Looking at services commonly provided by sharing economy platforms to their users, it seems that various classifications of those services are possible for place of supplies purposes under EU VAT.

A first possibility is that, based on their ultimate function to facilitate the provision of the underlying services among others, the services in question are regarded as intermediary services to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. While, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the passenger transport service provided by the underlying supplier is located. In such event, while, in case of a B2B transaction, the place of supply is instead where the underlying transaction occurs. In case of a platform like Uber or BlaBlaCar, the place of supply of those services is where the immovable property used in the provision of accommodation services by the underlying supplier (a non-taxable person) actually is. The presence of a platform does not alter the nature of the transaction and the place of supply of those services as electronically supplied services essentially depends on the actual level of influence and control operated by the platform to directly intervene in the transaction. In case of a platform like Airbnb or HomeExchange supplies its services to a non-taxable person, the place of supply is instead where the passenger transport service provided by the underlying supplier is located. In such event, while, in case of a B2B transaction, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

The OECD Working Party No. 9 on Consumption Tax Issues, on its part, has been working actively on the role of digital and sharing economy platforms in relation to the collection of VAT on cross-border transactions and the classification and integration of platform services in the VAT framework. The past few years have seen the sensational rise of new models of production, distribution, and consumption of goods and services, which have largely been facilitated and enabled by the rapid development and widespread adoption of digital technologies. The pace of innovation is so fast that entire industries have seen their business models disrupted by the new technology, as vividly explained by US District Court Judge Chhabria in a case involving the US-based sharing economy platform Uber.

In such light, it is particularly relevant for businesses and consumers alike to exchange with each other anything, from goods to services, with the ease and efficiency previously unimaginable. The OECD Working Party No. 9 on Consumption Tax Issues, on its part, has been working actively on the role of digital and sharing economy platforms in relation to the collection of VAT on cross-border transactions and the classification and integration of platform services in the VAT framework.

Tentative Solutions to Classification Problems of Platform Services

In order to solve those kinds of classification problems, a more systematic approach is required to determine the place of supply of platform services provided in the EU. In this connection, the author submits that three main possibilities can be envisaged:

1. A first alternative solution would be to treat platform services always as intermediaries, i.e. as services provided, by a platform acting either in its own name, or on behalf of another person. In such event, the place of supply is where the underlying transaction occurs. This solution is appealing, as a platform can normally be regarded as a professional intermediary in service transactions, which are generally classified as such when provided by an intermediary service provider. The OECD Working Party No. 9 on Consumption Tax Issues, on its part, has been working actively on the role of digital and sharing economy platforms in relation to the collection of VAT on cross-border transactions and the classification and integration of platform services in the VAT framework.

2. A second alternative solution would be to treat platform services always as electronically supplied services, i.e. as services delivered without an intervention on the basis of an electronic network, which are essentially supplied to parties situated in different Member States. In that respect, the place of supply of such services would of course still depend on whether the customer is taxable or non-taxable. While, in the first case, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

3. A third alternative solution would be to treat platform services always as the same as the underlying services to which they relate, i.e., in case of the intermediary platform, as services connected with an operation of property rental, or operating a conveyance. In such event, the place of supply of such services would depend on whether the underlying transaction occurs. In case of a platform like Uber or BlaBlaCar, the place of supply of those services is where the immovable property used in the provision of accommodation services by the underlying supplier (a non-taxable person) actually is. The presence of a platform does not alter the nature of the transaction and the place of supply of those services as electronically supplied services essentially depends on the actual level of influence and control operated by the platform to directly intervene in the transaction. In case of a platform like Airbnb or HomeExchange supplies its services to a non-taxable person, the place of supply is instead where the passenger transport service provided by the underlying supplier is located. In such event, while, in case of a B2B transaction, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

Classifications of Platform Services under Place of Supply Rules

A first possibility is that, based on their ultimate function to facilitate the provision of the underlying services among others, the services in question are regarded as intermediary services to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. While, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the passenger transport service provided by the underlying supplier is located. In such event, while, in case of a B2B transaction, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

A second possibility is that platform services are characterized as electronically supplied services, provided they are essentially supplied without an intervention on the basis of an electronic network, pursuant to the definition laid down in article 1(1)(f) of the VAT implementing regulation (EC) N 2116/95. In such case, the place of supply would be linked to the location of the underlying service provided. While, in case of B2B transactions, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

An alternative solution that could be envisaged in order to solve those kinds of classification problems, a more systematic approach is required to determine the place of supply of platform services provided in the EU. In this connection, the author submits that three main possibilities can be envisaged:

1. A first alternative solution would be to treat platform services always as intermediaries, i.e. as services provided, by a platform acting either in its own name, or on behalf of another person. In such event, the place of supply is where the underlying transaction occurs. This solution is appealing, as a platform can normally be regarded as a professional intermediary in service transactions, which are generally classified as such when provided by an intermediary service provider. The OECD Working Party No. 9 on Consumption Tax Issues, on its part, has been working actively on the role of digital and sharing economy platforms in relation to the collection of VAT on cross-border transactions and the classification and integration of platform services in the VAT framework.

2. A second alternative solution would be to treat platform services always as electronically supplied services, i.e. as services delivered without an intervention on the basis of an electronic network, which are essentially supplied to parties situated in different Member States. In that respect, the place of supply of such services would of course still depend on whether the customer is taxable or non-taxable. While, in the first case, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.

3. A third alternative solution would be to treat platform services always as the same as the underlying services to which they relate, i.e., in case of the intermediary platform, as services connected with an operation of property rental, or operating a conveyance. In such event, the place of supply of such services would depend on whether the underlying transaction occurs. In case of a platform like Uber or BlaBlaCar, the place of supply of those services is where the immovable property used in the provision of accommodation services by the underlying supplier (a non-taxable person) actually is. The presence of a platform does not alter the nature of the transaction and the place of supply of those services as electronically supplied services essentially depends on the actual level of influence and control operated by the platform to directly intervene in the transaction. In case of a platform like Airbnb or HomeExchange supplies its services to a non-taxable person, the place of supply is instead where the passenger transport service provided by the underlying supplier is located. In such event, while, in case of a B2B transaction, the place of supply is in fact where the customer is established, has his permanent address, or usually resides. A third possibility is that a platform acts in its own name and, yet, on behalf of another person. In such event, the place of supply depends on the nature of the underlying transaction. For instance, if the transaction is to be regarded as an intermediary service to which Article 46 VD apply, depending on whether the transaction in question is, respectively, B2B or B2C. Where, in the first case, the place of supply is the supplier’s location, in the second case the place of supply is where the underlying transaction occurs. If the platform supplies its services to a non-taxable person, the place of supply is where the underlying transaction occurs. If the platform supplies its services to a taxable person, the place of supply is where the underlying transaction occurs.
of supply rules, which is particularly problematic. If the proposed provisions are interpreted narrowly and only
reflect the nature and characteristics of the services provided by sharing economy platforms, circumstances which are difficult - if not impossible - to assess. Indeed, in the author's view, the classification of a service under place of supply rules is only a matter of political choice.

From a broader perspective, what is rather clear is that, given the rapid expansion of the sharing economy
and taking into account the multi-jurisdictional level at which most sharing economy platforms operate, a
discussion at the EU level - if not at the international level in an institution like the OECD - on the tax
regime of the sharing economy needs to be undertaken. Indeed, the 21st century economic and social
landscape are evolving at a fast pace, and the sharing economy - which is part of such ongoing shift - is set
to stay. Even tax pundits, then, had better prepare themselves and watch closely this growing space.

END NOTES

1 The author has recently published a book on “European VAT and the Sharing Economy” which is available in Wolters Kluwer’s EUCOTAX Series on European Taxation (see: here) and builds upon his Ph.D. thesis defended at Università Carlo Cattaneo – LIUC (Milan, Italy) on 17 December 2018.


3 US: Northern California District Court, 15 March 2015, Patrick Cotter et al. v. LYFT Inc., No. 13-cv-04065-
VC, 60 F. Supp. 3d 1067 (N.D. Cal. 2015), at para. 7.


6 For other issues and tentative solutions in this regard, please see G. Beretta, European VAT and the Sharing Economy (Kluwer Law International 2019).


9 From discussions at a VAT Committee meeting, in fact, it appears that the authorities of many Member
States have not yet reached a formal position, neither firm views, on how to qualify, for EU VAT purposes,
transactions between platforms and their users. Therefore, divergent interpretation and application of place of
supply rules by different Member States are very much possible. VAT Committee, Minutes 111th Meeting – 30 November 2018, at p. 8 (taxud.c.1(2019)1709508).

10 As indeed suggested by M. Lamensch, European Value Added Tax in the Digital Era at para. 2.2.1.3.1.
92000, 29 International VAT Monitor 1 (2018), Journals IBFD.

11 See linked sources by M. Lamensch, European Value Added Tax in the Digital Era at paras. 2.2.1.3.1.
92000, 29 International VAT Monitor 1 (2018), Journals IBFD.