

Lady Justice Falk:

Introduction

1. This is an appeal by HMRC against a decision of the Upper Tribunal (“UT”) that supplies of on-demand mini-cab services by the respondent, Bolt Services UK Limited (“Bolt”), fell within the Special Scheme for Travel Agents (the “Scheme”) set out in Articles 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 (the Principal VAT Directive, or “PVD”). That scheme, which is better known in this jurisdiction as the Tour Operators’ Margin Scheme, was implemented by what is now s.53 of the Value Added Tax Act 1994 (“VATA”) and the Value Added Tax (Tour Operators) Order 1987 as amended (the “TOMS Order”).
2. It might seem strange at first sight that supplies made by Bolt should be regarded as being akin to supplies made by a travel agent or tour operator, but that is, in effect, the conclusion reached both by the First-tier Tribunal (“FTT”) and by the UT in this case, based on the relevant CJEU case law. The critical issue in this appeal is whether that is indeed the effect of those authorities. I have concluded that it is not, and that HMRC’s appeal should therefore be allowed.
3. We are grateful for the assistance provided by the submissions of Eleni Mitrophanous KC and Charlotte Brown for HMRC, and Valentina Sloane KC and Jenn Lawrence for Bolt.

The background facts

4. The relevant facts can be summarised fairly shortly.
5. Bolt is part of an international group that provides a “global mobility platform” offering a range of services in over 400 cities. The services include transport by private hire vehicle (“PHV”). Bolt is the group’s licensed PHV operator in the United Kingdom. Bolt operates in various UK cities, with London its largest market.
6. Bolt’s platform enables customers to use a smartphone app to request a PHV to take them from point A to point B. The service is available 24 hours a day and 7 days a week. There is also an option to select the type of vehicle, such as standard, luxury or “XL”. The platform accepts the request and provides an estimated fare and arrival time. It also allocates the journey to a driver, generally on the basis of proximity. Drivers may choose whether or not to accept the work, and if they do not Bolt will allocate the ride to the next available driver.
7. The platform first became operational in London in 2019 before being expanded to other UK cities. Drivers register with Bolt and are granted access to the platform. They provide their own vehicles, which they are responsible for maintaining and insuring, and obtain PHV licences for their vehicle and for themselves. Bolt obtains its own licences to act as operator.
8. The FTT found that Bolt provides transport to a diverse group of customers who choose to travel via Bolt for a variety of different reasons. The customers include UK residents travelling for personal and business reasons, and overseas tourists. Figures for the period between August 2022 and May 2023 showed that Bolt had provided 35.9 million PHV

journeys, of which just over 1.8 million were provided to customers with a Bolt account that had been registered overseas. Out of the 35.9 million, 24,300 were journeys of 100km or more; 274,750 50km or more; and 1,258,490 25km or more. Some of the journeys were to and from transport hubs such as train stations (8.9% of the total) and airports (2.3% of the total).

9. Bolt offers its customers assistance via its app and website, and by email and a 24-hour phone line. Its website includes a blog offering travel advice and suggestions.
10. Initially, Bolt acted on an agency basis. As such, and bearing in mind that drivers would themselves generally be below the VAT registration threshold, the normal VAT rules would have allowed Bolt to ensure that VAT was chargeable only on its commission. However, from August 2022 Bolt has, for regulatory reasons, acted as principal. It therefore contracts with drivers for their services and, separately, with customers, who have no contractual relationship with the drivers. If the normal VAT rules applied, their effect would be that Bolt would be required to charge VAT on the entire fare.
11. This explains why the sums involved are substantial. As discussed below, application of the Scheme would result in Bolt charging VAT only on its margin, rather than on the entire fare. We were told that Bolt's appeal involves an estimated £190m, and were informed that other cases with sums well in excess of £1bn are awaiting its outcome.
12. In October 2022 Bolt asked HMRC for a ruling that the Scheme applied to its ride-hailing services. By a letter dated 28 February 2023 (the "Decision"), HMRC set out their considered position, rejecting Bolt's arguments that the Scheme applied. Bolt appealed to the FTT against the Decision. The FTT allowed the appeal, and the UT agreed with the FTT's conclusion. This appeal is brought with the UT's permission.

The legislation

13. Articles 306 to 310 of the PVD provide, so far as relevant:

"Special scheme for travel agents

Article 306

1. Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.

...

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 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."

(Article 309, not reproduced or considered further below, deals with cases where services are performed outside the EU. Its effect is to treat that element as exempt.)

14. In summary, therefore, where the Scheme applies:
 - a) Transactions "in respect of a journey" are treated as a single service supplied by the travel agent, taxable in the Member State where the travel agent is established.
 - b) The taxable amount is the margin, that is the difference between the VAT exclusive amount payable by the traveller and the cost of supplies to the travel agent that are for the "direct benefit" of the traveller.
 - c) VAT charged on those "direct benefit" services is not deductible.
15. Section 53 VATA relevantly provides:

"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."

(Sub-section (2) provides more detail about the scope of the permissible modification, including as to the nature, value and time of supply.)

16. The relevant parts of the TOMS Order are Articles 2 and 3, which provide 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.

...”

17. An important point to note is that it is common ground that the UK legislation should be construed in conformity with the PVD. Both parties relied entirely on CJEU authorities in oral submissions. Nonetheless, Ms Sloane emphasised wording in the UK legislation, in particular the reference in s.53(3) to “services of any kind commonly provided by tour operators or travel agents” (emphasis supplied).

The Tribunal decisions

The FTT’s decision

18. The FTT first considered the CJEU case law and made observations about the scope of the Scheme, before turning to the UK legislation. It decided that, consistently with both parties’ positions, it was possible to interpret the TOMS Order in a way that was consistent with the PVD. This was notwithstanding the fact that there is no express counterpart in the PVD to the requirement in Article 3(1)(b) of the TOMS Order that onward supplies must be made “without material alteration or further processing”. The FTT regarded this as equivalent to the CJEU’s recognition that “in-house” supplies are excluded from the Scheme.
19. The FTT then turned to the evidence of the single witness, Mr Joshua Ryan (Bolt’s UK and Ireland Country Manager), and its findings of fact. Most of these were uncontroversial, but I need to set out some key paragraphs in full:

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

92. I accept Mr Ryan’s evidence that some customers used Bolt’s PHV services as an alternative to other means of transport although I am unable to determine on the evidence provided whether the typical customer regarded the Bolt PHV service as similar or comparable to the services provided by, for example, airplane, train, bus and other taxi operators. I also accept that Bolt competes to some extent with those operators (obviously, more so with other taxi and bus services than with train and airline operators). At a general level, Bolt competes with providers of transport services in the areas and over the routes covered by Bolt. Bolt is clearly in direct competition with other providers of PHV services whether single driver businesses or other large

app-based operators or anything in between. The evidence suggested that the different providers of PHV services competed on price, convenience and estimated time of arrival (but mainly on price). I accept that if some operators are within the scope of and able to apply the TOMS while others who supply materially similar services are excluded from doing so then there would be a distortion of competition.”

20. After considering the parties’ submissions, the FTT noted at [103] that it was common ground that “Bolt was not a travel agent or tour operator within the normal meaning of those terms”. At [104] it identified the issues as being whether Bolt provides services of a kind commonly provided by tour operators or travel agents, and whether the drivers’ services are provided by Bolt without material alteration or further processing. The FTT went on:

“105. The first issue is whether what Bolt is doing is a service of the kind commonly provided by tour operators or travel agents. The answer depends on how Bolt’s services are viewed for the purposes of comparing them with the services provided by tour operators and travel agents. At a high level, Bolt supplies passenger transport and it is clear from the case law referred to above that transport is a travel service. That corresponds, at the high level, with the kind of supplies made by tour operators or travel agents when they supply transport by planes, trains and coaches. More particularly, Bolt supplies on-demand ride hailing services for passenger transport from point A to point B, mostly within urban areas. While some of the evidence suggested that tour operators and travel agents supplied point to point transport, eg airport pick-ups and transfers, I was not satisfied that they commonly provided on-demand rides from point A to point B which were the same as or similar to those provided by Bolt. In any event, for the reasons set out below, I consider that the correct approach is to take a high level or general view when considering whether services are of a kind commonly provided by tour operators or travel agents.”

21. In the discussion that followed, the FTT explained why it considered that a “high level” approach was appropriate, before saying this:

“108. If I am wrong and it is necessary to have regard to the mode of transport then I note that the Advocate General in *Madgett and Baldwin* took the view that where a hotel arranges for a taxi to take one of its guests to a station or airport, the ride with the hotel’s other services would not fall within the scope of the EU special scheme (see [23] above). The Advocate General did not take that view because arranging a taxi ride to a station or airport was not the kind of service commonly provided by tour operators or travel agents but because, in his view, the taxi service was ancillary to the provision of hotel accommodation. The obvious inference is that if the transport by taxi had not been ancillary then it would have fallen within the scope of the special scheme. There seems, therefore, to be no reason why a taxi ride (and thus a PHV journey) cannot be regarded as a service of a kind commonly provided by tour operators or travel agents.

109. I do not consider that the fact that Bolt provides rides to and from places, eg a supermarket, restaurant or cinema, which travel agents do not typically

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

22. The FTT also rejected HMRC’s argument that travel agents and tour operators do not generally provide services on demand, observing that the distinction was one of timing and could not be determinative. In addition, the FTT rejected HMRC’s argument that the drivers’ services were materially altered by Bolt. Further, if (contrary to the FTT’s view) additional elements were required beyond the provision of transport, then what Bolt provided was sufficient, “namely: the ability to arrange a journey with various options by using the Bolt mobile app; help and assistance available 24/7 via the app or Bolt’s website as well as by email and telephone; and information and advice on certain places served by Bolt which can be found in articles on Bolt’s website and in its blog” (FTT decision at [110] to [113]).

The UT’s decision

23. The UT agreed with the FTT that a broad, high-level approach was supported by the authorities, concluding that a detailed comparability exercise was neither required by the case law nor desirable because it would be difficult and resource-intensive (UT decision at [72], [73], [86] and [92]). The UT did indicate at [72] and [92] that it would not go quite as far as the FTT, saying at [72] that it did not think it could be concluded that “on all possible facts, everything which is ‘passenger transport’ falls, *per se* and with no possibility of any further consideration, within the scheme”. However, this was immaterial on the facts because the UT was not persuaded by the factors relied on by HMRC, such as the mode of transport, the locations covered (transfers to transport hubs being a small minority of journeys), the on-demand nature of the service or the question of which services compete with each other (UT decision at [74]-[88]).
24. The UT also agreed with the FTT’s conclusion as to the absence of material alteration or processing. It noted the absence of any reference in the PVD to “in-house supplies”; rather Articles 308 and 310 refer to services provided for the “direct benefit” of travellers. Applying that concept, it agreed with the FTT that the drivers’ supplies were made for the direct benefit of travellers, and that additions made by Bolt might add value but did not alter the nature of the supplies. It also rejected HMRC’s reliance on the existence of Bolt’s own PHV operator licences and concluded that, similarly, the services of drivers were not subsumed within an “in-house” supply by Bolt.

The grounds of appeal

25. HMRC’s grounds of appeal are, in outline:

Ground 1: The UT erred in holding that a broad, high-level approach was required to decide whether supplies fell within the Scheme, and/or to the extent that it considered that the Advocate General’s opinion in *Madgett & Baldwin* (see below) provided an alternative basis for the inclusion of Bolt’s supplies within the Scheme.

Ground 2: The UT erred in concluding that the drivers’ supplies to Bolt were not “materially altered or further processed” by Bolt and that Bolt’s supplies to its customers were not “in-house” supplies.

26. Bolt has filed a Respondent’s notice which supports the UT’s reasoning but also relies on Mr Ryan’s evidence to support the proposition that Bolt has many of the hallmarks of “traditional” tour operators and cannot properly be distinguished from them, and makes the point that under the regulatory regime even “on-demand” PHV rides must be pre-booked.

The principal relevant CJEU authorities

27. As a preliminary point, the general approach to interpreting a provision of EU legislation is well settled. It falls to be determined by “considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part”: see *The Learning Centre (Romford) v Revenue and Customs Commissioners* [2020] EWCA Civ 452, [2020] STC 898 at [99].
28. The scope of the Scheme was first considered by the Court of Justice in Case C-163/91 *Van Ginkel Waddinxveen BV v Inspecteur der Omzetbelasting, Utrecht* [1996] STC 825 (“*Van Ginkel*”). At that time the Scheme was set out in Article 26 of Directive 77/388/EEC (the Sixth Directive).
29. The taxpayer, Van Ginkel, was a tour operator established in the Netherlands. It offered “motoring holidays” in that jurisdiction in which it provided accommodation in bungalows owned by third parties and the customer provided their own vehicle. Van Ginkel charged VAT on the margin, but the Dutch tax authorities contended that VAT should be charged on the whole price on the basis that the supplies comprised a letting of holiday accommodation. In observations reiterated in later cases, the Court explained the rationale for Article 26 as follows:

“12. Article 26 of the Sixth Directive defines the special system of VAT applicable to travel agents and tour operators.

13. The services provided by these undertakings most frequently consist of multiple services, particularly as regards transport and accommodation, either within or outside the territory of the member state in which the undertaking has established its business or has a fixed establishment.

14. The application of the normal rules on place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations.

15. In order to adapt the applicable rules to the specific nature of such operations, the Community legislature set up a special VAT scheme in art 26(2), (3) and (4) of the Sixth Directive...”

30. The key issue in *Van Ginkel* was whether the Scheme could apply where only a single service was supplied, namely accommodation, or whether transport also had to be included. The Court held that transport did not need to be provided, saying this:

“23. Such a requirement would run counter to the aims of art 26 of the directive. As has already been indicated, those provisions adapt the rules governing VAT to the specific nature of the operations of travel agents. To meet the needs of customers, such agents offer widely differing types of holidays and journeys, allowing the traveller to combine, as he wishes, transport, accommodation and any other services which those undertakings may provide. The exclusion from the field of application of art 26 of the Sixth Directive of services provided by a travel agent on the ground that they cover only the accommodation and not the transport of the traveller would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the directive.”

31. The next significant authority is Joined Cases C-308/96 and C-94/97 *Customs and Excise Commissioners v Madgett & Baldwin* [1998] STC 1189 (“*Madgett & Baldwin*”). The taxpayers, Mr Madgett and Mr Baldwin, ran a hotel in Torquay. The majority of their clients were elderly and lived in the North of England. During the high season the taxpayers arranged coaches to collect and return their clients from and to pick-up points in the North, and to provide a sight-seeing excursion during their stay. Around 90% of the hotel’s customers used the facility. They paid a single charge which included the travel, accommodation and excursion. The taxpayers challenged a decision by Customs & Excise that the Scheme applied and the tribunal allowed the appeal. On a further appeal, Brooke J made a reference to the Court of Justice, which reformulated the questions posed as whether Article 26 applies to a “hotelier who, in return for a package price, offers his guests, in addition to accommodation, return transport between distant pick-up points and the hotel and an excursion by coach during their stay at the hotel, those transport services being bought in from third parties” ([15]).

32. Messrs Madgett and Baldwin were obviously hoteliers, not travel agents or tour operators. On its terms, Article 26 (and now its PVD equivalent) referred only to travel agents and tour operators. The Court concluded that this did not prevent the Scheme from applying. It reasoned as follows:

“18. It must be borne in mind at the outset that the services provided by travel agents and tour operators most frequently consist of multiple services, in particular transport and accommodation, supplied either within or outside the territory of the member state in which the undertaking has established its business or has a fixed establishment. 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. In order to adapt the applicable rules to the specific nature of such operations, the Community legislature set up a special VAT

scheme in art 26(2), (3) and (4) of the Sixth Directive (see *Beheersmaatschappij Van Ginkel Waddinxveen BV v Inspecteur der Omzetbelasting, Utrecht* (Case C-163/91) [1996] STC 825 at 840, [1992] ECR I-5723 at 5748, paras 13–15).

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

20. Furthermore, the underlying reasons for the special scheme for travel agents and tour operators are equally valid where the trader is not a travel agent or tour operator within the normal meaning of those terms, but effects identical transactions in the context of another activity, such as that of hotelier.

21. To interpret art 26 of the Sixth Directive as applying solely to traders who are travel agents or tour operators within the normal meaning of those terms would mean that identical services would come under different provisions depending on the formal classification of the trader.

22. Finally, as the Advocate General observes in para 32 of his opinion, to make application of the special scheme under art 26 of the Sixth Directive depend on a prior classification of a trader would prejudice the aim of that provision, create distortion of competition between traders and jeopardise the uniform application of the Sixth Directive.

23. It must therefore be held that the scheme under art 26 of the Sixth Directive applies to traders who organise travel or tour packages in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity, even if they are not, formally speaking, travel agents or tour operators.

24. However, as the Advocate General notes in para 36 of his opinion, traders such as hoteliers who provide services habitually associated with travel frequently make use of services bought in from third parties which take up a small proportion of the package price compared to the accommodation and are among the tasks traditionally entrusted to such traders. Those bought-in services do not therefore constitute for customers an aim in itself, but a means of better enjoying the principal service supplied by the trader.

25. In such circumstances the services bought in from third parties remain purely ancillary in relation to the in-house services, and the trader should not be taxed under art 26 of the Sixth Directive.

26. Where, however, a hotelier habitually offers his customers, in addition to accommodation, services which go beyond the tasks traditionally entrusted to hoteliers, and which cannot be carried out without a substantial effect on

the package price charged, such as travel to the hotel from distant pick-up points, such services are not to be equated with purely ancillary services.

27. In view of the foregoing, the answer to the questions referred by the High Court must be that art 26 of the Sixth Directive applies to a hotelier who, in return for a package price, habitually offers his customers, in addition to accommodation, return transport between certain distant pick-up points and the hotel and a coach excursion during their stay, those transport services being bought in from third parties.”

33. As can be seen, the Court referred at [24] to para 36 of the Advocate General’s opinion. The relevant extract from the opinion of Advocate General Léger is as follows:

“36. I consider that a service is ancillary if, first, it contributes to the proper performance of the principal service and, second, it takes up a marginal proportion of the package price compared to the principal service. It does not constitute an object for customers or a service sought for its own sake, but a means of better enjoying the principal service.

37. So that is the case, for example, with transport which a hotel might arrange locally to take its customers to nearby destinations.”

34. Readers familiar with VAT will recognise the concept of ancillary elements to a supply, reflected shortly after *Madgett & Baldwin* in the leading case of Case C-349/96 *Card Protection Plan Ltd v Customs and Excise Commissioners* [1999] STC 270 (“*CPP*”). In that case the Court confirmed that supplies should not be artificially split, and that there will be a single supply where there is an ancillary element which “does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied” (*CPP* at [30], citing *Madgett & Baldwin* at [24]). In such a case the tax treatment of the supply would be determined by its principal element. Thus, for example (and picking up on the Advocate General’s example), a taxi pick-up or drop-off at a local station arranged by a hotel for a guest might very well be treated as ancillary to a supply of accommodation.
35. The next issue in *Madgett & Baldwin* was how to apply the Scheme where, as in that case, the package provided included “in-house” services as well as services bought in from third parties. In rejecting an argument that the Scheme should be applied to in-house services the Court observed at [33] that Article 26 made no reference to such services, its essential aim being “to avoid the difficulties to which traders would be exposed by application of the general principles of the Sixth Directive concerning transactions involving the supply of services bought in from third parties”, and at [34] that “it should be recalled that the scheme under art 26 constitutes an exception to the normal rules of the Sixth Directive and must be applied only to the extent necessary to achieve its objective”.
36. Case C-200/04 *Finanzamt Heidelberg v Ist internationale Sprach-und Studienreisen GmbH* [2006] STC 52 (“*iSt*”) concerned a company that arranged programmes for high school and college students to study abroad in the United States for between 3 and 10 months. In addition to the educational provision and support, high school students were provided with board and lodging with a host family as well as flights and domestic connections. College students arranged their own travel and lodged in the selected

college. The issue was whether the Scheme applied to iSt. It was held that it did. After referring to the rationale for the Scheme, the Court said this:

“22. The court has held in that regard that the underlying reasons for the special scheme for travel agents and tour operators are equally valid where the trader is not a travel agent or tour operator within the normal meaning of those terms, but effects identical transactions in the context of another activity, such as that of hotelier. To interpret art 26 of the Sixth Directive as applying solely to traders who are travel agents or tour operators within the normal meaning of those terms would mean that identical services would come under different provisions depending on the formal classification of the trader (*Madgett & Baldwin*, paras 20 and 21).

23. In the case in the main proceedings, it is not in dispute that iSt is not a travel agent or tour operator within the normal meaning of those terms. It is however necessary to decide whether it provides services identical to those of a travel agent or tour operator.

24. It must be found that, in the course of its activities in relation to the ‘High School’ and ‘College’ programmes, iSt provides services which are identical or at least comparable to those of a travel agent or tour operator, in that it offers services involving the travel by plane of its customers and/or their stay in the host state and, in order to provide services generally associated with that type of activity, it uses the services of other taxable persons within the meaning of art 26 of the Sixth Directive, namely a local partner organisation and airlines.”

It can be seen that at [24] the Court extended what it said in *Madgett & Baldwin* about “identical” transactions to ones that are “at least comparable to those of a travel agent or tour operator”.

37. The Court then explained that the travel services in that case could not be regarded as ancillary to the supply of education, before addressing arguments from the German and Cypriot governments to the effect that journeys and stays of the nature in question could not fall within Article 26 because they were not “travel” for the purposes of Article 26; as the Cypriot government put it, they were not the usual services provided by a travel agent. The Court rejected this argument, saying:

“34. It is true that that article does not include a definition of the concept of travel. However, in applying that article there is no need to set out in advance the factors constituting travel. That provision applies provided that the trader in question is a trader for the purposes of the special scheme for travel agents, acts in its own name and uses in its operations supplies and services provided by other taxable persons. More particularly, in respect of operations for which the trader should be taxed under art 26 of the Sixth Directive, the only relevant criterion for the application of that article is whether or not the travel service is ancillary.

35. Furthermore, if the observations submitted in that respect, in particular by the German government, were followed, art 26 of the Sixth Directive would apply on the basis of the objective of the travel offered and the duration

of the stay in the host state. Such an interpretation would have the effect of adding an additional condition to any application of that article.

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

37. Furthermore, it is clear that imposing such an additional condition for the implementation of art 26 of the Sixth Directive might amount to drawing a distinction between traders on the basis of the purpose of the stay which they offer in the host state and would unquestionably distort competition between the traders concerned and compromise the uniform application of that directive.”

38. The next case I should mention is Case C-291/03 *MyTravel plc v Commissioners of Customs & Excise* [2006] 1 CMLR 13 (“*MyTravel*”). MyTravel sold packaged holidays but provided its own aircraft. What was in issue was the method of apportionment between the provision of third-party accommodation (within the Scheme) and “in-house” services of passenger transport, which were zero-rated. Of relevance is the Court’s comment at [39] that the purpose of the Scheme was “to adapt the rules applicable 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”, but was “not intended to simplify the accounting requirements entailed by the normal VAT scheme”. There might be a need for “fairly technical apportionments”.
39. Case C-128/05 *Commission v Austria* [2008] STC 2610 (“*Austria*”) decided that Austria had not been permitted to apply a low-turnover simplification measure to supplies within the Scheme. At [22], in discussing the scheme for small undertakings in Article 24 of the Sixth Directive, the Court repeated that, “[l]ike the other special schemes provided for in arts 25 and 26 of the directive” it should be applied only to the extent necessary to achieve its objective, and added that it was “settled case law that any exception to or derogation from a general rule is to be interpreted strictly”.
40. Case C-31/10 *Minerva Kulturreisen GmbH v Finanzamt Freital* [2011] STC 532 (“*Minerva*”) concerned a German travel agent that bought and resold opera tickets, both in conjunction with other services and on a standalone basis. It sought to apply the Scheme to the standalone as well as the packaged supplies. The CJEU rejected this. The Court reiterated that, as an exception to the normal rules, the Scheme must be applied only to the extent necessary to achieve its objective and that its objective was to adapt the applicable rules to the “specific nature of the activity of travel agents and tour operators” ([16] and [17]), it being clear from the case law that such activity is:
- “... characterised by the fact that, in most cases, the services provided by such undertakings consist of multiple services, in particular transport and accommodation, supplied partly outside and partly inside the territory of the member state in which the undertaking has established its business or has a fixed establishment. 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...” ([18])

As can be seen, this restates the rationale originally set out in *Van Ginkel*, but making it slightly clearer that the typical characteristics include activity across borders (“services ... supplied partly outside and partly inside the territory of the member state in which the undertaking has established its business”).

41. The CJEU’s conclusion was reasoned as follows:

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

22. It also follows from para 24 of *Van Ginkel* that where a service is not coupled with travel services, in particular transport and accommodation, it does not come within the scope of art 26 of the Sixth Directive.

23. It follows from the foregoing considerations that the sale by a travel agent of opera tickets in isolation, without the provision of a travel service, does not come under the special scheme provided for in art 26 of the Sixth Directive.

24. It should also be observed that the application of that special scheme to an activity such as that at issue in the main proceedings, where the travel agent merely sells tickets for performances without the provision of a travel service, would distort competition, in view of the fact that a given activity would be taxed differently according to whether or not the trader selling those tickets is a travel agent.

25. The answer to the question referred is therefore that art 26 of the Sixth Directive is to be interpreted as not applying to the sale by a travel agent of opera tickets in isolation, without the provision of a travel service.”

42. The CJEU’s decision in Case C-220/11 *Star Coaches s.r.o v Finančni reditelstvi pro hlavni mesto Prahu* EU:C:2012:120 (“*Star Coaches*”) took the form of a reasoned order, on the basis that the answer to the question referred could clearly be deduced from existing case-law ([17] and [18]). It needs to be read in the light of the *Alpenchalets* decision discussed below.

43. *Star Coaches* was a Czech-based coach operator that provided coach transport between Member States using both its own fleet of coaches and other transport companies as subcontractors. Its only customers were Czech-based travel agents. The tax authority decided that its activities fell within the Scheme. One of the questions referred by the national court was whether the Scheme could apply where only transport was supplied and not other services.

44. The Court concluded that a transport company which merely provided coach transport without other services was not within the Scheme. However, as we will see its reasoning was based on a misreading of *Van Ginkel*, which it considered had decided that a single service was not enough without other services such as information and advice. It held that because Star Coaches only supplied transport to travel agents the services supplied by it were “not identical to those offered by a travel agent or tour operator”.
45. Case C-557/11 *Maria Kozak v Dyrektor Izby Skarbowej w Lublinie* EU:C:2012:672 (“*Kozak*”) confirmed that the in-house element of a packaged supply by a travel agent does not fall within the Scheme, just as in *Madgett & Baldwin* the Scheme did not apply to the accommodation element. In *Kozak* there was an in-house provision of coach transport by Ms Kozak, a Polish travel agent, as part of a package with accommodation and meals. The in-house services had to be excluded despite them forming an essential part of the package ([25]). On the facts this benefitted Ms Kozak, who was able to apply a reduced rate to the transport element, rather than the standard rate applicable if the Scheme applied. (This is one of a number of examples illustrating the fact that application of the Scheme will not always be to the advantage of the taxpayer. In the UK, for example, supplies of transport in vehicles designed to carry more than 9 people are zero-rated.)
46. Case C-189/11 *Commission v Kingdom of Spain* EU:C:2013:587 (“*Spain*”) concerned infringement proceedings in which the Commission contended that Spain had not properly implemented the Scheme. One of the issues was whether Spain correctly applied the Scheme to any type of customer, including other operators, or whether it should be limited to “travellers” as the Commission contended. That part of the Commission’s challenge failed. In restating the rationale for the Scheme, the Court added that its objective was to simplify the rules applicable to travel agents and that it also seeks a fair distribution of revenue between Member States, because its effect is to attribute VAT revenue on the bought-in services to the place of their final consumption, and the margin to the place where the agent is established ([59]). (This is the consequence of the non-recoverability of input VAT on the bought-in services pursuant to Article 310.) Spain’s approach was more conducive to achieving those objectives, noting that an operator organising a package and reselling it to another travel agent is the one who “takes on the task of combining several services purchased from various third parties who are subject to VAT”, and must be able to benefit from the Scheme ([60] to [62]).
47. Case C-552/17 *Alpenchalets Resorts GmbH v Finanzamt Munchen Abteilung Körperschaften* EU:C:2018:1032, [2019] BVC 3 (“*Alpenchalets*”) concerned a company, Alpenchalets, which rented properties in Germany, Austria, and Italy from their owners and let them as holiday rentals. It sought the benefit of a reduced rate of VAT available under German legislation for short-term letting. The CJEU reformulated the questions referred as 1) whether “the mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services” was covered by the Scheme, and 2) whether a supply of holiday accommodation within Article 307 could benefit from a reduced rate.
48. In answer to the first question, the CJEU explained at [25] that it had been held in *Van Ginkel* that the “mere supply of accommodation by a travel agent” could be covered by the Scheme, observing that:

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

49. The CJEU further supported its conclusion by reference to *MyTravel*, where there had been a combination of in-house supplies and accommodation, and *iSt* where the taxpayer had supplied education-related services itself and the Court had referred to travel to the host State “and/or” the stay in that State as being sufficient for the Scheme to apply ([27] and [28]). While, as explained in *Minerva*, a supply “unrelated to a journey” does not fall within the Scheme, the “supply by a travel agent of holiday accommodation” did, even if unaccompanied by a supply of transport ([29]).

50. The Court then said that *Star Coaches* did not enable a different conclusion to be reached. That order had confirmed the case-law stemming from *Van Ginkel* and:

“... the Court merely noted, in [*Star Coaches*], that the transport services provided by a trader cannot be covered by Article 306 of the VAT Directive where they are provided, through a subcontractor, not to the traveller himself but to travel agents and that transport operator does not have any other feature which is capable of making its services comparable to those of a travel agent or tour operator.” ([32])

51. The Court therefore concluded that:

“... the mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services, regardless of the importance of those ancillary services, each amount to a single service covered by the special scheme for travel agents.” ([33] and the *dispositif*)

52. The second question was answered in the negative. The Court observed that the Scheme deemed there to be a single service, and that service was not one of the kinds listed in the PVD as permitted to qualify for a reduced rate ([36] to [39]).

53. Case C-108/22 *Dyrektor Krajowej Informacji Skarbowej v C. sp. z o.o.* EU:C:2023:522 (“*C*”) related to a Polish “hotel services consolidator” which purchased accommodation in Poland and abroad and resold it to other businesses. It usually provided only accommodation but, depending on the customer’s expectations, could provide further advice and assistance. The question referred to the CJEU was whether the supply of accommodation, without additional services, was sufficient for the Scheme to be applied. This was answered in the affirmative. The Court observed at [24] that the taxpayer:

“... carries out transactions that are identical, or at least comparable, to those of a travel agent or tour operator. Thus, the referring court observes that, depending on its customers’ needs and expectations, that company also

occasionally provides advice on the choice of accommodation and help with travel arrangements.”

The CJEU relied on the reasoning in *Alpenchalets* to confirm that the supply of holiday accommodation by a travel agent was sufficient for the Scheme to apply, whether or not it was combined with ancillary services ([26] to [28] and [30]).

54. The decision in Case C-763/23 *Direcția Generală Regională a Finanțelor Publice Iași, Direcția Generală Regională a Finanțelor Publice Iași v S. C. Dragoram Tour SRL* EU:C:2024:591 (“*Dragoram*”) was, like *Star Coaches*, in the form of a reasoned order. Only an unofficial translation of the full decision was available, along with an original version in French.
55. The taxpayer was a travel agent which bought from airlines plane tickets to non-EU destinations and then resold them to individuals. One of the issues in dispute was whether the Scheme applied notwithstanding the fact that the taxpayer provided no additional services apart from information and advice services ([25]).
56. After considering the case law including *Alpenchalets* and *C*, the Court observed:

“33. It can therefore be clearly deduced from this case-law that 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.

34. Under these conditions, the response to the second and third questions should be that Article 306 of the VAT Directive should be interpreted as meaning that the supply by a taxable person of airline tickets purchased from other taxable persons and resold to natural persons at a price including commission is subject to the special VAT arrangements applicable to travel agents, regardless of the fact that this supply is not accompanied by additional services other than information and advice services.”

The relevant part of the *dispositif* follows the wording at [34].

57. Drawing the threads together, and without at this stage deciding the core dispute, the effect of the case law may be summarised as follows:
 - a) The rationale for the Scheme lies in the fact that services provided by travel agents and tour operators frequently comprise a multiplicity of services which may also be provided in different territories. The normal VAT rules would entail practical difficulties which could hinder their operations.
 - b) However, in order to avoid complexity and ensure that the aims of the directive are met, that rationale does not prevent the provision of a single service falling within the Scheme, including one provided in a single territory, provided it relates to a journey. In particular, therefore, the provision of accommodation without transport has been held to fall within the scheme (*Van Ginkel*, *iSt* in respect of college

students, *Alpenchalets* and *C*) whereas a standalone supply unrelated to a journey does not (the supply of opera tickets in *Minerva*).

- c) The same reasoning would indicate that a supply of travel alone may fall within the Scheme: see the reference to travel “and/or” a stay in *iSt*, relied on in *Alpenchalets*. *Dragoram* appears to be consistent with this, although the relevant question was framed and answered by reference to a travel agent that also provided information and advice services.
- d) Although Article 306 refers only to travel agents and tour operators, interpreted in accordance with the normal meaning of those terms (*Madgett & Baldwin* at [20] and [21]), that does not prevent other taxpayers from falling within the Scheme who are not travel agents and tour operators, provided they supply identical or at least comparable services (*Madgett & Baldwin* and *iSt*). The rationale for this is that identical services should not be treated differently depending on the formal classification of the trader; to do so would distort competition, prejudice the aim of the Scheme and jeopardise the uniform application of the directive.
- e) What is required is travel. The objective of the travel and duration of a stay are irrelevant. Any such requirement would seriously restrict the scope of the Scheme and, again, distort competition and compromise the uniform application of the directive (*iSt*).
- f) Business to business supplies can fall within the Scheme (*Spain* and *C*).
- g) However, merely ancillary services will not be sufficient to render the Scheme applicable (*Madgett & Baldwin*).
- h) Further, “in-house” supplies are not within the Scheme, even though this requires businesses to conduct what may be difficult apportionments (*Madgett & Baldwin*, *MyTravel* and *Kozak*).
- i) More generally, the CJEU has made clear that the Scheme constitutes an exception to the normal VAT rules and must be applied “only to the extent necessary to achieve its objective” (*Madgett & Baldwin* at [34], repeated in subsequent cases including *Austria*, *Minerva*, *Kozak*, *Spain* and *C*).

The parties’ submissions on Ground 1 in outline

- 58. HMRC’s core argument under Ground 1 challenges the tribunals’ “high-level” approach. Bolt’s concession that it is not a travel agent or tour operator within the ordinary meaning of those terms reflects the fact that such operators are not in the business of providing minicab rides. It follows from the FTT’s conclusions at [92] and [105] that HMRC must succeed. The Scheme does not apply to the transport sector generally, but as the heading in the PVD indicates is a special scheme that provides an exception from the normal rules aimed at the activities of travel agents and tour operators. Bolt’s supplies are neither identical nor comparable to those of travel agents or tour operators as those terms are generally understood, which is what the case law requires.
- 59. Bolt seeks to uphold the tribunals’ approach, and in particular that of the UT. The touchstone of the Scheme is travel, not holidays or tourism. It is not restricted to the

offering of a “traditional” travel agent or tour operator, and “travel” is not defined. It can be local, and its purpose is irrelevant. The CJEU has confirmed that single supplies of accommodation or travel can engage the Scheme, including supplies on a business-to-business basis. HMRC were seeking to draw distinctions based on factors such as the on-demand, 24/7 nature of the service between locations of the customer’s choosing (generally within urban areas), but these distinctions were not supported by the legislation or case law. What Bolt did falls within the terms of the Scheme as applied by the CJEU: it provides travel services as principal using services provided by others, namely the drivers. HMRC’s reliance on the original aim of the Scheme (relating to multiple cross-border services) does not assist, because as the case law has shown that aim has had to be reconciled with other objectives including legal certainty and simplicity, and it is not reflected in the wording of the legislation. Further, Bolt in fact provides services of a kind commonly provided by tour operators.

Discussion

60. I have reached the clear conclusion that Ground 1 should succeed. Properly understood, and based on the FTT’s findings, the Scheme does not apply to Bolt’s on-demand mini-cab services.
61. At one level I follow the logic of Bolt’s approach. I can see how it can be said that a) the Scheme is not restricted to travel agents or tour operators; b) it can apply to a single service, provided it relates to a journey, including one supplied domestically; and c) (despite the continued references to it being applied “only to the extent necessary to achieve its objective”) the Scheme has in fact been applied broadly, including irrespective of the purpose of travel or duration of stay, and to business-to-business supplies. Bolt’s supplies clearly relate to a journey (they are “travel facilities”, using the wording in Article 306) so, the argument goes, it should follow that the Scheme applies.
62. Attractive though the logic appears at first sight, I cannot accept it. It is important to start with a reminder of the basic rationale for the Scheme. The Scheme targets the travel agent and tour operator sector because it is that sector that “most frequently” provides multiple services, including across borders, where the normal VAT rules would entail practical difficulties (*Van Ginkel* at [13] and [14]). Further, the CJEU has consistently emphasised that the Scheme must be applied “only to the extent necessary to achieve its objective”. It is therefore necessary to examine with care why the Scheme has been applied in the way set out in the preceding paragraph before reaching a conclusion.
63. On its terms, Article 306 applies to travel agents and tour operators, expressions that have their ordinary meanings. Bolt rightly agrees that it is neither. The CJEU case law has extended the application of the Scheme to businesses that are not travel agents and tour operators, but only if they effect “identical or at least comparable” transactions.
64. The rationale for the extension is that restricting the Scheme based on a “formal classification” of the trader would prejudice the aim of the Scheme, distort competition and jeopardise the uniform application of the directive (*Madgett & Baldwin* at [21] to [23]). This reflects the obvious point that similar supplies should be treated in the same way. If a hotelier ventures into the packaged holiday business, as Messrs Madgett and Baldwin did, they should not be taxed differently from a conventional tour operator. Similarly, an education provider, like *iSt*, that organises accommodation or travel should be taxed in the same way as if those components had been provided by a travel agent.

65. The FTT was unable to determine whether a typical customer regarded Bolt's PHV services as similar or comparable to services provided by other transport operators, and concluded that it was not satisfied that tour operators and travel agents "commonly provided on-demand rides from point A to point B which were the same as or similar to those provided by Bolt" (FTT decision at [92] and [105], see [19] and [20] above).
66. In my judgment it should have followed from this that Bolt's challenge failed. The relevant services are neither identical nor relevantly comparable. The CJEU's rationale for extending the scope of the Scheme beyond travel agents and tour operators has no application to supplies that are not in fact similar to supplies made by those sorts of businesses. Applying the Scheme to Bolt's supplies is neither necessary to secure the aims of the Scheme or its uniform application, nor would it prevent a distortion of competition. Businesses operating as travel agents and tour operators do not compete in the provision of mini-cab rides.
67. The FTT's reliance on a "high-level approach" was based on references in *Madgett & Baldwin* at [23] and *iSt* at [24] to "services generally associated with that kind of activity". While the UT disagreed with the FTT on the point it still justified a high-level approach by reference to the way the Court expressed itself in *Madgett & Baldwin* at [23] and *iSt* at [24] and [34] (UT decision at [60], [69] and [70]). I respectfully disagree. That approach pays insufficient attention to the need for the services to be "identical or at least comparable" to those provided by travel agents and tour operators.
68. Comparability must be determined by reference to the rationale for extending the Scheme beyond travel agents and tour operators. The expression on which the FTT relied was used in passages which explain that rationale. As I have explained, the rationale does not justify placing Bolt in the same category. The facts of *Madgett & Baldwin* and *iSt* were quite different. *Madgett & Baldwin* concerned packaged holidays, identical to supplies that could have been made by a tour operator. *iSt* concerned accommodation abroad and (for high school students) international travel ("travel by plane of its customers and/or their stay in the host state", *iSt* at [24]). As the FTT in effect found, minicab services of the kind provided by Bolt are not provided by travel agents or tour operators, or at least (and using the wording in the UK legislation on which Ms Sloane relied), not commonly so.
69. Bolt's arguments are not saved by the fact that the CJEU has accepted that the Scheme may apply to the provision of a single service. The reason for that was explained in *Van Ginkel* at [23] and *Alpenchalets* at [25] (see [30] and [48] above), namely to avoid complexity and ensure that the aims of the directive were complied with, bearing in mind that the travel agents and tour operators at which the Scheme is aimed offer widely differing types of holiday and journeys, allowing the traveller to combine services as they wish. That reason does not compel a transport offering of a quite different kind to that provided by a travel agent or tour operator to be treated as falling within the Scheme.
70. Bolt is also not assisted by the fact that the CJEU has accepted that purpose and duration are irrelevant. It did so because there is no such limitation in the wording of the directive, and such a limitation would "seriously restrict" the scope of the Scheme, distort competition and compromise the uniform application of the directive (*iSt* at [34] to [37], see [37] above). It is understandable that the CJEU considered that the Scheme would be compromised if businesses had to attempt to draw distinctions based on the purpose of travel or length of stay, but it does not follow that supplies that are not in fact comparable

to those made by travel agents or tour operators should fall within the Scheme. Similarly, the Scheme has been applied to business-to-business dealings in order to ensure that the Scheme meets its objective, bearing in mind that the supplier may be conducting precisely the sort of packaging at which the Scheme is aimed (*Spain* at [60] to [62], see [46] above). That consideration also has no application to Bolt.

71. The CJEU's care to confine the Scheme to the extent needed to achieve its objective is well illustrated by its refusal to apply it to "in-house" supplies, notwithstanding difficulties in apportionment, or to supplies by travel agents and tour operators that are unrelated to a journey. While both of these features are supported by the wording of the legislation, they do indicate care in ensuring that the Scheme operates within its intended limits, notwithstanding difficulties that may result.
72. The only two cases that give express consideration to a single supply of transport are the reasoned orders in *Star Coaches* and *Dragoram*. The conclusion in *Star Coaches* does not assist Bolt, although as we have seen its reasoning was based on a misreading of *Van Ginkel*. But the explanation of *Star Coaches* given in the CJEU's judgment in *Alpenchalets* at [32] (see [50] above) is illuminating, namely that the coach operator merely supplied travel agents and did not have "any other feature which is capable of making its services comparable to those of a travel agent or tour operator".
73. This comment provides strong support for HMRC's argument that merely being a transport operator that buys in services is not sufficient to make the operator's supplies "comparable to those of a travel agent or tour operator". Ms Sloane was unable to provide a convincing response to this. I agree with the submission of Ms Mitrophanous that the UT's analysis of this point at [67] of its decision, focusing on the earlier reference in the same paragraph of *Alpenchalets* to a "subcontractor", fails to address this key point. *Star Coaches* was indeed acting through subcontractors as the CJEU observed in *Alpenchalets* (namely the transport companies to which it subcontracted the provision of coach transport), but whether the label applied to *Star Coaches* as well does not answer why the CJEU was able to confirm the decision in *Star Coaches* on the basis that it did in *Alpenchalets*. The express basis for doing so was that *Star Coaches* was not a travel agent or tour operator, and the transport services it supplied were neither identical nor comparable to those of a travel agent or tour operator.
74. *Dragoram* is also of limited assistance. Most importantly, the taxpayer was a travel agent so the question of comparability did not arise. I would add that sales of plane tickets are also supplies of a kind that travel agents commonly make.
75. Ms Sloane relied on the fact that the CJEU had proceeded in *Alpenchalets* on the basis that the taxpayer was a travel agent, and in *C* had treated an entity as providing services that were identical or comparable to those of a travel agent or tour operator even though what it did was far removed from such a business as traditionally understood. I would make two points in response. First, the questions referred in both cases focused on whether additional services were required, not on whether the services supplied were identical or comparable to those supplied by travel agents or tour operators. Secondly, both concerned holiday or hotel accommodation, services of a kind typically provided by travel agents. I also note that in *C* at [24] the Court elaborated on its statement of identity or comparability by saying that "depending on its customers' needs and expectations, [the taxpayer] also occasionally provides advice on the choice of accommodation and

help with travel arrangements” ([53] above). That is, of course, precisely what travel agents do.

76. The UT expressed particular concern about what it considered would be a difficult and resource-intensive exercise to distinguish between the services in issue and those provided by travel agents and tour operators. While there will always be difficulties with any test at the margins, I do not consider that this concern justifies the approach of treating the supplies in issue as within the Scheme. To reiterate, Bolt failed to secure a finding from the FTT that travel agents and tour operators provide the same or similar services to Bolt’s on-demand minicab supplies. That is, with respect, obvious. The ordinary meanings of travel agent and tour operator, and the kinds of supply they make and the ways in which they make them, have moved with the times (as cases such as *C* illustrate), but no one can seriously suggest that travel agents and tour operators offer on-demand mini-cab rides, or anything comparable to them, whether through apps or otherwise. I also agree with Ms Mitrophanous’s submission that Bolt’s approach would render the references to travel agents and tour operators in Article 306 effectively redundant.
77. In its Respondent’s notice Bolt argued that it cannot properly be distinguished from a “traditional” tour operator. It relied on evidence exhibited to Mr Ryan’s witness statement as showing that travel agents offer services comparable to Bolt’s, such as chauffeur services.
78. The short answer to this is that Bolt is stuck with the FTT’s findings of fact, or perhaps more accurately the lack of findings that would support its case. Bolt did initially seek to mount a rationality challenge to the FTT’s findings at [92] and [105] in the UT (as a fallback argument to its primary case that the FTT was correct), but did not pursue it in argument before that tribunal. It would not be open to Bolt to seek to do so now, in circumstances where no rationality challenge was raised in the Respondent’s notice to this court and the FTT’s findings remain undisturbed as a result of the UT’s dismissal of the appeal, and indeed Ms Sloane confirmed that Bolt was not seeking to do so.
79. The slightly longer answer is that it would in any event be insufficient to show that some supplies made by some travel agents might be compared to some supplies made by Bolt. For example, the fact that some journeys Bolt provides are to or from airports or other transport hubs – because that is the location that the customer happens to have chosen as point A or point B – does not make the nature of its offering comparable to the airport transfers that a travel agent might provide (usually, as the FTT said, as part of a package, in which case they may be ancillary in any event). Even if a travel agent can be found that offers chauffeur services to and from other locations and does so as part of a business accepted as falling within the Scheme, then it does not follow that Bolt’s services are identical or comparable to those of a travel agent or tour operator as those terms are ordinarily understood, and the FTT did not find that they were. As Ms Mitrophanous submitted, a typical consumer would recognise Bolt as operating in a distinct business sector, the minicab sector, and not as conducting activities akin to those of a travel agent or tour operator.
80. I also consider that the FTT erred in holding, in the alternative, that the application of the Scheme was supported by the Advocate General’s comments in *Madgett & Baldwin* referred to at [33] above about a hotel booking local taxis for its clients. As the Court observed in its judgment at [24] and [25], such supplies are clearly ancillary. It does not

follow that, but for that fact, they would fall within the Scheme and, with respect, I do not consider that to be the obvious inference that the FTT thought it was. The point being made was that the travel element in the package in dispute in *Madgett & Baldwin* was, in contrast to a local taxi ride, too substantial to be regarded as ancillary. The correct VAT treatment of local taxi services as standalone supplies was simply not considered.

81. Finally, I should mention that Bolt sought to place some reliance on HMRC publications. Given that there are judicial review proceedings stayed behind this appeal, I will say no more than that the parts relied on have no statutory force and cannot assist in the determination of this appeal.
82. Given my conclusion on Ground 1, it is not necessary to consider Ground 2, which was the subject of much less full argument, and I consider it preferable not to do so.

Conclusion

83. In conclusion, I would allow HMRC's appeal and set aside and re-make the decisions below, with the result that Bolt's challenge to the Decision fails.

Lord Justice Arnold:

84. I agree.

Sir Colin Birss, Chancellor of the High Court:

85. I also agree.