WHAT DOES THE BOLT SERVICES LTD VAT WIN MEAN FOR ME?

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Why should I read this?

This article deals with the latest development in the ongoing saga of VAT in the private hire market. **PHTM** kindly agreed to publish two previous articles by me which summarised the implications of the Uber v Sefton Council decision in July and the announcement of a consultation by HM Treasury ("HMT") on the VAT treatment of private hire income in early 2024. The consultation by HMT is prompted by the VAT implications of the Sefton judgment.

This article brings us up to date with the implications of Bolt's success at the First-tier Tribunal on the VAT treatment of its private hire revenue, which was detailed in a decision published on 15 December.

For those of you old enough to remember Soap, the iconic TV series from the late 1970's, I hope I can live up to the opening line from each episode, *"Confused? You won't be, after this week's episode of ... Soap."*

A short summary of the journey to this point

1. Uber lost its appeal to the Supreme Court on worker status (Uber v Aslam and others). The decision was released in February 2021.
2. Uber lost its appeal to the High Court on licensing requirements in London (Uber v TfL and others). The decision was released in December 2021.
3. Uber won its appeal to the High Court on licensing requirements in England and Wales (Uber Britannia Ltd v Sefton MBC and others). The decision was released in July 2023.
4. HM Treasury announced a forthcoming consultation on the impacts of the July 2023 High Court ruling in Uber v Sefton. This announcement was part of the Autumn Statement in November 2023.
5. Bolt won its appeal to the First-tier Tribunal on the VAT treatment of private hire revenue. The decision was released in December 2023.

How does this fit together /why does it matter to me?

London

The TfL case is concerned with the licensing requirements governed by the **Private Hire Vehicles (London) Act 1998** ("the **1998 Act**"). The final statement in the decision published in December 2021 was as follows:

> *"To operate lawfully under the 1998 Act a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking."*

Key points:

1. The decision only relates only to London.
2. The decision explicitly followed Uber v Aslam, taking comfort from the Supreme Court analysis of the presence or absence of the contractual relationship between Uber, the driver, and the passenger.
3. It means all licensed operators ("PHOs") covered by the 1998 Act operate as principal with the clear implication that they are required to pay VAT on the full fare paid by the passenger.

England and Wales (apart from Plymouth)

PHOs in the rest of England and Wales were not affected by the TfL decision. They had to wait for the decision in **Uber v Sefton Council** in July 2023. This case is concerned with the licensing requirements governed by **Part II Local Government (Miscellaneous Provisions) Act 1976** ("the **1976 Act**").

The High Court agreed with Uber's submission in this case that *"to operate lawfully under the* **1976 Act** *a PHO who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking."*

Key points:

1. The losing parties in this case have sought leave to appeal and an injunction against local authorities changing their licensing requirements until the case is finally resolved.
2. The judge was happy to take Uber's request to be

guided by the earlier decision in the TfL case. Two judges agreeing with each other on very similar facts may increase the likelihood of the same decision at a higher court.
3. It means all PHOs covered by the 1976 Act operate as principal with the clear implication that they are required to pay VAT on the full fare paid by the passenger.
4. There has so far been no wholesale change to licensing requirements and therefore no need for an immediate change to the payment of VAT by PHOs.
5. The announcement of a forthcoming HMT consultation is a direct reaction to the Sefton decision.

Pending the change in licensing requirements and perhaps also the conclusion of the HMT consultation, there is certainly no need to change the basis on which PHOs pay VAT outside London.

Bolt

In the decision published in December, it was made clear that Bolt accepts it is acting as principal, that its ride hailing services are subject to VAT, and that it is liable to account for VAT by reference to the full fare paid by the passenger. The only question for the court was the basis on which it should calculate its VAT liability.

The case was decided by Judge Greg Sinfield, the President of the First-tier Tax Tribunal. Judge Sinfield agreed with Bolt, that it should pay VAT using the Tour Operators' Margin Scheme ("TOMS").

This means Bolt pays VAT on its gross margin, being the margin between the fare paid by the passenger and the amount retained by the driver. This is a significant victory for Bolt.

A few months prior to the Bolt decision, Judge Sinfield heard a case (**Sonder Europe**) concerning the supply of serviced accommodation and reached the same decision, that TOMS should apply to the calculation of the VAT due.

Key points:

1. HMRC intend to appeal.
2. HMRC has already appealed Sonder Europe and the appeal will be heard in December 2024.
3. The President of the Tribunal has made two high profile decisions, which may increase the chances of success by the taxpayer on appeal.
4. Unless a PHO is based in London or is already acting as principal, the Bolt decision has no immediate impact. The PHO should continue to act as agent and pay VAT in accordance with HMRC guidance.

What about Uber?

I understand that Uber is due to take a VAT case to the Tribunal in the first half of 2024 and that it will also argue that it should pay VAT using TOMS.

I am not foolish enough to guess the outcome of a case without being involved in it and certainly not before the hearing. It's much easier to read the decision and then decide whether I agree with it! There are though a few interesting points to bear in mind:

1. Bolt and Uber are being heard separately. The courts are keen to save time and resource either by joining similar appeals together or agreeing a lead case. I assume that did not happen here, because they are not similar enough.
2. Judge Sinfield accepted that the Bolt drivers were "independent contractors".
3. Following Uber v Aslam, Uber's drivers are workers.
4. It is well established that an employee cannot provide services separate to their employer whereas a self-employed person is subject to VAT in their own right.
5. There is no established UK case law or HMRC guidance on the VAT status of a worker and whether they are akin to an employee. This may be a key issue to decide at the Uber hearing.

These points may not be sufficient for the Tribunal to reach a different conclusion. They are at least sufficient not to just assume Uber wins, because Bolt won.

In conclusion

- If you operate in London, Bolt is good news if your drivers are "independent contractors". Far from settled, as HMRC will appeal but at least a step in the right direction. You might like to think about a protective claim for overpaid VAT which will be paid out if Bolt succeeds at a higher court and your facts are sufficiently similar.
- If you operate in the rest of England & Wales, carry on acting as agent if you can and it suits your business.
- Keep the pressure on to secure the zero or a reduced rate of VAT for private hire, as it is a better option compared to the uncertainty of litigation involving Bolt and Uber.

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