



VAT TREATMENT OF PRIVATE HIRE VEHICLES

Issued 26 July 2024

ICAEW welcomes the opportunity to comment on the VAT Treatment of Private Hire Vehicles published by HM Treasury, HMRC, and the Department for Transport on 18 April 2024, a copy of which is available from this [link](#).

This response of 26 July 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. This response was prepared based on the legal landscape following the High Court judgment in *Uber Britannia Limited v Sefton Borough Council* on 28 July 2023. However, we acknowledge that on 15 July 2024, the Court of Appeal overturned this decision in *D.E.L.T.A. Merseyside Limited and Veezu Holdings Limited v Uber Britannia Limited* [2024] EWCA Civ 802.
2. The Court of Appeal ruling clarifies that there is no requirement under the Local Government (Miscellaneous Provisions) Act 1976 for private hire vehicle (PHV) operators to enter into contracts with passengers as principals. This decision significantly alters the context of the government's consultation on VAT treatment of PHVs. While our response was prepared on the assumption that PHV operators had to act as principals (as per the *Uber v Sefton* case), we believe many of our comments remain relevant. Furthermore, we note that this legal matter may not yet be fully settled, as there is potential for an appeal to the Supreme Court. Should the Supreme Court overturn the Court of Appeal's decision, our response may remain relevant in its entirety. Our response should be read with this evolving legal context in mind, understanding that some specific points may need reconsideration depending on the final legal position.
3. We do not support the amendment of PHV legislation, to allow drivers to contract directly with passengers, solely to address VAT issues. Moving to a single-tier system for taxis and PHVs risks distorting the market, reducing consumer choice, and compromising passenger safety if a regulated intermediary is removed from the supply of PHV services.
4. Furthermore, we recommend against creating a "legal fiction" where PHV operators (PHVOs) act as principal for providing the services but as agents for VAT purposes. This approach could lead to confusion, increased compliance costs, and potential disputes between PHVOs and HMRC.
5. We also have reservations about the proposed options of introducing a reduced/zero rate for the services or a sector-specific margin scheme. These would introduce unnecessary complexity into the tax system and there is no guarantee that the VAT savings would be passed onto consumers. Furthermore, this could lead to calls from other sectors for similar treatment and there is no clear reason for the PHV sector alone to benefit from these proposals ahead of other sectors.
6. We recommend further exploration of the more targeted interventions to support vulnerable consumers. Enhancing funding for community transport schemes and expanding eligibility for disabled person's bus passes would appear to provide more effective support for the people who need it most without compromising the integrity of the broader tax system.
7. Any tax changes that are implemented should be sufficiently evaluated through regular and thorough impact assessments, considering fiscal impacts, the effects on PHV availability and affordability, unintended consequences and environmental impacts.
8. Throughout our response, we have emphasised the importance of adhering to the principles outlined in our Ten Tenets for a Better Tax System (Appendix 1). Any changes should aim to maintain simplicity, certainty, proper targeting, and ease of collection and calculation.

ANSWERS TO SPECIFIC QUESTIONS

CHAPTER 3 - ABOUT YOU

Question 1: In what capacity are you responding?

9. Representative body.

CHAPTER 4 – UNDERSTANDING THE POTENTIAL IMPACTS OF THE JUDGMENTS

Question 2: What are your views on this analysis and the assumptions underpinning it? Where respondents disagree, the government would be grateful if you could please provide details of why you disagree and/or alternative analysis.

10. The analysis and assumptions do not appear unreasonable, but it is difficult to comment further without access to the more detailed workings behind the analysis.

Questions 3 to 6 are not applicable.

CHAPTER 5 – OBJECTIVES OF GOVERNMENT INTERVENTION

Question 7: Do you agree that these are the right objectives for the government to be assessing options against? Are there any other objectives you think the government should be considering?

11. The stated objectives are broadly aligned with good governance principles and address key concerns. Supporting vulnerable consumers, ensuring cost-effectiveness, and promoting fair competition are crucial considerations.
12. However, the objectives could be expanded to better reflect the broader impact of potential interventions. While the stated objectives consider passenger welfare, consideration should also be given to the potential impacts on drivers. Any changes should also be compatible with broader transport and environmental policies.
13. Furthermore, as per the ICAEW Tax Faculty's Ten Tenets for a Better Tax System (Appendix 1), any interventions should aim to ensure the tax rules for PHV operators and drivers are simple, ensuring clarity and certainty in their tax obligations, and minimising additional administrative burdens.

CHAPTER 6 – CHANGING LEGISLATION

Amending Transport Legislation

Question 8: What are your views on amending PHV, and potentially taxi, legislation in England to allow drivers, rather than PHVOs, to contract with passengers?

14. We advise against amending PHV legislation to allow drivers to contract directly with passengers.
15. Such a change would require a significant overhaul of the existing regulatory framework, potentially impacting both PHV and taxi sectors. This complexity could lead to unintended consequences and legal uncertainties.
16. Removing the role of licensed operators could compromise passenger safety and consumer protections. The current system, which offers accountability and oversight, might be diluted if drivers operate independently without a licensed intermediary.
17. Furthermore, the estimated £750m annual revenue loss for the Exchequer is substantial. Any intervention should be cost-effective and maintain the tax base.

18. This change could blur the distinction between PHVs and taxis, potentially leading to unfair competition and regulatory confusion. It may also increase compliance burdens for individual drivers.

Question 9: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

19. Amending PHV legislation to allow drivers to contract directly with passengers fails to meet the objectives outlined in Chapter 5.
20. It compromises the objective of maintaining high standards of passenger safety and consumer protections. Removing licensed operators eliminates a crucial layer of accountability and oversight, potentially putting vulnerable consumers at risk.
21. The estimated £750m annual cost to the Exchequer conflicts with the objective of cost-effectiveness and ensuring good value for taxpayers' money. This substantial loss in revenue is difficult to justify, especially when considering ICAEW's tenet of properly targeted tax measures.
22. While intended to promote fair competition, this change could actually distort the market by blurring lines between PHVs and taxis. It may create an uneven playing field, contradicting the objective of fair competition and the tenet of a competitive tax system.
23. The complexity of implementing such a change conflicts with the principles of simplicity and certainty in tax administration, potentially increasing compliance burdens for drivers and creating new challenges for enforcement.

Question 10: Are you able to articulate a way in which PHV, and potentially taxi, legislation in England could be amended so that PHV drivers could contract with passengers as principal, but that did not result in a single-tier system? Please provide details.

24. We are not able to comment on this.

Question 11: If the UK Government was to amend PHV legislation in England to enable PHV drivers to contract with passengers, what impacts do you think this would have on the trade and passengers, particularly those with protected characteristics?

25. As mentioned above, removing licensed operators eliminates a crucial layer of accountability and oversight, potentially putting vulnerable consumers at risk.
26. It is not clear how this would work in practice. For example, would passengers be required to sign up to terms and conditions with each and every PHV driver?

Question 12: Do you think, in order to prevent passengers having to pay VAT on the full fare in England, the taxi and PHV sector should move to a single-tier system? Please provide details.

27. No, we'd advise against moving to a single-tier system solely to prevent VAT on full fares.
28. Using VAT to dictate regulatory structures could lead to unintended consequences and distort the market unnecessarily. It would reduce consumer choice and may also compromise safety by reducing regulatory oversight, contradicting the goal of maintaining high standards of passenger protection.
29. This change would likely introduce complexity and uncertainty into the sector, violating the principles of simplicity and certainty in ICAEW's Ten Tenets. It could create substantial compliance challenges for operators and confusion for consumers.
30. Instead of fundamental structural changes, we recommend exploring targeted interventions to address concerns while preserving the benefits of the current two-tier system.

Amending VAT Legislation

Question 13: Who do you think would benefit from amending the VAT Act to allow PHVOs to account for VAT as though they were agents for tax purposes, but act as principal for services to passengers?

31. Amending the VAT Act to allow PHVOs to account for VAT as agents while acting as principals for services to passengers could benefit the following groups:
 - a) PHVOs: Reducing the PHVO's VAT liability could increase their profitability.
 - b) Passengers: Potentially lower fares or smaller increases to fares could benefit consumers, especially frequent users. However, there's no guarantee savings would be passed on, and this approach might not effectively target support to the most vulnerable.
 - c) Drivers: Continuation of current operating models and possible increased demand due to lower fares could benefit drivers.

Question 14: Are there any other potential unintended consequences of this approach that are not outlined above? Please provide details.

32. Creating a legal fiction where PHVOs are agents for VAT but principals for services contradicts ICAEW's tenets of simplicity and certainty. This could lead to significant confusion, increased compliance costs, and potential disputes with tax authorities.
33. The mismatch between VAT treatment and economic reality may create loopholes for tax avoidance, violating the principle of proper targeting in tax legislation.
34. This exception could prompt other sectors to seek similar treatment, leading to a patchwork of special rules that complicate the tax system and undermine its coherence and fairness.
35. The introduction of this legal fiction could spark litigation from various stakeholders, creating prolonged uncertainty in the sector and potentially requiring frequent legislative adjustments, contrary to the tenet of constant tax rules.
36. It is not clear how any change to the VAT Act will impact on the possibility of including PHV services within the Tour Operators' Margin Scheme (TOMS), whether as a single service or as part of a package.

Question 15: Do you think this option meets the objectives outlined in Chapter 5? Please provide details.

37. This option partially meets the objectives outlined in Chapter 5, but with drawbacks.
38. It does meet the objective of promoting fair competition in the PHV sector by ensuring consistent treatment for all PHVOs.
39. Furthermore, the potential prevention of VAT-induced fare increases could benefit vulnerable users. However, there's no guarantee that savings would be passed on, and more targeted support is likely to be more effective.
40. The estimated £750m annual cost to the Exchequer is substantial and difficult to justify as good value for taxpayers' money, violating the principle of proper targeting of tax measures.
41. The "legal fiction" created by this option contradicts ICAEW's tenets of simplicity and certainty in tax rules. It could lead to increased complexity, compliance risks, and potential litigation, undermining ease of collection and calculation.

CHAPTER 7 – MITIGATION OPTIONS

Changing the VAT treatment of PHV services

Question 16: What are your views on these VAT options?

42. Reduced or zero-rating PHV services would result in substantial revenue losses (£1bn-£1.5bn annually), which may not represent good value for taxpayers.

43. There's no guarantee tax savings would be passed on to passengers. Evidence from the introduction of zero rates for **women's sanitary products** and for **eBooks** suggests PHVOs might retain the benefit, undermining the objective of supporting vulnerable consumers.
44. Reduced rates or a new margin scheme would introduce significant complexities, violating ICAEW's principles of simplicity and ease of collection. This could increase compliance costs for PHVOs and create disputes with HMRC.
45. These changes could prompt thousands of PHV drivers to voluntarily register for VAT, seeking to reclaim input tax. This would place a substantial administrative burden on HMRC, straining resources and potentially leading to delays.
46. More targeted interventions could be more effective and efficient. The substantial revenue forgone could be better used for direct support to vulnerable consumers.

Question 17: Do you think a margin scheme meets the objectives outlined in Chapter 5? Please provide details.

47. A margin scheme would partially meet the objectives outlined in Chapter 5 in that it should prevent significant fare increases and would promote fair competition in the PHV sector.
48. However, although any margin scheme introduced might be simpler than the TOMS, it would still introduce a new set of rules and calculations, which could lead to unintentional non-compliance, especially for smaller operators.
49. Furthermore, a new margin scheme would require HMRC to develop new guidance and procedures for overseeing the scheme, meaning this approach is not easy to administer for taxpayers or HMRC.
50. Finally, this approach would cost the government an estimated £750m a year, so is arguably not good value for taxpayers' money.

Question 18: Are there any other potential benefits of a margin scheme that are not outlined above?

51. A well-designed simple margin scheme, specifically tailored for the PHV sector, could streamline VAT compliance for PHVOs, reducing the administrative burden and costs associated with VAT accounting.

Question 19: Are there any other potential unintended consequences of a margin scheme that are not outlined above?

52. Determining the appropriate margin for VAT calculation could be complex, potentially leading to disputes between PHVOs and HMRC. This complexity might result in increased compliance costs, especially for smaller operators.
53. PHVOs might be tempted to misclassify additional services or expenses to maximise the margin scheme's benefits, potentially undermining the scheme's integrity and leading to enforcement challenges.
54. A margin scheme for PHVOs could lead to calls for similar treatment in other sectors, potentially complicating the broader tax landscape.
55. A margin scheme may make PHV services more expensive for VAT-registered business customers, who presumably would not be able to reclaim VAT.
56. Implementing a new scheme would likely involve significant transition costs for both PHVOs and HMRC in terms of system updates, training, and adaptation periods.
57. While intended to mitigate the effects of recent court judgments, a margin scheme could potentially reduce VAT revenue beyond what was initially projected.

Targeted interventions for consumers***Question 20: What are your views on these targeted interventions for consumers? Who do you think this sort of intervention would benefit?***

58. The proposed targeted interventions prioritise the needs of vulnerable individuals, such as those with disabilities, the elderly, and low-income individuals. This targeted approach could make essential transportation services more affordable and accessible without broad changes to the VAT system.
59. While we'd generally recommend against introducing new zero rates, zero-rating Demand Responsive Transport (DRT) services could be a more targeted and fiscally responsible intervention compared to zero-rating all PHV services. This could particularly benefit rural communities with limited public transport options.
60. Broadening the eligibility criteria for disabled person's bus passes could significantly improve mobility and accessibility for those with disabilities. However, the effectiveness of this measure depends on the availability and frequency of bus services in different areas. Residents in urban areas might benefit more than those in rural locations with limited bus coverage.
61. Enhancing funding for bus service operators grants (BSOG) and community transport schemes could ensure the long-term sustainability of these services. This approach could provide reliable transportation options for vulnerable groups across various communities, with community transport schemes potentially filling gaps left by traditional public transport.
62. Using targeted interventions could ensure that vulnerable groups are protected most effectively without increasing the overall complexity of the UK's VAT system. This approach is likely to be more straightforward to implement and monitor, compared to broader VAT changes.
63. These interventions could be more easily adjusted or scaled based on their effectiveness and changing needs, compared to altering VAT legislation.

Question 21: Are there any other views or comments you would like to provide that have not been covered in your responses to other questions?

64. If any changes are made to VAT, such as the introduction of a zero- or reduced-rate, robust data collection and analysis mechanisms must be implemented to monitor the impact of those changes.
65. A thorough impact assessment should be conducted at regular intervals (eg, annually for the first three to five years) to ensure that the changes are having the desired impact. This assessment should cover:
 - a) Fiscal impact on the Exchequer;
 - b) Effects on PHV availability and affordability, especially for vulnerable groups;
 - c) Unintended consequences on related industries or tax compliance; and
 - d) Environmental impacts, such as changes in vehicle usage or emissions.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).