



VAT AND THE SHARING ECONOMY: CALL FOR EVIDENCE

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ICAEW welcomes the opportunity to comment on the call for evidence on VAT and the sharing economy published by HMRC on 9 December 2020, a copy of which is available from this [link](#).

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For more information, please contact: taxfac@icaew.com

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

1. We welcome this call for Evidence in relation to VAT and the Sharing Economy. This is clearly a matter of increasingly significant strategic importance.
2. The Consultation focuses on ‘any digital platform which facilitates the supply of services between two or more unconnected parties, where those services do not involve any transfers in the ownership of ... property.’ In essence, it looks at where a consumer uses a digital platform to access the services of an underlying service provider (‘USP’), focussing only on the implications relating to the Sharing Economy.
3. While the call for evidence acknowledges there will also be an impact on a range of other taxes, this one focusses solely on VAT. It positions the challenges raised within the context of an ongoing body of work that has been undertaken both by the UK and international bodies, including in response to Action 1 of the Base Erosion and Profit Shifting (BEPS) Action Plan of the Organisation for Economic Cooperation and Development (OECD).
4. We agree that using a digital platform provides the basis for independent operators (the USPs) to gain the benefits of significant scale while still falling within exemptions that were designed to reduce the VAT administrative burden for small businesses. The challenges identified revolve around how transactions are falling (legitimately) outside the VAT net. We note that this is not a consultation about evasion or non-reporting of income, but about how the VAT regime of today does not work in this new digital environment.
5. The UK’s relatively high VAT threshold makes this concern particularly important in the UK compared to other countries. We note that previous consultations have examined and rejected reducing the VAT registration threshold.
6. We agree with the approach the Treasury is now adopting, asking questions which will help understand the commercial nature of how these platforms see themselves and what are their strategies for growth. We anticipate that the next step will be a full consultation with policy proposals, which will also begin to address some of these fundamental questions and look forward to participating further in this debate.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: What are your initial impressions of the Sharing Economy? Is the government right to be looking into it in the context of VAT?

7. Yes. However there needs to be a very clear definition as to what is considered to be within the scope of the ‘Sharing Economy’. In addition, regarding being within the scope of VAT clearer definitions regarding the meaning of ‘taxable person’ and ‘consideration’ will be required to ensure a high degree of legal certainty. For example, would car cost sharing be included? There are potentially major issues with barter type supplies for which there is no or little monetary consideration. In considering this same area, the OECD has tried to restrict the scope of the problem being addressed by excluding barter transactions such as couch surfing (exchange of a night on a couch for a home cooked meal for the host provided by the transient guest).

Question 2: Are there any Sharing Economy business models which the definition and guidance we have set out do not cover but which we should be aware of?

8. The OECD’s definition retained in the call for evidence is in itself very broad. The OECD did however attempt to circumscribe the notion of the ‘Sharing Economy’ by excluding certain types of transactions undertaken for non-monetary consideration where the determination of the value of the reciprocal supplies would be difficult to achieve – eg ‘couch-surfing’ - see answer to Question 1.
9. In terms of the place of supply of transactions within the Sharing Economy, the main conclusion of the 2015 OECD work was the recommended adoption of the destination principle for VAT. However, this means that a business needs some familiarity with the

VAT/GST rules for every country in which it has a customer, or, for example, in relation to real-estate letting, where the property is located.

10. There needs to be clear definitions of the nature of the supplies in the Sharing Economy, not only by the underlying suppliers but also those generated by the platforms, eg are their services related to real-estate (accommodation) taxable where the property is located, or are they electronically supplied services generally taxable where the customer is located. As the OECD has clearly pointed out in most Sharing Economy activities there are three parties involved, the underlying supplier, the platform and the customer (who may also himself be a supplier) – each of these parties may be making supplies for VAT purposes. Consideration must be given to ensuring that any legislation in the UK is globally compatible to ensure that there is no double taxation or double non-taxation.
11. How can businesses in all other countries be sure that they understand the rules in the UK, so that they can comply? The significant extension to the One Stop Shop will make steps towards facilitating compliance across the EU from 1 July 2021, but is there scope for a worldwide equivalent? Could HMRC collect indirect taxes for every country across the world for supplies by UK businesses to customers in each country, with a reciprocal agreement for the tax authorities in every other country? Could all tax authorities be trusted to hand over the correct amounts due? How would mediation work where such trust was not assured?

Question 3: Do you agree with the government’s assessment of the size and nature of the Sharing Economy in the UK? Have you or your organisation produced analysis not listed above on the size and nature of particular sectors of the Sharing Economy in the UK?

We would be particularly interested in any material relating to the five largest sectors of the UK Sharing Economy referred to in chapter two:

- **short-term accommodation**
- **passenger transportation**
- **on-demand household services**
- **on-demand professional services**
- **collaborative finance**

12. We do not have any data on the size or relative importance of the activities set out in the question. An example could be an accountant providing professional services in exchange for services such as building, gardening or window cleaning.
13. It would, in our view, be of benefit for the purposes of the analysis of the impacts to provide a definition of what is covered under each of the above headings – eg, does passenger transport cover the actual transportation, for example as provided by Uber drivers or should it cover also cost sharing arrangements such as BlaBla Car? The business models are very different.

Question 4: If not covered in your response to the previous question, could you please provide us with any projections which you or your organisation have produced regarding the future growth of the Sharing Economy in the UK?

This could be information covering a specific sector or the Sharing Economy as a whole, if, for example, you are responding on behalf of a trade body, professional institute or management consultancy.

It could be information for a specific business if you are responding on behalf of a digital platform. Your response will be treated in the strictest confidence.

14. We have not produced any projections – but there are a number of studies that have been undertaken on the magnitude and potential for growth of the sharing economy – see for example PwC UK (April, 2016), ‘[Assessing the size and presence of the collaborative economy in Europe](#)’. In February 2021, KPMG published its report Asset-light and flexible freight transportation to enable the supply chain of the future, see <https://advisory.kpmg.us/content/dam/advisory/en/pdfs/2021/sharing-economy.pdf> in which it considers how a sharing model is being used increasingly in freight transportation.

Question 5: Do you consider the balance to be changing between VAT-registered and non-VAT registered businesses in terms of relative contribution towards the UK's economic output?

That is to say, in favour of non-VAT registered businesses supplying an increasingly large proportion of services.

15. We are unaware of any change in the balance between VAT-registered and non-VAT-registered businesses, although the freezing of the VAT registration threshold may have a limited impact over time. Nonetheless, as the OTS reported in 2017 '... the threshold is costly (the annual cost of VAT foregone compared with the EU minimum threshold of €10,000 being over £2bn). There is also evidence it has a distortionary impact on business growth and activity'.
16. The OTS also noted a tendency for businesses, especially those with little input tax to recover, to 'bunch' around the registration threshold – this phenomenon is, in our view, likely to be even more pronounced in the 'Sharing economy'.

Question 6: Have you or your organisation produced analysis of the revenues which underlying service providers generate on digital platforms; if so, please could you summarise the results for us?

It would be helpful if you could categorise your response within the following turnover bands:

- (1) less than £10,000
- (2) between £10,000 and £34,999
- (3) between £35,000 and £69,999
- (4) between £70,000 and £84,999
- (5) greater than £85,000

Please state whether your analysis relates to a business, a sector or the sharing economy as a whole.

17. We have not produced any analysis of this nature.

Question 7: Should the government consider alternative VAT rules to the agent-principal rules in the context of the Sharing Economy? Should we consider solutions which, under certain circumstances, would require Sharing Economy digital platforms to account for VAT on the supplies that underlying service providers make to consumers?

18. A problem arises if an underlying supplier with low turnover, ie below the VAT registration threshold, and not registered for VAT were to supply services to a private individual. If the digital platform were deemed to supply the service, it would have to charge VAT on what would otherwise be a supply not subject to VAT. It would seem fairer for the digital platform to charge VAT on its introductory services, or commission to the underlying supplier. If the proposition is only to subject to VAT those supplies made by underlying suppliers above the VAT registration threshold then this 'distortion' would be removed.
19. However, platforms may not be aware of the level of activity of the underlying suppliers on multiple platforms as to whether in total the activities of a particular supplier exceed the registration threshold in the UK. Further any proposed change in legislation must not differentiate activities (from a VAT perspective) carried out via platforms and those carried out face to face – which would discriminate against platforms.

Question 8: Does your view about the need for alternative VAT rules in the context of the Sharing Economy vary according to economic sector and business model, or does it apply across all sectors and business models?

By way of example, would your answer be different in relation to passenger transportation than it would be for on-demand household services or the letting of short-term accommodation?

20. There could be a distinction made between goods and services, goods being easier to value and identify.
21. The example of passenger transport is interesting. Public transport is zero rated, but taxis etc are standard rated if registered for VAT. Is there room for simplification here, such as all charges for transport being either zero rated or standard rated? If zero rated, the issue largely disappears. If standard rated, the valuation and VAT registration issues arise. The decision on rate is a matter for government.
22. As we mentioned above business models based on cost sharing for car rides may not fall within the scope of VAT but to ensure legal certainty there must be a clearer definition of 'consideration' to ensure that only those activities where there is a clearly definable consideration can be brought into the scope of VAT – if they are not already.

Question 9: Should the government review the cross-border place of supply rules in this context; specifically, in light of that fact that these give an unfair VAT advantage to digital platforms based outside the UK? If so, how would you recommend we address this?

23. The place of supply rules should be amended so that the nature of the customer makes no difference to the place of supply (ie B2B or B2C). This would eliminate the complication of a supplier having to determine whether its customer was a business or non-business customer. The place of supply should be the location of the customer in all cases. If necessary, the supplier would then have to register for VAT in the customer's country or make use of a One Stop Shop type mechanism, as being further extended in the EU with effect from 1 July 2021. However, as noted above, the UK's place of supply rules must be harmonised with those applied in other countries/regions to avoid double taxation.

Question 10: What do you think about solutions that would require Sharing Economy digital platforms, wherever they are established, to register and account for UK VAT on the commission fees that they charge their (UK) underlying service providers? Please include details of your experiences of similar regimes in other jurisdictions.

24. If registration were to be adopted, this could perhaps be simplified by requiring the platform to apply the VAT fraction to the gross profits that it makes made from its commission. We understand there are withholding regimes whereby the platform withholds VAT/GST out of the commission, so avoiding registration by the ultimate supplier.

Question 11: Bearing in mind HMRC's desire to develop compliance measures which can be enforced with equal effectiveness upon both UK and offshore businesses, what do you think would be a proportionate and effective set of obligations, sanctions and administrative easements that HMRC could use to encourage compliance among digital platforms and underlying service providers?

25. Before this can be pursued further, clarity is needed as to who is the person liable for VAT? This might be the platform or the ultimate supplier, but not both. We recommend the Treasury should also consider, as the OECD has done, whether platforms rather than being liable for the VAT could not adopt the OECD's suggested roles for platforms. These roles include: information sharing with/reporting to the tax authorities enabling these authorities in respect of normal compliance activities as well as for risk analysis purposes; involving the platforms in educating/informing actors about their tax obligations and/or assisting them by providing IT solutions to facilitate compliance; imposing a type of liability to collect the VAT/GST due on the sharing/gig economy activities that they facilitate.
26. International agreement is needed to ensure compliance, perhaps along the lines of a worldwide One Stop Shop for platforms. This should then be easier to police, as the tax authority in the country of the suppliers could then be made responsible for the tax collection from their own citizens, regardless of where the customers were located and the country in which tax was due.

APPENDIX

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).