

News release: 19 July 2010

## IMPORTANT VAT RULING ON CLASSIC CAR IMPORTS

Jaguar and historic car dealer JD Classics has won a landmark appeal against HM Revenue and Customs in relation to a £210,000 import duty and VAT case.

### **Background:**

Between 2005 and 2008, JD Classics had imported from outside the EU some 35 cars, many of them Jaguar XK and E-Type models, and had relied on the collectors' item tariff that allows zero import duty and a 5% reduced rate of VAT. HMRC did not agree with the importer's assessment of these cars. Relying on their three-year window to reassess the tax treatment retrospectively, they ruled that 28 of these cars were not sufficiently rare or historically significant. HMRC demanded £270,000, reduced after a lengthy review process to £210,000.

JD Classics instructed Martin Emmison of solicitors Goodman Derrick LLP to appeal against the assessment, and Martin instructed specialist motoring barrister (and collector), Matthew Collings QC, to appear at the Tribunal. In June 2010, the Tribunal found in JD Classics' favour, and made a costs award. HMRC have just confirmed they will not be appealing the Tribunal's decision.

The case considered the guidelines that HMRC officials use in determining whether an old vehicle being imported from outside EU qualifies as a "collectors' piece of historical interest". On ordinary cars, customs duty is payable at 10% of the value at import, plus normal rate VAT on the whole amount. However older vehicles may be imported under tariff heading 97.05 (collections and collectors' pieces of historical interest), where customs duty is nil, and VAT is charged at an effective rate of 5%.

The difficulty comes in deciding what vehicles qualify under heading 97.05. The rules stem from a 1985 decision of the European Court of Justice. To qualify, the vehicle has to be relatively rare, no longer in normal use for the purpose for which it was originally made, sold outside the normal vehicle trade, and of high value. In addition the vehicle should illustrate an important stage in the development of the motor car.

In November 2009, the European Commission updated its guidelines to national customs authorities. These now confirm that there is a presumption of "historical interest" in favour of vehicles which are in their original state, without substantial changes to the chassis, steering or braking system and engine, at least 30 years old, and of a model or type which is no longer in production. The treatment is definitely available for vehicles of any age that can be proved to have been used in an historic event; and racing cars designed, built and used solely for competition, which have achieved significant sporting success at prestigious national or international events. Replicas are always excluded.

**Martin Emmison explains:** *“The main change is that there is now more emphasis on originality and less on age - previously, any vehicle made before 1950 would qualify as a collectors’ item; now it might not, if it has been modified, is incomplete or is very ordinary. It also opens the possibility of importing on this favourable basis a vehicle that is less than 30 years old, if you can demonstrate that the particular model ‘evidences a significant step in the evolution of human achievements or illustrates a period of that evolution’. If there is doubt whether a car will qualify for the reduced rate, you can apply for a binding tariff information, which is effectively an advance clearance.”*

Martin added: *“We were delighted to achieve this result for JD Classics. I hope and anticipate that this ruling will make it easier for those importing cars from outside the EU to continue to use the UK as the destination of choice”.*

**Derek Hood, owner of JD Classics, commented:** *“This has been a very time-consuming process, which has led to clarification of the VAT rules for importing classic cars, and which I believe will benefit the entire UK classic car industry.”*

#### **Notes to editors:**

GOODMAN DERRICK LLP is an established London law firm with a broadly based commercial practice, representing both UK and international clients. The firm has twenty partners and a total complement of 80 staff including over thirty five practising lawyers. The firm has an acknowledged expertise in the areas of media law, corporate & commercial law (including historic and collectors cars), litigation, property, employment and private client matters.

Martin Emmison’s niche motor practice arises from his lifetime enthusiasm for old sports and racing cars. His clients are a mixture of dealers, brokers, restorers, race preparers and major collectors from all parts of the world. Martin has handled a large number of cross border sales and exchanges of very expensive vehicles, and is experienced in import, taxation and registration issues. The firm also handles resolution of the disputes that inevitably arise in this area.

#### **Contact**

For more information, please contact Martin Emmison, Partner, on 020 7404 0606  
[memmison@gdlaw.co.uk](mailto:memmison@gdlaw.co.uk)