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VAT EXPERT GROUP[1]

VEG NO 095

VAT treatment of the platform economy: contribution of the VEG

[1] Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

INTRODUCTION

During the 26th VEG meeting of 11 May 2020, document VEG N° 090 on 'VAT treatment of the platform economy' was presented and discussed.

In follow-up to this meeting, the VEG members have prepared a comprehensive reflection note that was conveyed on 14 July 2020 to the Commission services.

This document is annexed and will be subject to an oral presentation during the 27th VEG meeting.

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FINAL VERSION

VAT TREATMENT OF THE PLATFORM ECONOMY

Coordinated VEG input to VEG Paper N° 090

JULY 13, 2020

Contents

1. EXECUTIVE SUMMARY

We welcome the Commission's initiative on the "VAT treatment of the platform economy" (VEG N° 090) and are keen to support the Commission with our coordinated VEG input.

Like the e-commerce VAT package, the work on the VAT treatment of the platform economy has a strong link with Europe's Digital Single Market strategy. Online platforms play a key role in innovation and growth in the Digital Single Market. Both for online and offline SMEs and micro-enterprises, online platforms constitute important, sometimes the main, entry points to certain markets and data. This aspect has gained increased importance considering the need for economic recovery after the Covid19 crisis.

We think that VEG document N° 090 therefore has to be put into a broader context, both to link it up with the broader economic and societal objectives and also with a long term vision for a future EU VAT system. The further digitalization of the world impacts the entire economy, and not only the platform economy, which consists of a broader ecosystem with many parties involved such as the underlying suppliers, the consumers, the platforms, the payment processing providers, the freight forwarders and many more, impacting as well on various sectors (finance, transport, accommodation, retail, etc.). This illustrates again that a 'one size fits all' solution is difficult to achieve.

Technology plays an important role, both when it comes to developing a long-term vision for a future VAT system but also when it comes to, in parallel, working together on improving the current system. We, therefore, welcome the Commission´s initiative to launch a broad study on the technology topic with the focus on digital reporting and e-invoicing, the platform economy and the extension of the MOSS, and are very keen as the VEG to support the Commission throughout the study with our practical business and technical expertise – VEG document N° 090 links also into aspects with which the Commission study deals, so we as the VEG think that our coordinated VEG input on VEG document N° 090 and the ideas contained therein will also be very helpful to be explored and researched further within the study, which we as VEG are very happy to support.

The key issues outlined by the Commission in VEG document N° 090 are the status of the underlying supplier, the nature of the services supplied by the digital platform to the underlying supplier and the final consumer, and the potential roles of the digital platforms in the exchange of information and/or collection of VAT.

Before looking at resolving the issues at stake and before focusing on the different options and roles digital platforms can potentially play, which we have outlined in further detail in this document, based on the VEG´s views, we need to first ensure that we clarify and are all aligned on what the term "platform economy" encompasses. For this purpose, a first step to be undertaken is to further work on clarifying the meaning and the scope of the term "platform economy" and its place in the VAT legal framework, based upon the broader Digital Single Market context in Europe. For the purposes of this document we use the terms "sharing economy" and "platform economy" in the same manner; neither of which are defined for tax purposes.

It is also important to carefully consider and further explore the CJEU jurisprudence both on the regulatory and tax ramifications of the platform economy business models and on the traditional economy, and to also carefully analyse and further explore solutions for the future.

Moreover, a coordinated international approach on an OECD and EU level – not only when it comes to VAT but also when it comes to VAT and direct tax, based on an international consensus – is of utmost importance.

Finally, before any policy decisions are made an impact assessment reflecting on the benefits and costs for all the relevant stakeholders has to be undertaken, not forgetting the SMEs but also the traditional economy in all of this. We assume that this will be part of the study on 'VAT in the Digital Age' that the Commission is about to launch.

Furthermore, much has been already achieved in addressing VAT challenges associated with marketplaces via the E-Commerce VAT package and more is already planned via proposed amendments to the Directive on Administrative Cooperation (DAC7 Amendment). We understand that VEG document N° 090 focuses on the part of the platform economy that is not already precisely covered by the e-commerce VAT legislation which the Council has already adopted. Therefore, we understand that the main focus of VEG document N° 090 is on the sharing/gig economy, and we have therefore focused our comments on this sector. However, before moving to detailed solutions, we believe it is crucial that the Commission undertake a gap analysis to identify which scenarios (services, goods, B2B, B2C, C2C etc.) are already covered by existing legislation and where gaps remain. In this way, any further initiatives can be targeted towards addressing those remaining challenges, using a risk-based and proportionate approach. Such an exercise can also serve to avoid multiple layers of legislation being applicable to platforms, which would add to complexity of the VAT system.

We appreciate the opportunity to provide input on this very important topic and are keen to support the Commission throughout the whole initiative, working together on short, medium and long term deliverables.

When building this house together, it is of utmost importance that we agree on the fundamentals and get the foundations right, since otherwise there is a real danger of making the current situation and the current VAT rules even more complicated both for the platform economy and the traditional economy.

2. INTRODUCTION:

As we highlighted in the written input to the VEG document N° 086 "Upgrading the EU VAT system – A reflection on possible ways forward", the fast technological developments have both commercial impacts (change of business models and product delivery strategies) and direct impacts on the VAT system. These present both challenges and opportunities to develop the legal VAT framework as well as VAT collection and administration systems. In our view the two are intrinsically linked.

We think that under the lead and coordination of the Commission and with the involvement of Member States (GFV) and business (VEG), there is an urgent need for a broader debate to develop a long-term vision for the design and operation of a future EU VAT system, which is effective, simple, robust and future proof.

Technology – as well as the topic 'platform economy' – more specifically plays an important role, both when it comes to developing a long-term vision for a future VAT system but also when it comes to improving the current system. The study planned to be launched by the Commission is an important cornerstone in this context and the VEG is very keen to support the Commission throughout the study.

3. PROBLEM STATEMENT AND KEY GUIDING PRINCIPLES

Safeguarding VAT revenues for Member States, and ensuring a level playing field for business, while keeping administrative and compliance costs for tax authorities and businesses, as tax collector, to a minimum, are key objectives that the Commission, Member States and businesses share.

It is important to keep in mind that the platform economy currently impacts on various business sectors (finance, transport, accommodation, retail, etc. and probably more in the future) and consists of a broader ecosystem with many parties involved such as the underlying supplier, the consumer, the platform or electronic interface ("EI"), the payment processing provider(s), freight forwarders and many more, including of course tax and customs authorities globally. When looking at resolving the issues at stake we need to look at the various sectors, the traditional economy, the platform economy and at all parties involved in the ecosystem, and need to find out if and how all parties involved can participate in achieving the above mentioned objectives.

Any solution, and there may be more than one, should also take into account the principle of neutrality which means before pushing all tax obligations for payment and reporting exclusively onto one party in the ecosystem, which will lead to VAT becoming an influencing factor on how business and commerce in general will be conducted in the future, it is important to analyse the whole ecosystem and evaluate which parties are instrumental and best placed to be part of the solution. The challenge, for all parties involved in the ecosystem, that the VEG has observed, is to identify the problems for both Member States (tax authorities) and businesses that we are aiming to resolve?

- Non-taxation
- Double taxation
- Level playing field

If not resolved the above aspects lead to an unlevel playing field for business (distortion of competition) and as well to tax (both indirect and direct) revenue losses. Whether using a traditional distribution channel or an e-commerce distribution channel – VAT neutrality has to be ensured. See the Ottawa Taxation principles[2] , and also OECD VAT/GST Guidelines.3 VAT rules have to ensure channel neutrality in order not to hinder the development of trade.

Moreover, keeping administrative and compliance costs for tax authorities and businesses to a minimum is also key for safeguarding VAT revenues and ensuring a level playing field. It has to be ensured that the collection and administration of VAT happens in a simple, clear and consistently applied and enforceable legal framework, which together with an efficient and harmonized use of modern technology can ensure that the correct tax is collected at the right time and compliance burdens are minimised.

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[2] Ottawa Taxation Principles "Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation

[3] Guideline 2.2 Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation; Guideline 2.3 VAT rules should be framed in such a way that they are not the primary influence on business decisions."

In the VEG's view, the following are the key principles to consider when looking to resolve the abovementioned challenges:

- Certainty & simplicity
- Consistency
- Proportionality
- Fiscal & Channel Neutrality
- International Cooperation / Enforcement
- Consultation with business & appropriate lead time
- Ability to automate (millions of transactions and hundreds of thousands of business parties involved)

We think that a key factor – when looking for solutions that work both for the traditional and the platform economies – is to look at the platform economy and its ecosystem in great detail, to understand the sectors impacted, the parties involved, the commercial and operational set ups of the different platforms based on their specific business model(s). For this business expertise and input – both commercial and VAT – from impacted businesses is essential.

A last but highly important factor when considering the building blocks mentioned in VEG document N° 090, is to ensure clarity and alignment on the understanding as to what the term "platform economy" encompasses. For this purpose, a first step to be undertaken is to clarify the meaning and the scope of the term "platform economy" and its place in the VAT legal framework, based upon the broader Digital Single Market context in Europe (and globally) and taking into account, where relevant, the CJEU jurisprudence on the regulatory and tax ramifications of the platform economy's business models.

Having set the scene and outlined the bigger picture, which we think is important when looking at VEG document N° 090, we now would like to focus on the key building blocks and requests mentioned in the document.

4. FOCUS ON VEG DOCUMENT N° 090 AND ITS BUILDING BLOCKS INCLUDING THE QUESTIONS RAISED THEREIN

4.1. Jurisprudence of the CJEU

Two CJEU cases were mentioned in VEG document N° 090 which are related to the platform economy on matters other than VAT and which, based on the Commission´s view, are relevant to reflect further on in the discussions we are having regarding VAT and the platform economy.

It needs to be carefully analysed whether and to what extent, the questions asked to the CJEU which were not related to VAT, can be considered for VAT purposes or not. For this it is very important to look at the relevant CJEU cases in very detail, also looking at their background and the issues at stake, which had nothing to do with VAT but could impact on VAT, leading to potentially big fundamental changes to the manner in which the VAT system functions, which need to be carefully explored.

Additionally, CJEU cases on VAT matters were mentioned in the document that do not directly relate to the platform economy (rather the traditional economy) but might be also relevant for our discussions – they concern the 2 key issues at stake – the status of the

provider (underlying supplier), i.e. is he a 'taxable person' or not and the nature of the services supplied by the digital platform.

As highlighted, the platform economy is a new phenomenon that has developed over the last 20 years. There is a large variation of digital platforms within the platform economy with various functions and types available in today's marketplace, ranging from platforms providing services, to products, to payments, to software development and many more.

When considering the CJEU jurisprudence and analysing it in further detail we need to do that based on a holistic approach, looking for a solution that works both for the traditional and for the platform economy, which is important to ensure channel neutrality.

We are very happy to support the Commission in a detailed analysis of all the relevant cases both related to VAT and outside of VAT.

4.2. Options for the future VAT treatment of the platform economy

Our understanding, as the VEG, is that the options presented on the VAT status of the underlying supplier and the VAT qualification of the services provided by the digital platform are based upon the proposition that, in principle, digital platforms are offering a distinct service from the service that is rendered by the underlying supplier (or provider) to the user or consumer. This is, in our understanding, the basis for the application of the VAT rules, whilst it does not exclude that platforms could organise their activities such that they fall within the scope of articles 14(2)c and 28 of the VAT Directive, or be treated as 'deemed' purchasers and sellers of goods under article 4a 1 and 2 of the same Directive.

Where the underlying suppliers in the platform economy carry on their activity in an independent way, they should in the view of the VEG be considered as the primary taxpayers for VAT purposes on the supplies of goods or services they perform.

4.2.1. Underlying supplier status

VEG document N° 090 refers to 2 options

- Clarifying the application of Article 2(1)(a) and Article 9(1) of the VAT Directive (option 4.1)
- Rebuttable presumption whereby the underlying supplier becomes a taxable person upon exceeding a set threshold (option 4.2) and their advantages and challenges.

We have looked at both options in further detail but we also tried to come up with new options and, in turn, analyse their advantages and challenges.

As already highlighted, we always need to keep in mind that given that the platform economy impacts on various sectors (finance, transport, accommodation, retail, etc.) and consists of a broader ecosystem with many parties involved such as the underlying the supplier, the consumer, the platform, the payment processing provider(s), the freight forwarder(s) and many more – it is difficult to come up with a 'one size fits all' solution and we, therefore, need to make sure that all parties in the ecosystem are part of the solution, whilst at the same time ensuring that the number of different potential VAT regimes applicable to platforms are kept to a minimum to ensure the highest levels of legal certainty and compliance.

We will outline below the advantages and challenges of the options we identified and are very happy to discuss them with the Commission and the Member States in further detail, in a meeting.

Firstly, we would like to start with options 4.1 and 4.2 before looking in more detail at the other options we identified:

- Option 4.1 – Clarifying the application of Article 2(1)(a) and Article 9(1) of the VAT Directive

  We agree with the advantages, when it comes to the challenges mentioned, we do not think that we should take the fact that the previous discussions in the VAT Committee have demonstrated the difficulty to arrive at a common approach as a disadvantage, nor the question mentioned "Are the current provisions sufficiently tailored for handling this new phenomenon?"

  Option 4.1., which we understand would consist of defining qualitative requirements and criteria for qualifying participants (underlying suppliers) in the platform economy as taxable persons for VAT purposes, needs to be further explored by the Commission as a starting point. It will help modernise the VAT system not only for the platform economy but also for the traditional economy, since the issue when a C becomes a B is an old issue that needs to be urgently resolved looking at and building on the jurisprudence of the CJEU.

  This option can be the fundament for building on and exploring other options. Once criteria have been defined, we think that an Implementing Regulation would be the best way to legislate the solution ensuring a uniform application of the rules across the EU both for the traditional and the platform economies.

- Option 4.2 – Rebuttable presumption whereby the underlying supplier becomes a taxable person upon exceeding a set threshold

  We agree with the advantages and disadvantages mentioned in VEG document N° 090. We think this option increases the complexity as various thresholds need to be applied and monitored at the same time (the threshold needs to take into account other relevant thresholds that (will) apply based on other VAT legislation, such as the VAT scheme for small businesses (entering into force as from 1 January 2025) and the 10k EUR threshold introduced in relation to TBE services from 1 January 2019 and to be extended to distance sales of goods (within the EU) under the e-commerce package entering into force next January, but probably postponed to 1 July 2021. Furthermore, it needs to be kept in mind that sellers/underlying suppliers are usually active on multiple platforms, so it would impact the further choices towards collection of VAT in the platform economy as individual platforms cannot monitor whether a seller/underlying supplier operating on multiple platforms has or has not breached a single threshold.

  We prefer a clarification/amendment of the concept of taxable person and economic activity (option 4.1) over this option.

Possible alternative options considered:

- New Option a) – Treating all underlying suppliers on sharing economy platforms as taxable persons.

    - Seems a simple and preferable option from a neutrality and public finance perspective. However, this option seems to be potentially unfair from a channel neutrality perspective – as it will highly disadvantage the platform economy in favour of the traditional economy. The question to be further explored, however is, whether the traditional economy and the platform economy are the same and whether they differs depending on the sector? If not, there might be no issue with channel neutrality. This question is highly debated in the VEG and there is no common position on this. Looking at the bigger picture the platform economy cannot be ringfenced since digitalization impacts on the entire economy – the platform economy is a forerunner of the entire economy (including the traditional economy) becoming digitalized. When looking at this option (treating all suppliers on sharing economy platforms as taxable persons) there is a link to the withholding regime mentioned in further detail in section 4.4. which could be considered to ease collection (underlying suppliers operating through digital platforms and not registered for VAT could make use of a withholding regime).

- New Option b) – Follow the 2021 e-commerce rules: Presumption that everybody who sells via a platform is a B unless the platform has information to the contrary (rebuttable presumption).

    - This would be consistent with the e-commerce VAT package, where the digital platform acting as a deemed reseller (the person selling goods through the digital platform (underlying supplier) is treated as a taxable person and the person buying the goods as a non-taxable person, unless the digital platform has information to the contrary – see article 5d inserted into the Implementing Regulation (EU) No 282/2011 by Council Implementing Regulation (EU) 2019/2026.)
    - Whilst we will be able to learn from the experiences that will be gained under the new 2021 rules, it should be taken into account that the deemed reseller regime is, under those rules, currently limited to situations that show underlying signs of a level of business activity, namely non-EU underlying suppliers entering a global market and EU underlying suppliers purchasing goods (of an intrinsic value not exceeding €150) from third countries or territories and importing those goods in to the EU[4] and non-EU established sellers of goods within the EU[5] (although for which there is no registration threshold available).
    - For a significant part of the broader platform economy, particularly for services or sharing assets, the line between private and business activity will be much more blurred. Also, what might not work for the sharing economy, which is taken to mean here those business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary

[4] Article 14a(1) of the VAT Directive
[5] Article 14a(2) of the VAT Directive

usage of goods or services often provided by private individuals, in the context of the 2021 rules is it to make the digital platforms the deemed supplier (see more later under the section potential role of digital platforms).
- However, as the VEG we would not be in favour of the introduction of new VAT regimes applicable to the 'sharing economy' which potentially could conflict with existing VAT rules or introduce a greater level of legal uncertainty.

4.2.2. Nature of the services supplied from the digital platform to the underlying supplier and to the consumer

- Option 4.3 – A fiction for the place-of-supply rules whereby, for the supplies made by the digital platform to the underlying supplier, the latter is deemed to be a taxable person.

  - We generally agree with the advantages and disadvantages mentioned in VEG document N° 090.
  - We do not necessarily think that the fact that this option does not resolve the issue whether the underlying supplier is a taxable person acting as such or not, as regards the transaction between the underlying supplier and the user is a disadvantage, as this is a separate issue, which if it can be resolved together with the nature of the service, this would be a satisfactory solution, but if not we need to look at other solutions.
  - As highlighted by the Commission in the document, this option does not resolve the VAT status of the supply from the digital platform to the user, while we would prefer a solution that also solves the nature of the supply from the digital platform to the user.

- Option 4.4 – Clarifying the application of the place of supply rules for services performed by the digital platform to the user by changes to the VAT Implementing Regulation (IR), effectively placing these services under the definition of Electronically Supplied Services – ESS.

  - We generally agree with the advantage mentioned in VEG document N° 090, as the option taken here to make use of the existing framework for the ESS also provides access to the clear and simple rules on the determination of the place of supply and the debtor of the VAT due, as set out in the IR. Irrespective of the status of the platform participant, VAT is due in the country where he is established. We would prefer a solution that also solves the nature of the supply from the digital platform to the underlying supplier.

- Option 4.5 – Uniform rule for the service of the platform, under the form of a specific place of supply rule for services rendered by digital platforms.

  - We generally agree with the advantages mentioned in VEG document N° 090 and do not think that the introduction of this specific rule complicates the assessment of the VAT status of the underlying suppliers.
  - This seems to be the most favourable option, as it has potentially the broadest scope (both supplies to the consumer and to the underlying supplier are covered). The advantage for the platform would be that it could apply the same

place of taxation rule irrespective of the fact if the underlying supplier/customer is a taxable person;

- Potential problems:
  - unequal treatment compared to traditional business models could arise; this might require that "alternative rules for clearly defined transactions" (e.g. immovable property, transport services) are added. If however the general rule (place of customer establishment) is perforated by special rules for such services, this might lead to the same problems which we currently have (when is a service a transport service or an accommodation service or an intermediary service?) – a balance between neutrality (equal treatment) and simplicity is needed.
  - also this rule will require an accurate and easy to apply definition of "services provided by a platform", which may be quite close to the definition of an ESS (see our comment under option 4.4).
  - prior to applying this rule, it will still be necessary to establish whether Article 28 (or article 14.2.c for goods) VAT Directive applies (which could change the direction and nature of the services supplied by the platform). An addition to the Implementing Regulation could ensure a consistent and harmonised application of these two provisions.
  - in order to assess the application of the MOSS and reverse charge, the platform will still need to know whether the underlying supplier is a consumer or a business

- New option a) – Redefinition of electronic services:

  The main issue in the case of B2C-services is to determine whether the services of the digital platforms qualify as electronic services or intermediary services (or even a "generic" service). The easiest way to deal with this might be to include a provision in the VAT Implementing Regulation that the place of supply rule for electronic services takes precedence over the place of supply rule for intermediary (or other) services. This is in line with the position of the VAT Committee. In that situation, taxation in the country of consumption is best ensured. The status of the customer is only relevant as regards the question as to who is liable to pay the VAT. This situation is covered by article 18 of the VAT Implementing Regulation already. This precedence rule should not only apply to the sharing economy, but also to other sectors of the economy.

  The European Commission could also take the opportunity to consider revising the definition of 'electronic services' to deal with the undesired results of the Geelen case and other similar situations. By widening the scope of the provision for electronic entertainment services etc. that are provided at distance over the internet, but which require more than minimal human intervention could be covered by the provision for electronic services.

- New Option b) – New place of supply rules for B2C services in general.

  - Place of supply rules for B2C services should be harmonised with B2B place of supply rules to ensure that, apart from 'physically consumed supplies' (on the spot supplies), services are always taxed where the customer is 'resident'. An analysis of supplies made (B2C) which do not currently fall under the destination principle (and are not physically consumed supplies) should be

carried out – including supplies which are currently exempt (with or without an option available in the finance and insurance sectors). In this context it might also be helpful to look at the OECD's International VAT/GST Guidelines and the application of the place of supply rules based on the destination principle. Prior to any change particular regard must be taken of any impact on SMEs and micro-enterprises in particular to not increase and ideally reduce their compliance burdens.

4.3. Role of the digital platforms in the VAT collection process

The Commission rightfully refers in this context to the work already performed at the level of the OECD – whose focus on the VAT/GST side so far was to look at digital platforms outside the sharing economy and which is currently working on the VAT/GST aspects of the sharing economy – with significant input from businesses around the world. A coordinated international approach based on an international consensus is very important in this respect. Therefore, the OECD VAT/GST work is a good basis to start from.

Additionally as already mentioned in the problem statement, the aspect of non-taxation is also relevant for direct tax purposes (essentially personal income tax) and efforts have already been started on the direct tax side as well, both at the OECD through Working Party 10 and also on an EU level through the "DAC7" work. It is also very important here that both work streams on direct tax at OECD and EU level are aligned and also link into the VAT/GST work on this topic, particularly as work in the VAT area is already well advanced (see also Art. 242a VAT Directive for reporting data), it is therefore important from a direct tax perspective to learn from and build on what VAT has already done, in order to avoid dual data reporting approaches one for VAT and a separate one for direct tax which would end up in a nightmare of bureaucracy and a big burden for digital platforms.

The links into the 'PSP' changes to the VAT Directive from 2024 must also be fully explored (introduced in articles 243a to d of the VAT Directive and the amendments to Regulation 904/2010) so as to avoid increasing the burdens on platforms even further.

We have below made an attempt to present the VEG's views on the most prominent possible roles, in a table setting out general and EU VAT specific reflections on benefits and considerations/issues. In the VEG's view, whatever solution is retained, it should be observed that it is as simple and uniform as possible. There should not be different solutions depending on:

- Whether goods/services are being supplied,
- The value of the goods/services being supplied to avoid threshold and 'cliff edge' effects,
- The applicable place of supply rule.

Within the EU context, it is also important to not lose sight of a number of specific attention points, such as:

- whether there are limits under the standard EU principles of proportionality and legal certainty and the EU fundamental rights (EU Charter) – can platforms be forced to collect VAT on all supplies conducted via their platform (irrespective of whether they also handle the payment and of the information they have available), this could lead to

a violation of the fundamental right to conduct business (and litigation in various MS)?

- Putting collection/information burdens on platforms could potentially lead to monopolies, since only "big" platforms will be able to handle all these obligations; small platforms (startups) might be hindered from entering the market. This could be at odds with the Digital Single Market strategy in the field of online platforms and could reduce innovation within the EU internal market.

- Specifically in the field of the VAT legal framework, the definition of the platforms' role(s) should also be accompanied by a harmonization or restriction on measures that can be taken by Member States under Art 205 of the VAT Directive (joint liability rules). Otherwise, Member States might use this provision in order to act unilaterally and/or add obligations on top of the EU developed solution, which could lead to distortion and complexity for businesses. We have seen this happening for traditional marketplace transactions, creating a very burdensome patchwork of obligations.

With respect to the spectrum of platform's roles developed by the OECD, as the VEG we would focus our analysis on the full liability regime and the data sharing approach.

Looking at both approaches in further detail making the digital platform liable to pay the VAT on sharing economy transactions is difficult given the specifics of the sharing/collaborative economy sector, therefore a clear, simple and internationally consistently applied data sharing approach might be the best way forward for the time being (this needs to be further explored). This would also allow us to learn from the full liability regime from experiences gained following the implementation of the EU e-commerce 2021 rules and also from experiences in other countries around the world.

a) Full liability regime

Benefits	**Further considerations/issues to deal with**
Liability of larger more compliant businesses (noting that with empirically supported evidence that, especially in the sharing economy, small underlying suppliers have a low level of compliance).	The e-commerce market is dominated by big electronic interfaces that can and will in all likelihood be compliant with these rules. In contrast the sharing/collaborative economy market includes various markets, various electronic interfaces and various business models. The sharing economy typically includes a large local market (e.g. tool rental or cleaning services), whereas the e-commerce market includes many cross-border transactions. This must be kept in mind if a deeming provision is considered an option. Because the sharing economy market is not as dominated by big market players as the e-commerce market the efficiency that can be achieved by taxing a few big taxpayers instead of numerous small taxpayers is

	achieved to a lesser extent.
Less businesses to audit for tax authorities.	In order to determine the correct VAT treatment an electronic interface will need to have all relevant data to determine the VAT treatment of a transaction, such as the place of supply, the remuneration paid and the place of establishment of the customer, whether an exemption applies etc. The electronic interface largely depends on information provided by the underlying supplier and/or customer and this information may be false, in particular concerning the price paid). The risks are higher than in the case of traditional e-commerce because in this case the parties will have "offline contacts". Hence, they may for example agree on paying 50 EURO for a service through communication tools provided by the electronic interface, but when the supplier provides the service at the location of the customer, the customer pays 100 EURO in cash. Cash transactions may take place in the sharing economy, where this is unlikely in the case of ecommerce. Application of the 'good faith' protection could be a possible compromise solution to this issue, as it has been in the context of the 2021 ecommerce regime
Overall compliance cost reduction (because compliance costs are regressive, it can be expected that while the compliance costs of the platforms increase, this will be overcompensated by compliance cost savings on the side of the underlying suppliers. So, even if platforms have to increase the price of their service to accommodate for their increased compliance costs, underlying suppliers should in the end be better off)	The liability to pay VAT on the B2C transaction may be shifted from an EU party to a non-EU party, i.e. from a supplier located in the EU to a digital platform located outside the EU. It is questionable whether the tax authorities in the EU are able to collect the VAT from that non-EU party and whether it is more efficient to collect the VAT from such a non-EU party. However, from a level playing field perspective one can't have a rule which only requires EU platforms to collect the VAT and not non-EU platforms.
	It should be clear to digital platforms whether they fall within the scope of such a deeming provision or not. There is no clear definition of what sharing economy is, and even less of what "platform economy" would cover.

	A fundamental examination of any new solutions must be made to harmonise it with the newly introduced e-commerce package. How to determine whether one falls under the ecommerce package provisions or under the separate set of rules that could be adopted regarding "the platform economy"?
	Services are an important part of the sharing economy. If the service falls within the main place of supply rule for B2C services, the service will be subject to VAT in the country of the supplier. Many of these services are local services, meaning that (except for border areas) the supplier is located in the country of the consumer. The main rule for B2Cservices thus ensures taxation in the country of consumption. If a deeming provision applies and the digital platform is regarded as the supplier of the service to the consumer, the supply will be subject to VAT in the country where the electronic interface is located. This may be anywhere in the world, thus resulting in VAT not being paid in the country of consumption. An example is tool rental. To avoid this undesired effect of the deeming provision a special place of supply rule needs to be included in the VAT legislation, or as noted above that all B²C services are aligned on the B²B rules as regards the place of supply.
	A deeming provision will make life easier for suppliers operating on the electronic interface. However, they may want to deduct VAT on their expenses. Under the deeming provision many underlying suppliers may be in a refund position resulting in tax authorities refunding those suppliers VAT periodically. If a deeming provision applies and the platform is located in a country different from the country of the underlying supplier of the services, the supplier will be subject to VAT in the country of the electronic interface, as the main B2B-rule applies, and the reverse charge rule will apply.

	This refund position of suppliers may be an incentive to fraud and honest business may need to wait for their refund because of checks.

b) Sharing of information by platforms

Benefits	**Further considerations/issues to deal with**
Information collected should include information necessary to identify the taxpayer and the amount of VAT that can be levied and the country competent to do so. In that case a country can determine based on this information whether it is missing VAT revenue.	It will be necessary to ensure that digital platforms cannot easily evade their obligations by, for example, establishing themselves in another country or changing their business model.
The provision of information need not go so far as to enable the amount of VAT due in a particular country to be determined on the basis of that information. It is important that the tax authorities know who has turnover that may be subject to VAT in a particular country. The tax authority can then compare this information with the information it already has at its disposal, such as VAT returns and VAT registrations, in order to determine where it is going to use its limited control capacity.	Any rules that are put in place need to be enforceable on both EU and non-EU platforms and further work is required to look at ways that this can be achieved e.g. blacklisting, whitelisting, PSP data sharing etc.
	A non-harmonized approach is not to be preferred. Obligations should be harmonized within the EU, with the existing obligation under art. 242a VAT Directive and with the work that is currently being done in the field of direct taxation to avoid platforms having to comply with different sets of rules. Preferably these obligations should be the same in the EU and non-EU countries. The OECD could play an important role here.
	The fact that digital platforms have different business models should also be taken into account. Not every digital platform will, therefore, record the same information about its users

	as part of its normal business operations. Digital platforms may have to adapt their way of working because they have to ask users for additional information due to the information provision obligations. Asking for additional information may result in users refraining from using the platform. In the VEG's opinion, therefore, customisation is required and not all digital platforms can be required to collect and provide information in the same way. It is important that the tax authorities and the European Commission consult with the sharing economy platforms to see what can be asked of them.
	The obligation should not result in one electronic interface gaining a competitive advantage over another because one is covered and the other is not. This includes applying the obligation to non-EU digital platforms even though it is questionable whether each and every one of them will meet their VAT compliance obligations.
	Privacy concerns should be dealt with.
	It is important that the rules are clear and digital platforms can be assured that they are meeting their obligations. The obligations must therefore, be clearly defined.

4.4. Suggest other options that might have to be considered

Looking at the platform economy and its ecosystem and also keeping channel neutrality in mind the question comes up is a platform a facilitator, a supplier or even both for VAT purposes?

Can we give platforms (depending on their business model(s) and operational set up) based on clear and simple criteria (technical or/and contractual) the flexibility to be what they can and want to be for VAT purposes? For example, can they decide based on the contractual relationship with the underlying supplier whether they would like to a be a supplier (commissionaire approach – undisclosed agent) or a facilitator (disclosed agent) for VAT purposes? If they decide to be a facilitator rather than making them fully liable to collect VAT, one could think of introducing for example EU-uniform data sharing obligations for them. Speaking about data sharing obligations also other parties involved in the ecosystem should be obliged to share data if they are helpful for the tax authorities. Therefore, from our perspective there is also a link into the PSP directive changes from 2024, which must be fully

explored (introduced in articles 243a to d of the VAT Directive and the amendments to Regulation 904/2010) so as not to increase burdens on platforms and to also ensure that data privacy laws are fully respected.

- Guidance/rule for single supply/Article 28 VAT Directive – topic not addressed in VEG N° 090.

The paper does not address whether the services provided by the platform to the user and the service provided by the provider to the user could be considered as one single supply made by the platform. The paper does also not address whether and how Article 28 VAT Directive and Article 9a Implementing Regulation could have an effect on the qualification of the services. Depending on the business model of a platform, Article 28 VAT Directive could be of great relevance and should be addressed. The applicability of Article 28 VAT Directive could change the direction in which the services are supplied and the nature of the services:

  - Requalification of the transactions:
    Single supply of services from the underlying supplier to the platform, single supply from the platform to the user, no service from the platform to the underlying supplier
  - Nature of the service:
    The nature of the service depends on the underlying supply of the provider which the platform is deemed to buy and sell.
  - Taxable amount: any fee charged by the platform to the underlying supplier could be treated as being included (deducted) from the service by the underlying supplier to the platform

- Withholding regime.

As mentioned in section 4.2.1 when treating all suppliers on sharing economy platforms as taxable persons the withholding regime could be considered to ease collection. This regime only works for digital platforms that are involved in the payment process and therefore maybe questionable from a channel neutrality perspective. It could be an option that needs to be further explored and could be applied in circumstances where the underlying supplier is not VAT registered despite having been informed by the platform that this needs to be done as the registration threshold is exceeded or if the underlying supplier instructs the platform to apply the regime because he does not want to become VAT registered.

Benefits	**Further considerations/issues to deal with**
The main objective of enforcement of VAT legislation in the sharing economy is the detection of suppliers not reporting VAT due. Electronic interfaces may be involved in the collection of VAT through a withholding mechanism (without becoming "deemed suppliers"). This way VAT revenues can be safeguarded.	It should be made easy for the digital platform to determine the amount of VAT that should be withheld when they are liable to collect, based on the information they have to collect. See however our comment above about the use of cash and the risk of fraud. Further reflection is needed to address this concern (which may, to a certain extent, be addressed by the newly adopted legislation on payment service providers). Withholding can only work and act as a different mechanism if there was a flat rate of VAT to be withheld, otherwise it is much the same as the deemed supplier option and the same benefits and identified issues exist.
The individual taxpayers do no longer have to be included in the process of collecting VAT.	The right of taxpayers to deduct VAT should also be addressed. This means that they still need to be audited. When the digital platform is liable to withhold and pay the VAT, a reduced rate (as compared to the standard rate applicable in each Member State) could apply to compensate the absence of a right to deduct the related input VAT (which is a significant policy issue because of the potential complexity involved in determining the extent of the right to deduct in the case of mixed use goods and in view of the risks of related fraud). If the seller communicates a VAT number and is thus liable to collect the VAT, he/she could apply the reduced rate (compensating for the absence of a right to deduct) or the standard rate (in this case he/she may deduct input VAT according to the normal rules).

	Even though it may be difficult to have non-EU electronic interfaces collect the VAT, some and hopefully most of the EU electronic interfaces will comply, allowing the tax authorities to focus their limited means on transactions by individuals operating through non-EU digital platforms. Any regime should be designed to be equally enforceable on all EU and non-EU players – otherwise it will drive an unlevel playing field.

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