

OECD releases consultation document on model rules for data reporting by platform operators for sellers in the sharing economy

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Executive summary

On 19 February 2020, the Organisation for Economic Co-operation and Development (OECD) released a consultation document ([the Consultation Document](#)) on model rules for reporting of data by platform operators with respect to sellers in the so-called sharing and gig economy. This interest in a common set of data reporting rules parallels the European Commission's interest in amending the European Union (EU) Directive on Administrative Cooperation (Directive 2011/16/EU, also known as the DAC) to facilitate the collection and exchange of data from digital platform operators by national tax authorities.¹

The views and proposals included in the Consultation Document do not represent the consensus views of the Committee on Fiscal Affairs (CFA) or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment. Interested parties are invited to submit written comments by 20 March 2020.

Detailed discussion

Background

The Forum on Tax Administration (FTA) was created in July 2002 by the OECD's CFA, with the aim of promoting dialogue between tax administrations and identifying good tax administration practices. The FTA's work is organized under three pillars: (i) supporting the international agenda; (ii) improving compliance; and (iii) future tax administration. The FTA's activity in recent years has included work on risk assessment and effective use of country-by-country reports, joint audits and effective taxation of sharing and gig economy participants.

At the 11th Plenary meeting of the FTA in 2017, FTA members agreed to work on a project to help ensure the effective taxation of the sale of goods or services in the sharing and gig economy. This project was referenced in the March 2018 OECD interim report to the G20 on *Tax Challenges Arising from Digitalisation*.² A project group, led by the Italian Revenue Agency and the United Kingdom's Her Majesty's Revenue and Customs, was set up to carry out the work. The project group held several meetings and engaged with selected sharing and gig economy platform operators. At the 12th plenary meeting of the FTA in 2019, the FTA members welcomed the publication of a report on the effective taxation of platform sellers in the sharing and gig economy, which summarizes the findings of the project group.³

On 7 February 2020, the European Commission opened a public consultation to strengthen the exchange of information framework in the field of taxation and update the EU DAC to include the ability for tax administrations to collect and then exchange taxpayer data collected by digital platform providers during the course of their operations, with the objective of delivering a common EU reporting standard in this area.

The Consultation Document

On 19 February 2020, the OECD released the Consultation Document on model rules for reporting of data by platform operators with respect to sellers in the sharing and gig economy. The Consultation Document states that the existence of online platforms facilitating a variety of transaction between users in the "sharing" or "gig" economy as changing many business sectors and suggests that tax administrations may wish to consider adapting their compliance strategies to reflect this development.

It notes both that there are significant opportunities for tax administrations to benefit from the move of activities previously carried out in the informal cash economy onto digital platforms and that certain activities carried out through online platforms may not always be visible to tax administrations. The Consultation Document acknowledges that some jurisdictions have already introduced reporting measures for platform operators and notes that dealing with multiple different reporting requirements could lead to costs and barriers to further development for platform providers.

Following up on the recommendations made by the FTA in 2019, the Consultation Document includes a draft of model reporting rules that could be adopted by interested jurisdictions on a uniform basis to collect information on transactions and income of platform sellers, with a view to containing the proliferation of different domestic reporting requirements and facilitating the automatic exchange of information by interested jurisdictions. In addition, it includes a draft code of conduct aimed at educating platform sellers on their tax obligations and minimizing compliance burdens.

Objectives of the model rules

The Consultation Document identifies several objectives of the model rules:

- ▶ Ensuring that tax administrations get timely access to high-quality information on the consideration earned by platform sellers
- ▶ Promoting standardization of reporting rules (which will help platform operators comply with their reporting obligations across jurisdictions)
- ▶ Promoting international cooperation
- ▶ Providing a reporting regime that can also be used for other tax-related purposes (e.g., value-added tax (VAT) risk analysis and monitoring)
- ▶ Promoting the development of new technical solutions to support the performance of due diligence (which eliminate most of the compliance burdens for platform operators)
- ▶ Ensuring that the scope is and remains adequate, efficient and targeted (recognizing that digital markets are rapidly evolving)

Building blocks of the model rules

The Consultation Document describes the overall architecture of the model rules as driven by three dimensions:

- (i) A targeted scope of transactions to be reported
- (ii) A broad scope of platform operators and relevant sellers, to ensure as many relevant transactions as possible are being reported
- (iii) Due diligence and reporting rules that ensure relevant information is reported without overly burdensome procedures

The Consultation Document summarizes the structure of the model rules as follows:

- ▶ Section I defines the scope of platform operators, the services covered, and the due diligence procedures and reporting requirements and contains a set of other relevant definitions.
- ▶ Section II contains the due diligence procedures to be followed by platform operators in order to identify sellers and determine the relevant tax jurisdictions for reporting. This includes procedures for identifying sellers not subject to the collection and verification requirements, identification of the information items that platforms are required to collect, rules for determining the tax residence of sellers and specification of the timing for completion of due diligence procedures and confirmation of documentation.
- ▶ Section III sets out the information to be reported about the platform, its operators, its sellers and their transactions each year and the format for reporting.
- ▶ Section IV contains administration and enforcement hallmarks that jurisdictions are expected to consider when implementing the model rules.

Definitions

The draft model rules define a “platform” as any software including a website or a part thereof and applications, including mobile applications, accessible by users and allowing sellers to be connected to other users for the provision of relevant services to such users. The term “platform” also includes associated services, including the collection of consideration. This definition is intended to exclude a platform that solely offers its own services, without the ability for third-party sellers to provide relevant services for the benefit of other users.

A “platform operator” is defined as an entity that contracts with sellers to make available all or part of a platform to such sellers. The draft model rules provide an exclusion from the reporting requirements for platform operators that have been incorporated for less than three years (before the first

day of the reportable period) and have realized revenue of less than €100,000 (for the most recent financial accounting period preceding the first day of the reportable period).

A “relevant service” is defined as the rental of immovable property (residential and commercial property, as well as parking spaces) or the provision of a personal service for consideration. For this purpose, a “personal service” is defined as a service involving time- or task-based work performed by one or more individuals for the benefit of a user, unless such work is ancillary to the transaction. The draft commentary to the model rules provides further elaboration regarding the services covered, including illustrative examples.

For purposes of these rules, a “reportable seller” is any seller other than: (i) an entity with more than 2,000 provided services for the rental of immovable property; (ii) a governmental entity; and (iii) an entity the stock of which is regularly traded on an established securities market (and related entities).

Due diligence procedures and reporting requirements

The draft model rules provide for the reporting of data no later than 31 January of the year following the calendar year in which the consideration to a reportable seller was paid or credited.

Under the draft model rules, with respect to services other than immovable property rental, the platform operator must report for its reportable sellers:

- a) Identifying information, including name, address and any tax identification number and its jurisdiction of issuance
- b) Where different from the seller, the name of the holder of the financial account to which the consideration is paid
- c) Each jurisdiction of tax residence
- d) The total consideration paid or credited during each quarter of the reportable period and the number of relevant services
- e) Any fees, commissions or taxes withheld or charged by the platform during each quarter
- f) The due diligence procedures relied upon to determine each jurisdiction of tax residence

With respect to immovable property rental services, the address, and where available the land registration number, of each property listing, the number of days each property listing was rented during the reportable period and the type of each property listing must also be reported.

Next steps

The Consultation Document sets out 17 questions regarding key aspects of the draft model rules. The OECD also welcomes comments on any other aspect of the draft model rules and commentary. Written comments on the Consultation Document are requested to be submitted by 20 March 2020.

Implications

The OECD's project to develop model rules for reporting by platform operators could have significant implications. Several jurisdictions have already moved forward with rules in this area. Germany, for instance, implemented reporting requirements for VAT purposes combined with a joint

and several liability rule in 2019. Austria implemented similar rules this year. Adoption of a set of model rules at the OECD level could potentially increase the likelihood of implementation by other jurisdictions.

Potentially affected companies should follow developments in the OECD project. Affected companies should also follow developments in the parallel effort announced by the European Commission. Companies may want to consider submitting comments as part of the consultation processes in the OECD and the EU. Companies also could begin to assess what changes to their processes and technology might be needed to enable reporting of the type contemplated in these projects.

Endnotes

1. See EY Global Tax Alert, [European Commission opens public consultation into collection and exchange of taxpayer information from digital platform providers](#), dated 17 February 2020.
2. See EY Global Tax Alert, [The OECD's interim report on tax challenges arising from digitalisation: An overview](#), dated 20 March 2018.
3. See OECD, ["The Sharing and Gig Economy: Effective Taxation of Platform Sellers"](#), dated 28 March 2019, and EY Global Tax Alert, [OECD's Forum on Tax Administration agrees on collective actions on tax certainty, cooperation and digital transformation](#), dated 29 March 2019.

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