

The Collaborative Economy and VAT/Consumption Tax

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I. INTRODUCTION

According to *The White Paper on Information and Communications 2017*¹ issued by the Ministry of Internal Affairs and Communications of Japan, the sharing economy/collaborative economy is defined as follows:

“[The] sharing economy represents economic vitalization activities to allow assets owned by consumers to become available for others through Internet matching platforms. These assets include skills, time and other intangibles.”²

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1 See, *the White Paper*; Section 2 of Part 1. The English version is available at <http://www.soumu.go.jp/johotsusintokei/whitepaper/eng/WP2017/2017-index.html>.

In the White Paper, the sharing economy is organised into five categories: goods (e.g. flea market apps, car rental services), space (e.g. accommodation using vacant housing), skills (e.g. housekeeping, child care), transportation (e.g. using a car to transport others) and money (e.g. crowd funding).

The sharing economy that the White Paper refers to reflects typical patterns but does not encompass all manifestations; accordingly, the sharing economy needs to be understood as much wider and more varied. The European Parliament's document titled "The Collaborative Economy and Taxation: Taxing the Value Created in the Collaborative Economy" (February 2018)³ portrays various dimensions of the collaborative economy/sharing economy. The sharing economy/collaborative economy uses not only durable consumer goods (e.g. cars, apartments), but also non-durable consumer goods (e.g. food in general) or investment goods (e.g. machines), and its purpose is both commercial and non-commercial.

Furthermore, transactions in the sharing economy/collaborative economy are not only B-to-B transactions or B-to-C (Business to Consumer) transactions, but also peer-to-peer (hereinafter "P-to-P") transactions. Among all these transactions, P-to-P transactions present the most difficult issues for taxation.

A main theme in this paper is VAT/consumption tax on P-to-P transactions in the sharing economy/collaborative economy, in that the governing tax system cannot keep up with the rapid expansion of this modern economy. In Japan, the term "sharing economy" is usually used, but in Europe, the term "collaborative economy" is generally used.⁴ In this paper, the term "collaborative economy" will be used.

II. THE POINTS OF ISSUE FOR THE COLLABORATIVE ECONOMY

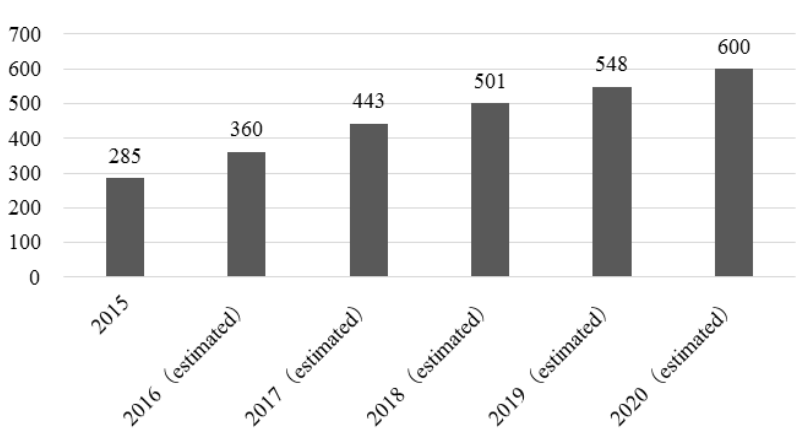
1. *Cannibalisation of Traditional Businesses*

According to the Yano Data Bank figures presented below, the market size of the collaborative economy in Japan has been growing. The size in 2020 is estimated as reaching a magnitude of more than twice that of 2015.

2 [http://www.europarl.europa.eu/ReData/etudes/IDAN/2018/614718/EPRS_IDA\(2018\)614718_EN.pdf](http://www.europarl.europa.eu/ReData/etudes/IDAN/2018/614718/EPRS_IDA(2018)614718_EN.pdf)

3 The document was prepared by the European Parliamentary Research Service (EPRS) in order to assist the members/staff of the European Parliament in their parliamentary work.

4 The sharing economy is also called the "gig economy" or the "1099 economy". The latter draws its name from the 1099-MISC Internal Revenue Service form used in the USA.

Figure 1: Market Size of the Collaborative Economy in Japan

Source: Yano Data Bank (2016), cited in the Ministry of Internal Affairs and Communication's White Paper on Information and Communication 2018 (reproduced by the author)

However, the drastic growth of the collaborative economy has been creating a number of serious inequalities for traditional business models relative to modern ones.

Airbnb has been growing in part due to its enjoying a greater advantage in setting prices for users as compared to traditional hotel groups – because homes/rooms through Airbnb are cheaper than staying in traditional hotels.⁵ Traditional hotels have to pay tax (i.e. corporate tax or VAT) and also incur costs to comply with legal regulations on disabled access and fire safety. By contrast, providers of homes/rooms through Airbnb need not do so. According to Morgan Stanley, 49% of Airbnb users in the US, UK, France and Germany had replaced an intended hotel stay with a stay booked through Airbnb. This phenomenon is called the “cannibalisation of traditional hotels”.

For instance, in London, the price of a typical hotel room includes VAT and property tax. However, providers operating through Airbnb rarely pay VAT, and they need not pay property tax unless their revenues are more than £8,000 per year. According to the Hotelschool report, a guest staying at a hotel room in 2015 paid on average \$220 plus \$44 (taxes); however a user booking a similar room through Airbnb paid \$142 plus \$22 (Airbnb fee).

Regarding these price differences, Airbnb suggests that it is misleading to compare Airbnb hosts who share a spare room with hotels which have

5 See V. HOULDER, Airbnb's edge on room prices depends on tax advantages, *Financial Times*, 3 January 2017.

200 rooms and high occupancy rates. Also, they insist that the overwhelming amount of money generated through Airbnb stays with hosts and their communities; further, they argue that the Airbnb model is unique and empowers regular people, boosts local communities and is subject to local tax. However, it can be observed that Airbnb's latest funding round amounted to \$30 billion; a figure not so different from Marriott International's market capitalisation of \$34 billion.

2. *Responsibilities of Platforms*

In traditional businesses, two actors (a seller and a buyer) are distinguished relatively clearly. The collaborative economy, on the other hand, comprises three actors; providers, users and platforms.⁶ Moreover, providers and users can be frequently or quickly changed. With regard to this flexibility and the blurred line between two of the actors, the neologism "prosumer (provider + consumer)" has been coined.⁷ In the new economy which is operated by such prosumers, it is often difficult to know which transactions have been carried out between providers and users. In order to grasp the details of transactions for the purposes of fair taxation, it is necessary to take the responsibility of each of the three actors into consideration.

Firstly, *providers* share their assets, resources, time or skills with users. They may be non-professional or professional. They should be well qualified, comply with legal regulations and maintain a good environment for their employees (if any) in the same way as done by traditional businesses.

Secondly, *users* consume services provided as end-users or non-end users. They should understand the rules which are understood by consumers in general before their purchases (i.e. rules of safety or claims for goods and services they purchase).

Thirdly, *platforms* connect both providers and users via internet technology. They match the supply of providers and the demand of users and facilitate payment from users to providers. Platforms play the most important role of the three actors because they can collect detailed information from both providers and users (i.e. name, address, age, occupation, hobbies and sensitive information such as personal preferences or health conditions). They can not only keep the information but also transfer it to third persons. Consequently, platforms have the responsibility of registering and maintaining the information properly. They are also responsible for knowing how much money (including virtual money) is paid by users to providers.

6 On these actors, see *The Collaborative Economy and Taxation: Taxing the Value created in the Collaborative Economy*, *supra* note 3, at 8.

7 *Ibid.* at 4.

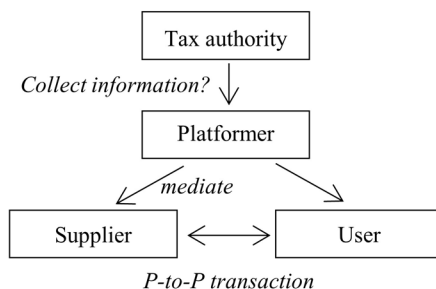
On the other hand, platforms have generally no obligation to provide the information collected from providers and users to a third person, especially to the government for a criminal or tax investigation. Operators in the collaborative economy prefer departing from the existing legal framework and tend to regard their business as reflecting a unique model.⁸ However, the platforms comprising such a brand-new business variety should comply with the standards of company social responsibility (CSR), as done by traditional businesses, if their activities generate profits in the society they belong to.

III. THE COLLABORATIVE ECONOMY AND VAT

1. P-to-P Transactions and VAT

One of the most serious issues for VAT as regards the collaborative economy is P-to-P transactions, as it is very hard for a tax authority to know how often the parties conduct transactions or how much money a provider receives from a user. Even if such a provider earns money in the same manner as a business person, he/she will usually not pay VAT as a taxable person.

Figure 2: Collaborative Economy Triangle



Source: author's elaboration

In the triangle (platform/provider/user) of the collaborative economy (Figure 2), only a platform knows the detailed information regarding the transaction (e.g. identities of both the provider and the user, content and price of the transaction). However, a platform is not required to report such information to a tax authority unless there are legal reporting obligations. In this context, there are three points to be considered:

- (a) Can P-to-P transactions be taxed? Namely, can a provider be regarded as a taxable person in terms of VAT?

⁸ See HOULDER, *supra* note 5. Platforms are generally reluctant to cooperate with state authorities; rather, they try to free themselves from them.

- (b) If (a) is answered in the affirmative, can the provider deduct input taxes?
- (c) When a P-to-P transaction is a barter transaction, can the transaction nevertheless be taxed? How can the consideration for the transaction be measured?

2. *Can a Provider of P-to-P Goods/Services be a Taxable Person?*

When the amount a provider receives from a user exceeds a certain threshold, the provider basically becomes a taxable person who is obliged to report and pay VAT, and at the same time he/she has a right to deduct input taxes.

As for the threshold in Japan, a business person whose taxable sales in the base period⁹ are not more than 10 million Yen (ca. 7,719 Euros) is exempted from VAT in the taxable period (Art. 9 of the Consumption Tax Act¹⁰).

On the other hand, in the EU the threshold is relatively low (except for the UK where it is ca. 97,382 Euros). The lowest threshold is 10,000 Euros (Estonia, Greece, Spain, France, Italia, Latvia, Luxemburg, Hungary, Malta, Netherlands, Portugal, Slovenia and Finland). In Germany, it is 12,500 Euros. When a business person realises taxable sales exceeding the threshold, he/she becomes a taxable person. Every taxable person is identified by an individual number (VAT identification number, Art. 214 VAT Directive).¹¹ In the EU, the VAT Directive defines “taxable persons” as “any person who independently carries out in any place any economic activity, whatever the purpose or result of that activity” (Art. 9, para. 1, VAT Directive). Under the VAT regime in the EU, a taxable person can be recognised both formally (by VAT identification number) and substantively (by his/her activity). In the Consumption Tax Act in Japan, there is no substantive definition of a taxable person.¹²

IV. JAPANESE CONSUMPTION TAX AND THE COLLABORATIVE ECONOMY

1. *Features of the Japanese Consumption Tax*

The Japanese consumption tax, which was introduced in 1989 at the rate of 3%, has been often called “a unique VAT”.¹³ The notable features of the

9 The base period means the two years prior to the taxable year for a business person.

10 *Shōhi-zei-hō*, Law No. 108/1988.

11 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

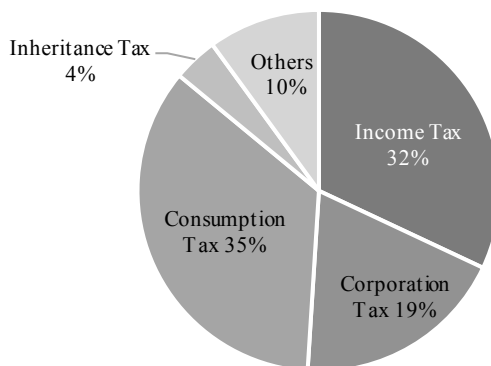
12 The Act merely prescribes that a taxable person is an individual business person or a corporation (Art. 2 para. 1).

13 For an outline of the Japanese Consumption Tax, see K. KIMU/Y. NISHIYAMA, Japan, in: Ecker/Lang/Lejeune (eds.), *The Future of Indirect Taxation: Recent*

Japanese consumption tax, which can influence taxation on the collaborative economy, are as follows:

- (a) The single and relatively low tax rate has been maintained for thirty years. However, the tax rate will increase from 8% to 10% (including the local consumption tax¹⁴) with a reduced tax rate of 8% in October 2019.
- (b) Taxable persons are not subject to a registration system analogous to the VAT identification number in the EU, nor is there a tax invoice requirement for the input tax deduction. However, identification numbers and a tax invoice as a requirement for the input tax deduction will be introduced in 2023.
- (c) Revenue from the consumption tax ranks first, outpacing both the income tax and the corporate tax. (See, Figure 3)
- (d) The Japanese consumption tax is relatively efficient from a global perspective. (Figure 4)

Figure 3: Tax Revenue in Japan, 2016 FY (ca. € 504 billion)



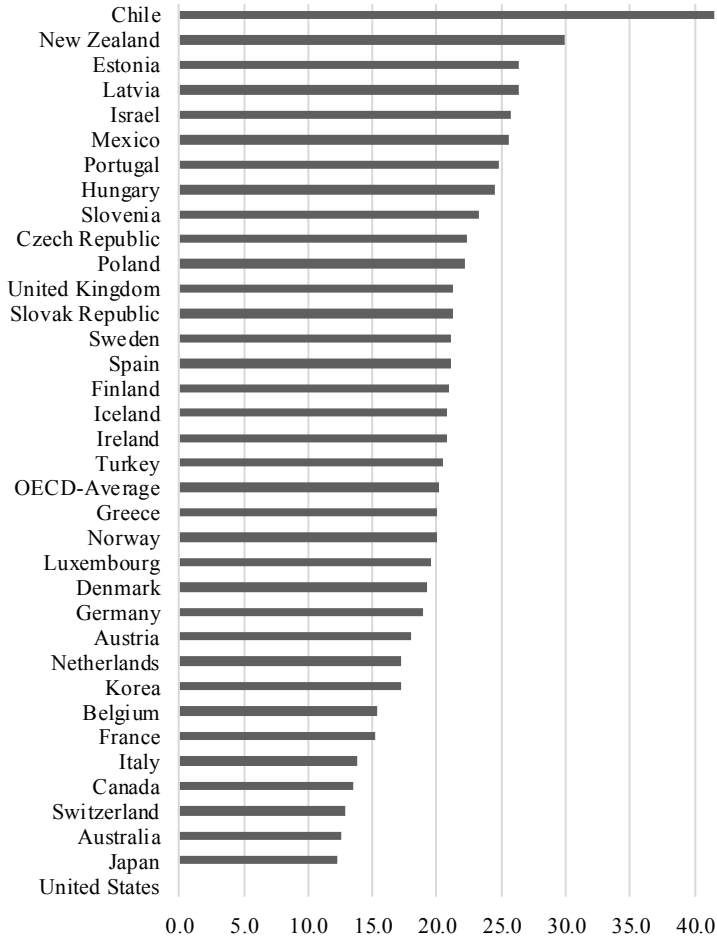
Source: National Tax Agency statistics (2018)¹⁵

Trends in VAT and GST Systems Around the World (Alphen aan den Rijn 2012) 213–237.

14 The current local tax rate is 6.3% and will increase to 7.8% after 1 October 2019.

15 https://www.nta.go.jp/publication/statistics/kokuzeicho/gaiyo2016/pdf/01_sozei.pdf (English and Japanese versions).

Figure 4: 2014 VAT Revenue Ratio in OECD Countries



Source: OECD (2016)¹⁶

2. Two Issues Regarding the Japanese Consumption Tax in the Collaborative Economy

When¹⁶ we think of how the Japanese consumption tax can be implemented in the collaborative economy, we have to take two points into consideration.

¹⁶ OECD, Consumption Tax Trends 2014 (<http://dx.doi.org/10.1787/888933419914>), published 2016.

Point 1: How can the status of a collaborative economy provider be identified under the current system in which there is no VAT-identification number?¹⁷

Point 2: Does a taxable transaction exist when the consideration for the transaction between a provider and a user is paid not in cash but by goods/services (a barter transaction)?

a) Identification of Provider Status

Most of the collaborative economy providers supply goods/services at a value under the tax threshold (10 million Yen in the base period); therefore they are not taxable persons for the purpose of VAT/consumption tax. However, a non-professional provider who acts in the same way as a professional business person is required to pay VAT as a taxable person when taxable amounts exceed the threshold. As there is no objective registration requirement for a taxable person in the Japanese Consumption Tax Law, such as in the VAT Directive in the EU,¹⁸ it is not easy to identify a provider as a taxable person.

b) Barter Transactions

There is no provision regarding barter transactions in the Consumption Tax Law, but Art. 45 Sec. 2 No. 4 of the Enforcement Order for the Consumption Tax Law¹⁹ provides that the market price of acquired goods/services is regarded as a taxable amount in calculating the consumption tax.

However, when such a market value cannot be measured objectively, or when there is a substantial difference in value between supplied goods/services and acquired ones, a taxable amount cannot be calculated and cannot be taxed. In regards to this, there is an argument in Germany as to what value will be the taxable amount when a supplied Good A is much cheaper than an acquired Good B.²⁰ In this situation, taxation should be implemented with reference to the value of Good B because VAT/consumption tax is generally understood as taxation on an ability of consumption; accordingly, what is important is how much a consumer (a user in the collaborative economy) consumes.

17 In Japan, the VAT tax rate will increase from 8% to 10% (inclusive of the local consumption tax) in 2019, and VAT invoices and the registration of taxable persons will be introduced in 2023.

18 Article 9 of the Directive provides “Taxable person shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity”.

19 *Shōhi-zei-hō shikkō-rei*.

20 R. BUNJES et al., *Umsatzsteuer Kommentar* (17th ed., 2017) § 10 Margin Note 4.

V. THE ACTION PLANS IN THE OECD/ EU

In order to create an efficient and feasible VAT system for the collaborative economy, it is necessary to survey the action plans on VAT in the OECD and the EU, which both have been leading the way in setting VAT tax policy.

1. *The OECD Action Plan 1 (2015)*

In 2015, the OECD released the report *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report*.²¹ In the foreword, the report identifies weakness in current tax rules as follows:

“International tax issues have never been as high on the political agenda as they are today. The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.”

In order to tax value fairly where it is generated, the TFDE (Task Force on the Digital Economy) concludes as follows:

“The collection of VAT/GST [Goods and Services Tax] on cross-border transactions, particularly those between businesses and consumers, is an important issue. In this regard, countries are recommended to apply the principles of the International VAT/GST Guidelines for the collection of VAT on cross-border B2C supplies of services and intangibles and consider the introduction of the collection mechanisms included therein. Moreover, a range of possible approaches for a more efficient collection of VAT on the importation of low value goods is available to countries that wish to remove or lower the VAT exemption thresholds.”

2. *The EU Action Plan on VAT (2016)*

In April 2016, a communication on an action plan on VAT²² was made public by the European Commission. The Commission emphasised that the tax system based on analog businesses cannot catch up with modern digital businesses. The collaborative economy has been discussed since September 2017 in Japan. The Commission states:

“[The] VAT system has been unable to keep pace with the challenges of today’s global, digital and mobile economy. The current VAT system, which was intended to be a transitional system, is fragmented, complex for the growing number of businesses oper-

21 https://www.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en. This report followed the OECD report titled *Addressing Base Erosion and Profit Shifting in BEPS* (2013).

22 7 April 2016, COM (2016) 18 final.

ating cross-border and leaves the door open to fraud: domestic and cross-border transactions are treated differently and goods or services can be bought free of VAT within the single market”.

In order to remove such problems, the Commission has proposed the following reforms:²³

- (a) The tax system needs to be simpler for businesses to use. Compliance costs are significantly higher in single market trade than in domestic trade, while complexity is stifling business, especially for small and medium-sized businesses (SMEs).
- (b) The growing risk of fraud must be combatted. The “VAT gap” between expected revenue and revenue actually collected is estimated at 170 billion Euros, while cross-border fraud alone accounts for 50 billion Euros of revenue loss each year.
- (c) The VAT systems needs to be more efficient, in particular at maximising digital technology opportunities and reducing administrative costs.
- (d) The tax system must be based on greater trust: trust between businesses and tax administrations, and between EU tax administrations.

In order to tax the digital economy fairly, it is necessary to make use of simple and low-cost digital technology for taxation, and to build a cooperative relationships between businesses and tax administrations. Especially in the collaborative economy – in which a platform, a customer and a tax administration are involved – a smooth and correct exchange of information is indispensable.

3. *The Tax Policy in the EU (2017)*

The tax policy toward the collaborative economy can be seen in the EU’s annual report *Tax Policies in the EU: 2017 Survey*.²⁴ The report points out the impact of the collaborative economy on the labour market as follows:

“On the one hand, taxation should not hamper this innovative activity at birth. The collaborative platform allows for more flexible working arrangements, increases resource efficiency, and facilitates the circulation of information, hence creating new market places. It creates new job opportunities and may facilitate access to [the] labour market for low-skilled workers”.

On the other hand, the report also suggests a negative impact as follows:

“[I]f the collaborative economy is not taxed, tax bases will erode as their market presence grows, and traditional business models will suffer from a competitive disadvantage

²³ *Ibid.* at 3.

²⁴ https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2017.pdf. This report was prepared by Taxation and Customs Union in 2017.

(as they will be taxed). Similar activities should be taxed the same way, whether they take place in traditional sectors or in the collaborative economy sector. Also, the development of the collaborative economy should not be a simple shift of labour forces, from the traditional economy towards new forms of work with lower social protection or deteriorated working conditions”.

In a globalised and digitalised economic environment, the tax system plays an important role both in supporting businesses in the collaborative economy and in fostering social mobility and justice.²⁵ In order to realise both goals at the same time, the European Commission expects the Member States to create simple and certain tax rules for the collaborative economy and to increase the level of voluntary cooperation between national authorities and platforms operating in the collaborative economy.²⁶

Simple and certain tax rules can be implemented in the following ways:²⁷

- (a) Publication of guidance and information campaigns to clarify applicable rules in order to make businesses recognise that the current tax rules which are applied to the traditional sector are also applied to the collaborative economy (e.g. tourist tax).
- (b) The introduction of a specific/simplified regime for the taxation threshold.
- (c) The voluntary involvement of platforms so as to either provide detailed data on taxable income/taxable amounts of the tax payers/taxable persons to the tax administrations or directly withhold taxes for the tax administrations.

In addition to the simple and certain tax rules, facilitating tax compliance is also important. In the EU, several Member States rely on digital integration to facilitate tax compliance. For instance, Bulgaria passed a bill that requires the electronic submission of corporate tax returns from 2018 onwards. Estonia has made the most remarkable reforms in this area. The country – called “E-Estonia” – has invested in public sector IT solutions in order to increase ease of use and to decrease bureaucracy. With these technologies, all government services are provided electronically, and the tax administration has been proceeding efficiently.²⁸ Moreover, Estonia has taken a proactive approach in engaging with the collaborative economy. Estonia also has generated a tax declaration platform in a pilot project with one of the leading players in the collaborative economy in order to simplify tax compliance for providers. In particular, it provides a voluntary opt-in

25 *Ibid.*, at 6.

26 *Ibid.*, at 12.

27 *Ibid.*, at 46.

28 *Ibid.*, at 47.

for such providers to share their income/sales information and to declare their taxes automatically and electronically.²⁹

The collaborative economy brings with it the issue of when and how it should be taxed. Taxation should not hinder the inception of innovative businesses because such businesses create new market places and new jobs especially for low-skilled workers. However, if digital businesses are not taxed in the same way as brick-and-mortar businesses, the latter businesses will suffer from disadvantages in the same market.

4. *The European Parliament Report (2018)*

In February 2018, the European Parliament released the report *The Collaborative Economy and Taxation: Taxing the Value Created in the Collaborative Economy*.³⁰ In the report, the phrase “level playing field” is often seen.³¹ A “level playing field” means a fair-terms-on-all-sides situation without any advantage for either side. The European Parliament Report points out that the level playing field does not mean an equal chance to succeed for each player, but rather that the same rules be applied to each player.

B-to-C transactions in the collaborative economy are regulated by the current tax rules with relatively ease. However, no one-size-fits-all approach exists in P-to-P transactions in the collaborative economy because it is often unclear whether the status of providers is individual or professional. And another question arises when services are provided to users by providers on behalf of platforms.

In order to maintain a level playing field for the purposes of taxation, especially as regards VAT on P-to-P transactions in the collaborative economy, it is necessary to adopt measures to foster providers’ tax compliance. In the report, the measures by several Member States are introduced. For instance, in Belgium, the Programme Act (2016) sets a threshold for collaborative economy transactions, below which they are exempt from VAT obligations provided certain conditions are satisfied. Similarly, in Italy, a VAT exemption for transactions in the collaborative economy has been discussed.³²

29 On E-Estonia, see T. SON, *The Impact of Estonia’s Digital State*, Diamond Online, dated 7 May 2018 (<https://diamond.jp/articles/-/184933>, English version). According to the article, 99% of government services have been digitalized and made available 24 hours a day, 365 days a year. Via PC or smartphone, tax payers can file their tax return in several minutes by verifying their own data, which has already been digitalized.

30 See *supra* note 6.

31 See *Ibid.*, 14–15.

32 See *Ibid.*, 19–20.

VI. THE DIGITAL SERVICES TAX: A NEW TAX FOR NEW BUSINESS?

In this section, another option for taxing the digital economy, including the collaborative economy, will be considered. In the EU, introduction of a digital services tax has been discussed³³ subsequent to the release of the OECD Action 1 Report (2015).³⁴ Under the proposal, big tech companies whose global annual revenue was at least 750 million Euros would see their sales (not income) taxed at the rate of 3%. However, amid strong opposition especially from Luxemburg, Sweden, and Ireland, introduction at the EU level has not yet been implemented. The USA has also expressed strong objections to the measure, as most of such companies are U.S.-based.

One of the main reasons for the opposition is that the digital services tax would violate the current tax treaties that aim to avoid double taxation. Another reason is a risk that introduction of the tax by only a limited number of Member States would create serious distortions in the EU market.³⁵

In this difficult situation, in October 2018, UK Chancellor Philip Hammond announced that the UK would introduce a tax on online firms whose global annual turnover is more than £500 million (“digital service tax”) at a rate of 2% in April 2020. The revenue from this new tax is expected to raise more than £400 million per year.

This new tax is said to be “a narrowly targeted tax” because it targets certain giant global enterprises such as GAFAM (Google, Apple, Facebook and Amazon). Hammond stated: “It is only right that these global giants, with profitable businesses in the UK, pay their *fair share* towards supporting our public services.”³⁶

In 2017, Amazon paid £4.5 million in UK taxes on its sales of £8.7 billion, Google paid £49 million on its sales of £7.6 billion, and Facebook paid £1.6 million on its sales of £1.3 billion. The “fair share” which Hammond refers to means a fair taxation as regards the gap between traditional businesses and digital businesses. Due to the growth of giant digital companies, many brick-and-mortar businesses and SMEs in the UK are facing a

33 Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM (2018) 148 final.

34 *Supra* note 20.

35 A director of a Belgian think tank said: “Better [to] have a European approach rather than [a] patchwork of bad national taxes”, see N. CHRYSOLORAS/W. HOROBIN, EU’s Divisive Plan to Tax Facebook, Amazon Returns to Spotlight, Bloomberg, 5 November 2018, available at <https://www.bloomberg.com/news/articles/2018-11-05/eu-s-divisive-plan-to-tax-facebook-amazon-returns-to-spotlight>.

36 “Hammond targets US tech giants with digital services tax”, The Guardian, 28 October 2018 (emphasis added).

loss of business opportunities or bankruptcy. For instance, Debenhams (a department store) will be closing fifty shops within a few years, and House of Fraser went bankrupt in August 2018. For these brick-and-mortar businesses, the tax burden, such as the “business rate” (real estate tax), is too heavy, whereas digital businesses, which have no physical presence in the UK, pay no “business rate” and thus have a financial advantage. However, this announcement by the government has been criticised by the opposition party as being inadequate to ensure that tech giants pay their fair share.

VII. CONCLUSION

An article in the *Financial Times*³⁷ suggested that sales by each participant of the collaborative economy is small but that an aggregation of the sales by all participants cannot be ignored for the purpose of the VAT/consumption tax.

As related in the article, a British lawyer brought a case before the High Court in order to argue that Uber should collect VAT and provide all passengers with VAT receipts because the passengers could then claim an input tax deduction with the receipts. The lawyer is the head of the Good Law Project, and his objective with the legal action is to build a case to change the law. However, Uber insisted that it has no obligation to collect VAT or to provide VAT receipts to passengers because it is an agent for self-employed drivers and not a service provider. The lawyer is said to have relied on an employment tribunal ruling of 2017 concluding that Uber drivers are workers. The tribunal established that Uber is not just “a mosaic” of 30,000 small businesses linked by a common platform.

A platform in the collaborative economy supplies no goods/service by itself, operating instead solely as an intermediary between a provider and a user. Even though the scale of a provider’s business is very small, without the platform the business would be impossible. The aggregation of small businesses creates a large economy, which subjects traditional businesses to unfair competition. We should also keep in mind that platforms have a certain responsibility to be subject to fair taxation for the large volume of sales which they generate.

There are two possible ways that platforms can accept their responsibility. Firstly, a new tax method, by which a platform would collect taxes from a supplier, could be introduced. Secondly, a platform could be obliged to provide all of a supplier’s data/information to a tax authority.

37 V. HOULDER/B. THOMPSON, Uber faces new pressure from crowdfunded VAT case, *Financial Times*, 28 June 2017.

At the moment, the collaborative economy has spread more slowly in Japan than in the USA, the EU or China.³⁸ For instance, though a new law for short-term rental rooms/houses was introduced on 15 June 2018, the law forces owners of rental rooms/houses to comply with several strict regulations, e.g. owners of rental rooms/houses cannot rent out their properties for more than 180 nights per year, and local authorities can impose even stricter restrictions. Furthermore, the taxi lobby has made it difficult to set up ride-sharing-businesses in Japan.

On 24 November 2018, the Japanese ruling party announced that it intended to introduce an inquiry system by which detailed information on the virtual currency trade and the collaborative economy will be collected from business persons operating in these areas. The purpose of the system is to investigate tax evasion practices and to reduce inequality compared to those who pay taxes properly. The system implies that a tax authority can require the business person (e.g. a bitcoin exchange trader, a platform in the collaborative economy) to give their customers' names, addresses and identification numbers (so-called "My Numbers"). The ruling party implemented this system in *The Outline of Tax Reform for 2019*,³⁹ which was released in December 2018.

Presently, the tax authority cannot determine who in fact made a trade or how much money has been earned in online transactions. With this new inquiry system, the tax authority will be able to collect information on online trade from a platform if they suspect tax evasion/avoidance. If a platform declines to provide information without a justifiable reason, the responsible parties will be sentenced to up one year of penal servitude or fined not more than 500,000 Yen (ca. 4,028 Euros).

Other countries, such as the USA, the UK or Germany, have already introduced such a system. However, the violation of confidentiality as between a platform and a customer is problematic. In order to make this system work effectively, some manner of judicial remedial system should be created whereby platforms can appeal a ruling of the tax authority.

38 According to an article in the Japan Times from 28 June 2018, only 27% of the population is familiar with the sharing economy.

39 https://www.mof.go.jp/tax_policy/tax_reform/outline/fy2019/20181221taikou.pdf (in Japanese).

SUMMARY

The tax system cannot keep pace with the rapid expansion of the collaborative economy. Although this modern economy is creating a new labour market, it is at the same time capitalising on traditional businesses and thereby disrupting the level playing field. In the area of VAT/consumption tax, it is very hard for a tax authority to determine how often transactions are made between a provider and a user, or how much money a provider receives from a user, especially in peer-to-peer transactions. Sales amounts for each individual transaction in the collaborative economy are small, but the aggregate sales are not insignificant.

In Japan, the debate on this matter has just begun. In November 2018 the Japanese ruling party announced that it will introduce an inquiry system under which detailed information on the collaborative economy is to be collected from platforms conducting such transactions. However, this inquiry system includes penalties, and it may therefore cause the collaborative economy to shrink; additionally, the system risks infringing on the confidentiality existing between a platform and its customers.

In the EU, the debate regarding fair VAT taxation has been ongoing since the release of the OECD Action 1 Report (2015), and the introduction of a digital services tax has been discussed, with taxation at the rate of 3% of sales (not income) for big tech companies. However, this tax has not yet been implemented owing to strong opposition from Luxembourg, Ireland and, especially, the USA, as many big US-based tech companies operate in the EU. One of the main reasons for the opposition is the risk that a tax imposed by only a limited number of member states would substantially distort the EU market. In this context, the UK government announced in October 2018 that a digital services tax would be introduced in April 2020.

Imposing a new tax on a new business sector is not, however, always an effective measure, and a complex tax system can be expected to prompt tax avoidance. In this sense, a digital services tax may only be a transitional mechanism. In order to ensure fair VAT taxation and “fair-share” tax payments in relation to the collaborative economy, a cooperative relationship between platforms and tax authorities would presumably need to be established.

ZUSAMMENFASSUNG

Das Steuersystem hat Schwierigkeiten, mit der raschen Expansion der Sharing Economy Schritt zu halten. Obwohl diese moderne Form der Wirtschaft einen neuen Arbeitsmarkt schafft, nutzt sie gleichzeitig traditionelle Geschäftsformen aus und zerstört die Chancengleichheit für die Akteure. Für die Steuerbehörden ist es bezüglich der Umsatzsteuer sehr schwierig festzustellen, wie viele geschäftliche Transaktionen zwischen Anbietern und Nutzen abgewickelt werden,

und wie hoch das von den Anbietern vereinnahmte Entgelt ist, insbesondere bei peer-to-peer-Geschäften. Die Entgelte für die einzelnen Transaktionen im Rahmen der Sharing Economy sind gering, aber die Summe aller Entgelte ist wirtschaftlich keineswegs unbedeutend.

Die Diskussion über diese Fragen hat in Japan gerade erst begonnen. Im November 2018 hat die regierende Partei angekündigt, dass sie ein Informationssystem einführen will, in dessen Rahmen von den Betreibern der Plattformen, über die solche Transaktionen abgewickelt werden, detaillierte Informationen über die Sharing Economy gesammelt werden sollen. Dieses System sieht allerdings Strafen bei Nichtbefolgung vor, sodass die Sorge besteht, dass die Sharing Economy schrumpfen könnte. Zudem besteht die Gefahr, dass die Vertraulichkeit zwischen einer Plattform und ihren Kunden verletzt wird.

In der EU hat die Diskussion über eine angemessene Erhebung von Umsatzsteuern in der Sharing Economy mit der Veröffentlichung des OECD Action 1 Report (2015) begonnen, und es wird die Einführung einer Steuer in Höhe von 3 % der Umsätze (nicht des Einkommens) auf digitale Dienstleistungen für große Internetfirmen diskutiert. Allerdings ist eine solche Steuer bislang aufgrund des erheblichen Widerstandes von Luxemburg, Irland und insbesondere den USA nicht eingeführt worden. Viele der in den USA beheimateten Internetfirmen sind in der EU geschäftlich aktiv. Ein Hauptgrund für den Widerstand ist, dass eine Steuer, die nur von einigen Mitgliedstaaten eingeführt wird, den europäischen Binnenmarkt erheblich verzerren würde. Die britische Regierung hat jedoch im Oktober 2018 angekündigt, im April 2020 eine Steuer auf digitale Dienstleistungen einführen zu wollen.

Die Erhebung einer neuen Steuer auf ein neues Geschäftsmodell ist aber keineswegs immer eine erfolgreiche Maßnahme, und ein komplexes Steuersystem lässt Steuerumgehungen erwarten. In diesem Sinne könnte eine Steuer auf digitale Dienstleistungen lediglich eine vorübergehende Erscheinung sein. Um eine faire Umsatzbesteuerung und eine faire Verteilung des Steueraufkommens zu erreichen, dürfte vermutlich eine Zusammenarbeit zwischen den Plattformen und den Steuerbehörden erforderlich sein.

(Die Redaktion)