

Input tax - Terrano Jeep - Whether intended to be made available for private use  
- Appeal dismissed

**BELFAST TRIBUNAL CENTRE**

**ANNE TRAINOR - Appellant**  
**- and -**  
**THE COMMISSIONERS OF CUSTOMS AND EXCISE - Respondents**

**Tribunal: HIS HONOUR JOHN McKEE QC (Chairman)**

**Sitting in public in Belfast on 4 September 2002**

The Appellant appeared in person

Mr Puzey of Counsel, instructed by the Solicitors for the Customs and Excise, for the Respondents

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**DECISION**

1. The Appellant purchased a new Terrano Jeep on 28 June 2000. She required this Jeep for the purposes of her part-time business as a sheep farmer operating from premises situated at 23 Belmont Road, Ballyardle, Kilkeel, County Down. She is registered for the purposes of VAT with effect from 1 January 1994. Accordingly, since she intended to use the Jeep exclusively for the purposes of her business, she therefore made her return claiming the input tax which she had paid on the purchase of the vehicle. By Notice of Assessment which appears to be dated 13 March 2002 the Respondents claimed a total of £2,333.62 on the basis that the Jeep was available for private use. The Appellant lives in an isolated area with no easy access to public transport. She has three children of school age who travel by bus. The Appellant's husband has a car which he uses to travel to and from his work in his employment by the Department of Agriculture so that that car is not available to the Appellant during the day. Finally the insurance on the Jeep is for business and pleasure purposes. The Respondents concluded that the Jeep was therefore in these circumstances available for private use.
2. Mr Trainor gave evidence on behalf of the Appellant. He asserted that the Jeep had indeed been bought exclusively for the purposes of the business of sheep farming. It was used both to check on the Appellant's flock of sheep and to tow a trailer. The flock of sheep were grazed in an area covering a twenty mile radius from the house. Whereas previously the Appellant had used a car this was found to be inadequate by reason of the rough terrain. Moreover it could not easily be used to tow the trailer. The Jeep is used as infrequently as possible because of

the expense of fuel. It consumes a gallon of fuel for every twenty miles when towing the trailer and without the trailer it consumes a gallon of fuel every thirty-three miles. Yet the Appellant has to check on the flock close to her home everyday and those sheep grazing further afield are checked every two days. This could not be undertaken without the Jeep. The trailer is used to transport sheep to and from market. The Appellant's flock comprises 150 breeding ewes and the Appellant expects approximately 280 lambs from this flock. Accordingly Mr Trainor suggested that the trailer would be attached to the Jeep for 85% of its use.

Mr Trainor gave evidence to the effect that an attempt had been made to insure this Jeep for business purposes only but that the insurance company had declined to offer such a policy and so the Appellant had no choice but to insure the Jeep for both business and pleasure purposes. This was in accordance with other evidence given to this Tribunal in similar cases. Finally Mr Trainor did not accept that the fact that the Jeep was parked adjacent to the dwelling house was of significance. He pointed out that this was purely for security purposes.

3. This Tribunal accepts the evidence of Mr Trainor as being both truthful and accurate.

4. Even given that the Appellant purchased the Jeep purely for the purposes of her business, nevertheless Counsel for the Respondents submitted that it was nonetheless available for private use. Mr Puzey cited *Commissioners for Customs and Excise v Upton* and furnished this Tribunal with a copy of the judgments of the Court. The question was what interpretation was to attach to the expression "make it available" as used in Article 7(2G) of the Value Added Tax (Input Tax) (Amendment) (No.3) Order 1995 which provides as follows: -

"A taxable person shall not be taken to intend to use a motor vehicle exclusively for the purposes of a business carried on by him if he intends to –

(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."

5. It follows then that the Appellant's stated intention, however genuine, is not the sole test to be applied in determining whether the terms of the Order have been adhered to so that the Appellant can recover.

Peter Gibson LJ applied the test implied in the following dictum: -

"In other words a car may be "made available" if it is available in fact and the owner does nothing to prevent its private use by himself."

6. Buxton LJ concurred with Peter Gibson LJ in finding for the Commissioners and, in the course of his judgment, said: -

"The question has to be decided as at the moment of the acquisition of the car. On the facts of the present case, I see no

escape from the conclusion that the car was at that moment, as a matter of fact, available for Mr Upton's private use, however little he then had any intention of actually so using it."

7. Finally Neurger J adding his weight to the judgments of Peter Gibson and Buxton LJ, acknowledged that:-

"... the consequence of this conclusion may be to render it very difficult for a sole trader, who acquires a motor car exclusively for his business, ... to avoid falling foul of paragraph 7(2G)(b)."

8. This Tribunal is bound to follow the judgment of the Court of Appeal and accordingly, not without some reluctance, finds that the Appellant cannot succeed in making her case in law notwithstanding that the facts are accepted as they have been stated on her behalf by Mr Trainor.

**HIS HONOUR JOHN McKEE**

**CHAIRMAN**

**RELEASED:**

LON/02/0406