of the vehicle, as they will be treated as having a car benefit. In contrast, previously, a van benefit itself may not have been applicable for the employee if private use was genuinely insignificant.

As a car however, commuting would be considered a private use and so a benefit in kind will likely be reportable on form P11D. The benefit value is calculated based on the vehicle’s CO2 emission and its list price. The value placed on the benefit can therefore be substantial and would typically be considerably more than the restricted (fixed-sum) van benefit charge.

### The position for employers

For employers, the UT decision has a number of implications including:



- a) Class 1A National Insurance charges will arise on the taxable value of the car benefit charge;
- b) A potential restriction in the capital allowances that can be claimed for corporation tax purposes (e.g. in the corporate tax return). Whilst vans qualify for an annual investment allowance of 100% in the year of purchase, as the test for capital allowance purposes broadly mirrors the “primary purpose” tests that have been used in this case by the UT, it is possible that businesses will now only be able to claim the more restricted writing down allowances that are available for cars (at a maximum annual rate of 18%, and a rate of only 6% for higher emission vehicles).

There should be no change to the treatment of vehicles for VAT purposes with its car definition unchanged.

## Potential next steps

As yet, HMRC have not changed their official guidance in this area.

However, pro-active employers should consider taking the following steps to manage their position in this area:

- a) Are the vans in your business likely to be affected by the change? If so, what could the budgetary impact of the change?
- b) Are you able to take any steps to try and ensure that these vehicles can continue to be classified as vans? For example, removing seats in the 2nd row area on a permanent basis?
- c) Should the UT’s decision change your procurement strategy in respect of any new vans that are required?
- d) How do you manage communications with employees and the potential increased tax charges they may suffer?

If you have questions or concerns then please contact your usual Blick Rothenberg contact or one of the individuals listed in the footer of this document who will be able to assist you further.



**Andy Timpson**  
Partner

+44 (0)20 7544 8899  
andy.timpson@blickrothenberg.com



**Robert Salter**  
Tax technical lead

+44 (0)20 7544 8706  
robert.salter@blickrothenberg.com

**Blick Rothenberg**  
16 Great Queen Street  
Covent Garden  
London WC2B 5AH

+44 (0)20 7486 0111  
email@blickrothenberg.com

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