

# Taxation of the Sharing Economy in Japan

## Income Taxation and Administration

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- I. Introduction (Overview)
- II. Taxing the Provider
  - 1. Type of Income
  - 2. Calculating Income
  - 3. Classification of Necessary Expenses (Distinction from Consumption)
  - 4. Maintaining Housing Loan Credits (Special Credits for Home Loans)
- III. Taxing Platform Companies
  - 1. Applying Company Tax to Fees
  - 2. Taxation Data
- IV. Administrative Issues and Possible Fixes
  - 1. Administrative Issues Related to Providers
  - 2. Establishing Withholding Obligation for Platform Companies
  - 3. Tax Return Filing Support for the Provider from the Platform Company
  - 4. Obtaining Data for Tax Agencies
- V. Conclusion

### I. INTRODUCTION (OVERVIEW)

In Japan, the sharing economy has come under scrutiny recently, and associated taxation issues are an important topic of discussion. This is closely associated with the fact that the sharing economy is a rapidly developing sector of the digital economy. Japan's Tax Commission released an interim report on 20 November 2017, discussing "the ideal form of the tax system in light of structural changes to the economy."<sup>1</sup> On page 2 of that report on promoting the digitalisation of tax procedures and personal income tax review, the commission translated the term "sharing economy" as *kyōyū-gata keizai* ("sharing-type economy"). It defined the concept as "arrangements whereby individuals are able to use the assets of others (including intangible assets such as skills), brokered online by a matching platform."

Having multiple individuals use an asset is not particularly new behavior. Since ancient times, people have borrowed and lent objects among their

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1 <http://www.cao.go.jp/zei-cho/shimon/29zen16kai6.pdf>.

friends and passed on hand-me-down clothing to those around them. However, in the current era, the development and spread of the internet has enabled strangers to connect. In the sharing economy, individuals totally unknown to each other can connect easily using smartphone apps and software. A key characteristic of the sharing economy is the effective utilization of hitherto dormant resources and labor. So, in one sense, enormous benefits accrue to society, and by capitalizing on this opportunity, some companies are growing dramatically.

Typical recent examples of the sharing economy include private lodgings, ridesharing, and flea markets. Famous company names include Airbnb (private lodgings), Uber (ridesharing), and Mercari (flea markets). Each of these companies operates as a platform in the sharing economy. New legislation (the Private Lodging Business Act)<sup>2</sup> enacted on 15 June 2018 seeks to promote the spread of sound private lodging services. One reason behind the legislation is the approaching 2020 Tōkyō Olympics. Another is the chronic hotel shortage experienced in tourist destinations such as Kyōto.

However, there are also negative aspects to the sharing economy, as typified by problems with illegal private lodgings. Even legal private lodgings may have adverse impacts on their surroundings, including on local safety and public health. Further, when a region becomes a tourist destination, this may drive up real estate prices as well as other prices, making the area unaffordable for local residents. Finally, the problem of unlicensed taxis around airports and sightseeing spots has intensified with the development of the sharing economy.

The usual parties involved in a sharing economy transaction are (a) the provider of a good or service; (b) the platform operator; and (c) the customer. In the case of using Airbnb to book a private lodging, the parties involved are (a) the person renting out a property; (b) the company, Airbnb, which provides services via its digital platform; and (c) the visitor renting the property.

This paper focuses primarily on the emerging income tax and administrative issues in the sharing economy. For example, classifying the type of income becomes an issue if the provider renting out their house for a private lodging is an individual. There are also administrative issues involved with the provider's tax filings. If the platform operator does not have a nexus within the country where the property owner is operating, there are problems related to international tax law.<sup>3</sup> Meanwhile, it is difficult to think

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2 *Jūtaku shukuhaku jigyō-hō*, Law No. 65/2017; for an overview of that Act, see the Japan Tourism Agency website; <http://www.mlit.go.jp/common/001212562.pdf>.

3 OECD, OECD/G20 Base Erosion and Profit Shifting Project “Tax Challenges Arising from Digitalisation – Interim Report 2018” Inclusive Framework on BEPS.

of the customer as being responsible for income or corporation tax in most cases (though they may in fact pay a consumption tax that is passed through by the provider).

The sharing economy is a new area that has seen rapid growth in recent years. In this research, our aim is to clarify taxation issues while delineating the features of the sharing economy. When considering international tax issues, we will refer to interim reports on the digital economy by the OECD. We will also briefly look into legislative theory in addition to interpretation theory.

For the sake of convenience, our research refers to firms such as Airbnb, which provide services over a digital platform, as “platform companies.” In this sense, the so-called GAFA group (Google, Apple, Facebook, and Amazon) are also platform companies.<sup>4</sup> From the outset, we point out that the emergence of new platform companies and their evolution in the digital economy – as well as the concentration of information therein – has the potential to radically transform the structure of the economy itself from the ground up.

## II. TAXING THE PROVIDER

### 1. *Type of Income*

#### a) *Income Classification*

Based on the comprehensive income concept, profit from renting one’s house to someone else or from driving another person in one’s own car clearly comprises taxable income. Imputed income would not be subject to tax without statutes such as Article 39 of the Income Tax Act<sup>5</sup> (inclusion in amount of gross revenue regarding inventories consumed for own use), and even though imputed rent is theoretical income, it is left untaxed for administrative reasons. However, if one does not use something oneself but instead charges others for using it, it is clearly no longer imputed rent. Given that fees are being received, the value of earnings at that time can be calculated relatively easily.

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[https://read.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report\\_9789264293083-en#page1](https://read.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-interim-report_9789264293083-en#page1).

4 See A. MCAFEE/E. BRYNJOLFSSON, *Machine, Platform, Crowd: Harnessing Our Digital Future* (New York 2017) at p. 137 mentioned “Platforms are online environments that take advantage of the economics of free, perfect, and instant.”

5 *Shotoku-zei-hō*, Law No. 33/1965.

b) *Classification as Miscellaneous Income or Real Estate Income*  
(*Opinion of National Tax Agency*)

If the provider is taxed, there are issues with type of income based on the Income Tax Act. In this regard, on 13 June 2018, the National Tax Agency (NTA) posted its opinion on Tax Answer No. 1906 (“When a salaried worker obtains supplementary income through online auctions, etc.”) in the Tax Answers section of its website. Its view was that income from transactions with individuals, including from private lodgings, internet auction websites, flea market apps, and the sale of Bitcoin and other virtual currencies, should be classified as miscellaneous income (Art. 5 Income Tax Act).<sup>6</sup>

From this, it seems doubtful that private lodging income would be considered real estate income (Art. 26 Income Tax Act). The NTA’s Tax Answers explain that private lodgings are usually accompanied by the provision of a certain level of tourism services, including hygiene and safety management for the customer. So, in this case, the income is not real estate income, but would be considered miscellaneous income, unlike simple real estate leasing.

Note that there are limits on aggregating profits and losses for miscellaneous income (Art. 69 (1) Income Tax Act). Losses incurred on sharing economy transactions such as private lodgings, internet auctions, or flea markets cannot be deducted from other types of income.

c) *Classification as Business Income or Employment Income*

Next, we turn to a possibility of business income. If a private lodging is being run as a side job rather than as one’s main business, it is more likely to be classified as miscellaneous income rather than business income. There has been a strong tendency in the court cases to date to rule that economic activities carried on outside of one’s main business (i.e., side jobs) cannot be considered “businesses” that generate business income.<sup>7</sup> The aforementioned NTA Tax Answer is premised on miscellaneous income being income received via sources such as internet auction websites, flea market apps, virtual currency sales, and private lodgings by persons who earn employment income in their main occupation. Accordingly, income earned through Mercari and Uber is generally considered to be miscellaneous income.

Under Art. 3-2 (1) Private Lodging Business Act, a “private lodging business” means one in which people other than operators as provided in the Inns and Hotels Act<sup>8</sup> have guests stay in their homes and receive lodg-

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6 <https://www.nta.go.jp/m/taxanswer/1906.htm>.

7 See H. SATŌ, *Sutandādo shotoku-zei-hō* [Basic Income Taxation] (2<sup>nd</sup> ed. revised version, Tōkyō 2018) 205.

8 *Ryokan-gyō-hō*, Law No. 138/1948.

ing fees. It also provides that the operation of the lodging does not exceed 180 days in one year as calculated according to a ministerial ordinance from the Ministry of Health, Labor and Welfare and the Ministry of Land, Infrastructure and Transport (Art. 2-3 Private Lodging Business Act). This means that the law did not anticipate private lodgings of longer than 180 days per year. This is believed to be one reason why the National Tax Agency classified private lodging business profits as miscellaneous income rather than business income.

However, even if the period of operation is within the 180-day limit, if the private lodging business is carried out for a considerable length of time as a main business rather than a side job, there remains the possibility that it may be classified as business income.

Next, we consider whether the concept of employment income applies in this case. The first potential problem related to employment income is the extent to which the provider receives instructions and orders from the platform company. There are two elements that should be considered when judging whether income is employment income: non-independence and subordination. Here the main issue is non-independence.

Recently, however, subordination has been the focus of a number of court cases. These are cases in which revenue has been set in advance to a certain extent, and there is no possibility of necessary expenditures or incurring a loss.<sup>9</sup> In this sense, it is hard to argue that the provider is a subordinate.<sup>10</sup> Accordingly, even in instances where there is a certain degree of non-independence, there is a low likelihood that it would be considered employment income.

For example, an Uber driver is responsible for paying for gasoline and car repairs by himself, but cannot necessarily always find passengers (that is, there is a possibility of loss). Accordingly, we can only conclude that an Uber driver's income does not qualify as employment income. However, even if the provider's income does not meet employment income requirements under tax laws, there remains a separate issue of whether they should be protected under labor and social security laws.

#### *d) No Filing of Return Required*

If the provider is a salaried worker, and does not have any other income from second jobs other than private lodgings or other sharing economy work, they do not have to report income from a side job if it does not ex-

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9 See SATŌ, *supra* note 7, 164.

10 See T. WATANABE, *Kyūyo shotoku gaitō-sei ni kansuru handan kijun toshite no hidokuritsu-sei to jūzoku-sei* [Non-independence and subordination as a criterion for employment income], *Zeimu Jirei Kenkyū* No. 145 (2015) 30.

ceed JPY 200,000 per year (Art.121 (1)(i) Income Tax Act). That means sharing economy profits up to JPY 200,000 would be left untaxed. However, if the income exceeds JPY 200,000, the provider is obliged to report it, even if it is earned through operating an illegal private lodging or unlicensed taxi.

## 2. *Calculating Income*

### a) *Calculating Revenue and Eliminating Information Asymmetry*

It is often the case that appropriate prices are not guaranteed in transactions between individuals due to information asymmetry. One example that highlights information asymmetry would be a television program that features individuals purchasing antiques from acquaintances that sometimes turn out to be extremely valuable and sometimes turn out to be worthless junk. Sometimes, only one of the parties knows the true value of the antique and this party leverages that into a favorable deal for themselves.

In peer-to-peer (P2P) transactions, however, information asymmetry can be largely eliminated thanks in part to platform companies in the sharing economy.<sup>11</sup> This is because platform companies provide review sections within their website or application that contain a variety of information regarding providers and customers. It is impossible to overlook rating systems in particular. On Airbnb and Uber, not only do the customers rate the providers, but the providers also rate the customers. As a consequence, those with poor ratings struggle to enter into agreements as providers and as customers.<sup>12</sup>

Accordingly, prices agreed upon using an online platform have a certain level of appropriateness and may be treated as reliable for the purpose of calculating income.

### b) *Problems with Illegal Income*

Providers in the sharing economy must of course report income, even if it comes from illegal behavior such as an unlicensed private lodging or an unauthorized taxi operation. In that sense, the Income Tax Act does not distinguish between illegal and legal income. However, it is thought that illegal income is not filed in many cases. As online platforms become easier to use due to technological developments, there may be a commensurate increase in the amount of unreported illegal activity.

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11 See A. SUNDARARAJAN, *The Sharing Economy – The End of Employment and the Rise of Crowd-Based Capitalism* (Cambridge, Mass. 2016) 139.

12 However, the question of how to eliminate malicious or false reviews remains.

While there are enforcement problems in levying appropriate taxes for services provided in the sharing economy, this issue could possibly be resolved with the cooperation of platform companies themselves. For example, in an effort to crack down on illegal private lodgings, on 19 July 2018, New York City Council voted unanimously to adopt draft regulations requiring Airbnb to disclose the names and addresses of its hosts to law enforcement agencies under the city's jurisdiction.<sup>13</sup>

Meanwhile, Japan saw a dramatic reduction in the number of properties listed on Airbnb's website following the enactment of the Private Lodging Business Act, which prohibited the listing of illegal private lodgings by platform operators. This led to a large and immediate drop in the company's profits. According to some reports, listings for Airbnb properties in Japan fell from a peak of 62,000 in the spring of 2018 to 27,000 as of 15 June, following the introduction of the new law.<sup>14</sup>

This dramatic reduction does not mean that all illegal private lodgings were eliminated, however. Some previously listed properties merely went underground and became black-market private lodgings instead. One way to prevent illegal private lodgings and the failure to report the illegal income they generate would be to require some sort of action (such as withholding) to be taken by the platform companies or to seek their cooperation in some manner, rather than expecting a law-abiding spirit from customers and providers.

### 3. *Classification of Necessary Expenses (Distinction from Consumption)*

If a provider's income is classified as miscellaneous income, the deduction of necessary expenses is allowed (Art. 35 (2) (ii) Income Tax Act). The issue here is scope of application. For example, in a private lodging situation, the host also uses the furniture and electronic appliances in a room when they are not renting the property out to a customer or if they are sharing the space when renting a private room only. If this is theoretical consumption, it does not count as necessary expenses. Art. 96(1) Order for Enforcement of the Income Tax Act<sup>15</sup> (under Art. 45(1) (i) Income Tax Act) can be used to determine whether expenses are applicable or not. The law states that expenses are applicable "if the main portion of domestic expenses is [...] necessary to carry out work to produce miscellaneous income, and the necessary portion can be clearly distinguished."

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13 K. HONAN, New York City Council Passes Bill to Regulate Airbnb, Wall Street Journal (digital version), 19 July 2018.

14 "Illegal Private Lodgings Avoid the Law," Nihon Keizai Shinbun, 22 June 2018, morning edition, p. 2.

15 *Shotoku-zei-hō shikkō-rei*, Cabinet Order No. 96/1965.

As to the issues of private lodging-related expenses, on 13 June 2018, the National Tax Agency published tax information relating to income generated from private lodging businesses regulated under the Private Lodging Act. Page 3 of the release discusses expenses that contain both a business portion and a day-to-day living portion, such as utilities charges and property taxes.<sup>16</sup> It states that only the amount relating to the private lodging business (business-related expenses) may be considered necessary expenses. It added that such expenses must be calculated after distinguishing them in a rational manner.

Similar considerations apply to ridesharing. If expenses such as vehicle depreciation, gas, parking, cleaning, and collision insurance can be distinguished from household expenses in a rational manner, they may be considered necessary expenses.

In practice, however, how to rationally distinguish expenses remains a major issue. If a good or service is purchased exclusively for a private lodging or for ridesharing and is not used for other purposes, it should be able to be classified as a necessary expense.<sup>17</sup> However, in many cases the provider also uses a product or service simultaneously and so expenses cannot be “clearly distinguished” as set forth in Art.96 (1) Order for Enforcement of the Income Tax Act. One possible future solution might be for the platform company to develop and provide software that could automatically make such a rational distinction based on some predefined parameters.

The case of online flea markets is slightly different. When assets for sale are movable household products, they are not considered taxable under Art.9 (1) (ix) Income Tax Act and Art.25 Order for Enforcement of the Income Tax Act. For this reason, losses are not deductible under Art.9 (2) (i) Income Tax Act. For sale proceeds to be classified as miscellaneous income, the object must have been purchased solely for the purpose of selling it in a flea market (i.e. for resale). In this case, expenses clearly distinguishable from household expenses – for example, transport and communications expenses incurred exclusively in purchasing the product, and expenses to store and ship the product – may be deducted as necessary expenses. Although such expenses may accumulate and ultimately result in a loss, because they are related to miscellaneous income, they are not deductible from other types of income, as previously mentioned.

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16 NATIONAL TAX AGENCY, <http://www.nta.go.jp/law/joho-zeikaishaku/shotoku/shinkoku/0018005-115/0018005-115.pdf>.

17 For example, in ridesharing, it should be possible to allocate gas and vehicle depreciation based on mileage traveled with passengers.



#### 4. *Maintaining Housing Loan Credits (Special Credits for Home Loans)*

If one's home is used for a private lodging business, the use of home loan credits provided under Article 41 of the Act on Special Measures Concerning Taxation (arrangements for income tax credits based on the loan balance at year-end) should arguably be limited. However, these arrangements originally applied to dwellings under Article 26 (1) of the enforcement order of the Act on Special Measures Concerning Taxation as "limited to cases where at least one-half of the floor space is used exclusively as a residence." Based on this, the rule allows home loan credits, even if a portion of floor space is not used as a residence.

Accordingly, tax credits may be applied even if the owner is a private lodging operator as long as all the following requirements are met: In addition to the aforementioned condition that one-half of the floor space must be used for residential purposes, the other requirements include use of the dwelling for residential purposes within six months of the date of construction or acquisition; continuous residence in the dwelling until 31 December of each applicable year; aggregate income of less than JPY 30 million in the year of credit; and floor space of at least 50m<sup>2</sup> in the newly built or acquired residence. In fact, Mizuho Bank announced that it would start offering home loans for private lodging residences as of 29 November 2018.

### III. TAXING PLATFORM COMPANIES

#### 1. *Applying Company Tax to Fees*

The main revenue of platform companies seems to be fees charged to providers and customers, as well as payments made by the providers to post ads on platform websites. This is undoubtedly gross revenue for the platform company. Meanwhile, all costs incurred to build websites and install servers, personnel expenses and so on are claimed as gross expenses.

However, many platform companies are small and the sharing economy is still in the startup stage as it involves economic activities in many new fields. Uber and Airbnb began life as startups on the West Coast of the United States. Mercari, which was recently listed on the Tōkyō Stock Exchange, was also launched as a startup.

In order to grow, IT-related platform companies need to capture a larger market share to take advantage of network effects in the IT market.<sup>18</sup> The sharing economy is no exception. Establishing a superior market position for platform companies requires a great deal of investment in the initial stages, and it is difficult to generate profits until the company matures and

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<sup>18</sup> See SUNDARARAJAN, *supra* note 11, 117.

has sufficient market share. That is, except for a few major companies, we cannot yet expect much corporate tax revenue coming from platform companies in the sharing economy.

However, platform companies tend to grow rapidly once they establish their position in the market (this is one major reason why they spend heavily on marketing in the initial stages). Still, IT companies do not generally hold a great deal of tangible assets, so it is easy for them to move their operations overseas.<sup>19</sup> Even if they continue to operate in the domestic market, platform companies can easily connect with both providers and customers using software on smartphones and other devices. As such, there is no need to retain a physical presence such as a branch.

This gives rise to a problem – taxes cannot be levied in Japan without a PE (permanent establishment). This problem is not confined to the sharing economy. Taxing platform companies in the digital economy is a major issue across industries.<sup>20</sup> There are current efforts underway to create some sort of resolution for indirect taxes by introducing reverse charges and registration systems,<sup>21</sup> but based on current OECD discussions on the topic, there is still no international consensus on how to deal with direct taxes.<sup>22</sup>

## 2. Taxation Data

Data and user participation are extremely important elements for platform companies in the digital economy. The more customers that use a company's software, the greater the amount of data that will be generated, which can also be used for business purposes. For example, platform companies can gain insights into consumer preferences and behavior from those who use their software, and then use this to improve their services. In this situation, such user data appear to be collected free of charge. However, software charges may be commensurately cheaper than expected because of the value companies place on user data.

This is similar to the arrangement whereby Google provides search software free of charge and in turn acquires user data. Because personal data are automatically uploaded into the system, when a user searches for a certain product, ads for similar products later appear on the user's computer screen. Similarly, when customers use Gmail and other free email services,

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19 See SUNDARAJAN, *supra* note 11, 163. See also S.-Y. OEI/D. M. RING, Can Sharing Be Taxed?, Wash. U. L. Rev. 93 (2016) 989.

20 For the sharing economy, see OECD, *supra* note 3, at Chapter 7, "Special feature – Beyond the international tax rules: The impact of digitalisation on other aspects of the tax system."

21 See NATIONAL TAX AGENCY, *supra* note 16, 9.

22 See OECD, *supra* note 3, Chapter 5.

this enables the collection of user data in some cases. Even assuming individual bits of data themselves do not have much value, they come to have value after accumulating in vast amounts as so-called big data. Analyzing these stores of data and manipulating them can further increase their value.

In this case, the issue is whether or not it is appropriate to tax information obtained from users. If services are being provided for free or at low prices because user data are valuable, a kind of barter transaction is taking place and should be subject to taxation. However, the problem is determining at what stage the value of such data is generated. Individual bits of information are not valuable by themselves, but they do start to gain value after they are collected, aggregated, analyzed, and processed. Arguably, there is no profit to the company at the data acquisition stage. Further, from the viewpoint of international taxation, the issue is whether tax is appropriately levied in the jurisdiction where the value is generated.<sup>23</sup>

#### IV. ADMINISTRATIVE ISSUES AND POSSIBLE FIXES

##### *1. Administrative Issues Related to Providers*

Even if the provider clearly generates income, they may not file a tax return, or they may not report the correct income if they do file a return. As mentioned previously, in many cases the provider participates in the sharing economy as a side job. It is quite conceivable that they are also salaried worker who has not previously run a side business, and that they have no experience in preparing tax returns, or lack sufficient knowledge to do so. Further, even if they are aware that they may need to file a return, they still may not do it as it may be bothersome to investigate how to calculate revenue and necessary expenses. This means that the tax authorities must first conduct publicity campaigns so that there is greater general awareness of the duty to file tax returns in these situations.

In the sharing economy, individual transactions between providers and customers are small but numerous. Further, because these are peer-to-peer transactions, it is difficult for the tax agencies to obtain information on each transaction.

Accordingly, even if the provider does not file a return, or if they are thought to have reported less than they should have, the information needed to calculate the appropriate income to deal with the matter may be lacking.

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23 See OECD, *supra* note 3, 166 and 171. See also M. DEVEREUX/J. VELLA, Taxing the Digitalised Economy: Targeted or System-Wide Reform?, *British Tax Review* 2018, 387, 390; I. GRINBERG, User Participation in Value Creation, *British Tax Review* 2018, 407; C. ELLIOT, Taxation of the Sharing Economy: Recurring Issues, *Tax Notes Int'l* 90 (2018) 91.

Also, there are many providers who also need to pay taxes, and because each individual's income is small, dealing with them all might be inefficient as there are few incentives for the tax authorities to take action.

However, the difficulty mentioned above does not mean that this issue can be left alone. This is because the sharing economy is growing steadily and becoming a larger and larger part of the overall economy.

## 2. *Establishing Withholding Obligation for Platform Companies*

In contrast with the tax authorities' lack of information, platform companies collect data on providers and customers. Data can be a source of profits for platform companies, so they try to have their apps and software used as much as possible. In some cases, they cut fees and other service prices dramatically in order to establish market dominance, as mentioned previously. The structure of the current digital economy means that heavily used platform company products collect vast amounts of information.

There are no direct monetary transactions between providers and customers in the sharing economy; these transactions take place through the platform company. The platform companies have not only data on transactions, but also knowledge of their flows.

One legislative proposal would be to have the platform company somehow involved in the provider's tax returns, which could yield large efficiency gains for the tax collection administration. For example, there could be a requirement to withhold the provider's income tax payments and to submit legal records.

One drawback to this idea is that it would be difficult to get the assent of a platform company with an obligation unilaterally placed upon it, as it would simply see an increase in costs. Another issue is that online payments are considered a civil contract between provider and customer, so it is questionable whether it is appropriate to make the platform company liable for withholding tax, as it is not a direct party to the agreement. Further, in some cases the provider may incur losses, and may be unable to file a tax refund return if they lack the ability to calculate the appropriate income.

That said, the platform companies already have to manage all of their customers' electronic information, so the actual costs involved in withholding taxes should not be too onerous. The civil contract format is important. However, withholding tax from listed company dividends, for example, is not the responsibility of the dividend payer but of the company handling them (stockbroker etc., Art.9-3(2) Act on Special Measures Concerning Taxation).<sup>24</sup> Further, final income may be negative in some cases for remuneration

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<sup>24</sup> *Sozei tokubetsu sochi-hō*, Law No. 26/1957.

under Art. 204 Income Tax Act, so an inability to file a return is not an acceptable reason to reject withholding tax arrangements. Accordingly, requiring platform companies to withhold tax is not entirely impossible, but whether this is desirable for the platform companies is another matter.

In fact, trials to collect accommodation taxes via Airbnb are taking place worldwide.<sup>25</sup> Initially, accommodation taxes in Japan (local taxes) applied only to stays at hotels and ryokans, and the companies collected them directly. However, accommodation taxes are increasingly being levied on private lodgings. For example, on 1 October 2018, the Kyōto City government introduced accommodation taxes to be collected from all types of guests – not just hotel customers. When the city of Kyōto was drafting this ordinance, the concept was for agents such as Airbnb to display all charges for customers, including taxes. Fees paid by the guests would include an accommodation tax portion to be paid specifically to the city.<sup>26</sup> The actual ordinance indicated that the entity with special collection obligations would be the operator of the ryokan or private lodging, with a supplementary resolution to “encourage private lodging agents and other third parties able to collect and pay the accommodation tax,” according to Kyōto City’s website.<sup>27</sup>

### 3. *Tax Return Filing Support for the Provider from the Platform Company*

Even if it is possible to revise the law and make platform companies responsible for withholding tax, if this increased requirement drives them overseas, not only will there be problems collecting income tax from the provider, but Japan will lose out on corporate taxes paid by the platform companies. A more moderate method would be to promote reporting directly by the taxpayer, which we explore below.

There is an idea that involves the platform company supporting the taxpayer in filing returns. Assuming that the provider properly files tax returns, platform companies can assist taxpayers unfamiliar with the process of preparing returns as part of customer support. This would make it unnecessary to unilaterally implement obligations such as withholding tax collection. There are many possible forms of support, but the most useful would entail providing the provider with the platform company’s digital data regarding the taxpayer in a format useful for tax returns.

For example, it may be possible to generate individualized tax returns with numbers already input with the help of tax accountants. As taxpayer data are likely to be kept by the platform company internally in digital form,

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25 See SUNDARARAJAN, *supra* note 11, 155.

26 “Expanding Sharing Economy, Easy to Pay Tax”, Nihon Keizai Shinbun, 17 October 2017, morning edition, p. 5.

27 <http://www.city.kyoto.lg.jp/gyozai/page/0000236942.html>.

they would be possible to communicate with the taxpayer via email, smartphone apps, and other such means. Thus, it should be possible to fulfill these duties at a cost acceptable to the platform companies.

Certainly there will be costs involved. However, as it is the taxpayer (provider) who faces trouble if they fail to report, they may prefer to work with platform companies that provide tax return filing assistance. Providing tax support services may also enhance their public image, which is not such a bad idea for the platform company either. This is an incentive to platform companies not required to collect withholding tax. The OECD's interim report also points out the importance of educating taxpayers not familiar with tax reporting so they can improve self-reporting successfully.<sup>28</sup>

#### 4. *Obtaining Data for Tax Agencies*

If the tax agencies are able to obtain a certain amount of tax-related data on the provider, and the provider is aware of this fact, it may encourage voluntary reporting.<sup>29</sup> The platform companies hold the information, so arrangements enabling the exchange of information between the tax agencies and platform companies would solve several of the administration's reporting problems as discussed thus far.

However, if providing information to the tax agencies is based on the thinking that it should be there as a backstop for voluntary reporting by the taxpayer, it may be problematic to create arrangements that provide all information automatically to the tax agencies without the taxpayer's consent. One principle of this system should be that the platform company provides tax agencies individual pieces of information at the agencies' request, and that taxpayers are informed if this occurs.

Recently, the Japan Tourism Agency has set up a private lodging management system. It collects and passes on certain data to relevant government agencies provided by private lodging operators who use the system.<sup>30</sup> Accordingly, there is no need to get the provider's approval on every occasion when providing information from the system. Regarding this point, the Ministry of Finance explains in the document "Data Collaboration Relating to Private Lodging Business" that regular reports on the length of stay and number of visitors, in addition to the names and addresses on applications and notifications, are to be additionally collected.<sup>31</sup>

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28 See OECD, *supra* note 3, 198.

29 *Id.*

30 <http://www.mlit.go.jp/common/001225038.pdf>.

31 [http://www.cao.go.jp/zei-cho/gijiroku/zeicho/2018/\\_icsFiles/afieldfile/2018/10/16/30zen18kai1-1.pdf](http://www.cao.go.jp/zei-cho/gijiroku/zeicho/2018/_icsFiles/afieldfile/2018/10/16/30zen18kai1-1.pdf).

## V. CONCLUSION

In the sharing economy, individuals share assets rather than simply owning them. A paradigm shift is underway – from ownership to usage. Individuals will be included in the sharing economy as both providers and customers. Smartphones and matching apps have facilitated and revolutionized the peer-to-peer economy. The cost of connecting individual with individual has declined to nearly zero.

The perspective of providing services has become important for companies that have supplied assets in the past – but they cannot continue to rely on selling assets alone. Toyota has a long history of manufacturing and selling cars, but now has its eye on service provision, including car sharing, ride-sharing, and autonomous driving services. It has linked up with an IT firm, Softbank, as part of a corporate strategy aimed at surviving the current paradigm shift.<sup>32</sup> In this era, the focus has shifted from an asset called the automobile to a service called movement.<sup>33</sup>

A future point of discussion will likely be the taxation information held by platform companies. However, it is not easy to develop rules that all countries worldwide will accept. Today, approaches to thinking about the digital economy and data differ from one country to the next.<sup>34</sup>

The ways in which we work will also change in parallel with the rapid development of the sharing economy. In this process, problems related to income gaps, social security, labor disputes, and privacy will emerge in different forms than existed in the past. Tax problems associated with these will also take on new forms. The ideal form of crowd-based capitalism<sup>35</sup> as symbolized by peer-to-peer transactions is an issue for future discussion.

## SUMMARY

*This paper focuses primarily on the emerging income tax and administrative issues in the sharing economy, such as private lodgings, internet auctions, and flea markets.*

*On 13 June 2018, the Japanese National Tax Agency posted its opinion that when salaried workers obtain supplementary income from sharing economy transactions, this should be classified as miscellaneous income (Art. 35 Income Tax Act) and losses incurred on those transactions cannot be deducted from other types of income (Art. 69 (1) Income Tax Act). However, if such salaried*

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32 “Toyota Changing”, Nihon Keizai Shinbun, 6 October 2018, morning edition, p. 7.

33 See N. TSUYUKI, “MaaS (Mobility as a Service)”, PRI Review No. 60 (2018) 2.

34 See OECD, *supra* note 3, Chapter 5.

35 See SUNDARARAJAN, *supra* note 11, 105.

*workers do not have any other income from second jobs apart from sharing economy work, they do not have to report income from a side job if it does not exceed JPY200,000 per year (Art. 121 (1)(i) Income Tax Act).*

*For platform companies there are other issues, especially concerning the taxation of data. The problem is determining at what stage the value of such data is generated. Individual bits of information are not valuable by themselves, but they do start to gain value after they are collected, aggregated, analyzed, and processed. Further, from the international tax viewpoint, the issue is whether tax is appropriately levied in the jurisdiction where the value is generated.*

*There are also administrative issues. Even if the provider (host) of sharing economy services clearly generates income, they might not file a tax return. One legislative proposal would be to have the platform company somehow be involved in the provider's tax returns, which could yield large efficiency gains for the tax administration. For example, there could be a requirement to withhold the provider's income tax or there could be an idea that involves the platform company supporting the taxpayer in filing returns.*

#### ZUSAMMENFASSUNG

*Die neu aufkommenden Einkommensteuer- und Verwaltungsfragen in der Sharing Economy, wie z. B. Vermietung von Privatunterkünften, Internetauktionen oder internetbasierte Flohmärkte, stehen im Vordergrund dieses Beitrags. Am 13. Juni 2018 veröffentlichte die japanische Steuerbehörde eine Stellungnahme zu zusätzlichen Einkünften aus der Sharing-Economy, wonach die Einkünfte eines Arbeitnehmers aus Transaktionen der Sharing-Economy als sonstige Einkünfte einzustufen sind (Art. 35 Einkommensteuergesetz) und Verluste, die bei solchen Transaktionen entstehen, nicht von anderen Einkommensarten abgezogen werden dürfen (Art. 69 Abs. 1 Einkommensteuergesetz). Wenn aber ein Arbeitnehmer abgesehen von Einkünften aus der Sharing-Economy kein weiteres Einkommen aus Nebentätigkeiten hat, besteht für ihn keine Pflicht, Einkünfte aus der Sharing-Economy zu melden, solange dieses Einkommen eine Obergrenze von JPY 200.000 pro Jahr nicht überschreitet (Art. 121 Abs. 1 (i) Einkommensteuergesetz).*

*Bei Plattformunternehmen gibt es eine weitere Problematik, insbesondere bezüglich der Besteuerung von Daten. Hier besteht die Schwierigkeit darin, festzustellen, zu welchem Zeitpunkt der Wert solcher Daten erzeugt wird. Einzeldaten haben zwar an sich keinen Wert, aber bei der Datenerhebung, -aggregation, -analyse und -verarbeitung gewinnen sie an Wert. Außerdem ergibt sich aus Sicht der internationalen Besteuerung die Frage, ob die Steuer in dem Land, in dem der Wert erwirtschaftet wird, angemessen erhoben wird.*



*Es bestehen ferner Fragen bezüglich einer effizienten Ausgestaltung des Verfahrens. Selbst wenn der Anbieter (Host) von Dienstleistungen der Sharing-Economy eindeutig Einkommen generiert, kann es sein, dass er keine Steuererklärung abgibt. Ein Gesetzgebungsvorschlag wäre, das Plattformunternehmen zur Mitwirkung an der Steuererklärung des Anbieters zu verpflichten, was zu großen Effizienzsteigerungen für die Steuerverwaltung führen könnte. Beispielsweise könnte das Plattformunternehmen dazu verpflichtet werden, die Einkommenssteuer des Anbieters einzubehalten, oder das Plattformunternehmen könnte dem Anbieter beim Einreichen der Steuererklärungen Unterstützung bieten.*

*(Die Redaktion)*