INSIGHTS

HMRC v Bolt: the Court of Appeal narrows the road for TOMS

A VAT decision with consequences beyond private hire vehicles

The Court of Appeal's decision in HMRC v Bolt Services UK Ltd is not just a private hire vehicle case. It is a reminder that the Tour Operators Margin Scheme is a narrow VAT exception, not a general margin scheme for businesses that buy in and resell travel-adjacent or accommodation-related services.

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For businesses that have applied TOMS outside a conventional travel agency or tour operator model, the decision should prompt a careful review of the historic position, current VAT treatment, and exposure to future HMRC enquiry.

The decision handed down last week in HMRC v Bolt Services UK Ltd in favour of HMRC is the latest in several cases considering the extent to which TOMS (Tour Operator Margin Scheme) can apply to other service sectors that are comparable to those supplied by travel agents and tour operators.

The decision follows successful appeals by Bolt to the First Tier Tribunal and Upper Tribunal against assessments raised by HMRC.

In brief, TOMS allows a supplier to account for VAT only on the margin of their supplies, rather than the full extent of the supply. In the case of Taxi and Private Hire Vehicle companies, this means the companies account for the margin, rather than charging VAT on the full price of the fare.

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This model has been widely adopted, and the decision in Bolt will have a significant impact on companies across the industry. The amounts involved are significant, with the Bolt case alone worth approximately £190m.

Why Bolt mattered

On a simplistic reading, Bolt's initial success at the first two tiers was based on the similarity of the passenger transport arranged via Bolt, to that commonly provided by travel agents.

However, the Court of Appeal held that the differences in Bolt's services were sufficient to stop TOMS applying.

What is particularly interesting about the Court of Appeal decision, is just how narrowly TOMS should be applied. In the Judges' view, TOMS is a narrow exception to the VAT rules, and should be applied restrictively, and on-demand point to point ride hailing services were not the kind of services a tour operator would typically provide. The services should be virtually identical and be genuinely comparable to those supplied by tour operators and travel agents.

That is the point that may matter most outside the private hire vehicle sector.

The decision does not simply turn on the fact that Bolt operated in the ride-hailing market. It turns on whether the services supplied were sufficiently comparable to those commonly supplied by travel agents and tour operators. For businesses relying on TOMS in adjacent sectors, the question is therefore not whether the service has a travel, accommodation or customer-facing element. The question is whether, properly analysed, the business is supplying services of a kind that fall within the scheme at all.

The wider industry impact

Following the decision, much of the focus has been on the impact on other Private Hire Vehicle companies, with reference to a potential significant challenge for Uber, but the model used in the Bolt case has been widely used across the industry.

However, we have seen tribunal cases and have been involved in several HMRC enquiries, considering other industries applying the same model, for example providers of serviced accommodation.

The case of Sonder Europe Ltd v HMRC, whilst with a different fact pattern, is centred on whether TOMS applied to serviced accommodation. The case was due to be heard earlier this year at the Court of Appeal, following success for the appellant at First Tier, and HMRC at the Upper Tribunal.

The narrow interpretation of TOMS will provide a significant boost to HMRC's position, and we can expect to see real enthusiasm from HMRC in pursuing these enquiries soon.

What is clear from the variety of decisions and success that HMRC has had at the various levels of tribunal, is that this is plainly not a straightforward area and the application of TOMS will turn on the specific fact pattern in each case.

What businesses should be reviewing now

Businesses that have applied TOMS, or have considered applying it, should not assume that the Bolt decision is confined to ride-hailing.

In practice, a review should consider:

- whether the business is acting as principal or agent;
- the precise nature of the bought-in supply;
- whether the onward supply is genuinely comparable to services supplied by tour operators or travel agents;
- whether there has been any material alteration or further processing of the bought-in service;
- how the position has been documented historically;
- whether HMRC has previously been notified of, or engaged on, the VAT treatment;
- the potential exposure if VAT were due on the full value of the supply rather than on the margin; and
- whether any protective disclosures, provisioning, or wider risk management steps should now be considered.

For accountants, lawyers, asset managers and other advisers, the immediate point is client identification. Businesses in private hire, mobility platforms, serviced accommodation, rent-to-rent models, travel-adjacent services and other sectors applying margin-based VAT treatment may need to be reviewed before HMRC opens an enquiry.

For clients and operators, the commercial point is equally important. If VAT becomes due on the full customer price rather than the margin, the effect may be material to pricing, margins, cash flow, historic exposure, and in some cases business valuation.

Clarity before enquiry

The Court of Appeal's decision in Bolt does not mean that TOMS can never apply outside traditional travel agency or tour operator businesses. It does, however, make clear that the scheme should not be applied casually, and that comparability with travel agents and tour operators must be analysed carefully.

The message is clear: businesses relying on TOMS outside a conventional tour operator or travel agency model should review their position now.

At Trident Tax, we advise businesses, shareholders and professional advisers on complex VAT issues, HMRC enquiries and tax disputes. If you or a client has applied TOMS in a non-traditional sector, or is facing HMRC questions on the application of the scheme, please speak to your usual Trident Tax contact.

Want to know more?

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