REF: CA-2025-001526

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

Meade J and Judge Greenbank [2025] UKUT 00100 (TCC)

B E T W E E N

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

-and-

BOLT SERVICES UK LIMITED

Respondent

APPELLANTS' REPLACEMENT SKELETON ARGUMENT
10 MARCH 2026

References: References to the paragraphs in the First-tier Tribunal decision are in the form FTT/x and to the Upper Tribunal decision in the form UT/x, where x is the relevant paragraph number.

References in square brackets are to the Core Bundle ("**CB**") or to the Supplementary Bundle ("**SB**") in the format **[bundle/tab/page]**.

Suggested pre-reading (estimated to require 2.5 hours): The First-tier Tribunal and the Upper Tribunal decisions, the Parties' skeleton arguments and Joined Cases C-308/96 and C/94/97 *Customs and Excise Commissioners v Madgett & Baldwin* [1998] STC 1189.

A. Introduction

1. The Respondent ("**Bolt**") is a licenced private-hire vehicle operator ("**PHVO**") acting as principal. The relevant services considered by the First-tier Tribunal ("**FTT**") and the Upper Tribunal ("**the UT**") were Bolt's "*on-demand, private hire passenger transport services*" (UT/6) **[CB/6/100]** ("**the Minicab Supplies**"). The Minicab Supplies were those made under contractual terms introduced on 1 August 2022 which were the subject of the request by Bolt for a non-statutory ruling from HMRC (FTT/6) **[CB/10/146]**.

2. The FTT, by a decision released on 15 December 2023 **[CB/10/145-168]**, decided that the Minicab Supplies fell within the "*Special Scheme for Travel Agents*" set out in Articles 306-310 of Directive 2006/112 ("**the PVD**") as implemented in the UK in (now) section 53 Value Added Tax Act 1994 ("**VATA**") and the Value Added Tax (Tour Operators) Order 1987 (as amended) ("**the TOMS Order**"). It is common ground that the TOMS Order is to be interpreted in line with EU law (FTT/11) **[CB/10/147]**.

3. The scheme is referred to below as '**the Special Scheme for Travel Agents**'. This scheme provides that travel agent/tour operator supplies are to be accounted for under the special rules of the scheme, rather than under the normal VAT rules.

4. The FTT identified two issues (FTT/8) **[CB/10/147]**, which were in turn considered by the UT:

   (a) Issue 1: whether, adopting the language of VATA, the Minicab Supplies are of a "*kind commonly provided by tour operators or travel agents*";
   (b) Issue 2: whether the Minicab Supplies fall outside the Special Scheme for Travel Agents because they are (i) in-house supplies or (ii) materially altered/further processed supplies.

5. The FTT decided both issues against HMRC. On Issue 1 in particular, the FTT decided that "*the correct approach is to take a high level or general view*"[1] and ask whether the Minicab Supplies are "*passenger transport*", on the basis 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*" (FTT/3, 105 and 107) **[CB/10/146, 165-166** and **166]**. Thus, that travel agents/tour operators provided passenger transport and that the Minicab Supplies were of passenger transport was, under the 'high level' approach, sufficient for their inclusion within the Special Scheme for Travel Agents.

6. By decision released on 24 March 2025 **[CB/6/99-125]**, the UT dismissed the appeal by the Appellants ("**HMRC**") against the FTT decision in relation to both issues (albeit acknowledging at UT/60 **[CB/6/115]** that the FTT erred at FTT/106 **[CB/10/166]** in its interpretation of CJEU case law) on the basis that a "*broad, high-level*" approach was indeed

[1] Unless otherwise stated, all emphasis in this skeleton argument is added.

correct. By further decision on 28 May 2025 **[CB/7/127-130]**, the UT granted HMRC permission to appeal to this Court on both their Grounds of Appeal on the basis that these raise arguable points of law with a real prospect of success, raise important points of principle and that there is also a compelling reason for this Court to hear the appeal in light of the fact that Bolt's position currently involves an estimated £190m, with sums well in excess of £1bn in relation to other PHVOs being stood behind this case (**[CB/8/143]**).

7. In a nutshell, HMRC say that the Minicab Supplies do not fall within the Special Scheme for Travel Agents because:

   (a) the Minicab Supplies are not (and were not found to be) identical to (or relevantly comparable to or competing with) the supplies of travel agents/tour operators on the ordinary meaning of those terms (which is the right test) and the UT (and FTT) erred in law in adopting instead a 'broad, high-level' test which asks instead only whether the supplies were of transport/travel (Ground 1); and/or
   (b) the Minicab Supplies are in-house supplies or materially altered/further processed supplies and thereby excluded from the scheme in any event (Ground 2).

B. Common Ground, the FTT findings and the Minicab Supplies

8. It is and has always been common ground that Bolt is not a 'travel agent or tour operator' within the ordinary meaning of those terms (FTT/8, FTT/103(1) **[CB/10/147], [CB/10/165]** and UT/30(1)) **[CB/6/107]**. That (inevitable) concession is made by Bolt because it rightly recognises that travel agents/tour operators are not, on the ordinary meaning of those terms, in the business of providing minicab rides.

9. A break-down of the Minicab Supplies made in a 10-month period is set out at FTT/90 **[CB/10/163]** showing in particular that of 35.9 million rides supplied in that period, some 96%[2] were for distances of fewer than 25km and that only 2.3% were to or from airports.

[2] The detail is set out at FTT/90 **[CB/10/163]**. Taking away from the total of 35.9m journeys those that were for 25km or more (*i.e.* 1,258,490) leaves 34.6m being for fewer than 25km. 34.6m is 96% of the 35.9m total.

10. The FTT described the Minicab Supplies as "*on-demand ride hailing services for passenger transport from point A to point B, mostly within urban areas*" (FTT/105) **[CB/10/166]**. Although the FTT did not define the ride-hailing/on-demand nature of the Minicab Supplies in issue, it was uncontentious before the FTT that the position is that Bolt's customers can request a minicab ride 24 hours a day and seven days a week ("**24/7**") to be taken from wherever they are located at that point in time (point A) to a precise point B of their choosing.[3] The on-demand nature of the supply is achieved by Bolt allocating the ride to one of its self-employed drivers ("**the Drivers**") on the basis of proximity to the customer at the time of the request by being able to locate the available Drivers in real-time. If a Driver rejects the ride, Bolt will allocate the ride to the next nearest Driver and so on (FTT/82 and FTT/85) **[CB/10/162]**. Hence Bolt's slogans "*Go wherever, whenever*" and "*Request in seconds, ride in minutes.*"[4]

11. Travel agents/tour operators (on the ordinary meaning of those terms) do not of course provide minicab rides '*wherever, whenever*' and that is the basis of Bolt's concession that it is not a travel agent/tour operator on the ordinary meaning of those terms. Travel agents/tour operators are not licenced, regulated PHVOs, they do not offer on-demand, 24/7 minicab rides and Bolt has (rightly) never contended that travel agents/tour operators offer any services that cover the vast majority of the millions of routes that Bolt and other PHVOs serve. Thus, a consumer who needs a ride home or to a friend's house or to a hospital appointment or to the cinema or theatre is not in the position of considering whether he/she should request that ride from Bolt/one of its competitors or whether instead to look to a travel agent/tour operator; the latter simply cannot assist.

12. Importantly:

    (a) At FTT/92 **[CB/10/163]**, the FTT stated that it was not able to determine whether "*the typical consumer regarded the* [Minicab Supplies] *as similar or comparable to the services provided by, for example airplane, train, bus and other taxi operators*". The FTT ought to have considered the comparability of the Minicab Supplies with the supplies of travel agents/tour operators, rather than with transport providers generally, but Bolt in any

[3] See FTT hearing transcript, Day 2, p.154 line 15 to p.158 line 21 **[SB/15/193-194].**

[4] See Hearing Bundle before the UT pp.1523-1524 (updated references will be provided in a replacement skeleton once the CA bundle is finalised) **[SB/18/307]** and **[SB/19/308]**.

event had failed to establish comparability from a typical consumer viewpoint either with transport supplies generally or (more importantly) with travel agent/tour operator transport supplies. The FTT noted that "*At a general level, Bolt competes with providers of transport services in the areas and over the routes covered by Bolt*" and that "*Bolt was clearly in direct competition with other providers of PHV services…who competed on price, convenience and estimated time of arrival (but mainly on price)*." There was no finding (or contention) that travel agents/tour operators commonly serviced the 'areas and routes' covered by Bolt.[5] And of course, on the ordinary meaning of those terms, they do not.

(b) At FTT/105 **[CB/10/165]**, the FTT rightly determined that Bolt had not satisfied it that travel agents/tour operators "*commonly provided on-demand rides from point A to point B which were the same as or similar to those provided by Bolt.*"[6] The FTT considered that did not matter because it, like the UT, (wrongly) considered that the right test for inclusion within the scheme was simply whether the supplies were of passenger transport (FTT/3 and FTT/105) **[CB/10/146]** and **[CB/10/166]**.

(c) As is to be expected of a typical consumer, and as was confirmed by Bolt's witness,[7] Bolt's customers considered both the on-demand feature of Bolt's supplies (requesting a ride from wherever they happened to be (point A) and the ability to specify any precise destination (point B)) as a reason for taking a minicab. These features are not offered by travel agents/tour operators (on the ordinary meaning of those terms). Nor, at an even more fundamental level, was there a finding (or contention by Bolt) that travel agents/tour operators offered any passenger transport for (at least) the vast majority of routes that Bolt serves. It is presumably these very considerations that led to the FTT's position at FTT/92 **[CB/10/163]** and FTT/105 **[CB/10/165-166]** as outlined above.

13. Bolt did not pursue its cross-appeal before the UT against the FTT's findings at FTT/92 **[CB/10/163]** and FTT/105 **[CB/10/165-166]**. Had the FTT (and the UT) asked the right

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[5] At UT/86 **[CB/6/120]**, the UT failed to note this important qualification in stating that the FTT accepted that Bolt competes with other transport providers.

[6] The FTT clearly did not mean that travel agents/tour operators 'commonly provided on-demand rides from point A to point B' (*i.e.* any chosen points A and B) but that these differed from those provided by Bolt in some unspecified respect. The FTT meant that travel agents/tour operators do not commonly provide passenger transport that is the 'same or similar' to that provided by Bolt.

[7] See FTT hearing transcript Day 2 p.174 line 16 to p.175 line 17 **[SB/15/198]**.

question: whether the Minicab Supplies were identical (or relevantly comparable) to or competing with the supplies of travel agents/tour operators, the finding at FTT/92 **[CB/10/163]** and FTT/105 **[CB/10/165-166]** could only have led to the conclusion that the Minicab Supplies fell outside the Special Scheme for Travel Agents.

C. Legislative Provisions

(i) The PVD

14. The PVD establishes the common system of value added tax and sets out that VAT is chargeable "*on each transaction*":

> ***Article 1***
>
> *1. This Directive establishes the common system of value added tax (VAT).*
>
> *2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.*
>
> ***On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components**.*
>
> *The common system of VAT shall be applied up to and including the retail trade stage.*

15. Title XII of the PVD sets out special schemes. Chapter 3 of Title XII sets out the Special Scheme for Travel Agents. (The Special Scheme was previously set out in Article 26 of the Sixth VAT Directive (77/388/EC) and some of the case law refers instead to Article 26.) Chapter 3 PVD provides as follows:

> **Special scheme for travel agents**
>
> ***Article 306***
>
> *1. Member States shall apply value added tax **to the operations of travel agents** in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies and services of 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.

(ii) VATA and the TOMS Order

16. Sections 1, 2 and 4 of VATA also provide that VAT shall be charged on each supply:

1. *(1) Value added tax shall be charged, in accordance with the provisions of this Act—*
   (a) on the supply of goods or services in the United Kingdom (including anything treated as such a supply)…

2. *(1) Subject to the following provisions… VAT shall be charged at the rate of 20 per cent and shall be charged—*
   (a) *on the supply of goods or services, by reference to the value of the supply as determined under this Act …*

4. *VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.*

17. Section 53 VATA 1994 provides, so far as relevant:

*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.

…
(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…"

18. The TOMS Order provides so far as relevant as follows:

Supplies to which this Order applies
2 *This Order shall apply to any supply of goods or services by a tour operator where the supply is for the benefit of travellers.*

Meaning of designated travel service
3*(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…

Place of supply
5 *A designated travel service shall be treated for the purposes of the Value Added Tax Act 1994 as supplied in the United Kingdom regardless of the place where it is to be enjoyed…*

Value of a designated travel service
7 Subject to articles 8, 9 and 9A of this Order, the value of a designated travel service shall be determined by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator in respect of that service, calculated in such manner as the Commissioners of Customs and Excise shall specify. …

Disallowance of input tax
12 *Subject to article 9A of this Order, input tax on goods or services acquired by a tour operator for re-supply as a designated travel service shall be excluded from credit under sections 14 and 15 of the Value Added Tax Act 1983. …*

D. <u>The Special Scheme for Travel Agents</u>

19. Further to the legislative provisions set out above and the case law relating to the Special Scheme for Travel Agents (detailed further below in relation to each Ground of Appeal), **(A)-(I)** below provide an outline of key aspects of the scheme.

(A) The Special Scheme for Travel Agents is an exception to the normal VAT rules and fundamentally changes the normal position in relation to (i) the place of supply, (ii) the taxable amount (*i.e.* the amount of consideration to which VAT will be applied), (iii) the right to input tax deduction, (iv) the treatment of single/multiple supplies, and (iv) the

application of exemptions/reduced rates/zero-rating (a supply that falls within the scheme loses any exemption, reduced rate or zero-rating that it would otherwise enjoy[8]). In particular, under the Special Scheme for Travel Agents, Bolt would account for VAT only on its 'margin'. Thus, if Bolt charges its customer £36 for a ride and pays the Driver £20, under the normal VAT rules, it will account to HMRC for £6 VAT, while under the Special Scheme it will account to HMRC for only £2.66. This example was accepted by Bolt as accurate before the FTT and explains the large amounts of VAT in issue in this and in related appeals from other PHVO/minicab operators.

(B) The exception to the application of the normal rules is made to alleviate the particular difficulties commonly faced by the travel agent sector. By way of example, a French travel agent buying a hotel room in Austria and supplying it to its customers together with coach transport it has bought from a German company to take its customers from France, through Germany and onto the Austrian hotel, would be faced with the difficulty of having to register and account for VAT and claim input tax deductions in France, Germany and Austria. Of course, if that travel agent supplies similar journeys to, for example, Greece and Spain, it would face still further difficulties. As set out by the CJEU in Case C-163/91 *Van Ginkel Waddinxveen BV v Inspecteur der Omzetbelasting, Utrecht* [1996] STC 825 ("***Van Ginkel***"):

> "*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*".

The Special Scheme thus applies to the travel agent/tour operator sector on the basis that an exception can be made particularly for that sector because it *characteristically* and *commonly* involves supplies for which the normal VAT rules create difficulties. Under the

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[8] As regards reduced rates, see Case C-552/17 *Alpenchalets Resorts GmbH v Finanzamt Munchen Abteilung Korperschaften* [2019] BVC 3 (**"*Alpenchalets*"**), para 37; as regards zero-rates, see Case C-74/91 *Commission v Germany* [1996] STC 843, para 18; and for exemptions, see Case C-763/23 *Direcţia Generală Regională a Finanţelor Publice Iaşi,Direcţia Generală Regională a Finanţelor Publice Iaşi v S. C. Dragoram Tour* SRL, EU:C:2024:591, ("***Dragoram Tour***"), para 37.

Special Scheme for Travel Agents, the French travel agent in this example will simply account for VAT in France on its margin.

(C) The Special Scheme for Travel Agents does not apply to the travel or transport sectors more generally. It does not apply beyond the travel agent/tour operator sector even though that wider sector can also sometimes face the same difficulties. Thus, again by way of example, if a French coach company supplies coach-services from France, through Germany and onto Austria, the French coach company will have to use the normal VAT rules and account for VAT in France, Germany and Austria; the Special Scheme for Travel Agents will not come to its aid. The French coach company is in the wider travel/transport sector, but it is not within the travel agent/tour operator sector. Even when such a supply is bought-in and on-supplied, it will still not come within the scheme unless it is a supply "*comparable to those of a travel agent or tour operator*" (*Alpenchalets*, para 32 and see (F) below).

(D) As a derogation from the normal VAT rules, the Special Scheme for Travel Agents is to be applied only to the extent necessary to meet its objectives; it is to be given a strict interpretation. One example of the strict application of the scheme is as follows: if in the example at **(B)** above the French travel agent bought-in the hotel room and meals in Austria from the Austrian hotelier and supplied these as a package to its customers together with its own 'in-house' coach transport, the coach transport element of the package would not fall within the Special Scheme for Travel Agents. The French travel agent would have to face the difficulties caused by the need (i) to register for VAT in France, Germany and Austria for the coach transport and (ii) to account for VAT on the supply of the hotel room and meals under the special rules of the scheme.[9] And this is so even if under the normal VAT rules dealing with single/composite/multiple supplies the supply of the hotel room, meals and the coach transport are properly characterised as a single supply predominantly of accommodation. Under that normal VAT rule, a trader would account for VAT on the basis of the place of supply of the accommodation alone. That normal rule is however also

[9] Indeed, that yet further complications may arise, is irrelevant: the purpose of the scheme is "*to adapt the rules application in respect of VAT to the specific nature of the work of a travel agent and thus reduce the practical difficulties which might hamper such work*"; it is "*not intended to simplify the accounting requirements entailed by the normal VAT scheme*" (Case C-291/03 *MyTravel plc v Commissioners of Customs & Excise* [2006] 1 C.M.L.R 13 para 39).

displaced by the scheme and the need to give it a strict interpretation: no supply or part of a supply made from the trader's own resources (*i.e.*, an in-house service) can be treated as falling within the scheme (Case C-557/11, *Maria Kozak v Dyrektor Izby Skarbowej w Lublinie* EU:C:2012:672 ("***Kozak***"), paras 20 and 25).

(E) It is not a condition for the application of the Special Scheme for Travel Agents that the supply must consist of multiple services or of supplies in multiple places. The reason for this is that it would be contrary to the purpose of the scheme (to uncomplicate VAT accounting for the travel agent sector) if travel agents/tour operators had to use the Special Scheme for their multiple service/multiple place supplies, but use the normal VAT rules for single or domestic supplies (see *Van Ginkel*, para 23). Presumably another reason for the scheme's application to domestic supplies is equal treatment/fiscal neutrality: in order to avoid treating (for example) a French travel agent who supplies a hotel room in France differently from an Austrian travel agent who supplies the same hotel room in France.

(F) Although it is not a condition of the application of the Special Scheme for Travel Agents that the supply be made by a travel agent/tour operator within the ordinary meaning of those terms, it must be a supply that is identical to supplies by travel agents/tour operators within the ordinary meaning of those terms. The scheme applies to supplies made by other traders if they "*effect identical transactions*" to travel agents/tour operators in the context of another activity (Joined Cases C-308/96 and C/94/97 *Customs and Excise Commissioners v Madgett & Baldwin* [1998] STC 1189 ("***Madgett***"), para 20-26). Thus, a hotelier who supplies its hotel accommodation to customers together with a supply of coach transport it has bought-in from a coach company accounts for VAT on the coach transport under the scheme and the VAT on the hotel accommodation under the normal VAT rules. In relation to the coach transport, the hotelier has in effect stepped out of the hotel sector and into the travel agent sector and the need to treat like cases alike and avoid distortions of competition necessitates that it too accounts for VAT on the coach transport under the scheme in the same way as would a travel agent supplying the coach transport. Bolt is not of course stepping out of the minicab sector at all in making its Minicab Supplies.

(G) Not all supplies even by a travel agent/tour operator fall within the Special Scheme for Travel Agents. The supply must relate to a journey and be one that is commonly made

by the travel agent sector. If a travel agent makes a supply that is not commonly made by the travel agent sector but by a separate sector (for example, the provision of tickets to an opera), it would distort competition were the travel agent able to account for VAT under the scheme while an ordinary trader supplying tickets to theatre/cinema/opera performances had to account under the normal VAT rules (see Case C-31/10 *Minerva Kulturreisen GmbH v Finanzamt Freital* [2011] STC 532 ("***Minerva***"), paras 23-24). This is another instance of the strict interpretation of the scheme. It is only if the opera tickets are supplied together with a supply that falls within the scheme (rather than as isolated supplies) that the scheme would apply to them on the basis that these then form a single supply. Thus, a supply of opera tickets together with hotel accommodation (or the supply of an airport transfer together with a flight) would fall within the scheme.

(H) The ordinary meaning of travel agent/tour operator is key to identifying the supplies that fall within the Special Scheme for Travel Agents. First, as the terms 'travel agent/tour operator' are not defined in the scheme, account must be taken of their ordinary meaning and the context in which the terms appear (*TLC (Romford) v Revenue and Customs Commissioners* [2020] STC 898 para 99. Secondly, CJEU case law refers to these terms on the basis of their ordinary meaning (see e.g. *Madgett* paras 17, 20-21). Thirdly, for supplies by traders who are not travel agents/tour operators to come within the scheme, they must be "*identical*" to the supplies of travel agents/tour operators on the ordinary meaning of those terms (or at least sufficiently comparable to engage the need for equal treatment/the need to avoid distortions of competition) (*Madgett*, paras 20-22).

(I) The ordinary meaning of travel agent/tour operator, taking account also of the context in which the terms appear, is that they are traders who typically offer "*widely different types of holiday and journeys allowing a traveller to combine, as he wishes transport, accommodation and any other service these undertakings may provide*". This was true in 1996 when it was said in *Van Ginkel* (at para 23) and remains true today (repeated in 2018 in *Alpenchalets*, at para 25). Travel agents/tour operators provide the services that are typically required by tourists such as travel by plane, train or coach (although of course they can be used by others for other purposes) and typically non-local travel (other than for excursions such as city-tours). They characteristically (though not invariably) offer multiple services in multiple places, hence the need for the provision of a Special Scheme for their supplies. The supplies in the scheme are those made by travel agents/tour operators when they act as principal (not as agents supplying agency services) and when

they buy-in supplies from other traders and sell those on, *i.e.* the travel agent buys in the relevant services from other traders and in effect subcontracts performance of the services to those other traders. It is the travel agent's supplier – e.g. the hotelier or coach company - who in fact performs the actual services for the travel agent's customer.

20. With respect, the basic error made by the UT (and by the FTT) was to ignore completely the fundamental feature of the Special Scheme for Travel Agents: that it applies to **travel agent/tour operator supplies** (whether made by a travel agent/tour operator or other trader). It is a limited scheme allowing for exceptional treatment for such supplies. The FTT and UT instead treated the scheme as being one for transport services generally when they are bought-in and on-supplied. That is clearly not what the scheme says and, as set out below, is contrary to the case law on the correct (and strict) interpretation of the scheme.[10] Had the scheme been intended to cover transport services more widely, it would not of course have specified that it applied to travel agent/tour operator supplies.

21. The effect of the UT's 'high-level' approach (which holds that where a trader buys and sells on any transport service it can account for VAT under the scheme rather than under the normal VAT rules) is to extend the application of the scheme to the whole of the minicab sector. Indeed, it extends the scheme also beyond this sector: under the 'high-level' approach of the UT (and the FTT), a trader who buys-in and on-sells school-bus journeys to its customers is also within the scheme with the serious consequence that it loses its zero-rating (see footnote 8); it will need to account for VAT on its margin rather than (as per HMRC's position) not account for VAT at all.

22. On the ordinary meaning of the terms, travel agents/tour operators do not supply minicab rides '*wherever, whenever*' and Bolt is not stepping into the travel agent sector when it makes its

[10] The UT's (and FTT's) errors in adopting a 'high-level' approach apply to their interpretation of the PVD and to the domestic provisions (which it is common ground are to be interpreted in conformity with the PVD and CJEU case law). In relation to the domestic provisions, to be in the scheme, a supply needs to be a 'designated travel service…by a tour operator'; a 'tour operator' includes a trader who provides '…services of any kind commonly provided by tour operators or travel agents'; and a 'designated travel service…by a tour operator' is a service that is identical (or sufficiently comparable such as to necessitate like treatment) to the services that travel agents/tour operators on the ordinary understanding of those terms make.

supplies; it remains firmly within the minicab sector. Similarly, a trader who supplies school-bus journeys is also not thereby stepping into the travel agent sector. The application of the Special Scheme for Travel Agents to such circumstances is an impermissible extension of that scheme, contrary to the fundamental requirement that the scheme provides for exceptional treatment to be applied in a limited way to deal with difficulties characteristically faced in the travel agent/tour operator sector.

E. Ground 1 – The UT erred in holding in relation to 'Issue 1' that a 'broad, high-level' approach was required to decide whether the Minicab Supplies fell within the scheme and/or to the extent that it considered that the AG Opinion in *Madgett* provided an alternative basis for inclusion of the Minicab Supplies within the scheme

23. The UT (like the FTT) erred in concluding that the question whether the Minicab Supplies fell within the Special Scheme for Travel Agents necessitated a "*broad, high-level*" approach which asks only whether the supplies are of "*passenger transport*" or "*travel*" services (see in particular UT/67-73 **[CB/6/116-118]** and UT/92 **[CB/6/121]**), rather than one which asks whether these are travel agent/tour operator services.

24. **First**, the UT's position misinterprets CJEU case law which has consistently set out that the correct test for inclusion within the Special Scheme for Travel Agents is whether the contender supplies, here the Minicab Supplies, are "*identical*" to those of **tour operators or travel agents** on the ordinary meaning of those terms; the test is not whether the contender supplies are travel/transport services more generally.

    (a) The UT misinterpreted in particular *Madgett*, which identified that the scheme applies "*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*" (para 20) and where the services "*go beyond the tasks traditionally entrusted to hoteliers…such as travel to the hotel room from distant pick-up points*" (para 26) and "*a coach excursion during their stay*" (para 27). Indeed, the reason given for applying the scheme to the supplies of other traders was stated to be concerns for treating "*identical services*" differently which would "*create distortion of competition between traders and jeopardise the uniform application*" of the PVD (paras 21-22). This further underlines the condition that the contender supplies be identical/competing with those of travel agents/tour operators. The UT instead (wrongly) considered that the test was

whether the trader organised 'travel' as principal using bought-in services, without the need for such travel to be identical (or comparable) to that provided by travel agents/tour operators at all (UT/69) **[CB/6/117]**.

(b) The UT similarly misinterpreted Case C-200/04 *Finanzamt Heidelberg v ISt internationale Sprach- und Studienreisen GmbH* [2006] STC 52 ("***ISt***"), where the CJEU again repeated that it "*is necessary to decide whether* [ISt] *provides services identical to those of a travel agent or tour operator*" (at para 23) and considered that ISt indeed did provide services that "*are identical or at least comparable to those of a travel agent or tour operator, in that it offers services involving travel by plane of its customers and/or their stay in the host state*" (para 24). The UT at UT/70 **[CB/6/117]** wrongly considered that this case too supported a test requiring the supply to be of 'travel' in general terms; it considered that at para 34 the CJEU "*refused to adopt a restrictive interpretation*" of the concept of travel (presumably one restricted to travel agent/tour operator supplies). However, the only reference the CJEU made to a restrictive approach was in para 36, where it simply set out the position that "*the objective of the travel and the duration of the stay in the host State*" were not factors intended to restrict the scope of the scheme, a position that does not of course undermine the CJEU's clear support for the need to establish similarity to the supplies of travel agents/tour operators. At para 34, the CJEU stated that "*there is no need to set out in advance the factors constituting travel*", the scheme "*applies provided that the trader in question is a trader for the purposes of the special scheme for travel agents*". The CJEU identified such a trader as one who "*provides services identical to those of a travel agent or tour operator*" (para 23).

(c) The UT also failed to take any account of *Alpenchalets*, where the CJEU interpreted Case C-220/11 *Star Coaches s.r.o v Financni reditelstvi pro hlavni mesto Prahu*, EU:C:2012:120 as holding that "*transport services provided by a trader cannot be covered by Article 306 where they are provided, through a subcontractor, not to the traveller himself but to travel agents and that 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*" (para 32). HMRC had contended that the FTT erred at FTT/65 **[CB/10/159]** in dismissing the requirement that, for inclusion in the scheme, bought-in and on-supplied transport services needed some 'other feature' that made them comparable to the services of travel agents/tour operators. In particular, the FTT erred by considering that the CJEU in *Alpenchalets* was explaining that Star Coaches failed to enter the scheme because it was acting "*as a subcontractor*" when the CJEU had in fact said

that Star Coaches was acting "*through a subcontractor*" (*i.e.* through its supplier in the way that is typical of travel agents/tour operators). The UT at UT/67 **[CB/6/117]** sets out how Star Coaches itself might be seen 'as a subcontractor': (i) Star Coaches subcontracted the coach transport to its suppliers (and therefore was in this sense indeed acting through a subcontractor); however (ii) in relation to the supplies Star Coaches' *customers* made to end consumers, Star Coaches was in effect a subcontractor to those customers. However, that analysis ignores the fact that the CJEU in both *Star Coaches* and in *Alpenchalets* was using 'subcontractor' in the first sense (i) above: Star Coaches was said to be acting "*through a subcontractor*". More importantly, the UT's analysis is still no answer to the key submission made: that *Alpenchalets* supports the position that a "*transport operator*", even one who buys-in and on-supplies transport services, can only enter the scheme if it has some 'other feature' "*capable of making its services comparable to those of a travel agent or tour operator*" (para 32, *Alpenchalets*).

25. **Secondly**, the UT's position fails to have any regard to the purpose of the Special Scheme for Travel Agents, which, as set out above, is primarily to alleviate practical difficulties travel agents/tour operators typically face under the normal VAT rules by reason of features characteristic of their supplies (*Van Ginkel*, paras 13-14 and 23).[11] It is not a scheme aimed at the wider transport sector. It also fails to have any regard to the purpose of applying the scheme to supplies of traders who are not travel agents/tour operators on the ordinary meaning of those terms, namely to respect fiscal neutrality, equal treatment and to avoid distortions of competition (see in particular *Madgett*, para 22). These purposes similarly require that a comparison be made between the Minicab Supplies and the supplies of travel agents/tour operators.

26. **Thirdly**, the UT's position wrongly adopts an expressly 'broad' and in effect expansive interpretation of the Special Scheme for Travel Agents. The scheme, like all derogations from the normal VAT rules, is instead to be given a strict interpretation such that it applies only to the extent necessary to achieve its objectives (as to the general position for special schemes, see Case C-128/05 *EC Commission v Austria* [2008] STC 2610 (para 22) and as regards a

[11] Case 189/11 *Commission v Spain*, EU:C:2013:587 also supports a further related purpose of the Special Scheme: the fair distribution of revenue as between Member States (para 59). That the scheme is to be interpreted according to its wording, context and objectives should be uncontroversial (see generally Case C-315/00 *Maierhofer* [2003] STC 564, para 27).

strict interpretation and fiscal neutrality, see Case C-581/19 *Frenetikexito – Unipessoal Lda v Autoridade Tributaria e Aduaneira* EU:C:2021:167 paras 22 and 32-33). In adopting a 'broad, high-level' approach, the UT had no regard to the CJEU's repeated insistence that the same holds for the Special Scheme for Travel Agents: *Madgett* (para 34), *Minerva* (para 16); *Kozak* (paras 16 and 20), Case C-422/177 *Szef Krajowej Administracji Skarbowej v Skarpa Travel sp. z o.o. w Krakowie* EU:C:2018:1029 (paras 24 and 27) and AG Opinion EU:C:2018:667 (paras 40-42), C-108/22 *Dyrektor Krajowej Informacji Skarbowej v C. sp. z o.o.* EU:C:2023:522 (para 20) and *Dragoram Tour* (para 27).

27. **Fourthly**, the UT wrongly considered that CJEU case law supported the "*broad, high level approach*" on the basis that supplies that were "*atypical*" of travel agents/tour operators had been found by the CJEU to be in the Special Scheme for Travel Agents, citing as examples 'hotel accommodation', 'plane tickets' and accommodation abroad in a college or with a 'host family' (UT/71) **[CB/6/117]**. In relation to the first two examples, these are in fact paradigm travel agent/tour operator supplies; the UT itself accepted this point at UT/84 **[CB/6/120]** where it termed these "*notorious and obvious*" instances of what travel agents supply. As regards the third example, the service provided in *ISt* (accommodation and meals in another country) is also clearly comparable to and competing with the supplies of travel agents/tour operators. In contrast, Bolt rightly made no claim, and the FTT made no finding, that travel agents/tour operators are generally active in the PHVO/minicab sector, generally cover Bolt's routes or provide services identical to or competing with those of Bolt. Indeed, the FTT rejected the contention that their supplies were "*the same or similar to those provided by Bolt*" (FTT/105) **[CB/10/166]**; Bolt directly competed with other PHVO/minicab operators (FTT/92) **[CB/10/163]**.

28. **Fifthly,** the UT also erred in considering that the "*broad, high-level approach*" was supported by the need to avoid a "*detailed approach to the question of comparability*" which would be "*difficult and resource-intensive*" and/or necessitate a "*quantitative*" approach (UT/73, 81, 84 and 86) **[CB/6/118, 119-120** and **120]**. The UT wrongly considered that HMRC's position required asking what percentage of travel agent/tour operators supplies were comparable to those of Bolt (and apparently to do so by an empirical analysis). In fact, HMRC's position is firmly rooted in the ordinary meaning of 'travel agent/tour operator': a supply can enter the Special Scheme for Travel Agents if and only if it is a supply that is identical, comparable to or competing with the supplies of travel agents/tour operators as those terms are ordinarily

understood. HMRC's approach does not require a difficult or resource-intensive exercise at all, nor any empirical analysis.

29. On the ordinary understanding of travel agent/tour operator supplies, the Minicab Supplies and indeed those of minicab operators generally are not identical or relevantly comparable: travel agents/tour operators do not on their ordinary meaning act/compete in the minicab sector. Nor were the Minicab Supplies found to be comparable. The FTT's position at FTT/92 **[CB/10/163]** and 105 **[CB/10/165-166]** made clear that Bolt had not persuaded the FTT that its supplies were identical or comparable to or competing with travel agent/tour operator supplies from the typical consumer viewpoint or at all; the FTT (wrongly) considered that this was not the right test and that it was instead sufficient that the Minicab Supplies and travel agent/tour operator supplies both fell within the general category of 'transport'. The UT also made no finding that the Minicab Supplies were identical or comparable to or competing with travel agent/tour operator supplies; it also (wrongly) considered that this was not the right test (UT/69-70) **[CB/6/117]**. As noted above, Bolt did not pursue its cross-appeal against the findings at FTT/92 **[CB/10/163]** and FTT/105 **[CB/10/165-166]**.

30. What Bolt did seek to argue was that Minicab Supplies to and from airports ("**airport minicab rides**") are identical/comparable to supplies made by travel agents/tour operators when such traders supply airport transfers and it sought to extrapolate from that argument the assertion that all the Minicab Supplies 'therefore' fall within the scheme or should do so to avoid complications. There has at times also been a claim that train minicab rides (rides to/from train stations) are also within the scheme on the claimed basis that travel agents/tour operators also offer train transfers. HMRC's response to this argument is:
    (a) First, on the ordinary meaning of the terms, travel agents/tour operators do not offer airport minicab rides as isolated supplies. What travel agents/tour operators do offer is airport transfers packaged with supplies that fall within the scheme (such as flights/hotel accommodation). The airport transfers enter the scheme on the basis that they are packaged with scheme supplies (as would supplies of opera tickets if packaged with scheme supplies, see *Minerva*, para 23) or on the basis that, in that packaged form, they are supplies that travel agents/tour operators on their ordinary meaning make. Further, such packaged transfers are scheduled and as the UT acknowledged (UT/86) **[CB/6/120]** provide certainty which on-demand rides lack. Further, the FTT's finding in this respect was only that "*airport transfers*" "*usually provided as part of a package*" (FTT/109) **[CB/10/166]** are provided by travel agents/tour operators; there was no finding to that

effect in relation to rides to/from train stations at all and the UT erred in considering otherwise (at UT/85) **[CB/6/120]**.

(b) Secondly, as Bolt accepted, it "*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*" (FTT/91) **[CB/10/163]**. Thus, there is no basis for considering that such minicab rides compete with travel agent/tour operator transfers in any event, nor was such a finding made by the FTT.

(c) Thirdly, *even if* this minority of supplies (2.3% of the Minicab Supplies) would fall within the Special Scheme for Travel Agents, that would provide no basis for finding that the vast majority of the Minicab Supplies or minicab supplies in general fall within the scheme. VAT is tax on each supply and the normal VAT rules apply to each supply made, subject to any particular supply being treated differently if it meets the relevant criteria for exceptional treatment. Thus, that any particular supply *A* falls within the Special Scheme for Travel Agents provides no basis for finding that another supply *B* falls within the scheme. Bolt's position on airport minicab rides provides no sound basis for Bolt's attempt to bring into the scheme the Minicab Supplies generally.

(d) Fourthly, because there is no basis for considering that the minicab sector can generally use the Special Scheme for Travel Agents (see para 29 above), *if* it is considered that a particular kind of minicab supply, e.g. airport minicab rides, potentially meet the conditions for entry into the Special Scheme for Travel Agents, the Court is then faced with the dilemma whether (i) to classify these particular airport rides as 'travel agent/tour operator' supplies within the scheme, or (ii) to classify these instead as simply minicab rides within the normal VAT rules. As airport minicab rides are in all respects (save for the pick-up/drop-off point being an airport) identical to minicab rides generally, the correct position is (ii). Consideration of fiscal neutrality/equal treatment/uniformity and/or the avoidance of distortions of competition as well as the strict interpretation of the scheme all support the adoption of (ii) (see *Minerva* at para 24).

31. The UT simply ignored each of the points set out in the previous paragraph. Its position was in effect that there is no indication in the CJEU's case law that an empirical study has to be carried out to determine how many travel agents offer precisely how many of the rides that Bolt offers and that this supports the high-level approach whereby all resupplies of transport services fall within the Special Scheme for Travel Agents. That is, with respect, clearly wrong. The right position is instead that Bolt has to show that each of its supplies fall within the scheme. If it has no case in relation to the vast majority of such supplies because they reflect

the general position of simply being minicab rides '*wherever, whenever*' which travel agents/tour operators, on the ordinary meaning of those terms, do not offer, then those supplies do not come within the scheme. If Bolt can make out a *prima facie* case for airport (or train) minicab rides, then it must (i) meet the objections set out in the previous paragraph and (ii) if it succeeds, succeeds only for 2.3% of the Minicab Supplies.[12]

32. Bolt has instead so far succeeded for all the Minicab Supplies on the basis that the FTT and UT have (wrongly) held that Bolt does not need to establish that these are identical/comparable to or competing with those of travel agents/tour operators at all.

33. **Sixthly**, the UT also erred in failing to find that the FTT erred at FTT/107 **[CB/10/166]** as regards the claimed 'risk of inconsistent application' or 'distortion of competition' on a more 'detailed' approach on the basis that Bolt and travel agents/tour operators acted in the 'same sector' (that of passenger transport). For the reasons set out above, the only sector that the Special Scheme for Travel Agents applies to is the travel agent/tour operator sector, while Bolt acts entirely in the separate PHVO/minicab sector.

34. **Seventhly**, that the UT claimed to adopt a less absolute 'high-level' approach from that wrongly adopted by the FTT, and one that permitted for 'further consideration' (UT/72 and 92) **[CB/6/117-118** and **121]** does not, with respect, meet the criticisms of the UT's approach

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[12] As regards any claimed competition with domestic flights, presumably of a customer taking a minicab ride from one airport to another, common sense suggests that these are wholly atypical. The FTT ought to have said so, but in any event made no finding that these were comparable. It should also be noted that, to the extent that the UT relied on the claimed finding that Bolt itself made supplies to 'tourists' (set out at UT/19) **[CB/6/105]**, the UT was wrong to list this as being uncontested. HMRC's position before the UT was that the FTT's statement that Bolt's customers include "*overseas tourists*" (at FTT/89) **[CB/10/163]** and that 1.8m journeys were provided to "*customers with a Bolt account that had been registered overseas*" (at FTT/90) **[CB/10/163]** should not be understood to be (and could not in any case properly be) a finding that the *Respondent* Bolt (rather than the separate overseas entity) provided these services as principal; Bolt's witness was unable to say that this was the case and Bolt put forward no other basis for such a conclusion.

(and that of the FTT) outlined above, nor did the UT identify how its "*broad, high-level*" approach was to be applied together with any (unspecified) "*further consideration*".

35. Further, to the extent the UT gave 'further consideration' to the particular supplies in this case in UT/78-91 **[CB/6/118-121]**, or in any event, it erred in particular as follows:
    (a) The UT failed to find that the FTT erred at FTT/109 **[CB/10/166]** by ignoring the fact that travel agents/tour operators on the ordinary meaning of those terms (i) do not provide passenger transport for the vast majority of routes/areas covered by the Minicab Supplies[13] or (ii) provide transport from wherever their customer happens to be at any time to any desired destination. Neither point is of course met (as the FTT sought to do) by pointing to the provision by travel agent/tour operators of airport transfers or to the fact that the purpose of travel is an irrelevant consideration.
    (b) The UT also erred in concluding that exhibit JR28 **[SB/17/252-306]** to Mr Ryan's evidence was admitted by the FTT (at UT/27) **[CB/6/107]** or in any event that (i) JR28 supported the position that any relevant travel agents (*i.e.* those acting as principal) provided cross-town transport or transfers for train journeys or (ii) that the FTT considered that it did so or (iii) that this provided any basis for supporting Bolt's position in any event (UT/85) **[CB/6/120]**. Whether any particular purported travel agent/tour operator provides any particular service is not the right question; rather, the right question is whether travel agents/tour operators on their ordinary meaning provide that service. Thus, even if a trader is otherwise a travel agent/tour operator within the ordinary meaning of those terms, any supply it makes of stand-alone minicab rides (or opera tickets) will fall outside the scheme.
    (c) The UT erred in failing to find that the FTT erred at FTT/110 **[CB/10/166-167]** in considering that the on-demand nature of the Minicab Supplies was also irrelevant and in

[13] As argued before the UT, in saying that Bolt provides rides "*to and from places, eg a supermarket, restaurant or cinema, which travel agents do not typically serve*" (FTT/109) **[CB/10/166]**, the FTT clearly did not consider (and could not, on the basis of Bolt's case, have considered) that travel agents/tour operators on their ordinary meaning provide passenger transport for at least the vast majority of routes covered by Bolt. Bolt's case turned on rides to/from airports and train stations. The FTT's finding should be understood as a finding (and could only properly have been a finding) that (at least) the vast majority of the Minicab Supplies are to/from places which travel agent/tour operators do not serve.

failing to find that the FTT had misunderstood this feature of the supplies.[14] It was uncontroversial and confirmed in cross-examination that the 'on-demand' nature of the Minicab Supplies meant that the customer could not book a particular pick-up time but requested a ride 'as soon as possible'. The FTT failed to consider this distinct feature of the supply and its relevance because it wrongly interpreted the 'on-demand' feature as being "*only a matter of timing*" and that "*any distinction based on how far in advance a ride was booked would necessarily be arbitrary*". The UT made the same error at UT/87 **[CB/6/120]**. In fact, the Minicab Supplies are not bookable on a scheduled basis at all (with the inherent risk of delay) and travel agents/tour operators on the ordinary meaning of those terms do not offer on-demand supplies (thus their supplies require pre-planning, but provide certainty). Thus, even for the small minority of routes that travel agents/tour operators were claimed to serve through airport transfers, a typical customer would be unlikely to consider an 'on-demand' ride comparable to a scheduled ride which could provide the security of ensuring timely arrival.[15] The UT itself acknowledged this as a matter of "*judicial notice*" and/or "*common sense*", but wrongly considered that this required "*investigating competition and substitutability*" as part of a "*complex, difficult and resource intensive task*" which militated in favour of its high-level approach (UT/86) **[CB/6/120]**. In fact, on-demand supplies are clearly distinct and readily identifiable; HMRC's position requires only the adoption of an understanding of the ordinary meaning of 'tour operator and travel agent' and the application of the common sense judgement. The UT's concerns here are again unfounded.

36. The UT also erred in considering that the Advocate General's Opinion in *Madgett* (at para 34) supported the view that a taxi ride "*might*" be within the Special Scheme for Travel Agents (UT/77) **[CB/6/118]** and to the extent, if any, that it considered that this provided an alternative basis for concluding that the Minicab Supplies fell within the scheme even if the "*broad, high-level approach*" was wrong.

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[14] For the avoidance of doubt, HMRC's position is that all PHVO minicab supplies (including scheduled rides) are outside the Special Scheme for Travel Agents. The position is even clearer however in Bolt's case because of the additional feature that the Minicab Supplies are all supplied on-demand.

[15] Indeed, Bolt's evidence was that Drivers are not sanctioned for simply cancelling a ride or not showing up (FTT hearing transcript Day 2 p.185 lines 3-5, p. 186 lines 3-18) **[SB/15/201]**.

(a) The Advocate General gave an example of a hotelier arranging a taxi service for its customers to a "*nearby station or airport*" as an example of what might be an 'ancillary' service by a hotelier, in contrast to the long-distance coach transport and tourist excursions that Madgett was providing which were not ancillary to its hotelier activities but an instance of Madgett stepping into the travel agent sector (see paras 34-40). The Advocate-General was thus concerned with identifying what might be an 'ancillary' service; he was not considering the position regarding taxi services and whether these would fall within the scheme, or whether that would be an improper expansion of the scheme. And he was not therefore implying that had the taxi to the nearby station or airport been provided by a taxi firm it would fall within the scheme. In any event, the example is irrelevant to the vast majority of the Minicab Supplies. Indeed, at para 37, the Advocate General supports the position that local transport services do not fall within the scheme.

(b) Moreover, the Advocate General's position (at para 39) supports HMRC's contention that it is relevant also to consider whether the services in issue are those traditionally entrusted to PHVOs (in which case they will not be within the Special Scheme for Travel Agents) or ones that go beyond such tasks and are an instance of a trader stepping outside its sector and into the travel agent/tour operator sector (a position adopted also by the CJEU at para 24). The UT erred in failing to consider this argument at all and in failing to conclude that none of Bolt's supplies are instances of a PHVO stepping into the travel agent/tour operator sector at all.

F. Ground 2 - the UT erred in its conclusion in relation to 'Issue 2' in considering that the Minicab Supplies were neither 'materially altered or further processed' nor 'in-house' supplies

37. The Minicab Supplies fall outside the Special Scheme for Travel Agents in any event for the alternative reason that, in making the Minicab Supplies, Bolt materially altered/further processed the supplies made to it by its Drivers and/or that the Minicab Supplies were in-house. The scheme strictly prohibits its application to in-house supplies (see *Madgett* paras 29-35, *Kozak* para 27). The UT erred in its analysis of this issue at UT/108-111 **[CB/6/124-125]**.

38. **First**, the UT erred in failing to consider HMRC's argument that the supplies of travel agents/tour operators were (on the ordinary understanding of those terms) typically back-to-back supplies, also obtainable directly from the travel agent/tour operator's own suppliers (to whom the actual provision of the service is subcontracted) and that this is reflected in the

condition in the TOMS Order that supplies are within the scheme only if made "*without material alteration or further processing*". Further, as decided in *HMRC v Sonder Europe Ltd* [2025] UKUT 00014 (TC) (currently on appeal to this Court), where there has been material alteration or further processing of the bought-in supply, the bought-in supply is not supplied for the direct benefit of the traveller as required by the PVD.

39. **Secondly**, like the FTT, the UT also erred in considering that the exclusion from the scheme of 'materially altered or further processed' supplies was the same as the exclusion from the scheme of supplies that were 'in-house' and thus failed to appreciate that a lesser degree of alteration was required for exclusion on the basis of 'material alteration or further processing' (UT/108) **[CB/6/124]**.

40. **Thirdly**, the UT erred in any event in considering that the Minicab Supplies were not materially altered and/or in-house (UT/109-110) **[CB/6/124-125]** by focusing on the aspects of the supply that were provided by the Driver, namely the physical transportation of the customer, and ignoring that it is Bolt (i) who provides the customer with the reassurance of the 'triple lock' - of being a licenced operator providing a ride by a licenced Driver in a licenced vehicle; and (ii) who uniquely can identify the nearest Driver for the on-demand ride.[16] The UT wrongly considered that Bolt simply added value to the supply made by the Driver. The UT failed to recognise that the supply to Bolt's customer in fact cannot take place without the key role played by Bolt: the Minicab Supplies cannot be independently obtained from the Driver (both as a matter of regulation but also as a matter of fact) – the customer cannot identify a Driver at all, and a *fortiori* not a nearby Driver 'on demand' without Bolt. Indeed, the UT erred in failing to consider at all the relevance of Bolt's platform to the provision of the supply: Bolt is not providing a booking service which simply intermediates between Driver and passenger albeit with Bolt acting as principal; rather, it is Bolt's platform that makes the ride possible (see Case C-434/15 *Elite Taxi v Uber Systems Spain* [2018] QB 854, paras 37-40). Taking the key features of Bolt's PHVO regulated status and platform alone and/or together with the other features of the supply that Bolt deals with – providing the customer with a sound estimate of the fare, a choice of size of minicab, an estimated time of arrival of the minicab at point A and drop off at point B, a live monitoring of the ride that can

[16] See *R (on the application of United Trade Action Group Ltd) v Transport for London (Transopco (UK) Ltd (trading as FREE NOW), interested party)* [2023] 2 All ER 98, para 11.

be shared with others, ensuring that Drivers take rest periods, providing a rating of Drivers and keeping records of every ride and Driver in case anything concerning occurs - the supply by Bolt is indeed materially altered or further processed from that made by the Driver to Bolt and/or an in-house supply.

41. **Fourthly**, the UT also erred in failing to find that the FTT erred at FTT/111 **[CB/10/167]** in not considering the degree of alteration of the bought-in supply (as compared to the Minicab Supplies) at all. The FTT wrongly applied a different test, namely whether the supplies were "*derived from supplies by other taxable persons that directly benefit the travel agent*". A bought-in supply that is used by the trader to make its own in-house supply cannot be said to be for the direct benefit of the traveller. In any event, in-house supplies are not excluded from the scheme on the basis of whether they benefit the trader or the traveller; the purpose of excluding in-house supplies (in line with the scheme's general objective and the need for a strict interpretation) is that a supplier of in-house services does not typically encounter the difficulties travel agents/tour operators face under the normal VAT rules such that there is no reason for their services to be given exceptional treatment (see *Madgett* AG Opinion para 51 and CJEU paras 31-35).

G. Conclusion

42. For these reasons, it is respectfully submitted that the UT erred in law in arriving at its decision on Issue 1 and/or Issue 2 and the Court is invited (i) to allow the appeal and set aside the UT decision; (ii) to allow HMRC's appeal against the FTT decision and to remake that decision, holding that the Minicab Supplies do not fall within the Special Scheme for Travel Agents; and (iii) to award HMRC their costs of the appeal and below.

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