



HM Treasury



HM Revenue
& Customs



Department
for Transport

VAT Treatment of Private Hire Vehicles

Consultation

April 2024

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Chapter 1

About this Consultation

Subject of this consultation

1.1 This consultation seeks to understand the potential impacts of the *Uber Britannia Limited v Sefton Borough Council* High Court judgment that was handed down on 28 July 2023 (hereafter referred to as “the 2023 High Court judgment”), and the impacts of the *Uber London Limited v Transport for London* High Court judgment that was handed down on 6 December 2021 (hereafter referred to as “the 2021 High Court judgment”) on the private hire vehicle (PHV) sector and its passengers.

1.2 This consultation also invites views on potential government interventions that could help to mitigate any undue adverse effects that these judgments could have on the PHV sector and its passengers. When evaluating potential interventions, the government has considered the impact on vulnerable consumers, the fiscal impact it would have on the Exchequer, and the degree to which it would promote fair competition between PHV operators (PHVOs).

1.3 Taxis (known as “hackney carriages” in older legislation) are not directly impacted by these court judgments, which sought clarity on whether a licensed PHVO needs to contract with the passenger.

1.4 PHV services must be booked through a licensed PHVO. The government recognises that, in different parts of the UK, PHVs and PHVOs may be referred to differently. For the purposes of this consultation, the terms “PHV” and “PHVO” are used to capture all of these.

1.5 HM Treasury, HM Revenue and Customs (HMRC), and the Department for Transport value the input of stakeholders and interested parties on this important issue. We will consider your responses in depth and will use the consultation responses provided to inform our policy development.

1.6 Chapter 4 of this consultation seeks to understand the potential impacts of these court judgments on PHVOs, PHV drivers, and different types of consumers. Chapter 5 invites views on the objectives government is using to design and assess potential policy interventions. Chapter 6 invites views on the ways in which the government could change transport, or VAT, legislation to enable PHVOs to act as agents for all PHV bookings they accept and account for VAT accordingly. Chapter 7 seeks views on the ways in which the government could otherwise mitigate the impacts of these judgments.

Who should read this?

1.7 Individuals (including PHV drivers, taxi drivers, and passengers), businesses (including PHVOs); trade associations; charities; local authorities; academics; plus, any other organisations with an interest in the VAT applied to PHV fares should read and consider responding to this consultation. As the High Court judgments only affect PHVOs in England (except Plymouth) and Wales, the government would particularly welcome responses from people and businesses based in those nations. As some of the options examined in this consultation could have implications in Scotland and Northern Ireland (NI) too, the government welcomes responses from people and businesses based there too.

Duration

1.8 16 weeks starting on 18 April 2024 and ending on 8 August 2024.

How to respond to, or enquire about, this consultation

1.9 A summary of the questions included in this consultation can be found in Chapter 8.

1.10 Please email enquiries and responses to:

phvovatconsultation@hmrc.gov.uk

Written enquiries and responses can be posted to:

HM Treasury, VAT & Excise Team, 1 Horse Guard's Rd, London, SW1A 2HQ

After the consultation

1.11 Responses will be considered in depth and used to inform the government's response to these High Court judgments. The government will publish a formal response to this consultation in due course.

Getting to this stage

1.12 The government has conducted internal analysis on the potential impacts of these court judgments, and the levers that it has at its disposal. This analysis, along with the engagement that has been carried out with the PHV industry, has informed the scope of this consultation. The government is grateful to those in the sector that have contributed to this process to date.

Chapter 2

Introduction

Background: Makeup of the PHV and taxi sector

2.1 There were 289,400 licensed taxis and PHVs in England in 2023. Around 80% (232,200) of these vehicles were PHVs. In Wales, there were 9,753 licensed taxis and PHVs, of which 56% (5,454) were PHVs.

2.2 In 2023, there were 346,300 licensed PHV/taxi drivers in England, of which 67% held PHV licences, 11% held taxi licences, and 21% held dual taxi and PHV licences, which allow the holder to drive both taxis and PHVs. In Wales, there were 10,789 licensed PHV/taxi drivers, of which 18% held PHV licences, 1% held taxi licences, and 80% held dual licences.

2.3 PHVOs also need to be licensed in order to be able to accept bookings and dispatch vehicles. In 2023, there were 15,000 licenced PHVOs in England (1,600 of which are licensed in London), and 738 in Wales.

2.4 According to the most recent National Travel Survey (which was conducted in 2022 and covers England only), 64% of those surveyed used a taxi or PHV for a maximum of twice a year. Around 16% of respondents travelled by taxi or PHV at least once a month but less than once per week, whilst 7% of responses travelled by taxi or PHV at least weekly.

2.5 Around half of the trips taken by taxi or PHV were taken for leisure purposes. The other common reasons for trips in 2022 were:

- commuting (15%)
- personal business – i.e. running errands (11%)
- shopping (12%)
- education (10%)

Background: VAT treatment of PHV services

2.6 PHV services provided by VAT-registered businesses are, and always have been, subject to the standard rate of VAT (20%). Taxis are also subject to the standard rate of VAT. This differs from transport designed to carry at least 10 passengers (such as buses and trains), which is subject to VAT at the zero rate. This zero rate is intended to incentivise the use of higher-volume transport services, thereby helping to reduce congestion and vehicle emissions. Other modes of transport – such as cable cars, ski lifts, and chairlifts – are subject to the reduced rate of VAT (5%).

2.7 Like all businesses, those in the PHV and taxi sector can choose whether or not to register for and charge VAT if they have an annual turnover below the UK VAT threshold, which was raised to £90,000 on 1 April 2024, keeping the majority of businesses out of VAT altogether. It is mandatory for those operating above this threshold to register for VAT and to charge 20% VAT on the PHV services that they provide. This means that, in practice, larger PHVOs are VAT-registered and the majority of PHV drivers are not VAT-registered.

2.8 The liability to charge VAT on PHV services sits with the person or business making the supply. HMRC accepts that PHVOs account for VAT as either “agent” or “principal” depending on their business model.

2.9 Prior to the High Court judgments, PHVOs claimed they acted as drivers’ “agents” or “intermediaries”. As a result, for most journeys, no VAT was charged on passenger fares. However, as demonstrated in Figure 1, VAT-registered PHVOs have always charged VAT on the agency fees they charge their drivers.

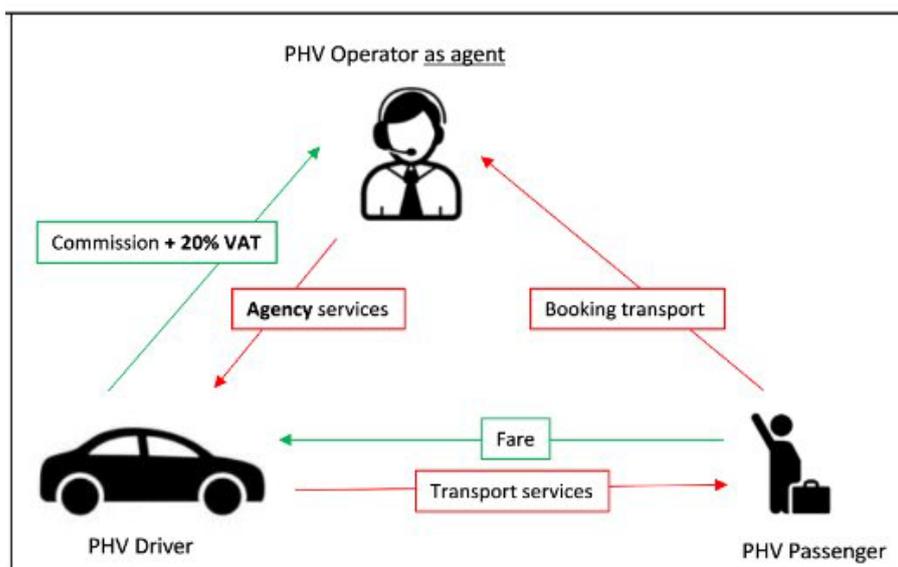


Fig. 1: PHVO Agency Model (assumes PHVO is VAT-registered)

2.10 There are also scenarios where a customer, typically a business customer, has a credit account with a PHVO allowing for payment on a regular (usually monthly) basis. This is referred to as “account work”, and for this, the PHVO is principal. Consequently, as demonstrated in Figure 2, the liability to account for VAT on “account work” sits with the PHVO. As PHVOs have always accepted that they are principal in “account work”, the VAT treatment of this type of work will not change as a result of the High Court judgments. This consultation, therefore, does not focus on “account work”.

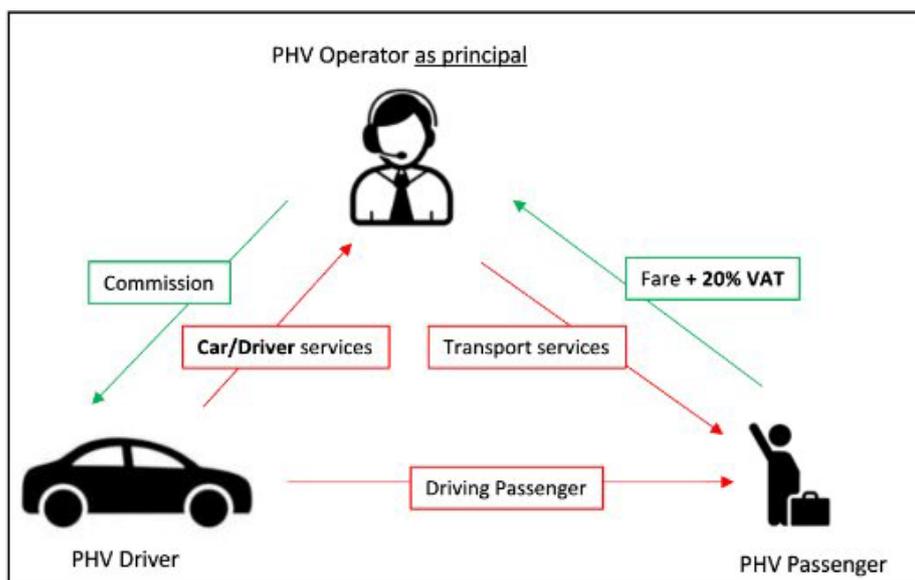


Fig. 2: PHVO Principal Model (assumes PHVO is VAT-registered)

Background: Taxi and PHV legislation and regulation

2.11 Taxi and PHV policy is devolved in Wales, Scotland, and NI. The UK Government is responsible for the legislative framework under which the taxi and PHV sector in England is regulated. In this consultation, the description of the taxi and PHV licensing regime and the exploration of action that could be taken to reform PHV, and potentially taxi, legislation in order to enable PHV drivers to contract with passengers is limited to England only.

2.12 England is covered by three pieces of legislation. The majority of England, excluding London and Plymouth, is covered by the Local Government (Miscellaneous Provisions) Act 1976 (hereafter referred to as "the 1976 Act"), which was the subject of the 2023 High Court judgment. Plymouth is covered by the Plymouth City Council Act 1975. This has not been subject to a High Court declaration, but it is worth noting that Plymouth's legislation contains the same provision that deems that the contract is made with the PHVO that accepted the booking as the 1976 Act. London is covered by the Private Hire Vehicles (London) Act 1998 (hereafter referred to as "the 1998 Act"), which was the subject of the 2021 High Court judgment.

2.13 The 1976 Act also applies in Wales, meaning that the 2023 judgment also has effect in Wales. However, as taxi and PHV policy was devolved to Wales in 2017, any changes that the UK Government might make to the 1976 Act would not apply in Wales unless the Welsh Government consented to this. It should be noted that the Welsh Government has announced its intent to introduce legislation to the Senedd Cymru/Welsh Parliament during this term to amend the taxi and PHV legislation that applies there. The Welsh Government's "Taxi and Private Hire Vehicle (Wales) Bill: White Paper" did not consider this issue, though.

2.14 Whilst these court judgments did not concern the legislation in NI or Scotland, by way of context: there are four classes of taxi in NI, which determine how that taxi can be used. Those licensed under “Class C” can only be used on a pre-booked basis, must be booked at an operating centre, and must carry details of their booking in the taxi during the journey. They cannot be hailed and cannot be used on taxi ranks. There are around 7,679 licenced taxi drivers in NI driving for around 1,137 operators.

2.15 In Scotland, licensing is required for booking offices taking bookings for four or more taxis, or private hire cars (PHCs). There are around 12,142 licensed PHC drivers in Scotland.

2.16 The primary purpose of the taxi and PHV licensing regime is public safety. In England, the sector is made up of two distinct types of services based on how passengers can engage the service: taxis, which can pick passengers up at ranks and be hailed on the street (known as “plying for hire”) and PHVs, which can only be booked through a licensed operator. Whilst taxis can undertake pre-booked work, PHVs cannot stand or ply for hire. These two types of service are sometimes referred to as a “two-tier” system.

2.17 The difference in how these two types of service can be engaged means that they are regulated slightly differently. As consumers are likely to take the first available taxi at a rank, or hail the first to pass in the street, competitive forces do not work effectively. Therefore, consumer protection is provided through fare regulation.

2.18 For PHVs, the requirement that bookings are made in advance of carriage means that passengers are able to compare services offered by operators and, subject to availability, select the option that best meets their cost and service level preferences. This competitive pre-booked market means that, unlike with taxis, fare regulation is not needed, as PHVOs can compete on price as well as other factors, such as reliability and availability.

2.19 A contract for PHV services provides protection for passengers, as they are more likely to obtain redress for failures to provide the agreed service – most typically when they are not collected, or do not reach their destination on time. Some PHVOs have acknowledged their responsibilities in this respect, but, as part of the contract, sought to limit their consequential liabilities. This is another difference in how the two tiers are regulated, reflecting the immediacy in the way taxi services can be engaged.

2.20 PHVs are defined in legislation broadly as a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a taxi, which is provided for hire with the services of a driver for the purpose of carrying passengers.

2.21 It is illegal for anyone to operate a PHV unless they hold a PHVO licence. “Operate” is defined in legislation as making “provision for the invitation or acceptance of bookings for a PHV”. A driver cannot operate a PHV unless they are a licensed PHVO. The 1976 Act states that:

“every contract for the hire of a private hire vehicle licensed under this Part of this Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle.”

Background: court judgments

2.22 In the *Uber BV v Aslam* 2021 Supreme Court case concerning the worker status of Uber drivers, the judge suggested that, in order to comply with the provisions of the 1998 Act, Uber would have to accept a contractual obligation to the passenger as a principal to carry out the booking.

2.23 Uber subsequently sought a High Court declaration that this view given by the judge was incorrect. The *Uber London Limited v Transport for London* 2021 High Court judgment found that what the Supreme Court had suggested was indeed correct: in order to operate lawfully under the 1988 Act, a PHVO licensed in London who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey that is the subject of the booking.

2.24 Uber then sought a declaration on the 1976 Act. Similarly, the *Uber Britannia Limited v Sefton Borough Council* 2023 High Court judgment confirmed that, in order to operate lawfully under the 1976 Act, a PHVO licensed in the rest of England (except Plymouth) or Wales who accepts a booking is required to enter as principal into a contractual obligation with the passenger to provide the service that is the subject of the booking.

2.25 Whilst these judgments did not concern tax law, a knock-on effect is that VAT-registered PHVOs in England and Wales would need to charge VAT on all PHV passenger fares to reflect these judgments. The judgments do not alter the position where a licensed PHVO or a taxi intermediary is arranging a fare for a taxi driver, as they are acting as the taxi driver’s agent, rather than a PHV driver’s agent, in these instances.

2.26 The government is aware that an appeal of the 2023 High Court judgment will be heard later this year. This consultation seeks views on the potential impacts of this judgment and the options available to government following the eventual outcome of this appeal.

Chapter 3

About You

3.1 Different types of businesses, organisations, and individuals may have different perspectives. The government is therefore keen to understand the context of the responses you provide to the questions contained in this consultation, and would be grateful for any insights respondents would be willing to share on the following. All responses will be treated confidentially in line with the privacy notice located in Chapter 10.

Question 1: In what capacity are you responding (e.g. a PHVO, a driver, a consumer, a representative body etc.)?

If you are a consumer:

- a) Where in the UK are you based?**
- b) How old are you?**
- c) Do you have a protected characteristic that means you rely on PHV services to a greater extent than you otherwise would do, such as a disability?**

If you are a consumer representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHVO:

- a) Which local authorities are you licensed with?**
- b) Where in the UK do you operate?**
- c) How many drivers do you work with?**
- d) How many journeys are booked through you every year? If you operate in multiple regions, we would welcome a regional breakdown of these journeys if possible.**
- e) Are you VAT-registered? If so, how do you account for VAT?**

If you are a trade representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHV driver:

- a) Where in the UK are you licensed?**
- b) How old are you?**
- c) Do you drive for a large PHVO that operates across multiple regions, or a smaller, regional PHVO?**
- d) Do you drive for more than one PHVO?**
- e) Are you VAT-registered?**

If you are a PHV driver representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

Chapter 4

Understanding the Potential Impacts of the Judgments

4.1 In order to consider effective policy options, it is important that the government fully understands the potential impacts of the 2023 High Court judgment, and the impacts that the 2021 High Court judgment has already had in London, on the PHV sector – including on passengers, PHVOs, and drivers.

4.2 It is difficult to predict with any certainty whether these court cases will have an impact on fare prices, PHVOs' profits, or drivers' earnings. Owing to the diversity of PHVO business models across the market, the effects of these court judgments will not be felt uniformly.

4.3 For instance, the government is aware that some PHVOs already act as principal on all journeys, and account for VAT accordingly. Indeed, in response to the 2021 High Court judgment, since April 2022, Transport for London has required all PHVOs that it licenses to contract with passengers as principal for every booking that they accept. The government is aware that some PHVOs changed their UK-wide business model as a result of this update to their licensing agreements.

4.4 However, as stated in the Introduction, the vast majority of PHVOs are licensed outside of London. Therefore, a significant portion of PHVOs by volume are likely to still be accounting for VAT as agent on most, or at least some, bookings.

4.5 The government is aware that some PHVOs are accounting for VAT as principal, but under the Tour Operators' Margin Scheme (TOMS). It is important to note that the government's position continues to be that TOMS does not apply to the PHV sector. As such, HMRC will challenge PHVOs that account for VAT under TOMS, which was not designed to be used by this sector.

4.6 Internal analysis suggests that the following impacts could be felt by the one-third of the PHV market still currently operating under the agency model. These impacts would only be felt in England and Wales, as the High Court judgments did not impact NI and Scotland:

- It is estimated that **the increase in fares could work out to be around 1.25% to 2.5% across the whole market**, when averaged with the other segments of the PHV and taxi market where the impact (beyond that which has already occurred) would be nil. **For the average passenger, the government expects this to equate to an increase in fares of only around £2.70 to £5.60 per year.**

- Any **reduction in journeys** will depend on the demand for PHV services, but, as an illustration, **could be expected to be around 1.25% to 2.5%**. Again, this is expressed as an average across the whole market, including the segment that has already moved to principal and taxis, which will not be impacted.
- The above range estimates may differ from industry analysis, as they take into account the fact that the impacts could be mitigated by drivers voluntarily registering for VAT, possibly also using the VAT Flat Rate Scheme. This would enable drivers to recover the VAT on a vehicle purchased as a capital item as well as apply a lower rate of VAT on their sales, whilst operators would be able to recover VAT charged to them by drivers at the full rate. Overall, **this could reduce the net additional VAT by close to one half**, substantially mitigating any impact of the court judgments.

4.7 To refine this analysis, the government would like to gather further evidence from respondents to better understand who uses PHVs and their purposes for using them.

Question 2: What are your views on this analysis and the assumptions underpinning it? Where respondents disagree, the government would be grateful if you could please provide details of why you disagree and/or alternative analysis.

Question 3:

If you are a consumer:

- a) How often do you get a PHV (noting that, as set out in Chapter 1, these are different to taxis)?**
- b) When you get a PHV, what are the most common reasons for your trip (e.g. work, social, medical appointments)?**
- c) Are there alternative forms of transport available to you (e.g. taxis, your own car, public transport, walking)?**
- d) On average, how far do you usually travel in a PHV?**
- e) On average, how much do you usually pay for a PHV trip?**
- f) How do you fund these journeys? (e.g. Do you pay for them yourself? Does your employer pay for them?)**

If you are a consumer representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHVO, we would welcome any data you have on:

- a) Your customer makeup (e.g. breakdown of business v consumer and characteristics of your customers).**
- b) How often individual customers typically travel with you.**
- c) The most common reasons why customers travel with you.**
- d) How far your customers typically travel.**
- e) How much your customers typically pay per trip.**

If you are a PHVO representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHV driver:

- a) What payments do you make to the PHVO that you drive for?**
- b) Do you have any other sources of income apart from income earned through being a PHV driver?**
- c) On average, how many hours do you work per week?**

If you are a PHV driver representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

Question 4: In what ways do you expect the 2023 High Court judgment to impact you (if you are a consumer or PHV driver), or your business (if you are a PHVO)?

Question 5: How has the 2021 High Court judgment concerning London impacted you (if you are a consumer using London-based PHVOs, or a PHV driver working for a London-based PHVO), or your business (if you are a PHVO operating in London)?

Question 6: If you are a PHVO, have you made any changes to your business model and the way in which you account for VAT since either the 2021 and/or 2023 High Court judgments? If so, please provide details.

Chapter 5

Objectives of Government Intervention

5.1 The government has considered a number of different potential interventions to help limit the aforementioned negative impacts on PHVOs, drivers, and passengers as far as possible.

5.2 When developing and assessing potential interventions, the government has primarily evaluated options against the following objectives:

- Supports vulnerable consumers who rely on PHV services, and maintains high standards of passenger safety/consumer protections
- Cost effective and ensures good value for taxpayers' money
- Promotes fair competition in the PHV sector

5.3 The government has also considered the following objectives when developing and assessing potential interventions:

- Low non-compliance risk
- Easy to administer for both taxpayers and HMRC

Question 7: Do you agree that these are the right objectives for the government to be assessing options against? Are there any other objectives you think the government should be considering?

5.4 The options identified by the government broadly fit into two categories:

- changing the legislation that has led to VAT at the standard rate needing to be applied to all passenger fares (which will be the subject of Chapter 6)
- targeted interventions to help mitigate the impacts of the judgments on consumers (which will be the subject of Chapter 7)

Chapter 6

Changing Legislation

6.1 In order to avoid VAT at the standard rate being charged on all PHV fares, **the government could amend either transport legislation or VAT legislation.** Whilst the government is consulting on this issue, PHVOs and drivers can rely on existing HMRC guidance, which allows PHVOs to continue to account for VAT as agent if that is how their business is structured.

6.2 It is worth noting that many PHVOs (around two-thirds by market value, rather than total number of PHVOs) are already accounting for VAT as principal on all bookings. The shift in PHVOs accounting for VAT as principal started after the 2021 High Court judgment and has steadily increased since. Despite this, there has not been a material real terms increase in passenger fares since the 2021 High Court judgment.

6.3 As the VAT revenue raised from these PHVOs accounting for VAT as principal is now incorporated in the public finances, changing VAT or transport legislation to revert to the position prior to the court judgments would not be fiscally neutral. Indeed, changing either VAT legislation or transport legislation to enable PHVOs to transition back to acting as agent would be **expected to cost the Exchequer around £750 million per year.**

6.4 It is also worth noting that, as transport policy is devolved, any changes made to taxi and PHV legislation would affect England only unless the Welsh Government consented to the changes being enacted in Wales too. As tax policy is reserved, any changes made to the VAT Act would impact the whole of the UK.

Amending transport legislation

6.5 The UK Government has committed to introducing legislation to improve the regulation of the PHV and taxi sector in England when Parliamentary time allows. Consideration has been given as to whether, as part of this reform, amendments could be made to PHV legislation in England so that the contract is between the driver and the passenger, rather than the PHVO and the passenger.

6.6 The government's view is that simply removing the reference to the term "contract" in the 1976 Act would require consequential amendments to other parts of the Act that are predicated on this position. Importantly, the London legislation does not include a clear provision on the contract being with the operator. Therefore, London PHVOs would continue to be required to be principal in a contract, potentially leading to unfair competition within the PHV sector in

England. This demonstrates the difficulty in identifying changes to the legislation that would make clear that the contract is between the passenger and the driver, rather than the PHVO, as the London legislation does not specify the contract is with the PHVO.

6.7 The government considers that maintaining the requirement for a PHV service to be booked through a licensed operator may not enable sufficient change from the current position that the contract is between the operator and the passenger. Under the PHV legislation, an operator is fundamental to the booking of a PHV, and therefore plays a distinct and legally necessary role in the regulatory system. Removing the requirement for bookings to be made with an operator would be a fundamental change and would have implications for the taxi sector as well.

6.8 The only way to put beyond doubt that a PHV driver can contract with a passenger would appear to be to remove the role of licensed operators, which would effectively replicate the current taxi licensing structure. Those previously licensed as PHVOs would take on the role of intermediaries, as is currently the situation for pre-booked taxis.

6.9 In the Law Commission's 2014 report, following its extensive review of the legal framework for taxis and PHVs, it consulted in detail on fundamental reform. It considered the two-tier system of taxis and PHVs and whether it should be retained, or moved to a one-tier system (i.e. a single category of vehicles that ply for hire and take pre-bookings). The final report concluded that the two-tier system should be retained, as:

“this structure promotes consumer choice and the provision of a wide range of services. Furthermore, the different ways in which taxis and private hire vehicles are engaged make different levels of regulation appropriate, so that a single system would lead to over or under-regulation.”

6.10 If the only way to enable a PHV driver to contract directly with the passenger is to move to a single-tier system, decisions would then need to be taken on whether the single-tier system was based on the current taxi standards, including regulated fares, or the PHV model. Whatever the approach taken, as the Law Commission identified, it would reduce consumer choice.

6.11 If the generally higher taxi requirements approach was chosen, this is likely to result in a significant reduction in the availability of licensed drivers and vehicles, as PHV drivers that did not re-license as a taxi driver would no longer be able to work in the trade legally. This would likely lead to an increase in the unlicensed market to meet unmet demand, thereby significantly undermining public safety.

6.12 Not only could this have implications on public safety, but licensing authorities would lose the revenue received from PHVOs, as they would no longer be required to be licensed. This is expected to result in higher licensing fees, as the fixed costs of administering the licensing regime (e.g. office space and utilities) would need to be

recovered from a smaller number of licences (driver and vehicle licences only).

6.13 The Law Commission concluded that, under a two-tier system, licensed PHVOs are a necessary element of the regulation of PHVs. Whilst it suggested that operator licensing should only cover dispatch functions, and no longer apply to the invitation or acceptance of bookings, it would still have been illegal for a PHV driver to accept a job directly from passengers. The government considers this unlikely to change the current contractual position.

6.14 The government's view is therefore that the two-tier system of taxis and PHVs remains the best approach to ensuring the sector can deliver a range of safe, accessible, affordable, and available services that meet the differing needs of passengers, and to thus maintain the high standards of passenger safety and consumer protections this provides. Furthermore, the government has not been able to identify a clear way to amend PHV legislation so that PHVO drivers could contract with passengers as principal without resulting in a single-tier system.

6.15 Moreover, as stated above, enabling drivers to contract with passengers as principal on all their work would be **estimated to cost the Exchequer around £750 million per annum.**

Question 8: What are your views on amending PHV, and potentially taxi, legislation in England to allow drivers, rather than PHVOs, to contract with passengers?

Question 9: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

Question 10: Are you able to articulate a way in which PHV, and potentially taxi, legislation in England could be amended so that PHV drivers could contract with passengers as principal, but that did not result in a single-tier system? Please provide details.

Question 11: If the UK Government was to amend PHV legislation in England to enable PHV drivers to contract with passengers, what impacts do you think this would have on the trade and passengers, particularly those with protected characteristics?

Question 12: Do you think, in order to prevent passengers having to pay VAT on the full fare in England, the taxi and PHV sector should move to a single-tier system? Please provide details.

Amending VAT legislation

6.16 Alternatively, the VAT Act could be amended to allow PHVOs to account for VAT as though they were agents for tax purposes, but act as principal for services to passengers.

6.17 Taking this approach would safeguard the passenger safety benefits and consumer protections that PHVOs acting as principal affords passengers, but prevent the associated need for VAT at the standard rate to be applied to all passenger fares, thereby supporting vulnerable consumers who may otherwise be impacted by fare increases. Taking this approach would also promote fair competition within the PHV sector, as it would ensure that all PHVOs accounted for VAT in the same way on all of their bookings.

6.18 However, deeming PHVOs to be agents for tax purposes would go further than simply overturning the effects of the recent court judgments. Indeed, it would effectively represent a tax relief on supplies unaffected by the judgments, because it would allow PHVOs to account for VAT as agent on all of their work – including where they have always accounted for VAT as principal.

6.19 It is also worth noting that taking this approach would entail creating in VAT legislation a legal fiction, thus introducing an exception to the fundamental principle that the VAT treatment of a given good or service is determined by the economic reality and the contractual arrangements in place. VAT is a very litigious tax, and this is an important principle that HMRC often rely on in litigation to safeguard billions of pounds in Exchequer revenue.

6.20 There is precedent elsewhere in the VAT system for introducing legal fictions. However, such exceptions were introduced to tackle specific and significant compliance problems. For instance, when goods and digital services are supplied through an online platform, the platform is deemed to be the supplier. These deeming provisions were introduced to tackle widespread non-compliance (typically from overseas sellers) and to make it easier for HMRC to collect tax that was already legally due. They also act as a simplification for small overseas businesses, as it prevents the need for them to have to register for VAT in the UK.

6.21 These issues do not apply to PHVOs, as most are based in the UK, and there is no widespread non-compliance in the sector that would justify introducing an exception to the ordinary rules of VAT.

6.22 Furthermore, legal fictions need to be used judiciously, as they can cause uncertainty and therefore invite unintended consequences that can be costly for both HMRC and taxpayers. This is because it is not always possible to pre-empt all potential interactions with existing legislation, often leading to lengthy litigation, which can go as far as the Supreme Court. Indeed, courts have often struggled with legal fictions – particularly the parameters of those fictions, and what characteristics or

factual circumstances should be incorporated into that fiction. Taking this approach would not necessarily, therefore, provide the sector with the clarity they are calling for.

Question 13: Who do you think would benefit from amending the VAT Act to allow PHVOs to account for VAT as though they were agents for tax purposes, but act as principal for services to passengers?

Question 14: Are there any other potential unintended consequences of this approach that are not outlined above? Please provide details.

Question 15: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

Chapter 7

Mitigation Options

7.1 Alternatively, the government could instead seek to mitigate any impacts of the court judgments on PHVOs, drivers, and PHV passengers – particularly those who rely on PHV services more heavily. This chapter invites comments on the options that the government has identified, and welcomes any other potential interventions that stakeholders would like to propose.

Changing the VAT treatment of PHV services

7.2 The government has considered changing the VAT treatment of PHV services. **Subjecting PHV services to the reduced rate of VAT (5%) would be expected to cost the Exchequer around £1 billion per year. Zero rating PHV services would be expected to cost the Exchequer around £1.5 billion per year.** This high cost reflects the fact that these options would go further than reversing the judgment, as they would also remove or reduce the VAT paid on drivers' agency fees, which have always been subject to the standard rate of VAT. Taking this approach could also encourage currently unregistered PHV drivers to register for VAT in order to recover VAT on their purchases, without having to charge VAT on their services.

7.3 As with all VAT reliefs, however, there is no guarantee that this tax cut would be passed on to passengers in the form of lower prices. It is also worth noting that VAT is the UK's third largest tax forecast to raise £176 billion in 2024/25, helping to fund key public services, such as the NHS, education, and defence. Any reduction in tax paid is a reduction in money available to fund these important services.

7.4 Alternatively, **the government could introduce a new margin scheme specifically for the PHV sector** that would allow PHVOs to account for VAT on the margin between the passenger fare and the driver's commission fee. This would allow TOMS to remain targeted at tour operators as intended (thereby limiting the risk of boundary pushing), whilst recognising the potential benefits of a margin scheme for the PHV sector as an administrative way to reduce their VAT liability on PHVO supplies.

7.5 A margin scheme would prevent PHVOs from claiming back any input VAT they pay on the services they buy in and resupply to passengers. However, it would limit the effective rate of VAT to c.4-5% of the full fare, as opposed to the standard 20% rate of VAT on the full passenger fare.

7.6 A new margin scheme would avoid the disadvantages associated with TOMS, which is mandatory and involves an official 39-step (or more in some cases) calculation because of the need to overcome the complexities involved in tour operators making supplies of bundled services. A new margin scheme could therefore have the benefit of being designed specifically for PHVOs, have a much simpler calculation, and could be optional.

7.7 It is worth noting, though, that the introduction of a new margin scheme may result in an increased administrative burden for PHVOs, as they would need to adapt accounting and business processes to accommodate a new scheme. This admin burden will likely be felt more acutely by smaller PHVOs.

7.8 A new margin scheme would have a similar fiscal impact to changing legislation, as it would also allow PHVOs to apply a margin scheme to its account work, which is unaffected by the judgment; therefore, implementing a new margin scheme for the PHV sector would be **estimated to cost the Exchequer around £750 million per year.**

Question 16: What are your views on these VAT options?

Question 17: Do you think a margin scheme meets the objectives outlined in Chapter 5? Please provide details.

Question 18: Are there any other potential benefits of a margin scheme that are not outlined above?

Question 19: Are there any other potential unintended consequences of a margin scheme that are not outlined above?

Targeted interventions for consumers

7.9 Alternatively, the government could explore broader options in the transport space that are targeted at supporting more vulnerable consumers.

7.10 For instance, to help those living in rural areas with fewer transport options, **the government could legislate to zero rate demand responsive transport (DRT) services for VAT purposes, which is expected to cost the Exchequer in the low millions of pounds per year.** DRT is a form of public transport where small vehicles (generally minibuses or people carriers) are dispatched on an *ad hoc* basis in response to demand. They do not operate to a fixed timetable and their route will vary depending on pick-up and drop-off locations. DRT can complement fixed-route public transport services and improve mobility in low-density areas and at low-demand times of the day.

7.11 The government could also explore broadening existing transport schemes that have been designed to support more vulnerable consumers. Examples of such schemes include:

- **Disabled person's bus pass** – Eligible disabled people qualify for a bus pass that entitles them to free bus travel at certain times of the day. Additional funding could go towards widening the scope of disabilities that qualify for this bus pass.
- **Bus service operators grant (BSOG)** – The BSOG is a grant paid to operators of eligible bus services and community transport organisations to help them cover some of their operating costs.
- **Community transport provision** – Local government and charities provide alternative travel support for vulnerable groups through community transport schemes such as DRT, Dial-a-Ride, Shopmobility, door-to-door minibuses, taxi provision to and from school, and community group car schemes. Additional funding could be provided to local authorities to support these existing transport provisions.

Question 20: What are your views on these targeted interventions for consumers? Who do you think this sort of intervention would benefit?

Question 21: Are there any other views or comments you would like to provide that have not been covered in your responses to other questions?

Chapter 8

Summary of Consultation Questions

Question 1: In what capacity are you responding (e.g. a PHVO, a driver, a consumer, a representative body etc.)?

If you are a consumer:

- a) Where in the UK are you based?
- b) How old are you?
- c) Do you have a protected characteristic that means you rely on PHV services to a greater extent than you otherwise would do, such as a disability?

If you are a consumer representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHVO:

- a) Which local authorities are you licensed with?
- b) Where in the UK do you operate?
- c) How many drivers do you work with?
- d) How many journeys are booked through you every year? If you operate in multiple regions, we would welcome a regional breakdown of these journeys if possible.
- e) Are you VAT-registered? If so, how do you account for VAT?

If you are a trade representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHV driver:

- a) Where in the UK are you licensed?
- b) How old are you?

- c) Do you drive for a large PHVO that operates across multiple regions, or a smaller, regional PHVO?
- d) Do you drive for more than one PHVO?
- e) Are you VAT-registered?

If you are a PHV driver representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

Question 2: What are your views on this analysis and the assumptions underpinning it? Where respondents disagree, the government would be grateful if you could please provide details of why you disagree and/or alternative analysis.

Question 3:

If you are a consumer:

- a) How often do you get a PHV (noting that, as set out in Chapter 1, these are different to taxis)?
- b) When you get a PHV, what are the most common reasons for your trip (e.g. work, social, medical appointments)?
- c) Are there alternative forms of transport available to you (e.g. taxis, your own car, public transport, walking)?
- d) On average, how far do you usually travel in a PHV?
- e) On average, how much do you usually pay for a PHV trip?
- f) How do you fund these journeys? (e.g. Do you pay for them yourself? Do you put benefit payments towards them? Does your employer pay for them?)

If you are a consumer representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHVO, we would welcome any data you have on:

- a) Your customer makeup (e.g. breakdown of business v consumer and characteristics of your customers).
- b) How often individual customers typically travel with you.
- c) The most common reasons why customers travel with you.
- d) How far your customers typically travel.
- e) How much your customers typically pay per trip.

If you are a PHVO representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

If you are a PHV driver:

- a) What payments do you make to the PHVO that you drive for?
- b) Do you have any other sources of income apart from income earned through being a PHV driver?
- c) On average, how many hours do you work per week?

If you are a PHV driver representative body, the government would welcome any aggregated responses to the above questions that you are able to provide on behalf of your members.

Question 4: In what ways do you expect the 2023 High Court judgment to impact you (if you are a consumer or PHV driver), or your business (if you are a PHVO)?

Question 5: How has the 2021 High Court judgment concerning London impacted you (if you are a consumer using London-based PHVOs, or a PHV driver working for a London-based PHVO), or your business (if you are a PHVO operating in London)?

Question 6: If you are a PHVO, have you made any changes to your business model and the way in which you account for VAT since either the 2021 and/or 2023 High Court judgments? If so, please provide details.

Question 7: Do you agree that these are the right objectives for the government to be assessing options against? Are there any other objectives you think the government should be considering?

Question 8: What are your views on amending PHV, and potentially taxi, legislation in England to allow drivers, rather than PHVOs, to contract with passengers?

Question 9: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

Question 10: Are you able to articulate a way in which PHV, and potentially taxi, legislation in England could be amended so that PHV drivers could contract with passengers as principal, but that did not result in a single-tier system? Please provide details.

Question 11: If the UK Government was to amend PHV legislation in England to enable PHV drivers to contract with passengers, what impacts do you think this would have on the trade and passengers, particularly those with protected characteristics?

Question 12: Do you think, in order to prevent passengers having to pay VAT on the full fare in England, the taxi and PHV sector should move to a single-tier system? Please provide details.

Question 13: Who do you think would benefit from amending the VAT Act to allow PHVOs to account for VAT as though they were agents for tax purposes, but act as principal for services to passengers?

Question 14: Are there any other potential unintended consequences of this approach that are not outlined above? Please provide details.

Question 15: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

Question 16: What are your views on these VAT options?

Question 17: Do you think a margin scheme meets the objectives outlined in Chapter 5? Please provide details.

Question 18: Are there any other potential benefits of a margin scheme that are not outlined above?

Question 19: Are there any other potential unintended consequences of a margin scheme that are not outlined above?

Question 20: What are your views on these targeted interventions for consumers? Who do you think this sort of intervention would benefit?

Question 21: Are there any other views or comments you would like to provide that have not been covered in your responses to other questions?

Chapter 9

The Consultation Process

How to respond

- 9.1 A summary of the questions included in this consultation can be found in Chapter 8.
- 9.2 Responses should be sent by 8 August 2024 via email to: phvovatconsultation@hmrc.gov.uk, or via post to: HM Treasury, VAT & Excise Team, 1 Horse Guard's Rd, London, SW1A 2HQ.
- 9.3 All responses will be analysed in depth, but it will not be possible to give substantive replies to individual representations.
- 9.4 The government will publish a formal response to this consultation in due course.

Consultation principles

- 9.5 This consultation is being run in accordance with the government's Consultation Principles. We will engage directly with relevant stakeholders alongside this consultation to support policy thinking.
- 9.6 The Consultation Principles are available on the Cabinet Office website: <https://www.gov.uk/government/publications/consultation-principles-guidance>
- 9.7 If you have any comments or complaints about the consultation process, please contact: Richard Manchip, Consultation Coordinator, Budget and Finance Bill Team, HM Revenue & Customs, 6 Central Square, Cardiff, CF10 1EP.
- 9.8 **Please do not send responses to the consultation to this address.**

Chapter 10

Privacy Notice

Processing of personal data

This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Revenue and Customs (HMRC), HM Treasury (HMT) and the Department for Transport (DfT) are joint data controllers for any personal data you provide in response to this consultation.

Data subjects

The personal data we will collect relates to individuals responding to this consultation. These responses will come from a wide group of stakeholders with knowledge of, and an interest in, the topic of this consultation.

The personal data we collect

The personal data will be collected through email and postal submissions and are likely to include respondents' names, email addresses, their job titles, and opinions. Some responses may also voluntarily include special category data, such as whether the respondent has any protected characteristics. Where respondents provide this data, it will be used solely to assess the impacts that these court judgments could have on different types of consumers.

How we will use the personal data

This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.

Processing of this personal data is necessary to help us understand who has responded to this consultation and, in some cases, contact certain respondents to discuss their response. It is also necessary in helping us to develop effective government policies.

We seek limited special category data to assess the impacts that these court judgments could have on different types of consumers. Providing this data is voluntary.

The government will not include any personal data when publishing its response to this consultation.

Lawful basis for processing the personal data

Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is consulting on the development of departmental policies or proposals to help us to develop effective government policies.

Article 9(2)(g) of the UKGDPR; the processing of special category data is necessary for reasons of substantial public interest. This task is consulting on the development of government policies, where we seek to measure any impact those may have on persons with protected characteristics.

Who will have access to the personal data

This consultation is being conducted in partnership with HMRC and DfT. HMRC will be collecting the personal data from you. Any directly identifiable information will then be sanitised by HMRC before uploading it to a shared restricted access document repository hosted by HMT. HMRC will then share responses securely with DfT.

As the personal data is stored on departments' IT infrastructure, it will be accessible to IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

We will retain the personal data until work on the consultation is complete and no longer needed.

Your data protection rights

HMRC are the lead department for data protection in connection with this consultation.

Relevant rights in relation to this activity are to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

To request access to your personal data processed in relation to this consultation, please contact HMRC in the first instance via: <https://www.gov.uk/guidance/hmrc-subject-access-request#make-a-sar-to-hmrc>.

HMRC may refer your DSAR to HMT or DfT when the processing was undertaken by them.

Complaints

If you have concerns about the use of your personal data as part of this consultation, please in the first instance contact HMRC's Data Protection Officer (DPO) at: advice.dpa@hmrc.gov.uk.

HMRC may refer your complaint to the DPO at HMT or DfT where the complaint concerns their processing of your personal data.

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: <https://ico.org.uk/make-a-complaint>.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format, or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk