Neutral Citation: [2023] UKFTT 01043 (TC)

Case Number: TC09014

FIRST-TIER TRIBUNAL
TAX CHAMBER

Location: Taylor House, London

Appeal reference: TC/2023/01186

VAT – Tours Operators' Margin Scheme – mobile ride hailing services – whether services of a kind commonly provided by tour operators or travel agents – whether services in-house supplies – whether transport services materially altered or further processed – appeal allowed

Heard on: 19 – 21 September 2023
Judgment date: 15 December 2023

Before

TRIBUNAL JUDGE GREG SINFIELD

Between

BOLT SERVICES UK LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Valentina Sloane KC and Jenn Lawrence, counsel, instructed by Deloitte LLP

For the Respondents: Eleni Mitrophanous KC and Charlotte Brown, counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This appeal concerns the VAT treatment of mobile ride-hailing services supplied by the Appellant, Bolt Services UK Limited ('Bolt'). Mobile ride-hailing services are on-demand, private hire passenger transport services ordered and paid for through a smartphone application.

2. In a letter dated 4 October 2022, Bolt asked the Respondents ('HMRC') for a non-statutory ruling that the Tour Operators Margin Scheme ('TOMS') applied to the ride-hailing services supplied by Bolt as principal. In a letter dated 28 February 2023 ('the Decision'), HMRC set out their considered position which was that the TOMS did not apply to the ride-hailing services supplied by Bolt as principal. On 15 March 2023, Bolt appealed to the First-tier Tribunal ('FTT') against the Decision.

3. For the reasons set out below, I have decided that the mobile ride-hailing services supplied by Bolt are services of a kind, namely passenger transport, commonly provided by tour operators or travel agents and the supply of such services falls within the scope of the TOMS.

SCOPE OF THE APPEAL AND ISSUES TO BE DECIDED

4. This appeal is brought under section 83(1)(b) of the Value Added Tax Act 1994 ('VATA') which provides for appeals in respect of "the VAT chargeable on the supply of any goods or services". The dispute between the parties concerns the amount of VAT due on the supplies of ride-hailing services made by Bolt as principal. There is no dispute that supplies of ride-hailing services are chargeable to VAT at the standard rate. The unresolved question is whether Bolt should account for VAT by reference to the total amount paid by the customer or on the margin, ie the difference between the amount paid by the customer and the cost to Bolt of goods or services supplied by taxable persons and used directly to provide the service. The answer to that question turns on whether the supplies of ride-hailing services by Bolt to holders of a Bolt account ('customers') fall within the scope of the TOMS. This appeal is not concerned with supplies made by Bolt to business customers who have a business account.

5. At the hearing, Bolt was represented by Ms Sloane KC with Ms Lawrence. For HMRC, Ms Mitrophanous KC appeared with Ms Brown. I am grateful to counsel for their helpful presentations, both written and oral, of the issues in this case and those instructing them for the care with which this case was prepared.

6. Ms Mitrophanous submitted that the scope of this appeal is limited to supplies made by Bolt under contractual terms introduced on 1 August 2022 which were the subject of the request for a non-statutory ruling in the letter dated 4 October 2022 and addressed in the Decision. When it asked HMRC for a non-statutory ruling, Bolt did not offer its customers the option of scheduled rides, ie rides that can be booked up to three days in advance and a minimum of at least 30 minutes before the desired pick-up time. By the time of the hearing, Bolt had introduced scheduled rides, first for business customers and then more widely. HMRC maintained that the only subject of the request and the Decision was on-demand rides and that scheduled rides were outside the scope of the appeal. Ms Sloane contended, that the Decision was a blanket ruling and that scheduled rides were therefore within the scope of the appeal.

7. I gave my decision at the hearing that this appeal is only concerned with supplies that were the subject of the Decision which is appealed. That means that services that were not referred to in the request for a non-statutory ruling and are not mentioned in the Decision are not within the scope of the appeal. Accordingly, supplies made by Bolt to business customers under the general terms and conditions of Bolt Business are not within the scope of this appeal. Black Cab rides (the ability to order rides in London in traditional black cabs launched in April

2023) and Bolt Tours (a package of travel services not yet offered to the public) are also not within the scope of the appeal. Although the liability of supplies of scheduled services is not within the scope of the appeal, I consider that it is appropriate to consider whether supplies by a private hire vehicle operator acting as principal fall within the TOMS generally so that if I decide that there is any distinction to be made between on-demand services, which are the subject of this appeal, and prebooked or in-advance services for the purposes of the TOMS, I can provide some guidance on where the dividing line lies.

8. It follows that the only issue in this case is whether Bolt's supplies of ride-hailing services on and after 1 August 2022 fall within the scope of the TOMS. In summary, Bolt contends that it makes supplies that fall within the TOMS because the ride-hailing services are supplied for the benefit of travellers and are of a "kind commonly provided by tour operators or travel agents" and to treat those services as falling outside the TOMS would lead to distortions of competition and a breach of neutrality between traders providing travel services of the same or a similar kind. HMRC submit that Bolt is not a tour operator or travel agent (which Bolt accepts) and it does not make supplies of a kind commonly provided by tour operators or travel agents. HMRC also assert that Bolt's supplies fall outside the TOMS because they are (i) in-house supplies or (ii) materially altered/further processed supplies.

LEGISLATIVE FRAMEWORK

9. The TOMS was established in the United Kingdom by section 53 VATA and the Value Added Tax (Tour Operators) Order 1987 (SI 1987/1806), as amended by the Value Added Tax (Tour Operators) (Amendment) (EU Exit) Regulations 2019 (SI 2019/73), ('the TOMS Order').

10. The TOMS Order was derived from and intended to implement Article 26 of Council Directive 77/388/EEC ('Sixth VAT Directive') which provided for a mandatory special VAT scheme for supplies by travel agents ('the EU special scheme'). Article 26 of the Sixth VAT Directive was later repealed and replaced by Articles 306 to 310 of Council Directive 2006/112/EC (the Principal VAT Directive or 'PVD').

11. As the UK legislation was intended to implement the EU special scheme in the PVD, the parties agreed that I must construe the UK legislation conformably with the requirements of the PVD as far as possible. Accordingly, I begin by considering the scope of the EU special scheme described in Articles 306 to 310 PVD. I will then consider whether the provisions of section 53 VATA and the TOMS Order can be interpreted and applied consistently with Articles 306 to 310 PVD. Finally, I will consider how the TOMS, as implemented in the UK by the TOMS Order (interpreted conformably, if possible), applies to the facts of this case.

EU legislation

12. Articles 306 to 310 PVD are as follows:

> "Article 306
>
> 1. Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.
>
> This special scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.
>
> 2. For the purposes of this Chapter, tour operators shall be regarded as travel agents.
>
> Article 307

> Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.
>
> The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.
>
> Article 308
>
> The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.
>
> Article 309
>
> If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.
>
> If the transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.
>
> Article 310
>
> VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible or refundable in any Member State."

13. Articles 308 – 310 refer to "other taxable persons". The term 'taxable person' is defined in Article 9 PVD as "any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity". Unlike the definition in section 3(1) VATA 1994, the term 'taxable person' in the PVD does not mean that the person is, or is required to be, registered with the national tax authority for the purposes of VAT: it is sufficient that the person carries on an economic activity, ie business.

14. The second paragraph of Article 306(1) provides that the special scheme does not apply to travel agents and tour operators where they act solely as intermediaries and are merely reimbursed expenditure incurred in the name and on behalf of the customer which has been entered in the supplier's books in a suspense account. It is common ground that Bolt provided the ride-hailing services as principal and so the exclusion from the TOMS of supplies by intermediaries on a reimbursement only basis is not relevant to this appeal. Similarly, there is no suggestion that any of Bolt's suppliers (the drivers) provided passenger transport services outside the UK so Article 309 has no application in this case.

15. Where the EU special scheme applies, the transactions are treated as a single service supplied by the travel agent or tour operator in the Member State in which they have established their business or have a fixed establishment from which the service was supplied. The value of the service is the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent or tour operator of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.

16. Before considering whether section 53 VATA and the TOMS Order correctly implement and can be applied conformably with Articles 306 – 310 PVD, it is necessary to consider how those provisions have been interpreted in the case law of the Court of Justice of the European Communities ('ECJ') and the Court of Justice of the European Union ('CJEU'), which I discuss next.

ECJ case law on interpretation of Articles 306 – 310

17. The first case to consider the application of the special scheme for travel agents was Case C-163/91 *Van Ginkel Waddinxveen BV, Reis- en Passagebureau Van Ginkel BV and others v Inspecteur der Omzetbelasting Utrecht* [1992] ECR I-5273 ('*Van Ginkel*'). In that case, the taxpayer was a Dutch tour operator which offered its customers 'motoring holidays' in the Netherlands. The customers used their own vehicles for travelling and Van Ginkel only provided accommodation. The accommodation was in bungalows, most of which were owned by third parties. Van Ginkel rented the bungalows and let them to its customers in return for payment. Van Ginkel accounted to the owners of the bungalows for the price paid by the customers less a commission of 20%. The issue was whether Van Ginkel was required to account for VAT on the commission or on the full letting price charged to the customer. The VAT treatment depended on whether Van Ginkel's motoring holidays were transactions within the special scheme for travel agents or simply a supply of the letting of holiday accommodation.

18. In a very short opinion, Advocate General Gulmann had no doubt that the letting by travel agents of holiday accommodation owned by third parties to travellers providing their own transport to and from the destination was within the special scheme. The Advocate General justified his conclusion in paragraph 7 as follows:

> "… When the position in paras (1) and (2) [of Article 26 of the Sixth VAT Directive] of the concepts 'in the provision of travel facilities' and 'in respect of a journey' are considered, it cannot be assumed that the use of the concept is intended to restrict the sphere of application of the provision. The use of the concept is probably meant simply to emphasise that the service provided must be a feature of a journey, but not that the journey, that is, the transport, is necessarily to form part of the service provided.
>
> The aims of the provision militate against a restrictive interpretation. The aims do not suggest that special importance is given to the inclusion of travel in the service provided or that there must necessarily be more than one service. The practical problems arising of services in other member states and which the provision aims to solve exist also with regard to the provision of one or more services not including transport. In this connection it is clear that the provision is to be interpreted in the same way whether the provision of the service or services in a specific case is effected in other states or in the travel agent's own country.
>
> It is probably also correct, as Van Ginkel and the United Kingdom government mention, that a restrictive interpretation of art 26 would raise practical difficulties in a number of cases …"

19. The ECJ in *Van Ginkel* explained the reason for the special scheme for travel agents and tour operators at [13] – [15]:

> "13. The services provided by these undertakings most frequently consist of multiple services, particularly as regards transport and accommodation, either within or outside the territory of the Member State in which the undertaking has established its business or has a fixed establishment.
>
> 14. The application of the normal rules on place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and

> the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations.
>
> 15. In order to adapt the applicable rules to the specific nature of such operations, the Community legislature set up a special VAT scheme in Article 26(2), (3) and (4) of the Sixth VAT Directive."

20. At [19], the ECJ noted that the German and United Kingdom governments had contended that

> "… it is not a condition for the application of [the special scheme for travel agents] that the journey in the strict sense, that is to say, the transport, should be arranged by the travel agent. It is enough that the service offered by the agent, even a single one … is in respect of a journey."

21. In *Van Ginkel*, the ECJ held at [21] - [24]:

> "21. Article 26(1) of the Sixth VAT Directive makes the application of that article subject to the condition that the travel agent shall deal with customers in his own name and not as an intermediary. …
>
> 22. On the other hand, Article 26(1) of the Sixth VAT Directive does not contain any provisions expressly requiring that, for the application of the special system of VAT envisaged by Article 26, the transport of the traveller to and from his accommodation shall be arranged by the travel agent.
>
> 23. Such a requirement would run counter to the aims of Article 26 of the directive. As has already been indicated, those provisions adapt the rules governing VAT to the specific nature of the operations of travel agents. To meet the needs of customers, such agents offer widely differing types of holidays and journeys, allowing the traveller to combine, as he wishes, transport, accommodation and any other services which those undertakings may provide. The exclusion from the field of application of Article 26 of the Sixth VAT Directive of services provided by a travel agent on the ground that they cover only the accommodation and not the transport of the traveller would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the directive.
>
> 24. The fact that the travel agent provides only holiday accommodation for the traveller is not, in these circumstances, sufficient to exclude that service from the field of application of Article 26 of the directive. Moreover, … the service offered by the agent, even where it is restricted to providing accommodation, need not be confined in such a case to a single service, since it may comprise, apart from the letting of the accommodation, services such as information and advice where the travel agent provides a range of holiday offers and the reservation of accommodation. There is therefore no reason to exclude such services from the field of application of Article 26 of the Sixth VAT Directive, provided, however, that the owner or manager of the accommodation with whom the agent has concluded an agreement is himself, as required by the provisions of Article 26(1) of the Sixth VAT Directive, a taxable person for the purpose of VAT."

22. The ECJ considered the special scheme for travel agents or tour operators again in Joined cases C-308/96 and C-94/97 *Customs and Excise v Madgett and Baldwin (t/a Howden Court Hotel)* [1998] STC 1189 ('*Madgett and Baldwin*'). Mr Madgett and Mr Baldwin ran a hotel in Devon and arranged for a coach-hire firm to transport the hotel's customers from and return them to pick-up points in the North of England. The coach was also used to provide the customers with a sight-seeing tour of Devon during their stay. HMRC took the view that the

additional transport services brought the business within the scope of the special scheme for travel agents or tour operators. The case was referred to the ECJ to determine, among other questions, whether a hotel business which provided transport services could be regarded as a travel agent or tour operator for the purposes of the special scheme.

23. In his opinion, Advocate General Léger took the view, in paragraph 33, that:

> "The art 26 scheme must therefore be applied to traders who habitually arrange travel or tours and, in order to supply the services generally associated with activity of that kind, have recourse to other taxable persons."

24. He then observed, in paragraphs 34 - 37 that the fact that a hotel arranges a taxi service for its customers for journeys to a nearby station or airport would not bring the hotel's transactions within the scope of the special scheme because such services were ancillary to the provision of hotel accommodation.

25. The ECJ in *Madgett and Baldwin* repeated the points made in *Van Ginkel* at [13]- [15] and then said at [19]:

> "Although the principal reason for the special margin scheme under Article 26 of the Sixth VAT Directive is the existence of problems in connection with travel services which include elements in more than one Member State, the wording of that provision is such that it applies also to supplies of services within a single Member State."

26. The ECJ in *Madgett and Baldwin* also held, at [20] - [23], that the special scheme in Article 26 of the Sixth VAT Directive applies to traders who are not travel agents or tour operators within the normal meaning of those terms where they engage in identical transactions in the context of another activity, such as that of a hotelier (as in that case). The ECJ stated as follows:

> "20. Furthermore, the underlying reasons for the special scheme for travel agents and tour operators are equally valid where the trader is not a travel agent or tour operator within the normal meaning of those terms, but effects identical transactions in the context of another activity, such as that of hotelier.
>
> 21. To interpret Article 26 of the Sixth Directive as applying solely to traders who are travel agents or tour operators within the normal meaning of those terms would mean that identical services would come under different provisions depending on the formal classification of the trader.
>
> 22. Finally, as the Advocate General observes in point 32 of his Opinion, to make application of the special scheme under Article 26 of the Sixth Directive depend on a prior classification of a trader would prejudice the aim of that provision, create distortion of competition between traders and jeopardise the uniform application of the Sixth Directive.
>
> 23. It must therefore be held that the scheme under Article 26 of the Sixth Directive applies to traders who organise travel or tour packages in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity, even if they are not, formally speaking, travel agents or tour operators."

27. However, the ECJ held that, where the services bought in from third parties are purely ancillary to the in-house services, then the transactions would not fall within the special scheme under Article 26 of the Sixth VAT Directive. At [34], the ECJ observed that the special scheme for travel agents and tour operators is an exception to the normal rules of the Sixth VAT Directive and "must be applied only to the extent necessary to achieve its objective" and, in [35], that it only applied to services bought in from third parties and not to in-house services.

28. The special scheme came before the CJEU again in Case C-200/04 *Finanzamt Heidelberg v ISt internationale Sprach- und Studienreisen GmbH* [2006] STC 52('*ISt*'). That case concerned a company which organised international language study and learning trips with programmes called 'High School' and 'College'. The High School programmes were aimed at students aged between 15 and 18 who wished to attend a high school or similar institution abroad for periods of three, five or 10 months. ISt arranged places at the schools, flights from Germany to the relevant country and accommodation with host families for the duration of the stay which could be three, five or 10 months. The College programmes were aimed at school-leavers who wished to attend a college for one to three terms. ISt arranged places at the colleges and students were provided with board and lodging at the relevant college. ISt did not arrange the flights which were booked by the students themselves.

29. In *ISt*, Advocate General Poires Maduro observed, in paragraph 16, that the special scheme for travel agents and tour operators "allows appropriate taxation of travel services whilst not in any way constituting an exemption scheme" but "must be applied only to the extent necessary to attain the objectives which it pursues." He summarised the interpretation of Article 26 in *Van Ginkel* and *Madgett and Baldwin* in paragraph 22 as "any taxable person who sells travel services in his own name, using for that purpose supplies and services provided by other taxable persons, must be covered by art 26 of the Sixth VAT Directive."

30. At paragraphs 34 - 37, Advocate General Poires Maduro considered the impact of the purpose and duration of the trip on whether a taxable person should be classified as a travel agent or tour operator. He concluded in paragraph 38:

> "It is only by means of an autonomous and non-restrictive interpretation of the concept of travel agent, based on an objective criterion such as that expressly used by the court in *Madgett and Baldwin*, which does not rely on any consideration of the purpose or duration of travel, that distortion of competition between traders may be avoided and uniform application of the Sixth VAT Directive be guaranteed."

31. In [22] of *ISt*, the CJEU stated that the EU special regime applies to persons who carry out identical transactions even if they are not travel agents or tour operators in the normal sense of the term because to "interpret art 26 of the Sixth VAT Directive as applying solely to traders who are travel agents or tour operators within the normal meaning of those terms would mean that identical services would come under different provisions depending on the formal classification of the trader." The CJEU, at [24], stated that:

> "… iSt provides services which are identical or at least comparable to those of a travel agent or tour operator in that it offers services involving the travel by plane of its customers and/or their stay in the host state and, in order to provide services generally associated with that type of activity, it uses the services of other taxable persons …"

32. In [34] of *ISt*, the CJEU considered what was meant by 'travel' in Article 26 of the Sixth VAT Directive. The CJEU held:

> "34. It is true that that article does not include a definition of the concept of travel. However, in applying that article there is no need to set out in advance the factors constituting travel. That provision applies provided that the trader in question is a trader for the purposes of the special scheme for travel agents, acts in its own name and uses in its operations supplies and services provided by other taxable persons."

33. The CJEU then adopted the views expressed by Advocate General Poires Maduro in paragraphs 34 – 37 of his opinion before holding in [36] that:

> "There is no reason to suggest that the Community legislature intended to restrict the scope of art 26 of the Sixth VAT Directive on the basis of two combined or distinct factors, namely the objective of the travel and the duration of the stay in the host state. Any other finding in that respect would be likely to seriously restrict the scope of that article and would be incompatible with the special scheme it introduces."

34. Case C-31/10 *Minerva Kulturreisen GmbH v Finanzamt Freital* [2011] STV 532 ('*Minerva*') concerned a travel agent in Germany who bought opera tickets and sold them to customers and to other travel agents either as part of a package with other services (such as accommodation, city tours, shuttle services or catering services) or without them as standalone supplies of tickets. The German court made a reference to the CJEU asking whether the EU special scheme for travel agents and tour operators applied to the sale by a travel agent of opera tickets in isolation, without the provision of additional services. The CJEU interpreted the question as asking whether a service provided by a travel agent falls under the special scheme only if it involves a travel service. The CJEU noted, in [15], that:

> "… the wording of [Article 26 of the Sixth VAT Directive] makes clear that in order for a travel agent's service to come under the special scheme defined therein, it must relate to a journey."

35. At [18] of its judgment in *Minerva*, the CJEU stated that the activity of travel agents and tour operators

> "… is characterised by the fact that, in most cases, the services provided by such undertakings consist of multiple services, in particular transport and accommodation, supplied partly outside and partly inside the territory of the member state in which the undertaking has established its business or has a fixed establishment."

36. In [19], the CJEU emphasised that not every service provided in isolation by a travel agent or tour operator will come within the EU special scheme:

> "It should also be noted that … it cannot be inferred from *Van Ginkel* that any individual service provided by a travel agent or tour operator falls under the special scheme provided for in art 26 of the Sixth Directive."

37. However, the CJEU, citing *Van Ginkel*, made clear in [21] that the supply of accommodation without transport can come within the scope of Article 26 of the Sixth VAT Directive:

> "It is apparent from that judgment that the court did not hold that any service whatsoever provided by a travel agent which is unrelated to a journey falls under the special scheme provided for in art 26 of the Sixth Directive, but that the provision by a travel agent of accommodation comes within the scope of that provision, even if that service covers accommodation only and not transport."

38. In [22] of *Minerva*, the CJEU stated that where a service is not coupled with travel services, in particular transport and accommodation, it does not fall within the scope of the special scheme.

39. In that case, the CJEU concluded that the sale by a travel agent of opera tickets in isolation, without the provision of a travel service, is not within the special scheme.

40. Case C-220/11 *Star Coaches s. r. o. v Financni reditelstvi pro hlavni mesto Prahu* (2012) ('*Star Coaches*') was disposed of by a reasoned order of the CJEU under Article 104(3) [now Article 99] of its Rules of Procedure because it considered that the answer could be clearly deduced from existing case-law. The case concerned a Czech coach operator which provided

passenger transport using its own coaches or by subcontracting the supply of transport to other transport companies. Star Coaches' customers were exclusively travel agents established in the Czech Republic or in other Member States. The Czech tax authority considered that Star Coaches should have accounted for VAT using the EU special scheme for travel agents and tour operators. The Czech court referred two questions to the CJEU. The first question was whether the special scheme applies only to supplies made by travel agents to end users of a travel service (travellers) or also to supplies made to other persons (customers). The second question was:

> "Must a transport company which merely carries out the transport of persons by providing coach transport to travel agents (not directly to travellers) and does not provide any other services (accommodation, information, advice etc.) be regarded as a travel agent for the purposes of Article 306 of [the PVD]?"

41. The CJEU answered the second question first. The CJEU held that a transport company which merely carries out the transport of persons by providing coach transport to travel agents, and does not provide any other services such as accommodation, tour guiding or advice, does not effect transactions falling within the special scheme for travel agents in Article 306 of the PVD. The CJEU's reasoning was contained in [22] – [25]:

> "22 It cannot therefore be ruled out that the services of an operator of passenger transport by coach who, when not using his own coaches, has recourse to the transport services of subcontractors liable to VAT may be subject to the special scheme in Article 306 of the VAT Directive. The circumstance that those services do not include accommodation services cannot suffice for them to be excluded from the scope of that provision.
>
> 23 However, following the approach adopted by the Court in *Van Ginkel*, it is also necessary that those services cannot be reduced to a single service and that they comprise, apart from the transport, other services such as information and advice relating to a range of holiday offers and the reservation of the coach journey. The Court has held that it cannot be inferred from *Van Ginkel* that any individual service provided by a travel agent or tour operator falls within the special scheme laid down in Article 26 of the Sixth Directive … That consideration applies in the same way to an economic operator who is not a travel agent or tour operator in the normal sense of those terms.
>
> 24 In the case of Star Coaches, the referring court states that it provides only a transport service for travel agents and no other services. That court expressly adds that the company does not provide any services such as accommodation, tour guiding or advice.
>
> 25 It follows that the services supplied by Star Coaches are not identical to those offered by a travel agent or tour operator."

42. In view of the Court's answer to the second question, it did not need to answer the first question but an answer was provided by the CJEU the following year in Case C-189/11 *European Commission v Kingdom of Spain* (2013) ('*EC v Spain*') which is described below.

43. Case C-557/11 *Maria Kozak v Dyrektor Izby Skarbowej w Lublinie* (2012) ('*Kozak*') concerned supplies of in-house transport services by Ms Kozak, a Polish travel agent. She sold all-inclusive package holidays including accommodation, meals and transport. Ms Kozak bought the accommodation and catering services from other suppliers and supplied the transport herself using her own fleet of coaches. Ms Kozak accounted for VAT on the in-house transport services separately, applying the reduced rate for passenger transport services. The tax authority considered that the transport services were an ancillary part of the supply of the package holidays and, as such, should be subject to the same rate of VAT although, as they

were in-house supplies, the tax authority considered that they did not fall within the EU special scheme. The matter reached the CJEU which followed its decision in *Madgett and Baldwin* and held that the special scheme applies only to services supplied by third parties and, therefore, the transport services supplied by Ms Kozak were subject to the normal VAT regime.

44. *EC v Spain* concerned infraction proceedings brought by the Commission against, among others, Spain in relation to their implementation of the EU special scheme for travel agents and tour operators. The issue was whether, for the special scheme to apply, the person who buys the services must be the traveller (the person who actually uses the services) or may also be another travel agent. The dispute arose because of different terms used in different language versions of the Sixth VAT Directive and the PVD with some using 'customer' and others 'traveller'.

45. Advocate General Sharpston observed in paragraph 42:

> "Moreover, it is clear that one person may buy a travel package to be used by another, but it would be surprising if the VAT treatment of the purchase were to depend on whether the purchaser was the actual traveller or a relative, holiday companion etc. … For the purposes of the margin scheme, therefore, the 'traveller' is not necessarily one who 'travels', and actual 'travel facilities' or an actual 'journey' need not form part of the package in respect of which the travel agent is required to apply the scheme."

46. In its judgment, the CJEU noted in [61] that when the special scheme for travel agents was adopted in 1977, the majority of travel agents sold their services directly to final consumers but that did not mean that the legislature intended to exclude sales to others from the special scheme. The CJEU held that Articles 306 to 310 PVD must be interpreted as applying to travel agents who act in their own name and use supplies of goods or services provided by other taxable persons to provide travel facilities to customers who are not necessarily travellers but to any type of customer.

47. In Case C-552/17 *Alpenchalets Resorts GmbH v Finanzamt München Abteilung Körperschaften* [2018] ('*Alpenchalets'*), the company rented houses in Germany, Austria, and Italy from their owners and subsequently let them, in its own name, to individual customers as holiday rentals. In addition to accommodation, the services included the cleaning of the accommodation and, in some cases, a laundry and 'bread roll' service which were provided by the owners or their agents. The CJEU was asked to consider whether Alpenchalets' supplies of holiday accommodation only or holiday accommodation with the additional services fell within the EU special scheme.

48. The Advocate General (Bobek) identified the inconsistency between *Van Ginkel* and *Star Coaches* (which appeared to have been overlooked by the CJEU in the latter) at paragraphs 29 and 30 of his Opinion:

> "29. Thus, in *Van Ginkel* the Court effectively stated that accommodation — one service — is enough. The 'optional extra' in the form of 'information and advice' was stated in the hypothetical. It was not established on the facts of the individual case. It was framed in terms of a possibility ('may'), and was left out of the operative part of the judgment.
>
> 30. It would nonetheless appear that the order in *Star Coaches* took that additional remark and turned it into part of the rule, by stating that for the special scheme for travel agents to apply, there must be more than only bought-in accommodation or only bought-in transport provided within the overall supply. Thus, the order in *Star Coaches* appears in fact to require that there be either accommodation or transport and 'something else'. Transport and accommodation do not have to be provided as a combination, but one of

> those services must be either accommodation or transport because the supply must, as a whole, relate to a journey."

49. The Advocate General concluded at paragraph 66 that Article 306 PVD should be interpreted as meaning that the EU special scheme applies to a supply of a service which consists in the provision of one bought-in service, provided that the bought-in service is accommodation or transport.

50. The CJEU in *Alpenchalets* adopted the approach suggested by the Advocate General and followed *Van Ginkel*. In [25], the CJEU confirmed that the supply of accommodation bought in from third parties, without more, falls within the EU special scheme:

> "… the mere supply of accommodation by a travel agent can be covered by the special scheme. In order to meet the needs of customers, travel agents offer widely different types of holidays and journeys, allowing the traveller to combine, as he wishes, transport, accommodation and any other services which those undertakings may provide. The exclusion from the field of application of Article 306 of the VAT Directive of services supplied by a travel agent on the sole ground that they cover accommodation only would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the Directive."

51. In relation to its decision in *Star Coaches*, the CJEU stated at [32]:

> "… the Court merely noted, in that case, that the transport services provided by a trader cannot be covered by Article 306 of the VAT Directive where they are provided, through a subcontractor, not to the traveller himself but to travel agents and that transport operator does not have any other feature which is capable of making its services comparable to those of a travel agent or tour operator."

52. The CJEU gave its answer to the national court's first question in [35]:

> "… Articles 306 to 310 of the VAT Directive must be interpreted as meaning that the mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services, regardless of the importance of those ancillary services, each amount to a single service covered by the special scheme for travel agents."

53. The second question referred in *Alpenchalets* concerned the interaction of the EU special scheme and the reduced rate for holiday accommodation. That is not an issue in this appeal.

54. Case C-108/22 *Dyrektor Krajowej Informacji Skarbowej v C, sp, z o.o., in liquidation* ('*C*') concerned a Polish company, C, which was a 'hotel services consolidator' and, as such, purchased accommodation in hotels and other establishments with a similar function located in Poland and abroad in its own name and on its own behalf from other taxable persons and resold them to its customers. C's customers were not individuals looking to stay in the accommodation but entities carrying on a commercial activity. C usually provided just the accommodation but occasionally, if its customer required it, also provided advice on the choice of accommodation and help with travel arrangements. The question referred to the CJEU was whether purchasing accommodation services from taxable persons and reselling them to other taxable persons without any accompanying ancillary services came within the EU special scheme for travel agents and tour operators.

55. In a very short judgment, given without any Advocate General's Opinion, the CJEU held that the activity carried on by C was covered by the EU special scheme for travel agents and

tour operators. The CJEU held that C satisfied the substantive conditions laid down in Article 306 PVD in that C purchased accommodation services in its own name from other taxable persons and then resold them to its customers, namely entities carrying on a commercial activity. The CJEU also observed, at [24], that C carried out transactions that were identical, or at least comparable, to those of a travel agent or tour operator. The issue in the case was whether the provision of accommodation services is covered by the special scheme for travel agents in cases where it is not accompanied by any ancillary services. The CJEU referred to its previous decision in *Alpenchalets* which concerned the supply of holiday accommodation and stated at [27] and [28]:

> "27 … the supply by a travel agent of holiday accommodation is covered by the special scheme for travel agents, even if that service covers accommodation only. In that regard, it should be observed that, since the mere supply of holiday accommodation by the travel agent is sufficient for the special scheme under Articles 306 to 310 of the VAT Directive to apply, the importance of other supplies of goods or services, which may be combined with the supply of accommodation, cannot have a bearing on the legal classification of such a situation, that is to say, that that situation is covered by the special scheme for travel agents.
>
> 28 Consequently, the Court has held that Articles 306 to 310 of the VAT Directive must be interpreted as meaning that the mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services, regardless of the importance of those ancillary services, each amount to a single service covered by the special scheme for travel agents"

56. The CJEU then confirmed in [29] that the EU special scheme for travel agents and tour operators "also applies to the sale of services relating to the provision of accommodation in hotels and other establishments." The CJEU held that the EU special scheme applies to the purchase of accommodation services from other taxable persons and resale of the accommodation to other economic operators even though the services were not accompanied by ancillary services.

Scope of EU special scheme for travel agents

57. Having considered the key ECJ and CJEU cases, it seems to me that the EU special scheme for travel agents under Articles 306 – 310 PVD applies as follows. The essential aim of the EU special scheme is to avoid the difficulties to which travel agents would be exposed by the application of the normal VAT rules to their transactions involving services by third parties supplied partly outside and partly inside the territory of the member state in which they have established their business or have a fixed establishment. It is clear from *Van Ginkel* at [14] that the application of the normal rules on the place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and the places in which they are provided, entail practical difficulties for the travel agents of such a nature as to obstruct their operations.

58. The special scheme is an exception to the normal rules of the PVD and, as was made clear in *Madgett and Baldwin* at [34] and *ISt* at [24], it must be applied only to the extent necessary to achieve its objective. However, other considerations such as simplicity and fiscal neutrality mean that it is not a necessary condition for the application of the special scheme that the travel agent's supplies must consist of a multiplicity of services or have an overseas element. If the special scheme applied only to supplies by travel agents of multiple services bought in from third parties in different member states, that could prejudice the aim of the scheme, create distortion of competition between traders and lead to the inconsistent application of VAT to the same supplies. For that reason, the CJEU has held that the special

scheme also applies where supplies are all made in a single member state including where that member state is the one in which the travel agent has established their business (see *Madgett and Baldwin* [19]).

59. The special scheme is restricted to transactions carried out by travel agents in the provision of travel facilities. The term 'travel agents' includes tour operators and also traders who are not travel agents or tour operators within the normal meaning of those terms but who engage in transactions that are identical or at least comparable to those of a travel agent or tour operator (see *Madgett and Baldwin* [20] and [21], *ISt* [22] and [24] and *C* [24]).

60. The EU special scheme only applies to goods and services bought in from third parties who are taxable persons and which are for the direct benefit of the traveller. The EU special scheme does not apply to in-house services supplied by the travel agent (*Madgett and Baldwin* [35] and *Kozak* [21] and [26]). Further, the travel agents must deal with their customers in their own name, not solely as intermediaries on a reimbursement only basis. The requirement that the bought-in supplies must be for the direct benefit of a traveller does not mean that the travel agent must provide the travel facilities direct to a person who is a traveller. The supply of travel services to a customer who is not a traveller (eg a supply to another travel agent) can fall within the special scheme (see *EC v Spain* [61]).

61. The CJEU has held in *ISt* at [15] and *Minerva* at [15] that the provision of travel facilities means that the transactions must relate to or be coupled with a journey. Although the service offered by the travel agent must be in respect of a journey, it is not a requirement that the transport must be arranged by the travel agent for a transaction to be a provision of travel facilities within the special scheme (see *Van Ginkel*, *Alpenchalets* and *C*). As is clear from *Minerva* at [22], transport and accommodation are both travel services, ie they relate to a journey. It is not clear what other services, if any, constitute travel services in their own right.

62. The question of whether something amounts to a provision of travel facilities in its own right is important because it determines whether it could fall within the scope of the special scheme when supplied on its own. It is now firmly established by [35] of *Alpenchalets* and [27] and [28] of *C* that a single supply by a travel agent of holiday accommodation rented from another taxable person without anything else is within the scope of the EU special scheme. However, whether a supply of transport without accommodation or other services (eg information and advice relating to a range of holiday offers and the reservation of the coach journey) falls within the EU special scheme is less clear.

63. In *Star Coaches* at [23] – [25], the CJEU stated that the provision of transport only falls within the special scheme if it is supplied with other services such as information and advice where the trader provides a range of holiday offers and the reservation of accommodation or transport. That analysis was criticised by the Advocate General in *Alpenchalets* but the CJEU in that case was less forthright. The CJEU in *Alpenchalets* did not discuss whether a supply of bought-in transport services, without anything else, falls within the scope of the EU special scheme because that issue did not arise in the case. The only reference to *Star Coaches* in the judgment in *Alpenchalets* suggests that the decision in *Star Coaches* was based on reasons other than those suggested in [23] of the judgment in that case (at [41] above). The CJEU in *Alpenchalets* said that it had merely noted in *Star Coaches* that the supply of transport in that case was not to the traveller and did not have any other feature which made the transport company's services comparable to those of a travel agent or tour operator.

64. It seems to me that the CJEU in *Alpenchalets* could easily have confirmed that the reason for the decision in *Star Coaches* was that a single supply of transport without more did not fall within the special scheme but it did not do so. Instead, the CJEU stated that the basis of the decision in *Star Coaches* was that the trader in that case, which was not a travel agent or tour

operator, merely provided transport services as a subcontractor to travel agents and did not make supplies which were identical or at least comparable to those of a travel agent or tour operator.

65. I consider that *Star Coaches*, as explained by the CJEU in *Alpenchalets*, shows that passenger transport services supplied, without any other travel related services, by a subcontractor are not identical or comparable to transactions carried out by a travel agent or tour operator. The CJEU's decision in *Star Coaches* turned on the fact that the company that supplied the transport was not a travel agent or tour operator and was not acting as such. In my view, *Star Coaches* is not authority for the proposition that a supply of transport services, without more, to a traveller cannot come within the EU special scheme. It merely shows that, in the opinion of the CJEU, the company in that case, which was not a travel agent or tour operator and made the supplies to travel agents as a subcontractor, was not acting as a travel agent or tour operator. There is nothing in the CJEU's judgment which suggests that if the travel agents had simply on-supplied the transport to the travellers, that supply would not have fallen within the EU special scheme. It seems to me that there is no reason why a supply of transport, without any additional travel facilities, to a traveller should not come within the EU special scheme in the same way as a supply of accommodation only.

66. If my analysis above is wrong and there is a distinction between supplies of holiday accommodation and passenger transport for the purposes of the EU special scheme, I consider that it lies in the nature of those supplies. Holiday accommodation or accommodation for use by travellers is, by it very nature, something which is identical or at least comparable to supplies made by travel agents or tour operators. The CJEU in *Alpenchalets* confirmed that a supply of holiday accommodation without anything else can fall within the EU special scheme. The CJEU in *Star Coaches* held that the supply of passenger transport in that case did not fall within the EU special scheme but it did not decide that supplies of transport could never fall within the scope of the special scheme. The CJEU stated that if, in addition to transport services, Star Coaches had also provided other elements such as information and advice relating to a range of holiday offers and the reservation of the journey, the transport services would fall within the EU special scheme even if the supply did not include accommodation.

UK legislation

67. Articles 306 to 310 PVD are implemented in UK law by section 53 of the VATA and the TOMS Order.

68. Section 53(1) VATA provides that:

> "53 Tour operators
>
> (1) The Treasury may by order modify the application of this Act in relation to supplies of goods or services by tour operators or in relation to such of those supplies as may be determined by or under the order."

69. Section 53(2) sets out (without prejudice to the generality of section 53(1)) a series of matters for which an order under section 53 may make provision. Section 53(3) specifies that:

> "(3) In this section 'tour operator' includes a travel agent acting as principal and any other person providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents."

70. The relevant order is the TOMS Order which, as noted in the Explanatory Note, "introduces with effect from 1 April 1988 a special VAT scheme for supplies by tour operators." As amended, Articles 2 and 3 of the Order define the supplies which fall within the scope of the TOMS as follows:

> "2 Supplies to which this Order applies

> This Order shall apply to any supply of goods or services by a tour operator where the supply is for the benefit of travellers.
>
> 3 Meaning of 'designated travel service'
>
> (1) Subject to paragraphs (2) and (4) of this article, a 'designated travel service' is a supply of goods or services –
>
> (a) acquired for the purposes of his business; and
>
> (b) supplied for the benefit of a traveller without material alteration or further processing;
>
> by a tour operator who has a business establishment, or some other fixed establishment, in the United Kingdom.
>
> (2) The supply of one or more designated travel services, as part of a single transaction, shall be treated as a single supply of services.
>
> (3) […]
>
> (4) The supply of goods and services of such description as [HMRC] may specify shall be deemed not to be designated travel services."

71. The TOMS does not apply to supplies that HMRC have specified as deemed not to fall within the TOMS. During the relevant period, HMRC had not specified that any of the supplies that are the subject of this appeal were deemed not to be within the TOMS.

72. I was also referred to Notice 709/5 which contains HMRC guidance on the TOMS. Some parts of the TOMS Notice have the force of law but the paragraphs that I was shown do not have force of law and I have not found them of any material assistance in interpreting the legislation.

73. In so far as possible, I must interpret the TOMS Order in a way that is consistent with the provisions of the PVD as interpreted and applied in the case law of the ECJ and CJEU. It seems to me that section 53 VATA and the TOMS Order are consistent (or can be interpreted conformably) with Articles 306 to 310 PVD save possibly in one respect. That is the requirement in Article 3(1)(b) of the TOMS Order that goods or services acquired for the purposes of the tour operator's business must be supplied to the traveller without material alteration or further processing. Article 306 PVD merely requires that the supplies of goods or services provided by other taxable persons should be used to provide travel facilities. There is no further requirement that the goods and services should be used in their original state. However, in *Madgett and Baldwin* at [35] and in *Kozac* at [21] and [26], the ECJ held that the special EU scheme only applies to services bought in from third parties. It follows that in-house supplies are not within the special EU scheme. It seems to me that if the requirement that goods and services acquired from third parties should not be materially altered or processed means that they must not be so changed as to become in-house supplies then Article 3(1)(b) of the TOMS Order can be interpreted conformably with Article 306 PVD.

74. Another apparent inconsistency is that Article 306 refers to the tour operators acquiring goods and services from "taxable persons". The TOMS Order does not contain any reference to taxable persons. As explained in [13] above, this is not really an inconsistency but a difference in terminology. In any event, there is no dispute in this case that the drivers were taxable persons in the sense used in Article 9 PVD so I do not need to consider this point further.

EVIDENCE

75. The only witness in the proceedings was Mr Joshua Ryan who joined Bolt in January 2019. Since March 2022, he has been Bolt's UK and Ireland Country Manager. Mr Ryan

made a witness statement, which stood as his evidence in chief. Although Ms Mitrophanous, who appeared for HMRC, cross-examined Mr Ryan at the hearing, there was no real dispute between the parties as to the facts. I found Mr Ryan to be a straightforward and credible witness and I have taken his evidence into account in my findings of fact below.

76. I was provided with electronic bundles of exhibits to Mr Ryan's statement and other documents which were all helpfully indexed and bookmarked.

77. On the basis of the evidence and the statement of agreed facts, I find the material facts to be as set out below. Additional findings of fact are set out where relevant in the discussion of the issues below.

FACTS

78. Bolt is part of the Bolt group of companies (the parent company of which is based in Estonia) that provides a global mobility platform (the 'Platform') offering a range of services, including transport by private hire vehicle ('PHV'), in over 400 cities worldwide. The Bolt group of companies also provides car rental services, mobility scooter rental services and grocery delivery services but this appeal is not concerned with those.

79. In the United Kingdom, Bolt is a licensed PHV operator. In relation to the areas within which it operates, it is licensed and regulated under the Private Hire Vehicles (London) Act 1998 (for London), under the Local Government (Miscellaneous Provisions) Act 1976 (in England and Wales outside London) and the Civil Government (Scotland) Act 1982 and Civil Government (Scotland) Act 1982 (Licensing of Booking Officer) Order 2009 (for Scotland).

80. The Platform became fully operational in London in June 2019. Since then, Bolt has expanded to other areas across the UK, including Cardiff and Edinburgh on 25 November 2021 and Manchester and Salford on 14 April 2022. London is Bolt's biggest market from a UK and global perspective. Drivers on the Platform currently operate from 22 cities across the UK, covering a population of approximately 26 million. In London, Bolt offers the additional service of facilitating the matching of Black Cab drivers with passengers (but this appeal is not concerned with Bolt's services in relation to Black Cab rides).

81. The Platform enables Bolt's customers to request a PHV to take them from point A to point B by using an app on their smart phones. The customers are able to select from a wide range of PHV options before completing their request. Customers can choose from the following categories:

(1) Standard - the PHV will meet certain general requirements, such as having four doors and a minimum of four seats for passengers.

(2) Comfort – the PHV will meet the same requirements as the Standard category but will be one of the specific models in a list of Comfort category vehicles published by Bolt and the vehicle registration year will be 2017 or newer. The Comfort category is currently only available in London.

(3) Electric - the PHV will be one of the specific models in a list of Electric category vehicles published by Bolt. The Electric category is currently only available in London.

(4) XL - the PHV will provide seating for a minimum of six persons, excluding the driver, and will be one of the specific models in a list of XL category vehicles published by Bolt. The XL category is currently only available in selected areas of the UK.

(5) Executive - the PHV will be one of the specific models in a list of Executive category vehicles published by Bolt. The Executive category is currently only available in selected areas of the UK.

(6) Luxury - the PHV will be one of the specific models in a list of Luxury category vehicles published by Bolt. The Luxury category is currently only available in selected areas of the UK.

82. Bolt accepts requests for rides from the customers via the Platform and provides each customer with an estimated fare and arrival time. Once a request for a ride has been received, Bolt allocates the journey to a PHV driver who is willing to transport the customer. All bookings and acceptances of PHV journeys are carried out via the Platform and in accordance with Bolt's terms and conditions for drivers and passengers. With effect from 1 August 2022, Bolt has acted as principal in the re-supply of passenger transport by PHV, which it buys from self-employed PHV drivers and re-supplies to its customers. Bolt contracts separately with both drivers and passengers and is responsible for all invoicing and remittance of payments. There is no contractual relationship between the drivers and the customers.

83. The PHV drivers are independent contractors. They are free to provide PHV transport independently of the Platform, including to Bolt's competitors. In order to provide transport services to Bolt, a PHV driver must first register with Bolt and be granted access to the Bolt platform. Before they can register and gain access to the Bolt platform, a PHV driver must provide copies of certain relevant documents (eg licence, MOT) to Bolt for validation. They must provide their own vehicles and all equipment needed to provide the transport. They are also responsible for maintaining their vehicles which includes ensuring that there is a valid MOT and appropriate insurance cover, acquiring licences, paying road tax, tolls, fuel and any electricity charge costs (to the extent relevant). Bolt does not generally have insurance in respect of transport by PHVs. However, Bolt has a contingent insurance policy in relation to transport by PHVs in London just in case there were ever any issue in relation to the validity of an insurance certificate filed by any driver. The contingent insurance policy has never been used.

84. The PHV drivers are able to set their own operating parameters when logged into the Platform. For example, if a driver were to register a vehicle which qualified for all three of the Standard, Executive and Luxury categories, then that driver could choose, at any given time, whether to accept journeys in all, some or only one of those categories. That choice would affect the fare for the journeys. The drivers can also select a 'minimum pricing bracket per mile'. In doing so, they would earn a higher fare per mile but might be allocated fewer rides.

85. Bolt allocates a customer's request for transport by PHV to a driver based on the driver's proximity to the customer at the time of the request. Bolt provides the driver with the destination and the estimated duration and fee for the journey. The drivers are free to accept or reject any offers to fulfil PHV journeys. Once Bolt makes the offer, the driver has 15 to 20 seconds (depending on the city) to accept the request for transport. If the driver does not accept within that time, the option to accept is terminated and the request is presented to the next closest driver.

86. The sole exceptions to the allocation by proximity rule are PHV journeys that depart from London, Manchester, Birmingham and Edinburgh airports. In such cases, customer requests are allocated on a 'first in, first out' basis whereby drivers join a virtual waiting list to avoid congestion around the airport. Additionally, London airports also use the 'rematch' feature where drivers close to completing a trip at an airport will be offered a journey departing from the airport. The purpose of this feature is to reduce congestion and pick-up times for passengers.

87. Once a driver has accepted the request for transport by PHV on Bolt's platform, the driver has a choice between using Bolt's own navigation system or one of two different third-party

satellite navigation systems: Google Maps or Waze. The driver is then free to choose their route.

88. The driver can ask for the price of a journey to be reviewed if they believe that the length of the trip exceeded the initial fare offered. Bolt's Customer Service Team will review the trip and will recalculate the price if the route taken was reasonable based on traffic conditions, road works or extenuating circumstances. If a customer complaint has been raised in respect of that journey, Bolt may select between a range of remedies, which could include a refund to the passenger —but this would be paid by Bolt and would not affect the amount paid to the driver for the journey.

89. Bolt provides transport to a diverse group of customers who choose to travel via Bolt for a variety of different reasons. The customers include overseas tourists travelling in the UK and UK residents travelling for personal and business reasons. Bolt supplies journeys of different lengths both within and between cities or towns.

90. Between August 2022 and May 2023, Bolt provided 35.9 million PHV journeys. Just over 1.8 million of those journeys were provided to customers with a Bolt account that had been registered overseas between August 2022 and May 2023. During the same period, out of the 35.9 million PHV journeys, Bolt supplied 24,300 PHV journeys that were 100km or longer; 274,750 journeys of 50km or longer; and 1,258,490 journeys of 25km or more. A number of PHV journeys provided by Bolt were to and from key transport hubs, such as train stations, bus stations, tube stops, airports. Between August 2022 and May 2023, Bolt supplied 831,282 (2.3% of the total) PHV journeys to or from airports and 3,162,289 (8.9% of the total) PHV journeys to or from train stations.

91. Mr Ryan said that, on certain routes, a number of customers used Bolt's PHV services as an alternative to travel via train, coach, traditional airport transfer services or even domestic flights. He also accepted that Bolt did not know if a customer was going to the airport to take a flight or to the train station to take a train or for some other reason.

92. I accept Mr Ryan's evidence that some customers used Bolt's PHV services as an alternative to other means of transport although I am unable to determine on the evidence provided whether the typical customer regarded the Bolt PHV service as similar or comparable to the services provided by, for example, airplane, train, bus and other taxi operators. I also accept that Bolt competes to some extent with those operators (obviously, more so with other taxi and bus services than with train and airline operators). At a general level, Bolt competes with providers of transport services in the areas and over the routes covered by Bolt. Bolt is clearly in direct competition with other providers of PHV services whether single driver businesses or other large app-based operators or anything in between. The evidence suggested that the different providers of PHV services competed on price, convenience and estimated time of arrival (but mainly on price). I accept that if some operators are within the scope of and able to apply the TOMS while others who supply materially similar services are excluded from doing so then there would be a distortion of competition.

93. Bolt offers its customers help and assistance via the Bolt app, its website as well as by email and 24/7 phone lines. Bolt currently has 24 employees dedicated to customer service in-house and has outsourced the rest of the operations to a team consisting of 169 individuals who deal with over 115,000 enquiries a month. Customers can receive assistance at any point in the process (e.g. when making a booking, manoeuvring around the app and/or once the PHV journey has taken place) via in-app messaging.

94. In addition, Bolt maintains an up-to-date blog on its website offering travel advice to customers who are tourists or visiting places. The blog contains articles with titles such as "Our favourite hangout spots in Edinburgh", "Where to go on a romantic dinner: top places in

Newcastle" and "Five tips and tricks for saving money this summer by travel expert Chelsea Dickenson".

95. In an Annex to their skeleton argument, HMRC produced a schedule setting out information from the websites of putative tour operators or travel agents in the UK about what services they provide to customers. HMRC did not produce any witness evidence to indicate how the websites had been selected. As I could not be satisfied that the information was representative or accurate, I decided during the hearing that I would not have any regard to it. I also decided that I would not have regard to any similar evidence produced by Bolt.

SUMMARY OF SUBMISSIONS

96. Ms Sloane submitted that the touchstone for the TOMS is not holidays or tourism but travel and a journey so that the scheme can apply to a wide variety of travel services. Bolt's customers want to travel from A to B and are thus travellers. There is no definition of "travel" and Ms Sloane contended that travel can be local as there is no minimum distance or duration requirement.

97. Bolt's principal submission was that Bolt is a tour operator for the purposes of the TOMS because it provides services of a kind commonly provided by tour operators or travel agents. Ms Sloane submitted that passenger transport by PHV is a kind of service which is commonly provided by travel agents, eg airport transfers and chauffeur services. She maintained that the meaning of tour operators or travel agents should be determined on a functional basis in order to avoid a lack of neutrality between supplies of travel services by different suppliers because one of them wears the hat of a tour operator and the other does not. She said that tour operator and travel agent should be interpreted broadly for the purposes of the TOMS.

98. The TOMS applies where a travel agent or tour operator uses supplies of goods or services for the direct benefit of the traveller. Ms Sloane contended that Bolt buys in services from the drivers which include the car, fuel and driving. She submitted that the Platform does not transform this into an in-house supply by Bolt.

99. HMRC's primary position was that Bolt's supplies are not services commonly provided by tour operators or travel agents within the normal meaning of those terms. Ms Mitrophanous submitted that it is inconceivable that the meaning of tour operator or travel agent would capture someone who supplied passenger transport by PHV from any point A to any point B. Ms Mitrophanous did not suggest that the purpose of the journey was a relevant factor. The fact that the passenger travelled from point A to point B for work rather than a holiday is not what excludes the journey from the TOMS. It is that tour operators and travel agents do not provide on demand transport services from anywhere at any time to anywhere. In her submission that means that Bolt cannot be supplying services that are similar or comparable to those commonly provided by tour operators. HMRC's case was that, on any ordinary understanding, tour operators and travel agents are traders who cater for those wishing to make pre-booked journeys, usually though not invariably abroad. Bolt's services do not fit that description and, therefore, Bolt is not a 'tour operator' for the purposes of the TOMS.

100. Ms Mitrophanous also submitted that Bolt's supplies fall outside the TOMS as they are:

(1) in-house supplies; or

(2) materially altered/further processed supplies compared to the supplies made by the drivers to Bolt.

101. HMRC's view is that "without material alteration or further processing" in the TOMS Order reflects the back-to-back aspect of how tour operators commonly provide their supplies. Ms Mitrophanous contended that what Bolt provides to the customer is access to and use of the Platform via the app, the PHVO licence, the pool of drivers and the physical transport. HMRC

accept that the drivers make a supply of services to Bolt but submit that what Bolt provides is so significant that it creates a single supply which is an in-house supply by Bolt of transport services. HMRC also contended that, even if Bolt's activities did not create an in-house supply, Bolt's activities amounted to a material alteration of the supply which Bolt received from the driver.

DISCUSSION

102. Applying section 53 VATA and the TOMS Order, interpreted conformably with Articles 306-310 PVD, the TOMS applies to supplies of goods or services for the benefit of travellers:

(1) by

(a) a tour operator,

(b) a travel agent acting as principal, or

(c) any other person providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents

who has a business establishment or some other fixed establishment in the United Kingdom; and

(2) the goods or services

(a) were acquired for the purposes of the supplier's business; and

(b) are supplied without material alteration or further processing, that is to say, have not become in-house supplies.

103. At the hearing, it was common ground or not disputed that in the period under consideration and for the purposes of this appeal:

(1) Bolt was not a travel agent or tour operator within the normal meaning of those terms;

(2) Bolt's passengers were travellers for the purposes of the TOMS;

(3) Bolt's ride-hailing services were supplied for the benefit of travellers;

(4) Bolt had a business establishment in the UK;

(5) Bolt supplied the ride-hailing services as principal; and

(6) the drivers' services were acquired by Bolt for the purposes of its business.

104. Those matters of common ground or not in dispute are not sufficient to bring Bolt's supplies within the TOMS. In order for its supplies on or after 1st August 2022 to fall within the scope of the TOMS, Bolt must

(1) provide services of a kind commonly provided by tour operators or travel agents; and

(2) supply the services of the drivers to the passengers without material alteration or further processing, ie they have not been changed so as to become in-house supplies.

105. The first issue is whether what Bolt is doing is a service of the kind commonly provided by tour operators or travel agents. The answer depends on how Bolt's services are viewed for the purposes of comparing them with the services provided by tour operators and travel agents. At a high level, Bolt supplies passenger transport and it is clear from the case law referred to above that transport is a travel service. That corresponds, at the high level, with the kind of supplies made by tour operators or travel agents when they supply transport by planes, trains and coaches. More particularly, Bolt supplies on-demand ride hailing services for passenger

transport from point A to point B, mostly within urban areas. While some of the evidence suggested that tour operators and travel agents supplied point to point transport, eg airport pick-ups and transfers, I was not satisfied that they commonly provided on-demand rides from point A to point B which were the same as or similar to those provided by Bolt. In any event, for the reasons set out below, I consider that the correct approach is to take a high level or general view when considering whether services are of a kind commonly provided by tour operators or travel agents.

106. The approach taken by the CJEU in the cases suggests that it is not necessary for the tribunal to descend into the detail of the services. In *Madgett and Baldwin* at [23], the CJEU referred to "services generally associated with that kind of activity" and in *ISt*, the CJEU said at [24] (emphasis supplied):

> "iSt provides services which are identical or at least comparable to those of a travel agent or tour operator in that it offers services involving the travel by plane of its customers and/or their stay in the host state and, in order to provide *services generally associated with that type of activity*, it uses the services of other taxable persons".

107. Determining whether a person provides services of a kind commonly provided by tour operators or travel agents by making a detailed examination carries the risk of inconsistent application of VAT to supplies to travellers and distortion of competition between traders in the same sector. That further supports the view that the tribunal should take a general or non-specific view of the activities that are to be compared. Adopting that approach, I conclude that passenger transport services are the kind of services commonly provided by tour operators or travel agents in that such services are generally associated with the type of activity carried on by tour operators and travel agents.

108. If I am wrong and it is necessary to have regard to the mode of transport then I note that the Advocate General in *Madgett and Baldwin* took the view that where a hotel arranges for a taxi to take one of its guests to a station or airport, the ride with the hotel's other services would not fall within the scope of the EU special scheme (see [24] above). The Advocate General did not take that view because arranging a taxi ride to a station or airport was not the kind of service commonly provided by tour operators or travel agents but because, in his view, the taxi service was ancillary to the provision of hotel accommodation. The obvious inference is that if the transport by taxi had not been ancillary then it would have fallen within the scope of the special scheme. There seems, therefore, to be no reason why a taxi ride (and thus a PHV journey) cannot be regarded as a service of a kind commonly provided by tour operators or travel agents.

109. I do not consider that the fact that Bolt provides rides to and from places, eg a supermarket, restaurant or cinema, which travel agents do not typically serve makes any difference in principle. HMRC did not suggest that the purpose of a journey, eg whether it was for business or pleasure, or its duration could affect whether or not it fell within the TOMS. Nor do I think that it makes any difference if a customer can specify the start and end point of the journey. If the purpose of the journey does not matter then why should a feature such as the ability of the customer to specify the place of departure and destination without restriction affect whether it falls within the scope of the TOMS? Travel agents and airlines routinely arrange transport of holidaymakers by PHV between their home and an airport at the start and end of a holiday. Such airport transfers are usually provided as part of a package but that does not make them any less from point A to point B.

110. In the course of argument, Ms Mitrophanous submitted that tour operators and travel agents did not commonly provide passenger transport services on demand but typically only

provided pre-booked passenger transport as part of a package. That suggested that, other arguments apart, Bolt's scheduled rides service might be distinguished from their on-demand service with only the former being a service of a kind commonly provided by tour operators or travel agents. In my view, the distinction between scheduled and on-demand rides, which is only a matter of timing, cannot be determinative of whether mobile ride-hailing services are services of a kind commonly provided by tour operators or travel agents and thus within the TOMS. Any distinction based on how far in advance a ride was booked would necessarily be arbitrary, eg a ride booked two hours in advance is within the TOMS whereas one booked one hour 59 minutes before the pick-up is not. Such a threshold cannot be determinative. It seems to me that ride-hailing services and scheduled rides cannot be differentiated and are both services of a kind commonly provided by tour operators or travel agents for the same reasons. It follows that I do not need to consider where the dividing line lies between ride-hailing services and scheduled services for the purposes of the TOMS.

111. HMRC's alternative arguments about in-house supplies and material alteration or processing were basically the same point. Their case was that tour operators and travel agents buy in services and simply pass them on to the traveller. Ms Mitrophanous submitted that the bought-in drivers' services are changed by the use of Bolt's own resources and therefore they are in-house or materially altered because they are not merely passed on. I do not agree with this analysis. The EU special scheme applies where Bolt acquires services, which are for the direct benefit of travellers, from the drivers for the purposes of Bolt's business and uses those services to provide travel facilities. The exclusion of in-house supplies from the scope of the special scheme reflects the fact that the supplies of goods or services provided by other taxable persons must be for the direct benefit of the travellers and not for the direct benefit of the travel agent or tour operator. In-house supplies are those made from the travel agent's own resources which may be self-created or derived from supplies by other taxable persons that directly benefit the travel agent. In this case, I find that, while there is an obvious indirect benefit to Bolt, the drivers' services directly benefitted the travellers and, therefore, they were not in-house services or materially altered or processed.

112. In conclusion, I consider that the supply of mobile ride-hailing services, without any additional elements, to a traveller is a provision of travel facilities within the TOMS in the same way as a supply of accommodation only.

113. If I am wrong and the provision of travel facilities requires there to be other elements in addition to the transport then it is not fatal to Bolt's appeal in my view. The CJEU in *Star Coaches* at [23] held that the addition of other services such as information and advice relating to holidays and the reservation of the journey would be enough to bring transport, which is a travel service, within the EU special scheme. In this case, Bolt provides such other services, namely: the ability to arrange a journey with various options by using the Bolt mobile app; help and assistance available 24/7 via the app or Bolt's website as well as by email and telephone; and information and advice on certain places served by Bolt which can be found in articles on Bolt's website and in its blog. I consider that, if required, such additional services are sufficient to bring the supply of mobile ride-hailing services within the TOMS.

DISPOSITION

114. For the reasons set out above, the appeal is allowed.

COSTS

115. Although this appeal was allocated to the Complex category, Bolt applied in time to the Tribunal to be excluded from potential liability for HMRC's costs or expenses in respect of the proceedings.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

116. 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.

JUDGE GREG SINFIELD
CHAMBER PRESIDENT

Release date: 15th December 2023