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DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Value added tax**

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**VALUE ADDED TAX COMMITTEE**  
**(ARTICLE 398 OF DIRECTIVE 2006/112/EC)**  
**WORKING PAPER NO 878**

**QUESTION**  
**CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

<b>ORIGIN:</b>	<b>Commission</b>
<b>REFERENCES:</b>	<b>Articles 2(1)(b) and (c), 9, 10, 12, 132, 135(1)(b) and (f), 282 to 292</b>
<b>SUBJECT:</b>	<b>VAT treatment of sharing economy</b>

## **1. INTRODUCTION**

The Commission services wish to discuss with the VAT Committee certain issues related to the VAT treatment of sharing (collaborative) economy.

New sharing economy platforms have grown rapidly over the recent years and today they have an important impact on the activities to which they relate. Some of these platforms are currently valued at over EUR 25 billion. In less than five years the key sharing sectors<sup>1</sup> have reached a global revenue level of around EUR 14 billion and it is foreseen that they could potentially reach EUR 300 billion by 2025<sup>2</sup>.

At European Union level, the development of sharing economy and its impact have been recognised in the Commission's Communication *A Digital Single Market Strategy for Europe*<sup>3</sup>, in which the Commission announces a comprehensive assessment of the role of platforms, including in the sharing economy<sup>4</sup>. Also the strategy for the internal market, which is currently being developed by the Commission services, will cover a set of actions related to the sharing economy. However, the VAT implications of the sharing economy have not been tackled so far and this therefore calls for clarification.

## **2. SUBJECT MATTER**

Sharing economy is a socio-economic phenomenon based on sharing of human and physical resources. It includes the shared production, distribution and consumption of goods and services by people and organisations<sup>5</sup>. It has evolved from a type of transaction between friends and family to a global movement of business<sup>6</sup>. According to some sources, the main sharing economy sectors are peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing and music video streaming<sup>7</sup>.

A sharing economy may take a variety of forms including supplies of goods and services for profit, non-profit, barter and co-operative transactions.

As regards the VAT, the analysis of the sharing economy transactions must be carried out at two levels. First of all, the taxation of the supplies of goods or services by a user of a sharing economy platform to other users should be considered, which necessitates the critical assessment of whether an individual providing goods or services through a sharing economy platform should be considered a taxable person in the sense of the VAT

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<sup>1</sup> Car transportation, music, finance, accommodation and online staffing.

<sup>2</sup> Commission Staff Working Document *A Digital Single Market Strategy for Europe*, Brussels, 6.5.2015, SWD(2015) 100 final, p. 53, [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd_en.pdf)

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A Digital Single Market Strategy for Europe*, Brussels, 6.5.2015, COM(2015) 192 final, [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

<sup>4</sup> Idem, p. 12.

<sup>5</sup> See B. Matofska, *What is the Sharing Economy*, <http://www.thepeoplewhoshare.com/blog/what-is-the-sharing-economy/>

<sup>6</sup> PWC, *The sharing economy: how is it affecting you and your business?*, <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/>

<sup>7</sup> Idem.

Directive<sup>8</sup>. Secondly, the VAT treatment of the services provided by the sharing economy platforms to their users, needs to be examined. The two types of transactions, i.e. between the individual users of the sharing economy platforms and between the platform and its users are considered separately. Different configurations of both types of transactions are possible, e.g. access to the platform is granted without consideration, but the services provided through the platform are payable or both access to the platform and services provided through the platform are payable, etc. However, from the VAT point of view, the assessment of the services provided by the platform does not influence the assessment of services provided by individuals through the platform and *vice versa*.

As regards transactions between individuals carried out through the sharing economy platforms, the current paper focuses on goods or services provided with the use of the sharing economy platforms under two scenarios which may be said to involve consideration.

It should be noted that a third scenario is possible whereby services provided through a platform are delivered free of charge<sup>9</sup> – i.e. without any remuneration – monetary or in the form of another service. Such a scenario, and its implications from a VAT point of view, remains outside the scope of this paper.

The focus of the present paper is therefore on:

1) Supply of goods or services for consideration

Under the first scenario goods or services are provided for consideration by one user of a sharing economy platform to another.

Companies operating such sharing economy platforms often use mobile applications or websites in order to put in contact consumers, e.g. needing a ride or wanting to hire an immovable property, and individuals ready to deliver the services requested. The hiring of the service as well as the payment is usually made through the platform.

2) Exchange of goods or services

Under the second scenario goods or services are made available by a user of a sharing economy platform to other users in exchange of their goods or services or those of others.

Also under this scenario the peer-to-peer lending, borrowing and exchange are conducted through the platform, but the mechanism of the transaction is different. This mechanism is either based on a simple exchange of goods or services between two individuals<sup>10</sup> or on an individual contributing his goods or services to the common pool and getting in exchange the right to benefit from other goods or services included in the pool<sup>11</sup>.

The VAT assessment of the transactions provided by the sharing economy platforms to their users raises less controversy than the one relating to the transactions between individuals carried out through the platforms.

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<sup>8</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

<sup>9</sup> See, for instance <https://www.blablacar.co.uk/blog/terms-and-conditions> .

<sup>10</sup> See, for instance <http://www.guesttogo.com/en/how-it-works> .

<sup>11</sup> See, for instance <http://www.streetbank.com/faq?locale=en> .

As regards the legal situation, there is, in general, lack of clarity as to whether conventional industry laws apply to peer-to-peer markets. Some sources stress that, on the one hand, the existing legislation does not cover certain activities and transactions within the sharing economy, whilst on the other hand, legislation developed for conventional industries is wrongfully applied to markets in the sharing economy<sup>12</sup>.

It should be stressed that the purpose of this paper is to clarify how the services provided by the sharing economy platforms and through the sharing economy platforms by their users are treated under the current VAT rules. It is certainly not the purpose of this paper to propose any modifications to the existing rules in relation to the sharing economy transactions.

### **3. THE COMMISSION SERVICES' OPINION**

As mentioned above, in looking at the VAT treatment of the sharing economy, it is necessary to distinguish between the activity undertaken by individuals providing goods or services through a sharing economy platform and that of the online sharing economy platforms.

#### **3.1. Goods or services provided by individuals through a sharing economy platform**

The analysis below is aimed at assessing whether the supplies of goods or services by individuals through the sharing economy platforms qualify as taxable transactions in the sense of Article 2 of the VAT Directive. The most controversial element of this assessment is linked to the question as to whether the individuals supplying goods or services through the sharing economy platforms qualify as taxable persons in the sense of Article 9(1) of the VAT Directive.

The present paper does not tackle the question of exemptions possibly applicable to the transactions between individuals concluded through the sharing economy platforms.

##### *3.1.1. Scenario 1: goods or services are provided for consideration*

According to Article 2(1)(a) and (c) of the VAT Directive supplies of goods or/and services are subject to VAT where they are made:

- for consideration,
- within the territory of a Member State,
- by a taxable person,
- acting as such.

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<sup>12</sup> European Commission, *Business Innovation Observatory, The Sharing Economy, Accessibility based Business Models for Peer-to-Peer Markets*, PWC, European Union, September 2013, p. 14, [http://ec.europa.eu/enterprise/policies/innovation/policy/business-innovation-observatory/files/case-studies/12-she-accessibility-based-business-models-for-peer-to-peer-markets\\_en.pdf](http://ec.europa.eu/enterprise/policies/innovation/policy/business-innovation-observatory/files/case-studies/12-she-accessibility-based-business-models-for-peer-to-peer-markets_en.pdf)

Under the scenario considered in this section the supplies of goods or services are provided by individuals through a sharing economy platform for consideration, often transferred through the platform<sup>13</sup>, within the territory of a Member State. Those supplies will, under the existing rules, be subject to VAT insofar as they are made by a taxable person acting as such.

Below it is therefore analysed, firstly, whether individuals providing goods or services through a sharing economy platform qualify as taxable persons within the meaning of Article 9(1) of the VAT Directive and, secondly, whether they can be considered as acting as such.

The notion of a **taxable person** as defined in the VAT Directive is very wide. As set out in Article 9(1), a taxable person is any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

In order therefore, to establish whether individuals providing goods and services through a sharing economy platform qualify as taxable persons it is necessary to assess, firstly, whether they carry out an economic activity and, secondly, whether they do it independently.

Article 9(1) of the VAT Directive itself clarifies that any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions is regarded as **economic activity**. The concept also covers the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis. In this context, "exploitation" within the meaning of this provision refers, in accordance with the principle that the common system of VAT should be neutral, to all those transactions, whatever may be their legal form, by which it is sought to obtain income on a continuing basis<sup>14</sup>.

According to the constant jurisprudence of the Court of Justice of the European Union (hereafter: CJEU) the term of "economic activities" is very wide and objective in character, in the sense that the activity is considered *per se* and without regard to its purpose or results<sup>15</sup>.

In *Finanzamt Freistadt Rohrbach Urfahr*<sup>16</sup> the CJEU indicated that the fact that property is suitable only for economic exploitation will normally be sufficient for a finding that its owner is exploiting it for the purposes of economic activities. By contrast, if, by reason of its nature, property is 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 it is actually being used for the purpose of obtaining income on a continuing basis.

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<sup>13</sup> See for instance <https://www.airbnb.com/help/article/51>.

<sup>14</sup> See judgment of the Court in Case C-8/03 *BBL*, ECLI:EU:C:2004:650, paragraph 36. See also Case C-186/89 *Van Tiem*, ECLI:EU:C:1990:429, paragraph 18; Case C-306/94 *Régie dauphinoise*, ECLI:EU:C:1996:290, paragraph 15; and Case C-77/01 *EDM*, ECLI:EU:C:2004:243, paragraph 48.

<sup>15</sup> See, for instance, Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen Ltd, Fulcrum Electronics Ltd, Bond House Systems Ltd v Commission*, ECLI:EU:C:2006:16, paragraph 43; Case 235/85 *Commission v Netherlands*, ECLI:EU:C:1987:161, paragraph 8.

<sup>16</sup> Case C-219/12 *Finanzamt Freistadt Rohrbach Urfahr*, ECLI:EU:C:2013:413, paragraph 20.

As regards the goods and services provided by individuals through the sharing economy platforms, the property at issue, such as an apartment to be rented, a car used to offer a ride, is by its very nature capable of being used for both economic and private purposes. Given the multitude of forms that supplies delivered through the sharing economy platforms may take, each assessment will need to take into account specific circumstances of the cases at hand. This said, it can, however, be assumed that, in general, joining a sharing economy platform through which goods or services are provided in return for remuneration, implies some continuity. The activities in question would therefore meet the requirements for inclusion in the concept of "economic activity" as set out in Article 9(1) of the VAT Directive.

Having said the above, it should be noted that Article 12 of the VAT Directive allows Member States to regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1). Therefore, as confirmed by the CJEU in *Kostov*<sup>17</sup> and *Slaby*<sup>18</sup>, the fact that the goods or services are supplied on an occasional basis does not in itself remove such supplies from the scope of application of the VAT Directive. It should be kept in mind, however, that the fact that the supplies fall indeed within the scope of the Directive, does not automatically mean that they are taxed.

It stems from *Slaby* that the mere exercise of the right of ownership and the management of the private property do not constitute economic activity<sup>19</sup>. However, where an individual concerned takes active steps to market 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, that person must be regarded as carrying out an economic activity and must, therefore, be regarded as a taxable person<sup>20</sup>. In this context it could be argued that an individual joining a sharing economy platform in order to offer his goods or services acts similarly to a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of the VAT Directive and should be regarded as carrying out an economic activity.

Given the very wide understanding of the concept of economic activity, referred to above, it can be therefore concluded that the supplies of goods and services made through sharing economy platforms, such as driving customers to requested destinations or renting out immovable property may qualify as an economic activity in the sense of the VAT Directive irrespective of whether such supplies are delivered with clear continuity or on a more occasional basis.

As set out in Article 10 of the VAT Directive, the condition that the economic activity must be conducted **independently** is aimed at excluding from the scope of the VAT employed and other persons in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

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<sup>17</sup> Case C-62/12 *Kostov*, ECLI:EU:C:2013:391, paragraph 28.

<sup>18</sup> Joined Cases C-180/10 and C-181/10 *Slaby and others*, ECLI:EU:C:2011:589, paragraph 49.

<sup>19</sup> *Idem*, paragraphs 38-41 and 50-51.

<sup>20</sup> *Idem*, paragraph 51.

Our research suggests that typically there is no such relationship of employer and employee binding an individual goods or services provider and the sharing economy platform. The terms of service of one of these platforms clearly state that the platform "... is not a party to any agreements entered into between hosts and guests, not is ... a real estate broker, agent or insurer. ... has no control over the conduct of hosts, guests and other users of the site, application and services or any accommodations, and disclaims all liability in this regard to the maximum extent permitted by law ..." <sup>21</sup>. It can be therefore concluded that a typical individual supplier of goods or services through a sharing economy platform carries out his activities independently. This said, however, it should be noted that the economic reality must always be taken into account, especially if it contradicts the terms of service. If the actual relationship between the sharing economy platform and an individual goods or services provider resembles that of an employer and employee, the situation must be treated accordingly and the issue as to whether economic activity is conducted independently carefully analysed <sup>22</sup>.

It stems from the above that individuals supplying goods or services, such as driving customers to requested destinations or renting out immovable property, through sharing economy platforms can, in principle, be said to carry out independently economic activity and thus qualify as taxable persons within the meaning of Article 9(1) of the VAT Directive.

It is worth noting that the above conclusion would be in line with the more general objective of avoiding distortions of competition that might be caused by not subjecting supplies provided through sharing economy platforms to VAT. The individual users of sharing economy platforms who are supplying goods and services would otherwise have competitive advantage over the suppliers of competing goods and services not using such platforms.

According to the case law of the CJEU, a taxable person is acting **as such** where he carries out transactions in the course of his taxable activity <sup>23</sup>. The latter is to be distinguished from purely private transactions that are not subject to VAT.

This said, it is in addition worth noting that the CJEU in *Kostov* <sup>24</sup> indicated that a taxable person acting in a certain field of activity who occasionally carries out a transaction falling within another field of activity is liable to VAT on that transaction, provided that that activity constitutes an activity within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.

As it has been established above, supplies of goods or services for consideration made by individuals through the sharing economy platforms, in principle, constitute economic activities, susceptible for those individuals to qualify as a taxable person. When delivering

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<sup>21</sup> <https://www.airbnb.com/terms>

<sup>22</sup> See, for instance *Uber dealt another blow over driver status* at <http://www.bbc.com/news/technology-34207838>; It is reported that in the United States several government bodies ruled that Uber drivers are employees, not independent contractors while others issued rulings that classify Uber drivers as independent contractors.

<sup>23</sup> See, for instance Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and others*, ECLI:EU:C:2006:16, paragraph 42.

<sup>24</sup> Case C-62/12 *Kostov*, ECLI:EU:C:2013:391, paragraphs 28-31.

them, taxable persons are acting as such, which means that they constitute taxable transactions in the sense of Article 2 of the VAT Directive.

*3.1.2. Scenario 2: goods or services are made available as part of an exchange*

Under the second scenario, whereby goods or services are delivered to other users in exchange of their goods or services, two situations are, in fact, possible:

- (a) the first one whereby individual A supplies to individual B goods or services and individual B supplies to A other goods or services in exchange<sup>25</sup>;
- (b) the second situation whereby an individual contributing his goods or services to the common pool gets in exchange the right to benefit from another's goods or services included in the pool<sup>26</sup>.

As mentioned in section 3.1.1. above, according to Article 2(1)(a) and (c) of the VAT Directive supplies of goods or/and services are subject to VAT whereby they are made for consideration, within the territory of a Member State, by a taxable person acting as such.

Under the scenario considered in this section it is assumed that the supplies of goods or services are provided within the territory of a Member State. Those supplies will, under the existing rules, be subject to VAT insofar as they are made for consideration by a taxable person acting as such.

Even though, according to the CJEU, barter contracts, under which the consideration is by definition in kind, and transactions for which the consideration is in money are, economically and commercially speaking, two identical situations<sup>27</sup>, scenario 2 for both situations could raise doubts as to the qualification of individuals supplying goods or services as taxable persons and as to the existence of a direct link between the service provided and the remuneration.

As referred to in section 3.1.1., the second subparagraph of Article 9(1) of the VAT Directive states that the exploitation of tangible or intangible property is regarded as economic activity if conducted for the purposes of obtaining income therefrom on a continuing basis. Even if we assume that a subscription to a sharing economy platform implies some continuity, the purpose of obtaining income is not evident where e.g. individuals swap apartments for the holiday period<sup>28</sup>.

The qualification of individuals participating in such swapping transactions as taxable persons could raise doubts. It could be that the principal reason of offering one's house for holidays on a sharing economy platform would be to get access to another house/other houses available through the platform. If the principal objective of the person offering the house through the platform is to obtain income, it would perhaps be easier to simply rent the house, which can also be done through the sharing economy platforms<sup>29</sup>.

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<sup>25</sup> See, for instance <http://www.guesttogo.com/en/how-it-works>.

<sup>26</sup> See, for instance <http://www.streetbank.com/faq?locale=en>.

<sup>27</sup> See, for instance Case C-283/12 *Serebryannay vek*, ECLI:EU:C:2013:599, paragraph 39.

<sup>28</sup> See, for instance <http://www.guesttogo.com/en/how-it-works>.

<sup>29</sup> See, for instance <https://www.airbnb.com/help/article/51/how-does-airbnb-process-payments>

In this context it should be emphasised that the assessment will need to be done on a case-by-case basis. Sharing economy covers a multitude of platforms and transactions. The assessment of such elements as the purpose of obtaining income or the continuity will not be the same in the case of individuals swapping houses once a year during a holiday period and individuals offering several holiday apartments throughout the year.

The remarks made in section 3.1.1. in relation to the assessment as to whether a taxable person is acting as such remain valid also in the present section.

In addition, the second scenario whereby an individual provides goods or services as part of an exchange raises questions as to the existence of the direct link between goods or services supplied and received as remuneration.

With reference to the element of consideration, according to the settled case-law<sup>30</sup> of the CJEU, there must be a direct link between the supply of goods or services made and the consideration received, if the supply is to be taxable for VAT purposes.

It is worth noting that in *Commission vs Finland*<sup>31</sup>, where the recipient of the services was obliged to pay an amount according to his financial resources, the existence of a direct link was challenged on the grounds that the amount was not calculated according to the value of the services received, but rather depended on the client's income and assets. The CJEU stressed in its judgment that where a person's activity consists exclusively in providing services for no direct consideration, there is no basis of assessment and the services are therefore not subject to VAT<sup>32</sup>.

In *Tolsma*<sup>33</sup>, the CJEU connected the existence of a direct link to the existence of a legal relationship between the person receiving consideration for a service and the person paying it, in the sense that there needs to be a reciprocal performance, a service provided in exchange of a remuneration and vice versa; *i.e.*, there would be no service for consideration without the remuneration, and the other way round. In addition, it seems that the CJEU has dismissed the existence of a direct link in cases<sup>34</sup> where the goods or services supplied could not be foreseen by its recipient, which would imply a lack of reciprocal performance.

As regards the first situation, whereby individual A supplies to individual B goods or services and individual B supplies to A other goods or services in exchange, there may be a number of different factual variations influencing the assessment from the VAT point of view. First of all, an exchange may be simply reciprocal and relate to goods of similar value. However, where a benefit is clearly unrelated to the amount of contribution, e.g. a holiday home exchange relates to homes for which the market renting fees clearly do not

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<sup>30</sup> Among others, CJEU, judgment of 8 March 1988 in case C-154/80 *Coöperatieve Aardappelen*, paragraph 12; and CJEU, judgment of 23 November 1988 in case C-230/87 *Naturally Yours*, paragraph 11.

<sup>31</sup> Case C-246/08 *Commission vs. Finland*, ECLI:EU:C:2009:671, paragraphs 49 and 51.

<sup>32</sup> *Idem*, paragraph 43.

<sup>33</sup> Case C-16/93 *Tolsma*, ECLI:EU:C:1994:80, paragraph 14 and the following.

<sup>34</sup> See, for instance Case 102/86 *Apple & Pear Development Council*, ECLI:EU:C:1988:120, paragraphs 14 and 15.

match, following the approach by the CJEU in *Commission vs Finland*, the direct link could perhaps be said to be missing<sup>35</sup>.

The second situation whereby an individual contributing his goods or services to the common pool gets in exchange the right to benefit from another's goods or services included in the pool may raise even more doubts as to the existence of the direct link. One of the sharing platforms argues that its primary objective is to get people involved in their community, to help local needs be met by local solutions, to help people to reuse things and reduce consumption<sup>36</sup>. Where, for example, an individual contributes to the pool a bicycle repair, he may get a variety of goods or services in exchange: an old sofa, gardening equipment or a French lesson. His own supply and what he is getting from the pool will not necessarily be matched through their value and both supplies do not need to happen in the same time period. Moreover, a bicycle repairer may not necessarily know at the moment of supplying his service what he will get from the pool, which could imply a lack of reciprocal performance. In the context of the jurisprudence referred to above, it can be therefore concluded that in situations whereby goods or services are made available as part of an exchange, the existence of a direct link between the supply and the consideration in kind for it could be disputed and it would in any event have to be carefully assessed taking into account all the factual circumstances of the case at hand. One element that may need to be taken into account and that could make a difference in the assessment of two seemingly similar situations would for example be the risk of provoking a competition distortion through non-taxation of certain supplies.

### **3.2. Services provided by online sharing economy platforms**

The VAT treatment of services provided by online sharing economy platforms is in fact the same as the treatment of the crowdfunding platforms discussed by the VAT Committee in relation to the VAT treatment of crowdfunding<sup>37</sup>.

Just like online crowdfunding platforms, the sharing economy platforms provide an opportunity for customers and individual service providers to interact.

Some platforms charge fees for their services<sup>38</sup>, some do not<sup>39</sup>.

Where platforms provide services free of charge<sup>40</sup> they remain outside the scope of application of the VAT Directive.

Where they supply services for consideration, such services are subject to VAT. These services would typically constitute intermediation to the extent that the platforms do not act in their own name. Some of the services supplied may in fact constitute financial services, where the platforms handle the payments. One of the platforms providing the possibility to rent out lodging describes the way they process payments in the following

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<sup>35</sup> More detailed considerations relating to the existence of the direct link can be found in Working paper No 836 on the VAT treatment of crowdfunding, p. 9 and the following.

<sup>36</sup> <http://www.streetbank.com/faq?locale=en>.

<sup>37</sup> Working paper No 836.

<sup>38</sup> See, for instance <https://www.airbnb.com/terms>.

<sup>39</sup> See, for instance <http://www.streetbank.com/faq?locale=en-GB>.

<sup>40</sup> See, for instance <https://www.blablacar.co.uk/blog/terms-and-conditions>.

manner: "1. Guests pay ... when they book a place; 2. ... releases the money to hosts 24 hours after the guest checks in"<sup>41</sup>.

The Commission services are of the opinion that services related to intermediation are economic activities falling within the scope of VAT and, insofar as there is a consideration, those services will be subject to VAT pursuant to Article 2(1)(c) of the VAT Directive. Where these intermediary services consist in financial services, such as payments or transfers, exemptions pursuant to Article 135(1) of the VAT Directive may apply. In all other cases in which the place of supply is within the EU, VAT would be payable.

### **3.3. Final considerations**

First of all, as regards the VAT treatment of supplies of goods or services provided by individuals through sharing economy platforms, the distinction must be made between the supplies of goods or services provided for monetary consideration and the ones in which no such consideration is paid.

In the Commission services' view, the supplies of goods or services for monetary consideration in principle qualify as taxable transactions for the purposes of application of the VAT Directive.

As regards the supplies of goods or services in exchange of other goods or services, the distinction is made between:

- (a) situations whereby supplies by individual A to individual B are made in exchange of supplies by B to A and
- (b) situations whereby an individual contributing his goods or services to the common pool gets in exchange the right to benefit from other goods or services included in the pool.

Due to the variety of possible transactions the assessment must be done on a case-by-case basis. The Commission services believe that doubts may arise as to the qualification of individuals as taxable persons and as to the existence of a direct link between the supplies and the remuneration in kind in both situations where there is an exchange of goods and services. It is on these issues that the Member States' views are particularly sought.

Even if it is concluded that individuals providing goods or services through sharing economy platforms qualify indeed as taxable persons in the sense of Article 9(1) of the VAT Directive carrying out taxable transactions subject to VAT under Article 2(1) of the VAT Directive, it is not excluded that they may benefit from different types of exemptions, such as exemptions for certain activities in the public interest set out in Article 132 of the VAT Directive or an exemption or graduated relief for small enterprises set out in Title XII, Chapter 1 of the VAT Directive.

The assessment of the VAT treatment of services provided by online sharing economy platforms seems much more straightforward. The Commission services are of the opinion that services related to intermediation are economic activities falling within the scope of

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<sup>41</sup> <https://www.airbnb.com/help/article/51>.

VAT. Where these intermediary services consist in financial services, such as payments or transfers, exemptions pursuant to Article 135(1) of the VAT Directive may apply. In all other cases, VAT would be payable.

**4. DELEGATIONS' OPINION**

The delegations are requested to give their opinion on the following:

- (1) the VAT treatment of supplies of goods or services through the sharing economy platforms for consideration,
- (2) the VAT treatment of supplies of goods or services made available to other users through sharing economy platforms in exchange of other goods or services in two situations:
  - (a) whereby individual A supplies to individual B goods or services in exchange of goods or services supplied by B,
  - (b) whereby an individual contributing his goods or services to the common pool gets in exchange the right to benefit from other goods or services included in the pool.
- (3) the VAT treatment of services provided by sharing economy platforms.

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