EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value Added Tax

Group on the Future of VAT
26th meeting – 5 April 2019

taxud.c.1(2019)1950741 – EN

Brussels, 14 March 2019

GROUP ON THE FUTURE OF VAT

GFV NO 086

VAT treatment of the sharing economy

1. INTRODUCTION

The sharing economy (also known as the gig, collaborative or peer-to-peer economy) has experienced rapid growth and development in Europe in the past years. According to a recent Eurobarometer study[1] published in October 2018, nearly a quarter of Europeans have used services offered via sharing platforms, while one out of five Europeans has already offered services via sharing platforms (or can at least imagine to do so).

The 2016 Commission's Communication 'A European Agenda for the collaborative economy'[2] set out the overall policy line of the Commission, which is to promote the development of the collaborative economy in Europe in a balanced and sustainable manner.

What exactly is covered by the sharing economy has not yet been defined for tax purposes. For the purposes of the above-mentioned Commission's Communication, collaborative economy 'refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals.'[3].

In 2015, the sharing economy was mostly spread over five key sectors, i.e. accommodation (short-term letting), passenger transport, household services, professional and technical services and collaborative finance, having generated revenues of EUR 3.6 billion in the EU that year[4]. Gross revenue in the EU from collaborative platforms and providers was estimated in 2015 to be EUR 28 billion. Growth in recent years has been spectacular with revenues almost doubling from 2014 to 2015.[5]

The advantages of the sharing economy are evident. It offers new opportunities leading to more choice and lower prices for consumers and allows entrepreneurs as well as citizens to offer services either on an occasional basis or professionally, contributing to growth and jobs in Europe.

However, the rapid development of the sharing economy in Europe has also raised questions, inter alia as regards the tax treatment of services provided via collaborative platforms. Not subjecting the supplies provided through sharing economy platforms to tax can lead to distortions of competition, since the individuals supplying goods or services via the platforms would enjoy a competitive advantage over other suppliers not using such platforms.

In particular, with regard to VAT, the main challenges are the following:

- First, because users of digital platforms, whether suppliers or customers, can act either in a professional or private capacity, it becomes necessary to assess who is a taxable

1 Flash Eurobarometer 467, The use of the colaborative economy, Fieldwork April 2018, Publication October 2018.
2 Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European agenda for the collaborative economy (COM(2016) 356 of 2 June 2016).
3 Communication on collaborative economy, p. 3.
4 Communication on collaborative economy, p. 2.
5 Fact sheet on the collaborative economy, published by DG GROW.

person and whether that person is acting in his professional or private capacity for VAT purposes.

- Second, even if there is no monetary payment between the two parties of the transaction, it needs to be established whether a consideration has nevertheless been paid in kind and, in a subsequent step, whether a direct link between a supply and its consideration can be deemed to exist.

These challenges can only be tackled through a close cooperation between Member States, policy makers and collaborative economy platforms. Raising awareness on tax obligations, making tax administrators aware of collaborative business models, issuing guidance and increasing transparency through online information can all be tools for unlocking the potential of the sharing economy.[6]

The following sections aim at providing some elements for the reflection on the VAT issues related to the sharing economy.

2. DISCUSSIONS IN THE VAT COMMITTEE ON THE VAT TREATMENT OF THE SHARING ECONOMY

The VAT treatment of the sharing economy was discussed at the 105th meeting of the VAT Committee. The Working paper[7] prepared for that discussion analysed the treatment of supplies provided through the sharing economy platforms under the current VAT rules. It focused on the question whether the supplies of goods and services by individuals through a sharing platform qualify as taxable transactions in the sense of Article 2 of the VAT Directive.

The Working paper distinguished between the VAT treatment of goods and services provided by individuals through a sharing economy platform on the one hand and the VAT treatment of intermediation services provided by such platforms on the other hand.

The VAT treatment of the services provided by online sharing platforms is identical to that of crowdfunding platforms[8] and depends on the consideration involved: where sharing economy platforms supply their services of intermediation for consideration, such services are subject to VAT. Where such services are provided free of charge, they remain outside the scope of application of the VAT Directive. This finding was, in respect of crowdfunding platforms, supported almost unanimously by the VAT Committee.[9]

It is to be noted that the discussion on the services provided by the platforms was limited to the question whether these services are subject to VAT or not without qualifying the services provided and assessing to whom the platform actually provided its service.

Regarding the treatment of supplies of goods or services provided by individuals through a sharing economy platform, the Commission services found that the most controversial

6 Communication collaborative economy, p. 13.
7 Working paper No 878 (taxud.c1(2015)4370160, Brussels, 22 September 2015).
8 As discussed by the VAT Committee, see Working paper No 836 (taxud.c1(2015)576037, Brussels, 6 February 2015).
9 See point 4 of the Guidelines following the 105th meeting of the VAT Committee of 26 October 2015, Document B (taxud.c1(2016)1162824, Brussels, 1 March 2016).

element is the question whether the individual supplying those goods or services qualifies as a taxable person in the sense of Article 9(1) of the VAT Directive.

There are several aspects to be considered in this regard under the VAT Directive.

Firstly, it needs to be established whether the individual providing goods or services through a sharing economy platform is carrying out an **economic activity** in the sense of Article 9(1) of the VAT Directive. As suggested in the Working paper "it can be assumed that, in general, joining a sharing economy platform through which goods or services are provided in return of remuneration, implies some continuity. The activities in question would therefore meet the requirements for inclusion in the concept of economic activity."

Secondly, that economic activity must be carried out **independently** under Article 9(1) of the VAT Directive, which means excluding from the scope of VAT employed and other persons bound to an employer in the sense of Article 10 of the VAT Directive. Although the working paper lays out that "typically there is no such relationship of employer and employee binding an individual goods or services provider and the sharing economy platform", every case should be assessed individually, taking into account the economic reality, to conclude what is the legal relationship between the economic actors involved in the sharing economy scheme. There has been national jurisprudence suggesting that the employer and employee relationship exists in the case of transport services offered via a platform[10].

Thirdly, under Article 2(1)(a) and (c) of the VAT Directive, a taxable person needs to **act as such** when carrying out transactions of his economic activity in order for him to fall within the scope of VAT. According to the Court of Justice of the European Union (hereinafter: CJEU), a taxable person is acting as such where he carries out transactions in the course of his taxable activity as opposed to purely private transactions.

Fourthly, where goods or services are made available as part of an exchange, whether in form of a direct barter or through the right to benefit from a common pool of goods and services, the question arises whether these goods or services are provided **for consideration** in the sense of Article 2(1)(a) and (c) of the VAT Directive. According to settled case-law of the CJEU, a **direct link** between these goods or services and the remuneration is needed.

The sharing economy was the subject of further discussions in the 110th and 111th meetings of the VAT Committee. This discussion focused on the nature of the service provided by a sharing economy platform active in the transportation sector under specific circumstances.

The Working paper[11] prepared for that discussion focused on defining the nature of the services provided by the platform involved in a particular business model. In the situation described in the document, the questions were raised whether a service provided by the platform could be qualified either as an electronically supplied service, as a supply of passenger transport or as a service taxable under the general place of supply rules.

[10] See judgement of the Court of Appeal, Paris, of 10 January 2019 on a case concerning SAS Uber France, to be found here.

[11] Working paper No 947 (taxud.c1(2018)1735106, Brussels, 3 April 2018).

Conclusions to be drawn from these discussions:

- The guidelines resulting from the first discussions in the VAT Committee do not contain any guidance as regards the key issue whether the individuals offering goods and/or services through the platform in fact qualify as a taxable person or not. Indeed, the guidelines simply state that these transactions are subject to VAT **if** the individual in supplying those goods and services carries out an economic activity qualifying him as a taxable person.

- The discussions showed that Member State delegations did not come to a consensus on the nature of the service provided by the platform recognising however, that different business models are possible in practice. In particular, they held diverging views on how to qualify the relationships platform/user and platform/driver.

3. APPLYING THE CURRENT RULES TO SOME PRACTICAL CASES

Generally, in the sharing economy three categories of actors are involved: 1) an intermediary online platform, connecting 2) the provider of goods or services (who shares assets, resources, time and/or skills) with 3) a user. There are mostly three transactions taking place: 1) one between the platform and the provider, 2) one between the platform and the user, and 3) one between the provider and the user.

It is however possible that the provider of goods or services is not acting independently, but could be considered an employee of a platform. If so, the platform would normally provide the supply to the customer itself. It is therefore essential to establish at the start the legal relationship between the economic actors involved in the sharing economy scheme and the transactions that are taking place.

Numerous sharing economy business models already exist, are evolving and/or emerging on a daily basis. Depending on the type of business model, various questions regarding the VAT implications arise, as can be illustrated by the practical cases set out below.

3.1. Case 1: accommodation sector type A

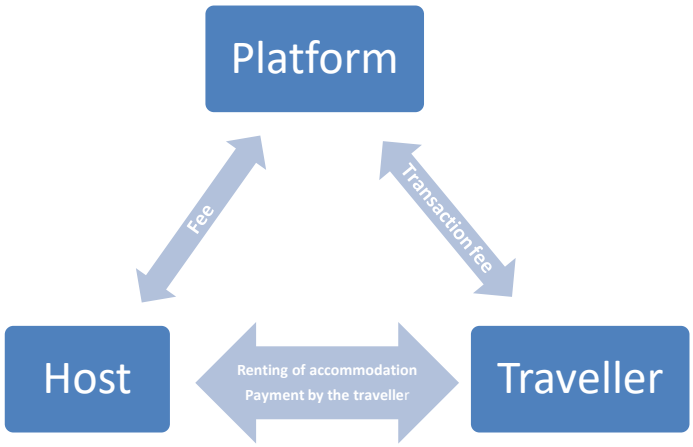
3.1.1. Description of the activity

A sharing economy platform allows its users to rent their spare rooms/apartments/houses to travellers looking for accommodation.

- The platform itself charges a flat commission fee to the hosts offering housing for rent,

- The platform also charges a transaction fee to travellers renting through that platform,

- The traveller pays directly to the host the price for renting the accommodation.



3.1.2. VAT treatment of the different transactions

In principle, three transactions take place and should be analysed: 1) one between the platform and the host offering housing to rent, 2) one between the platform and the traveller using the platform for renting of the accommodation, and 3) one between the host and the traveller.

a) Transactions between the platform and the host and between the platform and the traveller

Regarding the relation between the platform and the host, as well as that between the platform and the traveller, there should be no doubt that the platform is acting as a taxable person carrying out an economic activity. The transactions carried out by the platform should therefore be assessed according to the applicable rules of the VAT Directive.

The services supplied by the platform to the host and the traveller would be qualified as services of an intermediary or as electronic services.

When **supplied to a taxable person (B2B),** both intermediation services and electronic services are covered by Article 44 of the VAT Directive and would thus be considered to take place at the location of the customer. This would imply that in case of a customer being a taxable person not established in the EU, no tax would normally be due[12].

When **supplied to a non-taxable person (B2C),** it is essential for the place of supply of these services to conclude whether they constitute the services of an intermediary or rather electronic services. The matter seems not to be so straightforward as it has already been discussed by the VAT Committee and followed by Guidelines[13]. According to the Guidelines, intermediary services provided in a digital environment shall require an active involvement of the intermediary which goes beyond the automated supply provided with the use of only minimal human intervention. If the online platforms provide only passive automated services requiring not more than minimal intervention, they do not fulfil the conditions for intermediary services and should rather be considered electronic services. To make the conclusion one should thus assess the way the services are provided, namely what is the level of human intervention by the platform. It seems that in this particular case the services

[12] Some Member States could consider that the place of supply of the service is within their territory if the effective use and enjoyment of the service takes place within their territory.

[13] Working paper No 906, taxud C1(2016)3297911. Guidelines resulting from the 107th meeting of 8 July 2016, document D – taxud.c.1(2017)1402399 – 914.

provided by the platform to the host and the traveller are rather automated services and thus would constitute electronic services subject to taxation at the place of location of the customer.

Since no full consensus on the above guideline was reached among the Member States, it is possible that a different assessment is made by some Member States concluding that the platform carries out services of an intermediary subject to VAT where the underlying transaction takes place, thus where the immovable property is situated. It could also be considered that the services of the intermediary are not connected with immovable property[14] and in this case the place of supply of the services carried out by the platform would be the place of establishment of the supplier (platform)[15].

The above shows that the qualification of the services performed by platforms depends: firstly on whether the customer is considered to be a taxable or a non-taxable person and secondly on the way the services are actually carried out leaving quite some room for differing interpretations and assessments by Member States. In any case, without specific VAT rules on the taxation of services performed by sharing economy platforms different qualifications of these services among Member States could have a direct impact on their place of taxation and eventually lead to cases of double or non-taxation.

b) Transaction between the host and the traveller via the platform

Regarding the relation between the host and the traveller, the main question is **whether the activities performed qualify as taxable transactions** in the sense of the VAT Directive and should be subject to VAT.

It is clear that in this practical case accommodation is supplied for consideration. Subsequently, the question which should be answered is whether the host providing accommodation qualifies as a taxable person within the meaning of Article 9(1) of the VAT Directive, namely whether he carries out an economic activity on an independent basis.

As analysed in the VAT Committee Working paper[16], in case of property capable of being used for both economic and private purposes, all the circumstances in which it is used will have to be examined in order to determine whether the property is actually being used for the purposes of obtaining income on a continuing basis. In this respect, it is clear that the host obtains remuneration from the traveller for renting the accommodation. The continuity of the activity for each host will have to be assessed on a case-by-case basis. In this practical case, joining a platform through which services are provided in return for remuneration could imply that the intention of the host is to provide accommodation based *on some regularity* and not just as a one-off transaction.

Furthermore, as it stems from the jurisprudence of the CJEU, where an individual takes active steps to market property by mobilising resources similar to those deployed by a producer or trader, this person must be regarded as carrying out an economic activity and must therefore

[14] Following Article 31a point 3 (d) of the Council Implementing Regulation (EU) No 282/2011, services of intermediary in the 'provision of hotel accomodation or accommodation in sectors with a similar function' shall not be considered as services connected with immovable property. The question which arises is whether in this particular case, the renting of accommodation would indeed fall under the term of Article 31a point 3, (d).

[15] Article 45 of the VAT Directive.

[16] Working paper No 878 (taxud.c1(2015)4370160, Brussels, 22 September 2015).

be regarded as a taxable person[17]. It seems that when the host undertakes the steps and efforts to use the platform for marketing accommodation, he acts in a very similar way to a producer or trader.

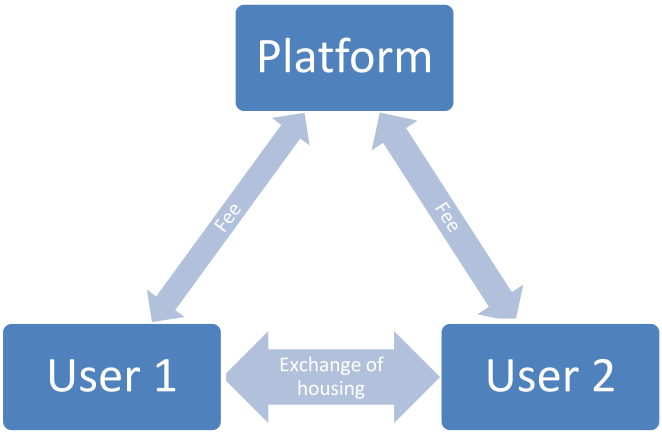
The above are only some indications to be considered regarding the qualification of the activity carried out by the host, which were also included in the guidelines of the 105th meeting of the VAT Committee. Since no full consensus was reached on these guidelines among Member States, it appears that differences in the VAT treatment of the services offered by the host in this practical case could occur.

3.2. Case 2: accommodation sector type B

3.2.1. Description of the activity

A sharing economy platform brings together two individuals (users of the platform) who agree to exchange houses, i.e. to travel and stay in each other's primary or second residency.

- The platform charges a subscription fee to both users.
- The details of the housing exchange are dealt with by the individuals taking part in the exchange.



3.2.2. VAT treatment of the different transactions

In principle, three transactions take place and should be analysed: 1) one between the platform and user 1, 2) one between the platform and user 2, and 3) the transaction between the two users of the platform.

a) Transaction between the platform and each of the two users

Regarding the relation between the platform and its users, there should be no doubt that the platform is to be regarded as a *taxable person carrying out an economic activity*. The transactions carried out by the platform should therefore be assessed according to the applicable rules of the VAT Directive.

[17] Joined cases C-180/10 and C-181/10, *Slaby and others*, EU:C:2011:589, paragraph 51.

Per analogy to case 1 (see point 3.1.2.(a)), the services supplied by the platform to the host and the traveller would be qualified as services of an intermediary or as electronic services. The same analysis as in point 3.1.2. applies here.

When **supplied to a taxable person (B2B),** both intermediation services and electronic services are covered by Article 44 of the VAT Directive and would thus be considered to take place at the location of the customer.

When **supplied to a non-taxable person (B2C),** it is essential for the place of supply of these services to conclude whether they constitute the services of an intermediary or rather electronic services. Following the VAT Committee Guideline[18], to make the conclusion one should assess the way the services are provided, namely what is the level of human intervention by the platform. It seems that in this particular case the services provided by the platform to both users are rather automated services and thus would constitute electronic services subject to taxation at the place of location of the customer. However, since no full consensus on the above Guideline was reached among the Member States, a different assessment is possible by some Member States qualifying the services of the platform as services of an intermediary subject to VAT where the underlying transaction takes place, thus where the immovable property is situated or at the place of establishment of the supplier[19].

In the absence of specific VAT provisions regarding such services, it is not excluded that, again, different conclusions could be drawn by the Member States, which might result in double or non-taxation.

b) Transaction between the users of the platform

In this practical case the assessment should focus on whether the transaction between the users is made *for consideration by taxable persons acting as such*.

In this respect, the CJEU made it clear that barter contracts under which the consideration is in kind are from the economic and commercial point of view identical to transactions for which the consideration is in money[20]. However, given the specificities of this practical case there are some doubts as to whether the individuals exchanging accommodation can be qualified as taxable persons and whether a direct link exists between the service provided and the remuneration.

While in case 1, the assumption that the subscription to the platform for renting the accommodation implies some continuity and thus the purpose of obtaining income appears more evident, such assumption seems doubtful where accommodation is merely exchanged during a holiday period.

The qualification of the users exchanging the accommodation as taxable persons could be easily questioned, since the main purpose of offering the house on the platform is to get

[18] Guidelines resulting from the 107th meeting of 8 July 2016, document D – taxud.c.1(2017)1402399 – 914.

[19] As already explained in point 3.2.1., following Article 31a point 3 (d) of the Council Implementing Regulation (EU) No 282/2011, services of intermediary in the 'provision of hotel accomodation or accommodation in sectors with a similar function' shall not be considered as services connected with immovable property. The question which arises is whether in this particular case, the renting of accommodation would indeed fall under the term of Article 31a point 3, (d). In case it is considered that the services of the platform are indeed covered by this article, Article 45 of the VAT Directive would apply.

[20] For instance case C-283/12, *Serebryannay vek*, EU:C:2013:599, paragraph 39.

access to another house available through the platform. If the main objective of the user were to obtain income, he/she would probably not use this sharing economy scheme but would simply rent the house. Therefore, it could be thought that in these cases the user is simply exercising his right of ownership on his personal property and that he has not taken active steps to market his property by mobilising resources similar to those deployed by a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of the VAT Directive[21].

Another issue, which seems controversial, is the existence of a *direct link between the service and the remuneration*. It seems that such direct link would exist in case of reciprocal exchange of goods of similar value. However, when accommodation of different market renting value is exchanged, one could wonder if the direct link exists. .

To conclude, the assessment of the transaction between users in case 2 depends on a number of elements such as the purpose of obtaining income, the continuity/frequency and on the accommodation which is exchanged. This needs to be looked at on an individual case basis and the conclusions reached by the Member States could therefore differ.

The fact that Member States might assess such situations differently makes it difficult for the platforms that are acting globally to be compliant with the VAT rules.

3.3. Case 3: on-line food services type A

3.3.1. Description of the activity

A platform offers the possibility for customers to order on-line food from restaurants listed on the platform and to have it delivered at the place chosen by the customer.

- Orders are placed through the app or website of the platform and then couriers transport orders from restaurants to customers.

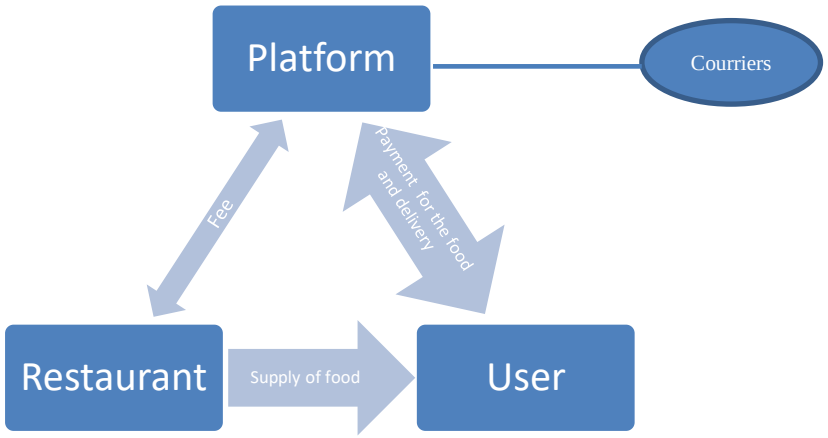
- The couriers are not contracted as employees by the platform.

- The customer is charged the price of the food and a delivery fee and pays the total amount charged to him to the platform.

- The platform does not take responsibility for the quality of the food delivered to the customer.

- The platform charges the restaurants a percentage of the value of the orders.

[21] *Slaby and others*, paragraphs 36-39.



3.3.2. VAT treatment of the different transactions

There are four transactions to be analysed for VAT purposes, namely 1) one between the restaurant and the consumer (user), 2) one between the platform and the restaurant, 3) one between the platform and the user, and 4) one between the courier and the platform.

As regards the transactions carried out by the restaurant and the platform, there should be no doubt that these are carried out by taxable persons and therefore are subject to VAT.

a) Transactions between the restaurants and the users

The restaurant carries out a supply of food to the user. The restaurant will be liable for VAT on the amount charged to the user by the platform on behalf of the restaurant.

b) Transactions between the platform and its users

In order to determine the VAT liability of the platforms, it is essential to determine what is exactly the service supplied by the platform to its users.

The platform assumes the responsibility for ensuring delivery of the meals; which means the users do not have any contractual link with the couriers. In addition, the platform collects the payment of the price for the meals on behalf of the restaurants.

The amount paid by the users to the platform (the price of the meal and the price of the delivery) does not represent the consideration for the supply made by the platform to the user since the price for the delivery is only collected by the platform on behalf of the user.

Although the delivery is effectively carried out by the couriers, the platform shall be deemed to supply this service to the users according to Article 28 of the VAT Directive. The price charged for the delivery represents the consideration for the supply from the platform to the user. The platform should therefore be the person liable for the payment of VAT on that transaction.

The Commission services are of the view that, the service supplied would qualify as a transport of goods which, according to Article 49 (presuming the supply of the meals is a domestic B2C supply), should be taxed in the Member State where the transport takes place.

It could be that the platform is not established in the Member State in the transport takes place. The platform would still need to fulfil its VAT obligations in the Member State in which the transport takes place.

c) Transactions between the platform and the restaurants

The services carried out by the platform for which a fee is paid by the restaurants should normally be considered intermediation services between the users and the restaurant. In any case, both intermediation services and electronic services provided to the taxable person are covered by Article 44 of the VAT Directive and would thus be considered to take place at the location of the customer (see the analysis under point 3.1.2.)

The platform also collects the payment for the meal from the user. The question then arises whether this collection of payment for which the platform receives a fee from the restaurant is to be considered as accessory to the main service, or as a separate financial service that could be exempt from VAT in accordance with Article 135 of the VAT Directive[22].

In the latter case, the platform would be a so-called mixed taxable person carrying out transactions that do not grant a right to deduct input VAT and transactions that grant a right to deduct input VAT.

d) Transactions between the platform and the couriers

In this relation, the question is whether the couriers are in fact carrying out their economic activity independently. If that is not the case, their status as taxable person could be questioned.

If the couriers are considered to be taxable persons, they should in principle charge VAT to the platform on the services supplied, except if they fall within the scope of the exemption for small enterprises in accordance with Articles 282 to 290 of the VAT Directive.

However, in order to obtain a deduction of VAT on their inputs, they could opt for the VAT normal arrangements.

3.4. Case 4: on-line food services type B

3.4.1. Description of the activity

A platform offers the possibility to book food experiences (a lunch/dinner but also cooking classes) at the premises of private persons in a range of countries, within and outside the EU. The platform, established in one Member State, excludes restaurants.

- The platform indicates who is offering the service, the service offered (the menu) and the price;

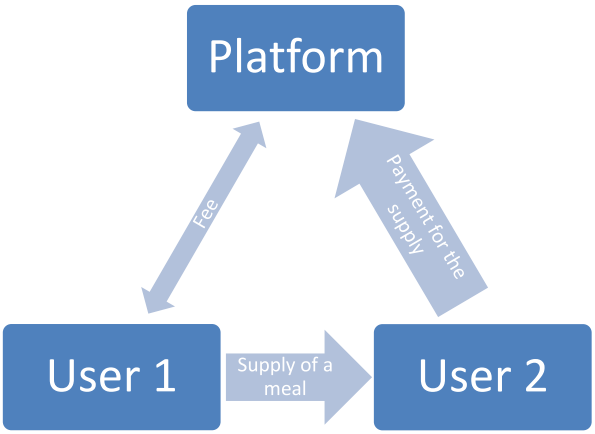
- The customer makes a request for a booking via the platform;

- The service provider receives the request via the platform and has the choice to accept it or to refuse it;

[22] In light of CJEU cases C-607/14, *Bookit*, and C-5/17, *DPAS*, it is however rather doubtful that these services would be covered by the exemption.

- The indicated price includes the fee of the platform;

- The customer pays to the platform which will transfer the amount collected minus its own fee to the service provider.



3.4.2. VAT treatment of the different transactions

In principle, three transactions take place and should be analysed: 1) one between the platform and user 1, 2) one between the platform and user 2, and 3) one between the two users of the platform.

a) Transaction between the platform and user 2

This is a transaction without consideration and therefore *out of the scope of VAT*.

b) Transaction between user 1 and user 2

The persons offering meals at their premises carry out this activity *independently* and *for consideration*. When these persons are accepting the requests made via the platform on a very regular basis, it seems obvious they should be considered as taxable persons. A different VAT treatment of these persons would raise issues of neutrality of VAT and distortions of competition with suppliers of genuine restaurant services.

However, when a user of the platform would only accept four to five times a year a request made via the platform, the response is less obvious.

To conclude, the assessment on whether user 1 acts as taxable person depends largely on the continuity/frequency. In the absence of common rules in this respect, Member States could reach different conclusions.

c) Transactions between the platform and user 1

The platform facilitates the contacts between the users. It also collects the payment for the services supplied by user 1 to user 2.

For the platform, it is important to know whether user 1 has the status of taxable person or not, as the VAT treatment of the provided services depends in the first place on whether it is provided to a taxable person or to non-taxable person. In case user 1 is a non-taxable person, and contrary to what is set out for case 1 under point 3.1.2, it is less relevant in this case to

determine the nature of the service supplied. Indeed, whether the platform provides an intermediation service (located where the underlying supply made by user 1 is located) or an electronically supplied service (located where user 1 is established, has his permanent address or usually resides), the place of taxation will be identical in almost all cases.

As in case 3 above, the question arises whether the collection of the payment is to be considered ancillary to the main service of supplying a meal, or as a separate financial service that could be exempt from VAT in accordance with Article 135 of the VAT Directive (see however footnote 15).

4. OBSERVATIONS OF THE COMMISSION SERVICES

4.1. On the qualification as a taxable person

The discussions in the VAT Committee as well as the above examples demonstrate that the question whether individuals supplying goods and services through the sharing platform qualify as taxable persons remains a fundamental question.

The question whether the supply made via the platform is subject to VAT or falls outside the scope of VAT since it is carried out by someone considered a non-taxable person has further repercussions, notably in terms of:

- Place of supply of the service provided by the platform;
- Right to deduct input VAT;
- Management by the tax authorities.

Place of supply of the service provided by the platform

As can be seen in the above practical examples, the status of the user, namely whether the user obtains the status of a taxable person or not, can have an effect on the determination of the place of supply of the service provided by the platform to that user.

Right of deduction

Typical for the sharing economy is that the providers of the goods or services in question make use of inputs (materials, etc.) that are also used in their private sphere.

Providers qualifying as taxable persons will have to calculate the deductible input VAT in proportion to the use for carrying out taxed activities and to the private use. In cases 1 and 2 described above, the taxable persons could claim, under certain conditions, the deduction of a part of VAT paid for the construction of the immovable property. In case 4, the taxable person could notably claim the deduction of a part of the VAT paid on the instalment of the kitchen, of the materials used in the kitchen, of the gas and electricity or of the furniture of the room in which the guests are hosted.

This would bring significant complexity for the provider and for the tax authorities and therefore most likely be an area giving rise to dispute.

Management by the tax authorities

The development of the sharing economy implies that a growing number of persons will obtain the status of taxable person for VAT purposes; many of them however with a relative low turnover. This is also a challenge for tax administrations in terms of managing effectively the tax compliance and the increased administrative burden.

Applying the exemption to the supply of goods and services by small enterprises (Articles 282 to 290 of the VAT Directive) is a way of reducing the burden of compliance for the taxable person and reducing the administrative burden for the tax administrations.

However, taxable persons could have an interest in opting out of the exemption and in applying the normal arrangements (see notably case 3). The use of simplified procedures for charging and collecting VAT in accordance with Article 281 could be an option for Member States to consider.

Need to bring the EU VAT legislation up to date?

Over the years, the notion of taxable person has been the subject to substantial jurisprudence of the CJEU. The development of the sharing economy, involving an explosion of the number of actors offering goods and services against consideration, is a new phenomenon, which prompts a reflection as to whether the current provisions and the jurisprudence are solid enough for coping with this development.

It is to be expected that tax authorities will in future continue to be confronted with new models of the sharing economy. They will have to assess, based on the particular features of the model, whether or not the individuals involved are to be considered taxable persons.

Given the fact that this assessment can have repercussions for other Member States in cross-border situations, in particular for the place of supply rules (see above), ensuring a common approach should be in the interest of all stakeholders.

Ensuring a common approach might require an amendment of the EU VAT legal framework. Which form such amendment would take is to be decided at a later stage.

4.2. On the services provided by the platform

When looking into the question of the VAT treatment of the activities of the sharing platforms, a number of issues arise:

- It is important to determine to whom the platform is providing a service against consideration. This can be to one of the users of the platform or to both.

- What is the nature of the service provided by the sharing platform? Is the service provided by a sharing platform to be considered as the service of an intermediary? Can it in certain cases be considered as the underlying supply (as connected with immovable property, transport, restaurant service …) or is it an electronically supplied service?

- Is the recipient of the service provided by the platform a taxable person or not? As indicated in the cases 1, 2 and 4 above, this might ultimately require a case-by-case assessment. The platforms described in cases 1, 2 and 4 have EU-wide activities. A

case-by-case assessment of the recipient of their services will inevitably create uncertainty for the platforms.

- When the platform also ensures the payment, how should that transaction (accessory to the main transaction or a separate service) be qualified? This has an impact on the VAT to be charged by the platform.

4.3. Discussions in the OECD

At the 111th meeting of the VAT Committee on 30 November 2018, the Commission services informed Member States that the topic of sharing economy came up in the context of the OECD during the most recent meeting of Working Party 9 (WP9) in the first half of November 2018. Most likely, the issue will present the next major working point of WP9 as it is equally challenging for tax administrations from the point of view of governance due to constantly evolving business models and for economic operators who stress the need for clear rules and legal certainty as well as the risk of double/non-taxation.

It is obvious that the progress of the discussions at the OECD will have to be followed closely. However, it should not obstruct the launching of a discussion at EU level. On the contrary, having these discussions at an EU level should strengthen the contribution of the EU to the OECD debate. Moreover, the discussions at EU level take place within the context of a common legal framework, i.e. the EU VAT legislation and are therefore de facto different to those at OECD level.

5. CONCLUSION AND QUESTIONS TO THE DELEGATES

The Commission services consider that given the growing importance of the sharing economy there is a need for launching a reflection at the EU level on the VAT treatment of this phenomenon.

Ensuring the neutrality of VAT and avoiding distortions of competition by ensuring an equal treatment between individuals supplying goods or services via sharing economy platforms and other suppliers not using such platforms is of key importance in this reflection.

Uncertainty about the applicable VAT rules and divergence in the application of these rules by the Member States lead to complexity for platforms willing to be compliant. It can also result in double or non-taxation within the EU.

The present paper aims at making an inventory of the issues that are emerging when applying the provisions of the current EU VAT legislation to the transactions taking place within the context of the sharing economy. Its goal is not to provide final responses to the issues raised but rather to complete this inventory and to start a more global discussion on whether the current VAT legislation is sufficient as such, whether it would need some further clarifications or whether more substantial changes would need to be envisaged.

The delegates are invited to indicate whether they:

- agree with the Commission services regarding the outlined concerns the sharing economy raises as regards:
    - the qualification of users as taxable persons and the consequences of divergent interpretations;

- the need for a uniform approach on the qualification of the services provided by the platforms in order to avoid double or non-taxation
- the challenge to find the right balance between tax compliance and the increased administrative burden ;

- have identified other concerns;
- agree that it should be further examined whether the EU VAT legislation needs to be updated in view of these developments;
- have any suggestions as regards the avenues to explore.

* *