

## VAT aspects of sharing economy (2) (2/25/19)

To pick up where we left off, this article explores the VAT treatment of business done by a sharing economy platform.

While we know that a platform is a trading point that brings together suppliers and consumers, the business model may vary from platform to platform. To assess the VAT treatment of a platform's business, we need to carefully examine the substance of its transactions and find out who the customer is and what kind of service the platform supplies in each situation. Remember that the VAT treatment comes into question only with any service the platform supplies for a consideration.

Depending on the extent to which the platform is involved in its transactions, its business may be treated as electronically supplied services or intermediation services. Alternatively, the platform itself may be considered to be supplying services (or goods).

### A provider of electronically supplied services

We can talk about an electronically supplied service where the platform enables a passive and sufficiently automated supply of services with minimal human involvement that cannot be supplied without using IT. In the case of an electronically supplied service, the platform has set up a system, supervises and improves its operation, but is not involved in supplying each service.

If the platform's service is considered an electronically supplied service, its operator should note that such a service, whether B2B or B2C, is treated as supplied at the customer's address. In the case of a B2C supply, the platform is responsible for paying VAT in the member state where the customer belongs. Payment should be made by registering for VAT in the member state or using the MOSS scheme.

### An intermediary

If a platform's business is to be treated as intermediation, its activities must be deliberate, significant and actively aimed at helping the supplier and the customer enter into a contract. To figure out whether the platform's business is intermediation, we need to examine all the objective circumstances of the transaction. In this case, we might check whether the platform conducts customer assessments and supplier compliance assessments and whether the platform has any influence on the price of the transaction and on the principles for supplying services. The platform's business may also be characterised by whether the consideration for its use is a fixed fee or depends on the amount of the transaction. Any transaction that takes place between the supplier and the customer largely automatically is not considered an intermediation service.

An intermediation service is treated as supplied at the place of supply of the transaction in which the intermediary takes part. For example, if the platform's service is intermediation in a transaction involving real estate, the service will be treated as supplied where that property is situated. And if the intermediary takes part in supplying an exempt (e.g. financial) service, the intermediation service will also be exempt.

### A service provider

For VAT purposes, any person that acts in supplying services on behalf of another person but in its own name is itself treated as a supplier and considered to have acquired the services from their actual supplier and supplied them on to the end customer.

We should separately assess whether the nature of transactions conducted on the platform is likely to make it appear to be providing the service offered on it. In this case, the platform's involvement in the transaction is far more significant than in the case of acting as intermediary in concluding it. In assessing the transaction, we can rely on findings the Court of Justice of the European Union (CJEU) made in its Ruling C-434/15 Elite Taxi of 11 May 2017 concerning services rendered by a taxi platform. In this ruling, the CJEU examined whether the platform is merely an electronic platform acting as intermediary or whether the platform supplies transport services. Since the platform had a decisive influence on how the drivers supplied their services, and the platform therefore exercised control over all aspects typical of transport services (pricing, safety conditions, offering vehicles, coordinating vehicle bookings, and assessing the drivers), the CJEU found that the platform itself is a transport service provider.

Also, we should assess in each situation whether the relationship between the platform and a service provider using it is consistent with an employer and employee relationship.

*(to be continued)*