
The collaborative economy and taxation

Taxing the value created
in the collaborative economy



IN-DEPTH ANALYSIS

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The growth of the collaborative economy has raised both concerns and challenges, making it necessary to examine its organisation and forms. The phrase covers a variety of transactions, commercial and non-commercial, involving individuals and businesses in different frameworks. Identifying the ways in which the collaborative economy operates and competes with traditional businesses is a prior condition to assessing how the taxation challenges it poses can best be addressed. Maintaining a level playing field for the taxation of all operators in the sectors where it operates is key.

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EXECUTIVE SUMMARY

A relatively recent phenomenon, the collaborative economy has become mainstream in a decade in some areas of activities, such as car-sharing or short-term lets. Although it is now a well-known term – with alternative names from the 'sharing' to 'gig' to 'peer-to-peer' economy – it remains difficult to grasp precisely, beyond the central feature that potential consumers and providers are connected via a digital platform that matches demand and supply, providing cheap access to information on a very large scale. These 'match-makers' make it possible for non-professional providers to offer goods and services in a wide range of activities, generating value and with the potential for further development.

The collaborative economy is a fast-evolving phenomenon, which spans existing situations. However, the names specifically used to describe it blur lines through the use of a new trinity: 'users-providers-platforms' that does not match with traditional consumer, business and intermediary concepts – on which legal provisions are based and used for the application of relevant regulatory frameworks. The original tripartite transactions also cover a wide range of realities, from pure non-monetary sharing to actual business, and in particular business-to-consumer (B2C) activities. A number of regulatory concerns arise as a result, not least of which concerns taxation.

Taxation issues in the collaborative economy increasingly highlight the need for an in-depth look into taxation, focusing on the link between the value created and tax, and the need for a level playing field for incumbent business facing competition from these new entrants to the market. This need is manifold, matching the multifarious situations encompassed by the collaborative economy. Establishing a level playing field requires identifying taxpayers and the tax base (determining whether the income derived from the sharing economy is a main or ancillary professional source of income, as well as determining the tax status of the players in the collaborative economy with regards to other, in particular indirect, taxes). Clarification of the status of the parties involved in collaborative economy transactions is also necessary, to determine the related tax requirements. This is particularly tricky with regards to peer-to-peer (P2P) platforms where the providers can be individuals acting in a non-professional capacity, triggering tax consequences and results in multi-faceted compliance challenges. Finally, dealing with taxation in the collaborative economy requires a case-by-base and tax-by-tax approach that prevents a straightforward 'one-size-fits-all' approach.

Based on available examples of national and local regulatory approaches adopted so far, some possible paths can be drawn, bearing in mind that they are generally reactive, addressing the identified side effects, some of which are specific to the particular areas where the collaborative economy has developed. Cooperation with collaborative platforms to ensure providers' tax compliance is one of them. Platforms can be proactive in cooperating with tax authorities to ensure exchange of information on tax obligations. Some platforms may help in the tax declaration process by collecting information resulting from e-transactions, and even collect some of the taxes, simplifying collection for tax authorities (e.g. local taxes relating to tourism). Action regarding B2C platforms fits into the ongoing reflection and action on digital business, as they share common features. Finally, addressing the tax challenges of the collaborative economy involves grasping its fast-evolving, multi-faceted reality, and fighting the narrative fog to understand exactly what the collaborative economy means.

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1. Introduction

When referring to the collaborative economy, the examples of well-known businesses in the car-sharing and rental-sharing areas immediately come to mind. However, these represent only a part of the collaborative economy. The collaborative economy can be described as giving, sharing or swapping services via a platform, for a fee or for free. Collaborative platforms are internet-based tools that enable transactions between people providing and those using a service, in other words they are virtual networks connecting users and suppliers.

For policy-makers to understand the breadth of challenges posed by the collaborative economy, it is necessary to examine its organisation and forms in-depth, as the phenomenon covers a variety of transactions, involving both individuals and businesses. Identifying the ways in which the collaborative economy operates is key to assessing how it competes with traditional businesses, and to identifying how it can be addressed as regards taxation.

2. Overview of the collaborative economy

The collaborative economy has emerged in citizen's daily life rather recently,¹ resulting from the new possibilities created by the ubiquity of information and communication technologies (ICT). Various terms, apart from collaborative economy and sharing economy, are used to describe the phenomenon, encompassing a variety of situations ranging from pure non-monetary sharing, to a range of commercial transactions via a new business model (the platform economy). The collaborative economy has developed in a wide range of services, from renting accommodation and car-sharing, to domestic tasks.

2.1. A niche concept becomes mainstream in a decade

Although the collaborative economy emerged relatively recently,² the collaborative economy has now become mainstream (some sources date this development to the years 2013/2014). This evolution is driven by technological, economic and societal factors, in particular improved communications technology and ubiquitous smart phone applications.

In short, potential buyers and sellers are connected via a platform that matches demand and supply in ways that were not previously possible. ICTs and platforms provide easy and cheap access to information on a very large scale.³ These 'match-makers' allow non-professional providers to offer goods and services (in other words, deploy their capital and labour).

The collaborative platforms have changed the ways of providing goods and services, enabling peers (chiefly individuals) to become providers, while not running a business activity and remaining consumers. This broadens the notion of providers beyond just business. As a result

¹ The first Google search on the term dates back to 2009.

² Examples of collaborative economy, such as real (non-monetary) sharing, gifting, swapping or bartering exist prior to the advent of internet-based platforms, which remained limited and confined geographically and in scope. Such free-to-use models still exist and are connected with the recirculation of goods.

³ These platforms are accessible worldwide, although the goods and services that are offered might be regional or local.

the collaborative economy generates equally new forms of work⁴ and sources of income.⁵ The collaborative economy is often said to blur the existing lines between social and commercial, and consumers, providers, and users (as evidenced in the 'prosumers' neologism),⁶ which is important in determining under which category economic activity should be addressed with regards to the relevant regulatory frameworks.

The use of technology (together with the connected use of data),⁷ which is the main driver of the collaborative economy, makes economic transactions both easier to run and cheaper (transaction costs), resulting in economies of scale and network-effects.⁸ It also facilitates interactions that were previously impossible. The collaborative economy takes digital transformation out of digital industries and implicates a larger number of individuals.

The collaborative economy (rather than 'sharing economy') appeared relatively recently in European Union (EU) documents (see Annex 1), notably in the communication 'Upgrading the single market: More opportunities for people and business' adopted by the Commission on 28 October 2015. The communication on 'A European agenda for the collaborative economy', adopted by the European Commission in June 2016, acknowledges the economic and social relevance of the collaborative economy. It underlines, among other things, that the collaborative economy may promote new employment opportunities and new sources of income by enabling individual citizens to offer services, and provide benefits for consumers through new services, an extending supply and lowering prices. Here the term collaborative economy is used to cover the same ground as the sharing economy, the term used in the literature covering the phenomenon beyond the EU.⁹

2.2. Services provided and value generated

The areas in which the collaborative economy platforms first prospered (accommodation, short-time lets, and transportation of passengers) are the first to come to mind. This is because they have posed some of the thorniest questions for regulators, for competing businesses, and for the general public. Nevertheless, the markets in which the collaborative

⁴ On the impact on work, see for instance Drahokoupil J. and Fabo F., [The platform economy and the disruption of the employment relationship](#), ETUI Policy brief, 2016.

⁵ In economic terms, the fact that platforms also make markets more competitive and efficient by improving the match between demand and supply, is also put forward (yet this is to be assessed against specific features of the considered market).

⁶ See [Critical assessment of European agenda for collaborative economy](#), Policy department for economic and scientific policy, European Parliament, February 2017, p. 12: 'This new economic environment is leading to the emergence of a novel economic agent, currently described with different neologisms – peers, prosumers, producers, pro-am consumers, and so on – that combines both production and consumption for a new, peer-based, mode of production and exchange, in accordance with two key directives: decentralisation and de-professionalisation, in a gradual overcoming of the distinction between producer and consumer.'

⁷ This relates to the use of the data generated by the use of the platforms (data privacy aspect) as well as the use of the data by the platforms As an example of the screening of users and providers operated by some platforms, see Hughes M., [Should a criminal record ban you from the sharing economy?](#), January 2018.

⁸ See for instance Demary V. and Engels B., [Collaborative business models and efficiency](#), Impulse paper N°7, Cologne Institute for Economy Research, April 2016, esp. pp. 12 sqq. Transaction costs cover search and information costs, bargaining and decision costs and governance and enforcement.

⁹ On the use of 'sharing economy' and 'collaborative economy' prior to the 2016 European Commission communication, see Codagnone C. and Martens B., [Scoping the sharing economy: origins, definitions, impact and regulatory issues](#), JRC technical reports, European Commission, 2016, pp. 6-7.

economy has developed are expanding beyond these familiar areas.

The collaborative economy allows providers to offer users many types of services. Transactions in the collaborative economy do not result in a change of ownership between users and providers however – when a user needs a good it is rented for a specific period, which is a service (car-sharing, house-lets, but also renting material). Pure services, such as provision of knowledge or baby-sitting, also exist.¹⁰

As a broad picture, the collaborative economy covers:

- Durable consumer goods, such as cars, bicycles, clothes or apartments;
- Nondurable consumer goods, like meals, or food in general;
- Investment goods, e.g. machines, or factory buildings;
- Intangibles, primarily knowledge;
- Services, such as babysitting, cleaning, or other typical services (with suppliers sharing their time while providing the service);
- transportation (passenger);
- online labour market (household services and professional and technical services);
- collaborative finance (crowd funding).¹¹

Estimations have been made of the **value generated** via the collaborative economy, although such assessments should be interpreted cautiously. In the Commission communication of 2 June 2016 on 'A European agenda for the collaborative economy', value is estimated at €28 billion in 2015.¹² The development potential is assessed in the 2016 study on the 'Cost of non-Europe in the sharing economy' at €160-572 billion in annual consumption across the EU-28 (€572 billion being the highest value assessed in 2015).¹³

Participation in the collaborative economy has grown, and today users include a substantial number of EU citizens. Public awareness and the frequency of use of collaborative platforms is considerable.¹⁴

2.3. Naming a fast-evolving phenomenon

There is no generally agreed term to describe the realities of the collaborative economy, nor does a generally accepted definition exist. Instead, several names and descriptions co-exist.¹⁵

Several labels are commonly used when referring to the collaborative economy, in particular 'platform economy', 'gig economy', 'on-demand economy' or 'peer economy'. All of these encompass terms covering a wide variety of situations and actors interacting via a digital

¹⁰ Commission communication '[A European agenda for the collaborative economy](#)', 2 June 2016.

¹¹ For a more detailed presentation, see Owyang J., [Honeycomb 3.0: The Collaborative Economy Market Expansion](#), March 2016, which lists the platforms operating in the collaborative economy generally.

¹² For a synthetic presentation, see the Commission staff working document SWD(2016) 184 final, part 3: 'Economic development and drivers', based on a study contracted by the European Commission.

¹³ Goudin P., [The Cost of Non-Europe in the Sharing Economy](#), EPRS, European Parliament, January 2016.

¹⁴ See [The use of collaborative platforms, Flash Eurobarometer 438](#), March 2016.

¹⁵ For an illustration of this variety of terms and the related conceptual ambiguity, see Codagnone C., Biagi F. and Abadie F., [The passions and the interests: unpacking the sharing economy](#), JRC, European Commission, 2016, Figure 1: Floating signifiers, p. 20, and Evidence box: Conceptual and semantic ambiguity in the sharing economy, p. 67.

platform. Each conveys an assessment of the phenomenon, without fully describing it, but instead emphasising a quality ascribed to a particular situation, considered by some as a word choice able to influence perceptions.¹⁶ This is particularly the case with the term 'sharing economy', and phrases such as 'helpers' used instead of providers.¹⁷ Some also consider that both 'sharing economy' and 'collaborative economy' aim at casting 'an inherently positive' gloss, likely to convey pre-conceived bias.¹⁸

Nevertheless, all these different terms contribute to identifying the characteristics of the phenomenon, and provide an encompassing definition. Several help grasp the key features of the collaborative economy. For example, a definition identifying the peer-to-peer characteristic is that it:

*...provides an economic opportunity for individuals to trade their under-utilised assets with other individuals through intermediaries that match supply and demand in an efficient way and with the help of information technologies. In many cases, this opportunity is exclusively only provided through collaborative platforms, as the supply of goods and services through other channels is subject to licencing and other regulatory barriers.*¹⁹

A complementary unifying definition focuses on five factors that unite the changes across many industries: market-based exchange; high-impact capital; crowd-based 'networks' rather than centralised institutions or 'hierarchies'; blurred lines between the personal and the professional, and similarly blurred lines between fully-employed and casual labour.²⁰

Another characteristic is that a collaborative economy firm is a digital platform owned and operated separately from the products and services exchanged.

As regards platforms, these are numerous and can display a swift evolution, whether developing into international corporations, or becoming a 'traditional' business using e-commerce facilities (but owning their assets and employing their staff). This implies that when addressing a specific collaborative economy business situation, it is important to have up-to-date information.²¹

¹⁶ For instance, to illustrate this discrepancy between the implicit nature conveyed by the 'sharing' or 'collaborative' adjectives and the reality, see Poole S., '[What's Yours Is Mine: Against the Sharing Economy by Tom Slee review – the problem with Airbnb and Uber](#)', *The Guardian*, 2016, or Cohen-Setton J., '[Blogs review: the sharing economy hype](#)', Bruegel, 2014 of the article '[Don't buy the 'sharing economy' hype: Airbnb and Uber are facilitating rip-offs](#)', by Baker D., *The Guardian*, 2014.

¹⁷ See for instance Stemler A., '[The myth of the sharing economy and its implications for regulating innovation](#)', *Emory Law journal*, Vol. 67, issue 2, pp. 197-241, 2017, esp. pp. 205-2016: 'The term "Sharing Economy" is a model of how word choice can influence perceptions. Adopted by most platforms, the term invokes notions of "helping others" and "community"(...) When euphemistically associated with such positive and altruistic images, it is no wonder that platforms can mobilise their millions of users to advocate on their behalf.'

¹⁸ This is particularly the case when addressing the changes engendered in work conditions. On the impact on work, see for instance Drahokoupil J. and Piasna A., '[Work in the Platform economy: beyond lower transaction costs](#)', *Intereconomics: review of European economic policy*, 52, 2017, pp. 335-340. Nevertheless, where pre-bias exists, it can impact on other areas.

¹⁹ See [An economic review of the collaborative economy](#), Policy department for economic and scientific policy, European Parliament, 2016, p. 12; underlining added.

²⁰ [The collaborative economy: socioeconomic, regulatory and policy issues](#), Policy department for economic and scientific policy, European Parliament, p. 12.

²¹ As an example, some car-sharing entities are now owned by car-renting companies (e.g., Zipcar – DriveNow).

Close but distinct conditions: the example of car-sharing

Vehicle sharing (the first examples of which date back to the early 20th century)²² is now a familiar way to use a particular vehicle. The practice has also developed in different forms. In this sector two different broad categories exist: the first being hiring the assets (vehicle) and the second adding a driver (labour and human capital) to the initial vehicle hire.²³

Traditional rental companies and car manufacturers have also entered activities such as peer-to-peer sharing (with or without driver), fractional ownership programmes and short-term renting.

When referring to car-sharing, the situation can vary enormously, from a P2P to simple business renting. Each situation displays different characteristics, and not all pertain to the collaborative economy.

3. Collaborative economy disruption

Existing criteria might not be able to fully describe the specificities of the collaborative economy, and this may raise concerns with regards to legal certainty. This poses a specific challenge for policy-makers addressing the collaborative economy (and more generally digital operations and e-commerce), as the activities, the underlying technologies and business models evolve rapidly by their nature; current provisions and criteria are potentially quickly outdated, and leave a legal and regulatory vacuum. As a result, adaptability of the criteria, as well as clarity in their meaning, is of primary importance when tackling regulatory challenges.

3.1. Decoding the collaborative economy

A main characteristic of the collaborative economy is that it matches 'people' who want to share assets and services via an online platform. It encompasses a wide variety of situations and actors (peers, consumers and business) – interacting via a platform, for the temporary use of goods or services – for profit or non-profit. Each situation needs to be assessed on its own merits, going beyond the terms deployed, which often do not match the criteria or concepts used in the regulatory provisions. In order to apply and enforce regulatory provisions it is necessary to clearly identify consumers, businesses, intermediaries, self-employed workers and employees.

3.1.1. Blurred lines: users-providers-platforms and consumers-businesses-intermediaries

The players in the collaborative economy belong to three categories: the service providers, who can be an individual (real peers) or a professional service provider; users who consume the assets provided (who are generally end-consumers); and the platform that connects both categories.²⁴

²² See Lehmann R.J. '[Blurred lines: insurance challenges in the ridesharing market](#)', R street policy study no 28, October, 2014.

²³ To illustrate the first category, see Zipcar, easyCar, Autolib, and Velib for instance; and for the second category, BlaBlaCar, Sodecar, Uber, Lyft, for instance.

²⁴ The Commission identified three categories of actors in its 2 June 2016 communication '[A European agenda for the collaborative economy](#)', 2 June 2016:

- (i) Service providers who share assets, resources, time and skills — these can be private individuals offering services on an occasional basis ('peers') or professional service providers;
- (ii) Users of these services;

Users is the most straightforward category, consisting of the users who consume the services provided. However, these may be end-users (consumers within the meaning of the EU consumer protection framework or non-end users (including businesses)).

Providers basically share the assets, resources, time, and/or skills, consumed by users. As regards their characteristics, they can be individuals offering services on an occasional basis (who are not professional, ranging from 'hobbyists' to casual providers), or professional service providers (which can be individual professionals, micro-entrepreneurs,²⁵ and companies).²⁶

Platforms match users and providers using information technologies. They can draw their preferences and characteristics to match supply and demand of services. They can also facilitate payment between users and providers.

Peer-to-peer (P2P) – one of the terms used to describe the collaborative economy – refers to transactions where both sides belong to the same category of economic actor, and are generally consumers, rather than businesses. P2P is used for consumer to consumer (C2C) transactions, excluding those between other categories of peer (which can be business-to-business – B2B – and Government-to-government – G2G).

Two models of collaborative economy exist: P2P and B2C. To distinguish between them, the role played by the platform is decisive. Where the platform serves only to channel the demand, without providing goods or services, and simply acts as an intermediary between supply and demand, the model is P2P. This is the case when suppliers retain full control of the service they offer. When the platform serves not only to channel the demand but also supplies the goods and services (e.g. free-floating car), or exert a strong control on the provisions of the service, the model is B2C.²⁷ If the transactions extend beyond these models – for instance by retaining control of the transaction, the providers, the prices, the quality of the services and the selection of providers – they may be deemed as service providers in their own right, triggering a transaction which can be remunerated differently (form fees, or advertisement, for instance). The service provided is an information society service 'as long as they deliver a service for remuneration, at a distance, by electronic means and at the individual request of a recipient'.²⁸

(iii) Collaborative economy platforms that connect providers with users and facilitate transactions between them, also ensuring the quality of these transactions.

²⁵ For a detailed presentation, see Dondena et al., [Literature review on taxation, entrepreneurship and collaborative economy](#), Publications Office of the European Union, 2017, p. 49 sqq: 'Impact of taxation on the decision to become an entrepreneur'.

²⁶ See note 6. As regards the range of providers in P2P platforms, see also Dondena et al., op. cit., p. 35: 'The literature does not provide an unequivocal answer to the question of which of these groups dominates the collaborative economy provider landscape. Emerging conclusions from survey evidence indicate that the "average" provider is likely to be using platforms to generate occasional or supplementary earnings, rather than as a primary source of income.'

²⁷ See Demary V., [Competition in the sharing economy](#), IW policy paper 19/2015, Cologne Institute for Economy Research, pp. 6-7.

²⁸ Commission communication '[A European agenda for the collaborative economy](#)', 2 June 2016, p.5 'Collaborative platforms'.

Platform: e-brokerage or business

The service offered by platforms is not new: it acts as an intermediary²⁹ between producers and customers. The question whether the intermediary service provided via a collaborative economy platform is ancillary to the provision of the actual specific service used by the customer is of importance, as it can trigger the application of provisions specific to the area of activity.³⁰

In addition, some platforms are more than an intermediary, but instead constitute a marketplace. In this case, the platform needs to be assessed to determine its status, taking into account that they also tend to evolve rapidly.

The global scale of a number of platforms (either acting only as an intermediary or playing a broader role) renders them multinational enterprises (MNEs), sharing common features, amongst which include their tax features.³¹

3.1.2. Platform and tri-partite transactions

The hallmark of the collaborative economy is the connection between users and sellers through a platform. Platform markets, also known as two-sided markets,³² are markets where a firm brings together two or more sides, both of which benefit from the existence of the platform.

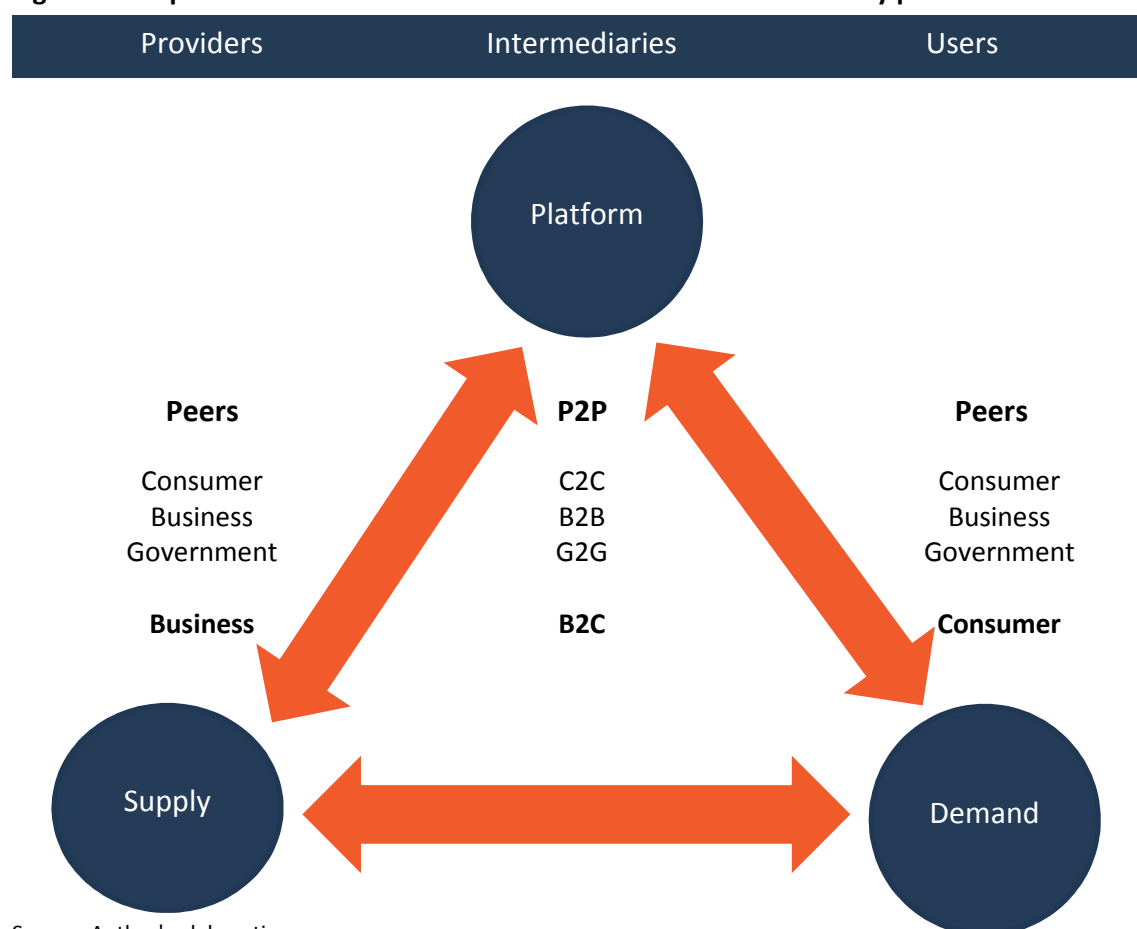
The collaborative economy consists of transactions between users, providers and the platform. Transactions, generally speaking, are an agreement between a buyer and a seller to exchange goods, services or financial instruments. As already mentioned, they generally do not lead to a change of ownership. Platforms can also offer other services in addition to the information society service of matching users and providers. Criteria are identified in the 2 June 2016 Commission communication. Here the assessment of market access conditions is more important than the nature of the service as such.

²⁹ Note that many major platforms have chosen to classify themselves in the USA as 'payment facilitators' – a classification originally intended for use by financial intermediaries – which have obligations to report gross earnings for all US users who earn over US\$20 000 and have 200 or more transactions in the calendar year. The vast majority of P2P sellers are unlikely to meet these criteria, reinforcing the importance of setting appropriate reporting thresholds.'

³⁰ See Judgement in Case [C-434/15](#) – *Asociacion Profesional Elite Taxi v Uber Systems Spain SL*, 20 December 2017. Note that the conclusion of the case is related to the nature of the non-public urban transport service. As regards the 'intermediation service that enables the transfer, by means of a smartphone application, of information concerning the booking of a transport service between the passenger and the non-professional driver who will carry out the transportation using his or her own vehicle (...) must thus be regarded as forming an integral part of an overall service whose main component is a transport service and, accordingly, must be classified not as "an information society service" within the meaning of Article 1(2) of Directive 98/34, to which Article 2(a) of Directive 2000/31 refers, but as "a service in the field of transport" within the meaning of Article 2(2)(d) of Directive 2006/123' (points 34-40).

³¹ See for instance Erwin B. and Karaman F., [The sharing economy part 1: New business models +traditional tax rules don't mix](#), *Insights*, Vol. 4, Nr 10, Ruchelaw, 2017, p.28.

³² On two-sided markets, see Cain Miller C., [How Jean Tirole's Work Helps Explain the Internet Economy](#), *New York Times*, October 2014.

Figure 1 – Tripartite relations and transactions in collaborative economy platforms

Source: Author's elaboration.

3.1.3. Transactions and income in the collaborative economy: distinction between pure sharing and commercial platforms

Collaborative economy platforms can be a true sharing platform (not-for-profit) or a for-profit collaborative economy platform (transactions for consideration i.e. beyond the sharing of the costs incurred by the service).³³

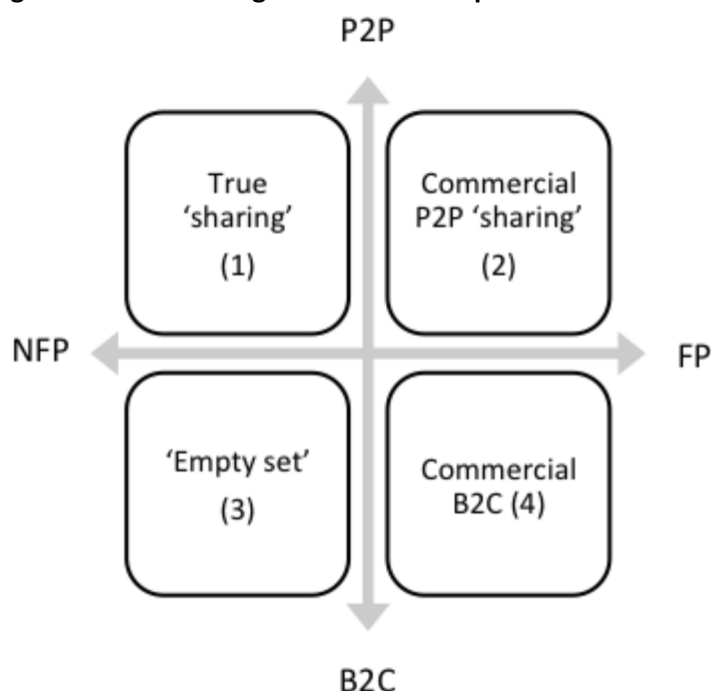
A part of the collaborative economy relates to 'true sharing', generally for smaller groups of users generating neither income nor added value, which is not a result of an information society service.³⁴ Such sharing generally occurs between peers (P2P).

For-profit collaborative economy activities can either be peer-to-peer (a consumer-to-consumer³⁵ situation), or a business to consumer transaction (B2C) for consideration, i.e. for profit. The variety of collaborative economy activities is illustrated in Figure 2.

³³ See the presentation in the 2017 study by Dondena et al., op. cit., p. 91: 'Income versus cost-sharing – Related to the above, cost sharing is treated as distinct to income in most tax systems. For example, in car-pooling schemes, payments to the driver to cover petrol money and maintenance would not be treated as income for taxable purposes.'

³⁴ Article 1(2) of Directive 98/34 (information society services) defining such a service 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'.

³⁵ Consumer here does not refer to the legal concept triggering obligations for business in consumer law.

Figure 2 – True sharing and commercial platforms

NB: NFP means 'not for profit', and FP 'for profit'.

Data source: Codagnone C. and Martens B., [Scoping the sharing economy: origins, definitions, impact and regulatory issues](#), JRC technical report, European Commission, 2016, p. 12.

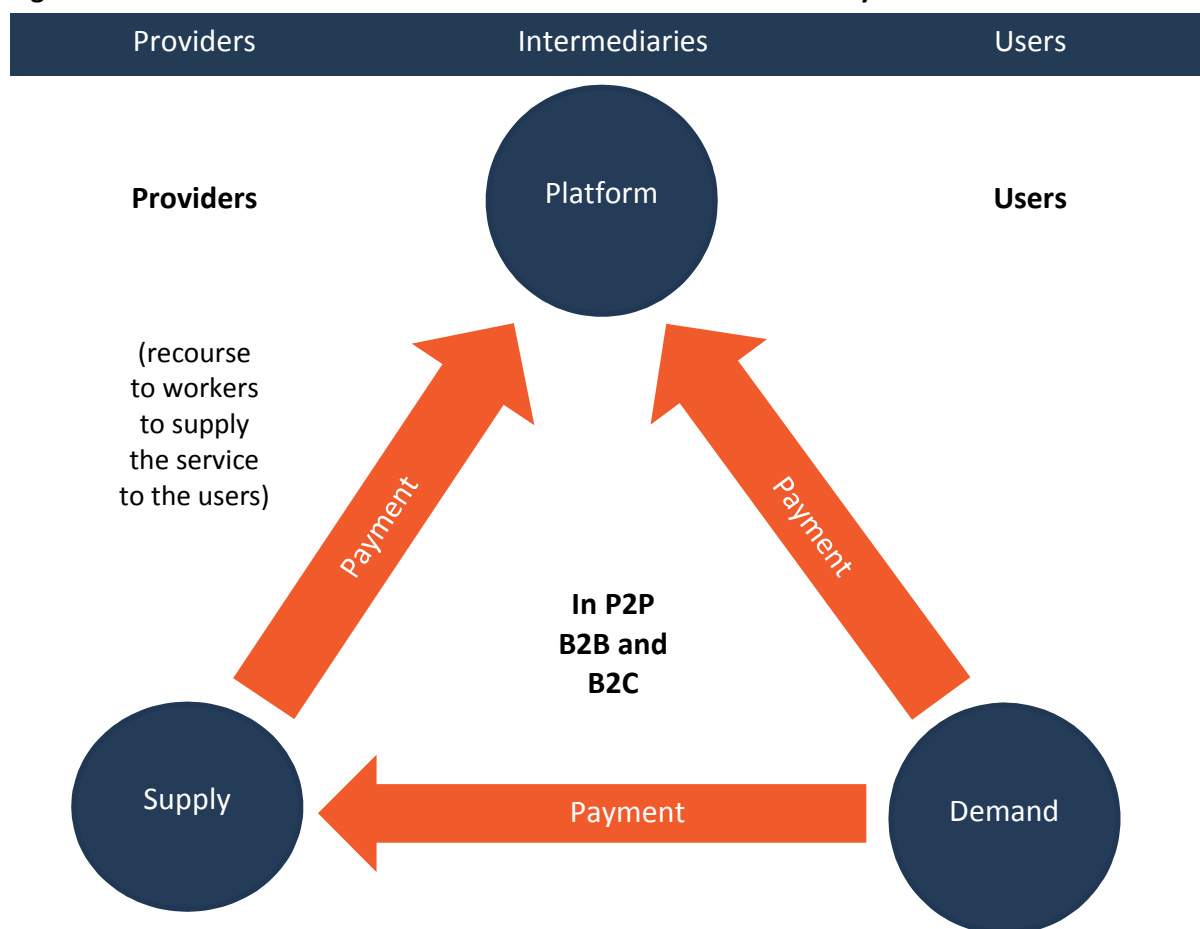
Transactions for consideration generate income and added value. This is self-evident for B2C transactions carried out by businesses, but this is also the case in P2P platforms, which raises more challenges, as sometimes the individuals acting as suppliers are not fully aware of the obligations (including tax obligations)³⁶ resulting from the extra income gained.

Pricing on the collaborative economy platforms can vary from a monthly price, a percentage of price per unit consumed (e.g. kilometres in car-sharing), fees for guests, or advertisement.³⁷ Income can also occur that is not directly related to the transaction between the provider and the user, such as advertising, or data mining.

In the collaborative economy, all transactions take place and are registered digitally, which at first sight excludes the possibility to 'cheat', all the more since the payments are also digital (as opposed to the black economy). As for P2P platforms themselves, their role as intermediaries means that they maintain a digital footprint of all business income generated by users ensuring traceability and opening the path for a reporting obligation upon platforms (see Section 4.3).

³⁶ See, for instance, results of the [research on the sharing economy prepared for Her Majesty's Revenue and Customs \(HMRC\)](#) in November 2017: 'quarter of respondents said they knew very little or nothing at all about how their sharing economy income is taxed. While our evidence shows that on the whole people want to comply with their tax requirements, many said they wanted more support and information from HM Revenue and Customs and sharing economy platforms around tax obligations and reporting'.

³⁷ Demary V., op. cit., p. 13.

Figure 3 – Schematic of financial flows between collaborative economy actors

1. Possible payment to the platform (fee, subscription etc.) generating an income for the platform¹

2. the supply may be realised as a result of using workers paid by the supplier: the question of tax applies with regards to the income for the workers and the social contributions for both the providers and the worker

3. Possible remuneration by advertisement/data mining etc. generating an income for the platform

4. Payment to the supplier
- generating an income for the latter, and
- added value if the users is an end user

5. Possible payment to the platform (fee, subscription etc.) generating an income for the platform

Source: Author's elaboration.

3.2. Regulatory challenges across the variety of platforms

Regulatory challenges posed by rent-sharing or car-sharing are often the first to come mind. However, they might not fully equivalent to those which arise in other collaborative economy areas, consequently it might be impossible to extrapolate a solution.³⁸

³⁸ Not all of these can be addressed using the same tools, in particular the question of self-regulation does not apply alike to trust safety and tax. In particular, extrapolating self-regulation regarding trusts may not address all compliance requirements (in particular tax).

The digital economy, and particularly the collaborative economy, raises a number of regulatory challenges covering not only taxation, but also consumer protection, safety, and responsibility (data protection).³⁹ Although each collaborative economy activity is specific, the common starting point is to give a legal qualification to both the peers involved and the transaction. This requires moving from descriptive terms such as 'collaborative lifestyle', true, or pseudo-sharing, to a case-by-case analysis using criteria relevant to assessing compliance with, among other things, taxation legislation, consumer protection safety, and responsibility requirements.

As acknowledged in the Commission communication on 'A European agenda for the collaborative economy', the collaborative economy often raises issues with regard to the application of existing legal frameworks, causing uncertainty over applicable rules, divergent regulatory approaches, and regulatory grey zones (in turn creating room for loopholes and mismatches enabling the circumvention of rules designed to preserve the public interest).

Regulatory uncertainty is seen as a challenge to the development of the collaborative economy.⁴⁰ As an example, unlicensed individuals offering rental services may not comply with the existing regulations or pay the associated costs (e.g. taxes, fees relating to required authorisations), giving them an advantage that enables them to charge lower prices. In addition, depending on the place where the services are provided, different rules might apply simultaneously in the same geographical market (several layers: state, local, and EU level when applicable).

Commonly identified challenges posed by the collaborative economy include consumer safety and protection (such as accountability in cases of consumer grievance and redress), fair competition, treatment of data generated, discrimination among participants, worker protection, and tax compliance. Some are common to both users and providers.⁴¹

Table1 – challenges raised

Users	Providers
Consumer protection and safety Accountability in consumer grievances and redress	Tax compliance and Fair competition Licensing and certification Labour impact and worker protection ⁴²
Treatment of shared information (data and privacy) Discrimination among participants Trust and reputational ratings	

Source: Author's elaboration.

³⁹ See [Synopsis report on the public consultation on the regulatory environment for platforms, on-line intermediaries and the collaborative economy](#), European Commission, 25 May 2016, where respondents point to: 'particular problems, such as the absence of a level playing field, lack of transparency, concerns around personal data collection and imbalanced bargaining power between platforms and suppliers, which could lead to unfair practices vis-à-vis consumers and businesses. A key cross-cutting issue mentioned in all the replies relates to the responsibility and liability of platforms. Many responses stressed the need to better enforce existing regulations and to ensure consistency of regulations within the EU.'

⁴⁰ See for instance Demary V. and Engels B., op. cit., pp. 25-29.

⁴¹ For a presentation of the legal framework involved, see for instance [BEUC position](#), pp. 11 sqq.

⁴² On this regulatory challenge which is not addressed here, see for instance the International Labour Organisation paper by De Stefano V. [The rise of the 'just-in-time workforce': On-demand work, crowdwork and labour protection in the 'gig-economy'](#), 2016.

4. Taxing value created by the collaborative economy

The literature on the collaborative economy does not address tax aspects in great detail.⁴³ Nevertheless, some studies on the collaborative economy also address specific features and the tax challenges they pose. These provide examples of the issues to be addressed and the remedies used in EU Member States. The examples provided below are taken from publicly available documents.

For the first time, at the end of 2017, the Commission survey on 'Tax policies in the European Union' examined and developed solutions as to how taxation could support entrepreneurship and harness the collaborative economy, while also fostering social mobility and ensuring social justice.⁴⁴

As a compulsory contribution to state revenue (in the broad sense), tax levied on workers' income (household and business, as taxpayers), or added to the cost of some goods, services and transactions, taxation is based on an initial determination of the transaction for consideration on which the tax applies (tax base), followed by determination of the status of the taxpayer to determine the direct and indirect taxes applicable.

4.1. Level playing field between collaborative and traditional economies

The principal challenge for deciding taxation lies in the fact that actors can belong to different categories of taxpayers, and consequently be liable for differing taxes, even though they are in competition with each other.

4.1.1. Level playing field and related concepts

The term '**level playing field**' is rather recent, and refers to equality of opportunities, or a 'fair-terms-on-all-sides' situation. No competing party should consequently have an advantage at the outset of a competitive activity, in line with the concepts of **fairness and justice**. In short, referring to a level playing field does not mean that each player has an **equal** chance to succeed, but that they all play by the same set of rules. In other words, it refers not to an equality of situation, but to an equality of opportunities. A prior requirement is to check that the various aspects of an initial situation are equal, that they share one (or several) qualities or standards which make them similar, and are consequently comparable.⁴⁵

Moving to the well-established case-law on the **equal treatment principle** as an illustration, equality of treatment means treating identical situations in the same way ('treat like cases as like', or formal equality), with the inverse meaning that treating different situations in the same way constitutes a breach of the equal treatment principle.

In taxation, the 'arm's length principle'⁴⁶ is based in national law and in double taxation treaties with the aim of addressing the specific situation of cross-border intragroup transactions from a tax perspective to ensure profits are taxed where they are generated. The

⁴³ See Codagnone C., Biagi F., Abadie F., op. cit., see table 5, pp. 77-115 summarising the content of the 140 review findings.

⁴⁴ European Commission, [Tax Policies in the European Union –2017 Survey](#), December 2017, p. 5 and the two-page box in 'Box 2.1: Collaborative Economy: tax compliance and collection', pp. 46-47.

⁴⁵ Arneson R., '[Equality of Opportunity](#)', *The Stanford Encyclopedia of Philosophy*, 2015, Edward N. Zalta (ed.).

⁴⁶ For a short presentation of the principle and a critical assessment of the deriving transfer pricing, see for instance [transfer pricing](#), Tax justice network, and the OECD's related [webpage](#).

principle is a tool used to delineate the tax base for tax authorities in cases of transactions which span over at least two tax jurisdictions and that do not have prices because they take place between related entities of a group of entities (intragroup transactions). The benchmark follows a detailed methodology which consists of assimilating the transaction to a similar one between unrelated entities and determining the price therefrom, so as not to provide an advantage to one of them. These are not purely objective ones (some have stressed the influence of behavioural economic findings in this respect).⁴⁷

4.1.2. Decrypting tax-related competition between collaborative and traditional economies

Collaborative economy platforms have entered markets where the traditional incumbent operators have operated, sometimes without competition for considerable time, such as taxis, for instance.

As the collaborative economy platforms often do not apply the framework and regulation of the respective market, unparalleled competition can be fostered against traditional companies that do. This is particularly the case of P2P models, as well as when platforms label themselves as digital companies (in other words, they sell access to software, matching algorithms and digital reputation and trust systems between their users and not the services and assets themselves).⁴⁸ The fact that new operators entering a market do not immediately endorse all the requirements applicable to the incumbent competition is not a new phenomenon and has also been observed in other sectors, where the digital economy enters markets previously dominated by 'brick-and-mortar' businesses.

When operating in the same market, the fact that some players pay less taxes than other businesses can generate a competitive advantage, since taxes are a cost for a taxpayer. Should the neutrality principle fail, an undue competitive advantage may be generated if unintended differential tax treatment of the collaborative economy occurs.

Put simply, quoting the description of the phenomenon in the Commission survey on 'Tax Policies in the European Union – 2017':

...if 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 (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.

4.2. Identifying taxpayers and determining the applicable taxes

The for-profit collaborative economy involves a transaction generating income and consequent tax liability. This is the case in all B2C and for-profit P2P models, whether the generated income is principal or ancillary. This applies whatever the means of payment, including the use of virtual currencies.⁴⁹

⁴⁷ See Greil S., 'The dealing at Arm's Length Fallacy: a way forward to a formula-based transaction profit split?', Intertax, Vol. 45, issue 10, pp. 624-630, in particular parts I, II and IV on the concept itself.

⁴⁸ In the United States, tech companies consider themselves as interactive computer service providers, see Stemler A., op. cit., pp. 216-217.

⁴⁹ See, for instance, the warning in the following [bitcoin.com page](#): 'The topic of payment methods is not the only thing to consider when getting involved in the sharing economy, though. Taxation is another important issue, as additional income generated through this "hobby" could be subject to additional taxes. Depending on where you live, and how much you earn, taxation may be enforced. Even if you are accepting Bitcoin

As several transactions are involved in the triangular relations run via a platform, each needs to be considered separately – for each taxpayer and each tax.

4.2.1. *Recognising the taxpayers*

B2C platforms are regulated by existing legislation on business,⁵⁰ therefore questions mostly arise regarding P2P platforms. The status of peers/suppliers is not the same in each case and no 'one-size-fits-all' approach exists. Indeed, peers in this respect are individuals, who may not be professionals, and determining whether they act in a personal or a professional capacity is a prerequisite to determining the application of tax law.

Individuals providing services (renting out their rooms, garages, time, skills, and personal possessions) to other individuals gain an income in return, which can trigger an obligation with regards to income tax and VAT (value added tax), for which latter a registration threshold exists. There is no such threshold for income tax (beyond the tax allowance), and any income gained as a provider in the collaborative economy would therefore need to be taken into account for income tax on the profits. In addition, in some countries, additional local taxes may apply to individuals acting in a professional capacity (as microbusinesses). Here, the challenge is to gather data about individuals who use the platforms and raise their awareness of the related tax obligations.⁵¹ However, as transactions are generally paid for electronically, this can be used to contribute to better identification of taxpayers and tracing income, especially if platforms report the data they hold on transactions (see below).⁵²

An additional question raised by the collaborative economy is that of the taxes linked to employment of the persons providing services to users on behalf of the platform (indirect social contributions and local taxes when applicable). When personal services are provided via a platform, establishing whether the individual is employed or self-employed (with the individual acting in a professional capacity) is key. If this is not the case, tax consequences may ensue (tax and/or social security) for the provider that has recourse to the persons acting for it (the hirer).⁵³

Platforms can act an intermediary and have a tax liability for the intermediation activity (e.g. taxable supplies for VAT) and the income they derive from it. When they are also providing

payments, make sure to check with your local government if there are taxes to be paid on your Bitcoin revenue.'

⁵⁰ See Codagnone C., Biagi F., Abadie F., op. cit., which analyses the literature on it. As phrased in its footnote xxv: 'The modalities of the exchange are different as some of the largest platforms (i.e. Airbnb) are pure P2P (where peer stands for a physical person as opposed to juridical persons), others are P2P (i.e. where individuals provide work to businesses as in Upwork or Freelancers), still others are B2C (i.e. Zipcar), G2G (i.e., MuniRent) or B2B (i.e., Cohealo). B2C platforms, no matter how innovative their business model (i.e. Zipcar), are fully regulated by existing legislation; the modality of exchanges and the players involved have different implications with respect to taxation concerns, which are obviously more important both in terms of what rules to apply and how to enforce them when platforms enable monetary exchanges between peers (i.e. taxation is an issue for Airbnb but a non-issue for Zipcar).'

⁵¹ See the [research on the sharing economy prepared for Her Majesty's Revenue and Customs \(HMRC\)](#), op. cit.

⁵² Tax compliance is generally stronger in economies with a higher penetration of electronic payments. Cash transactions create less of a record and are therefore more likely to be under-reported. See Goudin P., op. cit.

⁵³ See De Groen W. P. and Maselli I., [The impact of the collaborative economy on the labour market](#), CEPS special report, no 138, June 2016, pp. 26-27.

the service offered via the platform, they add to this activity. To this can be added the tax obligation as employer.

These B2C platforms may raise the same concerns as regards their size and tax practices as other multinational enterprises (see below).

4.2.2. *Determining the applicable taxes*

Tax is a fee charged by a government on a product, income, or activity. Indirect tax, including consumption taxes (VAT in particular in the EU, which is charged on goods and services) and excises taxes, are taxes levied on the price of a good or service. If tax is levied directly on personal or corporate income, then it is a direct tax.

Taxes relevant to the collaborative economy include personal income tax, corporate income tax, VAT, and other taxes.

Personal income tax derives from the transaction for consideration in compensation for the services the providers offer. The income of an individual supplier (secondary income or acting as a self-employed person) enters the income tax base if the supplier acts in their personal capacity, which is no longer the case when the supplier acts in a business capacity to run a business.

Corporate income tax is levied on the profit of a firm. As regards **providers**, this applies to entrepreneurs. The decision to start a business when operating as a provider in the collaborative economy can therefore be impacted by tax elements (in a broad meaning including social security contributions).⁵⁴ **Platforms** do not necessarily have a physical presence in all the countries where the services are offered, which raises the question of the existence of a permanent establishment. With limited physical presence in a country, an element allowing for their taxation in the country where their users buy the services they offer (i.e. where the value is created) may be lacking. This issue is currently under discussion at international (Organisation for Economic Co-operation and Development (OECD)) and EU level.

Both service providers and online platforms in the collaborative economy are, in principle, subject to **indirect taxes**, starting with **VAT** obligations, provided that the service provider is a VAT taxable person.⁵⁵ In the EU, the VAT framework is being reviewed to better address digital transactions, including the collaborative economy. The Commission highlighted the need for tax administrations to cooperate with collaborative platforms and the extension of the VAT one-stop-shop.⁵⁶

⁵⁴ See the assessment of the 'Impact of taxation on the decision to become an entrepreneur', 'Social security contributions' and 'Impact of taxation on the legal form of conducting a business (incorporation)' in Dondena et al., op. cit., pp. 49-59.

⁵⁵ In practice, a taxable person is generally a business, sole trader or professional. With this status, they are responsible for charging, collecting and paying VAT to the tax authorities, and documenting all of this in a VAT return. Private individuals are not generally involved in business and will therefore not be classed as taxable persons. For more information, see the dedicated Commission [webpage](#).

⁵⁶ The EU VAT regime for online sales has been recently updated, paving the way for a broadening of the one-stop-shop (single electronic registration and payment mechanism) by 31 December 2020. See Delivorias A., [Amending VAT rules on distance sales](#), Legislation in progress, EPRS, European Parliament, September 2017.

Other indirect taxes (e.g. excise duties) may be equally relevant, namely occupancy and tourist taxes in the case of short-term rental of apartments and rooms.⁵⁷

4.3. Fighting the fog on collaborative economy taxation

As there is no specific legislative and regulatory framework for the collaborative economy, the answers to the challenges which have arisen aim at capturing revenues deriving from the growth of the collaborative economy by tax authorities⁵⁸ and ensuring a level playing field with competing businesses, while also accompanying or promoting its development (namely entrepreneurship offering work opportunities).⁵⁹

Based on the information available on related measures across the European Union, some main conclusions can be drawn.⁶⁰ These illustrate policies on raising awareness, in particular for P2P providers on the binding rules; fostering cooperation with platforms, which can go as far as tasking them with collecting some taxes; and addressing platforms as multinational enterprises.

4.3.1. Clarifying tax obligations for P2P providers: raising provider awareness of tax obligations

Provider compliance can be improved by raising awareness. The first step as regards tax obligations is therefore to increase awareness, particularly for individuals acting as providers on collaborative economy platforms (P2P). Clearly setting out the line between ancillary activity and business activity allows citizens entering the collaborative economy to better understand their tax obligations.

Indeed, P2P providers who occasionally provide a service are not normally experienced in the requisite tax record-keeping and filing obligations.⁶¹ A part of this administrative burden can be alleviated if tax is collected by the platform and recordkeeping is assisted by information technologies reporting from the collaborative economy platform. Several examples exist of action taken by EU Member States to help individual providers in this manner.

A complementary action is to clarify tax requirements, in particular by setting the threshold above which tax obligations apply to the provider. Relevant for indirect taxes where certain thresholds apply to the tax liability of the provider,⁶² this is also important as regards income

⁵⁷ See presentation Dondena et al., op.cit., p.206.

⁵⁸ The collaborative economy involves a large number of rather small transactions. Nevertheless, the aggregated amount can be considerable.

⁵⁹ See Dondena et al., op. cit.

⁶⁰ Examples are taken from available information. Not all Member States have initiated or taken action relating to the taxation of the collaborative economy. The state of play is provided in [Tax Policies in the European Union – Survey 2017](#), op. cit., p. 46: 'Of the 28 Member States, five have already legislated one or more of the three solutions presented above (Belgium, Estonia, France, Sweden, the United Kingdom). Three countries (Austria, Denmark, Italy), have made proposals and five are actively engaged in the tax policy debate on the collaborative economy (Finland, Ireland, Lithuania, the Netherlands, Slovakia). In the remaining countries, little to no significant policy debate took place.'

⁶¹ See for instance Rahim N. et al., [Research on the Sharing Economy](#), Her Majesty's Revenue and Customs (HRMC), report 453, May 2017, namely conclusions on 'Tax-related behaviour of sharing economy providers', pp. 70-71.

⁶² Also relevant: the VAT small business exemption for facilitating tax compliance for micro entrepreneurs. Under Articles 284-287 of [Council Directive 2006/112/EC on the common system of value added tax](#), Member States are allowed to exempt small businesses from VAT registration up to a given threshold (for

tax, to ensure legal certainty for citizens as to how to comply with tax requirements when using collaborative economy platforms. Another criteria used to draw a line may be limitations to the remuneration of the cost, excluding profit (rendering the transaction for non-profit and consequently out of the scope of income tax). The frequency of the activity may also serve as a criteria to distinguish between a professional service and a peer service (e.g. a number of days).

In the EU, several countries have adopted measures to foster tax compliance.

Ireland created a 'Sharing economy tax centre'⁶³ in August 2016. The site provides information and resources relevant to the taxation of the sharing economy, so that individuals earning income through platforms can comply with tax obligations. The portal provides information for individual providers and for companies providing services, listing the tax issues to be considered and obligations to be met and kept in mind throughout the year. Among these are: the filing requirements; the status of the provider (employee or independent contractor) rules for home rentals; and supplementary information and documentation and links are provided on each heading.

In **Belgium**, the July 2016 Programme Act (*Loi programme/Programmawet*) sets a threshold for collaborative economy activities below which they can benefit from a flat-rate tax (10 %), do not trigger social security contributions, and are exempt from any VAT obligations, provided that a list of conditions are met (that the activity is a service, provided by one physical person to another, none of whom act in their professional activity, via a platform, and are paid or granted via the online platform approved by the tax authorities).⁶⁴

A 2016 law in **France** specifies a threshold for professional renters using Airbnb of up to €23 000 per year made from renting out homes on P2P economy websites, beyond which the profit is to be considered professional income and subject to income tax.⁶⁵

In the **United Kingdom**, a £1 000 tax-free allowance for property and trading income was introduced in April 2017, while the tax authorities were granted the powers to obtain data from digital platforms.⁶⁶

In **Finland**, small-scale passenger and goods transport is exempt from licensing requirements below a threshold of €10 000 annual turnover.⁶⁷

A proposal on the 'sharing economy' in **Italy** contains a relevant provision on fiscal grounds: a VAT exemption for sharing economy activities on digital platforms.

the 19 EU Member States that existed in 1977, this threshold was generally €5 000). An amendment of the directive was [proposed](#) on 18 January 2018.

⁶³ [Sharing economy tax centre](#).

⁶⁴ See presentation of the [collaborative economy tax treatment](#) mechanism and [A new legal regime for 'not too disruptive' collaborative platforms](#). The tax authority (*Service Public Fédéral Finances*) has a dedicated webpage [Economie collaborative](#).

⁶⁵ See Dondena et al., op.cit., p.155-160 and 180-183.

⁶⁶ Ibid.

⁶⁷ See [European agenda for the collaborative economy – supporting analysis](#), European Commission staff working document SWD(2016) 184, June 2016, p. 17.

In **Denmark**, a tax exemption is in place for income earned by renting out an apartment or house, if the amount is below DKR 24 000.⁶⁸

Taxation rules generally apply in the accommodation sector in **Slovakia** and **Hungary**.⁶⁹

Information campaigns directed at collaborative economy providers outside the EU are also in place.⁷⁰

4.3.2. *Cooperating with the platforms: fostering compliance using technology*

It is acknowledged that the collaborative economy bears the risk of expanding the shadow economy, as existing and new activity may go unreported. International work on tackling the shadow economy addresses this, namely in the OECD. A possible pooling of tax administration experience is being designed by way of 'a Task Force made up of interested tax administrations to examine the options, including in discussion with online intermediaries facilitating the sharing and gig economy, and to propose solutions'.⁷¹

However, the digital footprint of all transactions within a platform where data is recorded allows platforms to act as third-party reporters. This allows the possibility of exploiting technology to improve tax administration, and saves collaborative economy actors from monitoring a high number of transactions of small-scale P2P participants – particularly small providers and the self-employed. This would also respond to possible non-compliance on the part of small businesses, and relieve them of an administrative tax burden.⁷²

Cooperation with collaborative economy platforms provides useful mechanisms to authenticate the incomes reported by P2P sellers, since the platforms hold the information relating to the transactions that they have facilitated or intermediated. In other words, there is a possibility to use the big data generated by the platforms themselves to 'pre-complete' large parts of the collaborative economy taxpayer's tax return.⁷³ This is of particular importance for P2P transactions that are to be reported by all providers, opening a way towards tax authorities obtaining direct access to the information held by platforms, or ensuring that platforms withhold tax contributions on behalf of P2P users and subsequently remit these to the tax authorities. Tax authority cooperation with collaborative platforms could begin with sharing information on transactions run by providers, and develop towards automatic reporting of relevant income information to tax authorities by the platform (required to automatically report those P2P providers' income). Several such practices are already in place in EU Member states.⁷⁴

⁶⁸ However, different rules apply depending on whether you are the owner or renter of the apartment or house and whether it is a summerhouse. See Dondena et al., op.cit., pp. 169-172.

⁶⁹ Lenaerts K., Beblavý M. and Kilhoffer Z., [Government responses to the platform economy: where do we stand?](#), CEPS Policy Insights, nr 2017-30, July 2017.

⁷⁰ In this connection see Dondena et al., op. cit., p. 105.

⁷¹ [Shining light on the shadow economy: opportunities and threats](#), OECD, 2017, pp. 4, 48, 52.

⁷² See Aqib A. and Shah A., [Taxation and the Peer-to-Peer Economy](#), IMF working papers, August 2017, p. 26. Non-compliance from small business is typically very high, due to error rates, to which can be added misreporting and manipulation (the use of personal assets for P2P activities adds further difficulty in verifying expenses, which can be over 40 % in small businesses, even in advanced countries).

⁷³ Examples can be found in Estonia, and outside Europe in Brazil, see Dondena et al., op. cit., p.101.

⁷⁴ Examples also exist outside the EU see, for instance, the United States, as presented in Aqib A. and Shah A., op.cit., p. 26: 'all individuals or organizations who pay independent contractors at least \$600 during the year

In **Estonia**, a system set up in September 2015 and in place since February 2016, allows drivers to opt-in to a system where the transaction between providers (in this case drivers) and user is registered by the platform. The platform subsequently sends the tax office information on the income generated by the car-sharing drivers, which is automatically added to their tax return, building on the existing advanced online tax system.⁷⁵

A 29 December 2015 law in **France**⁷⁶ introduced an obligation for P2P platforms to inform their users residing in France, or those that conduct sales or provision of services in France, of their tax and social security obligations, for each transaction. Each year, the platforms used to make commercial offers must submit a document to their users that summarises the gross amount of transactions operated through the platform during the previous year. An independent third party certifies the platforms' compliance in respect of these obligations annually. Failure to comply risks by a fine of €10 000.

A further step was taken a year later, as a result of the 29 December 2016 law,⁷⁷ adding a supplementary obligation for collaborative platforms. This introduced the obligation to report their users' earnings directly to the relevant social security and tax administrations as of 2019. This tax return form – known as 'secure automatic reporting of income for online platforms' (*déclaration automatique sécurisée des revenus par les plateformes en ligne* (DAS) in French), must include several elements of information for each user liable for tax in France (identification, email address, private individual or professional status, total gross income received by the user during the calendar year in return for activities on the online platform, or paid through the platform, and the category under which the gross income falls). A copy of the information relating to each user in this tax return is sent electronically to the user concerned.

In 2016, the **United Kingdom** enacted legislation extending the powers of the tax authority to acquire data from digital platforms.

4.3.3. Collecting tax from the platform

A further step is to confer a collecting role on the platform that is connected to its intermediation of electronic payments for P2P transactions. This links the place where the value is created with the relevant tax jurisdictions for some taxes. While this cannot be achieved for all taxes, the link appears straightforward for **indirect taxes** on the gross value of the transaction. This is in particular the case for platforms in the accommodation-rental

must file a Form 1099-MISC to report these payments to the tax authorities. For collaborative finance platforms, any net interest earnings above US\$10 are reported on Form 1099-OID. The contractor will also receive a copy of these forms, providing a definitive record of income earned throughout the year. P2P platforms should, in principle, be fulfilling these reporting requirements, given that they classify their sellers as independent contractors. In doing so, they would also provide the tax authorities with data on turnover which can be cross-checked with the tax filings of those same individuals.' Some have qualified this cooperation as 'tax opportunism in information reporting': see also Oei, Shu-Yei, and Diane M. Ring, *Can Sharing Be Taxed*, pp. 46 sqq.

⁷⁵ See [EUCoLab, Best Practice Directory](#), 2017, p.62. For a more detailed presentation, see Dondena et al., op. cit., pp. 152-155 and 177-180.

⁷⁶ [Loi n° 2015-1785 du 29 décembre 2015 de finances pour 2016](#), Article 87. A [tax obligation](#) and a dedicated portal webpages are available. For a more detailed presentation, see Dondena et al., op.cit., pp. 155-160 and 180-183.

⁷⁷ [Loi n° 2016-1918 du 29 décembre 2016 de finances rectificative pour 2016](#), Article 24.

sector that play the role of tax collector and remitter for hotel and tourist taxes.⁷⁸

A number of platforms⁷⁹ have already agreed to collect and remit taxes on behalf of their users, in different countries, including some EU Member States. This is the case in **Portugal**,⁸⁰ **France** and the **Netherlands**, among others.⁸¹ At local level, platforms have also entered into agreements to collect specific taxes, in particular local hotel taxes, with a number of cities.

As regards income taxes, the situation is more complicated, as revenue from the collaborative economy in P2P may only represent part of the revenue, and needs to be considered together with other income and the personal situation of the taxpayer. In addition, data collected by each platform needs to be aggregated with other sources of income, including those from activities using other platforms, particularly given that activity often occurs across several platforms. This could result in shifting the compliance burden to the platforms.

4.3.4. Platforms as multinational enterprises

The biggest collaborative economy companies share common features with other multinational enterprises (MNEs),⁸² such as the use of IP licensing agreements, royalty payments, and the location of subsidiaries managing worldwide payment in tax jurisdictions, a practice commonly used by multinational companies, in particular those that are intellectual property (IP)-intensive. The biggest collaborative economy platforms have also set up a worldwide network of holding companies, and a large number of direct and indirect subsidiaries operating locally.⁸³

Collaborative economy platforms also use the same what is known as 'tax arbitrage' techniques as other MNEs. These are analysed and addressed in the actions provided in measures on base erosion and profit shifting (BEPS),⁸⁴ and their follow-up at international

⁷⁸ The example of India's experience outside the EU of such a role for indirect tax on goods and services is reported in Aqib A. and Shah A., op.cit., p. 27.

⁷⁹ See presentation in Rigaux L., [Sharing economy: a new challenge for the tax systems in the European States?](#), 2016, under Sectoral taxes, p. 27.

⁸⁰ See, for instance, Dondena et al., op. cit., p. 97. An example of an agreement by the platform to collect tax can be found for Portugal on the [Airbnb webpage](#).

⁸¹ Note that, in another area, there are examples of taxes collected on [ride-hail companies](#).

⁸² As an illustration, see Frenchweb, 6 February 2018, regarding Airbnb [turnover and profits](#).

⁸³ See the presentation by Karaman F. and Erwin B. [The sharing economy part 2: governments strike back](#), *Insights*, Vol. 4, Nr 11, Ruchelaw, 2017, as well as the first part of this article [The sharing economy part 1: New business models +traditional tax rules don't mix](#), with a presentation of the structure of two leading names in the collaborative economy (Uber and Airbnb). See on permanent establishment (PE), p. 29: 'Most income tax treaties concluded by the USA, for example, include a clarification that if a foreign company carries on business in the source state via a subsidiary, it shall not of itself constitute a PE. A similar provision can be found in income tax treaties based on the OECD Model Tax Convention. From a US tax perspective, a number of PE authorities illustrate that the separate status of affiliated corporations generally is respected. Tax authorities in the subsidiary's jurisdiction may take a deviating view if the local subsidiary is deemed a dependent agent. This would, however, require additional facts, such as legal or economic dependence upon the parent (other than solely by reason of share ownership) and entering into contracts on the account of the parent. Under current treaty rules, a subsidiary, however, cannot be a PE if its activities would be merely ancillary in character if performed directly by the parent'.

⁸⁴ Valero J., [OECD's Gurría: 'Don't jump the gun' on digital tax](#), Euractiv, January 2018. [Consultation](#) by the OECD on the tax challenges of digitalisation was initiated on [September 2017](#) with a view to preparing the April 2018 progress report.

level and in the specific measures adopted in implementation of BEPS and to further action at EU level. The measures specifically address the question of the tax nexus (permanent establishment for digital business operating via a subsidiary holding the group IP, located outside the countries where the platform operates).

As regards VAT, the platform is, as a minimum, responsible for remitting taxes on any fees or commission charged for its intermediation services. When the platform is considered to employ the 'providers', it faces tax obligations as an employer.⁸⁵

5. Outlook: grasping a fast-evolving, multi-faceted reality

The collaborative economy, and the digital economy as a whole, have loosened the methods of doing business, rendering it necessary to update the existing regulatory framework. So far, responses to the challenges posed by the collaborative economy at national and local levels have generally involved reactive solutions answering salient side-effects – in particular those relating to tax neutrality with regards to specific areas and issues.⁸⁶

Nevertheless, the required legislative update should rest on the specific characteristics of the collaborative economy, and the multi-faceted and fast-evolving reality in which it operates. The first step is to consider 'the necessity of a specific tax regime, and then whether such a tax regime should incorporate tax incentives based on a rationale for stimulating collaborative economy activity'.⁸⁷

In addressing the effects of the collaborative economy on taxation, impacts on tax neutrality and tax compliance can serve as indications of the broad objectives to tackle uncertainty in the classifications used, fragmentation of income, and the derived tax compliance costs for both taxpayers and the tax authorities, in order for society to benefit fully from the value created in the sharing economy.

⁸⁵ The situation varies according to the litigation regarding the employment status of persons participating in the collaborative economy, in particular drivers (employee or self-employed). In some countries the question of the drivers' status was decided on the stated grounds that they are employees rather than an independent contractor; this is the case in the United Kingdom (2016). This argument was rejected by a French court however, in March 2017. See, for instance, the most recent presentation in the 2017 study by Dondena et al., op.cit., pp. 92-96 part 4.2.2 'The classification of income Employment versus self-employment'.

⁸⁶ Lenaerts K., Beblavý M., Kilhoffer Z., op.cit.

⁸⁷ See, for instance, Dondena et al., op.cit., p. 42: 'in the literature there are two contrasting approaches to the tax treatment of collaborative economy activity. The first approach views the existing body of substantive tax law as already equipped with a conceptual framework sufficient to accommodate for collaborative modalities of business. ... However, they also suggest that it is necessary to streamline tax administration practices to address emerging compliance challenges ... The second approach suggests that the collaborative economy is, to an extent, a novel and distinct phenomenon and as such existing tax law is unable to accommodate it accurately.' This part relates to the rationale for differential tax treatment of entrepreneurship in the collaborative economy, however the alternative is a more general stance). The same applies to the conclusion that 'Many experts and stakeholders take a position somewhere between the two archetypal positions, noting that although the collaborative economy does not introduce entirely new notions, the technological turmoil that accompanies it renders some concepts and definitions outdated'.

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7. Annex

7.1. The EU and the collaborative economy (non-exhaustive list)

European Parliament resolutions

[Resolution of 15 June 2017 on agenda for the collaborative economy](#); [press release](#), European Parliament, 2017.

[Resolution of 24 November 2016 on new opportunities for small transport businesses, including collaborative business models.](#)

[Resolution of 26 May 2016 on the single market strategy.](#)

[Resolution of 19 January 2016 on towards a digital single market act.](#)

European Commission

[Communication 'A European agenda for collaborative economy'](#), COM(2016) 356, European Commission, June 2016, and [Commission staff working document](#) accompanying the document SWD(2016) 184.

Communication on [online platforms and the digital single market opportunities and challenges for Europe](#), COM(2016) 288, May 2016.

Communication on [upgrading the single market: more opportunities for people and business](#), COM(2015) 550, October 2015.

Communication on a [digital single market strategy for Europe](#), COM(2015) 192, May 2015.

Council

[Outcome of the Council meeting](#) on the collaborative economy, September 2016.

Advisory committees

European Economic and Social Committee

Opinion on [taxation of the collaborative economy – analysis of possible tax policies faced with the growth of the collaborative economy](#), October 2017.

Opinion on [collaborative economy](#), December 2016 (on the June 2016 communication).

Opinion on [sharing economy and self-regulation](#) (exploratory opinion), May 2016.

Committee of the Regions

Opinion on [collaborative economy and online platforms: a shared view of cities and regions](#), December 2016.

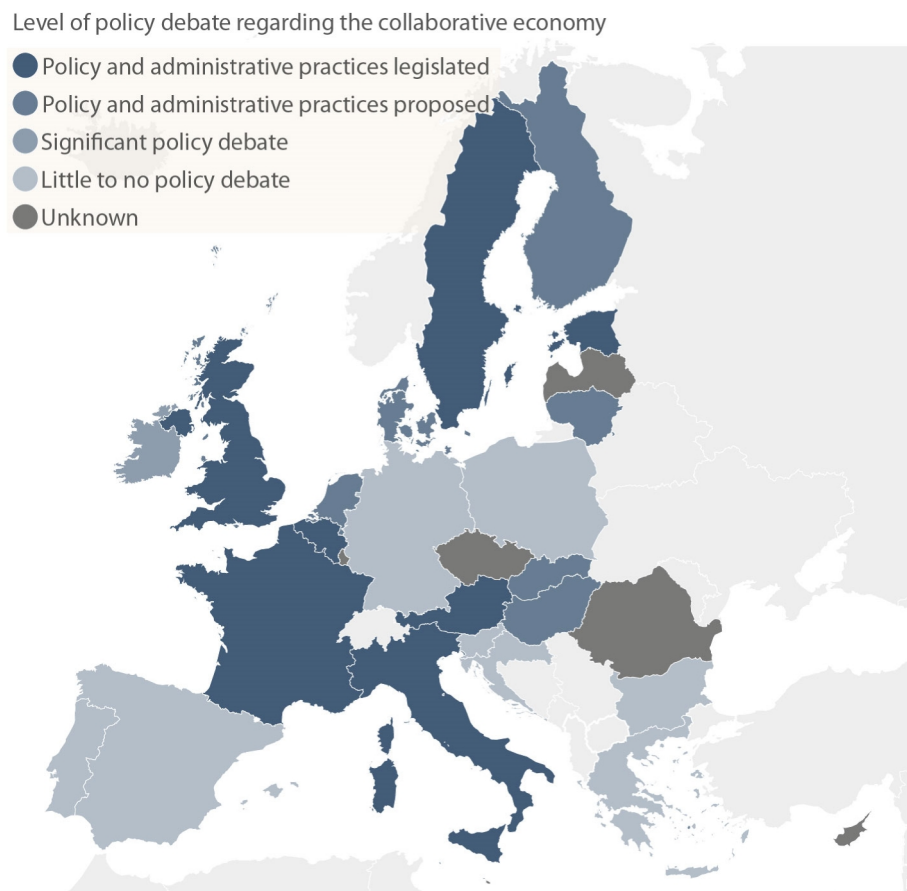
Opinion on [local and regional dimension of the sharing economy](#), December 2015.

7.2. Schematic of tax issues raised by the collaborative economy

Type of collaborative economy	Transaction	Tax	Collaborative economy tax issues
B2C: tax obligations on the business (platform)	Sales	Indirect: VAT	Same as for traditional business (with distinction between small and larger businesses)
	Sales	Other indirect taxes such as tourism tax	Same as for traditional business
	Sales generating business income	Direct taxes	Same as for traditional business (including digital economy)
	Recourse to persons actually providing the service (e.g. drivers, deliverers)	In case of employment taxes, related to the employment	Determining the status employed (or self-employed, in which case it can be a personal professional activity with related tax obligations, or an occasional activity as a peer, falling under P2P)
P2P: tax obligations on the peer providing the service	Sales	Indirect: VAT	A taxable person is a business, sole trader or professional. The peer is not generally a professional
	Sales	Other indirect taxes such as tourism tax	High number of providers Solution found in collection by the platform
	Sales generating income	Income tax	Ancillary income traceability Awareness regarding tax compliance Clarifying threshold above which specific obligations apply to this income
	Sales generating income as micro entrepreneur	Direct taxes	Same as for traditional business (including digital economy)

Source: Author's elaboration.

7.3. Measures taken by EU Member States on the collaborative economy



Source: [Member States' tax policy and administration practices in response to the collaborative economy](#) in Dondena et al., op.cit., p.151.

EU citizens' daily lives have been changed by the emerging collaborative economy. However, the terms employed to describe the phenomenon are as many and varied as the interpretations of what the collaborative economy actually comprises. The collaborative economy encompasses many situations that do not match the standard business categories and types of transactions.

The collaborative economy blurs the lines, not least as regards taxation. For policy-makers to understand how taxation of the collaborative economy can be put into practice requires fighting the surrounding fog of terms and categories. Privileging a case-by-base and tax-by-tax, rather than a straightforward 'one-size-fits-all' approach, is a prerequisite for grasping the potential benefits of this fast-evolving and multifaceted reality.

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