

# VAT AND PRIVATE HIRE

## VAT AND PRIVATE HIRE: WHAT DOES THE GOVERNMENT CONSULTATION 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. It brings us right up to date with the Government's publication of its consultation entitled "VAT Treatment of Private Hire Vehicles ("PHVs")".

The consultation was published on 18 April 2024 and remains open for responses for 16 weeks until 8 August 2024.

In previous **PHTM** articles I have provided extensive detail on points 1 – 5 below. Please read my articles in **PHTM**'s monthly newspapers for October and December 2023, and January 2024.

### 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 Transport for London ("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 v Sefton Council 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 Britannia Ltd v Sefton MBC**. 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.

### What is a consultation and why does it matter to me?

A government consultation is open to businesses, trade bodies, and members of the public. Anyone with a vested interest can respond. The responses do not have to follow a set format and can cover some or all the questions raised in the consultation document. All responses are confidential. The government issues its response once the consultation period is closed but does not share the details of any individual submission. You can therefore comment to whatever extent makes sense to you without the concern of sharing confidential commercial information with your competitors.

### Introduction section to this consultation

Section 2 of the consultation provides the Government's summary understanding of the PHV market. It also sets out the limitations and timing of the process. The following points are particularly important:

- Government sees a difference between PHV transportation and "higher volume transportation services". It feels that the zero-rate should incentivise services which reduce congestion and vehicle emissions.
- The consultation will only address the VAT treatment of agency work. This is confirmed in the following terms, "as private hire vehicle operators ("PHVOs") have always accepted that they are principal in "account work", the VAT treatment of this type of work will not change as a result of the High Court judgments. This consultation, therefore, does not focus on "account work"."
- As taxi and PHV policy is devolved in Wales, Scotland, and NI, any action that could be taken to reform PHV legislation to enable PHV drivers to contract directly with passengers is limited to England.
- The knock-on effect of the Sefton and TfL judgments is that VAT-registered PHVOs in England and Wales would need to charge VAT on all PHV passenger fares to reflect these judgments.

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- The government will not implement any changes until the eventual outcome of the Sefton appeal.

These points are confirmation that the authors of this document are:

- Not in favour of zero-rating for PHV transportation.
- Not in favour of changing PHV licensing regulations so that drivers contract directly with passengers.
- Regard the Sefton and TfL judgments as confirming that PHVOs are required to pay VAT, even though they are not VAT cases.

## The options explored in the consultation

In my December article for **PHTM**, I made the following statement about the announcement of the consultation in the Autumn Statement, *“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 the government typically issues a consultation when they have already decided on their preferred outcome.”*

Chapters six and seven contain details of eight options to mitigate the effect of paying 20% on all agency fares. However, only one of the eight options is given any serious consideration by HMRC. The following options are either explicitly rejected or dismissed by not being explored in any depth.

1. Changing licensing law to allow drivers to contract directly with passengers.
2. Amending VAT law to allow for a legal fiction that drivers contract with passengers, despite licensing laws to the contrary.
3. Reduced rate or zero-rate for PHV transportation.
4. Introduce a VAT zero rate for demand responsive transport (“DRT”) services.
5. Widening the scope of disabilities that qualify for the disabled person’s bus pass.
6. Increasing the bus service operators grant (“BSOG”), which is a grant paid to operators of eligible bus services and community transport organisations to help them cover some of their operating costs.
7. Provide additional funding for local government and charities to provide alternative travel support for vulnerable groups through community transport schemes such as DRT, Dial-a-Ride, Shopmobility, door-to-door minibuses, taxi provision to and from school, and community group car schemes.

The only option to survive is a margin scheme specifically designed for the PHV sector. The government is at pains to point out this margin scheme is not the Tour Operators Margin Scheme (“TOMS”). It is in fact in all material operational respects, identical to TOMS. The only difference is it is voluntary, whereas TOMS is mandatory.

The most obvious change from an agency model to a margin scheme is the collection of fare data from drivers, so the PHVO can calculate the profit liable to VAT. I know from discussions with operators, that will require a major change to the relationship with drivers and the accounting systems required to support the change.

## What do I do now?

I have said steady as she goes so many times, I feel like I’m on the deck of a ship. That is still the best advice. We now need to wait for:

- The outcome of the consultation process,
- The outcome of the Sefton case,
- The announcement of any changes to VAT law and guidance, and
- Potentially further progress in the Bolt and Uber VAT cases.

If the Sefton case is heard by the Supreme Court, that will take us to 2026 before we see any revised legislation from HMRC. If the case is finally decided at the Court of Appeal, we may see some progress next year.

In the meantime, please engage with the consultation process, with a particular focus on the operational issues with a margin scheme, as it is the only horse left with a rider.

## VAT CONSULTATION SEMINAR

at **PHTM EXPO** on Wed 15 May, 1pm

### VAT Treatment of PHVs

With expert analysis by:

Jonathan Main, VAT Partner, MHA  
and Gary Jacobs, CEO, Eazitax