
Shared economy, collaborative consumption and taxable persons for the VAT

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List of used abbreviations

VAT	Value added tax
VAT Directive	Council Directive of 28 November 2006 on the common system of value added tax
HR	Dutch Supreme Court
ECJ	Court of Justice of the European Union
EU	European Union
AG	Advocate general of the European Court
BNB	Beslisingen in belastingzaken, decisions of the Dutch court on tax matters
WOB	Wet omzetbelasting van 28 juni 1968, Dutch VAT Act of 28th June 1968

Chapter 1: Introduction

1.1. Shared Economy and Collaborative Consumption

The wide spread of the internet and the smart phone technology allow individuals from all over the world to be connected at any time of the day regardless the distance. This connectedness has been a major impulse for the so-called Sharing Economy and Collaborative Consumption. These terms describe an economic model which is based on coordinating the individuals' assets and consumption through a social network on the Internet whereby individuals obtains turnover on goods or services offered on these market places. The global financial crisis has acted as catalysator of these new models that provide some income to individuals by simple means of using his private resources. Beside the economic benefits for the consumer, they work as an antidote to materialism and overconsumption and a more efficient use of resources allows environmental benefits.

Shared Economy is a socio-economic system based on sharing underused assets or services, for free or for a fee, directly from individuals. This system is built around the sharing of goods and human resources and replaces third-party intermediaries with digital platforms. This has been extended to intangible assets, where money is being shared through the so-called crowdfunding. Some examples are Landshare (platform for sharing land for agricultural purposes), Airbnb (private owners provide lodging for a fee), Skillshare (platform to share skills, experience and knowledge). Shared economy promotes access rather than ownership.

Collaborative Consumption can be described as a peer-to-peer (C2C) marketplace and it implies a reinvention of traditional market behaviours—buying and selling, renting, lending, swapping, sharing—through technology, on a scale not possible before the internet. The most known examples are EBay, Marktplaats, and Etsy.

Most individuals who participate in the sharing economy and the collaborative consumption do receive a certain amount of money as compensation, but this income is often a net benefit and generally does not involve much quantitative cost-benefit analysis. The providers usually share their available resources at a lower price than what a professional might have billed. Through time, as certain platforms attract substantial number of individuals, these platforms have become the prime access point for customers on the online market.

Unfortunately there are not robust statistics and figures on the sharing economy in the Netherlands, with the exception of some partial estimations in cities like Amsterdam. The municipality of Amsterdam estimates that only the market of rented accommodation via Airbnb alone accounts for at least 40 million euro in rental revenue per year.

PwC has calculated that on a global basis, the sharing economy is currently worth €11 billion (million million) with this set to rise to a massive €300 billion by 2025. A research published in 2014 PwC in the UK details how five sub-sectors of the sharing economy in the UK are worth around €635 million now, and could be worth up to €11 billion a year by 2025. About 70% of

the UK population would share their idle assets if it were easy or convenient. This could potentially turn the UK public into a nation of “micro entrepreneurs”.

1.2. Scope of the essay

These forms of economic operations between individuals have given rise to looming challenges in the VAT area, and it is now the question if the existing VAT legislation in the EU and in the different Member States can provide with the appropriate legislative framework to regulate these economic models. In this essay I try to answer this question. My conclusion in this matter is explained at the end of Chapter 3.

In chapter 3 I also analyze if the transactions carried out by the individuals through internet platforms like Airbnb, Ebay, Landshare, Skillshare, TaskRabbit etc are taxable from a VAT perspective and if those individuals can be considered as acting in the private sphere or in the business sphere being in this last case taxable persons for the VAT.

Because of the scale reached by these new economic models, the issue on the taxability of these activities is connected to the potential distortion of competition for businesses operating in the traditional form. The main question is whether EU law is fit to support this new phenomenon and whether existing policies are sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives. In chapter 5 I present an analysis of this subject in the light of the principle of neutrality, a key feature of the VAT system. .

In chapter 6 I present my point of view on the need and the best approach for tax authorities to tackle control and avoid tax evasion.

In consideration to the international character of the subject, the essay is written mainly from an EU perspective.

Chapter 2: The notion of taxable person or “entrepreneur”.

In this chapter I analyse if the individuals participating in the shared economy act on the private sphere or if otherwise act as entrepreneur or taxable person for the VAT.

The Value added Tax is a consumption tax assessed on the value added to goods and service and is collected fractionally, via a system of partial payments by taxable persons. This mechanism ensures that the tax is neutral regardless of how many transactions are involved. This success in achieving the general objective of the tax, that is to tax all consumptions, depends widely on an interpretation of the concept of taxable persons as wide as possible.¹ Such a broad interpretation is also necessary to ensure that the neutrality of the tax is not distorted by applying the tax to those who do not use goods and services for consumption.

The concept of taxable person for the value added tax is broader than in other taxes like the income tax or corporate tax, and it is not limited to those persons operating commercially. Persons without the purpose of obtaining profit can also be subject to value added tax.

2.1. Taxable persons in the EU Directive 2006/112¹ and the Dutch VAT Act 1968 (Wet Omzetbelasting 1968)

Article 9 of the EU Directive 2006/112 provides a broad concept of establishes that:
'(1) “Taxable person” shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.’²

The purpose of applying a wide concept of taxable persons was justified for the Sixth Council Directive 77/388 / EEC as a way to keep the VAT as a general tax on consumption and in order to ensure an impartial application of VAT, by including all transactions which by their nature characterize as an economic activity.

The VAT Directive makes use of the term “taxable person” who performs “economic activities”. The activity consists on offering goods and services being essential in this concept the existence of an interaction of the person with an external market.

The Dutch legislation (WOB 1968) defers from the VAT Directive 2006/112 in the terminology: while the Directive refers to “any person who independently carries out in any place any economic activity” the article 7 of the Dutch VAT Act³ refers to “any person who independently

¹ M.E. van Hilten, H.W.M. van Kesteren, omzetbelasting, FED fiscale studieresie nr. 6, Kluwer, 14th edition (2014)

² Art. 9 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

³ Artikel 7 lid 1 Wet op de omzetbelasting van 28 juni 1968

exercises a profession or business”. The Dutch regulations use the terms “business” (“bedrijf”) or “enterprise” (“onderneming”) as synonyms. In the past Dutch case law described the term business as the organization of work and capital intended to participate in trade to satisfy social needs on continuing basis. However in later case law there was only mentioned to the exercise of a profession, without further mention to an organization of work and capital.⁴

The VAT Directive describes taxable persons without making reference to “businesses”. This difference is however of no relevance, as clarified by the Dutch Supreme Court, who indicates that both concepts must be regarded as synonymous. The requirements to qualify as a taxable person for the VAT are and need to be the same in the Dutch VAT act and the EU Directive.⁵ Apart from the terminological difference, the Dutch VAT Act transposes the concept of taxable person given in the EU Directive.

2.2. The notion “any person”.

Article 9 of the EU VAT Directive provides a broad definition of taxable persons. This concept encompasses every person or entity engaged in an economic activity regardless the legal status of that person and it includes both natural and juridical persons regardless their purpose and the results of the activity. Important is that the person takes part in the course of trade.⁶

The concept has a global context and it has been given as broad sense to avoid distortion of competition.

An individual who is part of an organization with the status of taxable person, can also act separately as an entrepreneur, since the members of the organization can act both in representation of the entity they are part of and on their own account.⁷

Neither the VAT Directive nor the Dutch VAT act require that the person is established or nationalized in the Netherlands to be a taxable person for the VAT. Persons performing taxable transactions in the territory of a Member State are subject to VAT.

2.3. The notion “independently”

Art. 10 of the EU Directive 2006/112 provides that the economic activity be conducted “independently”. This excludes persons in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.⁸ The

⁴ HR 11 March 1992, BNB 1992/173, FED1992/418.

⁵ HR 2 May 1984, nr. 22.153, BNB 1984/295, r.o. 3.6

⁶ Among others: Hof Amsterdam 2 June 1981, nr.162/80, V-N 1981, p.179; TC 30 November 1976, BNB 1978/89; HR 9 September 1992, BNB 1992/366; TC 8 April 1975, nr. 10.845, BNB 1975/174.

⁷ ECJ Case C-23/98 (Heerma)

⁸ HR 23 May 1990, BNB 1990/202; Hof van Leeuwarden 8 January 1993, BNB 1994/103

purpose of the Directive is to avoid that the companies' employees are considered taxable persons.

A natural person acting in the name and on behalf of a taxable company and pursuant to an employment contract, is not an independent taxable person even if he the sole shareholder or director.

The absence of an employment contract can be an indication of independency in this respect, although this is not decisive. Additionally, a person without employment contract could be in a relation of dependency. One example is the ruling of the Dutch Supreme Court that established that a trade agents who may have a single client was not acting independently.⁹

In the Case C-202/90 Ayuntamiento de Sevilla, the ECJ considered that the services supplies to the Spanish Autonomous Communities by land registrars were subject to VAT in accordance with the general rule contained in the VAT Directive. That position was derived from the fact that registrars act as professionals who organize autonomously and independently the human and material resources needed to supply the service and, they are an autonomous and distinctive part with which the Autonomous Community concluded a contract for supply of services for consideration.

2.4. The notion “economic activity”

The concept of taxable person is substantially linked to the performance of economic activities. For this reason, the notion of economic activity allows to further determine the scope of entrepreneurship for the VAT.

For the purpose of this essay it is of importance to differentiate economic and non-economic activities. Is for example the rent of a vacation house by a private person always an economic activity? In which circumstances does this transaction remain in the private sphere? Does it constitute the mere exercise of the right of ownership by its holder? Or is it an economic activity subject to VAT?

In the following chapter the concept of economic activities is studied in further detail.

⁹ HR 23 May 1990, BNB 1990/202

Chapter 3: Economic activities

The second paragraph of art. 9 of EU Directive 2006/112 provides that: “Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall in particular be considered an economic activity”. The term is therefore very wide.

3.1. Exploitation of tangible or intangible assets

The term "exploitation" refers to all transactions, whatever may be their legal form, by which it is sought to obtain income from the goods in question on a continuing basis.¹⁰ In accordance with the requirements of the principle that the common system of value added tax should be neutral, the term "exploitation" refers to all transactions, whatever may be their legal form, by which it is sought to obtain income from the goods in question on a continuing basis. Only in that case where the exploitation leads to obtain income on continuing basis can it be considered an economic activity.

The existence of an “economic activity” is assessed “per se”, without regard to its purpose or results. It is neither the scope nor duration that is ruling, but the nature of the activity.¹¹

Generally, business or professional activities are those involving the organization of self-employed human and material factors of production (or one of them) in order to intervene in the production or distribution of goods or services.

What concerns preparatory acts and the use of resources to develop future economic activities, they can (depending on the circumstances of the case) be considered part of the economic activities. The European Court of Justice ruled in the case *Rompelman* that the acquisition of a right to the future transfer of property rights in part of a building yet to be constructed, with a view to letting such premises in due course, may be regarded as an economic activity. However, this does not preclude the revenue authorities from requiring the declared intention to be supported by objective evidence such as proof that the premises which it is proposed to construct are specifically suited to commercial exploitation.¹² Important is that the acts are carried out with the economic activities in sight and that there are objective facts and circumstances to support that.

In *Joined Cases C-180/10 Słaby and C-181/10 Jeziorska-Kuć* the ECJ ruled that if a person takes active steps by mobilising resources similar to those deployed by a producer, a trader or

¹⁰ ECJ Case C-186/89 *WM van Tiem*

¹¹ ECJ Case C-186/89 *WM van Tiem*

¹² ECJ Case *Rompelman* C-268 / 83

a person supplying services (within the meaning of the VAT Directive) that person must be regarded as carrying out an 'economic activity' and must, therefore, be regarded as a taxable person for VAT.¹³ A business or commercial purpose must always be present.

3.1.1. Occasional transactions

In the case C-62/12 (Galın Kostov) the Court rules that upon interpreting Article 12(1) of the VAT Directive "a contrario", that a person who carries out only occasionally a transaction generally effected by a producer, trader or person supplying services is not, in principle, to be considered a 'taxable person' within the meaning of the Directive. However, it does not necessarily follow from that provision that a taxable person acting in a certain field of activity who occasionally carries out a transaction falling within another field of activity is not liable to VAT on that transaction. In consequence, the fact that a transaction is carried out occasionally does not always imply "per se" that the person is acting in the private sphere¹⁴. There is no absolute criterion to determine when a person will be considered to be habitually engaged in economic activities. The distinction between occasional and regular supplies is very often a question of fact. To make a distinction between a professional vendor and an occasional seller in an Internet platform like EBay, it must be determined whether the person "arranged" an activity that is subject to VAT and if there is an intention to obtain income on continuing basis. Each case must therefore be considered separately.

Additionally, a person who has the purpose of carrying out more than one single transaction tends to carry out other related activities that are associated with the performance of economic activities on a permanent basis.¹⁵ Therefore a person's signs of intention to repeatedly sale and consequently obtain a continuing income need to be observed.¹⁶

3.2. Supplies for consideration

A transaction is only subject to VAT if the parties concerned in that transaction agree on reciprocal obligations or compensation. A supply is effected "for consideration", and hence is taxable, only if there is a legal relationship between the provider of the good or service and the recipient pursuant to which there is reciprocal performance. The remuneration received by the provider of the good or service constitutes the value actually given in return for the service supplied to the recipient.¹⁷ The activity needs to be carried out for the purpose of obtaining income for an indefinite period of time, being the 'income' a remuneration received as consideration for the activity carried out.

There is no requirement to have a compensation paid in money, which is the most common of the cases, but it may be paid in numerous types of goods and services, important is the mutuality or existence of a reciprocal obligation.¹⁸

¹³ Joined Cases C-180/10 *Słaby* and C-181/10 *Jeziorska-Kuć*

¹⁴ ECJ in Case C-62/12 *Galın Kostov*

¹⁵ ECJ case *Rompelman* C-268 / 83

¹⁶ Advocate General *Manzak* opinion in Joined Cases C-180/10 *Słaby* and C-181/10 *Jeziorska-Kuć*,

¹⁷ ECJ 1 April 1982, nr.89/81 (*Hong Kong*), BNB 1982/311

¹⁸ AG Opinion in case C-37/08 *RCI Europe*, paragraph 57th 100 and ECJ Case C-16/93 *Tolsma*

The financial value of the consideration is a subjective value, which is the price set between parties, and should not be determined on the basis of objective criteria. In some situations, the compensation may be as low in relation to the economic value of the good or service supplied that it rather concerns a donation.

Supplies without consideration are not taxable, hence those persons solely engaged in supplies without consideration (free of charge) are not to be regarded as taxable persons.¹⁹

In case the consideration is merely symbolic or below the market value it still needs to be regarded as the actual consideration. The fact that the price paid for an economic transaction is higher or lower than the cost price is irrelevant to the question whether a transaction is to be regarded as a 'transaction effected for consideration'.²⁰ The VAT system is based on the subjective value of the supply and the concept of consideration requires only that there be a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person.²¹

3.2. Purpose of obtaining income on continuing basis

The requirement established by the article 9 of the directive to obtain income on continuing basis excludes the income obtained on occasional basis. The purpose of the person needs to be obtaining the income for an indefinite period of time. The person who occasionally rents his car, caravan or boat does not fall within the category entrepreneur.

In conclusion, not every grant of use of tangible property for consideration is an economic activity within the meaning of the Directive. To distinguish business from private activities it needs to be regarded if the activity has been being done for the purpose of obtaining income therefrom on a continuing basis.²²

According to settled case-law, the simple acquisition and the mere sale of an asset cannot amount to exploitation of an asset intended to produce income on a continuing basis as the only consideration for those transactions consists of a possible profit on the sale of that asset. As a rule, such transactions cannot, by themselves, constitute economic activities within the meaning of the directive.²³

The Dutch Supreme Court has ruled that the lease of a yacht acquired and restored as a hobby by its owner did not qualify as an economic activity because the owner did not seek to obtain a regular income. The hiring was seen as an incidental matter, because the owner's goal was simply to reduce the high costs of his hobby.²⁴

¹⁹ ECJ case C-89/81 Hong Kong Trade Development Council

²⁰ ECJ 20 January 2005, C-412/03 (Hotel Scandic Gåsabäck)

²¹ 21 HvJ Hotel Scandic Gåsabäck

²² ECJ Judgment of 26 September 1996, Case C-230/94 (Renate Ekler)

²³ ECJ Case C-77/01 (EDM) and Case C-8/03 (BBL)

²⁴ HR 25 January 1984, nr. 22 224, BNB 1984/90.

The issue of whether that activity is designed to obtain income on a continuing basis is an issue of fact which must be assessed having regard to all the circumstances of the case like the nature of the property concerned²⁵, the actual length of the period for which the property is hired, the number of customers, the amount of earnings and a comparison with the circumstances in which the person concerned actually uses the property with those circumstances in which the corresponding economic activity is usually carried out.

An activity carried out over a relatively long period of time gives rise to status of taxable person even when it is exercised pursuant to a single order. It is of no relevance how often a taxable person concludes comparable transactions; what is relevant is whether the particular property provides long-term revenue.

The preparatory acts may already be seen as economic activities when there is an intention to perform regularly in the course of trade. These acts form part of the transactions that are intended to be performed and must themselves be treated as constituting economic activity.²⁶ This is however an exception to the general principles, since at the moment these preparatory acts are being performed no supplies are taking place.²⁷

3.2.1. Whether profit or not

A taxable person does not necessarily need to have a profit motive. Likewise, an artists who carries paints merely as a leisure activity and sells regularly his work without any financial benefit can have the consideration of a taxable person.

In 2013 the ECJ ruled in case C-219/12 Fuchs that the operation of a photovoltaic installation on a privately-owned house used for private residential purposes, which is designed such that the electricity produced is (i) always less than the electricity privately consumed by its operator and (ii) supplied to the network in exchange for income on a continuing basis, falls within the concept of 'economic activities'. The Court noted that the operation of a photovoltaic installation constitutes an 'economic activity' if it is carried out for the purpose of obtaining income on a continuing basis: the concept of 'income' must be understood as meaning remuneration received as consideration for the activity carried out. It follows that, for a finding that the exploitation of property is carried out for the purpose of obtaining income therefrom, it is irrelevant whether or not that exploitation is intended to make a profit.²⁸

3.4. Goods or services susceptible of economical and private purposes

Where goods or services are capable of being used for both economic and private purposes, the circumstances have to be examined in order to determine whether it is actually used for the purpose of obtaining income on a continuing basis. In this sense, it is appropriate to take

²⁵ Case C-263/11 Rēdlihs [2012] ECR, paragraph 33.

²⁶ ECJ case 268/83 Rompelman of 14 February 1985

²⁷ M.E. van Hilten en H.W.M van Kesteren, omzetbelasting, p. 67

²⁸ ECJ case C-219/12 Fuchs

into account factors like the actual length of the period for the services, the number of customers or the amount of earnings to determine if the purposes existed.²⁹

The number and scale of the sales carried out are not in themselves decisive.³⁰ The scale of the sales cannot constitute a criterion for distinguishing between the activities of an operator acting in a private capacity and those of an operator whose transactions constitute an economic activity. A large volume of sales may also be carried out by operators acting in a private capacity.³¹

3.5. Conclusion

The settled case-law of the European Court of Justice confirms that the definitions of 'taxable person' and 'economic activities' have a very wide scope. To be able to have the consideration of business activities and fall within the scope of the VAT the person needs to carry them out for the purpose of obtaining income on a continuing basis. However, a clear distinction between economic and non-economic performance may be difficult because it will always depend on numerous facts around these supplies.

Can we conclude that individuals participating in internet platforms where goods and services are being sold and for which a specific amount of money is received, have the consideration of taxable persons for value added tax?

There is no blanket answer to this question, since it will very much depend on the circumstances. We can however conclude that individuals mobilizing resources for the exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis are performing economic activities under the light of the VAT directive and are therefore acting as a taxable person. As mentioned above, the distinction between occasional activities and regular supplies is very often a question of fact. To make a distinction between a professional vendor and an occasional seller in an Internet platform like EBay, it must be determined whether the person "arranged" an activity that is subject to VAT with the intention to obtain a continuing income.

I believe that the extension of the terms entrepreneur and economic activities in the Directive and the current Case Law are sufficient to assess if a transaction in the shared economy taking place through an economic platform is taxable and, once released the internal motivation of the person involved (that is, if it concerns an exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis) it is possible to determine if the person is taxable or is on the contrary acting in the private sphere.

²⁹ ECJ case C-230/94 Renate Enkler

³⁰ Joined Cases C-180/10 Staby and C-181/10 Jeziorska-Kuć

³¹ ECJ case C-155/94 (Wellcome trust) 20 juni 1996

As the statistics in other countries like the UK show, a great number of individuals within these platforms do have the consistent intention to obtain an income on continuing basis through their participation in trade and may be taxable persons for the VAT. This may lead to the rise of millions of micro-entrepreneurs, subject that presents many challenges from an administrative and control perspective. This topic is handled in chapter 6 of this essay.

Chapter 4: Special schemes for small enterprises

According to Art.281 of EU Directive 2006/112, Member States which may encounter difficulties in applying the normal VAT arrangements to small enterprises, by reason of the activities or structure of such enterprises, may, subject to such conditions and limits as they may set, and after consulting the VAT Committee, apply simplified procedures, such as flat-rate schemes, for charging and collecting VAT provided that they do not lead to a reduction thereof.

The scheme allows small entrepreneurs with low yearly turnover to make supplies without applying VAT on their invoice and avoiding the administrative burdens around the tax. For the tax authorities it eliminates the need to control a wide number of small entrepreneurs with low revenue. The other side of the coin is the lack of right to deduct VAT on purchases.

In the Netherlands, the VAT Act (WOB 1968) establishes that if the VAT balance due does not exceed € 1.883 , the taxable person falls within the scheme for small enterprises. This scheme applies only to natural persons who qualify as an entrepreneur and it implies a simplification in the administrative obligations both for the taxable persons and the tax administration who can avoid controlling numerous small entrepreneurs. Other countries in the EU have chosen the turnover criteria to determine the threshold for small entrepreneurs. The turnover criteria is in my opinion the most suitable and transparent criteria.

The Dutch threshold is low and with the unstoppable growth of the share economy and to face the numerous micro-entrepreneurs emerging from it, it seems to be advisable to increase this threshold for small entrepreneurs to avoid that numerous small entrepreneurs register for VAT purposes. Some countries like Belgium have already taken action on this matter and increased it to EUR 25.000 on January 1st 2016. Although the impact of the share economy in the Netherlands has not been measured, extending the threshold is one of the short-term possibilities to ease the administrative burdens related to the tax. However, the technical capabilities of nowadays differ significantly from a few decades back and the ability of the tax authorities to track and control transactions is much higher today. In my opinion new solutions will need to be explored. Additionally this scheme does not face the fact that share economy can be a major economic force operating in some markets.

In my opinion, the application of a threshold can affect neutrality when the extent of the revenue on supplies of services and goods performed by individuals through internet platforms becomes grand. In the next chapter I analyze the possible effects of an untaxed share economy on fiscal neutrality.

Chapter 5: Principle of neutrality and Shared Economy

The fundamental principle of fiscal neutrality pervades the entire field of VAT to safeguard the maintenance of the VAT system as a general tax on private consumption. The general character of VAT unconditionally assumes that comparable services under comparable conditions provided by comparable persons are treated equally regardless of who the provider is, ie. by a registered business or by an individual.³² This subject is of considerable importance in a global environment where the shared economy and collaborative consumption reach major proportions and their influence on specific markets can be grand.

In the combined cases *Kuč and Słaby*³³ the European Court ruled that the principle of neutrality of the common system of VAT precludes economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned, unless there is objective justification for such a distinction. The principle requires, inter alia, that traders, irrespective of the category of traders, who are in comparable situations to be treated equally, in order to prevent a distortion of competition within the internal market.

The fact that a great deal of the supplies through internet platforms is currently taxed can lead to a distortion of competition and be an obstacle for the principle of fiscal neutrality if the relevant turnover escapes taxes when comparing services from other service providers under comparable conditions are taxed. This is not only relevant for VAT but also for income tax, that operates as a cost for entrepreneurs. In the case of shared economy, the possible distortion of competition should not be in my opinion be assessed by looking to the turnover of each individual operating in the internet platforms of share economy, but it should also be put in context, since the mass of service providers within a country or even within a specific region or city may operate as a major market force that is not subject to the administrative and economic burdens of VAT and other taxes like income tax. In my opinion, to hold to the small entrepreneurs scheme as sole solution for the competition distortion is not sufficient and only implies a transitory measure rather than a long-term solution. Additionally, the shared economy in each market brings with itself a lot of potential revenue for the tax authorities that should not be disregarded. Needless to say, there are also numerous individuals whose supplies are not taxable transactions, but there is currently no mechanism to facilitate persons the clarification on their potential tax liabilities (or no tax liabilities).

EU law and European Court's case law is read and interpreted in light of fiscal neutrality to ascertain the limits of when a person providing services may fall under the scope of VAT and be considered to do this as a taxable person. Overall, it is settled European case-law that the principle of fiscal neutrality includes the principle of competitive neutrality, and it should remove barriers that would distort competition in respect of VAT for the actors who are in a comparable situation and providing competitive products/services that they are treated differently. In this regard, it is immaterial whether the distortion is substantial or not.

³² ECJ Joined Cases 201/85 and 202/85 *Klensch and Others v Secrétaire d'Etat à l'Agriculture et à la Viticulture*

³³ ECJ Joined Cases C-180/10 *Słaby* and C-181/10 *Jeziorska-Kuč*

The neutrality of the VAT system should guarantee complete neutrality of the tax burden arising in an economic activity. The right of deduction applies to both for the costs incurred in the start-up phase of a business, despite the fact a business has no turnover.

It should be emphasized that there is no completely neutral tax system. Often, the issue of neutrality in the tax system is ultimately a question of fiscal or political considerations of choosing which discriminatory measures is most consistent with the social and economic needs. Economic neutrality occurs when the tax does not affect the market mechanism and there is an optimal resource allocation of funds for production.

One example of a “disorder” that affects the optimal resource allocation is for example the existence of different tax rates. This difference in rates affects the price mechanism and the demand in goods and services and results in changing consumption patterns. The optimal economic neutrality requires that there is no significant difference in rates. Different tax rates on goods and services are controlled by political decisions and commitment to encourage the consumption of certain goods or services. Different tax rates have a distribution policy aspect, for example, groceries are taxed less and luxury consumption is taxed higher. Additionally there will be a difference in considering a decision to consume on the ground that one choice becomes more expensive due to VAT while another selection becomes cheaper due to it is considerably smaller taxed or completely exception. If such a difference is it gives rise to distortion of consumption.

A case that illustrates the potential lack of neutrality of the principle of equal treatment existed due to right political reasons is case C-36/99 *Idéal tourisme SA*. *Idéal Tourisme* carried out international passenger transport by bus whose supply was taxable while an airline operating in similar trajet was VAT exempt. A Member State that imposes VAT on the international transport operations of coach passenger transport operators and continues to exempt international air passenger transport would not be authorised to extend to the former the exemption allowed to the latter, even if the difference in treatment infringed the Community principle of equal treatment.

The approaches to tackle the subject are quite opposite in different EU countries. While some cities like London and Amsterdam have embraced room-sharing, other European cities like Paris and Berlin are moving to stop out-of-towners from overrunning neighborhoods and displacing local residents. In 2014, the city of Barcelona fined Airbnb €32.000 for illegally renting out rooms in private residences because the homes weren't registered with Spain's Catalonia region tourism registry. The city has since established an office to regulate short-term rentals. In Italy, the hotel industry has called for a crackdown on room-sharing. There seems to be necessary a more centralized European approach on the matter to avoid different tax treatments of the same services in different EU countries.

Chapter 6: Evaluation: new issues old rules?

The current VAT regulations provide with a sufficient framework to establish when the activities of individuals operating in the internet platforms fall within the private or in the hobby sphere or otherwise are taxable activities for the VAT. The theoretical distinction between taxable and not taxable supplies can be assessed case by case in the light of the EU acquis. The challenge is to move those persons moving in a grey area, outside the traditional and economic notion, towards acting in the form of businesses and entrepreneurs. VAT law has as its starting assumption the traditional notion that the offering and the turnover of services on a commercial market is a form of entrepreneurship. Today, individuals increasingly interact and enter into agreement using internet and social networks in most areas of the market. As technical device the Internet access has transformed in many ways the traditional business structures and lowered the transactional costs of entering into a contract to purchase goods or services. The current threshold setup in the Netherlands for small entrepreneurs may trigger tax liability for a considerable amount of individuals and it will need to be raised in the coming years unless other solutions are being implemented to tackle the issue. The current burdens of VAT compliance (and other taxes) may be too onerous for the individuals, and also for the tax authorities from a control perspective, so changes will most likely need to be introduced in the regulations.

The principle of fiscal neutrality of the VAT system requires that comparable services under comparable conditions provided by comparable persons are treated equally regardless if provided by registered businesses or by individuals. To meet the neutrality principle implies that many supplies of goods and services currently in the sphere for private consumption come under the VAT law application spectrum and become subject to VAT. The new economic models put the safeguard of this principle in danger and give rise to a lack of neutrality that can originate a negative distortion of competition. In order to avoid discrimination and achieve competitive neutrality, the VAT system should have a resilient neutrality capacity, that is, adaptable to the changing structures in the market.

Not all the individuals operating in internet platforms like Landshare, Airbnb, Skillshare, eBay, etc are performing taxable supplies and (consequently) not every individual has the consideration of entrepreneur for VAT purposes. Borrowing a piece of land to grow vegetable or fruit for own consumption does not qualify as an economic activity. However there are not clear mechanisms to inform and create awareness amongst those individuals on their (potential) fiscal liability.

When an individual meets the conditions for being treated as a taxable person, other circumstances should also need to be taken into account, like the fact that the web site where the platform is located is a fundamental component of the business that provides goods and services in the internet marketplace. The owner of the Internet platform is not a party in the agreement between the parties, but facilitates the conclusion of the transaction.

The internet site fulfills a coordinating mechanism for the social network for carrying out the transactions and turnover. The suppliers of web platforms have the role to create the marketplace and to provide additional tools to facilitate supply and demand meet in the marketplace. The combination of the site's coordination function and each supply of services through a social network (which is the market place) results in the scope of services that are traded, which is significantly greater than if each private individual himself took care of the organizational and administrative components (coordinating features) as website provider do to create a marketplace for sales of services.

In my opinion the internet platforms will need to cooperate with tax authorities by sharing information on the level of the transactions that are being closed through their websites, not only for the VAT but also for the income tax and other taxes. The tax liability should not turn to the platform owner, but it should simply facilitate the detection of individuals that exceed the threshold of the small business scheme and, at the same time, contribute to provide the users information about their tax liability. However the tax authorities should provide more clear guidelines for individuals on the risks of tax evasion and at the same time facilitate the clarification on the taxability or not of the transactions.

There are some isolated measures to track down individuals falling within the grey category. In Amsterdam, tourist taxes are now included in Airbnb's service charge and periodically transmitted to the relevant local authority. Airbnb also periodically sends hosts links and information regarding local regulations, although compliance with these local regulations—including safety regulations—remains the responsibility of the host.

The manner in which the resources are exchanged in the shared economy prevents such transactions from being fully captured in the official statistics. It is therefore difficult to estimate for example the extent to which the Dutch economy has already been affected by the nascent Sharing Economy. Additionally, how the taxes are collected may change: instead of dealing with a small number of big corporations, tax authorities may be dealing with a large number of small companies with incomes potentially below the value added tax threshold and income tax threshold for small entrepreneurs. If more economic activity moves away from large employers and into the sharing economy, this may encourage tax authorities to shift the collection or notification of to the various platform providers to capture more tax revenue.

Tax authorities should create a guide for "micro entrepreneurs" in the sharing economy, and provide some online guidance to help users of sharing economy services to easily work out if they are taxable persons for VAT and other taxes and, in case they are taxable, if they fall within the scheme for small entrepreneurs or are otherwise liable to collect VAT and pay income tax (and/or other taxes). The average individual participating in the sharing economy is not aware about the tax regulatory aspects or about the basic principles of VAT or the beginning of entrepreneurship.

The tax implications that arise from the sharing economy crossing borders will also need to be clarified.

Although there are significant opportunities for economic growth, incumbent firms may feel threatened by the new competition and the possibility of shrinking profit margins. Incumbents in industries such as the transportation industry are already spending vast resources to hire lawyers, lobby for legislation to block the new competition, promote negative publicity around the competition, and market their traditional services. This was the case for Uber, which has been banned in countries like Spain, France, Germany, the Netherlands, Portugal, and Spain.

Other firms indicate that they see no point in fighting this trend. Instead, they are exploring ways in which they may participate in the Sharing Economy, such as through sponsoring partnerships, acquiring firms, integrating the Sharing Economy into their existing business models, building their own platforms, and innovating their services.

UK tax authorities HMRC will consult with sharing economy platforms to explore the potential to develop interactive tools, such as an online calculator and mobile app to help sharing economy users work out, in a fast and simple way, the amount they need to report to HMRC (taking account of allowable expenses). The aim would be for any calculator to be able to factor in a variety of circumstances to reflect the diverse nature of the sharing economy and people using it.³⁴

The tax future of the Shared economy will be greatly influenced by the growth of revenues obtained via the internet platforms. According to an analysis made by PWC in 2014, it is expected that by the year 2025 the revenue obtained via the traditional methods will equal the revenue obtained in the shared economy sector.³⁵

³⁴ Independent review of the sharing economy, Government response. Her Majesty Government UK, March 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414111/bis-15-172-government-response-to-the-independent-review-of-the-sharing-economy.pdf

³⁵ The sharing economy – sizing the revenue opportunity, Price Waterhouse&Coopers UK 2014
<http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.html>

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