New Intermediaries in European Value Added Tax: Services in the Platform Economy as a Case Study

Socio-Technological Considerations

- Much of today’s trade takes place via the Internet.
- Internet platforms (intermediaries) enable their users to coordinate by means of the internet and exchange services amongst each other.
- Users of internet platforms often take the role of the supplier of the services provided by the platform (so-called “prosumers”).

- Most internet platforms are being operated by a central entity: examples Airbnb, Ebay, Rakuten or Uber.
- Some internet platforms are “distributed” and administered by all their users: example Bitcoin blockchain.
- Distributed internet platforms often aim to make third-party intermediaries redundant, because they enable direct transfer of digital assets (e.g. cryptocurrencies such as Bitcoin) from one user to another. The identities of the distributed platforms’ users are encrypted.

Substantive VAT Law

- Challenges: In the Platform Economy, the lines are blurred between active market participants and consumers. The question arises as to who is acting in an economic capacity within the meaning of Article 9 of the VAT Directive and whether they can act as a third-party intermediary for tax enforcement purposes.
- Internet platforms as well as individual users are potential taxable persons and third-party intermediaries:
  - Where internet platforms are being operated by a central entity, that central entity may qualify as a taxable person under Article 9 of the VAT Directive.
  - However, it may be difficult to identify a taxable person, where there is only an open network of users.
  - The ECJ’s “economic approach” based on “substance-over-form” allows for a legal assessment of these new social and economic developments. The existing concepts of the VAT Directive may, however, not be sufficient to classify them with legal certainty.

VAT Enforcement

- Challenges:
  - Services are being offered and often also supplied via the Internet (Article 7 of the VAT Implementing Regulation).
  - Users of internet platforms (suppliers and service recipients) can be based anywhere around the world, whereas taxes are enforced according to the principle of territoriality.
  - Authorities are hardly able to identify users of distributed platforms, due to encryption.
  - Administrations must find ways to ascertain, where taxable supplies are being made and – regarding distributed platforms – who is making those supplies.
  - Some of the above-mentioned problems might be solved by means of data analyses and intergovernmental cooperation.
  - Regarding public distributed platforms, however, the question of who may be held accountable remains unanswered for the time being.
  - Governments must try to answer these questions, while respecting the fundamental human rights (such as the right to respect for private and family life, the protection of personal data and the protection of property).