

The sharing economy: turning challenges into compliance opportunities for tax administrations

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Abstract

The rapid growth of the sharing economy has increased pressures on governments to address the variety of economic, social and legal issues it has given rise to in order to redress the emerging distortions without curtailing innovation. A key concern is whether the activities carried out by the agents involved in the sharing economy are adequately captured for tax. The current viewpoint is that the absence of sharing economy-specific regulation exacerbated by the poor visibility of the underlying activities results in under-collection of tax from the service providers and tax breaks for the platforms leading to an unfair competitive advantage over counterparts in the more strictly regulated traditional sectors. This article considers the challenges that the sharing economy poses for tax administrations, how these concerns are acknowledged within national and supranational governments and international organisations, the opportunities it presents for enhanced tax compliance, and measures, taken or proposed, by governments for enhancing tax compliance.

Key words: sharing economy, tax compliance, digitalisation, informal sector, disruptive technology

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1. INTRODUCTION

Digitalisation harnesses the advantage of increased Internet connectivity and availability of complex data processing algorithms to create online platforms that match parties willing to enter into a sharing transaction. An online platform plants an efficient (low transaction costs) and effective (high matching success) virtual intermediary into an originally peer-to-peer transaction and is at the very heart of disruption of conventional sharing models, which stems from the innate human ideas about fairness and their galvanised development into a profit-driven economic phenomenon.

Digital platforms convert an original two-party peer-to-peer (P2P) transaction into a tripartite structure with online interface connecting the end users (buyers and vendors). The online interface is a powerful search engine, which matches the offers made by the vendors with the bids placed by the customers on a massive and oftentimes global scale. Some of the most popular global platforms are Airbnb, Amazon, Alibaba, eBay and Uber. Locally used platforms can range from the globally recognised brands, such as Uber, to those that operate within countries or regionally such as Lyft in the US, Didi Chuxing in China, Jumia in Africa and Little Cab in Kenya. As the search algorithm is largely indifferent to the type of commodities and services that two parties are willing to exchange with each other, there are virtually no limits to the scope of the sharing economy.

The sharing economy business model gives rise to a variety of economic, social and legal issues. As this economy continues to grow in size and gain market share, so does the pressure on governments to address and study these issues, in order to redress the emerging distortions, while sustaining positive innovation. One of the concerns, which is at the core of this article, is whether activity carried out by the agents involved in the sharing economy is adequately captured for tax. The current viewpoint is that the lack of sharing economy-specific regulation exacerbated by the poor visibility of the underlying activity results in: (a) under-collection of tax from the end-users (vendors using the sharing economy platforms); and (b) tax breaks for the platforms giving them an unfair competitive advantage over counterparts in the more strictly regulated traditional sectors.

The article thus considers how these concerns are acknowledged within national and supranational governments and international organisations, what are the challenges and opportunities commonly identified and what measures are proposed or implemented to address the issues identified. The principal focus of this article is, thus, on the tax and fiscal policy implications of the sharing economy. For the purposes of this study, we make a distinction between the end-users, or service providers registered on the digital platforms, and the digital platforms themselves, to analyse how governments design their fiscal policies targeting the sharing economy. This article intends to be useful for a number of jurisdictions, but most of the data and examples of policy and legislative initiatives are sourced from the European Union countries.

The article is structured as follows. In section 2 we look at the prevailing scenario in the sharing economy including its scope, estimated size and projected growth. Section 3 provides a summary of the main implications on tax compliance and enforcement *vis-à-vis* the end users of the digital platforms. In this section we first review the relationship between the sharing economy and the informal sector as well as its potential to displace payroll taxes and social security contributions. Afterwards we establish the main challenges for the tax administrations in policing the end users stemming from the

characteristics of sharing economy. Section 4 highlights the asymmetry between the tax and employment law, which results in tax distortions *vis-à-vis* the digital platforms. In section 5 we explore some of the administrative and policy measures, proposed or already implemented, in various countries that seek to respond to the challenges posed to tax administrations by the sharing economy. On the basis of the preceding sections, this section demonstrates that due to the ambiguity of the definition of the sharing economy, current policy measures vary in targeting either the end-users or the digital platforms or both with the aim of enhancing tax compliance. In section 6 we highlight some EU-specific topics, such as applicability of the value added tax (VAT) regime to the taxation of the sharing economy and possible application of the state aid rules. It should be emphasised that the issues related to the discussions of tax avoidance opportunities afforded by digital platforms, as a sub-set of a broader digital economy in the context of international tax law, are outside the scope of this article.

2. THE SHARING ECONOMY

2.1 An overview of the sharing economy

There is no universal definition of the sharing economy. As a result, several terms are used to refer to an underlying type of activity such as ‘sharing economy’, ‘collaborative economy’ and ‘gig economy’. The unifying aspect between all three definitions is a tripartite structure where peer-to-peer transactions are powered by an intermediary in the form of a digital platform. The end-users, representing the demand and supply sides of a transaction, are matched using embedded search functionalities within the platform. The users normally pay for the services provided by the platform by allowing for a set percentage of the transaction value to be withheld by the platform provider as a fee or a commission payment.

Two broad forms of the sharing economy are generally distinguished: asset-based (utilises overcapacity of assets and consumer goods) and labour-based (gives opportunities to a skilled force to provide labour/professional services). Such a distinction is widely supported and is used as a foundation for further study of the policy implications by governments around the world.

The Parliament of the European Union has defined the sharing economy as ‘[t]he use of digital platforms or portals to reduce the scale for viable hiring transactions or viable participation in consumer hiring markets (i.e. sharing in the sense of hiring an asset) and thereby reduce the extent to which assets are under-utilised’.¹ A similar view is supported by the United Kingdom, which approaches the sharing economy as a domain broadly ‘split between physical assets and labour, although differing combinations of (capital) assets and labour are necessary for different household services’.²

For the purposes of this article, we delimit the scope of the sharing economy to transactions of value between two private parties using an intermediary in the form of a digital platform. Such transactions can involve virtually anything; however, three main

¹ Pierre Goudin, *The Cost of Non-Europe in the Sharing Economy: Economic, Social and Legal Challenges and Opportunities*, European Parliamentary Research Service, PE 558-777, Brussels, January 2016, 5.

² Alan Carter, ‘Sharing About Sharing: Tax Impacts and Administrative Options in the “Collaborative Economy”’ in Miguel Silva Pinto, Neil Sawyer and Ágnes Kővágó (eds), *Disruptive Business Models: Challenges and Opportunities for Tax Administrations* (Intra-European Organisation of Tax Administrations (IOTA), 2017) 24, 25.

sectors can be identified, namely home-sharing (eg, AirBnB, HomeAway, Tripping.com, FlipKey and others), car- or ride-sharing (eg, Uber, BlaBlaCar, Lyft, Curb, etc) and labour-based sharing (eg, TaskRabbit). The first two clusters represent the asset-based sharing economy, whereby the owners of the asset grant a customer the right to use the house or a car, without transferring the ownership or legal title. There are other less common types of consumer goods that are being shared, such as fashion items, pets and even food.³ Home-sharing and car-sharing are perceived as being analogous to the traditional hotel and taxi services, and indeed the more traditional counterparts have seen a decline in their market share since digital versions entered the scene. Legally however, should it be the case, for example, that Uber and taxi indeed are analogous, there are consequences that will arise for Uber, not the least in the area of taxation.

A third distinct sector of the sharing economy, commonly referred to as a ‘gig economy’ or ‘crowdsourcing’, is predominantly labour-based. Here the participants offer their professional services without entering into formal contractual arrangements with their clients. Whether this sector of the economy is considered as encroaching on the conventional labour market is difficult to determine conclusively especially as these types of activities have been around for a long time.

2.2 Estimated size and growth of the sharing economy

Studies into the sharing economy make attempts to estimate the size of the phenomenon. However, its true size remains unknown due to the myriad of features that not all the studies will incorporate and lack of reliable data.⁴ The 2016 PricewaterhouseCoopers study for the European Commission estimated that, in 2015 alone, the collaborative platforms and their providers generated EUR 4 billion in revenues and facilitated EUR 28 billion worth of transactions in the EU with the staggering growth rate of 100 per cent year on year.⁵ It is also estimated that going forward, up to approximately EUR 572 billion could be added to the EU economy by the sharing economy. This represents the potential economic gain derived from putting erstwhile under-utilised capacities to better usage. However, this is a theoretical amount because the full benefits may not be realised owing to substantial barriers currently in place.⁶ Whilst the accuracy of the

³ Home-cooked food can be subject to special regulations, as some countries impose an explicit ban on such sharing. The EU Commission excluded food sharing when analysing the ‘collaborative’ economy. Sarah Kessler, ‘The Sharing Economy for Food is the Latest Thing California May Legalize’ *Quartz* (online) (16 February 2017), available at: <https://qz.com/909255/the-sharing-economy-for-food-is-the-latest-thing-california-may-legalize/> (accessed 19 January 2019).

⁴ Organisation for Economic Co-operation and Development (OECD), *Tax Challenges Arising from Digitalisation – Interim Report 2018*, Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing, 2018) 194 [668], 195 Box 7.1.

⁵ European Commission, *A European Agenda for the Collaborative Economy*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2016/0356/ Final, Brussels, 2 June 2016, 1; European Commission and PricewaterhouseCoopers (PwC) UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, Brussels, April 2016, 7, 13-14, 30, available at: <https://publications.europa.eu/en/publication-detail/-/publication/2acb7619-b544-11e7-837e-01aa75ed71a1>.

⁶ Goudin, above n 1, 6, 21. See also OECD, *Tax Challenges Arising from Digitalisation*, above n 4; PwC Hungary, ‘The sharing economy presents Europe with a €570 billion opportunity’ press release (6 July 2016), available at: https://www.pwc.com/hu/en/pressroom/2016/sharing_economy_europe.html (accessed 19 January 2019). The 2016 PwC UK study for European Commission (above n 5, 9, citing PwC UK, *The Sharing Economy – Sizing the Revenue Opportunity* (2014)) also highlights a 2014

methodology can be debated, not the least due to visibility issues and the difficulty of tracking and tracing activity within this sector of the economy, it remains fairly clear that the issue is approaching a critical stage where some policy intervention is required to ensure positive development and integration of the emerging ecosystem within the existing social, economic and legal environment.

Table 1: Revenue and Transaction Value of Five Key Sharing Economy Sectors in Europe, 2015

Sector	Revenue 2015 (m)	Value 2015 (m)
Peer-to-peer Accommodation	€1,150	€15,100
Peer-to-peer Transportation	€1,650	€5,100
On-demand household services	€450	€1,950
On-demand professional services	€100	€750
Collaborative finance	€250	€5,200
Total	€3,600	€28,100

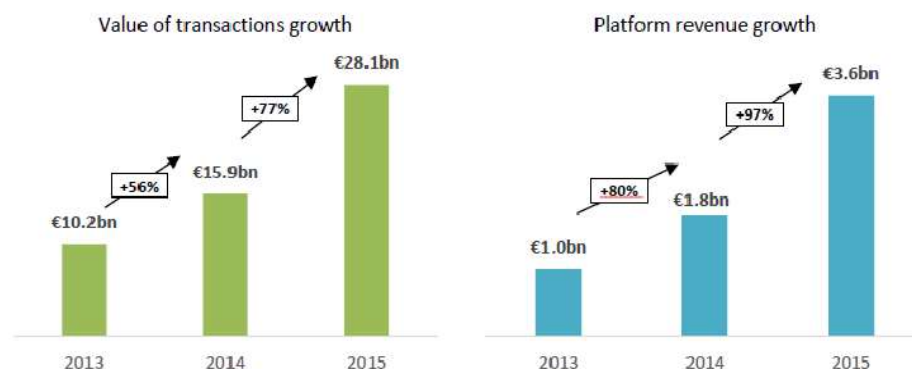
Source: European Commission and PricewaterhouseCoopers (PwC) UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, Brussels, April 2016, 13, available at: <https://publications.europa.eu/en/publication-detail/-/publication/2acb7619-b544-11e7-837e-01aa75ed71a1>.

More importantly, the 2016 PwC UK study noted that there had been strong growth since 2013 and that the 2015 revenues were double the amount generated in 2014 due to expanding operations in EU countries.⁷

PricewaterhouseCoopers study that estimated that five sectors where the collaborative platforms are active could generate global revenues of up to USD 335 billion by 2025.

⁷ European Commission and PwC UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, above n 5, 14, 30. Also in European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 2.

Fig. 1: Revenues and Total Transaction Value Facilitated by the Sharing Economy Platforms in Europe, 2013-2015



Source: PwC analysis

Source: European Commission and PwC UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, Brussels, April 2016, 14.

Based on the study conducted in the UK, the percentage of people regularly employed in the gig economy is insignificant, with the vast majority (85 per cent) remaining as part of the traditional labour force. Additionally, there are reports that the prevailing number of participants generates very low income from their activities (an average of USD 500 per month).⁸ However, another study concluded that the annual tax lost from the players in the ‘gig economy’ assuming a self-employed status amounts to nearly GBP 2 billion;⁹ however this estimate is likely to include the overlap with the end-users of the asset-based sharing economy that consider their services (provision of auxiliary services to accommodation or drivers) as self-employed.

Nonetheless, these figures indicate that the sharing economy could be a significant contributor to the EU economy, and therefore tax administrations need to have in place appropriate structures and measures to ensure adequate capture of the growing segment by tax laws so that it contributes proportionately to tax collections.

3. TAX IMPLICATIONS *VIS-À-VIS* END-USERS OF THE DIGITAL PLATFORMS

As illustrated above, the sharing economy has been gaining sizeable market share in the accommodation (short-term letting), passenger transportation, household services, professional and technical services, and collaborative finance sectors.¹⁰ For example, Airbnb is now the largest provider of accommodation services in the world.¹¹ By 2016,

⁸ Earnest, ‘How Much Are People Making from the Sharing Economy?’ *Earnest.com* (13 June 2017), available at: <https://www.earnest.com/blog/sharing-economy-income-data/> (accessed 19 January 2019).

⁹ Vanessa Houlder, ‘Tax Break for UK’s Self-Employed Rises in Costs by Nearly GBP 2bn’ *Financial Times* (6 January 2017), available at: <https://www.ft.com/content/c9bbceca-d364-11e6-b06b-680c49b4b4c0> (accessed 19 January 2019).

¹⁰ European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 1. See European Commission and PwC UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, above n 5, 3, 6-7.

¹¹ Betty Wood, ‘Airbnb Is Now Bigger than the World’s Top Five Hotel Brands Put Together’ *The Spaces* (15 August 2017), available at: <https://thespaces.com/2017/08/15/Airbnb-now-bigger-worlds-top-five-hotel-brands-put-together/> (accessed 19 January 2019).

Uber had grown to such a scale that it was considered the largest transportation network company in the US with a market share of over 70 per cent.¹²

It can be argued that the growth of the sharing economy is mainly driven by the cost advantage it gives the platforms with the flexibility provided to suppliers and users of the services. It's growth is also partly fuelled by the fact that many jurisdictions impose or enforce significantly lower regulatory requirements, including those for tax, on sharing economy users. On the one hand, this gives an advantage of allowing for innovation, entrepreneurship and growth within the new economic segment. On the other hand, there is a risk that a *laissez-faire* attitude to the sharing economy and a lack of government initiative to ensure regulatory coherence between the sharing and traditional economies may result in converting the sharing economy into an informal economy with a negative impact on tax collections.

Another important issue to consider is that, even when preventive measures are in place to ensure that the sharing economy stays within the formal domain, the taxes that are applied to its activities may yield lower revenues and distort the playing field. What is commonly observed is that, due to the lack of certainty and guidelines for categorisation of an activity carried out by end users for tax purposes, the activity is taxed under 'business income' or 'self-employment' income tax regimes, even though in substance (or when compared to the same activity in the traditional sector) the activity can be interpreted as that of employment, and attract much higher income tax rates and social insurance contributions. Thus, displacement of traditional business models by the sharing economy may result in further depletion of the tax revenues through generating lower employment taxes. The cost to government purses can be substantial. For example, in 2015 it was reported that the introduction of Uber in San Francisco led to demand for use of traditional taxis falling by 65 per cent according to the city's Municipal Transportation Agency and a drop of 30 per cent for traditional Yellow Cabs in New York.¹³

The design of a government's policy response that effectively addresses the implications of the sharing economy faces several challenges. The sharing economy can be characterised as a mesh of small agents involved in (typically) micro-transactions. Digitalisation-enabled scalability means that the number of potential taxpayers that need assessment can be enormous (eg, the number of Uber drivers in the UK is 40,000¹⁴ and globally 1.5 million¹⁵). The problem is exacerbated by the limited visibility of the sector,¹⁶ which means that economic activity carried out via lesser-known platforms

¹² Eric Newcomer, 'Uber Loses At Least \$1.2 Billion in First Half of 2016' *Bloomberg* (online) (25 August 2016), available at: <https://www.bloomberg.com/news/articles/2016-08-25/uber-loses-at-least-1-2-billion-in-first-half-of-2016> (accessed 19 January 2019).

¹³ Laura French, 'Sharing Economy Shakes Up Traditional Business Models' *The New Economy* (online) (13 April 2015), available at: <https://www.theneweconomy.com/business/the-sharing-economy-shakes-up-traditional-business-models> (accessed 19 January 2019).

¹⁴ Tom Bergin, 'Exclusive: Loophole Allows Uber to Avoid UK Tax, Undercut Rivals' *Reuters* (online) (8 June 2017), available at: <https://www.reuters.com/article/us-uber-tax-britain-idUSKBN18Y1Z8> (accessed 19 January 2019).

¹⁵ Artyom Dogtiev, 'Uber Revenue and Usage Statistics 2017' *BusinessofApps* (9 January 2018), available at: <http://www.businessofapps.com/data/uber-statistics/#3> (accessed 4 April 2018).

¹⁶ In the study carried out by the Kammer für Arbeiter und Angestellte Wien (Chamber of Labour Vienna) only in German-speaking countries, 121 online platforms with sharing economy parameters were identified: see Michael Heiling and Simon Schumich, *Branchenreport: Sharing Economy 2017* (AK Wien, September 2017), available at:

may be hard to detect and trace. Enforcing and policing tax compliance in economic sectors with such parameters can be a daunting task.

This section reviews the factors that can lead to lower revenue collections from the sharing economy, whether caused by informalisation of the sharing economy or by artificial application of more favourable regimes. We then outline the main challenges faced by tax administrations seeking to devise systems that effectively and efficiently capture the underlying activities of the sharing economy for tax purposes. It will form the basis for section 4 which builds on this analysis to provide examples of policy solutions and sharing economy tax regimes that are currently being implemented in a sample of countries.

3.1 The sharing economy and the informal sector

In principle, any economic activity is taxable, unless it is subject to specific exemptions or is below the *de minimis* level. The informal sector includes any paid activity, which is not declared to the authorities for tax, social security and/or labour law purposes.¹⁷ It is often referred to as the black, shadow, hidden, irregular, underground or unofficial economy. While activities in the informal sector may be legal, the income or receipts may not be declared, either at all or in full, to public authorities for tax, social security and/or labour law purposes. It can therefore be presumed that if a person provides a room for rental on AirBnB plus any extras, which may include meals or housekeeping, but does not declare the income derived from these activities for tax purposes, then that person is operating in the informal sector.¹⁸

Some studies have indicated that the informal sector is present in all jurisdictions across the world.¹⁹ Unfortunately, there is a close relationship between the ability of a country to raise tax revenues and the existence of a large informal sector.²⁰ Its most common features include the prevalence of cash-based transactions, weak regulatory institutions, and relatively high risks associated with illegal activities perpetuated by poor tax law enforcement.²¹

https://media.arbeiterkammer.at/wien/PDF/studien/Branchenanalyse_Sharing_Economy_2017.pdf (accessed 19 January 2019).

¹⁷ European Commission, *Employment and Social Developments in Europe 2013*, European Commission, Brussels (2014) 22. See also OECD (2012), *Reducing Opportunities for Tax Non-Compliance in the Underground Economy* (OECD Publishing, 2012).

¹⁸ European Commission, *Employment and Social Developments in Europe 2013*, above n 17, 22; Colin C Williams and Ioana Alexandra Horodnic, 'Regulating the Sharing Economy to Prevent the Growth of the Informal Sector in the Hospitality Industry' (2017) 29(9) *International Journal of Contemporary Hospitality Management* 2261, 2262.

¹⁹ Williams and Horodnic, above n 18, 2261. See also International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (2nd ed, 2013); Colin C Williams, 'Out of the Shadows: A Classification of Economies by the Size and Character of Their Informal Sector' (2014) 28(5) *Work, Employment and Society* 735.

²⁰ Mick Moore, 'Obstacles to Increasing Tax Revenues in Low Income Countries' (International Centre for Tax and Development Working Paper 15, 2013) 14.

²¹ African Tax Administration Forum (ATAF), *African Tax Outlook, 2nd Edition* (ATAF, 2017) 81. See also Burcin Bozdoganoglu, 'Tax Issues Arise from a New Economic Model: Sharing Economy' (2017) 8(8) *International Journal of Business and Social Science* 119, 125 where the author argues that '[c]ash-based transactions are almost as fuel for an informal economy' and because they 'cannot be followed, they facilitate the informal economy' (citing on this point Friedrich Schneider, *The Shadow Economy in Europe* (2013)).

Many tax administrations face challenges in effectively policing the informal sector to secure compliance with tax laws. The challenges may include a large number of unregistered businesses with potential to contribute low tax value per audit, an absence of proper bookkeeping as well as the mutable nature of their operations. As a result, the collection process and procedures per unit may be costly, which further discourages action from tax administrations which are likely to channel their resources towards more rewarding activities.²²

Although the sharing economy has undoubtedly given rise to new income streams by creating employment opportunities and curbing waste by utilising idle assets,²³ which should be good news for many tax administrations since this leads to the creation of new tax bases, it can have two contradictory impacts on the informal sector.

On the one hand, it could facilitate formalisation or transition into the formal sector of all activities and businesses that were previously conducted in the informal sector because these activities and income can now be reported fully to authorities, and thus make it easier for tax administrations to enforce compliance with tax rules.²⁴ This could have a significant effect on many developing countries for several reasons. First, a study conducted by Nielsen in 2014 indicated that people in developing regions have a higher propensity to share assets than those in developed regions as follows: Asia-Pacific (78 per cent); Latin America (70 per cent); Europe (54 per cent) and North America (53 per cent).²⁵ Secondly, developing countries have large informal sectors. For example, the *African Tax Outlook 2017* indicates that many of the countries surveyed struggle with the informal sector which accounts for 50 to 80 per cent of GDP, 60 to 80 per cent of employment, and as many as 90 per cent of new jobs. It attributes the development of the informal sector to: (a) high tax rates and transaction costs; (b) complex, costly procedures for creating and registering businesses, and (c) the lack of proper identification systems and single identifiers for all institutions. As a result, countries in the region are forgoing huge amounts of revenue.²⁶ It also notes that the coverage for VAT is patchy because of the large informal sector and therefore recommends that, for these countries to benefit from VAT, they must formalise the informal economy.²⁷ Lastly, some studies have also indicated that informal sector operators predominantly use the sharing economy to provide services.²⁸ Because it is hard for tax administrations to identify the activities in the informal sector and the potential taxpayers undertaking

²² Anuradha Joshi, Wilson Prichard and Christopher Heady, 'Taxing the Informal Economy: Challenges, Possibilities and Remaining Questions' (International Centre for Tax and Development Working Paper 4, 2012) 6.

²³ Cécile Remeur, *The Collaborative Economy and Taxation: Taxing the Value Created in the Collaborative Economy*, European Parliamentary Research Service (February 2018) 1, 4. See also European Commission, *A European Agenda for the Collaborative Economy*, above n 5.

²⁴ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 194-196 [467]-[468] and specifically [469(i)-(ii)].

²⁵ Nielsen Company, *Is Sharing the New Buying?: Reputation and Trust Are Emerging As New Currencies*, Nielsen Global Survey of Share Communities (2014), available at:

<http://www.nielsen.com/content/dam/nielsen-global/apac/docs/reports/2014/Nielsen-Global-Share-Community-Report.pdf> (accessed 19 January 2019). See also PwC UK, *Assessing the Size and Presence of the Collaborative Economy in Europe*, above n 5, 9.

²⁶ ATAF, above n 21, 22, 81.

²⁷ Ibid 20.

²⁸ Williams and Horodnic, above n 18, 2263. See also EOS Intelligence, 'Sharing Economy: Africa Finds Its Share in the Market' *Emerging Market Investors Association* (21 December 2017), available at: <http://www.emia.org/news/story/5666> (accessed 19 January 2019).

them due to lack of adequate data or channels for reporting,²⁹ the formalisation of the informal sector may be beneficial to tax administrations in enforcing compliance with tax laws.

On the other hand, the sharing economy could also provoke individuals and business to move from the formal sector to the informal sector, especially when the rules for reporting of activities and income are not formulated adequately.³⁰ For example, Williams and Horodnic, citing several studies, infer that one of the main negative consequences of the sharing economy on the hospitality industry is the growth of the informal sector.³¹ A study in Indonesia also indicated that the sharing economy may contribute to informalisation in the regular taxi industry.³² This prompted one commentator to observe that a shift from 'taxis to Airbnb hosts and Uber drivers may actually expand rather than reduce the informal sector'.³³ If the sharing economy does stimulate a shift from the formal to the informal economy, it could have far-reaching consequences, not only on the government but also on other businesses, consumers and workers. There could be a loss of tax revenue to governments due to a shrinking tax base with possible losses in income tax, social security contributions from employers and VAT,³⁴ resulting in the governments shouldering a greater burden on social protection, health and educational services.³⁵ It would also lead to an expansion of the problems associated with the taxation of the informal economy and operational difficulties in enforcing tax compliance.

²⁹ ATAF, *African Tax Outlook, 1st Edition* (ATAF, 2016) 21-22.

³⁰ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 195 [669(i)].

³¹ Williams and Horodnic, above n 18, 2262; referring to: (a) European Commission, *The Use of Collaborative Platforms*, Flash Eurobarometer 438, Briefing Note (March 2016); (b) European Commission, *The Use of Collaborative Platforms*, Flash Eurobarometer 438, Report (June 2016); (c) European Commission, *A European Agenda for the Collaborative Economy*, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2016)/0356/ Final, Brussels, 2 June 2016; Ki-Hong Choi et al, 'The Relationship between AirBnB and the Hotel Revenue: In the Case of Korea' (2015) 8(26) *Indian Journal of Science and Technology* 1-8; Cindy Yoonjoung Heo, 'Sharing Economy and Prospects in Tourism Research' (2016) 58 *Annals of Tourism Research* 166; Maria Juul, 'The Sharing Economy and Tourism: Tourist Accommodation', European Parliament Research Service Briefing (September 2015); R Koolhoven et al, 'Impulse Paper on Specific Liability Issues Raised by the Collaborative Economy in the Accommodation Sector, Paris – Amsterdam – Barcelona' (University of Groningen Working Group on the Collaborative Economy, 14 March 2016); Ljiljana Zekanović-Korona and Jurica Grzunov, 'Evaluation of Shared Digital Economy Adoption: Case of AirBnB' 37th International Convention on Information and Communication Technology, Electronics and Microelectronics (2014) 1574.

³² Mechthild von Vacano, "'Sharing Economy' versus 'Informal Sector': Jakarta's Motorbike Taxi Industry in Turmoil' (2017) 6(2) *Anuac: Rivista dell'Associazione Nazionale Universitaria Antropologi Culturali* 97.

³³ William I Robinson, 'Can Digital Sharing Economy Platforms Pull Latin America's Informal Sector into the Mainstream? No' *Americas Quarterly* (summer 2015), available at: <http://www.americasquarterly.org/content/can-digital-sharing-economy-platforms-pull-latin-america%E2%80%99s-informal-sector-mainstream-no> (accessed 19 January 2019). See also Bozdoganoglu, above n 21, 126.

³⁴ Sharing Economy Committee, Norway (Professor T Gabrielsen, chair), *The Sharing Economy – Opportunities and Challenges*, Official Norwegian Report (NOU) 2017:4, Ministry of Finance, Oslo (2017), ch 1, 10, available at: <https://www.regjeringen.no/en/dokumenter/nou-2017-4/id2537495/> (accessed 19 January 2019).

³⁵ Williams and Horodnic, above n 18, 2261. The authors also conclude that workers may also lose their entitlement to loans, pensions and social protection, legitimate businesses witness unfair competition and consumers lack any guarantees that health and safety regulations have been followed.

With respect to the more developed countries, it is also important that the expansion of the sharing economy in a regulatory vacuum or environment with lax rules does not result in the sharing economy morphing into a permanent informal economy. For the developed countries, there is a generally higher propensity to innovate as well as significantly higher resources to support emerging markets until they reach a level of maturity where intervention is required. As stated by a representative of the UK revenue authority (HM Revenue and Customs), ‘economies that have inflexible labour markets, poorly functioning capital markets, and penal levels of taxation on any potential innovators, will struggle to offset these obstacles created by wider economic policy choices via more narrowly targeted innovation policies as a tool for driving economic growth’.³⁶

3.2 Displacement of payroll taxes and social security contributions

Different platforms underlying the sharing economy use different revenue models for remunerating the service providers registered on their platforms. The remuneration can vary greatly between, and even within, the sectors of the economy where the sharing economy is found. According to the 2016 PwC UK study, most platforms charge a fixed or variable commission ranging from 1 per cent to 2 per cent in peer-to-peer lending, to up to 20 per cent for ride-sharing services. The 2016 PwC UK study concluded that the service providers receive on average 85 per cent of the value of transactions facilitated by sharing economy platforms.³⁷ The significant revenues earned by service providers therefore merit queries as to whether the income generated is appropriately declared to the tax administrations for taxation purposes and whether the existing tax compliance mechanisms and tools provide an adequate safeguard for ensuring full declaration and taxation of this income.

In many countries, personal income taxes or payroll taxes play an important role. For example, the African Tax Administration Forum (ATAF) estimated that, in 2015, the average contributions to the tax basket in 21 African countries were as follows: personal income tax (20 per cent); consumption tax on domestic goods (20 per cent); consumption tax on imported goods (20 per cent); import duty (15 per cent); other taxes (11 per cent); and corporate income tax, an average of 14 per cent.³⁸ The importance of payroll and personal income taxes should also be evaluated in light of the recent downward trends in the corporate income tax rates. For example, from 1992 to 2017, the average G20 corporate income tax rate fell by 12.6 per cent. The lowering of corporate tax rates may lead to a new wave of tax competition between G20 and Organisation for Economic Co-operation and Development (OECD) countries. For example, following the move in the UK to lower its corporation tax rate to 17 per cent in 2020, France, Italy, Japan, Indonesia and India have all announced reductions in their corporation tax rates.³⁹ Some countries have also introduced patent boxes, which apply

³⁶ Carter, above n 2, 27.

³⁷ PwC UK, *How the Sharing Economy is Reshaping Business Across Europe* (2016) 6, <https://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/future-of-the-sharing-economy-in-europe-2016.html>.

³⁸ ATAF, above n 21, 32.

³⁹ Michael Devereux et al, *G20 Corporation Tax Ranking* (Policy Paper Series, Oxford University Centre for Business Taxation, 16 March 2016) 1-2. See also Oxfam International, *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax* (Oxfam Policy Paper, Oxford, 12 December 2016), specifically 23, Figure 1: Corporate Tax Competition Europe.

a much lower rate to income on intangible assets hence introducing a new element to tax competition.⁴⁰

These trends could lead to decreasing reliance on corporate income tax and may force governments to focus on other sources of income, including, but not limited to, payroll taxes. However, reliance on payroll or personal income taxes is also likely to be affected by demographic ageing. In the EU, for example, consistently low birth rates and higher life expectancy are altering the age pyramid. This has led to a new population structure composed of a shrinking working population and an expanding retiring population drawing pensions for much longer as life expectancy increases. It is also estimated that the share of older persons in the total population will increase significantly in the coming decades, as a greater proportion of the post-war baby boom generation reaches retirement.⁴¹ This will, in turn, lead to an increased burden on those of working age to provide for the social expenditure required by the ageing population for a range of related services like health and social security.⁴²

3.3 Main challenges for the tax administrations in policing end-users stemming from the characteristics of the sharing economy

The fears that the sharing economy could lead to lower tax revenues are not unfounded.⁴³ This stems from challenges faced by tax administrations in ensuring that service providers registered on the platforms comply with tax obligations. The challenges include those set out further below.

3.3.1 *Difficulties in identifying the taxpayers due to the lack of information on the service providers*

A distinct feature of the sharing economy is that it has greatly facilitated individuals and small businesses to offer services using under-utilised assets on a peer-to-peer basis through virtual or digital platforms.⁴⁴ It is also premised on large numbers of service providers being registered to make available to the consumers the widest possible choices. The business model entails use of personal assets/property for business. The activities may be undertaken on a full or part time basis, regularly or intermittently. The income derived by these individuals and small businesses may also be relatively small. Further, some of these individuals and small businesses may also be using the personal assets/property for business for the first time and may thus be accounting for income thus generated for the first time as well. It has therefore been argued that these characteristics may not only make enforcement of tax laws difficult for tax administrations but may also make compliance challenging for the taxpayers.⁴⁵

⁴⁰ Devereux et al, above n 39, 1, namely UK, France, China, Italy, Turkey.

⁴¹ Eurostat, 'Population Structure and Ageing', http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing (accessed 19 January 2019).

⁴² Ibid.

⁴³ Dean Baker, 'Don't Buy the "Sharing Economy" Hype: Airbnb and Uber Are Facilitating Rip-Offs' *The Guardian* (online) (27 May 2014), available at: <https://www.theguardian.com/commentisfree/2014/may/27/airbnb-uber-taxes-regulation> (accessed 19 January 2019). See also Bozdoganoglu, above n 21, 125.

⁴⁴ European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 5.

⁴⁵ Shu-Yi Oei and Diane M Ring, 'Can Sharing Be Taxed?' (2016) 93(4) *Washington University Law Review* 989, 994-995.

3.3.2 *Difficulties in identifying the taxable income*

Difficulties in identifying taxpayers or the absence of information on the service provider's activities will certainly lead to difficulties in identifying taxable income for tax administrations. In the absence of obligations imposed on the platforms to provide information to tax administrations about service providers registered on their platforms as well as payments made to the service providers, the tax administrations may face difficulties in detecting whether income has been generated, especially in countries with a lack of a compliance culture. Even where the service providers can be identified, they often use personal property to generate income. Without clear rules, it may be onerous to demarcate between what is taxable and what is not. Further, access by tax administrations to this crucial information can be complicated when the platform providers and the service providers using the platform are located in different tax jurisdictions.⁴⁶

3.3.3 *Non-disclosure of the income earned*

It is often perceived that the income earned by the service providers through the platforms may remain unreported for tax purposes if the platforms do not provide this information to tax administrations.⁴⁷ For example, a market survey that was conducted by TNS Sofres in France revealed that only 15 per cent of the participants of the survey reported income earned through the sharing economy.⁴⁸ Another study conducted for the HMRC also analysed, among other things, the tax reporting behaviour of income earners in the sharing economy.⁴⁹ It observed that 35 per cent, slightly over one-third of those surveyed, had neither notified nor planned to notify the HMRC about income derived from the sharing economy.⁵⁰ Forty-six per cent indicated that the income earned did not meet the reporting threshold.⁵¹ However, 8 per cent indicated that they had not notified or did not plan to notify HMRC for another reason, with the largest responders in this segment earning higher gross personal incomes of between GBP 50,000 and GBP 69,999.⁵²

The reasons advanced by those who had not or were not planning to report income from the sharing economy to the HMRC were that the income was too small or one-off so was not worth the hassle (35 per cent); they did not know they had to declare this money (30 per cent), or they were unable to afford the tax arising (14 per cent).⁵³ Other reasons provided were that the government did nothing for them so they had no obligation to declare the money; taxes were too high; they did not think they would get caught by HMRC; it was a common practice in their place of work not to declare; they were worried they would have to pay the tax owed; it was the only way to compete and get jobs.⁵⁴ The reporting behaviour in the UK study also varied amongst different categories of activities undertaken in the sharing economy. The transport sector had the highest

⁴⁶ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 197-198 [478].

⁴⁷ Bozdoganoglu, above n 21, 125-126.

⁴⁸ Willem Pieter De Groen and Ilaria Maselli, *The Impact of the Collaborative Economy on the Labour Market*, Centre for European Policy Studies (CEPS) Special Report (June 2016) 24.

⁴⁹ Nilufer Rahim et al, *Research on the Sharing Economy*, National Centre for Social Research HMRC Report 453, HM Revenue and Customs, London (November 2017) 45 et seq.

⁵⁰ Ibid 45-46.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid 46-47.

⁵⁴ Ibid.

propensity to report the income (89 per cent of those who provided transport and 82 per cent of those who rented out a vehicle tended to notify or planned to notify the HMRC of such income).⁵⁵

Although the income earned from the sharing economy may seem insignificant at the individual or transaction level, it could be large when summed up. With the growing popularity of the sharing economy and more options for the utilisation of surplus resources, a continuing absence of policies that effectively police the service providers to ensure full declaration is likely to cause revenues collections to fall.

Currently, in countries where use of sharing economy platforms is common, only a small number of members of the population in fact derives substantial income from such transactions. In the study conducted in the UK, 77 per cent of the respondents claimed that transactions generated only side income, with 45 per cent earning less than GBP 250 (approx. EUR 270) per year. At the same time, the aggregate value of the sharing economy estimated by the same study reached GBP 8 billion per year. Fifty-four per cent of the people surveyed did not consider that the income derived was liable for tax at all, which potentially leaves a sizeable amount undeclared for tax purposes (especially if the income is considered to be the ‘top slice’ of income that should be added to the income earned from primary sources).⁵⁶

3.3.4 *Lack of familiarity with documentation requirements*

It has also been argued that certain features of the sharing economy may pose particular challenges in enforcing tax compliance. To start with, as the sector is still new, not all of the participants may be aware of their tax obligations and may have difficulties in declaring this income.⁵⁷ This can also be attributed to the fact that many may be transitioning from employment to self-employment which may bring confusion for these individuals as well as the governments on what the new taxable base comprises, and what deductions can be allowed, among other things.⁵⁸

Secondly, many of the service providers may be new to business. As a result, they may not be alive to the need or pay particular attention to tracking income and expenses for tax reporting purposes. They may also believe that this income is not taxable and may therefore not declare it. Buoyed by absence of information from the platforms to corroborate their declarations, they may also under-declare income earned.⁵⁹ The taxpayers will also face challenges in identifying deductible and non-deductible expenses hence making compliance with the tax laws a challenge.

Thirdly, most of the service providers may provide services on the collaborative platforms on a part-time basis. They may therefore generate low income. As a result, it may not be feasible for the tax administration to audit each individual to enforce

⁵⁵ For breakdown of responses, see *ibid* 47.

⁵⁶ Rahim et al, above n 49.

⁵⁷ OECD, *Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies* (OECD Publishing, 2017) 62. See also Bozdoganoglu, above n 21, 26; Sharing Economy Committee, Norway, above n 34, 10.

⁵⁸ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 196 [471].

⁵⁹ Oei and Ring, above n 45, 1053.

compliance due to low returns on efforts. However, the income may be significant if the cumulative income of all service providers registered on the platform is considered.⁶⁰

Fourthly, the sharing economy is premised on monetising excess capacity on personal assets/property. As a result, there may be significant personal use as well as the business use. Traditionally, mixed-use property poses challenges for tax administrations on how to distinguish between business usage and personal usage. In the absence of information on the business usage from the platform providers, it will be hard for tax administrations to police the use between business and personal activities and how related expenses should be apportioned.⁶¹

On the upside, it seems that familiarity with reporting procedures and self-assessment may play a positive role towards appropriate declaration by taxpayers themselves. The study conducted for the HMRC indicated that those who had reported or planned to report income from the sharing economy were mostly self-employed and had past experience in completing tax returns or had the assistance of intermediaries to assist with the self-assessment process.⁶²

As a result, the rise of the sharing economy may ultimately erode other sources of tax revenue, eg, withheld employment income. It may also lead to declining tax revenues from sectors with which sharing compete such as hotel and taxicab businesses.

4. TAX IMPLICATIONS *VIS-À-VIS* DIGITAL PLATFORMS IN THE CONTEXT OF EMPLOYMENT LAW

Digital platforms in a tripartite structure of sharing economy transactions represent another main group of taxpayers. Platforms generate income by withholding a percentage of value exchanged between the end users and the income so generated is potentially taxable under direct and indirect tax regimes.

Some of the direct and indirect tax implications with regards to taxation of online platforms are analysed through the prism of EU legislation in section 6. In addition to the issues raised in that section, it is also important to note that the tax treatment of the platform is complicated by the unclear delineation between tax and employment law. Taking the example of Uber, in the case before the London Tribunal, for example, it was decided that ‘drivers are recruited and retained by Uber to enable it to operate its transportation business’.⁶³ The treatment of the drivers as employees under employment law does not necessarily result in drivers having to be taxed as employees under applicable tax law.⁶⁴ That implies that, although the drivers are afforded certain benefits (eg, sick pay, holidays) and protection (eg, terms of employment termination), both the platform and the drivers may for tax law purposes be substantially or significantly

⁶⁰ Ibid 1053-1054. For example Merete Onshus from Norway’s Ministry of Finance is quoted as saying: ‘The numerous small incomes all together make up a considerable sum, but it may escape taxation under current rules if each of them are too small and thus operate below current tax thresholds’: see Lisbeth Kirk, ‘Nordic Tax Collectors Set Sights On New Economy’ *EUObserver* (19 May 2017), available at: <https://euobserver.com/business/137152> (accessed 19 January 2019).

⁶¹ Oei and Ring, above n 45, 1055.

⁶² Rahim et al, above n 49, 45, 50.

⁶³ *Aslam v Uber BV* [2017] I.R.L.R. 4 (28 October 2016) [9], upheld by Court of Appeal *Uber BV & Ors v Aslam & Ors* [2018] EWCA Civ 2748 (19 December 2018).

⁶⁴ Rita Cunha, *Uber and Gig Economy*, Background Report, All-Party Parliamentary Group on Responsible Tax, London (16 November 2017).

relieved of the obligations to assess and pay social insurance contributions, resulting in an incoherent and unsustainable system.

To an extent, confusion as to categorisation of the relationship between the digital platform and the end-users stems from the lack of clarity as to the nature of the platform itself. In a recent case before the Court of Justice of the EU, the judges had an opportunity to provide some clarification by deciding on the role of the Uber platform.⁶⁵ The judges concurred with the opinion provided by Maciej Szpunar and decided that the platform is ‘inherently linked to transport’ and must therefore be classified as ‘a service in the field of transport’. The decision is controversial, as it raises further questions with regards to the necessity of applying other procedures that equate Uber to taxis (eg, licensing) and, in particular, whether a relief from the payment of national insurance contributions can be considered as illegal State Aid under EU Law, as well as possible segmentation of the sharing economy into sectors, each requiring a distinct legislative regime.

5. MEASURES PROPOSED OR INTRODUCED: COUNTRY EXPERIENCES

Tax authorities that are faced with the increasing importance of the sharing economy have to make policy decisions on whether and how the regulatory infrastructure should be developed. In its analysis of the collaborative economy, the EU Commission identified five main areas, including taxation, where regulatory reforms that minimise distortion between the emerging sharing economy and traditional economy may be necessary.⁶⁶ Essentially, the form of governments’ intervention can fall anywhere along the spectrum from *laissez-faire* to new regulation.

In this section we consider some of the measures that are being implemented in some countries and to what extent a digital element – an online platform that records transactions – lends itself to its activation as a tax compliance tool. The unique benefit of the digital economy is that it provides a transparent, traceable platform that records transactional data that can be used to enhance tax compliance. Studies suggest that, in sectors where information reporting/transparency and tax withholding are difficult to impose (eg cash businesses), tax compliance declines.⁶⁷ Thus, we consider whether the current technological advancements can be integrated to ensure that the sharing economy can be transformed into a flagship sector of tax compliance, with embedded compliance (compliance-by-design), which supports an ever-growing market sector.

Digital platforms used as intermediaries in the sharing economy can be utilised in two main ways:

1. To enable measures that increase transparency. This category can include the need for the platforms to disclose the transactional data trafficked through their systems to tax authorities automatically, at later date or on request, or the real-time access to the platform by the tax authorities. This category of measures needs to address implications of data sharing and data privacy. Here, we will also look at the advances of technology that may potentially resolve the transparency v privacy

⁶⁵ C-434/15, *Asociacion Profesional Elite Taxi*, ECLI:EU:C:2017:981 (20 December 2017).

⁶⁶ European Commission, *A European Agenda for the Collaborative Economy*, above n 5.

⁶⁷ Oei and Ring, above n 45, nn 199-200.

conflict (such as blockchain-backed validation tools that allow verification of identity without disclosure of the underlying meta data).

2. To enable measures for real-time compliance through application of withholding tax (WHT) on the payment made. Here, it is important to consider whether the WHT system (such as that of the UK) would encompass the transaction in question and how the split payment will be affected.

5.1 Technology-centred policy responses

It is generally easier to enforce compliance with tax requirements in an environment with a higher prevalence of electronic payments over cash payments. This can also make it relatively easier to enforce WHT requirements.⁶⁸ In the transport, storage and communication sectors where firms tend to interact directly with customers and where individual transactions are often small, the displacement of cash transactions with recorded electronic transactions could be an opportunity for tax administrations to improve compliance, as it may prevent the circumvention of official reporting processes that underpins the formation of a country's taxable base. Indeed, one study indicated that drivers engaged in car-sharing schemes were more inclined to report income received by electronic means than by cash payments.⁶⁹

We take the view that the growth of the sharing economy, underpinned by the availability of electronic data of transactions, could become an opportunity to significantly improve tax compliance if the data of the transactions executed on the online platforms was shared with or accessed by tax administrations. It could help in establishing the identity of persons who provide services using the sharing platform and, by extension, the nature of services provided, the location of the service provider, and the payments made to the service provider, among other things.⁷⁰

One way of collecting this information is by obligating the platforms to report relevant data to the tax administration or alternatively provide access to the data repositories. The US is one example of a jurisdiction that requires sharing platforms to provide information on the payments made to service providers registered on their platforms.⁷¹ Italy has also recently introduced obligations on platforms to report to the Italian Revenue Agency.⁷²

However, it should be noted that the fact that the platform provider shares with or grants access to the data to the tax administration does not relieve the end-users who generate income of the burden to report the income when filing their tax returns.⁷³ It will only

⁶⁸ Ibid 1039. At 1040-1041 they argue that the fact that tax compliance research indicates that compliance is higher for income subject to information reporting than cash may suggest that higher reporting thresholds would have a negative impact on taxpayer compliance. See nn 199 and 200 for the list of studies supporting the claim.

⁶⁹ Ibid 1040 n 251.

⁷⁰ Ibid 1031 n 199.

⁷¹ For more details see ibid 1032 et seq.

⁷² Chiarra Putzolu, 'Challenges and Opportunities in the Sharing Economy: The Italian Perspective' in Miguel Silva Pinto, Neil Sawyer and Ágnes Kővágyó (eds), *Disruptive Business Models: Challenges and Opportunities for Tax Administrations* (Intra-European Organisation of Tax Administrations (IOTA), 2017) 18, 19.

⁷³ Oei and Ring, above n 45, 1036.

make it harder for taxpayers to conceal income knowing that the tax administration has access to the nature of their activities and payments received.

The information collected (and shared) by the platform can be useful in several ways as further outlined below.

5.1.1 Taxpayer registration and expanding the tax base

All tax administrations operate on the basis of a register that facilitates the identification of taxpayers, whether individual or corporate. The African Tax Administration Forum (ATAF) has likened it to the ‘building block of tax administration on which hinge all other processes and procedures – filing, payment, assessment, collection, auditing, reporting to key stakeholders, etc’.⁷⁴

The International Monetary Fund’s Tax Administration Diagnostic Assessment Tool (TADAT)⁷⁵ is often used to provide ‘an objective assessment of the health of key components of a country’s system of tax administration’.⁷⁶ It assesses the performance of a country’s tax administration systems, processes and institutions by reference to nine outcome areas.⁷⁷ One of the performance outcome areas is the integrity of the registered taxpayer base. It identifies an updated, accurate and complete register of taxpayers as the foundation of effective tax administrations. It therefore proposes that tax administrations should be able to identify their tax bases by registering taxpayers and maintaining these registers as well as their integrity.⁷⁸

However, many developing countries do not have a wide taxpayer base. For example, ATAF observes that most countries in Africa have incomplete and/or inaccurate registers of taxpayers. Reasons for this vary⁷⁹ but the effect is that most of these countries are unable to identify individuals and businesses which are eligible for incorporation into the tax base. Further, they may not be able to ensure that those who are registered pay the correct amount of tax because they are unable to track their activities, hence impacting negatively on compliance.⁸⁰

Information from the sharing economy platforms could bridge this gap and help with the identification of taxpayers (whether individuals or businesses) for purposes of analysis of whether they need to form a part of the tax base. In this way, the sharing

⁷⁴ ATAF, above n 21, 91.

⁷⁵ TADAT is a tool that has been developed by international development partners, with technical input from a wide range of experts, to help make tax administrations around the world more efficient and fair. It is aimed at providing an independent, standardised, evidence-based, quality-assured, all-round assessment of the performance of a tax administration system. TADAT is overseen by a Steering Committee of development partners – the European Union, Germany, Japan, Netherlands, Norway, Switzerland, and United Kingdom along with the International Monetary Fund (IMF) and the World Bank. For more details see <http://www.tadat.org/FAQs.html>.

⁷⁶ International Monetary Fund (IMF), *Tax Administration Diagnostic Assessment Tool (TADAT) Draft Field Guide, Version 5.0* (February 2015) 6, http://www.tadat.org/files/tadat_fieldguide_v5.pdf.

⁷⁷ Ibid 8, which outlines the areas where a TADAT assessment could be useful.

⁷⁸ Ibid 9.

⁷⁹ ATAF, above n 21, 91-92. They include the fact that national identification numbers, for both individual and corporations, are rarely connected to tax and other assets that have tax consequences such as the company registry, land registry or bank accounts. Another reason could be that tax administrations may not have adequate resources for post-registration verification or taxpayers failing to update registration files.

⁸⁰ Ibid.

economy can support the expansion of the tax base and lessen concerns that it may cause erosion of the existing tax base.⁸¹

5.1.2 *Identification of taxpayers not declaring their full income and improving the accuracy of information reported in tax returns*

The Tax Administration Diagnostic Assessment Tool also recognises that ‘timely filing is essential because the filing of a return is the principal means by which a taxpayer’s tax liability is established and becomes due and payable’.⁸² TADAT also recognises that:

tax systems rely heavily on complete and accurate reporting of information in tax returns. Audit and other verification activities detect discrepancies (e.g., undisclosed income) and penalise offenders, and serve to remind all taxpayers of the consequences of inaccurate reporting.⁸³

Absent information reporting requirements, the income earned from the sharing economy may not be reported to public authorities and may escape taxation and other obligations, eg, social security deductions. Although non-declaration of income has always existed – for example, for earnings from casual labour or household services in some countries – and as such is not unique to the sharing economy, it is the size and the growth of the sharing economy that makes reporting in this sector a significant issue to consider in terms of tax compliance. Information obtained from the platforms regarding the identity of taxpayers, their location, the nature of their activities, etc could be a useful tool for tax compliance.

For example, based on information released by the Dutch Tax Authorities on Uber’s activities, the Danish Customs and Tax Administration (SKAT) was able to identify 1,800 Uber drivers that operated in Denmark in 2015. It then informed these drivers that their income should be declared for taxation. The SKAT established from a sample that more than 180 drivers had earned more than DKK 80,000 (approx. EUR 10,750) per year. This action led to an amendment of the assessments of more than 500 Uber drivers⁸⁴ and demonstrated the potential of such information for tax compliance. In another example, the Australian Taxation Office (ATO), which has access to the Australian Transaction Reports and Analysis Centre (AUSTRAC) responsible for maintaining information on financial flows, helped identify unregistered businesses operating in the sharing economy.⁸⁵

Of the three parties to the transaction, the vendor, who provides a service in exchange for the payment, may ultimately be ‘subject to tax’. Therefore, it is important to ensure that robust mechanisms for accurately establishing the identity of the taxpayer are provided by the platform. Normally, the platform requires submission of some personal data by the parties willing to provide services therein. Table 1 below compares the information required by HMRC (the UK tax office) for issuance of a tax identification number to that of the Uber and Airbnb websites.

⁸¹ Bozdoganoglu, above n 21, 125, 126.

⁸² IMF, *Tax Administration Diagnostic Assessment Tool*, above n 76, 9.

⁸³ Ibid.

⁸⁴ Kirk, above n 60.

⁸⁵ OECD, *Tax Administration 2017*, above n 57, 62.

Table 2: Information Required for Registration for UK Unique Taxpayer Reference (UTR), As An Uber Driver and As An AirBnB Host

UK UTR	Uber Driver	Airbnb Host
1. Name (including title) 2. Previous last name or family name (if applicable) 3. National Insurance number 4. Date of birth 5. Current home address (including postcode and when you moved to the address) 6. Daytime telephone number (home, work or mobile telephone number) 7. Email address	1. Create a new account • Name • Email • Phone • City 2. Initial driver requirements for Uber • A valid driver's license • Details of the car- ◦ Valid vehicle registration: ◦ Either a four-door car, truck or minivan. • A clean driving record and criminal history • Be 21 years of age or older (23 depending on your city). • The intended driver is required to be on the insurance for the vehicle used. • Pass a background check. • A minimum of three years driving experience is mandatory. • Vehicle must be fit to pass an inspection from Uber. 3. Bank account details	1. Create a new account • Name • Email • Phone • City 2. Property details 3. Bank account, PayPal details for settlement

Some of the information details submitted to the platform could be useful for the tax administration. Additionally, most of the online platforms require the end-user to disclose their bank details. The link to the banking system can be considered as an avenue to secure establishment of the identity of the taxpayer, as most banks operate under Know Your Customer/Anti-Money Laundering (KYC/AML) processes that require collection of comprehensive information. In many countries, it is only possible to make payments in the sharing economy using a credit card. Additionally, settlements between platform providers and the service providers registered on their platforms is usually executed via bank transfers. Information on these transactions could therefore be very useful to tax administrations in identifying individuals and business that qualify for registration and to verify the nature and level of activities.

5.1.3 Pre-populating tax returns

The information received from the platforms could also be used to pre-populate tax returns.⁸⁶ Estonia has already entered into cooperation with collaborative platforms with

⁸⁶ European Commission, *Tax Policies in the European Union: 2017 Survey* (Publications Office of the European Union, 2017) 87 available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2017.pdf (accessed 29 January 2019). The 2018 Survey observes that 24 EU Member States have already established mechanisms for prefilling personal income tax returns to assist tax compliance. See European Commission, *Tax Policies in the European Union: 2018 Survey* (Publications Office of the European Union, 2017) 42, available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2018.pdf.

the primary aim of simplifying tax declaration procedures for drivers. Under this arrangement, the collaborative platform sends some information regarding the driver's earnings to the Estonian Tax Administration, which then uses the data to pre-populate the driver's tax returns.⁸⁷

5.1.4 Collection of tax

Tax can also be collected either immediately or based on assessment at a later stage. Immediate collection of tax is done within the WHT regime, with the WHT-liable transactions being prescribed within domestic tax codes. Usually, the code allows for residual provisions; however, it is possible that the transaction falls within the WHT-liable category, which would mean that the legal gateway of subjecting the transfer to WHT already exists and no revision to the existing tax code is necessary.

The withholding of tax has to be carried out by a party other than the taxpayer. Should the tax authorities have direct access to the platforms, split-payment systems can be introduced, which enable automatic real-time compliance whereby the tax payment is calculated and transmitted to the revenue authorities synchronously with payment for services or goods.

For example, AirBnB is already collecting tourist taxes on behalf of the French government and subsequently remitting them to the tax administration.⁸⁸ Italy has also introduced regulations on short-term renting that obligate resident intermediaries, permanent establishments or tax representatives of non-residents including online sites, to apply a 21 per cent withholding tax.⁸⁹

5.2 Policy responses: country experiences

This section summarises some of the policy approaches to facilitation of tax compliance by sharing economy platforms, with some references to the country experiences of a number of European tax administrations.⁹⁰

(a) Increasing tax breaks for the sharing economy and allowing for additional exemptions to be applied from the income earned below a certain threshold to encourage voluntary compliance

Based on household surveys that indicated that the earnings from the sharing economy and gig economy in the UK in 2015 were relatively small (less than GBP 500 per year) as contrasted with basic tax allowances of GBP 10,600 for 2015/16, GBP 11,500 for 2017/18 as well as a GBP 83,000 turnover threshold for compulsory registration into the VAT regime, the UK has adopted an approach that does not impose tax reporting requirements that may slow down the growth of the sharing and gig economy. It has therefore introduced a tax-free allowance of GBP 1,000 for

⁸⁷ European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 5. European Commission, *Tax Policies in the European Union: 2017 Survey*, above n 86, 47.

⁸⁸ See Airbnb, 'In what areas is occupancy tax collection and remittance by AirBnB available?', <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> (accessed 19 January 2019).

⁸⁹ Putzolu, above n 72, 20.

⁹⁰ Miguel Silva Pinto, Neil Sawyer and Ágnes Kövágó (eds), *Disruptive Business Models: Challenges and Opportunities for Tax Administrations* (Intra-European Organisation of Tax Administrations (IOTA), 2017). The publication summarises some of the discussions held in June 2017.

selling goods or providing services, a tax-free allowance of GBP 1,000 for income earned from the sharing economy on property owned and a GBP 7,500 allowance for renting out a room in a house.⁹¹ This move is geared towards sustaining the growth momentum. Similarly, Denmark has instituted measures aimed at encouraging voluntary compliance by extending incentives including higher basic allowances for property, cars and boats rented out but only if the third party declares the resulting income to the tax authorities in full.⁹²

(b) *Increasing awareness of taxpayers of their tax obligations arising from the sharing economy and providing improved guidance to support compliance*

A study conducted for the HMRC also indicated that there is evidence that advice and tools deployed by the HMRC, for example, the Tax Calculation Tool, HMRC email correspondence, and the HMRC website, helped self-employed people to be aware of their tax obligations. These can facilitate their registration as taxpayers and help them to understand their tax obligations and complete and file self-assessments as required.⁹³

Awareness of the obligations arising could be increased through taxpayer education and dedicated guidelines that target specific sectors of the sharing economy, eg, the accommodation, transport and services sectors, which should be updated regularly to keep up with changes in the sharing economy. The guidance should, among other things, clarify what activities are taxable; the thresholds (whether time or monetary) the activities need to attain before they can become taxable; the obligations of service providers who are taxable, eg, requirements for filing tax returns declaring income from the sharing economy, time limits for filing tax returns, record keeping requirements; and a description of deductions allowable against specific income.⁹⁴

In the above context, Finland decided upon issuing proactive guidance of this kind, thereby sending ‘a strong signal to the field about...control measures: effective and on credible level’.⁹⁵

In Italy, in addition to introducing a new law and obligations upon the sharing economy actors in the short-term rentals sector (discussed further below), the Italian government is also proactively engaging the sharing economy stakeholders. It has convened a Forum that brings together the Italian Revenue Agency and representatives of major operators affected by the new law, namely the Italian Federation of Professional Real Estate Agents, AirBnB, Booking.com, Homeaway and Property Managers Italia. The Forum is chaired by the Deputy Minister of Economy and Finance and seeks to amicably discuss how the law and the

⁹¹ Carter, above n 2, 29. See also Bozdoganoglu, above n 21, 133; OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 197 Box 7.2.

⁹² OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 197 Box 7.2.

⁹³ Rahim et al, above n 49, 56.

⁹⁴ See also OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 198 [480]-[482].

⁹⁵ Pekka Ruuhonen, ‘Seize the Moment As It Might Be Too Late Tomorrow - Digital Economy Offers Challenges and Opportunities to All Tax Administrations’ in Miguel Silva Pinto, Neil Sawyer and Ágnes Kővágó (eds), *Disruptive Business Models: Challenges and Opportunities for Tax Administrations* (Intra-European Organisation of Tax Administrations (IOTA), 2017) 7, 9.

information reporting system can be simplified and implemented with minimal disruption to business systems.⁹⁶

The Canadian Revenue Agency has also expanded its website to include information specifically targeting first time sharing economy income earners on the obligations that arise in relation to income tax and GST (goods and services tax) or the harmonised sales taxes (HST), in particular with regard to registration, collection and reporting of income so derived.⁹⁷ It has also entered into a strategic collaboration with the platform providers to act as intermediaries for relaying information to the service providers registered on their platforms on the nature of their tax obligations.

France has also mandated the platforms to provide certain information to the service providers registered on their platforms. These include links to the websites of the tax administrations and agency collecting the social security on communications after each transaction and an annual statement summarising the income earned through the platform to facilitate the preparation of a tax return.⁹⁸

(c) *Establishing dedicated tax regimes that address sharing economy structures that may have simplified assessment and compliance algorithms*

In Italy a proposal was made to the Italian Parliament in 2016 (AC 3564 – 27 January 2016) for the regulation of digital platforms to share goods and services in order to promote the sharing economy. Among several other objectives, it sought to establish a taxation regime for the sharing economy.⁹⁹ The new law targeting short term rentals (letting residential buildings for a period not exceeding 30 days through digital platforms) has: (a) introduced new informational reporting obligations upon all platforms that act as intermediaries for short term rentals to report all rental activities taking place to the Italian Revenue Agency; (b) introduced a substitute flat rate tax of 21 per cent for income derived from the short term rental; (c) imposed an obligation on the resident intermediaries, permanent establishments or tax representatives of non-residents, including online sites, that collect payment from the guest to withhold the 21 per cent flat rate tax.¹⁰⁰

Belgium has also introduced a special scheme for taxation of the sharing economy with a flat rate of 20 per cent and a fixed cost-deduction of 10 per cent.¹⁰¹ However the special regime is limited to services delivered by a private person to another private person through a ‘certified’ electronic platform. It has also imposed obligations on the platform to withhold taxes and remit them to the Belgian tax administration. However, the private person must have a turnover lower than EUR

⁹⁶ Putzolu, above n 72, 20.

⁹⁷ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 199 Box 7.3.

⁹⁸ Ibid.

⁹⁹ Putzolu, above n 72, 19; see also OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 197 Box 7.2.

¹⁰⁰ Putzolu, above n 72, 20.

¹⁰¹ The reasons advanced for the special scheme are that in the past the Belgian tax administration has observed that activities with ‘less commercial purpose’ ultimately had a negative or minimal tax result because of the quantum of deductible costs involved. See Dirk Dierickx, ‘The Belgian Compliance Model and the Methodology to Obtain Data from “Sharing Economy” Platforms’ in Miguel Silva Pinto, Neil Sawyer and Ágnes Kövágó (eds), *Disruptive Business Models: Challenges and Opportunities for Tax Administrations* (Intra-European Organisation of Tax Administrations (IOTA), 2017) 21.

5,100 in 2017 to access the special scheme. The scheme provides a VAT exemption for participants.¹⁰²

- (d) *Extend the existing provisions or introduce new obligations to allow for enhanced engagement of the online platforms to exchange information they record with tax administrations*

The sharing economy platforms have sizeable data on the activities and income earned by service providers. The European Commission, for example, has therefore recommended that the platforms should proactively cooperate with tax administrations to discuss how this information can be exchanged while taking into account data privacy concerns.¹⁰³

The Estonian Tax and Customs Board, the Finnish Tax Administration, the Mexican Tax Administration and the Ecuadorian Tax Administration all obtain information directly from the platforms, which can be used to prefill tax returns.¹⁰⁴

In the UK, section 228 of the *Finance Act 2013* enables the HMRC to request data from businesses that process credit and debit card payments (merchant acquirers) for tax compliance purposes. This law has been extended by the introduction of a new provision which allows the HMRC to directly engage the online platforms and access data needed to help enforce greater compliance.¹⁰⁵ In spite of these powers, the UK acknowledges that the realities of the current digitalised environment may make unilateral domestic measures ineffective since, for example, the transactions may take place across several jurisdictions and the data may also be held across several jurisdictions or in the cloud. Hence, collaborative international efforts would be better suited to addressing the access to information.¹⁰⁶

Due to challenges that may be faced in obtaining data when the platforms operate across several jurisdictions due to data privacy limitations, the OECD has now brought together over 50 tax administrations to, among other things, reach a joint agreement on the nature of data needed for tax compliance purposes and enter into dialogue with the sharing economy platforms as to how this data could be provided,

¹⁰² Ibid 21-22.

¹⁰³ European Parliament, *A European Agenda for the Collaborative Economy*, above n 5, 7; see also OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 199 [483]-[485].

¹⁰⁴ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 201 Box 7.4: Obtaining tax information directly from the platforms.

¹⁰⁵ Carter, above n 2, 29. The new section provides that:

‘(1) A person who—
 (a) provides services to enable or facilitate transactions between suppliers and their customers or clients, and
 (b) receives information about such transactions in the course of doing so, is a relevant data-holder
 (2) In this paragraph “suppliers” means persons supplying goods or services in the course of business
 (3) For the purposes of this paragraph, information about transactions includes information that is capable of indicating the likely quantity or value of transactions’.

¹⁰⁶ Ibid 29; see also Kirk above n 60, observing that Denmark had identified 142 shared economy platforms operating in the country in 2016, but since most of them are registered in other jurisdictions, there are difficulties in obtaining information. See also OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 199-200 [485].

ie, ‘a common set of information, a common format and transmission mechanism, a common timetable and any necessary domestic legislation’.¹⁰⁷

(e) *Use digital techniques to obtain information necessary for the audit*

The use of the digital skills within a tax administration is becoming imperative as an increasing number of business models have integrated digital elements within their process architecture, and traditional methods are becoming increasingly redundant and ineffective to ensure compliance. For example, the Belgian tax administration has created multidisciplinary digital teams to facilitate audits in an increasingly digitalised world.¹⁰⁸ Their audits in the sharing economy are mostly focused on identifying taxpayers with a level of activity that will enable them to compete unfairly with traditional businesses if they do not pay taxes like their traditional business counterparts. The Belgian tax administration usually makes requests for this data from the platform operators with a focus on: (a) ‘power users’; (b) users who provide rental services using more than three houses, and (c) users with a turnover of more than EUR 25,000 per year.¹⁰⁹ In the event that the platforms do not cooperate, the Belgian tax administration utilises a data harvesting technique known as ‘scrapping’ to collect necessary data from the platform or website using their in-house tool.¹¹⁰ This data is then analysed and used for compliance processes.

(f) *Obligate the sharing economy platform operators to collect taxes on behalf of the government and the tax administrations*

The City of Amsterdam,¹¹¹ Italy¹¹² and France¹¹³ have all entered into arrangements with sharing economy platforms, mainly AirBnB, whereby the platform collects tourist taxes and other taxes on behalf of the government and remits the same to the government. This arrangement lowers the administrative burden for the tax administration, allowing it to focus on the platform rather than the numerous service providers, and at the same time increases compliance levels because the platform operators have information on occupancy levels and also collect the payments before disbursing to the service providers their income (net of the commission charged). This may therefore move the collection to a real-time basis.¹¹⁴

¹⁰⁷ OECD, *Tax Challenges Arising from Digitalisation*, above n 4, 202 [486]-[487].

¹⁰⁸ Dierickx, above n 101, 22: the teams are specialised in the following key areas:

‘1 E-commerce: to obtain and analyze unstructured data from the web

2 E-audit: to obtain and analyze structured data from digital bookkeeping systems (e.g.: ERP systems), mostly with co-operation of the taxpayer

3 E-forensics: to obtain and analyze non-structured data, mostly without co-operation of the taxpayer and/or in cases of serious fraud

4 E-cash registers: to obtain and analyze structured data from cash-registers

5 E-audit mining: Analysis: Evaluating ESI (= Electronic Stored Information) for content & context, including key patterns, topics, people & discussion with the use of Predictive analyses and Artificial intelligence’.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Bozdoganoglu, above n 21, 130-131, 134.

¹¹² Putzolu, above n 72, 20; Bozdoganoglu, above n 21, 132-133.

¹¹³ Bozdoganoglu, above n 21, 131; See also France24, ‘AirBnB to Give French Cities 13.5 Million Euros in Tourist Tax’ *France24* (29 January 2018), available at: <http://www.france24.com/en/20180129-AirBnB-gives-135-million-euros-tourist-tax-french-cities> (accessed 19 January 2019).

¹¹⁴ Bozdoganoglu, above n 21, 130.

(g) More sophisticated and advanced digital solutions

Lastly, the most advanced of approaches consider a proactive strategy for the tax administration to tackle compliance in the sharing economy based on combining traditional Internet with even more sophisticated and advanced digital solutions. Such solutions can engage various technological advancements to power tax compliance processes and functions, including: Artificial intelligence, Machine learning, Big Data, Blockchain and Distributed Ledger Technology. The solutions differ in their disruptive impact and require different levels of modification of the existing legacy systems. The main obstacle is that the disruptive technologies are themselves not yet thoroughly understood, which makes deliberations on their compatibility with issues pertaining to the sharing economy, for now, an ambiguous and theoretical exercise.

5.3 Disruptive technology potential

Digital solutions can also extend beyond the function of monitoring of data to enabling withholding of the tax at source when the payment is being made. Some platforms in the sharing economy are already implementing automatic withholding tools for payment of taxes and levies on behalf of the taxpayers (vendors). In this respect, AirBnB has announced that it will reimburse EUR 13.5 million in tourist taxes to French municipalities.¹¹⁵

Newly emerging disruptive technologies, such as Blockchain, distributed ledgers, smart contracts and the Internet of Things can, however, offer even more sophisticated mechanisms for ensuring compliance as their design in each case implies unparalleled transparency and reliability and the scope to embed compliance into the transaction with no associated costs. Blockchain-based solutions can provide a database where transactions are recorded and shared on the distributed network. The records made on the blockchain are encrypted, so that the underlying data is not readable. The records are also immune to tampering, as distributed systems allow each node of the network to hold a fully-fledged and autonomous version of the record, so that editing of the information by any one party is not reflected on the rest of the ledgers. This feature is at the core of the in-built trust of the blockchain-based solutions, as permanence and immutability of records provide a highly reliable database that can consequently be used to extract data for tax compliance.

The smart contract is another unique feature of the blockchain, which is essentially a code that self-executes if certain predetermined parameters or conditions are met. Smart contracts allow parties to transact with each other peer-to-peer, ie, in a dis-intermediated manner, without the need to involve a third party to certify the validity of transaction. In this respect, any split system mechanism imposed to calculate and withhold tax liability, and make a transfer of the amount to the revenue authorities, can be built atop a smart contract.

One of the overlooked challenges of the unregulated shared economy is the high potential risk for tax authorities to lose control and oversight of the sector if the regulatory provisions are too burdensome or complicated. With the proliferation of cryptocurrencies that allow peer-to-peer payment with no involvement of a third party

¹¹⁵ France24, above n 113.

that can either validate or monitor and record the transaction, there is a chance that online services will be provided in an entirely opaque fashion. The mounting challenge that tax administrations face is twofold: to set up the system that allows taxation of the growing economic sector, but which disincentivises the users from operating ‘under the radar’, where the ‘sharing economy’ transmutes into an informal or ‘grey’ economy.

It is also important to point out that the tax system applicable to the shared economy should be designed with both sufficient flexibility and firmness. Here, one should not be misled into thinking that compliance of a sector that is intrinsically innovative could be forced by crude measures. Therefore, tax administrations should proactively recognise the risks likely to arise in the future and react with forward-looking measures that satisfy both the needs of the public sector as well as discourage non-compliance.

6. EU-SPECIFIC ISSUES WITH RESPECT TO THE SHARING ECONOMY

The exponential growth of the sharing economy in Europe and its potential as identified by the 2016 PwC UK study for the European Commission has prompted the addition of the sharing economy to the European agenda.¹¹⁶ The sharing economy is rapidly acquiring market share in Europe and, as many shift to earning income by utilising the overcapacity of idle resources and providing services online, a variety of economic, social and legal challenges and opportunities emerge. To address these challenges, the EU Commission supports the view that government should develop a regulatory approach to the sharing economy based on the holistic understanding of the phenomenon. Currently, there are no specific pan-European rules for the sharing economy, but the EU has provided non-binding guidelines¹¹⁷ for dealing with the following five key areas: (i) market access requirements (eg, authorisations and licensing); (ii) liability regimes (eg, countering illegal content); (iii) protection of users (iv) self-employed workers in the sharing economy, and (v) taxation. In line with the focus of this article, only tax-related implications of the sharing economy operators within the EU will be considered. In particular, we will look at the issues related to the direct tax, indirect tax and State Aid rules.

Direct taxation is largely unharmonised within the EU and regulatory initiatives in this area are notoriously hard to implement, as the unanimous consent of all 28 Member States¹¹⁸ is required to pass legislative instruments affecting direct taxation. This implies that, in the absence of EU secondary legislation, the Member States maintain autonomy over the fiscal policies and design of direct taxation regimes for the sharing economy. Most of the sharing economy measures that are being introduced at the domestic level are targeted at the end-users and tax evasion. As demonstrated in section 4 of this article, the types of approaches chosen by governments are highly varied, ranging from extending the exemptions from tax, to simplified flat tax regimes, to using data sharing capabilities to compile tax returns on behalf of the taxpayer.

Digital platforms operating within the European market provide online access platforms to EU consumers and generate value by withholding a percentage of the transaction value paid to the vendor located within the European market. The increased tax avoidance debate that underpinned the OECD/G20 base erosion and profit shifting

¹¹⁶ See Goudin, above n 1, 558-777. See also European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 2.

¹¹⁷ European Commission, *A European Agenda for the Collaborative Economy*, above n 5.

¹¹⁸ Art 115 of the Treaty on the Functioning of the European Union (TFEU).

(BEPS) report in 2015¹¹⁹ and, consequently, enactment of the EU Anti-Tax Avoidance Directive,¹²⁰ has assessed potential tax avoidance with reference to the degree of correlation between the value generation and taxation, prompting the conclusion that, as a rule, value should be taxed where it arises. Taking as an example Uber London Limited in the UK,¹²¹ in 2015 its reported turnover was GBP 23 million, profit before tax GBP 1.8 million and corporate tax paid GBP 0.4 million. Amidst the public discontent with the low tax contributions by other technology giants (eg, Facebook paid GBP 4,327 in corporate tax in the UK in 2014¹²², Apple paid GBP 11.8 million on GBP 1.9 billion of UK profit¹²³, and while in 2016 Amazon paid EUR 16.5 million as corporate tax on its European revenues totalling EUR 21.6 billion (£19.5bn) reported through Luxembourg,¹²⁴ the tax schemes of participants in the sharing economy are attracting scrutiny. In particular, when the operations of the online platforms are structured by the interposing of an intermediary company in Ireland or the Netherlands (both have low corporate tax, favourable Advanced Tax Rulings, and no Controlled Foreign Company rules),¹²⁵ questions are raised as to the legitimacy of these structures from the economic substance perspective and the tax planning opportunities they provide.

Digitalisation enables a global outreach, which means that both the end-users and the digital platform can operate cross border. As regards the digital platforms, the Anti-Tax Avoidance Directive (ATAD) limits the impact of aggressive tax planning by multinational enterprises in the technology sector by invoking an artificiality test in assessing the underlying tax structures. Also, adequate levels of taxation are monitored through increased transparency brought about by the Country-by-Country Reporting regime of the OECD's BEPS program. Revival of the Common Consolidated Corporate Tax Base (CCCTB) initiative should also provide a basis for further improvements in allocation of tax between the jurisdictions, providing for parallel revision of tax norms to include digital elements as one of the main value-drivers of the business.¹²⁶

¹¹⁹ The OECD/G20 Base Erosion and Profit Shifting Final Report published on 5 October 2015 has addressed challenges associated with taxation of digital economy in Action Plan 1: OECD, *Action 1 – 2015 Final Report: Addressing the Tax Challenges of the Digital Economy* (OECD Publishing, 2015). In March 2018, the update of the report was published by the OECD Special Digital Economy Task Force (DETF): OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing, 2018).

¹²⁰ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

¹²¹ Uber London Limited, *Report and Financial Statements for the Year Ended 31 December 2015* (2016).

¹²² Heather Stewart, 'Facebook paid £4,327 corporation tax despite £35m staff bonuses' *The Guardian* (online) (11 October 2015), available at: <https://www.theguardian.com/global/2015/oct/11/facebook-paid-4327-corporation-tax-despite-35-million-staff-bonuses> (accessed 19 January 2019).

¹²³ Peter Campbell, 'Apple pays just £12m UK tax on £2bn profit: Miserly bill is almost £400million short of the figure tech giant should have paid' *The Mail Online* (4 July 2015), available at: <https://www.dailymail.co.uk/news/article-3149056/Apple-pays-just-12m-UK-tax-2bn-profit-Miserly-bill-400million-short-figure-tech-giant-paid.html> (accessed 19 January 2019).

¹²⁴ Mark Sweney, 'Amazon paid just £15m in tax on European revenues of £19.5bn' *The Guardian* (online) (11 August 2017), available at: <https://www.theguardian.com/technology/2017/aug/10/amazon-uk-halves-its-corporation-tax-to-74m-as-sales-soar-to-7bn> (accessed 19 January 2019).

¹²⁵ See European Parliament, 'Tax Optimisation by AirBnB in Europe', Parliamentary Question to the Commission for Written Answer E-016006-15 (18 December 2015), available at: http://www.europarl.europa.eu/doceo/document/E-8-2015-016006_EN.html.

¹²⁶ See for example Peter Hongler and Pasquale Pistone, 'Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy' (IBFD Working Paper, 20 January 2015).

A different picture emerges for the cross-border transactions of the end-users of the platforms, as such operations fall outside the scope of the ATAD and no other pan-European legislative act can be relied upon to prevent tax evasion from such activities. When some of the jurisdictions attempt to mitigate the problem of insufficient oversight and visibility of the end-user activity by relying on information exchange provisions, there are restrictions that apply to the flow of information cross border, and in many cases even to data carriers within a single Member State. As the amended General Data Protection Regulation¹²⁷ entered into force in May 2018, the more stringent data privacy provisions are likely to significantly impede the progress in introducing measures to mitigate tax evasion through information sharing and collaboration between tax authorities.

With respect to indirect taxation, it appears to be ‘acknowledged ... that the supply of goods and services provided by collaborative platforms and through the platforms by their users are, in principle, VAT taxable transactions’.¹²⁸ However, the taxation is different for end-users and online platforms. Some of the issues related to the indirect taxation of the online platforms have already been discussed in section 3, so the focus of this section is on end-users.

The initial step of determining whether the end-users are subject to VAT is establishing their status as ‘taxable persons’, with reference to the economic activity carried out.¹²⁹ There are additional conditions pertaining to the activity, which can indicate whether it falls within the ambit of VAT rules, such as continuity and purpose of obtaining income. However, even when such conditions are observed and the activity is deemed taxable under the VAT, lack of sharing economy-specific guidance results in challenges of implementation of the rules, as: (a) the notion of income is not harmonised within the EU, giving rise to arbitrage, and (b) country-specific exemptions and registration thresholds apply, so that some taxpayers escape regulation due to their relatively insignificant size.

One of the distinct features of the European Single Market is a body of fundamental freedoms that curb discrimination and application of unjustified restrictions on the carrying out of activities by EU residents within the EU. Discrimination, however, is also triggered when a selected group of taxpayers receives a favourable treatment, and such instances are dealt with by State Aid Rules.¹³⁰ Sharing economy domains such as home-sharing and car-sharing, representing the largest sectors, have analogous counterparts within the traditional economy, being hotels and taxis. The latter have seen their market share declining dramatically with the emergence of the sharing economy. One of the factors driving the popularity growth of the sharing economy alternatives is arguably the lax regulation that allows end-users to engage in the activity while circumventing otherwise burdensome registration, certification and licensing requirements that are imposed on traditional sector hotels and taxis. Another key to ‘success’ is the fact that many end-users operate under self-employed status, which typically removes entirely, or significantly reduces, the burden of social insurance

¹²⁷ EU Council, General Data Protection Regulation (GDPR), 2016/679, entering into force 25 May 2018.

¹²⁸ Katerina Pantazatou, ‘Taxation of the Sharing Economy in the European Union’ in Nestor M Davidson, Michèle Finck and John J Infranca (eds), *The Cambridge Handbook of the Law of the Sharing Economy* (Cambridge University Press, 2018) 368, 371, citing European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 14.

¹²⁹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, art 9.

¹³⁰ Art 107 TFEU.

contributions that would have been paid by the digital platforms, had the relationship between the platform and the end-user been considered as employment.¹³¹

Some scholars argue that application of the State Aid rules to the sharing economy is a controversial issue, with complications arising from the selectivity requirements and the absence of a reference framework against which the advantages provided can be measured. With the lack of a reference framework, one can only speculate whether hotels and home-sharing and taxi services and car-sharing are comparable. More clarification can be provided within the future case law of the CJEU.¹³²

7. CONCLUSION

The sharing economy may be beneficial for governments, individuals and consumers by offering greater choice, efficiency and flexibility. Consumers now have a wide variety of choice. The sharing economy boosts innovation and entrepreneurship. It also creates new opportunities for individuals to utilise excess capacity for professional services thus generating new employment opportunities, flexible working arrangements and therefore new sources of income.¹³³ It has a power to stimulate growth in the overall national economies. The sharing economy is both demographically-neutral (no age limits, gender limitations, etc) and resistant to macroeconomic shocks by providing the population with the means of utilising their own resources to generate alternative sources of income.

However, the sharing economy can also produce negative societal impacts. Some of the most notable examples are the weak or entirely absent frameworks of consumer rights protection, safety regulations and social security mechanisms that are afforded by established sectors of economy. Consumers who agree to engage in sharing economy transactions are considerably more exposed to the risks involved and would find it difficult to seek a remedy for damages, should such occur.

In terms of taxation, if the sharing economy is properly captured by the tax laws, it can provide a new, growing, sustainable and reliable source of public revenue. Most of the unique tax compliance opportunities created by the sharing economy are attributable to its digital nature. In addition to the benefits derived from digitalisation, it can also be argued that the market segments incidentally replaced by the sharing economy customarily demonstrate deficient tax compliance, as the payment methods (usually in cash) allow for the circumvention of official reporting processes that underpin formation of the taxable base. As a result, an adequately regulated sharing economy can help transform the informal sector into a formal sector, securing additional sources of revenue for the government.

¹³¹ See UK case *Aslam v Uber BV* (2017) I.R.L.R. 4 (28 October 2016) [90]: '[t]he notion that London is a mosaic of 30,000 small businesses linked by a common platform is to our minds faintly ridiculous', and [9]: 'we are entirely satisfied that the drivers are recruited and retained by Uber to enable it to operate its transportation business'.

¹³² Advocate General Maciej Szpunar has considered that Uber is a transportation service (C-434/15, *Asociación Profesional Elite Taxi*, Opinion of the Advocate General, ECLI:EU:C:2017:364, 11 May 2017). However, there are also views that argue that strict classification of the digital platforms into pigeonholes of traditional economic models may stifle innovation and growth in entrepreneurship.

¹³³ European Commission, *A European Agenda for the Collaborative Economy*, above n 5, 2.