

# VAT aspects of sharing economy (1/24/19)

The role of the sharing economy is growing across Europe. Perhaps only a few of us had faced it earlier when booking an apartment with Airbnb, but now we can choose from a variety of services using the principles of the sharing economy. This article explores some of its VAT aspects.

## The sharing economy

The sharing economy began as an opportunity for people to share any of their spare resources (human resources and various tangible assets such as real estate, movables, and cash). The sharing economy reduces the price of services and increases their availability in industries such as rental real estate, transport, financial services, FinTech services, various professional services, and services for household needs. Services (goods) can be acquired free of charge, for a consideration, by barter, making a profit or at cost.

Today's digital technology helps such activities develop very fast. The sharing economy is organised through platforms on mobile apps or websites bringing together suppliers and consumers.

## VAT treatment of a chain of supplies

The VAT treatment of a chain of supplies in the sharing economy involves at least three persons: the platform, the supplier of goods or services using the platform, and the consumer also using the platform. The existence of a taxable supply should therefore be analysed at each of the three stages: between the platform and the supplier, between the platform and the consumer, and between the supplier and the consumer.

Before we can talk about any VAT aspect of the sharing economy, we need to understand whether supplies of services (goods) to consumers through a sharing economy platform are taxable supplies and whether the suppliers are taxable persons.

If a supply of services (goods) is to be treated as a taxable supply, the following conditions must be met:

1. The supply of services (goods) is made for a consideration, and there is a direct link between the services (goods) and the consideration received;
2. The supplier of services (goods) is treated and acts as a taxable person.

These conditions should be examined at each stage of the supply chain to understand whether we are talking about a taxable supply.

A consideration is the first factor we must have if we are to talk about a taxable supply. A free supply of services (goods) does not attract VAT. So where a platform or supplier provides services free of charge, the VAT issue is not relevant. The same is true for a supply of goods. While a barter is basically treated as a supply for a consideration, the European Commission says that each case in the sharing economy should be assessed on its merits, doubting whether an economic activity is conducted for a consideration, for example, in a summer exchange of homes.

The second factor we need to assess is whether the supplier of services (goods) is a taxable person. A taxable person is one that independently carries on a business regardless of its aim or result. The

independence condition is intended to exclude from the term “taxable person” any person to the extent they have a real or deemed employment relationship with their employer. Economic activity is taken to mean any systematic, independent activity for a consideration (including the activities of any manufacturer, dealer or service provider, agricultural activity, and the use of any tangible or intangible asset aimed at systematically gaining income). And it does not matter whether the business makes a profit. Thus, economic activity is defined in very broad terms. The systematic nature should be assessed by analysing all aspects of a transaction in each individual situation. There are no absolute criteria for determining when a person carries on a business (economic activity) systematically.

As to the systematic nature and using real estate in business, the case law of the Court of Justice of the European Union finds that the fact that a property fits only business use is sufficient to recognise that its owner is using it for its business purpose and for gaining long-term income. If, however, the characteristics of a property allow it to be used for business and private purposes, we need to analyse all the terms of its use to determine whether it is used for gaining long-term income. In its working paper No. 878 of 22 September 2015, the European Commission said that in the sharing economy, the mere fact that a person has joined a platform to supply goods or services indicates economic activity even if the supply of services (goods) is a one-off transaction.

Coming back to the three stages in a chain of supplies, we find that the activity of each individual supplier of goods or services should be assessed on its merits considering the above factors. There is no doubt that a platform’s activity conducted for a consideration is economic activity. To determine the place and rate of the service, the platform operator should understand what kind of service the platform provides and to what person. A platform operator may be required to register for VAT in another member state.

We’ll soon be writing about the VAT treatment of platform operators.