

VAT AND PRIVATE HIRE

AN UPDATE FROM THE AUTUMN STATEMENT ON 22 NOVEMBER 2023

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Jonathan Main is a VAT and indirect taxes partner at MHA and leads the practice across the North of England. He has a particular interest in the field of transport and has closely followed the developments regarding VAT and the private hire sector.

*The future VAT treatment of private hire revenue was brought into sharp relief by the recent judgment in **Uber Britannia Limited v Sefton Borough Council [2023] EWHC 1975 (KB)***

Although this position has not changed in the short term, there is now an issue which I believe requires your urgent attention.

Buried in Page 95 of the Autumn Statement which was published on 22 November, HM Treasury ("HMT") made the following announcement: **"VAT Treatment of Private Hire Vehicles – The government will consult in early 2024 on the impacts of the July 2023 High Court ruling in *Uber Britannia Ltd v Sefton MBC.*"**

WHY DOES THIS MATTER?

Think of a consultation process as the starting pistol being fired at the beginning of a race. Unfortunately, this could be a sprint, rather than a marathon. In my experience HMT typically issues a consultation when it has already decided on its preferred outcome.

For example, the two most recent HMT consultations published in September and November 2023 invited views on draft legislation designed to implement its preferred outcome. From HMT's perspective, a consultation is a chance for it to stress test the preferred future tax treatment, rather than invite ideas on a potential way forward.

It is far easier to influence the content of a consultation than to derail a process which is already underway. I have observed the progress of, or been involved in, many consultations over the last 30 or so years in the profession and can only recall one high profile consultation in the education sector, which ran aground once it became clear that HMT had failed to reconcile opposing views in the sector.

I have spoken to operators, industry experts, and presented at a recent industry webinar. I have heard widely differing views on the future for the industry, which leads to the inevitable conclusion that not everyone, including me, can be right!

WHY SHOULD I READ THIS?

In my last article, I discussed the implications of the **Uber v Sefton Council** High Court decision on the private hire sector. Uber succeeded in convincing the court that English and Welsh private hire operators ("PHOs") outside London should be licensed as **principals** with the implication that PHOs would need to pay VAT on both account and private journeys. This would be a fundamental change for the industry, affecting profits in the sector and the financial viability of operators.

The parties to the case have sought leave to appeal the High Court decision and to be granted an injunction against any local authorities changing their licensing arrangements until the conclusion of the litigation.

Given the request for the case to be referred to the Court of Appeal and the potential injunction to prevent local authorities pre-empting the outcome of the case, my advice at the time was "steady as she goes". HMRC's guidance has not changed, and you can therefore continue to act as **agent** for private journeys.

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HM Revenue & Customs

WHAT CAN I DO?

A brief recap on the current situation. Why are private journeys in a minicab like Schrodinger's cat, both subject to VAT and VAT free at the same time?

- The fare paid for a journey in a vehicle that carries less than ten passengers is subject to VAT.
- Unless you either employ the driver or the driver has worker status, you will be their agent and they will be liable to pay any VAT to HMRC.
- The VAT registration threshold at which a self-employed driver must register for VAT is £85,000 per year.
- As private hire drivers typically earn less than £85,000 per year from their self-employed business activities, they do not need to register for VAT.
- Private hire journeys are therefore both subject to VAT and VAT free at the same time!

As the cat is now out of the bag, hoping that nothing changes does not feel like a viable option. The option to act as an agent feels less certain going forward, leading to a potential shift in VAT liability from driver to operator. What options are available?

- We are waiting for the publication of the decision in the litigation at VAT Tribunal involving Bolt and HMRC. I understand that Bolt is arguing that VAT should only be paid on the profit it earns, rather than the full fare. For most operators, this may preserve the status quo if you compare profit on the fare to the fees earned from drivers.
- There is a well publicised industry campaign to preserve the VAT free status of private hire journeys by extending zero-rating to journeys in all vehicles, not just those which carry at least ten passengers.

The fact that HMRC is in litigation with Bolt confirms that it does not agree with the extension of a VAT scheme for Tour Operators (the Tour Operator's Margin Scheme or "TOMS") to the private hire sector.

The most coherent approach I have seen is the industry drive to extend zero-rating for all passenger journeys. This approach can be an end in itself or may encourage HMT to consider a reduced rate of 5% VAT as an alternative for the sector.

At this stage, I would urge you to support any lobbying activities to preserve the status quo, namely **no VAT on private journeys**. I have said previously that private hire is the only form of passenger transport with VAT. There is no VAT if we travel by bus, minibus, coach, train or aircraft. There will be no VAT for a journey in a licensed hackney cab unless the driver earns more than £85,000 per year.

Private hire is a lifeline for many parts of our communities who cannot afford a car, may find it difficult to access other forms of public transport because of their personal circumstances, or simply because there is no available bus or train service. It seems grossly unfair to single out this form of transportation purely because of unrelated licensing regulations.

I mentioned in my webinar presentation that inaction leads to the Government's preferred outcome. Now that we know that there will be a consultation exercise, this is clearly the case.

Finally, this could also be presented as an unexpected Brexit dividend. The UK could not extend zero-rating to private hire pre-Brexit, because we were bound by the restrictions of EU law. This is an opportunity to convince the Treasury and your local MP to support our local communities by providing targeted relief from VAT.

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