IN THE COURT OF APPEAL (CIVIL DIVISION) **Ref: CA-2025-001526**
ON APPEAL FROM THE UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)
Meade J and Judge Greenbank [2025] UKUT 00100 (TCC)

DATED 18 JULY 2025

BETWEEN:

BOLT SERVICES UK LIMITED

Respondent

-and-

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

BOLT'S SKELETON ARGUMENT

Suggested pre-reading: skeleton arguments of the parties, UT Decision and FTT Decision

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A. OVERVIEW

(a) UT and FTT Decisions

1. In a judgment dated 15 December 2023, Judge Sinfield in the First-tier Tribunal (the "**FTT**") allowed an appeal by Bolt Services UK Limited ("**Bolt**") against a decision of the Commissioners for his Majesty's Revenue and Customs ("**HMRC**") that supplies of mobile ride-hailing services made by Bolt do not fall within the Tour Operators' Margin Scheme ("**TOMS**") (the "**FTT Decision**") **[CB/10/145-168]**. Contrary to HMRC's contentions, the FTT found that mobile ride-hailing services supplied by Bolt are services of a kind commonly provided by tour operators or travel agents and that supplies of such services therefore fall within the scope of TOMS.

2. In a judgment dated 24 March 2025, Judges Meade and Greenbank in the Upper Tribunal (Tax & Chancery Chamber) (the "**UT**") dismissed an appeal brought by HMRC and upheld the FTT Decision (the "**UT Decision**") **[CB/6/99-125]**. HMRC now appeal the UT Decision **[CB/1/2-24]**.

(b) Overview of Bolt's supplies

3. Bolt's services consist of passenger transportation services via private hire vehicles.[1] Bolt obtains the transportation services from drivers who are independent taxable persons for VAT purposes and provide the means of transportation (i.e. they provide their own driving services, their own vehicle and the fuel).[2] The drivers, as small businesses operating on their own account, are free to choose whether to supply transportation services to Bolt and do not operate under any exclusivity (i.e. they are free to provide their services to other

[1] FTT Decision §78 **[CB/10/145-168]**.

[2] FTT Decision §§74 and 83 **[CB/10/145-168]**.

businesses instead of Bolt).[3] Bolt on-supplies the transportation services as principal to customers.

4. As the FTT found in the FTT Decision **[CB/10/145-168]**, Bolt competes with providers of a variety of travel and transport services, including providers of traditional taxis and private transfers.[4] Terms such as private hire journeys and taxi services are used interchangeably in the industry.[5]

5. Customers use Bolt's transportation services for a wide variety of purposes, which range from going to an airport or station to returning from a tourist attraction to a hotel. In the FTT Decision **[CB/10/145-168]**, the FTT quoted Mr Joshua Ryan (then Bolt's UK and Ireland Country Manager) as stating that a number of passengers used Bolt as an alternative to travel via train, coach, traditional airport transfer services or even domestic flights.[6] The FTT went on to accept Mr Ryan's evidence that some customers used Bolt's services as an alternative to other means of transport.[7] Further, the FTT Decision **[CB/10/145-168]** found (in accordance with Mr Ryan's evidence) that:

    1) Between August 2022 and May 2023, "*[a] number of PHV journeys provided by Bolt were to and from key transport hubs, such as train stations, bus stations, tube stops, airports*".[8]
    2) Bolt's customers "*include overseas tourists travelling in the UK*". Between August 2022 and May 2023, Bolt provided over 1.8 million journeys to customers with a Bolt account that had been registered overseas.[9]
    3) Between August 2022 and May 2023, Bolt supplied 24,300 journeys across the UK that were 100km or greater in length, 274,750 journeys that were 50km or greater in length and 1.258 million journeys that were 25km or greater in length.[10]

[3] FTT Decision §83 **[CB/10/145-168]**.

[4] FTT Decision §92 **[CB/10/145-168]**.

[5] Expedition Witness Statement of Mr Joshua Ryan §9. The FTT found that Mr Ryan was a "*straightforward and credible witness*" and took his evidence into account in its findings of fact: FTT Decision §75 **[CB/10/145-168]**.

[6] FTT Decision §91 **[CB/10/145-168]**.

[7] FTT Decision §92 **[CB/10/145-168]**.

[8] FTT Decision §90 **[CB/10/145-168]**.

[9] FTT Decision §90 **[CB/10/145-168]**.

[10] FTT Decision §90 **[CB/10/145-168]**.

4) Bolt maintains an up-to-date blog on its website offering travel advice to its 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 Dickinson*".[11]
5) 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 inhouse and has outsourced the rest of the operations to a team consisting of 169 individuals who deal with over 115,000 enquiries a month.[12]

6. Drivers are free to accept or reject any offers to fulfil private hire journeys. They are also free to provide PHV Journeys independently of the Bolt platform, including on platforms belonging to Bolt's competitors.[13] As Mr Ryan explained before the FTT, "*drivers operating on more than one platform at any one time is very common*"[14] and he confirmed that drivers could operate at the same time for companies (such as Veezu) which offer pre-booked, scheduled rides.[15]

(c) Overview of TOMS

7. TOMS is an accounting scheme, not an exemption from VAT.[16] The effect of TOMS is that VAT is accounted for on the margin between the bought-in travel service and the on-supply of that travel service.

8. It applies in the UK to supplies of goods or services which are:

1) acquired for the purposes of a business;
2) supplied for the benefit of a traveller;

[11] FTT Decision §93 **[CB/10/145-168]**.

[12] FTT Decision §94 **[CB/10/145-168]**.

[13] FTT Decision §83 **[CB/10/145-168]**.

[14] FTT transcript {Day 2/page 195/lines 7-9} **[SB/15/190-255]**.

[15] FTT transcript {Day 2/page 205} **[SB/15/190-255]**.

[16] See the Advocate General's Opinion in Case C-200/04 *Finanzamt Heidelberg v ISt internationale Sprach- und Studienreisen GmbH* [2006] STC 52 ("***ISt***"), §39: "*Finally, I would point out that Article 26 lays down appropriate taxation for travel services. It entails special rules in relation to the normal rules of taxation, but not a VAT exemption scheme*".

3) supplied without material alteration or further processing; and
4) supplied by a 'tour operator' who has a business establishment or some other fixed establishment in the UK (see §3 of the Value Added Tax (Tour Operators) Order 1987 (the "**TOMS Order**")). The concept of a 'tour operator' is expansive and is not restricted to a 'traditional' tour operator or travel agent; it includes any person "*providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents*" (see section 53(3) of the Value Added Tax Act 1994 (the "**VATA**")).

9. As HMRC's VAT Notice 709/5 (the "**TOMS Notice**") explains, TOMS "*covers anyone who is making the type of supplies detailed… even if this is not your main business activity, or you do not view yourself as a "traditional" tour operator*".[17] HMRC's examples of TOMS supplies in the TOMS Notice include "*organised shoots*", "*in-house training*" and "*conferences*", where they include, say, passenger transport.[18]

10. Contrary to the impression presented by HMRC's skeleton argument **[CB/3/46-71]** in this appeal, taxi trips have been an uncontroversial example of "*passenger transport*" falling within TOMS for several decades. HMRC's TOMS Notice has long confirmed that taxis are a transport service which fall within TOMS. The FTT found in *Cicero*[19] that the resupply of "*taxi pick-up services*" to students fell within the scope of TOMS.

11. HMRC's TOMS Notice sets out a list of travel services which fall within TOMS: [20]

> *"The following are <u>always</u> Margin Scheme supplies:*
> • *Accommodation*
> • *<u>Passenger transport</u>*
> • *<u>Hire of a means of transport</u>*
> • *Trips or excursions*
> • *Services of tour guides*
> • *Use of special lounges at airports"* (<u>emphasis</u> added).

12. The TOMS Notice states that "*the resupply of taxi trips is considered to be passenger transport*".[21]

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[17] TOMS Notice §2.2.

[18] TOMS Notice §7.11-7.13.

[19] *Cicero Languages International v Customs and Excise Commissioners* (1997) Decision No. 15246 ("***Cicero***").

[20] TOMS Notice §2.9.

[21] TOMS Notice §3.5.

(d) Summary of Bolt's case, which was upheld by the UT and FTT Decisions

13. The case law shows that the touchstone of TOMS is travel and a journey. It is not holidays or tourism. It is not restricted to the offering typical of a historic 'traditional' tour operator or travel agent, who used to be found on the High Street. TOMS is broader than that; it applies to a wide variety of travel services. In particular:

    1) 'Tour operator' and 'travel agent' are not defined in the applicable legislation or case law as, or restricted to, typical suppliers of a package holiday tour.

    2) Nor is 'travel' defined in the applicable legislation or case law. There is no requirement that 'travel' be for a particular purpose or duration. On the contrary, the CJEU case law makes clear that the subjective purpose of the travel is irrelevant[22] and that travel can be local.[23]

    3) The CJEU has recently confirmed in *Dragoram*[24] that a trader is a 'tour operator' if it provides the single service of resupplying passenger transport services. This does not need to be accompanied by advice or accommodation or be part of a travel package.

    4) The breadth of the concept of what constitutes a 'tour operator' or 'travel agent' is illustrated by the supply of hotel rooms. The case law is clear that a trader is a 'tour operator' if it provides the single service of resupplying hotel accommodation. This does not need to be a supply to a consumer; it can be a wholesale supply of blocks of rooms between resellers on a business to business ("**B2B**") basis[25]. It does not need to be the sort of hotel that a tourist typically books or that is typically packaged with other travel services. The last-minute resupply of a hotel room near

[22] *ISt*, §36.

[23] Opinion of Advocate General Sharpston in Case C-293/11 *European Commission v Hellenic Republic* EU:C:2013:378, §42.

[24] Case C-763/23 *Dragoram Tour*, EU:C:2024:591 ("***Dragoram***").

[25] Case C-108/22 *Dyrektor Krajowej Informacji Skarbowej v C. sp. Z o.o* EU:C:2023:522 ("***Dyrektor Krajowej Informacji Skarbowej (VAT – Hotel service aggregator)***").

a nightclub in Swindon at 4am falls within TOMS, despite the fact that it is far removed from the picture of a travel agent's typical supply (and would not be offered on e.g. Thomas Cook's website).

14. Both the FT and UT found that taxi rides are services of a kind commonly provided by tour operators or travel agents: §108-109 of the FTT Decision **[CB/10/145-168]**; §82-87 of the UT Decision **[CB/6/99-125]**. This was supported by evidence before the FTT, in the form of exhibit JR28 to the witness statement of Joshua Ryan ("**Exhibit JR28**") **[SB/17/310-364]**.

15. HMRC's arguments that: travel agents/tour operators do not typically offer on-demand, 24/7 minicab services; or that a customer would not typically consider whether to use a traditional travel agent/tour operator as an alternative to Bolt; or that there is no finding that Bolt competes with traditional travel agents/tour operators, are all irrelevant. They apply a series of conditions and tests which are not found in the TOMS legislation or case law. HMRC's objections apply equally to plenty of other travel services which plainly fall within TOMS:

    1) TOMS applies to a resupply of a hotel room in a town at 3am via an online "last minute" supplier;
    2) TOMS applies to a resupply of an ultra-luxurious private jet ride to Monaco;
    3) TOMS applies to a wholesale supply of blocks of rooms between resellers on a B2B basis.

    In none of those cases is the supply (judged by its very particular characteristics, e.g. the level of luxury or the time of the supply or the destination) typically offered by a traditional travel agent or tour operator; in none of those cases is the supplier likely to compete with, say, TUI or Easyjet Holidays; in none of those cases would the purchaser of the supply weigh up whether to book through a traditional travel agent or tour operator instead.

16. The FTT, UT and CJEU's high-level application of TOMS makes sense against the backdrop of a travel industry that is constantly evolving and innovating; where travel can now be not just last-minute but virtually instantaneous; where travel services can be packaged, customised or provided in isolation at the touch of a screen; where travel from

one city to another can be by train, plane, coach or car; where travellers may travel and stay at hotels within their own city; where travellers in a foreign city can use apps to arrange transport which was historically arranged through tour guides as part of a trip itinerary; where travel can be niche or luxury. In his Opinion in *Alpenchalets*[26] at §56, Advocate General Bobek contrasts the nostalgic picture of the high street travel agent with online apps and travel being arranged "*by several clicks on a smartphone*". This is apparent from developments such as the 'super app', with taxi trips being integrated into wider offerings.[27]

17. Bolt's case, which was upheld in the UT **[CB/6/99-125]** and FTT Decisions **[CB/10/145-168]**, is straightforward and aligns clearly with both the legislation and HMRC's own public position on the interpretation of the legislation in the TOMS Notice:

    1) Bolt buys in passenger transportation services for its business from drivers who are independent taxable persons for VAT purposes.
    2) Bolt supplies those transportation services for the benefit of travellers: its customers are manifestly 'travellers' as they are travelling from one point to another (that being the very point of the transportation services being supplied).
    3) Bolt supplies the services without material alteration or further processing: the fundamental travel service bought in from the driver and on-supplied remains exactly the same.
    4) Bolt is a 'tour operator' established in the UK: it provides travel services of the kind commonly provided by tour operators, namely taxi rides.

18. HMRC have decided that Bolt's services are excluded from TOMS on the basis of the following arguments, which are replicated in HMRC's Grounds of Appeal ("**GOA**") **[CB/1/2-24]** and skeleton argument **[CB/3/46-71]**. These arguments were correctly rejected by both the UT and the FTT. They cannot be reconciled either with the legislation or with HMRC's own long-established and published interpretation of the legislation.

    1) HMRC's <u>primary, over-arching argument</u> (underlying their Ground 1) is that the UT erred in concluding that the question whether Bolt's supplies fall within TOMS

[26] Case C-552/17 *Alpenchalets Resorts GmbH v Finanzamt München Abteilung Körperschaften* EU:C:2018:1032 ("***Alpenchalets***").

[27] Witness Statement of Mr Ryan, §§37-40.

necessitated a "*broad, high-level*" approach rather than considering, say, the purpose, destination and duration of each taxi journey **[CB/1/2-24]**. The problem for HMRC with this argument is that, as recognised by the UT, a "*broad, high-level*" approach is supported by both the domestic and CJEU case law:

i. In *Madgett and Baldwin*[28] at §23, when the CJEU states the general principle behind TOMS, it refers to traders who are not travel agents or tour operators falling within the scheme where they "*organise travel… in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity*" (see UT Decision §69 **[CB/6/99-125]**).

ii. The principles are expressed in similarly general terms by the CJEU in *ISt* (e.g. at §§24 and 34). In *ISt*, the CJEU expressly refused to adopt a restrictive interpretation of the concept of "*travel*" for the purposes of Article 306. The CJEU expressed the test simply by reference to the provision of travel services as principal using supplies and services provided by others, the only relevant exception as being whether the travel services are ancillary to another supply (see UT Decision §70 **[CB/6/99-125]**).

iii. Accordingly, the following have all been found by the courts to be within TOMS: a train ride within the UK[29]; a supply of hotel rooms by a bed bank to another business entity; the supply of educational programmes of a duration of three, five or ten months, involving travel to another country, enrolling in a local school or college and staying with a host family. Not one of those is a Thomas Cook-style 'holiday package'.

iv. It is not feasible or correct to exclude some transfers from TOMS on the basis of an inquiry into specifics, such as the distance travelled or the subjective purpose of the traveller or whether supplies are provided by a 'traditional' tour operator, such as Thomas Cook. TOMS would become

[28] 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***").

[29] *Nicholas Harvey t/a Green Express Railtours* (1998) Decision No. 15608 ("**Green Express Railtours**"), §13.

unworkable and a fiscal neutrality minefield. In the same way, the resupply of hotel accommodation falls within TOMS, irrespective of whether the hotel is used by someone local and for purposes other than a holiday.

2) HMRC's second argument **[CB/1/2-24]** (underlying their Ground 2) is that Bolt's supplies are 'in-house' and/or Bolt materially alters and/or further processes the transportation services. They rely on such matters as the fact that Bolt operates a platform and that imposes requirements on its suppliers. Those are true of other tour operators, even 'old-fashioned' or 'traditional' tour operators. The salient fact (as the UT correctly recognised) is that the essential transportation service (the provision of a driver in a vehicle to transport the customer) remains fundamentally the same. As HMRC's Decision **[CB/11/169-184]** itself stated "*Clearly, the physical transportation of passengers from "A" to "B" is the essence of the service any licensed private hire vehicle operator supplies*".[30]

19. Bolt makes one final point in this overview: namely, that HMRC's reliance on the *raison d'etre* of TOMS in identifying what services are or are not comparable to those of a tour operator is misplaced. Although the original objectives of the special scheme were to alleviate difficulties arising from re-supplying a package of travel services spanning different Member States, those objectives were not enshrined as conditions, and they do not define the scheme's scope of application. As the evolving case law has shown, the original purpose behind the scheme has to be reconciled with other objectives, including in particular legal certainty, objectivity, simplicity and avoiding distortion of competition. Thus, the resupply of a travel service can fall within TOMS even though: it is not to a traveller; it is not part of a package; it is not provided across different territories. As the Advocate General in Alpenchalets observed, that might lead to "*normative overreach*" and an implementation which is "*rather remote from that stated ideal*" of simplification for multiplicity of services but it is for the legislature to opt, should it prove necessary, for a different regime.[31] In the EU, the Commission has been consulting on reform of TOMS for many years. In the UK, as noted above, the legislation gives the option of excluding certain services; that is an option which HMRC have not taken up.

[30] HMRC's Decision, §50 **[CB/11/169-1184]**.

[31] Opinion of Advocate General Bobek in *Alpenchalets*, §§64-65.

20. For the above reasons, Bolt respectfully requests that HMRC's appeal **[CB/1/2-24]** against the UT Decision **[CB/6/99-125]** be dismissed with an order that HMRC pay Bolt's reasonable costs.

B. SUBMISSIONS

21. As noted at §104 of the FTT Decision **[CB/10/145-168]**, in order for Bolt's supplies to fall within the scope of 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, i.e. they have not been changed to become in-house supplies*".

22. The FTT and UT were correct to find that Bolt's supplies meet those conditions. Bolt first sets out the positive case on each condition before responding to HMRC's case on each, which corresponds to, respectively, Appeal Ground 1 and Appeal Ground 2 **[CB/1/2-24]**.

(1) Bolt provides services of a kind commonly provided by tour operators or travel agents

(i) The UT and FTT Decisions upholding Bolt's case

23. For the purposes of TOMS, a 'tour operator' is any person "*providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents*" (section 53(3) of the VATA).

24. Bolt provides services for the benefit of travellers, for the reasons set out above: it provides transportation services which are necessarily used by people who wish to travel from one point to another.

25. Bolt's transportation services are of a kind "*commonly provided by tour operators or travel agents*". They are passenger transportation services by a vehicle. As Judge Sinfield observed in the FTT Decision at §109: "*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*" **[CB/10/145-168]**.

Examples of this are set out at Exhibit JR28 **[SB/17/310-364]**. The UT found that Bolt's supplies were of a kind commonly provided by travel agents and tour operators: §82-87 of the UT Decision **[CB/6/99-125]**.

26. That the resupply of taxi trips falls within TOMS has long been accepted by HMRC and the industry. It is recognised by HMRC's TOMS Notice which states that "*passenger transport*" and the "*resupply of taxi trips*" fall within TOMS.[32] In *Cicero*, the Tribunal found that the resupply of a "*taxi pick-up service*" to students by a business supplying educational services was within TOMS.

27. Judges Meade and Greenbank correctly held in the UT Decision at §72 **[CB/6/99-125]** that the authorities supported a "*broad, high-level*" approach when considering whether services are of a kind commonly provided by tour operators or travel agents. The duration of the travel and the objective of the travel are irrelevant. It is not necessary for the services to be in the nature of a 'holiday package' provided by a 'traditional' tour operator. As Judges Meade and Greenbank correctly noted, this is well-established by the case law:

    1) In *ISt*, the CJEU considered supplies by ISt of educational language programmes, which enabled students to study abroad for 3, 5 or 10 months. ISt arranged for the students to enrol at a school or college and to stay with a host family. The CJEU had already found in other proceedings that such supplies did not constitute 'package holidays' for the purpose of Directive 90/314/EEC on package travel, package holidays and package tours. The German government argued that ISt's supplies fell outside TOMS due to their educational nature and the length of the trips. The CJEU firmly rejected that argument and held that <u>both the duration and the purpose of the travel service are irrelevant</u>.[33]

    2) In both *Madgett and Baldwin* at §23 and *ISt* at §24, the CJEU referred (at a high-level) to "*services generally associated with that kind/type of activity*" [i.e. the activity of travel agents or tour operators].

[32] TOMS Notice, §§2.9 and 3.5.

[33] *ISt*, §§34-37.

3) In *Dyrektor Krajowej Informacji Skarbowej (VAT – Hotel service aggregator)*, the CJEU held that the sale of accommodation services by one business (a hotel services consolidator) to another business, without any other services, fell within TOMS. The tax authority had argued that such services were not 'touristic'. The CJEU rejected that approach and held that the mere supply of holiday accommodation or accommodation services, on a purely B2B basis, fell within TOMS.

4) A high-level approach, focusing on the 'kind' of supplies is consistent with *Minerva*,[34] where the CJEU at §§21-22 drew a distinction between services "*unrelated to a journey*" and "*travel services, in particular transport and accommodation*".

5) It is also consistent with the approach taken by Advocate General Bobek in his Opinion in *Alpenchalets*. In particular:

   i. See §54: "…*'one bought-in' service is enough provided that it relates to a journey, as stated in Minerva. As a result, the special scheme for travel agents 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.* …"
   ii. See also §71: "*If it is agreed that the special scheme for travel agents applies to one bought-in service related to a journey (accommodation or transport), the provision of that service makes such a supply fall under Article 306 of the VAT Directive which means that it classifies it as a 'travel service'*."

6) In *Dragoram*, the CJEU confirmed that, following *Alpenchalets*, "*the sole supply of passenger transport services bought from taxable third parties by a travel agent for its customers falls within the scope of the special VAT scheme for travel agents, regardless of the fact that this supply is not accompanied by additional services or that the agency also provides information and advice services to its customers*".[35]

28. Judges Meade and Greenbank were consequently correct to hold in the UT Decision **[CB/6/99-125]** at §73 that:

[34] Case C-31/10 *Minerva Kulturreisen GmbH v Finanzamt Freital* [2011] STV 532 ("***Minerva***").

[35] *Dragoram*, §33.

> *"We agree with the FTT that a detailed approach to the question of comparability would be likely to prove a difficult and resource-intensive exercise. This is particularly the case if the tribunal were required to examine in detail the proportion of the supplies of established travel agents and tour operators that fall into a particular category or to engage in an analysis of the potential risks of distortion of competition if a particular supply falls within or without the scope of the scheme. There is no evidence in the CJEU case law that it is necessary to embark upon such an analysis, nor do we think it is desirable or necessary."*

29. The fact that a 'traditional' tour operator or travel agent does not offer travel services under precisely the same business model as Bolt is irrelevant, just as it is irrelevant that a 'traditional' tour operator has a different business model from a supplier of educational study programmes, a supplier of rail day-trips or a 'bed bank' which resells hotel accommodation to other commercial suppliers.

30. The question of whether a supply is "*commonly provided by tour operators or travel agents*" is to be addressed at high level of generality is also supported by the following points correctly relied upon by Judge Sinfield in the FTT Decision **[CB/10/145-168]**:

    1) First, "*[d]etermining 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 nonspecific view of the activities that are to be compared*" (§107).

    2) Secondly, "*…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, e.g. 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*" (§110).

31. That approach is consistent with the principle which has been reiterated by the CJEU in *Dragoram*, namely the need to avoid a "*complex tax system, in which the applicable VAT rules would depend on the constituent elements of the services offered to each traveller*"[36] It also avoids a "*distortion of competition between traders*" while guaranteeing the "*uniform application of the Sixth*

[36] *Dragoram*, §32.

Directive", as the CJEU emphasised in *ISt*,[37] and is consistent with the principle of legal certainty, which the Advocate General in *MyTravel* noted is particularly required in matters concerning VAT.[38]

32. Furthermore, and in any event, Bolt does have many of the hallmarks of a 'traditional' tour operator, as Judge Sinfield found in fact in the FTT Decision **[CB/10/145-168]**:

    1) Bolt offers transportation services to tourists and passengers going to travel hubs (§§89-90);
    2) travellers can choose from a range of vehicle options (§81);
    3) Bolt offers travel advice (§94);
    4) Bolt provides assistance to travellers with 24/7 customer service (§93); and
    5) Bolt has a network of suppliers (self-employed drivers, effectively operating as independent small businesses) from whom it buys in travel services (§§82-83).

(ii) Response to HMRC's points

33. HMRC make various complaints under their Ground 1 **[CB/1/2-24]**, none of which discloses any error of law and all of which cluster around the central argument that a supply only falls within TOMS if it is identical in respect of all its detailed characteristics (e.g. destination, duration, route, time of supply) to the average supply of a traditional travel agent / tour operator.

34. First, HMRC argue that a supply falls within TOMS only if it is identical to a supply commonly made by a travel agent / tour operator[39] and make the leap of logic that this means identical in respect of all its detailed characteristics (e.g. destination, duration, route, time of supply). The test is whether the supply is "*identical or at least comparable*"[40]. The approach of the CJEU shows that in considering whether supplies are comparable, it is not a necessary or appropriate part of the test to itemise all the particular characteristics of

[37] *ISt*, §37.

[38] See the Opinion of Advocate General Léger in Case C-291/03 *MyTravel Plc v Commissioners of Customs & Excise* ("***MyTravel***"), §52.

[39] HMRC skeleton argument, §24 **[CB/3/46-71]**.

[40] *ISt*, §24.

a travel supply and then ask whether a travel service with those very particular characteristics is typically provided by a tour operator or travel agent, using a "traditional" tour operator or travel agent as the yardstick. As noted above, that would exclude from TOMS niche, innovative or luxurious travel services. It would exclude last-minute, standalone resupplies of certain hotel rooms, helicopter rides or a limousine transfer from one destination in continental Europe to another, as an alternative to a flight.

35. As their second and third arguments, HMRC complain that in adopting such an approach, the UT failed to apply a purposive and/or strict interpretation of TOMS[41]. This is wrong:

    1) The UT expressly took account of the purpose of the regime and the correct manner in which to interpret it in the UT Decision at §§46, 55-56 **[CB/6/99-125]**.

    2) The UT's approach was consistent with the applicable CJEU case law, which makes clear that the original purpose of TOMS does not define its scope. As Advocate General Bobek observes in his Opinion in *Alpenchalets* at §62 (and as the UT Decision **[CB/6/99-125]** notes at §46), the raison d'être of TOMS was to address difficulties arising from the provision of a multiplicity of services across a multiplicity of jurisdictions. But the raison d'être of the scheme does not override the wording of the statute. It cannot introduce conditions which are not in the legislation. There is no condition in the legislation that the travel services within TOMS must be provided as a package or have an overseas element.

36. Fourthly, HMRC suggest that the UT considered that CJEU case law supported the "*broad, high-level approach*" on the basis that certain supplies held to fall within TOMS were "*atypical*" of tour operators / travel agents[42]. In the UT Decision at §79 **[CB/6/99-125]**, the UT correctly cited various examples of supplies which have been held to fall within TOMS as an indication of the level of generality with which to approach the relevant question. A supply which is "*atypical*" in the sense that it has particular characteristics which are not found in the average supply by a traditional tour operator/travel agent (e.g. the private jet) nevertheless falls within TOMS. Bolt has provided evidence in Exhibit JR28 **[SB/17/310-**

[41] HMRC skeleton argument, §25-26 **[CB/3/46-71]**.

[42] HMRC skeleton argument, §27 **[CB/3/46-71]**.

364] indicating that tour operators / travel agents are active in the transfers sector; this is enough to bring Bolt's supplies within TOMS.

37. As their fifth and sixth arguments, HMRC complain that the UT 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[43]. However, the UT's approach is plainly correct. As the UT noted at §73 in the UT Decision **[CB/6/99-125]**: "*[t]here is no evidence in the CJEU case law that it is necessary to embark upon [a detailed] analysis, nor do we think it is desirable or necessary*". Regardless, HMRC assert in their GOA **[CB/1/2-24]** that Bolt did not persuade the FTT that its supplies were identical, comparable or competing with those of tour operators / travel agents.[44] They also rely on the absence of a finding that Bolt competes with travel agents / tour operators. However:

    1) Judge Sinfield correctly observed in the FTT Decision at §109 *[CB/10/140-163]*: "*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*". Examples of this are set out at Exhibit JR28 **[SB/17/310-364]**. Bolt understands that HMRC does not dispute this; they cannot sensibly dispute it, as it is a matter of common knowledge and judicial notice. This was correctly addressed and confirmed by the UT at §82-87 of the Decision **[CB/6/99-125]**.

    2) HMRC's argument is that such transfers are typically provided by travel agents as part of a package. That is immaterial: the same is true of hotel accommodation yet the case law is clear that single supplies of accommodation or passenger transport are within TOMS, irrespective of not being supplied in a package or with accompanying advice.

[43] HMRC skeleton argument, §28-33 **[CB/3/46-71]**.

[44] HMRC also erroneously state that "*Bolt rightly did not pursue at the hearing before the UT its cross-appeal or criticisms against the FTT's conclusions at FTT/92 and 105*". The fact that the cross-appeal was not discussed orally before the UT does not mean it is not pursued; to the contrary, Bolt does pursue it in the terms set out in its Respondent's Notice **[CB/2/25-45]**.

3) HMRC also argue that short, urban transfers are not comparable to the airport transfers typically provided by tour operators and travel agents. That is not the relevant test: the supply of a last-minute hotel room in, say, Reading, on a standalone basis, is not typical of an archetypal supply by a traditional travel agent either. The fact that the transfers provided by Bolt encompass short transfers in urban areas, as well as transfers between homes and transport hubs or transfers as an alternative to train or plane travel, is immaterial. It is neither necessary nor feasible to apply TOMS by inquiring into the specific detailed nature of the travel or the subjective purposes of the traveller for each individual transaction. Yet this is what HMRC appear to suggest is required[45].

38. All HMRC's argument therefore amounts to is a complaint that certain of Bolt's supplies are not in competition with average supplies from a 'traditional' tour operator (such as, presumably, TUI or Thomas Cook). The UT rightly didn't consider that it was necessary for Bolt to establish on the evidence that individual transactions had the same characteristics as an archetypal transfer provided by a 'traditional' tour operator or that Bolt is in competition with other tour operators / travel agents. No such exercise was necessary in *Ist* or *Dyrektor Krajowej Informacji Skarbowej (VAT – Hotel service aggregator)*. Such an exercise would exclude from TOMS vast swathes of travel services which are niche, innovative or luxurious. The UT correctly found in §73 that it is neither necessary nor appropriate to engage in an analysis of the risks of distortion of competition and did not adopt §107 of the FTT Decision **[CB/10/145-168]**, which renders redundant the complaint about FTT/§107 in HMRC's sixth argument. Further and in any event, if Bolt were required to have proven that traditional tour operators and travel agents provided standalone transfers, it adduced such evidence. HMRC had the opportunity to put in responsive evidence on this point; they did not so. For the avoidance of doubt, Bolt relies on all of the evidence it relied upon before the FTT.

39. Seventhly, HMRC make a miscellany of complaints about the UT's Decision at §78-91[46] **[CB/6/99-125]**. These are largely repetitious of points already addressed above. HMRC claim that the UT erred in concluding that Exhibit JR28 **[SB/17/310-364]** was admitted

[45] HMRC skeleton argument, §30-31 **[CB/3/46-71]**.

[46] HMRC skeleton argument, §34-35 **[CB/3/46-71]**.

as evidence before the FTT but put forward no grounds for the alleged error[47]. As to HMRC's distinction between "on-demand" and "scheduled" rides, HMRC's approach was correctly rejected by the FTT and UT both on principle and as a matter of practicality. HMRC's approach would mean that a taxi scheduled for 5 minutes' time would be treated differently from a taxi booked on demand. The rejection by the FTT and the UT of HMRC's argument based on a distinction between "pre-booked" and "on-demand" rides was correct for the additional reason that private hire vehicle rides, even ones colloquially referred to as "on demand", are pre-booked as a requirement of regulatory law: "*Private-hire vehicles may only be hired to transport passengers on a pre-booked basis through an operator licensed by the relevant local authority*" (see *Uber Britannia Ltd v Sefton Metropolitan Borough Council* [2023] EWHC 1975 (KB) at §30 and Button on Taxis, Licensing Law and Practice, Chapter 12, section 12.56). Moreover, any such difference is immaterial to the application of TOMS in the same way that there is an irrelevant difference between a hotel room supplied by an online website which offers only "last minute" bookings and a hotel room supplied by a travel agent many months in advance.

40. HMRC also complain that the UT "*erred in considering that the Advocate General's Opinion in Madgett supported the view that a taxi ride "might" be within the Special Scheme for Travel Agents (UT/77) and to the extent, if any, that it considered that this provided an alternative basis for concluding that the Minicab Supplies fell within the Special Scheme for Travel Agents even if the "broad, high-level approach" was wrong*"[48]. This is incorrect. As the UT explained at §77 in the UT Decision **[CB/6/99-125]**: "*At FTT [108]* **[CB/10/145-168]***, the FTT was simply acknowledging the possibility that the supply of a taxi ride may be capable of falling within the scheme. We agree with the FTT that the view of the Advocate General (at Madgett AG [34]and [37]) that a taxi service provided to a customer by a hotelier for a journey to a nearby station or airport would be ancillary to the hotelier's other activities supports the FTT's view. The concept of "ancillary" activities in this context is an exception from bought-in travel services that would otherwise fall within the scheme (see Madgett [24]-[25], iSt [34]). It must contemplate the possibility that the provision of a bought-in taxi ride might otherwise be a travel service within the scheme*". HMRC's own TOMS Notice states that "*passenger transport*" and "*resupply of taxi trips*" always fall within TOMS.

[47] HMRC skeleton argument, §35(b) **[CB/3/46-71]**.

[48] HMRC skeleton argument, §36 **[CB/3/46-71]**.

41. For the reasons set out above, the UT was correct to hold in the UT Decision **[CB/6/99-125]** that Bolt provides services of a kind commonly provided by tour operators or travel agents. HMRC's complaints to the contrary disclose no errors of law and should be dismissed.

(b) Bolt supplies the services of the drivers to the passengers without material alteration or further processing

(i) The UT and FTT Decisions upholding Bolt's case

42. Bolt's supply of passenger transportation services is supplied without being "*materially altered*" or "*further processed*". Those terms are not found in the VAT Directive which the TOMS Order implemented. Those terms must be interpreted in context and in conformity with the scheme in the Principal VAT Directive.

43. HMRC's TOMS Notice at §7.1 gives the following as an example of an in-house supply: "*You make an in-house supply of coach or rail passenger transport if you (or a member of your VAT group) own or hire a coach or train, provide a driver, fuel, road licences, repairs, and so on. This is because you have put together these separate components, which become passenger transport.*" That is consistent with the case law of the CJEU in which 'in-house supplies' have been: the provision of accommodation by a hotel owner;[49] the provision of a fleet of coaches;[50] the provision of plane tickets where the planes are owned.[51] Bolt's supplies are clearly not 'in-house supplies', even on HMRC's own definition. Bolt does not own or hire the vehicles, does not provide the fuel, does not repair the vehicles, etc. Bolt buys in the fundamental transportation service from the driver, who provides both the driving services and the means of transportation, including the vehicle and the fuel.

44. 'In-house' cannot possibly extend to services where the re-supplier adds value for the customer by, for example, identifying the service which is appropriate to the customer's needs, providing a complaints service, packaging disparate elements into a single service,

[49] *Madgett and Baldwin*, §8 (and in general).

[50] Case C-557/11 *Kozak v Dyrektor Izby Skarbowej w Lublinie* [2012] All ER (D) 13, §8 (and in general).

[51] *MyTravel*, §6 (and in general).

processing bookings, providing a website and app etc. All of those services are routinely provided by almost all 'tour operators' of any sort.

45. The relevant test is whether the travel service itself (e.g. the accommodation or the transport) which is bought in by the 'tour operator' for re-supply is processed or altered into something else.

46. As HMRC themselves argued successfully in *Green Express Railtours*, which concerned a re-supplier of train journeys in the UK who added to the offering by supplying stewards and catering, the supply of the train journeys fell within TOMS because "*they were supplied without material alteration or further processing, the additional services offered by the Appellant serving only to enhance the transport rather than to change it into something else*" (emphasis added).[52]

47. Bolt's services relate to the booking of a bought-in travel service, just as any tour operator's services do: it offers a service by means of which the customer can be provided with a suitable service, can book the service, can pay for the service, can be assured of certain standards being met by the service etc. None of that alters the fundamental character of the transportation service itself, which Bolt buys in and resupplies.

48. Judges Meade and Greenbank were therefore correct to hold at §§109-110 in the UT Decision **[CB/6/99-125]** that:

> *"109. In the present case, if we undertake the exercise specified by the Upper Tribunal in Sonder UT to determine whether the supplies bought-in by Bolt are provided for the direct benefit of the traveller, we have to compare the supplies bought-in by Bolt – i.e. the services of the drivers – to the supplies made to Bolt's customer. Having done so, we agree with the FTT that the supplies made by the drivers are made for the direct benefit of the traveller:*
>
> > *(1) The driver provides the services of conveying the customer from A to B, in a vehicle that is properly maintained, insured, taxed and has a PHV licence. The nature of those services does not change when they are provided to the customer.*
> >
> > *(2) The additions to the supplies of the drivers' services that are provided by Bolt – the reservation service and payment service through the app – do not alter the nature of the supply that is made by the driver that the customer receives. They may add value to that supply, but no more than a traditional travel agent who organizes a journey for a client, makes the reservations, and arranges payment to providers of the transport services.*

[52] *Green Express Railtours*, §13.

> *(3) Ms Mitrophanous KC argued that the fact that Bolt is a licensed PHV operator and that licence is necessary if the services of the driver are to be provided lawfully through the platform demonstrates that the supply made by the driver is materially altered when it is made by Bolt to the customer. We disagree. The supply made by the driver is not materially changed. As Ms Sloane KC pointed out, the PHV operator's licence is required by any person who operates the reservation service. It does not affect the nature of the supply that is made by the driver the benefit of which is received by the customer*
>
> *110. For similar reasons, we also agree with the FTT that the services of the drivers are not subsumed within a wider "in-house supply" made by Bolt. The services of the drivers in conveying the passenger from A to B in properly maintained, insured and taxed vehicle remain the same. They are not materially altered so that what the customer receives is fundamentally different from the services that the driver provides."*

(ii) Response to HMRC's points

49. Under their Ground 2 **[CB/1/2-24]**, HMRC complain that the UT erred in failing to consider HMRC's argument that Bolt's supplies were neither 'materially altered or further processed' and/or 'in-house' supplies. This complaint discloses no error of law.

50. First, HMRC complain in their GOA **[CB/1/2-24]** that "*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 tour operator/travel agent's own suppliers (to whom the actual provision of the service is sub-contracted)*"[53]. However, there is no requirement in TOMS that travel services must be available by an alternative means than via the resupplier. HMRC do not point to any authority to support this as a relevant factor. In *Alpenchalets*, the business model was that the company "*rents houses from their owners and then lets them for holiday purposes to its customers. On arrival the owners or their agents provide further services to the individual customers, such as cleaning of the accommodation and, in some cases, a laundry and 'bread roll' service*". That resupply fell squarely within TOMS. There is no suggestion that the accommodation in those houses could be "*independently obtained*" by travellers. The resupplier, *Alpenchalets*, sourced the houses and made them suitable and available for bookings.

51. Secondly, HMRC complain that "*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*

[53] HMRC skeleton argument, §37 **[CB/3/46-71]**.

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'"[54]. There is no such error and HMRC fail to identify how a test of a "lesser degree of alteration" was applicable and would make any material difference to the UT's conclusion. The UT noted at §108 that: "*Even if there is a distinction – which we doubt - there must be a significant overlap between bought-in supplies that are not provided directly for the benefit of the traveller and those which form part of an in-house supply.*"

52. Thirdly, HMRC complain that the UT focused on the Driver rather than on Bolt and that key to Bolt's role is the provision of a platform/app to locate the driver, take a booking, calculate a fare, receive payment etc[55]. This is simply wrong: the UT addressed the role of Bolt at §109(2) and (3). As the UT noted, HMRC's argument about Bolt's role is true of many traditional tour operators. The service provided by a tour operator to its customer is different from, and adds value to, the supply provided by the hotelier or transport provider to the tour operator; the tour operator provides a booking service, organises the travel and takes payments. However, the core travel service being resupplied is the same: the provision of accommodation or the provision of transportation.

53. As to HMRC's licensing arguments, HMRC place heavy emphasis on the fact that Bolt holds the Private Hire Vehicle Operator's Licence. However, that does not transform the bought-in service into an "in-house service". It is commonplace for tour operators to obtain necessary licences for selling travel services and to put in place safety measures: ATOL licences are required by tour operators to sell flights (see the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012). The tour operator in *Green Express Railtours* provided rail stewards, which it was required to do by law for safety reasons.

54. The Private Hire Vehicle Operator's Licence must be obtained by anyone who provides the *booking* service. The operator's licence is only one of three relevant licences for private hire vehicles: the other licences are the driver PHV licence and the vehicle PHV licence. The drivers, not Bolt, supply the driver PHV licence and vehicle PHV licence. By the driver

[54] HMRC skeleton argument, §39 **[CB/3/46-71]**.

[55] HMRC skeleton argument, §40 **[CB/3/46-71]**.

PHV licence and the PHV vehicle licence (which must be obtained and held by the driver), the driver is subject to extensive rules and supervision by the regulator[56].

1) New applicants for driver PHV licences are subjected to rigorous checks and assessments. At the outset, they are required to obtain and disclose various original documents (including confirmation of an enhanced DBS check and permission to be in the UK). Further, they must pay a fee, undertake a physical fitness assessment and pass (i) an English language test, (ii) a safety, equality and regulatory understanding assessment and (iii) a topographical skills assessment. Upon successful application, drivers are then subject to stringent conditions "*designed to protect the public*".

2) In order to apply for (or renew) a vehicle PHV licence, the driver must book a "vehicle inspection" (for a cost) and attend a vehicle inspection centre with copies of various original documents, which the driver must also obtain. These include any existing vehicle licence, the DVLA registration document, insurance documents, an MOT certificate, etc.. Upon successful application, drivers are then responsible for complying with stringent licensing conditions, including requirements to present the vehicle on request for inspection, comply with certain advertising and signage restrictions, ensure that the vehicle is maintained to approved standards, etc..

55. As to the variety of other features to which HMRC point, it is typical for 'traditional' tour operators to impose contractual conditions on suppliers concerning safety, insurance, communications, etc. and take steps to hold suppliers accountable to those conditions (e.g. through audits and inspections). See, for example, the clauses recorded in *Thomas Cook Tour Operations Ltd and another v Louis Hotels S.A.* [2013] EWHC 2139 (QB) and *Cosmos Holidays Plc v Dhanjal Investments Ltd* [2009] EWCA Civ 316.

56. Bolt relies in full on its witness evidence, in which it addresses each factor relied upon by HMRC in its alternate cases and explains why that factor is inconsequential: see the Witness Statement of Mr Ryan and the associated Exhibits and Footnotes.

[56] Bolt here focuses on the position in London. However, to be clear, it is necessary in all regions across the UK for drivers to obtain and hold driver and vehicle licences. See PHV licence information in bundle (reference to follow)

57. Fourthly, HMRC appeal on the ground that the UT should have found that the FTT applied the wrong test by considering whether the supplies were for the "*direct benefit*" of the travel agent or the traveller[57] **[CB/1/2-24]**. HMRC's complaint is very difficult to discern: in *Sonder*, HMRC's own case is that the "*direct benefit*" test is applicable and this was upheld by the Upper Tribunal in *Sonder* at §94: "*It ought to be sufficient to say that the scheme will apply where there has not been a material alteration or further processing of the bought-in supply such that what is bought-in is not supplied for the direct benefit of the traveller. That is the test the FTT was required to apply*".

58. As that extract shows, there is not a dichotomy between, on the one hand, considering the extent of material alteration or further processing, and, on the other hand, considering whether what is bought-in is not supplied for the direct benefit of the traveller. Furthermore and in any event, the UT considered the different formulations of the test and upheld the FTT Decision on this issue by taking into account both the extent of material alteration and whether the bought-in supplies were provided for the direct benefit of the traveller: §§109-110 **[CB/6/99-125]**.

59. For the reasons set out above, the UT was correct to hold in the UT Decision **[CB/6/99-125]** that Bolt supplies the services of the drivers to the passengers without material alteration or further processing. HMRC's complaints to the contrary disclose no errors of law and should be dismissed.

C. CONCLUSION

60. For the reasons set out above (as well as those which Bolt advanced before the FTT and the UT), Bolt's resupply as principal of passenger transportation services falls within TOMS. Bolt's case is consistent with the case law and HMRC's own interpretation of the law in the TOMS Notice.

61. Bolt respectfully requests that HMRC's appeal be dismissed with an order that HMRC pay Bolt's reasonable costs.

[57] HMRC skeleton argument, §41 **[CB/3/46-71]**.

VALENTINA SLOANE KC
JENN LAWRENCE

Monckton Chambers
18 July 2025