Neutral Citation: **[2025] UKUT 00100 (TCC)**

Case Number: UT/2024/000008

**UPPER TRIBUNAL**
**(Tax and Chancery Chamber)**

Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL

*VALUE ADDED TAX – Tour Operators' Margin Scheme – mobile ride hailing services – whether services of a kind commonly provided by tour operators or travel agents – yes – whether services materially altered or further processed – no – appeal dismissed*

**Heard on:** 26 and 27 November 2024
**and following written representations**
**received on:** 27 January 2025
**Judgment date:** 24 March 2025

**Before**

**MR JUSTICE MEADE**

**JUDGE ASHLEY GREENBANK**

**Between**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**
**Appellants**

**and**

**BOLT SERVICES UK LIMITED**
**Respondent**

**Representation:**

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

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

# DECISION

## INTRODUCTION

1. This is an appeal by the appellants, the Commissioners for His Majesty's Revenue and Customs ("HMRC"), against a decision of the First-tier Tribunal (the "FTT") dated 15 December 2023 (the "FTT Decision")[1].

2. In the FTT Decision, the FTT allowed the appeal of the respondent, Bolt Services UK Limited ("Bolt") against a decision of HMRC contained in a letter dated 28 February 2023 that certain mobile ride-hailing services provided by Bolt as principal did not fall within the Tour Operators' Margin Scheme ("TOMS") for the purposes of Value Added Tax ("VAT").

3. HMRC appeals against the FTT Decision with the permission of the FTT.

4. At the hearing, HMRC were represented by Eleni Mitrophanous KC and Ms Charlotte Brown. Bolt were represented by Valentina Sloane KC and Ms Jenn Lawrence. We are grateful to counsel for their helpful submissions, both orally and in writing, and for their assistance during the hearing.

5. Following the hearing, the Upper Tribunal released its decision in *HMRC v Sonder Europe Ltd* [2025] UKUT 14 (TCC) ("*Sonder UT*"). We requested representations from the parties on the potential implications of the Upper Tribunal's decision for this appeal. Those representations were received on 27 January 2025 and we have taken those representations into account in this decision.

## SCOPE OF THE APPEAL

6. The decision of HMRC which forms the subject matter of this appeal came in response to a request from Bolt in a letter dated 4 October 2022 for a non-statutory ruling in relation to the VAT treatment of mobile ride-hailing services. The services which were the subject of that request were on-demand, private hire passenger transport services provided by Bolt as principal, ordered and paid for through a smartphone application.

7. As noted at FTT [7] and [8], Bolt also provides other services, including scheduled rides that can be booked in advance. However, the request for the ruling and HMRC's response were limited to Bolt's on-demand services. On that basis, the FTT restricted its decision to the treatment of on-demand services. In reaching its decision, however, the FTT considered it appropriate to consider whether the supplies made by a private hire vehicle operator acting as principal more generally fall within the TOMS. We adopt the same approach.

## RELEVANT LEGISLATION

8. It will assist our explanation of the issues in this appeal if we begin by setting out the relevant legislation.

9. The TOMS is a special scheme for the purposes of VAT. Where the scheme applies, the transactions that fall within the scheme are treated as a single service supplied by the taxpayer to the traveller in the jurisdiction in which the taxpayer is established and from which the service is supplied. The value of the supply is the difference between the amount, exclusive of

[1] [2023] UKFTT 1043. In this decision notice, we refer to paragraphs in the FTT Decision in the format "FTT [xx]"

VAT, to be paid by the traveller and the actual cost to the taxpayer of the goods and services that are provided by other traders for the direct benefit of the traveller. The taxpayer therefore charges VAT on the supply on an amount equal to its margin. But it is not entitled to recover any input tax on the supplies made by the other traders that are used in making that supply.

10. The TOMS was established in UK legislation by section 37A of the Value Added Tax Act 1983 (now 53 of the Value Added Tax Act 1994 ("VATA")) and the Value Added Tax (Tour Operators) Order 1987 (SI 1987/1806), as amended by the Value Added Tax (Tour Operators) (Amendment) (EU Exit) Regulations 2019 (SI 2019/73) (the "TOMS Order").

11. The UK legislation is derived from and intended to implement Article 26 of Council Directive 77/388/EEC (the "Sixth Directive"). Article 26 of the Sixth Directive was repealed and replaced by Articles 306 to 310 of Council Directive 2006/112/EC (the "Principal VAT Directive" or "PVD").

12. Articles 306 to 310 PVD are as follows:

> **Article 306**
>
> 1.
>
> Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.
>
> This special scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.
>
> 2.
>
> For the purposes of this Chapter, tour operators shall be regarded as travel agents.
>
> **Article 307**
>
> Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.
>
> The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.
>
> **Article 308**
>
> The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.
>
> **Article 309**
>
> If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.

> If the transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.
>
> **Article 310**
>
> VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible or refundable in any Member State.

13. As we have mentioned above, the relevant provisions of PVD are implemented in UK legislation by section 53 VATA and the TOMS Order. Section 53 VATA provides, so far as relevant, as follows:

> **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.
>
> (2) Without prejudice to the generality of subsection (1) above, an order under this section may make provision—
>
> (a) for two or more supplies of goods or services by a tour operator to be treated as a single supply of services;
>
> (b) for the value of that supply to be ascertained, in such manner as may be determined by or under the order, by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator;
>
> (c) for account to be taken, in determining the VAT chargeable on that supply, of the different rates of VAT that would have been applicable apart from this section;
>
> (d) excluding any person from the application of section 43;
>
> (e) as to the time when a supply is to be treated as taking place.
>
> (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.
>
> …

14. The relevant order made by the Treasury under the power in section 53(1) is the TOMS Order. The relevant provisions of the TOMS Order for the purposes of this appeal are Articles 2 and 3, which define the scope of the Order. As amended, Articles 2 and 3 of the TOMS Order are as follows:

> 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.
>
> 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.
>
> (4) The supply of goods and services of such description as the Commissioners of Customs and Excise may specify shall be deemed not to be a designated travel service.

15. As the FTT identified (FTT [11]), it is necessary to construe the UK legislation so far as possible in conformity with the provisions of the PVD. The FTT concluded that it was possible to interpret the TOMS Order in a way that is consistent with Articles 306 to 310 of the PVD as interpreted and applied in the case law of the Court of Justice of European Union ("CJEU")[2].

16. The FTT identified two possible areas of concern.

(1) The first was that, on its terms, Article 3(1)(b) of the TOMS Order requires that goods or services acquired for the purposes of the tour operator's business must be supplied to the traveller without material alteration or further processing whereas Article 306.1 PVD merely requires that the supplies of goods or services provided by other taxable persons should be used to provide travel facilities. The FTT addressed this issue at FTT [73] in the following terms:

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

(2) The second was that Article 306 PVD refers to tour operators acquiring goods and services from "taxable persons", but the TOMS Order does not contain any reference to taxable persons. The FTT regarded this point as merely a difference in terminology, and not a substantive difference (FTT [74]).

17. It was no part of either party's case before us that the provisions of section 53 VATA and the TOMS Order cannot be interpreted in a way that is consistent with Articles 306 to 310 of the PVD. In any event, as before the FTT, there was no dispute between the parties that the drivers were taxable persons in the sense used in Article 9 PVD. However, one of the issues before us concerned the correct interpretation and application of the Article 3(1)(b) of the

[2] In this decision notice, we use the term "CJEU" to refer to both the Court of Justice of European Union and its predecessor the Court of Justice of the European Communities.

TOMS Order so as to comply with such a conforming interpretation (i.e. the issue to which we refer at [16(1)] above). We return to that issue later in this decision.

18. We were also referred by the parties to various paragraphs in HMRC VAT Notice 709/5 including:

(1) paragraph 2.9 of the Notice, which includes "passenger transport" amongst the list of supplies that are "always Margin Scheme supplies".

(2) paragraphs 7.11, 7.12 and 7.14 of the Notice, which deal with the provision of conference and organized shoots and specify that the supply of passenger transport as part of those supplies will remain a Margin Scheme supply.

## FACTS

### Summary of facts found by the FTT

19. The FTT set out most of its findings of fact at FTT [78]-[94]. Those findings are not in dispute. For the purposes of this appeal, the following summary – which is taken largely from the FTT Decision – will suffice.

(1) Bolt is part of the Bolt group of companies, the parent company of which is based in Estonia. The group provides a global mobility platform offering a range of services, including transport by private hire vehicle ("PHV"), in over 400 cities worldwide.

(2) In the United Kingdom, Bolt is a licensed PHV operator.

(3) The platform became fully operational in London in June 2019. Since then, Bolt has expanded to other areas across the UK. London is Bolt's biggest market from a UK and global perspective.

(4) The platform enables Bolt's customers to request a PHV to take them from point A to point B by using an app on their smart phones. Customers can select from a wide range of PHV options before completing their request.

(5) Bolt accepts requests for rides from customers via the platform and provides each customer with an estimated fare and arrival time. Once a request for a ride has been received, Bolt allocates the journey to a PHV driver who is willing to transport the customer. All bookings and acceptances of PHV journeys are carried out via the platform and in accordance with Bolt's terms and conditions for drivers and passengers.

(6) With effect from 1 August 2022, Bolt has acted as principal in the re-supply of passenger transport by PHV, which it buys from self-employed PHV drivers and re-supplies to its customers. Bolt contracts separately with both drivers and passengers and is responsible for all invoicing and remittance of payments. There is no contractual relationship between the drivers and the customers.

(7) The PHV drivers are independent contractors. They are free to provide PHV transport independently of the platform, including to Bolt's competitors. In order to provide transport services to Bolt, a PHV driver must first register with Bolt and be granted access to the Bolt platform. The drivers provide their own vehicles and all equipment needed to provide transport. They are also responsible for maintaining their

vehicles, ensuring that there is a valid MOT and appropriate insurance cover, acquiring licences, paying road tax, tolls, fuel and any electricity charge costs (to the extent relevant).

(8) Bolt allocates a customer's request for transport by PHV to a driver based on the driver's proximity to the customer at the time of the request. Bolt provides the driver with the destination, and the estimated duration and fee for the journey. The drivers are free to accept or reject any offers to fulfil PHV journeys.

(9) The sole exceptions to the allocation by proximity rule are PHV journeys that depart from London, Manchester, Birmingham and Edinburgh airports. In such cases, other allocation arrangements are in place to avoid congestion around the airports.

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

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

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

**Mr Ryan's evidence**

20. The evidence before the FTT included witness evidence of Mr Joshua Ryan, who had been Bolt's UK and Ireland Country Manager since March 2022. The FTT found Mr Ryan to be a "straightforward and credible witness" and took his evidence into account in its findings of fact. The FTT made the following specific findings based on Mr Ryan's evidence (at FTT [92]):

> 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.

21. There was a dispute about the status of Mr Ryan's evidence, or at least part of it. We will decide the dispute. For reasons we give below, we do not in the end think it is very important, but the issues canvassed in relation to it shine a light on the substance of the appeal, for reasons also given below.

22. At FTT [95], the FTT referred to its decision to exclude certain materials produced by HMRC about the nature of services that certain putative tour operators or travel agents provided to their customers and certain "similar evidence" produced by Bolt.

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

23. There is no dispute that the FTT excluded HMRC's schedule on the basis stated. Bolt had also put in a similar schedule (once again, not supported by a witness statement). There is no dispute that that, too, was excluded by the FTT. However, HMRC submitted that the FTT's decision went further, and also excluded Mr Ryan's witness statement, at least in part, on the basis that that was also "any similar evidence produced by Bolt"; similar, HMRC submitted, in that it concerned services provided by putative tour operators or travel agents in the UK.

24. The argument over this before the FTT was short and Judge Sinfield simply stated his decision in the course of discussions with Counsel. FTT [95] was only included in the FTT Decision at HMRC's request after sight of the draft of the decision, with Bolt unsuccessfully arguing that it should not be included because it went beyond a mere typographical correction. We think it was unobjectionable, and certainly reasonable and normal, for the FTT to include, following a comment on the draft, a point which it had in fact decided but had not initially included in the FTT Decision.

25. We were taken to the two passages of the transcript of the argument before the FTT where this issue was canvassed. In our view, it is clear that Judge Sinfield excluded the parties' schedules which were not supported by a witness statement because of that lack of support and because, as a result, they could not be tested. The evidence of Mr Ryan (including the exhibits to his witness statement) was clearly in a different category because it was supported by a witness statement. It would be a very different matter to exclude such evidence, not least because a decision to do so would need to be clear about what was being excluded, and plainly much of Mr Ryan's evidence was not excluded, because Judge Sinfield referred to and relied on it in the FTT Decision.

26. We accept that in the second transcript passage to which we were referred (page 358 to 359) Judge Sinfield expressed reservations about an exhibit to Mr Ryan's statement and the weight to be given to it, but that is not the same as excluding it.

27. We conclude that the parties' respective schedules were excluded by the FTT, but Mr Ryan's evidence (including the exhibits) was not. We do so on the basis that that is what FTT [95], construed in the context of the oral arguments, means.

28. The main reason this might matter is because Bolt relies significantly on an exhibit to Mr Ryan's witness statement (JR28) showing that a number of travel agents (Corporate Travel Services, Baldwins Travel, Hays Travel) provide cars, transfers, business taxis, chauffeur services and the like. This evidence is arguably relevant to the question of the comparability of Bolt's services to those of travel agents and tour operators. We address that question later in this decision notice.

**THE FTT DECISION**

29. Having set out the facts, reviewed the relevant CJEU and UK authorities and concluded that the provisions of section 53 VATA and the TOMS Order can be interpreted in a way that is consistent with Articles 306 to 310 of the PVD, the FTT turned to its consideration of the relevant issues.

30. At FTT [103], the FTT set out the following matters that were common ground and so not in dispute between the parties:

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

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

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

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

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

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

The parties confirmed at the hearing before us that these items remained common ground between them.

31. The FTT identified the issues before it as being:

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

(2) whether Bolt supplied the services of the drivers to the passengers without material alteration or further processing.

32. On the first issue, the FTT found that the ride-hailing services provided by Bolt were services of a kind commonly provided by tour operators or travel agents and so capable of falling within the special scheme. It did so on the grounds that Bolt provided passenger transport services and at "a high level" those supplies corresponded with the kind of supplies

made by tour operators and travel agents (FTT [105]). If it was wrong on that point, and the comparison had to be made at a more particular level, the FTT would have concluded that Bolt provided taxi rides and there was "no reason why a taxi ride… cannot be regarded as a service of a kind commonly provided by tour operators or travel agents" (FTT [108]).

33. On the second issue, the FTT concluded that Bolt supplied the services of the drivers to the passengers without material alteration or further processing and so the ride-hailing services were not in-house services that had to be excluded from the TOMS (FTT [111]).

34. The FTT therefore concluded (at FTT [112]) that the supply of mobile ride-hailing services, without any additional elements, to a traveller was a provision of travel facilities within the TOMS. This conclusion was based on the FTT's conclusion from its review of the case law that the provision of transport is a travel service for the purpose of the TOMS and that it is not necessary for a trader to provide any additional services for that service to fall within the scheme. The FTT noted that, even if it was wrong on that issue, the additional services provided by Bolt – the various options for the journey within the Bolt mobile app, the help and assistance that was available through the app or Bolt's website, or by email and telephone, the information provided in articles on Bolt's website and in its blog – were sufficient to bring the supply of mobile ride-hailing services within the TOMS (FTT [113]).

35. On that basis, the FTT allowed Bolt's appeal.

**THE GROUNDS OF APPEAL**

36. HMRC appeal against that decision with the permission of the FTT. Their grounds of appeal are, in summary, as follows:

> (1) Ground 1 – The FTT erred in law in holding that supplies that (a) were not the same or similar to those of a tour operator or travel agent and/or (b) were not shown to be comparable from the typical consumer viewpoint and/or in competition with the supplies of a tour operator or travel agent nonetheless fell within the TOMS by virtue simply of being a form of passenger transport. In so doing, the FTT adopted the wrong approach and/or failed to apply a purposive and/or strict interpretation of the TOMS and/or asked the wrong question and/or misinterpreted relevant case law. The FTT also erred to the extent that it considered that if some minority of Bolt's supplies came within the TOMS (which is denied), all of Bolt's supplies could come within the TOMS.
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> (2) Ground 1(a) – To the extent the FTT made a finding of comparability/competition, it did so on no evidence or came to an unreasonable assessment of the evidence and one that was not open to it.
>
> (3) Ground 2: The FTT erred in law in considering that the Advocate General's opinion in *Madgett & Baldwin* provided an alternative basis for the FTT's conclusion.
>
> (4) Ground 2(a): The FTT ignored and/or misinterpreted key features of Bolt's mobile ride-hailing supplies and their relevance to determining whether the supplies fell within the TOMS.
>
> (5) Ground 3: The FTT erred in considering that if a multiplicity of services was needed for supplies to come within the TOMS, that this provided an alternative basis for its conclusion that Bolt's mobile ride-hailing supplies fell within the TOMS.

(6) Ground 4: the FTT erred in rejecting HMRC's alternative positions that Bolt's mobile ride-hailing supplies were materially altered or 'in-house' supplies such as to fall outside the TOMS.

37. The first five of these grounds (Grounds 1, 1(a), 2, 2(a) and 3) relate to the FTT's conclusions on the first issue that was before it. The final ground (Ground 4) relates to the FTT's conclusion on the second issue. We will address them by reference to the issues that were before the FTT.

## ISSUE 1: SERVICES OF A KIND COMMONLY PROVIDED BY TOUR OPERATORS OR TRAVEL AGENTS

### The FTT's decision on Issue 1

38. As we have described above, on this first issue, the FTT found that the ride-hailing services provided by Bolt were services of a kind commonly provided by tour operators or travel agents.

39. The FTT's reasoning is set out at FTT [105]-[110]. We have set it out in full below as we will need to refer to it in the course of our discussion.

> 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, e.g. airport pick-ups and transfers, I was not satisfied that they commonly provided on-demand rides from point A to point B which were the same as or similar to those provided by Bolt. In any event, for the reasons set out below, I consider that the correct approach is to take a high level or general view when considering whether services are of a kind commonly provided by tour operators or travel agents.
>
> 106. The approach taken by the CJEU in the cases suggests that it is not necessary for the tribunal to descend into the detail of the services. In *Madgett and Baldwin* at [23], the CJEU referred to "services generally associated with that kind of activity" and in *ISt*, the CJEU said at [24] (emphasis supplied):
>
> > "*iSt* provides services which are identical or at least comparable to those of a travel agent or tour operator in that it offers services involving the travel by plane of its customers and/or their stay in the host state and, in order to provide services generally associated with that type of activity , it uses the services of other taxable persons".
>
> 107. Determining whether a person provides services of a kind commonly provided by tour operators or travel agents by making a detailed examination carries the risk of inconsistent application of VAT to supplies to travellers and distortion of competition between traders in the same sector. That further supports the view that the tribunal should take a general or non-specific view of the activities that are to be compared. Adopting that approach, I conclude

that passenger transport services are the kind of services commonly provided by tour operators or travel agents in that such services are generally associated with the type of activity carried on by tour operators and travel agents.

108. If I am wrong and it is necessary to have regard to the mode of transport then I note that the Advocate General in *Madgett and Baldwin* took the view that where a hotel arranges for a taxi to take one of its guests to a station or airport, the ride with the hotel's other services would not fall within the scope of the EU special scheme (see [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, e.g. a supermarket, restaurant or cinema, which travel agents do not typically serve makes any difference in principle. HMRC did not suggest that the purpose of a journey, eg whether it was for business or pleasure, or its duration could affect whether or not it fell within the TOMS. Nor do I think that it makes any difference if a customer can specify the start and end point of the journey. If the purpose of the journey does not matter then why should a feature such as the ability of the customer to specify the place of departure and destination without restriction affect whether it falls within the scope of the TOMS? Travel agents and airlines routinely arrange transport of holidaymakers by PHV between their home and an airport at the start and end of a holiday. Such airport transfers are usually provided as part of a package but that does not make them any less from point A to point B.

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

40. In the event that it was wrong on the question of whether the provision of travel services could fall within the scheme without the need for other elements, the FTT decided that the other services provided by Bolt – the ability to arrange a journey with various options by using the app, help and assistance, and information and advice – were sufficient to bring Bolt's supplies within the special scheme. The FTT said this at FTT [113]:

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

**The parties' submissions in outline**

41. We will address the parties' arguments in more detail in our discussion below. However, in summary, their main submissions were as follows.

42. Ms Mitrophanous KC, for HMRC, criticised the FTT's reasoning on this issue. She made the following submissions.

(1) The FTT erred by adopting a "high level" approach to the question of whether the services provided by Bolt were "identical or at least comparable" to services provided by tour operators. By doing so – and finding that the supplies made by Bolt were of "passenger transport" and that supplies of passenger transport were commonly provided by tour operators – the FTT failed to ask the correct question derived from the CJEU case law, which was whether the services provided by Bolt were comparable to services provided by travel agents or tour operators.

(2) The FTT also erred in its application of its alternative rationale – that, even on a more particular approach, the supplies made by Bolt were comparable to services commonly provided by tour operators – by:

(a) focusing on the mode of transport and in particular relying upon the opinion of the Advocate General in *Madgett & Baldwin* as support for a conclusion that transport by taxi fell within the special scheme;

(b) regarding the fact that Bolt provided rides to and from places which tour operators did not typically serve as being irrelevant; and

(c) failing to treat the on-demand nature of the supplies made by Bolt as a feature, which distinguished those supplies from supplies commonly made by tour operators.

(3) The FTT also erred in its alternative basis for its conclusion (at FTT [113]). The additional services provided by Bolt could not bring the services provided by Bolt within the special scheme when the bulk of the services that Bolt provided (passenger transport) were not comparable with services commonly provided by tour operators.

43. Ms Sloane KC, for Bolt, supported the FTT's conclusions. In summary, her main submissions in response to HMRC's arguments were as follows.

(1) The CJEU case law shows that taxi rides can fall within the special scheme. The FTT's "high level" approach was consistent with the case law principles which show that:

(a) the correct touchstone is travel and a journey;

(b) the purposes and duration of the travel service are irrelevant;

(c) there is no requirement for a minimum distance of travel, or a cross-border element; and

(d) there is no requirement for a travel service to be packaged with other supplies to fall within the special scheme.

(2) The scope of the scheme is not defined by reference to supplies typically made by a "traditional" travel agent or tour operator. The arguments about the comparability of Bolt's supplies with those of traditional travel agents and tour operators are misplaced. In any event, the evidence shows that even traditional travel agents and tour operators organize transfers by taxi or PHV.

**Discussion**

44. This first issue, and in particular Ground 1, concerns the scope of the special scheme. We will address the particular submissions made by the parties below, but we will first turn to the scope of the scheme more generally.

***Principles derived from the CJEU case law***

45. On that question, we have been referred by the parties to a significant body of case law primarily derived from the decisions of the CJEU. We do not intend to conduct a review of all those cases in this decision. We will instead set out the principles that we derive from them, with reference to the leading cases.

46. The reason for the special scheme for travel agents and tour operators is to address the issues that arise for them from their businesses involving the provision of a multiplicity of services (typically transport and accommodation) in or outside the state in which they are established as a result of the application of the usual VAT rules (see, for example, *Van Ginkel Waddinxveen BV and others v Inspecteur der Omzetbelasting Utrecht* (Case C-163/91) ("*Van Ginkel*") at [13]-[15])

47. Article 306 of the PVD refers expressly to "travel agents" (Article 306.1) and extends the scheme to "tour operators" (Article 306.2) by providing that for the purposes of the relevant chapter of the PVD tour operators are to be treated as travel agents. Neither term is defined. The UK legislation – section 53 VATA and Articles 2 and 3 of the TOMS Order – refers to supplies of goods or services made by "tour operators". Again, this term is not defined.

48. Notwithstanding these express references, and the acknowledged purpose of the rules, the case law is clear that the special scheme is not confined to supplies of travel agents and tour operators in the traditional sense. The scope of the special scheme is defined by the nature of the services that are provided and not the classification of the person that makes the supplies.

49. The leading case in this respect is the decision of the CJEU in *Customs and Excise Commissioners v Madgett and Baldwin (trading as Howden Court Hotel)* (Cases C-308/96 and C-94/97) ("*Madgett*"). *Madgett* concerned hoteliers, who ran a hotel in Torquay, but who provided coach travel for guests from and to points in the North of England to and from the hotel through arrangements made with a coach hire firm. The CJEU held that the supplies of coach travel fell within the special scheme. The CJEU says this at *Madgett* [20]-[23]:

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

50. The CJEU therefore decided that a trader who provides "identical services" (*Madgett* [20] and [21]) to those of a travel agent or tour operator within the normal meaning of those terms, will fall within the special scheme. The CJEU's conclusion (at *Madgett* [23]) is expressed in more general terms.

51. Similar statements to those in *Madgett* can be found in other cases. In *Finanzamt Heidelberg v iSt internationale Sprach- und Studienreisen GmbH* (Case C-200/04) ("*iSt*"), the taxpayer company organized language and study programmes in the United States for German students including the provision of accommodation and, in some circumstances, flights, as well as other services. The CJEU found that these services fell within the special scheme. The CJEU says this at *iSt* [22]-[24]:

> 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 Article 26 of the Sixth Directive as applying solely to traders who are travel agents or tour operators within the normal meaning of those terms would mean that identical services would come under different provisions depending on the formal classification of the trader (*Madgett*, paragraphs 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 Article 26 of the Sixth Directive, namely a local partner organisation and airlines.

52. In this passage (at *iSt* [24]), the CJEU expresses its conclusion on the basis that the company provided services which were "identical or at least comparable" to those of a travel agent or tour operator. Later in the decision, the CJEU expresses its conclusion once again in more general terms, by reference to the provision of travel services as principal using supplies and services provided by others (see *iSt* [34] and [48]). The CJEU says this at *iSt* [34]:

> 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 Article 26 of the Sixth Directive, the only relevant criterion for the application of that article is whether or not the travel service is ancillary.

53. The question of how to compare a service provided by a trader who is not a travel agent or tour operator within the normal meaning of those terms with services commonly provided by travel agents and tour operators is central to HMRC's criticisms of the FTT's "high level" approach, which form the basis of Ground 1 of this appeal. We address that issue below.

54. The services provided by the taxpayer must relate to travel or a journey if they are to fall within the scheme (*Minerva Kulturreisen GmbH v Finanzamt Freital* (Case C-31/10) ("*Minerva*") at [15]). This is evident from the wording of the PVD: Article 306.1 PVD refers to the provision of "travel facilities"; and Article 307 which refers to the transactions made "in respect of a journey... to a traveller".

55. Notwithstanding the reasons for the creation of the scheme, there is no requirement for the taxpayer's supplies to involve a multiplicity of services.

(1) So a supply of holiday accommodation can fall within the scope of the scheme even where the service covers only accommodation and not transport provided that the supply of accommodation relates to travel or a journey (*Van Ginkel* [22] to [23], *Alpenchalets Resorts GmbH v Finanzamt Munchen Abteilung Korperschaften* (Case C-552/17) [28]-[29], and [33]).

(2) Also, although the earlier case law was equivocal in this respect, it is now established that the provision of transport alone may fall within the scheme. It is not necessary for the travel services to be part of a wider package incorporating a multiplicity of supplies; a single bought-in service of travel is sufficient (*S.C. Dragoram Tour SRL v Directia Generala Regionala a Finantelor Public Iasi* (Case C-763/23) ("*Dragoram*") at [33]).

56. Nor is there a requirement for a cross-border element (*Madgett* [19]). The purpose and duration of travel are also irrelevant (*iSt* [35]-[36]).

57. The special scheme only applies to "bought-in" services; that is, services which the taxpayer buys-in from other businesses as principal and provides as a part of its service to the traveller. Accordingly, when a taxpayer provides both bought-in services and its own services (referred to as "in-house services") to a traveller, it is only the bought-in services that fall within the scheme (*Madgett* [35], *Maria Kozak v Dyrektor Izby Skarbowej w Lublinie* (Case C-557/11) [27]).

58. Also, if they are to fall within the scheme, the bought-in services cannot be ancillary to a principal supply which is not within the scope of the scheme. This will typically be the case where a taxpayer buys-in travel services which represent only a small proportion of the service provided to the client and that principal service is not a travel service. This concept is described by the CJEU in *Madgett* in the following terms (*Madgett* [24]-[25]):

> 24 However, as the Advocate General notes in point 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 Article 26 of the Sixth Directive.

***Ground 1: the high-level approach***

59. HMRC's first ground of appeal is that the FTT erred in adopting a high-level or general approach to the question of comparability.

60. Our starting point is the decisions of the CJEU in *Madgett* and *iSt*. In *Madgett*, the CJEU refers to "identical transactions" and "identical services" (*Madgett* [21] and [22]) and, in *iSt*, to services that are "identical or at least comparable" to those provided by travel agents and tour operators (*iSt* [24]) as falling within the scope of the special scheme. Ms Mitrophanous KCrelies on these cases in support of her submission that the scope of the scheme is defined by reference to services that would be provided by travel agents and tour operators. She also points out, which we accept, that the references to services that are "generally associated with that kind of activity" in *Madgett* [23] and *iSt* [24] are references to services that form part of the supply that is made by the other trader to whom the provision of the supply has been entrusted and is not, as the FTT appears to suggest at FTT [106], support for a broader approach to the question of comparability itself.

61. Ms Mitrophanous KC also relied on the CJEU decision in *Star Coaches s.r.o. v Financni reditelstvi pro hlavni mesto Prahu* (Case C-220/11) ("*Star Coaches*") in support of her submission that the FTT was wrong to adopt the high-level approach.

62. *Star Coaches* concerned a Czech transport company that provided coach travel services to travel agents in the Czech Republic and other EU member states either using its own coaches or coaches provided by subcontractors. There were two questions before the CJEU. The first was whether the special scheme related only to supplies made by travel agents to end-users (i.e. travellers) or whether it could apply to supplies made to other customers. The second was whether a transport company that provides coach transport to travel agents (and not directly to

travellers) and does not provide any other services could be treated as a travel agent for the purposes of the special scheme.

63. The CJEU did not find it necessary to answer the first question. The CJEU answered the second question in the following terms (at *Star Coaches* [26]):

> The answer to the second question is therefore that a transport company, which merely carries out the transport of persons by providing coach transport to travel agents and does not provide any other services such as accommodation, tour guiding or advice, does not effect transactions falling within the special scheme for travel agents in Article 306 of the VAT Directive.

64. In reaching that conclusion, the CJEU stated that it could not rule out the possibility that the services of an operator of public transport, which when not using his own coaches, used the services of subcontractors might fall within the special scheme (*Star Coaches* [22]) However, it was also "necessary that those services cannot be reduced to a single service" (*Star Coaches* [23]) i.e. that the taxpayer must be making other supplies in addition to the transport services.

65. As we have explained, the latter point – the requirement for transport services to be part of a wider package of services if they are to fall within the special scheme – has been superseded by later case law (*Alpenchalets* [28] and [33], *Dragoram* [33]). Ms Mitrophanous KC quite correctly does not rely on *Star Coaches* as authority for such a proposition. She does, however, rely on the CJEU decision in *Star Coaches*, as interpreted by the CJEU in *Alpenchalets*, as support for her assertion that the mere resupply of passenger transport services is not sufficient to fall within the scope of the special scheme; some "other feature" is required. On her argument, as we understand it, that feature is derived from comparison with the supplies that are typically made by travel agents and tour operators. Ms Mitrophanous KC takes these points from the passage in the CJEU's decision in *Alpenchalets* (at *Alpenchalets* [32]) where the CJEU says this, when commenting on the decision in *Star Coaches*:

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

66. The FTT discussed the decision in *Star Coaches* (at FTT [63]-[65]) and concluded that:

> …*Star Coaches* is not authority for the proposition that a supply of transport services, without more, cannot come within the EU special scheme. It merely shows that, in the opinion of the CJEU, the company in that case, which was not a travel agent or tour operator and made supplies to travel agents as a subcontractor, was not acting as a travel agent or tour operator. (FTT [65])

67. Ms Mitrophanous KC criticized the FTT's analysis of both the CJEU's decision in *Star Coaches* and the commentary on it by the CJEU in *Alpenchalets*. In particular, she said that the FTT's analysis proceeded on a misunderstanding of the CJEU's decision in *Alpenchalets* in that the FTT assumed that *Star Coaches* had provided services "as a subcontractor" rather than "through a subcontractor". We do not read the FTT decision in that way. It seems to us that in the relevant passage in FTT [65], the FTT is referring to the fact that the taxpayer company did not make supplies directly to travellers. It made its supplies (whether using its own coaches or those of its own subcontractors) to travel agents. So, in effect, it was a

subcontractor of the travel agents and not acting as a travel agent or tour operator itself. That explanation is consistent with the approach of the CJEU in *Alpenchalets* and its decision in *Star Coaches*.

68. Having considered the wider case law, it seems to us that the authorities do support a broader approach than Ms Mitrophanous KC advances.

69. In the paragraphs in which the CJEU in *Madgett* ([20] and [22]) is addressing the particular facts of the case, it refers to the trader in that case having provided "identical services" to a travel agent or tour operator. However, when it states the general principle (at *Madgett* [23]), the CJEU refers to traders who are not travel agents or tour operators falling within the scheme where they "organize travel… in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity".

70. The principles are expressed in similarly general terms by the CJEU in *iSt* (at *iSt* [24] and [34]). In *iSt*, the CJEU expressly refused to adopt a restrictive interpretation of the concept of "travel" for the purposes of Article 306. The Court expressed the test simply by reference to the provision of travel services as principal using supplies and services provided by others, the only relevant exception as being whether the travel services are ancillary to another supply (*iSt* [34]). These comments mirror those of the Advocate General in *iSt* (see the Advocate General's opinion at [22] and [33]).

71. The CJEU has found that various supplies that might not be regarded as typical of supplies by travel agents and tour operators fall within the scheme. For example:

(1) The CJEU has found that the services provided by a "hotel services consolidator" – which involved the provision to other businesses of facilities for booking accommodation at hotels – fell within the scheme, in a case where the taxpayer purchased hotel accommodation from hoteliers in its own name and then on-sold that accommodation to its customers (*Dyrektor Krajowej Informacji Skarbowej v C. sp. z.o.o* (Case C-108/22)).

(2) In *Dragoram*, the CJEU found that the services provided by a company that purchased plane tickets for resale to customers fell within the scheme, even though the company offered no other services.

(3) In *iSt* itself, the company organized educational programmes, under which applicants were placed at an overseas school or college for periods between three and ten months – and in some cases found accommodation with a host family. The purpose and duration of the travel was irrelevant.

72. An important question for us is whether this broader approach is such that it extends to all supplies of "passenger transport services" in accordance with the highest-level approach adopted by the FTT. We note, in passing, that HMRC in its VAT Notice refers to supplies of passenger transport as always falling within the scope of the special scheme. However, we do not base our conclusion on the VAT Notice. Despite the broad approach in the CJEU case law, we do not think it can 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, that does not mean that the approach is not a broad, high-level one; we conclude that it is. On the facts of this case, we are satisfied that none of the matters to which HMRC point in Grounds 1a, 2 and 2a (which we discuss below and which also form part of Issue 1), or generally, are sufficient to disturb the conclusion that at an appropriately high-level and, subject

to the issues raised by Ground 4, the supplies made by Bolt are capable of falling within the scheme.

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

***Grounds 1a, 2 and 2a: the alternative reasons for the FTT's conclusion***

74. Ms Mitrophanous KC also took issue with various aspects of the FTT's approach to the question of comparability in its alternative rationale for its conclusion (FTT [108]-[110], and [113]).

75. The first of these relates to the mode of transport provided. In its decision, the FTT (at FTT [108]) concluded that there is "no reason why… a taxi ride… cannot be regarded as a service of a kind commonly provided by tour operators or travel agents". In support of its conclusion, the FTT relied on the opinion of the Advocate General in *Madgett* ("*Madgett AG*"), where the Advocate General makes a distinction between a hotelier (i) "arranging a taxi service for journeys to a nearby station or airport" (*Madgett AG* [34] and [37]) – which would be outside the scheme as it would be ancillary to its activity as a hotelier – and (ii) providing other services outside the scope of "tasks traditionally entrusted to hotels", such as tourist excursions (*Madgett* AG [39]) - which may fall within the scheme.

76. Ms Mitrophanous KC criticized the FTT's reliance on the Advocate General's opinion in *Madgett* on the grounds that (i) the reference to taxi rides in the Advocate General's opinion should not be regarded as confirmation that the provision of transport by taxi will always fall within the scheme and (ii) it was incorrect to draw the inference that local taxi rides could fall within the scheme from a case which was not concerned with transport by taxi at all.

77. We do not share Ms Mitrophanous KC's concerns. At FTT [108], the FTT was simply acknowledging the possibility that the supply of a taxi ride may be capable of falling within the scheme. We agree with the FTT that the view of the Advocate General (at *Madgett AG* [34]and [37]) that a taxi service provided to a customer by a hotelier for a journey to a nearby station or airport would be ancillary to the hotelier's other activities supports the FTT's view. The concept of "ancillary" activities in this context is an exception from bought-in travel services that would otherwise fall within the scheme (see *Madgett* [24]-[25], *iSt* [34]). It must contemplate the possibility that the provision of a bought-in taxi ride might otherwise be a travel service within the scheme.

78. As regards the other issues that relate to comparability, Ms Mitrophanous KC also submitted that the FTT fell into error by ignoring relevant characteristics of the services that distinguished the supplies made by Bolt from those typically made by travel agents and tour operators – primarily the fact that Bolt provides rides to and from places that tour operators do not typically serve and that Bolt's service operates on-demand and 24 hours a day. In the first case, the FTT equated the question of the underlying nature of the journeys provided by Bolt with the question of the purpose of the journey, which was found in *iSt* to be an irrelevant consideration (FTT [109]). The two were not the same. It was also, on Ms Mitrophanous KC's argument, incorrect for the FTT to treat the on-demand nature of Bolt's supplies as an

"arbitrary" criterion and so not a means of distinguishing these supplies from those commonly made by travel agents and tour operators (FTT [110]). The point was that the nature of the underlying service itself was not comparable with those commonly provided by travel agents and tour operators.

79. Ms Mitrophanous KC also submitted that, even if a proportion of Bolt's supplies – for example transfers to transport hubs (see the FTT's reference at FTT (109)) – might be regarded as comparable with those commonly provided by travel agents and tour operators, that proportion was a small minority. A minority of supplies that may fall within the special scheme could not affect the treatment of the vast majority of supplies that fell outside the scheme (*Minerva* [22]-[23]).

80. On these issues, and on the separate issue to which we refer below concerning the packaging of supplies, the argument before us descended into disputes between the parties as to the admissibility and relevance of evidence on the nature of the supplies made by some travel agents and tour operators and the proportion of journeys provided by Bolt or travel agents that would fall into particular categories - for example, the extent to which travel agents might provide taxi or chauffeur services for stand-alone journeys rather than part of a package or itinerary, the proportion of longer distance journeys undertaken by Bolt's customers, and the proportion of transfers to and from transport hubs provided by Bolt. It was in this context, that the dispute concerning Mr Ryan's evidence to which we referred at [20]-[28] above arose.

81. As we have mentioned, the dispute concerned an exhibit to Mr Ryan's witness statement (JR28) showing that a number of travel agents (Corporate Travel Services, Baldwins Travel, Hays Travel) provide cars, transfers, business taxis, and chauffeur services. We agree with the FTT's concern, expressed in the transcript passages to which we referred, that it is not possible to know how frequent this is. That having been said, we think that the very fact that it would be difficult ever to know, without a lot of work, the percentage or amount of business of this kind among the trade is a good argument for a quantitative approach not being the right one, a point also adverted to in the course of argument in the FTT. It may also be difficult to establish whether any particular activity of this kind is provided as principal or not.

82. We decided not to exclude JR28, but in any event, whether or not JR28 is excluded is not as important a dispute as the time devoted to it at the hearing before us might suggest. The reason is that in the last two sentences of FTT [109], the FTT said that airport transfers by taxi or PHV are "routinely" provided by travel agents (and airlines) and (last sentence) that those transfers are "usually" provided as part of a package. This finding, which HMRC does not dispute and indeed relies on, clearly means that sometimes such transfer provisions are not part of a package.

83. Ms Mitrophanous KC accepted in the course of argument before us that there was no concrete evidence bearing on whether such transfers are more often as part of a package and that the FTT's conclusion as to the relative frequency must have been based on a form of judicial notice.

84. We did not hear any detailed argument on how far judicial notice extends; it was not part of the argument below nor was it covered in the FTT Decision, and its scope is not part of either side's grounds on this appeal. However, we have already said that detailed quantitative inquiries are not the right approach and if judges and tribunals deciding the application of the scheme to particular cases are to rely on their own appreciation of the travel business then it must necessarily be at a broad level. They will not have a concrete idea of what proportion of

services are X rather than Y, or whether travel agents offer precisely A, B and C all together and how often. We note that none of the CJEU cases cited to us involves any such detailed analysis. They proceed on the basis and at the level that travel agents provide flights, or hotel rooms or the like, matters which are notorious and obvious and might well be the subject of judicial notice.

85. The significance to Bolt's argument of the parts of JR28 to which we have referred was partly that they spell out that the transfers might be stand-alone and not part of a full itinerary (for example on the first page under "Chauffeur Services"). But that this happens at least sometimes was part of the FTT's finding at FTT [109] that is not challenged by HMRC. So we think this was all something of a side show. We note that JR28 also gives some support for travel agents providing, in a similar way, cross-town transport or transfers for train journeys. We do not think that FTT [109] was intended to reject this, it is just that it happened to be focusing on airport transfers.

86. A somewhat related point arose in relation to which services compete with which others. One of Ms Mitrophanous KC's arguments was that on-demand journeys are not the same as, or comparable to, scheduled taxi services because they do not compete with each other. But the FTT (at FTT [92]) made findings accepting that Bolt does compete with other transport forms, as well as with other PHV service providers. Speaking for ourselves, and assuming that some form of judicial notice (or perhaps in this case, common sense) is appropriate, we think it is more likely than not that some consumers do make a choice between a scheduled service and an on-demand service, perhaps on the basis that the former is more expensive but more certain and the latter is cheaper but involves the possibility that the taxi will not come for 20 minutes. As with the point about quantitative proportions, investigating competition and substitutability can be a complex, difficult and resource-intensive task and we do not think it can be the right approach, which again militates in favour of assessing comparability at a high-level.

87. As regards the "on-demand" nature of Bolt's supplies for reasons similar to those of the FTT, we are not satisfied that this can be a distinguishing feature. All the supplies made by Bolt are made through the reservation system. We are not satisfied that it makes any difference to the VAT treatment as to whether those journeys are booked 1 week, 1 day or 1 minute in advance.

88. In summary, therefore, on the issues falling within Grounds 1a, 2 and 2a, we find no error in the FTT's approach. The FTT was entitled to reach the conclusions that it did on the evidence before it.

***Ground 3: multiplicity of supplies***

89. The final ground relating to Issue 1 concerns the FTT's alternative reasoning for its conclusion – that, if it was necessary for Bolt to make other supplies in addition to the provision of transport for the supplies of transport to fall within the scheme, the additional services provided by Bolt were sufficient to meet the requirement (FTT [113]).

90. Ms Mitrophanous KC confirmed that it was not HMRC's case that a multiplicity of services was required for the application of the special scheme. The basis for the FTT's alternative conclusion was therefore incorrect (see the interpretation of *Star Coaches* in the CJEU decision in *Alpenchalets* (*Alpenchalets* [33])). However, it was HMRC's case that passenger transport services provided by Bolt were not comparable with supplies made by

travel agents and tour operators; and the addition of the other services provided by Bolt could not bring those services provided within the scheme.

91. We have set out our views on the comparability issues above. The issues raised by this ground of appeal are addressed in that discussion. Given our conclusions on Grounds 1, 1a, 2 and 2a, we do not need to decide this ground, and we do not do so.

**Conclusion**

92. As regards the matters falling within Issue 1 (Grounds 1, 1a, 2, 2a and 3), we agree with the FTT's conclusion. We may have reached that conclusion by a slightly different route, but if and to the extent that betrays any errors of law in the FTT's approach, they are not material. At most, it could be said that in phrasing (in particular) FTT [107] as it did, the FTT articulated a truly absolute approach in respect of "passenger transport services" when an appropriately high-level approach cannot be said to have that result in all cases, but that paragraph was expressed in, and must be seen in, the overall context of the FTT Decision and it is clear that any very fine difference is immaterial. We will not set aside the FTT Decision on any of these grounds.

93. We dismiss these grounds of appeal.

**ISSUE 2: SERVICES SUPPLIED FOR THE BENEFIT OF A TRAVELLER WITHOUT MATERIAL ALTERATION OR FURTHER PROCESSING**

**The FTT's decision on Issue 2**

94. As we have described above, on the second issue, the FTT found that the ride-hailing services provided by Bolt were services supplied for the benefit of a traveller without material alteration or further processing.

95. The FTT's reasoning on this issue is set out at FTT [111].

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

**The parties' submissions in outline**

96. Ms Mitrophanous KC for HMRC submitted that:

(1) the supplies made by Bolt were not comparable to supplies made by travel agents and tour operators which were typically back-to-back supplies, where a trader buys and resells services without material alteration; and/or

(2) the supplies made by Bolt were "in-house" supplies in which the bought-in supplies were combined with Bolt's own resources to produce a separate supply.

97. Ms Mitrophanous KC said that the FTT erred in several material respects:

(1) First, the FTT took the view that bought-in supplies would have to be "so changed as to become in-house supplies" if they were to be excluded from the scheme (FTT [73])). In doing so, the FTT failed to consider the separate question of whether a "material alteration" had been made to the supplies so that they were not "for the direct benefit of the traveller". As a result, the FTT did not undertake the comparison required by the test set out by the Upper Tribunal in *Sonder UT* (*Sonder UT* [94]) and determine whether the alterations were such that the bought-in supplies from the drivers were not supplied "for the direct benefit of the traveller".

(2) Second, even though the FTT identified that if the degree of alteration was such as to render Bolt's supplies to customers in-house supplies (and so outside the scheme), it failed to consider the degree of alteration made to the bought-in supplies from drivers at all.

98. Ms Mitrophanous KC said that in both cases, the FTT failed to consider the degree of alteration to the supplies. In particular, it did not take into account factors such as Bolt's position as a licensed PHV operator and the provision of its platform that enabled the PHV rides to be provided to customers, lawfully and on-demand. Instead, the FTT focused on whether the supplies made to customers "were derived from" the supplies made by the drivers (FTT [111]).

99. Ms Sloane KC made the following submissions:

(1) The FTT applied the correct test. It identified that the supplies would not fall within the scheme if they were not made for the "direct benefit of the traveller" (FTT [111]) and expressly dealt with the issue of in-house supplies (FTT [73] and [111]).

(2) Bolt's resupplies to the customer did not constitute material alterations; it was common for travel agents and tour operators to provide other services to organize travel by making a booking, and dealing with payment. Those services added value, but did not affect the nature of the bought-in supply that is provided to the customer.

(3) It was not relevant that the licensing regime was such that the customer could not obtain the same service directly from the drivers. The licensing regime required the booking service to be licensed. Similar licensing regimes were in place for traditional travel agents and tour operators or for vendors of airline tickets; the re-supply of transport or accommodation in all those cases would fall within the TOMS.

100. Ms Sloane KC said that, if anything, the decision in *Sonder UT* supports Bolt's case:

(1) The errors identified by the Upper Tribunal in the FTT's decision in that case – failure to have regard to the "direct benefit" test and the mischaracterization of the supplies to which the test should be applied – do not arise in this case.

(2) The FTT applied the correct test. It made an evaluative judgment that should be respected by the Upper Tribunal (*Sonder UT* [104]-[105]).

**Discussion**

101. As we identified above, there are differences in the wording of the PVD and the TOMS Order. In particular, the TOMS Order refers in Article 3 to a "designated travel service" as being a bought-in supply "supplied for the benefit of a traveller without material alteration or processing". Article 306.1 PVD on the other hand simply refers to travel agents who "use supplies of goods or services provided by other taxable persons, in the provision of travel facilities". Articles 308 and 310 then refer to the supply of services provided by other traders "for the direct benefit of the traveller". Notwithstanding these differences, the FTT found that it was possible to adopt a conforming interpretation of the TOMS Order "if the requirement that the goods and services acquired from third parties means that they should not be so changed as to become in-house supplies" (FTT [73]).

102. There is no reference to "in-house supplies" in the PVD. The term is referred to in the CJEU case law typically in the context of distinguishing "in-house supplies" which cannot fall within the special scheme – because they cannot form part of the single service referred to in Articles 307 and 308 PVD – from supplies bought-in from third parties that fall within the scheme if the relevant criteria are met (see, for example, *Kozak* [24] and [27]). In this context, an in-house supply may refer to a supply made from the taxpayer's own resources or a supply resulting from a combination of resources – the taxpayer's own resources and goods and services that the taxpayer has bought-in from other traders - where the nature of the supply to the customer fundamentally differs from the supplies the taxpayer receives from the other traders.

103. As we understand it, Ms Mitrophanous KC's criticism of the FTT's conforming interpretation of Article 3(1)(b) of the TOMS Order at FTT [73] is that its explanation of the reference in the Order to "without material alteration or processing" is restricted to bought-in supplies that form part of "in-house supplies". In a similar vein, although the FTT refers to the "direct benefit" issue (at FTT [111]), its conclusions tie the question of whether there is a direct benefit to the traveller to the question of whether the supply of the drivers' services becomes part of an in-house supply. That explanation does not permit of the possibility that a bought-in supply might be excluded from the scheme simply because it is not provided "for the direct benefit of the traveller" irrespective of whether it forms part of an in-house supply.

104. We have not been referred to any direct authority on this point. As we mentioned above, between the date of the hearing and the issue of this decision, the Upper Tribunal issued its decision in another case concerning this aspect of the TOMS Order, *Sonder UT*, which addresses some of the issues concerning the conforming interpretation of the TOMS Order.

105. *Sonder UT* involved a taxpayer (Sonder) that leased apartments from third party landlords for periods of between two and ten years. It then granted licences to travellers to occupy the apartments for periods ranging from a single night up to a month, with an average stay of five nights. The question before the tribunal was whether Sonder's supplies fell within the TOMS. The FTT found that Sonder's supplies to its customers fell within the TOMS. Allowing HMRC's appeal, the Upper Tribunal found that the supplies did not fall within TOMS. This was because the transformation of the bought-in supplies (the longer terms leases) into short-term holiday accommodation (the licences to customers) involved a material alteration such that the bought-in supplies did not directly benefit the traveller.

106. The Upper Tribunal identified the requirement for the bought-in supplies to be supplied "for the direct benefit of travellers" as the governing principle to be derived from Articles 306-310 PVD (*Sonder UT* [80]). It found that Article 3(1)(b) of the TOMS Order capable of a consistent interpretation (*Sonder UT* [85]), but counselled against any attempt to restate the wording of the test. The Upper Tribunal said this at *Sonder UT* [94]:

> … we do not consider that it is necessary or desirable to restate the test in a way that goes beyond the language of the TOMS Order and the PVD. That is because all cases will turn on their own facts. It ought to be sufficient to say that the scheme will apply where there has not been a material alteration or further processing of the bought-in supply such that what is bought-in is not supplied for the direct benefit of the traveller. That is the test the FTT was required to apply.

107. That test required a comparison between the bought-in supply and the supply that was made to the taxpayer's customer (*Sonder UT* [99], [113]-[114]). On the facts, the FTT had failed to apply that test correctly because it had focussed on physical changes to the apartments and failed to consider the full bundle of rights and interests that were bought-in and those that were on-supplied. In particular, the FTT did not take into account material differences between the nature of the longer-term property interests that formed the bought-in supplies, and the short-term rights provided to customers.

108. The Upper Tribunal in *Sonder UT* did not base its decision on the concept of in-house supplies and so does not determine whether these are separate and distinct issues. Even if there is a distinction – which we doubt - there must be a significant overlap between bought-in supplies that are not provided directly for the benefit of the traveller and those which form part of an in-house supply.

109. In the present case, if we undertake the exercise specified by the Upper Tribunal in *Sonder UT* to determine whether the supplies bought-in by Bolt are provided for the direct benefit of the traveller, we have to compare the supplies bought-in by Bolt – i.e. the services of the drivers – to the supplies made to Bolt's customer. Having done so, we agree with the FTT that the supplies made by the drivers are made for the direct benefit of the traveller:

(1) The driver provides the services of conveying the customer from A to B, in a vehicle that is properly maintained, insured, taxed and has a PHV licence. The nature of those services does not change when they are provided to the customer.

(2) The additions to the supplies of the drivers' services that are provided by Bolt – the reservation service and payment service through the app – do not alter the nature of the supply that is made by the driver that the customer receives. They may add value to that supply, but no more than a traditional travel agent who organizes a journey for a client, makes the reservations, and arranges payment to providers of the transport services.

(3) Ms Mitrophanous KC argued that the fact that Bolt is a licensed PHV operator and that licence is necessary if the services of the driver are to be provided lawfully through the platform demonstrates that the supply made by the driver is materially altered when it is made by Bolt to the customer. We disagree. The supply made by the driver is not materially changed. As Ms Sloane KC pointed out, the PHV operator's licence is required by any person who operates the reservation service. It does not affect the nature of the supply that is made by the driver the benefit of which is received by the customer.

110. For similar reasons, we also agree with the FTT that the services of the drivers are not subsumed within a wider "in-house supply" made by Bolt. The services of the drivers in conveying the passenger from A to B in properly maintained, insured and taxed vehicle remain the same. They are not materially altered so that what the customer receives is fundamentally different from the services that the driver provides.

111. As with Issue 1, although our reasoning may at times differ, we agree with the FTT's conclusions on Issue 2. If and to the extent that there are errors of law in the FTT's reasons, they are immaterial. We do not set aside the FTT Decision.

112. We dismiss the appeal on Ground 4.

**DISPOSITION**

113. For the reasons given above, we dismiss HMRC's appeal.

**COSTS**

114. Any application for costs in relation to this appeal must be made in writing and served on the Tribunal and the person against whom it is made within one month after the date of release of this decision as required by rule 10(5)(a) and (6) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

**MR JUSTICE MEADE**
**JUDGE ASHLEY GREENBANK**

**UPPER TRIBUNAL JUDGES**

**Release date: 24 March 2025**