TAX COMPLIANCE AT A CROSSROADS

A study into issues of tax policy, compliance and administration in connection with the income taxation of collaborative economy platform workers

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Tax Compliance at a Crossroads

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Introduction

1. The collaborative economy as a segment of the digitalized economy

The rapid development and wide accessibility of information and communication technologies is inarguably disrupting the established, highly regulated brick-and-mortar economy. In some cases, the accessibility of technological resources prompted the emergence of novel economic models, predicated and reliant on technological innovation and infrastructure. In other areas, digitalization does not revolutionize the basic premises of economic activities, but rather the form of such activities. In its final report *Addressing the Tax Challenges of the Digital Economy*, the Organization for Economic Cooperation and Development ('OECD') argued that many business models that have emerged as part of the digitalized economy, such as electronic commerce, online advertising or high-frequency trading[1] have counterparts in the brick-and-mortar economy.[2] Digitalization provides a new medium for economic activity, leading to increased efficiency, lower transaction costs and a widened market reach. However, digitalization does not alter the nature of the underlying income-generating activities. Retail, advertising, and high-frequency trading are mere examples of economic activities that have been transplanted in the digitalized world. The breadth of the digitalized economy extends far beyond these business models, to the point where most economic activities have a digitalized counterpart.

One significant implication of the emergence of the digitalized economy and its reach is an increased emphasis on user participation as a core generator of value. In various segments of the digitalized economy, users not only act as product end-users, but also as active suppliers of goods and services.[3] The *collaborative economy* – also sometimes referred to as the sharing or the gig economy[4] exemplifies this notion.[5]

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1 OECD/G20 Base Erosion and Profit Shifting Project; 'Addressing the Tax Challenges of the Digital Economy – Action 1 Final Report', OECD Publishing, 2015, page 54.

2 Ibid.

3 Gerard Valenduc and Patricia Vendramin; 'Work in the Digital Economy: sorting the old from the new', European Trade Union Institute, 2016.

4 Definitional issues and different taxonomies used to describe the collaborative economy will be discussed in more detail in Part 8 of the present introduction below.

5 OECD; 'Measuring Platform Mediated Workers', OECD Digital Economy Papers, No. 282, OECD Publishing, 2019.

The key precept of the collaborative economy refers to the peer-to-peer provision of access to goods and services[6] through a digital platform intermediary (the 'platform', 'platform operator' or 'platform enterprise'), which enables the connection between supply and demand.[7] The collaborative economy enables individuals ('service providers', 'workers' or 'platform workers') to monetize the excess or idle capacity of resources they already have at their disposal[8] by engaging in exchanges with other members of their community.[9] Conventionally, the value of personal assets destined for individual consumption lied in the value of imputed self-benefitting activities.[10] Collaborative economy arrangements allow workers to realize genuine economic value using personal assets and resources.[11]

Income-generating peer-to-peer transactions have long existed at the level of any society or community. However, these arrangements have generally been informal and intermittent in nature. The collaborative economy provides a channel that enables peer-to-peer transactions to occur on a consistent basis and take on a markedly more formal character. In this respect, the collaborative economy is an additional example of digitalization altering and optimizing the manner in which transactions are undertaken, rather than establishing novel forms of economic activity.[12]

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6 Juho Hamari et al.; 'The Sharing Economy: Why People Participate in Collaborative Consumption', *Journal for the Association for Information Science and Technology,* 67 (9), 2016, pp. 2047-2059.

7 Ibid.

8 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

9 Juho Hamari et al.; 'The Sharing Economy: Why People Participate in Collaborative Consumption', *Journal for the Association for Information Science and Technology, 67 (9),* 2016, pp. 2047-2059.

10 Ajay Gupta; 'Taxing the New Gig Economy', *Bulletin for International Taxation 72 (4a)*, 2018.

11 Ibid.

12 See, in this respect, Jordan M. Barry; 'Taxation and Innovation: The Sharing Economy as a Case Study', in: Nestor M. Davidson et. al [Eds.]; *The Cambridge Handbook on the Law of the Sharing Economy*, Cambridge University Press, 2018. Barry surmises that the digitalization of economies brings about two major forms of innovation: technological innovation, on the one hand, and transactional innovation, on the other hand. Technological innovation refers to the development and deployment of scientific technology which enables the emergence of novel forms of economic activity. Conversely, transactional innovation refers to technology-driven improvements to ordinary transaction structures, enabling more cost-efficient and expansive market reach and increased productive output. The

2. Problem statement and main research question

Whether one focuses on digitalization as fueling the emergence of new forms of economic activity (*technological innovation*) or as creating avenues for new transaction structures (*transactional innovation*),[13] it is an undeniable fact that technological infrastructure and resources are a core tenet underlining value creation in a broad sense. The advent of the digitalized economy brought about a universal cognizance that laws and regulations were anchored in principles that fail to effectively capture the economic reality of these developments. In the realm of tax policy, the emerging discourse surmises that digitalized enterprises and business models exacerbate pre-existing concerns about base erosion and profit shifting and introduce new systemic tax challenges.[14] Many of the legal and regulatory concerns revolving around the digitalized economy as a whole equally pertain to the collaborative economy. Much like all other enterprises in the digitalized economy, collaborative economy platform enterprises raise concerns of artificial base erosion and profit shifting.[15] However, the peculiar structure of the business model of the collaborative economy raises an additional and unique set of separate issues: *the tax treatment of service providers or workers earning income through platforms*.

Collaborative economy arrangements disrupt established brick-and-mortar industries and defy conformist notions about working patterns and value creation. This highlights complex conundrums about the compatibility of existing legislative frameworks with this rapidly emerging business model, on the one hand, and the relationship between innovation and regulation, on the other hand. There is a pervasive perception that, by nature of their operating makeup, collaborative economy businesses function outside the scope of applicable regulatory structures in a manner that is at best opportunistic and at worst unlawful. These issues have

collaborative economy did not introduce new forms of economic activity altogether, but merely a framework for the undertaking peer-to-peer transactions. As such, the collaborative economy is an example of transactional innovation.

13 Ibid.

14 Ibid.

15 Katerina Panzatou; 'The Taxation of the Sharing Economy', in: Werner Haslhner et. al [Eds.]; *Tax and the Digital Economy – Challenges and Proposals for Reform*, Series on International Taxation 69, Wolters Kluwer, 2019.

progressively come to permeate the sphere of tax law as well. In particular, a prominent concern lies with the question of how the income derived by workers from peer-to-peer services rendered through platforms could and should be effectively captured under the net of taxation. Existing income taxation frameworks are strongly reliant on voluntary compliance. However, workers' unfamiliarity with applicable income tax laws, high compliance costs and limited administrative oversight undermine the incentive for voluntary compliance. The overarching environment of tax policy, characterized by fragmented and competing policy objectives has thus far precluded the design of cohesive solutions on the national or international level. Ultimately, these factors imperatively bring to the forefront considerations about the management of tax compliance within an increasingly devolved and informal framework for the performance of income-generating activities. Against this backdrop, this thesis is a study into the income tax challenges revolving around collaborative economy platform workers.

The overarching question addressed in the context of this research is:

'What approaches could be deployed to secure the effective income taxation of collaborative economy platform workers?

3. Overview and role of sub-research questions

Income derived by workers from peer-to-peer activities undertaken through platforms is routinely underreported by workers and ultimately under-taxed. This status quo is linked to a series of intersecting factors. Because workers are treated as independent contractors rather than employees of platform operators, platforms are not tasked with withholding and remitting tax in respect of workers' receipts or, in most cases, with reporting data about workers to tax administrations. This rendered the collection of tax in respect of income derived by workers wholly dependent on workers' voluntary compliance, on the one hand, and on administrative enforcement, on the other hand.

Domestic policymakers and international governmental organizations alike have begun to ponder or in some cases, have already introduced targeted measures aimed at safeguarding the effective taxation of income derived by workers from

peer-to-peer platform activities or at simplifying compliance requirements for these taxpayers. However, most such initiatives have proven to only provide incomplete or merely palliative solutions, being ultimately unsuccessful in enhancing tax collection in respect to platform workers' income to a meaningful extent. Existing and proposed initiatives are widely premised on the misguided viewpoint that the involvement of platforms in workers' compliance processes is a panacea, discounting the complexities associated with platforms operating across borders and the particularities of the collaborative economy business model.

It is upon this premise that this research proposes a more nuanced approach to the discussion and resolution of the income tax challenges at play in respect of collaborative economy platform workers. This contribution strives to identify the main challenges to the effective taxation of income derived by workers from their activities, to critically assess possible measures for safeguarding effective income taxation in the collaborative economy and to discuss the different levels at which these issues could be addressed. In an effort to prevent overgeneralization and account for the subtle but pertinent distinctions between various collaborative economy arrangements, the analysis focuses on the income tax considerations as relevant for workers in only three selected collaborative economy models, those being *private transportation services* ('ridesharing'), *short-term accommodation* ('homesharing') and *labor-based all-purpose freelancing* ('the task industry' or 'all-purpose freelancing'). This choice is based on three main reasons. Firstly, in a practical sense, ride-, homesharing and all-purpose freelancing activities account for a significant portion of the overall volume of collaborative economy activity globally. Secondly, because of the different nature of ride-, homesharing and all-purpose freelance activities and the different assets used by workers in the performance of these activities, the focus on these models enables a broad but refined view of the heterogeneity of the collaborative economy. Thirdly, in spite of the differences in the nuances of the activities of the workers involved in the three models, there are still sufficient similarities between these to allow for a coherent yet nuanced approach to the analysis of the issues of tax compliance at play.

To guide and facilitate these research objectives, this thesis will address the following supporting sub-research questions:

1. What are the income tax implications of ride-, homesharing and tasking activities performed by workers in the collaborative economy and how are these addressed under existing income tax rules?

2. What obstacles impede the effective taxation of income derived by individuals from ride-, homesharing and tasking activities in the collaborative economy?

3. What are the types of measures proposed or implemented to address the income taxation of collaborative economy platform workers in the ride-, homesharing and task industries and how do these fit against the norms of fiscal neutrality, efficiency, effectiveness, legal certainty and simplicity and the ability to pay principle?

4. What are the respective roles of tax administrations, platform operators and international governmental organizations in the on-going strides for safeguarding the effective taxation of platform workers?

4. Research aims, approach and methodology overview

At the present time, policymakers at domestic and international level alike are invested in the design of measures for securing the effective taxation of collaborative economy platform workers. However, the approaches and solutions most commonly advanced display various shortcomings and limitations. These unsatisfactory outcomes are attributable to a number of distinct but ultimately co-mingled factors.

Firstly, in many cases, the measures considered or introduced fail to account for the totality of determinants of non-compliance that are at play for collaborative economy platform workers. As such, the true root causes of non-compliance are not adequately targeted and addressed, allowing under-taxation and sub-optimal compliance to subsist despite intervention. Secondly, a separate set of issues results from the parallelism between measures proposed at domestic and international level. This confluence of policymaking forums augments complexities and necessitates the consideration of the circumstances in which international coordination is necessary, desirable and feasible. Thirdly, policymakers at domestic

and international level oftentimes rely on misguided precepts when proposing approaches for addressing the income taxation of collaborative economy platform workers. Broadly speaking, effective taxation could be attained through three main types of approaches: through measures that encourage taxpayers' voluntary compliance, through the improvement of administrative enforcement or through the design of measures that attempt to remove opportunities for non-compliance. As matters stand, policymakers are overall sorely unpreoccupied with delineating the objectives of proposed and implemented approaches for the taxation of platform workers. In turn, this determines a legal environment of rules that are limited in their effectiveness and that invite persistent compliance gaps. Fourthly, in certain cases, the measures adopted yield inequitable outcomes. Such inequities oftentimes result from the fact that the rules are conceived without reference to the particularities of the business model of the collaborative economy and the parallelism between economically interchangeable activities undertaken within and outside the realm of this business model.

Based on the supposition that the effective collection of tax in respect of income derived from peer-to-peer platform transactions is problematic, the encircling purpose of this research is to advance the notion that a holistic approach to addressing this issue is called for. The structure of this contribution intends to reflect this aim:

Part I of this thesis addresses the first sub-research question through a descriptive doctrinal analysis of the main income tax consequences of the platform activities and transactions of workers in the three models herein discussed. This analysis seeks to provide an overview of basic income tax obligations for platform workers from a substantive and compliance perspective. The consideration of these elements is a necessary precursor to the subsequent inquiry into the merits and demerits of various alternative approaches to the effective taxation of platform workers.

The main income tax consequences of platform workers' activities play out in similar (albeit non-identical) terms in most tax systems, because these tax consequences are inherent to the types of activities involved. However, when different approaches for the taxation of these activities were identified, these differences in approaches and outcomes have been highlighted. The process of source selection for this part

of the research was therefore centered on the objective of identifying and including different frameworks and techniques, in an attempt to discern how the taxation of collaborative economy transactions may play out under the structure of tax rules in force. The main materials used have been jurisdiction surveys, case law (where applicable), and tertiary academic commentary.

Part II of this research addresses the second sub-research question using a descriptive approach. Part II seeks to identify and discuss factors that obfuscate income tax compliance in respect of platform workers in the models selected. This thesis argues that a number of impediments to tax collection and compliance are rooted in the status of platform workers as small-scale independent contractors. Independent contractors are a segment of taxpayers in connection with which effective tax collection and voluntary compliance are notoriously difficult to safeguard by reason of the constraints in the enforcement and supervisory capacities of tax administrations and the myriad of opportunities available to these taxpayers to escape the net of taxation in whole or in part. In existing literature, independent contractors operating in a decentralized fashion and small scale, whose tax compliance obligations are typically disproportionate to the extent of their economic results, are commonly described as hard to tax groups.[16] This research aims to build on the scholarship on hard to tax groups and describe platform workers as an emerging hard to tax category, by identifying a number of characteristics pertaining to the manner in which platform activities are undertaken that create practical barriers to tax collection and compliance. The scholarship on hard to tax groups provides an appropriate reference point for a prosopography of the characteristics of collaborative economy platform workers and their relationship with tax administrations and for a deepened discussion about factors that may impair tax compliance.

Also within the scope of the second sub-research question, this contribution aims to explore the impact of taxpayers' compliance-related behaviors on income taxation, with a view to describing behavioral considerations as a potential barrier to tax

16 Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268*, 2004, pp. 337-354. Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', *Contributions to Economic Analysis*, *268* 2004, pp. 187-213. James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268*, 2004, pp. 11-75.

compliance. In the context of the present research, compliance-related behavior refers to the subjective determinants that underlie the compliance and reporting conduct of platform workers. Three forms of compliance-related behavior were selected for further discussion, these being *negligence*, *risk-taking behavior* and *non-compliant behavior determined by subjective decision frames*. In light of the circumstances of independent contractors, negligence, risk-taking, and non-compliance harbored by decision frames represent non-exhaustive but prevalent behavioral postures.

The third research question, devised along evaluative and normative lines, is addressed in Part III. This Part discusses existing and potential measures for addressing the income taxation of collaborative economy platform workers, with a focus on the advantages, disadvantages and limitations of different such measures. For the purposes of the analysis envisaged under the third research question, an evaluative framework focused on the principles of fiscal neutrality, efficiency, effectiveness, legal certainty and simplicity and the ability to pay principle is applied in critiquing different measures for addressing the income taxation of platform workers. The former four principles are part of the Ottawa Taxation Framework Conditions, introduced originally with a view to setting the policy scene for addressing the challenges posed by the emergence of electronic commerce,[17] and later recounted by the OECD as the framework upon which the taxation of the digitalized economy more broadly should be addressed.[18] The ability to the pay principle, although not part of the Ottawa Taxation Framework Conditions, is a fundamental notion of fairness and equity in the taxation of individual income.

The final sub-research question is addressed in Part IV. This Part also follows an evaluative and normative approach and inquires into the respective roles of tax administrations, platform operators and international governmental organizations in supporting the effective taxation of collaborative economy platform workers.

At the time of writing, various states have adopted or are considering the adoption of unilateral measures for safeguarding the taxation of income derived by

17 OECD; 'Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions', OECD Publishing, 2001.

18 OECD/G20 Base Erosion and Profit Shifting Project; 'Addressing the Tax Challenges of the Digital Economy – Action 1 Final Report', OECD Publishing, 2015.

workers from platform activities. Some such measures entail the introduction of withholding taxes (wherein platforms are tasked with withholding tax in respect of workers' earnings),[19] presumptive taxation methods and the imposition of third party reporting duties (wherein platform operators are required to report data pertaining to workers' identities and income to tax administrations). Parallel to developments at domestic level, the OECD and European Union ('EU') have recently adopted (model) proposals for broadening and harmonizing third party information reporting duties for platform operators.[20] In spite of the developing activism of domestic and international policymakers in designing measures for securing the income taxation of platform workers, this emerging regulatory environment continues to lack cohesion and indicate fragmented policy objectives and uncertainty about the respective roles of various actors. These issues are explored in further detail within the purview of the fourth sub-research question and in Part IV of the present contribution. In doing so, Part IV of the thesis addresses three separate sets of issues.

Firstly, the research discusses the complexities of involving intermediaries in measures for addressing the income taxation of platform workers. Most measures introduced to address the income taxation of collaborative economy platform workers entail the interposition of an intermediary between the taxpayer and relevant tax administration. In the vast majority of cases, the intermediary role is assigned to platform enterprises through which workers undertake income-generating activities. One purpose of this analysis is to determine the extent to which platform enterprises can effectively contribute to the objective of securing the taxation of workers.

19 Whilst withholding arrangements are widely recognized as an effective tax collection tool, the deployment of such mechanisms is particularly difficult in the context of the collaborative economy. Platforms are often based in jurisdictions other than the ones of workers and oftentimes have no taxable presence in the workers' jurisdictions. As such, platforms are an arguably unreliable withholding agent.

20 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 4 July 2022. Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation ST/12908/2020/INIT OJ L 104, 2021.

Secondly, this research explores the role and functions of tax administrations in the environment of the collaborative economy. Existing and proposed measures for the taxation of collaborative economy platform workers place considerable emphasis tax administrations. Many such measures entail that tax administrations publish guidance on the application of the relevant rules for the benefit of platform workers, cooperate with third parties under intermediary regulation arrangements and cooperate with their counterparts in other jurisdictions. The quality of tax administration determines revenue collection and enforcement levels, but likewise the efficiency of the tax system as whole, taxpayer perceptions towards the fairness of the system and the feasibility of various policies. The role of tax administrations in existing and proposed measures for the taxation of collaborative economy platform workers strongly highlights the profound interconnectedness of tax policy and administration.

Thirdly, the analysis discusses the parameters of policies driven by international governmental organizations for safeguarding the effective income taxation of platform workers, focusing on the OECD and EU. International governmental organizations have increasingly strengthened the appeal for a coordinated approach to safeguarding tax compliance in respect of collaborative economy platform workers. However, the multilateral approaches proposed by these international organizations do not necessarily provide complete and cohesive solutions to the underlying issue of the under-taxation of income derived from platform activities.

This analysis strives to determine how all these actors fit within the legislative and administrative environment for reforming the income taxation of collaborative economy platform workers. The overarching objective of this research is to depict and discuss the broader context within which the existing and proposed measures and initiatives towards the effective taxation of collaborative economy platform workers emerge and operate – because this context inevitably affects the effectiveness of these instruments.

5. Scope and limitations

This thesis is subject to several limitations which should be set out from the outset.

A. The present contribution is limited to the discussion of the issues pertaining to collaborative economy platform workers and does not delve into the analysis of the income taxation of collaborative economy platform enterprises

The business model of the collaborative economy is oftentimes described by reference to its so-called tripartite structure, which involves platform operators, platform workers and end-users.[21] Collaborative economy platform enterprises raise a number of tax issues, most of which are broadly encountered and recounted with respect to the digitalized economy as a whole. However, these issues are completely distinct from the tax challenges pertaining to platform workers and the tax consequences associated with their income-generating activities. The present contribution will only focus on this latter set of issues. The role, status and profile of platform operators and enterprises will be consistently referenced throughout the contents of the present contribution. However, the focus of all such remarks relates solely to the relationship between platform operators and workers. Conversely, issues pertaining to platform operators as taxpayers are excluded from the scope of analysis.

B. The present contribution is focused on the income tax implications of activities performed by workers through platforms

Peer-to-peer income-generating activities undertaken by workers through platforms carry various tax consequences. The present contribution focuses on the tax treatment of the income derived by workers and excludes from the scope of analysis non-income tax considerations (e.g., VAT/GST, sales taxes, transient occupancy taxes, tourist taxes, etc.). In a similar vein, the present contribution will not delve into the discussion of mandatory non-tax levies that may pertain to platform workers as a result of their platform activities (e.g., social security contributions,

21 See, for example: Liyang Hou; 'Destructive sharing economy: A passage from status to contract', *Computer Law & Security Review 34 (4)*, 2018, pp. 965-976.

national health insurance contributions, mandatory pension contributions, etc.). The present contribution may at times include brief references to taxes other than income tax and mandatory non-tax levies. Where such references occur, they are merely intended to have a supporting character within the argumentation or provide context. Such references are merely tangential and do not form part of the core focus of this research.

Likewise, this research does not focus chiefly on the status of collaborative economy platform workers for labor law purposes, nor on the link between labor law status and taxation. In particular, the present contribution does not approach the discussion of collaborative economy platform workers through the perspective of employment status and traditional wage taxes. In this respect, this research discusses income tax compliance considerations by reference to the status of (most) collaborative economy platform workers as independent contractors, without attempting to feed into a broader and distinct argument in favor of the treatment of workers as employees of platform operators rather than independent contractors. This research does remark at times on the (sometimes disputed) status of platform workers as independent contractors and on worker misclassification issues in the collaborative economy. However, the purpose of such commentary only serves to reinforce the discussion of tax compliance challenges as pertaining to independent contractors.

Finally, the analysis set out in the present contribution does not address non-tax considerations in a broader sense. Notably, the discussion of measures and approaches for safeguarding the effective taxation of collaborative economy platform workers (especially as developed in Parts III and IV to this research) does not consider the non-tax valences of proposals. In particular, this research does not focus on taxpayer rights and personal data protection in analyzing proposals. References to taxpayer rights and the protection of personal data are peripheral and not a core focus of this analysis.

C. The present contribution is limited to the discussion of the tax implications and obligations pertaining to collaborative economy platform workers deriving income from platform activities in the private transportation (ridesharing), private accommodation (homesharing) and general-purpose freelance labor sector (all-purpose freelancing)

As will be explored in further detail in paragraph I.7 of this introduction, there are a number of definitional and conceptual difficulties that obfuscate the emergence of consensus as to the scope of the collaborative economy. Paragraph I.7 of this introduction will explain in more detail how the present contribution is premised on an understanding of the business model of the collaborative economy that emphasizes service providers exploiting the excess or otherwise idle capacity of assets primarily intended for personal consumption with a view to generating income. In other words, the present contribution applies an understanding of the collaborative economy focused on the notion of service providers granting temporary access to a personal resource or exploiting an under-used personal skill to provide a service to an end-user in exchange for consideration. As such, this thesis excludes from the scope of analysis platform-facilitated peer-to-peer transactions involving the sale of goods. Transactions for the sale of goods involve the transfer of ownership rights in respect of an asset rather than the granting of temporary access to the asset in question.

Whilst there are various forms of platform-facilitated peer-to-peer activities that fall within the understanding of the collaborative economy here applied, the present contribution limits the focus to the discussion of three main types of activities, namely ride-, homesharing and all-purpose freelancing. In the contents of the present contribution, all-purpose freelancing is given a broad meaning and taken to refer to any form of platform activity where an individual provides a service to an end-user in exchange for consideration using a personal physical or non-physical asset (e.g., tools, skill). Ridesharing activities are understood to refer to platform-facilitated services for the provision of private transportation, wherein the service provider uses a personal vehicle in the performance of the underlying activities. Ridesharing and all-purpose freelancing will be discussed separately in Part I of the present contribution because of the particular (tax) issues that may arise in connection with the use of a personal vehicle in the performance of income-generating activities. In the following discussions about ridesharing and all-purpose freelancing activities, the present contribution will not delve deeply into questions about the professional status of the service provider (e.g., whether the service provider is a licensed taxicab driver providing private transportation services through a platform, whether an individual providing translation services through a freelancing platform is a licensed translator, etc.). Finally, homesharing is here taken to refer to platform-facilitated activities wherein a service provider

provides short-term accommodation in a property available to the service provider for personal use (e.g., a property that is owned by the service provider or in respect of which the service provider has effective power of use) to an end-user in exchange for consideration. The focus on all-purpose freelancing, ridesharing and homesharing chosen in the context of the present contribution is briefly explained in paragraph I.3 above of this introduction and will be laid out in more detail in Part I to this research.

D. This research focuses on platform-facilitated peer-to-peer services performed on a for-profit basis, to the broad exclusion of most discussion on transactions involving swaps or cost-sharing arrangements

Most platform enterprises facilitate for-profit cash transactions between service providers and end-users.[22] The focus of this research will be on these types of transactions.

In other cases, platform enterprises enable peer-to-peer barter transactions or swaps.[23] For example, some homesharing platforms operate a model that allows individuals to exchange homes for a limited period of time. The individual is remunerated in 'site credits' which may be used to claim a stay in another user's home. Other platform enterprises facilitate peer-to-peer cost-sharing arrangements, wherein the consideration paid by the end-user to the service provider is intended to compensate the costs of providing a particular service, without generating a profit for the service provider. Transactions involving peer-to-peer swaps and cost-compensation arrangements are not the core of the present analysis. However, since the nature of transactions affects the tax treatment of the receipts derived therefrom, Part I of the present contribution includes brief references to such activities. The primary focus of the present contribution remains however on for-profit cash transactions, with barter and cost-sharing arrangements only being mentioned with a view to providing context and illustrating variations of the potential tax consequences determined by the nature of transactions.

22 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.
23 Ibid.

Other types of platform-facilitated peer-to-peer transactions such as gifts and donations are excluded from the scope of the analysis altogether, as such transactions fall outside the purview of the working definition of the collaborative economy applied in the context of the present contribution.

E. Jurisdictional focus

Part I of this research will describe the tax consequences of income-generating activities involving ride-, homesharing and all-purpose freelancing in the collaborative economy. In doing so, Part I will include some references to domestic law measures. Similarly, Parts III and IV of the present contribution will reference domestic initiatives aimed at securing and improving tax compliance in respect of platform workers. In this respect, the methodology of this research includes comparative elements.

One of the key defining characteristics of the collaborative economy is the global scale of this business model's reach.[24] As such, confining domestic law references to the system of a single state or a limited pre-determined number of states would be incompatible with the overarching objectives of the present thesis. An attempt at developing an answer to the main and sub-research questions set out in the present contribution by reference to the domestic law of a single state would inevitably yield incomplete conclusions and would misrepresent the global character of the issues addressed within this thesis. Similarly, a strict comparative methodological approach involving the detailed discussion of the regimes of a limited number of domestic approaches would inevitably invite argumentative overlaps in some cases and gaps in other cases. Additionally, both a strict comparative approach or a focus on the domestic law of a single state would preclude the possibility of identifying and referencing common issues, variation in the manner in which certain issues arise and are handled and relevant contrasts in approaches wherever relevant. For these reasons, the present contribution will include references to various domestic laws and regimes, without attempting to develop a comprehensive analysis of any given domestic system. This approach seeks to allow for a broad and rich range of perspectives, focused primarily on the identification of trends and major points

24 Nestor M. Davidson et al.; *The Cambridge Handbook of the Law of the Sharing* Economy, Cambridge University Press, 2018. Introduction, page 2.

of contrast. References to domestic laws are therefore intended to be illustrative and to support the extrapolation of policy issues, arguments and indications of (emerging) trends. All such references are subservient to the research objectives here described and not intended to amount to an analysis of any given domestic law system or a pre-selected pool of countries or systems.

6. Previous literature

The taxation of workers that derive income from activities undertaken through collaborative economy platforms is the subject of a growing body of scholarship.

From the outset, some authors argue that part of the difficulty of developing adequate measures for addressing the tax challenges at play in the collaborative economy relates to the absence of a commonly accepted definition of the collaborative economy. The definitional issues and disagreement revolving around the concept of the collaborative economy spills over into issues of delineating the scope of this economic model.[25] Pantazatou argues that clear definitions are indispensable prerequisites for policymaking. The collaborative economy is an environment of marked heterogeneity, where different types of activities may entail different income tax consequences for individual workers. For this reason, Pantazatou argues that the introduction of equitable measures requires a nuanced understanding and cognizance towards these realities. Pantazatou contends that international governmental organizations – in particular the OECD and EU – should develop guidelines and general principles to assist domestic policymakers in the design of measures for safeguarding the income taxation of collaborative economy platform workers.

Oei and Ring argue that the taxation of collaborative economy platform workers does not pose significant substantive complexities.[26] However, Oei and Ring's study is based on insights from United States personal income tax law. While

25 Katerina Panzatou; 'The Taxation of the Sharing Economy', in: Werner Haslhner et. al [Eds.]; Tax and the Digital Economy – Challenges and Proposals for Reform, Series on International Taxation 69, Wolters Kluwer, 2019.

26 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

acknowledging that the income tax provisions relevant to the taxation of platform workers may at times be 'complex and imperfect', the law in force is in principle capable of adequately capturing the implications of income-generating peer-to-peer platform activities. According to Oei and Ring, there is a need for clarity in the application of existing income tax rules, rather than the responsive design of new measures. In their view, the incentive for voluntary tax compliance by platform workers is low and the enforcement capabilities of tax administrations are structurally limited. They attribute this state of affairs to two distinct sets of factors. On the one hand, platform workers exploit their 'microbusiness status' under the knowledge that administrative enforcement capabilities are structurally weak and the detection of non-compliance is unlikely. On the other hand, collaborative economy platform enterprises exploit areas of legal ambiguity for the opportunistic purpose of limiting the extent of otherwise applicable legal obligations vis-à-vis platform workers.

In a similar vein, Barry finds that the collaborative economy shines a light on both the strengths and weaknesses of income tax systems.[27] He argues that in most respects, existing income tax rules are appropriate to capture the tax consequences of peer-to-peer platform activities. Conversely, he points out areas where the collaborative economy challenges the application of existing tax rules. Notably, the dividing line between independent contractors and employees as drawn in the law is proving to be open to exploitation and allows opportunities for platform enterprises to inappropriately and opportunistically assign workers independent contractor status.[28]

Other authors' research into the collaborative economy focuses primarily on the characteristics of this business model. For example, Adam, Miller and Pope surmise that the collaborative economy compounds ongoing changes to the makeup of labor markets, wherein a growing number of individuals are moving towards self-employment or microbusiness ownership.[29] In their view, domestic income tax systems generally treat income derived from such activities more

27 Jordan M. Barry; 'Taxation and Innovation: The Sharing Economy as a Case Study', in: Nestor M. Davidson et al. [Eds.]; *The Cambridge Handbook on the Law of the Sharing Economy*, Cambridge University Press, 2018.

28 Ibid.

29 Stuart Adam et, al; 'Tax, legal form and the gig economy', Institute for Fiscal Studies, 2017.

beneficially than pure employment remuneration. They argue this state of affairs is inherently distortive and reform is necessary to mitigate obtuse tax consequences determined by the manner in which income is earned, rather than the nature of the income itself.[30] Adam, Miller and Pope acknowledge that the true impact of the collaborative economy on the makeup of labor markets is difficult to quantify with precision. However, they maintain that the low barriers to entry that characterize the collaborative economy are likely to attract a growing segment of the active workforce and ultimately lead to exacerbate the shortcomings inherent in existing income tax systems.[31]

Migai, de Jong and Owens find that the collaborative economy provides opportunities to formalize economic activities which otherwise primarily occur within the realm of the grey or shadow economy.[32] If adequately captured within the net of taxation, the collaborative economy could provide prospects for additional streams of public revenue. However, they acknowledge that these benefits can only materialize if governments effectively leverage the characteristics of the collaborative economy, in particular by involving platform operators in workers' compliance processes. To this end, they propose the further consideration of instituting withholding tax obligations and information reporting protocols to platform enterprises.[33]

The idea of relying on platform operators to support workers' compliance is mirrored by a number of other authors. For example, Fetzer and Dinger argue for the collection of tax in respect of platform workers' income through withholding by platform operators.[34] Fetzer and Dinger focus on the benefits of withholding taxes by reference to their efficacy in preventing non-compliance and (inadvertent) delays in tax collection. However, other authors rightly acknowledge that withholding tax arrangements in the collaborative economy are more complex than may appear on first glimpse. DeLaney Thomas highlights the challenges associated with a

30 Ibid.
31 Ibid.
32 Clement Okello Migai et al.; 'The sharing economy: turning challenges into compliance opportunities for tax administrations', *eJournal of Tax Research 16 (3),* 2019, pp. 395-424.
33 Ibid.
34 Thomas Fetzer and Bianca Dinger; 'The Digital Platform Economy and Its Challenges to Taxation', *Tsinghua China Law Review 12 (1)*, 2019, pp. 29-56.

broad-based withholding regime for the collaborative economy. She finds that the choice between final and non-final withholding attracts complex questions (and potentially tradeoffs) between efficiency and equity. Additionally, DeLaney Thomas highlights the difficulties in determining appropriate rates of withholding, in light of the different profitability margins that are at play for workers depending on the types of activities they perform.[35] DeLaney Thomas concludes that withholding alone is not a complete solution and should be complemented at the very least with other simplification tools (such as standard deductions that differentiate between different types of peer-to-peer platform activities).

Other authors find that the under-taxation of platform workers is largely a byproduct of the complexity of existing income tax rules. Nanez Alonso argues for the introduction of straightforward exemption thresholds to exclude *de minimis* yields from peer-to-peer platform activities from taxation and allowing tax administrations to focus limited oversight enforcement resources on platform workers that are genuine entrepreneurs.[36]

Beretta argues that policymakers should thread carefully in designing tax rules that target the collaborative economy specifically. Recounting subjective and objective notions of fiscal neutrality, Beretta cautions against the application of rules that strictly target the collaborative economy, as doing so is liable to create arbitrary winners, losers and distortions. Nevertheless, he acknowledges that the unique characteristics of the collaborative economy do require some measure of nuanced consideration. In his view, the design of tax policy must be preceded by an accurate understanding of how each business operates.

Shah and Aslam acknowledge that it is difficult to speak of a 'definitive approach' to addressing the taxation of collaborative economy platform workers. In their view, policies on the taxation of platform workers almost inherently entail tradeoffs.[37] They argue that such tradeoffs in tax policy have always existed, but that the

35 Kathleen DeLaney Thomas, 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166,* 2018, pp. 1415-1473.

36 Sergio Luis Náñez Alonso; 'Collaborative Economy in Europe and the Need for a Global Taxation Strategy'. Catholic University 'Santa Teresa de Jesus', 2016.

37 Aqib Aslam and Alpa Shah; 'Taxation and the Peer-to-Peer Economy', IMF Working Paper 17/187, 2017.

particular characteristics of digitalization and the collaborative economy are likely to force policymakers to consider these tradeoffs in a new light.[38] Whereas the collaborative economy poses an additional set of challenges for policymakers and tax administrations, Shah and Aslam surmise that these challenges do not imperatively invite a radical reconsideration of the tenets of income tax systems and the principles upon which these are based.[39]

7. Relevance and motivation

There are a number of considerations underlining the approach to the study of the tax issues pertaining to collaborative economy platform workers as employed by the present contribution.

A. Trends in reliance on personal income tax as a percentage of total revenue

Within the OECD, EU and Euro area, personal income taxes account for a significant portion of total tax revenue collection. In 2018, taxes on individual income, profits and capital gains accounted for 23.5% of total tax revenue in OECD countries.[40] In Europe, individual income tax made up 58% of total tax revenue amongst EU Member States and 59% within the Euro area.[41] As a matter of principle and generality, states' capacity to steadfastly rely on personal income tax as a healthy percentage of total tax collection is determined by economic and administrative considerations. However, the particularities of income-generating activity within the collaborative economy are liable to hamper the reliability of personal income tax as a tool for mobilizing public revenue.

38 Ibid.

39 Ibid.

40 OECD Statistics – Global Revenue Statistics Database, available via: https://stats.oecd.org/Index.aspx?DataSetCode=RS_GBL [Item 1100]. Data from 2018 is here cited as it is the most recent entry available at the time of writing.

41 Informationretrieved via: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Main_Page .

1) Relative stability of the tax base

A core determinant of the effectiveness of personal income tax refers to the predictability of revenue collection levels.[42] In turn, predictability depends on the relative stability of the basis for assessment of the tax. By extension, the capability of taxes on labor income to mobilize revenues depends on the predictability of the workforce makeup. The makeup of the workforce is a non-fiscal consideration, informed by the respective economic environments of states. Domestic industries, infrastructure and education are all factors that steer the broad character and composition of workforce at the level of individual states. As a matter of principle, workforce makeup is therefore determined by relatively rigid, stagnant and broadly uniform factors. This reality is relevant on at least two important grounds. Firstly, the design of domestic taxes on labor income is inexorably tied to the composition of the workforce. Workforce makeup amounts to a mirror image of societal development and the realities of income distribution within a given society. This fact is typically likewise reflected in policy design – wherein rate structure progressivity, exemptions and thresholds for taxation are determined and adjusted by states by reference to the nature of the workforce that is liable to tax. In other words, the particularities of labor income taxation are distinct in states where the workforce is predominantly high-skilled compared to broadly low-skilled workforces. Secondly, since the design of taxes applied to labor income is determined by factors that are typically rigid and stagnant, (sudden) changes to the variables that inform these designs are in practice disruptive. Transient phases of economic downturn producing increases in unemployment or rising inflation may usually remedied by states through temporary tax expenditures. Conversely, personal income tax systems are considerably less amendable to more profound and permanent changes to the makeup of the workforce.

The emergence of the collaborative economy could arguably be described as a profound and permanent change to the nature of the workforce.[43] To begin with, the heterogeneity that characterizes the environment of the collaborative economy distorts the line between high- and low-skilled workers. The collaborative

42 See, for example: A. H. M. Nuruddin Chowdhury; 'The Predictability and the Flexibility of Tax Revenues in Pakistan', *The Pakistan Development Review 2 (2)*, 1962, pp. 189-214.

43 Celeste Black; 'The Future of Work: The Gig Economy and Pressures on the Tax System', *Canadian Tax Journal 68 (1)*, 2020, pp. 69-97.

economy is an umbrella term that captures a potentially endless span of economic activity, tied mainly the common denominator related to workers' monetization of otherwise idle assets or resources. Blurring the distinction between the private and professional sphere, the collaborative economy similarly invites questions about whether yields derived from the use of private assets and resources should be subject to the same treatment as those derived from conventional labor.[44]

2) Inclusion of large segments of taxpayers within the formal and practical net of taxation

The reliability of personal income tax as a revenue mobilization tool is deeply influenced by the capacity of such taxes to effectively capture broad and meaningful segments of taxpayers. When large portions of economic activity are anchored in hard-to-capture sources or in the grey economy, non-compliance and weak enforcement undermine revenue collection. By its nature and character, the collaborative economy exacerbates these issues and concerns. In the first place, because of its flexibility, the collaborative economy creates opportunities for workers to derive income from multiple unrelated sources. The collaborative economy is an environment of high-volume/low-value transactions, wherein the possibilities for income underreporting can make the policing of taxable thresholds difficult in practice. Additionally, by its nature, the collaborative economy is said to exist at the very boundary between organized labor and the informal or grey economy. As such, income-generating activity within the collaborative economy raises similar difficulties typically associated with tax collection from informal or grey economy participants.[45]

3) Fragmented income sources

The predictability of revenue collection levels is a key determinant of the reliability of any given tax as a revenue mobilization tool. In the case of personal income taxation, this predictability is determined in no small part by the nature of the basis of assessment. Among OECD and EU states, the vast majority of the taxpaying

44 Willem Pieter De Groen and Ilaria Maselli; 'The Impact of the Collaborative Economy on the Labour Market', Center for European Policy Studies WP 138, 2016.

45 OECD; 'Notions of the Non-Observed Economy', in: OECD; *Measuring the Non-Observed Economy – A Handbook,* OECD Publishing, 2002.

population derives income from full- and part-time salaried employment.[46] Salaried employment entails a number of characteristics that support the predictability of personal income tax as an instrument for revenue mobilization. Firstly, employment remuneration is broadly stable and stagnant. Secondly, employment entails that the activity of the taxpayer is concentrated within a single source (in the case of full-time employment) or complementary sources (in the case of part time employment). Thirdly, the organizational nature of employment is inherently centralized, in that a single employer acts as a paying agent in respect of the remuneration of multiple individual employees.

These features and characteristics underpin the design of the mechanisms applied in most states for the collection of income tax on employment income. Wage withholding taxes are a paramount feature of the personal income tax systems of virtually all states. The most notable advantage of withholding as a collection tool is the capacity of this instrument to expedite revenue collection. Additionally, because withholding taxes are collected by a third party intermediary directly from the gross remuneration owed to the payee, this instrument manipulates the transaction costs of taxation for the taxpayer and minimizes the perception of the payment of tax as a loss for the taxpayer.[47] The broad-based application of withholding taxes in respect of employment income considerably mitigates what would otherwise be a core weakness of personal income tax rules: their reliance on taxpayer (quasi-)voluntary compliance.[48]

Withholding tax arrangements are particularly effective in the context of employment because the organizational nature of employment relationships lends itself well to the application of such tools. For self-employed taxpayers, the application of withholding taxes is a considerably more complex feat. At the time of writing, no state applies broad-based withholding to income derived from self-employment in a manner that mirrors the treatment of employment income.[49]

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46 OECD; Self-employment rate (indicator). DOI: 10.1787/fb58715e-en (Accessed on 10 August 2021)

47 Charlotte Twight; 'Evolution of Federal Income Tax withholding: The Machinery of Institutional Change', *Cato Journal 14 (3)*, 1995, pp. 359-396.

48 Piroska Soos; 'Self-Employed Evasion and Tax Withholding: A Comparative Study and Analysis of the Issues', *UC Davis Law Review 24 (1)*, 1990, pp. 107-194.

49 Ibid.

By contrast to ordinary employment relationships, collaborative economy work is characterized by the fragmentation of income sources across multiple unrelated transactions (oftentimes undertaken by workers through distinct and unrelated platform enterprises). Additionally, because collaborative economy platform workers are treated independent contractors, their receipts are not subject to withholding at source. These characteristics create opportunities for willful and inadvertent non-compliance, exploiting the vulnerabilities of personal income tax systems.

4) Potential for the broadening of self-employment as a percentage of the working population and associated perils to tax compliance and collection

At the time of writing, self-employment does not account for a sizeable portion of the total working population in OECD and EU states. For example, self-employment is estimated to account for 15.2% of the total working population in the EU, with this percentage having been relatively stable in recent years.[50] However, the growth and proliferation of the collaborative economy has the potential of determining a growing shift towards full or partial self-employment. Collaborative economy platform work is proving to be most attractive during periods of economic downturn and instability. Collaborative economy platform work is premised on the notion of individuals mobilizing the idle capacity of private resources and assets. As a result, the opportunity cost of participating in the collaborative economy as a worker is low. Additionally, participation in the collaborative economy entails low entry barriers, because the business model enables workers to generate income using resources already at their disposal.

A potential growing shift from employment to full or partial self-employment has a number of associated perils that may challenge the integrity of personal income taxes as a reliable revenue mobilization tool. Unlike employed taxpayers, whose remuneration is subject to collection at source through withholding, collaborative economy platform workers are subject to ordinary self-assessment and self-reporting compliance frameworks. These frameworks are heavily reliant on quasi-voluntary compliance by taxpayers. This state of affairs is liable to produce a series

50 OECD (2021), Self-employment rate (indicator). doi: 10.1787/fb58715e-en (Accessed on 10 August 2021).

of compliance and collection risks. Firstly, collection delays are considerably more common when taxpayers remit tax payments themselves rather than a withholding agent. Under self-reporting and self-assessment frameworks, the payment of tax takes place periodically, meaning the generation of income and the actual payment of tax are temporally segregated events. Secondly, since the generation of income is disconnected from the actual payment of tax under the self-reporting and self-assessment rules applicable to independent contractors, income taxation is liable to produce liquidity constraints for the taxpayer, when the taxpayer fails to adequately budget for taxes. Thirdly, because self-reporting and self-assessment frameworks are heavily reliant on voluntary compliance by taxpayers, this exacerbates the need for administrative enforcement, which in turn is costly and often disproportionate to the yields derived by workers from collaborative economy platform activities.

B. The collaborative economy highlights a crossroads between issues of tax compliance, tax policy and tax administration

The issues addressed as part of this research highlight the intersectionality between issues of tax compliance, tax policy and tax administration. Commentators attribute the persistent under-taxation of income derived by workers from peer-to-peer platform activities to a range of considerations: workers' difficulty in navigating the tax rules on the consequences of their income-generating activities, workers' awareness of the perceived opportunities for non-compliance associated with their activities and the asserted opportunistic practices of platform enterprises. As regards the quantitative impact of these respective factors, opinions in academic and policy literature are divided as to whether one could speak of a dominant determinant of non-compliance or if instead this *status quo* stems in equal part from distinct factors. In either case, the discussion and understanding of the determinants of non-compliance that are at play in the collaborative economy is a relevant consideration, because this inevitably impacts policy choices. As will be evidenced and discussed in detail in Part III, some of the measures introduced to address platform workers' taxation focus on the role of platform enterprises in workers' compliance processes, whilst other measures target non-compliance attributable to workers' unfamiliarity with the applicable rules or the appeal for non-compliance that platform workers tend to experience. Much like viewpoints are divided as to the impact of different factors accepted to amount to determinants of non-compliance, regulators, policymakers and scholars are equally divided as to

the capacity of the income tax rules currently in force to adequately capture the tax consequences of peer-to-peer income-generating activities. These divergences influence the nature of the various measures that may be put in place with a view to addressing the under-taxation of collaborative economy platform workers.

Beyond issues of pure policy, the tax challenges revolving around the collaborative economy bring to the forefront what is often an overlooked facet of tax law: the issue of tax system administration. The collaborative economy is an environment of high-volume/low-value transactions. Additionally, and as will be argued in detail in Part II to the present contribution, collaborative economy platform workers display a number of characteristics (and by extension, enjoy a series of opportunities for non-compliance) that are ordinarily associated with the so-called hard to tax sector. However, collaborative economy platform workers operate in a somewhat different manner from typical hard to tax groups, primarily because of the quasi-centralized environment of the collaborative economy. These factors invite compelling questions about the role that tax administrations should play within this milieu. Broadly, the main function of tax administrations has always related to safeguarding and policing tax compliance. Tax administrations conventionally discharged this function through oversight, supervision and enforcement. Modern and emerging approaches to tax administration support the idea of a so-called 'service-oriented' tax administration, wherein government bodies act to support and facilitate voluntary tax compliance, lessening the formal focus on oversight and enforcement. However, the nature of the environment of the collaborative economy arguably calls into question whether and to what extent either these approaches is entirely appropriate. Oversight and enforcement, on the one hand, and a service-oriented approach, on the other hand, are both resource-intensive feats. As such, perhaps the better question is that of how tax administrations should *manage* the environment of collaborative economy platform workers, rather than how it should supervise or service it. The discussion of the role of tax administrations is a particularly relevant consideration within the scope of the present research, since as will be discussed in detail in Part III to this thesis, many of the measures contemplated or adopted with a view to improving platform workers' taxation do emphasize and attach an important role of tax administrations.

8. Taxonomies and definitional issues

The term 'collaborative economy' raises significant definitional challenges, there being no single authoritative understanding that is accepted and used across the board.[51] There are at least three separate sets of reasons for this pervasive definitional ambiguity. Firstly, the collaborative economy is fraught by distinct definitions from various sources. In developing definitions, different actors pursue separate objectives, thereby augmenting the definitional dilemma. In some cases, purported collaborative economy enterprises self-assign definitions to their (sub)-business model and practices, compounding the multitude of existing definitions.[52] Additionally, policymakers on the national[53] and international arena[54] develop their own definitions of the collaborative economy. Usually, policymakers' definitions seek to address legal or regulatory considerations, which explains their preference for broad definitions in some cases and their exclusory approaches in other cases. Separately, there exist a number of scholastic definitions, which typically favor rigor over breadth.[55] Secondly, the collaborative economy proliferated at a rapid pace, meaning emerging definitions are particularly prone to obsolesce.[56] Thirdly, there are competing viewpoints as to the scope of the collaborative economy, as well as well as a number of different taxonomies for describing collaborative economy arrangements.

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51 Su-Ann Oh and J. Moon; 'Calling for a shared understanding of the ''sharing economy''', Proceedings of the 18th Annual International Conference on Electronic Commerce, 2016.

52 Georgina Gorog; 'The Definitions of Sharing Economy: A Systematic Literature Review', *Journal of Management 13 (2)*, 2018, 175-189. For platform enterprises, the very notion of 'collaborative economy' is a buzzword, which creates a vested incentive to use this term to describe their practices, regardless of whether or not the term is an appropriate descriptor of their model.

53 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 21.

54 European Commission; 'A European agenda for the collaborative economy', COM (2016) 356 FINAL, page 3.

55 See, for example: Aurélien Acquier et. al; *'Promises and paradoxes of the sharing economy: An organizing framework', Technological Forecasting and Social Change 125 (C), 2017, pp. 1-10.* See also: Lars Bocker and Toon Meelen; 'Sharing for people, planet or profit? Analysing motivations for intended sharing economy participation', *Environmental Innovations and Societal Transitions 23*, 2017, pp. 28-39.

56 Florian Hawlitschek et. al; 'Trust in the Sharing Economy', *Swiss Journal of Business Research and Practice 70 (1)*, 2016, pp. 26-44.

A. Common taxonomies

Without attempting to develop a comprehensive and pedantic review of all the headings that exist to describe this business model, the following paragraphs will briefly set out the main major taxonomies that are in practice used interchangeably. My commentary immediately below strives to convey that many of these nomenclatures are partial misnomers that do not accurately capture the particularities of the collaborative economy phenomenon.[57] Finally, a justification is provided as to why the present contribution relies on the term 'collaborative economy' rather than any of the other common taxonomies described below.

1) The gig economy

The term gig economy describes 'temporary, project-based and flexible jobs'.[58] This roughly involves the provision of personal services by an individual to an end-user. The notion of 'gig economy' carries nearly pejorative connotations, highlighting the controversial nature of the labor relationships within the collaborative economy, where workers are assigned the status of independent contractors by platform enterprises. Similarly, the term 'gig economy' emphasizes the temporary and amorphous manner in which platform workers typically undertake their activities. In other words, the notion of 'gig economy' primarily emphasizes certain organizational characteristics and the typical status of workers. However, the term 'gig economy' is an incomplete notion. Notably, this concept is misleading in that it implies workers' activities are generally temporary and project-based, disregarding the practical reality that many workers perform platform activities on a full-time or otherwise consistent basis. The term 'gig economy' discounts the full complexity of the changing landscape of work conditions brought about by the collaborative economy.

57 A similar line of argumentation regarding the definitional dilemmas at play in the collaborative economy was developed by Georgios Petropoulous in 'An economic review of the collaborative economy', *Policy Contributions 5*, 2017.

58 Georgina Gorog; 'The Definitions of Sharing Economy: A Systematic Literature Review', *Journal of Management 13(2)*, 2018, 175-189.

2) On-demand economy

The term 'on-demand economy' focuses on the immediacy with which the supply and demand sides of transactions are matched within this economic system.[59] This terminology will not be used in the contents of the present contribution, as it is my view that this term is likewise a misnomer. Firstly, the term 'on-demand economy' does not highlight the peer-to-peer character of collaborative economy transactions. The collaborative economy has a specific tripartite structure, wherein the primary role of platform enterprises is to facilitate the connection between a worker and an end-user. The term 'on-demand economy' does not aptly capture this tripartite structure. Secondly, the term does not reflect other core characteristics of the collaborative economy, such as the reliance by workers on private assets in rendering services.

3) The Uber-economy

Although admittedly less widely invoked, the term 'Uber-economy' is sometimes used in literature.[60] This term attempts to leverage conventional knowledge about the specific business model of *Uber* and extend it into a general definition of the collaborative economy. However, this term is an inherent mischaracterization. *Uber* has a particular operational makeup, which is not reflective of the collaborative economy as a whole. Most notably and unlike many other collaborative economy enterprises, *Uber* does not merely provide a marketplace that enables exchanges between workers and end-users. Instead, *Uber* notoriously exercises a significant measure of control over the manner in which workers render their activities through their interface – to the point the characterization of workers as independent contractors by *Uber* has been repeatedly challenged.[61] Additionally, *Uber* has a diversified business model and facilitates the performance of a number of different services by workers, which does not hold true with respect to most collaborative economy platform enterprises. The term 'Uber-economy' undeniably alludes to core characteristics of the wider business model, namely the tripartite structure of transactions and the reliance by workers on private assets in the performance

59 Ilaria Maselli et. al; 'Five things we need to know about the on-demand economy', Centre for European Policy Studies WP 21, 2016.

60 Ibid.

61 Uber v. Aslam [2021] UKSC 5.

of their activities. However, this term is liable to construct the mistaken viewpoint that any single enterprise is a true epitome of the collaborative economy.

4) Sharing or access economy

The term 'sharing economy' is inarguably the most commonly applied taxonomy. This expression carries similar connotations to the term 'access economy'. These terms describe activities where workers use private under-utilized assets to render services to end-users. Such services may be rendered either off- or online. In either case, the worker and end-user are connected or matched through a platform.[62] Both taxonomies focus on the notion of workers monetizing the idle capacity of private assets. Additionally, both taxonomies suggest that no transfer of ownership of the assets generally occurs between the worker and the end-user.

The terms 'sharing economy' and 'access economy' indirectly place a considerable measure of emphasis on transactions involving tangible assets. However, there a sizeable sub-business model of platform-mediated peer-to-peer activities involving intangible assets, such as the provision of time- and skill-based services. Additionally, the term 'sharing economy' in particular sits oddly against the reality that most platform workers perform their activities on a for-profit basis. Semantically, the term 'sharing' implies disinterested altruism. This is inherently incompatible with the for-profit character of most workers' platform activities.

5) Collaborative economy

The term 'collaborative economy' was originally developed by Botsman and Rogers.[63] This term attempts to encompass the plurality of peer-to-peer platform activities that are intermediated through platform enterprises. Botsman and Rogers distinguished between two major components of the collaborative economy: *product*

62 Georgina Gorog; 'The Definitions of Sharing Economy: A Systematic Literature Review', *Journal of Management 13(2)*, 2018, 175-189. In a similar vein, the notion of 'access economy' describes activities wherein a worker grants an end-user temporary access to a private asset (e.g., by providing the end-user transportation services in a private vehicle or by lending out an asset to the end-user).

63 Rachel Botsman and Roo Rogers; What's Mine Is Yours: The Rise of Collaborative Consumption, Harper Collins, 2010.

service systems and collaborative lifestyles (which entail the provision of access to assets and services without the transfer of ownership of the underlying asset)[64] and *redistribution markets*, which refer to the re-sale of underutilized personal assets on second-hand markets established by platforms.[65] Both components emphasize the circulation and monetization of idling private assets, the peer-to-peer nature of transactions and the role played by platform enterprises in facilitating the underlying transaction. Semantically, the term 'collaborative' directly alludes to the importance of the market mediation functions exerted by platform enterprises and the element of social networking that characterizes peer-to-peer transactions. Unlike other taxonomies, the notion of 'collaborative economy' effectively captures and highlights all the salient characteristics of this economic system, rather than focusing on a particular characteristic to the exclusion of others. For this reason, the present contribution will hereinafter apply the expression 'collaborative economy'.

B. Definitions of the 'collaborative economy'

1) Definitions in domestic laws

Policymakers have seldom developed definitions of the collaborative economy for domestic law purposes. For example, France has developed a definition of collaborative economy online platforms, but no specific definition of the collaborative economy.[66] In other countries, such as Norway[67] and the United Kingdom,[68] policy-makers have not developed strict legal definitions of the collaborative economy. Instead, they rely on scholastic definitions developed by government-appointed experts or committees.[69] Domestic approaches to the definition of the collaborative economy also vary as regards the breadth of their scope. In Italy, an un-adopted

64 European Commission; 'Scoping the Sharing Economy: Origins, Definitions, Impact and Regulatory Issues'; *Joint Research Reports – Institute for Prospective Technological Studies (Digital Economy Working Paper 2016/01).*

65 Ibid.

66 Eric Bocquet et. al; 'Taxation and the collaborative economy: the need for a fair, simple and unified regime', Information Report 481, Senat [France].

67 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 23.

68 Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017, page 3.

69 Diane M. Ring; 'Silos and First Movers in the Sharing Economy Debates', *Law & Ethics of Human Rights 13 (1)*, 2019, pp. 61-96.

draft bill defined the collaborative economy as 'a business model based on the optimal allocation and sharing of resources such as time and space, goods and services through on-line platforms'.[70] Conversely, in other jurisdictions, peer-to-peer transactions for the sale of goods are either explicitly or implicitly excluded from the definition of the collaborative economy.

2) Definitions developed by international governmental organizations

International governmental organizations involved in the proposal of policies for regulating the collaborative economy likewise take uncoordinated approaches in defining the collaborative economy. The EU Commission defines the collaborative economy as 'business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals.' The Commission's definition explicitly mentions the tripartite structure of this economic system, referencing 'three categories of actors [involved]: (i) service providers who share assets, resources, time and/or skill […], (ii) users of these and (iii) intermediaries that connect […] providers with users and that facilitate transactions between them'. According to the Commission, 'collaborative economy transactions generally do not involve a change of ownership', meaning this definition minimizes (but does not explicitly exclude) transactions for peer-to-peer sales of goods from the definition of the collaborative economy.[71] Originally, the EU

70 Ibid.

71 European Commission; 'Scoping the Sharing Economy: Origins, Definitions, Impact and Regulatory Issues', *Joint Research Reports – Institute for Prospective Technological Studies (Digital Economy Working Paper 2016/01),* page 3. See also: European Commission; 'Exploratory Study of consumer issues in peer-to-peer platform markets',implicitly confirming that the Commission definition suggests an exclusion of activities involving the sale and re-sale of goods. As will be evidenced immediately below, the exclusion of transactions involving the sale or re-sale of goods is also implied in some definitions of the collaborative economy developed by scholars. However, there is a notable measure of oddity in the approach of the Commission to exclude such activities from the scope of its own definition. As will be explored in detail in Parts III and IV to the present contribution, the Commission recently developed a proposal for the sixth amendment of the Directive on Administrative Cooperation (DAC7). Under DAC7, collaborative economy platform operators are required to report to the competent authorities of Member States information pertaining to the identity and consideration received by workers performing income-generating activities through their interface. The scope of reporting under DAC7 extends to platform-facilitated transactions involving both the provision of services and the sale of goods. The

Commission used the terms 'sharing' and 'collaborative economy' interchangeably in policy and public consultation documents, before settling for a more marked preference for the term 'collaborative economy'.[72] Conversely, the OECD has not developed a working definition of the term. Instead, the OECD resorts to a descriptive approach, whereby the collaborative economy refers to a multitude of platforms 'matching demand and supply in specific markets'.[73]

3) Scholastic definitions

Some scholastic definitions attempt to delineate specific characteristics that determine whether an economic arrangement falls under the collaborative economy umbrella. An example of this approach is the definition developed by Gerwe and Silva.[74] According to their definition, the collaborative economy is an economic system involving:

- Transactions between service providers and end-users, wherein the connection between these is established online by a platform, but the transaction itself is undertaken offline;

- Service providers and end-users alike engaged in peer-to-peer rather than professional transactions,

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breadth of the scope of reporting under DAC7 was justified by the Commission on grounds that will be explored in more detail elsewhere in the contents of this wider contribution. However, there is some measure of legalistic oddity in the fact that the Commission has not at the time of writing attempted to reason the obtuse relationship between the scope of reporting set out in DAC7, on the one hand, and its definition of the collaborative economy as here cited. I could only speculate that the Commission's definition of the collaborative economy is intended to serve different policy purposes than those pursued under DAC7. Alternatively, the argument could be made that transactions involving the sale and re-sale of goods had come to account for a more significant segment of the broader collaborative economy since the time the Commission developed its definition of the business model, leading also to changes in perception as to the scope of the collaborative economy.

72 Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017.

73 Gideon D. Markman et al.; 'The Distinctive Domain of the Sharing Economy: Definitions, Value Creation, and Implications for Research', *Journal of Management Studies 58 (4)*, 2021, pp. 927-948.

74 Oksana Gerwe and Rosario Silva; 'Clarifying the Sharing Economy: Conceptualization, Typology, Antecedents, and Effects', *Academy of Management 34 (1)*, 2020.

- Service providers using private assets in the performance of their activities; and

- Transactions involving the granting by a service provider to an end-user of temporary access to a resource, rather than transfer of ownership.[75]

Gerwe and Silva's definition of the collaborative economy is criticized in other literature as overly narrow and exclusory.[76] Notably, extending the definition only to transactions performed offline excludes various forms of platform-mediated transactions that may be performed remotely (e.g., tutoring, proofreading) and using non-physical resources (e.g., time or skill). Similarly, the notion that transactions need to be strictly peer-to-peer in character does not capture the full complexities surrounding the identity of service providers. Asset owners acting as service providers are not in all cases acting in a non-business capacity.[77] Finally, the focus on access to private assets without the transfer of ownership excludes peer-to-peer transactions involving the sale of goods from the definition of the collaborative economy, which is likewise a controversial viewpoint.
Other scholastic definitions attempt to conceptualize the collaborative economy by way of exemplification. In this respect, Schor defines the collaborative economy as 'economic activities including the following possible categories: recirculation of goods, increased utilization of durable assets, exchanges of services, sharing of productive assets and building social connections'.[78] Definitions that focus on exemplification tend to use broadly encompassing terminology, which further complicates the delimitation of the notion.

C. Working definition of the collaborative economy

As the foregoing paragraphs have strived to convey, most taxonomies and definitional approaches may have marked shortcomings, invite confusion and may be liable to misrepresent the full environment of the collaborative economy. These definitional issues are further compounded by the common use of alternative taxonomies (e.g., 'sharing' or 'gig' economy), all of which impliedly emphasize some

75 Ibid.
76 Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017.
77 Ibid.
78 Juliet Schor; 'Debating the Sharing Economy', Essay available via: https://greattransition.org/publication/debating-the-sharing-economy last accessed 4 October 2021.

characteristics whilst understating others.[79] Nevertheless, definitional accuracy is a relevant consideration for at least two main reasons. Firstly, a clear understanding of the concept is a necessary perquisite for coherent scholastic analysis.[80] Secondly, the articulated understanding of the concept of the collaborative economy is necessary for the purposes of determining the boundaries of this business model and distinguishing it from other economic systems.[81]

The present contribution purports to take a flexible understanding of the concept of the collaborative economy, in line with the objectives of this research. Accordingly, the present contribution does not attempt to develop a separate definition of the collaborative economy. Instead, this analysis will rely on a working definition focused on common typologies. In the context of the present contribution, the term collaborative economy refers to a collection of labor markets that display the following characteristics:

- **Platforms acting to connect the supply and demand sides of transactions;** whereas the involvement of platforms in the mediation of transactions is inarguably the most common feature of the collaborative economy as a whole, it should be noted that different platforms may have different operational makeups. In some instances, platforms only act to establish a marketplace where workers and end-users connect. In other cases, platforms determine the pricing of transactions and exert (some) control over the manner in which workers perform activities. In the present contribution, references to 'platforms', 'platform operators' and 'platform enterprises' encompass all these variations;

- **Profit-seeking activities by workers;** in the vast majority of cases, platform workers' activities are undertaken on a for-profit basis. The archetypal vision of the collaborative economy is premised on the notion that service providers are primarily motivated by income-related reasons.[82] However, and as described in

79 Daniel Schlangwein et. al; 'Consolidated systemic conceptualization, and definition of the ''sharing economy''', Journal of the Association for Information Science and Technology, 2020, pp. 817-838.

80 Ibid.

81 Koen Frenken and Juliet Schor; 'Putting the sharing economy into perspective', *Environmental Innovation and Societal Transitions 23*, 2017, pp. 3-10.

82 Brendan Churchill and Lyn Craig; 'Gender in the gig economy: Men and women using digital

paragraph I.6 above, certain sub-models of the collaborative economy involve the performance of not-for-profit activities by service providers. In the context of the present contribution, 'platform activities' refer to activities performed by workers with a view to generating profit. All references to not-for-profit activities will be explicitly described as such;

- **Nature of transactions – access v. transfer of ownership;** there are two main types of activities that workers may perform in the context of the collaborative economy, namely activities involving the provision of services (i.e., the granting of access to an end-user to a private resource in exchange for consideration) and the sale of goods (i.e., the transfer of ownership of physical or non-physical goods in exchange for consideration). The present contribution will primarily focus on platform activities involving the provision of services. This thesis applies an understanding of the collaborative economy that is focused on access to rivalrous assets, as opposed to transfers of ownership in assets. There are two main types of transactions involving the sale of goods that are typically associated with the collaborative economy. On the one hand, there are peer-to-peer transactions involving the re-sale of personal or household items through a platform. Almost by definition, dealings in used goods tend to occur on an intermittent basis, meaning any income derived from such activities is usually negligible. On the other hand, certain platform enterprises support a marketplace for individuals (e.g., craftsmen) to sell handmade and oftentimes personalized items. Such activities – unlike those involving the re-sale of used goods – indeed tend to have a continuous character. However, the present contribution excludes such activities from the main scope of analysis for two main reasons. Firstly, such activities are markedly akin to a genuine business rather than the para-entrepreneurial nature that conventionally characterizes the collaborative economy. Typically, handmade and personalized goods destined for sale are not developed by exploiting the capacity of under-used personal assets intended for personal consumption, but by using tools and assets that are associated with the service provider's trade.[83] Secondly, such transactions may in practice often

platforms to secure work in Australia', Journal of Sociology 55 (4), 2019, pp. 741-761.

83 The types of assets used in such transactions (coupled with the reality that transactions involving the sale of goods involve a transfer of ownership, rather than the mere granting of temporary access to a personal asset) probably likewise explains why certain definitions are phrased in a manner that impliedly or explicitly excludes the sale of goods from the

involve elements of a mixed contract. This holds true in particular as regards the sale of personalized goods, wherein the buyer provides detailed instructions as to the quality and characteristics of the item to be purchased and which is then developed and tailored by the seller by reference to these requests. For these reasons, the focus in the present contribution will be restricted to transactions involving the mere granting of access to assets (i.e., transactions involving the provision of services). Any references to platform activities involving the sale of goods will be explicitly described as such;

- **Identity of the worker;** the archetypal collaborative economy service provider is an individual acting in a non-business capacity. In the context of this research, references to 'service providers' and 'workers' describe individuals performing platform activities and acting outside the scope of professional activity;

- **Assets used in the performance of services;** in the context of this research, references to the assets used by service providers ascribe rivalrous personal assets – both physical and non-physical- used by workers in the performance of platform-mediated income-generating activities.

scope of the collaborative economy. It should be noted that the present contribution does not purport to argue that transactions involving the sale of goods cannot be described as part of the collaborative economy altogether.

Part I

The basic income tax consequences of ride-, homesharing and all-purpose freelance activities

I. FOREWORD

In conventional wisdom, there is a pervasive and misguided viewpoint that all income-generating activities in the collaborative economy are the same. If that were so, all forms of activity under the collaborative economy umbrella would raise the same issues. However, the income taxation of platform workers depends on the manner in which workers perform their activities and the assets they use as part of these activities. The collaborative economy is a markedly heterogeneous economic system. Some workers perform labor-intensive activities. Conversely, other workers' activities are capital-intensive. Some workers' activities combine labor and capital more evenly. In light of these considerations, the purpose of this analysis is to discuss and distinguish between the tax consequences of platform workers' activities in the ride-, homesharing and all-purpose freelancing collaborative economy models. Some major questions are common to workers' activities in all three models here considered. These include the inclusion of income derived from platform activities in the workers' basis for assessment, questions of income characterization, the possible deductibility of expenses incurred in connection with income-generating activities performed by workers, the question of whether losses incurred by workers in respect of their activities may be offset against other income. However, the manner in which these issues play out is influenced by the nature of workers' underlying activities. Conversely, other issues are more prevalent or specific to limited areas of the collaborative economy.[84]

84 By way of example, this part of the research will argue that controversies related to the classification of platform workers as independent contractors rather that employees are in practice more prevalent in the for-profit ridesharing, but do not arise in other segments of the collaborative economy.

II. THE INCOME TAXATION OF COLLABORATIVE ECONOMY PLATFORM WORKERS IN THE RIDE-, HOMESHARING AND ALL-PURPOSE FREELANCE MODELS

1. General remarks on ride-, homesharing and all-purpose freelancing activities

A. Ridesharing in the collaborative economy

Ridesharing arrangements involve the provision of private transportation services to an end-user using the workers' private vehicle in exchange for consideration.[85] Ridesharing is one of the largest and most prolific areas of the collaborative economy.[86] Many urban clusters cap the number of taxicabs permitted to operate therein.[87] By operating outside the taxicab medallion whilst providing a service that is largely interchangeable with that provided by taxicabs,[88] collaborative economy ridesharing enterprises are able to bypass ordinary barriers to market access.

Some platform workers perform ridesharing full-time and rely on this activity to derive a primary source of income. However, ridesharing workers perform such activities on a more limited basis and with a view to securing a supplemental source of income.[89] Ridesharing entails low entry costs for workers, since the vehicle used in the performance of activities is normally the platform worker's private vehicle.

85 This definition of ridesharing was adapted from the Oxford English dictionary, where the term 'ridesharing' was recently introduced. Like all other sub-business models of the collaborative economy, ridesharing exemplifies the notion of 'transactional innovation'. Through the accessibility of technology, an activity that previously only occurred in an informal and largely community-based manner comes to be systematized and ordained.

86 PwC; 'The Sharing Economy', Consumer Intelligence Series, 2015.

87 Scott Wallsten; 'The Competitive Effects of the Sharing Economy: How is Uber Changing Taxis?', Technology Policy Institute, 2015.

88 Carrie Brandon Elliott; 'Taxation of the Sharing Economy: Recurring Issues', *IBFD Bulletin for International Taxation 72 (4a), Special Issue*, 2018.

89 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', Forum on Tax Administration, 2019

Socially and economically, the growth of ridesharing relates to the low transaction and opportunity costs afferent to this model.[90]

Ridesharing arrangements consist of a tripartite structure common to the collaborative economy in general, which involves a platform operator, workers and end-users. The ridesharing platform maintains an interface accessible through an internet browser and/or a smartphone application. Individuals interested in providing ridesharing services register as platform workers or drivers.[91] End-users sign up for an account on the interface, and, depending on the particularities of the platform, they either submit a request for a specific destination, or browse through available rides. The platform worker and end-user connect through the platform's interface.[92]

Such a description of ridesharing in the collaborative economy is, however, rather crude. Different ridesharing enterprises operate distinctly. By way of example,

90 Anders Hansen Henten, and Iwona Maria Windekilde; 'Transaction costs and the sharing economy', *INFO 18 (1),* 2016, pp. 1-15.

91 Platform workers are commonly subject to various vetting procedures (e.g., regarding the quality of the vehicle intended to be used in the performance of activities and the fulfilment of applicable licensing requirements). In most cases, ridesharing platform operators also have internal onboarding procedures in place.

92 As will be discussed in more detail in Part IV to this wider thesis, there is a considerable measure of contention as to whether many ridesharing platform operators merely provide a marketplace where workers and end-users connect. In many cases, ridesharing platform operators tend to exert a considerable measure of control over the manner in which platform workers perform their activities. This aspect creates two separate sets of issues: on the one hand, it brings into question the status of the ridesharing platform operator itself. This aspect may be relevant, particularly in cases where entities whose activities are restricted to the provision of a digitalized marketplace are subject to different regulatory frameworks from those applicable to entities involved in the provision of private transportation services. From an EU law perspective, this question was addressed by the CJEU by reference to the perspective of whether the private transportation component of the activities of ridesharing entities is a core facet of the operational makeup of the undertaking concerned. On the other hand, where the involvement of ridesharing platform enterprises extends beyond the provision of a digitalized marketplace and the platform operator instead exerts some measure of control over the manner in which workers perform their activities, the characterization of workers as independent contractors rather than employees may likewise be brought into question. Otherwise put, different tax and regulatory issues may arise depending on the nature of the activities of the ridesharing platform enterprise.

some ridesharing platform operators strictly limit the possibility of workers and end-users to bargain their connection.[93] Whereas some platforms allow end-users to browse through available workers and routes and select a worker to connect with, most ridesharing platforms automatically match a worker with an end-user by reference to the details of the end-user's request for transportation. Similarly, different ridesharing platforms apply different internal policies as regards the pricing of workers' services.[94] Whilst some ridesharing enterprises allow the parties to agree on a price for a journey, most others use price-setting arrangements. In this respect, different ridesharing enterprises exert various degrees of control over the conduct of workers. Importantly, some ridesharing platform operators, particularly those focused on medium to long distance ridesharing, operate a cost-sharing paradigm for workers.[95] These differences may influence the income tax consequences for workers.

B. Homesharing activities in the collaborative economy

As used in the context of this research, homesharing arrangements involve platform workers providing short-term accommodation in property owned by or otherwise at their disposal. Homesharing arrangements follow the tripartite structure common broadly to the collaborative economy as a whole, wherein workers and end-users connect through the digital interface provided and maintained by a platform operator.

Within this wider model, there exist several variations of homesharing. Standard homesharing arrangements involve the provision of accommodation in exchange for consideration. Typically, homesharing platform operators recommend pricing ranges, without however controlling the prices charged by workers. A distinct arrangement is 'home swapping', wherein individuals 'exchange' homes temporarily. Home swappers are 'remunerated' in virtual credits, which may only be used to request to be hosted by another member of the same online

93 Anders Hansen Henten, and Iwona Maria Windekilde; 'Transaction costs and the sharing economy', *INFO 18(1),* 2016, pp. 1-15.

94 This is the case with long-distance ridesharing platforms in particular. This issue will be discussed in more detail in a subsequent sub-chapter to the present contribution.

95 Emily Griffis; 'The Sharing Economy in Europe – How Airbnb and BlablaCar are changing the future of tourism', 2014.

community.[96] Generally, these credits cannot be cashed out or otherwise converted into fiat currency. Therefore, on such platforms, every participating user acts as both 'worker' and end-user.[97]

C. All-purpose freelancing activities in the collaborative economy

All-purpose freelancing in the collaborative economy is a broad digitalized labor market that enables end-users to outsource requests for 'tasks'.[98] Platform operators provide, maintain and administer a digitalized interface, which allows users to submit requests for outsourced services and to connect with task workers available to render the service requested. Some tasking platforms enable the outsourcing of virtually any task, exemplifying the notion of 'all-purpose freelancing'. Other platforms provide more specialized marketplaces, which only allow the outsourcing of specific tasks.

One particularity of the tasker industry lies in that workers are considerably less reliant on (private) tangible assets in the performance of their activities, especially when viewed by comparison to ride- and homesharing platform workers. A key characteristic of ride- and homesharing activities refers to the monetization by workers of the excess capacity of tangible assets primarily intended for private consumption. Because of the more specific nature of the underlying activities in the ride- and homesharing industries, it is possible to associate certain tangible assets with these models as a matter of generality. Vehicles are an integral and necessary resource for workers to perform private transportation services through ridesharing platforms. Similarly, homesharing services are provided by a worker that has a home (or part of a home) available to be rented out on a short-term basis. It is considerably more difficult to draw a mirroring association between a particular tangible asset and the tasker industry. This is explicable for two self-

96 Ibid.

97 Because of the nature of home swapping, it is admittedly not entirely appropriate to refer to individual participants engaging in transactions therein as either 'workers' or 'end-users'. The wording referenced and applied here is merely an attempt at capturing participants in home swapping activities within the general nomenclatures applied in this wider contribution.

98 Tuija Toivola; 'Sharing Economy Startups: New Wave of Networked Business Models in the Changing World', Journal of International Business Research and Marketing 3 (4), 2018, pp. 12-19.

evident reasons. Firstly, virtually any service may be outsourced to a 'task worker'. The environment of the task industry is highly diverse. Secondly, because the tasker model involves primarily labor-intensive activities for workers, a broad span of services rendered by task workers do not involve the use of any tangible assets. The main characteristic of tasking lies in its labor-intensive and human capital oriented nature.[99] In this respect, the tasking industry involves the monetization of time and skill. Tasking is not tangible asset-centric in the same manner as the two other models here considered.[100]

Additionally, the tasker industry as a whole does not have a clear counterpart outside the realm of the collaborative economy in the same manner that the ride- and homesharing models do. Ridesharing platforms mediate a service that arguably competes directly with the formal taxicab industry. By the same token, homesharing services are nearly identical to those provided by established hoteliers. When it comes to the tasker industry, it is significantly more difficult to speak intuitively of a clear counterpart. This is attributable to two major factors. Firstly, apart from major tasking platforms, there does not exist a non-virtual marketplace for the supply and demand exchange of all-purpose freelancing. Secondly, many of the services mediated through tasking platforms have a deeply informal character and have always been provided in a peer-to-peer manner rather

99 Burcin Bozdoganoglu; 'Tax Issues Arise From a New Economic Model: Sharing Economy', *International Journal of Business and Social Science, 8 (8),* 2017, pp. 119-137.

100 Another notable difference between the task industry and the two other sub-business models here discussed refers to the medium through which the underlying service is rendered by the worker to the end-user. In the case of ride- and homesharing activities, workers and end-users connect digitally through the platform interface, but the underlying service is rendered in-person. Conversely, various services associated with the all-purpose freelancing industry may be rendered either in-person or remotely. Some such services (e.g household services) are of course provided in-person. Other services (e.g., tutoring) may be provided either in-person or remotely, depending on the arrangements in place between the platform worker and the end-user. In the vast majority of cases, the medium through which a service is rendered (in-person or remotely) does not impact the tax treatment of the receipts derived by the worker therefrom as a matter of practical reality. However, when the worker and end-user are in different jurisdictions, the cross-border character of the transaction may impact its tax treatment. However, when such services are rendered to an end-user in a different jurisdiction on a *de minimis* basis, it is unlikely that the platform worker would be taken to have a sufficiently strong nexus to the state of source of that income to trigger tax consequences for the platform worker in that state.

than through regulated channels. Whilst it could be argued that the ridesharing and homesharing collaborative economy models have de-formalized taxicab and short-term accommodation services, there is some room to argue that the tasking industry achieves the opposite, that is, to formalize the supply and demand for certain services.

2. Income derived from ride-, homesharing and all-purpose freelance activities: inclusion in the tax base and issues of income characterization

The first fundamental issue as relevant to the income taxation of ride-, homesharing and all-purpose freelance workers refers to whether the receipts derived from their activities are taxable. The following paragraphs will firstly ascertain the nature of the receipts derived by workers from activities in these collaborative economy models. Subsequently, this analysis addresses issues related to the inclusion and characterization of workers' income.

A. The nature of receipts derived by workers from ride-, homesharing and all-purpose freelance activities

1) Receipts derived from ridesharing activities

Ridesharing workers provide private transportation services in exchange for consideration. The main element in the receipts derived by workers from ridesharing activities relates to fares derived from their provision of private transportation services. However, workers may earn a significantly more diversified span of receipts. For example, many ridesharing platforms allow passengers to pay tips. Additionally, some ridesharing platforms pay out referral bonuses to platform workers when a worker refers another person to the platform. Some ridesharing platforms also developed specific reward programs for workers, such as reduced platform commissions.[101]

101 See, for example; Sunil Parekh and Ali Wiezbowski; 'Uber Pro(beta): Helping Drivers and their Families Reach Their Goals, On and Off the Road', available via: https://www.uber.com/newsroom/uberpro/ last visited 5 May 2022.

2) Receipts derived from homesharing activities

For homesharing workers, base platform receipts are payments received from guests for the short-term accommodation services provided. Given the nature of homesharing activities, these receipts may also include cancellation fees charged to guests or customers[102] or security deposits unequivocally withheld from guests or customers.[103]

Whether homesharing workers may derive accessory receipts beyond payments for the provision of short-term accommodation depends on the policies of homesharing platform operators. In a similar fashion to ridesharing, homesharing workers sometimes receive referral bonuses.[104] Since such amounts do not relate directly to the provision of short-term accommodation, they may follow a different tax treatment than the base receipts. Additionally, some homesharing platform operators also maintain reward mechanisms. For example, some platforms provide for a so-called 'superhost' category,[105] which rewards workers with low cancellation

102 EY; 'Airbnb – General Guidance on the taxation of rental income', United States, 2017.

103 Ibid. In most states, security deposits are not considered taxable income to the extent that they entail a *prima facie* obligation of repayment. This flows naturally from the fact that income tax cannot be applied n respect of an item of income over which the taxpayer does not enjoy dominium. Conversely, security deposits that are ultimately withheld may qualify as taxable income. However, amounts charged purely for the repair of damages to a rental property caused by a guest may be characterized as a cost compensation and therefore be excluded from taxation in some systems.

104 See, in this respect: 'Airbnb Referral Program Terms and Conditions', available via: https://www.airbnb.com/help/article/2269/airbnb-referral-program-terms-and-conditions last visited 5 May 2019.

105 See, in this respect: 'Airbnb – Superhost: Recognizing the best in hospitality', available via: https://www.airbnb.com/superhost last visited 5 May 2019. As part of the foregoing discussion about issues of worker misclassification in the ridesharing branch of the collaborative economy, it has been pointed out that courts may at times consider the particularities of reward/disciplinary mechanisms that platform operators have in place in relation to workers. In the context of the present discussion regarding homesharing, it is important to draw a distinction with the impact of such reward/disciplinary mechanisms compared to ridesharing. The mere fact that a platform operator has such internal mechanisms in place cannot be automatically be equated with an assertion of worker misclassification in the homesharing industry, despite the fact that such mechanisms were a part of courts' reasoning in questions of worker misclassification revolving around ridesharing workers. Firstly, in the jurisprudence on worker misclassification issues in the realm of ridesharing, courts never described reward/disciplinary mechanisms as a

rates and positive reviews. Workers may derive two types of rewards: cash and non-cash rewards. Cash rewards include flat percentage premiums on referral bonuses or fixed-value coupons. Similarly to what has been said in relation to referral bonuses, considering the direct link between the platform activities of the worker and these rewards, there is no reason to exclude them from an understanding of the notion of homesharing receipts. Non-cash rewards, however, raise more nuanced considerations. Homesharing platforms will sometimes reward workers through 'boosts', such as increased visibility of their listings on the interface of the platform. These may increase the amounts received by homesharing workers, since higher visibility entails the possibility of reaching a wider audience of potential guests. The value of this reward, however, would probably best be interpreted as an integral part of the worker's homesharing receipts from the provision of short-term accomodation rather than as an accessory receipt. On pragmatic grounds, it does not seem feasible to attempt to quantify such a reward with a view to giving it a concrete cash correspondent. Additionally, such a reward results in the generation of guest payments for the provision of short-term accommodation services, rather than in a payment accessory to such activity.

A distinct question to raise refers is that of the treatment of so-called 'site credits' that may be derived in connection with platform-mediated home swapping arrangements. Home swapping is a variant of collaborative economy homesharing whereby individuals connect through the interface of a platform to vacation in each other's homes. After providing short-term accommodation in their home, home swappers receive site credits, which can then be used in order to vacation in the home of another member of the same community. There is no possibility to cash these credits out or otherwise use them outside the community. These transactions are ultimately (indirect) barter transactions, since two members of the same community are ultimately exchanging short-term accommodation for short-

decisive consideration. These aspects were instead looked at in tandem with other factors that suggested a relationship of control and subordination between platform operators and workers. As such, the existence of reward mechanisms in the homesharing industry alone cannot be an argument to cast doubt on workers' misclassification as independent contractors. Secondly, it is important to stress that in the context of ridesharing, such mechanisms entailed either rewards *or disciplinary action* by the platform operator in relation to the worker. In the context of homesharing arrangements, these mechanisms typically only determine the eligibility of workers for certain rewards, but they do not usually entail disciplinary action.

term accommodation. The fact that site credits are used – and indeed, the fact that such credits are essentially the trading currency of the platform – does not alter the character of these transactions as barter transactions, since the site credits simply cannot be used outside the community or for any purpose other than another home swap.

From a normative standpoint, a broad-based definition of income[106] would suggest that any accretion to wealth or increase in consumption power could be regarded as income.[107] But, as a matter of practical reality, most tax systems inject additional nuances into their understanding of income, which may lead to the exclusion of such receipts from taxation. More specifically, most tax systems provide that income is only regarded as such if generated from 'real-money trade' or 'in-world transactions'.[108] This determines an almost explicit exclusion of receipts from virtual transactions and which cannot be converted into cash.[109] Consequently, under this approach, home swapping will not trigger any income tax consequences for participants.[110] The fact that receipts from home swapping are generally not taxable because they do not produce any income for tax purposes alleviates a number of otherwise onerous compliance and enforcement challenges. The main issue associated with the taxation of home swapping by reference to the site credits earned on the platform would be valuation. Of course, it could be argued that the site credits could potentially be used as a frame of reference and given a corresponding market value for the purposes of taxation. It is however important to not underestimate the practical difficulties that this could pose. Considering, in particular, the impossibility of cashing out home swapping site credits or otherwise exchanging them, it becomes apparent that such credits were not intended to be given a correspondent in the open market. Theoretically, their value could be estimated for example, by reference to the rental prices and amounts charged in various destinations, but this would still amount to a costly and difficult exercise, especially in cross-border situations.

106 Charles R. Hulten and Robert M. Schwab; 'A Haig-Simons Tiebout Comprehensive Income Tax', *National Tax Journal, 44(1),* 1991, pp. 67-78.

107 Ibid.

108 Aleksandra Bal; 'Taxation of Virtual Wealth', *IBFD Bulletin for International Taxation 65,* 2011, pp. 147-160.

109 Ibid.

110 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

3) Receipts derived from all-purpose freelancing activities

Task workers derive income primarily from payments received as consideration for services rendered to end-users. Platform operators may also allow end-uses to pay out tips to workers.[111] Because such amounts are directly related to the service rendered by the worker, their tax treatment would follow the one applicable to the other elements of consideration for the service performed. Additionally, task platforms may often provide workers with referral bonuses in a manner similar seen and discussed in connection with ride- and homesharing.[112] When such payments cannot be assimilated with the underlying activities of the worker, they would be treated separately for tax purposes from other elements of consideration received by the worker.[113]

B. Issues of income inclusion and characterization for receipts derived from ride-, homesharing and all-purpose freelancing activities

As a matter of broad generality, the question whether receipts derived by workers from activities undertaken through platforms are taxable income depends initially on whether a tax system follows a global or schedular definition of income.[114] Under a global approach, any clearly realized ascension to wealth is income for, regardless of the nature of the underlying activity. In such a system, all income is taxable unless specifically excluded. Conversely, schedular systems follow an 'inclusion' and formally exhaustive approach towards defining taxable income. Under a schedular system, an item of income is only taxable if it is included in an existing category or 'schedule'.[115] The distinction between global and schedular systems is somewhat theoretical, in that no tax system follows either approach fully.[116] The question of

111 See, for example: 'TaskRabbit – Tipping Taskers', available via: https://support.taskrabbit.com/hc/en-us/articles/216901546-Tipping-Taskers last visited 5 May 2019.

112 Ibid.

113 Such accessory payments may be treated, for example, under a residual income schedule, particularly when they are derived on a one-off basis. Alternatively, such amounts may be deemed to be excluded from taxation, depending on the applicable income tax rules.

114 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

115 Ibid.

116 A purely global income tax system would involve the aggregation of all income derived by a taxpayer and the application of a single tax to this aggregate amount. Under this theoretical model, all income follows the same tax treatment, regardless of its nature or source. Global

whether a tax system applies a global or schedular approach to the definition of income provides a (partial) answer to the question of whether an item of income is taxable. This dichotomy alone does not however indicate the substantive tax treatment of an item of income, which depends heavily on its characterization for tax purposes.[117] The characterization of platform workers' income in turn depends on the nature of their activities, the way in which their activities are performed and the assets used in the performance of these.

1) Inclusion and characterization issues related to receipts derived from ridesharing activities

Amounts derived by workers from ridesharing activities are in principle 'income' under either a global or a schedular approach.[118] In a more substantive sense,

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systems apply an arguably purist approach to the definition of income. However, to follow this approach strictly in practice would be to disregard the particularities of different items of income (e.g., the exposure of certain items of income to economic double taxation). Additionally, a purely global approach cannot accommodate the income tax incentives that many states, countries and jurisdictions often grant on grounds of public policy. For these reasons and others, income tax systems that formally apply a global definition of income in practice include various 'schedularized' elements (e.g., differentiated tax rates for different items of income, different assessment and collection mechanisms for different items of income, etc.) that determine a departure from a purely global definition of taxable income. In a similar vein, schedular systems may be inherently vulnerable to tax arbitrage (e.g., taxpayers seeking a characterization of their receipts that ensures exclusion from any income schedule or at the very least inclusion in a low-tax schedule) and high compliance and administration costs. Against this backdrop, income tax systems that follow a theoretically schedular approach usually define income categories broadly and make provision for residual income schedules aimed at preventing income from escaping from taxation.

117 As this analysis will strive to convey, income characterization impacts a number of other considerations, such as the possibility and extent of deductibility of expenses incurred by a platform worker in connection with the income and the approach followed to the compensation of losses from platform activities against income from other sources.

118 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017. Under a benchmark global system, any realized increase in the taxpayer's consumption power is income. Receipts from ridesharing activities would qualify as such. Under a schedular system, receipts from ridesharing activities are taxable income provided they fall under an existing schedule. The assumption laid out in these paragraphs that receipts from ridesharing activities would be included in taxable income by schedular systems is based on the breadth with which such schedules are defined in practice. There may be a number of

the question of whether platform income is to be included in the taxable base of ridesharing workers invites the inquiry into whether ridesharing receipts correspond to a recognized income category. Income characterization is relevant across the board, regardless of whether a given tax system follows a global or a schedular approach to defining taxable income. Both global and schedular systems treat income differently depending on its character.

The characterization of ridesharing receipts essentially depends on two main variables: the recognized sources or categories of income in the relevant tax system and the manner in which the ridesharing worker conducts their activities. These two aspects are highly interrelated, so it would be mistaken to dissociate them from one another.

On a basic level, ridesharing receipts would most readily be assimilated to business income,[119] trading income[120] or income from self-employment.[121] These three categories here cited are merely examples of national tax lexicon, but at their core, they all refer to income earned by an individual undertaking an income-generating activity on an independent basis.[122] In general, there are three main elements relied on by most tax systems in order to ascertain whether an item of income may be regarded as trading, business, or self-employment income. Firstly,

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cases where ridesharing receipts may not be subject to tax. Receipts from ridesharing may be non-taxable income to the extent that they fall under a threshold for *de minimis* income. As a matter of public policy, many tax systems allow an exemption for a predetermined portion of every (individual) taxpayer's income from tax. Additionally, tax on ridesharing income can be minimized or potentially neutralized by the application of deductions for expenses incurred in connection with the generation of such income. As regards the receipts from ridesharing activities, platform workers are essentially in the same position as any regular independent contractor or sole entrepreneur. They are normally taxed on a net basis, on the difference between gross receipts and allowable deductions.

119 Marek Herm; 'Estonia – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

120 Belema Obuoforibo; 'United Kingdom – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

121 John G. Rienstra; 'United States – Individual Taxation', last reviewed 1 April 2019, IBFD Country Analyses.

122 Belema Obuoforibo; 'United Kingdom – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses. Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

the income should flow from an activity conducted independently by the taxpayer (independence). Secondly, the underlying activity should be undertaken on a continuous or regular basis (continuity or regularity). Thirdly, the activity must have a profit-making motive or profit-making potential.

A) Elements in the definition of business, trading or self-employment income: *independence*

Business, trading or self-employment income is derived from an independent activity.[123] Independence entails that the taxpayer performs an income-generating activity outside the control and direction of a principal. The taxpayer is personally exposed to the risk and rewards of the underlying activity, as there is no principal to which these may be passed onwards.[124]

B) Elements in the definition of business, trading or self-employment income: carrying on an activity on a *continuous basis*

In most tax systems, income may only qualify as trading, business or self-employment income if it is derived from a continuous activity. In this respect, tax systems may employ different terminologies, with some requiring that the activity be 'carried out on a continuous basis',[125] and others simply making reference to the 'lasting' character of the activity.[126] In other cases, a legal system may also make

123 See, for example: Herbert Buzanich; 'Austria – Individual Taxation', last reviewed 1 January 2019, IBFD Country Analyses.

124 There is no unanimously predetermined understanding of the term 'independence'. In light of the pan-comparative methodology applied in this part of my research, I instead interpret this term by reference to its ordinary meaning. The ordinary meaning of 'independence' involves the consideration of (absence of) control over the exercise of the underlying activity and the risk profile of the taxpayer performing the activity. In this respect, an activity is independent when the taxpayer determines the particulars of the conduct of the activity, rather than performing these under the detailed direction and supervision from a principal. Exposure to risk entails that (1) the profitability of the activity depends on the conduct of the taxpayer alone and (2) that the taxpayer manages risk factors autonomously, without the possibility of passing these onwards to a principal.

125 Herbert Buzanich; 'Austria – Individual Taxation', last reviewed 1 January 2019, IBFD Country Analyses.

126 Andreas Perdelwitz; 'Germany – Individual Taxation', last reviewed 1 April 2019, IBFD Country Analyses.

reference to the activity being carried out 'regularly'[127] or having an 'ongoing' character.[128]

An independent activity that does not meet the continuity requirement may be subject to different tax rules. In Estonia, for example, income from an independent activity carried out *occasionally* is treated as 'other income on which tax is not withheld',[129] a schedule of income taxed on a gross rather than a net basis. In this respect, Estonia provides an example of a case where the income may be taxed more heavily if it cannot rightly be captured under the rules for the taxation of trading, business, or self-employment income. A similar situation is seen in Finland, where the tax administration has recently issued an opinion stating that amounts derived from ridesharing activities cannot generally be regarded as business income by reason of the 'sporadic and small-scale character' of the activities,[130] and consequently, expenses incurred in connection with deriving platform income are non-deductible. At the time of writing, neither the Estonian nor the Finnish tax administration have clarified where the line between sporadic or occasional and regular activities lies for the purposes of ascertaining the character of an item of income as business income.

In other cases, receipts from non-continuous activities may be subject to more beneficial taxation. For example, the Japanese schedule for occasional income

127 Marek Herm; 'Estonia – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

128 Higgins v Commissioner, 312 United States 212 (1941). See also: E. John Lopez; 'Defining ''Trade or Business'' under the Internal Revenue Code: A Survey of Relevant Cases', *Florida State University Law Review 11,* 1984, pp. 949-977. The requirement for a continuous, lasting, or regular character of the activity, much like the independence criterion, can be taken to stem from the very nature of what a trade or business represents. Almost by definition, a trade or a business implies a certain degree of consistency or continuity, rather than a merely one-off or purely occasional activity.

129 Republic of Estonia, Tax and Customs Board; 'Taxation of the income of drivers providing passenger transport services through a ride-sharing service platform', available via: https://www.emta.ee/en/private-client/taxes-and-payment/taxable-income/other-types-income last accessed 2 June 2022.

130 Laura Ambagtsheer-Pakarinen; 'Finland - Tax administration opines on tax treatment of Uber drivers', available via the IBFD Tax Research Platform. See also: Finnish Tax Administration (*Vero*) Opinion No. A107/200/2015.

follows a half-base regime,[131] whereby only half of the amounts of occasional income are taxable. Similarly, in Israel, income from occasional activities is taxed on a gross basis, but at half the statutory rate applicable to business income.

It is nevertheless important to note that continuity is not always an element in the definition of business, trading, or self-employment income. Under Portuguese tax law, for example, this criterion is not included in the definition of business income, and occasional income from any independent trade or profession is explicitly included in this schedule.[132]

When a continuity requirement is embedded in the definition of trading, business, or self-employment income, this may considerably influence the taxation of ridesharing platform workers. Many ridesharing workers perform activities in order to supplement their income, rather than to generate a main source of personal income.[133] In such cases, the (temporal) extent of their activities may impact the qualification of income for tax purposes, which will in turn impact the tax treatment of such income.[134]

Another important issue regarding the continuity criterion refers to the definition of the notion itself. Merely providing for a requirement of continuity for the activity does not give any substantive indication of just how regular a particular activity would have to be in order for the income earned therefrom to qualify as trading,

131 Makiko Kawamura et al.; 'Japan – Individual Taxation', last reviewed 1 January 2019. IBFD Country Analyses.

132 Ana Valente Vieira and Nuno Cerejeira Namora; 'Portugal – Individual Taxation', last reviewed 1 January 2019. IBFD Country Analyses.

133 OECD; 'The Future of Social Protection – What Works for Non-standard Workers?', OECD Publishing, 2018.

134 Such an outcome may be problematic from a neutrality perspective, specifically in those cases where a ridesharing worker providing private transportation services on an occasional basis is compared to another taxpayer providing the same service – whether within or outside the realm of the sharing economy – on a regular basis. Tax systems where regularity is not decisive or simply not seen as an element of the definition of business, trade, or self-employment income have a built-in protection against such outcomes. There is, however, something to be said in favor of treating income from an independent activity under a different schedule than business income on the grounds of the activity having an irregular or merely occasional character. From the perspective of legal simplicity, it is completely reasonable to provide for a simplified taxation regime (gross taxation, half base or reduced rate) for such items of income.

business, or self-employment income. Certainty and clarity as regards what continuity entails is especially important given the flexibility that ridesharing workers enjoy in deciding when and for how long to perform activities. With the proliferation of ridesharing as a means for individuals to derive supplementary sources of income, these questions become imperative.

C) Elements in the definition of business, trading or self-employment income: the intention to generate *profits*

The third element in determining the character of an item of income as trading, business, or self-employment income refers to the intention of the taxpayer to earn a profit from the underlying activity.[135] At face value, this criterion seemingly invites an inquiry into subjective elements about the intent of the taxpayer.[136] In practice, however, the profit-making motive is usually interpreted objectively to ascertain whether an activity has income-generating *potential*.[137]

In many tax systems, an activity that lacks a profit-making or profit-seeking element will be regarded as a hobby.[138] There are two major approaches of dealing with hobbies for tax purposes. In some systems, hobbies are not seen as a source of income, meaning that any receipts from that activity will be non-taxable.[139] In other systems, income from activities regarded as hobbies may be taxable, but restrictions may apply on the deductibility of expenses or the compensation of losses from the activity.

In the case of ridesharing workers, a profit-making motive is not difficult to establish. Profit-making or profit-seeking activities differ from mere hobbies in that the latter embed a strong element of personal consumption or leisure[140] – which could hardly be said in relation to an activity such as ridesharing.[141] There are a

135 Marco Ardizzioni et al.; *German Tax and Business Law,* Sweet & Maxwell Publishing, 2005.
136 Walter J. Blum; 'Motive, Intent, and Purpose in Federal Income Taxation'. *The University of Chicago Law Review, 34,* 1967, pp. 485-544.
137 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural* Analysis, 3rd edition, Wolters Kluwer Law and Business, 2010.
138 Ibid.
139 Marco Ardizzioni et al.; *German Tax and Business Law,* Sweet & Maxwell Publishing, 2005.
140 Ibid.
141 In some jurisdictions, such as Australia, the establishment of a profit-making objective of

number of other objective factors that can be examined in order to establish the profit-making objective and potential inherent in ridesharing activities, ranging from the fact that a concrete service is provided to another person, to the level of organization at stake in ridesharing activities (i.e., registration with a platform, compliance with the terms of the platform, etc.).

D) Brief findings on the issues in the characterization of receipts from ridesharing activities

In the case of ridesharing workers earning all or most of their taxable income from platform activities, their receipts would very likely be included under a trading, business, or self-employment category.[142] For such workers, the continuity requirement in particular would be non-contentious. The emergence of ridesharing and the flexibility it affords to workers in determining when and how much to work may however lead to numerous borderline situations for workers who only perform such activities occasionally.

To the extent that a ridesharing worker also derives accessory receipts from their activities, the characterization of these will normally follow the one attributed to the base fares, provided the accessory receipts are linked with the base fares. Conversely, accessory receipts not directly related to the worker's underlying activity would be addressed separately depending on their nature (e.g., as a gift or an item of occasional income).

2) Inclusion and characterization issues related to income derived from homesharing activities

As a matter of generality, receipts derived from homesharing activities would normally be seen as taxable income in most jurisdictions.[143] Issues related to the

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ridesharing – as well as the establishment of the profit-making potential of ridesharing as an activity in and of itself – seems like a non-contentious matter. The Australian Tax Office seemingly assumes an income-generating objective on the part of the ridesharing workers.

142 The question of effective taxation would then of course depend on whether the income is actually reported and/or whether the applicable tax rules are effectively enforced.

143 In a global system of taxation, receipts from homesharing activities would be formally taxable under the notion that they are a definite ascension to wealth. In a schedular

characterization of receipts derived by workers from homesharing activities can be more complex. The nature of homesharing arrangements implies that receipts from such activities could be regarded either as rental income from immovable property or, alternatively, as business, trading income, or self-employment income. In some cases, it is possible that homesharing receipts are never assimilated to rental income from immovable property, by reason of the character of the activities of the homesharing workers concerned. This issue will be discussed separately.

A) The dichotomy in the characterization of receipts from homesharing activities: *Rental income from immovable property or active income*

There is no singular definition of rental income from immovable property. In some cases, a statutory definition may not be in place at all, and the task of interpreting this notion is left to courts. In some tax systems, receipts from immovable property are included in a wider schedule for investment or passive income[144] rather than being a standalone category.

As a matter of generality, rental income from immovable property includes receipts from leasing real estate.[145] Rental income from immovable property is regarded as

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system, income from homesharing could be regarded as taxable income either because it is assimilated to a predefined category of income – such as rental income or trading or business income – or because it is captured by a residual and open-ended schedule of 'other income' or a more specific schedule for income from occasional activities. See, in this respects, the foregoing discussion related to the inclusion of receipts derived by ridesharing workers in the definition of 'taxable income'. As highlighted in the foregoing paragraphs, the taxable income of homesharing workers should include, as a matter of principle, the entirety of their receipts from platform activities – meaning, the actual accommodation fees received from guests, as well as other amounts such as retained security deposits, cancellation penalties withheld from guests, as well as any accessory receipts in the form of rewards and bonuses derived from the platform operator itself, provided that these are linked to the underlying activities of the worker.

144 Belema Obuoforibo; 'United Kingdom – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses. See also: Andreas Perdelwitz; 'Germany – Individual Taxation', last reviewed 1 April 2019, IBFD Country Analyses.

145 See, for example: Germany Fiscal Code, § 21. For its part, a lease is merely a contract whereby one party, being the lessor, grants another party, being the leassee, the right of usage and possession of their real estate in exchange for consideration, See, in this respect: Michael A. Oberst; 'The Passive Activity Provisions – A Tax Policy Blooper', *University of Florida Law Review 40,* 1988*, pp. 641-688*.

passive income across the board, since it involves the (passive) exploitation of an tangible asset.[146] Rental income from immovable property is rarely taxed on a gross basis: taxpayers are generally allowed to deduct expenses related to the generation of such income.[147] There are however some systems where expenses incurred in connection with the generation of rental income from immovable property are non-deductible, effectively resulting in the gross taxation of such income.[148] Rental income from immovable property may be taxed at a different (usually lower) rate than business or trading income, and specific allowances, tax breaks or exemptions may be available to use against rental income from immovable property specifically.[149] By contrast, trading, business or self-employment income covers receipts from independent, regular, profit-seeking or profit-making activities. The income is generated through the active involvement of a person rather than the mere exploitation of an asset.

In principle, the line between business, trading, or self-employment income, on the one hand, and rental income from immovable property, on the other hand, should not be especially blurry. However, the nature of the activities of homesharing workers may potentially lead borderline questions. Rental income is the product of a passive activity. The activities of the lessor usually only extend to the act of making the property available to a lessee.[150] Rental activities are focused on the object of the transaction. By their very nature, homesharing activities very often entail a more active involvement by the worker than a typical short-term lease. Many workers in the homesharing industry act like hoteliers more so than landlords, providing guests accessory services above and beyond pure short-term accommodation.[151]

146 Ibid.

147 Andreas Perdelwitz; 'Germany – Individual Taxation', last reviewed 1 April 2019, IBFD Country Analyses.

148 Vigdis Sigurvaldadottir; 'Iceland – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

149 HMRC; 'Guidance HS223 – Rent a Room Scheme', 2019.

150 The involvement of the lessor may and oftentimes does also extend to the performance of a number of other activities related to the lease, more specifically the determination of the contractual terms of the lease agreement (for example, the determination of the length of the lease agreement) and the performance management decisions regarding the lease agreement and the immovable property itself (for example, the selection of leasees, decisions regarding property improvements or renovations, or decisions regarding the insurance of the immovable property).

151 These secondary services or amenities often include cleaning services, meals, travel advice,

The more extensive the scope of these secondary services, the more questionable the character of the activity as passive.[152] When the services provided by a homesharing worker encompass the provision of short-term accommodation and additional amenities geared specifically at securing or increasing guest or customer satisfaction, these activities may meet the hallmarks of a trading, business, or self-employment activity.[153]

Homesharing platforms may enforce guidelines or requirements related to the minimum standards that a listed *property* should meet for a listing to be accepted and publicized on the platform, but they will rarely require that homesharing workers actually provide accessory services to guests or customers. Consequently, the decision of whether or not to render such secondary services is generally the latitude of the homesharing worker. The autonomy enjoyed by workers entails that whether or not the receipts of a given platform worker are to be regarded as rental income from immovable property, on the one hand, or trading, business, or self-employment income, on the other hand, becomes a casuistic matter.

or guided tours. Such accessory services concern the homesharing experience as a whole, more so than the functional nature of the accommodation. For example, if a homesharing worker provides towels as part of the accommodation, this service is a functional element of the underlying service. Conversely, if a homesharing worker provides meals, tours and/or travel advice, the overall homesharing arrangement is essentially a composite of different services, only one of which is the provision of accommodation.

152 The provision of accessory amenities to guests is normally also be reflected in the price charged, which may amount to an important indication that the value created is not solely the product of the exploitation of the immovable property where the short-term accommodation itself is provided, but equally the product of the additional services provided by the homesharing worker himselfSee, for example: 'Airbnb –How is the price determined for my reservation?', available via: https://www.airbnb.com/help/article/125/how-is-the-price-determined-for-my-reservation last visited 5 May 2019, on the general factors taken into consideration for the determination of the price charged for an individual reservation through a homesharing platform. Unlike ridesharing, where pricing is unilaterally determined by the ridesharing platform itself (both in the for-profit and in the cost-sharing business model), homesharing workers may individually determine the price to be charged for their listings.

153 Belastingdienst, 'Internet economy and the sharing economy', available via: https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/prive/werk_en_inkomen/interneteconomie/ last visited 5 May 2019.

Tax administrations in some states have taken steps to clarify the boundaries between rental income from immovable property and trading or business income, oftentimes making explicit reference to the situation of homesharing workers.[154] At the time of writing, there are three main approaches, each of which relies on different vectors. Firstly, there is the approach of focusing on the duration of the accommodation and the income earned therefrom; secondly, there is the approach of inquiring into the nature of the activities undertaken by the homesharing worker; and finally, there is the approach of focusing on the property itself.

Iceland is a system where the qualification of receipts from homesharing activities depends on either the period during which the property is let throughout the tax year or the levels of income earned from such activities. Homesharing receipts will be regarded as rental income from immovable property if a property is let for either less than 30 consecutive days or, alternatively, for under a total of 90 days during the same year.[155] If these temporal requirements are not met, or if the income earned exceeds a set threshold per annum, the underlying activity is assimilated to a business.[156] The main advantage of this approach is that it safeguards certainty and simplicity in the qualification of income. The qualification of platform income is based on objective considerations. However, monetary and temporal thresholds are formalistic and prone to yielding arbitrary results. As touched upon in the previous paragraphs, the main distinction between pure rental activities and business, trading, or self-employment activities depends on the main value-generating factor. If value were generated primarily or almost entirely from the mere act of exploiting immovable property, the activity would have a passive character. By contrast, if value were generated concurrently as a result of the activities and involvement of a person, the activity cannot rightly be described as passive. Neither a temporal nor a monetary threshold accounts for the core value-generating factor in distinguishing between these two categories of income. The mere fact that a property is leased out for a short period of time during a given tax year does not reflect the nature of the activities of the homesharing worker. It also does not account for situations when a worker had the intention to provide bed and breakfast-like accommodation through a platform, but ultimately did not do so and provided accommodation

154 Vigdis Sigurvaldadottir; 'Iceland – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

155 Ibid.

156 Ibid.

for a shorter period of time. The same considerations can be raised in relation to the monetary threshold. The amounts received from homesharing are neither a reflection of the extent of the activities of the homesharing worker. The amounts received may be the product of an entire collection of factors – ranging from supply and demand elasticity to market conditions, to unforeseen circumstances.

The second approach of distinguishing between rental income from immovable property and business income is by reference to the activities of taxpayer. The Netherlands is an example of a system that follows this approach.[157] The guidance of the Dutch tax administration makes specific reference to accessory services (such as the provision of meals or other amenities to guests) as possible criteria for determining whether a homesharing worker is regarded as engaging in a trade or business and consequently as earning active business profits.[158] A similar, but more nuanced approach is seen in the United States, where the dividing line between rental income and business income is determined by whether the taxpayer provides 'substantial services'.[159] This may include the provision of meals and entertainment, cleaning and laundry,[160] but excludes 'insubstantial' services which imply the active involvement of the worker, but which are simply deemed as not being sufficiently extensive (for example, waste collection or air conditioning).[161] Importantly, the United States 'substantial services' test was not introduced in response to the emergence of the homesharing business model, but instead it stems from perennial legislation and administrative practice. This approach, as employed by the Netherlands and the United States, is satisfactory in that it focuses on the value-generating factors and it secures equality in the treatment of an established business, such as a hotel or a bed and breakfast, and a homesharing worker rendering essentially the same activity. In practice, however, this approach

157 Belastingdienst, 'Internet economy and the sharing economy', available via: https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/prive/werk_en_inkomen/interneteconomie/ last visited 24 October 2022.

158 Ibid.

159 See, for example: H&R Block; 'Airbnb Host Reporting Guide', available via: https://www.hrblock.com/tax-center/wp-content/uploads/2018/05/airbnb-taxes.pdf last visited 24 October 2022.

160 Ibid.

161 Ibid. Such accessory services are excluded because they relate to the management of the accommodation service itself. They do not amount to a service provided next to or in addition to the underlying short-term accommodation service.

may lead to some measure of uncertainty and significant enforcement costs, considering the casuistic nature of the issue.

The third approach for distinguishing between rental and trading or business income is to focus primarily on the characteristics of the leased property, in conjunction with the activities of the homesharing worker. A tax system that takes this approach is the United Kingdom, which makes special provision for 'furnished holiday lettings'.[162] Similarly to the United States 'substantial services' test, the furnished holiday lettings regime predates the emergence and the proliferation of the homesharing business model. Under these rules, receipts from leasing a furnished house or apartment on a regular basis and with a view to the realization of profits will be *deemed* to represent trading income.[163] The furnished holiday letting regime does not consider the activities of the homesharing worker per se,[164] but focuses instead on the general hallmarks for ascertaining the existence of a trade or business (i.e., the continuity requirement and the intention to generate profits). In all other cases, homesharing receipts will be assimilated to rental income, regardless of the extent of the active involvement of the homesharing worker. Once again, the main issue with this approach is its failure to account for value-generating considerations in the settlement of income characterization questions.

B) Receipts from homesharing activities under the dichotomy between *business and occasional income*

There may be instances where a tax system never assimilates homesharing receipts to rental income from immovable property as a matter of principle, and instead will treat the platform income of homesharing workers either as trading income or as occasional income.

An example of a system taking this approach is Ireland, where the tax administration has issued guidance clarifying that receipts from homesharing activities are not regarded as rental income. This reasoning is based on the domestic law concept that rental income can only result from long-term leases, a temporal requirement that

162 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

163 Ibid.

164 See, for example: HMRC; 'Guidance HS253 –Furnished holiday lettings', 2018.

by definition cannot be met by homesharing workers in the course of their platform activities. Under this approach, accommodation is provided to guests, rather than tenants.[165] As such, homesharing receipts will be taxed as trading income under Irish tax law, to the extent that the activities of the homesharing worker are both regular and aimed at the generation of profits, and as occasional income in all other cases.[166]

It should likewise be noted that issues of income characterization may arise in respect of some of the accessory receipts derived by homesharing platform workers. As previously described, there may be instances where certain accessory receipts derived by workers from platform activities cannot be assimilated to the underlying arrangement for the provision of short-term accommodation. This may be the case with referral bonuses and other rewards paid out by platform operators to workers. In jurisdictions where these accessory receipts are taxable but cannot be directly related to the provision of short-term accommodation, they would most likely fall under a residual income schedule.

3) Inclusion and characterization issues related to income derived from all-purpose freelancing activities

Receipts from all-purpose freelancing activities invite similar questions about inclusion of the income in the workers' tax base and the characterization of the receipts for income tax purposes.

As a matter of principle and generality, receipts from all-purpose freelancing activities would fall under the basic definitions of taxable income followed in most

165 Ibid.

166 It may be difficult to ascertain regularity or continuity – which brings to the forefront the importance of clear and objective guidelines on a threshold that would be regarded as acceptable by the tax administration. This could be measured, for example, by setting a minimum number of times during which a homesharing worker had provided accommodation services in a given tax year, or by ascertaining a minimum number of days per annum during which the property must have been used for the provision of such services. By the same token, guidance on a profit-seeking motive is equally important. Nevertheless, in practice, a profit-making motive could be defended on the basis of objective factors, such as the existence of recordkeeping for the activities or the existence, maintenance, and upholding of clear business plans.

tax systems.[167] The more complex question refers to the characterization of the income for tax purposes. The most intuitive category under which receipts from all-purpose freelancing activities could potentially be brought for tax purposes is trading, business, or self-employment income. As discussed in depth previously, receipts from an activity will generally qualify as trading, business or self-employment income if the underlying income-generating activity is independent, performed with a degree of regularity and carries a profit-making motive or potential.[168]

Independence tends to not be necessarily contentious, since this criterion merely inquiries into whether a person performs an income-generating activity in their own name and at their own risk. Within the realm of the collaborative economy broadly and the tasker model in particular, the tripartite structure of transactions should not be equated to the assertion that a worker is rendering a service in the name and at the risk of the platform operator. Particularly in those cases where the role of the platform operator is restricted to the provision and maintenance of a marketplace for the meeting between supply and demand for various tasks, there is no reason to assimilate the platform itself with a principal of the task worker.[169] The profit-making objective or profit-making potential of the activities performed by task workers would likewise be difficult to call into question. The activities rendered by workers usually correspond to existing trades or profit-making vocations and in either event cannot be said to have a character that would imply an element of personal

167 Whether receipts from the performance of all-purpose freelancing activities would be captured under the general notion of taxable income in the filing jurisdiction of the worker will primordially depend on the design of the tax system itself. As described in the foregoing paragraphs, the two major approaches of defining the concept of taxable income are to either adopt an all-encompassing definition of the concept, wherein all clearly realized ascensions to wealth are understood to be prima facie taxable income, or alternatively, to provide an exhaustive list of recognized sources that can give rise to taxable income, often with the inclusion of a category for residual or occasional receipts. Similarly to the situation of ridesharing and homesharing workers, tasking receipts would likely be captured by either one of these general notions of taxable income.

168 See, for example: Herbert Buzanich; 'Austria – Individual Taxation', last reviewed 1 January 2019, IBFD Country Analyses. The United Kingdom is a notable example of a tax jurisdiction that does not provide for a statutory definition of trading income and instead determines whether a given activity gives rise to trading income on a case by case basis.

169 Kathleen DeLaney Thomas, 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166,* 2018, pp. 1415-1473.

leisure or consumption. The issue of regularity or continuity in the activities of task workers may however give rise to borderline cases for the same reasons discussed in relation to ridesharing workers.[170] Task workers freely determine their schedule and workload, so their activities may be intermittent and irregular. Consequently, the receipts from such activities may fall under an occasional income schedule in such cases.[171]

3. Issues related to the deductibility and apportionment of expenses incurred by ride-, homesharing and all-purpose freelance workers

A second key consideration to the income taxation of workers performing ride-, homesharing and all-purpose freelance activities refers to the deductibility of expenses incurred in connection with these activities. The basic precept followed by most tax systems is that income is taxed on a net basis, after expenses are deducted from taxpayers' (adjusted) gross income. Deductions safeguard net taxation in accordance with ability to pay, by taking into consideration the economic obligations of the taxpayer incurred in connection with the generation of taxable income.[172] By allowing (necessary or unavoidable) expenses to be deductible, equity is secured in the sense that a person will only be liable to tax on an amount that strives to reflect actual consumption power. In this respect, expense deductibility supports the core precepts of income taxation.[173] It would be difficult to overstate the relevance of these considerations in relation to the income taxation of collaborative economy platform workers. The generation of income from a formally independent activity inexorably involves the incurrence of various expenses.

Expense deductibility depends on a number of factors. Firstly, different deductibility rules may apply depending on the item of taxable income in connection with which an expense was incurred. Secondly, the income-generating activities of platform

170 Ridesharing and all-purpose freelance activities emphasize labor and human capital. For this reason, the main tax implications of these activities are similar.

171 Giorgio Beretta; 'The European Agenda for the Collaborative Economy and Taxation', *IBFD European Taxation 56 (9),* 2016, pp. 400-402.

172 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

173 Alfred G. Buehler; 'Ability to pay', *Tax Law Review 1 (3)*, 1946, pp. 243-258.

workers involve the habitual use of personal assets. This entails that platform workers incur expenses that are linked concurrently with the generation of taxable income and with personal consumption.

The paragraphs immediately below provide a brief overview of the typical expenses that may incurred by collaborative economy platform workers depending on the nature of their activities. Subsequently, consideration is paid to selected rules on expense deductibility, using comparative references and with a focus on the issue of apportionment of dual-purpose expenses. This analysis will strive to convey the differences that may arise in the types of expenses incurred by workers (and the respective treatment of these) as determined by the nature of workers' activities and the assets used in performing such activities. As will become apparent, some platform activities do not involve significant issues related to workers' deductibility of expenses. Conversely, in other cases, costs and expenses may be subject to specific rules and entail notable compliance-related particularities.

A. Issues of expense deductibility in the context of ridesharing activities

1) Common expenses associated with ridesharing activities

Most expenses incurred by ridesharing workers revolve around the vehicle used in the performance of their activities. This would include, for example, motor fuel and other vehicle running costs.[174] Other expenses may relate to the maintenance of the vehicle. In the case of leased vehicles used in the course of ridesharing activities, the lease payment itself could be regarded as a ridesharing-linked expense. When a worker uses an owned vehicle in the course of his platform activities, the financing costs of the vehicle acquisition, in the form of interest paid on a loan used to acquire the vehicle, would arguably be linked to the ridesharing activities.[175] Ridesharing workers may also incur expenses associated with the comfort of passengers, for example cleaning. Finally, ridesharing activities also entail a number of expenses related to the management of their activities, such as commission fees paid to platform operators.

174 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

175 Ibid.

2) Issues of expense deductibility and apportionment of dual-purpose expenses as related to ridesharing activities

Virtually all tax systems apply a general rule whereby expenses incurred in connection with generating taxable income are deductible.[176] In some jurisdictions, this general rule is qualified by additional requirements, whereby an expense linked to taxable income would also have to be 'necessary', 'ordinary', 'reasonable' or related 'wholly and exclusively' to the generation of taxable income.[177] It is generally accepted that there is more room to deduct expenses incurred in connection with trading, business, or self-employment income, simply because the generation of such income entails the incurrence of a broader span of expenses.[178]

By contrast, restrictions often apply on the deductibility of expenses incurred in connection with occasional income[179] or receipts deemed to fall in a residual income category. As highlighted previously in the present contribution, for these income schedules, deductions may denied (or potentially, standardized). Alternatively, net taxation may effectively be achieved through the application of a reduced tax rate or the inclusion of only part of the income in the taxable basis. The characterization of the income influences expense deductibility considerably.[180]

The emerging implications for ridesharing workers therefore become self-evident. For workers whose receipts are regarded as trading or business income – unless a specific rule applies,[181] expenses incurred in connection with platform activities should in principle be deductible to the extent that a direct link exists between the expense and the trading or business income generated through the ridesharing

176 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

177 United Kingdom Income Tax (Trading and Other Income) Act 2005 (c. 5) Part 2 — Trading income Chapter 4 — Trade profits: rules restricting deductions

178 Anton Joseph; 'Taxing Uber Drivers', *IBFD Asia-Pacific Tax Bulletin 24 (2)*, 2018.

179 Marek Herm; 'Estonia – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses. Makiko Kawamura et al.; 'Japan – Individual Taxation', last reviewed 1 January 2019. IBFD Country Analyses.

180 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

181 Specific deduction regimes for ridesharing workers will be discussed subsequently in the contents of the present sub-chapter.

activities.[182] In the case of ridesharing workers whose income is not regarded as trading or business income, the situation would be slightly more nuanced. The question of whether or not deductions are available at all would depend on the rules applicable to the income schedule under which their ridesharing income is captured. The outcome may be the disallowance of any deductions, the application of a flat or standardized the deduction, or potentially the application of a reduced rate or reduced base regime, depending on the tax system.

Within and outside the realm of the collaborative economy, individual taxpayers often incur expenses that are linked with income-generating activities but concurrently involve an element of personal consumption. In this analysis, these are referred to as dual-purpose expenses. The issue of dual-purpose expenses was acknowledged and addressed by tax systems long before the emergence of the collaborative economy. There are two main approaches to the treatment of dual-purpose expenses. On the one hand, dual-purpose expenses may be non-deductible.[183] On the other hand, there is the more moderate and widespread approach wherein dual-purpose expenses may be apportioned, thereby allowing the partial deductibility of an expense insofar as linked to the generation of taxable income.[184] Allowing dual-purpose expenses to be partially deductible on the basis of an apportionment safeguards ability to pay and ensures taxation on actual consumption power. This approach maintains coherence in the rule that expenses incurred with a view to generating income are deductible, whilst personal consumption is not. However, the accurate apportionment of a dual-purpose expense with a view to claiming a correct deduction will inevitably entail tracking and documentation burdens for the taxpayer[185] and a corresponding enforcement burden.[186]

182 Depending on the provisions of the filing jurisdiction of the ridesharing worker, this may also extend to the deductibility of pre- and post-trading expenses.

183 This is the approach taken in Germany, see the German Income Tax Act s.12 No.1.

184 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural* Analysis, 4rd edition, Wolters Kluwer Law and Business, 2020, pages 350 et seq.

185 Ibid.

186 Compliance and enforcement costs may be alleviated to some extent by the application of a fixed apportionment key, but the results might be arbitrary and the amount claimed as a deduction might not accurately reflect the income-generating objective of the expense and, by extension, the genuine ability to pay of the taxpayer.

Although they are formally opposites, these approaches of dealing with dual-purpose expenses tend to intersect considerably in practice. Regardless of whether a system is partial to the former approach (i.e., disallowing all mixed expenses as a matter of principle) or the latter (i.e., allowing taxpayers to apportion the components of the expense), numerous nuances qualify these general rules. For example, the German income tax system, which dogmatically follows the view that dual-purpose expenses non-deductible, includes two significant exceptions. Dual-purpose expenses may be deductible if there is a specific rule allowing for the deduction of particular expenses, or if the consumption component is *de minimis*.[187] Similarly, systems where apportionment is in principle permissible often impose limits for certain types of expenses (e.g., commuting, mileage, work attire) or determine whether apportionment is permissible on a case-by-case basis.[188] In addition, for certain categories of common dual-purpose expenses, some systems apply specific apportionment rules. An example of this approach is the United States, where mileage costs for vehicles used both for professional and private purposes may be deductible either based on the actual costs method or the standard mileage method.[189] For most dual-purpose expenses, an apportionment will therefore be possible in practice in the vast majority of cases.

The precise nuances of the apportionment rules for dual-purpose expenses are especially relevant in the case of ridesharing workers. The collaborative economy is predicated on workers monetizing the underused capacity of private assets.[190] The use of personal assets for the generation of income is an inherent characteristic of platform workers' activities.[191] Despite the fact that the treatment of dual-purpose expenses is by no means a novel issue, it is an aspect that is brought to the forefront by the proliferation of ridesharing income-generating activities.

If a ridesharing worker reports income in a system where the deduction of dual-purpose expenses is fully disallowed, no substantive or compliance issues arise.

187 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural* Analysis, 4rd edition, Wolters Kluwer Law and Business, 2020, pages 350 et seq.

188 Ibid.

189 Internal Revenue Service; 'Topic Number 510 – Business Use of Car'

190 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

191 Ibid.

The obvious downside will be that such workers will not be able to reduce their taxable income almost at all, since the vast majority of the expenses incurred would likely be have a dual character in the first place. This would especially be the case for workers that only provide ridesharing services on a part-time basis, using a private vehicle that is also used in private capacity. Nevertheless, such workers would likely be able to deduct all their 'pure' business expenses within the limitations imposed by domestic law. For example, if the ridesharing worker has a second smartphone used solely for accessing the platform's software or communicating with passengers, all expenses related thereto could be accepted as deductions.[192] By contrast, if a ridesharing worker reports income and files taxes in a jurisdiction that recognizes such apportionment, the main issues will be (1) ascertaining how apportionment is to be performed as a general rule, (2) whether there are any relevant apportionment rules for specific dual-purpose expenses that the worker incurs (e.g., mileage), and (3) tracking and documenting the expenses and the computations of the apportionment.

B. Issues of expense deductibility in the context of homesharing activities

1) Common expenses associated with homesharing activities

As shown previously in this analysis, homesharing workers may provide different types and spans of services to guests, which will in turn entail the incurrence varying levels and types of expenses. The main asset involved in homesharing activities is immovable property, and most expenses incurred by platform workers would relate to the property itself. Some such expenses may relate to the day-to-day administration of the property (e.g., utilities, insurance). Usually, operational expenses of this nature are deductible in the taxable period during which they were incurred.[193] Conversely, homesharing platform workers may also incur capital expenditures related to the long-term improvement of the property used to

192 Ibid. Indeed, even when a worker files taxes in a system where dual-purpose expenses may be apportioned between the professional and the private sphere, in the case of some expenses where these two dimensions are difficult to distinguish or apportion, it would be perhaps easier to invest in a separate asset destined for business use and access a full deduction.

193 Such expenses are deductible provided that the workers' income falls under a schedule against which deductions may be claimed.

supply accommodation services. Capital expenditures increase the intrinsic value of property. For this reason, they are subject to depreciation rules whereby the expenditure is recovered progressively for tax purposes, rather than wholly in the year it was incurred.[194]

2) Issues related to the deductibility of expenses related to homesharing activities

There are two major, already familiar variables that may affect expense deductibility for homesharing workers: the extent to which deductions are allowed as a matter of law and the characterization of workers' receipts.

i. Deductibility, apportionment and depreciation rules against homesharing receipts characterized as rental income from immovable property

As a matter of generality, there are a number of major approaches that tax systems can take in regards to the treatment of expenses incurred in connection with rental income from immovable property. Firstly, in some tax systems, such as Iceland, no deductions may be claimed for expenses incurred in connection with rental income from immovable property.[195] A similar approach is seen in Italy, where rental income from immovable property can only be offset by a flat deduction of 5% of the gross rental income itself.[196] In spite of the fact that both Iceland and Italy tax rental income from immovable property on a gross basis, the outcome in these two systems will be different from a practical standpoint. In Iceland, rental income is taxed at a separate rate from other categories of income,[197] whereas in Italy, rental income will be aggregated with receipts from all other recognized sources of income.[198] This approach may be problematic where the extent of secondary activities performed

194 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

195 Vigdis Sigurvaldadottir; 'Iceland – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses. There is only one exception to this rule, whereby an individual residing in a rented dwelling whilst concurrently renting out another property under a short-term accommodation arrangement may deduct rental expenses from income.

196 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

197 Vigdis Sigurvaldadottir; 'Iceland – Individual Taxation', last reviewed 1 February 2019, IBFD Country Analyses.

198 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

by the homesharing worker is either not taken into consideration or does not ultimately alter the characterization of the platform receipts as rental income from immovable property.

Secondly, there is the more common approach taken, for example, in the United Kingdom and United States, where (operational) expenses directly related to rental income from immovable property may be deducted in full. Under this approach, the qualification of the receipts from homesharing activities as rental income from immovable property becomes an issue with lesser practical implications, since the receipts from the activity will still be taxable on a net basis.[199] Nevertheless, this approach leaves the question of apportioning dual-purpose expenses related to the homesharing activities of the worker. In practice, this issue will be especially relevant for those workers that provide short-term accommodation in property that also used as a private residence. For example, when a homesharing worker provides short-term accommodation in their private residence during the tax year, the expenses borne for the utilities of that property for the given year will pertain both to the private consumption of the worker and the production of rental income. In such a case, a deduction for the entirety of the utility expenses will most likely not be possible, since a clear element of personal consumption exists.

This is one aspect of that may give rise to uncommon considerations for some tax systems. Dual-purpose expenses are more prevalent in connection with the generation of trading, business, or self-employment income. Rental activities, by contrast, conventionally do not entail the incurrence of dual-purpose expenses. Homesharing inherently implies the possibility that an expense may have a dual-purpose character. One solution is to apply the same principles of apportionment for dual-expenses incurred in connection with trading, business, or self-employment income to rental income from immovable property,[200] as accepted, for example, by the United Kingdom tax administration at the time of writing.[201]

199 Even when expense deductibility is allowed under similar terms against both trading and rental income, it may be the case that these categories of income are subject to different reporting or assessment rules and/or taxed at different rates. Income characterization is not inconsequential.

200 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

201 Ibid.

Some countries, such as the United States, provide for specific apportionment rules for rental expenses incurred for a property which partly used as a residence and partly let out during the same tax year.[202] The rules provide that deductible expenses need to be apportioned on the basis of a fraction to be calculated by the taxpayer.[203] Different expenses are subject to different apportionment rules. For example, deductions for maintenance expenses are computed based on the ratio of the number of days during which the property was rented out to the number of days the property was used.[204] Deductions for other expenses, such as taxes paid or interest on loans contracted in connection with the property are computed on a ratio of number of days rented to number of days in the tax year - [205] a relevant distinction in the case of homesharing workers that rent out vacation homes. The history of the US apportionment rules long predates the emergence of homesharing through platforms. In fact, the legislative intent was to prevent abusive deduction claims from taxpayers that would rent out properties such as vacation homes or properties not used routinely for personal purposes.[206] Nevertheless, these rules also apply to homesharing workers.[207]

Another relevant issue refers to the treatment of capital expenditures in those cases when an individual's receipts from homesharing activities are treated as rental income from immovable property. In the United Kingdom, for example, relief for such expenses is restricted. In this respect, the only relief available to homesharing workers whose receipts are regarded as rental income is a wear and tear allowance for the *replacement cost* of specific assets, such as furniture and kitchenware.[208] In other systems, relief for capital expenditures is more broadly available, extending to any improvement or maintenance pertaining to the property and without

202 26 United States Internal Revenue Code § 280A, 'Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.'

203 Jeffrey T. Lawyer; 'Vacation Homes Section 280A and Bolton v Commissioner: The Right Result for the Wrong Reasons', *Duke Law Journal 3,* 1985, pp. 793-812.

204 Ibid.

205 Bolton v. Commissioner of Internal Revenue No. 72-8013 (1982).

206 Jeffrey T. Lawyer; 'Vacation Homes Section 280A and Bolton v Commissioner: The Right Result for the Wrong Reasons'. *Duke Law Journal 3,* 1985, pp. 793-812.

207 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', Washington University Law Review 93 (4), 2016, pp. 989-1069.

208 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

restriction by reference to the assets concerned. Where capital expenditures may be recovered for tax purposes, the deductible amount will also depend on the depreciation method used.

Finally, the extent to which a deductible expense will reduce a homesharing worker's tax base will also depend on whether the filing jurisdiction requires a separate computation for every property used to earn homesharing income or, alternatively, whether a bundling of homesharing income and deductions from various properties is allowed for the purposes of determining the tax base.[209] This issue has potentially important implications for a number of reasons. If a particular homesharing activity yields small earnings but significant expenses, whereas another homesharing activity yields the opposite, a bundling of the aggregate earnings and expenses from both activities might still result in positive income, and thus, an outstanding tax liability. By contrast, a separate computation of gross rental earnings and deductions for separate properties might yield a tax loss for one property but a positive result for another.

ii. Deductibility, apportionment and depreciation against homesharing receipts characterized as trading, business or self-employment income

The deductibility of expenses for homesharing receipts characterized as trading or business income will not be much different from what has been seen in the mirror analysis of this issue as regards ridesharing workers. Trading, business, or self-employment income is seldom taxed on a gross basis in any modern tax jurisdiction. As such, the general rule will be that homesharing workers will be able to deduct expenses that carry a direct link with the generation of the homesharing income.[210]

209 In Ireland, for example, a separate computation will be required for each distinct property that the homesharing worker earns platform income from.

210 In practice, this might mean that a significantly wider span of expenses may be deductible compared to situations where the homesharing receipts are treated as rental income from immovable property. For example, under the rules on expense deductibility of most tax systems, pre-trading and post-trading expenses incurred in connection with business or trading income are also accepted as deductions- which is seldom the case in relation to the net taxation of rental income from immovable property. As regards dual-purpose expenses incurred by homesharing workers whose receipts are characterized as trading, business or self-employment income, their treatment involves the same considerations discussed in Part I.3.A in relation to ridesharing activities.

Additionally, the treatment of homesharing receipts as trading, business, or self-employment income will likely entail the availability of wider relief for capital expenditures. This is the case, for example, in the United Kingdom, specifically under the furnished holiday lettings regime – which is the only structure under which homesharing receipts will be treated as trading income in any event – where capital allowances are available without any significant restrictions. As such, relief will be available to recover the acquisition costs (and not only the replacement costs) of virtually all durable assets used in homesharing activities.[211]

iii. Deductibility, apportionment and depreciation against homesharing receipts characterized under a residual income category

As the foregoing analysis has shown, there may be instances where tax systems assimilate receipts from homesharing activities to a residual income category. An example cited to illustrate this approach was Ireland, where homesharing receipts will be treated as trading income to the extent that the activities of the homesharing worker are regular and aimed at the generation of profits, or as occasional income in the case of irregular activities. When an item of income is treated under a residual schedule, distinct rules on expense deductibility may apply. Accordingly, to the extent that homesharing receipts are regarded as trading income, not only will expenses incurred in direct connection with the earning of the platform income be deductible, but also capital allowances and pre-trading expenses.[212] By contrast, when the homesharing income is regarded as occasional income, capital expenses and pre-trading expenses will be non-deductible, and not all expenses incurred in direct connection with the homesharing activity will consequently be deductible.[213] For example, insurance expenses for a property used for homesharing would be denied, on the basis that insurance is a cost that the taxpayer would have to bear irrespective of whether the property is occasionally rented out.[214]

211 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.
212 Ibid.
213 Ibid.
214 Ibid.

C. Issues of expense deductibility in the context of all-purpose freelancing activities

1) Common expenses associated with all-purpose freelancing activities

The ride- and homesharing models involve the provision of a single major service. Consequently, workers performing such activities will incur the same major categories of expenses, with some variation determined by the manner they perform their activities individually. By contrast, all-purpose freelancing is a significantly wider and more heterogeneous model. It would be mistaken to put forward broad generalizations regarding the expenses incurred by task workers in the performance of their income-generating activities.

As a matter of principle, an expense common to all taskers, independently of the nature of the activities performed relates to the commission fees payable to the platform operator through which their activities are undertaken. For the most part, however, the expenses incurred by task workers will be largely dependent on the nature of their activities. For task workers performing household activities, their main expenses will likely be related to the tools used in the performance of the activities. Some task workers may only incur minimal expenses in the performance of their platform activities. This will most commonly be the case for task workers whose activities primarily involve time or skill.[215]

2) Issues related to the deductibility of expenses incurred in connection with all-purpose freelancing activities

To the extent that a task worker derives trading, business, or self-employment income from their activities, there would generally be very few restrictions on the deductibility of expenses.[216] When the activities of the task worker have an

215 This may be the case, for example, for task workers providing pet or child-sitting services.

216 Depending on the breadth with which their filing jurisdiction interprets the notion of expenses bearing a direct link with the generation of income, deductibility may well be extended beyond pure operational expenses (incurred with a view to maintaining the course of the tasker's activity from one day to another) but also pre-trading expenses, incurred for the purposes of commencing the activity in question. For task workers, the deductibility of pre-trading expenses is unlikely to represent a significant issue, simply

intermittent character and the receipts from these fall under a residual income category, the deductibility of expenses would need to be addressed in light of the rules applicable to such a schedule in the filing jurisdiction of the task worker. The issue of platform receipts characterized as residual or occasional income was shown to likewise occur for ridesharing and homesharing workers in some circumstances, and the foregoing analysis has identified a number of different techniques that tax jurisdictions adopt in regards to the treatment of expenses incurred under such a category.[217]

The apportionment of dual-purpose expenses will likely represent a lesser challenge for task workers compared to their counterparts in the two other models here considered. This stems largely from the character of the activities normally undertaken by task workers coupled with the assets used in the performance of these services (i.e., tools and supplies that are typically not used for personal purposes on a day to day basis). The thrust of the task industry is to 'connect consumers with labor'.[218] Time and skill cannot readily be regarded as a private monetizable asset in the same manner as a personal vehicle or a personal home. For its part, the concept

because tasking does not necessarily entail their incurrence in many cases.

217 Firstly, there are cases where expenses incurred in connection with earning occasional income are deductible on almost the same terms as under a trading, business, or self-employment income schedule. Consequently, occasional income will still be taxed on a net rather than a gross basis, largely in line with the norms embodied in the ability to pay principle. Secondly, there is the approach wherein expenses incurred in connection with earning occasional income are fully non-deductible, therefore resulting in the gross taxation of such receipts. If the tasker's platform activities do indeed have a greatly intermittent nature, it is quite likely that the expenses incurred in connection with generating platform income are rather marginal. In this sense, the application of restrictions on the possibility to deduct expenses may have very little practical impact and indeed, serves to relieve the tracking and substantiation burdens associated with claiming deductions. Finally, the foregoing sub-chapters have identified other techniques of taxing occasional receipts, for example, the application of a reduced rate to this income schedule, or the half-base approach, wherein only part of the gross receipts from an occasional activity are included in the taxable base of the recipient and taxed accordingly. These approaches, although providing for a built-in protection against the gross taxation of receipts from tasking activities and in spite of the legal simplicity entailed by their application, may lead to arbitrary results and potentially, to under-taxation.

218 Jordan M. Barry, 'Taxation and Innovation: The Sharing Economy as a Case Study', in: Nestor Davidson et al. [Eds.]; *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Cambridge University Press.

of labor itself does not exactly invite the consideration of a private, idle resource. In this respect, the separation between private and professional expenses is less complex in the case of task workers.

It is nevertheless entirely possible for task workers to use private assets in the performance of their activities.[219] The obvious consequence will be that the deductibility of expenses will be capped based on an apportionment of the overall expense.[220] In such a case, the conceptually correct approach would be to claim a pro rata deduction reflecting the link with the income-generating activity. In practice, however, this would be rather complicated from a taxpayer compliance and enforcement perspective. Firstly, when it comes to expenses related to tools, it is extremely difficult to perform such an apportionment with accuracy. Secondly, when it comes to expenses such as tools incurred by a task worker, the personal consumption element is probably *de minimis* in any event – meaning that a claim for a full deduction would probably not be contested. There is therefore quite a measure of leeway to argue in favor of accepting a full deduction for many of the operational costs borne by task workers. However, bypassing the apportionment requirement will likely be easier in the case of some expenses compared to others.[221]

4. Rules on the compensation of losses incurred by platform workers in connection with the undertaking of ride-, homesharing or all-purpose freelancing activities

A third major aspect of the income taxation of ride-, homesharing and all-purpose freelance workers revolves around the tax treatment of losses incurred in connection with their activities. When a taxpayer incurs a loss, several substantive issues need to be addressed. A first question is whether the loss is recognized for tax purposes and eligible for compensation in the first place. If loss relief rules may apply, a

219 Shu-Yi Oei; 'Tax Issues in the Sharing Economy: Implications for Wokers', in: Nestor M. Davidson et al. [Eds.]; *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Cambridge University Press, 2018.

220 Ibid.

221 For tools and similar supplies, as well as other expenses, such as a phone bill, it would not be all that complicated to fully segregate personal from professional use. In the case of other expenses, such as vehicle mileage, this will be significantly more complicated.

subsequent question concerns whether relief is granted against future income from the same category or also against current income from other sources. Additionally, when loss compensation rules apply, tax systems also need to address the issue of whether compensation should be available indefinitely and without restriction. This is especially relevant in cases when the taxpayer consistently reports losses in respect of certain activities. Finally, if a loss is recognized for tax purposes, another relevant consideration pertains to whether the loss is economically genuine or a mere tax loss.

A. The normative underpinning of loss compensation and its relevance in the context of losses incurred by workers in connection with ride-, homesharing and all-purpose freelancing activities

Risk is inherent in any business endeavor, meaning the results from platform workers' activities may sometimes be negative and reflect a loss. Modern income tax systems are premised on a notion of equity, which requires symmetry in the treatment of positive and negative results. Most tax systems implement these notions through loss compensation frameworks.[222] The underlying policy behind loss compensation rules is similar to the rationale for allowing the deductibility of expenses linked with the generation of income.

There are two major ways in which this may be achieved: either by allowing a loss in one income category to offset income from other categories for the same tax period (i.e., sideways relief) or by allowing for a loss generated in a given tax year to be carried forward to future tax years and offset a subsequent positive result from another income category thereafter (i.e., quarantined relief). These two approaches are equally sound from a normative standpoint, because both guarantee that the loss is effectively taken into consideration, either currently or during a future tax year. Systems that allow losses to be carried forward to future years sometimes impose a time limit during which the losses may be used to offset other income. This is justified by the compliance and enforcement challenges associated with tracking a loss for an extended period. After the expiration of this period, any remaining losses cannot be compensated.

222 Luca Cerioni; The European Union and Direct Taxation: A Solution for a Difficult Relationship, Routledge Publishing, 2015.

In practice, sideways and quarantined relief tend to be intertwined rather than to amount to a pure dichotomy. A legal system may provide that a loss in one income category is in principle eligible for sideways relief, but if the taxpayer does not have any taxable income from another source against which the loss could be offset, the loss will have to be carried forward to a subsequent year. Similarly, systems that apply a sideways relief paradigm in general limit the possibility of offsetting losses in some income categories against other income schedules. This is especially prevalent as regards investment losses.

B. Losses incurred in connection with ridesharing activities

1) General aspects on the relief of losses incurred in connection with ridesharing activities

Since many ridesharing workers rely on income from platform activities as a secondary source of income, a first question to address is whether a ridesharing loss may be eligible for sideways relief or may instead only offset future income of the same character. The answer to this question is relatively jurisdiction-specific. In the United States for example, the global design of the income tax system allows for sideways relief in respect of income from ridesharing.[223] This means that loss incurred in connection with ridesharing activities may be used currently against other types of income, such as income from employment or income from another independent activity of the taxpayer.

Other systems follow a more sophisticated approach. For example, the emerging practice of the Australian Tax Administration is to regard ridesharing losses as non-commercial losses,[224] meaning a loss incurred in connection with ridesharing activities will be quarantined and only offset against future income from the same activity.[225]This is a rather interesting approach if one considers that the original objective of the Australian non-commercial loss rules was to prevent taxpayers

223 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

224 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

225 Ibid.

from offsetting their main sources of income with losses from hobbies.[226] The non-commercial loss rules were originally adopted to ensure that losses from an activity that is unlikely to ever yield taxable earnings could not reduce income from other sources.[227] The Australian Tax Administration makes it explicit that in spite of the fact that the income earned by (ridesharing) platform workers would not be regarded as hobby income in the vast majority of cases, the non-commercial loss rules are nevertheless triggered.[228] An approach that employs a very similar reasoning but achieves an even more restrictive result is seen in the emerging practice of the Finnish tax administration,[229] where the general rule is that ridesharing is not seen as a business or entrepreneurial activity and thus, losses from ridesharing can neither be used to claim sideways relief nor to offset future income of the same character.[230] When loss relief as a matter of generality is only available for 'business' activities and ridesharing is regarded as not meeting this test, then no relief is available whatsoever. What sets the Australian and Finnish approaches apart is the manner in which they reach these results: whereas in Australia, the application of the non-commercial loss rules is triggered by the characteristics of the loss-generating activity itself,[231] Finnish tax law will *deem* the ridesharing activity to have a non-business character by reason of its 'small scale'.[232]

226 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural Analysis*, 3rd edition, Wolters Kluwer Law and Business, 2010.

227 In progressive tax systems, this issue is especially relevant for taxpayers that fall within (one of the) highest marginal tax brackets.

228 Ibid.

229 Finnish Tax Administration (*Vero*) Opinion No. A107/200/2015.

230 Ibid.

231 These characteristics are: (1) an assessable income for the business lower than AUS 20,000; (2) a loss making position for the business for 3 out of the 5 previous tax years; (3) the existence of real property assets amounting to less than AUS 500,000 for the business; or (4) the existence of less than AUS 100,000 of non-real assets at the level of the business (and where an asset used in the business has a dual business-consumption component, an apportionment based on the days used for each purpose is performed. Consequently, a vehicle used for both ridesharing and personal purposes whose value is AUS 25,000 will not amount to AUS 25,000 in non-real property assets, because such value is apportioned between business and personal use in this computation).

232 Laura Ambagtsheer-Pakarinen; 'Finland - Tax administration opines on tax treatment of Uber drivers', available via the IBFD Tax Research Platform.

Various other methods are followed in many other legal systems, however the United States, Australia, and Finland exemplify three core approaches to the treatment of ridesharing losses, each displaying their own respective merits and shortcomings.

As regards the possibility for sideways relief in the United States, the main advantage of this approach is that it makes a ridesharing loss a rather useful 'tax asset' for workers with diversified income streams. Sideways loss relief enables the reduction of the tax base overall and potentially allows the taxpayer to fall in a lower marginal tax bracket. Additionally, sideways relief may in practice entail lower compliance burdens for taxpayers. If losses can be used in the same year when they arise, there is no need for the taxpayer to track the loss to subsequent tax years. This is especially the case where the loss may be fully compensated in the year when it was incurred.

The approach to the treatment of losses incurred in connection with ridesharing activities applied in Australia likewise has its merits and shortcomings. The main advantage of the loss quarantining approach is its built-in protection against efforts to use (ridesharing) losses to offset other taxable income or fall into a lower tax bracket. At best, the ensuing losses will only be able to reduce or neutralize a future positive result from ridesharing. At worst, the losses may forever remain unused to the extent that ridesharing never generates a positive result for the worker concerned (for example, because the worker renounces ridesharing altogether). Loss relief is granted, as a matter of principle, with a view to preserving equity and net taxation. Conceptually, there is nothing wrong with disallowing sideways relief in favor of loss quarantining – but only to the extent that the loss can be effectively used and compensated.

Finally, similar considerations can be raised in relation to the approach of denying loss relief altogether. The absolute denial of ridesharing loss relief entails no compliance burdens associated with tracking of the losses for future years, and prevents the possibility of using a ridesharing loss in order to reduce taxable income from other sources, but it equally produces an odd result from an ability to pay perspective. The anti-abuse objective of such a policy is straightforward: the main goal is to prevent losses from activities that are unlikely to ever generate income but likely to only ever produce negative results from reducing the individual's

tax base. This is understandable in the case of activities where the business or entrepreneurial element is only minimal[233] or where the activity itself leans more towards being a hobby than an entrepreneurial endeavor,[234] but the application of such a rule to ridesharing is arguably inappropriate. There is very little reason for an individual to perform ridesharing activities through a platform with an objective other than that of earning income – which is arguably an entrepreneurial goal in and of itself.

2) Losses incurred in connection with ridesharing activities – Economic or pure tax losses?

In some cases, a loss may be recognized for tax purposes even though the taxpayer is not in a loss-making position economically.[235] This outcome may flow from the use of standardized deductions, particularly where the deductible amount is not capped to correspond with actual earnings.[236] As touched upon previously, some tax systems may allow taxpayers the option to either deduct dual-purpose expenses based on the apportionment of the overall expense, or to resort to a standardized deduction for such expenses. The aim of the standardized deduction is to simplify compliance by postulating that a flat percentage of a dual expense is deductible.[237]

The debate around the use of standardized deductions in order to generate tax losses is especially prevalent in the United States[238] (a sideways loss relief system), where the standardized mileage deduction which can be used by ridesharing workers is rather generous, amounting to USD 0.58 per business mile traveled at the time of writing.[239] If a ridesharing worker earns an amount equal to or less

233 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural Analysis*, 3rd edition, Wolters Kluwer Law and Business, 2010.

234 Ibid.

235 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums'. *Columbia Journal of Tax Law, 8 (1),* 2017, pp. 58-112.

236 Ibid.

237 Benjamin H. Harris and Daniel Baneman; 'Who Itemizes Deductions?', Tax Notes from the Tax Policy Center, 2011.

238 Stephen Zoep et al.; 'The Economics of Ride Hailing: Driver Revenue, Expenses and Taxes', MIT Center for Energy and Environmental Policy Research, Working Paper 005, 2018.

239 Ibid.

than USD 0.58 per mile traveled in the course of their ridesharing activities, but is able to deduct USD 0.58 for each mile traveled performing ridesharing activities, the result will always reflect a tax loss. The situation becomes more complicated, however, when the application of deductions based on an actual apportionment computation would have yielded a lower deductible amount.[240] Economic research into the gross and net earnings of ridesharing workers in the United States has consistently argued that the standardized deduction amounts to an implicit subsidy[241] for ridesharing workers. On the one hand, the economic result of the ridesharing activity is positive, since the actual expenses incurred in connection with the activity do not exceed earnings. On the other hand, the tax return of the ridesharing worker will reveal a tax loss, which can then be used currently to offset income from other sources. Additionally, the same research has shown that a computation of the amounts that would be deductible under the actual expenses approach most frequently reveals that the amount that could be claimed by the ridesharing worker under this approach is significantly lower than the one resulting from the application of the standardized deduction mechanism.

This begs the question of whether such losses should be generally eligible for relief. One solution to this is found again the United States tax code,[242] whereby an individual-run enterprise that has reported losses for three out of five tax years may be reclassified as a hobby activity. Income derived from the activity is taxable, but losses cannot be offset against other income.[243] The reclassification of the activity into a hobby merely entails a presumption, which can then be rebutted by the taxpayer through proof that the activity is indeed entrepreneurial in nature and not a hobby.[244]

In my view, a consistent loss-making position is not a persuasive argument in favor of regarding ridesharing as a hobby and taxing its positive results accordingly. In spite of the fact that the nature of hobby activities – i.e., a remote or reduced income-generating potential – entails the occurrence of losses for tax purposes,

240 Ibid.
241 Ibid.
242 United States Internal Revenue Code § 183.
243 Ibid.
244 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

the mere fact that ridesharing activities are also capable of resulting in losses for a number of (consecutive) years does not discount from the reality that ridesharing activities simply do not meet the elements of the common understanding of what a hobby constitutes for tax purposes. Ridesharing has an inherent business-like character, so it is prone to result in losses. In other words, the underlying reasons behind a loss-making hobby and a loss-making business are diametrically opposed: whilst the former may result in losses simply because the activity itself lacks a primary income-generating potential, the latter may generate losses by reason of its inherently speculative character.

C. Losses incurred in connection with homesharing activities

Most tax systems characterize receipts from homesharing activities either as rental income or as trading or business income. A third but considerably less common approach involves the treatment of receipts from homesharing activities as residual income. A homesharing worker's eligibility for loss compensation (and the approach to loss compensation applied) will depend primarily on the characterization of the underlying activities and the income derived from these.

1) Compensation for losses flowing from a rental activity

In many income tax systems, receipts from homesharing activities are assimilated to rental income from immovable property. Amongst the countries cited as examples of tax systems partial to these approach in the foregoing paragraphs are the United States and United Kingdom. The general norm is that passive losses can only be used against income from other passive activities. In other words, sideways relief is disallowed.

This is the case in the United Kingdom, for example, where to the extent that homesharing receipts are assimilated to rental income from immovable property – which, as shown, will normally be the case, unless the conditions for the furnished holiday letting regime are met – the tax treatment of homesharing losses will follow the general treatment applicable to all rental losses.[245] As such, rental losses from

245 See, for example: EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

homesharing activities may only be offset either currently against other rental income[246]or carried forward to offset rental income in a subsequent tax year.[247]

The United States characterizes receipts from homesharing activities as either rental or business income, depending on whether the worker provided 'substantial services' beyond mere short-term accommodation.[248] When the income is regarded as rental income from immovable property, losses from the homesharing activity may in principle only be offset against the positive results from another passive activity, with any unused losses being eligible for indefinite carry-forward. However, an important exception applies for taxpayers who are regarded as 'actively participating' in the management of a rented property,[249] who may offset rental losses currently sideways against any other source of active income. The maximum amount of rental losses eligible for sideways relief is capped at USD 25.000 per annum.[250] In order to be regarded as having an active participation, the taxpayer needs to ascertain active involvement in high-level management decisions related to the rented property, for example, the approval of guests, the determination of the terms of the rental agreement, the involvement in decisions pertaining to the improvement of the rented property.[251]

The main advantage of the active participation is exception lies in that it alleviates to some extent the compliance burden of tracking rental losses to future tax years. The possibility of offsetting rental against active income for example, from employment activities or from another active independent business of the homesharing worker entails that the effects of loss compensation will be reflected in the same year when the losses arise.

The active participation rules only impact loss relief, but otherwise have no bearing on the characterization of income or the availability of deductions. The active

246 Ibid.
247 Ibid.
248 See, for example: EY; 'Airbnb – General Guidance on the taxation of rental income', United States, 2017.
249 Ibid.
250 Ibid.
251 See, for example: H&R Block; 'Airbnb Host Reporting Guide', available via: https://www.hrblock.com/tax-center/wp-content/uploads/2018/05/airbnb-taxes.pdf last visited 5 May 2019.

participation rules do inquire into the activities of the taxpayer in relation to a rented property and to some extent acknowledge the fact that these activities are not purely passive. This regime equalizes the approaches to loss compensation for rentals and business activities, the latter being eligible for sideways relief as a matter of generality. In this respect, the United States takes an especially nuanced and sophisticated approach to the compensation of homeshating losses, in that the applicable tax rules will allow for quarantined relief for pure rentals, limited sideways relief for rental activities when active participation can be established, and full sideways relief when the extent of the activities of the worker is sufficient to find a genuine active business.

2) Compensation for losses regarded as flowing from a trading, business or self-employment activity

To the extent that homesharing receipts are assimilated to trading or business income, the treatment of losses from such an activity will naturally follow the general rules on loss compensation applicable to trading, business, or self-employment income.

Sideways relief is in principle allowed in respect of homesharing losses if the activity is regarded as a trade, business, or self-employment. This would be the case, for example, under United States tax rules, provided that the substantial services test for the characterization of the income has been met, and in Ireland, to the extent that the homesharing activities pass the regularity and business-motive tests.[252] A slightly distinct approach is applied in the Netherlands, where taxable income falls under one of three boxes, with loss relief being available within the same box. In this respect, to the extent that the homesharing worker may be regarded as earning business income – determined similarly to the United States approach, by reference to the extent of the secondary and accessory activities of the worker above and beyond pure renting – homesharing losses will be eligible for relief against any other active income, such as employment income.[253]

252 Ireland Revenue; 'Income tax loss relief – Restrictions to the amount of relief available'. Tax and Duty Manual, 2019.

253 Sijbren Cnossen and Lans Bovenberg; 'Fundamental Tax Reform in The Netherlands', *International Tax and Public Finance 48 (4),* 200, pp. 471-484.

In other systems, the characterization of homesharing activities as a trade, business, or a self-employment activity may not entail the eligibility for sideways loss relief, for one of two reasons. Firstly, the sideways compensation of such losses may not be possible in those cases where a state does not allow trading, business, or self-employment income to be offset against any other type of income. Secondly, sideways relief may be restricted specifically for homesharing losses treated as trading, business, or self-employment income under a distinct taxation regime. A relevant example of the latter approach is the United Kingdom furnished holiday letting regime. As described in the foregoing paragraphs, rental activities undertaken on a continuous basis with an intention to generate profit, using a fully furnished property that is never used by the taxpayer as a private residence will be deemed to represent trading income, meaning that the general rules on the achievement of net income taxation will be applicable to the results from such an activity. An important exception to this, however, lies in the treatment of losses. Under the furnished holiday letting regime, losses may only be offset against the positive results from another activity qualifying as a furnished holiday letting.[254]

3) Compensation for losses regarded as flowing from an occasional or otherwise residual category

Finally, considering the fact that homesharing activities may in some cases be regarded as occasional or residual and taxed under the corresponding category for such receipts, some consideration should be paid to the consequences of this approach in respect of losses incurred in connection with homesharing activities. Ireland was cited as an example of a system taking this approach.[255] In this respect, homesharing receipts and any ensuing losses will be treated either a trading income or occasional income.[256] The treatment of losses from a homesharing activity that meets the criteria of a trade was described in the previous paragraph. Losses from an activity regarded as other income, by contrast, are eligible for relief, but only

254 EY; 'General guidance on the UK taxation of rental income received by individuals, including Frequently Asked Questions', United Kingdom, 2018.

255 Marnix Schellekens; 'Initiative to maximise tax compliance in regards to Airbnb income', available via the IBFD Tax Research Platform, 2018.

256 Ibid.

against positive results from the same schedule,[257] and then it may only be carried forward to a subsequent tax year. Consequently, the treatment of losses will not be significantly impacted by the characterization of the activity under a residual income schedule, because loss relief is still in principle possible against future income in the same schedule.

D. Losses incurred in connection with all-purpose freelancing activities

The dichotomy between sideways and quarantined relief is naturally most relevant for taxpayers that earn diversified sources of income concurrently. In this sense, when a task worker earns platform income as well as other (active) income, the main benefit of sideways relief would be that a negative result from platform activities could be used currently, offsetting the same year's positive results from other sources. By contrast, quarantined loss relief entails that a negative result from platform activities in any given year can only be used against future income from the same source. As shown in the previous parts of this analysis, it is the *prima facie* characterization of the worker's platform receipts that will be determinative of the treatment of losses. In the case of task workers, the characterization conundrum is between trading, business, or self-employment income, on the one hand, and occasional or residual income, on the other hand. In this respect, the relevant aspects regarding loss compensation or relief for task workers are similar to those raised in relation to the treatment of losses from ridesharing activities.

It therefore follows that, to the extent that the worker's platform receipts are characterized as trading, business, or self-employment income, sideways relief is more likely to be in place.[258] The opposite approach, followed generally in tax systems where a different computation is required for every individual type of income earned depending on the source, quarantined relief is normally the norm. However, even under such systems, an umbrella computation of positive and negative results is usually performed for items of income that are of a similar nature. In this sense, it will usually only be specific types of income – usually passive income and capital gains – that will be computed and treated separately.

257 Ireland Taxes Consolidation Act 1997, § 384.

258 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural* Analysis, 3rd edition, Wolters Kluwer Law and Business, 2010.

Under such an approach, the result would be that task workers may be entitled to a limited sideways loss relief e.g., for tasking losses to be offset against ridesharing income or other income deemed to have a similar character.

In other countries, such as Australia, taskers' losses (as well as the losses of most platform workers) are taken to fall under the non-commercial loss rules,[259] in spite of the qualification of the income as business/commercial income.[260] The outcome of this approach is that taskers' losses cannot be offset against income from other sources, but the manner in which the Australian Tax Administration justifies the application of the non-commercial loss rules to platform workers would suggest that taskers' losses could potentially be offset against other sources of platform income.[261]

There seems to be an emerging trend in favor of quarantining taskers' as well as other platform workers' losses – either through the exercise of administrative discretion to switchover from sideways to quarantined relief, or by instituting a default rule that platform losses will be regarded as 'non-commercial losses' or losses in another category which is not eligible for sideways relief. The idea that, regardless of any ensuing losses, the objective of the activities of task workers is inherently commercial or business-like has already been defended in this analysis.

259 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

260 Ibid.

261 This interpretation is based on the analysis of the Australian Tax Administration of the situation of collaborative economy platform workers in general, without distinguishing between the different business models and activity sectors involved. As already discussed in relation to ridesharing losses, the Australian (administrative) approach of labeling the income of collaborative economy platform workers as commercial income, whilst treating their losses as non-commercial losses is a somewhat obtuse one that could rightly be called into question on a number of grounds. Firstly, there should be symmetry between the treatment of the positive and the negative results of sharing economy activities. If the income from, for example, tasking is argued by the tax administration itself to qualify as commercial income, it is odd to automatically regard the ensuing losses as non-commercial losses. Secondly, the asymmetry between the treatment of platform income and losses is not justified by the Australian Tax Administration. Rather, it is postulated as a reality that should be taken at face value. Thirdly, to the extent that this asymmetry between the treatment of income (as commercial in nature) and losses (as non-commercial in nature) is only extended to platform workers, a distortion is created between the loss relief available to platform workers and other independent contractors.

Specifically, a commercial objective is supported by virtually all the characteristics of taskers' activities in themselves: the provision of a paid service to a third party consumer, with the worker bearing most of the risks of the activity. The nature of taskers' activities are also in themselves indicative of a commercial rather than a hobby character:[262] in spite of the fact that the task industry encompasses too many types of activities to refer to a direct correspondent outside the collaborative economy, it is beyond doubt that the vast majority of the services rendered by task workers are ones that typically provided by professional freelancers or employees. By contrast, as previously explained, the hobby/non-commercial loss rules of most countries were designed with a view to preventing taxpayers from reducing taxable income or from falling under a lower tax bracket using losses from activities with an inherently non-commercial purpose.[263] Taskers' activities simply do not have such characteristics.

5. Additional considerations in the ridesharing industry – Issues of worker misclassification and specific considerations related to cost-sharing arrangements

A. Worker misclassification

1) Introduction to the problem

In the ridesharing collaborative economy model, the status of workers as independent contractors rather than employees is especially controversial.

The implications of treating workers as employees rather than independent contractors exceed the realm of taxation. Unlike independent contractors, employees enjoy a span of safeguards under labor law: (paid) leave entitlement, minimum wage claims and protection against termination or workplace discrimination.[264] Independent contractors do not by definition rely on a principal

262 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

263 Hugh J. Ault and Brian J. Arnold; *Comparative Income Taxation: A Structural* Analysis, 3rd edition, Wolters Kluwer Law and Business, 2010.

264 Tad Devlin and Stacey Chiu; 'Is Your Uber Driver or Lyfter an Employee or Independent

from whom they could claim such legal guarantees. Similarly, independent contractors are restricted in their possibilities to (collectively) negotiate minimum rights and payment.[265]

The following paragraphs will briefly outline some of the major characteristics that set employees and independent contractors apart and the main tax consequences to being treated as either an employee or independent contractor. Subsequently, the discussion will delve into the worker misclassification controversies at play in the ridesharing industry.

2) Approaches to distinguishing between employee and independent contractor derived from labor law

The criteria for distinguishing between employees and independent contractors vary between legal systems at the level of technical detail. Common law systems typically set out a basic test through case law.[266] Such tests outline key characteristics of an employment relationship, such as the level of control exerted by a principal over the work performed, the impossibility of the worker to delegate work to a third party, the limitation of the risks borne by the worker, or the limitation of the worker's responsibility as regards the results of the work to be performed.[267] Additionally, common law systems will often also provide for a statutory definition of employment in legislation dealing with the more detailed aspects of employment,[268] such as leave entitlement, minimum wages, etc.[269] In civil law systems, the notion of employment is typically set out in either the civil or labor

Contractor and Why Does it Matter?', Thomson Reuters Westlaw, 2017.

265 Case C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden, [2014] ECR 2411. Collective bargaining for independent contractors could potentially run against free market competition.

266 Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497.

267 Ibid. See also: Doug Pyper; 'Employment Status', House of Commons Briefing Paper CBP 8045, 2018.

268 Nigel Meager and Peter Bates; 'Self-Employment in the United Kingdom during the 1980s and 1990s', in: Richard Arum and Walter Muller; *The Reemergence of Self-Employment: A Comparative Study of Self-Employment Dynamics and Social Inequality*, Princeton University Press, 2004.

269 See, for example, the United Kingdom Employment Rights Act 1996

code[270] and refers to aspects such as the performance of work under the direction of a principal or the economic dependency on the principal. Workers whose risk profile does not meet the criteria enunciated in the civil or labor law definition are treated as independent contractors.

With some exceptions, many legal systems do not have a specific definition of employment in tax law. Relying on non-tax definitions will not always yield appropriate results, since the consequences of employment status are distinct for civil or labor law purposes compared to tax law.[271]

3) Tax implications of employee or independent contractor status

For tax purposes, the distinction between employee and independent contractor status is relevant towards (1) the collection of tax, (2) the incidence of social security contribution obligations and (3) the availability of expense deductibility.

A) Tax collection

A core difference between employees and independent contractors refers to the tax collection mechanisms applied in respect of the income derived from their work. Tax on wages and salaries is generally collected periodically by withholding at source under pay as you earn ('PAYE') systems.[272]

There are only isolated examples of jurisdictions that do not apply PAYE in respect of employment income, such as Hong Kong, Singapore, and Vietnam. It would not be going too far to assert these are exceptions to an otherwise almost universal practice as regards the collection of tax in respect of employment income. As with withholding tax applied to other types of income, such as dividends, interest, or royalties, withholding taxes on employment income are often an advance

270 See, for example: German Civil Code [BGB] § 611.

271 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998. Internal Revenue Service; 'Revenue Ruling 87-41, 1987-1 C.B. 296', commonly referred to as the '20-factor test'.

272 Kath Nightingale; *Taxation: Theory and* Practice, 4th edition, Prentice Hall, 2002.

payment on the personal income tax of the employee rather than a final tax.[273] Many jurisdictions require employed taxpayers to still file a return, even if their only source of income is earnings from employment.[274] There are many policy reasons behind this, such as the possible inexactitude of the PAYE rate schedule,[275] the availability of (a few) deductions for employees,[276] the need to take into account the overall personal circumstances of the taxpayer (e.g., through personal allowances).[277] The popularity of PAYE systems is largely self-explanatory. Firstly, PAYE frameworks are effective tools for mobilizing public revenues and facilitating tax compliance.[278] This is underlined by the fact that a large proportion of the economically active population of most states is comprised of employees. Secondly, withholding taxes intrinsically diminish tax evasion opportunities.[279] Thirdly, empirical research suggests that the application of withholding tax on

273 The idea that withholding taxes are conceptually and practically meant to constitute an advance payment can also be inferred from the terminology used by some jurisdictions to describe such taxes. For example, in Switzerland, the withholding tax on dividend and interest payments is referred to as an 'anticipatory tax'.

274 Withholding taxes on employment income may be a strong driver for the correct reporting of income of individual taxpayers under personal income tax. Empirical and experimental research ascertains that the withholding of tax on employment remuneration provides a strong incentive for diligence when taxpayers file their tax returns, primarily because these taxpayers have a vested interest in the prospect of obtaining a tax refund. For those individuals that had already been subjected to advance taxes on their income, the process of subsequent self-reporting or self-assessment invites them to meticulously assess and document their overall tax position. See also: Koenraad van der Heeden; 'The Pay-As-You-Earn Tax on Wages', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

275 Ibid.

276 Deductions for employees will be discussed below in this section.

277 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

278 OECD; 'Withholding & Information Reporting Regimes for Small/Medium-sized Businesses & Self-employed Taxpayers', OECD Forum on Tax Administration, Compliance Sub-Group, 2009. In an Information Note from 2009, the OECD pointed out the heavy reliance by many states on personal income taxes in securing public revenues and argued that personal income taxes could continue to support this trend for as long as the collection of withholding taxes remains the norm.

279 This especially holds true as regards those individuals whose sole or main source of taxable income stems from remuneration for employment activities: to the extent that an advance tax was already withheld from this income when it was paid by the employer, employees have very little room to underrepresent the amount of their income. To the contrary, they would more likely be entitled to refunds based on their personal or family circumstances.

employment income diminishes the day-to-day awareness of individuals towards their actual tax burden.[280]

By contrast, for self-employed individuals and independent contractors, it would hardly be feasible to devise a system of withholding tax,[281] considering the plurality and unrelatedness of payers and income sources.[282] For independent contractors and the self-employed, tax collection is based on taxpayer self-reporting or self-assessment.

B) Social security contributions

A second salient distinction between the treatment of employees and independent contractors relates to the collection and incidence of social security contributions. In addition to taxes on employment income, the gross remuneration of employees is also almost always reduced by the deduction of mandatory social security contributions. Employee social security contributions are collected essentially in the same manner as wage taxes, though withholding at source.[283]

In most systems, contributions to social security programs are mandatory for both the employee and employer.[284] Tax law commentators usually do not focus on the issue of social security contribution incidence.[285] However, this topic is widely discussed by economists and social scientists, as part of the debate whether mandatory employer social security contributions drive up labor costs and indirectly heighten unemployment rates.[286] It would perhaps be axiomatic to

280 Some authors refers to this phenomenon as 'tax consciousness', meaning the cognizance of the true burden of tax on income earned. A low visibility of tax for taxpayers is said to determine a lesser tendency to perceive the payment of tax as an economic loss.

281 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

282 Ibid. The application of withholding taxes to payments made to independent contractors would largely counter the feasibility argument that supports this collection mechanism in the case of employees.

283 Koenraad van der Heerden; 'The Pay-As-You-Earn Tax on Wages', in: Victor Thuonyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

284 Ibid.

285 See, for example: John E. Dixon; *Social Security in Global* Perspective, Praeger Publishers, 1999.

286 See, for example: Rupert Sendlhoffer; 'Incidence of Social Security Contributions and Taxes

explain the perception of employer social security contributions as a burden. These are in essence costs that employers bear merely by reason of being regarded as employers. For an employee, contributions to social security (whether deducted from their employment earnings or the resources of the employer) enable access to welfare and benefits programs provided by the state. For the employer, no such benefit accrues. From an economic perspective, social security contributions are not much unlike taxes for employers. The pecuniary impact of these contributions is mitigated to some extent by possibility available in many jurisdictions for employers to deduct amounts contributed from their tax base.[287]

As regards self-employed individuals, many states provide dedicated social security contribution pillars. Belgium and the United Kingdom are two examples of this trend, whereby employees and self-employed individuals make contributions to different classes of funds.[288] In the United States, independent contractors and the self-employed are subject to a so-called 'self-employment tax',[289] which is in fact a collection of social security and Medicare contributions due by individuals regarded as independent contractors and not a tax per se,[290] which enable self-employed contributors to access essentially the same benefits as those available to employees. Compliance with mandatory social security contributions due by the self-employed is generally difficult to safeguard. There are many possible explanations behind this, including the conceptual disconnect between the

– Empirical Evidence from Austria', Institute of Public Economics, Discussion Paper 1, 2001. These aspects, however, do not represent tax policy or tax compliance issues *stricto sensu*, since social security contributions are by definition not taxes. Nevertheless, I do believe it is worthwhile to briefly discuss the impact of employer contributions on the position of the latter, since the implications thereof are not much unlike those of taxes.

287 J.A. Macon et al.; 'Social security contributions as a fiscal burden on enterprises engaged in international activities'. General Report, International Fiscal Association, Volume LXIXb. However, it is equally important to note that some jurisdictions, such as Belgium and Germany, cap the amount that the employer is able to deduct, meaning the economic impact of such contributions on employers is not fully alleviated. Both employee and employer social security contributions represent a compliance burden, particularly in jurisdictions where PAYE and social security are not integrated.

288 Anne Vanderstappen; 'Belgian Social Security for the Self-employed', OECD, 2017.

289 Internal Revenue Service, Department of the Treasury; 'Rules Relating to Additional Medicare Tax', *Federal Register 78 (230),* 2013, pp. 71468-71475.

290 Ibid. In fact, the IRS Guidelines themselves mention that the self-employment tax should not be confused with a pure 'tax'.

social security system as a whole (which was originally designed with employed individuals in mind) and the circumstances of self-employed workers[291] and the absence of an effective collection mechanism (i.e., withholding) for contributions due by the self-employed.[292]

C) The availability of deductions

Another important distinction in the treatment of employees and independent contractors refers to the availability of deductions. Some commentary regarding the classes of deductions available to ridesharing workers as independent contractors was provided in the previous paragraphs to the present contribution. Those findings do not necessitate reiteration at this stage, but it would suffice to emphasize once more the general notion that independent contractors are able to deduct a wide span of expenses for income tax purposes. The situation of employees is considerably different. Apart from certain deductions granted to all individual taxpayers for personal circumstances on grounds of public policy,[293] employees generally have access to a limited class of deductions. In the United States, for example, employees are able to deduct commuting expenses, expenses linked to the maintenance of a home office and necessary business entertaining expenses borne directly by the employee.[294] In the United Kingdom, there is very little leeway for employees to use work-related deductions, with a very narrow 'necessity' test being applied.[295] Germany applies a slightly more liberal approach, whereby most expenses that can be substantiated and directly linked to an employment may be deducted, to the extent that the employer did not reimburse such these.[296] Nevertheless, the deduction of these expenses is usually capped per annum.[297]

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291 Mariano Bosch et. al; 'Nudging the Self-employed into Contributing to Social Security', Inter-American Development Bank, Working Paper 633, 2015.

292 Ibid.

293 For example, some tax systems may allow individuals a deduction for bank interest on a personal dwelling. As briefly noted in the foregoing paragraphs, most tax systems allow individual taxpayers to deduct certain personal expenses on public policy grounds.

294 Internal Revenue Service, 'Credits and Deductions for Individuals', available via: https://www.irs.gov/credits-deductions-for-individuals last visited 6 May 2019.

295 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

296 Ibid.

297 Ibid.

This treatment of expenses, rigid as though it may appear at face value, is not entirely inexplicable. Employees perform work under the direction of a principal. In the vast majority of cases, the principal supplies the tools used in the performance of work.[298] In turn, the employer is entitled to deduct expenses for providing this infrastructure from their tax base. Another reason behind the restrictions on employee deductions rests on grounds of administrative simplification.[299] Allowing employee deductions limits the possibility to apply PAYE as a final levy on employment income.[300]

4) The controversial status of ridesharing workers under the employee/ independent contractor dichotomy

The dichotomy between employees and self-employed persons is decisive in determining the incidence of various tax compliance costs and obligations.[301] Additionally, bleak market conditions are also liable to incentivize principals to (mis)assign workers as independent contractors rather than employees.[302] In other words, the conundrum of employee versus independent contractors is anything but a novelty.[303]

298 This is also one of the factors used by the United States tax administration to test whether an individual should be regarded as an employee or as self-employed. The elements of the test can be found in: Internal Revenue Service; 'Revenue Ruling 87-41, 1987-1 C.B. 296'

299 Lee Burns and Richard Krever; 'Individual Income Taxation', in: Victor Thuronyi [Ed.]; *Tax Law Design and Drafting, Volume 2*, International Monetary Fund, 1998.

300 Ibid. Another argument related to administrative simplification for why employees are generally barred from accessing deductions is that many of the expenses they would claim would likely have a dual-purpose character and routinely necessitate the application of apportionment rules.

301 Ronald R. Rubenfield; 'Tax Strategies for Classifying Employment: Employee v. Independent Contractor'. *Practical Tax Strategies 99 (35)*, 2017. This is not to dismiss the tangent reality that employers are also subject to other costly requirements above and beyond those related to tax compliance. As already mentioned, employee status tends to also entail a distinct set of protections under labor law, *inter alia* regarding (paid) leave entitlement, maternity or paternity leave, safeguards against discriminatory practices and unjustified dismissal. The position of an employer or principal as a surrogate for some of the tax compliance responsibilities of an employee is only one of the many costs associated with employer status.

302 John. O Everett et. al; 'Employee of Independent Contractor: A Determination with Far-Reaching Consequences', *American Accounting Association 9(1),* 1995, pp. 1-12.

303 Ibid.

In the case of some major ridesharing platforms, most notably *Uber*, the qualification of workers as independent contractors has proven to represent quite the bone of contention. At the time of writing, *Uber* has already been subject to several cases, two of which adjudicated before the Court of Justice of the European Union ('CJEU'), on the broader question of whether the services provided by *Uber* represent transportation or mere information intermediation services.[304] The CJEU did not, however, address, focus on, or answer questions regarding the status of *Uber's* workers as independent contractors or employees. The more specific issue of whether ridesharing workers should be regarded as employees or independent contractors was also answered by courts in several jurisdictions, both within and outside Europe, at times reaching diverging outcomes. Importantly, however, these cases addressed the question through the lens of labor rather than income tax law.

A) Successful challenges to independent contractor status – The Aslam judgment before the United Kingdom Supreme Court

A notable case where the status of ridesharing workers as independent contractors was successfully challenged is the *Aslam* judgment adjudicated ultimately before the United Kingdom Supreme Court.[305] United Kingdom labor law recognizes three categories: employees (which enjoy the broadest span of employment and social security law protection), workers (whose employment law protection is more limited than that granted to employees and only extends to the guarantee of minimum wage and paid leave) and self-employed (whose protection is limited to safety regulations).[306] In *Aslam*, ridesharing drivers undertaking activities through

304 Case C-434/15 Asociación Profesional Elite Taxi v Uber Systems Spain, SL and Case C-320/16 Uber France SAS v. Nabil Bensalem. Both cases concerned the status of Uber itself as either a private transportation service or a mere intermediary for the underlying services supplied by workers. I discuss this case law in more detail in Part IV.IV.2 of this thesis.

305 *Uber B.V. v Aslam and others* UKEAT/0056/17 EAT [2017]. *Uber BV and others v Aslam and others* [2021] UKSC 5.

306 Noel Whiteside; 'State Policy and Employment Regulation in Britain: An Historical Perspective', *International Journal of Comparative Labour Law 35 (3)*, 2019, pp. 379-400. It should be noted that the recognition of three labor law categories is a particularity of the United Kingdom. However, as will be discussed in more detail below, United Kingdom tax law only distinguishes between employees and the self-employed. Taxpayers assigned as 'workers' for labor law purposes are subject to the compliance frameworks applicable to ordinary self-employed persons.

the *Uber* platform argued they were misclassified as self-employed by *Uber*. On first instance, the claim was brought before the United Kingdom Employment Tribunal, which found that drivers were in fact workers, not self-employed independent contractors.[307] The United Kingdom Supreme Court confirmed the ruling of the Employment Tribunal.

This decision was reached on the basis of the analysis of the facts underlying the relationship between the ridesharing platform and drivers. The courts found that drivers were under a tacit obligation to accept rides.[308] In its agreements with drivers, *Uber* explicitly states that every driver should accept 'at least 80% of their trip requests overall' *to be able to keep their account.*[309] Drivers' denial of three tips in a row would lead to a temporary suspension of their account.[310] The courts also scrutinized general working conditions, finding that *Uber* drivers could not unilaterally determine fares for their services. Fares per distance travelled are determined automatically by *Uber's* price-matching algorithms, with no intervention by drivers. Additionally, *Uber* disallowed the transfer of 'driver status' between drivers under its user agreement.[311] By contrast, no such restriction would apply to a regular independent contractor, who is in principle free to delegate work. Moreover, travel routes were automatically generated by *Uber*.[312] Drivers were not obliged to follow that route, however if they deviated from it and a customer submitted a complaint regarding the length of the journey, the driver would have to 'justify the deviation from the recommended route'.[313] Finally, *Uber* withheld amounts from drivers' fares as penalties for misconduct.[314]

307 Under the United Kingdom Employment Rights Act 1999, the term 'worker' is defined to refer to an arrangement 'whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual'.

308 *Uber B.V. v Aslam and others* UKEAT/0056/17 EAT [2017], paragraphs 26 et seq.

309 Ibid.

310 Ibid.

311 Uber Services Agreement; available via: parliament.uk last visited 6 May 2019.

312 *Uber B.V. v Aslam and others* UKEAT/0056/17 EAT [2017], paragraphs 29 et seq.

313 Ibid.

314 Ibid.

The brunt of the *Aslam* case law was in effect an inquiry into the substance of the relationship between *Uber* and its drivers.[315] The determination of drivers' status entailed the ascertainment of congruent elements of subordination and economic dependency exerted by *Uber* over drivers.[316] Subordination becomes apparent from the manner in which the platform operator controls and directs the conduct of drivers in the performance of their activities. Economic dependency is highlighted by the constraints imposed on drivers in influencing the profitability of their results. By capping fares for rides, *Uber* was found to act as the functional determinant of drivers' remuneration, stripping drivers of 'entrepreneurial control' over their activites.[317]

B) Ridesharing workers' status as independent contractors upheld – The Razak case

In a recent case adjudicated in the US, a diametrically opposed result regarding the legal status of ridesharing workers operating under *Uber* was reached.[318] Similarly to the previously described *Aslam* case, the United States *Razak v Uber Technologies* case law was not a tax or social security dispute but a labor rights claim.

What is especially interesting about the *Razak* case is that the court looked at many of the same factors deemed decisive to challenge independent contractor status in *Aslam*: the influence exerted by *Uber* over drivers' decision to accept rides and the consequences of repeated rejecting rides, the possibility to forcibly log drivers off the platform (and consequently barring them from providing rides), and the impact of the rating system on the affiliation of the driver with the platform.[319] In spite of the

315 Sandra Fredman and Darcy Du Toit; 'One Small Step Towards Decent Work: *Uber v Aslam* in the Court of Appeal', *Industrial Law Journal 48 (2)*, 2019, pp. 260-277.

316 Guy Davidov; 'The Status of Uber Drivers: A Purposive Approach', Hebrew University of Jerusalem Legal Research Paper 17-7, 2017.

317 Ibid.

318 Razak v Uber Technologies, Inc., United States Court of Appeals for the Third Circuit [2018].

319 Ibid. Of course, Aslam and Razak were decided under the norms of two different legal systems. In Aslam, the courts essentially examined all the aspects of the drivers' relationship with the ridesharing platform through the lens of the question of control. In Razak, by contrast, the approach was rather to inquire into the extent to which Uber's regulations and policies impacted drivers' possibility to earn profits. On the basis of this reasoning, the court was able to build the argument that the ultimate decision on whether, when,

similarity with the arguments put forward in *Aslam*, the court found in *Razak* that none of these aspects indicate a sufficient level of control to establish employment status. In *Razak*, it was found that drivers enjoyed a sufficient measure of flexibility in determining the structure of their work schedules. In essence, the judgment in *Razak* involved a quantitative balance of the flexibility enjoyed by drivers, on the one hand, and the elements of control over drivers' conduct exerted by *Uber*, on the other hand. The weight of the former factor ultimately outweighed the latter.

C) Ridesharing workers as fully fledged employees according to the Rechtbank Amsterdam

The status of *Uber* drivers was also recently addressed under Dutch law, wherein the Amsterdam District Court ruled that that drivers are fully fledged employees of the platform operator.[320] To make this determination, the court similarly inquired into the substance of the relationship between *Uber* and its drivers to find elements of subordination and economic dependency. Economic dependency was inferred from the fact that drivers are unable to control the pricing of transactions with end-users. In the view of the court, the remuneration of *Uber* drivers more closely resembled a salary contingent on work performed than fees paid to independent contractors.[321]

As regards subordination, the court noted that this notion must necessarily be interpreted in light of the realities of modern working conditions and, more specifically of the business model of the collaborative economy. Because of the makeup of modern labor markets, employees enjoy a considerably wider measure of independence than was the case when the subordination test was originally developed. As such, the court found that inferences of *indirect* control exerted by *Uber* over drivers would be sufficient to meet the subordination test.[322] The court found such factors to exist. Firstly, when registering with the platform, drivers are

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and how to work (and earn profits therefrom) was with the drivers rather than with Uber. In the court's view, the 'punitive' measures taken by Uber against some of its drivers where merely reactionary acts in response to poor performance, not a determinant of whether the drivers can perform work in the first place.

320 Rechtbank Amsterdam ECLI:NL:RBAMS:2021:5029.

321 Ibid., paras. 23-24.

322 Ibid., paragraph 26.

required to accept *Uber*'s terms of service. The conditions for taking up work are non-negotiable for drivers. Additionally, drivers are required to accept any subsequent changes to these terms of service introduced unilaterally by *Uber*.[323] Secondly, *Uber* one-sidedly matches drivers with end-users. Drivers do not enjoy the possibility of selecting only those rides that would yield them the most benefit.[324] Thirdly, *Uber* has internal mechanisms in place for policing and penalizing drivers' conduct. The platform's rating system can determine a driver's termination or eligibility for performance-related rewards.[325] Similarly, *Uber* takes disciplinary action against drivers in response to complaints from end-users or when a driver rejects offers for rides.[326] In effect, the court found that drivers enjoyed no meaningful measure of entrepreneurial freedom.

5) Reflections on the employee/independent contractor conundrum in the ridesharing industry

The divergences in the outcomes reached in these cases are but a hint that questions about workers' classification are still largely unsettled at the time of writing. The contentious topic of worker classification in the collaborative economy necessarily requires some reflection.

To begin with, it should be noted that challenges levelled at workers' classification as independent contractors tend to be restricted to the ridesharing. Disputes revolving around worker misclassification typically do not arise in other segments of the wider collaborative economy. Furthermore, it would be misguided to argue that worker misclassification issues are prevalent throughout the ridesharing industry as a matter of generality. Findings of worker misclassification may result from the nature of the relationship between drivers and platform operators. Every platform operator in the ridesharing industry applies their own set of internal policies. The determination of whether a ridesharing worker was improperly assigned as an independent contractor is a matter of ascertaining a relationship of subordination and economic dependence between the platform operator and the worker. This is a casuistic issue, not one that should be generalized in the abstract. It is important to highlight this aspect, because there is a common misconception amongst that the

323 Ibid., paragraph 27.
324 Ibid., paragraph 28.
325 Ibid., paragraph 29.
326 Ibid., paras. 30-31.

clarification of workers' status would alleviate the brunt of the labor, tax and social security law issues revolving around the collaborative economy. Whilst certainty as regards workers' status would certainly be welcome in many respects, it is my view that this would only benefit those workers that were mis-assigned as independent contractors – not all ridesharing workers and certainly not all collaborative economy platform workers across the board.

However, when worker misclassification issues do arise, these are problematic on several grounds. Firstly, worker status is an area that highlights the complex confluence between labor, tax law and social security law.[327] For labor law purposes, the status of a worker is a precursor to ascertaining eligibility for various social rights and protections. For tax and social security law purposes, worker status determines the applicable regime for the payment and collection of taxes and social security contributions and questions of expense deductibility. The dissonance between labor and tax law is made particularly apparent by reference to the United Kingdom legal system. As discussed previously in connection with the *Aslam* judgment, United Kingdom employment law recognizes three labor statuses: employee, self-employed and worker. Conversely, tax law only acknowledges self-employed and employed taxpayers.[328]Although a taxpayer may be recognized as a worker under labor law, they remain subject to the tax compliance frameworks for the self-employed.

Secondly, states' approaches to the relationship between labor and tax law may in practice be muddied and therefore conducive to legal uncertainty. A legal system that highlights these issues is Germany. Under German law, tax courts and administrations are not bound by the decisions of labor law courts, with such decisions having a merely indicative character.[329] Such misalignment is liable to compound the complexity in settling worker classification issues.

Thirdly, even where tax law follows labor law on questions of worker classification, the outcomes produced under labor law provisions may be unsatisfactory. The divergence between the outcome reached in the *Razak* case, on the one hand, and

327 Gillian Murdoch et. al; 'Taxation of Workers in the Gig Economy: A European Perspective', *Intertax 49 (1)*, 2021, pp. 71-81.

328 Ibid.

329 Ibid.

the United Kingdom and Dutch cases on *Uber* drivers' classification illustrate this point eloquently. Almost universally, worker classification questions are ultimately determined by reference to the control and economic dependency tests. However, courts may reach different outcomes in applying these similar criteria to similar fact patterns. As such, the same factors that were taken to definitively determine that drivers are not independent contractors in the United Kingdom and the Netherlands did not compel the court in the *Razak* judgment. The substantive similarity of the criteria and tests applied should not be taken to suggest uniformity in outcomes.

Indeed, there is some room to argue that subordination and economic dependency are no longer the most appropriate approach for settling questions of worker classification. In the Dutch *Uber* case, the court explicitly acknowledged the difficulty of applying the subordination test against the backdrop of modern-day working conditions in the digitalized economy. This issue was sidestepped through a purposive interpretation of subordination by the court.[330] In other jurisdictions, courts already contemplate a more profound move away from the subordination test. For example, in Australia, a case on the vicarious liability of a collaborative economy platform enterprise in respect of a delivery workers' negligence prompted a court to highlight the inappropriateness of the subordination test in the ascertainment of the relationship between a platform operator and a worker.[331] The court argued that the subordination test was developed in the context of a predominantly agrarian society, where the labor market emphasized the 'division of functions and extreme specialization'.[332] Conversely, the nature of work in the collaborative economy is such that 'the conditions that gave rise to the control largely disappeared',[333] in that activities do not readily lend themselves to supervision by a principal. Against this backdrop, the Australian court instead applied a functional test, focused on the degree of integration of workers and their activities within the operational makeup of the platform operator, instead of the question of control exerted by the platform operator on workers' conduct.[334]

330 Rechtbank Amsterdam ECLI:NL:RBAMS:2021:5029, paragraph 26.
331 Hollies v. Vabu Pty Limited [2001] HCA 44.
332 Anton Joseph; 'Taxing Uber Drivers', *Asia-Pacific Tax Bulletin 24 (2)*, 2018.
333 Ibid.
334 Ibid.

A purposive interpretation of the subordination test arguably comes across as a compromise and an attempt to accommodate the contemporary circumstances of working conditions to a test that did not contemplate these. Conversely, the integration test is perhaps a more appropriate approach to capture the realities of the relationship between platform operators and workers. However, as matters stand, this functional test is unlikely to imminently displace the more established subordination test.

B. Cost-sharing arrangements in the ridesharing industry

1) A brief overview of cost-sharing arrangements

Conventional wisdom tends to conflate the ridesharing industry with taxicab-like private transportation services. This impression, however, does not capture full breadth and span of ridesharing arrangements that exist in the collaborative economy. Some ridesharing platforms use a significantly different business model. In turn, this entails different tax considerations for drivers.

Cost-sharing platform operators employ a business model that comes significantly closer to what a literal understanding of the notion of ridesharing would suggest. A semantic understanding of the term ridesharing implies the act of *sharing* a vehicle, rather than a formally entrepreneurial activity.[335] Cost-sharing arrangements are in effect the collaborative economy variant of traditional carpooling. The cost-sharing industry is premised on the idea of *sharing* assets, more so than capitalizing or monetizing private assets. From the perspective of the worker, the underlying purpose of sharing a vehicle is merely to recoup the costs of a journey, rather than to effectively profit from the idle capacity and potential economic productivity of a personal asset.[336]

335 Almost by definition, sharing discerns an act of community more so than a profit-making activity or otherwise an activity with a profit-making potential. In this respect, another conceptual difference between for-profit ridesharing and cost-sharing arrangements becomes apparent: whilst the former allowed for the emergence of a significantly more informal and digitalized counterpart to the highly regulated taxicab industry, the latter leveraged digital resources and technology to formalize a typical peer-to-peer activity.

336 Mehdi Farajahall et al.; 'What drivers pricing behavior in Peer-to-Peer markets? Evidence from the carsharing platform blablacar'. Available via: https://doi.org/10.1016/j.infoecopol.2019.01.002 last visited 5 May 2019.

Pricing in the cost-sharing industry is based on the estimated running costs of journeys.[337] The recommended price accounts for vehicle wear and tear for the journey,[338] fuel costs and road tolls.[339] Ridesharing workers is able to charge a different price from the one automatically computed by the platform, but adjustments are automatically capped upwards and downwards up to +/-50% of the recommended price.[340] This pricing strategy is used because the purpose of cost-sharing is to enable drivers to recover the running costs of a particular journey,[341] whilst concurrently and effectively barring them from achieving profits.[342] The pricing of for-profit and cost-sharing ridesharing has diametrically opposed underlying strategies. In the context of for-profit ridesharing, pricing must secure profitability. Conversely, cost-sharing arrangements only involve the recovery of costs for supplying a service.[343]

337 Nangel Kwong; 'The Taxation of 'Sharing Economy' Activities', in: Ina Kerschner and Maryte Somare [Eds]; *Taxation in a Global Digital Economy*, Linde, 2017.

338 Ibid.

339 Ibid.

340 European Commission; 'Explanatory study of consumer issues in online peer-to-peer platform markets. Case Study – BlaBlaCar', Directorate-General for Justice and Consumers, 2017.

341 European Commission; 'European agenda for the collaborative economy – supporting analysis'. Communication from the Commission to the European Parliament, The Council, the European Social and Economic Committee, and the Committee of the Regions. COM [2016] 365 final

342 Nangel Kwong; 'The Taxation of 'Sharing Economy' Activities', in: Ina Kerschner and Maryte Somare [Eds]; *Taxation in a Global Digital Economy*, Linde, 2017. Cost-sharing platforms tend to be fairly transparent, in that potential passengers are provided with an intuitive indication as to the relationship between the automatically computed recommended price and the price charged by a worker. On the interface of the platform, listings where the driver had adjusted the recommended price upwards are highlighted in either orange or red, depending on the extent of the upwards adjustment performed.

343 Additionally, for-profit ridesharing platforms sometimes apply so-called surge pricing mechanisms, whereby the fare prices are automatically increased during rush hour times, meaning that 'base fares' are essentially multiplied by a premium. Surge pricing is an expression of supply and demand elasticity: when the demand for a particular service is increased, a corresponding increase in prices will occur – because higher demand is inherently an invitation to higher profitability. In the case of cost-sharing ridesharing, there is no concept of surge pricing and a journey premium is never charged. The cost-sharing character of this business model is also apparent in the terms of service of cost-sharing platforms, which read that parties engage in transactions 'in a private capacity' and that drivers may not use the platform 'for profit or in any commercial or professional context'.

2) Tax implications of cost-sharing arrangements

By their nature, cost-sharing arrangements in the collaborative economy are irregular activities for workers. Additionally, cost-sharing arrangements lack profit-making potential. These considerations determine the tax consequences of cost-sharing arrangements.

A) Regularity of activities

In the case of cost-sharing ridesharing workers, the business model of cost-sharing platforms may well preclude the performance of activities on a regular basis altogether in a practical sense. Cost-sharing ridesharing platforms are devised with a view to enabling the recovery of running costs for medium to long distance journeys. In practice, drivers on these platforms only input listings and recover the costs for trips they would have taken anyway. There is no real incentive to do otherwise, since there is effectively no profit-making opportunity or potential. The regularity with which cost-sharing ridesharing workers will engage in platform activities is therefore not determined by opportunity costs, as would be the case with a for-profit ridesharing worker.

B) Absence of a profit-making objective or profit-making potential

Amounts received as a reimbursement of expenses would usually be qualified as refunds.[344] The question of whether or not refunds are regarded as taxable income may vary across tax systems. There are a few major trends in this respect.
To begin with, there is the approach of excluding refunded costs from taxation.[345] Under this approach, an ensuing issue relates to the definition of 'refunds'. In spite of the fact that cost-sharing platforms automatically compute a recommended journey price that takes into account running costs, drivers are still able to adjust the price charged within strict limits. In this respect, when a cost-sharing ridesharing worker charges a higher price than the platform-computed recommended price, it is entirely possible that the receipt earned will only partly amount to a refund,

344 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.
345 Zdzislaw Polkowski and Jakub Dysarz; 'An Analysis of the Legal, Economic and Technical Aspects of Carpooling Systems', *Scientific Bulletin – Economic Sciences 15,* 2016, pp. 76-88.

whilst any remaining portion of the payment in excess of the coverage of the running costs would be a profit.[346] In turn, the effective tax treatment of such a profit will depend on the manner in which it is qualified. As briefly touched upon in the previous paragraphs, cost-sharing ridesharing workers are unlikely to engage in platform activities on a regular or continuous basis. The implication of this is that the resulting profit receipt will in most cases not be regarded as business or trading income, since a requirement of continuity or regularity is most often an integral criterion of the definition of such income.[347] In such a case, the ridesharing profit would likely be taxable under the applicable rules for occasional or residual income.[348]

In other tax systems– such as the United Kingdom – the rules on the treatment of refunds include a measure of built-in protection against such outcomes. The United Kingdom has a specific regime to deal with refunds for the running costs of vehicles, called the Approved Mileage Allowance Payments scheme.[349] Under this mechanism, taxpayer may be reimbursed for the running costs of their vehicle up to a set maximum amount per annum, determined on the basis of a formula where the total miles traveled by that person are multiplied by a fixed rate per mile.[350] All amounts falling under this maximum amount are regarded as a tax-free allowance, whilst amounts exceeding the threshold are regarded as taxable income. The precise qualification of that income will depend on the circumstances of the person receiving the reimbursement. For example, if the running costs are reimbursed by an employer, any excess over the maximum tax-free allowance will be assimilated to employment income. In the case of self-employed persons or independent contractors, the regularity of underlying activities will determine the treatment of these receipts. The most obvious advantage of this approach lies in its capability of yielding predictable outcomes, because the question of whether or not part of

346 Ibid.

347 See, for example: Herbert Buzanich; 'Austria – Individual Taxation', last reviewed 1 January 2019, IBFD Country Analyses.

348 This approach of dealing with refunds appears to be rather simple and clear at face value. However, the nature of cost-sharing ridesharing activities may lead to a number of borderline and contentious cases because of the practical difficulties in breaking down a receipt between the refund element and the profit element.

349 Nangel Kwong; 'The Taxation of 'Sharing Economy' Activities', in: Ina Kerschner and Maryte Somare [Eds]; *Taxation in a Global Digital Economy*, Linde, 2017.

350 Ibid.

a receipt represents a tax-free refund will ultimately only depend on the aggregate amounts received during a given tax year.

A third approach of dealing with refunds is to regard these amounts as *prima facie* taxable income – either through the adoption of a broad definition of taxable income which does not exclude refunds,[351] by making provision for a specific schedule for the taxation of refunds, or by including refunds in a residual income category by default.[352] Italy is an example of a tax jurisdiction where refunds are in principle regarded as taxable income however, much like United Kingdom, it makes provision for a tax-free threshold.[353]

It follows from these considerations that different tax systems approach the issue of refunds in a variety of different ways, but in practice, the outcome for cost-sharing ridesharing workers might not vary significantly. The amounts received by cost-sharing ridesharing workers will often be too low to pass the threshold for taxation in those systems where refunds are taxable, or too low to exceed the level of the tax-free allowance in those systems applying the opposite approach.

Questions regarding the deductibility of expenses or the treatment of losses are similarly not prevalent as regards cost-sharing ridesharing workers. The running costs of the any journey undertaken by a worker are by definition reimbursed in cost-sharing ridesharing arrangements, which precludes the possibility to claim a deduction for expenses incurred. Similarly, the issue of losses does not emerge since the character of the activities precludes the emergence of losses.

C) No worker misclassification issues

The independent contractor/employee conundrum in the context of cost-sharing arrangements does not amount to a prevailing issue, for two important reasons. Firstly, the relationship between cost-sharing platforms and drivers is not indicative of any level of control that could bring into question the status of drivers. There are no set requirements or screenings imposed by platforms for cost-sharing drivers. There

351 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.
352 Ibid.
353 Ibid.

is, indeed, a rating mechanism in place, but its role is seemingly restricted to securing community trust and transparency,[354] rather than to trigger consequences for the cost-sharing ridesharing worker himself. Some measure of control is exerted in the sense that the payment levels are capped, by the reason behind this is solely that of ensuring that the payments for journeys are strictly a reimbursement of running costs. Secondly, the cost-sharing character of the activities undertaken almost by definition excludes the possibility of independent contractor/employee mis-qualification. Vehicle cost-sharing does not entail an entrepreneurial or commercial element.[355]

It is therefore apparent that the business model of cost-sharing platforms does raise some minimal tax considerations. In the vast majority of cases, the income earned by drivers will escape taxation by reason of the operation of domestic rules, rather than because of some potential failure to report platform receipts on the part of the taxpayers.[356] Ultimately, when a business model only creates minimal tax consequences, the best policy is perhaps non-intervention.

6. Income-generating activities involving a cross-border element

The income taxation of collaborative economy platform workers in all three models here considered may be pervaded by an additional layer of complexity in cases

354 European Commission; 'Explanatory study of consumer issues in online peer-to-peer platform markets. Case Study – BlaBlaCar', Directorate-General for Justice and Consumers, 2017. As previously highlighted, some ridesharing platform operators may rely on the user ratings to determine drivers' eligibility for reward programmes or, in other cases, to penalize the driver. Cost-sharing platform describe the purpose of the rating system as relevant towards the transparency and community trust that the platforms are striving to maintain. Considering the nature of the relationship between the platform and its users as well as the general working of the business model itself, it is unlikely that the rating system would serve the same accessory purposes as it does in the for-profit ridesharing business model.

355 'BlaBlaCar – Terms and Conditions', available via: https://blog.blablacar.co.uk/about-us/terms-and-conditions last visited 1 November 2022.

356 Of course, the argument could be made that the proliferation of such platforms is likely to mean that numerous but small receipts are consistently escaping taxation, therefore causing a tax gap. In reality, this argument is purely hypothetical – and there is no empirical evidence so far that the non-taxation of these receipts is causing a measurable impact on public revenues.

where the workers' income-generating activities involve a cross-border element. Typically, this situation may occur in two main scenarios:

- The first scenario refers to an individual that resides in a state but lets out immovable property situated in another state through a platform;[357]

- The second scenario refers to an individual that, whilst residing in one state, travels to another state to provide services there through a platform. In practice, this could occur prevalently for individuals residing in frontier areas. Alternatively, the individual could also be rendering services through a platform remotely. This may occur, for example, in the context of some freelancing activities (e.g., online tutoring, proofreading).

When an income-generating activity involves a cross-border element, both the state of source of the income and the state of residence of the taxpayer may in principle tax, meaning the taxpayer is exposed to the risk of juridical double taxation. When an item of income is taxed in its state of source, the state of residence of the taxpayer may unilaterally provide relief in respect of the foreign taxes paid or exempt the foreign-source income from tax. In order to minimize the incidence of juridical double taxation and to secure reciprocity in tax revenues foregone through the provision of relief, states conclude double tax treaties ('DTTs'). DTTs determine the extent to which state may levy tax.[358] The source state of an item of income may be limited in the extent and circumstances where it may tax an item of income derived from its territory from a resident of the other state. For its part, the residence state of the taxpayer is required to provide relief in respect of income that may be taxed in the source state in accordance with the DTT. Substantively, the tax treatment of income-generating activities that involve a cross-border element is not particularly complex and does not raise novel issues. However, such activities may entail additional compliance burdens for workers.

357 The terms of service of homesharing platforms generally do not require that the service provider is a resident of the state where the property being let is situated. This of course opens the door for income-generating activities that inolve a cross-border element,

358 Katerina Pantazatou; 'What can we Learn from Taxation?', in: Ulrich Becker and Olga Chesalina [Eds.]; *New Approaches for Ensuring and Financing Social Security in the Digital Age*, Nomos, 2020.

For example, where an individual lets out immovable property located in another state through a platform, the primary taxing rights in respect of the income derived from this activity will customarily rest with the state where the immovable property is located. Because individuals are liable to full tax liability in their state of residence, that state in principle retains the right to also tax such income. However, if a DTT applies between the residence state of the worker and the state where the immovable property is situated, the former state would be required to provide relief by crediting the taxes paid by the worker in the other state or by exempting this income from tax. In the absence of a DTT, the residence state of the taxpayer may still provide relief on a unilateral basis. In this situation, the worker would be required to meet compliance formalities in both states involved by reason of the nature of the underlying activity.

In a similar vein, the taxation of private transportation or all-purpose freelancing activities that involve a cross-border element is not notably complex. If the activities of the worker are regarded as having an independent character, the income flowing therefrom would likely be treated as business income. Normally (and particularly in the context of applicability of a DTT), business profits may only be taxed in the state of source if they are earned through and attributable to a permanent establishment maintained by the taxpayer in the source state. Otherwise, exclusive taxing rights rest with the residence state of the taxpayer. When the source state may tax, the onus is on the residence state to provide relief.

The oftentimes hybrid nature of collaborative economy platform work may however introduce qualification issues when the state of residence of the worker and the state of source of an item of income derived from performing platform work take divergent views on the characterization of the income. This may arise, for example, in the context of homesharing activities. Depending on the manner in which a homesharing worker performs their activities, their income may be regarded as either rental income from the rental of immovable property or business income. Similar issues may also occur in relation to private transportation and all-purpose freelancing activities performed in one state by a worker that resides in a different state. Depending on the manner in which a worker performs these activities, the income resulting therefrom may either be regarded as business or residual income. In the case of private transportation activities specifically, some controversy may also arise as to the status as the worker as an employee or an independent

contractor. When workers are regarded as earning income from activities performed as independent contractors, the income would normally be qualified as business income. Conversely, when workers are regarded as employees, income flowing from activities performed as part of the employment would be characterzed as employment income.[359] Divergences between the source state of the income and the residence state of the taxpayer regarding the characterization of an item of income are most relevant when they determine whether (and how) the source state will tax the income in question. Such divergences may arise because DTTs themselves do not usually establish autonomous rules that govern the qualification of various items of income.[360] As such, even where a DTT is applicable, states generally determine the character of income and income-generating activities by applying their domestic laws. Normally, conflicts of qualification that arise in the application of double tax treaties are resolved in favor of the source state, with the general requirement that the residence state of the taxpayer should follow the classification determined by the source state.

7. Compliance costs in connection with income-generating activities in the collaborative economy

The various tax consequences of collaborative economy platform activities identified in the foregoing discussion entail a series of compliance costs. Public finance literature and policymakers alike acknowledge the notion of 'hidden costs of taxation':[361] outlays borne by taxpayers purely in connection with meeting tax obligations.[362] In the context of the present analysis of the tax consequences of platform activities for workers, a discussion of compliance costs is relevant for at least two main reasons. Firstly, compliance costs are inarguably an integral element in the taxation of platform workers. As such, a review of platform workers' tax rights and obligations as flowing from their activities necessarily demands the consideration of tax compliance costs. Secondly, it is widely accepted that compliance costs are regressive in relation to the scale of income-generating

359 Ibid., pages 380-381.

360 Ibid.

361 Jeff Pope; 'The Administration and Compliance Costs of International Taxation', in: Andrew Lymer and John Hasseldine; *The International Taxation System*, Springer, 2002.

362 Ibid.

activities, income character and taxpayer identity.[363] Specifically, compliance costs disproportionately impact taxpayers that derive small amounts of income from independent activities.[364]

In literature, compliance costs are primarily discussed by (fiscal) economists more so than lawyers. This is explicable since compliance costs are not prefigured by law, but are a cost adjacent to the application of the law. However, the economic argument that compliance costs are an integral component of tax liabilities is strong. Taxation is ultimately a transaction between a person and a state. It entails transaction costs for the parties on both ends. Economists commonly discuss compliance costs by reference to a number of dichotomous taxonomies: voluntary and mandatory compliance costs, pecuniary and non-pecuniary compliance costs or gross and net compliance costs. With a view to developing an encompassing review of the compliance costs experienced by collaborative economy platform workers, the present contribution will rely in the following paragraphs on these taxonomies.

A. Mandatory and voluntary compliance costs

One of the most widely accepted and cited definitions of compliance costs, put forward by Sandford, reads: tax compliance costs are 'costs incurred by taxpayers […] in meeting the requirements laid upon them in complying with a given structure and level of tax'.[365] Sandford's definition alludes to the commonly accepted notion of economic theory that tax compliance costs are expenses above and beyond the amount of a taxpayer's tax liability, incurred merely in connection with the discharge of this obligation.[366] Such a definition, however, fails to account for the first major nomenclature of tax compliance costs which distinguishes between mandatory and voluntary costs.[367]

363 Laurence Mathieu et. al; 'The distribution of UK personal income tax compliance costs', Applied Economics 42 (3), 2010, pp. 351-368.

364 Ibid.

365 Cedric Sandford et al.; *Administrative and Compliance Costs of Taxation*, Bath: Fiscal Publications, 1989.

366 United States Government Accountability Office; 'Summary of Estimates of the Costs of the Federal Tax System'. Tax Policy, 2005.

367 Tracy Oliver and Scott Bartley; 'Tax system complexity and compliance costs – some theoretical considerations', Australian Treasury, 2005; and Bin Tran-Nam; 'Tax Reform and

This dichotomy was first introduced and discussed by economist Johnston.[368] According to Johnston, mandatory (or computational) compliance costs are expenses incurred by taxpayers in order to determine the amount of taxable income and the tax liability afferent to it.[369] Otherwise put, mandatory compliance costs are incurred by taxpayers in order to comply with a blackletter legal obligation. Voluntary compliance costs are expenses that taxpayers elect to bear in order to minimize their tax liability.[370] Voluntary costs are also sometimes described as discretionary or planning costs,[371] alluding to the notion of the taxpayer unilaterally deciding to incur and undertake costs in order to optimize their tax liability.[372].

The dichotomy between mandatory and voluntary compliance costs is far from uncontroversial. Some measure of tension exists as to whether voluntary compliance costs should be recognized as an integral component of tax compliance. Policymakers are reluctant in accepting the notion of voluntary compliance costs as a valid categorization of tax compliance costs,[373] since these are incurred by taxpayers as a matter of personal volition and in pursuit of a palpable tax benefit,[374]

Simplicity: A New and 'Simpler' Tax System?', *University of New South Wales Law Journal 34*, 2000.

368 Kenneth Johnston; 'Corporations' Federal Income Tax Compliance Costs: A Study of Small, Medium-sized, and Large Corporations', Bureau of Business Research Monograph No. 110, Ohio State University 1963.

369 Chris Evans and Binh Tran-Nam; 'The Compliance and Administrative Costs of the TVM: What are the Implications?', Australian Board of Taxation, 2011.

370 Tracy Oliver and Scott Bartley; 'Tax system complexity and compliance costs – some theoretical considerations', Australian Treasury, 2005; and Bin Tran-Nam; 'Tax Reform and Simplicity: A New and 'Simpler' Tax System?', *University of New South Wales Law Journal 34*, 2000.

371 Michael Goodwin; 'Tax Compliance – The Cost of Paying Tax', *The International Journal of Management and Science, 6 (5),* 1978, pp. 389-398.

372 Tracy Oliver and Scott Bartley; 'Tax system complexity and compliance costs – some theoretical considerations', Australian Treasury, 2005; and Bin Tran-Nam; 'Tax Reform and Simplicity: A New and 'Simpler' Tax System?', *University of New South Wales Law Journal 34*, 2000. Typical examples include the costs borne in order to assess one's eligibility for certain fiscal benefits or advantages, for claiming these benefits or advantages, costs borne in order to structure one's transactions or broader economic activities in a tax efficient manner, or costs supported in order to receive professional or independent structuring advice.

373 Chris Evans and Binh Tran-Nam; 'The Compliance and Administrative Costs of the TVM: What are the Implications?', Australian Board of Taxation, 2011.

374 Ibid.

which may offset or outweigh the (voluntary) compliance costs. This viewpoint is not, however, an accurate representation. Tax compliance costs arise as part of the interactions of the taxpayer with the applicable tax rules. In this sense, tax compliance costs are an inherent effect of the application of tax laws. Voluntary tax compliance costs are a consequence of the application of a legal provision in the same manner as mandatory tax compliance costs.[375]

As a result of their activities and the assets used in the course of these, collaborative economy platform workers incur both mandatory and voluntary tax compliance costs. As the foregoing analysis has strived to convey, the first and main tax consequence of workers' activities refers to the inclusion of the income from such activities in their basis for assessment. The only exceptions here identified referred to the situation of cost-sharing workers – whose platform receipts will most commonly qualify as refunds for tax purposes, and home swapping workers,[376]

375 Ibid. The distinction between mandatory and voluntary tax compliance costs may not be as clear-cut as Johnston's dichotomy suggests at face value. Admittedly, when voluntary compliance costs are interpreted superficially as referring to structuring efforts, the argument that such costs should not be regarded as an integral component of the tax burden is quite logical. Nevertheless, it is important to note that many of the benefits or relief mechanisms available to taxpayers can only be claimed through active (albeit voluntary) efforts on the taxpayers' part, since there is no legal obligation for taxpayers to claim them. Additionally, many of these optional benefits or relief mechanisms are in place not solely for the purpose of making the applicable tax framework attractive, but they instead represent tax expenditures put in place by policymakers in order to advance fundamental dogmatic goals, such as net taxation in accordance with the ability to pay principle. Expense deductibility is not merely in place to facilitate a reduction in tax liability, but to ensure that tax is applied after the economic circumstances in which income is generated are considered. There is nothing preventing platform workers from foregoing available deductions. The result would then be that voluntary compliance costs associated with tracking deductible expenses, substantiating such expenses with adjacent documentation in the tax return and apportioning dual-purpose will be surpassed altogether. But the corollary outcome is taxation on a basis that does not reflect the circumstances of income generation. This statement is not merely put forward as a hypothesis or an abstract possibility. To the contrary, empirical research into tax systems riddled with complexity and documented high compliance costs has shown that many individual taxpayers choose to forego tax benefits available to them in the form of deductions simply because the compliance effort associated with the claiming of such a deduction would exceed the tax savings to be achieved through the deduction itself.

376 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', *Intertax 45 (1)*, 2017.

whose platform receipts would at best be regarded as a form of virtual wealth,[377] therefore not falling within the notion of (taxable) income. As regards all other platform activities here considered, platform workers are regarded as earning taxable income, which will need to be documented and reported as a matter of a blackletter legal obligation. Consequently, this entails the adjacent, mandatory compliance costs of documenting platform receipts and reporting these.[378]

Thea activities of platform workers also entail various voluntary tax compliance costs. In particular, this invites the question whether claiming deductions and loss compensation involves voluntary compliance costs. Deductions and loss compensation mechanisms are in place in order to safeguard net taxation in accordance with taxpayers' ability to pay.[379] They preserve the *right* of the taxpayer to have their economic obligations and overall circumstances taken into consideration. Since there is no obligation to claim deductions and loss compensation, there should be no reason to regard the compliance costs associated with the claiming these as mandatory tax compliance costs.[380]

For this reason, it is argued that platform workers will be faced with voluntary tax compliance costs when claiming deductions and loss compensation. These will entail the tracking, documentation and apportionment of (dual-)purpose expenses and the tracking of losses for the purposes of claiming loss compensation. Claiming deductions entails the determination of whether a particular expense is deductible in the first place. As shown by the foregoing analysis, the characterization of platform receipts may be determinative of this question. Additionally, the

377 Aleksandra Bal; 'Taxation of Virtual Wealth', *IBFD Bulletin for International Taxation 65,* 2011, pp. 147-160.

378 In the case of workers earning income from cost-sharing arrangements, a reporting obligation may theoretically apply even if their receipts from activities are non-taxable refunds (e.g., in systems where all income needs to be reported regardless of its treatment) or if the receipts include a (marginal) profit element. However, both situations are in practice exceptional.

379 M. Slade Kendrick; 'The Ability-to-Pay Theory of Taxation', *The American Economic Review, 29 (1),* 1939, pp. 92-101.

380 Tracy Oliver and Scott Bartley; 'Tax system complexity and compliance costs – some theoretical considerations', Australian Treasury, 2005; and Bin Tran-Nam; 'Tax Reform and Simplicity: A New and 'Simpler' Tax System?', *University of New South Wales Law Journal 34*, 2000.

apportionment of dual-purpose expenses may raise distinct complications. In this respect, apportionment rules that allow deductibility based of a fixed percentage of the dual-purpose expense will be significantly easier to comply with compared to rules wherein a strict apportionment of the expense is required in determining the deductible amount. Finally, documentation and substantiation requirements may pose additional difficulties. In some systems, reasonable estimations of expenses may be sufficient to establish a deduction, whereas in other cases, it is well possible that every expense needs to be documented.

Similar considerations can be raised in relation to the claiming of loss compensation. The foremost compliance cost is represented by the one-off burden of determining whether platform losses are to be quarantined in the filing jurisdiction of the worker or whether such losses may be used to offset current income from other sources. As described in the foregoing paragraphs, this may depend on a series of variables, such as the issue whether the applicable provides for the possibility to access sideways loss compensation at all, or whether the platform receipts of the worker are characterized under a schedule where losses are always quarantined.

B. Pecuniary and non-pecuniary compliance costs

A second dichotomy distinguishes between pecuniary and non-pecuniary compliance costs.[381] Taxpayers will inevitably bear some compliance costs that can be quantified monetarily and other costs that do not have a cash correspondent. The pecuniary/non-pecuniary compliance costs dichotomy alludes to Sanford's original nomenclature of tax compliance costs.[382] According to Sanford, tax compliance costs fall into three different categories: time costs, psychological costs, and monetary costs.[383] Time and psychological costs are sometimes interpreted as non-pecuniary costs[384] and they are contrasted to 'monetary costs'. In the view of

381 Ibid.

382 Cedric Sandford et al.; *Administrative and Compliance Costs of Taxation*, Bath: Fiscal Publications, 1989.

383 Cidalia Lopes and Antonio Martins; 'The Psychological Costs of Tax Compliance: Some Evidence from Portugal', *Journal of Applied Business and Economics, 14 (2),* 2013, pp. 53-61.

384 Tracy Oliver and Scott Bartley; 'Tax system complexity and compliance costs – some theoretical considerations', Australian Treasury, 2005; and Bin Tran-Nam; 'Tax Reform and Simplicity: A New and 'Simpler' Tax System?', *University of New South Wales Law Journal 34*, 2000.

other scholars, for example, Pope,[385] time costs also represent a monetary cost,[386] since the time spent by taxpayers navigating legal provisions, compiling records or remitting taxes is time that they spend outside the sphere of their ordinary income-generating activity. Pope is arguably describing time spent on tax compliance as an opportunity cost.[387]

Monetary costs are arguably not a contentious category of tax compliance costs. They refer to actual expenses incurred in connection with the discharge of tax obligation.[388] These may include postage costs,[389] fees paid for tax advice, costs associated with maintaining income and expense records. Depending on the tax system, these expenses may be deductible themselves.[390]

Non-pecuniary costs are a significantly more ambiguous (and arguably contentious) class of tax compliance costs. Perhaps the foremost type of non-pecuniary costs are psychological costs. The first author to acknowledge psychological costs as one of the 'hidden costs of taxation' was Adam Smith,[391] who referred to the 'unnecessary trouble', the 'vexation', and the 'oppression'[392] experienced by the taxpayer in

385 Jeff Pope; 'The Administration and Compliance Costs of International Taxation', in: Andrew Lymer and John Hasseldine; *The International Taxation System*, Springer, 2002.

386 Ibid.

387 Ibid. I dare partly disagree with Pope's characterization of time costs as monetary costs, simply because it is difficult (if not impossible) to give a monetary correspondent to the time spent by (individual) taxpayers on tax obligations. Time costs could at best be described as a hybrid category of tax compliance costs, which albeit relevant, would be better framed at the very border between pecuniary and non-pecuniary tax compliance costs. In other words, although it is undeniable that taxpayers do dedicate a sometimes considerable or at the very least non-negligible amount of time to the formal fulfilment of their tax obligations, I would not go as far as to immediately equate these time costs to a concrete and measurable loss of productivity.

388 United States Government Accountability Office; 'Summary of Estimates of the Costs of the Federal Tax System', Tax Policy Center, 2005.

389 Sebastian Eichfelder and Frank Hechtner; 'Tax compliance costs: Cost burden and cost reliability', Quantitative Research in Taxation, Discussion Paper No. 212, 2016.

390 Joel Slemrod and Nikki Sorum; 'The Compliance Cost of the U.S. Individual Income Tax System', National Bureau of Economic Research, Working Paper No. 1401, 1984.

391 Simon James and Alison Edwards; 'The Importance of Behavioral Economics in Tax Research and Tax Reform: The Issues of Tax Compliance and Tax Simplification', Discussion Papers in Management, Paper No. 14, 2007.

392 Ibid.

the process of meeting tax obligations (and, I would argue, also in the process of identifying and claiming tax benefits).[393] Psychological compliance costs pose two issues: the difficulty in defining their precise boundaries (especially without falling into an intersection with other categories of compliance costs) and the difficulty of quantifying these.[394] Following Smith's definition, essentially any factor that causes the taxpayer frustration in their interactions with the tax system would qualify as a psychological cost of tax compliance. This, for its part, is not only an extremely broad concept, but also one prone to the traps of subjectivity. Different taxpayers, depending on *(subjective)* factors such as their own knowledge of tax rules, their behavioral stance towards tax compliance, or even their stress resistance will experience the *objective* reality of tax compliance differently.[395]

Much like psychological costs, I would argue time costs are equally difficult to measure with accuracy – especially when the goal is to measure time economically or otherwise with a view to giving a pecuniary correspondent to time. But regardless of whether time represents a pecuniary or a non-pecuniary compliance cost, the reality that taxpayers do dedicate time resources to fulfilling their tax obligations is undeniable. The main question is therefore not whether tax compliance should entail time costs, but rather, what are 'optimal' time costs. Ultimately, the time cost of tax compliance depends on factors linked to both the objective characteristics of the relevant tax laws and to the subjective choices of individual taxpayers. The features of the tax system itself are determinative of time costs, in that complex rules will tend to require more time (and effort) to navigate and to comply with.

Platform workers will experience time costs in the process of researching the applicable provisions that apply to them. This should be taken to refer to provisions that entail a blackletter tax obligation and provisions aimed at providing benefits or safeguarding the rights of the taxpayer alike.[396] Additionally, there are the time costs

393 Adam Smith referred to the notion of psychological tax compliance costs in his plea for efficiency as a fundamental axiom of tax policy.

394 Cidalia Lopes and Antonio Martins; 'The Psychological Costs of Tax Compliance: Some Evidence from Portugal', *Journal of Applied Business and Economics, 14 (2),* 2013, pp. 53-61.

395 Bernadette Kamleitner et al.; 'Tax Compliance of Small Business Owners: A Review', *International Journal of Entrepreneurial Behavior & Research, 18 (3),* 2012, pp. 330-351.

396 Sebastian Eichfelder and Frank Hechtner; 'Tax compliance costs: Cost burden and cost reliability', Quantitative Research in Taxation, Discussion Paper No. 212, 2016.

inevitably associated with preparing and filing returns. Different considerations will arise in a discussion of psychological costs by reference to platform workers. Psychological compliance costs are the product of an entire collection of variables, ranging from the subjective perception of taxpayers to the objective indeterminacy of the applicable tax rules. They are an indirect effect of the application of the tax rules. By reason of the breadth of the notion of psychological costs, coupled with the inevitability of invoking subjective considerations when discussing this notion, all taxpayers' interactions with tax rules could potentially entail psychological tax compliance costs.

By contrast, the measurement of the strict pecuniary costs of tax compliance does not pose the same type of difficulties. To start with, it should be noted that certain monetary tax compliance costs may arise incidentally to the fulfilment of any tax obligation or the claiming of any right or benefit.[397]As regards other pecuniary compliance costs, platform workers in particular may experience these differently, depending on the complexity of their circumstances. In this respect, the fulfillment of pure blackletter legal obligations, such as the reporting of platform receipts in the process of self-assessment, should not in principle entail any significant pecuniary compliance cost.[398] By contrast, some compliance costs may be more considerable. This may be the case, for example, when the platform worker purchases tracking and/or documentation software[399] or solicits professional advice regarding the availability and claiming of such rights and benefits.

C. Gross and net compliance costs

A third relevant nomenclature of tax compliance costs is that between gross and net compliance costs.

Gross tax compliance costs encompass the *totality* of costs incurred by taxpayers in connection with the fulfillment of statutory tax obligations, as well as in the

397 Chris Evans and Binh Tran-Nam; 'The Compliance and Administrative Costs of the TVM: What are the Implications?', Australian Board of Taxation, 2011.

398 Such an obligation may, however, entail non-pecuniary tax compliance costs, notably time and psychological costs.

399 Sebastian Eichfelder and Michael Schorn; 'Tax Compliance Costs: A Business-Administration Perspective', *Public Finance Analysis 68 (2),* 2012, pp. 191-230.

process of claiming certain tax benefits.[400] For the purpose of this analysis, I take the extensive view that both pecuniary and non-pecuniary costs may be taken into consideration when discussing gross tax compliance costs, for one main reason: gross tax compliance costs are not a description of the existing types of tax compliance costs incurred by taxpayers as much as they represent a measuring stick. In this respect, gross tax compliance costs are a useful conceptual tool for aggregating and subsequently quantifying the *prima facie* excess cost of taxation for taxpayers. In this sense, if we agree to recognize certain more contentious categories of tax compliance costs – for example, time and psychological costs - as part of the taxpayer burden, I see no reason to not consider such costs as part of the gross compliance burden of income taxation.

Gross compliance costs are discussed in contrast with the notion of net compliance costs.[401] Net tax compliance costs the difference between gross compliance costs and the benefits flowing from tax compliance.[402] For the purpose of the gross/net tax compliance costs dichotomy, literature refers to two main benefits of tax compliance whose aggregate reduces gross compliance costs:[403] deductibility benefits and managerial benefits.[404]

The deductibility benefits of tax compliance arise when taxpayers are able to deduct some of their tax compliance costs.[405] The occurrence of such benefits will, however, largely vary from one jurisdiction to another and it will depend on the breadth of the span of deductions allowed by each individual tax system. For example, systems such as Australia tend to be rather generous when it comes to the relief of tax compliance costs, with taxpayers being able to deduct the costs incurred for record-keeping, for access to a safe deposit box, or for commissioning the services of a professional

400 Chris Evans et al.; 'Tax Compliance Costs: Research Methodology and Empirical Evidence from Australia', *National Tax Journal 53 (2),* 2000, pp. 229-252.

401 Ibid.

402 Ibid.

403 Budi Susila and Jeff Pope; 'The Magnitude and the Features of Tax Compliance Costs of Large Companies in Indonesia'.

404 Phil Lignier; 'The Costs and Benefits of Complying with the Tax System and Their Impact on the Financial Management of the Small Firm', *Journal of the Australian Tax Teachers Association 2 (1),* 2006, pp. 121-143.

405 Phil Lignier et al.; 'Tangled up in tape: the continuing tax compliance plight of the small and medium enterprise business sector', *Australian Tax Forum 29,* 2014, pp. 217-247.

tax adviser.[406] The literature on gross/net tax compliance costs does not include ordinary deductions for business expenses in this category. Managerial benefits accrue when (stringent) tax reporting obligations push taxpayers into compiling financial information which is valuable for both tax compliance as well as for other business purposes.[407] By preparing thorough documentation in support of their tax position or simply in order to meet computational tax requirements, taxpayers produce statements that are relevant not only for tax compliance purposes, but which may also be used to gain a clearer overview of their own financial situation and to inform better decision making in the future.

These categories of tax compliance benefits are open to some measure of criticism regarding their relevance for the situation of platform workers.

The issue of whether or not platform workers would be able to deduct expenses incurred in connection with their interactions with the tax system itself is first and foremost one to be answered by tax jurisdictions individually. But even more importantly, given their particular tax compliance profile, it is rather unlikely that platform workers would be able to qualify for such deductions. Short of expenses linked to hiring a tax or accounting professional (if such an expense is recognized as a deduction in the jurisdiction of filing), platform workers would rarely incur many of the costs that could result in a compliance-related deduction for other taxpayers.

It could however be argued that certain managerial benefits could indeed accrue to platform workers. As a matter of generality, managerial benefits are discussed in relation to corporate taxpayers. The typical explanation of such benefits is that a company and its board will often be able to leverage financial information primarily prepared for tax purposes in order to steer better managerial decision-making. However, there is no reason why this argument cannot be imported *mutatis mutandis* to the situation of individual taxpayers, and more specifically to the situation of platform workers. When acting as an independent contractor

406 Chris Evans et al.; 'Tax Compliance Costs: Research Methodology and Empirical Evidence from Australia', *National Tax Journal 53 (2),* 2000, pp. 229-252.

407 Phil Lignier; 'The Costs and Benefits of Complying with the Tax System and Their Impact on the Financial Management of the Small Firm', *Journal of the Australian Tax Teachers Association 2 (1),* 2006, pp. 121-143.

and being primarily and singularly responsible for all the financial (and fiscal) aspects of a trade or business, taxpayers may easily make mistaken assessments of earnings versus spending or other structural trade decisions. By being required to substantiate earnings and track expenses, for example, taxpayers are tacitly coerced into financial introspection. Consequently, they produce an overview of their trade which they can then rely on for other purposes. For example, information compiled in reporting income and expenses may provide indications as to the genuine level of profitability of workers' platform activities.

III. SYNTHESIS

The foregoing analysis strived to identify and discuss the tax consequences of the platform activities of ride-, homesharing and task workers in an effort to meet two inter-related research aims. Firstly, the objective of this analysis was to ascertain what these tax consequences are and how they may play out under various tax system approaches from a pan-comparative perspective. Secondly and more importantly, the foregoing analysis purports to provide a foundation for the determination and understanding of why the management of these tax consequences may lead to lapses in tax compliance. From the preceding analysis, it emerges that the tax consequences of workers' platform activities may be divided along two main categories: *substantive tax consequences* and *compliance consequences*.

The *substantive tax consequences* of workers' platform activities may carry different valences. Such differences are determined chiefly by three main factors.

Firstly, **the nature of different types of income-generating platform activities will influence the tax consequences for workers**. From the foregoing description of three major collaborative economy models, a broad dichotomy is apparent between capital- and labor-intensive platform activities. In this respect, the homesharing sub-business model exemplifies a form of capital-intensive platform activity. The provision of short-term accommodation through a platform entails primarily the exploitation by a worker of an asset (i.e., immovable property).[408] Conversely, the platform activities of all-purpose freelance workers in the task industry are capital-intensive activities, because the performance of the underlying service relies primarily on workers' skill rather than the exploitation of an asset. Ridesharing activities could r be described as a hybrid between a capital- and a labor-intensive activity.

408 This continues to hold true in cases where the workers' activities go beyond the mere provision of short-term accommodation (e.g., because the worker provides various accessory services to guests). When the involvement of the worker in the underlying platform activity extends beyond making a space available to an end-user or guest, this may indeed impact the characterization of the income flowing from the transaction. However, it does not alter the reality that the performance of the underlying activity is primarily reliant on the provision of short-term accommodation. The performance of accessory services impacts the *manner* in which the overall service is provided. Accessory services as here referenced and discussed are just that: *accessories* to a main form of activity.

These differences influence the characterization of the underlying activity and the income flowing therefrom, as well as the types of expenses incurred in connection with the performance of the activity and the treatment of such expenses for income tax purposes. At face value, this consideration is axiomatic and self-evident. However, it is particularly important to stress this aspect, because there is a misguided tendency in speaking of the 'collaborative economy' and 'platform workers' as a whole. It is not always first intuition to reflect on the differences between the activities of workers in different collaborative economy models and on how these differences may impact the income taxation of workers. Acknowledging these realities from the outset is an important vector in any subsequent effort towards the design of measures aimed at improving tax compliance for collaborative economy platform workers.[409]

Secondly, **the conduct of workers also influences the tax treatment of their income-generating activities**. A core characteristic of the collaborative economy is that workers are free to decide when and how to render services through a platform.[410] This flexibility may in many cases impact the tax consequences of

409 The fact that platform workers in different models would experience a different tax treatment under the application of existing rules is not a problematic outcome, it is merely a normal consequence determined by the particularities of their activities. As will be explored in detail in Parts III and IV of this thesis, the ongoing strides for tax reform target 'platform workers' broadly. But different types of platform activities entail different tax consequences and carry different levels of profitability. Taking these into consideration is imperative with a view to ensuring that any regulations aimed at securing tax compliance and collection are not only effective in supporting revenue raising, but also equitable in their approach and outcome. Equity, in turn, cannot be separated from the consideration of the particularities of the activities and the workers in the question.

410 As was discussed previously in the content of this part of the thesis, some platform operators have internal policies whereby workers are penalized, for example, when rejecting (multiple) requests to perform services or when their ratings compiled in the platform's interface are poor. These factors have been considered by courts as part of the determination of whether workers are subordinated to and controlled by platform operators through which they undertake their activities in worker misclassification disputes. However, even in those cases where such elements of subordination and control exist, platform operators allow workers to determine their own working schedules and how they will perform their activities (for example, homesharing platform operators generally do not require workers to provide accessory amenities to guests, so when these are provided, it is done at the workers' volition). These are the flexibility factors referenced in this paragraph of the argumentation.

workers' activities. Whereas some workers engage in platform activities on a full-time basis and rely on receipts from such activities as a principal source of income, other workers perform income-generating activities on platforms on an intermittent basis. The frequency of activities may impact the characterization of the income derived from these. In turn, the characterization of the income will in many cases determine other tax consequences, such as whether the income is taxed on a gross or a net basis. For homesharing platform workers in particular, the manner in which they perform their activities (and specifically, whether these only extend to the mere provision of short-term accommodation or also include the active provision of accessory services to guests) may likewise impact the characterization of their platform receipts. Similarly to what has been said immediately above, these aspects highlight the importance of avoiding over-generalizations regarding 'platform workers' and 'platform activities'.

Thirdly, **the relation between platform operators and workers may impact the workers' status and, in turn, the tax treatment of the workers' income**. The foregoing analysis discussed examples of jurisprudence addressing issues of worker misclassification. As a default position, platform operators assign workers as independent contractors and not employees. Although the workers' status as an employee or independent contractor is foremost a labor law aspect, this issue impacts the treatment for tax purposes of the individual and their income as well. However, in certain situations, courts have ruled that specific platform operators had misclassified platform workers as independent contractors.[411] The steep dichotomy between employee and independent contractor status is an especially

411 Guy Davidov; 'The Status of Uber Drivers: A Purposive Approach', Hebrew University of Jerusalem Legal Research Paper No 17-7, 2017. Benjamin Cardozo; 'Riding the Line Between ''Employee'' and ''Independent Contractor'' in the Modern Sharing Economy', *Wake Forest Law Review 51 (5),* 2016, pp. 1223-1254. Jonathan V. Hall and Alan B. Krueger; 'An Analysis of the Labor Market for Uber's Driver-Partners in the United States', *Iowa Law Review 71 (3),* 2018, pp. 705-732. Robert L. Redfearn III; 'Sharing Economy Misclassification: Employees and Independent Contractors in Transportation Network Companies', *Berkley Technology Law Journal 31 (2),* 2016, pp. 1023-1056. Vanessa Katz; 'Regulating the Sharing Economy', *Berkley Technology Law Journal 30 (4)*, 2015, pp. 1067-1126. Robert Sprague; 'Worker (Mis)Classification in the Sharing Economy: Trying to Fit Square Pegs into Round Holes', *ABA Journal of Labor & Employment Law 31 (1)*, 2015, pp.53-76. Juliet B. Schor and Mehmet Cansoy; 'The Sharing Economy', in: Frederick F. Wherry and Ian Woodward [Eds.]; *The Oxford Handbook of Consumption*, Oxford University Press 2019.

relevant characterization issue since substantive and compliance obligations are approached differently as a matter of law for these respective categories of taxpayers.[412]

In conventional wisdom, worker misclassification is oftentimes perceived as an issue that pervades the collaborative economy as a whole. However, the present analysis argues that claims of worker misclassification are not in practice a generalized issue. Existing case law on this matter focuses on specific issues arising in the ridesharing industry and involves claims against worker classification by *Uber*. This reality cautions against broad claims about misclassification.

When addressing worker misclassification disputes, courts apply tests that focus on control and economic dependency in the relation between platform operators and workers. In this respect, it could be argued that such tests fail to enable an accurate representation of the status of workers and their degree of integration within the core business of platform operators. However, this argument remains largely hypothetical in the absence of a broader change in the paradigm for distinguishing between employees and independent contractors as a matter of law. The degree of control and subordination exerted by most platform operators over workers would in practice be unlikely to suffice for the ascertainment of misclassification.[413]

412 For example, because different substantive rules on the deductibility of expenses or the compensation of economic losses typically apply to employees and the self-employed, the ultimate tax liability of two legal subjects involved in activities that are virtually identical from a competitive perspective may differ depending on the legal status of the taxpayer. Such an outcome is primarily the product of the divergent rationales underlining the substantive tax treatment of employees, on the one hand, and the self-employed, on the other hand – with the latter being legally perceived as wholly in control of their economic activities and results. Similarly, the extent of procedural compliance obligations differs considerably between employees and the self-employed, with the latter being subject to a more comprehensive span of reporting obligations, as a result of the independent character of their economic activities; and likewise, tax collection techniques differ between the employed and the self-employed, respectively. Collaborative economy enterprises are fundamentally premised on objectives of administrative and transaction cost minimization – a reality that largely explains the incentive to assign workers independent contractor status.

413 It should also be noted that the results of applying these criteria may vary from one jurisdiction to another. The foregoing analysis discussed how claims of worker misclassification brought against Uber in three different jurisdictions yielded three different outcomes, despite the fact that the factors considered by all three courts were very similar.

It follows from these considerations that the nature of collaborative economy platform activities may invite issues related to the characterization of workers, transactions and income.[414] These characterization issues may ensue differently or to differing degrees depending on both the particularities of specific sub-business models and the manner in which workers themselves undertake their platform activities. Whereas worker characterization issues are in practice restricted to the ridesharing sub-business model, transaction and income characterization problems arise in all the three sub-business models here considered.

Beyond substantive aspects, workers' platform activities entail a wide span of *compliance costs*. The foregoing analysis argues that some of these costs are mandatory or otherwise unavoidable. Conversely, other compliance costs may be incurred in connection with claiming fiscal benefits such as deductions for expenses or relief for losses incurred in connection with platform activities. Regardless of the lens through which compliance costs are viewed, the disruptive character of these remains undeniable. As will be explored in more detail in Part II to this thesis, compliance costs exacerbate the experience of tax obligations as burdensome and diminish the incentive for voluntary compliance. This consideration is particularly relevant with respect to self-employed taxpayers, as the collection of tax from these is heavily reliant on voluntary compliance. The deadweight burden of compliance costs is augmented by their regressive nature, especially when viewed against the small amounts of income typically earned by workers from platform activities and the subjective characteristics of taxpayers.

Although control and subordination are common tests applied in most jurisdictions, the manner in which they are applied and the outcomes of these tests will inevitably vary depending on other characteristics of individual legal systems.

414 European Commission – Directorate-General for Taxation and Customs Union; 'Literature review on taxation, entrepreneurship and collaborative economy', Working Paper No 70, 2017.

Part II

Considerations that underpin the under-taxation of income derived by workers from collaborative economy platform transactions

I. FOREWORD

Any attempt at pondering a framework for the effective taxation of collaborative economy platform workers would be remiss in the absence of a prefatory discussion of the factors that underpin this *status quo* of sub-optimal compliance. A workable approach to safeguarding tax compliance for platform workers should pierce into the fundamental causes of non-compliance. In order to do so, the causes of non-compliance should be identified and understood.

This Part of the present research argues that there are two main sets of considerations that act to impair the effective taxation of platform workers. These refer to (1) the characteristics of platform workers and the environment within which their income-generating activities are undertaken and (2) the compliance-related behaviors of platform workers. Part II.I of this research will explore how, much like other taxpayers engaged in independent small-scale income-generating activities, collaborative economy platform workers enjoy various opportunities to misrepresent income, expenses and other relevant circumstances.[415] To this end, Part II.I will attempt to identify and discuss the characteristics of the environment of income generating-activities in the collaborative economy, with a view to developing a discussion of whether, how and to what extent these characteristics may incentivize platform workers' non-compliance. Subsequently, Part II.II will discuss the impact of compliance-related behaviors on workers' taxation. There is a sizeable body of existing literature exploring the impact of behavioral considerations on tax compliance.[416] Part II.II will set out a series of common behavioral stances and discuss how these may play out for platform workers.

415 Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', Contributions to Economic Analysis 268, 2004, pp. 337-354. Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 187-213. James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 11-75.

416 See, for example: Valerie Braithwaite and John Braithwaite; 'An evolving compliance model for tax enforcement', Australian National University Open Access Library, 2001. Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: Taxing Democracy: Understanding Tax Avoidance and Evasion, Routledge, 2003. James Alm et al.; 'Taxpayer information assistance services and tax compliance behavior', Journal of Economic Psychology 31 (4), 2010, pp. 577-586. Ronald G. Cummings et al.; 'Cross Cultural Comparisons of Tax Compliance Behavior', International Center for Public Policy Working Paper Series No. 01-3, 2001. Donna D. Bobek et al.; 'Analyzing the Role of Social Norms in Tax Compliance Behavior', Journal of Business Ethics 115 (3), 2013, pp. 451-468.

PART II.I. – CHARACTERISTICS OF COLLABORATIVE ECONOMY PLATFORM WORKERS AND THEIR ENVIRONMENT OF INCOME-GENERATING ACTIVITY

This analysis strives to explore those characteristics of platform workers' environment[417] which create practical opportunities for non-compliance and obstacles to the effective enforcement of tax rules. This research takes as a starting point the premise that the taxation of independent contractors is riddled with practical barriers,[418] distinct from substantive questions of income, taxpayer or activity characterization.

Nevertheless, it does remain important to acknowledge and emphasize, where relevant and applicable, those characteristics that set platform workers apart from ordinary independent contractors undertaking similar activities outside the collaborative economy. The fact that workers' economic activities are undertaken through a digitalized platform,[419] the oftentimes residual nature of their platform activities,[420] as well as the limitations in the independence of some platform workers in the performance of their activities[421] distinguish platform workers from

417 OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing 2019. Roberta A. Kaplan and Michael L. Nadler; 'Airbnb: A Case Study in Occupancy Regulation and Taxation', The University of Chicago Law Review Dialogue 82, 2015-2016, pp. 103-115. Daniel McDonald; 'Is the Sharing Economy Taxing to the Traditional?', FSU Business Law Review 16, 2017, pp.73-98.

418 Bernadette Kamleitner et al.; 'Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework', International Journal of Entrepreneurial Behaviour & Research 18 (3), 2012, pp. 330-351. Philip Ligner and Chris Evans; 'The Rise and Rise of Tax Compliance Costs for the Small Business Sector in Australia', Australian Tax Forum 27 (3), 2012, pp. 615-672.

419 Guillermo O. Teijeiro and Juan Manuel Vazquez; 'Taxation of the Ride-Sharing Economy: Source Taxation through Service Permanent Establishment Provisions Revisited – The Case under the Argentine Treaty Network', Bulletin for International Taxation 73 (12), 2019, pp. 667-682.

420 Seel for example: Nangel Kwong; 'The Taxation of 'Sharing Economy' Activities', in: Ina Kerschner and Martye Somare [Eds.]; Taxation in a Global Digital Economy, Series on International Taxation 107, Linde, 2017. Veiko Lember et al.; 'Technological capacity in the public sector: the case of Estonia', International Review of Administrative Sciences 84 (2), 2018, pp. 214-230.

421 Giorgio Beretta; 'Taxation of Individuals in the Sharing Economy', Intertax 45 (1), 2017.

ordinary independent contractors in some respects. In turn, this may entail the possibility of addressing the income taxation of collaborative economy platform workers through special-purpose frameworks that leverage the particularities of these taxpayers' environment.

1. Voluntary compliance – the condition sine qua non for the effective taxation of independent contractors: The role of taxpayer self-assessment and self-reporting procedures

All modern tax systems rely on various instruments to secure tax compliance and collection. These include, for example, third party information reporting frameworks[422] and withholding taxes.[423] These are arrangements whereby an intermediary is interposed between the taxpayer and the tax administration with a view to securing the integrity of accurate income reporting and tax collection. However, most tax systems are also heavily reliant on taxpayers' voluntary compliance.[424] Tax compliance and collection mechanisms are usually adapted to the nature and the character taxpayers' activities and the circumstances within which they generate income. As such, third party information reporting and withholding arrangements are normally in place where an intermediary that naturally exists as part of the environment of the taxpayer's income-generating activity may be feasibly interposed between the taxpayer and the tax administration. Conversely, in the case

Guy Davidov; 'The Status of Uber Drivers: A Purposive Approach', Hebrew University of Jerusalem Legal Research Paper No 17-7, 2017. Benjamin Cardozo; 'Riding the Line Between ''Employee'' and ''Independent Contractor'' in the Modern Sharing Economy', Wake Forest Law Review 51 (5), 2016, pp. 1223-1254. Jonathan V. Hall and Alan B. Krueger; 'An Analysis of the Labor Market for Uber's Driver-Partners in the United States', Iowa Law Review 71 (3), 2018, pp. 705-732.

422 Annette Nellen; 'Taxation in Today's Digital Economy', *Journal of Tax Practice and Procedure* 2015, pp. 27-37. Emilie Jackson et al.; 'The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage', Office of Tax Analysis Working Paper No 114, 2017.

423 Jordan M. Barry and Paul L. Caron; 'Tax Regulation, Transportation Innovation, and the Sharing Economy', *University of Chicago Law Review Dialogue 82,* 2015-2016, pp. 69-84. OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing 2019.

424 James Simon and Alley Clinton; 'Tax Compliance, Self-Assessment and Tax Administration', *Journal of Finance and Management in Public Services 2 (2)*, 2002, pp. 27-42.

of self-employed taxpayers, the determination and collection of tax liabilities will invariably yield to a significant (if not predominant) extent to taxpayers' willingness and capability to report income, expenses and other relevant circumstances accurately and to discharge correct tax payments in a timely manner.[425]

Voluntary compliance is apparent under the widely applied frameworks for taxpayer self-assessment or self-reporting. At their core, both systems refer to the process whereby taxpayers comprehensively document and report circumstances relevant to their income tax situation on a periodic basis. The main objective of self-assessment and self-reporting mechanisms is to assign the burden and the cost and of securing the assessment and timely payment of tax to the taxpaying unit directly. Under a self-assessment system, the taxpayer is responsible for both reporting their economic results as far as relevant for tax purposes and the computation and afferent payment of income tax.[426] Self-reporting mechanisms similarly require that taxpayers individually document and report their economic results, but unlike pure self-assessment systems, the tax liability is subsequently determined by the competent tax administration on the basis of information reported by the taxpayer.[427]

The role of tax administrations is more comprehensive in a self-reporting system. Self-reporting systems presuppose the active involvement of the tax administration in the process of computing tax.[428] Conversely, self-assessment systems vest a significantly more passive role to the tax administration, as their intervention is formally restricted to the enforcement of non-compliance.[429] Self-assessment systems emphasize taxpayer accountability to a more prominent extent, with the role of the tax administration being concentrated to residual functions.[430] Because self-reporting mechanisms are inherently reliant on the tax administration's active verification of the amounts reported by all taxpayers and the issuance of

425 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2),* 2018, pp. 1415-1473.

426 Andrew Okello; 'Managing Income Tax Compliance through Self-Assessment', International Monetary Fund Working Paper No 14/41, 2014.

427 Ibid.

428 Ibid.

429 Ibid.

430 Jeyapalan Kasipillai; 'A New Assessment Era', Asia-Pacific Tax Bulletin 5 (6), 1999, pp. 207-2010.

a corresponding assessment of tax payable, these systems entail administrative assessment.[431] True as though it may be that the taxpayer's responsibilities are more comprehensive in a self-assessment system, both frameworks rely on the accuracy, truthfulness and completeness of the information supplied by the taxpayer. Although taxpayers are not required to compute their personal tax liability in self-reporting systems, the accurate representation of information by the taxpayer is a condition *sine qua non* for effective taxation. At their core, self-reporting and self-assessment frameworks are ultimately honor systems.[432]

The extent to which self-assessment and self-reporting systems are effectively capable to secure the collection of tax depends on the correctness of taxpayer reporting. Typically, the ensuing concerns revolve around the understatement of income and the overstatement of deductible expenses, losses or other aspects that may reduce a tax liability.[433] When taxpayers enjoy opportunities to misrepresent such information, effective taxation is compromised. In the case of self-employed individuals specifically, there is a stark dissonance between the extent of emphasis placed on voluntary compliance and the ease with which these taxpayers may leverage the particularities of their circumstances to escape the net of taxation.[434]

431 As an almost innate consequence of the more active role played by tax administrations in self-reporting systems, comparative research reveals that such systems entail a larger number of disputes between taxpayers and government bodies. This finding is largely unsurprising, since in a self-reporting system the intervention of the tax administration is an integral component of the process of collecting tax.

432 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2),* 2018, pp. 1415-1473.

433 OECD; 'Notions of the Non-Observed Economy', in: OECD; Measuring the Non-Observed Economy – A Handbook, OECD Publishing, 2002. In some cases, such concerns may be partly alleviated in case withholding taxes or third party information reporting requirements apply to some of the aspects of the taxpayer's economic activities. For example, in the United States, self-employed or independently operating individual taxpayers may be subject to the reporting rules of Form 1099-K or Form 1099-MISC, when the payments received from a single payer in a given tax period exceed a set statutorily determined threshold. Consequently, third party information reporting may at times supplement the information received by the tax administration in the taxpayer's self-assessed return – but this will by no means be the case for all self-employed individuals.

434 Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354.

2. Characteristics of collaborative economy platform workers and their environment of income-generating activity

There is a growing body of literature that attempts to highlight the factors that obfuscate the effective taxation of income derived by workers from collaborative economy platform activities. For example, the Norwegian Sharing Economy Committee surmised that the under-taxation of platform workers' income is explained by the small amounts derived by workers from unrelated transactions,[435] the limited understanding of workers of the extent of the tax obligations and consequences stemming from their activities,[436] the visibility deficit of these taxpayers[437] and the intermittent character of many workers' income-generating platform activities.[438] In a similar vein, the Australian Tax Office identified compliance and collection challenges as stemming in part from workers' incomplete understanding of the full impact of their tax rights and obligations.[439] The Australian Tax Office additionally referenced the ease with which such taxpayers are capable of escaping the full impact of the tax system or evading tax altogether by reason of their visibility deficit.[440] Similar considerations emerged from research conducted by the United Kingdom Revenue and Customs Authority,[441] which found that platform workers typically undertake transactions without appreciating the span of ensuing tax consequences of these transactions or under the assumption that no income tax is due on the amounts they earn.[442]

In academic commentary, authors have identified and discussed the characteristics of platform workers in similar terminology.[443] Platform workers are said to enjoy

435 Norwegian Committee on the Sharing Economy; 'Summary and Recommendations', Official Norwegian Report (NOU) Intra-European Organisation of Tax Administrations 2019, 2017.
436 Ibid.
437 Ibid.
438 Ibid.
439 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.
440 Ibid.
441 Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017.
442 Ibid.
443 Clement Okello Migai et al.; 'The sharing economy: turning challenges into compliance opportunities for tax administrations', *eJournal of Tax Research 16 (3),* 2019, pp. 395-424.

various opportunities to under-report income[444] by reason of the limited extent of information available to tax administrations in relation to these taxpayers.[445]

Already from this very brief review of existing literature, two major and inter-related considerations emerge. Firstly, the commentary discussing the characteristics of platform workers that raise tax compliance and collection concerns overlaps to an important extent, suggesting an emerging implied consensus as to the main compliance risk factors. Secondly, from a synthesis of the characteristics identified in existing commentary, the compliance posture of the 'archetypal platform worker' emerges. The archetypal collaborative economy platform worker exhibits the following hallmarks:

- Firstly, they display a general and permeating unfamiliarity with tax rules or understanding of the full extent of the tax consequences of income-generating platform activities;

- Secondly, their activities undertaken on a small scale of fragmented and unrelated transactions;

- Thirdly, they enjoy a visibility deficit vis-à-vis the tax administrations, compounded by the overarching difficulties experienced by tax administrations in corroborating and verifying the information reported by the worker in a self-reported or self-assessed tax return;

- Fourthly, they experience a series of compliance costs and burdens associated with self-reporting and self-assessment mechanisms, whose extent tends to be disproportionate in relation to the scope of the worker's platform activities and the levels of income sourced from these platform activities;

- Fifthly, they enjoy opportunities to misrepresent facts the process of self-assessment or self-reporting, for example through the downwards misrepresentation of the positive results and the upwards misrepresentation of expenses incurred in connection with the generation of income.

444 Ibid.
445 Ibid.

3. Collaborative economy platform workers – An emerging hard to tax group

Collaborative economy platform workers are not only category of taxpayers that display the characteristics identified immediately above. Already from a surface-level reading of these hallmarks, the emerging image is that of a taxpayer with limited knowledge and engagement with the tax system, undertaking income-generating activities that entail disproportionate compliance costs and who is largely invisible to tax administrations. In existing literature, such taxpayers are commonly referred to as the *hard to tax* sector.[446] The scholarship on the hard to tax pursues two main objectives. Firstly, it attempts to develop a methodical analysis of taxpayer-related characteristics that befuddle voluntary tax compliance and the enforcement of tax. Secondly, it supports the discussion of potential solutions to address the underlying determinants of non-compliance, designed specifically in response to the risk factors pertaining to these taxpayers.[447] At its core, the scholarship on the hard to tax is premised on the notion that the design of rules aimed at enhancing effective taxation must necessarily be preceded by an understanding of the sources of sub-optimal tax compliance and collection.

The following paragraphs will attempt to contextualize the characteristics of collaborative economy platform workers by relying and building on the existing scholarship on the hard to tax sector.[448] The scholarship on the hard to tax provides a framework for the consideration of taxpayers' characteristics as relevant to issues of tax compliance and collection. The literature on hard to tax groups emerged in the second half of the 20th century,[449] predating the emergence of the collaborative economy. However, its findings are largely transposable to the present discussion

446 See, for example Victor: Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120. Najeeb Memon;'How to Tax Small Businesses in the Informal Economy: A Comparative Analysis of Presumptive Income Tax Designs', *Bulletin for International Taxation 64,* 2010, pp. 290-303. Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354.

447 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120.

448 Ibid.

449 Richard Musgrave and Malcolm Gillis; 'Fiscal Reform for Colombia, final report and staff papers on the Colombian commission on tax reform', *Journal of Public Economics 2 (3),* 1973, pp. 284-287.

and invite the realistic possibility of framing the archetypal collaborative economy platform worker within the hard to tax sector.

A. The hard to tax sector – Meaning, context and background

There is no single authoritative definition of the hard to tax sector.[450] Different authors have made contributions that develop on particular aspects deemed relevant for the description of the hard to tax sector.[451] According to Romanov, for example, the hard to tax is as an umbrella term for three distinct categories of taxpayers: the *hard to catch*, the *hard to detect*, and the *hard to collect*.[452] The *hard to catch* are taxpayers that escape the impact of the tax system by not reporting their activities and income at all.[453]This covers taxpayers that do not register for tax purposes and file self-assessed or self-reported returns, either deliberately or inadvertently. The *hard to detect* are taxpayers who register for tax purposes and formally comply with procedural obligations such as the filing of tax returns, but misrepresent the results of their activities with a view to evading tax.[454] Finally, the *hard to collect* are taxpayers from whom tax debts are generally difficult to practically collect by tax administrations.[455]

Some uncertainty persists in around the origin of the concept of hard to tax. There is some consensus that the first mentions of the notion are attributable to Richard Musgrave,[456] who introduced it as part of a report on fiscal reform in Colombia[457]

450 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75.

451 As will be discussed in more detail in the following paragraphs, some authors define the hard to tax by reference to the number of their income-generating transactions, see in this respect: Arindam Das-Gupta; 'A Theory of Hard to Tax Groups', *Public Finance/Finances Publiques 49 (4),* 1994, pp. 28-39. Other authors focus on the organizational form of the taxpayers' activities.

452 Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 187-213.

453 Ibid.

454 Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 187-213.

455 Ibid.

456 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75.

457 Richard Musgrave and Malcolm Gillis; 'Fiscal Reform for Colombia, final report and staff

and later discussed it at more length in a broader contribution on tax reform in developing countries.[458] It is conventional wisdom that tax administrations in developing countries struggle to safeguard taxpayer voluntary compliance. In this respect, the scholarship on the hard to tax often focuses on the particularities of developing countries. However, the findings regarding the hard to tax sector should not be confined to the context of tax policy and administration in developing countries. In spite of the fact that some considerations may be more prevalent in developing countries, these issues are not fundamentally unique to any specific landscape. Ultimately, the concept of the hard to tax is merely a notion derived from the practicalities of tax administration,[459] denoting the compliance, collection, and enforceability constraints that revolve around taxpayers earning income from small-scale decentralized activities.

Addressing the challenges to the effective taxation of hard to tax groups is relevant for a number of reasons. Although these taxpayers are typically small-scale income earners, the failure to effectively tax them may determine broader inequity. In any state, the tax mix is informed by concurrent objectives of collecting public revenues, redistributing wealth within society and fostering economic development.[460] The two latter (non-fiscal) goals correspond to the broad policy objectives that underline tax incentives and preferential tax regimes granted in respect of certain types of activities.[461] However, the foregone public revenues from the failure to effectively collect tax from the hard to tax sector may spill over into a shift towards other facets of the economy from where revenues are more easily collectible, to the detriment of objectives related to the promotion of growth through tax incentives.[462] Similarly, the need to compensate for the revenues lost as a result of

papers on the Colombian commission on tax reform', *Journal of Public Economics 2 (3),* 1973, pp. 284-287.

458 Richard Musgrave; 'Reaching the Hard to Tax', in: Richard M. Bird and Oliver Oldman; *Taxation in Developing Countries,* 4th Edition, The Johns Hopkins University Press, 1990.

459 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75. Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354.

460 Reuven S. Avi-Yonah; 'The Three Goals of Taxation', *NYU Tax Law Review 60 (1),* 2006-207, pp. 1-28.

461 Carl S. Shoup; 'A Growth-oriented Tax System', in: Richard M. Bird and Oliver Oldman [Eds.]; *Taxation in Developing Countries*, 4th Edition, The Johns Hopkins University Press, 1990.

462 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic*

the non-taxation of the hard to tax sector may lead to increases in reliance on other sources of public revenues such as consumption taxes[463] to the detriment of low income earners, who experience the regressive character of high consumption tax rates most prominently.[464]

It should be noted that the assimilation of specific taxpayers to a 'hard to tax group' does not necessarily mean that such a taxpayer will actually be non-compliant.[465] The literature on the hard to tax merely discusses factors that may *enable* the taxpayer to escape taxation.[466] Hard to tax groups pose challenges to compliance and enforcement to the extent that they either actively leverage their circumstances to escape taxation, or to the extent that their circumstances impair voluntary compliance efforts.[467]

Analysis 268, 2004, pp. 11-75.

463 Ibid.

464 Erik Caspersen and Gilbert Metcalf; 'Is A Value Added Tax Progressive? Annual Versus Lifetime Incidence Measures', *National Tax Journal 47,* 1994, pp. 731-746. Some authors also discuss the pure economic inefficiencies resulting from the under-taxation of hard to tax groups. The structural characteristics of hard to tax groups are traits that facilitate these taxpayers' attempts at escaping taxation. By leveraging these characteristics in order to achieve illicit tax savings rather than attempting a move towards the formalization of their activities, hard to tax groups allocate their own resources sub-optimally and sacrifice the benefits of economies of scale.

465 Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354. Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 187-213.

466 Ibid.

467 It is equally important to note that the scholarship on the hard to tax does not provide a complete overview of determinants of (potential) non-compliance. The hard to tax scholarship is primarily focused on objective variables pertaining to taxpayers and the nature of their activities that may impact tax compliance. On the other hand, the scholarship on the hard to tax very rarely explores subjective determinants of tax compliance (such as the political culture in the filing jurisdiction of the taxpayer, the issue of moral ambivalence towards the fulfilment of tax obligations, the conundrum between taxpayer risk aversion versus risk embracing postures, or the impact of negligent behavior in taxpayers' compliance-related actions) and the potential impact of these on compliance.

B. Justifying the reliance on the hard to tax concept

The research on the hard to tax is focused on the identification of tax compliance risk indicators. These refer to characteristics that may exert a negative impact on the compliance posture of a taxpayer.[468]

In a Guidance Note issued in 2004,[469] the OECD discussed small and midsize businesses as potentially high-risk taxpayers.[470] These were defined as 'any for-profit commercial entity' other than those that exceed a (high) asset threshold. Small businesses include sole proprietorships, partnerships as well as incorporated forms of organization. They also include individuals who derive income from self-employment, even if self-employment income is not their primary source of income.'[471] According to the OECD, these taxpayers display a number of characteristics that may hamper tax compliance and collection. Firstly, the nature of their activities entails that their income levels will vary from one period to another rather than being fixed.[472] Secondly, they typically have a limited bookkeeping infrastructure.[473] The elements identified and discussed previously in the contents of this research, contouring the profile and compliance posture of the archetypal platform worker, overlap to a significant extent to the risk factors highlighted by the OECD, as well as the elements discussed by the scholarship on hard to tax groups.[474]

The argument emerges that platform workers could be described as an emerging hard to tax segment or as small and midsize high risk taxpayers, within the understanding of these notions as developed by authors focused on hard to

468 OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

469 OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

470 Ibid.

471 Ibid., paragraph 17.

472 Ibid., paragraph 18.

473 Ibid.

474 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120. Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018.

tax groups and the 2004 OECD Guidance Note.[475] Against this backdrop, the paragraphs following immediately below with describe and explore in more detail several characteristics that may amount to compliance and enforcement risk factors, initially illustrating how these pertain to ordinary small- and micro-scale sized independent economic agents and/or ordinary hard to tax groups, and subsequently, with specific reference to the concrete situation of collaborative economy platform workers.[476]

The hallmarks or risk factors that will be discussed in these subsequent paragraphs are (1) the visibility deficit of hard to tax groups; (2) the information asymmetries that arise in the relationship between platform workers and tax administrations (3) the (limitations) of the bookkeeping infrastructure of platform workers; (4) the constrained incentive experienced by these taxpayers to maintain books or records of their accounts;[477] (5) the impact of the large volume of unrelated transactions of such taxpayers on voluntary compliance and effective enforcement; and (6) the issues posed by taxpayer literacy on compliance.[478]

These hallmarks perhaps do not account for the full span of risk factors that may impair effective taxation. Nevertheless, they have been selected for further discussion in the context of this research because they are frequently implied in literary, policy and administrative discussions about the determinants of collaborative economy platform workers' sub-optimal tax compliance. Additionally, these aspects allow for the understanding of the link between the nature and character of the activities of hard to tax groups and issues of tax compliance and collection. Importantly, although platform workers in principle have the same legal status as ordinary independent contractors, the manner in which they undertake their income-

475 Ibid. See also: OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

476 European Commission – Directorate-General for Taxation and Customs Union; 'Literature review on taxation, entrepreneurship and collaborative economy', Working Paper No 70, 2017.

477 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax'; *Contributions to Economic Analysis 268,* 2004, pp. 101-120. See also: Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018.

478 Marina Bornman and Marianne Wassermann; 'Tax literacy in the digital economy', eJournal of Tax Research, 2018.

generating activities (i.e., through the intermediation of a coordinating digitalized platform) may at times entail that certain risk factors partly play out differently for platform workers compared to ordinary hard to tax groups.[479]

4. Some hallmarks of hard to tax groups

A. The visibility deficit of the hard to tax

1) General considerations on the visibility deficit of hard to tax groups

A foremost hallmark of hard to tax groups relates to the limited extent to which the activities of these taxpayers are known to tax administrations. This notion is here referred to as the *taxpayer visibility deficit*. The visibility deficit of hard to tax taxpayers is largely axiomatic.[480] It concerns a number of considerations related to the environment of the income-generating activities of hard to tax groups which may erode willingness for voluntary compliance and the effectiveness of administrative oversight and enforcement. The visibility deficit of hard to tax groups is rooted in the decentralized ecosystem of these taxpayers. Hard to tax groups derive income from independent activities that are themselves readily concealable. By extension, the income derived from such activities is prone to misrepresentation by taxpayers in self-reported and self-assessed returns. Additionally, due to the small scale of the income-generating activities of hard to tax groups and the small amounts derived from such activities, administrative oversight and enforcement is disproportionately costly.[481]

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479 Jordan M. Barry and Paul L. Caron; 'Tax Regulation, Transportation Innovation, and the Sharing Economy', *University of Chicago Law Review Dialogue 82,* 2015-2016, pp. 69-84. OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

480 Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354.

481 Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 187-213. Some authors also attribute the visibility deficit of hard to tax groups to the broad use of cash payments. Cash-based transactions have an almost inherently erosive effect on compliance. The compliance posture of low-visibility independent taxpayers can potentially be weakened by the ease with which the receipts from cash transactions can

2) The visibility deficit of collaborative economy platform workers – are platform workers truly invisible to tax administrations?

The visibility deficit of platform workers follows innately from the pretenses of the collaborative economy itself. The collaborative economy enables individuals to capitalize the excess or underused capacity of private assets or exploit time and skill in order to earn income.[482] Platform workers' activities are inherently decentralized, because the decentralized supply of services is a basic characteristic of the collaborative economy.[483] From the perspective of an analysis focused on tax compliance, however, a discussion about the decentralized character of economic activity within the collaborative economy is quite prone to yielding paradoxical valences. On the one hand, the collaborative economy harbors a significant measure of decentralization by enabling individuals to engage in independent small-scale economic activities.[484] By their nature, peer-to-peer income-generating activities are difficult to police for tax purposes. On the other hand, there is the equally compelling argument that income-generating activities undertaken through platforms are not genuinely decentralized.[485] The platforms through which workers' activities are undertaken is inarguably centralizing repositories of information which naturally oversee the activities of workers.[486] The mere fact

be concealed in the process of self-reporting or self-assessment. Additionally, even in the case of a risk-averse taxpayer with no real motivation to misrepresent the results of their economic activity, cash receipts are significantly more difficult to track and document. By the same token, collection and enforcement efforts aimed at receipts from cash-based transactions are particularly difficult for revenue collection bodies to effectively scrutinize.

482 Caroline Bruckner; 'Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy', KOGOD Tax Policy Center, 2016. Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069. Jordan M. Barry and Paul L. Caron; 'Tax Regulation, Transportation Innovation, and the Sharing Economy', *University of Chicago Law Review Dialogue 82,* 2015-2016, pp. 69-84. OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing 2019.

483 Ibid.

484 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', Georgia State University Law Review 34 (2), 2018, pp. 283-333. Sounman Hong and Sanghyun Lee; 'Adaptive governance and decentralization: Evidence from regulation of the sharing economy in multi-level governance', Government Information Quarterly 35 (2), 2018, pp. 299-305.

485 OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing 2019.

486 Norwegian Committee on the Sharing Economy; 'Summary and Recommendations', Official

that information related to workers' activities exists in digital form and is stored by what is ultimately a centralizing body should not, however, be equated with an assertion that such information alone actually overcomes the visibility deficit of these taxpayers. Overcoming the visibility deficit of collaborative economy platform workers requires legal frameworks that actively leverage the centralizing functions and capabilities of platform operators with a view to safeguarding the effective taxation of workers.

B. Information asymmetries in the relation between hard to tax groups and tax administrations

1) In general

A second hallmark of hard to tax groups relates to the information asymmetries in the relation between these taxpayers and tax administrations. Information asymmetries are rooted in the independent character of the activities of hard to tax groups and the difficulties experienced by tax administrations in obtaining accurate information about such activities.[487] Both the visibility deficit of hard to tax groups and the information asymmetry in their relation to tax administrations result in tax administrations not being (fully) aware of the circumstances of taxpayers. However, these notions are distinct. The visibility deficit of hard to tax groups results in tax administrations being unaware of and unable to obtain information about these taxpayers' activities. The visibility deficit of hard to tax groups impairs the *identification* of taxpayers and their activities. Conversely, informational asymmetries refer to situations where tax administrations have an imperfect knowledge about the results derived by a taxpayer from their income-generating activities.

Originally derived from the microeconomic sciences,[488] the concept of information asymmetries describes situations where the bargaining power of parties is

Norwegian Report (NOU) Intra-European Organisation of Tax Administrations, 2017.

487 OECD; 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS', OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2018, paras. 477 et seq.

488 See, for example: Karl-Gustaf Lofgren et al.; 'Markets with Asymmetric Information: The Contributions of George Akerlof, Michael Spence and Joseph Stiglitz', Scandinavian Journal of Economics 104 (2), 2002, pp. 195-211.

imbalanced in that one of them is at an informational disadvantage compared to their counterpart.[489] Informational disadvantages prompt obtuse decision-making and sub-optimal allocations of resources.[490] These (economic) inefficiencies are termed market failures (i.e., inadequacies resulting from the unregulated operation of free parties on open markets). The redress of market failures is commonly said to require regulatory intervention with a view to protecting the party that bears the informational disadvantage.[491] Due to its origins in other social sciences and its importation into multiple distinct contexts – including various fields of law – the concept of information asymmetries lacks a unanimously accepted definition.[492] In turn, this affords a valuable measure of flexibility to adapt the boundaries of the notion and transpose it into the context of virtually any setting where a party is at an informational disadvantage that their counterpart may exploit in order to derive a personal benefit opaquely.

Information asymmetries are usually discussed by reference to transactions between private parties. Nevertheless, informational disadvantages may and do exist in any relation, irrespective of the identity of the parties. In particular, tax compliance provides a fertile terrain for the discussion of the asymmetric informational

489 Jiafang Wang, Zhiyong Feng and Chao Xu, 'Proactive Communicating Process with Asymmetry in Multiagent Systems', Journal of Applied Mathematics 1, 2013. Gavin Clarkson et al.; 'Information Asymmetry and Information Sharing', Government Information Quarterly 24 (4), 2007, pp. 827-839.

490 Information asymmetries are said to be associated with outcomes of *moral hazard* or *adverse selection*, respectively – the first of which refers to a situation where one of the parties to the transaction radically changes their behavior upon or immediately after the conclusion of a contract but before the fulfilment of the contractual obligations undertaken towards their counterparty, and the second referring to the scenario of a completed transaction wherein, by reason of the imperfect information enjoyed by one of the parties involved in the transaction, the pricing, quality, or quantity of the goods or services delivered is economically inefficient and distinct from the expectations that the party in the informational disadvantage had formed in the bargaining or pre-conclusion phases of the transaction. Issues of adverse selection refer to situations where, as a result of being at an informational disadvantage in a bargaining process, one party makes a decision with an inefficient economic impact, distinct from the choice they would have made had an informational imbalance not existed to their detriment.

491 Srinivasan Balakrishnan and Mitchell P. Koza; 'Information Asymmetry, Market Failure and Joint Ventures: Theory and Evidence', *Journal of Economic Behavior and Organization 20 (1),* 1993, pp. 99-117.

492 Ibid.

relation between taxpayers and tax administrations. The discussion of information asymmetries in the relation between taxpayers and tax administrations boils down to an inquiry into whether, how and to what extent the imbalances in the information available to tax administrations affects taxpayers' compliance-related behaviors and the enforcement capabilities of tax administrations. The supply of imperfect or incomplete information will in most cases be underlined by the party enjoying the informational advantage pursuing a vested interest, to the detriment of the counterparty.[493]

2) The informational disadvantage of tax administrations in relation to hard to tax groups and collaborative economy platform workers

Self-assessment and self-reporting frameworks are honor systems. This entails that the information available to tax administrations about the earnings, expenses and other circumstances of taxpayers is supplied by taxpayers themselves.[494] A workable tax can only be levied on the basis of objective and verifiable behavior or facts.[495]The effective administration of income tax systems demands the accurate representation and reporting of earnings and other information relevant to the determination of tax liabilities. In some cases, there are feasible measures in place

493 Outcomes of non-compliance or imperfect compliance could also result from the taxpayer's error or negligence. When this is the case, any potential tax savings achieved by the taxpayer are not the product of them actively pursuing a vested interest. For this reason, this part of the analysis takes the interests of the party bearing the informational advantage as an integral aspect of the working definition of the concept of information asymmetries. Additionally, in the view of some authors, tax compliance and administration is an area permeated dual-sided uncertainty. Authors partial to this interpretation advance a standpoint derived from game theory according to which, in their interactions, both the taxpayer and the tax administration experience distinct informational disadvantages. The tax administration may enjoy limited or imperfect information regarding the taxpayer. This may incentivize the taxpayer to misrepresent economic results for tax purposes. For his part, the taxpayer only enjoys limited information or insight into the actual enforcement powers and capacities of the tax administration. When the taxpayer has an exacerbated perception of the enforcement powers of the tax administration, the incentive to leverage his distinct informational advantage diminishes.

494 See, for example: B. Bawaono Kristiaji; 'Asymmetric Information and its Impact on Tax Compliance Costs in Indonesia – A Conceptual Approach', Tax Law Design and Policy Series Working Paper No 0113, 2013.

495 Bas Jacobs; 'From Optimal Tax Theory to Applied Tax Policy', Erasmus University Rotterdam, Tinbergen Institute and CESifo, 2012.

to buttress taxpayer voluntary compliance. In the case of salaried individuals, this is largely unproblematic. Wages and salaries are subject to tax withheld at source through PAYE systems.[496] Additionally, employers are subject to third party information reporting requirements in respect of amounts paid to employees.[497] Since employees and employers are transacting at arm's length, there is very little incentive for the latter to misrepresent the amounts reported.[498] As regards hard to tax groups, the environment within which these taxpayers undertake their income-generating activities complicates the task of introducing such measures as support structures to voluntary compliance.[499]

In the absence of individualized and verifiable information regarding their activities and the receipts from these, tax administration is essentially forced to accept the amounts reported by taxpayers in self-assessed or self-reported returns as fact. The challenges to enforcement and tax collection are further compounded by the oftentimes irregular patterns of activity of hard to tax groups, which result in unpredictable earnings that vary from one period to another.

496 OECD Forum on Tax Compliance Sub-Group; 'Information Note – Withholding & Information Reporting Regimes for Small/Medium-sized Businesses & Self-Employed Taxpayers', OECD Publishing, 2009.

497 An example of such a reporting obligation refers to Form W-2 in the United States, wherein employers document and report the remuneration paid to employees, as well as amounts withheld as part of payroll tax and mandatory social security contributions.

498 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

499 This is not to say, that payments made to independent contractors, the self-employed, or small or micro-scale businesses are never subject to any form of third party information reporting in any and all circumstances. A number of countries, such as Australia, Austria, Finland, Germany, the Netherlands, or Turkey, apply either withholding taxes or reporting duties for payments made to individual independent contractors. However, these frameworks have a narrow scope of application. In the case of employees, tax is withheld from their remuneration and the employer reports the amounts paid as consideration for the work performed simply by reason of the existence of an employment relationship. In the case of the few and scattered examples of withholding and reporting systems of the countries referenced immediately above, the withholding and reporting obligations only apply when a payment is made to a non-resident, when the payment exceeds a certain threshold or they relate to a lengthy contractual relationship for the provision of certain services, or when the payment represents consideration for a particular type of independent service (e.g., construction work). Withholding and information reporting in the case of individual taxpayers engaged in independent economic activities is therefore very much an exception rather than a generalized practice.

C. The limited compliance infrastructure of hard to tax groups

1) General remarks

Almost by definition, an income tax system where compliance is predicated on taxpayer self-reporting or self-assessment implies the need for taxpayers to keep records of their activities. On the one hand, tax administrations need information regarding the identities, activities and circumstances of taxpayers to effectively manage income tax systems. The visibility deficit of taxpayers and the informational disadvantage of tax administrations in their relation to taxpayers may impair this objective. On the other hand, income tax compliance also requires that taxpayers dispose of accurate and comprehensive information about their own circumstances. In this respect, bookkeeping is a core aspect of tax compliance.[500]

Bookkeeping may entail mandatory compliance costs for taxpayers, because recording transactions and expenses is intrinsically linked to the discharge of tax liabilities. Bookkeeping may also create non-pecuniary tax compliance costs, when accounting for the time, effort and vexation invested by taxpayers in bookkeeping obligations.

Because bookkeeping is ultimately a compliance cost, the extent of the burden attached to it depends on the degree of formality that the filing jurisdiction of the taxpayer attaches to bookkeeping requirements. In turn, the degree of formality of bookkeeping requirements depends on a number of variables. Firstly, formality depends on whether taxpayers are required to submit the supporting documentation tracking their earnings and expenses together with a tax return.[501] In many tax systems there is no obligation for individuals engaged in small-scale income-generating activities to file supporting documentation regarding earnings and expenses together with tax returns.[502] Secondly, there is the issue of whether

500 OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', The International and Ibero-American Foundation for Administration and Public Policies, OECD Publishing, 2015.

501 Laura Ambagtsheer-Pakarinen and Larisa Gerzova; 'Finland – Individual Taxation', IBFD Country Surveys, last reviewed 28 October 2019.

502 Ibid. Even within those systems that only require the maintenance of invoices and receipts suffices for the fulfilment of a taxpayer's bookkeeping obligations, the compliance burdens

the taxpayer is merely required to track and store documentation that confirms the results from those activities (such as a collection of receipts and invoices) or instead to produce accounting records. Documentation regarding the results of any economic activity is generated organically as the activity itself is undertaken. By contrast, the preparation of accounts creates an additional burden above and beyond the mere tracking and preservation of information. Thirdly, in those systems where the taxpayer is required to produce accounts, an important aspect pertains to the form and degree of formality of such accounts.[503]

Some systems may apply bookkeeping *standards* rather than format requirements in respect of self-employed taxpayers. An example of a system taking this

at stake will still be determined by other formal questions. One issue could relate to the period of time during which the taxpayer is required to keep documentation pertaining to the results of previous years. This aspect will vary from one tax system to another, with longer periods establishing a higher compliance burden. Another issue refers to the extent of precision required of individual taxpayers in tracking expenses and maintaining the supporting documentation pertaining thereto. In Finland, for example, the general norm is that taxpayers are not required to produce or maintain documentation for 'trivial' expenses claimed as deductions- an approach which, on the one hand, alleviates what would have been the burden of holding on to receipts and invoices pertaining to small-scale expenses for a number of years but, on the other hand, leaves behind the open-ended question of what precisely are the boundaries of triviality.

503 In most countries – particularly those where the self-employment or small and medium enterprise sector is sizeable – different accounting rules may apply for the self-employed. Simplified accounting requirements acknowledge and attempt to redress the (regressive) burden of bookkeeping compliance costs, without fully discounting the policy objective that taxpayers should be able to produce a mirror image of results from their activities through accounting records. Additionally, the application of simplified accounting and documentation requirements sits in consonance with the reality that the transactions, expenses, and assets used in the course of their activities are oftentimes more simplistic than those pertaining to large taxpayers. Germany is a system where the complexity and formality of the applicable accounting and bookkeeping standards is adapted to the size and organizational form of taxpayers. Independent contractors and sole proprietorships may prepare accounts under a simplified mechanism based on single-entry bookkeeping. Single-entry accounting entails that transactions are recorded once, rather than as debits and corresponding credits. The advantage lies in the obvious simplicity and accessibility to taxpayers that are inexperienced with accounting. See, in this respect: Yuri Ijiri; 'The Beauty of Double-Entry Bookkeeping and its Impact on the Nature of Accounting Information', in: Martin Shubik [Ed.]; Proceedings of the Conference Accounting and Economics, Routledge 2010, page 267. Kay Blaufus et al.; 'Income Tax Compliance Costs of Working Individuals: Empirical Evidence from Germany', Public Finance Review 42 (6), 2014, pp. 800-829.

approach is the United Kingdom,[504] where administrative guidelines set out that documentation should be kept up to date and be sufficiently comprehensive to enable the correct and complete filing of returns, the review by the tax administration of the information included in the return, and the effective claim of reliefs, rebates or other fiscal benefits.[505] As such, the United Kingdom practice on bookkeeping emphasizes norms and standards of adequacy and accuracy rather than formal elements.[506]

Regardless of the degree of formality, bookkeeping requirements and standards ultimately entail that taxpayers should have a framework for tracking and documenting their activities. In other words, taxpayers are impliedly expected to maintain a *bookkeeping infrastructure*. This refers to the resources and capabilities to be invested by taxpayers in tracking and documenting their activities for income tax purposes. A limited bookkeeping infrastructure is a hallmark of the hard to tax sector when taxpayers lack the resources, skill and requisite organizational framework to efficiently and effectively comply with bookkeeping requirements.[507] The limited bookkeeping infrastructure of hard to tax groups may be rooted in a number of considerations. For example, by reason of the small scale of their income-generating activities (and the perception of disproportionate compliance costs), taxpayers may be unwilling to invest resources towards bookkeeping (e.g., outsourcing accounting or licensing accounting software).[508] Additionally, taxpayers may lack the requisite skill to comply with formal bookkeeping requirements.[509]

504 HMRC; 'Internal Manual – Compliance Handbook: Record Keeping: Nature and Extent of Record', HM Revenue & Customs, 2016.

505 Ibid.

506 Ibid.

507 See, for example: Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', Contributions to Economic Analysis 268, 2004, pp. 101-120. Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018.

508 Kay Blaufus et al.; 'Income Tax Compliance Costs of Working Individuals: Empirical Evidence from Germany', *Public Finance Review 42 (6),* 2014, pp. 800-829.

509 The larger debate regarding the hard to tax sector and the structural characteristics of this group emerged in the second half of the 20th century, in an environment where the particularities of tax compliance were arguably different compared to the present time. Today, most transactions carry a digital footprint. Increasingly more popular cloud computing services simplify the storing of records. Additionally, commercial accounting software is increasingly available.

2) The bookkeeping infrastructure of collaborative economy platform workers – Do platform workers experience bookkeeping burdens to the same extent as ordinary independent contractors and hard to tax groups?

The manner in which bookkeeping obligations play out for platform workers does not differ significantly from the valences that this issue takes when it comes to ordinary hard to tax groups. Income-generating undertaken through collaborative economy platforms involve a large number of, which may need to be documented for tax compliance purposes. However, because earnings are centralized, processed and aggregated by platform operators before being paid out to workers, the documentation of earnings does not pose the same complications that pertain to typical independent contractors, who collect payments from clients or customers directly. In the case of platform workers, however, an ensuing issue relates to the documentation of expenses incurred. As noted previously, the extent and the nature of (deductible) expenses incurred by workers will largely depend on the type of platform activity performed.[510] Unlike the information pertaining to their platform earnings, data related to expenses is neither tracked nor documented by platform operators. Similarly, to the extent that the filing jurisdiction of the worker requires the preparation of accounts pertaining to the underlying activities, the preparation of these is the sole responsibility of the taxpayer. Storing documentation pertaining to tax-relevant transactions (i.e., invoices and receipts) for prescribed periods is similarly the duty of platform workers.

Another significant bookkeeping-related challenge pertaining to platform workers relates to the dual-purpose character of many of the expenses they routinely incur. Particularly in tax systems where the deductibility of dual-purpose expenses is conditional on a strict apportionment, the tracking of dual-purpose expenses may in practice give rise to a considerable compliance burden, which may well be disproportionate to the benefit yielded through the claiming of the apportioned deduction. The issue of apportionment is more prominent in the case of platform workers compared to ordinary independent contractors operating outside the collaborative economy, since the business model of the collaborative economy

510 Because of the nature of their activities, ridesharing and homesharing workers will typically incur a wider span of expenses eligible for deductions compared to workers involved in the tasking industry.

is premised on the notion of participants capitalizing the excess or idle capacity of otherwise personal assets.[511] Conventionally, bookkeeping refers to taxpayers documenting their income-generating economic activities. By its nature, the collaborative economy establishes labor markets where the line between economic activity and personal consumption is blurred. In turn, this compounds the bookkeeping challenges of collaborative economy platform workers.

D. The limited bookkeeping incentive of hard to tax groups

1) General considerations

Following the foregoing discussion regarding the constraints on the bookkeeping infrastructure of hard to tax groups, these paragraphs address the somewhat related but distinct issue of *bookkeeping incentive*. Limitations in taxpayers' bookkeeping infrastructure are rooted in the (1) disproportionality between the degree of formality required for the taxpayers' supporting documentation and the economic reality of taxpayers' reportable circumstances and (2) limitations in the resources, skill, and organizational framework of the taxpayer to develop or maintain records of their activities. The foregoing discussion on bookkeeping infrastructure emphasized issues of taxpayer *capacity*. Conversely, bookkeeping incentive refers to the limited extent to which taxpayers have the incentive to maintain records of their activities for reasons other than related to tax compliance *stricto sensu*.

The discussion of bookkeeping incentive as a hallmark of the hard to tax sector was originally proposed by Thuronyi as part of his framework for defining the hard to tax.[512] I submit that there are two potential avenues of interpreting and developing on Thuronyi's argument regarding the limited motivation of the hard to tax to maintain accounts. The first of these refers to the relationship between bookkeeping and the nature of the income-generating activities of the archetypal hard to tax taxpayer. The second pertains to the relationship between bookkeeping and the benefits flowing from bookkeeping for hard to tax taxpayers.

511 Ibid. See also: Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2),* 2018, pp. 283-333.

512 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120.

The more conservative approach to interpreting Thuronyi's argument is to link the compliance burdens of bookkeeping obligations and the nature of taxpayers' activities. Bookkeeping is generally not a strict necessity for the undertaking of the enterprises of many hard to tax taxpayers. In this respect, the limited bookkeeping incentive of hard to tax groups may relate to a perceived lack of added value of bookkeeping outside the context of tax compliance.[513] For some taxpayers, maintaining accounts is an almost inherent aspect of doing business. When non-tax accounting performed in the course of other business activities can simply be adapted for tax self-assessment or self-reporting purposes, bookkeeping obligations are significantly less onerous, as they are not fully dissociated from the core activities of the taxpayer. By contrast, in the case of taxpayers for whom the only reason to develop financial or fiscal accounts is linked to tax compliance, the weight of the ensuing compliance cost is significantly more prominent.

A second interpretation of the limited bookkeeping incentive of hard to tax groups is rooted in the dichotomy between gross and net tax compliance costs. Gross compliance costs encompass the aggregate expenses above and beyond the amount of tax payable, incurred by the taxpayer in interacting with the tax system. The concept of net compliance costs postulates that the incurrence of certain compliance costs can generate (non-tax) benefits for the taxpayer. The aspect most commonly cited by commentators refers to the *managerial benefits*. For individual taxpayers, the key managerial benefit relates to improved information about the profitability of their enterprise.[514] Thuronyi's argument could be interpreted

513 Ibid.

514 In his analysis of the managerial benefits flowing from correct fiscal recordkeeping, Sanford identified three main categories of managerial benefits, namely: (1) improved information, (2) improved control, and (3) savings on other costs. The former identifies the benefit of enhanced awareness of one's financial position as a result of tax-motivated recordkeeping, which is capable of leading to better business decision-making in the future. The second category refers to the enhanced cash flow, stock, and credit controls that are said to flow from appropriate recordkeeping. The final type of managerial benefit (i.e., savings on other costs) embodies the notion that appropriate records developed internally allow the taxpayer to save the other costs that would arise as a result of commissioning an external accountant. The notion of managerial benefits ensuing as a result of complying with tax bookkeeping obligations could also be linked with the related concept of financial literacy. Financial literacy refers to informed decision-making and management of finances. A complete and accurate overview of one's financial situation, developed in the course of complying with an otherwise unrelated tax obligation, is therefore linked to financial

to suggest that the managerial benefits for hard to tax groups are minute and insufficient to motivate accurate bookkeeping.

It would not be incorrect to also assert that bookkeeping may also determine tax benefits (e.g., credits, expense deductibility). Usually, the availability of tax benefits is not determined by the level of taxable income of taxpayers. Nevertheless, the ultimate value of tax reliefs depends on the extent to which they concretely reduce tax liabilities. There are two ways in which the modest value of tax benefits could impact compliance postures. Firstly, a tax benefit that does not result in a relevant reduction of the person's tax burden could result in the taxpayer simply foregoing the benefit in question – particularly when compliance burdens outweigh the value of the benefit.[515] Secondly, the anticipation of non-sizeable tax benefits flowing from compliance could simply encourage taxpayers to misrepresent earnings or expenses.

2) The bookkeeping incentive of collaborative economy platform workers

As the foregoing paragraphs have shown, a constrained bookkeeping incentive relates to the taxpayer's perception that bookkeeping is unnecessary for the conduct of their economic activity and that any benefits that could flow from adequate recordkeeping are disproportionately low. The discussion of bookkeeping incentive for small-scale entrepreneurs, including platform workers, illustrates an area where tax compliance obligations and entrepreneurial considerations intersect.[516]

In the case of collaborative economy platform workers, the oftentimes minute character and extent of their activities may explain the reduced non-tax motivated incentive to maintain records or accounts of activities. The assets typically used in the course of income-generating activities (i.e., assets intended primarily for personal use or consumption) contribute to this limited bookkeeping incentive as well. Adequate bookkeeping could yield a significant managerial benefit to

literacy in the same manner as managerial benefits.

515 Mark M. Pitt and Joel Slemrod; 'The Compliance Cost of Itemizing Deductions: Evidence from Individual Tax Returns', National Bureau of Economic Research, Working Paper No 2526, 1988.

516 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120.

platform workers, by aiding efforts to measure the genuine economic productivity of their platform activities – an aspect that would be especially relevant in the case of workers whose earnings are capped by the platform itself rather than determined individually.[517] For example, in the case of ridesharing workers, a number of platforms set pricing per distance travelled (with surges sometimes being applicable and computed by the platform's algorithms depending on the time of day, weather, etc.). Tracking earnings per distance travelled and the comparison thereof to the expenses incurred accordingly (e.g., petrol, tolls, etc.) could in fact amount to a relevant managerial benefit.[518]

Despite the fact that bookkeeping incentive may be explained by reference to objective elements (i.e., the benefits accruing to the taxpayer), incentive inevitably remains a subjective matter. Bookkeeping incentive is further diminished when the nature of the underlying activities is informal in its core nature and perceived by the taxpayer as a merely secondary or supplementary stream of personal revenue. Additionally, considerations regarding the optimization of time and asset allocation that could theoretically flow from adequate recordkeeping become less compelling in light of the business model and premises of the collaborative economy. Since most platform workers use private assets in the performance of their activities, the further optimization of the use of the assets in question through adequate recordkeeping is unlikely to be a core concern for the worker. In a similar vein, when workers engage in income-generating activities during periods when they would not have otherwise worked, the incentive to ponder improved time and resource allocation is likewise low.

E. The number of transactions of the hard to tax

1) General remarks

Another challenge to the effective taxation of hard to tax groups relates to the large number of unrelated transaction of these taxpayers. Sourcing of income from multiple unrelated transactions is ultimately an intrinsic feature of any independent

517 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4), 2016,* pp. 989-1069.

518 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8 (1),* 2017, *pp.* 58-112.

income-generating activity. The mere assertion that a large volume of unrelated transactions creates an obstacle to tax compliance is arguably a misguided over-generalization. However, effective taxation may be impaired when taxpayers exploit this circumstance with a view to fragmenting their income artificially, to concealing or misrepresenting economic results, and exploiting the limitations in the oversight capabilities of tax administrations.

The most comprehensive attempt at highlighting the impact of the large volume of unrelated transactions of hard to tax groups on compliance is a model developed by Das-Gupta.[519] According to Das-Gupta, the large volume of unrelated transactions of hard to tax groups entails that the capability of tax administrations to detect one or some such transactions 'has no bearing on their ability to detect any other transaction'.[520] This model boils down to the basic idea that the nature of the income streams of hard to tax groups exacerbates the ordinary limitations in administrative assessment[521] and by extension dents at the dissuasive or coercive undertone that penalties for non-compliance should carry.[522] Accepting that both the detection and

519 Arindam Das-Gupta; 'A Theory of Hard to Tax Groups', *Public Finance/Finances Publiques 49 (4),* 1994, pp. 28-39. The sourcing of aggregate income through multiple unrelated transactions is ultimately an intrinsic characteristic of any independent economic activity. Any consumer facing enterprise derives revenues from transacting with multiple unrelated customers, and not every enterprise undertaking economic activities in this manner in regarded as hard to tax or otherwise prone to non-compliance. As such, Das-Gupta's model could be criticized in that it exacerbates the impact of a characteristic shared by all consumer facing enterprises on tax compliance outcomes. However, such criticism is arguably tainted by a measure of misguided over-generalization for its own part, because it is built on an incorrect, overly indiscriminate and oversimplified comparison of the hard to tax sector and groups to any and all taxpayers that derive income from independent activities, without accounting for other traits of hard to tax groups. In particular, the core of the criticism levelled at Das-Gupta's theory is ultimately centered upon the idea that the manner in which a taxpayer's income is sourced neither establishes nor implies a relationship of causality with proneness for non-compliance. This viewpoint is entirely valid. However, it remains important to note that Das-Gupta's theory does not solely discuss or restrict itself to issue of (voluntary) compliance, but rather also insists on detection and enforcement.

520 Ibid.

521 Jonathan S. Feinstein; 'An Econometric Analysis of Income Tax Evasion and Its Detection', RAND Journal of Economics 22 (1), 1991, pp. 14-35.

522 Ann D. Witte and Diane F. Woodbury; 'The Effect of Tax Laws and Tax Administration on Tax Compliance: The Case of the U.S. Individual Income Tax', National Tax Journal 38 (1), 1985. Michael Doran; 'Tax Penalties and Tax Compliance', Harvard Journal on Legislation 46 (1), 2009, pp. 111-161.

the enforcement capacities of tax administrations are curtailed by reason of the large volume of unrelated income generating transactions of hard to tax groups, the emerging conclusion would be that effective taxation becomes wholly dependent on the impetus for voluntary compliance of the hard to tax taxpayer himself.

The difficulties in securing the effective taxation of hard to tax groups is therefore the by-product of the *prima facie* predilection for non-compliance of these taxpayers, coupled with the limitations of enforcement.[523] This *prima facie* predilection for non-compliance could be explained in the context of the hard to sector and groups by also considering and recalling the other hallmarks of these taxpayers, in particular their visibility deficit and the information asymmetry that is at play in their relation with tax administrations. As already alluded to in the context of these paragraphs, both of these characteristics incentivize non-compliance, because they minimize the risks of non-compliance.[524] What Das-Gupta's theory and model adds to these findings, in particular when all these elements are approached in concert, is the argument that the risk associated with non-compliance is also attributable (partly but arguably not wholly)[525] to the difficulties experienced by tax administrations in *tracing* the large volume of unrelated transactions pertaining to a taxpayer whose incentive to voluntarily comply is presumably low from the outset.

2) The volume of unrelated transactions arguments in the context of collaborative economy platform workers

Formally, platform workers are not unlike typical independent contractors, in that they render services to unrelated end-users in exchange for consideration. However, their activities are undertaken through the intermediation services of platform operators. Usually, payments made by end-users are collected by the platform and subsequently remitted (normally net of the flat service or intermediation commission fee) to the worker that performed the service.[526]

523 Arindam Das-Gupta; 'A Theory of Hard to Tax Groups', *Public Finance/Finances Publiques 49 (4),* 1994, pp. 28-39.

524 John T. Scholz; 'Enforcement Policy and Corporate Misconduct: The Changing Perspective of Deterrence Theory', Law and Contemporary Problems 60 (3), 1997, pp. 253-268.

525 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75.

526 Payout policies vary from one platform operator to another. For example, many ridesharing

Platform workers are not compensated or remunerated for 'idle time',[527] and the payments they receive have an entirely dynamic character, corresponding to the extent and number of transactions.[528] Unlike the archetypal independent contractor, however, platform workers always derive their payments objectively from the same source: platform itself, which acts as a payment intermediation agent. The question then arises as to whether and to what extent the argument pertaining to the hard to tax sector regarding the limited detection possibilities of (platform) receipts, as caused by the volume and unrelated nature of transactions,[529] also applies in the context of collaborative economy platform workers.

On the one hand, and similarly to the situation of the typical hard to tax sector,[530] the argument that the detection and enforcement by tax administrations of a transaction that was unreported or misreported by the taxpayer has no bearing on the capacity to detect all the income generating transactions of such a taxpayer (and ultimately, verify or ascertain the full extent of the receipts from their economic activity), was informed by the scattered nature of the payments for every individual transaction. Since the taxpayer is remunerated by every individual client or customer for every individual income-generating transaction undertaken, the detection of the full extent of the taxpayer's economic activity would entail, from the perspective of the competent tax administration, the detection of all these individual transactions. On the other hand, in the case of platform workers, a linking factor does exist in respect of all transactions: the platform itself. The related issue that ensues is whether the mere availability of the information regarding the income generating transactions

platforms typically pay out workers on a weekly basis. Homesharing platforms, by contrast, customarily distribute payments to workers upon the completion of every individual booking, which in turn means that every payment received will correspond to every individual service rendered. Task workers are likewise commonly paid separately for each individual transaction. These payout policies reflect the size, frequency and median level of consideration relating to the transactions undertaken under these three respective sub-business models.

527 Jiaru Bai et al.; 'Time-Based Payout Ratio for Coordinating Supply and Demand on an On-Demand Service Platform', in: Ming Hu [Ed.]; Sharing Economy: Making Supply Meet Demand, Springer, 2019.

528 Ibid.

529 Arindam Das-Gupta; 'A Theory of Hard to Tax Groups', *Public Finance/Finances Publiques 49 (4),* 1994, pp. 28-39.

530 Richard Musgrave; 'Reaching the Hard to Tax', in: Richard M. Bird and Oliver Oldman; *Taxation in Developing Countries,* 4th Edition, The Johns Hopkins University Press, 1990.

of workers at the level of the platform through which they undertake these activities means that the competent tax administration in the filing jurisdiction of the worker may actually access such information and subsequently use it effectively.

F. The tax literacy of hard to tax groups

1) General remarks

Tax compliance frameworks based on self-assessment or self-reporting emphasize taxpayer responsibility. This necessarily entails that for taxpayers to be able to fulfil their obligations and exercise their rights under such systems, they are impliedly expected to possess an indeterminate degree of familiarity, knowledge and understanding of the rules of the tax system. Existing scholarship on the hard to tax sector has long argued that these taxpayers' limited tax literacy impairs voluntary compliance.[531] The emergence of the collaborative economy and platform work has rekindled discussions about the importance of tax literacy and taxpayer education[532] and the role of these as mediums to encourage voluntary compliance.

One approach to the discussion of tax literacy is by reference to its relation with the related but distinct concept of financial literacy.[533] Financial literacy refers to the ability of informed and effective judgments in the management of financial or personal finance-related affairs.[534] The earliest discussions on the topic were

531 See, for example: Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018. Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268,* 2004, pp. 337-354. Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 187-213.

532 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2019.

533 Dajana Cvrlje; 'Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale, and Tax Non-Compliance', *The Macrotheme Review 4 (3),* 2015, pp. 156-167. Toni Brackin; 'Overcoming tax complexity through tax literacy – an analysis of financial literacy research in the context of the taxation system', Australasian Taxation Teachers Association 2007.

534 Ibid. See also: Andrew C. Worthington; 'Predicting Financial Literacy in Australia', Financial Services Review 15 (1), 2006, pp. 59-79.

focused predominantly on pure and obvious personal budgeting decisions,[535] without much consideration to the complete span of monetary consequences that any financial decision may have, such as insurance or tax implications.[536] The emergence of the notion of financial literacy was primarily driven by factors such as market deregulation,[537] the rise of self-funded retirement schemes,[538] and the increased availability of private investment prospects – all of which create opportunities for the generation of wealth that are readily available to individuals and emphasize the importance of informed decision-making.[539]

However, the heightened interest in the topic of financial literacy has prompted some voices in literature to point the incompleteness of the original theories explaining the contours of this notion. Chardon is commonly credited as the first author to have highlighted how taxation had been hitherto incorrectly excluded from the discussion of financial literacy.[540] Chardon suggested that tax considerations are an integral component of financial literacy. Firstly, any transaction or economic decision carries tax consequences, meaning the management of taxation is akin to any other budgeting decision.[541] Secondly, Chardon discussed elements of tax compliance and non-compliance through the lens of financial implications,[542] comparing upwards tax adjustments, penalties for non-compliance and costs for remedying compliance errors to 'expenditure shocks'.[543] According to Chardon, the mismanagement of tax obligations impacts the financial position of individuals in the same way as any other inadequate budgeting decision. The argument that taxation represents an integral facet of financial literacy is by now all but

535 Toni Chardon et al.; 'Tax Literacy in Australia: not knowing your deduction from your offset', *Australian Tax Forum 31 (2),* 2016, pp. 321-362.

536 Ibid. See also: Toni Brackin; 'Overcoming tax complexity through tax literacy – an analysis of financial literacy research in the context of the taxation system', Australasian Taxation Teachers Association 2007.

537 Ibid.

538 Ibid.

539 Ibid.

540 Toni Chardon; 'Weathering the Storm: Tax as a Component of Financial Capability', *Australasian Accounting, Business and Finance Journal 5 (2),* 2011, pp. 53-68.

541 Ibid.

542 Ibid.

543 Ibid. Expenditure shocks are a term imported from economics, describing the destabilizing nature of unpredicted expenses, such as significant price increases, ensuing costs triggered by market failures, or monetary penalties.

contentious. In this respect, the notion of financial literacy has become an umbrella term for a myriad of distinct aspects and elements related to the management of affairs that bear implications on the financial standing of an individual.

Because of the inherently indeterminate character of tax literacy, various authors interpret the concept differently. For example, Cvjrle defined tax literacy as a blanket term traversing two distinct types of skills that taxpayers should implicitly possess: numerical skills[544] (as relevant for the reporting, assessment and review of tax liabilities) and assimilation skills[545] (towards understanding tax rules relevant to one's situation).[546]

Wassermann and Bornman developed a broader and more holistic definition of tax literacy.[547] According to Wassermann and Bornman, tax literacy is the product of three inextricable elements: awareness, knowledge and informed decision-making.[548] Awareness is cognizance towards the tax consequences of activities.[549] It includes foresight of both the existence and the extent of the tax consequences that will flow from activities and decisions.[550] Knowledge encompasses substantive and procedural tax knowledge.[551] Substantive tax knowledge is the taxpayer's (correct and complete) understanding of the context of taxation.[552] Procedural knowledge refers to the understanding of formal aspects of tax compliance, such as filing deadlines, bookkeeping obligations or appeal procedures.[553] Finally, informed decision-making entails undertaking transactions with a foresight of the ensuing tax consequences and the capacity to comply and manage these tax consequences.

544 Ibid.
545 Ibid.
546 Ibid.
547 Marina Bornman and Marianne Wassermann; 'Tax literacy in the digital economy', e*Journal of Tax Research,* 2018.
548 Ibid.
549 Ibid.
550 Ibid.
551 Ibid.
552 Ibid. See also: Ming Ling Lai et al.; 'Quest for Tax Education in a Non-Accounting Curriculum: A Malaysian Study', Asian Social Science 9 (2), 2013, pp. 154-162.
553 Ibid.

Lapses in tax literacy may impair tax compliance in a number of ways. Lapses in awareness, for example, may entail undertaking activities without a sufficient grasp on the ensuing tax consequences. In turn, this may result in either a failure to comply with the afferent tax obligations altogether or, alternatively, in the pursuit of an activity where the extent of the afferent tax consequences ultimately comes to be regarded as disproportionate to the yield of the activity itself from the perspective of the taxpayer. Deficiencies in knowledge may result numerical or computational mistakes leading to imperfect compliance,[554] late filing or potentially to the failure to claim tax benefits that the taxpayer was otherwise legally entitled to.[555]

2) Considerations on tax literacy in the context of hard to tax groups

The diversity in the identities of the taxpayers associated with the hard to tax sector precludes definitive remarks regarding tax literacy amongst these groups. Nevertheless, there exist various studies that attempt to draw broad inferences about the tax literacy of specific segments of taxpayers, such as employees, the self-employment and informal economy participants.[556]

Existing research on the tax literacy of the self-employed has yielded mixed results. For example, one study conducted in respect of small-sized businesses in Australia found that these taxpayers usually possess basic tax-oriented knowledge,[557] but struggle to navigate more complex tax rules (e.g., on the depreciation of business assets) and to adapt to changes in tax legislation.[558] A different study, focused on legal professionals transitioning from employment to self-employment[559] found

554 Dajana Cvrlje; 'Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale, and Tax Non-Compliance', The Macrotheme Review 4 (3), 2015, pp. 156-167.

555 See, for example: Mark M. Pitt and Joel Slemrod; 'The Compliance Cost of Itemizing Deductions: Evidence from Individual Tax Returns', National Bureau of Economic Research, Working Paper No 2526, 1988.

556 See, for example: OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', The International and Ibero-American Foundation for Administration and Public Policies, OECD Publishing, 2015.

557 Brett Freudenberg et al.; 'Tax Literacy of Australian Small Businesses', Journal of Australian Tax 18 (2), 2017, pp. 22-61.

558 Ibid.

559 Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation

widespread lack of foresight on the particulars of the tax compliance obligations attached to self-employment. Such hurdles in the transition to self-employment involved deficient accounting and computational skills.[560] Additionally, the shift from the payment of tax through PAYE withheld by an employer was cited as leading to 'haphazard withdrawals'[561] and cash flow difficulties.[562] Although these studies yielded non-identical findings and focused on different vectors, they do invite the argument to emerge that, at least in the context of the self-employed, concerns about sub-optimal tax literacy are not without merit.

Conversely, existing research on tax literacy amongst informal economy participants as a segment of the hard to tax sector produced rather clear-cut findings. In the context of the informal economy, low degrees tax literacy are frequently asserted as core drivers of unintentional and inadvertent non-compliance.[563] According to existing research, the low tax literacy of informal economy participants is rooted in two main considerations: poor computational skills and disinterest in tax compliance.[564] Policymakers in a growing number of states introduce tax education initiatives geared towards informal economy participants,[565] suggesting some emerging consensus that low tax literacy is a concerning determinant of non-compliance.

3) Considerations on tax literacy as relevant to collaborative economy platform workers

Working Paper No 14, 2018.

560 Ibid.

561 Ibid.

562 Ibid.

563 Jelte Verberne; 'Taxation and the Informal Business Sector in Uganda- An Exploratory Socio-Legal Approach', Tax administration and research center conference, 2018. Imran Sharif Chaudhry and Farzana Munir; 'Determinants of Low Tax Revenue in Pakistan', Pakistan Journal of Social Sciences 30 (2), 2010, pp. 439-452. Dajana Cvrlje; 'Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale, and Tax Non-Compliance', The Macrotheme Review 4 (3), 2015, pp. 156-167.

564 Jelte Verberne; 'Taxation and the Informal Business Sector in Uganda- An Exploratory Socio-Legal Approach', Tax administration and research center conference, 2018.

565 See, for example: OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', The International and Ibero-American Foundation for Administration and Public Policies, OECD Publishing, 2015.

Conventional wisdom suggests that collaborative economy platform workers are typically unaware of the tax consequences of their activities,[566] with the argument going as far as to assert that this amounts to one of the core reasons behind the under-taxation of income they derive from activities undertaken through platforms.[567] From the perspective of tax literacy, the archetypal collaborative economy platform worker is described as akin to an informal economy participant: a taxpayer that operates largely outside the net of taxation, unawareness and disinterested in the tax consequences of their income-generating activities.[568]

At the present time, the most comprehensive empirical research into tax literacy levels amongst platform workers is a study by Oei and Ring,[569] which inquired into the understanding of ridesharing platform workers of the income tax consequences of their activities. Oei and Ring observed tax-related discussions on selected internet discussion forums between ridesharing workers, concluding that workers broadly understand the consequences of tax non-compliance and comprehend the parameters of their basic tax obligations, such as the filing of tax returns with the inclusion of income from platform transactions in their tax base.[570] On the flip side, they found that ridesharing workers display a limited understanding of the substantive rules on the computation of deductible expenses and the apportionment of dual-purpose expenses,[571] the distinction between deductibility and capitalization, as well as the management of bookkeeping obligations.[572] In spite of the fact that Oei and Ring's study only extended to the question of tax

566 OECD; 'Beyond the international tax rules: The impact of digitalisation on other aspects of the tax system', in: OECD/G20 Base Erosion and Profit Shifting Project, Tax Challenges Arising from Digitisation –Interim Report 2018, OECD Publishing, 2018. Baker Institute; 'How Should we Tax the Sharing Economy?', 2019. Institute of Public Accountants; 'A Sharing Economy Reporting Regime', 2019. Norwegian Committee on the Sharing Economy; 'Summary and Recommendations', Official Norwegian Report (NOU) Intra-European Organisation of Tax Administrations, 2017.

567 Institute of Public Accountants; 'A Sharing Economy Reporting Regime', 2019.

568 OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', The International and Ibero-American Foundation for Administration and Public Policies, OECD Publishing, 2015.

569 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8 (1),* 2017, *pp.* 58-112.

570 Ibid.

571 Ibid.

572 Ibid.

literacy amongst ridesharing workers and investigated the issue primarily through the lens of United States tax substantive and compliance considerations, their research lends itself to some measure of cautious generalization.

Reverting to the previously described definition of tax literacy as a three-dimensional concept encompassing awareness, understanding, and informed decision making,[573] the circumstances of platform workers provide an appropriate context to discuss how this notion may play out in practice.

Oei and Ring in principle find that platform workers are aware of the tax consequences of their activities. However, this finding must necessarily be qualified. The methodology and design of Oei and Ring's research involved examining tax-related discussions between platform workers. In this respect, it would have been unlikely from the outset to infer complete unawareness of workers towards tax considerations. For this reason, I refrain from broad conclusory remarks that platform workers are in general aware of their income tax obligations. Still, and as is discussed in more detail in Part III.II.2 below, it is increasingly more commonplace that platform operators supply general reminders to workers that their income-generating activities entail tax consequences and that workers need to comply with. In this respect, workers' unawareness that their activities entail tax consequences may increasingly become a relegated issue. These considerations notwithstanding, awareness is merely one element of tax literacy.[574] Oei and Ring's study confirms that platform workers may lack contextual understanding of the substantive and procedural tax rules that are relevant to their circumstances. In turn, this may underline inadvertent non-compliance. In a similar vein, a deficient understanding of the tax implications of income-generating activities may compound obtuse labor supply decisions for taxpayers.

A broad understanding of tax literacy as a multi-layered notion is therefore necessary and desirable. Different determinants of tax literacy require specific approaches and entail varying degrees of complexity. In the case of collaborative economy platform workers, unawareness in regards to the tax consequences

573 Marina Bornman and Marianne Wassermann; 'Tax literacy in the digital economy', e*Journal of Tax Research,* 2018.

574 Ibid.

of their income-generating activities may be addressed through initiatives for engaging these taxpayers with tax systems. Conversely, safeguarding platform workers' contextual understanding of the tax rules relevant to their circumstances requires comparatively more complex initiatives.[575]

575 I discuss initiatives for taxpayer engagement and education as a tool for mitigating low tax literacy in the collaborative economy and improving the income tax compliance of platform workers in detail in Part III.II.2 of this thesis.

PART II.II. – COMPLIANCE-RELATED BEHAVIORS AND THEIR EFFECT – AN INQUIRY INTO SOME SUBJECTIVE DETERMINANTS OF TAX COMPLIANCE

An overarching motif consistently emphasized in this analysis is the strong reliance on voluntary compliance as regards the taxation of individuals that derive income from independent activities.[576] However, the concept of voluntary compliance is arguably an elusive notion in and of itself. The payment of tax is a legal obligation. All aspects of taxation are regulated. Although taxpayers do enjoy various substantive and procedural rights, most aspects of taxation entail obligations for taxpayers.[577] Against this backdrop, the concept of voluntary compliance seems deeply paradoxical.[578]

Since self-assessment and self-reporting frameworks rely on voluntary compliance, their effectiveness is entwined with the underlying behavior of taxpayers. At one extreme lie taxpayers that register for tax purposes, report the results of their activities and circumstances accurately and discharge tax debts on time, oftentimes in spite of the opportunities created by their circumstances to evade doing so.[579] At the other extreme are those taxpayers that actively pursue opportunities to escape taxation.[580] In between these two poles, one could identify other types of compliance postures. For example, there may be taxpayers that fail to exert sufficient diligence in the management of their tax obligations, leading to late filing or avoidable computation errors.[581] For other taxpayers, non-compliance may not necessarily result from the active pursuit of evasion opportunities, but rather from

576 This holds true in relation to all self-employed taxpayers, regardless of whether they are seen as a 'hard to tax' segment. In Part II.II of this research I focus in particular on compliance-related behaviors as relevant to hard to tax groups, however the findings I lay out largely apply in respect of self-employed taxpayers as a matter of generality.

577 J.T. Manhire; 'What Does Voluntary Compliance Mean? A Government Perspective', University of Pennsylvania Law Review Online 164, 2015-2016, pp. 11-18.

578 Huiqi Yan et al.; 'The enforcement-compliance paradox', China Information 30 (2), 2016, pp. 209-231.

579 Ibid.

580 Ibid.

581 Kyle D. Logue; 'Optimal Tax Compliance and Penalties When the Law is Uncertain', *Virginia Law Review 27 (2)* 2007, pp.241-296.

the taxpayer leveraging their circumstances in order to escape the full impact of income taxation.[582] Tax compliance behavior falls along a continuum.[583]

The purpose of this part of the present research is to explore selected forms of compliance-related behavior, with a view to discussing the impact of these on tax compliance outcomes. This analysis does not purport to develop a comprehensive discussion of all forms of behavior that taxpayers may display. Instead, the focus will be on behaviors that are most commonly displayed by self-employed taxpayers in general and taxpayers assimilated to the hard to tax sector in particular, based on the circumstances of their income-generating activities and the opportunities for non-compliance that these circumstances enable.

1. Taxpayer behavior as a determinant of tax compliance – Insights from existing scholarship

The impact of behavior on tax compliance is a longstanding subject of inter-disciplinary research. Behaviors that impact tax compliance have been studied most especially through the lens of the economic and psychological sciences,[584] ultimately leading to the emergence of three major schools of thought.[585]

The first of these, developed by Allingham and Sandmo,[586] is the *deterrence* or *economics of crime* theory of tax compliance.[587] This model is predicated on the idea of a rational taxpayer, oriented towards the maximization of personal utility of funds. The deterrence theory postulates that the taxpayer's compliance *decision* is informed by a subjective assessment of the costs and benefits of compliance

582 Victor: Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120.

583 Brian Erard and Chih-Chin Ho; 'Explaining the U.S. Income Tax Compliance Continuum', *eJournal of Tax Research 1 (2),* 2003, pp. 93-109.

584 Edward E. Marandu et al.; 'Determinants of Tax Compliance: A Review of Factors and Conceptualizations', International Journal of Economics and Finance 7 (9), 2015, pp. 207-218.

585 Ibid.

586 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', Journal of Public Economics 1, 1972, pp. 323-338.

587 Ibid.

compared against the potential consequences of (un)detected non-compliance.[588] Under this theory, a low probability of detection or low penalty rates are assumed to incentivize non-compliance.

The second major theory is the so-called *institutional anomie theory*.[589] Unlike the deterrence model, which takes an economic approach to compliance and evasion, the institutional anomie theory is rooted in sociology.[590] The institutional anomie theory assumes every person's moral compass is informed by socially institutionalized values and that deviant behavior occurs when a person's values are distinct from socially embedded norms. In particular, this theory emphasizes the tension between individualism and collectivism.[591] Applied to the context of taxation, this theory suggests that taxpayers are more likely to be non-compliant when they prioritize individualism over collectivism. The institutional anomie theory assumes that taxes and tax compliance have an inherent social utility, whereas non-compliance generates an unethical individual benefit. The choice between compliance and non-compliance is ultimately determined by the subjective predilections of individual taxpayers.

The third major model is the *theory of planned behavior*.[592] This model, imported from the social psychological sciences, assumes that *intent* is the constant precursor of action.[593] Intent is informed firstly, by the subjective perception of the individual vis-à-vis a certain form of behavior ('behavioral belief'); secondly, by the individual's perception of the beliefs taken by his immediate circle over a type of behavior ('normative expectations') and thirdly, by the individual perception of the character of a certain type of behavior within society ('control belief').[594] The decision

588 Ibid.

589 Edward E. Marandu et al.; 'Determinants of Tax Compliance: A Review of Factors and Conceptualizations', *International Journal of Economics and Finance 7 (9),* 2015, pp. 207-218.

590 Ibid.

591 Ibid.

592 Theresia Woro Damayanti et al.; 'Trust and Uncertainty Orientation: An Effort to Create Tax Compliance in a Social Psychology Framework', *Procedia – Social and Behavioral Sciences 211 (5),* 2015, pp. 938-944.

593 Ibid.

594 Andi Nurwanah; 'Determinants of tax compliance: theory of planned behavior and stakeholder theory perspective', Problems and Perspectives in Management 16 (4), 2018,

of whether or not to comply with tax obligations will depend on the perception – in terms of morality and acceptability – of compliant and non-compliant behavior as taken by the taxpayer himself, his inner circle and society at large.[595] The planned behavior model therefore theorizes compliant and non-compliant behavior through the lens of the interpretation of social values at different levels.

A synthesis of these three models suggests that tax compliance behavior could be explained by reference to (economic) notions of personal utility, social values and subjective perceptions towards the acceptability of non-compliant behavior. A shared characteristic of all these theories is their assumption that tax non-compliance involves conscious decision-making. In this respect, these theories attempt to identify the factors that determine compliance-related behavior, more so than to explain behavior itself. Under the deterrence model, the decision to comply is informed by a subjective appreciation of risk and reward.[596] Under the institutional anomie theory, a taxpayers' behavior is assumed by reference to personal utility over social utility.[597] Finally, under the theory of planned behavior, the taxpayer is said to choose non-compliance over compliance if he believes that non-compliance is (ethically) justifiable.[598] Although these models take different avenues to explaining the underlying subjective determinants of tax non-compliance, they all assume an intrinsic element of intentionality, deliberate action or underlying reasoning. In other words, these modes refer to *attitudes* that may influence taxpayers' behavior, more so than on behavior as such.

An emerging trend amongst scholars, policymakers and tax administrations is to distinguish between different forms and nuances of non-compliance, to accept that these are underlined by different causes and to attempt to enforce or remedy these by reference to their underlying causes. In particular, there is an increasing cognizance of

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pp. 395-407.

595 Ibid.

596 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', *Journal of Public Economics 1,* 1972, pp. 323-338.

597 Edward E. Marandu et al.; 'Determinants of Tax Compliance: A Review of Factors and Conceptualizations', *International Journal of Economics and Finance 7 (9),* 2015, pp. 207-218.

598 Andi Nurwanah; 'Determinants of tax compliance: theory of planned behavior and stakeholder theory perspective', *Problems and Perspectives in Management 16 (4),* 2018, pp. 395-407.

the distinction between intentional and inadvertent non-compliance.[599]Although it is accepted that both determine non-compliance outcomes, the behavioral determinants underlying these are distinct. Inadvertent non-compliance cannot be explained away by reference to any of the three models synthetized above in these paragraphs. Accordingly, rather than attempting to discuss tax compliance behavior through the lens of established theories and models, this part of the present contribution will distinguish between several concrete *behavioral postures* or *compliance-related behaviors*.[600]

2. The distinction between compliance-related behaviors and subjective attitudes towards compliance

The following analysis must necessarily be preceded by some brief commentary on the distinction between *behavior* and *attitudes* in relation tax compliance.

The discussion of attitude as relevant to tax compliance was popularized in literature by Braithwaite.[601] Braithwaite discussed the distinction between the legal legitimacy of government and psychological legitimacy.[602] Legal legitimacy is the acceptance by legal subjects of public authority as vested by democratic means.[603] Psychological legitimacy refers to the subjective interpretation and value judgment of individuals vis-à-vis public authorities, informed by personal value systems and individual objectives.[604] Political and psychological legitimacy stem from distinct sources: the former is broadly the product of a formal democratic legal process, whereas the latter is rooted in individual attitudes and the vested interests of legal subjects.[605]

599 Ibid.

600 References will be made to the models described immediately above where their precepts may be linked or correlated to the behavioral postures here identified.

601 Lin Mei Tan and Valerie Braithwaite; 'Motivations for tax compliance: the case of small business taxpayers in New Zealand', Australian Tax Forum 33 (2), 2018, pp. 222-247. Valerie Braithwaite; 'Games of Engagement: Postures within the Regulatory Community', Law and Policy 17 (3), 1995, pp. 225-255.

602 Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: Taxing Democracy: Understanding Tax Avoidance and Evasion, Routledge 2003.

603 Allen Buchanan; 'Political Legitimacy and Democracy', Ethics 112 (4), 2002, pp. 689-719.

604 Psychological legitimacy refers to the extent to which individual legal subjects deem public authority 'appropriate, proper, and just' and compatible with their own moral compass.

605 Tom R. Tyler; 'Psychological Perspectives on Legitimacy and Legitimation', Annual Review of Psychology, 2006, pp. 375-400.

As related to tax compliance, Braithwaite describes psychological legitimacy as an almost quantitative measure,[606] expressed through differing degrees of distance that taxpayers interpose towards government.[607] According to Braithwaite, this takes the form of five distinct *attitudes*: commitment, capitulation, resistance, disengagement and game playing.[608]

Commitment is the individual belief that the payment of tax carries inherent social utility. By extension, the tax administration is not only a legally and psychologically legitimate body, but also serves a higher collective interest.[609] *Capitulation* is the acceptance of the legitimacy and authority of tax laws and the tax administration enforcing these, whereby legal subjects concede that (coercive) enforcement is a legitimate and acceptable consequence of non-compliant behavior.[610] Commitment and capitulation embody attitudes of *deference*.[611]

The remaining motivational postures identified by Braithwaite (resistance, disengagement and game playing)[612] involve *defiance*.[613] *Resistance* is a 'watchful', vigilant, skeptical attitude towards taxation,[614] underlined by the belief that

606 Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: Taxing Democracy: Understanding Tax Avoidance and Evasion, Routledge, 2003.

607 Ibid.

608 Ibid. See also: Lin Mei Tan and Valerie Braithwaite; 'Motivations for tax compliance: the case of small business taxpayers in New Zealand', Australian Tax Forum 33 (2), 2018, pp. 222-247. Valerie Braithwaite et al.; 'Taxation Threat, Motivational Postures, and Responsive Regulation', Law & Policy 29 (1), 2007, pp. 137-157.

609 Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: *Taxing Democracy: Understanding Tax Avoidance and Evasion,* Routledge, 2003.

610 Ibid.

611 Ibid. See also: Małgorzata Niesiobędzka and Sabina Kołodziej; 'The fair process effect in taxation: the roles of procedural fairness, outcome favorability and outcome fairness in the acceptance of tax authority decisions', Current Psychology 39, 2020, pp. 246-253.

612 Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: Taxing Democracy: Understanding Tax Avoidance and Evasion, Routledge, 2003. Katharina Gangl et al.; 'Taxpayers' Motivations Relating to Tax Compliance: Evidence from Two Representative Samples of Austrian and Dutch Self Employed Taxpayers', Journal of Tax Administration 1 (2), 2015, pp. 15-25.

613 Ibid.

614 Nadja Dwenger et al.; 'Extrinsic and Intrinsic Motivations for Tax Compliance: Evidence from a Field Experiment in Germany', American Economic Journal: Economic Policy 8 (3), 2016, pp. 203-232. Eva Hofmann et al.; 'Preconditions of Voluntary Compliance: Knowledge

government and its administrative bodies are interested in controlling legal subjects rather than pursuing social utility.[615] *Disengagement* is as an attitude wherein taxpayers perceive government as woefully illegitimate and untrustworthy. Disengagement is the perception of government and the tax administration as beyond all redemption, to the point that any effort of challenging their authority is futile as well.[616] Finally, *game playing* is the individual perception that tax laws are not a strict set of rules,[617] but a moldable toolkit that taxpayers can use in order to achieve personal ends and objectives.[618] Game playing entails that taxpayers perceive taxation as riddled with conflict.[619] Taxpayers actively seek loopholes in tax rules and strategies to minimize their tax liabilities, whilst the tax administration seeks to hamper and halt such efforts.[620] Under a game playing attitude, taxation has a profoundly adversarial character,[621] whereby both the taxpayer and the tax administration pursue combative agendas.

Braithwaite herself argued that a distinction exists between attitudes and *compliance related action*.[622] The former refer to the different degrees of psychological legitimacy that taxpayers afford to government. Conversely, compliance related actions concern the actual *conduct* of taxpayers.[623] Braithwaite's scholarship argues that there is no absolute overlap between attitudes and compliance related decisions.[624] The empirical survey-based analyses conducted by Braithwaite herself revealed an

and Evaluation of Taxation, Norms, Fairness, and Motivation to Cooperate', Z-Psychol. 216 (4), 2008, pp. 209-217.

615 Ibid.

616 Valerie Braithwaite [Ed.]; 'Dancing with Tax Authorities', in: Taxing Democracy: Understanding Tax Avoidance and Evasion, Routledge 2003.

617 Eva Hofmann et al.; 'Preconditions of Voluntary Compliance: Knowledge and Evaluation of Taxation, Norms, Fairness, and Motivation to Cooperate', Z-Psychol. 216 (4), 2008, pp. 209-217.

618 Ibid.

619 Valerie Braithwaite and Monika Reinhart; 'Deterrence, Coping Styles and Defiance', *Archive of Public Finance Analysis 69 (4),* 2013, pp. 439-468.

620 Eva Hofmann et al.; 'Preconditions of Voluntary Compliance: Knowledge and Evaluation of Taxation, Norms, Fairness, and Motivation to Cooperate', *Z-Psychol. 216 (4),* 2008, pp. 209-217.

621 Valerie Braithwaite and Monika Reinhart; 'Deterrence, Coping Styles and Defiance', Archive of Public Finance Analysis 69 (4), 2013, pp. 439-468.

622 Valerie Braithwaite (Ed.); 'Dancing with Tax Authorities', in: *Taxing Democracy: Understanding Tax Avoidance and Evasion,* Routledge, 2003.

623 Ibid.

624 Ibid.

inconclusive relation between attitude and conduct. In some cases, the compliance related actions of taxpayers corresponded to their underlying motivational posturing. But in other cases, Braithwaite concluded that non-compliance was either only partly aligned with the asserted motivational posture of a taxpayer or attributable wholly to distinct considerations.

There are at least two key reasons why the discussion of taxpayer (voluntary) tax compliance should not be theorized based on a heavy focus on mere attitude. Firstly, it is in practice difficult to establish clear and direct empirical links between attitude and outcomes.[625] This is because attitude is not an *a priori* determinant of actual outcomes. As such, the link between attitude and outcomes (i.e., compliance or non-compliance) will in many cases be merely speculative or potentially coincidental. Secondly, even if attitude were viewed in a vacuum and theorized as a determinant of outcomes, this would create a whole host of limitations and misconceptions. If any given outcome (e.g., voluntary compliance) were studied by reference to a set of attitudes (e.g., Braithwaite's five motivational postures), the implication would innately emerge that individuals hold fully consistent attitudes regarding the underlying outcome. This would inarguably be a misguided viewpoint. For example, an individual may hold a broadly deferent view towards taxation and appreciate taxation as part of a social contract with government. Concurrently, the same individual may believe that being non-compliant is justified in their particular case.[626]

Braithwaite recognized that voluntary tax compliance, non-compliance or imperfect compliance are more directly the product of taxpayers' compliance related actions. Such actions, in turn, may depend on a broader series of determinants, tied to the particular circumstances of the taxpayer. Any outcome is determined directly by conduct or behavior.

625 Martin Halla; 'Tax Morale and Compliance Behavior: First Evidence on a Casual Link', *The B.E. Journal of Analysis & Policy 12 (1)*, 2012.

626 Larisa Margareta Batrancea et al.; 'Understanding the Determinants of Tax Compliance Behavior as a Prerequisite for Increasing Public Levies', The USV Annals of Economics and Public Administration 12 (15), 2012, pp. 201-210.

3. Compliance-related behaviors and their impact on voluntary compliance

A. Taxpayer negligence

1) General remarks

A first form of taxpayer behavior discussed with reference to its impact tax compliance is *negligence*. The incidence of taxpayer negligent behavior on tax compliance is relevant for a number of reasons. Firstly, the concept of negligence is recognized and entrenched in the legal terminology of various tax systems.[627] This facilitates an inherently interdisciplinary inquiry into the link between taxpayers' compliance related actions and existing approaches for regulating tax compliance behavior.[628] Secondly, the discussion of negligent behavior creates an opportunity to highlight the distinction between non-compliance and imperfect compliance, as well as the line between intentional and inadvertent non-compliance. Thirdly, the discussion of negligent behavior is arguably appropriate in light of the particularities and complexities of tax compliance frameworks based on taxpayer self-assessment or self-reporting.[629] Self-reporting and self-assessment require taxpayers to actively interact with tax rules on a consistent basis. These mechanisms assign taxpayers a profound degree of personal responsibility in reporting their results and paying tax accordingly.[630] The interaction with the applicable tax rules entails that individual behavior is brought to the forefront – and by extension, that negligence may surface at various stages of the taxpayers' interaction with the tax rules.

627 Lars P. Feld et al.; 'Tax Evasion, Black Activities and Deterrence in Germany: An Institutional and Empirical Perspective', Annual Congress of the International Institute of Public Finance, 2007. Richard J. Wood; 'Accuracy-Related Penalties: A Question of Values', Iowa Law Review 76 (2), 1991, pp. 309-351.

628 Gregory Carnes and Ted Englebrecht; 'An investigation of the effect of detection risk perceptions, penalty sanctions, and income visibility on tax compliance', The Journal of the American Taxation Association 17 (1), 1995, p. 26.

629 Michael Doran; 'Tax Penalties and Tax Compliance', Harvard Journal on Legislation 46 (1), 2009, pp. 111-161.

630 Mohd Rizal Palil and Ahmad Fariq Mustapha; 'Factors affecting tax compliance behaviour in a self assessment system', African Journal of Business Management 5 (33), 2011, pp. 12864-12872.

2) Negligent behavior as a matter of generality

An appropriate starting point for a discussion of negligence is a prefatory inquiry into the various meanings and undertones this notion carries. Arguably, 'negligence' draws meaning from at least three sources: (1) the ordinary or semantic interpretation of the term; (2) the moral or deontological denomination of negligence, and (3) the existing legal definitions and interpretations of negligence, as applied within and outside the context of tax law.

Ordinarily, negligence refers to a state of carelessness or disregard for rules or norms, be these social, moral or legal. It is a form of individual behavior characterized by inattention and neglect.[631] In deontological theory,[632] negligence is broadly understood to refer to actions whose negative consequences outweigh their benefits.[633] The deontological interpretation of negligence suggests a balancing act of the positive and negative consequences of behavior. Finally, the meaning of negligence is inferred from various areas of law within which this notion is applied. Negligence is a core precept under the common law of torts,[634] where civil liability is assigned by reference to negligent behavior.[635] It entails that a person had acted in disregard of a duty of care owed to a third party, resulting in loss or damage.[636] Negligence is also molded into the (private) laws of civil law systems,[637] where

631 Ibid.

632 Heidi M. Hurd; 'The Deontology of Negligence', Boston University Law Review 76 (1), 1996, pp. 249-272.

633 Ibid.

634 Michael Ashley Stein; 'Priestley v Fowler (1837) and the Emerging Tort of Negligence', *Boston College Law Review 44 (3),* 2003, pp. 689-731.

635 David G. Owen; 'The Five Elements of Negligence'. Hofstra Law Review 35 (4), 2007, pp. 1671-1686.

636 C.R. Symmons; 'The Duty of Care in Negligence: Recently Expressed Policy Elements – Part I', The Modern Law Review 34 (4), 1971, pp. 394-409. Tort laws sometimes distinguish between negligent and gross negligent liability. The former is typically the ascertained by reference to a defendant's disregard for norms and consequences. The latter largely overlaps with ordinary negligence, in that it requires the establishment of careless and reckless behavior. This distinction highlights the idea that negligent behavior falls along a quantitative continuum.

637 See, in this respect § 823 I BGB and § 276 BGB. See also: Elizabeth van Schilfgaarde; 'Negligence under the Netherlands Civil Code - An Economic Analysis', California Western International Law Review 21 (2), 1991, pp. 265-302 and Danny Watson; 'Style over Substance? A Comparative Analysis of the English and French Approaches to Fault in

tortious liability is established by ascertaining the occurrence of damage caused by failure to exercise requisite care.[638] Additionally, negligence is also embedded in the criminal law tradition of a significant number of legal systems,[639] where it similarly serves a standard to establish liability for criminal omissions.

A shared denominator of all these interpretations of the concept of negligence lies that they highlight *passive* conduct. Negligent conduct entails failure to act, resulting from the disregard or ignorance of (legal) norms. Negligent behavior – when understood as synonymous to laxity and thoughtlessness in behavior – can lead to consequences that contravene virtually any legal norm. Importantly, the focus lies on the *consequences* of negligent behavior, rather than the behavior itself. From a synthesis the foregoing findings, it emerges that the main component elements or characteristics of such conduct are *passivity in the conduct, disregard for a norm or obligation* and (the materialization of) *negative externalities*.

3) Taxpayer negligence and tax compliance

Accepting the notion that behavior is the immediate precursor of outcomes,[640] negligence may be a precursor to tax non-compliance. The question then arises as to how negligence is translated into the context of taxation by states. As the following paragraphs will strive to convey, the concept of negligence is entrenched in the procedural tax laws of some systems as part of the processes applied by tax administrations and courts for distinguishing between different forms of non-compliance and the determination of penalty amounts and formats. By considering the behavior of taxpayers, tax administrations are enabled to adapt enforcement strategies to the nature of non-compliance and more specifically, to the source of non-compliance.[641] In recent decades, tax administrations in various states

Establishing Tortious Liability', Manchester Review of Law, Crime and Ethics 2 (1), 2013.

638 See, for example: Ralph Surma; 'A Comparative Study of the English and German Judicial Approach to the Liability of Public Bodies in Negligence', Oxford University Forum of Comparative Law, 2000.

639 See, for example § 97, § 109e, § 138, § 161 German Criminal Code. J. R. Spencer and Marie-Aimée Brajeux; 'Criminal Liability for Negligence—A Lesson from across the Channel?', The International and Comparative Law Quarterly 59 (1), 2010, pp. 1-24.

640 Icek Ajzen; 'The Theory of Planned Behavior', Organizational Behavior and Human Decision Processes 50, 1991, pp. 179-211.

641 Katleen M. Carley et al.; 'Predicting Intentional and Inadvertent Non-Compliance', *Carnegie*

developed risk management strategies,[642] wherein approaches to enforcement rely on the underlying behavior of taxpayers.[643] This allows tax administrations to secure cost savings[644] and safeguard proportionality between the character of an instance of non-compliance and the type of enforcement action applied in response.[645]

Some systems where negligence is applied in administrative enforcement are the United Kingdom, Germany or the United States. As the remainder of this analysis will strive to convey, when tax systems implement such a standard of negligence procedural tax laws, they oftentimes apply a series of markers of positive and/or negative conduct to ascertain taxpayers' behavior.

In the United Kingdom, for example, tax administrations follow an enforcement strategy centered on a standard of taxpayer *reasonable care*.[646] Non-compliance outcomes may be *careless*, *deliberate* or *deliberate and concealed,*[647] depending on the conduct of the taxpayer. Reasonable care is loosely defined as the taxpayer's duty to ensure the accuracy of the 'tax returns and other documents'[648] Interestingly, this understanding of reasonable care hinges to a significant extent on the *capacity* of taxpayers and boils down to a 'best effort duty' of taxpayers.[649] The main issue in

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Mellon University: Center for Computational Analysis of Social and Organizational Systems.

642 OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

643 See, for example: OECD Forum on Tax Administration; 'Information Note – Understanding and Influencing Taxpayers' Compliance Behaviour', Small/Medium Enterprise Compliance Sub-group, OECD Publishing, 2010.

644 OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

645 OECD Forum on Tax Administration; 'Information Note – Understanding and Influencing Taxpayers' Compliance Behaviour', Small/Medium Enterprise Compliance Sub-group, OECD Publishing, 2010.

646 HMRC; 'Penalties for inaccuracies in returns and documents', Compliance checks series – CC/FS7a.

647 Ibid.

648 The HMRC applies a distinct standard of reasonable care in the case of those taxpayers that employ tax avoidance schemes. Because such circumstances generally do not pertain to the types of taxpayers analyzed in the contents of the present contribution, this distinct standard of reasonable care will not be explored further in the contents of these paragraphs.

649 Interestingly, in United Kingdom jurisprudence, reasonable care is interpreted as referring to the behavior that a reasonable person would have applied in a given contextual setting, which imbues some measure of objectivity in the concept and deviates to some extent

treating the taxpayer's capacity as the centerpiece is the subjectivism harbored by this approach. Reasonable care may well mean different things depending on the taxpayers involved, because different taxpayers have different degrees of capacity within the meaning of this concept.

Non-compliance resulting carelessness (the terminology used by the United Kingdom tax administration in reference to negligent behavior)[650] is failure to exercise reasonable care.[651]Therefore, rather than being vested with an autonomous or self-standing definition, negligent behavior is defined negatively as the failure to uphold the general standard of reasonable care. A number of factual elements are considered to ascertain carelessness (e.g., repeated and consistent inaccuracies in the returns of the taxpayer,[652] the extent to which the taxpayer maintained records[653] or whether the taxpayer sought the assistance of an advisor).[654]

A similar reasoning is applied under the German approach for ascertaining non-compliance resulting from *gross negligence*.[655] Gross negligence exists where the taxpayer failed to undertake positive steps to inform himself about the tax obligations or tax compliance requirements pertaining to him.[656]

The concept of negligence is used in a similar manner in the United States, where the behavior of the taxpayer is a precursor to establish the level of penalty applied to various forms of non-compliance.[657] Non-compliance attributable to negligent

from the focus on the efforts of the taxpayer involved alone.

650 Ibid. See also: Rita de la Feria and Parintira Tanawong; 'Surcharges and Penalties in UK Tax Law', in: R. Seer and A.L. Wilms [Eds.]; Surcharges and Penalties in Tax Law, IBFD, 2016.

651 HMRC; 'Penalties for inaccuracies in returns and documents'. Compliance checks series – CC/FS7a.

652 HMRC; 'Internal Manual – Compliance Handbook: Penalties for Inaccuracies: Types of inaccuracy: Careless Inaccuracy', HM Revenue & Customs, 2016.

653 Ibid.

654 Ibid.

655 §378 Leichtfertige Steuerverkuerzung.

656 Ibid.

657 I.R.C. § 6662 (2002) – penalty for negligence or disregard of rules or regulations. Importantly, under I.R.C. § 6662, penalties can be imposed for either negligent non-compliance or for the understatement of income – neither of which is regarded as the product of intentional steps taken by the taxpayer in order to reduce a tax liability. Negligent non-compliance is penalized in those cases where the taxpayer failed to exercise reasonable care, whilst

conduct is reprimanded under a targeted penalty, colloquially referred to as the *accuracy penalty*.[658] Negligence is defined as the failure to *make a reasonable attempt to* comply [with applicable tax rules].[659] In practice, negligence is found based on subjective considerations and characteristics,[660] such as the *honesty* of the taxpayer,[661] the degree of *sophistication* of the taxpayer,[662] or the resources that the taxpayer enjoys to outsource compliance costs to an advisor.

Negligent behavior can therefore be approached in either a negative or a positive manner. Under a negative approach, negligence refers to a taxpayer's failure to exercise best efforts in interactions with the tax system, to approach substantive and compliance obligations with due diligence and to make reasonable attempts at meeting tax obligations. Under a positive framing, negligent behavior is ascertained when the taxpayer approaches tax obligations with carelessness and disregard.

4) The incidence of negligent behavior

The reasonable care, best efforts or due diligence standards that serve as a frame of reference for the ascertainment of negligent behavior pertain to all the interactions of the taxpayer with the applicable rules and to all stages of tax compliance processes.[663] Tax systems vary in the degree of precision with which they define

non-compliance in the form of the understatement of income is ascertained and penalized by establishing that the taxpayer wrongfully (but not maliciously) interpreted the relevant computational rules. The role of penalties in enforcing tax compliance has long been the subject of literary debate, with various models attempting to rationalize the role of penalties in enhancing tax compliance. The argument could be made that penalties are economically nonsensical as a means of securing the payment of tax, because there is little merit in the assumption that increasing the amount of a debt to the government will secure the payment of a different outstanding debt. From a strictly economic perspective, tax penalties are an inherently paradoxical tool for securing tax compliance. However, penalties are deeply associated with voluntary tax compliance because they attempt to tap into the behavior of the taxpayer, which in turn represents the precursor of compliance or non-compliance outcomes.

658 I.R.C. § 6662 (2002).

659 Ibid.

660 Ibid.

661 Ibid.

662 Ibid. Taxpayer sophistication is inferred from the nature of the taxpayer's income-generating activities.

663 James Simon and Alley Clinton; 'Tax Compliance, Self-Assessment and Tax Administration',

the stages of tax compliance processes. Additionally, the nature of compliance obligations depends on the particularities of tax systems and the characteristics of the taxpayer.[664] A broadly objective definition of tax compliance was developed by the OECD. According to the OECD, tax compliance is the cumulative fulfilment of a number of obligations:[665] registration for tax purposes, the correct reporting of tax liabilities and the timely effecting of tax payments.[666] Negligent behavior may play out at all these stages.

A taxpayer's failure to register for tax purposes and the obligation to file a return in a timely manner could be attributed to negligent behavior when negligence is interpreted as disregard for formal obligations. The duties to register for tax purposes and file a return within prescribed timeframes are fundamentally formal in character and apply in the same manner to (all) taxpayers.

The same argument cannot be made in relation to the correct reporting of tax liabilities. Accurate reporting entails different degrees of complexity depending on the circumstances of taxpayers. The provision of an accurate representation of income and expenses will normally be unproblematic for taxpayers who derive income from a single source (such as employment) and for whom very few expenses are deductible.

University of Exeter Open Research, 2009. It should be noted that in relation to tax compliance, it is only the negative outcomes of negligent behavior that stand to be penalized. As a behavioral posture understood to refer to a failure to exercise best efforts and due diligence in one's interactions with the tax system, there is room to appreciate that negligent behavior could potentially result in either the underpayment or the overpayment of tax. The treatment of the latter, however, is not set out in any of the provisions cited above, with reference, for example, to the provision of refunds for tax overpaid because of a computational error. Similarly, a measure of negligent behavior is obviously manifested when a taxpayer fails to claim relief (for example, in the form of the deduction of expenses or loss compensation) by reason of a failure or omission to apply the relevant provision, therefore resulting in the overpayment of tax (or potentially, in the taxation of gross rather than net income). Such manifestation of negligence economically favors the social planner rather than the taxpayer.

664 As illustrated several times in the contents of this wider contribution, certain taxpayers (for example individuals whose only source of income is employment income) are, in some systems, exempt from the requirement of filing a tax return at all.

665 Ana Clara Borrego et al.; 'Tax Noncompliance in an International Perspective: a Literature Review', *Portuguese Journal of Accounting and Management 14,* 2013, pp. 10-41.

666 OECD Forum on Tax Administration Compliance Sub-Group; 'Compliance Risk Management: Managing and Improving Tax Compliance', OECD Publishing, 2004.

Negligent behavior is less likely to impact compliance, because the circumstances of the taxpayer invite fewer opportunities for negligence.[667] The opposite applies to a taxpayer engaged in a small-scale independent economic activity.[668]

Finally, the obligation to pay income tax formally pertains to all taxpayers.[669] The manner in which tax is collected for various items of income depends on the character of the income and the characteristics of the taxpayer involved. Whilst tax on employment income is collected at source, income tax collected on self-employment, business, or trading income remitted by the taxpayer directly. In the former case, there is hardly room for negligence (e.g., a late or incomplete payment), because the duty of effecting the payment is shifted from the taxpayer to a third party altogether. In the latter case, negligence caused by delay or underpayment is more likely to occur. Other jurisdiction-specific factors can compound the opportunities for negligence to arise, for example in systems where income tax needs to be paid on an estimated or periodic basis.[670]

Another consideration on the impact of negligent behavior on tax compliance refers to the potential spillover effect that can result from the manifestation of negligence in one sphere of the tax compliance process. A spillover is a scenario where a given action (or inaction) in one area directly influences a second outcome.[671] In the context of a discussion about the spillover effects of negligent behavior in relation to tax compliance, this would entail the rippling effect of negligence exhibited by a taxpayer vis-à-vis one stage of his interactions with the tax system which directly also affects another stage of the tax compliance process.

667 Katleen M. Carley et al.; 'Predicting Intentional and Inadvertent Non-Compliance', Carnegie Mellon University: Center for Computational Analysis of Social and Organizational Systems. Bernadette Kamleitner and Erich Kirchler; 'Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework', International Journal of Entrepreneurial Behaviour and Research 18 (3), 2012, pp. 330-351.

668 Ibid.

669 An exception to the obligation of paying tax may and is frequently made in many tax systems for taxpayers earning income beyond a set floor or threshold. This cannot however be regarded as an exclusion from the personal scope of income tax, since it represents an exemption from taxation of *income* below a certain level, not of the *taxpayers* themselves.

670 Katleen M. Carley et al.; 'Predicting Intentional and Inadvertent Non-Compliance', Carnegie Mellon University: Center for Computational Analysis of Social and Organizational Systems.

671 Michael Doran; 'Tax Penalties and Tax Compliance', *Harvard Journal on Legislation 46 (1),* 2009, pp. 111-161.

5) The incidence of negligent behavior in tax compliance – Collaborative economy platform workers

Conventional wisdom suggests that platform workers are often either unaware of or disregard the tax consequences flowing from their income-generating activities.[672] Additionally, the intermittent character of many workers' activities may harbor an overall disinterest to abide by the same complex compliance obligations that pertain to a fully-fledged entrepreneur.[673] Similar considerations arise when discussing the tax sophistication of the archetypal platform worker. In Part II.I.4.F of this research, I discussed the notion of tax literacy and described it to refer to the capacity of taxpayers to navigate the tax rules as relevant to their circumstances.[674] If taxpayer sophistication is linked with negligence, then negligent compliance-related behavior is inextricably linked in turn with tax literacy. In the case of collaborative economy platform workers, negligent behavior in tax compliance attributable to insufficient tax sophistication may be a common occurrence, underlined in particular by the inexperience of taxpayers with the substantive and procedural tax rules applicable to entrepreneurs.[675]

B. Risk-taking behavior in tax compliance

1) General remarks

The following paragraphs will discuss the concept of risk-taking as a second behavioral determinant of non-compliance. I submit that the discussion of risk-taking behavior in relation to tax compliance is relevant for a number of reasons.

Firstly, the impact of taxpayers' subjective appreciation of risk has long been recognized as a salient vector that informs conscious compliance and non-

672 Norwegian Committee on the Sharing Economy; 'Summary and Recommendations', Official Norwegian Report (NOU) Intra-European Organisation of Tax Administrations, 2017.

673 Caroline Bruckner; 'Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy', KOGOD Tax Policy Center.

674 Marina Bornman and Marianne Wassermann; 'Tax literacy in the digital economy', e*Journal of Tax Research,* 2018.

675 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4), pp. 989-1069,* 2016.

compliance decisions.[676] Secondly, the discussion of risk-taking behavior and its impact on tax compliance is relevant and appropriate against the backdrop of the particularities and complexities self-assessment and self-reporting systems. These systems entail active interaction by the taxpayer with tax rules, thereby inviting various situations where taxpayer conduct may determine non-compliance.[677] Thirdly, the discussion of risk-taking behavior is an appropriate continuation of the foregoing analysis regarding the hard to tax sector. As Part II.I to the present contribution has strived to convey, hard to tax groups tax typically display a series of characteristics rooted in the nature of their activities,[678] which may impair the effective collection of tax.[679] However, the structural characteristics of the hard to tax sector, as identified and discussed at length in Part II.I, will only determine non-compliance to the extent that taxpayers exploit these characteristics with a view to escaping the net of taxation.[680] In turn, the exploitation of these circumstances involves risk-taking behavior by taxpayers.

2) Towards a modern understanding of risk-taking behavior in tax compliance – Determinants of risk-taking behavior

In spite of its emerging recurrence in discussions of tax compliance, the concept of risk-taking behavior neither has a legal origin nor a particular legal definition. The objective of abstracting risk-taking behavior could be supported by an attempt at identifying the factors that determine taxpayers' assumption of risk in compliance decisions.

i. Determinants of risk-taking behavior – Outcome utility

676 Kimberley N. Varma and Anthony N. Doob; 'Deterring economic crimes: The case of tax evasion', *Canadian Journal of Criminology 40 (2),* 1998, pp. 165-184.

677 See, for example: Arifin Rosid et al.; 'Tax Non-Compliance and Perceptions of Corruption: Policy Implications for Developing Countries', Bulletin of Indonesian Economic Studies 54 (1), 2018, pp. 25-60.

678 Valeria Bucci; 'Presumptive Taxation Methods: A Review of the Empirical Literature', *Journal of Economic Surveys, 34 (2),* 2019, pp. 372-397. Friedrich Schneider; 'The Size and Development of the Shadow Economy around the World and the Relation to the Hard to Tax', International Studies Program Working Paper No 03-24, 2003.

679 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75.

680 Ibid.

A first factor that may inform taxpayer risk-taking behavior is the subjective perception of the utility of tax non-compliance (i.e., outcome utility).[681] Outcome-utility is a pillar of the classical deterrence theory of tax compliance.[682] Under the deterrence theory, the taxpayer is said to assume the risk of non-compliance if the perceived benefits of non-compliance outweigh the perceived consequences. From a strictly economic point of view, the maximization of wealth utility is an entirely sound concept explaining compliance decisions. Consequently, taxpayer risk-taking behavior should be prominent in systems that apply low penalties or whose tax administrations do not typically engage in wide-scale auditing and enforcement procedures.

However, one salient point of criticism levied at the deterrence theory lies in that the compliance levels predicted under this model sit oddly against the empirical reality of actual compliance levels.[683] A concrete example of this is the United States, where in spite of typically low audit rates,[684] voluntary compliance amongst individual taxpayers is high.[685] Importantly, this is not to say that the United States (or any other tax system where such a mismatch between predicted and actual compliance levels could be identified on the basis of a utility outcome analysis) does not face sizeable challenges regarding the management of tax evasion.[686] Instead, what this finding highlights is that the notion of outcome utility cannot be taken to provide a complete explanation for taxpayers' assumption of risk-taking behavior in relation to tax compliance.

ii. Determinants of risk-taking behavior – Individual propensity towards risk or risk appetite

681 Jeff T. Casey and John T. Scholz; 'Beyond Deterrence: Behavioral Decision Theory and Tax Compliance', Law & Society Review 25 (4), 1991, pp. 821-844.

682 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', Journal of Public Economics 1, 1972, pp. 323-338.

683 Jean-Luis Arcand and Gregoire Rota Graziosi; 'Tax Compliance and Rank Dependent Expected Utility', The Geneva Risk and Insurance Review 30, 2005, pp. 57-69.

684 Marilyn Young et al.; 'The Political Economy of the IRS', Economics and Politics 13 (2), 2001, pp. 201-220.

685 Jean-Luis Arcand and Gregoire Rota Graziosi; 'Tax Compliance and Rank Dependent Expected Utility', *The Geneva Risk and Insurance Review 30,* 2005, pp. 57-69.

686 Mark J. Mazur et al.; 'Understanding the Tax Gap', *National Tax Journal 60 (3),* 2007, pp. 569-576.

Accepting that outcome utility alone cannot fully underline taxpayers' risk-taking behavior, a different element to inquire into refers to the actual *risk propensity* or *appetite for risk* of the taxpayer. From a behavioral perspective, taxpayers fall along a continuum of propensity towards risk.[687] At one extreme, some are primarily risk-averse[688] or otherwise disinterested in pursuing gambles, whilst at the other extreme, some display a greater propensity towards risk.[689] The same taxpayer may approach different situations with either a risk-taking or risk-aversive attitude.[690] This determines ambiguous compliance attitudes.

In the realm of corporate governance, risk propensity or risk appetite broadly refers to the extent to which a taxpayer is willing to engage in acts, activities or positions with an uncertain outcome in the pursuit of a purportedly desirable result.[691] Applied to the context of taxation and tax compliance, risk appetite refers to the extent to which an organization is willing to pursue tax savings against a backdrop of uncertainty.[692]

In light of the objectives pursued by the present contribution, a relevant question to raise refers to whether and to what extent these considerations regarding risk appetite could rightly be transposed to the situation of individual taxpayers. The circumstances of individual taxpayers, including those that derive income from independent activities, typically entail a comparatively limited span of tax

687 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19 (1),* 1997, pp. 1-18.

688 Miles S. Kimball; 'Standard Risk Aversion', Econometrica 61 (3), 1993, pp. 589-611.

689 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', The Journal of the American Taxation Association 19 (1), 1997, pp. 1-18. Sim B. Sitkin and Amy L. Pablo; 'Reconceptualizing the Determinants of Risk Behavior', The Academy of Management Review 17 (1), 1992, pp. 9-38.

690 Ibid.

691 See, for example: Patricia Jackson; 'Risk appetite and risk responsibilities', EY, 2015. Ruth Murray-Webster and David Hillson; *A Short Guide to Risk Appetite*, Gower Publishing, 2012.

692 See, for example: Clarisse Amadieu-Le Claire; 'France – Tax Risk Management', IBFD Country Tax Guides, last reviewed 6 October 2019. Eelco van der Enden et al.; 'Tax Codes of Conduct: Fit for Purpose?', Bulletin for International Taxation 70 (9), 2016. In practice, this may entail, the adoption of planning or structuring strategies and positions that could potentially be challenged by tax administrations or the undertaking of major transactions in the midst of regulatory reforms.

risks. Nevertheless, risk is an almost inherent element of any undertaking, and this reality equally holds true in the context of (individual) taxation. However, the manner in which the discussion of risk appetite is approached in relation to individual taxpayers differs from the situation of corporate taxpayers in two major ways. Firstly, and largely because of the smaller scale and complexity of their tax affairs, individual taxpayers are neither legally nor socially required to display any measure of transparency in relation to their risk appetite. Consequently, the risk appetite of individual taxpayers usually remains unknown. Secondly, in the case of individual taxpayers, the attribution of a particular tax position to an increased risk appetite is significantly more difficult to ascertain.

Although tax risks surface in different manners for corporate and individual taxpayers, the propensity of both for the assumption of risk will be informed by their risk appetite. Risk appetite is an intrinsic characteristic of any person. The question then arises as to what elements inform risk appetite.

Firstly, existing literature suggests that risk appetite is underlined by risk *capacity* and *tolerance*.[693] Risk capacity is the quantitative measure of risk in order to achieve a certain objective. Risk tolerance refers to the extent of risk materialization that an individual or organization would have the capacity to take on in the pursuit of tax savings.[694] In this respect, risk appetite is informed by a balancing exercise of the risk capacity and the risk tolerance of the taxpayer. Secondly, risk appetite could be informed by risk exposure,[695] being the extent to which a taxpayer is exposed to tax risks as a result of the nature of their economic activities, as well as the manner in which the choose to undertake these activities. Finally, risk appetite is arguably also informed by risk culture,[696] as represented by the subjective appreciation of the taxpayer of the expected efficacy flowing from risk-taking behavior.

iii. Determinants of risk-taking behavior – Perceived risk

693 Ruth Murray-Webster and David Hillson; A Short Guide to Risk Appetite, Gower Publishing, 2012.

694 Arnaldo Marques de Oliveira Neto; Governance and Risk Management in Taxation, Springer, 2017, page 45.

695 Ruth Murray-Webster and David Hillson; *A Short Guide to Risk Appetite*, Gower Publishing, 2012.

696 Ibid.

A third element that may determine risk-taking behavior refers to taxpayers' perception of the extent and gravity of the consequences of an ambiguous compliance decision or position. This aspect will be referred to here as *perceived risk*.

A starting point for considering perceived risk would be to once again refer to the deterrence theory of tax compliance.[697] If outcome utility alone cannot fully explain the empirical realities of tax compliance levels amongst individual taxpayers, the question could be shifted towards the role played by the probability of detection on the decision to engage in risk-taking behavior. In this respect, a distinction exists between the *actual* and the *perceived* possibility of non-compliance detection.

The actual probability of detection refers to the real chances that a given instance of non-compliance will actually be identified (e.g., through an audit).[698] It would be difficult to make any absolute statements regarding probability of detection, but broadly speaking, this would likely depend on factors such as the previous behavior or reporting positions of the taxpayer, the availability of resources enjoyed by the relevant tax administration and the interest of the tax administration to actually pursue enforcement in a given case.

By contrast, the perceived probability of detection is the subjective perception of the taxpayer of the possibility that his non-compliance could be detected and enforced.[699] Because this risk perception is based on the taxpayer's subjective appreciation of the probability of detection, it will not necessarily correspond to the actual probability of detection.[700] Of course, taxpayers' individual perception of risk and probability of detection may be informed by the same broad factors listed immediately above (e.g., availability of enforcement resources, gravity and extent

697 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', *Journal of Public Economics 1,* 1972, pp. 323-338.

698 James Alm et al.; 'Institutional Uncertainty and Taxpayer Compliance', The American Economic Review 82 (4), 1992, pp. 1018-1026.

699 Paul C. Schauer and Lawrence Bajor; 'The Impact Detection Risk Has on Tax Compliance: An Alternative View', *Academy of Accounting and Financial Studies Journal 11 (2),* 2007, pp. 15-35.

700 Gary Kleck; 'Deterrence: Actual Versus Perceived Risk of Punishment', in: Gerben Bruinsma and David Weisburd [Eds.]; Encyclopaedia of Criminology and Criminal Justice, Springer, 2014.

of the non-compliance itself, etc.), but in actuality, the likelihood that the taxpayer is able to form a subjective determination of risk perception that corresponds to the actual probability of detection is low.

The mismatch between the actual and the perceived risk of detection invites a related inquiry into whether taxpayers typically appreciate the probability of detection upwards or downwards. Conventional wisdom imported from criminology and punishment theories suggests that taxpayers usually overestimate probabilities of detection.[701] One overarching theme impliedly explored by the classical deterrence theory of tax compliance is that self-reporting and self-assessment collection and compliance systems induce uncertainty for the taxpayer.[702] Uncertainty is linked to the micro-economics theory of *expected utility*,[703] which attempts to explain decision-making processes governed by uncertainty as being inherently influenced by subjectivity.[704] In the context of taxation, there is no real uncertainty as to the tax savings that could be achieved through non-compliance, because tax liabilities are innately predictable. By contrast, the probability of detection – and by extension, the absolute benefit of non-compliance – cannot be accurately appreciated *ex ante*.[705]

The probability of detection is precisely where the risk-taking behavior of the taxpayer will concretely manifest. Risk-taking behavior cannot occur without a pre-existing risk propensity or appetite for risk.[706] From the outset, the risk-averse taxpayer may be unconcerned with issues of probability of detection. However, a taxpayer with a higher propensity towards risk would be more inclined to exploit uncertainty. Risk propensity, however, is informed by risk appetite – or the degree

701 Ibid.

702 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', Journal of Public Economics 1, 1972, pp. 323-338.

703 Amos Tversky; 'A Critique of Expected Utility Theory: Descriptive and Normative Considerations', Erkenntnis 9 (2), 1975, pp. 163-173. Sanjit Dhami and Ali al-Nowaihi; 'Why do people pay taxes? Prospect theory versus expected utility theory', Journal of Economic Behavior & Organization 64 (1), 2007, pp. 171-192.

704 Ibid.

705 Yoram Keinan; 'Playing the Audit Lottery: The Role of Penalties in the U.S. Tax Law in the Aftermath of Long Term Capital Holdings v. United States', *Berkley Business Law Journal 3 (2),* 2006, pp. 381-436.

706 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19 (1),* 1997, pp. 1-18.

to which the taxpayer is willing to take on an uncertain outcome – and for its part, the subjective appreciation of the probability of detection will determine whether the assumption of risk would be worthwhile.

iv. Determinants of risk-taking behavior – Risk framing

Another element that may determine risk-taking behavior is the manner in which the risks of non-compliant behavior are presented to the public by government and tax administrations.[707] This element is referred to as *risk framing*.[708] The three determinants discussed in the foregoing paragraphs – outcome utility, risk propensity, and risk perception – share a common nucleus in that they are inextricably informed by the subjective determinations of the taxpayer. By contrast, framing effects as used in this context refer to the description of compliance and the consequences of non-compliance as *presented to* taxpayers.

Framing effects refer to the manner in which taxpayers are led to believe that detected non-compliance will be approached and treated. There are two main approaches to framing. Firstly, governments could present an exacerbated image of the resources at their disposal and the sternness with which tax non-compliance is purportedly approached. Secondly, they may employ a secretive attitude regarding actual enforcement practices (for example, by maintaining an opaque stance regarding audit rates).[709] Both these approaches attempt to tap into the impact of perceived risk on taxpayer compliance-related conduct. The envisaged effect of the former approach is to create an aggravated perception of the actual risk of non-compliance. The latter approach seeks to achieve the same result, but rather than exerting a direct impact on risk perceptions, it relies on the common tendency of taxpayers to exaggerate probabilities of detection.

The impact of framing effects on risk-taking behavior was also discussed by some authors from the perspective of *preference reversal*.[710] Preference reversal is a

707 Jeff T. Casey and John T. Scholz; 'Beyond Deterrence: Behavioral Decision Theory and Tax Compliance', Law & Society Review 25 (4), 1991, pp. 821-844.

708 Ibid.

709 Mark B. Cronshaw and James Alm; 'Tax Compliance With Two-Sided Uncertainty', Public Finance Review 23 (2), 1995, pp. 139-166.

710 Ibid.

hypothesis originally developed in social psychology studies, which attempts to predict individual decision-making frameworks.[711] In the context of tax compliance decisions, preference reversal can predict the extent of risk-taking behavior by taxpayers depending on whether they perceive taxation and the decision of whether or not to comply with their tax obligations in terms of two options – a safe and a risky one (i.e., compliance or non-compliance) –[712] or in terms of a quantitative assessment of the monetary value of compliance compared against non-compliance (i.e., levels of tax savings).[713] The preference reversal theory predicts that most taxpayers would be more inclined to choose compliance over non-compliance – that is, a safe choice over an inherently risky one -[714] but are more likely to engage in non-compliance when explicitly *presented* with the monetary value of non-compliance.[715]

3) The incidence of risk-taking behavior – Hard to tax groups and collaborative economy platform workers

Risk-taking is a compliance-related behavior which explains the manner in which taxpayers may approach the decision of whether or not to meet their compliance obligations against a backdrop of uncertainty as to the real consequences of non-compliance.[716] The nature of the tax obligations of collaborative economy platform workers create various circumstances where risk-taking behavior may influence compliance.

711 Amos Tversky et al.; 'The Causes of Preference Reversal', The American Economic Review 80 (1), 1990, pp. 204-217.

712 Jeff T. Casey and John T. Scholz; 'Beyond Deterrence: Behavioral Decision Theory and Tax Compliance', Law & Society Review 25 (4), 1991, pp. 821-844.

713 Ibid.

714 Ibid.

715 Ibid.

716 See, for example: James O. Alabede et al.; 'Individual taxpayers' attitude and compliance behavior in Nigeria: The moderating role of financial condition and risk preference', Journal of Accounting and Taxation 3 (5), 2011, pp. 91-104. Nigar Hashmizade et al.; 'Social networks and occupational choice: The endogenous formation of attitudes and beliefs about tax compliance', Journal of Economic Psychology 40, 2014, pp. 134-146. Paul J. Beck and Woon-Oh Jung; 'Taxpayer compliance under uncertainty', Journal of Accounting and Public Policy 8 (1), 1989, pp. 1-27.

Firstly, opportunities to engage in risk-taking conduct may depend on the nature of particular reporting decisions.[717] The character of reporting decisions may be discussed in terms of the dichotomy between declaring income, on the one hand, and claiming a deduction, on the other hand. Risk-taking behavior in the context of reporting decisions essentially refers to the extent to which a taxpayer is willing to misrepresent the positive results of an activity downwards and misrepresent expenses eligible to be claimed as deductions upwards. Interestingly, empirical studies into the risk appetite of individual taxpayers in their reporting decisions were rather inconsistent in the answers to the question of whether taxpayers display a greater risk appetite for the overstating of deductions compared to the understatement of income.[718] The analyses undertaken by some authors suggest that, particularly in the case of items of income or expenses that they regard as 'ambiguous',[719] taxpayers displayed a more significant propensity to misrepresent expenses upwards, whilst taking a more conservative attitude towards reporting income.[720] This finding could be explained by the practical reality that in most cases, the level of expenses incurred may be even more difficult to audit or definitively determine that the levels of gross receipts from an economic activity. By contrast, other authors went as far as to attribute most of the tax gap pertaining to personal income tax revenues as flowing from the understatement of income rather than the overstatement of deductions.[721]

717 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19 (1),* 1997, pp. 1-18.

718 Brian Erard and Jonathan S. Feinstein; 'Honesty and Evasion in the Tax Compliance Game', The RAND Journal of Economics 25 (1), 1994, pp. 1-19. Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', The Journal of the American Taxation Association 19 (1), 1997, pp. 1- 18. William M. Gentry; 'Understanding Spatial Variation in Tax Sheltering: The Role of Demographics, Ideology, and Taxes', International Regional Science Review 32 (3), 2009, pp. 400-423. Joel Slemrod; 'A General Model of the Behavioral Response to Taxation', International Tax and Public Finance 8 (2), 2001, pp. 119-128.

719 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19 (1),* 1997, pp. 1- 18.

720 Ibid.

721 William M. Gentry; 'Understanding Spatial Variation in Tax Sheltering: The Role of Demographics, Ideology, and Taxes', *International Regional Science Review 32 (3),* 2009, pp. 400-423.

Such inconsistency, I will submit, need not ineludibly be interpreted to suggest that risk-taking behavior is necessarily more prevalent when it comes to either the understatement of income or the overstatement of deductions. Rather, it is perhaps best attributable to the differences in the variables relied on by different scholars in their measurements and analyses.[722] This inconsistency and its accompanying argument could also be explained by the fact that, depending on the relevant circumstances pertaining to any given taxpayer, the perceived risk of misreporting will be impacted by other considerations. Specifically in the case of those taxpayers associated with the hard to tax sector, and particularly if a measure of risk propensity already exists at the level of their behavioral posture,[723]the appetite for misrepresenting either income or deductions in their returns may be compounded by their general visibility deficit,[724] as well as the typical information asymmetry[725] that governs their relationship with the tax administration.

Another circumstance that may compound individual taxpayers' risk taking behavior is the degree of (un)certainty afferent to a given reporting decision.[726] This concerns the probability that a reporting decision posited by the taxpayer in their return will be challenged by the tax administration.[727] According to Christensen and Hite, for example, a low probability of challenge positively impacts the adoption of risky tax positions by individual taxpayers.[728] In many cases, without necessarily

722 For example, Christensen and Hite specifically focused on 'ambiguous' elements of income and deductible expenses in their analyses.

723 Sim B. Sitkin and Amy L. Pablo; 'Reconceptualizing the Determinants of Risk Behavior', *The Academy of Management Review 17 (1),* 1992, pp. 9-38.

724 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 11-75. Victor: Thuronyi; 'Presumptive Taxation of the Hard to Tax', Contributions to Economic Analysis 268, 2004, pp. 101-120. Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018.

725 Ibid. See also: Salim Nuhu Ahmed and John M. Musah; 'On asymmetric information and tax morale in developing countries', World Institute for Development Economics Research Working Paper No 12, 2018.

726 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19 (1),* 1997, pp. 1-18.

727 Jeffrey A. Roth and John T. Scholz [Eds.]; *Taxpayer Compliance, Volume 2: Social Sciences Perspectives,* University of Pennsylvania Press, 1989.

728 Anne L. Christensen and Peggy A. Hite; 'A Study of the Effect of Taxpayer Risk Perceptions on Ambiguous Compliance Decisions', *The Journal of the American Taxation Association 19*

attempting to misrepresent a reportable item, taxpayers may be uncertain as to whether that reporting decision will be accepted or challenged by the tax administration. For example, when a taxpayer is unsure about whether an item of expenditure claimed as a deduction will be challenged by the tax administration, the taxpayer's persistence in claiming that deduction despite the uncertainty about the outcome represents an instance of risk taking.

In the case of platform workers in particular, this broader analysis has already shown that there are multiple areas where the probability of challenge by the tax administration would not be significant, particularly by reason of the visibility deficit of these taxpayers and the information asymmetry in the relation between the taxpayers and the tax administration. Ultimately, the practical strains experienced by tax administrations in effectively policing platform workers' compliance entails a generally low probability of challenge, which in turn may incentivize risk-taking behavior, subject to a pre-existing risk propensity on the taxpayers' part.[729] Similar considerations arise when platform workers are not themselves certain about the validity of a particular reporting position but nevertheless advance this position in their returns relying on a low perceived probability of challenge. Finally, uncertainty about the validity of a particular reporting decision, especially to the extent that it is coupled with a level of deficient tax literacy, can produce purely circumstantial

(1), 1997, pp. 1-18. This finding is consistent with the model posited under the traditional economics of crime framework for compliance, according to which taxpayers are more likely to engage in (illegitimate) reporting practices with a view to the achievement of tax savings if the probability of detection and penalty is low. However, the role played by certainty, as advanced by Christensen and Hite, goes beyond the substantive realm envisaged under the economics of crime model. Specifically, the economics of crime model of tax compliance is focused on the impact of probability of penalty and detection on the misrepresentation of economic results by taxpayers in their returns (as regards the reporting of income and deductible expenses alike). Under this model, the taxpayer is assumed to undertake a rational cost-benefit analysis of a risky reporting decision, wherein the (unlawfully gained) tax savings are measured against the level of the applicable penalty that would result from the detection of the non-compliance. The variable of certainty discussed in the analysis of Christensen and Hite, however, hinges to an important extent on the ambiguity rather than the pure unlawfulness or illegitimacy of a particular reporting decision.

729 As argued at length previously in this portion of the present analysis, risk propensity is ultimately a precondition for risk-taking behavior, since those taxpayers that do not display a risk appetite or a predilection for the assumption of risk but are instead primarily risk-averse are not incentivized to leverage non-compliance opportunities.

non-compliance outcomes. In cases as those referred to here, however, uncertainty may amount to a circumstance that can be leveraged by a risk-taking taxpayer.

C. Decision frames, voluntary compliance and individua compliance-related behavior

1) Prefatory remarks and rationale

Beyond negligence and risk-taking behavior, I submit as part of this analysis that the compliance-related behavior of hard to tax groups, including collaborative economy platform workers, may also be influenced by the decision frames associated with income tax compliance processes.[730] Compared to the foregoing analysis of negligence and risk-taking behavior, the discussion of decision frames requires a different frame of reference and concurrently expands on the preceding remarks on risk-taking behavior and its influence on tax compliance. On the one hand, negligence and risk-taking behavior may be understood as intrinsic characteristics of the individual. In turn, negligence and risk-taking behavior may affect income tax compliance because the characteristics of income tax compliance frameworks (and the emphasis of these on taxpayer voluntary compliance) are inherently sensitive to taxpayer behavior. On the other hand, the discussion of decision frames involves applying a reverse frame of reference. In this respect, the discussion of decision frames entails the understanding of the manner in which income tax compliance frameworks and the characteristics of these may influence and shape taxpayer behavior.

For the purposes of the brief discussion of decision frames and their influence on compliance-related behavior, I rely on two factual predicates as a foundation. Firstly, the compliance frameworks relevant to the income taxation of all self-employed taxpayers emphasize voluntary compliance and taxpayer inputs. For this reason, these frameworks innately enable compliance 'choices' for taxpayers and therefore create decision frames. In this respect, taxpayer decision frames are the core reason for why income tax compliance is vulnerable vis-à-vis taxpayer

730 Bernadette Kamleitner et al.; 'Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework', International Journal of Entrepreneurial Behaviour & Research 18 (3), 2012, pp. 330-351.

behavior. Secondly, the payment of tax is ultimately and effectively a reduction of gross wealth and liquidity for any taxpayer. The economic cost of taxation may influence taxpayer behavior in two major ways: firstly, through the framing effects experienced by taxpayers in connection with the actual payment of tax[731] and secondly, by reason of the visibility of tax and of the impact of the tax burden on personal wealth.[732] In this respect, the argument emerges that the manner in which income tax is experienced by taxpayers may determine taxpayers' compliance-related behavior and finally influence (effective) taxation. In the narrow context of this brief argumentation, I will focus on factors that are relevant to the taxpayers' subjective experience of income tax as relevant to self-employed taxpayers and hard to tax groups.

In referring to decision frames as part of this argumentation, I apply a semantic understanding of this concept. In this respect, 'framing' as used in the context of this research refers to subjectively emphasizing some specific aspects of a set of circumstances whilst diminishing others in the process of navigating a decision-making process. In other words, I use the term 'decision frames' as a conduit for the subjective biases of individuals which drive decision-making and behavior.

2) Compliance-related behavior determined by decision frames as relevant to hard to tax groups and collaborative economy platform workers

There are two key inter-related decision frames as relevant to the income tax compliance obligations of self-employed taxpayers in general (and hard to tax groups in particular) which may influence compliance-related behavior. Firstly, taxpayers that derive income from independent activities and whose income tax liability is determined based on self-reporting or self-assessment may be prone to experience the payment of income tax as an economic loss. Secondly, because self-reporting and self-assessment frameworks presuppose that taxpayers comprehensively document their circumstances and report these individually,

731 See, for example: Serna Boccardo; 'Experimental Design: The Role of Framing Effect in Affecting Individual Tax Compliance', Experimental Economics, 2014.

732 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', Contributions to Economic Analysis 268, 2004, pp. 11-75. Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018.

taxpayers are liable to perceive income tax as an intrusive legal obligation. These two factors may enable decision frames, i.e., subjective biases that emphasize the prospect of tax non-compliance as an alternative to voluntary compliance. Where there are no safeguards in place to buttress taxpayer voluntary compliance, income taxation remains tied to taxpayer conduct and therefore sensitive to taxpayers' decision frames.

i. Framing effects of the act of taxation – the payment of tax as a loss

The concept of framing effects derives from the psychological study of perceptions towards decision-making.[733] Framing theory explains the cognitive underpinnings that underline the predilection to approach a decision as either a loss or a (potential) gain.[734] In turn, the understanding of the loss/gain dichotomy is relevant because individual conduct and behavior will take on different shapes depending on whether a person pursues a potential gain or seeks to avoid a potential loss.

In existing literature, the loss/gain dichotomy was also applied to the context of income tax compliance, with a view to explaining the decision frames that may be experienced by individuals when they are presented with an opportunity for non-compliance.[735] However, an ensuing interpretative issue emerges, rooted in the nature of tax. For the taxpayer, taxation cannot be readily interpreted through the binary lens that contrasts gains and losses, because taxation inherently entails a reduction of gross income, wealth or liquidity. For this reason, the framing decisions afferent to tax compliance are more accurately explained through an adjusted dichotomy, involving losses and non-gains rather than losses and pure

733 Amos Tversky and Daniel Kahneman; 'The Framing of Decisions and the Psychology of Choice', *Science Journal 211,* 1981, pp. 453-458.

734 Ibid. The most commonly cited and perhaps most appropriate example of loss framing illustrates the valences of the decision to participation in a lottery: the decision to participate can either be perceived as a potential gain – as represented by the prospect of winning – or a loss, represented by the loss of the money paid to participate in the lottery to begin with.

735 The approach of compliance-related behavior through the lens of loss framing is arguably also the foundation of the deterrence theory and the trade-off it proposes between the respective costs and benefits of compliance compared to detected or undetected non-compliance.

gains.[736] Compared to the contrast between losses and pure gains, the loss/non-gain dichotomy emphasizes the experience of decision frames in connection with pure losses in comparison with a more neutral, but certainly not gain-yielding outcome.[737]

Unsurprisingly, the most apparent divergence in the experience of income tax obligations as losses rather than non-gains plays when comparing the circumstances and compliance obligations of employed and self-employed taxpayers.[738] For both employees and the self-employed, the payment of tax objectively involves a reduction of available liquidity. However, the decision frames experienced by employees and the self-employed differ by reason of the respective mechanisms through which tax payments are collected for them.[739] In the case of employed taxpayers, tax is collected through withholding at source based on PAYE arrangements. As a consequence, the payments employees actually receive are already net of tax. Employees receive pay slips that document their gross remuneration and their remuneration net of wage tax, but even so, they are nevertheless mere 'passive recipients' of information about amounts of tax they already discharged, legally and economically.[740] By contrast, self-employed taxpayers effect tax payments unilaterally, rather than through an intermediary. For taxpayers regarded as employees, the payment of tax amounts to a *non-gain*,[741] because of the passive nature of their interactions with the income tax system.[742] By

736 Simona Sacchi and Luca Stanca; 'Asymmetric Perception of Gains versus Non-Losses and Losses versus Non-Gains: The Causal Role of Regulatory Focus', Journal of Behavioral Decision Making 27 (1), 2014, pp. 48-56. Lorraine Chen Idson et al.; 'Distinguishing Gains from Nonlosses and Losses from Nongains: A Regulatory Focus Perspective on Hedonic Intensity', Journal of Experimental Social Psychology 36 (3), 2000, pp. 257-274.

737 Ibid.

738 David Kelsey; 'Testing for Framing Effects in Taxpayer Compliance Decisions', *Journal of the American Taxation Association,* 1990, pp. 60-77.

739 Ibid.

740 Bernadette Kamleitner et al.; 'Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework', International Journal of Entrepreneurial Behaviour & Research 18 (3), 2012, pp. 330-351. Arguably, it is difficult to accurately refer to a decision frame in this context in relation to employed taxpayers. At best, their interaction with their tax obligations are predominantly neutral and passive.

741 Ibid.

742 Ibid. This argument could perhaps be taken even further, because it may well happen that employed taxpayers – particularly those whose only or main source of income is

contrast, the self-employed are more likely to experience the payment of tax as a loss because of their active involvement in the discharge of tax liabilities.[743]

The conduct of individuals as influenced by framing effects is developed further through the prospect theory, which attempt to explain the complexities of loss, gain and non-gain experiences.[744] The prospect theory assumes that a loss is experienced more intensively than a gain of an identical proportion.[745] In a similar vein, losses are experienced more conspicuously than mere non-gains.[746] The prospect theory further posits that risk-taking behavior is more prominent in connection with the aversion of losses than in the pursuit of gains. To the extent that prospect theory is taken to explain the determinants of individual conduct, the conclusion would emerge that self-employed taxpayers are effectively conditioned in favor of risk-taking behavior, all things being equal.

In the discussion of tax compliance, these findings are rather self-evident when considering that the payment of tax on income sourced from an independent economic activity through self-assessment or self-reporting entails the *ex post* surrender of an existing amount of income, whilst income tax collected through withholding at source entails that a portion of the wealth never concretely reaches the hands of the taxpayer. However, this argument arguably creates a reductionist view, wherein the payment of tax is either a clear non-gain when the taxpayer is (voluntarily) compliant or an avoided loss where the taxpayer engages in non-compliant conduct. Some authors point out that other decision frames may also be considered.[747] For example, voluntary compliance and the payment of tax may

represented by employment remuneration – are ultimately eligible for tax refunds (for example, on the basis of personal allowances).

743 Lorraine Chen Idson et al.; 'Distinguishing Gains from Nonlosses and Losses from Nongains: A Regulatory Focus Perspective on Hedonic Intensity', Journal of Experimental Social Psychology 36 (3), 2000, pp. 257-274.

744 Sanjit Dhami and Ali al-Nowaihi; 'Why do people pay taxes? Prospect theory versus expected utility theory', Journal of Economic Behavior & Organization 64 (1), 2007, pp. 171-192.

745 Lorraine Chen Idson et al.; 'Distinguishing Gains from Nonlosses and Losses from Nongains: A Regulatory Focus Perspective on Hedonic Intensity', Journal of Experimental Social Psychology 36 (3), 2000, pp. 257-274.

746 Ibid.

747 Bernadette Kamleitner et al.; 'Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework', *International Journal of Entrepreneurial Behaviour &*

amount to a loss, but detected non-compliance may determine a comparatively larger loss (i.e., the payment of the outstanding tax together with interest or penalties).[748] Alternatively, voluntary compliance may be experienced by the taxpayer as a 'reduced gain' (net income following the payment of tax) as opposed to a larger gain (i.e., non-compliance and the taxpayer retaining their gross income, assuming non-compliance is not detected and enforced).[749]

Regardless of whether the taxpayer perceives non-compliance as the aversion of a loss or as the maximization of a gain (and notwithstanding the fact detected and enforced non-compliance may determine an exacerbated loss), this theoretical framework ultimately suggests that decision frames are liable to determine behavior. In the case of self-employed taxpayers, these decision frames are enabled by the particularities of self-reporting and self-assessment compliance frameworks. The very fact that self-reporting and self-assessment frameworks rely on taxpayer inputs entails that decision frames will arise. Consequently, this creates the opportunity for taxpayers to consider non-compliance as an alternative to voluntary compliance.

ii. High tax visibility and the potential induction of decision frames where income tax is perceived as an intrusive legal obligation

Additionally, there is some room to argue that the decision frames of self-employed persons in connection with income tax compliance may be influenced by the perception of taxation as an intrusive legal obligation. As part of this brief argumentation, I refer to the idea that taxation may be experienced as an intrusive obligation by using the term 'tax visibility'.[750] Tax visibility refers to the extent to which taxpayers are actively cognizant of the existence and the extent of the economic impact of taxation on consumption power.

Research 18 (3), 2012, pp. 330-351.

748 Ibid.

749 Ibid.

750 John Cullis et al.; 'Tax Compliance: Social Norms, Culture and Endogeneity', International Studies Program Working Paper No 07-22, 2010.

The concept of tax visibility is referenced in other scholarship as tax awareness.[751] Tax awareness carries the same valences as the term tax visibility, namely the degree of taxpayers' cognizance of the economic impact of taxation.[752]Existing literature applies the concept of tax awareness as a conduit for examining and emphasizing taxpayers' misconceptions or biases as related to their actual tax burden. In this respect, tax awareness is sometimes discussed by reference to the dichotomy between two forms of false awareness:[753] optimistic awareness, on the one hand, and pessimistic awareness, on the other hand.[754] Optimistic awareness is the idea that (some) taxpayers underestimate the economic impact of their tax burden,[755] whilst pessimistic awareness is the incorrect overestimation of the true economic burden of taxation.[756]

Previous literature establishes the finding that levels of tax awareness differ considerably between employed and self-employed taxpayers. Existing empirical

751 See, for example: Laszlo Csontos et al.; 'Tax awareness and reform of the welfare state: Hungarian survey results', Economics of Transition 6 (2), 1998, pp. 287-312.

752 Ken Messere et al.; *Tax Policy: Theory and Practice in OECD Countries*, Oxford University Press, 2003, page 231. As will be briefly touched upon immediately below, the concept of tax awareness is also sometimes used as a measuring stick for the assessment of the extent to which these taxpayers understand the distinction and the respective impacts of the different amounts withheld from their employment remuneration (for example, wage taxes contrasted to mandatory employee social security contributions). A related term, albeit arguably biased in favor of the notion that some taxpayers are generally only partly aware of the breadth of the impact of taxation is the concept of *tax illusions*, which similarly alludes to taxpayers' tendency to take a distorted, perception of the absolute economic extent of their tax burden.

753 Laszlo Csontos et al.; 'Tax awareness and reform of the welfare state: Hungarian survey results', Economics of Transition 6 (2), 1998, pp. 287-312.

754 Ibid.

755 Ibid.

756 Tax visibility can be approached and discussed in relation to virtually any form of taxation, direct or indirect. In the context of indirect taxation, perhaps the most self-evident example is represented by value added taxes, notoriously acclaimed for revenue-raising capacities determined by low visibility. Consumers are of course aware, on a macro-scale, of the existence and the charge of value added tax on virtually all consumer goods and services, but the integration of the tax in the final price of products entails that the impact of the tax will not be an active concern for all customers with every transaction they undertake on which value added tax is due. In the realm of direct taxation, the most appropriate area to discuss tax visibility in light of the objectives of the present contribution is the area of income taxation.

research into the tax awareness of employees has shown that these taxpayers inconsistently over- and underestimate the economic impact of tax on their wage remuneration,[757] and that they typically do not differentiate correctly between amounts withheld as wage tax and mandatory (requited) contributions.[758] These findings vary by reference specific demographic factors and individual tax literacy.[759] Existing research concludes that the circumstances of employees (and in particular, the passive nature of their interactions with income tax rules) determine low tax awareness for these taxpayers. By contrast, self-employed taxpayers interact with income tax rules in a more direct fashion. The visibility of tax is inherently higher for these taxpayers, simply because the nature of self-assessment and self-reporting entails that taxpayers are actively engaged in every level of the compliance process.

In this respect, the tax consequences of income-generating activities undertaken independently are comparatively more prominent. The high visibility of tax is underlined by two key issues. Firstly, for self-employed taxpayers, the payment of tax is temporally and functionally disconnected from the actual generation of income.[760] This raises considerations that largely mirror the remarks raised immediately above in relation to the framing of taxation as a loss rather than a mere non-gain. For self-employed taxpayers, the payment of income tax involves an active transfer of cash and therefore the surrender or liquidity that was previously in the taxpayer's hands. In this respect, the payment of tax is an active experience for self-employed taxpayers.

Secondly, self-employed taxpayers experience more extensive and complex tax compliance costs compared to their employed counterparts. Depending on their nature, compliance costs may exacerbate tax burden visibility differently. Notably, the distinction should be noted between monetary and non-monetary compliance costs and the influence of these. Monetary compliance costs create a cashflow burden above and beyond the actual tax liability of the taxpayer. They amount to an additional economic reduction in gross consumption power induced as an

757 Amrizah Kamaluddin and Nero Madi; 'Tax Literacy And Tax Awareness of Salaried Individuals in Sabah and Sarawak', National Accounting and Research Journal 3 (1), 2005, pp. 71-89.

758 Ibid.

759 Ibid.

760 John Cullis et al.; 'Tax Compliance: Social Norms, Culture and Endogeneity', International Studies Program Working Paper No 07-22, 2010.

adjacent effect of taxation. Monetary tax compliance costs increase the visibility of tax in particular by augmenting its actual economic impact.[761] Non-monetary tax compliance costs raise slightly different considerations. Non-monetary compliance costs do not have a direct cash value.[762] Instead, they relate refer to the time and strain invested interacting with the tax system.[763] Non-monetary compliance costs compound the visibility of income tax by emphasizing the immaterial burden associated with the fulfilment of tax obligations.

The higher visibility of tax that generally pertains to self-employed taxpayers as a result of the particularities of the self-assessment and self-reporting systems may harbor a bias in favor of non-compliance as an alternative to (voluntary) compliance. In particular, the fact that self-assessment and self-reporting mechanisms require the taxpayers' involvement at every substantive and procedural stage of the process of ascertaining and discharging a tax liability entails that all the possibilities to manipulate positive results downwards or deductible expenses upwards are highlighted to the taxpayer, therefore creating 'compliance choices' and decision frames.

iii. Loss framing and tax visibility and their incidence for collaborative economy platform workers

Similarly to all self-employed taxpayers, collaborative economy platform workers receive gross receipts from which income tax is paid through active remittance by the worker, rather than through withholding at source. In this respect, collaborative economy platform workers are liable to experience the decision frames described above in these paragraphs and the biases in favor of non-compliance enabled by these decision frames.

The incidence and influence of these decision frames is likely to be exacerbated in respect of hard to tax groups, because the circumstances of these taxpayers may act to strengthen biases for non-compliance. For example, in cases where the taxpayer

761 Ibid.

762 Ibid.

763 As discussed in Part I to the present contribution, there also exist additional nomenclatures of tax compliance costs in addition to the taxonomy of pecuniary and non-pecuniary costs, such as mandatory/voluntary compliance costs.

approaches income tax compliance through the loss/non-gain dichotomy, the visibility deficit and information asymmetries in relation with tax administrations may strengthen the incentive for non-compliance under the predicate of averting an economic loss which would flow from the payment of tax. In a similar vein, where the decision frame of the taxpayer is posed by reference to the contrast between a gain understood as the enjoyment of net income (after the payment of tax), contrasted to a higher gain (i.e., the enjoyment of gross income if tax is not paid), the low probability that non-compliance would be detected may favor the riskier pursuit of the higher gain. Likewise, where the payment of tax is *prima facie* perceived as a loss, whereas non-compliance is seen as a potentially higher loss (i.e., the payment of tax plus penalties), the visibility deficit and informational advantage of the taxpayer may mitigate the perception of pursuing the higher loss as a considerable risk. In a similar vein, high compliance costs may exacerbate the burden of tax and therefore emphasize a preference for non-compliance.

PART II.III. SYNTHESIS AND CLOSING REMARKS

The main research aims of Part II of this thesis were to identify and discuss possible practical determinants of the under-taxation of income derived by collaborative economy platform workers from their activities. Against this backdrop, Part II of this contribution identified the characteristics of platform workers' activities and environment and the manner in which these may create opportunities for non-compliance and analyzed selected compliance-related behaviors that platform workers may experience and which may underline under-taxation.

This research attempted to describe collaborative economy platform workers as an emerging *hard to tax group*.[764] The concept of hard to tax groups was originally coined and developed in literature during the second half of the 20th century[765]as part of a branch of scholarship focused on the study of the tax compliance and enforcement challenges pertaining to small- and micro-scale sized taxpayers that undertake independent and decentralized income-generating activities. Existing literature on hard to tax groups is oftentimes focused on the particularities of developing countries, however the administrative challenges posed by these taxpayers are not necessarily exclusive to developing countries.[766] Hard to tax groups display a number of characteristics linked with the manner in which their activities are organized which may amount to compliance risk factors. In the contents of the present research the structural characteristics translated into potential risk factors discussed were the *visibility deficit* of these taxpayers, the *information asymmetry* that typically characterizes their relation with tax administrations, the limited *bookkeeping infrastructure* of these taxpayers, the constrained *incentive to keep records of accounts of economic* of these taxpayers, the *large volume of unrelated transactions* of these taxpayers and finally, the deficiencies in *tax literacy* oftentimes displayed by these taxpayers.

764 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004, pp. 11-75.

765 Richard Musgrave and Malcolm Gillis; 'Fiscal Reform for Colombia, final report and staff papers on the Colombian commission on tax reform', *Journal of Public Economics 2 (3),* 1973, pp. 284-287.

766 Richard Musgrave; 'Reaching the Hard to Tax', in: Richard M. Bird and Oliver Oldman; *Taxation in Developing Countries,* 4th Edition, The Johns Hopkins University Press, 1990.

The visibility deficit of hard to tax groups, the information asymmetries in their relation with tax administrations and their large volume of unrelated transactions may create enforcement challenges for tax administrations. The constrained tax literacy of hard to tax groups and their limited bookkeeping infrastructure and incentive concern the disproportionality between the compliance costs and burdens of these taxpayers and the scale of their income-generating activities. Consequently, these considerations may disincentivize voluntary compliance.

Hard to tax groups are ultimately taxpayers whose substantive tax obligations are in principle straightforward under applicable tax rules, but in relation to whom effective taxation is hampered by practical considerations. As such, hard to tax scholarship is focused on the practical dimension of tax compliance and administration and the challenges ensuing therein. In the contents of Part II.I to the present research, the argument was progressively developed that collaborative economy platform workers display the structural taxpayer- and activity-specific characteristics ordinarily associated with the hard to tax sector. As such, the taxation of platform workers raises familiar considerations and administrative challenges. Nevertheless, platform workers' activities are undertaken through (quasi-centralized) intermediaries and inherently carry a digital footprint. As such, the characteristics of the collaborative economy environment may provide opportunities to mitigate or overcome some of the identified barriers to effective taxation at play.

Part II.II of this research discussed a number of compliance-related behaviors that may impair effective taxation. The discussion of taxpayer behavior is a necessary complement to the analysis developed in Part II.I regarding the hallmarks of hard to tax groups. As emphasized previously in the contents of the present research, the mere fact that a taxpayer displays those characteristics that normally pertain to tax hard to tax groups does not mean that such taxpayer will necessarily be non-compliant. Regardless of the existence of objective risk factors, non-compliance is the product of taxpayer behavior, not characteristics. The emphasis that self-reporting and self-assessment systems place on voluntary compliance invariably entails that the actual behavior of taxpayers impacts income taxation in practice. In this respect, Part II.II of this research focused on three forms of behavior as relevant

to the circumstances of hard to tax groups: *negligence*,[767] *risk-taking behavior*[768] and *non-compliant behavior determined by decision frames*,[769] as underlined by the *framing effects afferent to income taxation* and the *heightened visibility of the economic impact and cost of income taxation*. Negligent compliance-related behavior determines inadvertent non-compliance. Conversely, risk-taking behavior and decision frames may underlie intentional non-compliance.

There are two main factors that underpin the importance of an accurate understanding of the objective and subjective factors that may impair the effective taxation of platform workers in respect of income derived from their activities. Firstly, an understanding of the characteristics and environment of these taxpayers is the most appropriate foundation for the design of measures aimed at improving tax compliance and collection among collaborative economy worker participants. By understanding those factors that create opportunities for non-compliance, obfuscate voluntary compliance or motivate non-compliance, policymakers are equipped to target the these factors directly. A comprehensive understanding the environment of collaborative economy platform workers – particularly the broad similarities and nuanced differences between platform workers and ordinary hard to tax groups – allows policymakers to ponder approaches through which instruments aimed at supporting effective taxation may be embedded directly within these taxpayers' environment. Secondly, these considerations are likewise relevant as regards the administrative dimension of taxation. To an increasingly more prominent extent, tax administrations across the board adapt enforcement and taxpayer support strategies to the particularities and risk factors displayed by various types of taxpayers. The understanding of the environment and characteristics of collaborative economy platform workers is therefore a requisite precursor to tax administration-driven measures for safeguarding the effective taxation of collaborative economy platform workers.

767 Thomas Schultz and Kevin Wright; 'Concepts of negligence and intention in the assignment of moral responsibility', Canadian Journal of Behavioural Science 17 (2), 1985, pp. 97-108.

768 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis', Journal of Public Economics 1, 1972, pp. 323-338.

769 OECD; 'Tax Morale – What Drives People and Businesses to Pay Tax?', OECD Publishing 2019.

Part III

Measures for addressing the taxation of income derived by workers from collaborative economy platform activities

I. FOREWORD

Collaborative economy workers are generally treated as ordinary independent contractors in respect of their income-generating activities.[770] In Part I to this thesis, I discuss the tax consequences flowing as a matter of broad generality from workers' activities. The argument emerged that these tax consequences may be disproportionately complex in relation to the manner in which workers typically perform their activities. Subsequently, Part II identified and discussed a number of obstacles to safeguarding the effective taxation of platform workers, as related to the characteristics of workers' activities and their compliance-related behavior.[771] This combination of factors underscores an environment of sub-optimal tax compliance and ineffective enforcement.[772]

Arguably, existing income tax rules are failing to secure the effective taxation of income derived by workers from platform activities because these rules do not readily reconcile the environment of the collaborative economy. As Part II to the present contribution has strived to convey, self-assessment and self-reporting frameworks are honor systems. They presuppose candidness and no intention to misrepresent income and other information on taxpayers' part. Conversely, platform workers are prone to make erroneous representations regarding income, expenses and other relevant circumstances, either deliberately or inadvertently.

The view that targeted measures for addressing the income taxation of platform workers are necessary and desirable is gaining ground amongst policymakers

770 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

771 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268,* 2004, pp. 101-120. See also: Daisy Ogembo; 'Are Presumptive Taxes a Good Option for Taxing Self-Employed Professionals in Developing Countries?', Oxford University Centre for Business Taxation Working Paper No 14, 2018. Marina Bornman and Jurie Wessels; 'The tax compliance decision of the individual in business in the sharing economy', *eJournal of Tax Research 16 (3),* 2019, pp. 425-439.

772 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', Georgia State University Law Review 34 (2), 2018, pp. 283-333. Sounman Hong and Sanghyun Lee; 'Adaptive governance and decentralization: Evidence from regulation of the sharing economy in multi-level governance', Government Information Quarterly 35 (2), 2018, pp. 299-305.

across the board. Reactionary measures aimed at safeguarding the taxation of income derived by platform workers have come to take shape in a number of states and jurisdictions.[773] For their part, some international governmental organizations – most notably the OECD and EU – are increasingly engaged in developing frameworks for enhancing tax compliance in the collaborative economy.

The overarching purpose of Part III of this thesis is to present and reflect upon various existing, proposed and potential approaches for safeguarding tax compliance in respect of collaborative economy platform workers. The paragraphs immediately below will explain the concept of 'measures' for supporting the income taxation of collaborative economy platform workers, in an effort to define the manner in which this notion will be used recurrently in this research. Subsequently, this research will establish a categorization of different existing, proposed or potential approaches as relevant to the income taxation of collaborative economy platform workers.[774] Next, this research will set out a normative framework of standards for the discussion of existing, proposed or potential measures to addressing the income taxation of collaborative economy platform workers. Additionally, this research will broadly address general considerations that may determine the preference of states for a certain approach over other options for securing the income taxation of platform workers. Finally, this research will detail on the particularities of the types of measures identified and selected for further discussion.

1. 'Measures' for addressing the income taxation of platform workers

There exist a number of possible approaches for addressing the income taxation of collaborative economy platform workers. On the one hand, policymakers may introduce black-letter laws that prescribe the tax treatment of income derived by

773 See, for example, Alain Huyghe and Annick Van Hoorebeke; 'Belgian special regime covering the sharing economy'; Baker & McKenzie Alert, available via: https://bakerxchange.com/cv/1a8d2bca47c62224498c939d613da8f14afac2a5 last accessed 2 November 2020.

774 As this wider contribution has strived to convey, the asserted *status quo* of under-taxation of collaborative economy platform workers is a multifaceted issue determined by a variety of considerations. For this reason, it is possible to ponder measures suited to address different underlying determinants of non-compliance or sub-optimal compliance.

workers from platform activities or that mandate specific conduct. On the other hand, soft law measures may be introduced with a view to supporting voluntary compliance.

The notion of black-letter law is hardly elusive. These are positive, binding instruments introduced with a view to regulating the behavior of legal subjects or prescribing legal consequences.[775] Black-letter laws have a number of characteristics. Firstly, the source of law is formal legislative action. Secondly, they are subservient to an asserted public interest.[776] Thirdly, they are usually reactionary in nature. Fourthly, they are binding and enforceable. However, policymakers may attempt to achieve similar outcomes through soft law measures. Unlike black-letter laws, soft measures are unenforceable and therefore do not create legal consequences. Although unenforceable, soft laws are also reactionary tools aimed at steering behavior.

The term 'measures' as used in the present analysis refers to *any steps deployed policymakers, government bodies or international governmental organizations with a view to addressing the income taxation of collaborative economy platform workers.* This includes black-letter measures that prescribe the tax treatment of income derived by workers from platform activities, measures that assign duties on third parties in respect of income derived by workers and soft law measures introduced to facilitate voluntary compliance.

775 Sam Peltzman; 'Current Developments in the Economics of Regulation', in: Gary Fromm [Ed.]; Studies in Public Regulation, MIT Press, 1981. Richard F. O'Donnell and Nancy M. Lemein; 'Reactionary Regulation', Regulation 27 (14), 2004-2005. Economic sciences, define black-letter laws as a governmental response to market failures or irregularities. The economics-based understanding of black-letter laws emphasizes their reactionary and regulatory character.

776 Bettina Lange; 'The Emotional Dimension of Legal Regulation', *Journal of Law and Society 29 (1),* 2002, pp. 197-225. Philip Selznick; 'Focusing Organisational Research on Regulation', in Richard Noll [Ed.]; *Regulatory Policy and the Social Sciences*, Berkeley University of California Press, 1985.

2. A taxonomy of measures for addressing the income taxation of platform workers

Any attempt at comprehensively surveying all existing or potential measures for addressing the income taxation of platform workers would be at best unfruitful and at worst unfeasible. Policymakers may take differing views towards the core determinants of platform workers' under-taxation and prioritize different policy agendas. In spite of these permutations, most measures for addressing the income taxation of platform workers arguably fall under a number of broad, general headings. For the purposes of preventing disruptive limitations to the scope of analysis whilst concurrently pre-empting overlapping references to materially similar measures, the present research is premised on the notion that the measures for addressing the income taxation of platform workers fall under a number of limited categories:

- **Measures for simplifying income tax assessment requirements.** These usually include measures whose personal scope extends to broader categories of taxpayers earning income from small-scale independent activities, including collaborative economy platform workers. Income-generating peer-to-peer activities can take various forms and be undertaken both within and outside the realm of the collaborative economy. The tax challenges posed by platform workers are largely reminiscent of those pertaining to ordinary hard to tax groups. Measures for the simplification of income tax assessment requirements may be broken down into at least two major sub-categories. Firstly, some such measures may entail exemptions in respect of the income derived by taxpayers in respect of certain activities.[777] Secondly, there are measures aimed at simplifying the substantive and compliance consequences of the activities of taxpayers under

777 An example in this regard are the dual trading and property allowances introduced in the United Kingdom. Under the trading allowance, income up to GBP 1.000 earned from 'casual services' is exempt from tax. The personal scope of this allowance does not explicitly reference collaborative economy platform workers, however platform workers that derive income from labor-intensive platform activities (e.g., ridesharing and all-purpose freelancing) are eligible for the allowance. In a similar vein, the property allowance is an exemption for the first GBP 1.000 earned by individuals from the short-term letting of private real estate. Whereas the property allowance is available to any individual taxpayer earning rental income, it may also be claimed by platform workers performing homesharing activities. These will be discussed in more detail subsequently in the contents of this Part.

the scope of the rules. This usually involves the implementation of presumptive taxation methods i.e., indirect means for the assessment of income tax or the inference of the tax base;[778]

- **Measures to clarify the application the existing income tax rules as relevant to the tax consequences of platform workers' income-generating activities – taxpayer engagement and education initiatives.** Such measures by their nature have no direct impact on platform workers' tax compliance or the collection of tax in respect of income derived by platform workers from their income-generating activities. Instead, these measures attempt to indirectly influence the compliance-related behavior of collaborative economy platform workers with a view to stimulating voluntary compliance. In recent years, tax administrations in many states have progressively come to revise approaches to their relations with taxpayers, by seeking to maximize taxpayer voluntary compliance over coerced and enforced compliance.[779] One approach for incentivizing voluntary compliance is through the clarification of existing tax laws. Modern tax compliance theory suggests that the provision of support to taxpayers may harbor two positive externalities. On the one hand, it may increase tax morale and other intrinsic subjective motivators for taxpayer voluntary

778 Valeria Bucci; 'Presumptive Taxation Methods: A Review of the Empirical Literature', Journal of Economic Surveys, 34 (2), 2019, pp. 372-397. These include, for example, standard deductions (wherein the deduction of expenses actually incurred from gross income is replaced by a flat or percentage amount to arrive at the basis for assessment), the application of low and flat percentage turnover taxes (wherein the taxation of net income is replaced wholly by the application of a tax on the turnover or the gross receipts achieved by the taxpayer within a given taxable period), indirect income assessment or approximation methods. Presumptive taxation may take a myriad of forms, however one common denominator lies in that these methods aim to mitigate aspects that pose particular compliance and enforcement challenges. For example, the standard deduction attempts to replace the efforts associated with the claiming of deductions on the basis of expenses actually incurred (with the associated tracking and documentation compliance burdens) by a formulistic approach, wherein net (taxable) income is simply the difference between gross receipts less a fixed monetary or percentage amount. Presumptive taxation methods for addressing the income taxation of collaborative economy platform workers will be discussed in detail subsequently in this Part.

779 Justina A.V. Fischer and Friedrich Schneider; 'The puzzle of tax compliance revisited: testing the 'slippery slope' hypothesis for trust and power against field data', *Swiss Society for Statistics and Economics*, 2009.

compliance.[780] On the other hand, the provision of support and clarification as to the application of the rules could lead to fewer errors by taxpayers in self-assessment and self-reporting processes, therefore mitigating the incidence of taxpayer negligence;[781]

- **Measures for enhancing the supervisory capabilities of tax administrations.** In particular, these include third party information reporting frameworks pursuant to which intermediaries are required to collect and report information to tax administrations related to the identities and income of taxpayers.[782] The role of such measures is to enable tax administrations to gain information about the identities of workers engaged in income-generating platform activities and income derived from such activities. As emphasized in Part II.I to this wider contribution, one of the root causes underlying the sub-optimal tax compliance of platform workers relates to the limitations in the supervisory capabilities of tax administrations. The visibility deficit of ordinary hard to tax groups and the informational asymmetry in the relation between these taxpayers and tax administrations is difficult to remedy because of the decentralized character of taxpayers' income-generating activities. However, platform workers' activities are normally recorded digitally. Therefore, may policymakers leverage the coordinating capacities of platform operators though the introduction third party information reporting frameworks with a view to achieving a better supervision of the income-generating activities of platform workers;[783]

780 OECD; 'Tax Morale – What Drives People and Businesses to Pay Tax?', OECD Publishing 2019.

781 The increased availability of information and communications technologies supports the simplification of compliance processes and enables the service-oriented approach adopted by a growing number of tax administrations. Many tax administrations have developed interactive tools for the provision of real-time support to taxpayers.

782 Whilst individual states have paved the way for the enhancement of administrative supervisory capacities through the institution of information reporting protocols, the OECD has recently taken the lead on coordinating the institution of such measures at international level. In July of 2020, following a hasty round of public consultations, the OECD published a proposal for multilateral third party information reporting in respect of workers performing certain activities through platforms. The EU Commission adopted a similarly broad-based regime for third party information reporting through an update to the Directive on Administrative Cooperation.

783 Similarly to the initiatives for collecting income tax from platform workers through withholding by platform operators, third party information reporting by platform operators is an example of governments exploiting the characteristics of the business model of the

- **Non-employee withholding arrangements for the collection of tax in respect of income derived by collaborative economy platform workers.** Such measures are devised by reference to the digital footprint of collaborative economy transactions and the integrated environment of the collaborative economy, whereby the income-generating transactions of workers are mediated by platform operators and other payment intermediaries.[784] These measures entail that an intermediary withholds and remits tax in respect of income derived by collaborative economy platform workers on behalf of these taxpayers.

3. Prefatory comments on the measures for addressing the income taxation of platform workers

A. Different measures are congruous and may be introduced and applied contemporaneously

Different measures for addressing the income taxation of collaborative economy platform workers are not mutually exclusive. For example, whilst Australia pioneered the trend of taxpayer engagement and education initiatives geared towards platform workers,[785] it is likewise one of the jurisdictions that forged the path for enhanced supervisory and enforcement capabilities through the institution of third party information requirements in respect of platforms operators. Likewise, in Denmark, workers that undertake income-generating activities through a platform that engages in information exchanges with the domestic tax administrations are eligible for an exemption in respect of part of the income derived from such activities.[786] Different measures target distinct determinants of non-compliance and take different approaches to safeguarding compliance. For this reason, separate measures may complement each other and may be introduced contemporaneously.

collaborative economy with a view to improving tax compliance.

784 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2)*, 2018, pp. 283-333.

785 Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.

786 Peter Hill Hansen and Malte Thomsen; 'Growth through Sharing Economy while Auditing according to Current Legislation', IOTA Papers – Danish Tax Administration, 2017.

B. Political viewpoints and biases towards the collaborative economy may determine policymakers' preference for certain measures or combinations of measures over others

Depending on their nature, innovative business models respond differently to regulated and unregulated markets.[787] At its core, the disruptive character of the collaborative economy lies in that its different models emulate established industries (e.g., private transportation and accommodation), whilst operating primarily outside the regulatory frameworks applicable to these. As such, regulatory intervention is typically detrimental to the business model of the collaborative economy.

The attitudes of policymakers towards the collaborative economy may influence the form, extent, and the nature of measures introduced to address the income taxation of platform workers.[788] Because the collaborative economy as a whole is sensitive to regulation, the nature and extent to which policymakers implement measures in this field will inevitably act to either encourage or dissuade collaborative consumption.[789] This aspect is especially important in light of the tripartite structure of collaborative economy transactions, wherein the platform acts as an intermediary. The extent to which a measure aimed at enhancing tax compliance over the income earned by platform workers entails the involvement of the platform operator will influence the costs and burdens of the platform operator. For example, lax measures such as taxpayer engagement and education initiatives entail no or minimal costs and burdens for platform operators. By contrast, the application of withholding taxes over the receipts earned by platform workers wherein the platform operator may be required to act as withholding agent would entail significantly more compliance costs and burdens for platform operators.

787 A self-evident example in this respect refers to renewable energy industries. Such business models thrive in highly regulated markets. The more taxes and duties are levied on fossil fuel industries, the more pervasively is a shift towards renewable energy incentivized. By extension, renewable energy providers are only truly disruptive to existing industries to the extent that the latter are highly regulated. By contrast, the collaborative economy has a different relationship and response to regulatory action.

788 Ina Kerschner and Martyre Somare; Taxation in a Global Digital Economy, Linde, 2017.

789 Ibid.

It should likewise be noted that the nature, form and extent of measures introduced will inevitably be underpinned by adjacent policy considerations and viewpoints. For example, in the United States[790] and Australia[791] tax administrations have developed information portals and resources for platform workers to facilitate taxpayers' compliance with pre-existing tax rules. Conversely, the United States and Australia have not introduced black-letter measures or instruments to simplify workers' compliance obligations, because these states are partial to the view that pre-existing tax rules are appropriate to accommodate the consequences of income-generating platform activities.[792]

C. Non-fiscal considerations pertaining to the social, economic and political environment of a state may determine a preference for certain measures or combinations of measures over others

Another aspect that may influence the preference for a given approach to addressing the income taxation of platform workers relates to the social, political and economic environment of a given state. For example, presumptive taxation mechanisms aimed at broader hard to tax groups may be favored in states with comparatively weaker tax administrations and wider sectors of informal or grey economic activity.[793] In countries operating against this socio-economic background, a wider culture of low voluntary compliance justifies the adoption of simplified income tax assessment rules for hard to tax groups, whereas the emergence of collaborative economy platform work could be a merely compounding concern. Conversely, measures driven by tax administrations to clarify applicable tax rules and the income tax consequences of platform workers' activities are more likely to be favored in countries with an established culture of voluntary compliance.[794]

790 Internal Revenue Service; 'Gig Economy Tax Center', available via: https://www.irs.gov/businesses/gig-economy-tax-center last accessed 14 November 2022.

791 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

792 Ina Kerschner and Martyre Somare; Taxation in a Global Digital Economy, Linde, 2017.

793 Richard Musgrave; 'Reaching the Hard to Tax', in: Richard M. Bird and Oliver Oldman; *Taxation in Developing Countries,* 4th Edition, The Johns Hopkins University Press, 1990.

794 OECD; 'Current tax administration approaches and limitations', in: OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019. This holds particularly true in developed countries that attribute the asserted low compliance levels to platform workers' unawareness and limited understanding of the fiscal implications of

D. No approach is a one-size-fits all solution for safeguarding the effective taxation of workers

A key characteristic of the collaborative economy relates to the flexibility it affords to workers. Some workers may perform platform work on a full-time basis, wherein receipts from platform activities are their primary source of income. The frequency and scale of workers' activities is a matter of personal choice. This results in an environment where a large number of taxpayers undertake similar income-generating activities under different circumstances. In turn, this introduces considerations that policymakers must necessarily account for when devising measures to address the income taxation of workers. The suitability of different measures depends on the manner in which a worker undertakes activities.[795] In the abstract, this issue could be addressed through the design of differentiated measures whose scope is devised by reference to the particularities of workers' activities. However, differentiated measures produce an intricate legal net that may be conducive to uncertainty and arbitrage.[796] Workers would likely either find themselves unaware of the rules that apply to their situation or attempting to organize their activities in a manner that allows them to fall within the scope of the rules yielding a more beneficial outcome.

4. Framework for the discussion of measures addressing the income taxation of collaborative economy platform workers

Each type of measure for addressing the income taxation of platform workers embodies a different approach to tax compliance and emphasizes more or less incidentally a particular determinant of non-compliance. The diversity of possible approaches for addressing the income taxation of collaborative economy platform

platform activities, rather than assuming these taxpayers willfully act as persistent non-compliers.

795 For example, presumptive taxation methods may be better suited in respect of part-time workers. For such workers, the disincentive for voluntary compliance is arguably compounded by the disproportionality between the extent and the results of their income-activities and the compliance obligations under existing income tax rules.

796 Wojciech Kopczuk; 'Tax simplification and tax compliance: An economic perspective', available via: http://www.columbia.edu/~wk2110/bin/epi.pdf last accessed 13 November 2022.

workers may raise theoretical complexities in determining a common benchmark against which different measures may be discussed. In my view, one way to do away with such complexities is to recall the shared foundations of all modern tax measures.

In essence, all tax measures embody a twofold role: an instrumentalist component, on the one hand, and a value-oriented component, on the other hand.[797] Tax measure are ultimately instruments used by policymakers to achieve specific objectives.[798] The instrumentalist view provides a pragmatic approach to the understanding of tax measures. It allows these to be viewed and evaluated by reference to their purported objectives, their role in the broader tax mix and the underlying intentions of policymakers. However, tax measures inevitably also encompass a value-oriented conception of the law. The values underlining tax measures are entrenched in the 'general principles' of (tax) law. General principles safeguard the quality of laws and policies. They reflect the broad societal predicates of policymaking. Additionally, general principles create a dogmatic frame of reference through which laws and policies are viewed. Through this, general principles (and more broadly, the value-oriented conception of the law) substantiate the instrumentalist dimension of tax measures. Tax policy should be purpose-driven, rather than grounded on institutional biases. For this reason, a value-oriented approach to discussing tax measures is an indispensable complement to the instrumentalist view towards such measures.

The instrumentalist role of the different approaches to addressing the income taxation of collaborative economy platform workers concerns the theoretical and practical capability of measures to overcome the barriers to tax compliance that underline the *status quo*. There are two key issues impairing the effective taxation of platform workers. The first of these relates to the characteristics of workers. The

797 Hans Gribnau; 'Legislative instrumentalism vs. legal principles in tax law', *Sapienza Università Editrice 3*, 2012, pp. 9-42.

798 Ibid. From an instrumental perspective, the objectives of tax measures may be strictly fiscal (i.e., raising revenues to finance public expenditure), subservient to fiscal objectives (e.g., steering taxpayer behavior and conduct with a view to preventing non-compliance and by extension losses of tax revenues) or non-fiscal (e.g., steering taxpayer behavior with a view to encouraging non-tax societal norms, redistributing wealth within society to mitigate inequality, etc.).

small and quasi-centralized scale at which platform workers undertake their income-generating activities weakens possibilities for effective administrative oversight and enforcement and creates opportunities for undetectable non-compliance.[799] The second concerns workers' compliance-related behavior and their (purported) disinterest in the tax consequences of their activities,[800] their perception of the low probability that non-compliance is detectible and enforceable[801] and their propensity to experience the payment of tax as a loss.[802]

With respect to the principled considerations revolving around the measures for addressing the income taxation of platform workers, I emphasize the principles of fiscal effectiveness, efficiency, legal certainty and simplicity, neutrality, flexibility and ability to pay. In concert, these principles entail that tax measures should secure revenue collection with minimal distortions for legal subjects, safeguard certainty and predictability, be equitable, adaptable to ensuing developments and remain effectively enforceable.

This theoretical framework is underlined by the viewpoint that a benchmark which accounts for the shortcomings in the application of the existing tax rules whilst concurrently maintaining a prescriptive approach towards the standards that new measures should uphold is the most holistic and appropriate manner of substantively discussing these measures. These considerations notwithstanding, it does remain important to note that a diversified normative framework, referencing a multitude of distinct policy principles and objectives almost innately entails a series of complications. Different standards of good policymaking embody

799 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268*, 2004, pp. 101-120. Najeeb Memon; 'How to Tax Small Businesses in the Informal Economy: A Comparative Analysis of Presumptive Income Tax Designs', *Bulletin for International Taxation 64 (5)*, 2010, pp. 290-303. Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268*, 2004, pp. 337-354.

800 OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing 2019. OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2019.

801 Gregory Carnes and Ted Englebrecht; 'An investigation of the effect of detection risk perceptions, penalty sanctions, and income visibility on tax compliance', The Journal of the American Taxation Association 17 (1), 1995, p. 26.

802 Salim Nuhu Ahmed and John M. Musah; 'On asymmetric information and tax morale in developing countries', World Institute for Development Economics Research Working Paper No 12, 2018.

inherent trade-offs, thereby precluding the possibility that a given measures be fully consistent with an abstract 'gold standard'. This demands flexibility in the interpretation of the theoretical framework here relied on.

A. The small and 'decentralized' manner in which workers perform their activities as a barrier to compliance

In Part II.I of this thesis, collaborative economy platform workers were described as an emerging hard to tax group. In literary lexicon, 'hard to tax' is a blanket expression for taxpayers that pose tax compliance and enforcement hurdles.[803] Collaborative economy platform workers display many of the hallmarks associated with ordinary hard to tax groups. Whilst platform operators centralize workers' activities and record a digital footprint for these, the role of platforms as agents to facilitate workers' compliance needs to be ascertained under special rules. Measures introduced for enhancing the income taxation of collaborative economy platform workers should necessarily account for the particularities of these taxpayers' activities and circumstances.

B. Platform workers' compliance-related behaviors and their impact on tax compliance

Collaborative economy platform workers may display compliance-related behaviors that impair effective taxation. Negative behavioral responses to income tax obligations are rooted in the small and formally decentralized character of workers' platform activities, wherein tax enforcement is structurally weak and the incentive for voluntary compliance is low. The nature of platform workers' activities, coupled with the reality that self-assessment and self-reporting compliance systems are largely honor mechanisms that rely on taxpayer honesty,[804] entail that tax compliance for collaborative economy platform workers is highly sensitive to the compliance-related behaviors of these taxpayers. For this reason, measures aimed at securing the income taxation of platform workers should strive to alleviate the impact of these behavioral patterns on tax compliance outcomes.

803 Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004 pp. 187-213.

804 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.

C. General principles of law

Any tax measure for securing the income taxation of platform workers should likewise abide by the general principles of good tax policymaking. In particular, I submit that the following general principles are notably relevant to the discussion of measures for addressing the income taxation of collaborative economy platform workers: effectiveness, efficiency, certainty and simplicity, fiscal neutrality, flexibility and ability to pay.[805] These principles are invoked as part of the present analysis because they relate closely to and explain the normative nature of personal income tax: a broad-based tax, which captures the consumption power and accounts for the circumstances of individual taxpayers.

1) Fiscal effectiveness

Fiscal effectiveness embodies the precept that 'taxation should produce the right amount of tax at the right time'[806] and minimize opportunities for non-compliance.[807] Fiscal effectiveness is referred to in some literature as the 'minimum tax gap' principle,[808] which entails that at the level of a tax system, non-compliance should be minimized as far as feasibly possible.[809] Fiscal effectiveness is therefore a standard of adequacy that any tax measure should primordially uphold. The nature, design and procedural processes of any measure should be conducive to the foremost objective of taxation: raising public revenues.[810] Whilst literary definitions of this concept reference non-compliance and heavily

805 These principles were notably emphasized by the OECD as part of the Ottawa Taxation Framework Conditions, as part of the early policy discussions about the taxation of electronic commerce activities. Subsequently, the OECD reiterated these principles as normative guidelines as part of BEPS Action 1. As the following paragraphs will strive to convey, the principles of effectiveness, efficiency, legal certainty and simplicity, fiscal neutrality, flexibility and equity (ability to pay) are notably relevant to the circumstances of hard to tax groups in general and collaborative economy platform workers in particular.

806 OECD; 'Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions', OECD Publishing, 2001.

807 Ibid.

808 Association of International Certified Professional Accountants; 'Guiding principles of good tax policy: A framework for evaluating tax proposals', 2017.

809 Ibid.

810 Reuven S. Avi-Yonah; 'The Three Goals of Taxation', *NYU Tax Law Review 60 (1),* 2006-207, pp. 1-28.

imply it cannot be fully prevented or enforced, non-compliance should be exceptional. In other words, fiscal effectiveness does not presuppose complete compliance.

The principle of fiscal effectiveness is relevant in the discussion of measures for securing the income taxation of collaborative economy platform workers because it emphasizes the minimization of non-compliance opportunities. In turn, non-compliance opportunities play out differently in respect of specific (categories of) taxpayers. In approaching the effective taxation of collaborative economy platform workers as a hard to tax group, the principle of fiscal effectiveness demands a focus on the specific obstacles to compliance and non-compliance opportunities pertaining to hard to tax groups. In this respect, fiscal effectiveness is inextricably entwined with the instrumental function and dimension of the pondered measures for securing the income taxation of platform workers.

This precept will hereinto be interpreted to entail that measures for the income taxation of collaborative economy platform workers should strive to *overcome or otherwise minimize the opportunities for non-compliance available to these taxpayers.*

2) Efficiency in compliance and administration

In law and economics,[811] fiscal efficiency entails that resources be utilized in a manner that maximizes welfare.[812] The effects of a given tax measure should be restricted to the achievement of an actual goal of taxation and should not cause additional burdens to taxpayers and government bodies. Taxation is ultimately a transaction between the taxpayer and the state. The transactional nature of taxation underscores its administrative and compliance costs, which are not directly related to the raising of revenues but to the 'management' of the underlying transaction. In spite of the inherently distortionary nature of compliance and administrative costs, the principle of efficiency does not presuppose the elimination of these. Rather, and accepting the notion that some compliance and administrative costs

811 Stephen E. Margolis; 'Two Definitions of Efficiency in Law and Economics', *The Journal of Legal Studies 16(2)*, 1987, pp. 471-482.

812 Ibid.

are an innate part of taxation, the principle of efficiency only embodies the norm that these costs should be minimal. In turn, the minimization of compliance and administrative costs depends on a variety of considerations, ranging from the design of tax laws to the administrative environment within which these laws apply.

Efficiency is a relevant consideration in the evaluation of possible measures for safeguarding the taxation of collaborative economy platform workers. As the foregoing argumentation in this research has strived to convey, the tax compliance costs borne by platform workers are oftentimes disproportionate to the scale of their activities and income. Tax compliance costs are inherently regressive and negatively influence taxpayers' compliance-related behavior, meaning the appeal for efficient tax measures is particularly compelling in relation to hard to tax groups. Closer parity between compliance burdens, on the one hand, and the circumstances and compliance infrastructure of taxpayers, on the other hand, more broadly underscores the equity of tax systems.

The following paragraphs will rely on an interpretation of fiscal efficiency as the notion that the *compliance and administrative costs associated with measures aimed at addressing the income taxation of collaborative economy platform workers should be minimized to the farthest feasible extent.*

3) Legal certainty and simplicity

Tax measures should enable legal subjects to ascertain the consequences of their income-generating activities with ease and predictability.[813] Certainty and simplicity require that (tax) rules should be clear and understandable, allowing taxpayers to accurately anticipate the consequences of their activities.[814] Arguably, certainty and simplicity are two-pronged precepts, embodying a substantive and a procedural dimension. In a substantive sense, tax rules should be clear and predictable in their

813 Association of International Certified Professional Accountants; 'Guiding principles of good tax policy: A framework for evaluating tax proposals', 2017. Rules that safeguard certain and consistent outcomes indirectly result the minimization of compliance costs and foster the incentive for voluntary compliance.

814 OECD; 'Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions', OECD Publishing, 2001.

application. Procedurally, taxpayers should be enabled to know when and how tax is to be accounted.[815]

Measures for securing the income taxation of collaborative economy platform workers should embody the principles of legal certainty and simplicity. As Part II to this research has strived to convey, platform workers are typically inexperienced in navigating the income tax rules relevant to the treatment of entrepreneurs. This is attributable largely to the quasi-formal nature of income-generating arrangements in the collaborative economy and to the emerging transition to (partial) self-employment harbored by the collaborative economy. The circumstances under which platform workers perform their income-generating activities demand tax measures that accommodate these particularities. The certainty and simplicity of tax measures streamlines compliance and mitigates the influence of (low) tax literacy on the effective collection of tax.

In the context of this analysis, legal certainty and simplicity refer to the *accessibility and predictability in the application of measures for addressing the income taxation of platform workers*.

4) Fiscal neutrality

Fiscal neutrality is a multifaceted meta-juridical notion, open to various interpretations. Fiscal neutrality may refer to neutrality *in law*, whereby similarly situated taxpayers should be treated alike as a matter of law. A flip side interpretation of this notion pertains to neutrality *in fact*, whereby the outcomes reached in

815 Ibid. An almost identical definition is provided by the AICPA, where certainty is defined as requiring that the applicable tax rules should be clear as to *when, how,* and *how much* is to be paid in taxes. The AICPA refers to the importance of rules having a straightforward character, 'allowing the taxpayers to comply with them correctly and in a cost-efficient manner'. The AICPA also refers to a third distinct, but related principle of *transparency and visibility*, according to which taxpayers should readily have knowledge of the existence and potential implication of a tax rule on their particular situation. There is a significant overlap between this notion of transparency and visibility and certainty and simplicity – particularly when the latter is interpreted to also encompass the idea that tax rules should be predictable in their application and easily accessible. See also: Clinton Alley and Duncan Bentley; 'A Remodelling of Adam Smith's Tax Design Principles', *Australian Tax Forum 20,* 2005, pp. 579-624.

relation to similarly situated taxpayers should be ultimately and effectively similar. Fiscal neutrality is also commonly interpreted by reference to the notion that taxes should not produce distortions in individual decision-making.[816] This interpretation of the concept of fiscal neutrality is widely regarded as a utopian precept, because taxation will invariably impact behavior at least to some degree. Consequently, this notion is most amendable to a flexible interpretation to entail that the impact of taxation on taxpayers' behavior should be minimized as far as possible.

Services rendered by workers through collaborative economy platforms are oftentimes economically interchangeable with services supplied outside the collaborative economy. As such, the tax treatment and effective tax burden borne by platform workers should be ultimately similar to that pertaining to taxpayers undertaking materially similar activities outside the collaborative economy. Measures aimed at securing the income taxation of collaborative economy platform workers should not distort decision-making frames on whether to undertake an activity within or outside the collaborative economy. Additionally, tax measures should not disrupt the decision to participate and the extent of participation in the collaborative economy by workers. Moreover, to the extent that a given measure entails the involvement of the platform(s) through which the worker operates, the impact on the platform should be minimized as far as feasible.

In the context of the subsequent analysis, fiscal neutrality will therefore be interpreted to entail *that measures for addressing the income taxation of platform workers should be accompanied by minimal distortion.*

5) Flexibility

The rapid pace of the emergence of peer-to-peer work through the collaborative economy is illustrative of the ease with which digitalization may influence the form in which various income-generating activities are undertaken. In turn, this revived proliferation of small-scale peer-to-peer work emphasizes fractures in the ambitions of effectively applying existing income tax rules to platform workers.[817] A salient

816 OECD; 'Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions', OECD Publishing, 2001.

817 Kellen Zale; 'When Everything is Small: The Regulatory Challenge of Scale in the Sharing Economy', *San Diego Law Review 53 (4)*, 2016, pp. 949-1016.

feature of the collaborative economy itself lies in its capacity for diversification. In effect, the business model is readily replicable into any form of activity that operates on the precepts of supply and demand. This entails, in turn, that platform workers performing different types of activities will earn items of income and use assets that are subject to distinct regimes under existing income tax rules.

Flexibility is arguably an important consideration in regards to envisaged measures for securing the income taxation of collaborative economy platform workers. Any measure tailored to the particularities of the compliance posture of collaborative economy platform workers should be designed in a manner that accommodates and balances the major features of platform work, without producing disruptions or permutations amongst distinct forms of activity. Flexibility entails that tax measures should reflect the circumstances of taxpayers, whilst concurrently being amendable to changes in such circumstances. Flexibility is a broader attribute in the quality of income tax systems, and an indispensable consideration in the dynamic environment of changing working conditions harbored by the digitalization of economies.

In this context, flexibility is here understood as the precept that any such measure should *strive to capture the tax consequences pertaining to platform workers across different models without discriminating against or impliedly favoring particular income-generating activities.*

6) Taxation in accordance with workers' ability to pay

The ability to pay principle embodies a maxim of fairness,[818] wherein the tax burden should be proportionate to the circumstances of the taxpayer. In the context of the present analysis, ability to pay is interpreted as an objective measurement of the taxpayer's economic capacities.[819] The objective, economic-driven approach to

818 Murray N. Rothbard [Ed.]; 'Distribution of the Tax Burden: The 'Ability-to-Pay' Principle'; in: *Power and Market: Government and the Economy*, Institute for Human Studies, 1970.

819 Joseph M. Dodge; 'Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles', *Tax Law Review 58 (4)*, 2005, pp. 399-462. This interpretation of the ability to pay doctrine does away with two major dimensions of the conventional debate surrounding the notion, namely the question of whether ability to pay dictates the application of flat or progressive taxation and whether, to what extent and how subjective

viewing the ability to pay principle here supported invites the consideration of this principle primarily as a question in the design of the tax base.

Taxation in accordance with ability to pay is a relevant consideration in regards to the tax measures geared towards collaborative economy platform workers. As any other individual taxpayers, platform workers should be taxed on a basis that reflects the economic reality of their income-generating activities, including the extent and scale of such activities.

Consequently, ability to pay is here interpreted as *the application of tax following the consideration of the (economic) results as well as the burdens borne by the taxpayer with a view to generating income*. Ability to pay taxation by definition entails that taxation should be neither confiscatory nor unjustifiably low,[820] but instead correspond to the earnings of the taxpayer. Since ability to pay is interpreted objectively, 'earnings' here refer to actual economic results. As such, in its ideal form, ability to pay taxation is akin to net taxation,[821] that is the computation of the basis for assessment following the access of relief for expenses directly connected with the generation of income.

considerations pertaining to the situation of the taxpayer (such as the subjective utility of every unit of income earned and any non-alienable endowments of the taxpayer such as human capital) should be treated for tax purposes. The discussion of whether the norms embedded in the ability to pay principle support flat or progressive taxation are neither relevant nor directly related to the precepts entrenched in the core of the principle. Similarly, discussions about the subjective nuances of ability to pay merely act to convolute the interpretation of the principle and work against the goal of conceptualizing ability to pay into a predictable and reliable measuring stick for the determination of the tax burden.

820 Frans Vanistendael; 'Legal Framework for Taxation'; in: Victor Thuronyi [Ed.]; Tax Law Design and Drafting, Volume 1, International Monetary Fund, 1996.

821 J. Clifton Fleming Jr. et al.; 'Fairness in International Taxation: The Ability-to-Pay Case for Taxing Worldwide Income', *Florida Tax Review 5 (4)*, 2001, pp. 299-354.

II. ANALYSIS OF EXISTING AND POTENTIAL MEASURES FOR ADDRESSING THE INCOME TAXATION OF COLLABORATIVE ECONOMY PLATFORM WORKERS

1. Measures aimed at broader hard to tax groups, including collaborative economy platform workers

A first approach for addressing the income taxation of platform workers is through broad-based measures that may cover wider hard to tax groups. Developed and developing countries alike face tax compliance and collection challenges in connection with informal, small-scale or otherwise decentralized income-generating activities. The introduction of income tax rules tailored to the particularities of taxpayers engaged in such activities has become increasingly more commonplace commencing the turn of the 20th century.[822]

A. Rationales for income tax rules tailored towards hard to tax groups

Hard to tax groups enjoy various opportunities for undetected non-compliance, determined by matter-of-fact circumstances grounded in their ease of misrepresenting income and expenses and the limitations in the oversight and enforcement capabilities of tax administrations. Simplified tax rules tailored to the circumstances of hard to tax groups are generally predicated on practical arguments.

Firstly, income tax compliance obligations are often experienced as disproportionately costly by individual taxpayers who source income from small-scale independent activities.[823] Existing research[824] established two widely accepted

822 Richard Musgrave; 'Reaching the Hard to Tax', in: Richard M. Bird and Oliver Oldman; *Taxation in Developing Countries,* 4th Edition, The Johns Hopkins University Press, 1990.

823 Sebastian Eichfelder and Michael Schorn; 'Tax Compliance Costs: A Business-Administration Perspective', Public Finance Analysis 68 (2), 2012, pp-191-203.

824 John Hasseldine and Peggy A. Hite; 'Framing, gender and tax compliance', Journal of Economic Psychology 24 (4), 2003, pp. 517-533. Brian Erard and Chih-Chin Ho; 'Explaining the U.S. Income Tax Compliance Continuum', eJournal of Tax Research 1 (2), 2003, pp. 93-109.

findings on the negative externalities of high tax compliance costs. To begin with, the economic impact of tax compliance costs is inversely proportional with enterprise size.[825] Consequently, the compliance burden of taxpayers engaged in small-scale income-generating activities is exacerbated. Additionally, tax compliance costs influence taxpayer attitudes and compliance-related behaviors, in that high compliance costs discourage voluntary compliance.[826] The obtuse relationship between taxable income and the compliance burdens of taxation is purportedly remediable through simplified rules for hard to tax groups, wherein compliance obligations are narrowed and more closely aligned with the compliance resources of such taxpayers.

Secondly, simplified tax measures for hard to tax groups may support the quality of tax administration. The administrative argument in favor of simplified frameworks for hard to tax groups mirrors the one related to compliance costs. When taxpayers' incentive for voluntary compliance is weak, the onus switches to the limited enforcement capabilities of tax administrations. Simplified frameworks tailored to the circumstances of hard to tax groups could mitigate these administrative weaknesses. In particular, to the extent that such rules are effectively conducive to increased voluntary compliance, the emphasis on (costly) administrative enforcement is mitigated.

Thirdly, simplified tax rules that account for the particularities of hard to tax groups may stimulate voluntary tax compliance in respect of taxpayers that were never previously registered for income tax purposes,[827] such as grey or informal economy participants. In this respect, such measures may indirectly help attract new taxpayers into the net of taxation.

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825 Sebastian Eichfelder and Michael Schorn; 'Tax Compliance Costs: A Business-Administration Perspective', Public Finance Analysis 68 (2), 2012, pp-191-203.

826 Ibid. See also: Ann Hansford and John Hasseldine; 'Tax compliance costs for small and medium

sized enterprises: the case of the UK', Journal of Tax Research 10 (2), 2012, pp-288-303.

827 Victor: Thuronyi; 'Presumptive Taxation of the Hard to Tax', *Contributions to Economic Analysis 268*, 2004, pp. 101-120. Najeeb Memon; 'How to Tax Small Businesses in the Informal Economy: A Comparative Analysis of Presumptive Income Tax Designs', *Bulletin for International Taxation 64 (5)*, 2010, pp. 290-303. Roy Bahl; 'Reaching the Hardest to Tax: Consequences and Possibilities', *Contributions to Economic Analysis 268*, 2004, pp. 337-354.

B. Features in the design of simplified rules for hard to tax groups

Simplified taxation rules for hard to tax groups attempt to reduce the complexities of determining taxpayers' basis for income tax assessment.[828] This may be achieved in a number of ways, such as:

- Through the exclusion of certain items of hard to capture income from the basis for assessment;

- By relying on a proxy for net income as a basis for assessment, such as turnover or a percentage of turnover;

- By replacing (itemized) deductions for expenses actually incurred with standard or flat deductions.

C. Approaches to simplifying the income taxation of hard to tax groups – Exemptions in respect of 'hard to capture' income

A first approach to simplifying compliance for hard to tax groups is through the introduction of exemptions in respect of certain income derived by these taxpayers.[829] Exemptions applied in respect of income derived by hard to tax groups are usually underlined by two key objectives. On the one hand, such exemptions may be introduced on grounds of compliance and administrative convenience. On the other hand, exemptions may embed incentives and therefore serve as a tool for steering taxpayer behavior.

828 Shlomo Yitzhaki; 'A Note on Optimal Taxation and Administrative Compliance Costs', The American Economic Review 69 (3), 1979, pp. 475-480.

829 Exemptions for different items of income may be underpinned by distinct policy rationales. Income may be exempt pursuant to social and political considerations – which would be the case, for example, when taxpayers benefit from a subsistence exemption for a portion of their income. A similar treatment is typically afforded across the board to welfare payments, such as merit prizes or scholarships. Alternatively, an item of income may be exempt with a view to eliminating economic or juridical double taxation.

1) Exemptions motivated by administrative convenience

The difficulties associated with policing tax compliance in respect of trading and rental income, particularly in an environment where peer-to-peer type work is proliferating, prompted some states to introduce exemptions in respect of such income. For example, in the United Kingdom,[830] pursuant to the 2017 Finance Bill, individual taxpayers may claim flat exemptions of GBP 1.000 for property and trading income.[831] The exemptions run separately, meaning taxpayers earning both trading and property income during the same year may claim a separate exemption for each.[832]

Taxpayers earning trading or property income up to GBP 1.000 *per annum* are not required to report the exempt income. As such, taxpayers that are not otherwise required to file a self-assessed tax return in the United Kingdom do not lose their non-filing status through the application of the trading and/or property allowance. Similarly, taxpayers that do file self-assessed returns are not required to declare amounts exempted from tax pursuant to the allowance(s). The threshold of GBP 1.000 is measured by reference to turnover, not profits. When a taxpayer earns less than GBP 1.000 in trading or property income during the tax year, the allowance

830 HM Treasury; 'Finance Bill – Explanatory Notes', 2017.

831 Ibid. Despite the terminology used in the Finance Bill, the *trading* allowance does not only apply in respect of actual trading income (i.e., income derived from an independent profit-seeking activity performed with regularity). The allowance may also be claimed in respect of casual and miscellaneous income in the United Kingdom. In Part I to this research, I discuss in more detail issues of income characterization that may be at play in relation to independent profit-seeking income-generating activities which are only performed intermittently by taxpayers. I describe therein that when such activities are only occasional or intermittent in nature, the income derived would generally fall under a residual income schedule rather than being characterized as trading income. In this respect, the fact that a taxpayer's activities are intermittent in nature does not bar their eligibility to claim the trading allowance. This is also in line with the underlying rationale of the trading allowance, whose purpose is to safeguard administrative and compliance convenience in respect of *de minimis* income-generating activities.

832 HM Revenue & Customs; 'Tax-free allowances on property and trading income'; available via: https://www.gov.uk/guidance/tax-free-allowances-on-property-and-trading-income last accessed 14 November 2022. The trading and property allowances have largely overlapping characteristics, so their design and objectives will be discussed in concert in these paragraphs. The scope of the allowances is not restricted to trading or property income derived from activities undertaken through collaborative economy platforms.

cannot be used to generate a trading or property loss for tax purposes. Taxpayers that derive trading or property income in excess of the threshold of the tax-free allowance are required to register and file a self-assessed tax return, but remain eligible for partial relief. The taxpayer may decide to either claim a deduction for expenses actually incurred in connection with generating trading or property income or alternatively, to claim GBP 1.000 as a deduction against gross income. In such a case, the allowance is effectively converted to a flat standard deduction.

The trading and property allowances in the United Kingdom were introduced on grounds of administrative and compliance convenience. Formally, the allowances introduce a departure from the norms embedded in the ability to pay principle. The GBP 1.000 fixed floor for the allowances was determined without much principled consideration. The allowances attempt to do away with the requirement that taxpayers file self-assessed returns when the proceeds from an activity are *de minimis* or otherwise hard to capture. In spite of the broad personal scope, the spirit of the trading and allowance exemptions is more likely geared towards micro-scale independent agents and workers who undertake platform activities on a part-time basis and in parallel to formal employment. In such cases, where the levels of trading and/or property income earned would be minimal, the argument of administrative convenience may indeed be more convincing than a formal interpretation of equity and ability to pay. These considerations notwithstanding, the reality of growing participation in the collaborative economy may well work to dent at the added value of such exemptions. To the extent that a large volume of taxpayers are engaged in peer-to-peer activities eligible for one of these allowances, providing an exemption for a large segment of taxpayers may become unattractive considering foregone public revenues. Alternatively, if a growing number of taxpayers come to rely on peer-to-peer work as a primary source of income, the provision of a *de minimis* exemption geared at part-time workers would only yield negligible administrative cost savings and little benefit for taxpayers.

2) Exemptions aimed at steering taxpayer behavior

A separate rationale for exemptions in respect of hard to capture income relates to steering taxpayer behavior. Tax compliance is highly sensitive to taxpayers' behaviors, so policymakers may attempt to influence behavior through incentives. An example of a system that introduced a behavior-steering exemption is Denmark.

In Denmark, a basic tax-free allowance is granted to individual taxpayers as a subsistence exemption, adjusted periodically to account for the cost of living.[833] Collaborative economy workers that undertake transactions through platforms engage in automatic information exchanging with the Danish tax administration are eligible for an increased allowance.[834] The increased exemption is aimed at incentivizing and directing workers to perform platform income-generating activities through 'cooperative' platforms.[835] The application of the regime is conditional on the conduct of platforms.

Under this initiative the role of the (increased) allowance is primarily symbolic. Unlike the United Kingdom trading and property allowances, wherein the simplicity and convenience underpinnings of the measures are brought to the forefront, the Danish approach to the partial exemption of platform income mirrors different considerations entirely. Rather than supporting administrative convenience, the measure is more obviously an incentive mechanism. The increased exemption itself is tied to a separate measure for addressing the income taxation of collaborative economy platform workers: information reporting by platform operators.[836]

3) The perils of exemptions for income derived by hard to tax groups – lessons from the Belgian Law on economic recovery

Exemptions for income derived by collaborative economy platform workers (and hard to tax groups in general) may in some cases be legally controversial. In 2018, Belgium adopted a short-lived regime that amounted to a cautionary tale about

833 Magnus Vagtborg et al.; 'Denmark – Individual Taxation', last reviewed 14 November 2022, IBFD Country Tax Guides.

834 Peter Hill Hansen and Malte Thomsen; 'Growth through Sharing Economy while Auditing according to Current Legislation', IOTA Papers – Danish Tax Administration, 2017.

835 Ibid.

836 Denmark is one of the jurisdictions that pioneered the adoption of legislation requiring platform operators to disclose information pertaining to the identities and receipts of platform workers to the tax administration. However, the effectiveness and enforceability of such rules is dependent on the platform operator having a relevant taxable presence in Denmark in the form of a subsidiary or permanent establishment. Wary of the obstacles to automatic information exchange posed by these territorial limitations, the Danish government has concluded a number of co-regulatory agreements with platform operators that facilitate peer-to-peer work in Denmark without maintaining a taxable presence therein.

the perils of income exemptions for hard to tax groups. The Recovery Law of 18 July 2018 ('Law on economic recovery') instituted a regime which allowed certain taxpayers to benefit from a broad-based exemption from income tax. In the spring of 2020, the regime was annulled following a judgment by the Belgian Constitutional Court that the framework was incompatible with the constitutional principles of equality and non-discrimination.

i. Scope and legal effects of the Law on economic recovery

The Law on economic recovery had a three-tiered scope of application. Firstly, it applied in respect of peer-to-peer work performed through a collaborative economy platform.[837] This covered services supplied outside the framework of a professional activity, wherein the worker and end-user connect through a 'recognized electronic platform'.[838] Secondly, the instrument applied to individuals performing 'occasional work'. An occasional worker was an individual whose main income-generating activity was an employment or self-employment rendered 'occasional' services outside the course of their activity.[839] Finally, the Law on economic recovery covered 'associative workers', meaning individuals acting outside the framework of their habitual professional capacity rendering services for the benefit of an established or *de facto* association (e.g., a charity foundation or a sports association). Along all the three pillars covered in the Law on economic recovery, the services rendered are typically small in scale and produce minimal yields. The peer-to-peer informal nature of the services was the principal shared component justifying the institution of common regime along the three tiers of work covered.

The Law on economic recovery introduced an exemption from tax in respect of income derived by taxpayers from the three categories of covered activities.[840] The floor of the exemption was originally set at EUR 6.000 per annum (indexed ultimately to EUR 6.340).[841] Whilst the absolute floor of the exemption was calculated on a per-year basis, workers engaged in occasional and associative work

837 Belgium; Law on economic recovery and strengthening social cohesion, July 18 2018, Belgian Official Journal 27 July 2018 [2018040291].
838 Ibid.
839 Ibid.
840 Ibid.
841 Ibid., Articles 12, § 3, and 24, § 3.

were subject to an additional monthly limit.[842] Additionally, workers performing associative, occasional or collaborative economy work were exempt from social security contributions and excluded from labor law protections. In effect, the Law on economic recovery instituted a regime wherein workers derived no social rights from these activities, but were likewise exempt from legal obligations that would otherwise pertain to these.[843]

The legislator motivated this measure under the veneer of two policy objectives: legal certainty and simplicity, on the one hand, and the removal of activities undertaken through the collaborative economy, occasional and associative work from the 'twilight zone', on the other hand.[844] The legislator asserted that workers engaged in activities covered under the instrument were stereotypically unaware of the tax treatment applicable to the receipts derived from such activities.[845] The legislator implied that taxpayers are in any case not interested in deriving social rights, but instead prefer a lax regime that minimizes the legal consequences of the covered activities.[846] The argument related to removing the receipts from the

842 Consequently, occasional and associative workers would only be able to benefit from the income tax exemption if their monthly receipts from the covered services did not exceed one twelfth of the maximum floor of EUR 6.340. The additional monthly limit for associative and occasional workers was an accessory to the requirement that their activities be performed in addition to a habitual employment or self-employment. As no such requirement applied in respect of collaborative economy platform workers, their earnings were not subject to a monthly limit. The Law on economic recovery did not preclude the same taxpayer from performing activities within all the three tiers. In such a case, the workers' earnings would be aggregated with a view to ascertaining their eligibility for the exemption.

843 Belgium, Constitutional Court; Judgment n ° 53/2020 [2020202097]. It is perhaps plain to see why the Law on economic recovery was particularly strongly supported by collaborative economy platform operators.The instrument created and advantage for the taxpayers whilst concurrently imposing no burdens on platform operators. The removal of any social rights from the performance of platform activities pursuant to the Law on economic recovery alleviates the platforms' risk exposure to obligations under labor law.

844 Belgium; Constitutional Court; 'Press Release on Judgment 53/2020'.

845 Belgium, Constitutional Court; Judgment n ° 53/2020 [2020202097].

846 These arguments are not necessarily convincing, primarily insofar as they are generalized across three tiers of activities undertaken in largely distinct forms. The legislator from the outset asserts that only occasional and associative work includes an element of disinterested generosity, whilst this aspect is not extended to platform-intermediated collaborative economy work. The presumption of disinterested generosity for associative and occasional work is arguably misguided in and of itself, as it entails a conjecture on the subjective intentions of the taxpayer. As long as associative work in the form of the

covered services from the 'twilight zone' was a theoretical consideration. According to the legislator, workers performing activities covered by the Law on economic recovery most often failed to report income, primarily due to the visibility deficit of the underlying activities and the impossibility of the tax administration to police these.[847] Additionally, in the case of occasional and associative workers specifically, the legislator pointed towards the *social value* innate in such activities, wherein the compensation received for the services themselves is only secondary to the worker.

ii. Judgment on the unconstitutionality of the Law on economic recovery

In April 2020, the Belgian Constitutional Court delivered a judgment whereby the Law on economic recovery was found incompatible with the principles of equality and non-discrimination.[848] According to the Constitutional Court, the differences in the labor law, social security and tax law treatment of workers under the scope of the Law on economic recovery and ordinary employees and self-employed persons outside the scope of the law amounted to unjustified discrimination.[849] The Court reasoned that the legislator enjoys a significant margin of discretion when introducing exemptions.[850] However, legal subjects in manifestly similar sets of circumstances should be treated similarly. The Court found that the Law on economic recovery instituted a regime whereby taxpayers undertaking economically interchangeable activities within and outside the framework of the legislation were subject to patently different treatment, to the detriment of ordinary employees and self-employed persons acting outside the scope of the contested legislation.

This difference in treatment was not justified by the arguments asserted by the legislator. The Court rejected the notion that taxpayers performed income-generating activities covered by the law driven by the social value of the underlying services and not in pursuit of personal earnings. In the view of the Court, the intrinsic

provision of assistance in organizing an amateur sporting or occasional work in the form of cleaning or private tutoring services is performed in exchange for consideration, the mere fact that the work itself has an inherent social value cannot realistically be equated with the notion that the service provider is acting out of disinterred generosity and perceives the payment as a secondary consideration at best.

847 Belgium, Constitutional Court; Judgment n ° 53/2020 [2020202097].

848 Ibid.

849 Ibid.

850 Ibid.

value of income derived from such activities varies from one taxpayer to another and it is informed by the personal circumstances of the taxpayer.[851] Additionally, the goal of preventing taxpayers from not declaring income was likewise denied as justification for the broad-based exclusion of the income from tax and social security contributions. The Court took the view that platform workers, occasional and associative workers were granted beneficial tax treatment under the law by reference to arbitrary considerations.

iii. Considerations on the aftermath of the annulment of the Law on economic recovery

The now-annulled Law on economic recovery was arguably as an example of *de-regulation*. The shortcomings of the framework were at least twofold. Firstly, as the Belgian Constitutional Court rightly reasoned, the legislation removed the legal effects of work performed under the three pillars covered altogether. As I argue previously as part of this analysis, exemptions applied in respect of hard to capture income are not controversial when they pursue an obvious objective of administrative and compliance convenience or where they are related to the regulation of taxpayer behavior. Considerations about administrative and compliance convenience are readily apparent where the exemption only extends to genuine *de minimis* amounts. In this respect, the level of the exemption is effectively telling of the underlying rationale of the measure and the intent of the legislator. For example, the level of the trading and property allowances introduced in the United Kingdom embed an obvious element of administrative and compliance convenience. Conversely, the comparatively generous exemption instituted through the Law on economic recovery (over EUR 6.000 *per annum*) hardly concerns *de minimis* amounts.[852]

851 Ibid.

852 However, one factor that cannot and should not be overlooked is that de minimis thresholds may not be generalized across the board. The question of what constitutes de minimis income must necessarily be addressed casuistically by reference to the particularities of given states, as this aspect is inevitably intertwined with non-fiscal considerations on living standards and averaged earnings levels. For example, in Belgium, the average net-adjusted disposable income per capita is approximately EUR 33.000 per annum. An exemption from tax in respect of receipts in excess of EUR 6.000 per annum is arguably not de minimis. See, for example: OECD; 'Better Life Index – Belgium', available via: https://www.oecdbetterlifeindex.org/countries/belgium/ last accessed 21 June 2022.

As regards exemptions aimed at steering taxpayer behavior, I will submit that such measures are more readily defensible where there exists a clear and direct link between the taxpayer's eligibility for the exemption and the conduct encouraged through the measure. In Belgium, the argument submitted by the legislator before the Constitutional Court was that the Law on economic recovery encouraged the removal of income derived from peer-to-peer activities from the 'twilight zone' and encouraged taxpayers to perform income-generating that carried social value. According to the legislator, taxpayers that derived income from activities covered by the Law on economic recovery were purportedly not driven by profit-making motives. In my view, the Constitutional Court was correct in rejecting these arguments. To begin with, the argument that an exemption from tax encourages taxpayers to report income and undertake income-generating activities outside the 'twilight zone' is purely theoretical. In the case of the Law on economic recovery, there was no direct link between taxpayers' eligibility for the exemption and the desired conduct as described by the legislator. This may be readily contrasted with the broadened personal allowance introduced in Denmark, discussed previously as part of this analysis. In Denmark, the broadened personal allowance was only extended to platform workers that performed income-generating through platform operators that (voluntarily) reported information to the Danish tax administration. The link between the benefit of the exemption and a broader policy objective (in this case, the enhancement of the oversight capabilities of the Danish tax administration) is obvious and unequivocal.[853]

853 Separately from this aspect, there is a considerable lapse in the argument that taxpayers perform income-generating activities with profit-making potential without actually pursuing profits. As mentioned previously in this analysis, the Law on economic recovery provided an exemption in respect of income derived from activities undertaken through the collaborative economy, occasional activities and so-called associative work. The profit-making potential of income-generating activities undertaken through the collaborative economy is self-evident. Under the Law on economic recovery, occasional services were merely defined as income-generating activities performed by an individual in parallel to employment. This definition does not imply any consideration to the effect that occasional services entail inherent social value and that individuals perform such activities out of disinterested generosity rather than with a view to earning profits. As regards associative work (defined under the Law on economic recovery as the provision of services under the auspices of a charitable organization or a sports association), it is similarly difficult to draw definitive inferences about the profit-seeking motivations of taxpayers. The mere fact that a charitable organization or sports association pursues objectives of social value cannot be equated with a finding that individuals performing services through such entities for

Secondly, a considerable issue with the Law on economic recovery related to the specificity of the personal scope for the application of the income exemption. In turn, this translates into two separate issues. To begin with, the Law on economic recovery emphasized the channel through which income-generating activities were performed, rather than the nature of the underlying activities themselves. This approach inherently invites contentions about the unequal treatment of taxpayers that perform interchangeable income-generating activities. Additionally, by defining the scope of an income exemption by reference to the channel through which the taxpayer performs the underlying income-generating activity, the rationale for the income exemption becomes innately corrupted. Reiterating a previous remark, income exemptions may be justifiable on grounds of administrative and compliance convenience. Exempting *de minimis* amounts of hard to capture income from tax is an acceptable measure for alleviating disproportionate administrative and compliance costs. Admittedly, the emergence of the collaborative economy brings to the forefront and exacerbates issues related to the effective taxation of income derived by individuals from peer-to-peer activities. However, this notion alone does not amount to a compelling argument in favor of only extending an exemption to income derived from peer-to-peer activities undertaken through platforms. Income from such activities is hard to capture under the net of taxation regardless of the channel through which the taxpayer performs the underlying income-generating activities. This aspect did not come into play, for example, as regards the trading and property allowances applied in the United Kingdom, because the exemption for income under that regime depends on the nature of the taxpayer's activities, without considering the manner or the medium through which the activities are performed.

In this respect, the scope and weak instrumental reasoning of the Law on economic recovery were arguably the instrument's undoing. It is likewise for this reason that other frameworks instituting exemptions in respect of income derived by platform workers are not similarly contentious. As a matter of generality, exemptions inherently entail a tradeoff that favors simplicity over a stringent notion of equity.[854]

remuneration are not driven by profit.

854 As part of this analysis, my focus is limited to the subject-matter of exemptions introduced to address the income taxation of hard to tax groups. By definition, such exemptions emphasize legal certainty and simplicity and the principle of efficiency. However, exemptions may be granted in other contexts for very different policy reasons (e.g., with a

If the notion is accepted that such exemptions are only appropriate insofar as they pursue objectives related to administrative convenience or the regulation of taxpayer behavior, these objectives should be both clearly delineated and obviously embedded within the exemption itself. Ultimately however, exemptions for hard to capture income can only serve limited purposes.

D. Approaches to simplifying the income taxation of hard to tax groups – Presumptive taxation techniques

In existing literature, presumptive taxation is one of the most widely discussed approaches for addressing the income taxation of hard to tax groups.[855] Presumptive taxation purportedly supports overcoming the practical collection and enforcement constraints experienced by tax administrations in developing countries, where a significant segment of income-generating activity is informal, cash-based or otherwise decentralized and anchored in hard to capture sources.[856] Whilst presumptive taxation techniques are widely applied in various developing countries,[857] the discussion of such measures should not be confined to developing countries[858] for two major reasons. Firstly, the compliance and collection hurdles that presumptive taxation mechanisms are aim to overcome are by no means unique to developing countries. Secondly, presumptive taxation is a broad concept encompassing a plethora of mechanisms, whether or not these are explicitly labelled as 'presumptive'.[859]

view to eliminating the double taxation of income or under international law obligations, as is the case with the exemption from tax of the income of diplomats).

855 Victor Thuronyi; 'Presumptive Taxation of the Hard to Tax'; Contributions to Economic Analysis 268, 2004, pp. 101-120. Richard M. Bird and Sally Wallace; 'Is It Really so Hard to Tax the Hard-to-Tax? The Context and Role of Presumptive Taxes', in: James Alm et al. [Eds.]; Taxing the Hard to Tax, Elsevier, 2004. Parthasrathi Shome; Tax Policy Handbook, International Monetary Fund, 1995, page 258.

856 Ibid.

857 See, for example: India; 44AD of the Income Tax Act. Gunther Taube and Helaway Tadesse; 'Presumptive Taxation in Sub-Saharan Africa: Experiences and Prospects', International Monetary Fund Working Paper No. 96/5, 2006.

858 Shlomo Yitzhaki; 'A Note on Optimal Taxation and Administrative Compliance Costs', *The American Economic Review 69 (3)*, 1979, pp. 475-480.

859 Ibid.

aPresumptive taxation refers to income tax assessment mechanisms that rely on indirect indicators to determine the taxable basis. Scholars that explore presumptive taxation refer to the widely accepted definition of the concept developed by Ahmad and Stern,[860] according to whom presumptive taxation 'covers a number of procedures under which the 'desired' tax base is not *measured* but *inferred* from simple indicators which are more easily measured than the base itself'.[861] Presumptive taxation is therefore best understood as an umbrella term for a collection of indirect mechanisms for the assessment of taxable income.

Presumptive taxation supports legal simplicity and efficiency.[862] By attempting to arrive at a basis for assessment based on simplified vectors, presumptive taxation techniques purport to ease compliance complexities for taxpayers. Whilst the merits of presumptive taxation, when judged against objectives of substantive and compliance simplicity cannot be discarded, the relation between presumptive taxation and other policy principles is more convoluted. Because presumptive taxation methods rely on indirect means of ascertaining a basis for assessment, the tax base will inevitably differ from that which would have been determined by applying the ordinary assessment rules. Additionally, because presumptive taxation regimes is usually only extended to hard to tax groups, such measures may fall foul of the norms embedded in the principle of fiscal neutrality, since taxpayers rendering similar services may be taxed differently depending on the form and scale of their activities. That said, it does remain important to recall that ability to pay and fiscal neutrality could and should be understood as having a dual *de jure* and *de facto* dimension. Taxpayers should be assessed by reference to their actual economic capacity and be treated in the same way as other taxpayers that undertake similar income-generating activities both in law and in fact. The mere fact that the same tax rules apply as a matter of law to taxpayers irrespective of the scale of their activities does not necessarily safeguard equity and neutrality in fact. Consequently, the argument could be made that the application of separate simplified rules in respect of hard to tax groups may mitigate non-compliance, thereby at the very least supporting outcomes that are equitable as a matter of fact.

860 Ehtisham Ahmad & Nicholas Stern; *The Theory and Practice of Tax Reform in Developing Countries,* Cambridge University Press, 1991.

861 Ibid.

862 Vito Tanzi and Milka Casanegra de Jantscher; 'Presumptive Income Taxation: Administrative Efficiency and Equity Aspects', International Monetary Fund Working Paper No. 87/54, 1987.

Because of the vectors emphasized in the determination of the basis for assessment, taxpayers subject to such presumptive taxation regimes may experience unpredictable impacts on earning incentive. Because these regimes emphasize various factors in the determination of the tax base that are selected based on criteria unrelated to their relative impact on earning capacity, the outcome may be that certain production factors or activities are impliedly discriminated against or favored. In turn, this entails that production factors and work effort would not be optimally allocated, since their allocation would be (partly) informed by tax considerations. In other words, presumptive taxation may generate an inefficient allocation of resources – an outcome that contradicts the norms embedded in a strict interpretation of the principle of fiscal neutrality.

One salient characteristic of some, but not all presumptive taxation mechanisms in many countries pertains to the intended temporary character of these schemes.[863] Taxpayers are often meant to only be subject to presumptive taxation for a limited time and subsequently 'graduate' to assessment under the regular income tax rules.[864] There are at least two major arguments that support this approach. Firstly, because of the indicators used in presumptive taxation mechanisms, these measures do not necessarily reflect the genuine ability to pay of the taxpayer. One way to limit this artificiality is to limit the application of these rules to a given taxpayer to a pre-determined timespan. Secondly, it remains important to recall and consider the link between presumptive taxation, on the one hand, and the informal or grey economy, on the other hand.[865] Presumptive taxation is intended as a bridge towards the formalization of informal or grey economic activity.

1) Forms of presumptive taxation – Proxy methods

Some presumptive taxation techniques rely on indicators such as turnover, pre-determined percentages of turnover, the gross or net value of the assets used in

863 Victor Thuronyi [Ed.]; 'Presumptive Taxation', in: Tax Law Design and Drafting, Volume 1, International Monetary Fund, 1996.

864 Ibid.

865 Najeeb Memon; 'How to Tax Small Businesses in the Informal Economy: A Comparative Analysis of Presumptive Income Tax Designs', Bulletin for International Taxation 64 (5), 2010, pp. 290-303.

the course of an income-generating activity,[866] net worth[867] or income reconstruction methods to arrive at the desired tax base. Because such indicators are used in lieu of actual net income as the basis for assessment, the following paragraphs will refer to these techniques as *proxy methods.*[868] The plethora of possible indicators for proxy presumptive taxation methods precludes the possibility of developing a comprehensive survey of all such methods. Instead, this analysis will only focus on those potential proxies that could *prima facie* apply in respect of collaborative economy platform workers, bearing in mind two relevant variables. These include, firstly, the nature and character of the workers' income-generating activities and secondly, the type of assets used in the performance of income-generating activities by workers.

i. Considerations in the selection of an indicator for proxy presumptive taxation methods

In considering proxy-based presumptive taxation as an approach to addressing the income taxation of hard to tax groups including collaborative economy platform workers, the selection of the relevant indicator is a crucial consideration.

Firstly, the indicator should necessarily enable a meaningful assessment of tax. Presumptive taxation is an inherently artificial tool predicated on fictions.[869] However, much like ordinary income tax assessment rules, the purpose of a (proxy) presumptive tax should be to reflect (or at least approximate) the economic results of the taxpayer. In other words, the ultimate conceptual underpinning of ordinary income assessment and proxy presumptive taxation largely intersect – meaning the latter should attempt to uphold the finality of the former. As such, any indicator chosen for a proxy method should be one that is relevant to the context of the taxpayer's income-generating activity. This consideration equally

866 In effect, any method that relies on a basis for assessment distinct from actual (net) income could be described as presumptive.

867 Victor Thuronyi [Ed.]; 'Presumptive Taxation', in: Tax Law Design and Drafting, Volume 1, International Monetary Fund, 1996.

868 The term 'proxy' is employed to compound the suggestion that a selected indicator is used as a replacement for income in the assessment and the determination of the taxpayer's liability to tax and tax burden.

869 Parthasrathi Shome; Tax Policy Handbook, International Monetary Fund, 1995, page 258.

holds true in the context of the taxation of collaborative economy platform workers.[870]

Secondly, in the three models here discussed, the activities of platform workers emphasize the use of various assets as a starting point: for ridesharing workers, vehicles; for homesharing workers, immovable property; and for all-purpose freelancers, the emphasis may be on some material assets, but also intangible ones, such as professional skill. However, the actual earnings of workers will be impacted by variables above and beyond those pertaining to the assets used. For example, earning capacity is commonly impacted by the feedback mechanisms in place on the platforms. Additionally, the earnings sourced by collaborative economy platform workers are influenced by the span and the extent of accessory services they provide to customers as part of their platform activities. The heterogeneity of the collaborative economy compounds the complexity of selecting an appropriate proxy.

ii. Tax as a percentage of turnover

A percentage-of-turnover tax entails that a fixed portion of gross receipts is regarded as taxable income.[871] Therefore, the percentage of turnover is the proxy for net income.[872] An example of this approach is found in Indian tax law,[873] where small-scale enterprises may opt to be taxed on the basis of a percentage of their annual gross receipts.[874] The percentage of gross receipts is deemed to reflect by way of fiction the profits of the enterprise. The differentiated percentages attempt

870 For example, an indicator such as the value of the taxpayer's qualifications would be inarguably inappropriate, when considering that various different types of platform work require either qualifications of values too different to allow for any measure of simplification, or require no specific, objectively quantifiable qualifications on the part of the taxpayer.

871 Victor Thuronyi [Ed.]; 'Presumptive Taxation', in: *Tax Law Design and Drafting, Volume 1*, International Monetary Fund, 1996.

872 Najeeb Memon; 'How to Tax Small Businesses in the Informal Economy: A Comparative Analysis of Presumptive Income Tax Designs', Bulletin for International Taxation 64 (5), 2010, pp. 290-303.

873 India: 44AD of the Income Tax Act.

874 Ibid. The relevant percentage of turnover is 6% for enterprises that do not source material earnings from digital transactions and 8% for enterprises involved in digital transactions.

to accommodate and reflect the differences in the level of overheads incurred by different forms of enterprises and the impact of these on actual profitability. The selection of the relevant percentage of turnover is arguably the most crucial aspect in the design of such a mechanism. Whilst the primary objectives of proxy-for-income methods relate to simplicity and convenience, the outcomes reached under this approach should nevertheless attempt to secure an approximation of the taxpayer's economic reality, however brute.[875]

In the case of collaborative economy platform workers, their actual net profits would in most cases be impacted by whether their income-generating activities are capital- or labor-intensive. Furthermore, even at the level of different labor-intensive activities, the assets used in the performance of these would inevitably play a role. For example, time- and skill-intensive platform activities performed by all-purpose freelancers entail fewer overheads compared to ridesharing activities. The impact of these considerations becomes further more salient to the extent that a given tax system pondered the application of a percentage-of-turnover tax towards wider hard to tax segments. Against this background of practical complexity, it emerges that differentiated percentages determined for distinct segments of activity would be the most, if not only appropriate approach to safeguarding some measure of equity under this mechanism.

From the perspective of legal simplicity, the emphasis on turnover has a number of advantages. Firstly, unlike other economic indicators, turnover does not determine contentions related to the differences between workers performing different types of activities and using different types of assets. As such, a percentage-of-turnover tax could be scaled without much difficulty, provided that the relevant percentage be determined with account to the objective particularities of taxpayers. Secondly, turnover is an easily verifiable measure of the yields derived from an activity. Because platform operators collect and centralize the payments of workers, then proceed to pay these amounts out to workers in periodic lump sums (thereby aggregating payments from individual transactions), a clear and appropriately documented measure of gross receipts is usually available. Thirdly, the application of a presumptive tax assessed on the basis a fixed, pre-set percentage of gross

875 Charles E. McLure, Jr. et al.; The Taxation of Income from Business and Capital in Colombia, Duke University Press, 1990, page 144–45.

receipts would eliminate the requirement for taxpayers to account for deductible expenses.[876]

However, taxation levied by reference to a pre-determined percentage of turnover does not consider the real expenses incurred by the taxpayer in connection with taxable activities. In a similar vein, a percentage gross receipts tax would lead to inequitable outcomes when judged against the norms of the principle of fiscal neutrality, since the assessment of tax depends on the circumstances of the taxpayer rather than the underlying income-generating activities. These outcomes could however be remedied through the application of differentiated percentages, adjusted to the broad circumstances of taxpayers involved in specific sectors of economic activity. A percentage-of-turnover tax could dis-incentivize the incurrence of costs aimed at generating profits, when such costs would not be accurately and fully taken account in any way in the determination of the taxpayer's ultimate tax liability. By extension, the taxpayer's resources would not be allocated efficiently. Additionally, this approach cannot adequately consider economic losses borne by taxpayers in the course of their activities. Losses most commonly ensue as a result of the incurrence of expenses that exceed the gross receipts earned within a given period. A gross receipts tax would not take such aspects into account adequately.

Some authors do however point out that, in spite of the shortcomings of a percentage-of-turnover tax, the choice is ultimately one between a 'poorly enforced' ordinary income tax applied on a net basis and a 'somewhat better enforced' percentage of gross receipts tax. This argument alludes to the notion that the practical advantages of a presumptive tax justify its flaws. I dare disagree with this view, because the respective conceptual and practical merits and demerits of ordinary income taxation, on the one hand, and presumptive taxation, on the other hand, pertain to distinct considerations. Even with respect to hard to tax groups, the sound conceptual underpinning of ordinary income taxation is rarely denied, because self-assessment and self-reporting frameworks attempt to provide a

876 As discussed at length in the two previous chapters to this research, the deductibility of expenses is perhaps one of the most salient bones of contention as regards the taxation of collaborative economy platform workers as a matter of generality. Deductible expenses are commonly easy for hard to tax groups to misrepresent in their favor in self-assessment and self-reporting processes, with little prospect of such non-compliance being detected or enforced.

reflection of the economic reality of the taxpayer's circumstances. The issues in applying ordinary income tax assessment rules to hard to tax groups relate to mere practical considerations. An attempt at remedying the practical shortcomings of ordinary income taxation rules should not be based on an alternative system which, although superior on practical grounds, is underpinned by major conceptual flaws.

2) Forms of presumptive taxation – The standard deduction

i. General remarks

Another possible approach for enhancing tax compliance in respect of collaborative economy platform workers and other hard to tax groups is through the implementation of standard business deductions.[877] Standard business deductions are also a form of presumptive taxation.[878] Standard business deductions entail that the gross income of the taxpayer is offset by a predetermined amount, rather than the expenses actually incurred in connection with the generation of taxable income.

Standard business deductions are applied under different nomenclatures in most tax systems. The United States federal income tax system, for example, includes a so-called qualified business income deduction,[879] commonly also referred to as the pass-through deduction.[880] This measure allows individuals deriving 'qualified trading or business income' to deduct 20% of the income derived from such activities.[881] A standard deduction available to self-employed taxpayers is

877 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.

878 Joel Slemrod and Shlomo Yitzaki; 'Analyzing the standard deduction as a presumptive tax', International Tax and Public Finance 1, 1994, pp. 25-34.

879 United States Tax Cuts and Jobs Act, Provision 11011 Section 199A – Qualified Income Business Deduction.

880 Internal Revenue Service; 'Tax Reform' (Publication 5318), 2018.

881 The qualified business income deduction exists alongside the ordinary deductions that taxpayers may claim (which in turn, are either itemized or other standard deductions). As such, the qualified business income deduction in the United States embeds a significant incentive. Notably, the United States income tax system includes, in addition to the qualified business income deduction, a number of other standard deductions. An example is the standard deduction for mileage costs. Mileage costs may be deducted by taxpayers either on an itemized basis (i.e., on the basis of the expenses incurred as a matter of economic

also applied in the Netherlands,[882] capped at a fixed amount of EUR 7.280. The self-employed deduction cannot be used to generate a tax loss, meaning those taxpayers whose results are lower than the amount of the deduction will be denied the full deduction. A dispensation from this general rule is made for start-up enterprises (which are inherently prone to actually achieve losses in their first period of activity). In a similar, albeit broader fashion, Australia allows individual taxpayers, both employed and self-employed, to claim a standard deduction of AUD 1.000, in lieu of itemized deductions for expenses actually incurred.[883]

These brief examples were here presented for the purposes of extrapolating a number of general characteristics of standard deductions, pertaining to both the structure of these mechanisms and the policy principles underlying them. The primary role of standard deductions relates to supporting legal certainty and

reality) or on a standardized basis, whereby a fixed amount is deductible per (qualifying) mile travelled. Similarly, depreciation for various assets is oftentimes determined on the basis of fixed or pre-determined (and thereby fictitious) depreciation schedules, rather than the actual wear and tear of the depreciable asset.

882 Tax Consultants International; 'The Self-Employed Deduction', available via: https://www.tax-consultants-international.com/read/self-employed-deduction_zelfstandigenaftrek?submenu=13182&sublist=13177&subsublist=13176 last accessed 8 November 2022. The conditions for taxpayers to be eligible for this deduction are threefold: firstly, the taxpayer must be regarded as self-employed for income tax purposes. Secondly, the taxpayer must meet the so-called 'hourly criterion' set in the Income Tax Act, whereby their self-employment amounts to a minimum of 1.225 hours per year. Finally, the taxpayer must be below the legal retirement age, with taxpayers undertaking an independent economic activity on a self-employed basis who are over the legal pension age being eligible for a distinct deduction, amounting to 50% of the ordinary EUR 7.280 amount.

883 Tom Toryanik; 'Budget 2010/11 – personal taxation: Standard deduction announced', IBFD Tax News Service, Australia. The deduction may be claimed by both employed and self-employed individuals. Employed taxpayers incur fewer expenses in connection with the generation of income in practice. That being said, a number of income tax systems, particularly those that apply detailed itemization schedules, do allow a number of expenses to be deducted by employees and the self-employed alike. Examples commonly include clothing or mileage. For Australia, an income tax system that takes a highly itemized approach to the deduction of expenses, the extension of the standard deduction to employees and the self-employed alike is readily understandable. On the other hand, the absence of a distinction drawn in the personal scope of the Australian standard deduction fails to account for the reality that the self-employed do in fact tend to incur higher expenses in connection with their income-generating activities.

efficiency in tax compliance.[884] Standard deductions may take different forms, in that they may be designed either a fixed amount or as a percentage of earnings. The choice between a flat amount and a percentage is relevant because it will be more or less directly determinative of the actual value of the deduction as a tax saving tool. An important consideration pertaining to standard deductions determined as fixed amounts revolves around the risk that such deductions could produce so-called tax losses – i.e., losses that ensue for tax purposes rather than as a matter of economic reality. This issue could be prevented through limitations to full deductibility where this would lead to a pure tax loss. Standard deductions set as a percentage of the taxpayer's earnings intrinsically prevent the generation of tax losses.

Because standard deductions are a presumptive taxation technique,[885] they display the same shortcomings that pertain to presumptive taxation as a matter of principle. Standard deductions replace the deduction of expenses actually incurred by the taxpayer, meaning they do not enable an objective measurement of the taxpayer's net ability to pay. This criticism notwithstanding, standard deductions do display significant merits when assessed against the norms embedded in the principles of legal certainty and efficiency. By replacing deductions for actual expenses incurred with a fixed amount or percentage of earnings, standard deductions do away with tracking, substantiation, and documentation requirements.[886] Particularly relevant for developed countries partial to the trend of tax compliance automation, standard deductions may facilitate the preparation and availability of pre-populated returns,[887] thereby easing compliance burdens for taxpayers and the administrative and enforcement constraints for tax administrations.

ii. Standard deductions as a tool for simplifying compliance in respect of platform workers

As previously outlined, the deductibility expenses incurred in connection with the generation of taxable income is one of the most problematic aspects related

884 Joel Slemrod and Shlomo Yitzaki; 'Analyzing the standard deduction as a presumptive tax', International Tax and Public Finance 1, 1994, pp. 25-34.

885 Ibid.

886 Tom Toryanik; 'Budget 2010/11 – personal taxation: Standard deduction announced', IBFD Tax News Service, Australia.

887 Ibid.

to platform workers' income taxation. Taxpayers performing small-scale and decentralized income-generating activities enjoy various opportunities to misrepresent deductible expenses.[888] Additionally, the procedural requirements associated with the correct claiming of deductions (e.g., the tracking and substantiation of the expenses actually incurred) may be deemed too onerous by taxpayers, to the point that the benefit of a reduction in the tax base may outweighed by the efforts associated with claiming the deduction.[889] Although carrying an inherent element of artificiality, a standard deduction could approximate, at least to some extent, the net profit pertaining to the workers from their income-generating activities. This could be done, for example, if the standard deduction were set as a pre-determined percentage of platform earnings, with the percentage determined on the basis of average profit ratios for such taxpayers.[890]

In this respect, another relevant consideration pertaining to the design of a standard business deduction aimed at collaborative economy platform workers refers to the question of whether the level of the deduction, when set as a percentage of gross earnings, should be the same irrespective of the nature of workers' income-generating activities.[891] The particular nature of workers' activities will inevitably impact the types and the extent of (deductible) expenses incurred, as a result of the types of assets used in the performance of such activities. For example, platform workers involved in labor-intensive activities, such as all-purpose freelancing, will typically incur fewer expenses compared to their counterparts in the ridesharing and homesharing collaborative economy models. Differentiated standard business deductions which distinguish between labor- and capital-intensive industries inarguably yield a better approximation of actual net profits.[892]

Another consideration pertains to the influence of standard deductions on compliance-related behavior. Expense deductibility is the area where risk-taking

888 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8 (1),* 2017, pp. 58-112. Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.
889 Ibid.
890 Ibid.
891 Ibid.
892 Ibid.

behavior is most likely to surface, considering the ease with which taxpayers are able to misrepresent the expenses incurred and the low probability of detection. Standard deductions could mitigate the incentive of non-compliance through the overstatement of deductions for expenses incurred. In a similar vein, the application of a standard deduction could lessen instances of misrepresented deductions as a result of the taxpayers' negligence – as the application of a standard deduction by definition does away with the tracking, substantiation, and misinterpretation aspects that frequently lead to inadvertently non-compliant outcomes produced as a result of negligent behavior.

One issue of a standard business deduction, however, refers to its incapacity to reflect possible economic losses incurred by collaborative economy platform workers, when their expenses actually incurred exceed both the level set out in the standard business deduction and the level of their gross receipts. This issue too, however, could be addressed through the addition of a caveat in the design of the standard business deduction, wherein expenses actually incurred were allowed to be taken into consideration when they are substantiated and when they actually result in an economic loss for the taxpayer.

2. Tax literacy as a vehicle to voluntary compliance – Taxpayer engagement and education measures in the collaborative economy

Initiatives for supporting the tax literacy of platform workers through taxpayer engagement and education have long been championed as an intuitive and efficient approach to buttressing tax compliance in the collaborative economy.[893] Taxpayer engagement and education initiatives do not entail the introduction of new tax rules. Instead, these measures seek to reinforce voluntary compliance with existing income tax rules.[894] The following paragraphs will describe the main arguments

893 European Parliamentary Research Service; 'The collaborative economy and taxation: Taxing the value created in the collaborative economy', European Parliament, 2018.

894 As will be discussed in more detail immediately below, these initiatives are typically favored by states were the prevalence of sub-optimal taxation is attributed to the notion that platform workers' non-compliance is determined by the complexity of the existing rules and the unfamiliarity of workers with the rules.

advanced by states in support of the introduction of taxpayer engagement and education initiatives, elaborate on some approaches to the design of taxpayer engagement and education measures and discuss the extent to which these could support the effective taxation of income derived by workers from collaborative economy activities.

A. The relevance of tax literacy in voluntary compliance and approaches to taxpayer engagement and education

In Part II to this contribution, I argued that, like other of hard to tax groups, collaborative economy platform workers may be inadvertently non-compliant. This may result from their limited awareness, knowledge and understanding of the legal rules governing the tax consequences of their income-generating activities.[895] The asserted low tax literacy of collaborative economy platform workers is rooted in a number of considerations. Firstly, some workers undertake income-generating activities on a small scale and under the impression that these activities do not entail any tax consequences specifically because of their small scale and their purportedly informal nature. Secondly, some workers – regardless of the scale of their activities – may engage in income-generating activities through platforms without considering that these activities entail income tax consequences at all. Thirdly, for many workers, undertaking income-generating activities through a platform involves a partial or full transition from salaried employment. Platform workers may be unfamiliar with the rules that govern the tax treatment of their activities. Fourthly, the nature of income-generating activities in the collaborative economy – which often entails the use of private assets – may create compliance complexities for workers.[896]

These factors suggest that platform workers' inadvertent non-compliance is underlined by two inter-related issues. On the one hand, workers may simply be unaware of the tax consequences flowing from their income-generating activities. On the other hand, workers may lack the necessary knowledge to apply the tax

895 OECD; 'Current tax administration approaches and limitations', in: OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

896 These may relate to the apportionment of dual-purpose expenses, the characterization of income derived from activities undertaken through platforms for tax purposes, or the application of depreciation rules in respect of private assets.

rules relevant to the treatment of their income-generating activities. Against this backdrop, taxpayer engagement initiatives refer to measures for raising workers' awareness in regards to the tax consequences of their income-generating activities. Taxpayer education initiatives are measures introduced to support and improve platform workers' substantive knowledge of the tax rules relevant to their situation. Because awareness and knowledge are in-dissociable facets of tax literacy, taxpayer engagement and education initiatives often apply contemporaneously and embed both these elements. However, as will become apparent from the argumentation in the following paragraphs, different steps and approaches are needed towards taxpayer engagement, on the one hand, and taxpayer education, on the other hand.

Because of the particular nature of collaborative economy activities, taxpayer engagement and education measures in practice take two broad forms. Firstly, these initiatives may be driven by tax administrations. This entails that tax administrations seek to both engage platform workers with the tax system and educate workers on how to navigate the tax rules relevant to their situation. Secondly, taxpayer engagement and education initiatives may involve cooperation between tax administrations and an intermediary involved in the environment of workers' income-generating activities. Most commonly, the intermediaries would be collaborative economy platform operators. Under this approach, tax administrations and platform operators undertake complementary efforts towards improving workers' tax literacy.[897]

B. Asserted arguments for the institution of taxpayer engagement and education measures

1) Existing income tax rules are appropriate to capture the consequences of platform workers' income-generating activities in the view of some policymakers

Some policymakers take the view that existing income tax rules are appropriate for the treatment of collaborative economy platform workers. In their view, the improvement of compliance-related behavior through taxpayer engagement and

897 Normally, platform operators are tasked with facilitating taxpayer engagement, whereas tax administrations provide resources aimed at supporting education.

education initiatives is sufficient for securing the effective income taxation of platform workers.[898] As a matter of principle and generality, legal reform is justified when existing rules are no longer effective. Typically, this occurs when tax rules are designed by reference to viewpoints regarding uses of capital and resources which are no longer necessarily prevalent.

Peer-to-peer income-generating activities undertaken in the collaborative economy are inarguably the result of technological innovation and the increased availability and accessibility of technological resources. In a similar vein, collaborative economy peer-to-peer work entails the attribution of a novel usage to resources.[899] Despite the innovative character of the collaborative economy, it is difficult to argue convincingly that existing income tax rules are wholly and fundamentally incompatible with the realities of income-generating activity within this business model. Issues pertaining to the inclusion of income in platform workers' basis for assessment, the characterization of income, relief for losses and expenses (including capital and dual-purpose expenses) are laid out and addressed in the existing income tax rules.[900]

898 Celeste Black; 'The Future of Work: The Gig Economy and Pressures on the Tax System', *Canadian Tax Journal 68 (1)*, 2020, pp. 69-97. Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.

899 The collaborative economy as a whole is reliant upon the usage by workers of private assets for income-generating purposes, on technologically driven matching of supply and demand and on automated payment collection and processing.

900 The argument that existing income tax rules are appropriate to accommodate platform workers' income-generating activities justifies the preference of some policymakers for taxpayer engagement and education initiatives over other (more far-reaching) measures for addressing the income taxation of collaborative economy platform workers. As I seek to convey here, this argument is rooted in the conceptual underpinning of existing income tax rules. Indeed, all modern income tax systems include rules that address the inclusion of income in the taxpayer's basis for assessment (including in cases where such income is derived from peer-to-peer activities), on income characterization, expense deductibility and loss compensation. The counter-argument to this viewpoint, however, is that the management and application of these rules is overly complex in the context of the collaborative economy. The collaborative economy is an environment of high-volume/low-value transactions. It is difficult to infer that taxpayer engagement and education alone could comprehensively address the diversified determinants of non-compliance at play in the collaborative economy.

Moreover, income tax compliance requirements in general emphasize taxpayer responsibility. Self-reporting and self-assessment frameworks presuppose that taxpayers act diligently and conscientiously in documenting their circumstances and in discharging the payment of tax. These theoretical pretenses hold true in respect of all taxpayers for income tax purposes, including collaborative economy platform workers. In this respect, to be engaged and educated with the income tax system is an integral element of the personal accountability and responsibility that underlines income tax compliance. Under such logic, taxpayer engagement and education measures are a support structure for taxpayer accountability.

Additionally, the design of specific tax rules for collaborative economy platform workers is a complex task. The collaborative economy is a highly heterogeneous environment. The tax consequences of workers' activities may vary considerably depending on whether the underlying activities are labor- or capital-intensive and depending on the scale and frequency with which workers perform these. As such, it would be difficult to devise a unitary, cohesive and simple legal framework to ensure effective and equitable taxation across a broad variety of activities. Conversely, existing income tax rules already draw distinctions between the treatment of labor and capital-intensive income-generating activities. Similarly, under existing tax rules, the tax consequences of income-generating activities likewise vary depending on the frequency of the underlying activity.

2) Taxpayer engagement and education measures are not disruptive

Taxpayer engagement and education initiatives are non-disruptive measures. Firstly, the consonance between taxpayer engagement and education initiatives and the norms embedded in the principle of fiscal neutrality cannot be understated. Existing income tax rules does not take into consideration the fact that platform workers perform income-generating activities through a digitalized environment. Collaborative economy platform workers are ultimately mere independent contractors – and the tax consequences of their activities are dictated by the nature of these activities and the assets used in the performance of these activities.[901] They are required to declare receipts from platform activities in their basis for

901 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016*,* pp. 989-1069.

assessment, allowed to deduct expenses, access loss relief and tax incentives on the same terms and under the same guise as ordinary entrepreneurs who render economically interchangeable services outside the collaborative economy. Such praise could, however, be tamed with some measure of criticism. Collaborative economy platform workers and ordinary entrepreneurs are not always in identical circumstances. For example, the comparatively smaller scale at which platform workers undertake their activities may entail that the mandatory and voluntary compliance costs borne by platform workers are comparatively more burdensome.[902] As I argue in Part III.I.4, fiscal neutrality should be considered as both a matter of law and fact. This precept does not entail that tax rules should be blind to the circumstances in which taxpayers perform specific income-generating activities. In this respect, the principle of fiscal neutrality only provides a limited argument in support of reinforcing platform workers' compliance with pre-existing income tax rules over the design of special-purpose measures for addressing the income taxation of platform workers.

Secondly, taxpayer engagement and education initiatives are an efficient approach to address the income taxation of platform workers. Because taxpayer engagement and education initiatives do not entail the adoption of new tax rules or the alteration of existing ones, this approach would likewise not entail the incurrence of any of the political or partisan costs, hurdles and barriers associated with the introduction of new tax rules. However, this is an argument of convenience rather than a compelling claim that taxpayer engagement and education initiatives are superior to other possible measures for addressing the income taxation of collaborative economy platform workers.

3) Taxpayer engagement and education measures are consistent with emerging trends in tax administration

Taxpayer engagement and education measures are consistent with the emerging practice of tax administrations of actively encouraging voluntary taxpayer compliance.[903] In a growing number of countries, tax administrations have increased the

902 Soo Kyung Park et al.; 'Policy compliance and deterrence mechanism in the sharing economy: Accommodation sharing in Korea', Internet Research 29 (5), 2019, pp. 1066-2243.

903 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2019

availability of resources for taxpayers, by developing interactive tools for answering inquires[904] and publishing information portals. The role of tax administrations has evolved from a passive to an increasingly more active one. Rather than being primarily involved in oversight, supervision and enforcement on an *ex post factum* basis, tax administrations strive to play a supporting role *throughout* taxpayers' compliance processes. The development of mirroring resources in support of collaborative economy platform workers is in consonance with the growing approach towards a service-oriented tax administration.[905]

C. Envisaged effects of taxpayer engagement and education initiatives – Impacts on voluntary compliance and tax compliance costs

1) The allocation of administrative resources and its impact on taxpayer compliance-related behavior

The (limited) existing research into platform workers' reporting behavior chiefly cites unawareness or uncertainty regarding the tax consequences of income-generating activities performed in the collaborative economy.[906] Research on taxpayer behavior outside the realm of the collaborative economy likewise establishes the consistent finding that legal complexity is a common determinant of non-compliance[907] Ultimately, in any given system, some taxpayers may be circumstantially non-compliant.[908]

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904 Ibid.

905 In some cases, the resources made available to collaborative economy platform workers are framed as part of a broader strategy for taxpayer outreach and education. See, in this respect: OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', *The International and Ibero-American Foundation for Administration and Public Policies*, OECD Publishing, 2015.

906 See, for example: Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017.

907 Natrah Saad; 'Tax Knowledge, Tax Complexity and Tax Compliance: Taxpayers' View', *Procedia – Social and Behavioral Sciences 109 (8)*, 2014, pp. 1069-1075. Peter H. Schuck; 'Legal Complexity: Some Causes, Consequences, and Cures', *Duke Law Journal 42 (1*), 1992, pp. 1-52.

908 Lin Mei Tan and Valerie Braithwaite; 'Motivations for tax compliance: the case of small business taxpayers in New Zealand', *Australian Tax Forum 33 (2),* 2018, pp. 222-247. See also: Valerie Braithwaite [Ed.]; 'A New Approach to Tax Compliance', in: *Taxing Democracy: Understanding Tax Avoidance and Evasion,* Routledge 2003.

On the one hand, the mere deployment of taxpayer engagement and education measures inherently entails that some degree of non-compliance (underpinned by determinants other than unawareness or lack of knowledge) would inevitably persist.[909] On the other hand, to the extent that taxpayer engagement and education initiatives effectively enhance voluntary compliance amongst some taxpayers, the overall burden of enforcement of tax administrations would be reduced. In turn, this enables tax administrations to focus oversight and enforcement on willful evaders, thereby streamlining the allocation of administrative resources.[910] However, assessing the effectiveness of taxpayer engagement and education measures on (voluntary) compliance either from a quantitative or a qualitative point of view may be a tall feat in practice. There are two major reasons for this.

Firstly, the incidence of different compliance-related behaviors is difficult to establish outside pure theoretical rhetoric. Within any given tax system, non-compliance levels are ascertained through the so-called tax gap measurement,[911] meaning the (absolute) difference between the levels of tax expected to be collected and amounts actually collected.[912] A quantitative measurement of non-compliance alone does not support the discernment of specific determinants of non-compliance. With the exception of very few tax administrations[913] which attempted to establish empirically the extent to which platform workers' non-compliance is underlined by negligence and limited tax literacy,[914] most countries advancing the viewpoint that these characteristics are a main determinant of non-compliance rely on mere anecdotal evidence. Of course, considering the characteristics of the archetypal platform worker, it is neither inappropriate nor inconceivable to conclude that these taxpayers may be inexperienced with navigating the net of legal obligations attached to their income-generating activities.[915] Nevertheless, policymakers

909 J.B. Ruhl and Daniel Martin Katz; 'Measuring, Monitoring, and Managing Legal Complexity', Iowa Law Review 101 (1), 2015, pp. 191-244.

910 James Alm et al.; 'Taxpayer information assistance services and tax compliance behavior', *Journal of Economic Psychology 31 (4)*, 2010, pp. 577-586.

911 Konrad Raczowski; 'Measuring the tax gap in the European Economy', *Journal of Economics and Management 21*, 2015, pp. 58-72.

912 Ibid.

913 Nilufer Rahim et al.; 'Research on the Sharing Economy', HMRC Report 452, 2017.

914 Ibid.

915 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8 (1),* 2017, pp. 58-112.

should ideally not attempt to tackle negligence and limited tax literacy without a prior reasoned determination of the prevalence of other determinants of non-compliance.

Secondly, it should be noted that taxpayer engagement and education initiatives are seldom deployed as the sole measure for addressing the income taxation of platform workers.[916] On the one hand, this is the case because the clarification of existing rules is innately compatible with the deployment of other measures.[917] On the other hand, this is more obviously explained by the fact that taxpayer engagement and education initiatives alone are very rarely perceived as a sufficiently far-reaching approach.[918] When taxpayer engagement and education initiatives are deployed in concert with other measures targeting other determinants of non-compliance, it may become difficult to distinguish between the respective impacts of each measure.[919]

2) Impact on taxpayer compliance costs

Taxpayers' unfamiliarity and uncertainty regarding the treatment of their activities may exacerbate their tax compliance costs.[920] In turn, the compliance costs of taxation could be mitigated when taxpayers are provided with resources that facilitate them in navigating these rules.

916 See, for example: Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.

917 Katerina Pantazatou; 'Taxation of the Sharing Economy in the European Union', in: Nestor M. Davidson et al.; Cambridge Handbook of Law and Regulation of the Sharing Economy, Cambridge University Press, 2018.

918 In many states, taxpayer engagement and education initiatives are put in place as a supplement to black-letter measures, such as third party information reporting protocols. Much like taxpayer engagement and education initiatives, third party information reporting protocols attempt to reinforce platform workers' tax compliance with pre-existing rules.

919 This is exacerbated by the fact that the *actual* impact and prevalence of different determinants of non-compliance cannot accurately be ascertained *a priori*.

920 Chris Evans; 'Taxation Compliance and Administrative Costs: An Overview', *Institute for Fiscal Studies*, 2008. Martin Feldstein; 'Tax Avoidance and the Deadweight Loss of the Income Tax', *Review of Economics and Statistics 81 (4)*, 1999, pp. 674-680.

Arguably, taxpayer education alone cannot reduce all compliance costs borne by platform workers. Collaborative economy platform workers experience the compliance costs and obligations attached to the complexities of self-assessment and self-reporting processes. These may include costs related to tracking and documenting (gross) receipts and expenses or the payment of estimated taxes. The mere clarification of applicable tax rules has no impact on the burden of these compliance costs. Whilst all forms of tax compliance costs are inherently burdensome, there exists a nuanced distinction between the undertones of various forms of compliance costs. Taxpayers experience different compliance-related processes differently. There is a self-evident qualitative distinction between mandatory compliance costs related to the tracking of gross receipts, on the one hand, and the experience of time and vexation costs associated with ascertaining the correct characterization of an item of income in the self-reporting or self-assessment processes, on the other hand. In this respect, whilst the former could rightly be described as an inevitable extension of self-reporting or self-assessment processes, the latter more obviously amount to a deadweight burden.

3) Tax and financial literacy

Taxpayer engagement and education initiatives may encourage voluntary tax compliance and determine a number of positive subjective externalities.

Firstly, improved tax literacy as stimulated by taxpayer engagement and education measures may mitigate the impact of taxpayer negligence on compliance. Self-assessment and self-reporting frameworks emphasize taxpayer inputs, meaning awareness and knowledge are core determinants of voluntary compliance. Second, engagement and education related to the tax consequences of income-generating platform activities may optimize workers' labor supply decisions. Taxation directly affects the economic profitability of any income-generating activity.[921] An adequate understanding of the tax consequences afferent to peer-to-peer income-generating activities is a necessary precursor for workers to appreciate the real profitability of their income-generating activities.[922] Insufficient tax knowledge may distort

921 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8(1),* 2017, pp. *58-112*.

922 Ibid.

workers' labor supply decisions.[923] Because taxation is a downstream activity, disconnected from the actual generation of income, workers may overestimate the profitability of their activities.[924] In a similar vein, taxpayers may develop distorted subjective notions about the profitability of their activities when they have limited knowledge about applicable tax rates.[925] This aspect can be particularly problematic for workers that earn income from various sources, treated under separate schedules and rate structures.[926] Thirdly, some platform workers may be exposed to tax consequences in more than one jurisdiction. These scenarios may add a layer of complexity to the tax profile of the worker, who may be required to navigate the tax laws of two different states concurrently.

D. Taxpayer engagement and education measures driven by tax administrations

Taxpayer engagement and education measures are typically two-pronged and include (1) initiatives for taxpayer outreach ('engagement') and (2) initiatives for informing and educating platform workers on how to comply with their tax obligations and access various tax benefits relevant to their situation ('education').[927]

923 Shu-Yi Oei; 'Tax Issues in the Sharing Economy: Implications for Wokers', in: Nestor Davidson et al. [Eds.]; *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Cambridge University Press, 2018.

924 Ibid.

925 Ibid.

926 Ibid. Additionally, some of the tax consequences of income-generating activities undertaken by workers through platforms only materialize at later points in time. For example, gains from the disposal of immovable property used as a personal residence are exempt from capital gains taxation in most states. For homesharing platform workers in particular, the provision of short-term rental accommodation in a personal property (or, as the case may be, the provision of such accommodation as a business) may relinquish the eligibility for the exemption in whole or in part. Additionally, domestic tax rules may sometimes entail the recapture of depreciation allowances upon the disposal of the property in question. From the taxpayer's perspective, the decision to provide homesharing accommodation and considerations pertaining to the subsequent sale of the property may well be detached from one another, potentially creating circumstances where the triggering of capital gains taxation is perceived as an unexpected tax consequence.

927 OECD; 'Current tax administration approaches and limitations', in: OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

1) Taxpayer engagement as driven by tax administrations – Nudges and voluntary compliance

A common and intuitive approach to taxpayer engagement is through compliance-related nudges applied by tax administrations. Nudges are linked with legal subjects' personal autonomy and behavioral posturing. All laws and regulations exist with a view to achieving a specific policy outcome. To be able to do so, laws and regulations must be capable of steering the behavior of legal subjects. Nudges are a tool for influencing individual behavior, aimed at reinforcing the intended policy outcomes of existing laws and regulations.

In the contents of this analysis, I rely on the interpretation of 'nudging' as developed by behavioral economists Thaler and Sunstein.[928] According to Thaler and Sunstein, nudges are a tool that public bodies may use to improve the quality of governance and public administration.[929] Their understanding of nudging is grounded on the notion that individuals' decision-making processes are not inherently inclined towards objectively optimal outcomes and are therefore prone to yielding outcomes that are neither beneficial to themselves nor wider society.[930] Legal subjects are constantly faced with *choices*. If the quality of governance and administration is linked with the actions of legal subjects, the argument emerges that the quality of governance could in turn be improved by tapping into the *choice architecture* of individuals.[931] To do so, Thaler and Sunstein support the application of nudges, which they define as '*any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives*'.[932] Nudges are not mandates and they entail no legal consequences of effects. Instead, nudges are an intervention into individuals' private sphere that is by definition easy to avoid.[933] Because of the breadth of the concept itself, nudges can take a variety of different forms and they may be applied in various contexts.

928 Richard H. Thaler and Cass R. Sunstein; *Nudge*, Yale University Press, 2008.
929 Mark Kosters and Jeroen Van der Heijden; 'From mechanism to virtue: Evaluating Nudge theory', Journal of Evaluation 21 (3), 2015, pp. 276-291.
930 Richard H. Thaler and Cass R. Sunstein; *Nudge*, Yale University Press, 2008.
931 Mark Kosters and Jeroen Van der Heijden; 'From mechanism to virtue: Evaluating Nudge theory', *Journal of Evaluation 21 (3)*, 2015, pp. 276-291.
932 Richard H. Thaler and Cass R. Sunstein; *Nudge*, Yale University Press, 2008.
933 Ibid.

Based on this definition as adapted to the narrower context of tax compliance and administration, nudges are here understood to have the following characteristics:

- Firstly, their object and purpose is to support voluntary tax compliance;

- Secondly, they attempt to tap into the behavioral postures of taxpayers, as far as such postures are relevant in relation to issues of tax compliance;

- Thirdly, they do not entail the introduction of new regulation (either by exacerbating the legal consequences of non-compliance or by rewarding voluntary compliance).

i. Compliance-related nudges – Forms, design and behaviors targeted

Self-assessment and self-reporting mechanisms are honor systems, which place the onus on taxpayers to report taxable income other circumstances relevant to the determination of their tax liability.[934] Hard to tax groups enjoy various opportunities for non-compliance. As such, their compliance-related behavior is not always inclined towards voluntary tax compliance.[935] Against the background of these realties, compliance-related nudges have become an increasingly more common tactic through tax administrations attempt to address compliance deficits.[936] However, not all tax compliance-related nudges are the same. Nudges may attempt to encourage voluntary tax compliance by tapping into distinct behavioral insights.

For example, nudges may attempt to stimulate voluntary compliance through an appeal to *social norms*.[937] This approach is used, for example, by the United Kingdom tax administration, which sends taxpayers leaflets that read '*9 out of 10 people pay their taxes on time*'.[938] By framing voluntary compliance as a social

934 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.

935 Dimitri Romanov; 'Costs and Benefits of Marginal Reallocation of Tax Agency Resources in Pursuing the Hard-to-Tax', *Contributions to Economic Analysis 268,* 2004 pp. 187-213.

936 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2019.

937 Sherzod Abdukadirov; Nudge Theory in Action: Behavioral Design in Policy and Markets, Palgrave Macmillan, 2016, page 9.

938 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies',

norm, the nudge leverages the link between the compliance-related behavior of individual taxpayers and broader societal considerations.[939] Compliance-related nudges could also emphasize social norms through other tactics. For example, nudges could include information about the (general) allocation of public revenues raised through tax.[940] Such nudges seek to reinforce the idea of taxation as a social contract, wherein taxpayers contribute to the public good and government is under a corollary obligation to allocate the resources collected in a manner that safeguards such public good.

On what is arguably the opposite side of the spectrum, nudges may instead emphasize the consequences of non-compliance.[941] Some nudges target taxpayers' risk-taking behavior, which is in turn most commonly the product of a subjective perception of low probability that non-compliance could be detected.[942] Because nudges are addressed to a broader segment of taxpayers, such warnings do not entail a direct link to the actual consequences that any given taxpayer would face for non-compliance. As such, and because perceptions of low probability of detection and enforcement are informed by the taxpayers' subjective appreciation of their personal circumstances, the effectiveness of such nudges could rightly be called into question.

A more nuanced approach to nudging involves targeted reminders. This approach is applied in Australia, where the tax administration uses SMS messaging to remind specific taxpayers of upcoming filing and payment deadlines.[943] These reminders in principle target inadvertent non-compliance and negligent behavior. However,

OECD Publishing 2019, page 184.

939 Donna D. Bobek et al.; 'The Social Norms of Tax Compliance: Evidence from Australia, Singapore, and the United States', *Journal of Business Ethics 74,* 2007, pp. 49-64. Research into compliance-related behavior has long indicated that taxpayer voluntary compliance is partly informed by considerations related to the attitudes of peers towards compliance.

940 Justin E. Holz et al.; 'The $100 Million Nudge: Increasing Tax Compliance of Businesses and the Self-Employed using a Natural Field Experiment', National Bureau of Economic Research Working Paper Series, 2020.

941 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, page 185.

942 Jeff T. Casey and John T. Scholz; 'Beyond Deterrence: Behavioral Decision Theory and Tax Compliance', *Law & Society Review 25 (4),* 1991, pp. 821-844.

943 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, page 99.

they may also (indirectly) target risk-taking behavior. Taxpayers with an existing record of non-compliance are temporarily flagged as 'unlikely to pay' in regards to upcoming tax liabilities and they are issued reminders.[944] An important merit of this approach lies in the more personalized character of the nudge, which makes it more evidently and directly linked to the particular circumstances of the addressee. However, such nudges are only feasible if there exists the requisite infrastructure to process taxpayer-related data analytically. The salience of this issue becomes all the more apparent when considering the situation of hard to tax groups, in relation to whom a root cause of non-compliance is their visibility deficit.[945]

Finally, compliance-related nudges may take the form of brief reminders of the tax consequences pertaining to specific activities. Such nudges are particularly relevant as regards taxpayers that undertake secondary income-generating activities (e.g., in addition to a main employment). Such taxpayers are not necessarily inclined towards non-compliance, but may misconstrue an income-generating activity as a mere hobby or fail to consider its tax implications. However, the effectiveness of this form of nudging is largely dependent on the capabilities of tax administrations to actually reach the intended addressees.[946]

ii. Compliance-related nudges in the context of collaborative economy platform workers

Nudges are primarily a tool for taxpayer engagement. As such, these should support parallel measures for taxpayer education. In turn, this aspect invites the related question of how compliance-related nudges should be designed to effectively support taxpayer education initiatives. The importance of this consideration is underpinned by two aspects related to the nature of nudges. Firstly, nudges are supposed to be easily avoidable by addressees.[947] Secondly, nudges are not

944 Ibid.

945 Paul J. Beck and Woon-Oh Jung; 'Taxpayers' Reporting Decisions and Auditing under Information Asymmetry', *The Accounting Review 64 (3)*, 1989, pp. 468-487.

946 Perhaps the most self-evident manner of achieving this end is to refine the medium through which the nudge itself is transmitted. In this respect, such forms of nudges may be effective to the extent that the taxpayers targeted operate in a more or less centralized or otherwise organized form – which would indeed be the case for collaborative economy platform workers.

947 Mark Kosters and Jeroen Van der Heijden; 'From mechanism to virtue: Evaluating Nudge

meant to alter the options available to addressees or to the consequences of the undesirable behavior targeted through the nudge.[948] The effects of nudges are therefore limited by definition. As such, messaging and deployment medium are critical determinants of the effectiveness of nudging as a tool for taxpayer engagement.

Arguably, the capability of compliance-related nudges to effectively support taxpayer education measures requires a link between the nudge itself and existing resources for taxpayer education developed by tax administrations. To this end, tax compliance-related nudges should amount to an informational intervention.[949] This entails that the messaging of the nudge should include a direct and obvious reference to education resources developed for taxpayers to whom the nudge is addressed. A distinct question revolving around the effectiveness of compliance-related nudges pertains to the messaging contained in the nudge itself. As the illustrative examples of nudges discussed in the foregoing paragraphs have strived to convey, compliance-related nudges may attempt to target different cognitive biases that may underline non-compliance.[950] Different types of compliance-related nudges attempt to penetrate these distinct cognitive biases through various approaches to framing compliant and non-compliant conduct.[951]

The messaging in compliance-related nudges aimed at collaborative economy platform workers should strive to be consistent with the wider objective of taxpayer engagement and education initiatives. As emphasized previously in the contents of the present contribution, tax administration-driven engagement and education initiatives are typically underpinned by the viewpoint that the sub-optimal tax compliance of collaborative economy workers is determined by workers' unawareness and unfamiliarity with the tax consequences pertaining to their income-generating activities.[952] In this respect, it seems neither suitable nor

theory', *Journal of Evaluation 21 (3)*, 2015, pp. 276-291.

948 Ibid.

949 Dayanand S. Manoli; 'Nudges and Learning: Evidence from Informational Interventions for Low-Income Taxpayers', National Bureau of Economic Research Working Paper Series, WP 20718, 2014.

950 OECD Publishing 2019. OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019.

951 Ibid.

952 OECD; 'Current tax administration approaches and limitations', in: OECD; 'The Sharing and

necessary to deploy nudges that emphasize social values. The messaging of such nudges is highly abstract and carries no direct link to the targeted root causes of non-compliance (i.e., unawareness and negligence). In a similar vein, nudges that emphasize the consequences of tax non-compliance are arguably not appropriate or useful as part of taxpayer engagement and education initiatives. Nudges that highlight deterrence stimulate adversity rather than taxpayer engagement. Against this background, nudges framed in a neutral tone that highlight the *existence* of tax obligations for collaborative economy platform workers are arguably most appropriate as tools for taxpayer engagement.

Another relevant consideration towards the effectiveness of nudges is the medium through which the nudge is transmitted.[953] For tax compliance-related nudges aimed at collaborative economy platform workers, the identification of intended addressees is theoretically facilitated by the quasi-organized nature of workers' activities. Platform operators centralize information regarding the identities of workers. When platform operators are subject to reporting requirements, tax administrations may be better positioned to disseminate compliance-related nudges.[954] This may be achieved, for example, through communications sent directly by tax administrations to the workers identified pursuant to information reported by platform operators. However, it is widely acknowledged that tax administrations seldom dispose of the most appropriate and natural medium to distribute compliance-related nudges to platform workers. For this reason, in the vast majority of cases, platform operators are tasked with disseminating compliance-related nudges to workers. This is typically achieved under cooperative arrangements

Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

953 Miguel A. Fonseca et al.; 'An experimental investigation of the use of nudges embedded in tax filing software to reduce error rates', Tax Administration Research Centre, 2018. Eugen Dimant et al.; 'Requiem for a Nudge: Framing effects in nudging honesty', *Journal of Economic Behavior & Organization 172*, 2020, pp. 247-266.

954 Platform operators have no vested interest in workers operating through their infrastructure being non-compliant for tax purposes. However, they neither have a vested interest in assisting tax compliance if the underlying regulations would translate into additional and disruptive burdens for their business model. As such, platform operators will innately be more inclined to support soft law tax administration-driven efforts aimed at enhancing voluntary compliance by workers, because the steps required of platforms thereunder neither entail a reassignment of the compliance burdens and duties of the worker to the platform nor any sizeable additional costs or responsibilities.

for taxpayer engagement and education developed by tax administrations and platform operators.

2) Taxpayer education – Information portals developed by tax administrations

A growing number of tax administrations in various, primarily developed countries, have in recent years published information portals explaining the income tax implications of platform-mediated peer-to-peer activities.[955]

Publicly available information resources enable scale without mass in tax administrations' approach to taxpayer education.[956] Information portals may displace at least in part, individual inquires by taxpayers about routine questions on the interpretation of tax rules. By way of example, the tax administrations in Denmark and the United States developed information portals to support taxpayer education in respect of collaborative economy platform workers.

In Denmark, the national tax agency developed a notably comprehensive information portal for platform workers.[957] The portal has a main homepage that directs to separate pages explaining the tax consequences of different income-generating activities in the collaborative economy. At the time of writing, the portal covers homesharing, ridesharing, all-purpose freelancing, peer-to-peer sales and exchanges of goods and services and crowdfunding.[958] Each entry includes information tailored to the particularities of the activities involved and

955 European Commission; 'European agenda for the collaborative economy – supporting analysis'. Communication from the Commission to the European Parliament, The Council, the European Social and Economic Committee, and the Committee of the Regions. COM [2016] 365 final. A 2016 survey conducted by the EU Commission on Member States' strategies on enhancing income tax compliance amongst collaborative economy platform workers identified *awareness and education* measures deployed by tax administrations as the most widespread and widely favored strategy.

956 João Félix Pinto Nogueira; 'Tax Administration and Technology: from Enhanced to No-Cooperation?'; Digital Transformation of Tax Administrations, 2022, Available at SSRN: https://ssrn.com/abstract=4125999 or http://dx.doi.org/10.2139/ssrn.4125999 .

957 See, in this respect: Danish Tax Administration; 'Sharing Economy', available via: https://skat.dk/skat.aspx?oid=2236769 last accessed 24 June 2022.

958 Ibid.

details on the different tax consequences that ensue depending on the manner in which platform workers perform their activities. For example, the homesharing portal distinguishes between the domestic tax obligations of letting out part of a dwelling occupied by the platform worker as primary residence, on the one hand, and the implications of letting out a property used as a vacation home.[959] The portal also describes the different allowances, deductions and exemptions that platform workers may access depending on their activities and the assets used in the performance of these.[960] Tax rules and procedures are explained on the portal by reference to the particularities of collaborative economy income-generating arrangements. This considerations is notably relevant, because income-generating activities in the collaborative economy may be intermittent and involve the use of personal assets by workers.

In the United States, the federal tax administration recently published a 'gig economy tax center' on its website.[961] The portal presents the collaborative economy broadly and inclusively to refer to peer-to-peer work performed through a connecting platform.[962] Subsequently, the portal proceeds to break down the domestic income tax consequences of gig economy activities into four categories:[963] the storing of records on receipts and expenses, the payment of estimated income tax, the ascertainment of the relevant tax form(s), and the filing process.[964] For each respective category, the portal directs to pre-existing guidance forms published by the tax administration explaining, for example, the guidelines for recording income and expenses and ascertaining whether an item of income is taxable or an expense is deductible, clarifying deadlines and guidelines for the payment of estimated tax and final tax returns.[965]

In my view, the added value of information portals developed by tax administrations as tools for supporting taxpayer education depend on the specificity and

959 Ibid.
960 Ibid.
961 Internal Revenue Service; 'Gig Economy Tax Center', available via: https://www.irs.gov/businesses/gig-economy-tax-center last accessed 24 June 2022.
962 Ibid.
963 Ibid.
964 Ibid.
965 Ibid.

comprehensiveness of information disseminated, on the one hand, and on the visibility of the portals, on the other hand.

In terms of specificity and comprehensiveness, the approach taken by the Danish tax administration could arguably be described as a best practice. Whilst taking a somewhat distinct approach to the clarification of income tax rules for the benefit of collaborative economy platform workers, the portal developed in the United States displays similar advantages. By directing platform workers to pre-existing guidance documents, the United States approach to clarifying the application of the tax rules safeguards consistency in the tax administration's approach between the treatment of platform workers and other taxpayers earning income in similar circumstances outside the collaborative economy. An approach as the one employed in the United States is especially appropriate to the extent that tax administrations had already compiled and published other general guidance documentation that is directly relevant and applicable to the situation of collaborative economy platform workers.

Whereas considerations revolving around the comprehensiveness and specificity of the information provided in tax administration-developed information portals speaks to these instruments' quality of *education*, the visibility of these portals is an aspect directly related to the degree of taxpayer *engagement* pursued.[966] The availability of informational resources is nearly meaningless unless such information effectively reaches the intended addressees.[967] In turn, this highlights the role of taxpayer engagement initiatives as an indispensable support structure for taxpayer education.

E. Cooperative approaches to taxpayer engagement and education undertaken between tax administrations and platform operators

Taxpayer engagement and education are inseparable and co-equal components of tax literacy. Taxpayer engagement ultimately boils down to a notion of outreach. The party most suited to this is one that maintains natural touchpoints to taxpayers

966 OECD; 'Current tax administration approaches and limitations', in: OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

967 Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.

and a direct medium to reach taxpayers.[968] The emergence of the collaborative economy and the growing awareness of the challenges to tax compliance posed by workers prompted various initiatives for establishing a cooperative relationship between platform operators and tax administrations. The following paragraphs will focus on a particular such cooperative framework, namely the OECD *Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms* ('Code of Conduct' or 'Code').[969]

1) Codes of conduct as a matter of generality

Broadly speaking, a code of conduct is a set of statements whereby an enterprise (or group of enterprises) undertakes to regulate internal behavior and uphold certain commitments.[970] These commitments may be intended to benefit the enterprise, society at large, a specific group of persons, or a combination of these.[971] Codes of conduct vary in the extent of voluntarism under which they are adopted. In this respect, codes of conduct are sometimes adopted on a purely voluntary basis by enterprises, without any form of government intervention. Alternatively, codes of conduct may be adopted under various arrangements of mandated or sanctioned self-regulation.

Codes of conduct typically have a lax and open-ended character and place limited emphasis on issues of implementation. For these reasons, there is a significant measure of rightful skepticism revolving around the relevance of such instruments. However, there are strong arguments why the importance of codes of conduct

968 OECD; 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS'; OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2018, page 198. OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 22.

969 The OECD published the Code of Conduct together with the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy. The Model Rules introduce a multilateral framework for information reporting by collaborative economy platform operators and automatic exchange of information between tax administrations. According to the OECD, the Code of Conduct is intended to supplement third party information reporting (as enabled by the Model Rules) through taxpayer engagement and education initiatives. I discuss the Model Rules in more detail in Part III.II.3 of this research.

970 See, for example: Kathryn Gordon and Maiko Miyake; 'Business Approaches to Combating Bribery: A Study of Codes of Conduct', *Journal of Business Ethics 34*, 2001, pp. 161-173.

971 Ibid.

should not be discarded. Firstly, codes of conduct inherently involve an element of reputational accountability. Secondly and perhaps most importantly, codes of conduct (like all self-regulatory instruments) emphasize *standards* over strict duties.[972] In other words, they allow organizations to take a purposive approach towards legal requirements.[973]

2) Background to the OECD Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms

A number of features of the OECD Code of Conduct are noteworthy in particular. Firstly, the Code of Conduct is a welcomed promotion of soft law frameworks and cooperative regulation as instruments of tax governance.[974] Even if only on a symbolic level, codes of conduct may compound public trust in enterprises and the wider tax system.[975]

Secondly, the Code of Conduct introduces an element of soft law standardization.[976] It purports to preclude the need for tax administrations to negotiate separate arrangements with individual platform enterprises.[977] Equally importantly, the OECD advances the notion that the broad design of the Code of Conduct enables platform operators to formulate flexible solutions that are more likely to be accepted across different jurisdictions concurrently.

972 Ibid.
973 Richard Murphy; 'A Code of Conduct for Taxation', Tax Justice Network, 2007.
974 Hans Gribnau et al.; 'Codes of Conduct as a Means to Manage Ethical Tax Governance', *Intertax 46 (5)*, 2018, pp. 390-407.
975 Ibid.
976 OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 2021.
977 Ibid.

Thirdly, the OECD deliberately designed the Code of Conduct to have a broad and encompassing scope.[978] Accordingly, the instrument only covers 'actions which are not already required by law and which are compatible with other legal requirements.'[979]

Fourthly, an interesting characteristic of the Code of Conduct lies in the bilateral nature of the commitments and undertakings it sets out. The Code of Conduct establishes a cooperative framework for platform operators and tax administrations to contribute equally towards taxpayer engagement and education objectives. In effect, this embeds a symbolic contractual element within the Code of Conduct.[980]

3) Undertakings set out in the Code of Conduct and their links to voluntary compliance

The provisions of the Code of Conduct set out different types of undertakings for collaborative economy platform enterprises and tax administrations.

Firstly, the Code sets out the basic parameters on the relation between platform enterprises and tax administrations.[981] Accordingly, platform operators and tax

978 Ibid.

979 Ibid. The added value of this lies in that it precludes controversies regarding the compatibility of the Code of Conduct with other measures for the taxation of collaborative economy platform workers. Consequently, the Code of Conduct does not displace any other regulatory mechanism. It merely exists alongside any other such mechanisms, but without there being neither a hierarchical nor a heterarchical relationship between these. This choice of design creates opportunities for flexibility as to what undertakings could be required through the Code of Conduct, whilst concurrently maintaining the status and role of the Code of Conduct as a mere soft law supplement to other measures.

980 This is apparent from the wording used in the Code of Conduct itself. The wording '[t]ax administrations, which wish platform operators to engage with sellers on their tax obligations, will provide information on their respective websites or other applications setting out the circumstances when sellers may be liable to tax in their jurisdiction' creates the subtle contextual implication that tax administrations cannot expect platform operators to invest the resources in promoting taxpayer engagement amongst platform workers, unless that tax administration is demonstrably invested for its part in the attainment of these standards.

981 OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-

administrations undertake to establish an 'open and transparent relationship' with a view to assisting workers in meeting their tax obligations and ultimately improving voluntary compliance.[982] Platform operators are required to develop and implement a tax strategy outlining their commitment to this cooperative relationship.[983] In keeping with the flexible and general nature of codes of conduct, the instrument is vague as to the specific implementation steps envisaged under these points. The Code is merely focused on setting out objectives, rather than specific steps.

Interestingly, the Code expands on the bounds of the relationship between platform operators and tax administrations, in stating that platform operators '*will seek* to cooperate with tax administrations to find solutions together, including at the technical level, which will be sustainable for both the platform operator and the tax administrations'[984] [emphasis added]. The wording used (the platform operator 'will seek') implies a duty of proactive action by platform enterprises. In other words, the onus is on platform operators to propose action points. This is consistent with the wider emphasis placed by the OECD on the role of platform enterprises could exert over workers' compliance. Ultimately, the Code of Conduct seemingly envisages an 'open-ended' character for the cooperative relationship between platform enterprises and tax administrations.

Secondly, the Code includes five provisions setting out specific undertakings and duties for tax administrations and platform operators. These are framed with more specificity and relate more directly to the improvement of the effective taxation of platform workers through cooperation between tax administrations and platform operators.

To this end, Point three of the Code establishes a duty for tax administrations to make available for platform workers information 'setting out the circumstances when '[workers] may be liable to tax in their jurisdiction'.[985] Such information may be

and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 202, Points 1 and 2.

982 Ibid.

983 Ibid.

984 Ibid., at Point 9.

985 Ibid., at Point 3.

provided on tax administrations' website 'or other applications'.[986] According to the Code, 'this may include information about appropriate thresholds and exemptions, reporting requirements, allowable expenses and record keeping obligations'.[987] This provision in the Code of the Conduct is consistent with the wider OECD discourse, which emphasizes the role of taxpayer education in voluntary tax compliance.[988] This provision validates the notion that information portals developed by tax administrations are a core element of taxpayer engagement and education initiatives as measures for addressing the income taxation of collaborative economy platform workers. In this respect, the OECD arguably uses the Code of Conduct as a vehicle for further formalizing a call on tax administrations to build information portals.

The Code of Conduct sets out a mirroring duty for platform operators to send each worker a 'general statement' and continuous reminders outlining their responsibility to comply with applicable tax obligations.[989] In other words, platform operators are expected to nudge workers into voluntary tax compliance. Under the Code, platform operators are required to implement a similar 'general statement' informing workers about the (possible) existence of tax obligations within their terms of service.[990] The Code implies that platform operators should ensure that workers are engaged with the tax system and aware of the existence of their obligations. This approach is readily explicable by the direct relationship that exists between workers and the platform through which they undertake their income-generating activities. As a result of the nature of this direct relationship, platform enterprises have the optimal medium for the attainment of taxpayer engagement. Taxpayer education, on the other hand, is asserted as the duty of tax administrations.[991]

986 Ibid.
987 Ibid.
988 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019. OECD ; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020.
989 OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 2021, at Point 4.
990 Ibid., at Point 5.
991 Ibid., at Point 3.

Finally, the Code sets out the duty for platform operators to provide workers 'at least annually' with a 'statement of payments received from transactions carried out through the platform *along with any other appropriate information*'[992] [emphasis added]. Once again, the Code ultimately leaves the scope of information to be provided by platforms open-ended. The implication of the wording of this provision is that supplying workers with a statement about their payments received from platform activities is a minimum standard, leaving platforms to determine what additional information could and should be supplied. Unlike the points in the Code of Conduct described in the two foregoing paragraphs, this provision is not directly related to taxpayer engagement and education, but rather to supporting platform workers' self-reporting or self-assessment for income tax purposes.

The Code of Conduct is an important development towards formalizing taxpayer engagement and education initiatives as a measure for addressing the income taxation of collaborative economy platform workers. On the one hand, there is room to be rightly critical of the capability of these initiatives to safeguard effective taxation in respect of any hard to tax group, including collaborative economy platform workers. Ultimately, taxpayer engagement and education alone cannot overcome the deep-seeded issues that enable income tax non-compliance in the first place. On the other hand, the proliferation of taxpayer engagement and education initiatives in the context of the income taxation of collaborative economy platform workers brings a number of considerations to the forefront. There is inarguably an emerging consensus among policymakers at domestic and international level that the effective taxation of platform workers entails a key role for tax administrations.[993] In a similar vein, there is a progressive emphasis on the role of platform operators in supporting tax compliance in respect of workers. However, the role of platform operators in this context is yet to be delineated (and delimitated) with specificity. A cooperative relation between tax administrations and platform operators in the context of taxpayer engagement and education

992 Ibid., at Point 6.

993 I share the basic viewpoint that the income taxation of collaborative economy platform workers is multifaceted and highlights intersections between issues of tax policy and tax administrations. However, I am broadly critical of the notion that the role of tax administrations in supporting the effective taxation of platform workers should be focused on taxpayer engagement and education initiatives. I comment on these aspects in detail in Part IV to this research.

initiatives is undisputedly a welcome development and it may strengthen the objectives of these initiatives. Nevertheless, this cooperation should not conceal the obvious limitations of taxpayer engagement and education measures.

3. Measures for enhancing the oversight, supervision and enforcement capabilities of tax administrations – Third party information reporting

The persistent under-taxation of income derived by collaborative economy platform workers is linked in part to these taxpayers' visibility deficit and the information asymmetries in their relation with tax administrations.[994] Tax administrations are generally constrained in their capabilities and willingness to pursue command-and-control type enforcement in labor markets of high-volume/low-value transactions. Against this backdrop, there has been growing emphasis on measures for buttressing the oversight, supervision and enforcement capabilities of tax administrations in relation to platform workers.

Tax administrations' oversight, supervision and enforcement capabilities are supported most readily through third party information reporting arrangements. These entail that an intermediary supplies information pertaining to the identities and incomes of certain taxpayers to the tax administration. Information reporting requirements are applied in respect of intermediaries that are integrated within the natural ecosystem of taxpayers and who amalgamate information about large segments of taxpayers as part of their commercial dealings with these taxpayers. As such, frameworks for third party information reporting leverage the centralizing capabilities of the intermediary and the proximity between the intermediary and the taxpayers. The information supplied by the intermediary purportedly mitigates the informational imbalance between taxpayers and tax administrations.[995] Concurrently, third party information reporting arrangements may lessen taxpayers' proclivity for misrepresenting income or other information in self-reported or self-assessed returns.

994 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

995 Bibek Adhikari et al.; 'Information Reporting and Tax Compliance', *American Economic Association Papers and Proceedings 110*, 2020, pp. 162-166.

A. The role of third party information reporting arrangements in income tax systems

1) Third party information reporting as a support structure in relation to voluntary tax compliance

A core precept of taxation is that governments need to able to observe taxpayers and activities to be able to tax these effectively.[996] Information is inarguably a necessary precursor to effective taxation.[997] However, the clamoring challenge lies in capturing information. Some taxes (for example, VAT) are designed in such a way so at to generate observable trails of information.[998] Conversely, many taxes are not underlined by readily traceable information.[999] Personal income taxation in particular presupposes the identification and accurate representation of taxpayers' flows of income and other relevant circumstances. By its design, the system is sensitive to a systemic enforcement deficit.[1000] Most notably in connection with self-employed taxpayers, income taxation is reliant on voluntary compliance. The main enforcement tools available to tax administration are audits and fines. However, the deterrent effect of these is undercut by taxpayers' awareness that their visibility deficit renders the probability that non-compliance will be detected minimal.[1001] Policymakers are aware that voluntary compliance must be reinforced by mechanisms that foster the incentive for taxpayers to fulfill their tax obligations and that preserve the integrity of deterrence tools.

If the availability of information is indeed the key support of effective taxation – and accepting the notion that taxpayers are not in all cases reliable suppliers of information – the natural response would be to seek out information from third parties. The imposition of third party information reporting requirements neither removes nor limits the reporting duties of taxpayers in self-assessment

996 Dina Pomeranz; 'No Taxation without Information: Deterrence and Self-Enforcement in the Value Added Tax', American Economic Review 105 (8), 2015, pp. 2539-2569.

997 Ibid.

998 Ibid.

999 Ibid.

1000 Eric Toder; 'Reducing the Tax Gap: The Illusion of Pain-Free Deficit Reduction', Urban Institute and Urban-Brookings Tax Policy Center, 2007.

1001 Jonathan S. Feinstein; 'An Econometric Analysis of Income Tax Evasion and Its Detection', *RAND Journal of Economics 22 (1),* 1991, pp. 14-35.

or self-reporting processes. It merely provides an additional, objective channel of information for tax administrations. Unlike taxpayers themselves, a third party has no vested interest to misrepresent information.[1002] Additionally, intermediaries typically have a sizeable infrastructure for the processing of data, rendering the possibility of incorrect reporting lower when compared against the self-reporting capabilities of individual taxpayers.[1003]

2) Direct and indirect effects of third party information reporting arrangements

The imposition of third party information reporting requirements has no impact on the tax obligations of taxpayers. The primary purpose of third party information reporting is to mitigate the prevalence of sub-optimal tax compliance caused by information asymmetries and taxpayers' visibility deficit. The intended direct effect of these measures is to provide tax administrations with tools that improve their oversight, supervision and enforcement capabilities. Still, the added value of third party information reporting as a tool for improving administrative oversight and enforcement may be difficult to quantify in absolute terms.[1004] Nevertheless, third party information reporting protocols can theoretically support the integrity of income tax systems in at least two other ways, exerting indirect effects on tax compliance.

Firstly, third party information reporting may contribute to optimizing the administration of income tax systems. This can be achieved when tax administrations commodify the information received under third party information reporting frameworks and use it to provide resources for facilitating taxpayer compliance. Notably, many tax administrations use information received under third party

1002 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759. Information reporting duties are typically applied in respect of employers, financial or credit institutions – entities that deal with taxpayers at arm's length.

1003 Ibid.

1004 The mere availability of information cannot be directly equated with enhanced supervision and enforcement. The receipt of information is entirely redundant to the extent that tax administrations do not have the practical capability to process the information or otherwise act based on the information received.

information reporting frameworks for the provision of pre-populated tax returns.[1005]

Secondly, third party information reporting may stimulate voluntary compliance. For taxpayers, tax compliance is the product of a socially informed subjective decision-making process. Risk-taking taxpayers are in particular predisposed to consider the probability of non-compliance detection in their self-assessment or self-reporting processes. For this reason, their awareness of the application of third party information reporting in relation to them may influence their behavior. Rather than increasing the penalties afferent to detected non-compliance, third party information reporting frameworks harbor an environment where the taxpayer is made to perceive their personal exposure to detection and penalties more prominently.

3) Third party information reporting arrangements in the context of collaborative economy platform workers

Third party information reporting is widely championed as a feasible and desirable approach to address the income taxation of collaborative economy platform workers. The arguments in support of the application of third party information reporting arrangements in the context of the collaborative economy are rooted in the characteristics of the environment of the collaborative economy.

Income-generating activities in the collaborative economy by their nature carry a digital footprint. Workers' activities are digitally recorded by the platforms through which they are performed. Payments derived by workers are electronically processed and cash payments are rare. Even when payments are not recorded by platform operators, they would still normally pass through a bank or other

1005 OECD; 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS'; OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2018; and OECD; 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations – Country Experiences With the Use of Pre-populated Personal Tax Returns', OECD Publishing, 2006. Pre-populated tax returns may reduce taxpayers' exposure to auditing and diminish the incentive to misrepresent information in a self-reported or self-assessed return. For example, a number of states take a 'deemed approach' to pre-populated tax returns, wherein these are automatically accepted and not further reviewed when submitted close to the expiry of a notice period. This approach is premised on the notion that information available to the tax administration pursuant to third party information reporting is sufficient to deem a return acceptable.

centralized payment processing intermediary. The traceability of platform workers and their activities creates opportunities to address information asymmetries and these taxpayers' visibility deficit through the application of third party information reporting mechanisms. As such, the environment of the collaborative economy is amendable to the application of third party information reporting measures.[1006]

Furthermore, third party information reporting arrangements are a non-intrusive approach to address the income taxation of collaborative economy platform workers – a relevant consideration from the perspective of fiscal neutrality. Such measures attempt to safeguard tax compliance by superseding some opportunities for non-compliance that would otherwise be available to taxpayers. Third party information reporting mechanisms may be favored by states whose viewpoint is that existing income tax rules are appropriate to address the income taxation of platform workers and that the under-taxation of platform workers is mainly rooted in circumstantial considerations related to taxpayer behavior. Third party information reporting arrangements reinforce equity and voluntary compliance with existing income tax rules and act as a support structure in relation to these. In other words, third party information reporting arrangements readily coexist with other elements in a broader tax system.

In the legal context of the EU, third party information reporting arrangements applied in respect of collaborative economy platform workers have been ruled to be compatible with the freedom to provide services set out in Article 56 TFEU.[1007] According to the CJEU, third party information reporting requirements do not regulate the provision by platform operators of their own services, as such

1006 In Part II to this thesis, I discuss in more detail how the digital footprint of platform workers' income-generating activities sets these taxpayers apart from ordinary hard to tax groups. In the contemporary digitalized era, most payments (including those for peer-to-peer services) are indeed processed electronically (e.g., through payment settlers such as PayPal or Google Pay). However, in the case of collaborative economy platform workers, the digital footprint of activities is inherent in the nature of their income-generating activities, rather than an incidental occurrence. This is linked with the tripartite structure of income-generating activities in the collaborative economy, where platform operators are involved by design in all activities performed by workers.

1007 I discuss the compatibility of third party information reporting arrangements with secondary EU law in Part IV.IV.2.B of this research.

measures only concern the taxation of income derived by workers.[1008] Where third party information reporting measures apply, their only effect in respect of platform operators may relate to the creation of additional costs in respect of the provision of their own services, but not the actual provision of the underlying services.

B. The identity of the information reporter in the collaborative economy – platform operators or alternative intermediaries?

The inherently digitalized nature of platform workers' income-generating activities invites some questions about the suitability of different intermediaries that could act as repositories and reporters of information. Third party information reporting obligations over platform workers may be imposed on entities other than platform operators. In principle, reporting duties could likewise be imposed on credit institutions or payment processing entities, for example.[1009]

On the one hand, the application of information reporting duties on platform enterprises is in many ways the most reasoned approach. Measures for the taxation of platform workers should be designed by reference to the core characteristics of these taxpayers and the circumstances in which they generate income. These primarily revolve around the tripartite structure of collaborative economy transactions and the role played by platform operators within transactions.[1010] The argument could also be made that platform operators are better equipped to manage reporting compared to entities such as credit institutions and ordinary payment processors.[1011] The nature of collaborative economy arrangements is

1008 Case C-674/20 Airbnb Ireland UC v. Région de Bruxelles-Capitale [2022], paragraph 42. See also Opinion of Advocate General Szpunar in Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022], paragraph 50. Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022].

1009 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2017. The selection of the information supplier should be subservient to the objective of enhancing the supervisory capacities of tax administrations and (voluntary) compliance outcomes amongst collaborative economy participants.

1010 Philippe Barezieux and Camille Herody; 'Rapport au Premier Ministre sur l'Economie Collaborative', 2016.

1011 Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.

such that platform operators are the primary source of information pertaining to workers.[1012] Platform operators maintain the first and more direct touchpoint to workers. Conversely, even though credit institutions may have access to data pertaining to workers' income-generating activities and the receipts they derive from these, they are only secondary repositories of information. Additionally, unlike platforms, credit institutions' data on workers would likely be comingled with other information, making it comparatively difficult to ensure the provision of relevant datasets and a suitable format for reporting.[1013] Reporting by credit institutions or digitalized payment processing enterprises would require mechanisms for sequestering the transactions of platform workers from the transactions of other clients, thereby compounding the compliance burden associated with such measures.

However, one issue posed by frameworks that require platform operators to report information on workers concerns the enforceability of such requirements in cases where the platform operator neither resides nor maintains a presence in a jurisdiction that imposes information reporting requirements. Such scenarios are an inherent byproduct of the globalized nature of the wider digitalized economy. Cross-border enforceability constraints may compromise the effectiveness of third party information reporting frameworks. For this reason, policymakers must necessarily design such measures in ways that overcome these constraints.[1014]

1012 Chartered Accountants Australia; 'A Sharing Economy Reporting Regime' – Public Consultation Response, Appendix A.

1013 Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019. Tax Institute Australia; 'A Sharing Economy Reporting Regime' – Public Consultation Response. On the other hand, reporting by credit institutions or payment processors does have its own merits. By comparison to platform operators, credit institutions and payment processors normally have more sophisticated processes to verify the accuracy of data. The Anti-Money Laundering and Know-Your-Client procedures deployed by these are typically refined as a result of their experience with due diligence procedures. Credit institutions in particular have long been subject to comprehensive reporting duties, for example pursuant to the Common Reporting Standard and Foreign Account Tax Compliance Act. Platform operators, by contrast, typically attempt to minimize the extent of information required from workers.

1014 At the present time, this issue is largely addressed as a result of the development of a multilateral approach to third party information reporting for the collaborative economy by the OECD. In the European Union, a recent amendment to the Directive on Administrative Cooperation ('DAC7') similarly safeguards information reporting and cross-border

It should also be noted that states may impose overlapping reporting obligations on different intermediaries in respect of the same taxpayers. An example of a state where overlapping information reporting requirements are in place is Finland.[1015] In addition to reporting duties applied to platform operators under domestic law, the Finnish tax administration mines additional data from financial institutions and credit card companies. The information extracting capacities afforded to the tax administration under Finnish law are expansive and allow the broad-based collection of information supplied from different third party sources. In a similar vein, the Australian Tax Office supplements information received from platform operators with cross-referencing from the Transaction Reports and Analysis Centre, a domestic intelligence agency specialized in the monitoring of unregistered businesses and money laundering supervision.[1016]

C. Reporting by platform operators under third party information reporting arrangements instituted prior to the emergence of the collaborative economy

Many states have pre-existing frameworks for third party information reporting pursuant to which platform operators may be required to supply information related to workers.

By way of example, in the United States, independent contractors are generally subject to information reporting requirements set forth in § 6041 (Form 1099-MISC) and § 6050 (Form 1099-K) of the Internal Revenue Code.[1017] Form 1099-MISC is issued by persons that extend a payment of at least USD 600 to a recipient. For example, a business paying a natural person USD 600 in cash for consultancy services is required to report the payment to the Internal Revenue Service using Form 1099-MISC.[1018]

automatic exchange of information between tax administrations in respect of collaborative economy platform workers. These instruments are discussed in more detail subsequently in this Part.

1015 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019.

1016 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2017.

1017 26 United States Internal Revenue Code § 6041 and § 6050 – Information at source.

1018 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

The provisions of § 6050 apply in respect of financial institutions and third party payment settlement organizations i.e., payment intermediaries.[1019] Under § 6050, third party payment settlement organizations were originally required to issue and file Form 1099-K in respect of payments received by a natural person in excess of USD 20.000 *per annum* derived from at least 200 transactions.[1020] Only recently, pursuant to the American Rescue Plan Act of 2021, the threshold for reporting under § 6050 was reduced to USD 600 *per annum*, regardless of the number of transactions.[1021]

Collaborative economy platforms based in the United States had originally taken the position that the functions they exercise (payment collection and processing) render them third party payment settlement organizations for the purposes of the rules described immediately above.[1022] Consequently, platform operators only reported information in relation to workers that derived over USD 20.000 through at least 200 transactions undertaken through their interface during the same year. As a result, many workers were excluded from the scope of reporting altogether before the threshold for reporting was lowered.[1023]

Still, a threshold for reporting may be desirable for various reasons. The thresholds for Form 1099-K reporting under § 6050 are effectively nothing but a *de minimis*

1019 Third party payment settlement organizations typically include PayPal, Amazon and Google Checkout.

1020 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069. The difference between § 6041 and § 6050 lies in the circumstances under which reporting is required. Under § 6041, reporting is due by persons that make direct payments to independent contractors (usually clients or customers). Conversely, § 6050 sets out a reporting obligation in respect of payment intermediaries (i.e., entities that process payments derived by independent contractors from clients or customers). The reporting requirements under § 6050 are notably relevant for independent contractors that derive payments from high-volume/low-value transactions.

1021 H.R.1319 - American Rescue Plan Act of 2021 Sec. 9674.

1022 Shu-Yi Oei; 'Tax Issues in the Sharing Economy: Implications for Workers', in: Nestor M. Davidson et al. [Eds.]; *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Cambridge University Press, 2018.

1023 This would most commonly be the case for platform workers that only perform on a part-time or otherwise intermittent basis, leading to an objective difference in treatment compared to full-time platform workers. The bright-line threshold established under the § 6050 for Form 1099-K reporting allowed opportunities for arbitrage. Since the revenue and transaction thresholds are applied as cumulative conditions, a taxpayer may orchestrate non-reporting by simply limiting their number of transactions.

exclusion. As a matter of principle, any *de minimis* exclusion is premised on the notion that the full neutralization of the tax collection and reporting gap is a utopian value. *De minimis* exclusions are by definition a concession that favors legal simplicity and efficiency. What an acceptable minimum actually represents is a question to be settled at the level of individual jurisdictions. Arguably, the availability of comprehensive information on all the taxpayers involved in collaborative economy platform transactions is meaningless to the extent that the tax administration cannot act upon it. By contrast, when the reporting requirements are restricted to high-earning platform workers, the tax administration is better positioned to allocate limited supervisory and enforcement efforts. Additionally, *de minimis* thresholds may mitigate compliance costs for reporting intermediaries.[1024]

De minimis thresholds are justifiable on grounds of efficiency and simplicity. However, they should be approached with some measure of caution. If a threshold is applied, it should be set at a floor that complements the overarching objectives of the third party information reporting framework. For example, high thresholds arguably highlight administrative oversight, supervision and enforcement as key objectives of third party information reporting measures. Conversely, lower thresholds strengthen the secondary or indirect objectives of third party information reporting frameworks. Additionally, the prevalent circumstances of taxpayers subject to reporting should also inform the level of *de minimis* thresholds. This consideration is especially relevant in the context of the collaborative economy, where some workers derive all or most of their income from activities performed through platforms, whereas other workers' activities are intermittent and yield smaller and more unpredictable proceeds.

Besides the United States, other countries' pre-existing legislation likewise includes third party information reporting mechanisms that may be applied to require

1024 Intermediaries automatize information reporting obligations as part of their own compliance infrastructure. This is especially the case when the reporting obligation covers a large segment of taxpayers. However, the automation of reporting obligations is considerably more facile when third party information reporting requirements only entail that the intermediary discloses information already collected from taxpayers as part of their commercial dealings with the taxpayer. In practice, many third party information reporting requirements are more than a mere transfer of data. *De minimis* thresholds reduce the incidence of non-commercial requests for additional information by intermediaries from taxpayers.

reporting by platform operators. In the United Kingdom, pursuant to the 2016 update of the Finance Act,[1025] the tax administration is vested with data-gathering powers in respect of information maintained by business intermediaries.[1026] The legislation defines business intermediaries as any person that 'provides services to enable or facilitate the transactions between suppliers and their customers or clients (other than services provided solely to enable payments to be made' and 'receives information about such transactions in the course of doing so'.[1027] Collaborative economy platform operators fall under this definition.[1028]

The data-gathering powers enjoyed by the tax administration under the Finance Act are limited to information that the business intermediary already has at its disposal for its own purposes.[1029] A business intermediary subject to reporting cannot be requested to gather and report additional information. Additionally, reporting by business intermediaries must be preceded by a request by the tax administration, as the legislation does not envisage automatic or spontaneous reporting.[1030] Whilst the asserted purpose of the legislation is to facilitate the fiscal supervision of taxpayers earning income from small-scale independent activities,[1031] these data-gathering powers are ultimately hollow in the context of the collaborative economy.

Most states favor the introduction of tailored frameworks for reporting over collaborative economy platform workers. The Australian government made an explicit statement to this effect,[1032] arguing that none of the existing frameworks for third party information reporting is suited to the circumstances of platform workers.[1033] Indeed, in many cases, third party information reporting duties are designed with a limited scope and with a view to industries and activities that are

1025 United Kingdom; Finance Act 2011 [c.11].
1026 Ibid., § 176.
1027 Ibid.
1028 Judith Harger and Claire Miles; 'OECD's consultation paper on data sharing by platform operators', Willkie Farr & Gallagher (UK) LLP.
1029 Ibid.
1030 Ibid.
1031 HM Revenue & Customs; 'Explanatory Memorandum to the Data-Gathering Powers (Relevant Data) (Amendment Regulations 2016), No. 979/2016.
1032 Australian Government – The Treasury; 'A sharing economy reporting regime: A consultation paper in response to the Black Economy Taskforce Final Report', 2019.
1033 Ibid.

customarily regarded as high risk for non-compliance (e.g., agreements for the performance of construction work, sub-contractor agreements).

D. Multilateral frameworks for third party information reporting by platform operators and automatic exchange of information between tax administrations regarding collaborative economy platform workers – The OECD Model Rules

There is an emerging trend towards the introduction of multilateral measures for third party information reporting in respect of collaborative economy platform workers. The OECD is at the forefront of this development towards the internationalization and coordination of reporting by platform operators. In July 2020, the OECD published the *Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy* ('Model Rules' or the 'Rules').[1034]

As the foregoing paragraphs have strived to convey, unilateral third party information reporting frameworks differ on matters of scope and substance. Such differences reflect the respective priorities of policymakers and the circumstances of tax systems. By definition, a broad-based coordinating instrument cannot sensibly account for the nuances and policy preferences of individual states – it can merely strive to tackle some of the structural shortcomings of unilateral measures. In this respect, it is undeniable that the Model Rules and the international coordination introduced through this instrument have their particular merits and added value.

Firstly, the OECD surmises that the introduction of third party information reporting frameworks based on the Model Rules will mitigate the compliance burdens of multinational platform operators, which would otherwise have to comply with distinct reporting requirements applied in different jurisdictions.[1035]

1034 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy' [Public Consultation Document], 2020.

1035 The Model Rules were introduced by the OECD at a time where an increasing number of states had implemented (or where contemplating the implementation of) third party information reporting requirements in respect of collaborative economy platform workers.

Secondly, the Model Rules attempt to overcome the limitations to the enforceability of unilateral reporting measures in cross-border situations.[1036] Platform operators under the scope of the Rules ('Reporting Platform Operator') that are tax residents of, or otherwise incorporated or managed in a tax jurisdiction that has implemented the Model Rules are required to file an annual general report on the transactions of platform workers ('Sellers') to the tax administration of the state of residence of the platform operator ('Reportable Jurisdiction').[1037] With a view to mitigating the complexities of cross-border enforcement of reporting obligations, the report filed by the platform operator must include information pertaining to both domestic transactions and transactions undertaken by sellers resident in, or pertaining to immovable property located in any other jurisdiction that has implemented the Model Rules. The onus is then on the tax administration of the Reportable Jurisdiction to exchange the information received with its counterparts in other states that have implemented the Model Rules or a similar protocol ('Partner Jurisdiction(s)'). Consequently, the Model Rules entail that covered platform operators report all information in a single jurisdiction on a consolidated basis.

Thirdly, the internationalized and standardized character of the Model Rules has the potential to stimulate an impetus for the adoption of similar frameworks in states that have not yet deployed similar reporting measures (e.g., because of the usual limitations to the enforcement of such measures in cross-border situations).

1) Background of the Model Rules

The OECD has long acknowledged the embryonic tax compliance risks posed by collaborative economy platform workers. In two recent biennial *Tax Administration* reports, the OECD briefly referenced the challenges experienced by tax administrations in securing the effective taxation of platform workers.[1038] The OECD

1036 Ibid. See also: Greenwoods; 'New rules for the sharing and gig economy? The new normal in international tax', 2020, available via: https://www.greenwoods.com.au/insights-source/new-rules-for-the-sharing-and-gig-economy-the-new-normal-in-international-tax last accessed 2 November 2020.

1037 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: https://www.oecd.org/ctp/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 9 June 2022, Section 3.

1038 OECD; 'Comparative Information on OECD and other Advanced and Emerging Economies',

comingles the compliance risks at play within the collaborative economy with those arising in the cash economy, largely describing platform workers as ordinary hard to tax groups. Subsequently, the OECD dedicated a sub-chapter to the tax challenges posed by the collaborative economy in the *Interim Report* on the digitalized economy.[1039] As part of the *Interim Report*, the OECD discussed the visibility deficit of platform workers and the information asymmetries in their relation with tax administrations. In the view of the OECD, these issues could be mitigated through third party information reporting in respect of platform workers.[1040]

In 2019, the OECD published the *Effective Taxation of Platform Sellers* Report,[1041] focused exclusively on the collaborative economy and the taxation of workers. As part of this report, the OECD reiterated the argument for a standardized approach to reporting by platform operators over workers operating through their interfaces.[1042] This recommendation distinctly foreshadowed the Model Rules. According to the OECD, a coordinated mechanism for reporting by platform operators was imperative on the grounds that an increasing number of states had adopted or were pondering the adoption of unilateral reporting frameworks. Uncoordinated unilateral frameworks are difficult to enforce in cross-border situations and compound compliance challenges for platform operators.

2) Structure and operation of the Model Rules

The Model Rules are structured along four main sections. The following paragraphs briefly discuss these in turn.

OECD Publishing, 2019. OECD; 'Comparative Information on OECD and other Advanced and Emerging Economies', OECD Publishing, 2017.

1039 OECD; 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS'; *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, 2018.

1040 Ibid. According to the OECD, this could be achieved through a multilateral framework, resembling the architecture of the Common Reporting Standard.

1041 OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

1042 Ibid.

i. Definitions – in-scope platform operators, activities and workers

The first section of the Model Rules sets out a number of definitions that establish the scope of the instrument.

First, the Model Rules define in-scope platform operators as '[any] entity that contracts with 'sellers' (platform workers) to make available the interface of its platform to such sellers'.[1043] The Rules include three optional exclusions for (1) start-up platform operators, (2) platform operators that bar workers from deriving profits and (3) platform operators that do not have 'reportable sellers'. The obligation to report under the Rules applies to in-scope platform operators that do not fall under one of the three exclusions and that are resident, incorporated or managed in a jurisdiction that implemented the Model Rules.[1044]

Second, in-scope services consist of the rental of immovable property or the provision of personal services for consideration.[1045] Personal services involve the provision of 'time- or task-based work performed by one individual at the request of a user'.[1046] A service is not regarded as a personal service within the meaning of the Model Rules if provided pursuant to an employment relationship between the provider and the platform operator or an entity related to the platform operator.[1047]

Third, the Model Rules define in-scope sellers to cover both natural and legal persons. Specific exclusions are set out for publicly traded enterprises, governmental bodies and regulated hotel businesses.[1048] These exclusions are readily explicable by reference to the overarching objectives of the Model Rules, namely the enhancement of tax administrations' supervisory capabilities over taxpayers that derive small-scale incomes from activities undertaken through platforms.

1043 Vasiliki Agianni; 'OECD Publishes Model Rules for Reporting by Platform Operators', IBD Tax News Service, 2020.
1044 Ibid.
1045 Ibid.
1046 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Section I Part A.
1047 Ibid.
1048 Vasiliki Agianni; 'OECD Publishes Model Rules for Reporting by Platform Operators', IBD Tax News Service, 2020.

These definitions are already indicative of the comprehensive scope of the Rules. According to the OECD, in-scope platform operators were deliberately defined in a general and all-encompassing manner,[1049] with a view to enabling broad-based reporting. The Model Rules make provision for only limited optional exclusions. The first exclusion seeks to spare start-up platform enterprises from the compliance costs associated with reporting under the Rules. However, the effect of this exclusion is limited, as it is conditioned by a stringent turnover threshold of EUR 1.000.000 *per annum*. The exclusion for platforms that bar workers from deriving profits was not present in the original draft of the Model Rules published in February 2020, but it was added in the final version following comments submitted as part of the public consultation.[1050] The exclusion is justified on the grounds that the activities of not-for-profit workers do not carry tax consequences under domestic law in general, rendering reporting over such transactions superfluous.[1051]

The definition of covered services is similarly extensive and generic, capturing capital- and labor-intensive activities alike. A transaction will only be an in-scope service to the extent that it is rendered in exchange for consideration. The form in which the consideration is paid is not relevant, but the reporting requirement is conditioned on the amount of the consideration being known or reasonably identifiable by the platform operator. This entails that transactions where the platform operator merely connects users without playing a role in the settlement of consideration escape reporting altogether. In practice, this is most likely the case with platforms that facilitate one-off and largely informal transactions between

1049 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Background.

1050 Comments submitted by *BlaBla Car* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1051 However, a platform operator's eligibility for the not-for-profit carve-out provisions is conditional upon the supply of evidence that workers are actually barred from achieving profits. According to the Commentary adjacent to the Model Rules, this would entail the platform operators' provision to the tax administration of the particularities of the agreements concluded with workers and of the internal price fixing mechanisms that bar the achievement of profits.

peers.[1052] Whether or not the services rendered online or offline is immaterial for the purposes of reporting under the scope of the Rules.

In principle, activities involving the sale of goods through a platform are excluded from reporting under the Model Rules. In the vast majority of cases, collaborative economy arrangements involving the peer-to-peer sale of goods occur on a one-off or highly intermittent basis (e.g., sales of used goods). The OECD did not elaborate on the reasoning behind the basic exclusion of platform-facilitated transactions for the sale of goods in either the body of the Model Rules or the Commentary to the Model Rules. Presumably, this exclusion was motivated by the micro-scale at which such transactions tend to occur. The Commentary does acknowledge the potential difficulties associated with transactions that involve both the sale of goods and the provision of a personal service. In this respect, the Commentary to the Model Rules provides for a solution that mirrors the approach customarily taken by the OECD in relation to mixed contracts. To the extent that the elements of the contract could be separated, the part of the transaction involving the provision of a personal service is subject to reporting under the Rules.[1053] The example cited in the Commentary to this end involves a peer-to-peer transaction for the sale and installation of tiles, wherein the transfer of property rights in the tiles and the installation are seen as key separable components of the transaction.[1054] However, if a service (e.g., the packaging of goods to be sold) is merely ancillary to the transaction, no reporting is required.[1055] In 2021, the OECD developed an additional optional protocol which captures activities involving the sale of goods.[1056] In jurisdictions that implement

1052 Comments submitted by *Booking* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1053 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Commentary paragraphs 25 et seq.

1054 Ibid.

1055 Ibid. As the Model Rules place the onus on the in-scope platform operators to determine what transactions are subject to reporting, the only apparent solution available to platforms is to attempt to restrict the ensuing of mixed contract transactions to the furthest extent possible. Platform operators could potentially do so by internally regulating the terms of transactions between workers and users.

1056 OECD; 'Model Reporting Rules for Digital Platforms – International Exchange Framework and Optional Module for Sale of Goods'.

the optional protocol, issues related to reporting over mixed contracts that involve both the sale of goods and an in-scope service are alleviated.

ii. Due diligence procedures

The second section of the Model Rules prescribes the due diligence procedures to be followed by platform operators.[1057]

Firstly, platform operators are required to identify the sellers operating through their interfaces are excluded from the scope of reporting.[1058] This exception only extends to government entities, publicly traded enterprises and established hotel businesses. Pursuant to the Model Rules, platform operators may make this determination using publicly available data.[1059]

Secondly, the Rules set out the information that platform operators are required to collect. This includes the full name, primary address, taxpayer identification number and the date of birth of sellers that are natural persons. For entity-sellers, the information to be collected is materially identical (i.e., legal name, primary business address, taxpayer identification number and business registration number). The Model Rules place the onus for verifying the accuracy of this information on reporting platform operators.[1060] The Rules explicitly establish an obligation for platform operators to cross-reference the information received against records at their disposal and any available electronic interface for the verification of such data.[1061] When platform operators have a reasonable belief that information supplied to them is onerous, they are required to verify such information using 'reliable' third party data.[1062]

1057 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Section II. The Model Rules allow platform operators to outsource due diligence processes. Outsourcing does not entail the re-assignment of responsibility and liability for the accuracy of information subject to reporting.

1058 Ibid.

1059 Ibid., Section II B.

1060 Ibid., Section II C.

1061 Ibid.

1062 Ibid., Section II C 3.

Thirdly, the Model Rules set out the procedural aspects of timing and validity of the due diligence procedures. The objective of these provisions is to prevent platform operators from relying on outdated data in due diligence processes.

iii. Information to be reported and consolidated reporting

The third section of the Model Rules sets out the substantive reporting requirements the timing and format of reporting. In-scope platform operators are required to supply the information subject to reporting to the competent tax administration in their jurisdiction of reporting no later than 31 January of the year following the calendar year in which a platform worker was identified as an in-scope seller.[1063] The information reported must include the personal details of workers, the amounts credited to the worker during the reportable period (including any fees, commissions or taxes withheld by the platform operator during that period) and the financial account identifiers of the workers.[1064]

Whether or not the workers reported upon are residents of the jurisdiction where the information is reported or are engaged in the rental of immovable property located within that jurisdiction does not matter for the purposes of reporting. The Rules follow a 'single-reporting principle', in that the consolidated report filed by the platform operator replaces the multiple jurisdiction-specific reports that would otherwise be filed under unilateral frameworks. The tax administration is tasked with exchanging the information received with partner jurisdictions on an automatic basis.

iv. Enforcement and administration

The final section of the Model Rules addresses administrative and enforcement aspects.[1065] It sets out broad expectations for how governments should monitor platform operators' compliance with the reporting requirements. The Rules set out that governments should consider the introduction of retention requirements for

1063 Ibid., Section III A.

1064 Ibid., Section III B. The report is to be prepared within the formal of an XML schema developed by the OECD.

1065 Ibid., Section IV.

platform operators to store information collected and verified pursuant to the due diligence procedures for a minimum time period.[1066]

Additionally, the Model Rules prescribe enforcement measures to be deployed by platform operators against non-cooperative workers. The Rules expect platform operators to freeze the accounts and withhold the consideration received by workers that supply misleading or inaccurate personal information.[1067] The asserted objective of these internal enforcement mechanisms relates to the facilitation of platform operators' fulfillment of due diligence obligations, by preventing additional obstacles posed by workers' uncooperative behavior.[1068] The Model Rules do not prescribe unambiguous standards as to the criteria that should inform the application of enforcement measures by platform operators. The Rules are silent as to the contrasts between erroneous reporting produced by workers' genuine negligence and the deliberate supply of incorrect information by workers.

v. Remarks on the Model Rules

According to the OECD, the Model Rules were driven by considerations of standardization, efficiency and effectiveness.[1069] The Rules seek to spare platform operators from the asserted burdensome task of complying with distinct unilateral domestic frameworks. Consolidated reporting combined with automatic exchange of information between tax administrations has long been used as a tool for overcoming the territorial barriers that otherwise constrain third party information reporting measures.[1070] Outside the context of the collaborative economy, (extra-territorial) third party information reporting is a tried and tested tool for safeguarding tax compliance, which renders the ambitious reach of the Model Rules all but a surprising effort on the part of the OECD. The asserted merits of third party information reporting notwithstanding,[1071] the Model Rules are tainted

1066 Ibid. Retention requirements could facilitate, for example, the undertaking of randomized audits by tax administrations in jurisdictions that have implemented the Model Rules.

1067 Ibid.

1068 Ibid.

1069 Ibid.

1070 Robb Chase; 'Diving in: Platform Transactions and the OECD Digital Economy Effort', *Tax Executive 72 (36)*, 2020.

1071 As discussed previously in the contents of these paragraphs, the ultimate effectiveness of third party information reporting in general is, in this author's opinion, yet to be definitely

by a number of shortcomings. These aspects determine yet unanswered questions pertaining to the very objectives of the Rules, their relationship with existing non-tax law domestic provisions and the envisaged role of platform operators in the compliance processes of collaborative economy workers.

A) Compliance burdens

From the outset, the OECD describes consolidated reporting as a tool for mitigating the compliance burdens that platform operators would otherwise experience under unilateral and uncoordinated domestic frameworks for third party information reporting. In the public consultation following the first draft of the Model Rules, responses from collaborative economy enterprises expressed support for consolidated reporting.[1072] However, the Rules create two other types of compliance burdens for platform operators.

Firstly, the Model Rules require platform operators to collect information that goes beyond what is already collected from workers ordinarily.[1073] Platform operators commonly do not collect the entirety of information envisaged under the Model Rules for the purposes of regular commercial dealings with workers.[1074] Consequently, the Model Rules create an environment where a portion of the information submitted by workers in registration processes would be immaterial to their undertaking of activities through the platform. By imposing requirements for the collection of

asserted as a matter of principle.

1072 See, in this respect: Comments submitted by *Uber* and *BlaBlaCar* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1073 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Section II. Under the Model Rules, platform operators are expected to collect workers' first and last name, primary address, taxpayer identification number, date of birth and financial account information.

1074 Comments submitted by *Airbnb* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

information not otherwise gathered, the Rules invariably generate tension between the theoretical capability of platform operators to collect information, on the one hand, and the actual availability of the information envisaged.[1075]

Secondly, in some instances, the Model Rules entail that platform operators are required to address analytical questions as part of due diligence processes. This is the case, for example, as regards mixed contracts involving the sale of goods and the provision of an in-scope service. Activities involving the sale of goods are in principle excluded from the scope of reporting under the Model Rules. When a transaction involving the sale of goods is accompanied by the provision of a service, the platform operator is required to assess the transaction with a view to determining whether it is subject to reporting. As a matter of principle, third party information reporting frameworks should merely amount to a transfer of data, whereby an intermediary supplies data at its disposal to the relevant tax administration. The determination of whether certain information need be reported should be determined by bright-line standards (e.g., monetary or other similar formal thresholds) rather than material considerations related to the characteristics of a taxpayer or a transaction.[1076]

B) Limits to information collection capabilities under domestic laws

Platform operators may experience challenges in collecting some of the information subject to reporting under the Model Rules, for example the taxpayer identification

1075 Comments submitted by *Airbnb and BlaBlaCar* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1076 Comments submitted by *Uber* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020. Freshfields Bruckhaus Deringer; 'Policing Platform users' compliance: new international reporting rules' [Briefing], 2020, available via: http://knowledge.freshfields.com/en/Global/r/4296/policing_platform_users__compliance__new_international last accessed 2 November 2020.

numbers of workers.[1077] Firstly, some countries – particularly ones with weaker tax administrations – commonly do not issue taxpayer identification numbers (or equivalent identifiers) to individuals involved in small-scale independent income-generating activities.[1078] Secondly, the law of various countries grants individuals the right to refuse the disclosure of certain information. For example, Australian law allows taxpayers to refuse to disclosure their individual tax file number (i.e., the country equivalent to the taxpayer identification number) to third parties.

The final version of the Model Rules, published after the public consultation, relieves platform operators from the requirement of collecting a taxpayer identification number to the extent that this identifier is either not issued under the domestic law of the state of the workers' residency or not required to be disclosed under domestic law.[1079]

The Model Rules are ambiguous as to the usefulness of information such as the taxpayer identification number of workers in light of the other forms of information that reporting platform operators either already have at their disposal as a result of their commercial processes or otherwise collect pursuant to the requirements set forth within the Model Rules.

1077 Greenwoods; 'New rules for the sharing and gig economy? The new normal in international tax', 2020, available via: https://www.greenwoods.com.au/insights-source/new-rules-for-the-sharing-and-gig-economy-the-new-normal-in-international-tax last accessed 2 November 2020. Comments submitted by *KPMG* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1078 Comments submitted by *Uber* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1079 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Section II B(4)(b). The platform operator is required to establish that the workers' taxpayer identification number need not be collected, by reference to the domestic legislation of the state of residence of the workers concerned.

C) Thresholds for reporting and the policy objectives of the Model Rules

The Model Rules only foresee isolated exclusions from the scope of reporting.[1080] There are no *de minimis* exclusions or gracing provisions for workers whose activities are occasional or whose earnings are negligible.[1081] According to the preamble, the Model Rules seek to minimize exclusions from reporting with a view to achieving a broad-based and comprehensive framework.[1082] Nevertheless, it could be disputed whether reporting over workers irrespective of the scale of their income-generating activities serves this objective rightly. On the one hand, a *de minimis* threshold would be difficult to determine in light of the intended broad scope of implementation and application of the Model Rules. On the other hand, *de minimis* thresholds may support the core objectives of third party information reporting frameworks.[1083]

Importantly, the imposition of a minimum threshold would have alleviated the compliance burdens experienced by reporting platform operators for the undertaking of due diligence procedures. In their current form, the Model Rules prescribe the same due diligence processes to be undertaken by platform operators in relation to all workers subject to reporting, irrespective of the extent of their

1080 As discussed previously in the contents of the present analysis, these exclusions concern large businesses rather than the archetypal collaborative economy platform workers and workers whose activities are explicitly excluded from reporting (e.g., the supply of goods).

1081 The only exclusion informed by the size of the platform activities included within the Rules refers to entities that have undertaken more than 2.000 transactions for the (short-term) rental of immovable property through a platform during the same reportable year. It is generally accepted that this exclusion was designed with a view to excluding established hotel enterprises from the scope of reporting.

1082 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', Background.

1083 As emphasized consistently throughout the present analysis, third party information reporting frameworks only enhance the supervisory capabilities of tax administrations to the extent that these have the resources to process information received pursuant to such instruments. On the other hand, third party information reporting may also serve secondary purposes. In particular, tax administrations may use information received to provide pre-populated tax returns to workers. Additionally, third party information reporting measures may mitigate the incentive for taxpayers to misrepresent income in self-reported or self-assessed tax returns. These considerations, coupled with the difficulty of determining a broadly acceptable *de minimis* threshold in the context of a multilateral instrument, do rationalize the approach in the Model Rules.

activities or the levels of income derived from these. In a similar vein, the Model Rules do not account for the reality that, independently of third party information reporting legislation, platform operators already undertake know-your-customer ('KYC') procedures in relation to some platform workers, which may translated for tax purposes.[1084] Furthermore, *de minimis* thresholds may be designed in a manner that does not compromise the objective of broad-based reporting. In the case of the Model Rules, this could have been devised in one of two ways.

Firstly, platform workers who either undertake a number of transactions below a certain established minimum *or* whose platform activities yield less than an established minimum monetary amount could be excluded from the scope of reporting altogether. In relation to all workers subject to reporting by reason of exceeding these thresholds, the due diligence requirements for the verification of personal data and information set forth in the Model Rules could be readily applied. A threshold of alternative rather than cumulative conditions for the number of transactions and the level of income could ensure that workers' opportunities for arbitrage around the thresholds are restricted and that only genuinely *de minimis* amounts would be excluded from reporting. Additionally, a threshold that emphasizes the number of transactions and gross receipts of workers amounts to a bright-line yardstick, which does not require reporting platform operators to delve into analytical questions pertaining to the workers' circumstances.

Alternatively, the scope of reporting could be designed in such a way that only workers whose activities or income receipts exceed an established objective threshold would be subject to due diligence verification procedures. For workers whose activities or income fall below such a threshold, reporting would still apply, however the information supplied would be restricted to data already collected by platform operators for commercial purposes and not subjected to additional due diligence procedures.[1085] The main advantage over this approach would be that the

1084 Freshfields Bruckhaus Deringer; 'Policing Platform users' compliance: new international reporting rules' [Briefing], 2020, available via: http://knowledge.freshfields.com/en/Global/r/4296/policing_platform_users__compliance__new_international last accessed 2 November 2020.

1085 Comments submitted by *Airbnb* within the OECD Public Consultation on the Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy, available via: https://www.oecd.org/tax/exchange-of-tax-information/public-comments-

KYC processes performed by platform operators in relation to certain workers could be leveraged and transposed into the context of information reporting.

E. Implementation of multilateral third party information reporting arrangements in EU Law – DAC7

Mere weeks after the publication of the final version of the Model Rules by the OECD, the EU Commission published a draft proposal for an update to *Directive 2011/16/EU on administrative cooperation in the field of taxation* ('DAC') that mirrors in large part the provisions of the Model Rules. In March 2021, an updated text of the proposal was agreed upon by EU Member States in the Council of the EU. This instrument is the sixth amendment of DAC and it is colloquially referred to as 'DAC7'.

1) Policy background

The policy background for DAC7 largely mirrors the considerations set forth by the OECD as context for the Model Rules.[1086] At the time when the DAC7 proposal was

received-on-the-draft-model-rules-for-reporting-for-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm last accessed 2 November 2020.

1086 In July 2020, the EU Commission adopted an updated Tax Package founded on three major policy objectives: strengthening existing EU-level efforts against tax abuse, facilitating tax administrations in keeping the pace with an ever-evolving economy and mitigating compliance burdens for individual and corporate taxpayers. The Tax Package included a proposal for extending the reporting and transparency provisions of DAC to the collaborative economy ('DAC7'). The Tax Package was set forth by the Commission as a necessary stepping stone towards economic recovery in the wake of the Covid-19 pandemic. According to the Commission, the imperative revenue needs of EU Member States entail that persistent non-compliance needs to be tackled with a sense of urgency. Much like the OECD, the EU Commission acknowledged the emerging tax compliance risks posed by the asserted failure of collaborative economy platform workers to report income derived from income-generating platform activities. The Commission vehemently argued that the collaborative economy facilitates an environment of non-compliance that threatens the integrity of Member States' bases of taxation. In the view of the Commission, platform workers enjoy numerous opportunities for under- or non-reporting proceeds from income-generating activities. Considering the difficulties in measuring the direct effect of third party information reporting measures on public revenue mobilization, the timing of the Commission's DAC7 proposal is somewhat dubious. However, it should be remarked that the business model of the collaborative economy as a whole originally emerged in the wake of the 2008 recession. In this respect, the urgency of addressing the ensuing tax

introduced, twelve Member States had already implemented unilateral legislation on information reporting by collaborative economy platform operators.[1087] As discussed previously in the contents of this analysis, unilateral measures are difficult to enforce in extra-territorial situations, which dents their effectiveness. Additionally, they entail a considerable compliance burden for platform operators, which have to adjust reporting to the permutations of disparate domestic instruments. In this respect, the added value of harmonization is self-evident.[1088] The stakeholder consultation organized between the Commission and representatives of the collaborative economy likewise reflected a shared preference towards a harmonized approach that pre-empts domestic law permutations and duplicative reporting.[1089]

At its core, DAC7 is a mere extension of the existing framework for automatic exchange of information within the EU to collaborative economy platform enterprises. Pursuant, for example, to previous updates of DAC, similar reporting requirements were instituted in respect of financial and tax intermediaries. Under DAC7, platform operators are essentially framed as digital intermediaries. Much like other intermediaries subject to reporting under the wider framework of DAC, platform operators are custodians of information that could and should be leveraged by tax administrations with a view to supervising and enforcing tax compliance. Indeed, the fact that a comprehensive framework on third party information reporting had long been established within the EU through DAC is a structural advantage in building on existing experience when extending reporting requirements to specific business models such as the collaborative economy.

challenges posed by the business model itself during the next episode of global economic downturn arguably has an element of poetic suitability.

1087 See, for example: Annabelle Bailleul-Mirabaud and Céline Pasquier; 'DAC 7: online platforms, key players-to-be in the European tax transparency framework?', Tax Connect Flash, 2020.

1088 It should be noted, however, that harmonization measures should be accompanied by sunset clauses that eliminate reporting duties under previous legislation with a view to preventing unnecessary and duplicative reporting.

1089 European Commission; 'Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'. COM(2020) 314 final, page 6.

2) A close mirror of the OECD Model Rules

The reporting requirements under the DAC7 closely resemble the substance and architecture of the OECD Model Rules. On the limited points where DAC7 deviates from the Model Rules, the scope of reporting is only extended compared to the OECD counterpart.

A) Scope of reporting

Under DAC7, in-scope platform operators are defined in a breadth that echoes the comprehensive approach of the Model Rules, as entities that contract with sellers to make available a platform to such sellers. A platform operator will be subject to reporting requirements ('reporting platform operator') provided it (i) is a resident for tax purposes in a Member State, (ii) is incorporated, effectively managed, or maintains a permanent establishment in a Member State, or (iii) facilitates the performance of in-scope activities within the territory of a Member State, even when it maintains no taxable presence therein.[1090] According to the Commission, the extension of the scope of reporting to platforms that do not maintain a presence in the EU was necessary on two grounds. Firstly, a limited scope of applicability of the instrument would limit revenue collection. Secondly, the inclusion of platform operators regardless of their establishment in the EU safeguards a level playing field between platforms.[1091] Unlike the OECD Model Rules, DAC7 does not set out a carve-out provision for start-up platform operators with turnovers below a set threshold. According to the Commission, such an exclusion would have been undesirable as it would have encouraged regulatory arbitrage by taxpayers and out-of-scope platform operators below the threshold.

The scope of activities subject to reporting is likewise broader under DAC7 compared to the Model Rules. DAC7 envisages reporting over (i) platform-facilitated personal services (wherein the definition of personal services is identical to the one set forth under the Model Rules),[1092] (ii) platform-facilitated transactions involving the

1090 Ibid., page 10.

1091 Giorgio Beretta; 'The New Rules for Reporting by Sharing and Gig Economy Platforms Under the OECD and EU Initiatives', EC Tax Review 30 (1), 2021, pp. 31-38.

1092 Under the Model Rules, a personal service is defined as: service involving time- or task-based work performed by one or more individuals that act either independently or on

rental or letting of immovable property or any mode of transport and (iii) platform-facilitated sales of goods.[1093] The extension in the material scope of reporting under DAC7 to cover transactions involving the letting of movable property is an appropriate and considerate development compared to the Model Rules, particularly in light of the emergence and proliferation of collaborative economy sub-business models focused on these activities. By contrast, the rationale for the inclusion of transactions involving the sale of goods is arguably misguided, as most platform workers involved in such activities typically perform these on a very restricted scale. Consequently, the ultimate benefits stemming from reporting over such transactions are disputable. Transactions involving the sale of goods were presumably included within the scope of reporting solely for the sake of comprehensiveness, but it is uncertain whether this ambition is fully justified. Still, this broad scope of reporting does entail one important advantage. As previously discussed in my reflections on the OECD Model Rules, one critique that may be levelled at that instrument refers to the fact that exclusions from the scope of reporting are determined in some instances by reference to the characteristics of the underlying transactions. By way of example, when the same transaction contemporaneously entails the sale of goods and the provision of a personal service, the platform operator is expected to evaluate this mixed contract and determine whether it is required to report. This not only compounds compliance costs, but likewise entails that platform operators are expected to make analytical determinations about transactions.

The in-scope platform workers in respect of which reporting duties must be met include both natural and legal persons that are either resident in a Member State or rent out immovable property located in a Member State. A worker is a 'resident' of a Member State if they have a primary address in an EU Member State or have been issued a taxpayer identification number of VAT number in an EU Member State. Unlike the Model Rules, DAC7 does not envisage exclusions for low-risk taxpayers (e.g., hotels or publicly traded corporations). An exclusion only applies in respect of government entities.

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behalf of an Entity. This service is carried out at the request of a user, either online or physically offline after having been facilitated via a platform.

1093 European Commission; 'Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'. COM(2020) 314 final, page 11.

B) Collection of information and due diligence procedures

For the purposes of fulfilling their reporting duties, in-scope reporting platform operators are required to register with a single Member State (usually the Member State where platform operator has a VAT number).[1094] Platform operators that reside for tax purposes in more than one EU Member State are allowed to select a jurisdiction for reporting. A selection is also possible for platform operators that are not established in the EU but whose relevant activities take place within the EU.

The information collection and verification requirements applicable to reporting platform operators under DAC7 largely mirror the corresponding requirements set out in the Model Rules. Platform operators are required to collect in-scope workers' first and last name (or trade name in the case of legal persons), primary address, taxpayer identification number and VAT identification number where applicable, date of birth (or the business registration number in the case of legal persons) and the financial account identifier in which the consideration for the activities performed is credited.[1095]

Platform operators are required to verify the information collected through the due diligence procedures laid down in the Annex to the DAC7 proposal.[1096] Mirroring the provisions of the Model Rules, DAC7 merely provides that all the information collected and subject to reporting must be verified by reference to all searchable records available to the platform operator.[1097] DAC7 establishes that Member States are required to grant reporting enterprises free-of-charge access to domestic governmental databases for authenticating the accuracy of information supplied to platform operators by workers.

C) Contents and timing of reporting, consolidated reporting and automatic exchange of information

Similarly to the Model Rules, DAC7 entails consolidated reporting by platform

1094 European Commission; 'Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'. COM(2020) 314 final.
1095 Ibid., Article 8ac.
1096 Ibid., Annex
1097 Ibid.

operators. The report must include (i) the identifying information of in-scope platform workers, collected and verified pursuant to the due diligence procedures and (ii) all information about the total consideration paid to in-scope workers during the reportable period.[1098] The information reported by a platform operator in a Member State must be communicated by the competent authorities to counterparts in all other Member States where in-scope workers are resident and/or rented out immovable properties are located. The deadline for the automatic exchange of information between the authorities of the Member States must occur within two months following the conclusion of every annual reportable period.

D) Administrative provisions and enforcement

The enforcement provisions included in the DAC7 proposal are nearly identical to the Model Rules. Platform operators must unilaterally deploy coercive measures against workers that refuse to supply information or hamper due diligence procedures (i.e., by the freezing of these workers' platform accounts and/or the withholding of consideration). Similarly, DAC7 envisages the application of penalties for non-compliance for reporting platform operators that submit incomplete or inaccurate reports.[1099]

DAC7 includes provisions for the registration of platforms not otherwise established in the EU. These platforms are required to register in the Member State where their activities are performed. That Member State will then issue an identification number for the platform. If the non-EU established platform performs activities in more than one Member State, the platform may make a unilateral election for registration in one of these States. In the view of some authors, non-EU platforms will still pose enforcement challenges. The requirement that such platforms register in a Member State does not override enforceability constraints in respect of entities that do not maintain a presence in the EU.[1100]

1098 See, for example: Annabelle Bailleul-Mirabaud and Céline Pasquier; 'DAC 7: online platforms, key players-to-be in the European tax transparency framework?', *Tax Connect Flash*, 2020.

1099 European Commission; 'Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'. COM(2020) 314 final, Article 25a.

1100 Stan A. Stevens and J.T. van Wamelen; 'The DAC7 Proposal and Reporting Obligation for Online Platforms', *EC Tax Review 30 (1)*, 2021, pp. 24-30.

F. Brief reflections on third party information reporting measures as a tool for safeguarding tax compliance in the collaborative economy

The similarities between the Model Rules and DAC7 attest to the growing relevance of multilateral third party information reporting and the role of platform operators in safeguarding tax compliance for workers in the collaborative economy.[1101]

Much like the Model Rules, DAC7 is more than a mere data transfer framework, in that it requires the collection by in-scope platform operators of information they would not otherwise require from workers and the undertaking of additional due diligence procedures. Both instruments set out a comprehensive scope of reporting, with limited carve-outs. In spite of the fact that both instruments seek to minimize compliance and administrative costs, some authors highlight the risk for duplicative reporting harbored by these measures.[1102] Reporting under the Model Rules and DAC7 is not coordinated with other frameworks for third party information reporting and exchange of information between tax administrations,[1103] meaning overlapping reporting may subsist despite the objectives of these instruments. Other authors surmise that smaller platform operators are exposed to disproportionate compliance costs in connection with collecting information from workers, due diligence and reporting, compounding 'winner takes it all' effects for existing platforms.[1104]

1101 Giorgio Beretta; 'The New Rules for Reporting by Sharing and Gig Economy Platforms Under the OECD and EU Initiatives', *EC Tax Review 30 (1)*, 2021, pp. 31-38.

1102 Ibid.

1103 Ibid. Beretta references in particular overlaps in reporting and exchange of information through KYC.

1104 Stan A. Stevens and J.T. van Wamelen; 'The DAC7 Proposal and Reporting Obligation for Online Platforms', *EC Tax Review 30 (1)*, 2021, pp. 24-30. Stevens and Wamelen surmise that large platform operators enjoy a competitive advantage, since their compliance costs per worker would be comparatively lower. Interestingly, in the Public Consultation for the OECD Model Rules, *Uber* commented about its compliance with existing reporting requirements and noted that it is 'targeted by authorities to comply' specifically because of its size. In this respect, third party information reporting measures that set out a broad personal scope for reporting intermediaries safeguard a level playing field and strive to preclude workers' opportunities for arbitrage (e.g., registering and supplying services through platforms that are not required to report information to authorities). On the one hand, I agree with the viewpoint that it is difficult to balance considerations of efficiency (i.e., the relative compliance cost burdens for platform operators) with neutrality (which

These considerations notwithstanding, I surmise that the main added value of the Model Rules and DAC7 lies in the fact that these instruments address the key challenge related to the enforceability of unilateral measures in cross-border situations. Unilateral third party information reporting measures are incompatible with the globalized nature of the collaborative economy. In this respect, the Model Rules and DAC7 are inarguably a welcome development. But beyond this inarguable merit, it is my view that the OECD and EU Commission created a context for third party information reporting measures to also gain considerable political momentum as a tool for addressing the income taxation of collaborative economy platform workers.

In setting out the respective policy backgrounds of the Model Rules and DAC7, the OECD and EU Commission reconciled a number of politically catchy arguments. Both organizations highlighted the inequities enabled by the under-taxation of collaborative economy platform workers and the necessity of enhanced administrative oversight in respect of these taxpayers. Concurrently, the OECD and EU Commission both attempted to extend consideration to the circumstances of platform operators, arguing that third party information reporting measures should not entail disproportionate compliance costs. By their design as multilateral frameworks, the Model Rules and DAC7 make third party information reporting a convenient measure for addressing the income taxation of collaborative economy platform workers. In practice, this may effectively create a double-edged sword. The political momentum of the Model Rules and DAC7 inevitably brings about the broad-based implementation of such measures in different states. By extension, this emphasizes the visibility deficit of platform workers and the information asymmetries in their relation with tax administrations as key determinants of non-compliance, and strengthened administrative oversight and enforcement as primary tools to address these issues. This narrowed viewpoint is liable to discount the incidence of other, equally relevant factors underlying non-compliance in the collaborative economy. In Part IV.IV of this thesis, I discuss in more detail that the convenience afferent to third party information reporting

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demands a broad scope of reporting with limited exclusions). On the other hand, there is room to argue that this balance would be more readily attainable if third party information reporting measures are designed as a mere transfer of data, in that they only require platform operators to report information they already collect from workers as part of regular commercial dealings.

should not drive a lessened emphasis on other measures for safeguarding the income taxation of platform workers.

4. Non-employee withholding arrangements for the collection of tax in respect of income derived by workers from platform activities

In some states, the prevailing viewpoint is that the income tax compliance challenges posed by collaborative economy platform workers should be addressed through non-employee withholding arrangements.[1105] Such measures entail that an intermediary is required to collect and remit tax on workers' behalf for amounts derived from income-generating activities undertaken through platforms.

Non-employee withholding arrangements are not broadly applied as a measure for securing the income taxation of platform workers. Nevertheless, the consideration of such measures is relevant for a number of reasons. Firstly, a small number of states have either introduced or contemplated the introduction of non-employee withholding arrangements at the time of writing. While this fact alone is not indicative of an emerging trend, the experiences of states that have either implemented or considered non-employee withholding arrangements provide relevant insights into the merits, shortcomings and challenges of this approach to securing the effective taxation of collaborative economy platform workers. Secondly, withholding arrangements are usually regarded as the most reliable and efficient approach for the collection of tax. Withholding taxes are applied in virtually all tax systems in respect of various items of income, with a view to streamlining the timing of tax collection, simplifying compliance and removing (some) opportunities for non-compliance. A discussion of the collection of tax in respect of income derived by platform workers through withholding is appropriate in light of the compliance challenges posed by these taxpayers. Thirdly, the nature of the collaborative economy – and in particular, the digital footprint of transactions – should in principle provide opportunities for the broad-based application of non-employee withholding over workers' receipts. In light of these considerations, the

1105 See, for example: Michel Bouvard et al.; 'The collaborative economy: proposals for a simple, fair and efficient tax system', available via: https://www.senat.fr/notice-rapport/2014/r14-690-notice.html last accessed 9 June 2022.

question emerges as to why non-employee withholding arrangements are seldom applied in respect of income derived by platform workers from their activities.

The following paragraphs strive to address four major points. Firstly, consideration is extended to some theoretical factors underlining the added value of non-employee withholding arrangements towards securing the effective taxation of income derived by platform workers. Secondly, this analysis explores some options for the design of non-employee withholding arrangements as relevant to the situation of platform workers and the circumstances of their income-generating activities. Thirdly, this research discusses examples of domestic measures that attempted to introduce non-employee withholding arrangements as a tax collection tool for platform workers. Fourthly, this analysis reflects on the difficulties associated with the design and implementation of non-employee withholding arrangements in the context of the collaborative economy.

A. Viewpoints on the desirability of non-employee withholding arrangements for the collection of tax in respect of income derived by workers from activities undertaken through collaborative economy platforms

Sentiments on the desirability of withholding arrangements as a tool for securing the effective taxation of income derived by collaborative economy platform workers vary considerably.

At one end of the spectrum, the Australian government vehemently rejected the idea of introducing a non-employee withholding framework for platform workers. It justified this stance by reference to a number of considerations. Firstly, the government opined that a withholding regime restricted to income derived from platform activities would create unjust discrimination compared to income derived from similar activities outside the collaborative economy.[1106] In the view of the Australian government, non-employee withholding would only be called for against the backdrop of manifestly rampant non-compliance by platform workers.[1107] In other words, non-employee withholding is seen as a reactionary solution of last

1106 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

1107 Ibid.

resort. Secondly, the government argues that withholding agents would experience burdensome compliance costs and be incentivized to shift the burden of these onto workers.[1108] Thirdly, the government noted the difficulties associated with determining appropriate withholding rates and the structure of withholding. In the view of the government, a final withholding tax could create arbitrary distinctions between taxpayers, whereas non-final withholding would do little in the way of simplifying compliance for workers.[1109] Similarly, the determination of the appropriate rate for withholding would be hampered by competing considerations of encouraging participation in the collaborative economy, on the one hand, and the need to raise and mobilize revenue, on the other hand.

At the opposite end of the spectrum, Mexico recently introduced a broad-based non-employee withholding regime for platform workers.[1110] The measure requires collaborative economy platform enterprises to act as withholding agents in respect of income derived by workers from income-generating activities performed through the platform.[1111] The material scope of the regime is particularly expansive, covering the sale of goods and the provision of services through platforms with hardly any carve-outs. The regime applies three separate rates, which distinguish between different types of income-generating activities. Income derived from the sale of goods and the provision of services (excluding private transportation, delivery services and the provision of homesharing accommodation) is subject to withholding at a rate of 1%. Peer-to-peer private transportation and delivery services are subject to withholding at a rate of 2.1%. Finally, income from the provision of short-term accommodation is subject to withholding tax at a rate of 4%.[1112] In principle, the withholding tax is non-final. However, taxpayers earning income up to a fixed monetary threshold may opt to consider the withheld amount as a final payment of tax.[1113] The regime requires all platform enterprises that provide intermediation services through a digital platform interface to act as withholding

1108 Ibid.
1109 Ibid.
1110 Eduardo Orellana Polo; 'Mexico – Individual Taxation', IBFD Country Tax Guides [Reviewed 8 January 2021, Section 1.4.4.2]. Mexico – Secretariat of Public Finance; 'First Resolution of Amendments to the Miscellaneous Tax Resolution for 2020', 12 May 2020.
1111 Ibid.
1112 Ibid.
1113 Ibid.

agents, irrespective of their residency or of whether they maintain a presence in Mexico. Non-resident platforms that do not maintain a local presence in Mexico (e.g., through a permanent establishment or tax manager) are not exempted from withholding and remitting tax. Failure to comply with the withholding obligations for three consecutive months attracts a temporary restriction for the platform to provide intermediation services in Mexico.[1114]

B. Theoretical arguments supporting the desirability of non-employee withholding arrangements in the context of the collaborative economy

1) Collaborative economy platform workers are not fully-fledged entrepreneurs, so collecting tax in respect of the receipts from their income-generating activities through an intermediary is appropriate

Across the board, the income taxation of independent contractors involves taxpayer self-assessment or self-reporting.[1115]

The archetypal independent contractor is an *entrepreneur*. There exists a broad body of multi-disciplinary literature wherein entrepreneurship is explained by reference to different types of considerations. One approach, used commonly by social scientists, is to emphasize the characteristics and behavior of the entrepreneur.[1116] Under this view, the entrepreneur is a risk-taker and opportunity seeker.[1117] Another approach, employed in legal and economic sciences, is to view entrepreneurship as a *process.*[1118] For example, Timmons and Spinelli developed a definition of entrepreneurship that distinguishes between two processes: the creation or recognition of opportunity[1119] and the (will of) seizing opportunity.[1120]

1114 Ibid.

1115 Yue Dai; 'Taxing the Sharing Economy and Digital Platforms', *Tax Notes International 95 (6)*, 2019, pp. 511-517.

1116 Ibid.

1117 Ibid.

1118 Steven H Hobbs; 'Towards a Theory of Law and Entrepreneurship', Capital University Law Review 26 (2), 1997, pp. 241-300. Stephen Spinelli Jr. and Robert J. Adams Jr.; New Venture Creation: Entrepreneurship in the 21st Century, 3rd edition, McGraw-Hill, 2016.

1119 Ibid.

1120 In a similar fashion, Pivateau proposed a tripartite definition of entrepreneurship, which emphasizes the following component elements: firstly, and overlapping with Timmons and

Other authors, such as Kihlstrom and Laffont,[1121] emphasize the capacity of managing risk and uncertainty as the central determinant of entrepreneurship.[1122] Authors such as Shackle highlight innovation as a marker of entrepreneurship.[1123] Innovation refers to the capacity of modernizing outputs and their consumption, and the foresight of future and potentially disruptive changes.[1124] Finally, a widely discussed determinant of entrepreneurship is independence.[1125] As a behavioral trait, independence is arguably interchangeable with the notions of risk-taking and openness to experience that describe the entrepreneur. As a characteristic of the activities of the entrepreneur, independence pertains to the organizational structure, the nature and the character of the entrepreneur's pursuits.[1126] The extent to which collaborative economy platform workers could be regarded as entrepreneurs by reference to these characteristics may rightly be called into question.

Spinelli's definition of entrepreneurship, the identification and exploitation of opportunity; secondly, the production or the facilitation of consumption of novel goods and/or services; and finally, the creation of ultimate value. Consequently, unlike Timmons and Spinelli's dedicated focus to opportunity alone, Pivateau's definition of entrepreneurship could be summarized as encapsulating opportunity, innovation, and value creation as determinants of entrepreneurship.

1121 Richard E. Kihlstrom and Jean-Jacques Laffont; "A general equilibrium entrepreneurial theory of firm formation based on risk aversion", *Journal of Political Economy, 87 (4),* 1979, 719-748.

1122 Ibid.

1123 George Lennox Sharman Shackle; Expectations, Enterprise and Profit, George Allen & Unwin, 1970. European Commission – Directorate-General for Taxation and Customs Union; 'Literature review on taxation, entrepreneurship and collaborative economy', Working Paper No 70, 2017.

1124 Ibid.

1125 Justin G. Longenecker et al.; 'Egoism and Independence: Entrepreneurial Ethics', Organizational Dynamics 16 (3), 1998, pp. 64-71.

1126 Entrepreneurship and self-employment are by no means synonymous concepts. Self-employment (or independent contractor status) is a purely legal construction, referring to the performance of typically for-profit economic activities on an independent basis, rather than in the name and on behalf of a principal. By contrast, entrepreneurship is not a legal concept in and of itself. Instead, entrepreneurship is best understood as an umbrella term encompassing a series of traits that may pertain to independent economic activities. It is a qualitative characteristic of independent economic activity, but not necessarily a threshold to establish whether an economic activity is necessarily independent and thus conducive of self-employment or independent contractor status. While most individual entrepreneurs will normally be self-employed or independent contractors, not all independent contractors or self-employed persons would necessarily be entrepreneurs.

Firstly, it is debatable whether platform workers' activities entail innovation. It is beyond question that the wider business model of the collaborative economy itself is innovative. The collaborative economy reformed the provision of casual peer-to-peer services from an informal and unstructured endeavor into a sustainable and consistent income-generating opportunity. Platform workers put assets primarily intended for personal usage and consumption to an innovative use. However, the activities of platform workers themselves do not entail any measure of innovation.[1127]

Secondly, the uncertainty borne by platform workers as part of their activities is arguably minimal. Platform workers experience the economic risks normally borne by ordinary entrepreneurs to a considerably milder extent. This is rooted in the nature of the collaborative economy. Unlike ordinary entrepreneurs, platform workers experience minimal barriers to market entry.[1128] They are not required to identify and pursue a customer base, because platform operators automatically provide a marketplace that matches supply and demand for workers' services.

Finally, platform workers do not enjoy full entrepreneurial independence. Platform workers are in principle free to determine working schedules[1129] and normally to accept or deny proposed user requests for services.[1130] However, the independence enjoyed by platform workers does not extend far beyond these aspects. Workers are usually required to fulfil a number of requirements that condition their possibility to render services through platforms.[1131] Their activities are internally regulated by

1127 In addition to the services rendered by the platform workers themselves, a number of key value drivers within the collaborative economy are wholly unrelated to the workers themselves.

1128 Anders Hansen Henten and Iwona Maria Windekilde; 'Transaction costs and the sharing economy'*, INFO 18 (1),* 2016, pp. 1-15.

1129 C. Leiren Mower; 'Sole Proprietorship and the Labor Conduct', *Duke University American Review 74 (2)*, 2002, pp. 315-344.

1130 Most collaborative economy platforms provide workers with the option to deny a user request for a service. However, in the case of certain platforms, persistent denials of user requests result in the worker being penalized. This further dents the argument that platform workers are independent contractors. Indeed, the application of penalties by platforms for refusals to supply requested services was invoked in existing jurisprudence as an argument supporting the re-classification of platform workers' legal status from independent contractors to employees.

1131 For example, in the homesharing sub-business model, workers' property listings must

the terms of service of platform operators. Unlike pure entrepreneurs, collaborative economy platform workers are merely a part of the economic ecosystem established by platform operators.

The fact that platform workers are not genuine entrepreneurs does not directly affect their legal status as independent contractors. For labor and tax law purposes, the dichotomy between independent contractors and employees is established by reference to tests of subordination and economic dependency,[1132] which do not readily intersect with notions of entrepreneurship.

Under tax law, there is arguably room for the design of arrangements tailored to the particularities of collaborative economy platform workers. The institution of non-employee withholding arrangements is arguably a reasoned approach to ensure that the manner in which tax is collected in respect of workers' platform receipts reflects the particularities of these taxpayers' activities and the circumstances of their income-generating activities. Since the economic risk profile of collaborative economy platform workers is considerably more restricted than that of the ordinary independent contractor, the application of compliance and collection rules that emphasize the personal responsibility of the workers themselves to a lesser degree may be justified.

Admittedly, one issue related to the argument that non-employee withholding is an appropriate approach to collect tax in respect of income derived by platform workers by reference to their limited risk profile lies in the fact that it embeds an implicit bias in favor of assigning platform operators as withholding agents.[1133] This argument may be restrictive, by drawing an unnecessary distinction between the circumstances of collaborative economy platform workers and other modern hard to tax individuals outside the collaborative economy. Peer-to-peer or otherwise

meet minimum requirements of cleanliness and amenities available.

1132 Hugh J. Ault et al.; *Comparative Income Taxation: A Structural* Analysis, 4th edition, Wolters Kluwer Law and Business, 2020.

1133 In Part III.II.4.E of this research, I discuss in detail issues related with the assignment of duties that platform operators act as withholding agents under non-employee withholding measures for addressing the income taxation of platform workers. In particular, it may be difficult to enforce withholding obligations in cases where platform operators do not reside or maintain a presence in a jurisdiction that requires withholding.

informal services are rendered by individuals for consideration also outside the collaborative economy, and the providers of such services raise ultimately the same income tax compliance risks as workers. However, the broadly digitalized nature of most income-generating arrangements entails, for example, that payments for most peer-to-peer services are processed digitally in many cases, even where the service provider and the recipient of the service do not connect through a platform. To the extent that payments are processed digitally, the payment processor (i.e., the entity providing the payment processing infrastructure) is an intermediary for the transaction in a similar way as platform operators are intermediaries for workers and service end-users. The existence of a transaction intermediary is therefore a more convincing argument in favor of the application of non-employee withholding as a measure for the collection of tax than the limited entrepreneurial character of collaborative economy platform workers. I am partial to the view that measures for addressing the income taxation of collaborative economy platform workers are more likely to effectively fulfil their instrumental objectives if such measures are designed by reference to the particularities of the income-generating activities of platform workers and the environment of these taxpayers. However, it is equally important to note that while platform workers are an obvious emerging hard to tax group, they are certainly not unique as regards the income tax compliance risks they pose. For this reason, measures introduced with a view to addressing the income taxation of collaborative economy platform workers should lend themselves to scaling and be capable of also reconciling other taxpayers that raise similar tax compliance risks.

2) The collaborative economy creates opportunities to design special-purpose regimes for enhancing tax compliance and collection

Whereas platform workers are an emerging tax compliance risk group,[1134] policy-makers have not shied from acknowledging the unique compliance opportunities afferent to the collaborative economy. The digital footprint of workers' activities creates opportunities for the design of tax collection frameworks that embed and leverage these particularities. The existence of a centralizing intermediary is an inherent characteristic of income-generating arrangements in the collaborative

1134 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2017, page 62.

economy. However, as I note previously in this analysis, this argument should not discount from the reality that income-generating peer-to-peer activities performed outside the collaborative economy increasingly involve the digital processing of payments and by extension, the presence of intermediaries. In this respect, the possibility of introducing tax collection frameworks that leverage the centralizing capabilities of intermediaries is not necessarily unique to the collaborative economy.[1135]

3) Political and societal considerations justify the application of non-employee withholding in respect of income derived by workers from platform activities

The design of any measure for addressing the income taxation of the collaborative economy inherently carries political valences. For countries where the welfare state is funded and supported primarily by salaried contributors, informal and unreported economic activity is a deadweight burden,[1136] which undermines the effectiveness of social programs and the reliability of personal income tax as a source of public revenue, particularly and disproportionately to the detriment of the most vulnerable members of society.[1137] Against this backdrop, such countries may be particularly invested in developing measures that safeguard the timely collection of tax such as non-employee withholding arrangements.[1138]

4) Non-employee withholding could encourage small-scale quasi-entrepreneurship

1135 However, I do note that the main distinction between peer-to-peer income-generating activities undertaken within and outside the scope of the collaborative economy involves a threshold issue. As I remark in this paragraph, the presence of centralizing intermediaries is an *inherent* feature of collaborative economy arrangements and merely a *common* one in other cases.

1136 Marie-Cécile Escande-Varniol; 'The Legal Framework for Digital Platform Work: The French Experience', in: Derek McKee et al. [Eds.]; *Law and the "Sharing Economy": Regulating Online Market Platforms*, University of Ottawa Press, 2018.

1137 Ibid.

1138 Philippe Barezieux and Camille Herody; 'Rapport au Premier Ministre sur l'Economie Collaborative', 2016. Marie-Cécile Escande-Varniol; 'The Legal Framework for Digital Platform Work: The French Experience', in: Derek McKee et al. [Eds.]; Law and the "Sharing Economy": Regulating Online Market Platforms, University of Ottawa Press, 2018.

Non-employee withholding as a tool for the collection of tax in respect of income derived by platform workers entails the reassignment of compliance costs from workers to the intermediary acting as withholding agent. By extension, the encumbrances experienced by casual platform workers through compliance costs that weigh disproportionately against the extent of their activities are mitigated. Some states specifically champion the empowerment of platform workers as an explicit objective of proposed non-employee withholding arrangements.[1139] In some cases, governments go as far as to assert that the application of 'outdated rules not designed with the increasing digitalization of the economy in mind'[1140] as opposed to targeted frameworks tailored to the particularities of collaborative economy-type work discourage individuals to take up such work.[1141]

5) Withholding taxes strengthen the reliability of income tax collection

Virtually all policy and academic discussions about the enforcement weakness of individual income taxes[1142] support the application of withholding arrangements as a means towards safeguarding effective taxation.[1143] By the first half of the 20th century, the financing of World War II and the subsequent management of its fallout (including the widespread adoption of social welfare programs)[1144] emphasized the crucial role of frameworks for the collection of income tax that enabled timely and effective compliance and alleviated opportunities for non-compliance. Whereas the vast majority of the taxpaying population earned income from employment, the payment of taxes in annual, quarterly, or other periodic installments led to considerable delays in tax collection and highlighted taxpayer non-compliance.

1139 Philippe Barezieux and Camille Herody; 'Rapport au Premier Ministre sur l'Economie Collaborative', 2016.

1140 European Commission Directorate-General for Employment Social Affairs and Inclusion Directorate B; 'A Digital Single Window for Income Data from Platform Work', 2020, page 26.

1141 Ibid.

1142 Piroska Soos; 'Self-Employed Evasion and Tax Withholding: A Comparative Study and Analysis of the Issues', U.C. Davis Law Review 24 (1), 1990, pp. 107-194. Anuj C. Desai; 'What the History of Tax Withholding Tells Us about the Relationship Between Statutes and Constitutional Law', Northwestern University Law Review 108 (3), 2014, pp. 860-904.

1143 Ibid. The collection of tax through withholding in respect of active income originally proliferated during the 19th century Civil War in the United States, which triggered an imperative demand for speedy revenue mobilization.

1144 Reuven S. Avi-Yonah; 'The Three Goals of Taxation', *NYU Tax Law Review 60 (1),* 2006-207, pp. 1-28.

The enforcement challenges of policing enormous numbers of individual taxpayers (the vast majority of whom earned modest incomes) was largely alleviated with the broad-based application of withholding taxes on employment income.[1145] The collection of tax through withholding was inarguably an innovation in income tax compliance. Withholding arrangements supported the development of income taxation from a tax on the upper-class to a broad-based tax levied on the overall consumption power of the masses. The case in favor of tax collection through withholding is well established and largely uncontested.[1146]

The prospect of applying withholding taxes is particularly attractive and feasible when a single entity centralizes payments derived by large segments of taxpayers.[1147] The centralizing capabilities of these entities are leveraged under the notion that it is considerably more practicable to require a single unit to collect and remit tax payments on behalf of multiple taxpayers than to collect tax debts directly from taxpayers.[1148] Additionally, withholding taxes prevent delayed collection[1149] caused by taxpayer liquidity problems. Taxpayers may be willing to discharge tax liabilities pertaining to income previously earned, but may fail to do so because the income was already consumed by the time assessed income taxes become due.

The collection of tax through withholding also limits the impact of negative compliance-related behaviors and fosters positive compliance-related attitudes. When tax is collected through withholding, compliance is less sensitive to taxpayers' negligence and risk-taking behavior.[1150] In a similar vein, withholding mitigates the negative externalities of the perception of tax as a loss and high

1145 James Alm et al.; 'The Structure of Tax Compliance', The Review of Economics and Statistics 72 (4), 1990, pp. 603-613.

1146 See, for example: Richard L. Doernberg; 'Case against Withholding', Texas Law Review 61 (4), 1982, pp. 595-654.

1147 Ibid. This especially holds true as regards employers handling the remuneration of employees or financial institutions extending interest payments to creditors.

1148 Mildred Wigfall Robinson; 'Skin in the Tax Game: Invisible Taxpayers – Invisible Citizens', *Villanova Law Review 59 (4),* 2018, pp. 729-752.

1149 William C. Boning; 'Paying Taxes Automatically: Behavioral Effects of Withholding Income Tax', University of Michigan, 2018.

1150 Joseph Van Wagstaff; 'Income Tax Consciousness under Withholding', Southern Economic Journal 32 (1) Part 1, 1965, pp. 73-80.

tax visibility. Taxpayers' awareness that (part of their) income had already been taxed at source may encourage[1151] accuracy in self-reported or self-assessed tax returns.[1152]

6) Withholding arrangements address the prevalent determinants of non-compliance at play for collaborative economy platform workers

At face value, these general arguments in favor of the collection of tax through withholding translate almost impeccably the core trepidations that underpin the under-taxation of collaborative economy platform workers. Platform workers are small-time earners who may struggle to fulfill the substantive and procedural requirements afferent to their legal status as independent contractors.[1153] The complexities of collecting tax from workers directly are compounded by the impact of their negative behavioral postures and their capacity to leverage their visibility deficit and informational advantage over the tax administration to evade the payment of tax. Most importantly, their activities carry a digital footprint and are undertaken through intermediaries, which dispose of the centralizing capabilities that commonly determine the feasibility of withholding.[1154]

1151 Ibid. Particularly when taxpayers' only or primary source of income is employment income taxed at source, they may perceive the filing of returns as an opportunity to claim refunds.

1152 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473. Existing research extensively documented taxpayers' attitudinal responses to self-reporting and self-assessment processes as falling in one of two extremes depending on the predicted outcome: taxpayers anticipating to owe a balance describe the self-reporting or self-assessment process as one experienced with 'dread', whilst those expecting to achieve a refund are 'elated'. Whereas a refund is effectively the repayment of an interest-free loan extended to government, reclaiming the amount is experienced by many taxpayers as a benefit.

1153 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 27.

1154 Ibid. European Parliamentary Research Service; 'The collaborative economy and taxation: Taxing the value created in the collaborative economy', European Parliament, 2018, page 20.

C. Considerations in the design of non-employee withholding arrangements for income derived by workers from platform activities – Scope, design and characteristics

This analysis describes a series of general considerations regarding the scope, design and characteristics of non-employee withholding regimes as relevant to the taxation of collaborative economy platform workers. As will become apparent from the following remarks, choices in the design of non-employee withholding frameworks inevitably impact the purported effectiveness of such measures.

1) Mandatory versus optional non-employee withholding

In principle, non-employee withholding arrangements may either apply as a mandatory or optional measure. Mandatory non-employee withholding regimes are non-elective measures that establish a specific set of substantive and procedural rules governing the treatment of taxpayers and activities within the scope of the rules. They are a *lex specialis* to the perennial tax rules as applicable to ordinary independent contractors. Conversely, optional regimes are elective frameworks. They likewise establish a distinct set of substantive and procedural tax rules tailored to specific taxpayers,[1155] however the onus is on taxpayers themselves to choose whether to be assessed pursuant to the usual substantive and collection rules or under the optional regime.

The choice between mandatory and optional non-employee withholding may reveal nuanced details about the overarching objectives of such measures. Mandatory regimes imply a stern policy ambition for enhancing and safeguarding effectiveness in the collection of tax. By contrast, optional frameworks prioritize objectives of simplification and efficiency for taxpayers. The design of distinct substantive and procedural rules for economically interchangeable activities on the basis of the identity and structural characteristics of services providers innately goes against a strict interpretation of the norms embedded in the principle of fiscal neutrality.[1156]

1155 In certain countries, opt-in simplification regimes may be available, in addition to collaborative economy platform workers, to other small-scale individual taxpayers.

1156 When the regime is optional, the underlying rationale of the pre-existing income tax rules (wherein tax is assessed following the consideration of all the circumstances under which a

An equally relevant question refers to how the optional character of a regime could be ascertained. An optional regime could be designed either as an opt-in or opt-out framework. Under an opt-in framework, taxpayers are subject to the ordinary income tax assessment rules, unless they specifically choose to be taxed under the special-purpose regime. By contrast, an opt-out framework establishes a set of default rules. The effectiveness of opt-in mechanisms is dependent on a complex set of practical variables. The framework should be sufficiently publicized, so that the taxpayers are aware of the possibility of being taxed on a simplified basis. Additionally, an opt-in regime is considerably more susceptible to taxpayers' biases towards the non-compliance opportunities otherwise available to them.[1157]

2) *Breadth of the regime: frameworks that only cover certain types of income-generating platform activities, comprehensive frameworks that cover any form of income-generating activity undertaken through a platform, exclusions determined by the capacity in which workers perform their income-generating activities*

Another particularity in the design of non-employee withholding arrangements relates to the scope of such measures. As relevant to the circumstances of collaborative economy platform workers, non-employee withholding frameworks may have a broad scope that covers any income-generating activity undertaken through a platform.[1158] Alternatively, non-employee withholding regimes could be designed with a limited scope which only extends to certain types of income-generating activities. Finally, the scope of such measures may be determined by reference to the manner in which workers perform their activities.

taxpayer generated income) is more aptly preserved.

1157 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.

1158 Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy. Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016.

A) Non-employee withholding applicable only to certain types of income-generating activities undertaken through platforms versus broad-based non-employee withholding arrangements

A non-employee withholding regime could be designed to only apply to platform workers performing certain types of activities.[1159] Alternatively, the regime could be designed with a broad scope that extends in principle to any type of income-generating activity performed through a platform.[1160] From the perspectives of effectiveness and neutrality, a broad-based withholding regime is arguably preferable. Conversely, non-employee withholding measures applied only in respect of some types of income-generating activities may be justified on practical considerations. For example, some types pf collaborative economy arrangements are by nature occasional or intermittent (e.g., peer-to-peer sales of used goods). The application of withholding in respect of proceeds from such activities would be an overly far-reaching measure.

B) Non-employee withholding arrangements that exclude certain workers by reference to the capacity in which their income-generating activities are performed

Non-employee withholding arrangements may be designed to only apply to workers performing income-generating activities in a non-professional capacity.[1161]A delimitation ascertained by reference to the capacity of the platform worker invites considerations related to the nature of the services rendered, the established

1159 See, for example: Republic of Estonia, Tax and Customs Board; 'Taxation of the income of drivers providing passenger transport services through a ride-sharing service platform', available via: https://www.emta.ee/eng/business-client/income-expenses-supply-profit/changes-legislation/taxation-income-drivers-providing last accessed 2 November 2020.

1160 Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy. Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016.

1161 By way of example, in Belgium, the recently adopted a package for the income taxation of collaborative economy platform workers defines a covered service as one rendered by one private person to another. In turn, private persons are defined, inter alia, as individuals 'acting outside the course of their business'. The implication of these definitions is that the scope of the regulations extends solely to peer-to-peer transactions rendered through a platform.

principles of good lawmaking and ultimately, the objective pursued through the institution of non-employee withholding.

On the one hand, from the perspective of an end-user, it makes no difference whether a worker that supplies services is acting in a professional or a non-professional capacity. Private transportation services are economically interchangeable, whether the service provider is a casual platform worker, an unlicensed platform worker whose primary stream of income is from the provision of peer-to-peer transportation services or a platform worker holding a separate licensing authorization for private transportation services. In this respect, the restriction of the scope of the scheme to casual platform workers is prone to create a disruptive difference in treatment, informed by considerations pertaining to the worker rather than the underlying activities performed. On the other hand, the exclusion of platform workers operating in a professional capacity becomes explicable when viewed against other policy considerations. Non-employee withholding arrangements seek to simplify tax compliance for platform workers. To the extent that the benefit of simplification is only intended to be extended to casual platform workers, the exclusion of professional service providers becomes immediately reasoned. This exclusion is also explicable on the grounds that professional service providers are comparatively more experienced with the management of compliance obligations.

When an exclusion for workers acting in a professional capacity is envisaged, the definition of the term 'professional capacity' is in turn imperative.

3) Thresholds for excluding certain workers from the scope of non-employee withholding

The scope of non-employee withholding frameworks may also be determined through monetary floors or thresholds.[1162] Under this approach, workers earning income beyond a pre-determined level would be excluded from the scope of withholding.

1162 Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016. Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy. Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016.

Similarly to the remarks presented immediately above, delimiting the scope of non-employee withholding to workers earning minimal amounts of income from platform activities is explicable by reference to (explicit and implicit) considerations of simplicity and efficiency. The application of a monetary threshold as a point of reference for ascertaining the line between covered and out-of-scope platform workers and activities is a clear-cut and predictable yardstick. Nevertheless, such thresholds are often set at low and restrictive levels in practice. The application of restrictive monetary thresholds reinforces the notion that non-employee withholding arrangements do not amount to a fully-fledged framework for the income taxation of platform workers. The approach of excluding certain workers from the application of the measures by reference to monetary thresholds seems justified on the notion of only simplifying compliance processes for those platform workers for whom compliance costs would be most disproportionate in relation to the extent of their platform activities.[1163]

D. Existing and proposed measures instituting non-employee withholding in respect of income derived by workers from platform activities – Two examples

As the foregoing paragraphs have strived to convey, non-employee withholding arrangements are theoretically justified in light of the nature of collaborative economy income-generating activities and may be designed by reference to various features. Nevertheless, reality is proving that the adoption and implementation of such measures is particularly challenging. The following paragraphs will introduce two examples of initiatives for non-employee withholding taxes from Belgium and Italy. The purpose of this analysis is to ascertain and discuss the reasons underlying the difficulties attached to developing and maintaining frameworks for non-employee withholding for collaborative economy platform workers.

1163 On the other hand, this aspect sits oddly against other underpinning rationales for the design of such frameworks. In particular, it amounts to a missed opportunity to fully exploit the compliance and collection opportunities provided by the commercial tripartite structure of the collaborative economy and the digital footprint of workers' activities, as the worker participants earning the highest levels of income are excluded from the scope of the rules altogether. In a similar vein, this exclusion sits oddly against the justification that platform workers could be subjected to a dedicated set of rules that reflects the differences in their risk profile compared to ordinary independent contractors operating outside the realm of the collaborative economy.

1) Example 1 – Comprehensive frameworks for non-employee withholding proposed in Belgium and Italy

In Belgium, the introduction of a non-employee withholding regime for platform workers was first considered in 2016, as part of a package for the simplification of the income tax rules applicable to taxpayers deriving income from peer-to-peer platform activities.[1164] This initiative was scrapped in favor of a regime which foresaw an exemption for income derived from peer-to-peer platform activities. The exemption regime was annulled in 2020 pursuant to a judgment delivered by the Belgian Constitutional Court.[1165] In the aftermath of the Constitutional Court's decision, the Belgian government reintroduced a simplified taxation framework which resembles the initiative from 2016, including in that it establishes a non-employee withholding mechanism for income derived by workers from platform activities. The duty to act as withholding agent is assigned to the platform operators through which workers perform their activities.[1166]

In Italy, a draft bill that proposed a simplified taxation regime for platform workers and required platform operators to withhold tax on workers' behalf was submitted for parliamentary debate in 2016 but was never adopted or implemented.[1167]

Because of the overlaps and similarities between the Belgian and Italian frameworks, this analysis describes them contemporaneously.

A) Scope of application and approaches to the delineation of scope

In Belgium, the framework for the simplified taxation of platform workers applies in respect of 'covered services'.[1168] 'Covered services' are arrangements that meet

1164 Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016.

1165 The judgment of the Belgian Constitutional Court is discussed in detail in Part III.1 of this thesis.

1166 Belgium; Royal Decree of 26 January 2021 emending the Royal Decree/WIB 92 with a view to reintroducing the obligation to withhold tax on income from the sharing economy (BS 29.01.2021).

1167 Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy.

1168 Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016. Belgium; Royal Decree of 26 January 2021 emending the Royal Decree/WIB 92 with a view to

five main criteria. Firstly, both the platform worker and the recipient of the service must act in non-professional capacity. This criterion restricts the scope of the framework to genuine peer-to-peer activities. Secondly, the underlying service must be provided pursuant to a contract concluded through an intermediary platform. Thirdly, the consideration for the underlying services must be processed by a 'platform operator'.[1169] This requirement excludes arrangements that involve cash payments and other payments effected directly between the end-user and the worker. The requirement for the consideration to be processed by the platform operator is explicable in light of the withholding obligation imposed on platforms. Fourthly, the regime explicitly excludes income-generating activities that only relate to the letting of movable or immovable property through a platform.[1170] Fifthly, the framework only covers services rendered by workers through a 'recognized electronic platform'.[1171]

Under the defunct Italian bill, the scope of the regime was delineated by reference to the normative definition of the terms 'collaborative economy', 'platform manager' and 'worker'. The collaborative economy was defined as '[a labor market] generated by the optimized allocation of space, time, goods and services through digital platforms. The managers of platforms act as enablers by connecting [workers and] users. The assets that generate value for the platform belong to [workers]. There is no subordinate employment relationship between [platform] managers and [workers]. Platforms that operate in favor of professional [workers] registered in the business register are excluded'.[1172] 'Platform managers' were defined as 'private

reintroducing the obligation to withhold tax on income from the sharing economy (BS 29.01.2021). Belgium; Circular 2021/C/44 – 'FAQ on the sharing economy'.

1169 Ibid.

1170 This exclusion effectively entails that income derived by workers from homesharing activities is excluded from the scope of the regime, provided that such income relates solely to the letting of immovable property. Conversely, the law is silent as regards the treatment of homesharing activities that involve the active provision of a broad-span of accessory services and that may impact the characterization of the income. Presumably, such services should be covered under the instrument since they do not 'solely' relate to the letting of property.

1171 Belgium Ministry of Finance; Sharing Economy – List of 'recognized electronic platforms', available via: https://financien.belgium.be/sites/default/files/downloads/127-deeleconomie-lijst-erkende-platformen-20210427.pdf last accessed 30 November 2021.

1172 Italy; Atto Camera: 3564/2016 - Draft law: Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy, Article 2(1)(a).

or public entities that manage the platform'.[1173] 'Workers' were defined as 'persons who operate through the digital platform by providing services or selling goods'.

The abstract choice between a normative definition of the collaborative economy or the definition of covered services is ultimately inconsequential for the material scope of the rules. Both frameworks excluded activities provided by workers in a professional capacity, covering only peer-to-peer activities.[1174] The only meaningful difference in the scope of the two instruments lies in that, unlike the Italian regime (which covered any peer-to-peer activity rendered through a platform), the Belgian framework excludes specific activities (i.e., activities that solely involve the letting of movable or immovable property) from its scope of application.

B) Treatment of income derived from in-scope activities

Both the Italian and Belgian frameworks applied subject to stringent monetary thresholds. In Italy, the 2016 bill provided that platform-derived income in excess of EUR 10.000 *per annum* would be re-characterized and taxed as trading income.[1175] In Belgium, the original 2016 framework similarly provided that platform receipts exceeding EUR 5.1000 *per annum* would be assimilated to trading income and taxed as such.[1176] The revamped non-employee withholding arrangement in Belgium introduced a higher threshold of EUR 6.390 *per annum*. When a workers' gross income exceeds this amount, the full amount is taxable as trading income. The re-characterization of the income by reference to this threshold is a rebuttable presumption. The taxpayer may prove that their activities are not performed in a professional capacity or only carried out on an intermittent basis.[1177]

1173 Ibid., article 2(1)(b).

1174 European Commission; 'Scoping the Sharing Economy: Origins, Definitions, Impact and Regulatory Issues', Joint Research Reports – Institute for Prospective Technological Studies (Digital Economy Working Paper 2016/01), page 8.

1175 Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy, preamble and Article 5

1176 Belgium; Programme Law of July 1, 2016, Belgian Official Journal, 4 July 2016, Section I § 2.

1177 Belgium; Royal Decree of 26 January 2021 emending the Royal Decree/WIB 92 with a view to reintroducing the obligation to withhold tax on income from the sharing economy (BS 29.01.2021).

Therefore, the frameworks were intended to only cover platform workers whose activities were so restricted (and likely infrequent) that they would be regarded as residual income under the ordinary income tax rules in any case. Under both regimes, the character of the income is inferred in part by reference to the amounts derived from the relevant activities. Activities yielding amounts of income that exceed the thresholds are impliedly seen as 'professional' rather than pure 'peer-to-peer' activities. This is likely underpinned by the notion that genuine peer-to-peer activities performed in a non-professional capacity do not typically yield high levels of income.

In Belgium,[1178] gross income from covered activities is reduced by a standard deduction amounting to 50% of the gross receipts, then taxed at a rate of 20%.[1179] Consequently, receipts from platform activities are effectively taxed at a 10% rate. The 50% standard deduction replaces itemized deductions for expenses actually incurred. Under the Italian draft bill, receipts from covered services were intended to be subject to a 10% final tax, without the application of deductions to reduce the basis for assessment. The application of a lower final tax rate achieves the same effective outcome as under the Belgian regime, but taking a different approach to this end. The application of a reduced final tax rate to (gross) income ultimately is akin to the taxation of fictitious net income.

C) Platform operators as withholding agents

The Italian and Belgian initiatives are notable in they were the first major instances when the notion of relying on platform operators as withholding agents was formally and sternly considered.[1180]

In Belgium, the applicability of the framework as a whole is conditioned on the registration of platform operator as a 'recognized electronic platform'.[1181] Consequently, the obligation to act as withholding agent is only triggered in respect of those platform operators that apply to be 'recognized'. The conditions

1178 Ibid.

1179 Ibid.

1180 As described immediately above in these paragraphs, the withholding tax rates envisaged were 20% in Belgium and 10% in Italy.

1181 Belgium; Circular 2021/C/44 – 'FAQ on the sharing economy'.

for recognition are purely formal. Recognition merely entails that the platform operator is a company created under the laws of an EU Member State and has a VAT identification number. The mere fulfilment of these formal conditions does not automatically trigger an obligation to act as withholding agent, since the request to be 'recognized' needs to be submitted by the platform operator.

In Italy, the withholding obligation was envisaged to apply by default. Any enterprise that met the definition of 'platform manager' set out in the legislation would be required to withhold tax in respect of income derived by workers from the performance of services covered by the instrument. The duty to act as withholding agent was envisaged to apply to both 'platform managers' that resided in Italy for tax purposes as well as non-resident platform managers. If a non-resident platform manager did not have permanent establishment or other tangible presence in Italy, it would be required to appoint a local representative for the management of withholding obligations.[1182]

2) Example 2 – The Italian sectoral approach to the taxation of income derived from homesharing activities – Article 4 of Decree 50/2017

The Italian proposal for a comprehensive non-employee withholding regime never made it to fruition. In 2017, merely a year following the (seemingly abandoned) submission of this proposal, the legislator moved towards a sectoral approach through the adoption of a non-employee withholding regime applicable only to income derived from homesharing activities.[1183]

For the taxation of homesharing platform workers, the measure introduced an opt-out regime wherein workers deriving income from short-term leases are taxed on a gross basis at a flat rate of 21%,[1184] unless they explicitly exercise their option to (continue to) be taxed under the ordinary income tax rules. Platform operators, whether or not resident in Italy, are required to act as withholding agents for the tax. Whilst the rules established in Decree 50/2017 (the 'Decree') apply to short-term leases generally, the particular relevance of its provisions to homesharing

1182 Italy; Atto Camera: 3564/2016 - Draft law Digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy , Article 5(1)-(2).
1183 Italy; Decree Law no. 50/2017.
1184 Ibid., Article 4.

platform workers has inspired the colloquial dubbing of the framework as the '*Airbnb tax*'.

At the time of writing, *Airbnb* is pursuing a challenge of this framework before the CJEU on the grounds that the measure amounts to an infringement on the freedom to provide services.

A) Scope of application

The scope of the measure is determined three main elements: the characteristics of the parties to the short-term lease, the object of the lease and the duration of the lease.

Firstly, as regards the subjects involved, the lease must be concluded between natural persons acting outside the course of business.[1185] Whereas the Decree does not provide a definition of the concept of business capacity, an explanatory Circular issued by the Italian Revenue Agency recommends a fallback on existing definitions of the term as applied under the Italian Civil Code and in the area of VAT.[1186] Under Italian law, an activity is exercised in business capacity if performed through a recognized legal form such as a recognized sole proprietorship (i.e., a formal criterion) and exercised habitually (i.e., a material criterion). The legal rights enjoyed by the lessor in the property are irrelevant. Consequently, the lessor may be the owner enjoying full legal dominium over the property, a tenant sub-letting the property or the beneficiary of another property right recognized under Italian property law.[1187]

Secondly, the object of the lease must refer to the provision of transitory housing or tourist accommodation.[1188] The leased property must be suited to residential use

1185 Italy; Joint Budget Commissions: Chamber of Deputies and Senate of the Republic; 'Hearing of the Director of the Revenue Agency', 2017.

1186 Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art. 4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96].

1187 Italy; Joint Budget Commissions: Chamber of Deputies and Senate of the Republic; 'Hearing of the Director of the Revenue Agency', 2017.

1188 Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art. 4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96].

and fall within one of the cadastral categories recognized under Italian law (with the exception of office units).[1189] The instrument only applies in respect of property located in Italy.[1190]

The Decree took a substantive approach to alleviating uncertainty about the characterization of income derived from short-term leases. As previously described in the contents of this wider contribution, income characterization may be impacted by whether homesharing platform workers supply mere accommodation (in which case the income is regarded as passive rental income) or supplement the provision of accommodation with accessory services (whereby the receipts may be characterized as active income). Under the Decree, the mere supply of additional amenities does not alter the characterization of the income.[1191] Examples amenities explicitly cited in the text of the legislation are the provision of linens and cleaning services.[1192] In the explanatory Circular, the Revenue Agency creatively extends the list of accessory services to also include the provision of Wi-Fi connection, utilities and air conditioning.[1193] As examples of amenities that would impact the characterization of the income, the Revenue Agency cites the provision of meals, guided tours or rental cars. The Revenue Agency rationalizes that the provision of certain amenities is 'functional' and necessary to the use of the property itself.[1194] The reference to a functional relation between the lease and the provision of certain accessory services is a convincing suggestion that neither the examples of amenities cited in the legislation nor the additional examples illustrated in the Circular amount to a closed, exhaustive list.

Thirdly, with respect to the duration of the lease, the Decree defines a short-term lease as not exceeding 30 days.[1195] The 30-day term concerns individual lease agreements, meaning that where several contracts are concluded between the same parties within the same fiscal year, the 30-day period is calculated separately for each agreement.[1196]

1189 Ibid.
1190 The lessor does not need to be resident in Italy.
1191 Italy; Decree Law no. 50/2017, Article 4.
1192 Ibid.
1193 Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art. 4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96].
1194 Ibid.
1195 Italy; Decree Law no. 50/2017, Article 4.
1196 Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art.

B) Non-employee withholding in respect of income derived from covered short-term leases when the transaction involves an intermediary

When a short-term lease meets the subjective, objective and temporal requirements described immediately above, the lessor is subject to a flat tax set at a rate of 21% for the receipts derived from the their activities. The tax is assessed on a gross basis, meaning the taxpayer may not claim deductions for expenses incurred in connection with the lease. If the recipient opts out of the regime instituted through the Decree, the income is taxed at the ordinary progressive income tax rates (ranging between 23 and 43%). In the latter case, the income would be taxed on a net basis, after the application of deductions and other allowances.[1197]

When the short-term lease is concluded through an intermediary, the latter is required to withhold and remit the 21% tax from the gross fees earned by the lessor.[1198] An intermediary is assigned withholding agent obligations if it materially intervenes in the collection of the consideration for the short-term lease.[1199] The tax

4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96]. The definition of a short-term lease by reference to a set number of days mitigates uncertainty revolving around the concept of 'short-term' lease.

1197 The option for net taxation at the usual progressive rates is more beneficial to taxpayers who incurred substantial deductible expenses, particularly if the taxpayer is experienced with navigating the domestic substantive and procedural compliance processes. It is particularly favorable to taxpayers whose deductible expenses exceed the level of their taxable receipts, as in this case, the taxpayer would be able to access loss relief mechanisms.

1198 Under the Decree, when a taxpayer servicing short-term leases through an intermediary required to act as withholding agent opts out of the simplified regime to instead be taxed under the usual progressive rates, the withholding tax is nevertheless collected by the intermediary. The amount withheld is then treated as an advance payment of income tax. This approach is different from the scope of the 2016 proposal for a comprehensive non-employee withholding arrangement regime. Under the 2016 bill, services rendered without an intermediary platform would fall outside the scope of the instrument altogether. In the homesharing regime introduced by the Decree, the taxpayer may be subject to the flat 21% rate regardless of whether the income is derived through an arrangement involving a platform. However, when the arrangement is concluded through an intermediary platform, this triggers a withholding obligation. The existence of a platform operator as part of the transaction only impacts the manner in which the flat tax is collected, not the application of the regime altogether.

1199 Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art. 4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96]. Intermediaries that merely mediate the conclusion of the contract itself, without playing any role in the

is assessed by reference to the fee charged for the lease, exclusive of any penalties or security deposits retained by the lessor.[1200]

For the purposes of the Decree, the only criterion that triggers the obligation to act as a withholding agent is the intervention of the intermediary in the material handling of the payment for the short-term lease. Consequently, the legal form of the intermediary is immaterial.[1201] More importantly, the residence of the intermediary is likewise inconsequential. As such, a non-resident intermediary that maintains a permanent establishment in Italy is required to act as withholding agent.[1202] A non-resident intermediary that does not have a permanent establishment in Italy is required to appoint a permanent representative for the purposes of managing withholding obligations.[1203] In this situation, the tax representative acts as a 'manager' of the withholding obligations of the non-resident intermediary.

E. Challenges to the application of non-employee withholding in respect of income derived by workers from activities undertaken through platforms

Non-employee withholding arrangements are applied on a limited scale in respect of platform workers. Where such measures exist, they are tainted by structural shortcomings. In my view, these shortcomings are rooted in the factors which make the introduction and application of such arrangements difficult in the first place. By extension, these factors may explain why non-employee withholding arrangements are seldom applied as an approach to address the income taxation of collaborative economy platform workers. In my view, the factors which complicate the introduction of non-employee withholding arrangements are twofold. These relate to (1) the heterogeneity of the wider economic system of the collaborative economy and (2) the difficulties in enforcing withholding obligations against platform operators in cross-border situations.[1204]

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processing of payments are merely required to store the information pertaining to the transactions and communicate it to the Revenue Agency. The Decree does not institute due diligence obligations for such intermediaries to verify the data pertaining to the lessor and the guest.

1200 Ibid.

1201 Ibid.

1202 Italy; Decree Law no. 50/2017, Article 4.

1203 Ibid.

1204 In turn, this issue is arguably rooted in a misguided institutional bias towards assigning

1) Issue 1 – Structure and design choices – rate(s) of withholding, final versus non-final withholding and scope of withholding

Different types of peer-to-peer platform activities inherently yield different degrees of profitability and expenditure for workers. In particular, a distinction exists between labor-intensive platform work (such as all-purpose freelancing), capital-intensive activities (such as homesharing) and hybrid activities (such as private transportation). Since the yields from labor and capital vary, the application of a single withholding tax rate to all peer-to-peer platform activities may ultimately be inequitable and regressive.[1205] These issues could be addressed if the withholding regime were designed as a pre-payment of income tax rather than a final tax, wherein workers maintain the possibility of filing a self-reported or self-assessed return to account for expenses incurred and claim refunds or credits. However, this undermines the capability of withholding arrangements to simplify the management of revenue collection.[1206] Alternatively, the issue could be addressed through the application of differentiated rates, determined by reference to the nature of activities. While this approach has its merits, it does imbue an element of added complexity.

Additionally, the scope of non-employee withholding likewise inevitably affects the effectiveness of such measures. As the foregoing descriptions have strived to convey, non-employee withholding frameworks may delineate their scope by reference to the capacity of the worker, the nature of the activities performed by the worker and the level of income derived from such activities. On the one hand, exclusions from the scope of withholding may be rationalized in most cases. On the other hand, many such exclusions diminish the effectiveness of these arrangements as tools for enhancing tax compliance and collection. Differences between the tax consequences of various income-generating activities determined

platform operators as withholding agents in the first place. Later in this analysis (notably in Part IV.IV), I argue in further detail that the proximity between platform workers and platforms often determines a preference for assigning compliance intermediation functions to platform operators. In Part IV.IV, I explain that platform operators are often not reliable intermediaries under non-employee withholding frameworks.

1205 Aqib Aslam and Alpa Shah; 'Taxation and the Peer-to-peer Economy', International Monetary Fund Working Paper 187, 2017.

1206 Ibid.

by the differences in the nature of the underlying activities are better addressed through differentiated withholding arrangements, rather than the exclusion of certain activities from the scope of withholding altogether.

The heterogeneity of collaborative economy activities, coupled with the reality that workers may derive income from activities undertaken through different platforms and potentially in addition to a different source of primary income (such as employment), make it difficult to devise a comprehensive withholding framework capable of equitably approximating final tax liabilities on a broad scale.[1207]

2) Issue 2 – Cross-border enforceability constraints

Certain items of income – most notably employment income, interest and dividends – readily lend themselves to tax collection through withholding because of the presence of centralized intermediaries through whom the payments are passed.[1208] In a wholly domestic context, where a withholding agent is established in a jurisdiction that applies a withholding regime, enforceability is straightforward and unproblematic (Figure 1). In such cases, the duty to collect tax is imposed on an

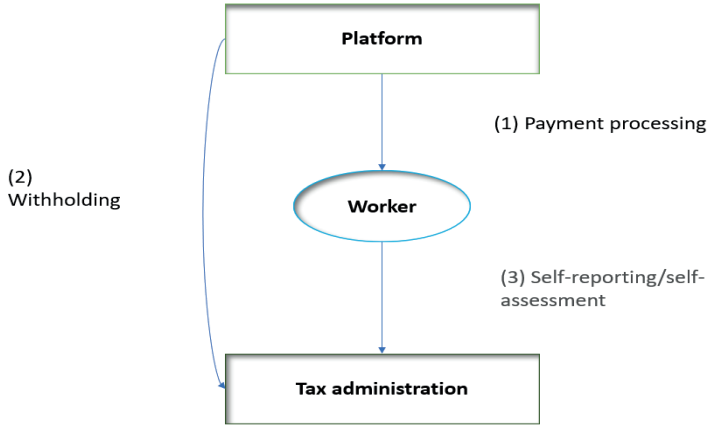

Figure 1 - Wholly domestic situation

1207 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 38.

1208 Edward K. Cheng; 'Structural Laws and the Puzzle of Regulating Behavior', *Northwestern University Law Review 100 (2)*, 2006, pp. 655-718.

entity over whom enforcement jurisdiction is feasible. In this scenario, there is an uninterrupted tripartite relationship between the taxpayer, the tax administration and the withholding agent, unhindered by territorial constraints to enforceability.

Conversely, enforceability is considerably more cumbersome when the withholding agent is established outside the jurisdiction that requires withholding and maintains no local presence in that jurisdiction.

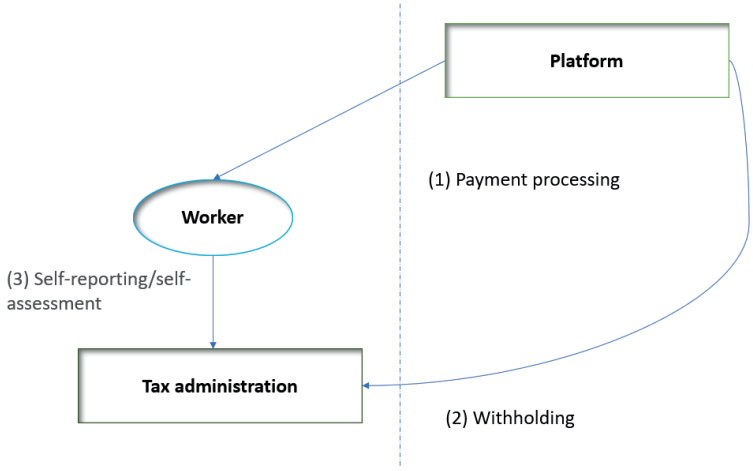

Figure 2 - Platform maintains no local presence

A. Considerations in overcoming the barriers to the enforceability of withholding arrangements in cross-border situations

Platform operators are deeply integrated within the environment of platform workers' income-generating activities. For this reason, they are the most obvious withholding agent in the context of such arrangements for the collection of tax in respect of income derived by workers. If the notion is accepted that the enforceability of withholding obligations against platform operators in cross-border situations is a main challenge to the introduction and application of non-employee withholding arrangements, the question emerges as to how this obstacle could be overcome. For the purposes of this research, I submit that there are two main possible approaches to achieve this. On the one hand, non-employee withholding regimes could be designed in a manner than compels non-resident platform operators into compliance. On the other hand, non-employee withholding regimes could be

designed to rely on a party other than a platform operator to act as withholding agent.

1) Option 1 – Sidestepping the territorial challenges to the imposition of withholding obligations on platform operators

The following part of this analysis will explore potential methods through which the territorial limitations to the enforceability of withholding obligations could be sidestepped in situations where the platform enterprise is a non-resident and maintains no presence within a jurisdiction applying a withholding regime. As this analysis will strive to convey, there are a number of different approaches for circumventing these territorial constraints to enforceability. However, these approaches themselves have a series of shortcomings.

i. Requiring platform operators to establish a local presence

A. General remarks

One approach to bypassing the territorial limitations to the enforceability of withholding arrangements is to require platform operators to establish a local presence in the jurisdiction applying such measures.[1209] At the time of writing, Italian legislation instituting a withholding tax arrangement in respect of income derived from platform-intermediated peer-to-peer homesharing arrangements applies such a requirement, whereby non-resident platform operators that do not have a permanent establishment in Italy are required to appoint a local tax representative for the management of withholding obligations.[1210]

1209 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 27. In its own discussion about the feasibility of withholding tax arrangements in respect of income derived from peer-to-peer platform activities, the OECD also discussed the institution of a requirement for platform enterprises to appoint a local tax representative as a solution to the enforceability constraints against non-resident platforms that do not maintain a local presence in jurisdictions applying withholding arrangements

1210 Italy; Decree Law no. 50/2017, Article 4 and Italian Tax Administration; Circular No. 24/12 October 2017 [Tax regime of short leases - Art. 4 Legislative Decree 24 April 2017 n. 50, converted by law 21 June 2017 n. 96].

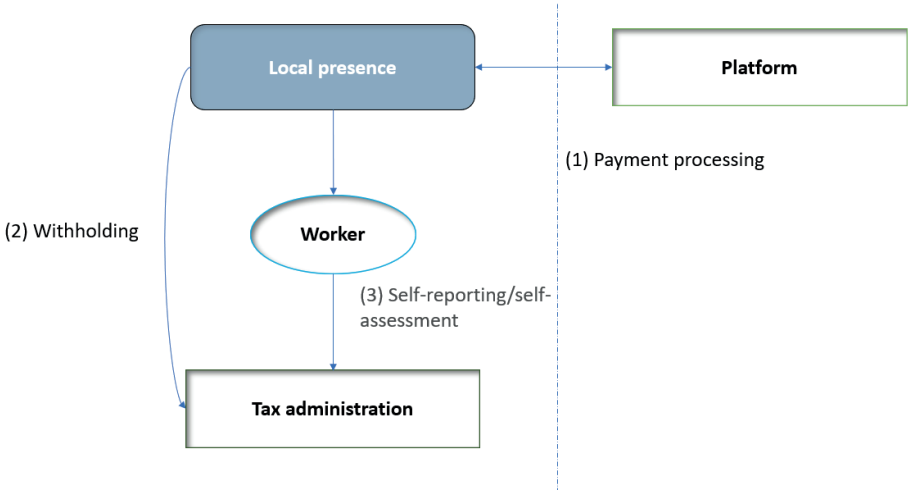

Figure 3 - Requirement to establish a local presence in the jurisdiction applying a withholding tax regime

B. Some remarks – Would an obligation for non-resident platform operators to appoint a local representative be compatible with EU law?

Outside the EU sphere, this approach towards overcoming territorial constraints to the enforceability of withholding arrangements would likely be uncontroversial. However, within the EU, this approach is questionable in light of the fundamental freedoms guaranteed under primary law. In the EU, similar domestic law measures have in the past been ruled as unlawful by the CJEU. [1211]

In an infringement procedure brought by the Commission against Belgium, the CJEU addressed the question of whether the requirement for a non-resident insurance undertaking to appoint a local tax representative tasked with the collection of tax on insurance premiums was compatible with the freedom to provide services.[1212] The Belgian government supported the requirement to appoint a tax representative by reference to the need to secure the collection of tax in a cross-border context.[1213] This requirement had no bearing on aspects pertaining to the authorization of the

1211 Armin Cuyvers; 'Freedom of Establishment and the Freedom to Provide Services in the EU'; in: Emmanuel Ugirashebuja et al. [Eds.]; Institutional, Substantive and Comparative EU Aspects, Brill, 2017.
1212 Case C-522/04 Commission of the European Communities v. Kingdom of Belgium.
1213 Ibid., para 49.

non-resident undertaking to provide services in Belgium.[1214] The CJEU rejected this argument. According to the CJEU, EU secondary law provides less restrictive mechanisms for securing the collection of tax debts, specifically pursuant to the Directive on Administrative Cooperation[1215] and Article 3 of Directive 76/308 on mutual assistance in the recovery of taxes.[1216] Additionally, the Court noted that under domestic law, Belgium assigned the legal responsibility for the payment of the underlying tax on the holder of the insurance policy in respect of insurance contracts concluded with an undertaking that is not resident or does not maintain a permanent establishment in Belgium.[1217] For these reasons, the requirement for the appointment of a local tax representative was deemed disproportionate and ultimately incompatible with the freedom to provide services.

In a similar judgment, the CJEU examined the compatibility with the freedom of services of a domestic law measure pursuant to which non-resident pension funds and insurance companies were required to appoint a tax representative in Spain for the purposes of securing the collection of withholding taxes in respect of occupational pensions and insurance premiums.[1218] Similarly to Belgium, the Spanish government argued that the requirement for the appointment of a local tax representative is underpinned by effective fiscal supervision and the prevention of tax evasion.[1219] However, the CJEU ruled that the measure was disproportionate in that it went beyond what was necessary to attain these objectives. Spain could rely on the less restrictive instruments on administrative cooperation for the exchange of information and the recovery of taxes.[1220]

1214 Ibid.

1215 Article 1(1) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation OJ 336 1977.

1216 Case C-522/04 Commission of the European Communities v. Kingdom of Belgium para 56.

1217 Ibid., para 54.

1218 Case C-678/11 European Commission v. Kingdom of Spain.

1219 Ibid., para 44.

1220 Ibid., paras 49 et seq.

C. The obligation for platform operators to appoint a local tax representative under the non-employee withholding arrangement instituted by Article 4 of Decree 50/2017 in Italy

In Italy, the non-employee withholding regime for income derived from short-term leases attempts to overcome cross-border enforceability constraints by requiring non-resident platform operators to assign a local representative in Italy to secure the management of the withholding obligations. Shortly following the implementation of the Decree into law, *Airbnb* initiated proceedings to challenge the legality of the obligation to collect and withhold tax on behalf of platform workers. *Airbnb's* case was originally brought before the Regional Administrative Court of Lazio (the 'TAR'), where its claims were ultimately unsuccessful. *Airbnb* subsequently lodged an appeal with the Italian Council of State – the highest administrative court in Italy – wherein it requested a preliminary judgment from the CJEU.[1221] The request was initially dismissed by the CJEU on grounds of material inadmissibility.[1222] *Airbnb* recently requested the resubmission of the request for preliminary ruling, with the underlying questions currently pending before the CJEU.[1223] The CJEU ruled on the question in December 2022.

The judgment rendered by the TAR in the complaint lodged by *Airbnb* in first instance provides a starting point for the consideration of viewpoints towards the compatibility of the requirement for the appointment of a local representative with the freedom to provide services. Against this backdrop and considering the approach developed by the CJEU in previous case law on similar questions, the following paragraphs will discuss Judgment 227/2019 pronounced by the TAR on the requirement for platform operators to appoint a local tax representative.

According to *Airbnb* as part of the arguments presented before the TAR, the requirement to appoint a local representative in Italy for the management of withholding obligations amounted to an unjustified restriction on the freedom to provide services the principles of competition law.[1224] Additionally, *Airbnb*

1221 Case C-723/19 Airbnb Ireland UC and Airbnb Payments UK Ltd v Agenzia delle Entrate.
1222 Article 53(2) of the Rules of Procedure of the Court of Justice Article 53(2) and 94.
1223 Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022].
1224 Articles 3, 18, 32, 44, 49, 56, 101 ss., 116, 120, 127 ss. TFEU, the principles of EU competition law, right of establishment and freedom to provide services, as well as Directives 2000/31

submitted that the obligation to act as withholding agent would discourage workers from renting out properties through its platform and instead perform such services through intermediaries not involved in the handling of payments who are not required to withhold tax under the Decree.[1225] This argument essentially implies that the Decree discriminates against the business model of peer-to-peer platform-mediated homesharing as a whole. The TAR dismissed this argument. According to the TAR, the notion that the Decree discriminates against *Airbnb's* business model is purely hypothetical in that *Airbnb* did not produce any empirical evidence that it was at threat of suffering a competitive disadvantage.[1226] The TAR opinioned that the measure is more likely to encourage the peer-to-peer provision of short-term accommodation through platforms tasked with withholding, because withholding spares the taxpayer of the responsibility to pay income tax through ordinary self-assessment process.[1227] In my view, both sides of this argument are somewhat speculative. Drawing competition-related inferences based on the architecture of a tax collection mechanism seems neither appropriate not feasible.

Still, the most notable part of the judgment covered the analysis of the requirement for the appointment of a local representative and its compatibility with the freedom to provide services. In its judgment, the TAR rejected the notion that this measure is incompatible with EU law.[1228] The reasoning of the TAR essentially boils down to three main arguments. Firstly, the judgment invoked statistical evidence about the degree of non-compliance by workers with tax obligations afferent to the generation of income from homesharing activities.[1229] Whilst this argument supports the design of a collection mechanism that pre-empts opportunities for non-compliance enjoyed by workers, it does not hinge on the lawfulness of the requirement for the appointment of a local representative *per se*. As such, this argument is in my view superfluous and immaterial to the compatibility of the measure with EU law.

/ EC (Directive on electronic commerce) and 2006/123 / EC (on services in the internal market).

1225 Airbnb Ireland v. Revenue Agency [Regional Administrative Court for Lazio – Section 2nd Tier], judgment 8819 of 2017.

1226 Ibid.

1227 Ibid.

1228 Ibid.

1229 Ibid.

Secondly, the TAR expounded that the requirement for the appointment of a local tax representative does not in fact create significant compliance burdens for the non-resident platform enterprise, since the human and instrumental endowments associated with this requirement are minimal.[1230] According to the TAR, the role of the tax representative is to merely provide a local interlocutor for the tax administration. In the view of the TAR, compliance with withholding obligations could prove even more onerous for a non-resident enterprise that maintains no local presence in Italy.[1231] In my view, this argument is particularly unconvincing in light of the above-mentioned CJEU case law. In the infringement procedures against Belgium and Spain, the CJEU did not inquire into issues pertaining to the quantification of the compliance costs associated with the appointment of a local tax representative. A judicial quantification of compliance costs is an arguably redundant exercise. Economic and commercial rationales dictate that enterprises are best suited to make determinations about compliance costs.[1232] If the compliance costs associated with the appointment of a tax representative are considered, this only entails that intermediaries should be provided *the choice* to appoint a local representative. In essence, the TAR is framing a requirement which at face value is inherently restrictive as a benefit – a viewpoint which is questionable at best and intrusive and perverse at worst.

Thirdly, the TAR discussed whether less restrictive measures would have been available to attain the objective of combating tax fraud in respect of undeclared income from homesharing activities. The TAR considered the instruments for administrative cooperation applied in Italy, in a line of reasoning similar to the one followed by the CJEU. Oddly, the TAR described administrative cooperation as a merely 'abstract' solution to tax fraud.[1233] According to the TAR, reliance on administrative cooperation for securing the collection of tax in respect of income derived from peer-to-peer homesharing activities would have 'no useful effect' and it would entail an incessant dialogue with the tax administration in the state of residence of the platform enterprise as regards income sourced from real estate and

1230 Ibid.

1231 Ibid.

1232 See, for example: Case C-371/10 National Grid Indus v. Inspecteur van de Belastingdienst Rijnmnond/kantoor Rotterdam.

1233 Airbnb Ireland v. Revenue Agency [Regional Administrative Court for Lazio – Section 2nd Tier], judgment 8819 of 2017 at 7.7.

activities in Italy.[1234] The TAR argued that, in light of the large number of workers, many of whom derive small amounts of income, administrative cooperation would be ineffective and inefficient.[1235]

This last point in the reasoning of the TAR invites a series of considerations. To begin with, it should be noted that this judgment predates the adoption (and implementation) of DAC7. Nevertheless, the TAR in this judgment did not argue that no specific framework for the exchange of information regarding income derived by workers from peer-to-peer platform activities applied. Instead, it implied that the nature and the circumstances of income generation within the collaborative economy make administrative cooperation and exchange of information ineffective as a matter of generality. In the judgments in the infringement procedures against Belgium and Spain, the CJEU did not attempt to quantify the effectiveness of existing instruments for administrative cooperation in respect of insurance premiums and occupational pension contributions. Otherwise put, the determination of whether a less onerous alternative to the requirement for a tax representative exists does not entail an inquiry into the mechanics of administrative cooperation frameworks vis-à-vis various activities or items of income.

In its judgment, the TAR correctly argued that existing CJEU jurisprudence does not establish an absolute prohibition for a Member State to require a non-resident enterprise to appoint a local tax representative, but merely that such a measure is incompatible with EU law when a Member State disposes of less restrictive alternative in order to attain a public interest objective.[1236] The TAR impliedly attempted to sidestep the bounds of this strict proportionality test by reference to the peculiarities of the business model of the collaborative economy, arguing that administrative cooperation alone would be insufficient. In my opinion, the argument that administrative cooperation is ineffective would not be accepted by the CJEU for a number of reasons. Firstly, DAC7 is designed specifically by reference to the peculiarities of the business model of the collaborative economy. The protocol for administrative cooperation established under DAC7 attempts to target the specific information gaps at play in the collaborative economy, which amount

1234 Ibid.
1235 Ibid.
1236 Ibid.

to barriers to the effective income taxation of platform workers. Secondly, even in the absence of a dedicated protocol for administrative cooperation as regards income derived by workers from collaborative economy transactions, it is unlikely that the CJEU would accept an arbitrary distinction drawn between administrative cooperation as regards the economic system of the collaborative economy and any other areas covered under the material scope of other administrative cooperation frameworks. The CJEU is generally unconcerned with the particularities of administrative cooperation frameworks in relation to specific taxpayers and activities. The existence and availability of such arrangements is sufficient to find that Member States dispose of less onerous alternatives. The absence of an inquiry by the CJEU into how and to what extent Member States could use administrative cooperation frameworks with a view to attaining objectives in the public interest could be interpreted as implying that the onus is on the Member States themselves to determine how administrative cooperation arrangements could be leveraged and optimized for the achievement of national objectives in the public interest.

In spite of the fact that the appointment of a local representative could help bypass the territorial constraints to the enforceability of withholding tax obligations in a cross-border context, this approach remains contentious, at least within the realm of the EU. In light of the previous case law of the CJEU, this preliminary ruling will provide a welcomed opportunity for the discussion of the relationship between third party information reporting protocols applicable to the collaborative economy, on the one hand, and withholding tax arrangements, on the other hand.

D. Opinion of Advocate General Szpunar and CJEU judgment on the compatibility of non-employee withholding and the obligation to appoint a local representative with the freedom to provide services and personal reflections

Prior to the CJEU judgment in Case C-83/21, Advocate General ('AG') Szpunar published an Opinion on the case.[1237] The Opinion addresses the compatibility of

1237 Opinion of Advocate General Szpunar in Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022]. This analysis will focus on the elements of the Opinion (and subsequent CJEU judgment) discussing the compatibility of the withholding obligation and the obligation of non-resident withholding agents to appoint a tax representative i.e., paragraphs 51 et seq. of the Opinion.

the obligation to withhold tax (and, in the case of non-resident withholding agents, to appoint a local tax representative) with the freedom to provide services. The CJEU judgment largely follows the AG's Opinion on this issue.

The AG's Opinion takes a critical stance towards the assertion that the Italian measure covertly targets non-resident platform operators that are involved in the management and processing of payments collected by hosts in respect of short-term rentals. According to the AG, a withholding obligation cannot be applied in respect of intermediaries that are not involved from the outset in the processing and management of payments.[1238] Additionally, the AG opines that the fact that most intermediaries for short-term rentals who are involved in the processing of payments derived by hosts is merely an incidental effect, flowing from the fact that the business model of such intermediaries does not require establishment in the states where hosts provide the underlying short-term accommodation service.[1239] The AG moreover rightly points that the withholding obligation does not concern the taxation of the intermediary, but the collection of tax in respect of income derived from the underlying short-term accommodation services supplied by natural person hosts through the *Airbnb* platform. Ultimately, the AG finds that resident and non-resident intermediaries are not in a different situation from the perspective of the freedom to provide services.

The AG argues that the obligation to act as withholding agent restricts in the principle the freedom to provide services of *Airbnb*. As part of the Opinion, the AG argues that the domestic measure entails that *Airbnb* is effectively an intermediary between worker hosts and tax administrations (wherein tax administrations expect to receive amounts collected by the intermediary) and an intermediary towards worker hosts (wherein workers would expect that the withholding of tax entails that their own income tax obligations had been relieved).[1240]

In the view of the AG, this restriction is justified by the necessity of ensuring effective income tax collection (and the prevention of income tax evasion) in respect of income derived from short-term accommodation arrangements. The AG argues

1238 Ibid., paragraph 60.
1239 Ibid., paragraph 63.
1240 Ibid., paragraph 67.

that the application of withholding taxes is a proportionate measure to achieve this objective, by reference to the mechanics of withholding tax measures. According to the AG, withholding taxes streamline, expedite and simplify the collection of income tax.[1241] The AG referred to previous instances where the CJEU accepted that the collection of tax through withholding was a justified and proportionate measure. However, previous case law concerned situations where withholding taxes where applied in respect of income derived by non-residents from domestic sources, and wherein the withholding agent was established in the Member State that required withholding. Still, the AG opined that these findings apply *mutatis mutandis* to situations concerning residents that derive domestic income (i.e., *Airbnb* hosts). According to the AG, the difficulties to the effective collection of tax that Member States seek to address through withholding taxes do not only arise because of the place of residence of the taxpayer, but may also be rooted in other factors, such as the large number of taxpayers sourcing small amounts of income from short-term rentals.[1242]

In a similar vein, the CJEU judgment confirms that domestic legislation which imposes an obligation on undertakings involved in payment intermediation to withhold tax is not incompatible with Article 56 TFEU in nature.[1243] However, unlike the AG, the CJEU finds that the obligation to withhold tax in respect of payments collected does not amount to a restriction of freedom to provide services in the first place. The CJEU discussed and rejected *Airbnb's* argument that the measure effectively targets homesharing collaborative economy enterprises. The Italian measure applies both in law and in fact to all enterprises involved in the intermediation of short-term accommodation, including ordinary real estate agents. The CJEU conceded that most such enterprises are indeed homesharing collaborative economy enterprises, but it noted that this is merely the result of 'market configuration'.[1244]

As regards the requirement for the appointment of a tax local representative, both the AG and CJEU found this aspect of the legislation to be incompatible with Article

1241 Ibid., paragraph 69.
1242 Ibid., paragraph 70.
1243 Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022] paragraphs 52-55.
1244 Ibid., paragraph 47.

56 TFEU. To begin with, the AG discussed and disagreed with *Airbnb*'s argument that this requirement is discriminatory per se, since it only applies in respect of non-resident intermediaries.[1245] Indeed, residents and non-residents are not in similar circumstances as regards the application of tax measures, so it is unlikely that the CJEU will find that this requirement rises to the level of discrimination. Nevertheless, the AG did find that the requirement to appoint a local tax representative creates a disproportionate restriction on *Airbnb*'s freedom to provide services. The AG referred to previous case law,[1246] where the CJEU found that the compliance costs associated with the appointment of a local tax representative could 'equal or exceed' the costs for the intermediary to undertake the functions which the domestic legislation required be delegated to the local representative.[1247] According to the CJEU, domestic legislation that foresees such requirements should allow intermediaries the choice between the appointment of the representative and undertaking withholding themselves.[1248] In the view of AG Szpunar, the Italian measure requiring *Airbnb* to appoint a local representative for the management of withholding tax obligations should be considered in the same light. Ultimately, the view of the AG is that whilst platform operators may be required to withhold tax in respect of amounts derived by workers is compatible with the freedom to provide services, the requirement that non-resident platform operators appoint a local representative to manage obligations is unlawful under Article 56 TFEU.

The CJEU followed the AG's Opinion in finding that the requirement to appoint a local representative amounts to a restriction of the freedom to provide services set out in Article 56 TFEU.[1249] The requirement to appoint a local representative applies only in respect of undertakings that do not have a permanent establishment in Italy and creates additional costs for such undertakings, notably the cost of remunerating the local representative.[1250] The Italian government argued that the measure is justified on two grounds: the fight against tax evasion in the short-term rental

1245 Opinion of Advocate General Szpunar in Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022], paragraphs 70-71.
1246 Case C-678/11 European Commission v. Kingdom of Spain [2014], paragraphs 57-59.
1247 Ibid., paragraph 57.
1248 Ibid., paragraph 58.
1249 Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022], paragraphs 58-59.
1250 Ibid.

sector and the effective collection of tax.[1251] The CJEU accepted that the disputed measure is suitable to attain these two objectives.[1252] However, it proceeded to rule that the measure goes beyond what it necessary to attain these objectives. Firstly, third party information reporting requirements that apply in respect of homesharing intermediaries are a less restrictive measure in place to prevent tax evasion and support effective taxation. This is in line with previous CJEU case law, as discussed above in these paragraphs. Secondly, the CJEU was notably critical of the requirement that the local representative must be a resident of Italy. In the view of the CJEU, the residence criterion is only relevant as regards administrative convenience, which is insufficient to justify an obstacle to the exercise of the freedom to provide services.[1253]

In my view, neither the AG Opinion nor the CJEU judgment in this case were surprising developments. To begin with, there were indeed no compelling reasons to argue that the TFEU precludes the imposition of withholding obligations in respect of collaborative economy platform operators from the outset. The effective collection of tax is a legitimate objective in the public interest, and withholding taxes are not a disproportionate measure *a priori*, including in cases where withholding agents are established in other Member States. However, I emphasize consistently as part of this analysis that there do need to exist safeguards for the enforceability of withholding obligations in cross-border situations. The proportionality test applied by the CJEU inherently seeks to determine whether such safeguards exceed what is necessary to achieve the objective of ensuring enforceability in cross-border contexts.

The proportionality test is bound to yield unhelpful outcomes in regards to non-employee withholding arrangements applied in respect of income derived by collaborative economy platform workers. By its logic and design, the proportionality test acts to protect platform operators against far-reaching restrictions. Synthesizing the case law summarily discussed in the foregoing paragraphs of this analysis, it emerges that the CJEU in the past discussed the restriction created through the requirement to appoint a local tax representative by reference to

1251 Ibid., paragraphs 62-63.
1252 Ibid., paragraph 67.
1253 Ibid., paragraphs 73-75.

two considerations. Firstly, the CJEU argued that administrative instruments for cooperation on the recovery of taxes enable a less intrusive alternative to the requirement for the appointment by a non-established withholding agent of a local tax representative.[1254] Secondly, the CJEU also argued that the compliance costs afferent to the appointment of a local tax representative entail that Member States should provide intermediaries the option to choose between appointing a local tax representative and undertaking withholding obligations themselves without appointing a representative.[1255] In my view, neither of these approaches could enable an appropriate and scalable approach to non-employee withholding. The collaborative economy is an environment of high-volume/low-value transactions. It is not feasible to rely on administrative cooperation for the recovery of taxes in this context consistently and on a broad scale. In strictly factual and practical terms, there is room to question whether such an approach would genuinely act to simplify and enhance the effective taxation of platform workers to a meaningful extent compared to the *status quo*. In a similar vein, there is also room to question whether the option for non-established intermediaries to choose between the appointment of a local tax representative or undertaking withholding duties without such a representative could enable a practical and scalable approach to non-employee withholding in the collaborative economy. Both approaches entail considerable compliance costs for platform operators, and these costs would be exacerbated considerably if more Member States introduced similar withholding measures. Notably, one of the key arguments for the introduction of multilateral third party information reporting through the OECD Model Rules and DAC7 pertained to the compliance costs borne by platform operators in connection with the permutations of multiple domestic frameworks. The application of withholding obligations in respect of platform operators (and the requirement for non-resident platform operators to appoint a local tax representative) raises both legal and practical issues. In the context of EU law, the legal questions chiefly revolve around the compatibility of such measures with the fundamental freedoms guaranteed by the TFEU. The answer to these legal questions will only elucidate the bounds of how EU Member States may design non-employee withholding regimes in line with EU law.

1254 Opinion of Advocate General Szpunar in Case C-83/21 Airbnb Ireland UC, Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022], paragraph 50.

1255 Ibid., paragraph 58.

ii. Multilateral withholding arrangements

An alternative approach that preserves the enforceability of withholding tax arrangements in a cross-border context could be the institution of a multilateral withholding protocol. Such a framework would transplant *mutatis mutandis* the architecture of the OECD Model Rules and the EU's DAC7. Under such an approach, a non-resident platform operator would be required to withhold tax in respect of income derived by workers from activities undertaken through the platform. However, rather than remitting the amount collected to the tax administration in the jurisdiction where the tax is due, the amount would be remitted to the tax administration in the state of residence of the foreign platform enterprise. Subsequently, that tax administration would remit the amount collected to its counterpart(s).

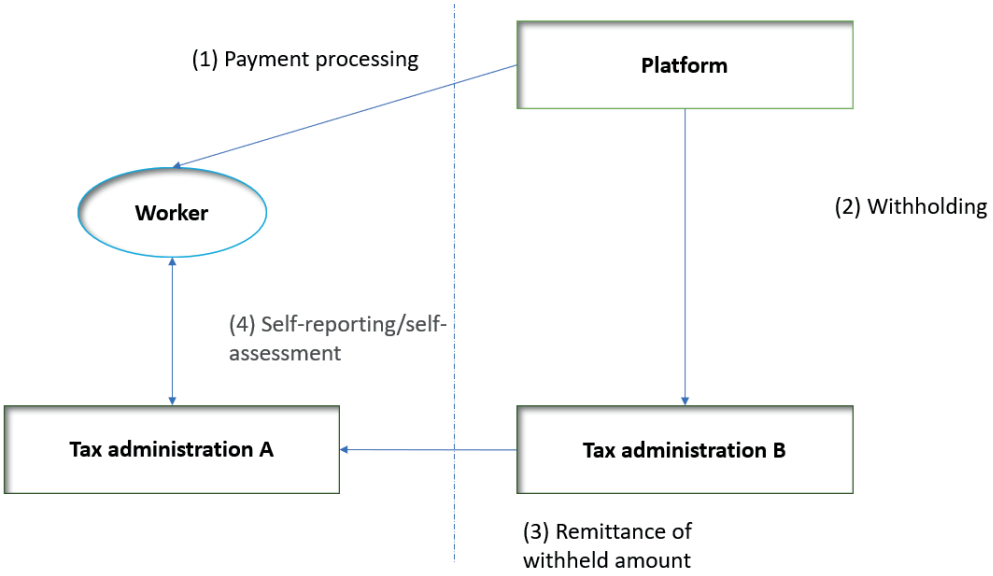

Figure 4 - Multilateral withholding arrangement

Such an arrangement requires (bilateral or multilateral) cooperation agreements between states. Alternatively – and perhaps most realistically – it could be devised pursuant to an international harmonization instrument. This approach to withholding mirrors the underlying rationale of existing multilateral third party information reporting protocols. As discussed elsewhere in the contents of

the present contribution, one of the main challenges associated with unilateral third party information arrangements referred to the enforceability of reporting requirements against non-resident enterprises. The OECD's Model Rules and the EU's DAC7 attempt to sidestep these constraints by establishing a multilateral framework. Under these instruments, the onus for enforcing information reporting obligations against a platform enterprise falls upon the government bodies in the state of residence of that enterprise. Accordingly, tax administrations are not required to interact with non-resident enterprises, but merely with their counterparts in other jurisdictions. The following paragraphs will attempt to discuss the feasibility of the deployment of a multilateral framework for non-employee withholding that follows the same approach.

A. Previous 'multilateral' withholding arrangements – lessons from the defunct Savings Directive

Multilateral withholding arrangements are not commonplace. One of the few instances where these were attempted was under the now defunct Savings Directive.[1256] The objective of the Savings Directive was to secure the effective taxation of interest income derived by private individuals residing within the EU. Under the Savings Directive, financial institutions were required to report the identities of such individuals to the competent authority of their state of residence.[1257] In turn, those competent authorities were required to exchange the information received from reporting financial institutions on an annual basis. The Savings Directive therefore followed an approach to multilateral third party information reporting similar to the mechanics of the OECD Model Rules and DAC7. However, the Savings Directive was in force at a time when a number of states provided for bank secrecy legislation, which would preclude the reporting and subsequent exchange of information envisaged under this arrangement. For this reason, the Savings Directive included a transitional withholding tax regime to preserve the bank secrecy provisions of such states.[1258] This regime allowed financial institutions to withhold taxes at source in respect of the interest income,

1256 Article 11 of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments [No longer in force].

1257 Leopoldo Parada; 'Intergovernmental Agreements and the Implementation of FATCA in Europe', *World Tax Journal 7 (2)*, 2015, pp. 201-240.

1258 Ibid.

without however disclosing the identities of the account holders.[1259] The financial institution remitted the amount withheld to the competent authority of its state of residence.[1260] In turn, that authority would retain 25% of the revenue collected by the financial institution and remit the remaining amount to its counterpart in the jurisdiction where the beneficial owner of the interest income resided.[1261]

The multilateral withholding tax regime instituted under the Savings Directive was merely a compromise, aimed at accommodating sovereign bank secrecy regimes. The Savings Directive sought to improve residence-state taxation of interest income pursuant to third party information reporting and automatic exchange of information. The grandfathering provisions of the Directive that allowed withholding taxation were very much the exception to the general rule, rather than a fully-fledged alternative. However, the existence of such an arrangement within the context of the EU invites the question of whether a similar multilateral withholding regime could be instituted with a view to securing the effective taxation of income derived by workers from platform activities.

B. A multilateral withholding tax regime for income derived by workers in the collaborative economy – practical issues

Theoretically, a multilateral withholding arrangement could bypass the territorial limitations to enforceability against platform enterprises that do not reside and do not maintain a presence in the jurisdiction requiring withholding.

However, the feasibility of such a framework presupposes complex legal and political foundations. To begin with, multilateral frameworks can only be designed in an environment that enables legal coordination. In the EU, multilateral frameworks are legally feasible.[1262] Outside the EU, such an initiative could perhaps

1259 Thomas Rixen and Peter Schwarz; 'How Effective is the European Union's Savings Tax Directive? Evidence from four EU Member States', *Journal of Common Market Studies 50(1)*, 2012, pp. 151-168.

1260 Article 11(1) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments [No longer in force].

1261 Ibid., Article 12(1).

1262 However, in the EU, Directives on the harmonization of direct tax measures must be adopted unanimously (or pursuant to enhanced cooperation). In light of the other shortcomings for multilateral withholding frameworks (discussed below in this section), it is highly unlikely

be driven through a model proposal to be developed by the OECD, mirroring the Model Rules.

Another, perhaps more dramatic hurdle associated with this approach refers to the degree of coordination its architecture depends on. In turn, from a political perspective, such consensus presupposes incentive and reciprocity.

The multilateral withholding regime instituted under the Savings Directive was deeply connected with certain states' political motivations, specifically the preservation of bank secrecy provisions. Arguably, the instrument as a whole could have been designed to include a permanent multilateral withholding tax regime in addition to third party information reporting and automatic exchange of information had this approach been seen as more suited and effective. For their part, those states that implemented the transitional withholding tax regime of the Savings Directive were not incentivized by issues related to securing the effective taxation of interest income, but instead by their preservation of bank secrecy regimes.

Another reason why the political incentive for a multilateral withholding tax arrangement pertaining to income derived from platform activities may be limited relates to the lack of consensus as to whether withholding taxes are necessary in the collaborative economy in the first place. At the time of writing, a very limited number of Member States have designed unilateral withholding tax regimes applicable to income derived by workers from platform activities.[1263] Conversely, the overarching political sentiment was clearly different in respect of other measures. The OECD Model Rules and the Commission's DAC7 proposal came about against the backdrop of scattered and uncoordinated unilateral regimes for third party information reporting by platform enterprises. One of the key objectives of the Model Rules and DAC7 is to alleviate the permutations of an environment where a large number of states introduce similar legislation in an uncoordinated manner. The pre-existence of unilateral third party information reporting arrangements in a significant number of states arguably facilitated the political acceptability

that such an initiative would be favored by EU Member States.

1263 Italy; Decree Law no. 50/2017, Article 4. Estonia; Simplified Taxation of Business Income Act, passed 19.06.2017.

of multilateral frameworks for information reporting and automatic exchange of information.

Political reciprocity raises a different type of concern. By definition, a multilateral withholding tax regime entails that tax administrations be required to act as collection agents on their counterparts' behalf. Under the Savings Directive, the retention of a fixed percentage of revenues collected by the authority in first receipt of the withheld amount compensated for this to some extent. However, the issues pertaining to the Savings Directive cannot be fully superimposed to the circumstances at play within the collaborative economy. By its very nature, the withholding regime in the Savings Directive had a limited scope and only applied to a small number of states. Conversely, an EU-wide multilateral withholding regime for income derived from platform transactions would have a considerably broader scope. If such a framework were developed among OECD countries (and not be restricted to EU Member States), this issue would arguably be all the more jarring. Collecting and remitting revenues to a counterpart tax administration may be acceptable between states were the flow of revenues is more or less balanced. However, such an approach could ultimately lead to undue burdens on tax administrations in those states where a large number of platform enterprises establish their tax residency. The tax administrations in such states would be required to collect and remit tax for their counterparts in virtually all other participating jurisdictions. Conversely, states where no or only few platform enterprises actually withhold tax would primarily be transferred revenues from abroad, without necessarily collecting and remitting significant amounts of revenue themselves. In other words, this approach is likely to create obtuse outcomes between states.

Another relevant consideration concerns the rate of withholding. In a wholly domestic situation, withholding tax rates can readily be designed so that they amount to a realistic approximation of the taxpayer's final liability. By contrast, in a cross-border multilateral context, this is considerably more difficult to achieve. One option would be to apply a uniform rate across the entirety of the regime.[1264] However, the rate would be inherently arbitrary both nationally and internationally.

1264 Under the Mexican withholding tax regime for income from collaborative economy activities, different rates are applied in respect of private transportation and delivery services, homesharing activities and residual sales of goods and provisions of services, respectively.

iii. Securing compliance with withholding obligations through direct deterrence

Another approach to safeguarding enforceability could be through the application of deterrence mechanisms applied against the withholding agent. This approach is favored in Mexico, which introduced withholding regime whereby platform enterprises – whether they reside or maintain a presence in Mexico – must withhold tax in respect of amounts derived by workers from income-generating activities performed through their interface.[1265] The legislation includes enforcement provisions targeted towards non-resident platforms, whereby failure to withhold and remit tax for three consecutive months attracts a temporary ban from providing services in Mexico.[1266]

This approach disregards the challenges to cross-border enforceability by instituting a penalty mechanism aimed at incentivizing compliance and chastising attempts at circumventing the obligation to withhold tax. There are a number of reasons why a withholding arrangement designed along these lines is unlikely to be replicated on a large scale. In my view, a non-employee withholding arrangement that disregards the complexities of cross-border aspects and that seeks to ensure compliance with withholding obligations through deterrence could only be appropriate in the context of either a closed economy or against the backdrop of highly approximated laws. The application of deterrence to secure withholding agents' is an aggressive approach to safeguarding enforceability. Additionally, mere deterrence does not address the complexities of withholding obligations in cross-border situations.

1265 Eduardo Orellana Polo; 'Mexico – Individual Taxation'; IBFD Country Tax Guides [Reviewed 8 January 2021, Section 1.4.4.2]. Mexico – Secretariat of Public Finance; 'First Resolution of Amendments to the Miscellaneous Tax Resolution for 2020', 2020. Other South American countries have either introduced or considered the introduction of similar approaches to non-employee withholding. For example, Brazil recently considered a proposal wherein a platform operators that would not comply with withholding obligations in respect of the income generated by workers through their platform would be 'fined' an amount that corresponded to the outstanding amounts for withholding. Under this approach to deterrence, the withholding agent is effectively made liable for the payment of the actual tax owed in respect of the income generated by platform workers.

1266 Ibid.

Firstly, assuming an EU context, it is rightly questionable whether this approach could be deemed compatible with the fundamental freedoms. EU Member States are limited in their possibilities of creating inbound restrictions on enterprises of other Member States.[1267]

Secondly, this approach does not fully account for other challenges associated with the application of such measures in a cross-border context. The Mexican withholding framework relies on deterrence as an enforcement tool against non-resident withholding agents. It does not, however, adequately address issues pertaining to the management of the withholding obligations that arise in situations where a non-resident enterprise is required to act as a withholding agent that are independent of enforceability considerations. A non-resident withholding agent may experience difficulties upholding domestic data protection standards, thereby calling taxpayer rights into question.[1268] Additionally, an arrangement instituting withholding obligations in respect of non-resident platform enterprises raises similar compliance costs as unilateral third party information reporting frameworks. Prior to the adoption of the OECD Model Rules and DAC7 in the EU, a considerable number of states implemented domestic legislation whereby platform enterprises were required to report data pertaining to the identity and income of workers to domestic tax administrations. A major challenge associated with these unilateral measures is that they created an environment where platform operators providing services in multiple jurisdictions were required to provide separate and potentially duplicative reports to the tax administrations in all jurisdictions that applied such measures.[1269] Moreover, platform enterprises were faced with the permutations

1267 Article 56 TFEU; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ 178 2000. Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services OJ 241 2015.

1268 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 27. Data protection considerations are cited by the OECD as one of the main reasons underpinning the argument in favor of requiring non-resident platform enterprises to appoint a local representative in the context of cross-border withholding arrangements.

1269 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-

of domestic reporting frameworks, which compounded compliance costs.[1270] It is precisely against this backdrop that the OECD and EU proposed multilateral reporting frameworks whereby platform enterprises are only required to submit a consolidated information report in one jurisdiction. These challenges would arise in a similar, but arguably more pronounced manner in the context of withholding regimes that apply irrespective of the residence of the platform acting as withholding agent. In the case of unilateral third party information reporting protocols, the fact that different domestic frameworks required the supply of different types and extents of information were a source of considerable compliance costs for platform enterprises, as platforms would be required to collect and report different types and formats of data sets depending on the requirements of each reporting framework. In the context of a withholding arrangement following the same underlying logic, non-resident platform enterprises would be faced with separate computation requirements for the withholding taxes, as individual states would most likely require the withholding of tax at different rates. In the case of third party information reporting, these issues were largely settled through the substantive harmonization of data collection and reporting requirements, which allows a platform enterprise subject to reporting to collect the same type of information in respect of all workers operating through its interface across the entirety of its operations and irrespective of the residence of the workers themselves. Conversely, it would be difficult to expect that different jurisdictions could reach an agreement on the (full) harmonization of withholding requirements – ranging from the timing and calculation of the withholding amount to the applicable rate of withholding.

iv. Voluntary withholding arrangements with foreign platform operators

Another theoretical possibility for overcoming the enforceability constraints of withholding tax arrangements is the conclusion of voluntary withholding agreements between platform enterprises and domestic tax administrations.[1271] At the time of writing, a number of such voluntary withholding agreements have been negotiated by tax (regional) administrations in some countries.[1272] However,

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and-gig-economy.htm last accessed 8 June 2021, Foreword.

1270 Ibid.

1271 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 29.

1272 Ibid. See also: Christoph Busch; 'Regulating Airbnb in Germany – status quo and future

the scope of such agreements usually only extends to the collection and remittance by platform enterprises of transient occupancy taxes, tourist taxes and other *ad valorem* levies. As regards non-employee withholding over receipts derived by workers from platform activities, the Belgian regime operates on a quasi-voluntary basis, whereby withholding obligations only apply to platform operators that individually apply to qualify as 'recognized electronic platforms'. In some cases, voluntary agreements have been concluded between platform operators and tax administrations in areas other than withholding tax. For example, prior to the adoption of mandatory multilateral third party information reporting regimes, the Danish tax administration had concluded agreements with various collaborative economy platform enterprises for the voluntary supply of information pertaining to the identity and income derived by workers through such platforms.[1273]

There are only modest arguments that would support the design of non-employee withholding arrangements that rely on voluntary agreements between platform operators and tax administrations. The voluntary character of the agreements could create built-in enforceability and compliance with withholding obligations by platform enterprises. To the extent that a platform enterprise voluntarily undertakes to act as withholding agent, the incentive to disobey withholding obligations should in principle be limited. Voluntary agreements between private sector enterprises and government bodies inevitably embed reputational incentive for compliance.

However, this argument is inarguably overshadowed by the salient legal and practical limitations of this approach. Firstly, the approach is particularly onerous, in that it entails the conclusion and management by tax administrations of separate agreements with a potentially large number of enterprises. The collaborative economy is not an oligopolistic environment. Additionally, since the collaborative economy business model can be replicated to virtually any sector of economic activity, the emergence and proliferation of new platform enterprises is likely to continue in the future. Whilst voluntary agreements may be workable as regards a smaller number of established platform enterprises, this approach is not scalable

trends', *Journal of European Consumer and Market Law 8 (1)*, 2019, pp. 39-41.

1273 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 29.

in light of the realities of the environment of the collaborative economy.[1274] Secondly, there is no overriding reason for platform enterprises to enter into such agreements in the first place. Reputational considerations are not sufficiently compelling to determine a meaningful trend for platform enterprises to enter into such agreements on a broad scale. Thirdly, the voluntary character of this approach inherently create opportunities for arbitrage that may be exploited by platform workers, either directly or circumstantially.[1275] For example, workers earning income from different platform activities may be in the situation where part of their income is subject to withholding whereas other parts are not. In a similar vein, platform workers may unilaterally determine how tax is to be collected in respect of their platform income by performing activities through one platform or another.

2) Option 2 – Arrangements that assign withholding obligations on an agent other than a platform operator

As the foregoing analysis has strived to convey, the approaches to overcoming cross-border enforceability constraints in respect of non-resident platform operators display considerable shortcomings. Overall, these considerations highlight the difficulties associated with designing withholding regimes that assign withholding agent obligations on platform operators specifically. For this reason, the question arises whether these challenges could be bypassed through arrangements that assign withholding obligations on an entity other than the platform(s) through which a worker performs income-generating activities.

This could entail an arrangement whereby income derived by platform workers is settled in a designated bank account and wherein the duty to withhold and remit tax in respect of such income is assigned to the financial institution with which the account is maintained. A variant of this approach was recently introduced in Estonia

1274 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 29.

1275 In Part III.1, I discuss in more detail a cooperative third party information reporting framework introduced in Denmark. The framework allowed platform operators to voluntarily register to disclose information about the identities and incomes of platform workers to the Danish tax administration. Platform workers performing income-generating activities through 'cooperative platforms' were granted a broadened basic allowance.

pursuant to the Act on Simplified Taxation of Business Income.[1276] The Act institutes an opt-in regime that allows individuals to open a so-called entrepreneur account for the settlement of consideration derived from independent personal services. The entrepreneur account may be made available by any credit institution (whether resident in Estonia or not) that opts to provide this service.[1277] The credit institution withholds and remits tax in respect of the amounts credited to the account.[1278] The applicable rate of withholding is 20% in respect of income up to EUR 25.000 per annum and 40% in respect of all income above this threshold.[1279] The tax is withheld monthly, similarly to the timing of PAYE withholding for employees.[1280]

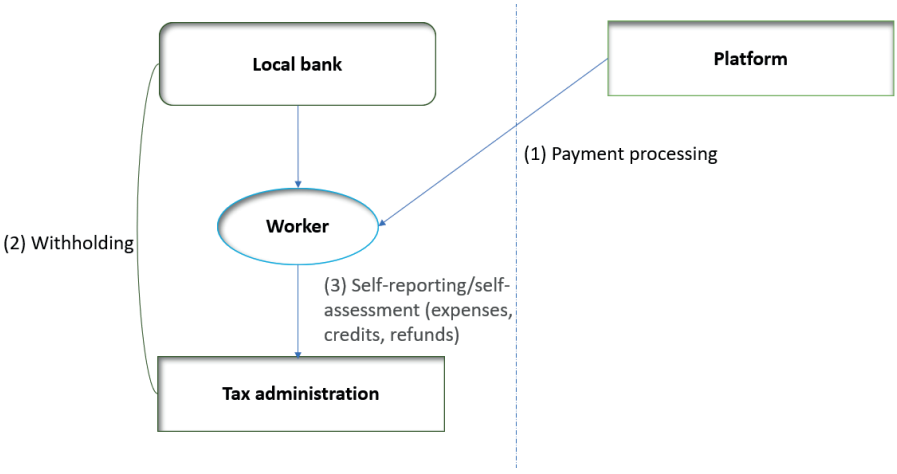

Figure 5 – Credit institution as withholding agent

1276 Estonia; Simplified Taxation of Business Income Act, passed 19.06.2017.

1277 In spite of the fact that the Simplified Taxation of Business Income Act allows any credit institution to provide an entrepreneur account, at the present time this service is only provided by Estonian-resident credit institutions.

1278 Estonia; Simplified Taxation of Business Income Act, passed 19.06.2017 § 1(3).

1279 Ibid., § 2.

1280 Ibid., § 3. Under the Estonian regime, the tax is withheld on the gross amount of income remitted to the entrepreneur account, meaning taxpayers do not have the possibility to claim deductible expenses. The withholding tax collected by the credit institution is a final levy under the Estonian regime. This is merely a choice of domestic law design, and should similar withholding arrangements come to be replicated, other states would likely design the withholding tax as a mere prepayment of income tax.

The credit institution with which the entrepreneur account is opened communicates the identities and amounts settled in the account by individuals to the domestic tax administration. Based on the information so received, the tax administration determines the amount of tax to be withheld and communicates this back to the credit institution, which withholds and remits the amount in question.[1281]

The regime purports to streamline tax compliance for individuals earning income from decentralized peer-to-peer activities, whether performed through a platform or otherwise.[1282] In other words, it is geared towards individuals that would typically be regarded as hard-to-tax segments.

This approach has a number of advantages.

i. No cross-border enforceability and compliance management constraints by design

The foremost advantage of a withholding arrangement wherein tax is collected by a local credit institution is that this approach does not entail the cross-border enforceability constraints and compliance management challenges associated with regimes that assign withholding obligations to platform enterprises. As the foregoing analysis has strived to convey, platform enterprises are generally not an appropriate withholding agent, particularly in cases where they facilitate income-generating activities in multiple jurisdictions. The possible approaches for addressing these challenges may be legally contentious or practically ineffective. Conversely, arrangements that focus on an alternative intermediary circumvent these issues, since withholding obligations are localized and organized within a single jurisdiction.

1281 Estonia; Simplified Taxation of Business Income Act, passed 19.06.2017 § 6.

1282 Kairit Veerberk; 'Estonian Tax and Customs Board Launched an Entrepreneur Account for Natural Person'; Intra-European Organization of Tax Administrations, 2019, available via: https://www.iota-tax.org/news/estonian-tax-and-customs-board-launched-entrepreneur-account-natural-person last accessed 8 December 2022.

ii. Effectiveness in tax collection

The collection of tax through withholding is the most obvious and widely applied approach securing effective and timely taxation.[1283] However, this can only hold true in the context of withholding arrangements that are feasible, enforceable and applied in respect of a broad segment of individual taxpayers. A withholding regime where collection and remittance duties are assigned to a local credit institution is a utilitarian approach to fiscal effectiveness. At its core, this approach leverages the fact that payments for peer-to-peer platform activities are processed digitally to begin with and settled in traceable bank accounts rather than in cash.

iii. Links to information reported by platform operators under third party information reporting arrangements

One issue associated with this approach to withholding refers to the fact that the regime is conceptualized as an opt-in arrangement.[1284] It would admittedly be difficult to design a regime that follows this approach as a default (or opt-out) framework. By definition, the scale of effectiveness of opt-in measures depends on the extent to which they are actually used by taxpayers. There are a number of factors that may hamper the acceptability of opt-in frameworks.

To begin with, some taxpayers may be unaware of the regime. Potentially, this could be addressed through taxpayer engagement and education initiatives. However, taxpayers that are deliberately non-compliant may simply not opt with a view to preserving the opportunities for non-compliance that are available to them outside the framework. One way of addressing this is by leveraging information received by tax administrations under third party information reporting frameworks. Data received pursuant to third party information reporting frameworks could complement the withholding regime by enabling risk modelling by tax administrations. As such, tax administrations could rely on the substantive information received pursuant to third party information arrangements with a

1283 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, page 23.

1284 Estonia; Simplified Taxation of Business Income Act, passed 19.06.2017 § 1(1).

view to verifying information pertaining to the identities and incomes received by workers from platform activities.[1285]

iv. Flexibility in design

Finally, a notable upside of a withholding regime designed along the parameters here described refers to the flexibility in design harbored by such arrangements. The framework is readily replicable, but the particularities of design lend themselves to domestic adaptation.

Firstly, states may determine whether the withholding tax should be final or non-final. As a matter of principle, final withholding taxes are more effective towards simplifying tax collection and compliance, since they do not entail a subsequent re-assessment of the income or the provision of refunds. Nevertheless, final withholding taxes may bar the consideration of relevant factors pertaining to the taxpayer and their expenses, fail to effectively approximate the tax liability of taxpayers and ultimately create arbitrary winners and losers.[1286] This issue is especially relevant in the context of the collaborative economy, where workers' activities entail the incurrence of different types and levels of expenses – and by extension, different degrees of profitability. The choice between a final and a non-final withholding tax oftentimes amounts to a trade-off between competing notions of taxation in accordance with the ability to pay principle, on the one hand, and legal simplicity, on the other hand. Some countries that apply withholding arrangements in respect of income derived by workers from peer-to-peer platform activities attempt to mitigate these issues by allowing workers the possibility of individually choosing whether the withheld amount is to be treated as a final tax or a pre-payment.[1287] This approach could also be extended in the context of opt-in withholding arrangements. The reason for this is that a non-final withholding tax collected – even when applied in the context of an opt in regime – enables the possibility for the taxpayer to effectively discharge a portion of their tax liability once

1285 Edward K. Cheng; 'Structural Laws and the Puzzle of Regulating Behavior', Northwestern University Law Review 100 (2), 2006, pp. 655-718.

1286 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

1287 Eduardo Orellana Polo; 'Mexico – Individual Taxation', *IBFD Country Tax Guides* [Reviewed 8 January 2021, Section 1.4.4.2].

the income subject to tax is actually incurred (thereby alleviating part of the liquidity issues that may arise when tax is paid in whole pursuant to selfassessment) whilst preserving the possibility for expenses and other relevant facts to be subsequently taken into consideration.

Secondly, this approach could contribute to addressing issues associated with workers' fragmentation of income across multiple and distinct platform activities. Under a withholding regime that requires platform enterprises to collect and remit tax in respect of workers' income, a worker earning from services provided through multiple platforms would be subject to withholding by each individual platform. This can result in a distorted final tax liability, particularly when the worker concerned incurs overlapping expenses in respect of the different platform activities. By contrast, this issue does not arise if tax is withheld from an account where the entirety of the workers' platform income is settled. The aggregation of all relevant income and the application of a single withholding tax in respect of this aggregate amount alleviate both the issue of income fragmentation in the collaborative economy and the challenges associated with the application of multiple withholding taxes in respect of each individual source of income.

III. SYNTHESIS

Part III of this research argued that there are four main approaches pursuant to which the taxation of income derived by workers from activities undertaken through platforms may be achieved. These approaches are (1) the institution simplified mechanisms for the assessment of income tax, (2) taxpayer engagement and education initiatives, (3) third party information reporting arrangements and (4) non-employee withholding arrangements. These measures target distinct determinants of non-compliance and vary in the degree to which they safeguard key policy principles of income taxation. Not all these measures are directly conducive to effective taxation. Depending on the casuistic circumstances in which workers undertake income-generating activities, different measures may appear more or less appropriate.

Simplified mechanisms for the assessment of tax may take various forms. They may entail the exemption of certain hard to capture items of income from tax, the replacement of itemized deductions for expenses actually incurred with standard deductions or the application of other presumptive taxation techniques wherein tax is applied on a basis other than (net) income. Usually, the personal scope of such measures is not restricted to collaborative economy platform workers but instead extends to broader categories of hard to tax groups. Simplified taxation rules may mitigate the compliance costs borne by taxpayers that earn small amounts of income from independent activities. By extension, these measures could theoretically (and indirectly) foster positive attitudes towards voluntary compliance. Still, simplified taxation mechanisms are a merely palliative solution. Depending on their scope of application, such measures may result in different taxpayers being subject to different rules despite performing economically interchangeable activities. Additionally, simplified tax assessment rules are inherently artificial in the outcomes they yield.

The least controversial approach to addressing the income taxation of platform workers is through the introduction of ***taxpayer engagement and education initiatives***. These measures strive to overcome non-compliance as determined by workers' negligence and deficient tax literacy. In the abstract, the added value of such measures seems self-evident. However, their impact is difficult to

quantify or qualify. Firstly, even on a theoretical level, the effectiveness of taxpayer engagement and education initiatives depends on their underlying quality and visibility. Secondly, taxpayer engagement and education initiatives are generally introduced in concert with other types of measures for addressing the income taxation of platform workers. This further complicates the possibility of ascertaining the respective impact of taxpayer engagement and education measures and segregating these from other measures applied concurrently, particularly when the prevalence of different determinants of non-compliance is not known with certainty from the outset.

In many states, the preferred solution for addressing the income taxation of platform workers is through the introduction of ***third party information reporting mechanisms aimed at enhancing the oversight and supervisory capacities of tax administrations***. A broader trend towards the further adoption of such measures is imminent in light of the OECD and EU efforts to operationalize multilateral third party information reporting arrangements. The main benefit of multilateral frameworks for third party information reporting lies in their capacity to overcome the territorial limitations otherwise associated with the introduction of unilateral measures. Through such measures, states purport to reinforce the two main components in the income taxation of taxpayers subject to self-assessment or self-reporting: voluntary compliance and the effectiveness of administrative supervision. By having information at their disposal regarding the identities and income derived by workers from activities undertaken through platforms, tax administrations would be better equipped to undertake its oversight and supervision functions. The visibility deficit or platform workers and the informational asymmetry in their relation with tax administrations would be mitigated. As a corollary, taxpayers subject to reporting would experience a lesser proneness for risk-taking behavior and the misrepresentation of their income in self-reported or self-assessed returns. However, third party information reporting measures by their nature cannot address the totality of determinants of non-compliance at play. Specifically, such measures alone cannot circumvent instances of non-compliance caused by taxpayer negligence. Additionally, even accepting the notion that taxpayers would experience a lesser incentive to misrepresent income in self-reported or self-assessed returns, they continue to enjoy opportunities to misrepresent other relevant information not subject to third party reporting (e.g., expenses incurred). Despite the emerging consensus about the added value of such measures, third

party information reporting arrangements do not provide a complete solution for addressing the under-taxation of income derived by workers from activities undertaken through platforms. In my view, such measures should be relied on as a structure for *supporting* compliance and effective taxation, rather than a definitive answer to the conundrum of platform workers' sub-optimal compliance.

Finally, a smaller number of states have contemplated or introduced ***non-employee withholding arrangements for the collection of tax in respect of income derived by workers from activities performed through a platform***. Such measures reassign the direct responsibility of computing and remitting tax to a third party. The argument could be made that non-employee withholding arrangements applied in respect of income derived by platform workers would run against the norms embedded in the principle of fiscal neutrality, since other taxpayers rendering economically interchangeable services in an independent manner are generally not subject to tax through withholding. However, the circumstances in which platform workers undertake their income-generating activities and their functional dependency on centralizing platform operators would arguably supersede this consideration. This particularly holds true when the ultimate tax liability achieved through (final) withholding approximates as a matter of fact the tax liability which would otherwise be due. Although the case for the desirability of non-employee withholding arrangements can be made in the abstract, such measures are difficult to apply in practice. When envisioning the introduction of such measures, most states assign withholding obligations to the platform operator through which workers' activities are performed. In situations where the platform operator does not reside or maintain a tangible presence in a jurisdiction applying such measures, enforceability is largely compromised. This issue could be overcome through the design of measures that assign withholding obligations to entities that naturally and effectively maintain a local presence.

At the level of any given state, effective taxation in a broad sense requires three main elements. Firstly and most importantly, there is a need for *mechanisms that facilitate compliance and which are directly conducive to compliance*. Secondly, there needs to be a broad incentive for *voluntary compliance*. Thirdly, there is a need for mechanisms that *buttress voluntary compliance*. Against this backdrop, the following considerations emerge:

- Because of the limited direct impact they can feasibly exert over compliance outcomes, ***the added value of taxpayer engagement and education initiatives should not be overstated***. The ultimate intended effect of these measures is to reinforce the application of other income tax rules by incentivizing voluntary taxpayer compliance. However broadly construed, voluntary compliance always needs to be buttressed by other mechanisms if one wishes to speak of effective taxation;

- States and international organizations should ***acknowledge the inherent limitations of third party information reporting arrangements***. The intended effects of third party information reporting arrangements are twofold: improving administrative oversight and encouraging voluntary compliance. Without attempting to discount the importance of these, it cannot be overlooked that such measures do not in and of themselves directly facilitate compliance;

- Further consideration should be paid to ***mechanisms through which non-employee withholding arrangements could be expanded***. The application of non-employee withholding taxes directly secures the collection of tax in respect of income derived by workers from activities undertaken through platforms. By extension, this lessens the emphasis on taxpayer voluntary compliance and the necessity for administrative deterrence.

Part IV

Reflections on the roles and functions of international governmental organizations, tax administrations and platform operators in addressing and supporting the effective taxation of collaborative economy platform workers

I. FOREWORD

The under-taxation of collaborative economy platform workers is a multifaceted issue, underlined by a span of distinct considerations.[1288] Existing and potential measures for addressing workers' income taxation have various strengths and weaknesses. In light of the heterogeneous nature of the collaborative economy, it is difficult to rightly speak of a basic one-size-fits-all solution to address the full spectrum of tax compliance challenges at play. The persisting under-taxation of collaborative economy platform workers is arguably compounded by the rigid premises upon which policymakers oftentimes approach the feat of securing tax compliance in the first place.

Firstly, proposed policies for addressing workers' effective taxation are increasingly divided between the domestic and international sphere. International governmental organizations have progressively become a forum for discussing the compliance risk factors in the collaborative economy and the proposal of (additional) measures for safeguarding workers' income tax compliance. This development muddies the waters and underlines a regulatory environment that lacks cohesion, embedding fragmented policy objectives and uncertainty about the roles and functions that international governmental organizations could or should actually play in this context.

Secondly, the compliance challenges posed by the collaborative economy highlight the intersected nature of tax policy and administration issues. In turn, this invites compelling and open-ended questions about the role that tax administrations could or should play in supporting the effective taxation of platform workers. Modern schools of thought focus on the balancing act of tax administrations between a service-oriented posturing and the exercise of command-and-control enforcement. The challenges posed by platform workers' under-taxation encourage questions about whether the conduct of tax administration should still be viewed through this binary lens.

1288 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 21.

Thirdly, there is an unabated emerging viewpoint that platform operators should be mandated to support workers' compliance and be involved as intermediaries in different measures for addressing the income taxation of workers. This argument is predicated on the degree of integration of platforms in workers' environment and the proximity between platform operators and workers. Still, I surmise that there is a need for a lucid inquiry into the extent to which platform operators can reliably backstop non-compliance and buttress measures for addressing workers' effective taxation.

In Part IV to this research, I seek to identify and discuss the roles and functions of three actors involved in the strides for addressing the effective taxation of collaborative economy platform workers:

Firstly, Part IV.II of this thesis addresses the role and functions of international governmental organizations in supporting the ongoing efforts of domestic policymakers to secure platform workers' tax compliance. The focus of the analysis will be on two international organizations that actively participate in the discourse related to platform workers' income taxation, namely the OECD and EU Commission. Part IV.II of this thesis will attempt to ascertain how and to what extent these actors could feasibly strengthen the effectiveness of domestic initiatives for safeguarding tax compliance in the collaborative economy. This will be achieved through the proposal of a general threefold typology of functions of international governmental organizations and the discussion of the implications of these functions in the context of the issues at play in relation to the income taxation of collaborative economy platform workers.

Secondly, Part IV.III of this research explores the role and functions of tax administrations in safeguarding the income taxation of platform workers. Several existing and proposed approaches for securing the taxation of platform workers place considerable emphasis on tax administrations. These entail that tax administrations extract information regarding the identities of workers, cooperate with platform operators in engaging workers with the tax system and educating workers on the application of the income tax rules relevant to their situation and cooperate with their counterparts in other jurisdictions.[1289] In other

1289 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD

words, existing measures are predicated on the ordinary understanding of tax administration as balancing the exercise of enforcement and compliance support postures. In Part IV.III of this thesis, I note ongoing developments in the policy discourse about the role of tax administrations in the management of income tax systems which arguably alter and broaden the conventional understanding of the functions of tax administrations.[1290]

Thirdly, Part IV.IV of this research discusses the status of platform operators under the existing and proposed measures for securing the effective taxation of workers. Platform operators are an integral element in the environment within which workers undertake income-generating activities. For this reason, many measures devised with a view to addressing workers' compliance assign various duties in respect of platform operators. Under different measures, platform operators contribute to taxpayer engagement and education initiatives geared towards workers, report information pertaining to the identities and incomes derived by workers[1291] and in some cases, act as withholding agents in respect of income derived by workers. In spite of the fact that platform operators can contribute to supporting some mechanisms for supporting workers' compliance, their role should perhaps not be overstated. Accordingly, Part IV.IV of this thesis discusses the opportunities and limits of the extent to which platform operators can steadfastly support policymakers' objective of safeguarding the effective taxation of platform workers.

Publishing, 2019. OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 8 June 2021.

1290 Richard M. Bird; 'Administrative Dimensions of Tax Reform', Asia-Pacific Tax Bulletin 10 (3), 2004, pp. 134-150.

1291 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019. OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 8 June 2021.

II. THE ROLE AND FUNCTIONS OF INTERNATIONAL GOVERNMENTAL ORGANIZATIONS IN SUPPORTING THE EFFECTIVE TAXATION OF COLLABORATIVE ECONOMY PLATFORM WORKERS

1. General remarks – The involvement of international governmental organizations in driving efforts for addressing the effective taxation of income derived by workers in the collaborative economy

Platform workers' under-taxation is rooted in the opportunities for deliberate and inadvertent non-compliance that arise in their interactions with the income tax rules of systems where they are exposed to tax liabilities. As such, the effective taxation of platform workers should principally be addressed through measures introduced at domestic level to preclude these opportunities for non-compliance and to facilitate compliance. Still, it is undeniable that topical issues of tax policy have become increasingly more internationalized. The locus of policy setting is progressively divided between the national and international arena.[1292] As such, the involvement of international governmental organizations in tax policy design related to the collaborative economy is not a surprising development.[1293] However, this invites a deeper inquiry into how the role of international governmental organizations should be crystalized in the context of the emerging web of measures for securing the taxation of platform workers. The following paragraphs articulate a reasoned analysis into the manner in which international governmental organizations could best support member states, countries and jurisdictions in securing the effective taxation of collaborative economy platform workers. This involves the consideration of the opportunities, but also the limits to how international governmental organizations could contribute to the wider objective of safeguarding platform workers' taxation.

1292 See, for example: OECD; 'Latin American Economic Outlook 2020: Digital Transformation for Building Back Better', OECD Publishing, 2020.

1293 Diane M. Ring; 'Who is Making International Tax Policy? International Organizations as Power Players in a High Stakes World', Fordham International Law Journal 33 (3), 2010, pp. 649-772.

The focus of this analysis is on two organizations, namely the OECD and EU Commission. The EU Commission has long postured the strive for promoting the sustainable development of the collaborative economy,[1294] whilst concurrently advocating for measures aimed at mitigating the under-taxation of income derived by workers.[1295] In a similar vein, the OECD assumed a leading role in emphasizing the tax compliance challenges posed by the collaborative economy and proposing initiatives for addressing these.[1296]

2. Conceptual issues – Understanding '*international governmental organizations*' and a basic typology of the roles and functions of international governmental organizations

The present analysis should be preceded by a brief and general discussion about what international governmental organizations actually are, the goals they serve and their peculiar role in the area of tax policy. From the outset, it is perhaps banal to assert that international governmental organizations are mere institutional creatures.[1297] International relations scholarship defines international governmental organizations as 'purposive entities, with bureaucratic structures and leadership, permitting them to respond to events'.[1298]

1294 See, for example: European Commission; 'Single Market for Services – Collaborative Economy', available via: https://ec.europa.eu/growth/single-market/single-market-services/collaborative-economy_en last accessed 20 May 2022.

1295 European Commission; 'Impact Assessment – Tax fraud and evasion – better cooperation between national tax authorities on exchanging information, Accompanying the document ''Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'''. SWD(2020) 131 final.

1296 OECD; 'The impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration'; OECD Publishing, 2021. OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

1297 Dapo Akande; 'The Competence of International Organizations and the Advisory Jurisdiction of the International Court of Justice', *European Journal of International Law 9 (3)*, 1998, pp. 437-467.

1298 Robert 0. Keohane; 'The Analysis of International Regimes: Towards A European American Research Programme', in: Voker Rittberger [Ed.]; Regime Theory and International Relations, Clarendon Press, 1993. Diane M. Ring; 'Who is Making International Tax Policy? International Organizations as Power Players in a High Stakes World', Fordham International Law Journal 33 (3), 2010, pp. 649-772. In colloquial and formal policy discourse alike, the influence of international governmental organizations is oftentimes taken for granted. Arguably, this

Until the beginning of the 20th century, international relations were conducted mostly through direct interactions between states (i.e., transnational relations) or through bodies of government interacting with foreign counterparts (i.e., trans-governmental relations). There was no meaningful appetite for structuring international relations under the auspices of formal entities.[1299] Since the advent of the Second World War, the institutionalization of inter-state relations increased considerably.[1300] Changing paradigms of international relations led to the establishment of various organizations that clustered international cooperation in various fields.[1301] For its part, this development is explicable by reference to the realities of globalization. The progressively internationalized character of security, economic development, trade and human rights issues crystalized the view that numerous policy objectives could not be effectively conducted by states in isolation or through direct relations with other states.[1302] Against this backdrop, the institutionalization of international relations through international governmental organizations was both necessary and convenient.

These realities arguably apply *mutatis mutandis* to the role of international governmental organizations on issues of tax policy. Taxation archetypally highlights profound tensions between state sovereignty and international interdependence. Originally, the internationalization of (direct) taxation matters became apparent when the proliferation of cross-border trade highlighted the economic inefficiencies flowing from the incidence of juridical double taxation. In turn, the evolving emphasis of states on alleviating double taxation prompted the emergence of bilateral double tax treaty networks. The first major international organization involved in supporting states towards addressing juridical double

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compounds the tendency of overlooking considerations about how and to what extent international governmental organizations may contribute to addressing topical policy issues.

1299 Niels M. Blokke; 'Proliferation of International Organizations', in: Niels M. Blokker and Henry G. Schermers [Eds.]; *Proliferation of International Organizations – Legal Issues*, Kluwer Law International, 2001.

1300 Beth A. Simmons and Lisa L. Martin; 'International Organizations and Institutions', in: Walter Carlsnae et al. [Eds.]; *Handbook of International Relations*, SAGE Publications, 2002.

1301 Niels M. Blokke; 'Proliferation of International Organizations', in: Niels M. Blokker and Henry G. Schermers [Eds.]; *Proliferation of International Organizations – Legal Issues*, Kluwer Law International, 2001.

1302 Ibid.

taxation was the League of Nations. To this day, the negotiation of double tax treaties based on models developed by international governmental organizations largely remains the norm. The globalization of economies, particularly towards the turn of the 21st century, broadened the objectives of domestic tax policymakers and forged a new onus on issues related to backstopping tax avoidance and evasion, improving cooperation with (corporate) taxpayers and other (non-transparent) jurisdictions and adapting income tax regimes to the realities of a deeply digitalized economy. International governmental organizations pushed for coordination and institutionalized cooperation in addressing these emerging issues, based on the view that these challenges are not effectively amendable to unilateral measures. In the EU specifically, the establishment and maintenance of the internal market increasingly brought to the forefront the necessity of removing tax barriers and determined the progressive surrender of policymaking attributes to EU institutions.[1303]

The implications of globalization are broadly open-ended. In turn, if the notion is accepted that the proliferation of international governmental organizations and their involvement in various areas of policy is explicable by reference to globalization, it becomes readily apparent why the roles and functions of international organizations are open-ended themselves. On the one hand, an overall readiness to concede that the role and functions of international organizations on issues of (tax) policy should not be delineated in a rigid manner imbues a measure of welcome flexibility. Steering clear of unyielding notions about the circumstances where any given issue of tax policy could or should be addressed on the international arena enables a malleable approach to accommodating the sovereignty of states with the interconnected nature of economies and policy challenges. On the other hand, a sober understanding of international governmental organizations is a necessary and desirable precursor to clearly understanding the opportunities and limits to what policy objectives may and can be achieved effectively by these entities.

From the outset, it is important to assert the distinction between the role and the functions of international governmental organizations. The role of international

1303 Peter J. Wattel; 'General EU Law Concepts and Tax Law', in: Wattel P.J. et al. [Eds.]; *Terra/Wattel European Tax Law, Volume 1, General Topics and Direct Taxation*, 7th Edition, Wolters Kluwer, 2018.

governmental organizations relates to their position and mandates in relation to members. In this respect, the understanding of the role of international governmental organizations involves questions about their subjective identities. Conversely, the functions of international governmental organizations concern their objective outputs. The main functions of international governmental organizations flow from their roles.

According to Archer, international governmental organizations concurrently play the roles of instrument, arena and actor.[1304] Members of international governmental organizations use these entities as instruments to pursue own interests. The main *raison d'être* of international governmental organizations is to institutionalize inter-state relations with a view to overcoming the inefficiencies of direct trans-national and trans-governmental relations. The instrumental role of international governmental organizations is embodied in their representative and rule-making structures. In this respect, international governmental organizations act as adjuncts, working towards policy objectives for members by proxy.[1305] Additionally, international governmental organizations provide a formally neutral arena for the meeting of members. To this end, international governmental organizations are a forum for discussion, cooperation and disagreement between members.[1306] Finally, international governmental organizations are in many cases actors in their own right. International governmental organizations develop internal governance structures, which emerge into 'sites of authority'.[1307] International governmental organizations leverage their bureaucratic structures to cluster expertise and

1304 Clive Archer; *International* Organizations, 3rd Edition, Routledge, 2001, Chapter 3.

1305 The instrumental role of international governmental organizations is considerably more complex than displayed as part of my high-level discussion here. Ostensibly, international governmental organizations enable the co-equal representation of members' interests and streamline policymaking. However, co-equal representation and efficient policymaking oftentimes involve tradeoffs, especially in the case of international governmental organizations with a broad membership. Purely co-equal representation involves unanimous decision-making, which in many cases would impair speedy reactionary policymaking. Additionally, different international governmental organizations have widely different mandates and competences, which in turn determines their specific roles and functions. This research does not delve into such issues, because they are not material to the core argumentation here set forth.

1306 Clive Archer; *International* Organizations, 3rd Edition, Routledge, 2001, Chapter 3.

1307 Vera G. Centeno; 'The OECD: actor, arena, instrument', *Globalisation, Societies and Education 19 (2)*, 2021, pp. 108-121.

knowledge and develop institutional individualities. In doing so, they build 'rational authority' and convert it into an autonomous power to act.[1308]

It therefore becomes apparent that international governmental organizations are both conduits for their members and agents in their own right. In turn, these roles explain the multifaceted functions of international governmental organizations. For the purposes of this part of the present contribution, I will rely on a threefold typology of generally acknowledged functions of international governmental organizations, which includes:

- ***Agenda-setting influence***[1309] relating to the core function of international governmental organizations of underscoring topical issues and developing normative pillars upon which emerging policy issues could be addressed;

- ***Rule-making powers***[1310] relating to international governmental organizations designing legal frameworks for the attainment of specific policy objectives;

- ***A socializing function***[1311] relating to the function of international governmental organizations in providing a forum for direct interactions between states and allowing a constructivist approach to shaping policy convergence.

3. Three functions of international governmental organizations in supporting the effective taxation of collaborative economy platform workers

In my view, the opportunities and limits for the OECD and EU Commission to support domestic policymakers' strides towards safeguarding the effective taxation of collaborative economy platform workers may be crystalized by reference to the

1308 Ibid.

1309 Beth A. Simmons and Lisa L. Martin; 'International Organizations and Institutions', in: Walter Carlsnae et al. [Eds.]; *Handbook of International Relations*, SAGE Publications, 2002.

1310 Ibid.

1311 Nicola Chelotti et al.; 'Do Intergovernmental Organizations Have a Socialization Effect on Member State Preferences? Evidence from the UN General Debate', *International Studies Quarterly 66 (1)*, 2022.

three general functions described immediately above (i.e., agenda-setting, rule-making and socialization). I surmise that the OECD and EU Commission should translate these functions into the three following steps:

- ***Standard-setting as an expression of agenda-setting influence:*** in my view, the OECD and EU Commission should develop and highlight overarching principles to guide the design of best practice approaches for addressing the taxation of collaborative economy platform workers. This is arguably a relevant and helpful precursor to the adoption and implementation of reasoned and purpose-driven policy;

- ***Harmonization or approximation of certain measures for addressing the income taxation of collaborative economy platform workers as an expression of the rule-making function of international governmental organizations:*** in the context of the income tax challenges posed by the collaborative economy, the harmonization of certain laws may be relevant for two reasons. Firstly, the structural limitations to the enforceability of certain measures in cross-border situations entails that the effectiveness of these should be safeguarded through multilateralism. International governmental organizations may support this objective by proposing multilateral frameworks for addressing certain determinants of non-compliance that are at play in the collaborative economy. Secondly, harmonization may expedite and broaden the implementation of certain approaches for addressing the income taxation of collaborative economy platform workers, thereby accelerating the resolution of specific compliance risk factors. This aspect is particularly relevant because the under-taxation of collaborative economy platform workers is attributable to broadly similar considerations across the board;

- ***Encouraging states, countries and jurisdictions to engage in exchanges of experiences and to replicate best practice approaches for addressing the income taxation of collaborative economy platform workers as an expression of the socializing function of international organizations:*** the OECD and EU Commission should encourage members to share experiences with the application of different approaches to addressing the income taxation of collaborative economy platform workers. Such exchanges may support the identification of strengths and weaknesses of different approaches to tackling

the compliance risk factors. Additionally, these exchanges may prompt the identification of best practice approaches. The replication of best practices may support the broad-based resolution of the income tax challenges posed by collaborative economy platform workers.

4. Perennial positions of the OECD and EU Commission towards the income tax issues at play in the collaborative economy

A. The OECD

The OECD's most structured attempt at discussing tax non-compliance in the collaborative economy (and its groundwork call for reform) was the *Effective Taxation of Platform Sellers* Report published in 2019. As part of the Report, the OECD argued that the collaborative economy forges opportunities for workers to misrepresent earnings, expenses and other relevant data in self-assessed or self-reported tax returns. According to the OECD, the prevalence of this issue is augmented by the limited capabilities of tax administrations to exercise effective oversight and extract information from platform enterprises, particularly when these are based in different jurisdictions. Based on these factors, the OECD proposed a number of options for addressing the under-taxation of collaborative economy platform workers.[1312]

For overcoming workers' opportunities to misrepresent income and expenses, the OECD discussed reliance on taxpayer engagement and education initiatives.[1313] The OECD proposed an open-ended approach to cooperation between platform operators and tax administrations aimed at nudging voluntary compliance by workers and clarifying the application of income tax rules as relevant to the situation of platform workers.[1314] The OECD conceded that taxpayer engagement

1312 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

1313 To this end, the *Effective Taxation of Platform Sellers* Report was published together with the *Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms*. The Code of Conduct is discussed in more detail in Part III.II.2.E of this research.

1314 OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig

and education initiatives carry inherent limitations.[1315] To this end, the OECD briefly referenced the desirability of embedding compliance processes within workers' self-reporting processes.[1316] However, beyond passing remarks, the OECD does not delve into this matter with any meaningful measure of detail.

Additionally, the OECD expressed support for the adoption of instruments that task platform enterprises with reporting and/or withholding obligations. Whereas the broadened deployment of multilateral third party information reporting is well underway, there remain considerable challenges in the way of non-employee withholding tax arrangements in the context of the collaborative economy. In light of the support expressed by the OECD in favor of such measures,[1317] it is arguably dubious that no further consideration was paid to the barriers for the adoption of withholding tax arrangements in the collaborative economy.

Still, the OECD is seemingly partial to a holistic approach towards addressing the income taxation of platform workers. The OECD does not ostensibly argue for a one-size-fits-all approach, but instead concedes that different measures may address different determinants of non-compliance with varying degrees of effectiveness.

B. The EU Commission

The EU Commission first presented its stance on the collaborative economy in 2016, when it developed an 'agenda' published as a Communication.[1318] From the outset, the Commission set out to encourage confidence for consumers, enterprises and governments engaging with the collaborative economy. As such,

economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 2021.

1315 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 43.

1316 Ibid.

1317 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective'; OECD Publishing, 2014. OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020.

1318 Caroline Cauffman; 'The Commission's European Agenda for the Collaborative Economy – (Too) Platform and Service Provider Friendly?', Journal of European Consumer and Market Law 5 (6), 2016, pp. 235-243.

the 2016 agenda was markedly platform-friendly. The Commission lauded the opportunities for economic development harbored by the collaborative economy and took a conservative approach in the discussion of the legal and regulatory issues revolving around it. The Commission purported to provide guidance on the application of primary and secondary EU law to platform enterprises in areas of market access, consumer protection, labor law and direct and intermediary liability.[1319] The Commission also briefly touched on issues related to the income taxation of workers.

The Commission's guidance was general and notable for its tone more so than its content. On the one hand, the Commission noted that collaborative economy arrangements may raise issues of worker misclassification and tax compliance. On the other hand, the Commission argued that Member States should not approach such arrangements under a presumption of worker misclassification. Instead, Member States were encouraged to establish thresholds that preserve the treatment of platform workers as non-professional service providers. As regards issues of income taxation, the Commission prompted Member States to support workers' voluntary compliance by providing guidance on applicable tax rules and to cooperate with platforms towards facilitating the collection of tax from workers.

In the summer of 2020, the Commission introduced a Tax Package aimed at overcoming issues of tax avoidance and evasion, including the under-taxation of collaborative economy platform workers. The DAC7 proposal was introduced as part of this initiative. The Tax Package marked a shift in the tenor of the Commission

1319 The Commission cautioned Member States about the possible (prima facie) status of (some) platform operators as information societies within the meaning of Article 4 of the E-Commerce Directive, which entails stringent limitations on the application of restrictions or the conditioning of market access.The Commission provided non-binding guidance on criteria that may be applied by Member States in order to determine whether a platform operator is an information society or a direct provider of an underlying service (e.g., private transportation or homesharing). The Commission recommended that Member States apply a 'facts and circumstances' approach in order to determine whether the platform operator exercises 'significant influence or control' over the provider of the underlying service (e.g., by determining the final price for transactions or by holding ownership title in respect of assets used in the performance of services). The Commission highlighted that Member States should consider the nuanced character of collaborative economy arrangements, since different platform operators exercise considerably different degrees of control over workers and the manner in which underlying services are rendered.

towards the collaborative economy. The Commission discussed the under-taxation of platform workers with an unequivocal tone of urgency. The Commission emphasized that workers' visibility deficit and the limited oversight capabilities of tax administrations curtailed effective taxation.[1320] In this respect, the Commission highlighted the importance of third party information reporting by platform operators and automatic exchange of information between tax administrations.[1321] Whereas the Commission pushed for the harmonization of third party information reporting protocols,[1322] there are currently no mirroring calls for the harmonized adoption or coordination of other approaches for addressing the under-taxation of platform workers.[1323] By contrast to the more encompassing stance of the OECD, the Commission does not explore arguments on the desirability of non-employee withholding arrangements in the context of the collaborative economy.

In the explanatory memorandum to the DAC7 proposal, the Commission vehemently asserted the importance of the instrument in strengthening the enforceability of income tax rules and in addressing structural lapses in administrative oversight over income generated from peer-to-peer platform transactions.[1324] In fact, the Commission goes as far as to explicitly claim that the lack of information reporting by platform operators creates a regulatory advantage for platform workers by comparison to other individual taxpayers whose activities and income are subject to reporting,[1325] by creating opportunities for workers to under-report income derived from peer-to-peer platform activities. The Commission therefore suggests that workers' visibility deficit is the core determinant of non-compliance. This is arguably a narrowed view, which dismisses the prevalence of other factors that augment poor voluntary compliance. In the Impact Assessment that accompanied

1320 European Commission; 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda for the Collaborative Economy'. COM (2016) 356 final, pages 13-14.

1321 Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation COM(2020) 314 final.

1322 Ibid.

1323 Giorgio Beretta; 'The New Rules for Reporting by Sharing and Gig Economy Platforms Under the OECD and EU Initiatives', EC Tax Review 30 (1), 2021, pp. 31-38.

1324 Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation COM(2020) 314 final, Explanatory Memorandum.

1325 Ibid.

the DAC7 proposal, the Commission explicitly noted that some workers 'may not know they have to report their earnings',[1326] distinguishing negligent behavior from the deliberate misrepresentation of earnings.

5. Standard-setting by international governmental organizations in the context of the collaborative economy – The need for guiding principles as a precursor to effectively addressing the income taxation of collaborative economy platform workers

Neither the OECD nor EU Commission have developed a purposive approach to safeguarding platform workers' effective taxation. In my view, the OECD and EU Commission's contribution to the development of solutions for addressing tax compliance in the collaborative economy would be buttressed by an enhanced focus on standards and a principle-based approach.

In the context of this research, standard-setting is seen as an expression of the wider function of international governmental organizations of highlighting broad topical issues of policy and developing the normative foundation from which policy would be subsequently developed (either unilaterally or through multilateral cooperation). It is by now a basic truism that international governmental organizations play an extensive contribution in setting out tax policy agendas that guide the conduct of their members. International governmental organizations are adjoining bodies that may catalyze cohesive and principle-based initiatives. For this reason, international governmental organizations are an appropriate forum for establishing normative pillars and principles that should guide the strategies for addressing the income taxation of platform workers. The argument in favor of an encompassing and principle-based approach for safeguarding workers' effective taxation is hardly controversial. Still, at this time, such a foundation is manifestly lacking.

In setting standards for approaching the tax challenges posed by the collaborative economy, international governmental organizations establish an

1326 European Commission; 'Impact Assessment – Tax fraud and evasion – better cooperation between national tax authorities on exchanging information, Accompanying the document ''Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation'''. SWD(2020) 131 final, page 12.

authoritative 'tone at the top'. All states have sovereign governance structures, but membership in international governmental organizations implies submission to a supplementary governance architecture and system of values.[1327] In my view, the tax compliance challenges at play in the collaborative economy necessarily require a principle-based strategy. Setting a meaningful tone at the top entails the unequivocal determination of the normative standards that measures aimed at tackling this issue should embody. Establishing a tone of the top requires more than a mere formalistic assertion of principles and desired outcomes. Instead, the tone at the top must be capable of compelling policy change to materialize desired outcomes.

A. Towards a principle-based approach to the design of measures for addressing the income taxation of collaborative economy platform workers – The OECD's 'Tax Compliance by Design' Report: An opportunity yet to be embraced

1) Background – The objectives of Compliance by design

A notable, albeit merely implied and incomplete attempt at the ascertainment of a principled approach for addressing the taxation of platform workers lies in the OECD's *Tax compliance by design* Report. Against the backdrop of the challenges associated with hard to tax groups, the OECD in recent years has begun to promote targeted compliance strategies, aimed at sidestepping the determinants of small-scale entrepreneurs' non-compliance.[1328] The Compliance by design Report was published prior to the emergence of the collaborative economy. However, the

1327 The concept of 'tone at the top' originally emerged in the context of corporate governance literature and corporate social responsibility. 'Tone at the top' embodies the notion that (corporate) organizations are inherently hierarchical structures. This implies that the attitude and behavior displayed at the top of the organization will be reflected in the attitudes and behaviors that prevail at all other lower levels of the organization. In spite of the origin of this notion in the theory of corporate governance, the overarching logic of the 'tone at the top' theory could be applied mutatis mutandis to the context of the relationship between international organizations and members. See, in this respect: Dinah M. Payne and Cecily A. Raiborn; 'Aggressive Tax Avoidance: A Conundrum for Stakeholders, Governments, and Morality', Journal of Business Ethics 147, 2018, pp. 469-487.

1328 OECD; 'Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises', OECD Publishing, 2012, page 3.

precepts set out therein are relevant and transposable to the tax challenges at play in the collaborative economy.

Compliance by design was preceded by the OECD's earlier *Right from the start* Report.[1329] In Right from the start, the OECD argued the desirability of a 'real time' approach to tax compliance.[1330] Tax compliance outcomes are pegged largely to taxpayer behavior. In this respect, the Right from the start Report proposes that policymakers and tax administrations should act proactively to identify and tackle subjective determinants of non-compliance before non-compliance occurs in the first place.[1331] The Report also proposed a focus on 'end-to-end' processes, which entails the integration of tax compliance frameworks that enable the reporting of income and expenses directly within the environment of taxpayers.[1332] According to the OECD, tax compliance frameworks for small-scale entrepreneurs should be designed in a manner that is conducive to compliance and precludes or otherwise limits the opportunities for non-compliance.[1333]

Compliance by design purports to build on these objectives, with a view to integrating them in a broader system where 'tax compliance becomes a natural part' of ordinary income-generating activity.[1334]

2) The tenets of Compliance by design – Compliance by design as a system and a series of principles that should inform tax system design

Compliance by design entails two main tenets. Compliance by design could be read as describing the ideal of a tax system predicated on tax collection tools and compliance infrastructures that are directly integrated within the environment of taxpayers' income-generating activities and enable effective taxation to occur naturally. Concurrently, Compliance by design likewise refers to a series of principles and standards relevant to attaining effective taxation in respect of hard to tax groups, including collaborative economy platform workers.

1329 Ibid.
1330 Ibid., page 11.
1331 Ibid.
1332 Ibid., page 16.
1333 Ibid., page 20.
1334 Ibid., page 30.

A) Compliance by design viewed as a system

A system is an integrated aggregation of processes, wherein a unitary goal is pursued.[1335] The Compliance by design 'system' entails four major elements: *data flow and knowledge, participants, infrastructure* and *rules*.

Data flow and knowledge describes the core objective of Compliance by design, which is to determine with (reasonable) certainty the right amount of tax on time.[1336] Compliance by design involves the collection of data pertaining to income-generating transactions in real time and converting such data into 'knowledge about the right amount of tax to be determined and paid'.[1337] The second element – participants – refers to the parties involved in Compliance by design strategies. Ordinarily, tax compliance processes involve the taxpayer and tax administration. Compliance by design supports the involvement of various third parties within tax compliance and administration processes.[1338] In light of the fact that Compliance by design is focused on the automation of compliance processes by embedding these directly within the income-generating activities of taxpayers, these third parties would include entities who 'deliver services that are more or less directly related to the process of bookkeeping and reporting'.[1339] This covers any participant which could influence the quality of the tax return. Infrastructure refers to the technology required for collecting data, commodifying it and converting it into compliance-related processes.[1340] In light of the emphasis placed on the automation of compliance processes, this notion is readily explicable. The final element of the Compliance by design system are 'rules'.[1341] Compliance by design

1335 Ibid.
1336 Ibid.
1337 Ibid.
1338 Ibid., page 42.
1339 Ibid. The involvement of third parties within certain taxpayers' compliance processes is by no means a novel idea introduced through the *Compliance by design* strategy. However, third party compliance agents typically include entities tasked with acting as information reporters or withholding agents. *Compliance by design* supports a wider span of third party involvement, which would extend to any organization providing services to the taxpayer that could be translated directly or indirectly into tax compliance processes. This could include, for example, ordinary third party software developers.
1340 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014, page 42.
1341 Ibid.

does not necessarily envisage regulatory overhaul, but rather the deployment of compliance processes that optimize the management of existing tax rules. This entails that processes that are conducive to compliance should be integrated within the application of existing income tax rules as far as feasibly possible.[1342]

Summarily, it therefore emerges that an income tax system predicated on Compliance by design would integrate two main types of compliance processes:

- ***Outcome-determinative rules***, meaning measures that directly safeguard the timely payment of tax and preclude opportunities for non-compliance. The most self-evident example of an outcome-determinative tax measure refers to the collection of tax through withholding. When tax is collected through withholding, the computation and remittance of tax is reassigned from the taxpayer to a third party intermediary, thereby aligning income-generating activities with the actual payment of tax and removing opportunities for taxpayer non-compliance;

- ***Automated self-reporting or self-assessment processes that link taxable events with their afferent tax consequences***, meaning reporting processes that sidestep the opportunities for willful and inadvertent non-compliance that may ordinarily occur when taxpayers compile tax returns. Frameworks for self-reporting and self-assessment cultivate non-compliance when the reporting of taxable events is temporally and functionally separated from the occurrence of the underlying taxable events.

From a subjective perspective, the Compliance by design system involves the following driving actors:

- ***Domestic policymakers*** – tasked with adapting Compliance by design to the particularities of domestic income tax systems;

- ***Tax administrations*** – whose key role refers to the development and management of self-reporting and self-assessment frameworks that align taxable events with their respective tax consequences;

1342 Ibid.

- ***Intermediaries*** – which includes any entity that may contribute to naturalizing compliance for taxpayers.

B) Compliance by design viewed as a guiding principle for the design and management of income tax systems

Compliance by design could also be interpreted as embedding a prescriptive dimension. As described by the OECD, the ultimate objective of Compliance by design refers to the establishment of an environment that is conducive to tax compliance, whilst minimizing or removing opportunities for negligent or willful non-compliance. This characterization of Compliance by design is profoundly normative.

3) The relevance of Compliance by design in the context of measures for addressing the income taxation of collaborative economy platform workers

In my view, Compliance by design should be the leading principle guiding the income taxation of platform workers. A normative interpretation of Compliance by design implies that policymakers should prioritize measures that are conducive to compliance and minimize opportunities for non-compliance. At its core, Compliance by design is aimed at compensating for the limited enforcement capabilities in regards to taxpayers that enjoy circumstantial opportunities for non-compliance, through the introduction of mechanisms that act to override these. Compliance frameworks that rely on data reported by taxpayers cannot be conducive to compliance, because these depend on a structural level on the quality of individual reporting inputs. In turn, the quality of individual reporting is unavoidably determined by taxpayers' diligence and understanding of the rules, even when there is no behavioral predisposition towards non-compliance.[1343]

All existing and proposed measures for addressing the taxation of collaborative economy platform workers purport to remove or lessen opportunities for non-compliance. For example, third party information reporting mechanisms aim to

1343 Joyce Beebe; 'How Should we Tax the Sharing Economy?', Baker Institute Report, 2018.

override possibilities for platform workers to misreport income.[1344] Presumptive taxation mechanisms (for example, standard deductions) similarly seek to mitigate opportunities for non-compliance by reducing the extent and complexity of data to be inputted by individual taxpayers.

Minimizing opportunities for non-compliance is inarguably a lesser challenge than ensuring compliance frameworks are conducive to tax compliance. Whereas the former objective could be attained through tweaks that supplement the existing rules, the latter entails a shift in the conduct of compliance processes. However, a stronger emphasis on frameworks that are conducive to effective taxation is necessary and justified for at least two major reasons. Firstly, the reduction of opportunities for non-compliance and the design of frameworks that are conducive to effective compliance are two dimensions which target distinct causes of non-compliance. Secondly, the minimization of opportunities for non-compliance is not necessarily enough in and of itself. For example, whereas extensive third party information reporting may minimize opportunities for taxpayers to misrepresent income, such mechanisms do very little in addressing other avenues for non-compliance, such as the misrepresentation of deductible expenses.[1345] In other words, the ideas of removing opportunities for non-compliance and applying processes that are directly conducive to compliance are two inseparable sides of the same coin.

4) The suitability of a Compliance by design system for securing the income taxation of platform workers

Compliance by design refers to any system that embeds (third party-driven) automated processes with a view to converting tax compliance into a natural component of income-generating activity.[1346] The feasibility of Compliance by design depends on the nature of taxpayers' environment. Compliance by design

1344 Bibek Adhikari et al.; 'Information Reporting and Tax Compliance', *American Economic Association Papers and Proceedings 110*, 2020, pp. 162-166.

1345 See: Joel Slemrod et al.; 'Does credit-card information reporting improve small-business tax compliance?', *Journal of Public Economics 149*, 2017, pp. 1-19.

1346 Clement Migai; 'A Changing Technological Landscape and the Impact on Tax Revenue Collection and Processes', in: Intra-European Organization of Tax Administration; 'Transforming Tax Administration and Involving Stakeholders', 2017, page 54.

processes are suited with respect to taxpayers whose transactions occur or are stored digitally. Additionally, Compliance by design relies heavily on the involvement of third parties in tax compliance processes. This includes actual tax intermediaries[1347] that may be tasked with withholding or third party information reporting duties, as well as any other third parties which may play other supporting roles in compliance processes (e.g., software developers making the requisite compliance infrastructure available). The characteristics of the collaborative economy and the nature of platform work support the viability of a system premised on these variables. Platform workers' transactions are recorded digitally. Their activities carry digital footprints, maintained by various third parties. For example, platforms record transactions and (oftentimes) the consideration paid in respect of each transaction. When the consideration for transactions is not known to the platform, it is usually in any case recorded by a different intermediary (e.g., a bank or credit card company), as most collaborative economy transactions entail online payments.

B. The persisting uncertainty about the principles that should inform the design and management of approaches for addressing the income taxation of collaborative economy platform workers

Although the OECD's Compliance by design initiative embodies compelling precepts that are relevant to addressing the income taxation of collaborative economy platform workers, Compliance by design was not authoritatively asserted as a guiding standard for securing workers' effective taxation. This is decidedly unfortunate, in light of the ongoing but muddied pursuit of solutions to addressing the underlying issue. In my view, the importance of bringing Compliance by design to the forefront is underpinned by two main considerations. Firstly, Compliance by design could reinforce the consideration of a cohesive approach to addressing the income taxation of platform workers, lessening the emphasis on misguided notions that any single measure could effectively address persisting under-taxation. Secondly, Compliance by design provides a foreground from where states and international organizations could continue to ponder pragmatic and original solutions for addressing the income taxation of platform workers.

1347 Ibid.

As this wider analysis has strived to convey, the issue of securing tax compliance within the collaborative economy is profoundly multifaceted. There is a plurality of policy, soft law and administrative instruments proposed or put in place with a view to supporting tax compliance. Different instruments highlight the role of different parties – such as platform enterprises and tax administrations – and different frames of reference towards the role of such parties. In my view, approaches for addressing the income taxation of platform workers should amount to a cohesive and integrated strategy. This could be achieved if measures were framed by reference to an overarching standard and designed to amount to a fleshed out system that enables effective taxation. The nature of the OECD's on-going work on the tax issues in the collaborative economy buttresses the idea that the OECD considers that the concept of Compliance by design should inform the broader approach towards the effective taxation of collaborative economy platform workers.[1348] Additionally, the OECD has repeatedly highlighted the importance of further work into the implementation of Compliance by design processes in taxpayer reporting and assessment processes.[1349] However, the OECD itself has yet to go as far as to explicitly frame Compliance by design as an overarching standard.

As the present analysis has previously described, the OECD and EU Commission are involved in parallel in the discussion and proposal of policies aimed at safeguarding the effective taxation of collaborative economy platform workers. On the one hand, the main upside lies in that different international organizations are bestowed with different competences, thereby imbuing flexibility in the manner in which the underlying issue of platform workers' taxation can be approached. On the other hand, and particularly by reference to the role of international organizations in establishing a strategic tone at the top, divergences may hamper the overall coherence of the emerging strategies and regulatory web for the taxation of collaborative economy platform workers. This backdrop highlights the relevance of international organizations pursuing coherent and ultimately unitary standards. If the notion is accepted that Compliance by design should be the guiding principle in policies for the effective taxation of collaborative economy

1348 OECD ; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020,

1349 OECD; 'The impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration'; OECD Publishing, 2021, page 54. OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 43.

platform workers, international governmental organizations involved in addressing the compliance challenges at play in the collaborative economy should contribute to reinforcing this standard and its relevance. This aspect is particularly relevant, since major international actors involved in the design of policies towards the effective taxation of collaborative economy platform workers seemingly view the issue through distinct lenses: whilst the OECD infers the necessity of compliance by design arrangements, the EU Commission more strongly emphasizes patchwork solutions, such as the enhancement of the oversight and supervisory capabilities of tax administrations.[1350]

6. The rule-making powers of international governmental organizations: the harmonization of certain measures for addressing the income taxation of collaborative economy platform workers

International governmental organizations derive rule-making powers through delegation by members. Earlier in this analysis, I surmised that the core *raison d'être* of international governmental organizations relates to institutionalizing, representing and advancing inter-state policy interests.[1351] In being delegated rule-making powers, international governmental organizations are granted the tools to perform this function effectively. The delegation of rule-making powers to international governmental organizations may take three main shapes. The purest is *explicit delegation*, which involves a specific mandate to act and a principal-agent relation between members and international governmental organizations.[1352] Conversely, *implied delegation* entails the effective and adaptive conduct of international governmental organizations as rule-makers, despite no explicit mandate to act in a particular area. Implied delegation is linked with an ambulatory view of the instrumental function of international governmental organizations,

1350 Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation COM(2020) 314 final, Explanatory Memorandum.

1351 I discuss the threefold view of international governmental organizations as instrument, arena and actor in more detail in Part IV.II.2 of this research.

1352 Ian Johnstone; 'Law-Making by International Organizations: Perspectives from IL/IR Theory', in: Jeffrey L. Dunoff and Mark A. Pollack, *Interdisciplinary Perspectives on International Law and International Relations – The State of the Art*, Cambridge University Press, 2013. OECD; 'The Contribution of International Organisations to a Rule-Based International System', OECD Publishing, 2019.

as emerging developments and evolving circumstances determine shifts in the original missions of international governmental organizations. Rule-making powers derived from implied delegation are grounded in members' acquiescence of the conduct of international governmental organizations.[1353] In this respect, rule-making powers rooted in implied delegation preserve the instrumentalist function of international governmental organizations. Finally, *attenuated delegation* may be a basis for the rule-making powers of international governmental organizations.[1354] This concept is linked with the view of international governmental organizations as actors in their own right. Through their internal governance structures, international governmental organizations develop their own identities and policy preferences.[1355] This translates into the exercise of rule-making powers by international governmental organizations in a fashion that is somewhat 'removed from member state control', but not wholly unintended or incompatible with the policy interests of members.[1356]

Rules made by international governmental organizations may include blackletter legislation, soft law recommendations and model rules.[1357] Both blackletter legislation and soft law instruments drive harmonization and by extension, convergence in the policy approaches of members.

The relevance of the rule-making function of international governmental organizations as relevant in tax matters ultimately relates to the reality that states are increasingly confronted with policy and regulatory challenges that transcend the

1353 Ibid.

1354 Ibid.

1355 Ibid. See also: Clive Archer; *International* Organizations, 3rd Edition, Routledge, 2001, Chapter 3.

1356 Ibid.

1357 Existing scholarship on international law and international relations applies different taxonomies for distinguishing between the different types of acts and instruments adopted by international governmental organizations. For example, Johnstone (cited above) distinguishes between 'treaty law, legislation and regulation, executive decisions, soft law and judge-made law.' The research objectives of this contribution do not require a comprehensive overview of all types of instruments through which international governmental organizations exercise rule-making powers. However, in referring to 'rules' developed by international governmental organizations, I deem soft law instruments (including model rules) to fall within the same category as blackletter legal instruments for the purposes of this brief argument.

legal and structural capabilities of domestic rule-making frameworks.[1358] As such, the rule-making function of international governmental organizations is underlined on two main grounds. Firstly, rules developed by international organizations under a multilateral approach may support overcoming the structural limitations to the cross-border enforceability of domestic measures. In this respect, international governmental organizations develop instruments that bolster the effectiveness of domestic measures and support progress towards shared policy objectives. Secondly, measures developed by international governmental organizations through rule-making structures may formalize and strengthen consensus on approaches for addressing shared policy issues.[1359]

The following paragraphs reference briefly the partial harmonization of measures for addressing the income taxation of collaborative economy platform workers, by reference to the OECD Model Rules, DAC7 and the Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms. Through the following discussion, I seek to convey a number of arguments. Firstly, the harmonization of measures for addressing the income taxation of collaborative economy platform workers requires the pre-existence of consensus among members related to the added value of specific measures. In Part III of this research, I discuss in detail how different approaches for addressing platform workers' income taxation entail different views towards the core determinants of non-compliance. In turn, this entails divergences in the views of states as regards the utility of specific measures. Secondly, I comment briefly on the possibility that the harmonized approach to third party information reporting instituted through the Model Rules and DAC7 may entrench biases against other types of measures.

1358 OECD; 'The Contribution of International Organisations to a Rule-Based International System', OECD Publishing, 2019.

1359 The authoritative nature of tax polices developed by international governmental organizations (most notably the OECD and EU Commission) is however a somewhat contentious matter in and of itself. In the wake of the OECD/G20 BEPS Project, there emerged vocal concerns about the legitimacy of international governmental organizations as decision-makers and drivers of shifts towards an internationalized approach to the design of tax policies. These points of criticism were underlined in particular by the nature of the governance structure and processes applied by the OECD and EU Commission in the areas of tax policymaking. This thesis does not purport to address and discuss the broader issues related to the legitimacy deficit of the OECD and EU Commission in the area of tax policymaking.

Rule-making is the strongest and most consequential power of international governmental organizations. The fact that the OECD and EU Commission have already acted to harmonize third party information reporting in the collaborative economy and emphasized the importance of such measures in safeguarding the effective taxation of platform workers may stifle the incentive for states to consider different measures. In my view, this aspect is relevant in light of the reality that third party information reporting arrangements are by their nature not directly conducive to tax compliance.

A. The Model Rules and DAC7 – The end of the road for international harmonization of blackletter measures for addressing the taxation of platform workers?

The efforts of international governmental organizations in exercising rule-making functions for supporting the taxation of collaborative economy platform workers invite competing considerations. On the one hand, the swift adoption of the OECD Model Rules and the Commission's DAC7 illustrates the effectiveness with which international governmental organizations may act to harmonize domestic approaches for addressing the income taxation of platform workers. On the other hand, the strides towards the harmonization of third party information reporting protocols cannot necessarily be taken as a suggestion that the harmonization of other types of measures is necessary, desirable or even feasible.

The success in harmonizing third party information reporting requirements is explicable by reference to a number of considerations. Firstly, the fundamental purposes underpinning the OECD Model Rules and DAC7 related to overcoming the territorial constraints to the enforceability of unilateral third party information reporting protocols and limiting duplicative compliance costs experienced by platform enterprises in connection with unilateral domestic third party information reporting instruments.[1360] The progressive adoption of uncoordinated third party information reporting regimes harbored a legal and regulatory environment where

1360 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 8 June 2021. Robb Chase; 'Diving in: Platform Transactions and the OECD Digital Economy Effort', Tax Executive 72 (36), 2020.

the development of a harmonized multilateral framework for information reporting was a genuine practical necessity. This sense of imperativeness of harmonization is not necessarily at play as regards other types of measures for addressing the income taxation of platform workers. For example, simplified income assessment rules such as standard deductions or exemptions for hard to capture income are merely concerned with the computation of income taxable income under domestic law. There is no compelling argument in favor of harmonizing such rules.

Secondly, both the Model Rules and DAC7 were designed by reference to pre-existing structures for third party information reporting and automatic exchange of information between tax administrations. In 2014, the OECD developed the Common Reporting Standard and operationalized it through the Model Competent Authority Agreement for reporting and automatic exchange of information on financial accounts. These frameworks purport to backstop income sheltering by requiring financial institutions to report to local tax administrations information about accounts opened and held by non-residents. Tax administrations in participating jurisdictions exchange information received with their counterparts. The information subject to reporting and the due diligence procedures under the OECD Model Rules is broadly similar to those under the Common Reporting Standard.[1361] In a similar vein, DAC7 merely extends the pre-existing scope of third party information reporting and automatic exchange of information between tax administrations in the EU. In other words, the two multilateral third party information reporting protocols introduced in the context of the collaborative economy are built on a pre-established architecture – a practical consideration which largely explains the ease with which these instruments were developed and gained acceptance.

Thirdly, the harmonization of third party information reporting through the introduction of multilateral frameworks does not raise notable issues regarding the competencies of intervention by international governmental organizations. In the EU in particular, issues of direct taxation may only be harmonized through unanimity in the Council and under the substantive condition that harmonization

1361 OECD Forum on Tax Administration; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 27.

is necessary in support of the functioning of the EU internal market.[1362] Information reporting by platform operators and the exchange of the information received by tax administrations do not alter the substantive tax treatment of income derived by workers. As such, domestic income tax rules are broadly unaffected by such instruments and the attainment of unanimity is feasible.[1363]

The OECD Model Rules and DAC7 were preceded by the introduction of unilateral information reporting regimes by individual states, implying the existence of a meaningful measure of consensus as regards the desirability of such measures as tools for addressing the income taxation of collaborative economy platform workers. Conversely, states display marked divergences as regards measures for securing tax compliance by platform workers beyond third party information reporting. Some states introduced or broadened existing exemptions for income derived from peer-to-peer platform activities, largely in an effort to streamline self-reporting obligations for workers earning *de minimis* amounts.[1364] By contrast, other states designed non-employee withholding arrangements, which do not emphasize voluntary compliance, but rather the elimination of opportunities for non-compliance for platform workers. In other words, individual states' policies for securing platform workers' compliance are seemingly fouled with conflicting objectives in basic approaches. On the one hand, there is emerging consensus that the principles of legal simplicity and effectiveness are or should be leading norms in the design of regulations for securing platform workers' tax compliance.[1365] On

1362 Katerina Pantazatou; 'Taxation of the Sharing Economy in the European Union', in: Nestor M. Davidson et al. [Eds.]; The Cambridge Handbook of the Law of the Sharing Economy, Cambridge University Press, 2018.

1363 Such feasibility is also highlighted by the ease with which the scope of reporting under the Directive on Administrative Cooperation has been progressively extended. At the time of writing, a further extension of reporting under this instrument – unrelated to the collaborative economy ('DAC8') is contemplated by the Commission.

1364 Examples of states that have introduced such exemptions are the United Kingdom and Denmark; see in this respect: Robb Chase; 'Diving in: Platform Transactions and the OECD Digital Economy Effort', Tax Executive 72 (36), 2020. Belgium also introduced a regime allowing for income derived from peer-to-peer platform activities to be exempt up to a fixed amount. However, the Belgian exemption regime was ruled unconstitutional, leading to its repeal and highlighting the contentiousness of such exemptions in light of the principles of good law-making.

1365 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019.

the other hand, the dispersions across different states' approaches for attaining these objectives indicate persistent disagreement as to whether the *status quo* of sub-optimal tax compliance by platform workers should be addressed through measures that lawfully remove income from the net of taxation, as is the case when exemptions for platform income are introduced or broadened, or through the design regimes that prioritize timely tax collection, as is the case with withholding tax arrangements.[1366]

B. The soft 'harmonized' approach to taxpayer engagement and education

Beyond the harmonization of third party information reporting, the OECD successfully worked towards the harmonization of taxpayer engagement and education initiatives through the *Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms*.[1367] The Code of Conduct is widely perceived as a non-contentious initiative. Firstly, the cooperation between platform enterprises and tax administrations with a view to raising workers' awareness of their tax obligations is not a novel notion. Prior to the adoption of the Code of Conduct, tax administrations in various states had already established informal frameworks for cooperation with platform enterprises.[1368] As such, the Code of Conduct purports to support the expansion of such initiatives, more so than to introduce an original concept of cooperation between tax administrations and platform enterprises. The Code of Conduct merely builds on a consensus that was already emerging. Secondly, the Code of Conduct uses a particularly broad and open-ended language, without attempting to regulate the minutia of the cooperative relationship between platform enterprises and tax administrations. The instrument establishes flexible undertakings, not a significant paradigm shift. In effect, the Code of Conduct does not attempt to institute a monolithic and

1366 These realities furthermore highlight the importance of standard-setting as a baseline for the design of measures towards the effective taxation of collaborative economy platform workers. In the absence of an authoritative expression of standards, disparities in policy objectives and priorities are likely to persist across states.

1367 OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 2021.

1368 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, pages 22 et seq.

highly specific approach to cooperation between platform enterprises and tax administrations. Harmonization is readily attainable against the backdrop of broad pre-existing consensus and when it concerns the deployment of measures that do not entail significant resources or structural reform.

C. The further harmonization of measures for addressing the income taxation of platform workers – necessity, desirability and feasibility

At the time of writing, neither the OECD nor the EU Commission have gone as far as to authoritatively recommend the harmonization of other measures relevant to the income taxation of collaborative economy platform workers beyond third party information reporting arrangements.[1369] There are a number of factors that could explain this stance, each entailing specific implications. To begin with, and as previously argued, states across the board favor different types of measures for addressing the income taxation of collaborative economy platform workers.

Additionally, beyond third party information reporting arrangements, other measures for addressing the income taxation of platform workers do not require harmonization from a structural perspective. This aspect may be reinforced by reference to non-employee withholding measures. A harmonized approach to non-employee withholding would only be truly necessary from a structural perspective in the context of a withholding regime that attempts to replicate the multilateral architecture of the Model Rules and DAC7. As discussed previously in the contents of the present contribution, such a regime would entail the collection of tax by a platform enterprise and the remittance of the entire amount collected to the tax administration in the platform enterprise's jurisdiction of residence, with that tax administration subsequently remitting the amounts collected to its counterparts. However, and as previously discussed, such an approach would be tainted by a number of challenges of design. On the flip side, other approaches to the design of non-employee withholding arrangements for income derived by workers from platform activities could (or could have been) designed unilaterally by individual states, without an overriding necessity for harmonized action. Harmonization by

1369 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, pages 26 et seq. European Parliamentary Research Service; 'The collaborative economy and taxation: Taxing the value created in the collaborative economy', European Parliament, 2018, page 20.

international organizations ordinarily needs to be justified by reference to the argument that a particular policy or regulatory issue would be better addressed at international level relative to the quality of domestic efforts. A harmonized proposal would inherently require broadly framed rules, which allow leeway for states to determine issues of implementation (i.e., the character of the levy as a final or non-final tax, the applicable rate and applicable thresholds and carve outs).

Finally, but perhaps most importantly, international governmental organizations themselves may support the notion that existing instruments for securing the taxation of collaborative economy platform workers suffice. On the one hand, in the advent of the Model Rules and DAC7, a limited appetite for further measures may well be justified. The effects of these broad-based multilateral measures on platform workers' compliance cannot be quantified at the time of writing. Additionally, in practice it may be difficult to differentiate between the impacts of third party information reporting arrangements on different determinants of non-compliance. Previously in this research, I described that the formal primary purpose of third party information reporting frameworks relates to enhancing the oversight, supervision and enforcement capabilities of tax administrations. In this respect, third party information reporting instruments may increase the prevalence of coerced or enforced compliance.[1370] However, third party information reporting arrangements may also influence taxpayer behavior by reinforcing the threat of deterrence, even where no enforcement action is actually taken. Additionally, some tax administrations use information received pursuant to third party information reporting arrangements to provide taxpayers with (partly) pre-populated tax returns. This heterogeneity complicates the distinction between the different effects of third party information reporting, especially when viewed at a broad scale. The Model Rules and DAC7 are still a recent innovation, so the absence of discussions about further harmonization in the immediate aftermath of these instruments is unsurprising.

On the other hand, I dare submit that the increased emphasis on third party information reporting fueled by the Model Rules and DAC7 may inform an undesirable bias and dampen the incentive for the further consideration of

1370 See, for example: James Alm et al.; 'Third-Party Income Reporting and Income Tax Compliance', Andrew Young School of Policy Studies Research Paper Series WP 06-35, 2006, discussing the effect of low audit rates on tax compliance.

measures to address the income taxation of collaborative economy platform workers, especially measures that are directly conducive to compliance. Both the OECD and EU Commission were adamant in their arguments that third party information reporting measures are indispensable tools for safeguarding the effective taxation of collaborative economy platform workers, and emphasized the visibility deficit of platform workers and the information asymmetries in their relation with tax administrations as core determinants of non-compliance. Additionally, third party information reporting arrangements are a tried and tested technique for encouraging and policing taxpayer compliance. In this respect, the application of such measures in respect of an emerging hard to tax group as are collaborative economy platform workers is intuitive and uncontroversial. However, the collaborative economy is an environment of high-volume/low-value transactions which poses a number of distinct compliance risks. The OECD Model Rules and DAC7 overcome the difficulties of enforcing third party information reporting in cross-border situations, but third party information reporting alone is arguably not a sustainable approach to addressing the income taxation of collaborative economy platform workers.

In my view, the OECD and EU Commission should prevent biases related to third party information reporting to proliferate. Rule-making is the most far-reaching power of international governmental organizations. However, the mere fact that international governmental organizations may introduce measures effectively in certain areas should not translate to overlooking measures that are not or cannot be regulated at international level. To this end, the OECD and EU Commission should actively acknowledge that rule-making is only one of the ways in which they may support states in addressing the income taxation of collaborative economy platform workers and encourage states to maintain a broad view towards the capabilities and limitations of different measures.

7. International governmental organizations as a forum for the exchange of experiences and the emergence of coordination through the replication of best practices

In being a forum for the clustering of policy, international governmental organizations also determine implicit convergences in the interests and policies of their

members. International relations scholarship describes this as the socializing function of international governmental organizations.[1371] From an empirical perspective, it is usually onerous to distinguish between the incidences of the different impetuses for convergence harbored by international governmental organizations. As the foregoing paragraphs have strived to convey, international governmental organizations also exert agenda-setting and rule-making functions – both of which also act to determine policy convergence. The degree to which socialization underlines convergence is therefore difficult to ascertain. In international relations literature, socialization is usually defined in constructivist terms as an organic process whereby membership in international governmental organizations determines a shift in the interests and conduct of policies by members.[1372] Socialization between members is a natural byproduct of the various interactions fostered by international governmental organizations. In a purely theoretical sense, socialization between members of international governmental organizations purportedly enables policy convergences through non-bureaucratic channels.[1373]

It is undeniable that members of international governmental organizations from the outset share a number of core policy interests. In my view, the socializing function of international governmental organizations also therefore translates to the provision of a forum where members exchange views and experiences. I submit that this socializing function may also be relevant towards expediting, optimizing and coordinating the different approaches for addressing the income taxation of collaborative economy platform workers.

However, socialization may only be a meaningful driver for policy if it is formalized to some extent. On the one hand, socialization flows naturally from the interactions harbored under the auspices of international governmental organizations. On the

1371 Nicola Chelotti et al.; 'Do Intergovernmental Organizations Have a Socialization Effect on Member State Preferences? Evidence from the UN General Debate', International Studies Quarterly 66 (1), 2022.

1372 Jeffrey T. Checkel; 'Social construction and integration', *Journal of European Public Policy 6 (4)*, 1999, pp. 545-560.

1373 In the case of the OECD in particular, socialization effects are bolstered by the fact that government officials participate actively in the outputs of the OECD. See, in this respect: Tony Porter and Michael Webb; 'The Role of the OECD in the Orchestration of Global Knowledge Networks', Canadian Political Science Association annual meetings, 2007.

other hand, scholarship on international relations oftentimes describes policy convergence as driven by socialization as an incidental or adjacent result of the clustering of interests in the forum of international governmental organizations. In my view, the OECD and EU Commission should take advantage of their roles in providing an environment that enables purpose-driven socialization between members. In other words, socialization should be used actively as a tool in advancing approaches for safeguarding the effective taxation of collaborative economy platform workers. This entails two main actions.

Firstly, members of international governmental organizations should be encouraged to share domestic policies introduced in respect of the collaborative economy through public consultations. There is considerable value in surveying domestic measures and in understanding domestic policy choices. Exchanges of experiences with the application of different tools for addressing income taxation in the collaborative economy enable the identification of trends and policy priorities. Equally importantly, they enable an understanding of the strengths, weaknesses and actual effects of different measures. Candid exchanges of experiences between states can reveal the types of measures that are most effective in addressing the income taxation of platform workers, on the one hand, and caution against the replication of ineffective measures, on the other hand. Secondly, international governmental organizations should leverage domestic experiences to identify best practice approaches. In turn, international governmental organizations should promote best practice approaches and encourage other members to replicate these.

If the identification and replication of best practices is encouraged, this may incentivize a 'race to the top' in the development of domestic approaches and policies or addressing the income taxation of platform workers. Typically, states develop policies in a responsive or reactive manner, by reference to existing regulatory weakness and failures. If the notion is advanced that some domestic measures amount to best practices, other states may be encouraged to develop and implement similar measures. Additionally, this form of coordination may be a valuable complement to formal harmonization, particularly in those areas that do not readily lend themselves to harmonization. For example, many approaches for securing the effective taxation of platform workers emphasize duties for tax administrations to develop and implement mechanisms for the management of

the measures. The manner in which tax administrations perform these functions is not an aspect that may be formally harmonized. Still, the approaches to the management of tax rules and systems by tax administrations could converge through the exchange of experiences and the subsequent replication of best practices.[1374] In other cases, substantive measures for addressing the taxation of platform workers may not be easily subject to formal harmonization. For example, in the EU legal order, the harmonization of direct taxation measures requires Council unanimity, which is oftentimes difficult to secure in practice because of the divergent interests of EU Member States.[1375] However, if EU Member States were encouraged to exchange experiences with different unilateral measures, this could facilitate the natural coordination of domestic measures and approaches.

Additionally, exchanges of experience may help prevent implicit biases in domestic policymaking and on issues of tax administration. This consideration is notably relevant in the advent of the Model Rules and DAC7. These instruments reinforced the focus on third party information reporting frameworks as measures to backstop the under-taxation of income derived by workers from activities undertaken through platforms. As I argue at length in Part III.II.3 of this research, third party information reporting measures primarily target the visibility deficit of platform workers and the information asymmetries in their relation with tax administrations. In this respect, such measures are predicated on a type-casted viewpoint towards the determinants of platform workers' compliance. The Model Rules and DAC7 inevitably compel the broadened implementation of third party information reporting measures in more states. In turn, this may be accompanied by a lessened emphasis on other types of approaches towards safeguarding tax compliance in the collaborative economy. From a policy perspective, over-regulation may be deemed just as undesirable as under-regulation. However, the increased emphasis on third party information reporting may harbor undesirable biases and implicitly prejudice the development of innovative approaches to addressing the income taxation of emerging hard to tax groups. In my view, the OECD and EU Commission

1374 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2019. OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2017.

1375 Katerina Pantazatou; 'Taxation of the Sharing Economy in the European Union', in: Nestor M. Davidson et al.; Cambridge Handbook of Law and Regulation of the Sharing Economy, Cambridge University Press, 2018.

should work to prevent such outcomes. The OECD and EU Commission should discourage the notion that information received by tax administrations pursuant to third party information reporting arrangements should only serve oversight and enforcement. Instead, they should promote the commodification of such data, for example through the provision of pre-populated returns. Against this backdrop, states should be encouraged to exchange experiences with different approaches to the use of data received through third party information reporting instruments and the effects of these on compliance levels.

However, international governmental organizations may only enable an effective forum for the exchange and replication of best practices to the extent that they follow a clear and appropriate understanding of what processes amount to best practices in the first place. This further underscores the importance that the OECD and EU Commission apply a holistic view towards the various determinants of platform workers' under-taxation and the advantages and shortcomings of different measures for addressing workers' income taxation effectively. In this respect, the identification of best practices is closely linked with normative standard-setting. Standards and principles establish benchmarks for the outcomes of the approaches to addressing the income taxation of platform workers. In turn, best practices are measures and approaches that operationalize these benchmarks.

As such, best practices should be defined by reference to the concept of effective income taxation as relevant to the context of collaborative economy platform workers. The plurality of determinants of non-compliance at play and the multiple avenues for building towards effective taxation entail different notions of best practices in different contexts. In my view, the identification of best practices should involve the two inseparable dimensions of income taxation as relevant to the circumstances of platform workers: rules and policies, on the one hand, and tax administration-driven compliance processes, on the other hand. Best practice rules are those measures that actively build towards the effective income taxation of platform workers. In particular, this refers to measures that enable non-employee withholding arrangements to be applied effectively in respect of income derived by platform workers, by overcoming the existing barriers to the introduction of such measures. Additionally, it may also refer to measures for the simplification of income assessment rules (e.g., exemptions and standard deductions) which do not compromise the equitable taxation of platform workers in accordance with

the ability to pay principle. As related to tax administration-driven measures, best practices should refer to processes that actively mitigate the shortcomings of ordinary taxpayer self-reporting and self-assessment processes. In particular, this refers to the automation of the processes for the preparation of income tax returns by workers. This may involve frameworks that directly link taxable events with tax accounting and the provision of pre-populated tax returns to workers.

III. THE ROLE AND FUNCTIONS OF TAX ADMINISTRATIONS IN SUPPORTING THE EFFECTIVE TAXATION OF COLLABORATIVE ECONOMY PLATFORM WORKERS

1. General remarks and research objectives

Tax policy, compliance and administration are closely intertwined areas.[1376] Many existing and contemplated approaches for addressing the income taxation of platform workers place a marked emphasis on the role of tax administrations, rather than envisaging a radical reform of income tax rules.[1377] However, different approaches highlight distinct administrative functions. For example, frameworks for third party information reporting underline administrative oversight, enforcement and the exchange of information between tax administrations.[1378] Conversely, initiatives for taxpayer engagement and education emphasize the idea of service-oriented tax administration, focused on supporting voluntary compliance. In a similar vein, the OECD's Compliance by design Report envisages tax administrations as actively contributing to the automation and naturalization of compliance processes.[1379]

1376 Richard M. Bird; 'Administrative Dimensions of Tax Reform', Asia-Pacific Tax Bulletin 10 (3), 2004, pp. 134-150.

1377 According to Lipniewwicz, 'tax administration' involves an objective and a subjective interpretation. Objectively, 'tax administration' refers to the totality of administrative actions undertaken to manage tax laws. In a subjective sense, 'tax administration' refers to the body of authorities and institutions tasked with carrying out administrative functions in the field of taxation. The present analysis focuses on the subjective facet of tax administration and its functions. See, in this respect: Rafal Lipniewicz; 'Tax Administration and Risk Management in the Digital Age', *Information Systems in Management 6 (1)*, 2017, pp. 26-37.

1378 OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 8 June 2021. Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation COM(2020) 314 final.

1379 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, pages 11-12.

The purpose of Part IV.III of this thesis is to develop a cohesive interpretation of the functions of tax administrations within the landscape of the collaborative economy. An inquiry into the functions of tax administrations is relevant to the objectives of this broader research for a number of reasons. Firstly, tax administrations perform their functions with limited resources.[1380] Certainty as to the role of tax administrations in the strides for securing the effective taxation of platform workers is a necessary precursor to optimizing the allocation of resources. Secondly, because of the interconnectedness between policy and administration, a candid inquiry into the capabilities and limitations of tax administrations is an integral element in assessing the effectiveness of measures introduced or contemplated for addressing the income taxation of platform workers. Thirdly, coherence and certainty as to the role of tax administrations may support improved international coordination.

2. Conventional notions on the functions of tax administrations

Milka Casanegra de Jantscher famously wrote that '*tax administration is tax policy*',[1381] arguing that the effectiveness of tax rules cannot be abstracted away from administrative considerations. Substantive and procedural tax rules are constantly changing, reflecting (incremental) shifts in policy objectives. The effectiveness with which these structures are administered ultimately impacts the effectiveness of tax systems as a whole.

Existing scholarship describes the functions of tax administrations by reference to *fiscal*, *economic* and *social* considerations.[1382] The fiscal function is the primordial task of tax administrations. It refers to the management of tax compliance and collection by tax administrations. Economic and social considerations are subsidiary to the fiscal function of tax administrations. The economy of tax administration describes the discharge of fiscal functions in a cost-efficient manner. Finally, because tax administrations are the subjective expression of tax

1380 Ibid., page 16.

1381 Milka Casanegra de Jantscher; 'Administering a VAT', in M. Gillis et al. [Eds.]; *Value Added Taxation in Developing Countries,* World Bank, 1990.

1382 Rafal Lipniewicz; 'Tax Administration and Risk Management in the Digital Age', *Information Systems in Management 6 (1)*, 2017, pp. 26-37.

systems, social considerations entail that tax administrations should interact with taxpayers in a manner that encourages compliance and minimizes the deadweight burden of taxation. The social component of tax administration therefore involves tax administrations promoting voluntary compliance. Voluntary compliance diminishes the incidence of *ex post* administrative enforcement. In this respect, the social function of tax administration also reinforces the considerations of efficiency embedded in the economic function.

Tax administrations in practice enjoy considerable leeway in determining the parameters within which they perform fiscal, economic and social functions. Because the economic and social functions are subservient to fiscal objectives, the core role of tax administration revolves around safeguarding revenue collection. However, the manner in which tax administrations integrate economic and social considerations will influence the effectiveness of the core fiscal function. In this respect, the effectiveness of tax administration may be viewed by reference to its fiscal, economic and social objectives and the demands embedded within these. Firstly, tax administrations can only perform fiscal, economic and social functions within the confines of the resources available to them. The competence of tax administrations to exercise oversight and enforcement is set out as a matter of law. Additionally, some mechanisms (e.g., third party information reporting arrangements and withholding taxes) purport to streamline the manner in which tax administrations fulfil their fiscal function. However, in many cases, tax administrations may be implicitly expected to autonomously develop frameworks that allow them to safeguard tax compliance. Secondly, the availability of resources for tax administrations to perform fiscal, economic and social functions is distinct from the allocation by tax administrations of available resources across these functions. Thirdly, effective tax administration requires alignment between the approach to the performance of fiscal, economic and social functions and the realities of the environments of taxpayers. As such, tax administrations need to adapt their methodology for the management of tax systems with the circumstances of different segments of taxpayers.

Broader societal, political and economic concerns, such as digitalization and emerging patterns of income-generating activity, inevitably galvanize tax administrations and force modernization.[1383] Such developments do not alter

1383 Milka Casangera de Jantscher ; 'Problems in Administering a Value-Added Tax in Developing

the core functions of tax administration. Regardless of the societal, political and economic landscape, tax administrations remain tasked with safeguarding revenue collection in an efficient and socially positive way. However, the peculiarities of emerging developments, such as the digitalized economy, do require an adapted approach to the performance of core tax functions of tax administration. In particular, this involves tax administrations seizing and leveraging the opportunities to optimize revenue collection posed by such landscapes. As a corollary, a dynamic approach to tax administration also involves addressing challenges to revenue collection introduced by emerging societal, political and economic developments.

3. Tax administration in the broader digitalized economy – The OECD's 'Tax Administration 3.0' vision

A. Tax Administration 3.0 – Background

The most recent, comprehensive and arguably ambitious attempt at inferring the functions of tax administrations in the landscape of the wider digitalized economy is the OECD's *Tax Administration 3.0* Report.[1384] Tax Administration 3.0 is the chronological successor of earlier strides towards reforming the working of tax administrations to align it with technological development. Tax Administration 1.0 was the era of conventional tax administration,[1385] involving manual, labor and resource intensive processes.[1386] The turn of the 21st century and the early days of commercial digitalization paved the way for Tax Administration 2.0 or e-administration.[1387] Tax Administration 2.0 was a segment of a wider OECD-driven strategy for the modernization of governmental functions through 'e-governance'.[1388] E-governance permeated various branches of public administration, including

Countries: An Overivew', World Bank Development Research Department Report No. DRD 246, 1987.

1384 Ibid.

1385 RegFollower; 'OECD: Digital Transformation of Tax Administration', available via: https://regfollower.com/2020/12/09/oecd-digital-transformation-of-tax-administration/ last visited 4 July 2022.

1386 Ibid.

1387 Ibid.

1388 OECD; 'Implementing E-Government in OECD Countries: Experiences and Challenges', OECD Publishing, 2003.

tax system management. Tax Administration 2.0 involved broader reliance on third party information reporting, the automation of some compliance processes (e.g., invoicing for VAT) and targeted risk-oriented enforcement.[1389] However, Tax Administration 2.0 had a limited scope and purpose. Reliance on analytical and big data tools only extended to isolated segments and areas of tax administration.[1390]

Tax Administration 3.0 sets out a broad-based move towards digitalized tax administration. It envisages a comprehensive and generalized reform, wherein compliance processes are integrated within the income-generating transactions of taxpayers in a manner that revives the standards set out in Compliance by design.[1391] The economic and social functions as subsidiary elements to revenue collection are brought to the forefront and emphasized through the lens of digitalization and the wide availability of information and communication technologies as government resources.

B. The need for Tax Administration 3.0

Two main considerations underscore the necessity and desirability of reform along the lines of Tax Administration 3.0: the structural limitations of Tax Administration 2.0, on the one hand,[1392] and the changing landscape of income-generating activities, on the other hand. The Tax Administration 2.0 model focused on streamlining oversight and enforcement for tax administrations. This approach allows a significant measure of non-compliance to subsist, because it fails to account for the entirety of factors at play in the environment of taxpayers.[1393] Tax compliance remains a downstream process segregated from income-generating activities

1389 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 10.

1390 Tax administrations that did attempt to embed e-administration tools focused on large corporate taxpayers. Corporate income tax is comparatively more demanding from an administrative perspective than, for example, personal income tax. This practical reality explains in part why efforts to optimizing and streamlining tax administrations usually focus (at least initially) on corporate taxpayer more so than individuals.

1391 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014.

1392 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 11.

1393 Ibid.

and taxable events.[1394] The unabated digitalization of economies challenges the effectiveness of existing administrative strategies for oversight, enforcement and even supporting voluntary compliance.[1395] Likewise, because of the propagation of the collaborative economy, labor income is increasingly anchored in hard-to-capture avenues of economic activity.[1396] The road towards Tax Administration 3.0 is also paved by the ambition of leveraging and integrating the characteristics of digitalized business models within tax compliance and collection processes.[1397] Tax Administration 3.0 seeks to overcome the structural limitations of the current administrative environment.[1398] This objective entails a bottom-up reform in the objectives of tax administration functions.

C. Core components and steps towards Tax Administration 3.0

The OECD describes Tax Administration 3.0 by reference to six core elements. These are intended to reform the priorities of tax administrations, safeguard effective taxation and ultimately improve taxpayers' experiences interacting with the relevant legislation.

Firstly, Tax Administration 3.0 entails the integration of compliance processes within taxpayers' ecosystems,[1399] with a view to naturalizing tax compliance and mitigating the conventionally segregated relationship between taxable events and the actual payment of tax. This entails the development of 'joined-up services',[1400] meaning resources developed under public-private partnerships for translating compliance processes directly within taxpayers' activities.[1401]

1394 Alfredo Collosa; 'The digital transformation of Tax Administrations. Is a new management model emerging?', Inter-American Center of Tax Administrations, 2021.

1395 Jay A. Soled and Kathleen DeLaney Thomas; 'Automation and the Income Tax', *Columbia Journal of Tax Law 10 (1)*, 2018, pp. 1-48.

1396 Ibid.

1397 Clement Okello Migai et al.; 'The sharing economy: turning challenges into compliance opportunities for tax administrations', *eJournal of Tax Research 16 (3)*, 2019, pp. 395-424.

1398 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 12.

1399 Ibid.

1400 Ibid.

1401 This is largely reminiscent of the standards and processes proposed in Compliance by design.

Secondly, Tax Administration 3.0 involves a partial reassignment of functions related to data processing and the determination of tax liabilities from tax administrations to the private sector.[1402] Tax Administration 3.0 proposes the establishment of a comprehensive network of intermediaries to support tax administrations in the discharge of their functions. This notion of cooperative governance in the realm of tax compliance is by no means a novel concept, as most tax administrations have historically relied on intermediary regulation protocols to a significant extent.[1403] At most, the Tax Administration 3.0 discussion document reinforced and broadened the pleas for this.

Thirdly, tax administration processes would be progressively undertaken and settled in real time.[1404] This component is tied with the objective of integrating compliance processes directly within taxpayers' income-generating environments and safeguarding the provision of legal certainty to taxpayers. According to the OECD, this move towards real time compliance and administration would be driven by the automation of routine administrative functions.[1405]

The three final precepts of Tax Administration 3.0 relate to broader normative considerations. In this respect, Tax Administration 3.0 entails transparency and accountability towards taxpayers. The reforms envisaged through Tax Administration 3.0 boil down to the increased automation of compliance processes and the broadening of intermediary regulation. As such, this model of tax administration would minimize human intervention in the ascertainment of tax liabilities and assign the determination of tax liabilities to parties other than the taxpayer to a significant extent. However, taxpayers should remain unobstructed in their possibility to review and challenge decisions made in relation to their situation. Because compliance processes are intended to be undertaken and settled in real time, taxpayers should enjoy a corresponding opportunity to verify

1402 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, pages 12-13.

1403 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2)*, 2018, pp. 283-333.

1404 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, pages 12 et seq.

1405 Ibid.

and challenge the outcomes of such processes in real time.[1406]

Additionally, Tax Administration 3.0 acknowledges the interconnectedness between taxation and other government functions and services. As part of their income-generating activities, legal subjects interact with a number of different government bodies beyond the tax administration. In order to streamline these interactions and facilitate coordination between different government agencies, it is proposed that a unitary digital identification system be used.[1407] It should be noted that a number of states have long had such interoperable frameworks in place.

Finally, Tax Administration 3.0 entails a taxpayer-centric approach to administrative processes.[1408] The core objective is to support compliance and maintain a service-oriented tax administration, whilst concurrently 'limiting the areas where compliance choices remain' available to taxpayers. This emphasizes the social function of tax administration, in that the automation of income tax compliance processes should not determine a 'no contact', fully depersonalized approach.[1409]

D. Tax Administration 3.0 – A realistic impending paradigm shift, mere vision or adjusted status quo?

1) Is Tax Administration 3.0 the meaningful shift in vision it purports to be?

Under a broadly integrated and automatized system, tax administrations' main function should be the management of the underlying network and the oversight of the system itself, more so than the direct oversight and supervision of taxpayer compliance. The OECD explicitly asserts that the Tax Administration 3.0 model is not attainable through mere incremental changes or developments in current

1406 Ibid. This precept is linked with the overarching debate about the relation between the progressive automation of administrative processes and the procedural rights of taxpayers. It implies a sensible balancing act between mitigating the influence of taxpayer behavior on compliance processes, on the one hand, and upholding taxpayers' rights to review and challenge (automated) inputs as relevant to their income taxation.

1407 Ibid.

1408 Ibid.

1409 João Félix Pinto Nogueira; 'Tax Administration and Technology: from Enhanced to No-Cooperation?'; Digital Transformation of Tax Administrations, 2022, available via SSRN: https://ssrn.com/abstract=4125999 or http://dx.doi.org/10.2139/ssrn.4125999 .

administrative processes.[1410] In this respect, the OECD seemingly implies that existing precepts of tax administration are largely antithetical with the prevailing vision set out in Tax Administration 3.0. It is arguably true that tax collection is heavily reliant on voluntary taxpayer compliance and targeted administrative enforcement – which in turn translates into an emphasis on of oversight, supervision, enforcement and taxpayer support functions for most tax administrations. However, there are a number of arguments dispelling the notion that Tax Administration 3.0 amounts to a true paradigm shift.

The integration of compliance processes within taxpayers' natural environments is not a novel concept introduced through Tax Administration 3.0. Most concepts set out in Tax Administration 3.0 resemble the earlier Compliance by design initiative. In Compliance by design, the OECD acknowledged the propensity for non-compliance rooted in the downstream character of taxation.[1411] To this end, the OECD championed the idea of enhanced cooperation between tax administrations and private sector third parties that provide technological resources used by taxpayers as part of their economic activities, with a view to transposing compliance processes directly within taxpayers' infrastructure.[1412] These notions are transposed verbatim within the Tax Administration 3.0 discussion document, highlighting their persisting relevance.[1413]

However, the discussion document itself provides limited guidance on how this objective could or should be achieved. The Tax Administration 3.0 discussion document highlighted the benefits of certain compliance frameworks in naturalizing compliance processes (in particular, pay-as-you-earn withholding arrangements), acknowledged the difficulties in extending such arrangements to certain items of income and taxpayers and recommended the further consideration of options to overcome existing barriers to the broader naturalization of compliance processes.

1410 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 16.

1411 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014 page 23.

1412 Ibid.

1413 The OECD never discarded the procedural and normative standards initially set out in *Compliance by design* Report. Nevertheless, its emphasis and recommendations on the further development of compliance by design frameworks have been arguably scarce since the publication of the initial Report.

However, the discussion document does not provide a meaningful inquiry into why such barriers exist and how they could be sidestepped. Instead, it merely advances the notion that technological infrastructures create significant opportunities for the further devise and implementation of compliance by design frameworks.[1414] Consequently, Tax Administration 3.0 remains largely theoretical.

Still, many tax administrations have long and routinely applied some techniques outlined in Tax Administration 3.0.[1415] However, the mere fact that tax administrations attempt to progressively automatize certain compliance processes cannot necessarily be construed as a broader appetite for a paradigm shift. The exercise of oversight, supervisory and enforcement functions and have arguably remained the core focus of tax administrations.

For example, a recent decree adopted in France grants the domestic tax administration the authority to request social media and collaborative economy enterprises access to data pertaining to French resident users.[1416] The data to be supplied pursuant to the decree only extends to information published by users on the surface web (i.e., personal profile pages, posts and the like), to the exclusion of user password-protected data. The French tax administration may use information furnished under this framework to police possible undeclared income. By way of example, social media posts indicating that an individual is engaged in the provision of short-term accommodation may be matched with the individuals' tax returns to ascertain whether the income from such activities had been reported. This monitoring mechanism is predicated on 'matching' inferences about taxpayers' activities based on internet activity with self-reported tax returns. The decree sparked significant concern over taxpayers' rights to data protection and privacy. There are also grounds to question the effectiveness of this experimental approach to administrative oversight and enforcement. At its core, the overarching implication

1414 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 21.

1415 The reliance on taxpayer digital identities and intermediary regulation networks characterize the operational processes of most modern tax administrations.

1416 France; Decree n ° 2021-148 of February 11, 2021 on the modalities of implementation by the general direction of public finances and the general direction of customs and indirect rights of computerized and automated processing allowing the collection and the exploitation of data made public on the websites of online platform operators.

of the decree is that individuals' self-reported tax returns should be a reflection of the life they present through private internet activity – else they become an audit target. However, such data is not necessarily a reliable source of information and it may create an arguably odd pretense for enforcement. Equally importantly, the monitoring envisaged under the decree is onerous and highly resource-intensive for the tax administration. Finally, the mechanics of this framework are more akin to surveillance rather than administrative oversight.

The French decree is admittedly a mere example and one that should not be projected to entail a generalized trend. However, it does amount to a telling example about how technological infrastructure is leveraged in the practices of some tax administrations. The focus of the decree is chiefly on fraud detection and enforcement. Oversight and enforcement have historically been the prevailing functions of tax administrations. Through Tax Administration 3.0, the OECD implies that the widespread availability of technological infrastructure creates opportunities to lessen the focus on enforcement and reassign resources to the development of frameworks that are conducive to compliance and that inherently eliminate compliance 'choices'.[1417] However, enforcement is seemingly deeply entrenched within administrative practices – and it is arguably questionable whether the digitalization of economies and taxpayer lifestyles could displace this notion. Rather, it seems probable that governments will continue to ponder ways in which technological infrastructure may be embedded into novel approaches towards (strengthened) oversight and supervision.

2) The added value of Tax Administration 3.0

Tax Administration 3.0 could rightly be criticized for setting out idealistic notions and downplaying the impact of the persisting focus on oversight and enforcement as prevailing functions of tax administrations. Whilst Tax Administration 3.0 is unlikely to immediately result in a monolithic overhaul, there is significant added value to be derived from the discussion document.

1417 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014.

A) The reinforcement of Compliance by design

As argued previously, Tax Administration 3.0 does not introduce radically novel notions of how tax administration and compliance should be managed as much as it reinforces the procedural and normative ideals of the earlier Compliance by design initiative. Whilst not purely innovative, Tax Administration 3.0 is a welcome development, because a move towards the enhanced deployment of compliance by design frameworks is both desirable and necessary. Compliance by design frameworks have the capability to significantly streamline the management of revenue collection.[1418] Equally importantly, compliance by design protocols are arguably the most suited approach to ensuring the effective taxation of income anchored in hard to capture sources without necessitating policy overhaul. Compliance by design frameworks are particularly relevant in the taxation of taxpayers operating on small scales and generating small amounts of individual income.[1419]

B) Reinforcing the importance of automation in streamlining tax compliance and the management of tax compliance processes

Tax Administration 3.0 reinforces the reality that for many taxpayers that pose compliance risks (in particular, taxpayers operating on a small and decentralized scale), the underlying income tax consequences and obligations are not substantively complex.[1420] However, taxpayers' unfamiliarity in navigating self-reporting or self-assessment processes, the information asymmetry that characterizes their relation with tax administrations[1421]and the numerous compliance 'choices' available to taxpayers in self-declaring income and expenses underpin non-compliance.[1422] These taxpayers are arguably the most relevant segment for the automation of compliance processes. Broad-based automation is unlikely to be suited to taxpayers with complex sets of circumstances because of the inherently formulaic nature

1418 Ibid.
1419 Ibid.
1420 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016 pp. 989-1069.
1421 Joyce Beebe; 'How Should we Tax the Sharing Economy?', Baker Institute Report, 2018.
1422 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 11.

of compliance by design. Tax Administration 3.0 implies that the management of individual taxpayers faced with uncomplicated tax obligations should be routinized, rather than prevail as a common administrative challenge.

C) Highlighting the shortcomings of prevailing approaches to tax administration

Finally, Tax Administration 3.0 implies a critical stance towards the prevailing administrative focus on (supported) voluntary compliance coupled with oversight and enforcement, on the grounds that these approaches are resource-consuming, unaligned with the realities of the digitalized economy and fail to capture core determinants of non-compliance.[1423] As the foregoing analysis has strived to convey, oversight and enforcement are proving to remain core precepts of modern tax administrations. The availability of technology and the possibilities for automating compliance processes have not displaced the historically strong focus on coerced compliance and enforcement yet. In spite of the fact that Tax Administration 3.0 is unlikely to propagate an immediate and radical shift in priorities, the discussion document is notable in that it alludes to the notion that administrative oversight and enforcement are inherently incomplete responses.

3) The functions of tax administration in the advent of Tax Administration 3.0

Tax administration is unlikely to undergo an imminent paradigm shift towards the ideals purported in Tax Administration 3.0. On the one hand, this is attributable to the fact that most of the elements set out in the Tax Administration 3.0 discussion paper are hardly novel. On the other hand, the prevailing role of taxpayer voluntary compliance, administrative oversight and enforcement is deeply entrenched across the board. These notions invite the consideration of how the realities of tax administration functions should be defined in the advent of Tax Administration 3.0.[1424]

1423 Ibid.

1424 The strong emphasis on broadening compliance by design frameworks set out in the Tax Administration 3.0 discussion document invites the question of whether the introduction and management of such frameworks should emerge into the main task or function of modern tax administrations. On the one hand, compliance by design framework and automation should arguably result in a lesser need for other functions, in particular

A) Administrative oversight and enforcement

A particular feature of tax administration is the confluence between voluntary compliance and enforcement.[1425] Existing scholarship cautions against an excessive focus on oversight and enforcement as tools for safeguarding compliance.[1426] Tax Administration 3.0 promotes the automation of compliance processes and frameworks. Formally, this would require a lessened focus on oversight and enforcement. However, as argued above in this an analysis, this neither entails nor presupposes that administrative oversight and enforcement should or could be displaced as functions of tax administration. Firstly, even if compliance by design arrangements come to be propagated on a broader scale, such frameworks are suited primarily to the situation of taxpayers for whom non-compliance is underscored in large part by the issues associated with the segregation between the incurrence of taxable events and the actual payment of tax. Compliance processes cannot be feasibly routinized in respect of all taxpayers. Secondly, the availability of technological resources creates novel avenues for tax administrations to extract information about taxpayers and therefore improve the efficiency of oversight and enforcement mechanisms. In light of these considerations, the idea of a reformed tax administration as set out in Tax Administration 3.0 does not imply that oversight and enforcement no longer play a role. It does however call for a more nuanced view about the circumstances where administrative oversight and enforcement is the appropriate approach towards safeguarding effective income taxation.[1427]

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enforcement and oversight. On the other hand, the perception of various administrative functions in a hierarchical order is an arguably flawed premise from the outset. Whilst Tax Administration 3.0 correctly supports the notion that tax administrations should autonomously develop networks and resources that streamline self-reporting, this cannot be equated with the idea that such frameworks are universally feasible. Consequently, the administrative management of areas where compliance by design frameworks cannot (or will not) be deployed will likely remain governed by conventional oversight and enforcement strategies. Additionally, even in those areas where compliance by design protocols can be successfully implemented, it is unlikely that tax administrations would abandon the focus on taxpayer supervision. As such, the functions of tax administrations in this context should best be seen in a heterarchical rather than a hierarchical order.

1425 Jon S. Davis et al.; 'Social Behaviors, Enforcement, and Tax Compliance Dynamics', The Accounting Review 78 (1), 2003, pp. 39-69.

1426 Ibid.

1427 The description of compliance as 'voluntary' in this context is arguably a misnomer, as tax obligations are inherently not voluntary. Rather, a more appropriate descriptor would be

B) Networking with intermediaries in the design of compliance frameworks and solutions to optimize self-reporting

Tax Administration 3.0 emphasizes the naturalization of compliance processes by integrating tax compliance directly within taxpayers' ecosystems. Certain compliance by design frameworks (in particular pay-as-you-earn withholding arrangements) are introduced by law. However, various forms of compliance by design (for example, integrated accounting) may be developed pursuant to voluntary cooperation agreements between tax administrations and private sector enterprises.[1428] The enhanced focus on compliance by design arrangements should further the prominence of tax administrations in devising ways to implement these autonomously.

C) A new view towards 'voluntary' compliance

Tax administration 3.0 supports a move away from perennial notions of 'voluntary' compliance in favor of frameworks that are inherently conducive to compliance and limit opportunities for non-compliance.[1429] In my view, this is a welcome, if not necessary and overdue development. Existing scholarship conventionally distinguished between notions of voluntary compliance, enforced compliance and no compliance along a continuum. Voluntary compliance embodies the idea of taxpayers' intrinsic willingness to abide by the legal requirements leading up to the payment of tax. A voluntarily compliant taxpayer is one who reports income, expenses and other relevant circumstances truthfully and on time and pays tax accordingly, without the need for governmental coercion or deterrence. Enforced compliance refers to the collection of tax through the application of deterrence, wherein compliance is a response to pressure more so than a 'voluntary' act.[1430] Finally, non-compliant taxpayers are those that either

coerced compliance.

1428 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, pages 204 et seq.

1429 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 12.

1430 Fabio Pereira da Silva et al.; 'Voluntary versus enforced tax compliance: the slippery slope framework in the Brazilian context', *International Review of Economics 66 (5)*, 2019, pp. 147-180.

escape the reach of deterrence mechanisms or towards whom deterrence is not effectively applied.

The notions of voluntary and enforced compliance are merely forms of conduct that may be steered, at least theoretically. High tax morale purportedly harbors voluntary compliance. Conversely, ambivalence and the perception of tax as a deadweight entail that compliance needs to be stimulated through deterrence. This binary approach distinguishing between voluntary and enforced compliance has long informed discussions about the conduct of tax administrations' fiscal, economic and social functions. Conventional wisdom suggests that tax administrations should stimulate attitudes that encourage voluntary compliance, by engaging taxpayers with the tax system and bolstering tax morale. On the other hand, tax administrations should apply deterrence to safeguard compliance in respect of taxpayers that do not react to voluntary compliance stimuli. In both cases, tax administrations influence attitudes and behaviors. In my view, this school of thought fosters inconsistency. Attitudinal and behavioral factors undeniably influence tax compliance. However, the structural weakness of income tax frameworks lies in the fact that compliance outcomes are this sensitive to taxpayer attitude and behavior in the first place. Tax administrations' efforts to encourage voluntary compliance in some cases and enforce compliance in others merely steer the incidence of attitudes and behaviors – they do not mitigate the actual effect of these factors. In this respect, effective taxation means alleviating the degree of subjective influences on compliance outcomes, rather than reshaping the incidence of attitudinal and behavioral influences.

This is most readily achievable by reducing reliance on taxpayer inputs. Self-assessment and self-reporting frameworks allow taxpayer attitudes and behaviors to influence compliance.[1431] The naturalization of tax compliance processes would enable a move away from attitudinal and behavioral influences and ultimately, from the discussion of compliance outcomes by reference to the dichotomy between voluntary and enforced compliance. To the extent that the reporting of taxable events and the payment of tax are integrated directly within the environment of taxpayers, compliance outcomes need not be viewed as either voluntary or enforced.[1432]

1431 OECD; 'Digital Transformation Maturity Model', OECD Publishing, 2022, page 41.
1432 In my view, a move away from conventional notions of 'voluntary' compliance is also

E. Tax Administration 3.0 and the collaborative economy

As part of the Tax Administration 3.0 discussion document, the OECD specifically references the emergence of the collaborative economy as one of the core challenges of revenue collection driving the need for a reformed tax administration.[1433]

The emergence of the collaborative economy is driving a pervasive transition from salaried employment to self-employment.[1434] Employment remuneration is almost universally subject to compliance by design frameworks through PAYE withholding.[1435] By contrast, tax in respect of income from self-employment is collected pursuant to taxpayer self-reporting and self-assessment frameworks. Outside PAYE arrangements, revenue collection is less predictable and amounts to a resource-intensive stride for tax administrations and taxpayers alike. The comparison between employees and self-employed taxpayers invoked by the OECD in discussing the administrative challenges afferent to the collaborative economy implies two interesting aspects. Firstly, the OECD is establishing the plea that compliance by design frameworks should be devised and deployed for collaborative economy platform workers. Secondly, the specific reference to PAYE withholding reinforces the notion that the OECD maintains that such frameworks should be extended to income derived by workers from collaborative economy activities.[1436] Another challenge to the collection of tax in respect of income derived from collaborative economy platform work discussed in Tax Administration 3.0 refers to workers deriving income from concurrent activities across different platforms.[1437] Consequently, platform income is fragmented among various hard to capture sources. Income fragmentation is prone to hamper the effectiveness of administrative oversight, for example when different reporting requirements pertain to each item of platform income.

necessary considering the ambiguity of this concept. Tax compliance means compliance with obligations set out in the law. A voluntary act is one performed absent obligation, not absent coercion.

1433 OECD; 'Digital Transformation Maturity Model', OECD Publishing, 2022, page 21.

1434 Ibid.

1435 Ibid.

1436 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 26.

1437 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 21.

The Tax Administration 3.0 discussion document implies that existing and proposed measures for the taxation of platform workers provide incomplete solutions to the underlying issue for two major reasons. Firstly, they do not alleviate the outdated emphasis on voluntary compliance, administrative oversight and enforcement. Secondly, tax administrations have not yet reformed their practices in a manner that allows them to effectively manage the landscape of the collaborative economy. These realities invite the inquiry into how administrative practices should be reformed with a view to mitigating these issues.

1) Pre-populated tax returns based on third party information reporting

Third party information reporting arrangements are inarguably the most widely favored measure for addressing the income taxation of collaborative economy platform workers. However, the present contribution has criticized at length how the added value of such frameworks is oftentimes overstated by policymakers and domestic and international level. Whilst third party information reporting frameworks may influence compliance behavior,[1438] they do not simplify taxpayer self-reporting, nor do they remove the opportunities for non-compliance that are inherently at play in self-reporting processes.[1439] The OECD has expressed in quite definitive terms its credence in the capability of third party information reporting frameworks to improve tax compliance and collection in respect of individual income derived from collaborative economy activities.[1440] However, in the Tax Administration 3.0 discussion document, the OECD impliedly took a more tempered view towards these measures. The OECD explicitly asserted that the mere availability of data cannot be taken to guarantee compliance.[1441] Instead, data collected should be exploited with a

1438 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

1439 Joel Slemrod et al.; 'Does credit-card information reporting improve small-business tax compliance?', *Journal of Public Economics 149*, 2017, pp. 1-19.

1440 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019. OECD; 'Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy', available via: www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-tosellers-in-the-sharing-and-gig-economy.htm last accessed 8 June 2021.

1441 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 21.

view to actively determining income tax compliance.[1442]

The most obvious way to use data received pursuant to third party information reporting measures to facilitate tax compliance is through the provision of pre-populated tax returns.[1443] There are a number of benefits to the provision of pre-populated tax returns. Firstly, they formally reduce compliance and *ex post* oversight costs for taxpayers and tax administrations, increasing the certainty and simplicity of filing processes. Secondly, they imbue an element of taxpayer personalization, which could potentially improve taxpayer morale.[1444] However, pre-populated tax returns are a not a panacea. The added value of these is dependent on a series of variables. The provision of pre-populated tax returns can only reduce compliance and administration burdens to a meaningful extent if pre-populated returns are provided to a wide segment of taxpayers.[1445] Additionally, the possibility of providing pre-populated tax returns is largely determined by the comprehensiveness and quality of data available to tax administrations and the extent to which such data may be (directly) transposed to a pre-populated return.[1446]

Administrative practices differ across the board as regards the degree of sophistication of pre-populated tax returns. At a basic and common level, the provision of pre-populated tax returns merely entails that information already available to the tax administration is transposed to an electronic tax return, wherein the taxpayer may freely adjust pre-introduced inputs and supplement these with inputs that were not pre-filled. In other cases, tax administrations rely on information received pursuant to third party information reporting frameworks with a view to reshaping taxpayer compliance behavior.

For example, the Spanish tax administration integrated artificial intelligence within e-filing in order to predict taxpayer errors and strengthen the integrity of pre-filled

1442 Ibid.

1443 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 38. OECD; 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations – Country Experiences With the Use of Pre-populated Personal Tax Returns', OECD Publishing, 2006.

1444 Ibid., page 13.

1445 Ibid., page 16.

1446 Ibid.

inputs. When taxpayers attempt to change a pre-filled input, they are shown a nudge message which indicates that their intended modification may be erroneous.[1447] The system relies on the predictive modelling of taxpayer errors, based on research and machine learning into typical erroneous modifications of pre-filled inputs.[1448] The Australian tax administration recently developed a similar framework, wherein real-time accuracy checks are embedded into pre-populated returns. Based on historical data about amounts reported or assessed in respect of a given taxpayer, the system displays nudge warnings when the taxpayer input or modification to a pre-filled amount is flagged as considerably higher or lower than expected.[1449] Both the Spanish and Australian approaches seek to strengthen the integrity of pre-populated inputs, effectively discouraging manual changes by taxpayers.[1450]

Arguably, pre-populated tax returns may in most cases mitigate the incidence of taxpayer negligence and risk-taking behavior in income reporting. However, the provision of pre-populated tax returns does not alter the basic architecture of income tax compliance. Regardless of whether taxable income is expressed as a taxpayer input in a return or introduced directly by the tax administration, the actual payment of tax remains temporally disconnected from the generation of taxable income. In this respect, the mere fact that tax returns are partly pre-populated does not supersede taxpayers' perception of the payment of tax as an economic loss and the liquidity considerations connected to the payment of tax separately

1447 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2022, page 61.

1448 Ibid.

1449 Ibid.

1450 Many tax administrations surveyed in the most recent OECD Report on *Comparative Information on OECD and Other Advanced and Emerging Economies* informed the OECD that, when provided with a pre-populated tax return, most taxpayers do not attempt to manually change pre-filled inputs. There are several factors that may influence taxpayer behavior vis-à-vis pre-populated tax returns. For example, an ambivalent attitude towards tax compliance may mean that the taxpayer refrains from changing pre-filled inputs. This may notably be the case in regards to risk-averse taxpayers, who may rely on pre-filled inputs to prevent possible erroneous reporting. In a similar vein, pre-populated tax returns may dissuade risk-taking taxpayers from attempting to misrepresent taxable income, since the pre-filled inputs strengthen deterrence. To the extent that manual changes to pre-filled inputs are broadly erroneous (either because of taxpayer negligence or because the taxpayer deliberately attempt to misrepresent income), the argument in favor of discouraging manual changes through nudges is compelling.

from the generation of taxable income. In a basic form, pre-populated returns do not overcome compliance 'choices', as taxpayers continue to enjoy opportunities to misrepresent deductible expenses and other reportable circumstances.

The OECD's Tax administration 3.0 vision is notable through the ambitious proposition in favor of moving away from mere e-administration to 'a-administration'.[1451] In my view, the OECD does not express a call for optimizing the manner in which technological resources are used to automatize the administration of income compliance, as much as a call towards naturalizing income tax compliance altogether through automation. In this respect, the commodification of information received by tax administrations through third party information reporting arrangements into pre-populated tax returns is a welcome development. However, the extent to which pre-populated tax returns may in themselves determine effective taxation inarguably depends on the degree of sophistication of a tax administration's approach to the provision of pre-populated tax returns.

In the context of the collaborative economy, the large-scale adoption of third party information arrangements frameworks provides a significant opportunity for broadening the provision of pre-populated tax returns and extending these to platform workers. Usually, legislation that sets out third party information reporting requirements does not address how data collected and reported is to be used tax administrations. The onus falls on tax administrations themselves to initiate the provision of pre-populated returns. Indeed, data received pursuant to third party information reporting mechanisms may be exploited by tax administrations with a view to facilitating compliance. However, this requires two important elements. On the one hand, there is need for a change in the paradigm of how third party information reporting arrangements are viewed. Conventionally, the purpose of these instruments is related to improving the oversight and supervisory capabilities of tax administrations. However, this viewpoint is growing obsolete. Third party information reporting should be seen as a tool available to tax administrations to actively enable compliance. On the other hand, since third party information reporting alone does not entail compliance by design, the onus falls

1451 João Félix Pinto Nogueira; 'Tax Administration and Technology: from Enhanced to No-Cooperation?'; Digital Transformation of Tax Administrations, 2022, Available at SSRN: https://ssrn.com/abstract=4125999 or http://dx.doi.org/10.2139/ssrn.4125999 .

on tax administrations to supplement the data received with frameworks that are conducive to compliance.

2) Compliance by design approaches to income tax compliance

The dominant rhetoric in *Tax Administration 3.0* is that the improvement of compliance and administrative processes requires the penetration of taxpayers' ecosystems.[1452] As part of the Tax Administration 3.0 discussion document, the OECD suggested the extension of non-employee withholding arrangements to collaborative economy platform workers.[1453] Withholding arrangements are inarguably the archetypal compliance by design arrangement. When tax is collected through withholding, the main function of tax administration is the management of the withholding network itself. The reference to the application of withholding arrangements to income derived from platform transactions is quite incongruous, in light of the unsuccessful character of most unilateral initiatives to this end. It is surprising that the OECD advocated for the application of such measures without much consideration to the factors that have henceforth precluded the broad-based introduction of non-employee withholding. More importantly, the design and introduction of non-employee withholding requires policy change, more so than tax administration-driven developments.

But beyond non-employee withholding, the Tax Administration 3.0 discussion document provided a valuable opportunity for the OECD to revisit and elaborate on the role of tax administrations in developing frameworks that streamline taxpayer self-reporting and embed the notions originally set out in Compliance by design. In the context of the collaborative economy, the naturalization of taxpayer self-reporting entails the deployment of resources that allow the comprehensive tracking of events relevant to the income taxation of workers. As a matter of best practice, this includes the income generated by workers from activities undertaken through platforms, as well as expenses incurred in connection with income-generating activities and any other circumstances relevant to the determination of workers' income tax liability. Information about the income generated by workers is

1452 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014.

1453 OECD; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020, page 31.

broadly available to tax administrations (and may be translated into pre-populated tax returns) based on third party information reporting by platform operators. Conversely, tax administrations enjoy limited information on other facts relevant to determining workers' income tax liability, in particular expenses incurred. In tax systems where deductions are standardized, this is not particularly problematic.[1454] Information about expenses actually incurred by individual taxpayers (including platform workers) could be tracked, for example, through the development of opt-in frameworks that integrate tax accounting software directly into the business bank accounts of taxpayers. The emerging, but still embryonic emphasis on compliance by design frameworks to be developed by tax administrations further highlights the importance that the OECD encourages exchanges of experiences between states with the development and implementation of such frameworks and eventually, the replication of best practices

1454 It should be noted that even where a tax system sets out standardized deductions, taxpayers may still retain the possibility to claim deductions for expenses actually incurred rather than by applying a standard deduction.

IV. THE ROLE AND FUNCTIONS OF PLATFORM OPERATORS TOWARDS SUPPORTING THE EFFECTIVE TAXATION OF WORKERS

1. Involving platform operators in the compliance processes of workers: challenges, opportunities and limits

Collaborative economy platform workers are largely akin to ordinary hard to tax groups[1455] and perform income-generating activities under circumstances that harbor opportunities for non-compliance.[1456] However, since they perform their income-generating activities through platforms, their environment is not entirely decentralized.[1457]

Various approaches for securing the income taxation of collaborative economy workers contemplate an intermediary role for platform operators. Under initiatives for taxpayer engagement and education, platform operators cooperate with tax administrations in nudging workers towards voluntary compliance. Similarly, third party information reporting frameworks require platform operators to supply information to tax administrations regarding the identities and incomes derived by workers. Some states have introduced (or considered) measures whereby platform operators are required to withhold tax in respect of income derived by workers. The tripartite structure of collaborative economy arrangements lends itself to the assignment of intermediary functions to platform operators for supporting the taxation of workers in the view of policymakers.[1458]

1455 Michael Engelschalk; 'Creating a Favorable Environment for Small Businesses', in: James Alm et al. [Eds]; *Taxing the Hard to Tax*, Elsevier 2004.

1456 Marina Bornman and Jurie Wessels; 'The tax compliance decision of the individual in business in the sharing economy', *eJournal of Tax Research 16 (3),* 2019, pp. 425-439. Daniel K. McDonald; 'Is the sharing economy taxing to the traditional?', *Florida State University Business Review 16 (1)*, 2017, pp. 73-95.

1457 Andranik Tumasjan and Theodor Beutel; 'Blockchain-Based Decentralized Business Models in the Sharing Economy: A Technology Adoption Perspective', in: H. Treiblmaier and H. Beck [Eds.]; *Business Transformation through Blockchain,* Palgrave Macmillan, 2018.

1458 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019. European Parliamentary Research Service; 'The collaborative economy and taxation: Taxing the value created in the collaborative economy', European Parliament, 2018.

However, I surmise that there is a need for a tempered view towards the position of platform operators in measures for addressing the income taxation of workers. The notion that platform operators are always a necessary and appropriate intermediary is a misguided and narrowed viewpoint. In my view, there are three core predicates that should underline the discussion of the role and functions of platform operators in relation to the income taxation of workers:

- From the outset, the nature of collaborative economy arrangements may create some legal challenges or complexities;

- In some cases, the nature of collaborative economy arrangements creates opportunities for involving platforms in workers' compliance processes;

- In other cases, there are structural and legal limitations to the possibilities of relying on platform operators for addressing the income taxation of workers.

2. Asserted or potential challenges inherent in the nature of collaborative economy arrangements

A. The perceived opportunism of platform operators and the worker misclassification conundrum

1) Platform operators as opportunistic actors

At the inception of the collaborative economy, the prevailing sentiment amongst commentators was that the emergence and growth of this business model revolved around dodging regulation. In particular, there was a pervasive belief that platform operators in the private transportation and homesharing sectors facilitated the performance of activities that were economically interchangeable with highly regulated services, whilst operating outside the frameworks that regulated these. In the context of taxation, the notion steadfastly emerged that platform operators consistently mischaracterize workers as independent contractors, thereby prompting workers' non-compliance with their income tax obligations.

Ring and Oei notably referred to platforms' approach to workers compliance obligations as tax opportunism.[1459] They describe tax opportunism as the situation when a business that displays characteristics common with two regulatory regimes takes the position that it falls under the more lightly regulated framework of the two.[1460] Tax opportunism occurs when an enterprise takes advantage of the ambiguity regarding the (appropriate) regulatory framework and is able to cherry-pick the one that is least burdensome. Ring and Oei unequivocally distinguished their notion of tax opportunism from pure regulatory arbitrage. Arbitrage is the active design of an arrangement with a view to capturing an advantage. Pure arbitrage typically involves a mismatch between the economic substance of the arrangement and its legal treatment.[1461] By contrast, mere tax opportunism occurs when an enterprise takes advantage of the characteristics of its existing arrangements to support the argument that they should be treated under a more advantageous or less burdensome regulatory framework. Opportunism is a comparatively passive feat, which involves leveraging factual circumstances and legal ambiguity.

2) Issues of worker misclassification – the typical argument on platforms operators' opportunism

The classification of workers as independent contractors rather than employees is frequently cited as the area where platforms' opportunism is both most salient and most consequential.[1462] The designation of platform workers as independent contractors is not always appropriate, as evidenced by an emerging body of case law in different jurisdictions, where workers claim re-classification as employees of platform enterprises. However, even when such legal challenges are successful, the initial designation of workers as independent contractors carries important implications. The denomination of the relationship between platform operators and workers rests initially with platform operators. According to Ring, this creates

1459 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016 pp. 989-1069.

1460 Ibid.

1461 Victor Fleischer; 'Regulatory Arbitrage', Texas Law Review 89 (2), 2010, pp. 227-290.

1462 Blake E. Stafford; 'Riding the Line Between Employee and Independent Contractor in the Modern Sharing Economy', *Wake Forest Law Review 51 (5)*, 2016, pp. 1223-1254. Andrei Hagiu and Julian Wright; 'The status of workers and platforms in the sharing economy', *Journal of Economics and Management Strategy 28 (1)*, 2019, pp. 97-108.

room for platform operators to leverage the first-mover effect: the ability to secure a regulatory advantage by being the first to act on a legal question.[1463] Once a first party has acted on a legal question, the effects of this are in practice difficult to displace or overcome.

However, challenges to workers' status as independent contractors are not always successful. More importantly, such challenges do not commonly arise in the collaborative economy outside the realm of the private transportation model, inviting questions about the genuine extent of the worker misclassification issue.[1464]

Although doctrines and laws for the classification of workers vary across states, the line between a worker's status as an employee or independent contractor is usually drawn by reference to tests that emphasize control and economic dependency.[1465] The control test addresses the extent of direction and supervision exercised over a worker. The greater the extent of direction and supervision from a principal, the stronger the inference that the worker is an employee. Control is typically ascertained by reference to the facts and circumstances at play the relationship between the worker and principal.[1466] The economic dependency test determines

1463 Diane M. Ring; 'Silos and First Movers in the Sharing Economy Debates', *Law & Ethics of Human Rights 13 (1)*, 2019, pp. 61-96.

1464 Elsewhere in this contribution, I argue that worker misclassification disputes are more prevalent in the ridesharing segment of the collaborative economy compared to other models here considered. Modern notions of labor law acknowledge the power imbalance between employees and principals and take a protectionist approach towards the employee. Additionally, employees and independent contractors are also subject to different sets of rules for tax purposes. An entity's status as an employer will entail the incurrence of various compliance burdens under labor and tax law. This explains the incentive to label workers as independent contractors. The problem of worker misclassification is by no means novel, however it is exacerbated by the emergence and proliferation of peer-to-peer work under the collaborative economy. See, in this respect: Robert Sprague; 'Worker (Mis)Classification in the Sharing Economy: Trying to Fit Square Pegs in Round Holes', A.B.A Journal of Labor & Employment Law 53, 2015. Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', Washington University Law Review 93 (4), 2016 pp. 989-1069.

1465 Blake E. Stafford; 'Riding the Line Between Employee and Independent Contractor in the Modern Sharing Economy', *Wake Forest Law Review 51 (5)*, 2016, pp. 1223-1254.

1466 Examples of relevant facts and circumstances may include the discretion afforded to the worker in how to discharge the work assigned (or the possibility of the worker to delegate an assignment to a third party unrelated to the paying entity), the question of whether the paying entity supplies the tools necessary for the performance of the tasks.

whether the worker is economically reliant on a principal, as opposed to operating an economic activity autonomously.[1467] Similarly to the control test, economic dependency test is ascertained by reference to the facts and circumstances of that relationship. This may include the respective investments made by the worker and the principal in the materials used for the performance of work, the worker's personal exposure to profit and loss, or the extent of personal initiative of the worker in the performance of duties.[1468]

The manifold arguments invoked by platform enterprises in support of their classification of workers as independent contractors pierce precisely through the control and economic dependency tests and relate to the core characteristics of the collaborative economy. Platform operators often argue that workers enjoy full flexibility as to the time spent performing income-generating activities through the platform. This differs from ordinary employees, whose working hours are contractually pre-determined.[1469] Additionally, platform workers are formally exposed to profit and loss, since the income they derive in any given period depends on the extent and quality of their activities. Furthermore, in some segments of the collaborative economy workers commonly enjoy leeway regarding the fees charged to customers for services supplied.[1470] Collaborative economy platform workers are also responsible for the assets used in the performance of their activities. By contrast, employees are typically provided with the tools necessary for their duties by an employer (or reimbursed for costs incurred to procure such tools). This follows from the precept that collaborative economy platform workers use personal assets in the performance of their income-generating activities.

At face value, these differences between the circumstances of platform workers and ordinary employees amount to a sufficiently compelling justification for their

1467 Blake E. Stafford; 'Riding the Line Between Employee and Independent Contractor in the Modern Sharing Economy', *Wake Forest Law Review 51 (5)*, 2016, pp. 1223-1254.

1468 Ibid.

1469 Robert L. Redfearn III; 'Sharing Economy Misclassification Employees and Independent Contractors in Transportation Network Companies', *Berkley Technology Law Journal 31 (2)*, 2016, pp. 1023-1056.

1470 However, in other business models, in particular peer-to-peer transportation, prices are determined by the platform automatically and cannot be altered by the workers. Homesharing platform operators do not usually apply price-setting mechanisms, they merely recommend pricing ranges.

classification as independent contractors. However, the way in which workers perform income-generating activities varies heavily in practice depending on the particulars of specific platform enterprises. As such, worker misclassification is not a dominant issue in the homesharing and all-purpose freelancing segments of the collaborative economy. However, it is a frequent point of contention in the peer-to-peer private transportation sector. This cautions against broad arguments about platform operators' opportunism on issues of worker misclassification.

Classification as an independent contractor is legally actionable by workers. However, misclassification claims entail a lengthy and resource-intensive process. Additionally, in jurisdictions that facilitate out-of-court settlements, worker misclassification disputes may remain substantively unresolved.[1471] Furthermore, the terms of service of many platform operators include arbitration clauses that bar the pursuit of litigation by workers. Whereas such clauses are sometimes ruled to be unlawful in and of themselves, the pursuit of a challenge against the arbitration clause amounts to an additional hurdle for workers seeking to litigate their status.[1472]

For income tax purposes, independent contractors experience comparatively heavier and more complex compliance costs than employees. Consequently, taxpayers who may otherwise have no predisposition towards non-compliance are exposed to increased compliance burdens and possibilities for negligent non-compliance.[1473] On the flip side, the perceived opportunity for non-compliance is more sizeable for independent contractors compared to employees, as a result

1471 Douglas O'Connor et al. v. Uber Technologies Inc. et al.; United States District Court of Northern California [Case No. 13-cv-03826-EMC], 2019.

1472 Another reason why existing regulatory frameworks provide only limited avenues to addressing issues of worker misclassification in the collaborative economy stems from the interplay between the criteria applied by courts in the control and economic dependency tests and the internal policies specific to each individual platform enterprise. As touched upon previously in these paragraphs, the control and economic dependency tests are chiefly based on facts and circumstances. The application of these tests inevitably entails an inquiry into the particulars of the relationship between a worker and a platform operator. As such, the outcomes of these tests are a largely casuistic matter. I discuss these issues in more detail in Part I.II.5.

1473 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

of the differences in the reporting and collection mechanisms applicable to these taxpayers.[1474] As such, this may compound some workers' predilection for non-compliance.

Still, in many cases, the relationship between platform operators and workers simply does not meet the thresholds of control and economic dependency. In such cases, it is arguably questionable whether the designation of workers as independent contractors is an opportunistic move rather than an appropriate reflection and denomination of the relation between platform operators and workers. The employee/independent contractor conundrum is set out in dichotomous terms, but the casuistic particularities of relations between workers and platform operators may create ambiguity even where no opportunism is at play. The collaborative economy is premised on workers exploiting the idle excess capacity of private assets with a view to generating income. The peer-to-peer nature of collaborative economy platform work lies at the boundary between private and professional activity. Consequently, the collaborative economy as a whole inherently operates in an area that harbors ambiguity and challenges the application of rigid notions to describe the relation between platform operators and workers. In this respect, the purportedly ambiguous status of platform workers as independent contractors may well be a composite product of legal indeterminacy, the true nature of the relation between workers and platform operators and some measure of opportunism by platform operators. There is no simple answer to the general question of whether collaborative economy platform workers should be treated as employees or independent contractors for tax and labor law purposes. In recent years, a number of responsive approaches to clarifying the status of collaborative economy platform workers have been suggested or initiated.

A) The EU Commission's proposal for a Directive to establish the status of platform workers as employees through a rebuttable presumption

Recently, the EU Commission tabled a proposal for a Directive aimed at improving legal certainty regarding the employment status of collaborative economy platform workers and enhancing working conditions for service providers in the collaborative

1474 Marina Bornman and Jurie Wessels; 'The tax compliance decision of the individual in business in the sharing economy', eJournal of Tax Research 16 (3), 2019, pp. 425-439.

economy.[1475] The Directive sets out five criteria to indicate whether a platform operator exerts 'control' over workers. The criteria cover:

- Whether the platform operator 'effectively determines' the 'upper limits for the level of remuneration' derived by the worker;

- Whether the platform operator requires workers 'to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or the performance of work';

- Whether the platform operator supervises 'the performance of work' or verifies 'the quality of work results, including by electronic means';

- Whether the platform operator 'effectively restricts [workers'] freedom, including through sanctions, to organize their work; in particular, the discretion to choose working hours or periods of absence, to accept or to refuse tasks, or to use subcontractors or substitutes'; and

1475 Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM(2021) 762 final. The improvement of working conditions is related to the social protections afforded to employees under labor law. The proposed Directive applies a broad and encompassing scope. Under the instrument, platform operators are referred to as 'digital labor platforms'. These are defined to cover any natural or legal person that provides a commercial service through electronic means (such as a website or mobile application), at the request of a recipient of a service and which involves 'as a necessary and essential component, the organization of work performed by individuals, irrespective of whether that work is performed online or in a certain location'. The term 'platform work' is defined as 'any work organized through a digital labor platform and performed [..] by an individual (i.e., a worker) on the basis of [a contractual relation with the digital labor platform]. Finally, the term 'person performing platform work' is defined as 'any individual performing platform work, irrespective of the contractual designation of the relationship between that individual and the digital labor platform by the parties involved'. These definitions are laid out in Article 2(1)-(3) of the proposed Directive. For clarity, I note that the proposed Directive also applies the term 'platform worker', but uses a different meaning of the term as used in the context of this research. As part of this research, I refer to platform workers as any individuals that perform income-generating activities through platforms. In the proposed Directive, Article 2(4) defines the term 'platform worker' to mean 'any person performing platform work who has an employment contract or employment relationship [with the platform operator]'.

- Whether the platform 'effectively restricts the possibility [of workers] to build a client base or to perform work for any third party'.[1476]

If the relation between the platform operator and worker meets at least two of these criteria, a rebuttable presumption is established that the worker is an employee of the platform operator.[1477] In rebutting this presumption of employment, platform operators bear the burden of proof.

In a Communication published alongside the proposed Directive, the Commission unequivocally indicated that worker misclassification is not a prevalent issue, in that most collaborative economy platform workers are genuine independent contractors.[1478] In other words, the purpose of the Directive is purportedly not to determine a broad wave of worker re-classification. Instead, the main objective of the instrument is to support legal certainty, through a control test that reflects the particularities of collaborative economy arrangements. The Commission also acknowledged that platform operators might react to this development by tweaking their relations with workers in order to preserve workers' status as independent contractors. Control is ultimately a meager threshold test, meaning platform operators (or any other principal) may adjust the extent of control exercised over a worker downwards. In my view, this is hardly problematic, because the ultimate purpose of the Directive is only to enhance legal certainty on the definition of control. In this respect, a clear definition of control removes the circumstantial ambiguity that may otherwise enable opportunism, and ultimately generate questions about misclassification.

1476 Ibid., Article 4(2).

1477 Ibid., Article 4(1).

1478 European Commission; 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work', COM(2021) 761 final. As part of the Communication, the Commission estimates that there are a28 million individuals that undertake income-generating activities through platforms in the EU overall. According to the Commission, up to 5.5 million of these may be 'false self-employees'. In my view, the focus should not be on the absolute percentage of misclassified workers, but rather on the concentration of misclassified workers across specific segments of the collaborative economy. Worker misclassification issues are considerably more prevalent in the ridesharing and delivery sectors compared to other parts of the collaborative economy.

In the collaborative economy, legal debates about worker classification are frustrating because of the appearance that platform operators seek to 'have their cake and eat it too'. Worker misclassification issues only arise where vague legal tests allow platform operators to effectively control the conduct of workers' activities under a formal and thinly veiled guise of self-employment. A clear and predictable control test only targets legal ambiguity, not the general notion that collaborative economy platform workers may be genuine independent contractors. In my view, the overarching ambiguity related to the control test which the Directive seeks to address is rooted in the evolving circumstances of modern working conditions. As a basis for establishing a master-servant relationship, control entails that a principal regulates the manner in which a worker conducts their activities. The technology-driven nature of collaborative economy work does not lend itself to a rigid interpretation of control.[1479] One of the core reasons why platform operators exert some degree of control over the conduct of workers relates to the experience of end-users and the reputation of the platform operator itself. For example, price-setting algorithms protect end-users against arbitrary or predatory pricing by workers. Similarly, the rating mechanisms used by most platform operators harness user safety and mitigate information asymmetries between workers and end-users, strengthening consumer confidence. However, if these mechanisms are sufficient to establish a presumption that workers are employees of the platform operator, one may only speculate how platform operators will adjust.

Assuming a platform worker is classified as an employee pursuant to the test set out in the Directive, that worker would generally be treated as such for labor and tax

1479 In this respect, the five criteria laid out in the Directive set out what is arguably a low threshold for control. For example, the first criterion (i.e., wherein the platform operator 'effectively determines' the 'upper limits' of prices charged to end-users for services supplied by end-workers) could be easily met in practice. Platform operators that use price-setting algorithms would in all cases meet this test. However, the term 'effectively determines' as used in the Directive may suggest that platform operators which merely recommend upper pricing limits for workers could also fulfill this test if they penalize or sanction workers that charge prices in excess of the recommended upper limit. In a similar vein, the third criterion (referring to platform operators that supervise the conduct of workers 'including through electronic means') may affect the usage of user feedback or rating mechanisms, when these are used by the platform operator to sanction or reward a worker.

law purposes alike.[1480] Consequently, amounts derived by workers from activities performed through platforms should be characterized as employment income, and platforms deemed to be employers would be required to withhold tax in respect of such amounts under the PAYE frameworks for the collection of tax in respect of employment income applied in all EU Member States. Notably, the proposed Directive remains unclear on the link between the labor and tax law treatment of platform workers. In particular, the instrument does not address issues related to the management and enforcement of withholding tax obligations when platform operators neither reside nor maintain a presence in a Member State that would require withholding in respect of employment income.

B) Scholastic proposals for a 'dependent contractor' worker category

While the EU Commission seeks to clarify the bounds of the employee/independent contractor dichotomy, some authors believe that collaborative economy platform workers fall outside this dichotomy altogether. The Commission proposal for a Directive to remove ambiguity on the threshold of control as used to ascertain the status of workers seeks to preclude opportunities for platform operators to opportunistically exploit ambiguity. Conversely, if the argument is developed that collaborative economy platform workers should be classified under a specific category outside the employee/independent contractor dichotomy, the implication would be that controversies related to the status of workers are not the product of legal indeterminacy or platform operators' opportunism, but rather a consequence of the peculiar nature of collaborative economy work arrangements.

For example, Carboni argues that neither employee nor independent contractor status could capture the realities of collaborative economy arrangements and reflect the relation between workers and platform operators.[1481] Indeed, the employee/independent contractor conundrum generally invites the balancing of the totality of the circumstances under which a worker performs their activities. In the case of collaborative economy platform workers, this involves questions about the (direct or indirect) control and economic dependency in the relation between

1480 Usually, individuals that are treated as employees for labor law purposes are also treated as employees for tax purposes.

1481 Megan Carboni; 'A New Class of Worker for the Sharing Economy', *Richmond Journal of Law & Technology 22 (4)*, 2016, pp. 1-56.

platform operators and workers rises to the level of 'employment'. In practice, this involves balancing the flexibility and freedom enjoyed by workers in structuring the income-generating activities they undertake through platforms against other circumstances that indicate subordination in their relation with platform operators. According to Carboni, the outcomes under these tests may be unpredictable and legally and economically unsatisfactory. Notably, the labor laws of some states (for example the United Kingdom and Canada) do recognize a third worker category. This approach ensures the benefit of some social protection for workers that do not enjoy the full extent of entrepreneurial freedom of fully-fledged independent contractors.

The argument on the desirability of a third worker category for accommodating the circumstances of the collaborative economy highlights the confluence between issues of labor and tax law, but also emphasizes the need for a cautious approach to distinguishing between the underlying labor and tax law issues at play. For labor law purposes, the employee/independent contractor dichotomy is relevant in determining an individual's entitlement to various social rights. The power imbalance inherent in a master-servant relationship justifies the social entitlements granted by most states to employees on equitable grounds (paid leave, minimum wage, safeguards against arbitrary termination, etc.). A power imbalance is ultimately a threshold question in and of itself, so the notion that some individuals are neither fully independent nor effectively controlled and economically dependent on a principal but instead fall somewhere in the middle of this continuum is entirely valid. There are therefore compelling arguments for recognizing such working arrangements and formalizing these under labor law with a view to safeguarding the social and economic rights of workers.

C) Worker status should not be crucial for income tax compliance purposes

Personal income tax is a broad-based tax on consumption power. Under personal income tax, equity entails that the (economic) burden of tax liabilities is aligned with the power of sacrifice of the taxpayer. In a purely theoretical sense, the status of an individual and the circumstances under which they derive income (from employment or an independent trade) does not matter. The tax compliance safeguards applied in respect of employees (i.e., the collection of tax through withholding by the employer and the third party information reporting duties applied to employers in respect of

employees) are in place for reasons of convenience and feasibility. If the objective of policymakers is to safeguard workers' income tax compliance (e.g., through the application of withholding taxes on receipts derived from income-generating activities or the institution of third party information reporting requirements), this neither requires the reclassification of workers as employees nor the recognition of a separate worker category. In a structural sense, withholding taxes and third party information reporting arrangements are feasible whenever an intermediary that may be assigned to withhold tax or report information exists, regardless of the status of workers themselves.

Formally, there is surely room to argue that the treatment of collaborative economy platform workers as employees could considerably alleviate income tax compliance challenges, assuming platform workers could simply be reassigned under PAYE/ordinary wage tax collection frameworks. The reason for this lies in the fact that these frameworks amount to compliance by design arrangements. In turn, the feasibility of compliance by design arrangements depends on the availability of compliance intermediaries and an underlying technological infrastructure, more so than the status of taxpayers as employees or independent contractors.

The ongoing policy (and scholastic) calls for clarity and certainty as regards the labor law status of collaborative economy platform workers are inarguably an important and desirable development. While I argue in this research that workers misclassification issues should not be overstated, I cannot go as far as to rightly argue that the status of collaborative economy platform workers as independent contractors is at times contentious. However, it is my view that solutions to the income taxation of collaborative economy platform workers should not be deeply rooted in labor law developments necessarily. To begin with, labor law developments will inevitably continue to work around the threshold tests of control and economic dependency, which do allow platform operators to maintain the status of workers as independent contractors. Labor law developments therefore cannot provide a generalized solution to the income tax compliance challenges at play in relation to collaborative economy platform workers. While issues of worker classification may depend on the particularities of the relation between workers and specific platform operators (as evidenced by the prevalence of worker misclassification issues in the ridesharing model, rather than other segments of the collaborative economy), the income tax compliance challenges posed by platform workers play out similarly

across the board, regardless of the relation with specific platform operators. Additionally, if the argument is accepted that the digitalization of economies will continue to shift individuals' income-generating patterns, then platform workers would merely remain a first example of an emerging hard to tax group. In my view, measures for addressing the income taxation of platform workers should be flexible and amendable to other emerging hard to tax categories, including those were worker misclassification issues do not arise in the first place.[1482]

B. Platform operators as information societies and implications of platform operators' status under EU law

The interchangeability between services rendered by workers in the collaborative economy and similar services outside this framework has long invited questions about the appropriate qualification of platform enterprises themselves.

Under EU law, the most authoritative guidance on the legal characterization of certain collaborative economy enterprises is inferred from three recent judgments of the CJEU. The CJEU's first ruling on the status of a collaborative economy enterprise was in *Asociación Profesional Élite Taxi v. Uber Systems Spain*,[1483] where the core question was whether *Uber's* activities of connecting drivers to end-users amounted to mere intermediation or a fully-fledged transportation service. Subsequently, the CJEU addressed a nearly identical question of characterization in *Uber France SAS.*[1484] The most recent judgment inquiring into the status of a collaborative economy enterprise was the *Airbnb Ireland* case,[1485] where the CJEU dealt with the question whether the activities of *Airbnb* qualify the undertaking as a real estate agent or a mere intermediation service.

As a starting point, the CJEU conceded in all three cases that *Uber* and *Airbnb* render a *prima facie* intermediation service.[1486] However, determining the ultimate

1482 Peer-to-peer income-generating activities may well be provides outside the collaborative economy.

1483 Case C-434/15 Asociación Profesional Elite Taxi v. Uber Systems Spain SL.

1484 Case C-320/16 Uber France SAS v. Nabil Bensalem.

1485 Case C-390/18 Airbnb Ireland [X v. Airbnb Ireland UC et al.]

1486 Case C-434/15 Asociación Profesional Elite Taxi v. Uber Systems Spain SL para 35. Case C-320/16 Uber France SAS v. Nabil Bensalem para 19, Case C-390/18 Airbnb Ireland [X v.

character of their activities required an analysis into whether the intermediation element was disconnected from the underlying service rendered by workers (i.e., private transportation in the *Uber* cases and short-term accommodation in the case of *Airbnb*) or instead, whether the intermediation activities of *Uber* and *Airbnb* amounted to an integral component of the underlying services.[1487] The CJEU made this determination by reference to a detailed inquiry into the respective operational makeups of *Uber* and *Airbnb*.

In the two *Uber* cases, the CJEU focused on the degree of control exercised over the activities of drivers.[1488] In particular, it found that *Uber* exerted and enforced decisive influence over drivers' fares, their conduct and the quality of the underlying services.[1489] The CJEU ultimately concluded that such degree of influence entails that *Uber's* intermediation services form an integral part of the underlying private transportation service.[1490]

Conversely, the CJEU reached a diverging conclusion in the *Airbnb* case. The Court analyzed the operational makeup of *Airbnb*, which primarily involves enabling connections between hosts and end-users. In addition to this intermediation component, *Airbnb* provides a series of secondary services, such as civil liability insurance, damage guarantees, payment processing services and a tool for the estimation of rental prices.[1491] The CJEU ultimately found that *Airbnb* was an information society, as the intermediation services were sufficiently detached from the underlying short-term accommodation service provided by workers through *Airbnb*'s platform.[1492] According to the CJEU, *Airbnb* merely supplied a marketplace of accommodation offerings.[1493] Unlike *Airbnb*, *Uber* autonomously and automatically matches a service provider and an end-user, by reference to physical proximity, specific vehicle requests made by end-users or the availability of a given driver. By

Airbnb Ireland UC et al.] paras 39 et seq.

1487 Case C-434/15 Asociación Profesional Elite Taxi v. Uber Systems Spain SL para 50.

1488 Marcos Alvarez Suso; 'E-Platforms Providing Services in the Short-Term Rental Accommodation Market: The Challenges for Taxation of These Services under the EU VAT', International VAT Monitor, 2020, pp. 8-15.

1489 Case C-434/15 Asociación Profesional Elite Taxi v. Uber Systems Spain SL para 39.

1490 Ibid., para 40.

1491 Case C-390/18 Airbnb Ireland [X v. Airbnb Ireland UC et al.] para 39.

1492 Ibid., para 53.

1493 Ibid.

contrast, *Airbnb* merely enables a marketplace where end-users could connect with hosts. *Airbnb* itself does not make autonomous or definitive decisions about the matches of specific parties. The secondary services provided by *Airbnb* as part of its marketplace did not alter the Court's decision.

Neither the *Uber* nor the *Airbnb* cases concerned issues of tax law. However, this does not preclude some brief discussion about the (potential) implications of these judgments on tax matters.

1) Relevance of the status of an enterprise as an information society under EU law

Platforms' characterization as information societies may carry significant consequences under EU law.[1494] Notably, under the E-Commerce Directive, EU Member States are precluded from restricting market access and regulating the supply of services for information societies established in other Member States. As the foregoing paragraphs have strived to convey, the CJEU determined whether *Uber* and *Airbnb* qualified as information societies by reference to the link between the intermediation component of their activities and the underlying service rendered by workers. Following the *Uber* judgments, a platform operator is more than an information intermediary when the degree of control exerted over workers' activities makes the intermediation activities of the platform operator inseparable from the underlying service rendered by the platform worker. The test impliedly developed by the CJEU in drawing this line can invite uncertainty and inconsistencies between the classification of enterprises intermediating similar services but exercising different degrees of control over workers. By extension, it may also create opportunities for platforms to structure or restructure their practices around this test.[1495]

1494 Article 56 TFEU; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ 178 2000. Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services OJ 241 2015.

1495 Charlotte Garden and Nancy Leong; 'The Platform Identity Crisis – Responsibility, Discrimination, and a Functionalist Approach to Intermediaries', in: Nestor M. Davidson et al. [Eds.]; The Cambridge Handbook of the Law of the Sharing Economy, Cambridge University

2) Possible implications on platform workers' status as independent contractors?

To the extent that the classification of platform operators depends on the control exercised over workers' activities, an accompanying implication may well come to be that enterprises not regarded as mere information societies could be scrutinized as regards their classification of workers as independent contractors rather than employees. Whilst the questions addressed by the CJEU in the *Uber* cases specifically are not focused on tax or employment law issues, the characterization of *Uber's* particular business model as a transportation rather than a mere intermediation service could indirectly affect the status and characterization of workers as independent contractors.[1496]

3) Information society status and third party information reporting on tax matters

The implications of platform operators' status as information societies under the E-Commerce Directive in connection with taxation were addressed more explicitly in a recent judgment of the CJEU. The case concerned the compatibility between the E-Commerce Directive and Belgian legislation that required providers of property intermediation services to report to the regional tax administration information on transactions involving tourist accommodation.[1497] *Airbnb*, whose status under EU law as an information society was already ascertained by the CJEU, argued that the

Press, 2018, pp. 449-458. Some authors surmise that the CJEU should have instead made the determination of whether Uber and Airbnb's respective activities amounted to mere intermediation by reference to a functionalist approach, focused on the comparison between the types of services rendered by workers through platforms with economically interchangeable transactions undertaken outside the realm of the collaborative economy. Their argument is that a functionalist test based on the economic interchangeability of services would lessen the emphasis on what platforms' a priori self-characterization and their relationship with workers. Ultimately, a test focused on the relationship between the intermediation component and the underlying service as applied by the CJEU in these judgments is nothing more than a threshold test, liable to invite opportunistic behavior purposed on remaining below that threshold.

1496 Katerina Pantazatou; 'Taxation of the Sharing Economy in the European Union', in: Nestor M. Davidson et al.; *Cambridge Handbook of Law and Regulation of the Sharing Economy*, Cambridge University Press, 2018.

1497 Case C-674/20 Airbnb Ireland UC v. Région de Bruxelles-Capitale, paras. 13 et seq.

requirement to supply such information ran contrary to the E-Commerce Directive, since the purpose of the E-Commerce Directive is to safeguard the free movement of online services within the internal market.

'The field of taxation' expressly falls outside the scope of application of the E-Commerce Directive.[1498] Additionally, the legal basis for the E-Commerce Directive is Article 114 TFEU, which excludes 'fiscal provisions'.[1499] To the extent that the Belgian measure requiring *Airbnb* to supply information to the regional tax administration amounted to a tax measure, it would fall outside the scope of protection harnessed by the E-Commerce Directive. According to the CJEU, the Belgian legislation that required *Airbnb* to report information in respect of tourist accommodation was a fiscal provision, and therefore fell outside the scope of the E-Commerce Directive. The Belgian measure could therefore not run contrary to the Directive.[1500] The CJEU reasoned that although *Airbnb*'s activities (online property intermediation) concerned information services protected under the E-Commerce Directive, the contested Belgian measure as applicable to *Airbnb* was a tax measure, outside the scope of the Directive. The recipient of the information requested was a (regional) tax administration, and the underlying information was relevant to the identification of persons liable to tax and the basis for the assessment of tax.[1501]

1498 Ibid., para 30. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ 178 2000, Article 5(1)(a).

1499 Case C-674/20 Airbnb Ireland UC v. Région de Bruxelles-Capitale, para. 27.

1500 Ibid., para. 34.

1501 Ibid., para 33. As part of the same case, the CJEU also addressed the question of whether the Belgian measure restricted the free movement of services within the meaning of Article 56 TFEU. The CJEU found that the measure applied indiscriminately to all undertakings that provide property intermediation services. *Airbnb* argued that it is however disproportionately impacted by the information reporting requirements. Responding to this argument, the CJEU remarked that this fact is merely a quantitative aspect which reflects the comparatively larger market share of *Airbnb* itself, rather than being an effect of the *manner* in which *Airbnb* provides services in the internal market. The CJEU noted that the legislation did not target *Airbnb* or other providers of property intermediation services. Rather, the purpose of the measure was to enable the tax administration to manage a regional tourism tax.

Airbnb also challenged the compatibility of Italian legislation requiring the collection and transmission of information about the identities and incomes derived by hosts with Directive 2006/123 ('the Services Directive'). The Services Directive operationalizes the freedom to provide services in the internal market by requiring EU Member States to abolish restrictions in a number of fields. However, like the E-Commerce Directive, the 'field of taxation' is excluded from the scope of application of the Services Directive.[1502] In a recent judgment in Case C-83/21, the CJEU confirmed that such third party information reporting requirements amount to fiscal measures and therefore fall outside the scope of the Services Directive. In Case C-83/21, the CJEU further developed the guidance on the criteria that determine the nature of a domestic measure as falling under the 'field of taxation'. Firstly, the addressee of the information collected by the intermediary is the tax administration, meaning an organ of the tax system. Secondly, third party information reporting requirements are set out in tax legislation. In effect, this criterion may be interpreted to mean that a measure adopted under the domestic legislative framework of taxation is regarded as a tax measure. Thirdly, third party information reporting requirements pertain to the 'field of taxation' since their purpose is to support the identification of the person liable to liable to tax and the determination of the basis of taxation. This is because third party information reporting requirements extend to information pertaining to the identity of the taxpayer and income derived by the taxpayer through the intermediary subject to reporting.

While arguably not landmarks in the CJEU's jurisprudence on the tax aspects of the collaborative economy, these judgment are a welcome development. Since tax measures are excluded from the scope of the E-Commerce (and Services) Directive, there is some value in a CJEU judgment setting out clear criteria for determining whether a measure is a 'tax measure'. More importantly, this case law settles questions about the compatibility of third party information reporting requirements with EU law. This is arguably relevant in light of the implementation of DAC7 in the domestic legislation of Member States.

1502 Directive 2006/123EC of the European Parliament and the of the Council of 12 December 2006 on services in the internal market OJ L 376, 2006, Article 2(3).

3. Delineating the role of platform operators in supporting the income taxation of workers – Opportunities and limitations

A. Brief background – measures for addressing the income taxation of platform workers as 'intermediary regulation' arrangements

A notable characteristic of many measures for addressing the income taxation of platform workers relates to the role assigned to platform operators.[1503] These measures may be defined as 'intermediary regulation' arrangements. Intermediary regulation is an umbrella term for a collection of tax measures that interpose a third party between the taxpayer and tax administration.[1504] Such arrangements are underpinned by a series of interconnected rationales. Firstly, the relation between taxpayers and tax administrations is inherently obtuse. Tax administrations are limited in their capabilities to police taxpayer compliance. For this reason, there emerges a circumstantial push for partially reassigning this function to third parties. Secondly, tax compliance processes are downstream by nature. In turn, this entails that tax administrations' interventions can only occur on an *ex post factum* basis.[1505] The shortfalls of the downstream character of tax compliance processes can be addressed through the deployment of intermediary regulation arrangements at some point or points before the actual filing of a return by the taxpayer. Thirdly, the manner in which many taxpayers undertake their income-generating activities creates opportunities for the introduction of intermediary regulation protocols. As a matter of practical reality, most economic activities entail income passing through the hands of various centralized bodies. Intermediaries

1503 As part of the taxpayer engagement and education initiatives driven by tax administrations in OECD and EU states, platform operators cooperate with tax administrations in informing workers about the (income) tax consequences of their activities. Third party information reporting arrangements require platforms to supply information with a view to supporting the oversight capabilities of tax administrations. In the few states that have introduced withholding taxes for income derived by workers from platform activities, platform operators are required to act as collection agents. It readily follows that all such measures require platform operators to provide a support structure for tax administrations in the discharge of their different functions.

1504 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2),* 2018, pp. 283-333. Sounman Hong and Sanghyun Lee; 'Adaptive governance and decentralization: Evidence from regulation of the sharing economy in multi-level governance', *Government Information Quarterly 35 (2),* 2018, pp. 299-305.

1505 Ibid.

are naturally present within the ecosystem of many taxpayers. Policymakers often leverage these circumstances as a justification for the deployment and application of intermediary regulation frameworks.

B. 'Intermediary regulation' arrangements as interpreted in existing literature

In existing literature, the rationale of intermediary regulation is explained under two complementary theories: the theory of *regulatory gatekeeping* and the theory of *structural systems*.

1) Regulatory gatekeeping

Regulatory gatekeeping suggests the assignment of duties upon the third parties with whom taxpayers naturally interact in order to frustrate the opportunities for non-compliance that taxpayers enjoy.[1506] Regulatory gatekeeping is grounded on the view that certain third parties have the capability to disrupt and prevent taxpayers' non-compliant conduct.[1507] Intermediary regulation arrangements therefore attempt to dismantle non-compliant behavior by requiring a third party intermediary to pre-emptively influence behaviors that would or could otherwise result in non-compliance.

Conservative concepts for theorizing tax compliance indicate that taxpayer reporting behavior is influenced by perceptions related to the probability of detection of non-compliance.[1508] Direct deterrence exercised by tax administrations is oftentimes insufficient at best and ineffective at worst. The theory of regulatory gatekeeping

1506 Reiner H. Kraakman; 'Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy', Journal of Law, Economics, & Organization 2 (1), 1986, pp. 53-104, introducing the general notion of gatekeeper regulation, but without a focused emphasis on issues of tax compliance. See also: Ke Steven Wan; 'Gatekeeper Liability versus Regulation of Wrongdoers', Ohio Northern University Law Review 34 (2), 2008, pp. 483-522.

1507 Susan C. Morse; 'Tax Compliance and Norm Formation under High-Penalty Regimes', Connecticut Law Review 44 (3), 2021, pp. 675-736.

1508 Michael G. Allingham and Agnar Sandmo; 'Income Tax Evasion: A Theoretical Analysis'. *Journal of Public Economics 1,* 1972, pp. 323-338. Stefanos A. Tsikas; 'Enforce taxes, but cautiously: societal implications of the slippery slope framework', *European Journal of Law and Economics 50 (1)*, 2020, pp-149-170.

assumes that intermediary regulation can backstop the limitations of direct deterrence. The intermediary is closer to the perpetrator of (potential) misconduct than the tax administration, and this proximity strengthens the effectiveness of direct deterrence. Additionally, intermediary regulation arrangements may amount to a form of indirect deterrence, in that they diminish the incentive for taxpayers to engage in non-compliant conduct in the first place. In other words, intermediary regulation arrangements spread the costs and risks of compliance and enforcement through the interposition of a third party between the taxpayer and the tax administration.

2) Structural systems

The necessity and desirability of intermediary regulation is also set out through the theory of structural systems.[1509] In the face of non-compliance by legal subjects with any legal requirement, the most intuitive response available to governments is to tighten enforcement and penalties, exacerbating the consequences of non-compliance. However, measures designed along prohibitive lines can have a number of theoretical and practical shortcomings. The introduction of additional penalties is liable to increase the complexity of existing laws. Additionally, prohibitive laws may foster mistrust and resistance. Prohibitive laws are inherently costly in management and administration. They are prone to intensify existing regulatory failures, more so than to remedy these. For these reasons, structural systems are an alternative to prohibitive regulation. Structures or structural systems are frameworks that promote and incentivize compliance by 'making the undesirable behavior less profitable or more troublesome'.[1510] Structural systems do not alter the legal consequences of non-compliance – they merely mitigate the appeal, ease or opportunity for non-compliance without altering the essence of the underlying substantive laws.[1511]

C. Markers of effectiveness for intermediary regulation arrangements

The effectiveness of intermediary regulation arrangements depends on a series of factors.

1509 Leandra Lederman; 'Statutory Speed Bumps: The Roles Third Parties Play in Tax Compliance', *Stanford Law Review 60 (3)*, 2007, pp. 695-743.
1510 Ibid.
1511 Ibid.

1) Proportional and meaningful reassignment of compliance costs

Under intermediary regulation arrangements, the party interposed between the taxpayer and the tax administration bears compliance costs flowing from the application of the measure. It is generally accepted that compliance cost management is inversely related to enterprise size.[1512] Nevertheless, policy considerations concurrently dictate that compliance costs should be proportional to the overarching objective of a given measure. The assignment of compliance costs on the intermediary should correspond to the lessening of the administrative costs of government in securing tax compliance and collection. Intermediary regulation arrangements presuppose the reassignment of the costs of tax system management from tax administrations to the intermediary. However, the effectiveness of the underlying instruments demands that this reassignment of costs should have a meaningful and positive impact. Specifically, this means that the framework should result in a reduction of compliance costs for the taxpayers and a reduction of administrative costs for the relevant tax administration.

2) Integration of the intermediary within the environment of taxpayers

An intermediary is considerably more likely to effectively support taxpayer compliance if the intermediary is an entity that forms an integral part of the commercial dealings of the taxpayer. A salient determinant of non-compliance amongst individual taxpayers relates to the pervasive parallelism between the income-generating activities of the taxpayer, on the one hand, and the regulatory framework for the taxation of income, on the other hand.[1513] To this end, intermediary regulation arrangements should support the naturalization of compliance processes and bridge the gap between taxable events and income taxation.

3) Scale and centralization

Intermediary regulation arrangements seek to mitigate the tax compliance and collection challenges flowing from the decentralized manner of operation of

1512 Sebastian Eichfelder and Michael Schorn; 'Tax Compliance Costs: A Business-Administration Perspective', *Public Finance Analysis 68 (2)*, 2012, pp-191-203.

1513 OECD; 'Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises', OECD Publishing, 2012.

large segments of taxpayers. As such, these measures should create a significant element of centralization in the manner in which the compliance, oversight and supervision of taxpayers is managed for income tax purposes. To this end, the effectiveness and efficiency of intermediary regulation arrangements is enhanced when intermediation duties are concentrated upon a limited number of intermediaries relative to the number of taxpayers.[1514] Centralized intermediation streamlines administrative enforcement and mitigates the imposition of duplicative intermediation duties. The effectiveness of intermediary regulation is cheapened to the extent that taxpayers enjoy opportunities to escape the scope of the frameworks.

4) Relation between the intermediary and the tax administration

Finally, the effectiveness of intermediary regulation arrangements is determined by the extent to which the tax administration is legally empowered and able to reach the intermediary. This is particularly relevant in cases where the intermediary is based in a different jurisdiction. In cross-border situations, the effectiveness of intermediary regulation arrangements may be compromised by the limitations in the possibilities of tax administrations to enforce obligations against the intermediary.

D. Opportunities to assign intermediary functions to platform operators – Taxpayer engagement and education initiatives and third party information reporting frameworks

1) The role of platform operators in taxpayer engagement and education initiatives and third party information reporting frameworks and the envisaged effects of such measures on the income taxation of platform workers

Some measures for addressing the income taxation of platform workers readily lend themselves to the assignment of intermediary functions to platform operators. This is notably the case as regards the ongoing initiatives for taxpayer

1514 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

engagement and education, as well as the robust frameworks for third party information reporting progressively being introduced in many states. Taxpayer engagement and education initiatives and third party information reporting frameworks target specific determinants of platform workers' tax non-compliance, but these measures are not directly conducive to the effective taxation of income derived by collaborative economy platform workers. The purpose of these paragraphs is to argue against a complacent approach to policymaking, involving an excessive and misguided focus on taxpayer engagement and education initiatives and third party information reporting as tools for securing the income taxation of collaborative economy platform workers. The appropriateness of platform operators as intermediaries for the implementation of these measures should not encourage a myopic reliance on taxpayer engagement and education initiatives and third party information reporting. By focusing on the role played by collaborative economy platform operators under these two types of measures, I seek to convey that taxpayer engagement and education initiatives and third party information reporting frameworks are increasingly becoming measures of convenience, anchored in biases that may mask many of the causes for workers' sub-optimal income tax compliance. In turn, this development is liable to stall progresses towards the design and implementation of comparatively more effective approaches to securing the income taxation of collaborative economy platform workers.

A) Platform operators as intermediaries under taxpayer engagement and education initiatives and third party information reporting frameworks

i. Taxpayer engagement and education initiatives

Engagement and education are in-dissociable components of tax literacy.[1515] This readily explains why many states have conceptualized their initiatives for improving collaborative economy platform workers' tax literacy under the notion of cooperation between platform operators and tax administrations. Measures for engaging platform workers with the ecosystem of taxation bridge the gap to the educational resources developed by tax administrations. In other words,

1515 Marina Bornman and Marianne Wassermann; 'Tax literacy in the digital economy', *eJournal of Tax Research*, 2018.

taxpayer engagement and education initiatives by their nature lend themselves to the assignment of an intermediary role to platform operators. As part of taxpayer engagement and education measures, the role of platform operators is to support tax administrations in encouraging voluntary compliance. Encouraging voluntary compliance is a function that normally rests with tax administrations themselves. By contrast to tax administrations, platform operators have a natural medium for interacting with workers.[1516]

The heterogeneity of the collaborative economy may impair the design of cohesive and comprehensive measures to be applied uniformly across broad segments of income-generating activity. These issues are not however salient in regards to initiatives for taxpayer engagement and education. Under such measures, the duties assigned to platform operators take on a general and open-ended character, which normally extends to the provision of nudges reminding workers about their obligation to observe the tax consequences of their activities. Additionally, the

1516 The role of platform enterprises in supporting taxpayer engagement is also explicable through the lens of the theory of planned behavior. The theory of planned behavior attempts to explain tax compliance behavior by reference to three interconnected factors: attitude, subjective norms and perceived behavioral control. Attitude refers to the degree to which taxpayers perceive tax compliance as a moral obligation and a contribution to society. The subjective norm element indicates the social pressure associated with tax compliance, indicating that trust in public authority steers taxpayer behavior towards voluntary compliance. Finally, perceived behavioral control refers to the taxpayer's subjective appreciation of the ease or difficulty in engaging in compliant or non-compliant conduct. Behavioral control is impacted by perceptions about the enforcement attitude, approach and resources of government bodies, by the perceived complexity of the tax system, tax awareness and tax complexity. In other words, the theory of planned behavior hypothesizes that the contextual setting of the taxpayer impacts voluntary tax compliance. Moral and informational disconnectedness from the tax system reduce the incentive for voluntary compliance. Conversely, an environment where the normative components of taxation are highlighted and where tax awareness and knowledge is supported stimulates voluntary compliance. As a matter of practical reality, it is typically difficult to public authorities alone to establish strong links to taxpayers. This aspect, in turn, rationalizes the attempts at requiring intermediaries to contribute towards the establishment of this environment. Additionally, the theory of planned behavior impliedly acknowledges that voluntary tax compliance entails an inherently social component, wherein subjective attitudes towards tax compliance are informed in part by the general attitude to compliance prevailing within the taxpayer's environment. This aspect likewise compounds the added value of fostering a normative and supportive approach to tax compliance within the social environment of the taxpayer.

compliance costs for platform operators as associated with taxpayer engagement and education measures are likewise not particularly significant.

Furthermore, taxpayer engagement and education initiatives are not curtailed by considerations related to the physical presence of platform operators in a state applying such measures. Taxpayer engagement and education initiatives highlight cooperation between platform operators and tax administrations. These initiatives do not raise issues of legal enforcement, which in turn lessens the need for the consideration of issues related to the location of the platform operator itself. Whilst cooperative agreements concluded between platform operators and tax administrations are normally a weak mechanism to secure the enforceability and applicability of measures for addressing the income taxation of workers,[1517] this does not hold true as regards taxpayer engagement and education initiatives.

ii. Third party information reporting frameworks

The intermediary role of platform operators is inarguably most apparent under third party information reporting mechanisms.[1518] The present contribution argued at length that poor self-reporting behavior amongst hard to tax groups (including collaborative economy workers) and the limited capability for responsive enforcement by tax administrations is determined by the information asymmetry that characterizes the relation between these and the visibility deficit of taxpayers operating 'under the radar'.[1519] Whereas virtually all income tax systems operate under the dictum that income should be (self-)reported by taxpayers, commentators tend to agree that income subject to third party information reporting accounts for the brunt of actually reported and taxed income.[1520]

1517 This is particularly the case when tax administrations attempt to secure the enforceability of third party information reporting requirements against platform operators (especially platform operators based in a different jurisdiction) pursuant to bilateral cooperative agreements with platform operators.

1518 European Parliamentary Research Service; 'The collaborative economy and taxation: Taxing the value created in the collaborative economy', *European Parliament*, 2018, page 20.

1519 James Alm et al.; ''Sizing' the Problem of the Hard-to-Tax', *Contributions to Economic Analysis 268*, 2004, pp. 11-75.

1520 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2),* 2018, pp. 283-333.

There is little room to disagree with the notion that the assignment of reporting obligations to platform operators is justified. Unilateral and multilateral measures for third party information reporting are predicated on the idea that the digital footprint of peer-to-peer platform activities lends itself to integrated reporting by platform operators.[1521] Under third party information reporting arrangements, platform operators' basic role is to support the oversight and enforcement capabilities of tax administrations. It is widely accepted that platform operators are suited to fulfil this role. By nature of their relation with workers, platform operators centralize large datasets of information.[1522] The underpinning idea of intermediary regulation arrangements is to quantitatively reduce the number of taxpayers upon which tax administrations need to exert direct deterrence, by assigning functions related to the support of deterrence functions to a third party intermediary.[1523] Platform enterprises are suited to attain the key objectives of third party information reporting arrangements, because they are integrated within the environment of income-generating activity of workers. This entails that the collection of data subject to reporting occurs naturally.[1524]

B) The concept of voluntary compliance in income taxation – A house of cards supported through taxpayer engagement and education initiatives and third party information reporting frameworks?

Taxpayer engagement and education initiatives and third party information reporting arrangements readily lend themselves to the assignment of intermediary roles to collaborative economy platform operators. In this respect, these measures are convenient from a policy perspective. However, convenience is liable to mask the limitations of such measures. In my view, taxpayer engagement and education

1521 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017.

1522 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

1523 Reiner H. Kraakman; 'Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy', *Journal of Law, Economics, & Organization 2 (1)*, 1986, pp. 53-104

1524 Third party information arrangements should in principle be a mere transfer of data, which only extends to data that would be collected by platform operators as part of their normal interactions with workers. However, the relation between workers and platform operators entails that platform operators may request additional information from workers should this be necessary under a specific third party information reporting framework.

initiatives and third party information reporting frameworks are anchored in two main biases: an institutional bias towards the concept of voluntary taxpayer compliance, on the one hand, and a political bias related to the role of platform operators in the environment of workers' income-generating activities, on the other hand.

I. An institutional bias for voluntary tax compliance

A common thread of taxpayer engagement and education initiatives and third party information reporting frameworks lies in that these measures emphasize taxpayer voluntary compliance. In the case of taxpayer engagement and education, voluntary compliance is linked with tax literacy and tax morale. Third party information reporting arrangements purport to encourage voluntary tax compliance primarily by exacerbating the perceived risk of non-compliance, therefore dissuading taxpayers from misrepresenting circumstances relevant to the determination of their tax liability.

By its nature, income taxation is inherently sensitive to taxpayer behavior. Tax compliance is merely an all-inclusive term that describes taxpayers consenting to the reassignment of wealth mandated by taxation.[1525] In turn, voluntary tax compliance falls along a continuum and takes on different forms. For example, McBarnet distinguishes between committed and capitulated tax compliance.[1526] Committed compliance is an expression of voluntarily complaint behavior, wherein taxpayers abide with tax obligations even where no deterrence is applied. Conversely, capitulated compliance is an expression of coerced compliance. Committed compliance is obviously the gold standard of tax compliance.

Policymakers across the board are well aware of the inherent risks of relying on taxpayers to be complaint absent any impetus. In this respect, initiatives towards taxpayer engagement and education purport to strengthen commitment towards

1525 Erich Kirchler and Ingrid Wahl; 'Tax Compliance Inventory: TAX-I Voluntary compliance, enforced tax compliance, tax avoidance and evasion', *Journal of Economic Psychology 31 (3)*, 2010, pp. 331-346.

1526 Doreen McBarnet; 'When compliance is not the solution but the problem: From changes in law to changes in attitude', Australian National University Center for Tax System Integrity, 2001.

tax compliance. However, the question of whether taxpayer engagement and education initiatives can also overcome predilections for non-compliance is a different one entirely. In this respect, the effect of taxpayer engagement and education initiatives is constrained by its nature. Even in the case of taxpayers that intend to be complaint, negligence is unawareness may impair effective taxation. Taxpayer engagement and education initiatives seek to mitigate these considerations, but their inherently impersonalized nature calls this into question. Additionally, merely buttressing positive compliance-related attitudes does not necessarily translate to an influence on actual compliance-related behavior.[1527]

In principle, third party information reporting arrangements seek to strengthen capitulated compliance through their deterrent effect. At least on a theoretical level, the taxpayers most likely to react to deterrence are those that otherwise appreciate that a low probability of detection justifies non-compliance. Regardless, the added value of third party information reporting should not be overstated. Such frameworks leave a number of avenues for non-compliance unaddressed. Whereas taxpayers are accurate in their self-reporting of matched income (meaning income subject to third party information reporting), they may be less so with respect to unmatched income not subject to reporting, with existing research suggesting that many taxpayers do not report any of their unmatched income.[1528] Arguably, the extent of unmatched income derived by the taxpayer will largely depend on the extent of income subject to reporting, which in turn pertains to the scope and design of third party information reporting frameworks.[1529]Other empirical analyses indicate a propensity of taxpayers to offset income subject to third party information

1527 I discuss the overlaps and distinctions between compliance-related attitudes and compliance-related behavior in more detail in Part II.II of this research. Attitude is a broader concept, which encompasses perceptions in relation to the obligation of paying tax. Behavior relates to the actual conduct of taxpayers. In many cases, taxpayers with positive compliance-related attitudes will in fact be compliant. However, attitude and actual behavior do not in all cases overlap, and attitude is not always a precursor and determinant of actual conduct. In other words, the link between attitude and outcomes is not always direct. Conversely, behavior directly determines all outcomes.

1528 Mark D. Phillips; 'Individual Income Tax Compliance and Information Reporting: What do the U.S. Data Show?', National Tax Journal 67 (3), 2014, pp. 531-568.

1529 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

reporting with increased expenses.[1530] Unlike income, expenses are significantly more difficult to police and they are typically not subject to intermediary reporting. When taxpayers actively seek to offset reportable income with deductible expenses, the line between capitulated and creative compliance is ever more blurred.

Because of the inevitable impact of behavior on tax compliance, the notion of voluntary compliance cannot amount to much more than a house of cards. Taxpayer engagement and education initiatives and third party information reporting frameworks attempt to operationalize specific compliance-related attitudes and behaviors and steer these to safeguard tax compliance. However, taxpayer attitudes and behaviors are ultimately unpredictable and unreliable vectors. Across the board, policymakers emphasize the concept of voluntary compliance and its central role in income tax systems.[1531] In my view, the institutional bias in favor of voluntary compliance is especially prevalent in those cases where there exist no other feasible safeguards for effective taxation.

Historically, the concept of voluntary compliance emerged as an expression of convenience and necessity, prompted by the structural limitations of tax administrations to police compliance in respect of broad segments of taxpayers.[1532] Progressively, the concept of voluntary tax compliance has come to also embed social and political undertones, whereby the payment of tax is presented as part of a social contract with a view to stimulating compliant behavior. In my view, the circumstances that prompted the emergence of the concept of voluntary tax

1530 Joel Slemrod et al.; 'Does credit-card information reporting improve small-business tax compliance?', *Journal of Public Economics 149*, 2017, pp. 1-19. Whether reported expenses are legitimate or not cannot necessarily be determined in the abstract. For example, some taxpayers who would misrepresent income in the absence of third party information reporting may not have claimed expenses, even if those were valid, as the misrepresentation of income is sufficient to attain a zero tax liability.

1531 See, for example: OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education, Second Edition', OECD Publishing 2021, pages 111 et seq. In discussing the relation between taxpayer engagement and education initiatives and voluntary compliance, the OECD takes the concept of 'voluntary compliance' itself for granted. Policymakers at domestic and international level alike frequently comment on various tools and measures for safeguarding voluntary compliance. However, they seldom discuss *why* voluntary compliance is a centerpiece of income tax system management.

1532 See, for example: J. T. Manhire; 'What Does Voluntary Tax Compliance Mean: A Government Perspective', *University of Pennsylvania Law Review Online 164*, 2015-2016, pp. 11-18

compliance (and subsequently its evolution into an entrenched institutional bias) no longer hold true in most cases. Although personal income tax is by nature socially and politically informed, there exist increasingly broader possibilities to alleviate the influence of taxpayer attitude and behavior on tax compliance. Ideally, income tax systems should incorporate as far as possible measures that absorb opportunities for non-compliance and the volatile incidence of taxpayer attitudes and behavior on compliance. Conversely, taxpayer engagement and education initiatives and third party information reporting frameworks do not absorb taxpayer attitudes and behaviors, they merely seek to redirect these. The main issue flowing from this lies in that a persistent emphasis on voluntary compliance perpetuates a flawed *status quo*. The emphasis on stimulating voluntary compliance through intermediaries distracts from the perhaps more appropriate question of whether the availability of various intermediaries could enable a shift from voluntary compliance to compliance by design.

These remarks and critiques do not purport to suggest that taxpayer engagement and education initiatives and third party information reporting frameworks are wasteful and broadly ineffective approaches for addressing the income taxation of collaborative economy platform workers. Rather, my core critique is that the prevalence of such measures may cloud their inherent limitations. In turn, the prevalence of such measures is underlined by the ease with which they may be introduced. In the foregoing paragraphs, I argued that it is feasible and appropriate to require platform operators to engage workers with their tax obligations. In a similar vein, the emerging multilateral instruments for third party information reporting alleviate the otherwise pervasive challenges to the unilateral introduction of such measures by individual states. Conversely, the prevalence of taxpayer engagement and education initiatives and third party information reporting frameworks in the collaborative economy is seemingly not a primary product of the direct effects of these measures on income tax compliance and collection.

II. A bias on the role of platform operators in the ecosystem of collaborative economy platform workers

I argued at length as part of this research that a primary distinction between collaborative economy platform workers and ordinary hard to tax groups relates to the quasi-centralized structure under which platform workers perform their income-

generating activities. The integration of platform operators in workers' ecosystem is the key factor enabling this quasi-centralization. This characteristic of collaborative economy arrangements prompts the feasibility of various intermediary regulation arrangements, including taxpayer engagement and education initiatives and third party information reporting frameworks. However, I surmise that there is room to question whether this has also prompted a myopic bias related to the role of platform operators in supporting the income taxation of workers, wherein the key concerns are operationalizing measures, more so than the intended effects of different measures. In this respect, similar remarks may be raised in relation to the role of platform operators in connection with taxpayer engagement and education initiatives and third party information reporting frameworks.

It is difficult to disagree with the notion that platform operators may strengthen the effectiveness of taxpayer engagement and education. Previously in the contents of this research, I contended that a cooperative approach to taxpayer engagement and education is justified, desirable and arguably necessary for operationalizing such measures. However, the duty of educating taxpayers on these obligations falls chiefly on tax administrations.[1533] In Part III.II.2 of this thesis, I argued that information portals developed by different tax administrations with a view to supporting platform workers' understanding of their tax obligations vary in their degree of specificity and comprehensiveness. Even to the extent that an appropriate approach to taxpayer engagement or outreach is secured by platform operators, these initiatives must necessarily be matched with educational resources. More importantly, such measures are arguably superfluous in systems where voluntary tax compliance levels are comparatively low in the first place.[1534] As such, for some policymakers, the core question should relate to whether taxpayer engagement and education initiatives contribute to a meaningful extent to improving the income taxation of collaborative economy platform workers,

1533 See, in this respect: OECD; 'Code of Conduct: Co-operation between tax administrations and sharing and gig economy platforms', available via: http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/code-of-conduct-co-operation-between-tax-administrations-and-sharing-and-gig-economy-platforms.pdf last accessed 8 June 2021 at Point 3.

1534 This is an organic consequence of the fact that taxpayer engagement and education initiatives are more suited to strengthening voluntary/committed compliance, rather than overcoming predilections for non-compliance.

more so than the question of how taxpayer engagement and education initiatives should be optimally designed.

Similar considerations may be raised in relation to third party information reporting frameworks. The notion that the utility of third party information reporting protocols is limited to supporting oversight and enforcement capabilities is growing to become an outdated and narrowed viewpoint, and one which is arguably incompatible with the realities of the economic system of the collaborative economy.[1535] It is hardly realistic for tax administrations to prioritize compliance through direct deterrence and enforcement in this context. Rather, the focus falls increasingly on the question of how tax administrations should manage this environment of income-generating activity. In this respect, third party information reporting would be best contextualized by reference to the question of how data received by tax administrations could support the management of this growing network of taxpayers, not how it can serve deterrence and enforcement. Otherwise, the broadening of the scope of third party information reporting to the context of the collaborative economy merely acts to compound and perpetuate the increasingly redundant cycle of suppressing detected (or rather, detectable non-compliance) as opposed to the more appropriate notion of supporting tax compliance and writing non-compliance out.[1536] The impact of information reporting on tax collection and revenue mobilization depends on the manner in which the reported data is used and its integration within existing compliance frameworks for self-reporting and self-assessment.

The degree of integration of information received pursuant to third party reporting into self-reporting and self-assessment processes largely depends on the particularities of the administrative environment of states. Systems with an established culture of service-oriented tax administrations have prefaced their initiatives for the introduction of third party information reporting protocols applicable to the collaborative economy specifically referencing how the information supplied pursuant to these arrangements will be used to facilitate

1535 OECD; 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations – Country Experiences With the Use of Pre-populated Personal Tax Returns', OECD Publishing, 2006, page 10.

1536 Rita de la Feria; 'Tax Fraud and Selective Law Enforcement', *Journal of Law and Society 47 (2)*, 2020, pp. 240-270.

tax compliance. For example, the Danish and Australian tax administrations have indicated that data supplied under these protocols would be used to facilitate the provision of pre-populated tax returns to collaborative economy platform workers.[1537] Still, tax administrations vary significantly as regards the degree of their development and sophistication of processes for reconciling third party information reports with other datasets at their disposal and providing taxpayers with pre-populated tax returns.[1538] When tax administrations provide tax returns pre-populated with datasets received pursuant to third party information reporting arrangements, a subsequent question relates to the extent to which the (partial) pre-population of returns reduces taxpayers' compliance costs and opportunities for non-compliance. This issue boils down to the degree to which to the (partial) pre-population of returns with such information reduces the necessity for taxpayer inputs. In turn, this depends on two issues. Firstly, this depends on the degree of sophistication of the approach to providing pre-populated tax returns. In Part IV.III.5 of this research, I describe briefly how some tax administrations embed artificial intelligence bots into e-filing frameworks, which nudge taxpayers and discourage manual changes to pre-filled inputs in the return. Secondly, this likewise depends on the specific legislative context of states.[1539] At the time of writing, a number of states have adopted legislative simplification measures aimed at directly or indirectly benefitting collaborative economy platform workers.[1540] In particular, these include *de minimis* exemptions for income derived from peer-to-peer activities undertaken through platforms or standard deduction rules. Legislative frameworks that allow

1537 Peter Hill Hansen and Malte Thomsen; 'Growth through Sharing Economy while Auditing according to Current Legislation', IOTA Papers – Danish Tax Administration, 2017. The OECD is also adamant and consistent in the argument that third party information reporting through the Model Rules may contribute to simplifying taxpayer self-reporting. The OECD strongly supports the notion that information received by tax administrations pursuant to third party information reporting frameworks should contribute to the provision of pre-populated tax returns. See, for example: OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing 2022, page 51.

1538 OECD; 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations – Country Experiences With the Use of Pre-populated Personal Tax Returns', OECD Publishing, 2006, page 10.

1539 OECD; 'Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations – Country Experiences With the Use of Pre-populated Personal Tax Returns', OECD Publishing, 2006, pages 15-16.

1540 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, pages 22 et seq.

for a limited scope of itemized deductions, credits and other similar discretionary benefits and instead favor presumptive simplification techniques lend themselves more readily to the provision of pre-populated tax returns, as the bulk of relevant information may be transposed directly from verifiable and reliable third party information reports.

In my view, the taxpayer engagement and education initiatives and third party information reporting frameworks introduced in connection with the income taxation of collaborative economy platform workers highlight a relevant and fragile balancing act between the convenience of intermediary regulation measures and the effectiveness of some such measures. Whether intermediary regulation arrangements are feasible in various contexts depends on subjective questions, such as whether an appropriate and reachable intermediary with broad centralizing capabilities is available. However, the actual effect of such measures on effective taxation depends on objective considerations related to the nature of the measures themselves.

E. Limits to the role that platform operators can play in measures for addressing the income taxation of workers – The elusive concept of tax compliance by design

1) Compliance by design and platform operators as intermediaries – a bridge too far?

Platform operators are reliable intermediaries under the measures introduced by many states for supporting taxpayer engagement and education and third party information reporting. However, such measures alone are neither directly conducive to compliance, nor do they absorb the opportunities for non-compliance otherwise available to platform workers. These realities, I dare submit, require a candid consideration of the extent to which platform operators could feasibly support measures for addressing the income taxation of workers. As part of this research, I argued vehemently in favor of a Compliance by design-based approach for addressing the income taxation of collaborative economy platform workers. This implies a purpose-driven view towards the manner in which income tax rules and systems are designed and managed. Compliance by design involves the naturalization of income tax compliance processes and alleviating the temporal

disconnect between taxable events and the generation of income. In this respect, a system that embeds these notions presupposes that all events which entail income tax consequences are recorded comprehensively and in real-time. By and large, the measures most commonly introduced by states for addressing the income taxation of collaborative economy platform workers are not designed along these lines. As such, the question emerges as to why the implementation of measures predicated on Compliance by design in the context of the collaborative economy is lagging.

2) Outcome-determinative rules - The difficulties in applying non-employee withholding taxes in respect of income derived by workers from platform activities when platform operators are assigned as withholding agents

The collection of tax through withholding, particularly when applied on broad segments of individual taxpayers that earn small amounts of income, is the archetypal example of an outcome-determine measure within the meaning of Compliance by design.[1541]

Theoretically, the digital footprint of collaborative economy transactions (and in particular, the digital processing of payments for workers' income-generating activities) entails that non-employee withholding should be feasible as an approach for securing the income taxation of platform workers. However, amongst the measures contemplated for addressing the income taxation of platform workers, withholding arrangements are arguably an outlier in practice. The introduction of non-employee withholding arrangements for the collection of tax in respect of income derived by collaborative economy platform workers poses subjective and objective challenges.[1542]

The subjective challenges related to the introduction of non-employee withholding arrangements in respect of collaborative economy platform workers concern the selection of an appropriate withholding agent. Because of the tripartite structure

1541 Clement Okello Migai et al.; 'The sharing economy: turning challenges into compliance opportunities for tax administrations', *eJournal of Tax Research 16 (3)*, 2019, pp. 395-424.

1542 I discuss the challenges associated with the introduction of non-employee withholding taxes as a measure for addressing the income taxation of collaborative economy platform workers in more detail in Part III.II.4 of this thesis. The purpose of this brief commentary is to describe withholding taxes through the precepts of Compliance by design.

of the collaborative economy, the most intuitive approach is to require platform operators to act as withholding agents. However, platform operators are unreliable withholding agents in cross-border situations. Cross-border enforceability is a relevant consideration in respect of any intermediary regulation arrangement that involves platform operators. The conspicuity of this issue is most apparent in the context of withholding frameworks.[1543]

The objective issues connected with the introduction of non-employee withholding arrangements as a measure for addressing the income taxation of collaborative economy platform workers concern the complexity of designing such frameworks and, to some extent, the limited political appetite for such measures. Policymakers in many states are skeptical as to the necessity or desirability of the collection of tax through withholding in respect of receipts derived by workers from platform activities.[1544] The heterogeneity of income-generating arrangements in the collaborative economy complicates the task of determining an appropriate rate (or schedule of rates) for withholding and the choice between withholding tax as a final levy on income derived by platform workers or an advance payment of platform workers' income tax.[1545] The argument goes that final withholding may determine arbitrary results, whereas non-final withholding is liable to affect workers' cash-

1543 In Part III.II.4 of this thesis, I discuss this issue in more detail and describe a number of possible approaches for sidestepping these cross-border enforceability constraints. Therein I conclude that platform operators are ultimately unreliable withholding agents and argue in favor of approaches that assign withholding obligations on different intermediaries that are integrated in the environment of platform workers, such as banks or credit institutions. The *prima facie* argument in favor of assigning platform operators as withholding agents in respect of income derived by workers mirrors the argument related to the assignment of third party information reporting obligations in respect of platform operators over other intermediaries: platform operators are naturally integrated into the income-generating activities of workers.

1544 For example, this is the case in Australia, where the prevailing viewpoint is that third party information reporting mechanisms coupled with taxpayer engagement and education initiatives are sufficient to secure the income taxation of platform workers. According to the Australian government, withholding taxes could yield inequitable outcomes and should be a measure of last resort in addressing rampant non-compliance.

1545 See, for example: New Zealand Inland Revenue; 'The role of digital platforms in the taxation of the sharing and gig economy', available via: https://taxpolicy.ird.govt.nz/publications/2022/2022-dd-digital-platforms-gig-sharing-economy/chapter-2 last accessed 31 May 2022, at Point 2.41.

flows and contribute insufficiently to public revenue mobilization.[1546] In this respect, the view amongst many policymakers is that non-employee withholding arrangements pose tradeoffs between effectiveness, simplicity and equity in much the same way as other measures for addressing the income taxation of platform workers. The OECD briefly referenced the desirability of tax collection through withholding in respect of platform workers' income. According to the OECD, tax collection through withholding ensures that income generation and tax collection are inextricably linked, in contrast with the payment of tax pursuant to taxpayer self-reporting or self-assessment, wherein taxation is down-streamed and detached from the generation of income. Whilst acknowledging the difficulties associated with the enforceability of withholding obligations against foreign platform operators, the OECD stopped shy of making concrete recommendations for overcoming these challenges.

In my view, these challenges are not insurmountable, and they speak more to the need for an approach to non-employee withholding that reconciles the particularities of the collaborative economy than to the undesirability of addressing the income taxation of collaborative economy platform workers through non-employee withholding arrangements.[1547] The objective challenges to the introduction of non-employee withholding for the collection of tax in respect of collaborative economy platform workers (withholding rates and the choice between final and non-final withholding) as described immediately above are mere questions of scope and design, which arise in the context of any tax measure. However, the subjective challenges to the introduction of non-

1546 Australian Government Board of Taxation; 'Tax and the Sharing Economy: A Report to the Government', 2017. The tradeoff between final and non-final withholding is often discussed by policymakers in connection with the desirability of introducing non-employee withholding arrangements for securing the income taxation of collaborative economy platform workers. In my view, the choice between a final non-employee withholding tax and non-employee withholding as an advance payment of workers' income tax is not a particularly controversial issue. The choice between final and non-final withholding taxes in the collaborative economy arguably poses the same issues as the choice between final and non-final withholding in respect of wages and salaries, which are subject to PAYE withholding in virtually all states, countries and jurisdictions.

1547 As part of the conclusions to this thesis, I reiterate the desirability of non-employee withholding as an approach for safeguarding the effective taxation of income derived by workers in the collaborative economy and propose an approach to the design of this framework that accounts for the subjective and objective challenges here discussed.

employee withholding arrangements for platform workers (i.e., the choice of the appropriate withholding agent) are arguably clouded by the persistent emphasis on platform operators as compliance intermediaries. In this respect, the cross-border enforceability constraints to the application of non-employee withholding where platform operators do not maintain a presence in a jurisdiction that requires withholding may be sidestepped by assigning withholding obligations on an entity other than a platform operator.

3) Tax administration-driven measures for automating self-reporting within the meaning of Compliance by design – An open-ended issue

Beyond non-employee withholding, Compliance by design may be operationalized through frameworks developed by tax administrations. Such frameworks embody Compliance by design to the extent that they mitigate the disconnect between taxable events and the reporting of these for income tax purposes.

I. Semi-automated transfer of data recorded by platform operators in pre-populated tax returns for workers

In some states, tax administrations have developed income reporting infrastructures tailored to the environment of income-generating activity of platform workers. The Estonian tax administration recently developed a framework for linking workers' data as recorded by platform interfaces directly to a pre-populated individual tax return.[1548] The arrangement was developed under voluntary cooperation agreements between the tax administration and various collaborative economy platform enterprises. The framework reconciles data pertaining to the identity and income derived by workers as recorded by the platform with a pre-existing e-filing system. Under this arrangement, platform workers may opt to have data uploaded directly from the interface of the platform to a pre-populated tax return.[1549] The system is semi-automatized and works on a taxpayer opt-in basis.[1550] The arrangement only extends to the automatic reporting of workers' income. Expenses are not reported, meaning workers are required to report these separately. This

1548 Daisy Ogembo and Vili Lehdonvirta; 'Taxing Earnings from the Platform Economy: An EU Digital Single Window for Income Data?', *British Tax Review 1*, 2020, pp. 82-101.
1549 Ibid.
1550 Ibid.

follows from the fact that the framework only transfers data already collected and processed by platform operators.

On the one hand, this framework exemplifies and reinforces the notion that data collected, stored and processed by platform enterprises as it regards the identities and income of workers may form the basis for the provision of pre-populated tax returns for workers.[1551] The direct transfer of data recorded by platform operators to a tax return contributes to tax compliance simplification particularly in cases where receipts derived by workers from platform activities are taxable on a gross basis or where deductions are standardized rather than itemized. On the other hand, the fact that this arrangement only enables the semi-automatic reporting of income, without extending to the reporting of expenses, exemplifies the limits to the capabilities of information collection and extraction by and from platform enterprises. Platform operators do not record expenses incurred by workers in connection with the income-generating activities they undertake.[1552] Compliance by design presupposes the naturalization of income tax processes and the integration of these directly within taxpayers' income-generating activities. By extension, Compliance by design requires comprehensive information about taxpayers. In the case of collaborative economy platform workers, this often extends beyond information collected and processed by platform operators themselves ordinarily and in the course of their dealings with workers.

Recently, the OECD reminded that work is still ongoing towards the development of frameworks for integrating income tax reporting processes directly within the interfaces used by platform operators with a view to support Compliance by design.[1553] In my view, the extent to which this objective will be attained depends

1551 The OECD Model Rules (and DAC7 in the EU) paved the way for the broadened application of third party information reporting frameworks in the collaborative economy. It may be expected that tax administrations in a growing number of states will proceed to integrate information received pursuant to such frameworks in pre-populated tax returns for platform workers.

1552 In theory, this issue could be addressed through the development of voluntary agreements between platform enterprises and tax administrations whereby the former would develop and embed an infrastructure for workers to record their expenses within the interface of the platform directly. However, such arrangements have not yet been put in place at the time of writing.

1553 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies',

the degree to which policymakers and tax administrations working towards Compliance by design will push for platform operators to integrate the collection of information beyond payments received by workers into their interfaces. The initiative of the Estonian tax administration to link information already collected by platform operators directly to a pre-populated tax return for workers highlights the reality that the integration of datasets compiled by platform operators with e-filing tax returns systems is technologically feasible (provided the technological infrastructure of tax administration allows this). I surmise that the main issue does not relate to reconciling datasets compiled by platform operators with tax return e-filing. Rather, the key question is whether information which platform operators do and could collect in respect of the income-generating activities of workers is sufficient to provide a comprehensively pre-populated tax return which requires few if any supplementary taxpayer inputs.[1554]

II. Broader tax administration-driven strides to achieve Compliance by design and the desirability of extending these to collaborative economy platform workers

A notable and comprehensive implementation of Compliance by design processes through tax administration-driven measures is the Dutch automatic profit tax return for freelancers. The automatic profit tax return is a pilot project intended to enhance tax collection in respect of self-employed individuals by implanting compliance-related processes directly within the ongoing activities of taxpayers. The framework purports to establish an uninterrupted flow of data that commences with the recording of the taxpayers' transactions and concludes with the submission of all data to the tax administration, which translates it into a pre-populated tax return.[1555]

OECD Publishing, 2022, page 51.

1554 As I highlight above in this research, transposing information about income derived by workers into a pre-populated tax return may be sufficient if the income is taxable on a gross basis or reduced through standardized rather than itemized deductions.

1555 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, page 204.

Under this framework, the business accounts of the taxpayer are the basis for the tax return.[1556] In preparing accounts, the taxpayer uses a special-purpose accounting software which tracks all transactions performed, meaning all electronic invoices and payments made to and by the taxpayer are automatically translated into business accounts.[1557] The software also tracks expenses incurred by the taxpayer and records these into the standard accounting schedule. The functionality of the software extends to a built-in capacity of distinguishing between expenses incurred in connection with the taxpayers' trade and private expenses and recording each part of the transaction accordingly, even when a payment effected by the taxpayer from a business bank account includes both.[1558] The taxpayer may adjust these default inputs manually. For this, the software includes an interactive assistant tool, which is activated when the taxpayer opens one of the fields in the default account with a view to adjusting the automatically inputted information. The assistance tool iterates the applicable legislation in respect of the item of income or the expense in the corresponding accounting field.[1559] This assistance tool is fed with information that supplied and regularly updated by the Dutch tax administration through a content management system.[1560]

Data recorded by the accounting software is a basis for a pre-populated electronic tax return. The return is automatically supplemented with other data collected in parallel by the tax administration under distinct reporting and collection mechanisms (e.g., withholding taxes collected in respect of non-business income, information received pursuant to parallel third party information reporting arrangements and data pertaining to private investments).[1561]

The framework ensures that compliance-related processes are directly entrenched within the business activities of the taxpayer, safeguarding end-to-end transparency. This mechanism targets and addresses two core determinants of non-compliance amongst hard to tax self-employed individuals: the costs associated with accurately

1556 Ibid., page 205.
1557 Ibid.
1558 Ibid.
1559 Ibid., page 206.
1560 Ibid.
1561 Ibid.

recording and characterizing transactions and expenses and the potential incidence of taxpayer negligence. The automated character of transaction recording alleviates the otherwise burdensome compliance costs associated with record-keeping. Similarly, the targeted provision of information on applicable legislation largely reduces the potential for negligent human error in tax compliance. In effect, this framework creates a tax compliance one stop shop.

There are four main aspects that highlight the merits of this approach to implementing Compliance by design. Firstly, the Dutch automatic profit tax return personifies the notion that the widespread availability and business-purpose use of information and communication technology can be successfully translated into compliance-related processes in respect of an ordinarily hard to tax segment of taxpayers. Secondly, the approach confirms the added value of a broad-based approach to intermediary regulation in relation to tax compliance. A broad interpretation of intermediary regulation supports the notion of involving any third party – beyond pure payment agents or tax intermediaries – which could contribute to the quality of the tax return within compliance processes. In particular, this broad interpretation to intermediary regulation supports the establishment of public-private partnerships with software developers, with a view to developing and deploying a largely automated tax compliance infrastructure. Thirdly, this framework demonstrates the interrelatedness of accurate data collection and data processing. The automatic profit tax return initiative establishes a framework which extends beyond the mere collection of taxpayer and transaction data, but leverages the information collected within the process of tax return preparation. Finally, the nature and character of the framework concretely embodies the precept that effective taxation is readily attainable when compliance processes are naturalized. The functionality of the accounting software used as a basis for tax return preparation is embedded within the taxpayer's business in a nearly seamless manner, thereby mitigating the disconnect between taxable events and tax compliance processes.

At the time of writing, the automatic profit tax return is not used for self-reporting by collaborative economy platform workers. However, there are a number of arguments in support of the notion that this arrangement – or a variant thereof – would add considerable value in safeguarding the effective income taxation of platform workers.

Firstly and perhaps most importantly, the architecture of the automatic profit tax return targets the bookkeeping challenges that are at play for collaborative economy platform workers. Usual self-reporting and self-assessment frameworks presuppose that taxpayers track income, expenses and other relevant information as a basis for the ascertainment of their tax liability.[1562] A system which allows taxpayers to record income, expenses and other relevant facts as they occur considerably simplifies bookkeeping and mitigates the downstream character of compliance processes in relation to taxable events. Secondly, a system similar to the automatic profit tax return could address the substantive issue of expense characterization for collaborative economy platform workers. By their nature, peer-to-peer platform activities entail that platform workers use personal assets in the performance of their activities.[1563] An implication of this is that platform workers will incur various dual-purpose expenses, whose deductibility is subject to specific rules and limitations in various countries. As described immediately above, the functionality of the automatic profit tax return extends to facilitating the characterization of expenses incurred depending on their nature and character. This is particularly relevant in the context of a segment of taxpayers where the characterization of expenses incurred in connection with the generation of income poses some of the most salient compliance challenges.[1564] In tax systems that apply specific rules for the apportionment of dual-purpose expenses (e.g., mileage on dual-usage vehicles), the computation of the apportioned deduction could be automated. Thirdly, this arrangement bypasses the challenges associated with involving platform enterprises in workers' compliance processes. The automatic profit tax return exemplifies the notion that compliance by design arrangements can be introduced under an approach that simply leverages the particularities of taxpayers that operate as independent contractors in general. The role of platforms as intermediaries would be reduced under this frame of reference, as the arrangement only purports to simplify self-reporting for taxpayers, not to exploit the role of platform enterprises *per se*.

1562 Shu-Yi Oei and Diane Ring; 'The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums', *Columbia Journal of Tax Law, 8 (1),* 2017, pp. 58-112. Clement Okello Migai et al.; 'The sharing economy: turning challenges into compliance opportunities for tax administrations', *eJournal of Tax Research 16 (3)*, 2019, pp. 395-424.

1563 Shu-Yi Oei and Diane Ring; 'Can Sharing Be Taxed?', *Washington University Law Review 93 (4),* 2016, pp. 989-1069.

1564 Ibid.

The automatic profit tax return is a comprehensive approach for linking taxable activities with taxpayer self-reporting, capable of accounting for the full extent of the taxpayers' circumstances. In my view, frameworks developed by tax administrations for automating and naturalizing taxpayer self-reporting are a relevant and welcome development because they embed the 'best of both worlds' within the meaning of Compliance by design. A salient critique to the application of non-employee withholding taxes as a tool for collecting tax on income from independent activities relates to the artificiality and arbitrariness harbored by withholding taxes. Despite streamlining the timing of revenue collection and precluding taxpayer behavior from influencing compliance, withholding taxes are an inherently formulaic approach to securing effective income taxation. In particular, final withholding taxes pose concurrent risks of over- and under-taxation, in disregard of the taxpayer's genuine ability to pay. There is a strong case in favor of not removing compliance-related processes from the hands of taxpayer altogether. At least on a theoretical level, self-reporting and self-assessment frameworks encourage taxpayer accountability and facilitate a comprehensive overview of the totality of the circumstances of the taxpayer as relevant for income tax purposes. However, self-reporting and self-assessment frameworks also allow taxpayer negligence and risk-taking behavior to affect income tax compliance. This shortcoming may be overcome if information that would otherwise be self-reported by the taxpayer in a return is automatically collected and processed in real time. Nevertheless, the effectiveness of this approach depends on the extent and breadth of the information collected and processed.[1565]

1565 Earlier in Part IV.IV of this thesis, I described briefly the effect of third party information reporting arrangements on taxpayers' self-reporting behavior. For example, according to Adhikari et al., 'taxpayers respond to third-party information reporting in offsetting ways'. Although taxpayers whose income is subject to reporting by a third party self-report more receipts in tax returns, they also self-reporting 'an increase in expenses of a similar magnitude'. In this respect, third party information reporting frameworks may in practice not determine a meaningful increase in tax liabilities. As a matter of principle, it is untenable to envisage a third party information reporting arrangement wherein an intermediary is required to report expenses incurred by taxpayers, because intermediaries do not generally centralize such information in the first place. Even where third party information reporting frameworks mitigate information asymmetries between taxpayers and tax administrations about income, taxpayers maintain an informational advantage as regards (deductible) expenses. This issue is overcome if information about all transactions incurred by the taxpayer, including expenses incurred, is collected and processed in real time.

V. SYNTHESIS

This Part reflected on the roles and functions of three key actors as regards the effective income taxation of collaborative economy platform workers: international governmental organizations (notably the OECD and EU Commission), tax administrations and the platform operators through which workers' activities are undertaken.

As part of this research, I argue that the OECD and EU Commission should support domestic policymakers in the strides towards safeguarding tax compliance in the collaborative economy through three main steps: establishing overarching and principle-based standards to guide policymaking, performing rule-making functions in specific areas and encouraging states to exchange experiences with different approaches for addressing the income taxation of platform workers and to replicate 'best practice' approaches.

The mandates of the OECD and EU Commission are markedly different. Consequently, the manner in which they can act to strengthen domestic policymakers' efforts for addressing income taxation in the collaborative economy differs. The asserted commitment of these international governmental organizations to support states in devising frameworks that safeguard platform workers' effective taxation is welcome development, but it is stalled by the absence of a definite and principled foundation where their respective roles are defined with specificity.

The OECD and EU Commission perceive the tax challenges at play in the collaborative economy by reference to their respective mandates. This is largely an unavoidable byproduct of their distinct competences, and formally an opportunity to approach the underlying issues holistically. However, it likewise exposes the risk for the emergence of incoherent discourse at the international level. The OECD has historically acted as a consensus-building organization.[1566] As such, it takes a broader approach to the discussion of platform workers' under-taxation. The

1566 Arthur J. Cockfield; 'The Ride of the OECD as Informal World Tax Organization through National Responses to E-Commerce Tax Challenges', *Yale Journal of Law and Technology 8*, pp. 136-187, 2005.

policy documents published by the OECD on the income taxation of collaborative economy platform workers indicate an open-ended view and consideration for the different determinants of non-compliance at play and the possible approaches for addressing platform workers' income taxation. Conversely, the EU Commission enjoys hard rule-making competencies and disposes of a considerably more formalized governance structure. The EU Commission's emphasis on the benefits of multilateral third party information reporting arrangements as a tool for safeguarding tax compliance in the collaborative economy is unsurprising, considering the Commission's competence to propose legislation in this area.

The risk of incoherence in the tones and focuses of international governmental organizations could be overcome through their coordination in approaches to agenda-setting. This could be achieved if the OECD and EU Commission took a consistent approach in promoting the same principles and standards for safeguarding the taxation of collaborative economy platform workers. This would be most effectively achieved if international governmental organizations were more adamant in promoting Compliance by design. Compliance by design is premised on the notion that effective income taxation involves naturalization and the establishment of direct links between taxable events and the determination and payment of tax. Compliance by design involves the application of outcome-determinative rules such as the collection of tax through withholding, wherein the duty of determining and remitting tax payments is shifted to a third party intermediary. Additionally, Compliance by design entails administrative frameworks that remove the material and temporal disconnect between taxable events and the transposition of these into self-reported/self-assessed tax returns. In light of the determinants of non-compliance at play in relation to collaborative economy platform workers, the precepts set out in Compliance by design are notably relevant.

In its 2019 Report on Effective Taxation of Platform Sellers, the OECD shyly hinted at the desirability and necessity of considering the deployment of arrangements that embody the precepts originally set out in Compliance by design.[1567] The growth of

1567 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 43, paragraph 102. According to the OECD, the digitalized nature of platform workers' income-generating activities entails that the technological infrastructure required for integrating tax compliance processes directly within workers' environment

the collaborative economy (and accompanying concerns about non-compliance) imperatively demands a naturalized approach to the management of income tax systems. This (passing) remark is arguably indicative of the OECD's viewpoint that Compliance by design precepts should inform the approaches for addressing platform workers' taxation. Still, the OECD is yet to authoritatively bring this notion to the forefront.

The absence of a principle-based approach to supporting the effective taxation of collaborative economy platform workers is all the more apparent in the discourse of the EU Commission. The Commission's Impact Assessment accompanying the initial DAC7 proposal (unsurprisingly) focused on the under-reporting by workers of earnings derived through platforms and the inefficiency of perennial frameworks for third party information reporting and cross-border cooperation between tax administrations on the exchange of information in addressing this issue.[1568] However, the Commission's discourse creates the myopic inference that enhanced administrative oversight, enforcement and supervision is a panacea. In the 2014 Compliance by design Report, by contrast, the OECD worked from the premise that the under-taxation of hard to tax groups is related to the barriers created by tax system complexity to voluntary compliance, rather than solely to hard to tax groups exploiting opportunities for non-compliance. There is a perceived rigid line that conventionally divides and distinguishes between the ideas of backstopping non-compliance (through oversight and enforcement) and bolstering compliance. Compliance by design is relevant and remarkable in that it attempts to approach the discussion of hard to tax groups' effective taxation without segregating these notions from one another. This attitude is particularly useful as regards the taxation of platform workers, where it is difficult to ascertain with specificity the incidence of the different determinants of non-compliance.[1569] Therefore, the EU Commission's contribution to supporting EU Member States in addressing the income taxation of collaborative economy platform workers would be strengthened if the Commission itself broadened its frame of reference towards the determinants of non-compliance and the possible methods to address these.

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already exists, but needs to be exploited further.

1568 European Parliament; 'Briefing – Initial Appraisal of a European Commission Impact Assessment – Better cooperation against tax fraud'. COM(2020) 314.

1569 OECD; 'The Sharing and Gig Economy: Effective Taxation of Platform Sellers', OECD Publishing, 2019, page 43, paragraph 102.

As part of this research, I can only speculate as to the reasons why the EU Commission focuses on the narrower idea of backstopping non-compliance through multilateral third party information reporting arrangements rather than adopting a broader and principle-based stance, encompassing the concurrent facilitation of compliance *and* the prevention of non-compliance. One possible explanation may relate to the idleness with which Compliance by design is discussed by the OECD in relation to collaborative economy platform workers and the failure of the OECD to steadfastly ascertain this precept as an overarching standard. Indeed, a resolute call towards Compliance by design from the OECD may have inspired the EU Commission to attempt to set a similar tone. Another, perhaps more persuasive reason may relate to the particular governance structure of the EU and the approach to tax policymaking of the EU Commission. The hard rule-making competences of the EU Commission highlight and favor efforts towards the approximation of Member States' laws over mere standard-setting. I am not compelled, however, that this either discards or precludes the role of the Commission as a standard-setter. Notably, the Commission's 2016 European Agenda for the Collaborative Economy was arguably an exercise in standard-setting, which established a general attitude towards the collaborative economy and the legal and regulatory challenges it posed. The shift in the Commission's tone, culminating with its staunch framing of DAC7 as the key to closing the loopholes that allowed workers' under-taxation to persist, is more readily explicable as narrowed and undesirable viewpoint towards the tax challenges at play in the collaborative economy.

Beyond the assertion of Compliance by design as an overarching principle, the dissemination of experiences with the implementation and application of frameworks that embody these norms is both necessary and desirable. In turn, this argument highlights the importance of the socializing function of international governmental organizations. For this reason, the OECD and EU Commission should encourage states to exchange experiences on the introduction and application of domestic law practices as based on Compliance by design. When these exchanges of experience lead to the identification of best practices, international governmental organizations should promote the replication of similar approaches in other states. Exchanges of experiences between states and the replication of best practices are important drivers towards broadening the deployment of Compliance by design approaches for securing the effective taxation of collaborative economy platform workers.

As described at length in the present analysis, the most obvious outcome-determinative measure for securing platform workers' taxation involves the collection of tax in respect of income derived by platform workers through withholding. However, in Part III.II.4 of this thesis, I describe the difficulties associated with the introduction of non-employee withholding arrangements for platform workers. In Part III.II.4, I discuss a number of options for overcoming these challenges and develop the main argument that a non-employee withholding regime for collecting tax in respect of income derived by platform workers needs to be adjusted and designed by reference to the peculiarities of the environment of platform workers. In my opinion, the OECD and EU Commission should actively encourage states that have introduced non-employee withholding arrangements to share insights about the characteristics of such measures, experiences in the management of the relation with withholding agents and effects about compliance levels. I underscore the added value of open debate about states' experiences with the application of non-employee withholding arrangements on two main grounds. Firstly, in spite of their (formal) benefits as mechanism for safeguarding compliance, non-employee withholding arrangements are seldom applied in practice as a mechanism for collecting tax in respect of income derived by collaborative economy platform workers. If international governmental organizations encourage further debate about non-employee withholding arrangements and their application in respect of platform workers, states' interest in the introduction of such frameworks could potentially be bolstered. Secondly, exchanges of experience and the replication of best practices could support overcoming the existing difficulties to the broad-based application of non-employee withholding arrangements in the collaborative economy. For example, in Part III.II.4 of this research, I describe the Estonian opt-in regime for non-employee withholding, which may be applied to any individual taxpayer that derives income from an independent activity, and highlight it as an option for bypassing the challenges associated with assigning withholding duties on platform operators. Publicizing such measures and encouraging other states to replicate them would strengthen and broaden the trend of addressing platform workers' effective taxation through withholding taxes.

Exchanges of experience and the promotion of best practice replication are also relevant as regards the tax administration-related notions embedded in Compliance by design. In the 2014 Report, the OECD theorized that tax administrations should be encouraged to consider and develop frameworks that ensure the alignment

between taxable events, the reporting of these for income tax purposes and the determination of the tax consequences of such events. The OECD in particular already provides a forum where tax administrations in member countries share experiences on approaches to the management of income tax systems. There is a strong and self-evident argument in favor of bolstering this practice, in light of the central role of tax administration-driven measures under Compliance by design.

Tax administrations are a second key actor in addressing the income tax challenges at play in the collaborative economy. Tax administration is slowly but constantly evolving. Considerations on the automation of tax administrations have grown increasingly more prominent in recent years. However, the focus has arguably fallen on short-term objectives, therefore preserving the pre-existing emphasis on the binary idea that tax administrations should encourage voluntary taxpayer compliance in some cases and enforce compliance in others. In turn, this determines a reactive approach to the manner in which the automation of tax administration is viewed.[1570] In proposing a paradigm shift that emphasizes compliance by design, the OECD's Tax Administration 3.0 model should be a notable move away from this reactive approach. Under the Tax Administration 3.0 model, income taxation should occur in the background of income-generating activities, therefore minimizing taxpayer inputs.[1571]

However, a renewed and strengthened emphasis on compliance by design and the role that tax administrations should play in this context should not create a perverse approach to income tax compliance. Tax administration-driven measures cannot always remove the influence of taxpayer behavior on income tax compliance. The main point of contact between taxpayers and tax administrations lies at the level of taxpayer self-reporting or self-assessment processes. In this respect, if tax administrations are expected to drive compliance by design arrangements, this implies a call on tax administrations to develop frameworks wherein taxpayer self-reporting and self-assessment are naturalized. In practice, self-reporting and self-assessment processes will inevitably entail some taxpayer inputs. Tax

1570 João Félix Pinto Nogueira; 'Tax Administration and Technology: from Enhanced to No-Cooperation?'; Digital Transformation of Tax Administrations, 2022. Available at SSRN: https://ssrn.com/abstract=4125999 or http://dx.doi.org/10.2139/ssrn.4125999 .

1571 OECD; 'Digital Transformation Maturity Model', OECD Publishing, 2022, page 30.

administrations may minimize reliance on taxpayer inputs through the provision of pre-populated tax returns which integrate comprehensive information collected through third party channels and which include 'nudges' that discourage taxpayers from making modifications to pre-filled inputs (whether these are erroneous or deliberate misrepresentations). Whereas such arrangements may in practice mitigate the incidence of taxpayer behavior on compliance to a considerable extent, they cannot absorb this influence fully – because the design of personal income tax rules by its nature lends itself to influence by taxpayer behavior.

In some cases tax administrations have developed limited-purpose frameworks that do remove income tax compliance processes from the hands of taxpayers. A notable recent example in this respect is an arrangement developed by the Singaporean tax administration for the collection of tax in respect of private hire drivers. In Singapore, the tax administration developed a far-reaching experimental 'no filing service', wherein the processing of information already available to the tax administration replaces taxpayer self-reporting completely.[1572] They are instead issued an assessment setting out their tax liability.[1573] The Singaporean 'no filing service' essentially replaces taxpayer reporting with administrative assessment. This approach involves no taxpayer inputs, since the administrative assessment is based wholly on information supplied by third party reporters. A 'no filing service' based on administrative assessment is only feasible where the taxpayer is subject to comprehensive third party information reporting, meaning this approach would be difficult to scale across broader segments of taxpayers.[1574]

1572 OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies'; OECD Publishing, 2022, page 60.

1573 Ibid.

1574 More importantly however, a 'no filing' approach inevitably invites questions about taxpayer rights and representation in the context of compliance by design. The overarching purpose of compliance by design is to safeguard effective taxation and preserve the public policy notion that personal income tax should amount to a broad-based tax on the overall consumption power of individuals. Conversely, compliance by design should not translate into a depersonalized approach to the assessment of income tax. Where such approaches do apply, the possibility for taxpayers to appeal an administrative assessment effectively and efficiently is primordial. This research does not address this issue, since the discussion of taxpayer rights is outside the scope of this contribution.

The inevitably growing emphasis on compliance by design does not only entail a shift in the functions of tax administrations, as much an evolution of the paradigms related to the role of tax administrations. In this analysis, I discuss that the core functions of tax administrations relate to safeguarding and enforcing tax compliance and collection. The incremental development of compliance by design frameworks for tax administrations does determine a partial shift in the functions of tax administrations. To the extent that income tax compliance processes are (partially) naturalized, the corollary should be a reduced necessity for the exercise of administrative oversight and enforcement. In a similar vein, compliance by design should lessen reliance on the other frameworks through which tax administrations historically supported voluntary compliance (in particular, taxpayer engagement and education initiatives). However, compliance by design does not presuppose that tax administrations will no longer exercise oversight and enforcement and attempt to stimulate voluntary compliance through taxpayer engagement and education initiatives. In this respect, the core functions of tax administration are unaltered in the advent of Tax Administration 3.0.

The more prominent paradigm shift instead relates to the role of tax administrations. Income tax compliance involves direct contacts between taxpayers and tax administrations. In this respect, the conventional role of the tax administration entails direct contact with taxpayers. In the context of a paradigm shift modelled along the OECD's Tax Administration 3.0 vision, such contacts would be largely minimized. As a corollary, the primary role of tax administrations would shift from that of a pure administrator to a manager.[1575] Rather than applying and administering the law, the key role of the tax administration would relate to the management of compliance infrastructures and the identification of compliance risk areas.[1576] The tax administration would serve as a steward of the income tax system itself, rather than as a bridge between individual taxpayers and the law.

1575 João Félix Pinto Nogueira; 'Tax Administration and Technology: from Enhanced to No-Cooperation?'; Digital Transformation of Tax Administrations, 2022. Available at SSRN: https://ssrn.com/abstract=4125999 or http://dx.doi.org/10.2139/ssrn.4125999 . In the Tax Administration 3.0 discussion document, the OECD refers to this as the establishment of a system of systems under the management of tax administrations.

1576 Ibid.

As regards the income taxation of collaborative economy platform workers specifically, compliance by design as driven by tax administrations is still an early development. However, the progressive emphasis placed on compliance by design by the OECD is likely to determine tax administrations to consider ways in which such arrangements could be extended to platform workers. It would be difficult, if not misguided, to attempt to identify general trends of administrative practices to the design of compliance by design arrangements tailored to collaborative economy platform workers, because such trends are yet to emerge. Nevertheless, it does remain possible and appropriate to briefly remark on the implications of a compliance by design-based approach to tax administration as relevant to the context of collaborative economy platform workers.

The high-volume/low-value landscape of income-generating activity in the collaborative economy will eventually force innovation by tax administrations, whether tax administrations explicitly label frameworks they develop as 'compliance by design' or not. In particular, the broad-based application of third party information reporting arrangements will likely entail that a growing number of tax administrations will provide pre-populated tax returns to platform workers. As I descried previously in this analysis, pre-populated tax returns may be accompanied by automated real-time accuracy checks, aimed at lessening the incidence of erroneous reporting. Potentially, third party information reporting arrangements could enable pure administrative assessment, wherein the role of the taxpayer only extends to the actual payment of tax.[1577] In my view, a broader move towards tax administration-driven measures that embed various notions of compliance by design is an inevitable development, simply because the management of income taxation in respect of emerging hard to tax groups is not administratively viable without at least some elements of compliance by design.[1578]

1577 As I note immediately above, 'no filing services' that involve administrative assessment should be accompanied by safeguards that protect taxpayer rights and equitable taxation. In this respect, the role of the taxpayer would also extend to the right of appealing administrative assessment.

1578 The role and functions of tax administrations in connection with the income taxation of platform workers also depend on the manner in which compliance by design arrangements are primarily devised. More broadly, this also depends on whether future policy developments will entail that platform workers come to be increasingly treated akin to employees for income tax purposes or continue to be treated as quasi-fully-fledged independent contractors. Previously in this analysis, I noted the odd comments of the

Finally, this Part of the present research discusses collaborative economy platform operators as intermediaries for securing the effective income taxation of workers. Modern tax compliance frameworks have long relied on intermediaries to a considerable extent. Intermediaries are conduits for the optimized discharge by tax administrations of their own functions. In this respect, compliance intermediaries strengthen by extension the effectiveness of tax policy measures and objectives. Tax administrations cannot perform their functions effectively in splendid isolation. Under all arrangements that interpose an intermediary between the taxpayer and tax administration, the core role of the intermediary is to bridge and backstop factors that impede the effective exercise of tax administrations' functions. Intermediary regulation arrangements are particularly important in relation to sectors of income-generating activity predicated on high-volume/low-value transactions. The emphasis on intermediary regulation arrangements for securing the effective taxation of collaborative economy platform workers is inevitable and desirable.

There are three types of such measures that contemplate platform operators as intermediaries: engagement and education initiatives, third party information reporting frameworks and (some) non-employee withholding arrangements. Additionally, there are ongoing initiatives for integrating information collected by platform operators into e-tax returns for workers. Each of these measures emphasizes the vectors of effective intermediary regulation in different ways. Platform operators are effective and appropriate intermediaries for the purposes of taxpayer engagement and education initiatives and third party information reporting arrangements. However, these measures alone do not address the under-taxation of platform workers in full.

Taxpayer engagement and education initiatives and third party information reporting arrangements directly relate to the conventional binary view about the functions of tax administration: encouraging voluntary compliance, on the one

OECD in the Tax Administration 3.0 discussion document, whereby the income taxation of platform workers should be progressively addressed through the withholding of tax by intermediaries. If this development were to materialize, the emphasis on self-reported or self-assessed returns by taxpayers would diminish. Conversely, if and where income tax cannot be collected through withholding, the importance of effective self-reporting and self-assessment framework is brought to the forefront.

hand, and discouraging and penalizing non-compliance, on the other hand. In Part IV.III of this thesis, I argue that this dichotomous view towards the management of income taxation emphasizes the impact of taxpayer attitudes and behaviors on compliance outcomes. I further argue that effective taxation should not focus solely on altering the incidence of taxpayer attitude and behavior, but instead on desensitizing tax compliance to the influence of these. In turn, this requires a shift in the paradigm of tax compliance, wherein compliance is naturalized and embedded directly within the income-generating activities of taxpayers. In my view, the extent to which platform operators could support this objective is questionable.

The emergence of the collaborative economy compounds ongoing shifts in labor markets and working conditions. By its nature, the collaborative economy enables individuals to generate income that is anchored in hard to capture sources. To some extent, the status of platform workers as independent contractors exacerbates concerns about the under-taxation of the income they derive. In my view, the difficulties associated with securing workers' tax compliance are imputed to a misguidedly deep extent to arguments about worker misclassification by platform operators. As part of this analysis, I argue that the prevalence of worker misclassification issues only extends to limited segments of the collaborative economy. The under-taxation of collaborative economy platform workers is not underlined by rampant ambiguity about the status of workers, as much as the limited capabilities of existing income tax mechanisms to safeguard effective taxation in respect of quasi-centralized income-generating activities. The nature of the compliance challenges posed by collaborative economy platform workers, coupled with the limitations in the effectiveness of most existing approaches for addressing workers' compliance cast doubt on the reliability of 'voluntary' and 'enforced' compliance as guiding notions for the management of income tax systems. These considerations highlight the importance of a transition towards compliance by design. Embedding compliance processes directly within the economic activities of taxpayers requires a strengthened emphasis on intermediary regulation. In turn, this consideration augments the relevance of the markers of effective intermediary regulation.

The foregoing analysis has strived to convey that platform operators are unreliable conduits for attaining the policy objective of naturalizing tax compliance for workers. Firstly, platform operators are usually not adequate intermediary agents for the application of non-employee withholding in respect of income derived by

workers. In Part III.II.4 of this thesis, I discuss the main considerations that hamper the introduction of non-employee withholding arrangements in the collaborative economy. Summarily, these issues relate to the challenges of enforcing withholding obligations against non-resident platform operators that do not maintain a local presence and to workers' fragmentation of income across different sources. In my view, non-employee withholding arrangements are only feasible in the collaborative economy to the extent that they involve withholding by an intermediary that does not pose cross-border enforceability constraints and which is concurrently capable of aggregating income from distinct sources. I discuss how these objectives are achieved under the Estonian non-employee withholding arrangement for entrepreneurs in Part III.II.4 of this thesis.

Secondly, platform operators cannot fully support the automation of taxpayer self-reporting and self-assessment. Platform workers enjoy considerable opportunities to willfully and inadvertently misrepresent income and expenses in self-reported or self-assessed tax returns. Where applicable, third party information reporting arrangements purport to backstop these issues to some extent. In some cases, tax administrations transpose information received pursuant to third party information reporting into pre-populated tax returns, thereby limiting reliance on information supplied by taxpayers alone. Additionally, taxpayers' knowledge that they are subject to reporting may diminish the incentive to misrepresent earnings. However, both these considerations play along the idea of steering taxpayer behavior, rather than preventing behavioral factors from influencing compliance. Platform operators do not record or report the full span of data and circumstances as relevant to the determination of tax liabilities. Indeed, no framework for third party information reporting, however comprehensive, could feasibly extend as far. As such, if the overarching policy objective were to reform the functioning of self-reporting and self-assessment compliance frameworks by preventing taxpayer behavior from influencing these, information supplied to tax administrations by platform operators is insufficient, regardless of how such information were used. Instead, as I argue previously in this analysis, this could be achieved by linking taxable events in real-time with their accounting for tax purposes. I discuss how this objective is achieved under the automatic profit tax return pilot project developed by the Dutch tax administration in Part IV.IV.4 of this thesis.

Since the emergence of the collaborative economy and the inception of the heightened focus on platform workers' under-taxation, the focus of policymakers has fallen chiefly on the design of intermediary regulation arrangements wherein platform operators support compliance. Conversely, there is a comparatively lesser focus on the broader and more relevant question of securing effective taxation in respect of emerging hard to tax groups as a matter of generality. This is attributable in large part to the incessant emphasis on voluntary and enforced compliance as precepts of tax administration and income tax system management. In my view, the persistent focus on strengthening the role of platform operators in workers' compliance processes acts to delay the necessary and desirable shift in paradigm towards tax compliance by design.

Reflections following Parts III and IV - The need for a cohesive framework for securing the effective taxation of income derived by workers from activities undertaken through platforms

1. From measures to a strategy for addressing the income taxation of collaborative economy platform workers

A. Structural and legal limitations to the effectiveness of the measures for addressing the income taxation of collaborative economy platform workers

Collaborative economy platform workers are an emerging hard to tax group. The under-taxation of income derived from activities undertaken through platforms is rooted in a series of distinct but ultimately inter-related causes. The main determinants of non-compliance here identified broadly fall along four general categories.

Firstly, collaborative economy platform workers undertake their income-generating activities in a formally independent manner. Under the self-assessment and self-reporting compliance mechanisms applicable to taxpayers earning income from independent activities, the onus falls on platform workers to individually report receipts and other relevant circumstances towards the determination of their tax liability. In principle, the income taxation of collaborative economy platform workers is governed by voluntary compliance. When not buttressed by additional impetuses, voluntary compliance may be eroded by taxpayers' conduct.

Secondly, in their relation with tax administrations, platform workers are usually at an informational advantage which in practice may work to the detriment of tax administrations and their capabilities to effectively safeguard (voluntary or coerced) compliance. This is rooted in the fact that the self-assessment and self-reporting frameworks used to ascertain workers' tax liabilities are heavily reliant on taxpayer inputs.

Thirdly, the nature and extent of the tax consequences flowing from income-generating platform activities makes (voluntary) compliance onerous and overly complex. This holds true in particular for workers that perform such activities on a small scale or an intermittent basis and for workers transitioning from employee to independent contractor or self-employed status. Subjective perceptions about the complexity of income tax rules and compliance requirements may work to weaken tax morale, to enhance the perception of taxes as losses and augment negligent compliance-related conduct.

Fourthly, due to the visibility deficit characterizing their income-generating activities and the expenses incurred in connection with these, the perceived opportunity for non-compliance is notably prominent,[1579] especially when underpinned by a limited *a priori* incentive for voluntary compliance or a high underlying risk appetite.

These different determinants of non-compliance may be addressed through a number of measures. The visibility deficit of workers' activities and the informational asymmetry between workers and tax administrations may be targeted through the introduction of third party information reporting arrangements aimed at enhancing the oversight and supervisory capabilities of tax administrations. The primary purpose of such measures is to reinforce the effectiveness of administrative supervision, but such measures may also influence to some extent the conduct of taxpayers and disincentivize erroneous self-reporting and self-assessment. A more expansive measure is the introduction of non-employee withholding arrangements, wherein an intermediary is required to collect and remit tax in respect of receipts derived by workers from income-generating platform activities. It is broadly accepted that the interposition of a third party intermediary between taxpayers and tax administrations mitigates the opportunities for non-compliance that are otherwise enjoyed by taxpayers earning income from independent and formally decentralized activities.[1580] In this respect, the appeal of non-employee withholding arrangements is particularly obvious. Non-employee withholding arrangements may also alleviate compliance difficulties for inexperienced platform workers whose under-taxation is underlined by inadvertent conduct and negligence. In practice however, non-employee withholding arrangements are seldom applied. Instead, the complexity of platform workers' compliance obligations is usually addressed through taxpayer engagement and education initiatives and, on a narrower scope, through the application of simplified taxation rules such as exemptions for *de minimis* amounts of income derived from platform activities.

Out of the measures here identified, non-employee withholding arrangements are inarguably the most far-reaching and target the effects of most determinants

1579 Marina Bornman and Jurie Wessels; 'The tax compliance decision of the individual in business in the sharing economy', e*Journal of Tax Research 16 (3),* 2019, pp. 425-439.

1580 Manoj Viswanathan; 'Tax Compliance in a Decentralizing Economy', *Georgia State University Law Review 34 (2)*, 2018, pp. 283-333.

of non-compliance. Nevertheless, in general, the types of measures discussed in Part III to this thesis are not mutually exclusive, in that a number of different such measures may be introduced and applied contemporaneously. As argued in Part III to this thesis, the choice for a country, state or jurisdiction in favor of one measure or a given combination of measures may be influenced to a considerable extent by local viewpoints towards the incidence of the different determinants of non-compliance targeted by each measure.

The application of *measures* for addressing the income taxation of collaborative economy platform workers creates a number of limitations to the ultimate objective of securing effective taxation. This is determined by the limitations of the measures themselves. The effect of the four measures identified in Part III to this thesis may be limited by two sets of considerations.

Firstly, most measures here identified have structural limitations, in that they are not individually capable of capturing all determinants of non-compliance. This is particularly the case as regards measures involving taxpayer engagement and education, measures for the simplification of platform workers' tax compliance and third party information reporting arrangements. By their nature, these measures only address specific determinants of non-compliance, allowing others to subsist.

Secondly, measures for addressing the income taxation of platform workers may pose legal limitations, in that they may not readily lend themselves to application and enforceability in certain contexts. This is notably the case as regards non-employee withholding arrangements. Structurally, such measures effectively and comprehensively target the effects of all main determinants of non-compliance. However, non-employee withholding arrangements are difficult to design and implement in practice. The feasibility and enforceability of such measures in cross-border contexts depends heavily on the identity of the withholding agent. Additionally, the design of non-employee withholding arrangements entails a series of complex choices. For example, these relate to the determination of an appropriate withholding rate to accommodate the different levels of profitability yielded by labor- and capital-intensive income-generating activities. Furthermore, the question may be raised whether the collection of tax through withholding is always appropriate, regardless of the level of earnings and frequency of platform workers' activities. Finally, if the collection of tax through withholding is desirable,

this invites the question whether withholding should be final or a mere pre-payment of income tax.

B. A necessary and desirable paradigm shift: from measures to a strategy for addressing the income taxation of collaborative economy platform workers

The focus on individual measures for addressing the income taxation of collaborative economy platform workers invites a myopic stance, where some considerable degree of non-compliance is bound to persist. In my view, the objective of securing the effective taxation of platform workers instead requires the conceptualization and design of a strategy aimed at safeguarding compliance and effective taxation. A strategy-based approach allows the issue of platform workers' under-taxation to be managed by reference to the overall context of the underlying issues. Addressing the effective taxation of platform workers through a strategy is different from the mere concurrent application of different measures. A strategy has a number of characteristics that set it apart from the introduction of measures or combinations of measures.

Firstly, a strategy is by definition an apparatus composed of interrelated processes that work towards a core unitary objective. In other words, a strategy is premised on the notion that no one single process or measure amounts to a one-size-fits-all solution – nor should it. Additionally, unlike a mere collection of measures, the overarching objective of securing the effective taxation of collaborative economy platform workers is more accurately defined and contextualized as an issue rooted in multiple determinants of non-compliance under a strategy. A strategy-based approach enables a crystalized view of the structural and legal limitations inherent in the different existing and proposed measures for addressing the income taxation of collaborative platform workers. When this is the case, it becomes feasible to deploy complementary processes that work to overcome the limitations of mere measures. In other words, a strategy is not a combination of measures, but rather a network of measures and actors aligned towards an ultimate overarching objective.

Secondly, a fully-fledged strategy is more amendable to being scaled than combinations of measures for addressing the income taxation of collaborative economy platform workers. In my view, this change is paradigm is both necessary

and desirable. The advent of the collaborative economy brought to the forefront the ease with which individuals may generate income through quasi-formalized channels. However, income-generating activities undertaken by individuals strictly through the collaborative economy are increasingly becoming the mere tip of the iceberg of a rapidly changing labor market. The digitalization of information channels and payment processing services allows individuals to engage in peer-to-peer income-generating activities outside the realm of the collaborative economy as defined in the context of this research. In many cases, individuals engage in such activities in a more entrepreneurial manner, without the intermediation services of platform operators that connect them with end-users. Instead, many individuals seek out a customer base themselves and only rely on platforms that act as digitalized payment processors to collect payments from customers. The growing prevalence of peer-to-peer work, both within and outside the confines of the collaborative economy highlights the necessity and desirability of frameworks for safeguarding tax compliance in this emerging environment of devolved income-generating activity. This objective is more readily achievable through a strategy. Mere measures, even when adopted in concert, generally lack an obvious common denominator.

Thirdly, in Part III.I.4 of this thesis, I argue that the taxation of collaborative economy platform workers should be addressed in a principled manner. However, I also highlight the marring tradeoffs that inherently arise when a broad principled framework is applied. Tradeoffs arise because different measures are predicated on compromises between different principled ends and competing policy objectives. A strategy by its nature does not prominently pose this issue, because every component of a strategy is only conceptualized as a stepping stone, integrated into a broader whole. A strategy is comprised of inter-related processes, each of which targets a particular objective whilst being concurrently subservient to a clear overarching objective. In other words, the role of each component or process is determined from the outset with specificity. The mere fact that some processes prioritize certain sub-objectives to the detriment of others does not hamper the overall effectiveness of the strategy, since different limited-purpose components work holistically in concert towards a core goal.

1. *The OECD's Compliance by design vision – a strategy guideline*

A strategy approach to addressing the income taxation of collaborative economy platform workers requires a meaningful shift in the existing paradigms about income tax compliance, the role of intermediary regulation arrangements and tax administrations and the overall approach to the management of personal income tax systems. I surmise that a move away from mere measures or combinations of measures towards a fully-fledged strategy for addressing the income taxation of collaborative economy platform workers should be constructed from the vision set out by the OECD in Compliance by design.

Compliance by design provides a starting point for a strategy approach in two broad and deeply relevant ways. Firstly, Compliance by design reinforces the urgency of addressing the under-taxation of hard to tax groups in a general sense.[1581] At the level of any country, state or jurisdiction, some measure of income-generating activity will inevitably occur through grey, informal or otherwise undetected channels. In conventional wisdom, the incidence of grey economic activity is viewed through the lens of macro-economic hardship and weak regulatory structures. However, this notion is arguably growing increasingly obsolete. The ongoing digitalization of economies creates channels that enable and encourage income-generating activities to be undertaken outside the scope of ordinary regulatory structures across the board. The prevalence of grey or quasi-grey income-generating activity is not attributable to regulatory gaps as much as it is the product of opaque channels that allow such income-generating activities to occur on a prevalent scale. The failure to acknowledge this reality and to effectively integrate taxpayers under the net of taxation would only exacerbate this issue, likely prompting the further growth of small-scale and largely unseen economic activity. In the Compliance by design report, the OECD alludes to the notion that the under-taxation of hard to tax groups is not primarily related to the structural ineffectiveness of existing income tax compliance structures. Instead, certain taxpayers are simply difficult to capture effectively for income tax purposes using ordinary compliance structures, when these are incompatible with the realities of taxpayers' income-generating circumstances and environment. In turn, this requires the development of special-purpose arrangements for hard to tax groups, wherein tax compliance and collection processes take into consideration the specific characteristics of taxpayers, the root

1581 OECD; 'Tax Compliance by Design – Achieving Improved SME Tax Compliance by Adopting a System Perspective', OECD Publishing, 2014, page 16.

determinants of non-compliance and the particularities of the environment within which their income-generating activities are undertaken.

Secondly, Compliance by design highlights the opportunities to leverage the characteristics of the channels through which hard to tax groups undertake their income-generating activities with a view to reforming existing paradigms related to tax compliance and the management of income tax systems. In other words, Compliance by design proposes that the channels through which the income-generating activities of hard to tax groups are undertaken could and should be integrated into compliance processes. The digitalization of economies entails that the visibility deficit of hard to tax groups carries different implications today than originally. By extension, this enables avenues for the design of income tax compliance processes which are adjusted to the characteristics of hard to tax groups.

Compliance by design proposes the naturalization of tax compliance processes through the deployment frameworks that are directly conducive to compliance whilst concurrently precluding regular opportunities for non-compliance.[1582] In Part IV.II to this thesis, I described this proposition as concurrently encompassing a normative or prescriptive dimension, which may be ultimately interpreted as a utilitarian expression of the principle of effective taxation. Normative statements are relevant for the design of strategies, because these allow the definition of overarching objectives. In my view, the normative precept of Compliance by design should be applied *mutatis mutandis* to a strategy for addressing the income taxation of collaborative economy platform workers.

However, it should be noted that Compliance by design does not imply or presuppose a perfect approach, wherein all non-compliance is absorbed altogether. In interpreting the principle of fiscal effectiveness earlier in this research,[1583] I allude to the notion that fiscal effectiveness is in itself a utilitarian rather than an absolutist concept. In some existing literature, the principle of fiscal effectiveness is referred to as the '*minimum* tax gap' principle.[1584] Similarly, in the Ottawa Taxation Framework

1582 Ibid., page 22.

1583 I discuss my views and interpretation of the principle of fiscal effectiveness in Part III.I.4.C of this research.

1584 Association of International Certified Professional Accountants; 'Guiding principles of good

Conditions, the OECD describes fiscal effectiveness by stating that tax rules should 'produce the right amount of tax at the right time, and the potential for evasion and avoidance should be *minimized*'.[1585] These considerations hold no less true in connection with the normative underpinning of Compliance by design. In this respect, Compliance by design should not be interpreted as a conduit towards full income tax compliance, because this a utopian notion itself. Instead, Compliance by design merely proposes the idea of comprehensively following taxable events and aligning these with their income tax consequences in real time with a view to improving compliance and effective taxation.

Compliance by design broadly sets out guidelines for the envisaged naturalization of tax compliance processes. According to the OECD, Compliance by design requires two main types of processes. Firstly, Compliance by design may be achieved through the introduction of outcome-determinative tax compliance rules. Applied to the context of the taxation of collaborative economy platform workers, the only measure that may be strictly described as outcome-determinative refers to non-employee withholding arrangements. Secondly, Compliance by design brings about a cognizance that the naturalization of compliance processes cannot always be achieved through outcome-determinative rules alone. In some circumstances, outcome-determinative rules may difficult to introduce, apply and manage. Not all forms of income-generating activity readily lend themselves to the application of tax through withholding. For this reason, Compliance by design suggests that frameworks that are conducive to compliance and which concurrently preclude opportunities for non-compliance may be devised outside the scope of pure regulatory intervention. In this respect, naturalized compliance channels may and should be designed by tax administrations. Tax administrations should therefore develop resources that streamline tax compliance and which enable the real-time reporting of taxable events and other circumstances as relevant to the income taxation of persons.

These notions are particularly relevant towards the design of a strategy for addressing the effective taxation of collaborative economy platform workers,

tax policy: A framework for evaluating tax proposals', 2017.

1585 OECD; 'Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions', 2001.

because they highlight the reality that legal measures may and should be optimized and complemented by compliance processes and mechanisms designed by tax administrations. In other words, Compliance by design brings to the forefront the precept that effective tax compliance is underpinned by the intersectional and complementary roles of tax policy and tax administration. In my view, the multifaceted determinants of non-compliance that are at play for collaborative economy platform workers further augment the viewpoint that effective taxation should be addressed through a combination of policy and administration developments.

Indeed, tax administrations are increasingly expected to achieve more with less. The emphasis on reporting frameworks developed by tax administrations under the auspices of Compliance by design does invite one to revisit the broader question of the relation between tax policy and tax administration. Regardless of its design, no tax policy could ever be successful in an efficient and ineffective administrative environment. By the same token, effective and efficient tax administration cannot compensate for policy weaknesses. In this respect, there is some room to raise the theoretical question of whether an emphasis on reporting frameworks to be developed by tax administrations in the context of Compliance by design is a workable approach. In my view, there are reasonable and compelling arguments in favor of pushing for tax administrations to actively contribute to the naturalization of income tax compliance processes for hard to tax groups. As the OECD surmised in the Compliance by design report, the under-taxation of hard to tax groups is not rooted chiefly in the incompatibility between substantive income tax rules and the particularities of these taxpayers' income-generating activities. Rather, hard to tax groups are usually non-compliant because procedural compliance frameworks do not usually reconcile the particularities of their environment of income-generating activity. Compliance by design does not presuppose that tax administrations carry the brunt of the weight of securing the income taxation of hard to tax groups. Rather, it proposes that tax administrations optimize the functioning of taxpayer self-reporting and self-assessment processes, in a manner that enables these frameworks to amount to a genuine reflection of the taxpayer's circumstances as relevant to the calculation of income tax.

2. A Compliance by design-based strategy for the effective taxation of collaborative economy platform workers

A strategy for the effective taxation of collaborative economy platform workers premised on Compliance by design requires two broad determinations: the delineation of the roles of the different parties involved in the strategy and the determination of the main material components of the strategy.

A. Actors or parties

The design and implementation of a strategy for addressing the income taxation of collaborative economy platform workers requires separate contributions from a number of actors: domestic policymakers, tax administrations, intermediaries and international governmental organizations. In Part IV to this research, I describe their roles and functions are under the *status quo*. Subsequently, I develop the argument that these roles require some measure of reconsideration against the backdrop of the objective of securing effective taxation in the collaborative economy. A strategy inherently requires interconnectedness in the roles, functions and contributions of the actors involved.

In Part IV.II.4, I posit that there are inevitable limits to the extent to which policies for addressing the taxation of collaborative economy platform workers may be feasibly harmonized. As such, a prominent degree of unilateralism is bound to exist. However, domestic tax policy design is inevitably shaped by the context within which it is developed. Domestic policymakers should move away from the emphasis on measures or combinations of measures for addressing the income taxation of collaborative economy platform workers. The foundation of a strategy, in my view, is a shift in the paradigm of how the under-taxation conundrum is approached. Domestic policymakers' understanding of the importance of working towards a strategy enables crystallization and cognizance of the limitations of some measures currently favored. By extension, this enables a reassignment of the focus on the introduction of frameworks that are conducive to compliance and limit opportunities for non-compliance.

Similar considerations arise as regards the role of international governmental organizations. In Part IV.II to this research, I submit that the OECD in particular has

made a considerable contribution to the harmonization of taxpayer engagement and education initiatives and third party information reporting arrangements in the collaborative economy. However, I maintain that the approximation of domestic measures for addressing the income taxation of platform workers should retain a narrow scope. Instead, international governmental organizations should also strive to establish and promote standards that guide domestic policymaking and provide countries, states and jurisdictions with a forum for exchanging experiences with different approaches for addressing the income taxation of platform workers with a view to enabling the identification (and subsequently the replication) of best practices. I dare submit that these considerations hold no less true in the feat towards the emergence of strategies for securing effective taxation in the collaborative economy. In my view, the OECD and EU Commission should encourage states, countries and jurisdictions to depart from the perception that addressing the income taxation of platform workers merely requires the adoption of singular measures or combinations of measures. The OECD and EU Commission should advocate for systems grounded on Compliance by design and facilitate states, countries and jurisdictions in exchanging experiences and replicating best practices.

A strategy for addressing the income taxation of collaborative economy platform workers inevitably also entails the introduction and application of various intermediary regulation arrangements. Intermediaries interposed between platform workers and tax administrations facilitate the discharge of tax administrations' functions and steer the compliance-related behavior of workers. The digitalized footprint of platform workers' activities and the quasi-centralized channels through which their income-generating activities are undertaken create some opportunity for the introduction of intermediary regulation arrangements. In the context of the tax challenges posed by collaborative economy platform workers, the most self-evident intermediaries are platform operators. In Part IV.IV.3, I argue there are clear limitations to the extent to which platform operators can contribute to supporting the effective taxation of workers.

These limitations are broadly explicable by reference to three considerations. Firstly, some of the measures wherein platform operators are assigned an intermediary function are not themselves conducive to compliance. This holds true as related to third party information reporting and taxpayer engagement and education

initiatives alike. Secondly, the extent of information collected by platform operators as part of their dealings with workers does not cover the full span of information that workers would otherwise need to individually report in a self-assessed or self-reported return. Thirdly, in the context of outcome-determinative rules such as non-employee withholding arrangements, platform operators are unreliable intermediaries.

In light of these considerations, the scope of relevant intermediaries should be broadened beyond platform operators alone. This should cover, in particular:

- ***Banks, credit institutions and other payment settlement entities***. These parties are integrated into the environment of income-generating activity of platform workers in a different manner than platform operators. Unlike platform operators, these entities are better positioned to also record information related to the expenses incurred by platform workers in connection with their generation of taxable income. These entities have a more comprehensive overview of the overall situation of platform workers as taxpayers. Additionally, banks, credit institutions and other payment settlement entities with which workers interact as part of the performance of their income-generating activities are more likely than platform operators to maintain a local presence in workers' jurisdiction;

- ***Software developers***. A core element towards Compliance by design- relates to the development of compliance frameworks by tax administrations. In turn, this entails that tax administrations should establish cooperative relations with actors specialized in the development of technologies that may underpin such compliance frameworks.

Finally, a cohesive strategy for addressing the income taxation of collaborative economy platform workers would also involve tax compliance tools developed by tax administrations. Compliance frameworks developed by tax administrations complement outcome-determinative rules introduced by policymakers and supplement blackletter measures.

B. Components – Shaping Compliance by design

A strategy predicated on Compliance by design relies chiefly on two *main* types of processes:[1586] outcome-determinative measures and measures driven by tax administrations. Each of these is operationalized differently and contributes to the overarching objective of securing the effective taxation of collaborative economy platform workers in a different way.

1) Operationalizing outcome-determinative measures for addressing the income taxation of collaborative economy platform workers – sidestepping the challenges to the application of non-employee withholding arrangements using alternative intermediaries

In Parts III and IV to this thesis, I argue in favor of the introduction of non-employee withholding as an approach to safeguard the income taxation of collaborative economy platform workers. As part of this research, I describe non-employee withholding as an outcome-determinative approach to securing effective taxation.

The collection of tax through withholding entails the reassignment of tax computation and remittance obligations from the taxpayer to an intermediary. Intermediary regulation arrangements are most effective when the taxpayer, tax administration and intermediary are transacting at arm's length.[1587] In such cases, the incentive for the intermediary to misrepresent information in favor of the taxpayer is essentially nil. Effective intermediaries are broad repositories of information, meaning their compliance infrastructure is unlikely to enable the incidence of faults and errors that may otherwise occur in taxpayer self-reporting or self-assessment processes. Withholding arrangements preclude the impact of individual taxpayer conduct on compliance outcomes. When tax is collected through withholding, the risk appetite of taxpayers cannot affect compliance. Additionally, withholding arrangements more closely align taxable events with the

1586 As part of these conclusions, I will further develop the argument that third party information reporting, taxpayer engagement and education initiatives and simplified income taxation regimes should continue to play a role under a system-based approach for addressing the income taxation of collaborative economy platform workers.

1587 Leandra Lederman; 'Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted?', *Fordham Law Review 78 (4),* 2010, pp. 1733-1759.

actual payment of tax, therefore alleviating taxpayers' subjective perception of the payment of tax as a loss as well as liquidity issues associated with the discharge of tax liabilities on an *ex post factum* basis.[1588]

In my view, the implementation of non-employee withholding arrangements for collaborative economy platform workers is delayed in part by the incessant emphasis on designing intermediary regulation arrangements that assign a role to platform operators, despite the unreliability of platform operators as withholding agents and the availability of other, more appropriate intermediaries. In Part III. II.4 of this thesis, I describe the difficulties associated with the enforceability of non-employee withholding arrangements in cross-border situations. This notably occurs where a platform operator required to act as withholding agent neither resides nor maintains a tangible presence in jurisdictions that require withholding by platform operators. Subsequently, I analyze a number of hypothetical and practical approaches for overcoming this issue.

In particular, I note the approach contemplated under the Italian *'Airbnb tax'*, which requires foreign platform operators to appoint a local representative for the purposes of managing and securing the enforceability of the platform operator's withholding agent obligations. The compatibility of the requirement for the appointment of a local representative with the to provide services remains contentious and the question is pending before the CJEU in the context of the Italian *Airbnb tax*.[1589] In the past, the CJEU addressed a number of similar questions related to measures aimed at safeguarding the cross-border enforceability of withholding taxes, specifically in the context of withholding taxes applied on insurance premiums to be collected by EU-based insurance undertakings. In existing case law, the CJEU ruled that measures wherein a foreign EU-based undertaking is required to set up a local presence in a Member State that assigns withholding agent obligations on the undertaking have a restrictive character. The Court accepts that restrictive domestic law measures

1588 The OECD effectively surmises that wage tax withholding as applied to employment remuneration ensures that individuals earning employment income are treated under Compliance by design frameworks. The application of non-employee withholding taxes in respect of receipts derived by collaborative economy platform workers would align the compliance treatment of these individuals with taxpayers that are already assessed under a Compliance by design framework.

1589 Case C-83/21 *Airbnb Ireland UC,* Airbnb Payments UK Ltd. v Agenzia delle Entrate [2022].

may be lawful under EU law provided that they are justified and proportional. In assessing proportionality, the CJEU assesses less restrictive means for the attainment of a public policy objective. In its jurisprudence concerning insurance undertakings, the CJEU found that the availability of administrative cooperation frameworks established under EU law amounts to a less restrictive measure. Additionally, the CJEU also noted in the past that intermediaries should be allowed the choice between the appointment of a local representative or the undertaking of withholding unilaterally without such intermediaries. In my opinion, the CJEU is likely to follow the Opinion of AG Szpunar and rule that the requirement to appoint a local representative is incompatible with EU law.

Nevertheless, the outcome of the pending CJEU decision on the Italian *Airbnb tax* may enable a number of future developments. On the one hand, should the CJEU find the measure lawful, the question inevitably emerges about the future proliferation of non-employee withholding arrangements to be applied in respect of platform workers' income. At this time, such non-employee withholding arrangements are narrowly applied and hardly favored across the board, including in most EU Member States. Whether a ruling confirming the legality of the Italian approach to safeguarding the cross-border enforceability of non-employee withholding arrangements would lead to the broader adoption of similar measures in other EU Member States is up for grabs.[1590]

1590 Based on previous case law, it is unlikely that the CJEU will find that the Italian measure is compatible with EU law. As I discuss in Part III.II.4 to this research, the requirement for an enterprise to act as withholding agent may in itself rise to the level of a restriction of the freedom to provide services. Additionally, a requirement for non-established entities to appoint a local tax representative for the purposes of managing withholding obligations is inherently restrictive in light of the freedom to provide services. Under EU law, restrictions on the exercise of fundamental freedoms are only lawful if they are justified by an objective in the public interest (i.e., the effective taxation of income derived by platform workers) and if the restrictive measure meets a proportionality test. Proportionality entails that no less restrictive alternatives were available for the attainment of the objective in the public interest. In the context of the Italian 'Airbnb tax', the CJEU is likely in my view to discuss two less restrictive alternatives. Firstly, the instruments for administrative cooperation available under EU law may allow a Member State to safeguard the enforceability of withholding obligations against foreign platform operators even where these do not appoint a local tax representative. Secondly, the CJEU may argue that Italy should provide platform operators the choice between the appointment of a local tax representative and the undertaking of withholding obligations without a local tax representative. Previously

On the other hand, the more interesting question relates to the impact of a finding that the Italian *Airbnb tax* creates an unlawful restriction under EU law for foreign EU-based platform operators. In such a case, one of two broad outcomes could play out. The idea of applying non-employee withholding arrangements for collecting tax in respect of receipts derived by collaborative economy platform workers could well be abandoned by Italy and other EU Member States. This outcome is undesirable, since other measures for addressing the income taxation of collaborative economy platform workers (third party information reporting, simplified taxation regimes and taxpayer engagement and education initiatives) by their nature cannot alone preclude the impact of the main determinants of non-compliance here identified and discussed. Alternatively, policymakers in Italy and other EU Member States could find the opportunity to explore different approaches for scaling non-employee withholding arrangements in a cross-border context.

In my opinion, regardless of the outcome of the pending CJEU judgment on the Italian *Airbnb tax*, non-employee withholding arrangements should as a matter of principle not be designed around platform operators as withholding agents. Irrespective of whether a withholding arrangement is designed as a final tax or a prepayment of income tax, the effectiveness of these instruments is largely dictated by their capability to directly determine a tax liability that accurately approximates the tax which would be due if taxpayers were assessed based on income received and actual expenses incurred. In part, this may be addressed by reference to the rate(s) of withholding applied. However, a host of other issues remains. Many platform workers derive income from activities performed through separate platforms. Additionally, the increasing popularity of independent freelance-type work entails that many individuals may derive outside the scope of the collaborative economy strictly speaking. When this is the case, individuals may be subject to withholding by a number of separate intermediaries in respect of some sources of income and potentially not subject to withholding in respect of income derived from other sources. Additionally, when income is derived from distinct sources, accounting for expenses incurred in connection different items of income is not readily intuitive through the design of withholding rates alone.

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in this research, I argue that this test inherently only acts to protect platform operators and cannot determine an appropriate approach to non-employee withholding in respect of income derived by collaborative economy platform workers.

For these reasons, in my view, outcome-determinative rules for the collection of tax in respect of income derived by collaborative economy platform workers should contemplate intermediaries other than platform operators. In Part III.II.4, I surmise that an effective approach to non-employee withholding was introduced in Estonia, which introduced an opt-in non-employee withholding arrangement where withholding functions are assigned to banks and other credit institutions. Under this approach, individuals earning income from independent activities (within and outside the scope of the collaborative economy) may create a designated bank account for the deposit of receipts from such activities, referred to as an 'entrepreneurial account'. The credit institution with which the entrepreneurial account was created acts as a withholding agent in respect of sums deposited within it. As such, the bank determines income tax due by reference to the amounts deposited in the entrepreneur account and remits that amount on the taxpayers' behalf.

The advantages of this approach to the design and application of non-employee withholding arrangements are manifold and relevant to the circumstances of collaborative economy platform workers. Firstly, this approach sidesteps the difficulties associated with relying on platform operators as withholding agents. Secondly, the withholding of tax by a bank or credit institution from an entrepreneurial account more readily enables the concurrent collection of tax in respect of income from distinct sources. This is notably relevant in relation to platform workers that derive income from parallel activities undertaken through separate platforms. In turn, this enables a consolidated and more comprehensive overview of taxpayers' circumstances. Thirdly, this approach to non-employee withholding is scalable beyond collaborative economy platform workers, meaning it may safeguard Compliance by design in respect of other hard to tax groups as well. As a matter of principle, the application of non-employee withholding using an entrepreneurial account as a basis merely requires that the amounts deposited to the account are derived from an independent income-generating activity. There is no structural reason precluding the extension and application of this arrangement to any taxpayer deriving income from such activities, whether within or outside the realm of the collaborative economy strictly defined.[1591]

1591 One salient issue under this approach, however, relates to the potential difficulties of this mechanism in accurately approximating final tax liabilities. This may be especially problematic when income from different types of activities is aggregated, although each activity entails different degrees of profitability and the incurrence of distinct expenses

Unlike platform operators, banks and other credit institutions do not pose salient cross-border enforceability constraints, since they generally maintain local presences in the jurisdictions where they provide commercial services as an ordinary matter of fact. A system that embodies the norms embedded in Compliance by design is one that strives to naturalize tax compliance processes. This is achieved in large part through the application of intermediary regulation arrangements that involve parties that are already integrated within the environment of taxpayers for non-tax purposes. From this perspective, I surmise that banks and credit institutions are inarguably reliable withholding agents as a matter of principle.

However, this approach to non-employee withholding does entail a number of non-negligible weaknesses. Firstly, this approach is abstracted as an opt-in mechanism. In Part III.II.4 of this thesis, I discuss the structural limitations and disadvantages associated with the design of non-employee withholding arrangements as opt-in measures. Broadly speaking and regardless of their legal characteristics, the effectiveness of opt-in arrangements is deeply intertwined with the scale to which they are applied in practice. This is inarguably an unpredictable and complex vector. However, in the case of a non-employee withholding arrangement that involves the remittance of amounts earned by taxpayers to a designated bank account and the discharge of withholding duties by the relevant bank, an opt-in approach is the only structural and legal choice of design. The scalability of this approach to withholding relies on two variables: the willingness of taxpayers to deposit amounts earned to an entrepreneurial account subject to withholding, on the one hand, and the commitment of banks and other credit institutions to act as withholding agents. In this respect, there is clearly a deep measure of voluntarism that underlines the functioning of this framework. There is no simple answer to how such voluntarism could or should be bolstered. As regards the willingness of taxpayers to opt into the system, this may be addressed through the deployment of separate processes aimed at supporting the application of non-employee withholding arrangements. Still, the more challenging issue relates to compelling banks and credit institutions to opt in to act as withholding agents.

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by the taxpayer. However, such issues may be mitigated if the withholding tax is designed as a mere prepayment of tax. Additionally, these issues are not particularly prominent in systems where uniform tax rates apply in any case across different types of income-generating activities and where the deductibility of expenses is limited.

Secondly, the framework here described presupposes that taxpayers would remit all amounts of income derived from independent activities (whether undertaken through a collaborative economy platform or not) to the entrepreneur account. This inevitably introduces questions related to workers that derive income from distinct sources and who would omit some of these sources from being deposited to the entrepreneur account. When applicable, non-employee withholding arrangements do prevent individual taxpayers' conduct from impacting compliance outcomes. However, taxpayer conduct may entail efforts to remove certain amounts or streams of income from the scope of withholding altogether. In turn, this may dent the overall effectiveness of the non-employee withholding arrangement. This is a natural consequence of the fact that banks and credit institutions are not directly involved in the processing and remittance of payments derived by workers as consideration for services rendered. By comparison, mandatory withholding by platform operators would be more difficult to escape. In my view, while it is desirable to contemplate and design income tax compliance frameworks that are not deeply sensitive to taxpayer behavior, it is ultimately unrealistic to expect that any tax measure (or system) could ever be immune to taxpayers' conduct.

Thirdly, this framework adds a layer of complexity to the task of distinguishing between labor- and capital-intensive activities in the application of withholding. As argued at length in this thesis, the profitability margins of labor- and capital-intensive income-generating activities may vary considerably, for example because of the different types and levels of expenses incurred in connection with the performance of such activities. As a matter of best practice, non-employee withholding taxes should be applied in a manner that accounts for these distinctions. The most obvious approach to achieving this is through the application of differentiated withholding tax rates in respect of different types of income-generating activities.[1592] The application of differentiated rates is feasible where the withholding agent is a platform operator that enabled the performance of the underlying service, because of the specialized profile of different platform operators. Conversely, banks and other credit institutions are not involved in the

1592 As briefly outlined in Part III.II.4 to this thesis, Mexico introduced a non-employee withholding mechanism for income derived by workers from activities undertaken in the collaborative economy that applies differentiated tax rates to labor- and capital-intensive activities. However, the Mexican non-employee withholding regime assigns withholding agency obligations on platform operators.

performance of the underlying service. They instead merely aggregate deposits for payments received. This creates avenues for the muddying of income sources and the distinctions entailed between different such sources and it may be especially problematic in jurisdictions that normally allow different expenses to be treated as deductions against income from labor- and capital-intensive activities, respectively. Since this is a structural issue associated with the overarching logic of this framework for non-employee withholding, any approach to mitigating this effect would arguably amount to a mere patchwork solution. If differentiated withholding rates were to be applied in respect of labor- and capital-intensive activities, receipts from these respective sources would need to be segregated into separate entrepreneurial accounts, each subject to a different withholding rate. The main downside of this solution however relates to the compliance burdens that would inevitably ensue. In the alternative, a single withholding rate could be applied if set at a level that averages the profitability of labor- and capital-intensive activities. Under this approach however, the argument for the application of non-employee withholding as a final tax is weakened.

Fourthly, this approach may create enforcement and administration issues in respect of workers that derive foreign income from activities undertaken through platforms. This could involve, for example, a worker residing in one state who rents out a property situated in another state through a platform, wherein the (rental) income is also taxable in the state where the property is situated. Withholding may be challenging to enforce and administer if payments for such activities are remitted to a credit institution which is itself based in a state other than the state one where the rented out property is situated. In the context of an opt-in system, these issues may be mitigated if the credit institution acting as withholding agent commits to also withhold and remit tax owed in a different state, but this is arguably a patchwork rather than a structural solution. In this respect, the approach to non-employee withholding as here described cannot absorb and internalize all the cross-border administrative constraints that may play out.

By reason of the characteristics of this approach to non-employee withholding as described in the foregoing paragraphs, I surmise that such an arrangement should not be broadly and rigidly applied as a final tax. Instead, in my view, this mechanism would be most suited to limit tradeoffs between legal simplicity and equity if taxpayers that elect to be assessed under this framework are also given the

possibility to choose whether the amount withheld would represent a final tax or a prepayment of income tax. As a matter of principle and generality, a non-employee withholding arrangement may be designed in a manner that strives to approximate the tax liability which would have been determined under the ordinary rules for the determination of taxable income. However, as alluded to immediately above, in practice this would be a challenging feat, as it is difficult to account for the particularities of distinct income-generating activities (especially labor-intensive activities contrasted to capital-intensive activities) at the level of the withholding arrangement. Additionally, the collection of tax through withholding commonly poses the risk of over-collection and over-taxation. In particular, a non-employee withholding arrangement regime cannot accurately account for situations where the taxpayer is in a loss-making position. This is especially relevant in tax systems that allow individual taxpayers to relief losses by offsetting these against other current sources of income or against future income. Across the board, states design their personal income tax systems in a manner that seeks to account for the totality of the economic and personal circumstances of taxpayers. The collection of tax through final withholding, especially in respect of active income, may incidentally sidestep the instruments put in place with a view to considering these circumstances.

Final withholding establishes the risk that taxpayers would not in all cases be assessed in an equitable manner that reflects ability to pay. However, the structural added value of withholding arrangements lies in their capacity to streamline, simplify and expedite the collection of public revenues. From this perspective, the application of final withholding taxes is self-evidently preferable. The submission of self-assessed or self-reported returns by taxpayers following the application of withholding and the accompanying claims for tax refunds would arguably dent at the benefits of collecting tax through withholding in the first place.[1593] The balancing act introduced by these considerations underpins, in my view, the importance of allowing taxpayers subject to non-employee withholding to elect whether withholding should amount to a final tax or a prepayment of tax in their case. The collaborative economy is a highly heterogenous environment of income-generating activity, wherein workers enjoy considerable flexibility in determining

1593 Kathleen DeLaney Thomas; 'Taxing the Gig Economy', *University of Pennsylvania Law Review 166 (2)*, 2018, pp. 1415-1473.

how their activities are performed, the scale of the underlying activities, the manner and the extent of expenses incurred in connection with the performance of these activities. Against this backdrop, it is neither feasible nor realistic to postulate that non-employee withholding may determine a tax liability that broadly reflects individual circumstances. As such, allowing taxpayers to unilaterally choose between final and non-final withholding enables the personalization that income tax systems should embody, whilst concurrently sidestepping the disadvantages of a general and broad-based decision in favor of either final or non-final withholding.

2) *Operationalizing measures driven by tax administrations within a system for effectively addressing the income taxation of collaborative economy platform workers*

Even if the limitations to the broadened introduction of non-employee withholding arrangements were overcome, processes driven by tax administrations should supplement these. Like any other approach for addressing the income taxation of platform workers, non-employee withholding is not a one-size-fits-all. Instead, it is merely an arrangement that is suitable in some situations and that may address effective taxation to some extent. As I argued earlier within these conclusions, the application of non-employee withholding as a final tax in respect of income derived by collaborative economy platform workers (and any other taxpayers that derive income from active and independent sources) may not be appropriate or desirable in all cases. The effectiveness of withholding arrangements as a tax collection tool is linked with these instruments' capability of accurately approximating the tax liability which would be determined under regular self-reporting or self-assessment processes, through the determination of taxable income, expenses and other relevant circumstances. In the case of independent income-generating activities in connection with which taxpayers incur expenses that would otherwise qualify as deductions, the argument in favor of the collection of tax through final withholding is especially weak. Additionally, (final) non-employee withholding may not be suitable in the case of workers that undertake income-generating platform activities on a high scale and in a markedly entrepreneurial manner. The scale of a given activity would generally entail a broader span of expenses incurred in connection with its performance. Equity and the ability to pay principle demand that these circumstances be taken into consideration for income tax purposes.

In my view, tradeoffs between equity and administrative convenience are particularly difficult to justify in relation to fleshed out economic activities undertaken frequently and on a meaningful scale. Additionally and especially if non-employee withholding is designed as an opt-in regime, there are numerous grounds to assume with some certainty that tax in respect of receipts derived by platform workers would not be collected in all cases through non-employee withholding. Outside the scope of application of non-employee withholding, platform workers' ordinary status as independent contractors would entail that tax collection be preceded by self-reporting or self-assessment.

Self-reporting and self-assessment frameworks have numerous weaknesses and allow non-compliance to subsist. Reforming self-reporting and self-assessment frameworks in a manner that embodies Compliance by design entails a transplant of the fundamental precepts of Compliance by design into the functioning of these frameworks. As highlighted in the contents of this thesis, the basic precepts of Compliance by design can be summarized to require:

- The naturalization of compliance processes through the alignment of taxable events and other relevant circumstances with their afferent tax consequences;

- The automation of compliance processes and the minimization of reliance on taxpayer inputs;

- The conceptualization of taxpayer reporting processes in a manner that is directly conducive to compliance whilst concurrently limiting opportunities for non-compliance.

In general, self-reporting and self-assessment frameworks do not uphold these norms. Self-reporting and self-assessment frameworks are heavily reliant on information supplied by taxpayers. The preparation of self-reported and self-assessed returns generally occurs on periodical intervals, meaning taxable events and other relevant circumstances are temporally misaligned with the reporting duties pertaining to these. Ultimately, these basic practical characteristics of self-reporting and self-assessment frameworks render them sensitive to taxpayer conduct and ultimately to willful and inadvertent non-compliance.

A strategy predicated on Compliance by design requires self-assessment and self-reporting frameworks that are conducive to compliance and limit opportunities for non-compliance for two inter-related reasons. Firstly, as mentioned immediately above in these paragraphs, even if outcome-determinative rules are applied broadly, the (final) tax liabilities of numerous taxpayers will inevitably still be determined through the filing of a self-reported or self-assessed return. In this respect, weak self-reporting and self-assessment frameworks fail to effectively support the objectives of outcome-determinative rules. Secondly, a strategy is a composite organism by definition.

In Part IV.IV.3, I describe an approach developed by the Dutch tax administration with a view to transplanting Compliance by design into taxpayer self-reported returns, dubbed the 'automatic profit tax return'.[1594] The automatic profit tax return functions on the basis of software that allows the tracking of income received and expenses incurred by self-employed individuals. The software translates information pertaining to these directly into tax accounting language and subsequently transposes it into a pre-populated tax return. The software recognizes and characterizes the tax consequences of routine transactions. This approach seeks to establish an uninterrupted flow of information that links such activities with reportable information. This is achieved by linking taxpayers' transactions directly with the accounting software and finally to the pre-populated tax return.

As I argue in Part IV.IV.3 of this thesis, the innovative character, robustness and added value of the automatic profit tax return as a process subservient to Compliance by design are determined by the pragmatic viewpoint taken to the involvement of third parties in compliance processes. The automatic profit tax return relies on the centralized and comprehensive collection of data directly from the financial transactions of taxpayers as these occur. In Estonia, the tax administration attempted to develop a similar framework targeted at collaborative economy platform workers. Under the Estonian framework, information related to the receipts derived by platform workers is reported by platform operators to the tax administration and subsequently transposed into a pre-populated tax return. At their core, both approaches are similar in that they establish a direct chain

1594 The system is described in more detail in OECD; 'Comparative Information on OECD and Other Advanced and Emerging Economies', OECD Publishing, 2019, pages 203-209.

between taxable events and the reporting of these for tax purposes. However, the two approaches differ in their scope. The Estonian framework is limited to the reporting of income, because platform operators do not collect other information related to the income-generating activities of workers (such as expenses incurred in connection with their income-generating activities). Conversely, the Dutch automatic profit tax return ensures a more encompassing chain of information, which is not limited only to income derived from payments, but also to expenses incurred by independent contractors. In my opinion, an exercise in contrasting the different scopes of the Estonian and Dutch frameworks further illustrates the structural limitations to the reliance on platform operators under intermediary regulation arrangements, as well as the difficulties associated with attaining Compliance by design for collaborative economy platform workers by relying on support from platform operators.

In my view, the Dutch automatic profit tax return is an example of a best practice approach to tax administration-driven processes for implementing Compliance by design. The framework is conducive to compliance and minimizes opportunities for non-compliance, wherein compliance 'choices' are largely removed from the taxpayer's control. Additionally, the automatic profit tax return is a scalable approach to Compliance by design, which may be applied to any taxpayer earning income from an independent activity – above and beyond collaborative economy platform workers. The automatic transposition of information from taxable events into accounting terms and subsequently to a tax return alleviates the ordinary weakness of self-reporting and self-assessment. This allows the return to amount to a genuine reflection of the economic results of the taxpayer. In this respect, it amounts to a useful tool supporting and complementing non-final withholding.

C. Simplified income taxation frameworks, taxpayer engagement and education initiatives and third party information reporting – Role in a strategy predicated on Compliance by design

Whereas I argue for the institution of a strategy focused on Compliance by design, I do not attempt to postulate that other approaches for addressing the income taxation of collaborative economy platform workers that are already applied or should be discarded or overlooked altogether. Specifically, I surmise that taxpayer engagement and education initiatives, third party information reporting

arrangements and (to some extent) simplified income taxation regimes for hard to tax groups should continue to be considered as contributing to the overarching objective of safeguarding effective taxation in the changing environment of income-generating activity brought about by the collaborative economy.

1) Simplified income taxation regimes in the context of a Compliance by design-based system for addressing the income taxation of collaborative economy platform workers

In Part III.II.1 of this thesis, I describe the application of simplified income tax assessment mechanisms as a possible approach for addressing the income taxation of collaborative economy platform workers. Simplified income taxation frameworks are commonly advanced as a means for safeguarding compliance in respect of hard to tax groups for a number of convenience-related reasons. The substantive and procedural requirements of ordinary income tax rules are usually disproportionately complex in relation to the compliance infrastructure of taxpayers engaged in small-scale independent income-generating activities. In light of this, the application of simplified regimes may alleviate compliance burdens and incentivize voluntary compliance. Simplified rules for hard to tax groups may lessen the pressure on otherwise limited administrative oversight and supervision resources. In Part III.II.1, I refer to three broad approaches for the simplification of income tax rules that may be relevant in light of the circumstances of platform workers' income-generating activities. Firstly, I describe the introduction of exemptions for (some) amounts of income anchored in hard to capture sources. In this respect, I argue that exemptions applied in respect of hard to tax groups may be introduced by reference to a number of considerations: to exclude certain *de minimis* amounts from the scope of income taxation; in an attempt to steer the behavior of taxpayers; and to provide a public policy-motivated incentive. Secondly, I refer to presumptive taxation techniques. This may entail (1) the introduction of standard deductions to be applied in lieu of deductions for expenses actually incurred in connection with small-scale income-generating activities and (2) measures wherein the assessment of net income is replaced with a more simplistic proxy, such as a percentage of gross turnover.

All these approaches favor legal simplicity to the detriment of equitable taxation applied strictly in accordance with the ability to pay principle. Additionally, their only direct effect relates to the substantive simplification of income assessment,

meaning such measures are not conducive to compliance and do not in and of themselves preclude opportunities for non-compliance. This consideration notwithstanding, I will propose that such measures could support the functioning of a strategy predicated on Compliance by design to some extent.

The exclusion of genuine de minimis amounts from tax may be justified and desirable. However, this only holds true in respect of exemptions that target one-off, intermittent or otherwise very small-scale income-generating activities. In Part III.II.1, I compare two domestic measures introducing an exemption for income anchored in hard to capture sources introduced in connection with the emergence of the collaborative economy. In the United Kingdom, individuals that derive income up to GBP 1.000 per annum from the provision of peer-to-peer services (including the provision of short-term accommodation) in any format benefit from a trading or property allowance, which excludes these amounts from income tax. Conversely, in Belgium, the now defunct Law on economic recovery allowed taxpayers earning income from occasional, associative and collaborative economy arrangements to benefit from an exemption for income up to EUR 6.340 per annum. The Belgian measure was abolished following a ruling on its unconstitutionality. The measure was contentious on two major grounds. Firstly, the personal and material scope of the exemption was determined by the channel and form through which taxpayers performed the underlying activities. As such, this created a selective benefit. Secondly, the exemption primarily purported through its nature and effect to provide an incentive, rather than to simplify tax compliance and collection. Conversely, the trading and property allowances applied in the United Kingdom apply irrespective of the channel through which peer-to-peer services are rendered. The exemption effectively only extends to pure de minimis activities undertaken on a very small or intermittent scale. For these reasons, it is a relatively uncontroversial arrangement. In my view, there are valid reasons to allow amounts from genuine de minimis activities to be excluded from incomer taxation.

Presumptive taxation techniques such as standard deductions or proxies for net income such as a percentage of gross income may also support the integrity of non-employee withholding arrangements in their capacity to accurately approximate final tax liabilities. Reiterating a remark already raised in the context of these conclusions, the effectiveness of non-employee withholding arrangements is arguably corelated with their capability of approximating final tax liabilities.

Specifically in the case of income-generating activities undertaken independently and in a quasi-entrepreneurial manner, this necessarily requires the consideration of expenses incurred by taxpayers in connection with such activities. In my view, one approach for attaining this objective by preceding the collection of tax through withholding with the application of a standard deduction, aimed at estimating expenses actually incurred. In light of the differences between the nature and extent of expenses associated with labor- and capital-intensive income-generating activities, standard deductions should be designed differentially.

2) Taxpayer engagement and education initiatives bolstering the effectiveness of opt-in Compliance by design arrangements

Under the envisaged strategy here described, non-employee withholding and automated self-reporting/self-assessment are described as opt-in mechanisms. The structural limitations of opt-in arrangements are largely self-evident. However, these may be overcome to a meaningful extent by taxpayer engagement and education initiatives.

The primary purpose of taxpayer engagement and education initiatives relates to safeguarding taxpayers' awareness and understanding of the income tax rules which they routinely interact. Conventionally, the added value of taxpayer engagement and education is asserted by reference to two inter-related considerations. Firstly, taxpayer engagement and education is touted as supporting tax morale or the intrinsic willingness of taxpayers to be voluntarily compliant.[1595] Secondly, taxpayer engagement and education initiatives are relevant in supporting taxpayers to navigate compliance obligations. In this respect, taxpayer engagement and education initiatives are a tool for addressing and mitigating the negative externalities of tax system complexity. However, I surmise that taxpayer engagement and education initiatives are also relevant in systems designed to ease and naturalize compliance. In particular, taxpayer engagement and education initiatives may amount to relevant tools for informing taxpayers about the availability of opt-in Compliance by design frameworks, therefore supporting broadened reliance on these.

1595 OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education', The International and Ibero-American Foundation for Administration and Public Policies, OECD Publishing, 2015.

3) Third party information reporting arrangements – supporting the effectiveness of self-assessment and self-reporting frameworks and the continued importance of oversight and enforcement as functions of tax administration

In Parts III and IV of this thesis, I am broadly critical about the heavy reliance on third party information arrangements as a mechanism for securing the effective taxation of collaborative economy platform workers. I underpin my argumentation on the nature of third party information reporting arrangements and their intended impact on tax compliance. The primary function of third party information reporting mechanisms, including the multilateral Model Rules and DAC7,[1596] relates to the enhancement of the oversight and supervisory capacities of tax administrations. These instruments are not directly conducive to compliance and do not supersede taxpayers' opportunities for non-compliance. Instead, they merely mitigate the visibility deficit of hard to tax groups subject to reporting and the information asymmetries in the relation between such taxpayers and tax administrations.

In Part IV.III of this thesis, I describe the main functions of tax administration and the links between these. Under the modern paradigms about tax administration, the functions of these actors extend beyond the mere exercise of oversight, supervision and enforcement. This reality notwithstanding, the exercise of oversight, supervision and enforcement remains a core element in the performance of tax administrations' functions. This also holds true in a system that embodies the norms of Compliance by design. Regardless of the robustness of compliance frameworks, it is unwise and unrealistic to expect that the incidence of non-compliance may be completely alleviated. Nevertheless, the effectiveness of oversight, supervision and enforcement inevitably depends on the nature and quality of all pre-enforcement actions.[1597]

Outside the application of opt-in Compliance by design frameworks, the ordinary determinants of non-compliance would continue to subsist. In turn, this entails the necessity for some degree of administrative oversight, supervision and

1596 Andrew J. Bibler et al.; 'Inferring Tax Compliance from Pass-Through: Evidence from Airbnb Tax Enforcement Agreement', *The Review of Economics and Statistics 103 (4)*, 2021, pp. 636-651.

1597 Ibid.

enforcement. Under this viewpoint, oversight, supervision and enforcement are subsidiary processes. The deterrent effect of administrative oversight, supervision and enforcement could also indirectly strengthen the incentive for taxpayers to opt in to be assessed under core Compliance by design arrangements.

The mere availability of information as enabled by the application of third party information reporting mechanisms cannot be generally equated with inferences about the manner in which such information is used by tax administrations. Information received by tax administrations pursuant to third party information reporting arrangements is only truly valuable to the extent that it is effectively commoditized. The commoditization of information received may buttress the effectiveness of administrative oversight, supervision and enforcement. This is attainable when tax administrations rely on data supplied through such arrangements to develop targeted risk modelling and enforcement activities. Additionally, data received pursuant to third party information reporting arrangements may likewise strengthen the functioning of automated self-reporting and self-assessment frameworks. This would be the case most notably when such information is automatically linked with the taxpayers' fiscal accounting and considered together with other information mined as part of the development of pre-populated tax returns. Importantly however, the mere transposition of information reported by a third party into a prepopulated tax return does not directly secure compliance and effective taxation when no other factors are considered. This highlights the importance of supplementing such information with additional streams of information (e.g., sources of income not subject to reporting and expenses incurred by the taxpayer in connection with their income-generating activities).

Conclusions

The broad digitalization of economies brings about the advent of new forms of economic activity. But equally importantly, it leads to the emergence of novel channels for the supply and consumption of pre-existing types of services. The collaborative economy is a wide collection of labor markets epitomizing this notion.

There is persisting ambiguity as regards the scope of the collaborative economy.[1598] This thesis applied a definition that sought to emphasize a number of key characteristics that distinguish this economic model from other segments of the digitalized economy. Firstly, the collaborative economy is chiefly defined by its tripartite structure involving platform operators, workers and end-users. The tripartite structure of collaborative economy arrangements determines the unique approach to the delivery and consumption of services within this ecosystem. Secondly, income-generating activities in the collaborative economy are undertaken by individual workers using personal assets that are normally and usually intended for private consumption. The collaborative economy enables individuals to convert private assets and resources into a productive apparatus and integrate these in the performance of income-generating activities. Thirdly, in the vast majority of cases, workers rendering services in the collaborative economy act in a non-professional capacity. This highlights the informal, peer-to-peer nature of the pattern for the delivery and consumption of services fostered in collaborative economy labor markets. Fourthly, the services supplied by workers through platforms are usually economically interchangeable with similar services that may be available outside the sphere of the collaborative economy. However, the nature of such interchangeability carries its own measure of ambiguity. On the one hand, in some cases, the collaborative economy establishes a framework that de-formalizes certain services. In particular, this holds true as regards activities such as ride- or homesharing and their relation to their counterparts outside the collaborative economy. Prior to the emergence of the collaborative economy, the provision of private transportation and private accommodation services occurred strictly within the confines of highly regulated industries. Conversely, the collaborative

1598 See, for example: Georgios Petropoulous 'An economic review of the collaborative economy', Bruegel Policy Contribution, No. 2017/5, 2017.Willem Pieter De Groen and Ilaria Maselli; 'The Impact of the Collaborative Economy on the Labour Market', Center for European Policy Studies WP 138, 2016. Daniel Schlagwein et al.; 'Consolidated, systemic conceptualization, and definition of the "sharing economy"', Journal of the Association for Information Science and Technology 71 (7), 2020, pp. 817-838.

economy established paradigm of economic activity wherein such services are readily supplied on a peer-to-peer basis. On the other hand, the collaborative economy broadly imbues an element of formality in certain activities that were conventionally casual and community-based. This is particularly self-evident as regards various forms of all-purpose freelancing. The all-purpose freelancing segment of the collaborative economy created an environment where peer-to-peer community services resemble a fully-fledged and fleshed out enterprise more so than a decentralized and broadly informal activity.

When viewed in concert, these characteristics reveal the overarching predication of the collaborative economy: a decentralized approach to the liberalization of access to resources and income-generating activities.

Customarily, individuals were constrained in the extent of the means available to them to generate income. Beyond ordinary employment arrangements, individuals would be able to source income by setting up an independent enterprise or from ordinary investments. Peer-to-peer community-based work was never truly deemed a scalable and sustainable approach for deriving a main source of income or a meaningful secondary income stream. The collaborative economy challenges these precepts. Peer-to-peer community-based work is increasingly becoming a hallmark of the broader labor market across the board.[1599] This is reinforced by the low barriers to entry experienced by individuals who pursue income-generating opportunities in the collaborative economy. Platform operators establish and maintain markets that allow individuals to generate income outside the confines of conventional frameworks. In doing so, they blur the line between professional and non-professional activities, between individual entrepreneurship and controlled matchmaking, between formality and informality.

The emergence and proliferation of the collaborative economy was premised on the defiance of pre-existing paradigms. From a legal and regulatory perspective, this was bound to be problematic, because legal and regulatory frameworks are usually constructed in binary terms.

1599 Vasilis Kostakis and Michel Bauwens; *Network Society and Future Scenarios for a Collaborative Economy,* Palgrave Macmillan, 2014.

These issues are also apparent in the area of income tax law. Modern personal income tax systems are premised on an elusively simplistic but largely theoretical notion: the consumption power of natural persons, comprehensively construed, is subject to tax. As a matter of principle, any ascension to wealth generated by an individual is a part of their consumption power.[1600] For reasons of equity, the burdens borne by the individual in generating income should be taken into consideration before tax is applied. These broad notions are however largely utopian, and no existing income tax system amounts to a purist tax on total consumption power. The notion of income tax as a broad tax on consumption power is qualified in countless ways. Different items of income are subject to different sets of rules. In many instances, items of income that are form part of the individual's consumption power are excluded from tax for various policy-related reasons. Because of the plurality and complexity of income tax rules, the tax treatment of any 'ascension to wealth' must be determined caustically as a precursor to the determination of its treatment under the applicable income tax rules.

Receipts derived by workers from income-generating activities performed through platforms may only be brought within the formal net of taxation after the determination of the rules applicable to these. Across the board, income tax rules distinguish between income derived from employment compared to income derived from an independent trade or business. Similarly, different tax rules may be relevant depending on whether an activity is undertaken by an individual acting in a professional or non-professional capacity. The frequency, duration and scale of an income-generating activity may likewise impact its treatment for income tax purposes. In other words, it emerges that the substance of income tax rules is also devised on the basis of binary dichotomies. Accommodating the environment of income-generating activity of the collaborative economy within these is proving to be an uncomfortable feat.

Additionally, income tax systems are not only a collection of substantive and procedural rules. Income tax systems should also be viewed by reference to the actors involved as part of these. The payment of (income) tax is ultimately a dealing that involves the reassignment of wealth from the individual taxpayer to

1600 Joseph M. Dodge; 'Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles', *Tax Law Review 58 (4)*, 2005, pp. 399-462.

government. This reassignment of wealth takes place within a complex system that involves players beyond the taxpayer and an abstract notion of 'government'. It involves policymakers, tax administrations and various intermediaries. Each of these plays a distinct role as part of the reassignment of wealth foreseen by income taxation. The role of policymakers relates to the determination of legalistic questions on when, how much and how income tax should apply. However, in the context of the challenges posed by the under-taxation of platform workers, most policymakers have yet to arrive at satisfactory solutions. The design of tax policy inevitably entails compromises and tradeoffs between different principles. The tax compliance challenges in the collaborative economy bring this reality acutely to the forefront. Treading concurrent considerations of equity, simplicity, efficiency and effectiveness is proving to yield patchwork measures for addressing the income taxation of platform workers, rather than cohesive and coherent strategies or approaches. Similarly, the role of tax administrations is increasingly more complex. Across the board, tax administrations are expected to fulfill a broadening span of functions, which extends beyond the oversight and supervision and the provision of 'support structures' to taxpayers. Instead, tax administrations are gradually taking on an active role in driving tax compliance. Finally, income tax rules are often designed in a manner that interposes an intermediary between the taxpayer and the tax administration. When this is the case, the intermediary is tasked with supporting the tax administration in the discharge of its own functions. Intermediary regulation arrangements are widely favored, based on the notion that these mitigate the limitations ordinarily experienced by tax administrations in overseeing and managing tax compliance. However, the mere interposition of an intermediary between the taxpayer and tax administration cannot always overcome deeper flaws in the broader design of income tax systems.

Collaborative economy platform workers generate income in an imperfect legal environment. This contribution developed the following core arguments and findings:

1. **Existing income tax rules, whilst formally capable of capturing and addressing the tax consequences of income-generating activities undertaken by workers in the collaborative economy, are not conducive to compliance.**

Usually, collaborative economy platform workers are treated as independent contractors for labor and income tax purposes. For platform workers, tax compliance therefore entails duties to report income derived from platform activities and pay tax in respect of such amounts. Expenses incurred by workers in connection with their income-generating activities are usually deductible. Similarly, losses incurred by workers in connection with activities undertaken through platforms may be eligible for relief. However, the application of these rules is not always straightforward, which makes tax compliance and administration burdensome.

i Amounts derived by workers from activities undertaken through platforms are usually taxable income. However, the nature of some activities undertaken through platforms is such that workers may generate non-taxable receipts. The heterogenous nature of the collaborative economy environment imperatively demands certainty as to the line between taxable and non-taxable income.

In the vast majority of cases, workers render services through platforms for profit-making or profit-seeking objectives. However, the nature of some collaborative economy arrangements is such that workers are precluded from deriving profits in the first place. For example, some platform operators developed models wherein workers may only perform activities on a cost-sharing or cost-recovery basis. In such cases, the receipts derived by workers from the underlying activities will normally qualify as non-taxable refunds. In other cases, platform operators merely enable non-taxable barter transactions. This is the case, for example, in the context of home swapping arrangements. Under such arrangements, individuals make accommodation available to other members of an online community. The consideration received is expressed in site credits, which may only be used within

the same online community and cannot be cashed out. When an activity does not generate taxable income, tax compliance issues do not arise.

In anecdotal discourse, there is a misguided tendency to perceive the collaborative economy as a broad and unitary environment. This viewpoint is conflates the various types of activities that individuals engage in through platforms and overlooks the very real heterogeneity that characterizes the collaborative economy.

> ii *When workers do generate taxable income, the tax treatment of any receipts derived depends to the characterization of the underlying activity for income tax purposes. Income characterization issues arise casuistically by reason of the manner and the choices made by workers as to how their activities are undertaken. The income tax rules of many systems do not always provide meaningful guidance to alleviate characterization issues. In turn, this compounds compliance and administration challenges and harbors an environment of legal uncertainty.*

Collaborative economy platform operators broadly afford workers a considerable measure of flexibility as to when and to what extent they engage in income-generating activities. Whereas some workers perform activities through platforms on a full-time or otherwise consistent basis, other workers' activities may be intermittent or temporally inconsistent. Additionally, in many cases, platform operators do not regulate the minutia of how workers actually undertake their activities. In turn, the manner in which workers perform their activities may influence the characterization of receipts derived from the underlying activities. Income characterization questions are a relevant consideration, since in many situations, different tax rules apply in respect of different items of income. In such cases, the determination of the characterization of an item of income becomes a precursor to the determination of its tax treatment.

This thesis discussed two main considerations that may impact income characterization in respect of receipts derived by workers from platform activities. Both of these considerations relate to the acts and conduct of platform workers.

Firstly, income characterization may be impacted by the decisions of workers are regards when and to what extent they will perform income-generating activities

through platforms. In many tax systems, the frequency of an activity impacts the qualification of the receipts derived therefrom. This consideration is particularly relevant as regards ridesharing platform workers and workers earning income from the performance of all-purpose freelancing activities. By nature of their activities, the receipts derived by workers from ridesharing or all-purpose freelancing activities may in principle qualify as income from trade, business or self-employment. However, some tax systems define this category of income by reference to the frequency of the underlying activities. When a profit-making or profit-seeking activity is not undertaken with a requisite measure of underlying frequency, the income may be characterized under a separate, usually residual income schedule. When a frequency requirement determines the characterization of an item of income, the term 'frequency' itself should be unambiguously defined.

Secondly, income characterization issues may arise by reason of the manner in which workers conduct their activities. This issue arises most notably in the context of homesharing activities. By their nature, homesharing activities relate to the (passive) exploitation by a worker of immovable property. As such, the receipts derived from such activities would normally qualify as rental income from immovable property.[1601] However, some workers engaged in homesharing arrangements perform these in a manner that exceeds the pain and passive exploitation of property. This is most notably the case when workers supply a broad span of amenities which go beyond the provision of accommodation (e.g., meals, guided tours and other similar services). When the activity exceeds the mere exploitation of property, its nature is active rather than passive. If so, the receipts derived by such workers may be characterized as trading, business or self-employment income rather than rental income from immovable property.

Because these factors impacting the characterization of income and activities relate directly to the conduct of workers, it becomes apparent that income

1601 In some countries, states or jurisdictions, an item of income may only qualify as rental income from immovable property if it is derived from a long-term lease. The nature of homesharing arrangements generally and effectively precludes long-term leases. Where a longevity requirement impacts the characterization of income derived from homesharing activities, the underlying receipts would fall under a different characterization. This is the case, for example, in Ireland, where receipts from homesharing activities are usually treated under a residual income schedule.

characterization issues are a largely casuistic matter. This consideration highlights the importance of having certainty as regards the conduct-related factors that may impact income characterization and bright-line tests that enable the effective resolution of questions on income characterization.

iii *In principle, collaborative economy platform workers may be entitled to the deduction of expenses incurred in connection with their income-generating activities undertaken through platforms. However, the rules on expense deductibility may be difficult to apply in practice, particularly when expenses relate concurrently to an income-generating activity and the private consumption of the worker. The compliance challenges posed by the deductibility of dual-purpose expenses are especially prevalent in the context of the collaborative economy, since this economic model encourages workers to use private assets in the performance of income-generating activities.*

The deductibility of expenses incurred in connection with the generation of taxable income is a core expression of the ability to pay principle. Expense deductibility allows the consideration of the burdens incurred by the taxpayer in connection with income-generating activities. Expense deductibility is broadly conditioned by the ascertainment of a direct link between the underlying expense and income subject to tax. The deductibility of expenses is particularly relevant for independent contractors and sole proprietors, who personally supply the tools that are necessary for the performance of their income-generating activities.

The corollary of the notion that expenses incurred in connection with taxable income are deductible is the principle that expenses related to the taxpayer's personal consumption may not be deducted. When viewed in concert, these precepts invite questions about the treatment of expenses that relate both to the generation of taxable income and the taxpayer's consumption i.e., dual-purpose expenses. This aspect is particularly notable in the context of platform workers' income-generating activities. The collaborative economy is predicated on workers' using private assets in the performance of income-generating activities. As such, the incurrence of dual-purpose expenses by workers is a common and prevalent occurrence.

Approaches on the treatment of dual-purpose expenses vary amongst tax systems. In some cases, the deductibility of dual-purpose expenses is disallowed as a matter of generality, unless a specific rule covers a certain category or type of expense (e.g., vehicle-related expenses). In other cases, taxpayers may be allowed to apportion the expense and claim a partial deduction, reflecting the segment of the expense as linked to the generation of taxable income. When deductibility is allowed, it in any case would not extend to the entirety of the dual-purpose expense, unless the element of personal consumption is *de minimis*. In practice, the application of the apportionment rules may lead to compliance challenges for workers and oversight and enforcement difficulties for tax administrations. These complications notwithstanding, the obvious link between expense deductibility and equitable taxation in accordance with the ability to pay principle demands that the expenses incurred by platform workers in connection with their income-generating activities be adequately considered and addressed.

iv When the activities of platform workers result in a loss, workers may be able to claim relief through loss compensation rules. The treatment of losses incurred by collaborative economy platform workers should not be overlooked in analyses about the tax consequences flowing from these taxpayers' activities.

Modern income tax systems are premised on a notion of equity, as embedded through the ability to pay principle. Ability to pay entails the fundamental percept that a person's situation needs to be comprehensively taken into consideration as part of the application of income tax. By extension, the ability to pay principle requires taking into consideration both the positive and the negative results flowing from an activity. Tax systems implement this notion through loss compensation regimes. Loss compensation regimes secure the symmetry between the treatment of positive and negative results for tax purposes. In this respect, the underlying policy behind loss compensation mechanisms is very much the same as the rationale for allowing the deductibility of expenses that carry a direct link with the generation of taxable income. There are two major ways in which this may be achieved: either by allowing a negative result in one income category to offset the positive results in other income schedules for the same tax period (i.e., sideways relief) or by allowing for a loss generated in a given tax year to be carried forward to future tax years and offset a subsequent positive result from another income category thereafter

(i.e., quarantined relief). Since many platform workers in practice derive income from a plurality of sources (e.g., salaries or wages from traditional employment, and potentially receipts from other types of platform activities), the question of loss compensation may be muddied in compliance challenges.

v *In some cases, platform workers' activities may involve a cross-border element. When this is the case, the worker may be exposed to income tax consequences in more than one jurisdiction concurrently. Even when this does not lead to (unrelieved) juridical double taxation, concurrent taxation under the jurisdiction of more than one state may augment compliance and administrative complexities.*

Some platform workers may earn income from homesharing platforms from the provision of private accommodation in a property situated in a jurisdiction other than the worker's residence jurisdiction. It is also possible that a worker residing for tax purposes in one jurisdiction travels to another jurisdiction to provide services therein. Alternatively, a worker residing in one jurisdiction may render services through a platform remotely to end-user in other jurisdictions. In such situations, the worker may potentially be exposed to juridical double taxation, through the application of comprehensive taxation in the state of residence, concurrent with a limited tax liability in the source state of the income. Juridical double taxation may be eliminated or mitigated pursuant to the application of a double tax treaty between the state of residence of the worker and the source state of the income. Alternatively, the state of residence of the worker may provide unilateral relief.

The exposure to tax consequences in more than one jurisdiction – even when this does not result in unrelieved juridical double taxation – creates additional compliance burdens and obligations for workers.

vi *Anecdotally, there is a mistakenly broad argument related to the prevalence of worker misclassification issues in the collaborative economy. In some cases, collaborative economy platform operators do misclassify workers as independent contractors despite the nature of their relation with workers. However, such issues in practice only arise on a limited scale, without rightly amounting to a generalized issue across the collaborative economy. In most other cases, platform workers' independent contractor*

status as assigned by platform operators accurately reflects workers' circumstances and the nature of their relation with the platform operator. The discussion of worker misclassification issues cannot and should not be approached through the lens of income tax law alone, but instead needs to be considered by reference to the relation of this issue under labor law.

Since the proliferation of the collaborative economy, academic commentators and policymakers have advanced the argument that platform operators generally misclassify workers as independent contractors. An individual's status as an employee or independent contractor is particularly relevant under labor law, where employment status determines eligibility for a broad span of social rights and safeguards. Labor and individual income tax law are not aligned as a general rule, but the treatment of an individual under tax law oftentimes follows their status as determined under labor law. As such, the dichotomy between employees and independent contractors is also relevant for income tax purposes, particularly because different rules for the assessment and collection of tax apply to employees and independent contractors. Tax on employment remuneration is collected through withholding at source. Conversely, independent contractors are required to individually report taxable income and other relevant circumstances and pay tax accordingly. By comparison to employees, independent contractors experience heavier tax compliance burdens. Equally importantly, independent contractors enjoy a wide span of opportunities to misrepresent income, expenses and other relevant circumstances.

However, the emerging argument related to worker misclassification in the collaborative economy is overly broad. At the present time, misclassification issues have only been litigated by workers against some ridesharing platform operators in a limited number of cases. Where worker misclassification was successfully claimed, the underlying arguments revolved around the control and economic dependency that characterized the relation between platform operators and workers. The control and economic dependency test or a variation thereupon is applied in most countries, states and jurisdictions to distinguish between employees and independent contractors.

There are two main factors that dent at the integrity of the argument related to the breadth of the worker misclassification issues in the collaborative economy.

Firstly, in many cases, platform operators structure their relation with workers in a manner that does not raise overt misclassification concerns under this test. In practice, many platform operators are merely a marketplace that enables workers to connect with end-users for the supply of a specific service. Under such arrangements, workers are neither controlled by nor economically dependent on the platform operators through which their activities are undertaken. Secondly, the control and economic dependency test is merely a threshold requirement. Any test designed as a threshold inherently invites an incentive to stay below the threshold. The assignment of workers' status is a determination that rests initially with platform operators. To the extent that platform operators refrain from the exercise of control and the institution of economic dependency upon workers, misclassification challenges are readily sidestepped under these tests. As such, more stringent scrutiny of the rapport between platform operators and workers under the control and economic dependency test would not necessarily displace these asserted issues.

Worker misclassification arguments could be more convincing if the dichotomy between employees and independent contractors were ascertained under an alternative test. This would be the case, for example, if a functional approach to worker status were applied, wherein a worker's status as an employee or independent contractor were based on the integration of the worker in the business of the platform operator and the extent to which the worker's activities amount to an integral element of the platform operator's core business.[1602] By contrast to the control and economic dependency test, this functional approach places a lesser emphasis on the particularities of the relation between workers and platform operators. As a corollary, this limits the opportunities available to platform operators to circumvent worker misclassification challenges by reference to their relation with workers. There is room to argue that a functional test is ultimately also based on a threshold, since this approach would apply by reference to the degree to which workers contribute to the generation of economic value by platform operators. Nevertheless, this threshold is comparatively less susceptible

1602 The functional test to the assessment of worker status was proposed originally in Charlotte Garden and Nancy Leong; 'The Platform Identity Crisis – Responsibility, Discrimination, and a Functionalist Approach to Intermediaries', in: Nestor M. Davidson et al. [Eds.]; *The Cambridge Handbook of the Law of the Sharing Economy*, Cambridge University Press, 2018, pp. 449-458.

to manipulation, since the test involves a global assessment of core business rather than of the relation between workers and platform operators alone. In other words, under a functional test, the status of the worker (and the afferent questions related to misclassification) would be considered under a considerably broader and arguably more holistic frame of reference. However, the functional test could cause overkill by assigning a broad span of workers as employees, in spite of the materially and substantively independent manner in which their income-generating activities are actually undertaken. The effects of a functional test for distinguishing between employees and independent contractors cannot be viewed in a vacuum and only by reference to the environment of the collaborative economy. At the end of the day, the distinction between employment and independent contractor status is relevant in determining a series of questions e.g., eligibility for social rights, the allocation of tortious or criminal liability for damage caused in the course work and the applicable rules for the assessment and collection of income tax on payments received by the individual. The overarching logic of the labor, civil, criminal and tax laws that rely on the employee-independent contractor dichotomy relates back to the subordination between an individual and a principal. A functional test is not however primarily concerned with questions of subordination. The circumstances in which platform workers perform their activities arguably differs from the manner in which ordinary employment is performed. In other words, a move towards a functional test of integration for distinguishing between employees and independent contractors should be preceded by a paradigm shift in the manner in which the broader notion of employment is understood. Against this background, the functional approach should be viewed with some measure of critical thought.

Recently, the EU Commission proposed a Directive which aims to improve legal certainty about the status of collaborative economy platform workers as employees or independent contractors and alleviate issues of worker misclassification. The Directive sets out a control test which emphasizes circumstances that are particular to collaborative economy arrangements and the relations between workers and platform operators. Whereas a functional test as discussed immediately above proposes a different approach to ascertaining the status of platform workers, the proposed Directive merely seeks to adapt existing legal tests on worker classification to the particularities of the collaborative economy. In my view, the adoption and implementation of this instrument will likely alleviate the prevalence of concerns about worker misclassification in the collaborative economy.

For income tax purposes, the collection of tax in respect of amounts derived by workers from activities performed through platforms would theoretically be eased if (most) workers were treated as employees rather than independent contractors. However, worker status is a determination that is seldom made initially under tax law.[1603] Additionally, the introduction of mechanisms that allow tax to be collected through withholding by a third party intermediary in respect of income derived by collaborative economy platform workers does not necessarily demand a shift in the (labor law-based) classification of workers. To the contrary, as argued in Parts III and IV to this thesis, the nature of the environment of the collaborative economy lends itself to the design and application of non-employee withholding taxes as collection tools for income derived by workers from (independent) activities undertaken through platforms.

vii Platform workers incur a series of disruptive income tax compliance costs. High compliance costs may discourage voluntary compliance and broadly breed inefficiency and ineffectiveness in the management of personal income tax systems.

The tax consequences of platform workers' activities (ranging from the computation and reporting of taxable income and the determination of deductible expenses and the apportionment dual-purpose expenses) entail significant compliance costs. Compliance costs may be discussed by reference to a number of taxonomies (e.g., mandatory/voluntary compliance costs, pecuniary/non-pecuniary compliance costs, gross/net compliance costs). Regardless of their character, compliance costs are inherently cumbersome and dissuade the incentive for voluntary compliance. This notably holds true in respect of taxpayers engaged in small-scale independent income-generating activities, wherein the disproportionality between the yields

1603 The tax treatment of employees and independent contractors formally differs in that the remuneration received by employees is generally subject to tax withholding at source and broad-based third party information reporting regulations. Employers or similarly situated principals are generally tasked to act as withholding and third party information reporting agents. However, third party information reporting arrangements and non-employee withholding arrangements may be applied in the context of the collaborative economy. In other words, compliance frameworks may be approximately equalized for employees and independent contractors without an overriding need for worker reclassification. For this reason, my view is that worker mis- and reclassification issues should continue to be addressed primarily by reference to labor law.

from the underlying activity, the amount of tax revenue to be collected *per capita* and the related tax compliance costs is most prevalent and self-evident.

2. Collaborative economy platform workers undertake income-generating activities in an environment that creates opportunities for undetected intentional or inadvertent non-compliance. Platform workers' opportunities for non-compliance are rooted in the nature of their income-generating activities, on the one hand, and the impact of their individual conduct on compliance outcomes, on the other hand.

i By reason of their status as independent contractors, platform workers are subject to compliance frameworks that are deeply reliant on voluntary compliance. Voluntary compliance is deeply intertwined with taxpayer conduct. In the absence of safeguards, voluntary compliance is a fragile notion.

As a matter of generality, platform workers are required to individually report income, expenses and other relevant circumstances and pay income tax pursuant to frameworks for taxpayer self-reporting or taxpayer self-assessment. These frameworks are 'honor systems' whose integrity depends on the accuracy of taxpayer inputs. As a self-evident corollary, these frameworks are inherently sensitive to errors and misrepresentations by taxpayers. Self-reporting and self-assessment frameworks are predicated on taxpayer voluntary compliance.

Voluntary compliance is an elusive, if not arrogant terminology.[1604] At face value, this concept implies legal subjects' intrinsic willingness to pay tax. It sits oddly against the reality that taxation is a reassignment of wealth mandated by law. Tax compliance is furthermore reinforced with penalties for non-compliance. By their nature, these precepts are incompatible with the term 'voluntarism'. Taxpayers do not voluntarily comply with tax laws, as much as they consent to the reassignment of wealth foreseen by income taxation. As such, this notion is best understood as describing taxpayer conduct that comports with the requirements set out in the law, without entailing the need for enforcement.

1604 J.T. Manhire; 'What Does Voluntary Compliance Mean? A Government Perspective', *University of Pennsylvania Law Review Online 164,* 2015-2016, pp. 11-18.

Still, it would be incorrect to assert or believe that legal enforcement is the only mechanism applied to buttress voluntary compliance. Across the board, tax administrations rely on intermediaries interposed between themselves and taxpayers with a view to confirming the accuracy of information reported by taxpayers and securing the timely collection of tax debts. At the advent of the emergence of the collaborative economy, such arrangements were scarce, and many of these were not designed with the environment of the collaborative economy in mind. At the present time, despite the increasing adoption of measures that interpose intermediaries between tax administrations and platform workers, voluntary compliance by workers remains the norm.

If the notion is accepted that compliance frameworks premised on taxpayer voluntary compliance are inappropriate to secure the effective taxation of income derived by workers from activities undertaken through platforms, the call immediately emerges for a radical shift in the paradigms applied to assess and collect tax in respect of income derived by platform workers. At this time, a paradigm shift is yet to emerge. At best, voluntary compliance is a term of mere convenience. In placing the onus on taxpayers to meet the tax obligations associated with their income-generating activities, tax systems impliedly acknowledge that their design is not directly conducive to compliance.

ii Collaborative economy platform workers are an emerging hard to tax group. The tax compliance and administration challenges posed by collaborative economy platform workers are rooted in the structural characteristics of the environment within which workers undertake their income-generating activities.

Collaborative economy platform workers are not a unique category of taxpayers. The opportunities enjoyed by platform workers to misrepresent income, expenses and other relevant circumstances in self-reporting and self-assessment processes resemble those that pertain to so-called hard to tax groups. Existing literature identifies a series of structural characteristics of hard to tax groups that act to incentivize non-compliance and weaken the effectiveness of administrative oversight and enforcement. These characteristics may be discussed in relation with collaborative economy platform workers:

a) **Visibility deficit** – the activities of hard to tax groups are not readily visible to tax administrations. Against this backdrop, tax administrations will only be aware of these taxpayers' income-generating activities if these are reported by taxpayers themselves, unless intermediary regulation measures are introduced;

b) **Information asymmetries** – even when taxpayers register for tax purposes and report information about their income-generating activities, the accuracy of their inputs may be difficult for tax administrations to verify. The prevalence of this issue is exacerbated by the difficulties associated with the application of mechanisms wherein an intermediary is interposed between the taxpayer and tax administration by reason of the decentralized environment within which hard to tax groups undertake their income-generating activities;

c) **Limited compliance infrastructure** – taxpayers undertaking income-generating activities independently are required to report the results pertaining to these activities individually. By its nature, the reporting of income, expenses and other relevant circumstances and the payment of tax are temporally detached from the underlying income-generating activities. Against this backdrop, it becomes apparent that the tracking of income, expenses and other relevant circumstances by taxpayers is a necessary precursor to tax compliance. Hard to tax groups often lack the infrastructure to accurately track these;

d) **Limited bookkeeping incentive** – hard to tax groups are ordinarily disinterested in investing a considerable degree of effort into tracking information relevant to their income-generating activities, because the collection of such information often does not serve non-tax related ends. The limited bookkeeping incentive of hard to tax groups is further compounded by the small scale and informal nature of some income-generating activities;

e) **High-volume/low-value unrelated income-generating transactions** – small-scale, decentralized income-generating activities undertaken on an independent basis entail separate dealings with unrelated parties. This factor complicates compliance and enforcement;

f) **Limited tax literacy** – hard to tax groups often do not have the requisite knowledge as necessary to navigate the income tax rules as relevant to their

situation. In turn, this may determine errors in compliance and by extension, inadvertent non-compliance.

iii Although broadly sharing the characteristics of ordinary hard to tax groups, collaborative economy platform workers differ from these in some respects. These differences are determined in particular by the digital footprint of their income-generating activities and the centralization imbued within their environment by platform operators and other digitalized intermediaries that store information about their identity, activities, payments received as consideration for services rendered and expenses incurred in connection with their income-generating activities.

Unlike ordinary hard to tax groups, collaborative economy platform workers undertake their income-generating activities through the intermediation services of platform operators. Payments received by workers as consideration for services rendered to end-users are usually digitally processed. Platform operators normally act as escrows for such payments. In general, payments derived by workers are deposited through banks or other credit institutions. Compared to the setting of income-generating activity of ordinary hard to tax groups, the environment within which platform workers perform their activities more readily lends itself to the deployment of intermediary regulation arrangements. Despite the prevalence of non-compliance, the environment of income-generating activities of collaborative economy platform workers poses opportunities for the design of mechanisms that could support effective taxation. For this reason, mechanisms aimed at safeguarding the effective taxation of income derived by collaborative economy platform workers should strive to leverage the features in the environment of platform workers that may subservient to tax policy objectives.

iv The incidence and prevalence of non-compliance is linked with the behavior of taxpayers.

Income tax compliance embeds a strong behavioral component. The mere fact that the environment of taxpayers creates opportunities for undetected non-compliance cannot be equated with a general assertion that such taxpayers will in fact be non-compliant. Non-compliance is not solely the product of the circumstances of the taxpayer. It results instead from the conduct of taxpayers. However, the

circumstances and environment of the taxpayer may incentivize types of conduct leading to non-compliance. In other words, whilst the circumstances of the taxpayer alone do not determine non-compliance, the prevalence of certain circumstances may enable or encourage non-compliant conduct. As regards hard to tax groups, including collaborative economy platform workers, this thesis discussed three forms of compliance-related behavior that may be fostered by these taxpayers' circumstances:

a) **Negligence** – negligence is linked, but does not fully overlap with limited tax literacy. Negligent compliance-related behavior leads to inadvertent non-compliance, notably when taxpayers fail to approach their obligations with reasonable care. Additionally, negligent conduct may be determined by taxpayers' difficulties and limited incentive to maintain accurate and comprehensive records of income derived, expenses incurred and other relevant circumstances that should be reflected in a self-reported or self-assessed tax return. In the case of collaborative economy platform workers, negligent compliance-related conduct is rooted in these taxpayers' inexperience with the tax compliance requirements pertaining to independent contractors;

b) **Risk-taking behavior** – risk-taking behavior is an aggressive posture vis-à-vis tax obligations. Risk-taking behavior is a form of conduct wherein the taxpayer exploits or leverages their circumstances and the opportunities for non-compliance created thereunder to escape the net of taxation. Such conduct is underpinned by an individual predisposition towards risk (i.e., 'risk appetite') and compounded by subjective perceptions related to the low probability that non-compliance would not be detected and/or enforced. For hard to tax groups and collaborative economy platform workers, risk-taking behavior may therefore be linked with the visibility deficit of their activities and the information asymmetries that characterize these taxpayers' relation with tax administrations;

c) **The high visibility of taxes and the perception of the payment of tax as a loss as decision frames under personal income taxation** – in the case of independent contractors, the generation of income and the payment of tax in respect of such income are temporally separate events. For this reason, in the case of hard to tax groups, the visibility of income tax is exacerbated and the

payment of tax is experienced more strongly as an economic loss. Conversely, taxpayers who derive income from employment are subject to wage taxes collected through withholding at source. For such taxpayers, the visibility of tax is less prominent. Additionally, since tax is collected by an intermediary before the income reaches the hands of the taxpayer, the payment of tax is framed to a lesser extent as an economic loss. The high visibility of tax and the prominent experience of tax as an economic loss result from the nature and structure of the tax compliance frameworks applicable to individuals that derive income from independent activities. In turn, these characteristics weaken the incentive for voluntary compliance and encourage non-compliant conduct.

v *The under-taxation of income derived by workers from collaborative economy platform activities is the product of a complex and multifaceted set of factors. There are a variety of determinants of non-compliance underlining this status quo. These multifaceted considerations add layers of complexity to policymakers' task of devising frameworks to secure effective taxation.*

There are a variety of factors that underpin the persisting under-taxation of income derived by workers from income-generating activities undertaken within the collaborative economy. Individual determinants of non-compliance play out differently and may impact (non-)compliance outcomes in different ways and to varying degrees. The under-taxation of income derived by workers from platform activities may result from both intentional or inadvertent non-compliance by workers. In turn, there are different respective factors that underpin these forms of non-compliance. Beyond lapses in compliance, under-taxation may be attributed to the weaknesses of tax administrations and the ineffectiveness or absence of intermediary regulation arrangements aimed at supporting compliance and administrative oversight. For this reason, the feat of securing the effective taxation of income derived by platform workers should be approached holistically and with due consideration to the existence and potential impact of distinct determinants of non-compliance.

3. **There are four broad types of measures that may be introduced to address the income taxation of receipts derived by workers from activities undertaken within the collaborative economy. In light of the heterogeneity**

of the factors underpinning the asserted under-taxation of platform workers' income and the difficulties associated with the implementation of some measures, there is hardly a 'one-size-fits-all' approach to be spoken of.

(a) This thesis identifies four main types of measures that may be introduced to with a view to addressing tax compliance in respect of income derived by workers from activities undertaken through platforms.

(b) The main types of measures are as follows:

a) **Simplified taxation rules**– historically, most tax systems have made provision for simplified regimes for the income taxation of hard to tax groups. If the argument is accepted that collaborative economy platform workers are an emerging hard to tax group, it may be argued that such measures may be relevant in the context of these taxpayers. Simplified taxation rules as relevant to platform workers may in turn take two main forms:

i On the one hand, platform workers may fall under the scope of application of simplification regimes designed to cover a broader hard to tax category, not limited to income derived from collaborative economy arrangements;

ii On the other hand, states may design frameworks for simplified taxation whose scope only extends to platform workers or income derived from collaborative economy arrangements.

Frameworks for simplified income taxation purport to streamline compliance through the introduction of alternative approaches to taxpayer reporting requirements and the assessment of tax. Taxpayers earning income from independent activities who are assimilated with the hard to tax sector are generally subject to disproportionate compliance burdens. For their part, compliance burdens are described as disincentivizing voluntary compliance. Through the application of frameworks for simplified reporting and tax assessment, the nature and extent of the compliance burdens of hard to tax groups is more closely matched to these taxpayers' means and willingness to be voluntarily compliant. Such frameworks may take a number of broad forms. One approach is the introduction of exemptions

for (part) of the income derived by hard to tax groups from their activities. Income exemptions may cover *de minimis* amounts derived from intermittent or otherwise small-scale activities. Another approach to the simplification of reporting and assessment requirement for hard to tax groups is the introduction of presumptive taxation mechanisms.[1605] Such mechanisms may entail the taxation of (a percentage of) turnover in lieu of net income or the application of standard deductions in lieu of deductions for expenses actually incurred by the taxpayer.

b) **Taxpayer engagement and education initiatives** – such measures purport to address under-taxation as resulting from taxpayers' unawareness of their tax obligations and lack of knowledge in navigating the tax rules relevant to their situation. Usually, taxpayer engagement and education initiatives are led by tax administrations. Such measures alone do not simplify or alter compliance requirements for collaborative economy platform workers, but merely seek to reinforce and clarify the application of the underlying income tax rules as relevant to a particular segment of taxpayers. In other words, such measures seek to target non-compliance determined by taxpayer behavior, specifically negligence. Their actual effect on compliance levels and outcomes is difficult to quantify, even in the abstract.

1605 In existing literature, income exemptions are sometimes described as a variation of presumptive taxation. This thesis discusses income exemptions and presumptive taxation techniques separately by reason of the working definition of presumptive taxation here applied. In this contribution, presumptive taxation is understood to cover measures whereby the basis for assessment of the taxpayer is computed under a set of rules distinct from those applicable under the ordinary setting of an income tax system. They are taken to cover in particular measures pursuant to which taxpayers are assessed on a measure distinct from net income (e.g., gross turnover) or whereby taxpayers may claim standard deductions rather than deductions for expenses actually incurred in connection with their income-generating activities. Conversely, income exemptions are understood to refer to measures pursuant to which certain amounts are excluded from the scope of taxation altogether. This thesis does not attempt to counter the viewpoint that income exemptions may be seen as a form of presumptive taxation, since the exemption of an item of income from tax inherently entails that the tax base is determined as a measure other than pure net income. Instead, this thesis merely distinguishes measures that exclude certain items of income from tax from measures establish an alternative determination of the taxpayer's basis for assessment, without excluding an item of income from tax per se.

Such initiatives are predicated on the notion that the informal nature of income-generating activities undertaken through platforms may determine workers to overlook the tax implications attached to these. Taxpayer engagement usually involves the provision of 'nudges' whereby platform workers are casually informed a and reminded that their income-generating activities entail tax consequences that they are required to comply with. Compared to tax administrations, platform operators are more deeply integrated in the environment of platform workers. Against this backdrop, there is an increasing trend towards the assignment of duties of taxpayer engagement upon platform operators. Taxpayer engagement and outreach initiatives undertaken online are a broader development, supported in particular by the OECD's ongoing tax citizenship and culture initiative.[1606] As such, the enhanced emphasis on taxpayer engagement in relation to collaborative economy platform workers is merely an element in a wider ongoing trend. Taxpayer education initiatives entail the publication of guidance for platform workers on approaching the tax consequences flowing from their income-generating activities and accessing any relief, simplification mechanisms or tax benefits set out under the relevant income tax rules. The onus falls on tax administrations to develop such guidance. Taxpayer education initiatives may be materialized through the development of information portals to be disseminated by tax administrations.

c) **Third party information reporting arrangements** – such measures are primarily instituted with a view to improving the oversight and enforcement capabilities of tax administrations.

By reason of their status as independent contractors, collaborative economy platform workers are personally responsible to report information pertaining to the receipts from their income-generating activities as a precursor to the ascertainment of their taxable basis and tax liability. Taxpayer-supplied information may be incomplete or unreliable. In turn, this reality may weaken the effectiveness of administrative oversight and supervision, fostering opportunities for taxpayer non-compliance. Against this backdrop, there is an acknowledged need for measures

1606 See, for example: OECD; 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS', OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2018, paras. 477 et seq. See also: OECD; 'Building Tax Culture, Compliance and Citizenship – A Global Source Book on Taxpayer Education'; *The International and Ibero-American Foundation for Administration and Public Policies*, OECD Publishing, 2015.

that enable additional streams of information to be available to tax administrations. Such arrangements are referred to in this thesis as third party information reporting frameworks.

Third party information reporting arrangements envisage the interposition of an intermediary in the relation between taxpayers and tax administrations. The intermediary is generally an entity that collects information from a broad span of taxpayers that are otherwise difficult for tax administrations to directly police and exert deterrence upon. Such information is collected by the intermediary for non-tax purposes as part of the ordinary dealings occurring between itself and the taxpayers subject to reporting. As a measure for addressing the income taxation of collaborative economy platform workers, third party information reporting arrangements seek to remedy taxpayers' visibility deficit and the information asymmetry that characterizes their relation with tax administrations. In doing so, such measures may achieve two results. Firstly, the direct effect of third party information reporting arrangements is the theoretical reinforcement of the oversight, supervision and enforcement capacities of tax administrations. The availability of third party supplied data lessens the dependency of tax administrations on information reported by taxpayers themselves, therefore alleviating concerns related to the reliability of such data. Secondly, the application of third party information reporting may indirectly steer the reporting behavior of taxpayers subject to reporting, disincentivizing taxpayers from declaring income erroneously in self-reported or self-assessed returns. This effect is rooted in the behavioral response of taxpayers to the knowledge that the receipts from income-generating activities are reported to tax administrations by an independent third party. Additionally, tax administrations may use information received pursuant to third party information reporting measures to provide pre-populated tax returns.

In the collaborative economy, the introduction of third party information reporting frameworks is feasible by reason of the role played by platform operators in collecting and centralizing information related to workers and their income-generating activities. For this reason, when third party information reporting requirements apply in respect of platform workers' income and activities, the reporting entity is usually the platform operator through which the underlying activities are undertaken.

d) **Non-employee withholding arrangements** – such measures assign the task of determining and collecting tax in respect of income derived from platform activities from platform workers themselves to a third party withholding agent.

Withholding taxes are underpinned by a logic that largely and ultimately mirrors the rationale for the application of third party information reporting arrangements. Withholding taxes are usually applied in respect of categories of taxpayers that derive income that passes the hands of an intermediary with broad centralizing capacities before economically reaching the taxpayer. Withholding taxes may have a number of advantages. Firstly, such measures reduce the need for tax administrations to rely on taxpayer-supplied inputs in the determination of tax liabilities and the collection of tax. Secondly, the collection of tax through withholding promotes the expedient collection of tax. Under the self-reporting or self-assessment processes applicable to independent contractors, a time gap inevitably exists between income-generating activities, the filing of a tax return and finally the payment of tax. By contrast, withholding taxes safeguard a more accurate temporal alignment between income-generating activities and the payment of tax. Thirdly, the collection of tax through withholding in respect of income derived by workers from platform activities backstops the opportunities for non-compliance that would otherwise be available to these taxpayers. This is an organic consequence of the reality that the collection of tax through withholding entails the reassignment of duties related to the collection and remittance of tax from the taxpayer to the relevant withholding agent. Additionally, the collection of tax through withholding may reduce the negative externalities caused by the high visibility of tax burdens for independent contractors and the prominence of the experience of income tax obligations as an economic loss. Non-employee withholding taxes essentially equalize the approach to tax collection as normally applicable to employees, on the one hand, and other taxpayers deriving income outside the scope of a typical employment relation, on the other hand. However, the feasibility of non-employee withholding arrangements depends on the existence of a reliable withholding agent. At the present time, non-employee withholding arrangements are not broadly applied as a tool for the collection of tax in respect of income derived by workers from collaborative economy platform activities.

(c) There are a number of considerations that may underpin the preference policymakers for certain measure or combination of measures for addressing the income taxation of platform workers. Such choices may be grounded concurrently on fiscal and non-fiscal considerations.

At least on a theoretical level, the four types of measures that may introduced with a view to addressing the income taxation of collaborative economy platform workers are not mutually exclusive for the most part. Nevertheless, the choice for the introduction of measures should not be solely guided by the inter-relation between distinct measures, but likewise by the envisioned added value of each type of measure.

Against this backdrop, the introduction of simplified taxation mechanisms is likely to be favored in systems with weak tax administrations and broad segments of hard to tax groups. The intended effect of such measures is to mitigate the compliance burdens normally arising under self-reporting or self-assessment frameworks, therefore lessening the extent of requisite taxpayer effort and administrative scrutiny. Equally importantly, since the scope of such frameworks is open to flexibility in design, they may readily be applied to cover a wider segment of taxpayers posing compliance risks, beyond platform workers alone. Conversely, taxpayer engagement and education initiatives are more likely to be favored in systems with a strong pre-existing culture of voluntary compliance. Taxpayer engagement and education measures are predicated on the notion that the under-taxation of income derived by workers from activities undertaken through platforms is chiefly attributable to taxpayer negligence, rather than to overt attempts at non-compliance.

In a similar vein, third party information reporting arrangements are most appropriate in systems that broadly attribute the under-taxation of income derived by workers from activities undertaken through platforms to these taxpayers' behavior more so than potential shortcomings of applicable tax rules to accommodate and safeguard the effective taxation of such income. However, the structural effectiveness of third party information reporting arrangements in turn requires a strong administrative infrastructure that enables a meaningful processing of the information received. By contrast, non-employee withholding arrangements entail the institution of a separate set of rules for the collection of tax

in respect of income derived by workers from platform activities compared to other independent contractors who derive income in a structural setting that does not lend itself to the application of such measures.

(d) In contemplating approaches for addressing the taxation of income derived by workers from platform activities, policymakers should be guided by the basic principles of good lawmaking. Whereas some tradeoffs between policy principles and priorities are unavoidable, these should be minimized as far as feasibly possible.

This thesis argues that the income taxation of platform workers should be guided by notions of fiscal effectiveness, efficiency, neutrality legal certainty and simplicity, flexibility and equity. These principles imply that approaches and strategies for taxing platform workers should attain the following objectives:

- Secure the reliable and timely collection of tax, minimizing opportunities for non-compliance;

- Minimize compliance costs for taxpayers and the costs borne by tax administrations;

- Ensure the alignment in the tax treatment of income derived by workers from collaborative economy platform activities with the tax treatment of income derived from economically interchangeable activities undertaken outside the collaborative economy;

- Secure predictability for taxpayers as regards the tax consequences afferent to their income-generating platform activities;

- Be amendable to broad application across different forms of income-generating activity undertaken within the collaborative economy and

- Ensure that the tax liabilities of workers correspond with their genuine ability to pay, measured as a representation of these taxpayers' true economic results.

(e) The four types of measures identified as approaches to addressing the income taxation of platform workers each display a number of principled and practical shortcomings.

Even when viewed in a vacuum, there is no single perfect solution to addressing the income taxation of platform workers. Different measures target distinct determinants of non-compliance and impact compliance outcomes differently.

Measures that introduce a simplified approach to the taxation of platform workers' income may yield artificial outcomes. Additionally, such measures may allow undetected non-compliance to subsist. Through the introduction of simplified taxation regimes, policymakers merely alter the meaning of 'compliance' as it regards those taxpayers subject to the simplified framework. By exempting hard to capture income from tax, policymakers do not promote compliance, but merely remove certain items of income from the net of taxation altogether. In a similar vein, the determination of the basis for assessment under a measure distinct from net income pursuant to the application of presumptive taxation techniques does not in itself preclude the possibility for taxpayers to misrepresent the variables relevant to tax assessment under the presumptive taxation mechanism. By their very nature, simplified frameworks for the assessment of income tax are predicated on a tradeoff between equity and simplicity.

Similarly, taxpayer engagement and education initiatives by nature only address taxpayer negligence and tax literacy as potential determinants of non-compliance. Such measures alone only reinforce the tax consequences attached to income-generating platform activities on a theoretical level. The mere fact that taxpayers are informed and reminded about their tax obligations cannot be equated with the assertion that taxpayers will be compliant. By the same token, the provision of guidance on the application of the rules does not mean that such guidance will be followed. Across the board, there is an increased emphasis on taxpayer engagement and education initiatives as a tool for enhancing tax compliance in the environment of collaborative economy platform workers. This is most notably apparent through the OECD's Code of Conduct on Co-operation between tax administrations and sharing and gig economy platforms, which promotes a cooperative approach to taxpayer engagement and education in the collaborative economy involving mutual responsibilities for platform operators and tax administrations. On a purely

theoretical level, the argument may be made that taxpayer engagement and education initiatives address negligent compliance-related conduct and therefore enable tax administrations to better focus limited oversight and enforcement resources on intentional non-compliance. Nevertheless, since taxpayer engagement and education initiatives cannot be fully personalized, the impact of these on negligent conduct may be difficult to quantify.

Third party information reporting arrangements may improve the oversight and supervisory capabilities of tax administrations and dis-incentivize erroneous taxpayer self-reporting, however such measures do not directly ensure or safeguard effective taxation. Despite the broad application of third party information reporting protocols in respect of income derived by workers from platform activities, these measures alone provide an incomplete solution to the underlying issue. These measures do not alter the underlying self-reporting and self-assessment processes of taxpayers. More importantly, information subject to reporting seldom covers the entirety of the facts that taxpayers are expected to report in a return. Against this backdrop, the increased effectiveness of fiscal supervision and the impact on taxpayer behavior are only influenced in respect of information subject to reporting, without extending to other information that falls outside the scope of such reporting. In my view, considerations related to the limits to which third party information reporting arrangements may support tax compliance are particularly relevant in light of the broad degree to which such measures are applied in respect of collaborative economy platform workers across the board.

Whereas non-employee withholding arrangements address the main determinants of non-compliance as relevant to collaborative economy platform workers, these measures may be difficult to deploy in practice, particularly when the envisioned withholding agent is the platform operator through which a worker undertakes their income-generating activities. This holds particularly true in situations where the platform operator neither resides for tax purposes nor maintains a tangible presence in the state that requires withholding. The effectiveness of withholding taxes is weakened in cross-border situations, since the duty to act as withholding agent may be difficult to enforce against a non-resident entity. This situation is particularly prevalent in the collaborative economy, wherein platform operators do not need to be present for tax purposes in the states where they provide services.

4. ***The income tax system is a dynamic entity, composed of various parties that impact its design and functioning. In the context of addressing the tax challenges posed by the under-taxation of income derived by workers from platform activities, three specific actors are notably relevant. These are (1) the international governmental organizations involved in contouring and influencing tax policy, (2) tax administrations and (3) the centralizing third parties which are integrated within the environment of income-generating activity of platform workers.***

International governmental organizations, tax administrations and intermediaries which are integrated within the environment of platform workers each play a respective role in addressing workers' effective taxation. However, these roles are not always adequately crystalized.

i The most notable international organizations that have assumed a role in contouring and influencing tax policy as relevant to addressing the under-taxation of platform workers are the OECD and EU (in particular through the EU Commission). Despite the authority of their statements and proposals over domestic tax policymaking, these organizations have yet to explicitly delineate their respective roles as regards the tax compliance challenges posed by platform workers. This thesis surmises that the international governmental organizations which have actively taken a role in supporting the design and implementation of measures to address the under-taxation of income derived by platform workers should fulfill three main functions: standard-setting, supporting where necessary and desirable the harmonization of measures and actively promoting the exchange and replication of best practice policies between states.

Since the advent of the emergence of the collaborative economy, the OECD and EU Commission have integrated the discussion of the challenges related to the under-taxation of income derived by workers from activities undertaken through platforms on their respective agendas.

It is inarguable that the OECD and EU Commission have made a valuable contribution towards the harmonization of measures for addressing the income taxation of platform workers. This is most evident through the recent introduction

of multilateral frameworks for third party information reporting in respect of income derived by platform workers, as facilitated by the OECD's Model Rules and the EU's DAC7. In recent years, a considerable number of states introduced unilateral third party information reporting arrangements as a tool for mitigating the under-taxation of platform workers' income. These unilateral initiatives displayed two major shortcomings, related to the globalized nature of the collaborative economy. Firstly, the enforceability of third party information reporting measures was weak in cross-border situations, wherein the platform operator required to supply information was neither a resident nor maintained a tangible presence in the jurisdiction of the tax administration that was supposed to the receive the information. Secondly, the plurality of overlapping third party information reporting regimes created considerable compliance burdens for platform operators, which were faced with duplicative reporting obligations in different jurisdictions. These shortcomings and limitations are addressed through the OECD's and EU's multilateral third party information reporting arrangements. The Model Rules and DAC7 enable third party information reporting over income derived by workers from platform activities through consolidated reporting by platform operators. A platform operator that falls under the scope of application of these instruments collects on a consolidated basis the data pertaining to all reportable workers that earn income through its interface. The consolidated data is reported once to a single tax administration. In turn, that tax administration is tasked with exchanging on an automatic basis the information received with its counterparts. In light of the underlying shortcomings of unilateral third party information reporting arrangements, the structural change and harmonized approach to this measure introduced through the Model Rules and DAC7 was both necessary and desirable.[1607]

In a similar vein, albeit to a less momentous degree, the OECD proposed a quasi-harmonized approach to taxpayer engagement and education initiatives through the Code of Conduct on *Co-operation between tax administrations and sharing and gig economy platforms*. The Code of Conduct introduces a cooperative approach to taxpayer engagement and education which highlights complementary roles for tax administrations and platform operators. The wording and spirit of the Code

1607 The necessity and desirability of harmonization may be inferred from the territorial limitations and compliance costs posed by unilateral third party information reporting arrangements as these stood prior to the adoption of the Model Rules and DAC7.

of Conduct implies that the OECD views taxpayer engagement and education initiatives as a residual solution.[1608] Still, taxpayer engagement and education initiatives are not disruptive measures. They neither entail considerable burdens for tax administrations and platform operators, nor establish a specific trajectory for addressing the under-taxation of platform workers. By their nature, taxpayer engagement and education initiatives are subsidiary measures, which makes it nearly superfluous to discuss the Code of Conduct through the lens of necessity or desirability. The call for a cooperative approach to taxpayer engagement and education as set forth by the OECD is therefore a latent development.

Questions related to the necessity and desirability of further harmonization are all the more challenging to posit against other types of measures for addressing the income taxation of platform workers, such as simplified taxation regimes or the collection of tax in respect of workers' income through withholding. The introduction of simplified income taxation regimes is dubious to propose at international level. The introduction of simplification regimes needs to be integrated within domestic income tax systems, and international organizations hardly have the requisite competences to act in this area to a meaningful extent. More importantly, simplified taxation regimes do not broadly and fully address the underlying issues of under-taxation of income derived by platform workers. In a similar vein, a hypothetical proposal for a harmonized approach to the collection of tax in respect of workers' platform-derived income through withholding would be unlikely to garner acceptance. It should be noted that the application of withholding taxes in respect of platform workers' income raises similar cross-border enforceability challenges as those associated with unilateral third party information reporting arrangements. In cross-border situations, it is inarguably difficult to compel foreign platform operators to act as withholding agents in respect of income derived by

1608 This is apparent, for example, from Point 9 to the Code of Conduct, which reads: 'Where appropriate under this Code of Conduct, the platform operator will seek to cooperate with tax administrations to find solutions together, including at the technical level, which will be sustainable for both the platform operator and the tax administrations.' As argued elsewhere in the contents of this thesis, codes of conduct are inherently idealistic instruments which set out open-ended obligations. Codes of conduct are ultimately a collection of commitments, predicated on notions of good faith more so than on legal obligations. Codes of Conduct are instruments that enable flexibility in design. As such, they lend themselves to the integration of expectations that fall outside the breadth of regulation or are otherwise difficult to regulate.

workers. However, withholding arrangements do not lend themselves to the design of multilateral frameworks in the same manner and to the same degree as third party information reporting arrangements.

In light of these considerations, it should be accepted that there are structural limits to the extent to which international governmental organizations may act to support the design of approaches for addressing the income taxation of platform workers through the approximation of laws alone. Against this backdrop, it is submitted that international governmental organizations should act on a more diversified basis to fulfill roles that also include the setting of standards and the promotion of exchanges and replication of best practices.

Unlike other fields of law, in the area of tax policy, standard-setting remains an understated function of international governmental organizations. In the context of this contribution, standard-setting is understood to refer to the ascertainment of specific and practical principles which should guide the design of strategies for addressing the income taxation of platform workers. At this time, the international governmental organizations that have actively assumed a role in supporting the effective taxation of platform workers have not gone as far as to explicitly establish standards along these lines. The closest development to this end is the ascertainment of the notion of Compliance by design introduced by the OECD. Compliance by design was originally referenced prior to the emergence of the collaborative economy, in the context of a broader policy discussion of the OECD on the taxation of small-scale enterprises in the hard to tax sector. Nevertheless, this thesis argued that the precepts set out through Compliance by design are directly relevant to addressing the income taxation of collaborative economy platform workers. Through Compliance by design, the OECD proposed that policymakers and tax administrations alike should contribute to the design of tax assessment and collection frameworks that are inherently conducive to compliance and that remove the opportunities for non-compliance normally available for hard to tax groups. Compliance by design innately carries a normative dimension. As such, it lends itself to interpretation as a standard that should guide the design of measures and strategies for addressing the income taxation of platform workers. The OECD has impliedly confirmed the continued relevance of Compliance by design by referencing this notion in policy documents discussing the tax challenges pertaining to the collaborative economy specifically. However, the OECD has not gone as far as

to assert Compliance by design as an overarching standard in the strides towards the effective taxation of platform workers. The EU Commission is likewise yet to assert a call for a principled and standard-based approach to addressing the income taxation of collaborative economy platform workers.

Finally, this thesis argues that international organizations should play an active role in encouraging countries, states and jurisdictions to engage in exchanges of experiences related to (unilateral) measures introduced with a view to securing the effective taxation of platform workers. In turn, such exchanges may lead to the identification of best practices: measures and strategies introduced unilaterally which uphold the ultimate objective of securing the effective taxation of platform workers. The identification of best practices should be followed by the replication of these in other countries, states and jurisdictions. This precept ultimately describes an organic process of legal coordination or a purpose-driven form of legal transplanting.

Such legal transplanting is necessary, desirable and feasible in the context of the strides towards addressing the income taxation of platform workers for a number of reasons. Platform-intermediated income-generating activities are increasingly becoming an integral characteristic of labor markets the world over. As a corollary, the challenges associated with securing the effective taxation of income derived by workers from such activities has progressively become a familiar tale across the board. Different countries, states and jurisdictions attempt to tackle these issues with distinct approaches – some of which are proving more effective than others. When effective approaches do emerge, the replication of these in other systems faced with mirroring compliance and collection challenges is beneficial. However, the exchange of experiences, identification and transplanting of best practices requires a forum within which these may occur. International organizations create an appropriate setting to this end. Facilitating the organic coordination of unilateral measures and strategies complements the other main functions of international organizations in the area of the collaborative economy.

ii Compliance by design should be actively framed as the overarching principle underlining the frameworks for addressing the income taxation of collaborative economy platform workers.

The precept of Compliance by design provides the requisite foundation for addressing the income taxation of collaborative economy platform workers because it encapsulates the multifaceted dimension of the underlying issues. In setting out that income tax rules should be conducive to compliance and preclude opportunities for non-compliance, Compliance by design is ultimately an expression of the notion of effective taxation.

Compliance by design should not remain a latent concept, cited intermittently by the OECD. Instead, this notion should be further developed and brought to the forefront of the policies for addressing the income taxation of platform workers. This entails, however, that Compliance by design be grounded on established authority. In my view, the onus falls chiefly on the OECD to ascertain this. Additionally, the EU Commission has long supported initiatives introduced by the OECD. The scope of competence of the EU Commission is comparatively more formalized. Importantly, the EU Commission is vested with the authority to publish Recommendations which EU Member States are expected to take into consideration, without however being bound by them. The legal limitations of Recommendations do not preclude the relevance of setting out Compliance by design in this format. Compliance by design is a concept, more so than a precept amendable to strict legal ratification.

iii The functions of tax administrations in supporting the effective taxation of collaborative economy platform workers should be framed robustly. Conventionally, tax administrations focus on the oversight and enforcement of tax compliance and on servicing of taxpayers with a view to fostering voluntary compliance. In light of the particularities of the environment of the collaborative economy, new functions of tax administrations emerge, notably a prominent role in developing frameworks and an infrastructure that is conducive to compliance and removes opportunities for non-compliance.

The core function of tax administration always related chiefly to safeguarding revenue collection (i.e., the fiscal goal of tax administration). Because they operate with inherently finite resources, tax administrations are expected to discharge this function in a resource-efficient manner (i.e., an economic objective). Additionally, because tax administrations are the subjective expression of the tax system and the main tangible body with which legal subjects interact as taxpayers, tax

administrations are expected to conduct their functions in a manner that encourages voluntary compliance and mitigates taxpayer adversity towards taxation (i.e., a social objective).[1609] Tax administrations are vested with competence to safeguard compliance and granted authority to undertake supervisory and enforcement actions. Still, tax administrations enjoy discretion in regards to structuring their approach to policing compliance. For its part, the economic objective of tax administration is impliedly determined by the budget within which it operates. Finally, the social objective of tax administration generally flows from public policy rather than a conventional legal foundation. The fiscal, economic and social objectives of tax administration are merely a starting point in establishing and understanding how tax administration is performed.

In 2020, the OECD called for a transformative approach to tax administration. In Tax Administration 3.0, the OECD highlighted the structural inefficiencies of current practices and proposed a paradigm shift purporting to optimize the effectiveness of income tax system management. The OECD impliedly acknowledged that the modernization of tax administration is already underway. However, the ongoing developments in tax administrations remain deeply entrenched in conventional notions of oversight and enforcement. Notably, the OECD implied that existing efforts at modernizing tax administration are focused on compliance risk management in respect of corporate taxpayers. Conversely, a lesser focus is placed on the management of tax compliance in respect of hard to tax groups. The environment of income-generating activity is changing, and the emergence of the collaborative economy is a core underlying catalyst. Against this backdrop, tax administrations are expected to adapt their approach to the conduct of fiscal, economic and social objectives in a manner compatible with these realities and developments.

The OECD described the Tax Administration 3.0 vision as a cohesive and naturalized approach to the management of income tax systems. As part of the Tax Administration 3.0 report, the OECD lamented a reality originally set out in Compliance by design, namely that the downstream nature of income tax compliance processes cultivates inefficiency and creates opportunities for non-compliance. Accordingly, the OECD

1609 The fiscal, economic and social functions of tax administration are explained in Rafal Lipniewicz; 'Tax Administration and Risk Management in the Digital Age', *Information Systems in Management 6 (1)*, 2017, pp. 26-37.

reiterated the plea initially expressed in Compliance by design for the integration of compliance processes directly within the environment of income-generating activity of taxpayers.[1610] In the view of the OECD, this may be achieved through the development by tax administrations of resources that enable taxable events to be connected with their afferent tax consequences in real-time. Putting in place such resources requires cooperation between tax administrations and third party intermediaries.

The Tax Administration 3.0 report is notable for two interconnected reasons. First, it is a welcome iteration of the continued relevance of the precepts set out in Compliance by design. Secondly, Tax Administration 3.0 confirms the notion that Compliance by design should be given a broad meaning. An income tax system that is conducive to compliance and where opportunities for non-compliance are inherently precluded is not solely composed of outcome-determinative rules. Instead, Compliance by design pertains in equal measure to the manner in which income tax rules are applied, administered and managed.

The notion that oversight, supervision and enforcement exerted over taxpayers should be the main way in which tax administrations conduct their fiscal objectives is growing increasingly outdated and incompatible with the contemporary realities of income-generating activity. Nevertheless, Neither Tax Administration 3.0 nor Compliance by design demand or imply the displacement of these functions. Instead, the more appropriate question concerns the manner in which oversight, supervision and enforcement should be integrated within a tax administration that promotes and embodies Compliance by design.

iv Platform operators may support workers' tax compliance pursuant to the application of intermediary regulation arrangements. However, there are structural limitations to the extent of platform operators' contribution. These limitations are determined by two main considerations related to the realities of the economic system of the collaborative economy: (1) cross-border enforceability constraints in cases where the platform operator is neither a resident for tax purposes nor maintains a tangible

1610 OECD ; 'Tax Administration 3.0 – The Digital Transformation of Tax Administration', OECD Publishing, 2020.

> *presence within a jurisdiction applying a given intermediary regulation measure and (2) the limited extent of information collected by platform operators in respect of the workers that perform income-generating activities through their interface.*

Formally, platform workers generally qualify as independent contractors for tax purposes. Small-scale income-generating activities undertaken on an independent basis raise compliance risks by reason of the opportunities enjoyed by taxpayers to misrepresent their results in self-assessment and self-reporting processes. These risks may be mitigated through the application of intermediary regulation arrangements.

In the context of this thesis, intermediary regulation arrangements were taken to refer to frameworks pursuant to which a third party is interposed between a segment of taxpayers and the tax administration. The intermediary acts as a 'compliance gatekeeper', tasked with either facilitating taxpayers' compliance or alleviating the opportunities for non-compliance available to taxpayers. The effectiveness of intermediary regulation arrangements depends on a number of factors which are ultimately circumstantial in nature. Firstly, the third party intermediary should act as a centralizing body between a broad segment of taxpayers and a tax administration. Intermediary regulation arrangements are necessary and desirable because of the practical difficulties experienced by tax administrations in policing tax compliance over numerous and unrelated taxpayers. In other words, the effectiveness of intermediary regulation arrangements is dependent on the centralizing capabilities of the third party intermediary. Secondly, the intermediary should be a person against which the underlying regulation may be effectively enforced. Intermediary regulation arrangements cannot uphold their object and purpose to the extent that the person interposed between a segment of taxpayers and the tax administration cannot be brought under the enforcement jurisdiction of the latter. Thirdly, the effectiveness of intermediary regulation arrangements is determined by the extent to which the intermediary is integrated within the environment of the taxpayers. This consideration relates to the nature of the relation between the intermediary and the underlying segment of taxpayers as it otherwise exists for non-tax purposes. Intermediary regulation arrangements purport to mitigate the necessity for tax administrations to rely on taxpayer inputs in ascertaining and collecting tax liabilities. For this reason, an intermediary should

be a genuine and robust repository of information. Finally, the application of an intermediary regulation arrangement should result in a meaningful reassignment of compliance costs from taxpayers and tax administrations to the relevant third party intermediary. Third party intermediary regulation protocols inherently result in the assumption by the intermediary of additional compliance costs. Under such measures, intermediaries essentially act as support structures for the discharge by tax administrations of their functions. The corollary of the compliance costs assumed by the intermediary should be an actual improvement in the compliance posture of the underlying taxpayers and correspond to a reduction in the burdens borne by tax administrations in connection with the conduct of their fiscal, economic and social objectives.

Since the advent of the collaborative economy and the emerging cognizance of the compliance risks posed by platform workers, the notion readily emerged that the relation between workers and platform operators could be leveraged towards the design of intermediary regulation arrangements, wherein platform operators would be interposed as compliance agents between workers and tax administrations. As a matter of principle and generality, this argument is wholly sound. Within the collaborative economy, workers' income-generating activities are undertaken through the intermediation enabled by platform operators. Platform operators are integrated within the environment of workers and centralize considerable degrees of information in respect of otherwise unrelated taxpayers. At face value, there is a strong and reasoned argument in favor of assigning intermediary functions to platform operators with a view to safeguarding the effective taxation of income derived by workers. However, this thesis advances the argument that policymakers and tax administrations should be wary of overstating the extent to which platform operators amount to effective intermediaries.

There are two main examples of measures which overall lend themselves well to the assignment of intermediary functions upon platform operators.

To begin with, there is growing cognizance that the effectiveness of taxpayer engagement and education initiatives is enhanced when such measures are driven by complementary efforts from tax administrations and platform operators. Tax administrations are well positioned to develop resources and guidance for clarifying the application of income tax rules as relevant to the nature of platform

workers' income-generating activities. However, any added value of such resources is dependent on their visibility. For this reason, taxpayer engagement is a necessary complement to education. The proximity between platform operators and workers enables the former to effectively nudge platform workers with reminders that their (independent) income-generating activities may entail tax consequences and direct workers to take steps towards meeting these. Cooperative taxpayer engagement and education initiatives are non-contentious. The nature and extent of platform operators' duties under such measures is structurally limited. Even in cases where a platform operator is neither a resident nor maintains a presence in a market where it conducts intermediation services for workers, these usually do not display considerable reluctance to contributing to taxpayer engagement and education initiatives. Speculatively, the openness of platform operators to contribute to support tax administrations in taxpayer engagement and education initiatives may be explained by the underlying implication of taxpayer engagement initiatives. In reminding workers that their activities may entail income tax consequences and guiding workers to determine what these consequences are and how to be compliant, taxpayer engagement initiatives essentially reinforce the individual and personal responsibility of workers in respect of their tax obligations. This merely buttresses the *status quo* supported by platform operators, wherein workers are treated as independent contractors and responsible for their own income tax obligations.

Additionally, platform operators are arguably effectiveness intermediaries under the third party information reporting arrangements. By comparison to taxpayer engagement and education initiatives, third party information reporting frameworks raise more complex questions related to cross-border enforceability. This limitation was however addressed through the institution of multilateral third party information reporting arrangements designed with a view to reducing the necessity for platform operators subject to reporting obligations to interact with foreign tax administrations. As a self-evident corollary, this approach likewise obviates the need for tax administrations to attempt enforcement of third party information reporting requirements against entities that do not maintain a presence within their jurisdiction.

Beyond these measures, the added value of platform operators in supporting platform workers' compliance and hindering possibilities for non-compliance

is questionable. Neither taxpayer engagement and education nor third party information reporting arrangements safeguard effective tax collection directly. In respect of taxpayer engagement and education measures, this reality flows from the inherent limitations of the initiatives. In the case of third party information reporting arrangements, this is attributable to the fact that the mere reporting of information does not amount to a strict causal determinant of tax compliance and collection.

The receipt of information by a tax administration in regards to the identities and amounts of income derived by workers from activities undertaken through platforms may facilitate compliance to the extent that the information received is effectively commodified and converted towards the determination of workers' tax liabilities. However, data supplied by platform operators is seldom sufficient to enable a comprehensive determination of the circumstances of workers as taxpayers. By nature of their interactions with workers, platform operators merely collect information related to payments derived by workers as consideration for services rendered to end-users through the platform and fees and commissions withheld by the platform operator itself from these. Admittedly, such information may allow the drawing of inferences related to the frequency and scale of a given worker's activities. However, platform operators do not dispose of other information as relevant to the comprehensive determination of workers' circumstances, such as expenses incurred in connection with their activities. In this respect, information supplied by platforms alone is only sufficient in countries, states and jurisdictions where tax liabilities are predominantly determined by reference to (gross) earnings and without the consideration of other circumstances related to the taxpayer. In turn, this reality suggest that the nature of the relation between an intermediary and a taxpayer and the extent of the intermediary's integration within the taxpayer's environment is ultimately a threshold question.

In a similar vein, platform operators are usually ineffective withholding agents. By contrast to other types of measures here discussed, the cross-border enforceability constraints at play when the platform operator does not maintain a presence in the jurisdiction requiring withholding are comparatively more difficult to overcome.

5. In light of the plurality of determinants of non-compliance at play in the collaborative economy, as well as the structural and legal limitations to the application of different measures or combinations of measures for addressing the income taxation of platform workers, a paradigm shift is necessary and desirable. Such a paradigm shift could be attained if policymakers, working together with international governmental organizations, tax administrations and intermediaries approached the taxation of collaborative economy platform workers through a strategy which embodies the norms set out by the OECD in Compliance by design.

i The OECD's Compliance by design framework provides a normative and practical foundation for comprehensively addressing the income taxation of collaborative economy platform workers.

The overarching motif of Compliance by design lies in that income tax policy, compliance and administration should be conceptualized as a system composed of processes that are directly conducive to compliance and concurrently limit opportunities for non-compliance. An approach to the management of income tax systems predicated on Compliance by design acknowledges pragmatically that different processes and actors should work interconnectedly to attain this ultimate objective.

ii A strategy predicated on Compliance by design relies primarily on two main elements: outcome-determinative rules and frameworks developed by tax administrations for the purposes of reforming taxpayer self-reporting and self-assessment processes.

The introduction of outcome-determinative rules involves the broadened application of non-employee withholding taxes in respect of income derived by workers from activities undertaken through platforms. The ongoing difficulties associated with the deployment of non-employee withholding arrangements to collect tax in respect of platform workers' income are largely linked with the unreliability of platform operators as withholding agents. However, these issues could be superseded through the design of non-employee withholding mechanisms that assign collection duties to a different intermediary. To this end, designing an opt-in regime whereby platform workers deposit receipts derived from income-

generating activities into a designated bank and account and requiring the bank or financial institution with which the account is maintained to withhold tax in respect of the amounts deposited amounts to a pertinent solution. Unlike platform operators, banks and financial institutions ordinarily maintain a presence in the markets and jurisdictions where they provide services. As such, they do not pose the cross-border enforceability challenges associated with requiring platform operators to act as withholding agents in jurisdictions where they have no tangible presence. Additionally, since the payments derived by workers as consideration for their activities are processed digitally (and ultimately deposited into workers' accounts), banks and financial institutions are naturally integrated within the environment of platform workers. This comports with the norms embedded in Compliance by design.

Despite their benefits in expediting revenue collection and simplifying compliance burdens for taxpayers, withholding arrangements cannot always safeguard equitable taxation in accordance with the ability to pay principle. For this reason, non-employee withholding taxes applied in respect of platform workers' receipts should be levied as a prepayment of tax rather than a final tax liability. The heterogenous nature of the collaborative economy makes it difficult, if not impossible, to design a broad-based withholding regime that is genuinely capable of approximating final tax liabilities with accuracy. However, platform workers should be given the option to unilaterally choose for withheld amounts to be treated as a final payment of tax.

Accepting the notion that opt-in non-employee withholding arrangements cannot be broadly applied as (final) taxes in all cases, it becomes apparent that some platform workers would continue to be assessed for income tax purposes through the submission of a self-reported or self-assessed tax return. The shortcomings of self-assessment and self-reporting frameworks could and should be addressed through the design by tax administrations of automated tax returns, wherein the transactions of taxpayers are directly translated into fiscal accounts and thereafter transposed into a pre-populated tax return. Under this approach, receipts, expenses and any other relevant events would be automatically linked with their underlying tax consequences, removing the otherwise pervasive temporal and material segregation between taxable activities and the (self-)reporting of these. The automated tax return approach as here described ensures a direct and unbroken chain wherein taxpayer inputs are minimized. However, it does remain important

to note that the added value of automated tax returns designed along the lines here described depends heavily on the breadth and robustness of information captured. Comprehensive income taxation in accordance with the ability to pay principle requires information about the totality of the circumstances of taxpayers. In the case of collaborative economy platform workers, there is a misguided viewpoint that the availability of information related the amounts derived from the performance of their income-generating activities provides a sufficient basis for the accurate assessment of tax. This stance underlines the popularity of third party information reporting arrangements that require platform operators to supply data to tax administrations regarding the consideration received by workers for activities performed through the platform. Platform operators merely collect information as related to the amounts received by workers as consideration for services rendered, since platform operators act as escrows for such payments. However, workers' activities are otherwise performed on a largely independent basis. For this reason, platform operators do not collect information about expenses incurred by workers in connection with their income-generating activities or about separate income streams. For this reason, in my view, information captured and transposed into an automated tax return should be mined from the taxpayer's financial accounts, which provide a more comprehensive overview of the totality of the circumstances of the taxpayer.

iii Even in the context of a strategy predicated on Compliance by design, simplified income taxation arrangements, taxpayer engagement and education initiatives and third party information reporting arrangements should continue to play a role.

Whereas the provision of simplified income assessment rules for hard to tax groups may be criticized as yielding artificial outcomes, some simplification tools may remain justified and desirable even in the context of an income tax system predicated on Compliance by design. In particular, there may be valid grounds for states, countries and jurisdictions to provide exemptions in respect of genuine *de minimis* amounts derived from very small-scale and/or intermittent activities. However, income exemptions inherently entail a departure from the notion of equitable taxation in accordance with the ability to pay principle. As such, if they are applied, their scope should be limited.

In a similar vein, ongoing taxpayer engagement and education initiatives could and should support the processes described above. This is especially relevant since the approaches to non-employee withholding and the automation of tax returns as here envisaged would amount to opt-in arrangements.

Finally, regardless of the dominant approach applied to the assessment and collection of income tax, third party information reporting arrangements remain relevant for a number of reasons, including in supporting the integrity of automated pre-populated returns. Additionally, the exercise of administrative oversight, supervision and enforcement remain core functions of tax administration. Since the Compliance by design frameworks here described are conceptualized as opt-in arrangements, the need for oversight, supervision and enforcement cannot and should not be displaced altogether.

PROPOSITIONS ADDRESSING THE INCOME TAXATION OF COLLABORATIVE ECONOMY PLATFORM WORKERS

The findings set out in this research underpin the following propositions for addressing the income taxation of collaborative economy platform workers:

1. Policymakers should move away from false notions that a one-size-fits-all approach could exist to secure effective taxation. The collaborative economy is a heterogenous environment that encompasses capital- and labor-intensive income-generating activities, performed by workers with varying degrees of frequency. The under-taxation of income derived by collaborative economy platform workers is the result of a plurality of determinants of non-compliance. Fiscal equity requires that these distinctions be taken into consideration in determining how the income taxation of workers should be regulated. The income taxation of collaborative economy platform workers should be devised by reference to a strategy, composed of processes that seek to be directly conducive to compliance whilst concurrently limiting opportunities for non-compliance. This could be achieved by reference to the norms embedded in the OECD's Compliance by design initiative. A strategy for addressing the income taxation of collaborative economy platform workers involves (1) the broadened introduction withholding taxes and (2) a reformed approach to self-assessment and self-reporting, which would limit reliance on taxpayer inputs opportunities for taxpayer non-compliance.

2. At the present time, the application of withholding taxes in respect of income derived by collaborative economy platform workers is hampered by two main sets of issues, which may and should be overcome:

    a) **The challenges to the enforceability of withholding agency obligations against platform operators that neither reside nor maintain a presence in jurisdictions requiring withholding.** However, this issue may be overcome through the assignment of withholding obligations to entities other than platform operators, such as banks or other credit institutions to which workers deposit payments received as consideration for activities performed through platforms to act as withholding agents in respect of such income;

b) **The difficulties associated with the design of a unitary system for withholding, as posed by the heterogeneity of circumstances for workers undertaking income-generating activity within the collaborative economy.** However, this issue may be overcome in several ways:

i ***by extending a withholding arrangement to a limited category of workers.*** Notably, the application of a final withholding tax may not be feasible in systems that allow independent contractors (including platform workers) to claim a broad span of deductions for expenses incurred in connection with income-generating activities undertaken through platforms. However, even in such systems, the collection of tax through withholding is an appropriate mechanism for collecting tax in respect of workers that only engage in such activities on a small-scale or on an intermittent basis;

ii ***through the design of differentiated withholding schedules.*** This approach would entail the application of distinct withholding rates for workers depending on whether their activities are capital- or labor-intensive and depending on the scale and frequency of their activities;

iii ***Through the design of the withholding tax arrangement as a prepayment of income tax rather than a final tax.*** This approach would mitigate the inaccuracies that are commonly at play in respect of final withholding taxes;

iv ***Through the design of the withholding tax as an opt-in framework, complemented with the application of distinct Compliance by design frameworks for platform workers that do not opt in, in particular compliance assistance tools developed by tax administrations.***

3. DAC7 and the OECD Model Rules are a welcome development in the area of third party information reporting over income derived by workers from activities undertaken through collaborative economy platforms. However, third party information reporting alone does not guarantee tax compliance and the effective collection of tax in the context of the collaborative economy. The OECD and EU Commission should strive to prevent domestic policymakers from framing third party information reporting arrangements as a panacea. The availability

of information for tax administrations cannot be directly equated with effective taxation.

4. **Tax administrations should broaden the availability of compliance assistance tools for taxpayers. Such tools should be designed with a view to overcoming the weaknesses of ordinary self-assessment and self-reporting frameworks, which are deeply reliant on taxpayer inputs and which enable opportunities for willful and inadvertent non-compliance to subsist. There is an imperative need for compliance assistance tools that are capable of naturalizing the process of ascertaining tax liabilities, through the establishment of direct and immediate links between taxable events and their afferent tax consequences.**

5. **Whereas simplified income taxation rules (exemptions for hard to capture income, standard deductions or mechanisms which establish artificial proxies for net income) may alleviate the otherwise pervasive complexity of the income tax rules relevant to the circumstances of collaborative economy platform workers, states should not rely on this approach for addressing the income taxation of collaborative economy platform workers extensively. Simplified mechanisms for the assessment of income and tax compound the artificiality of income tax systems and are prone to produce outcomes that do not reflect taxpayers' genuine ability to pay. For these reasons, the scope of such arrangements should remain narrow. Where they are applied or introduced, such mechanisms should merely extend to:**

   a) **Alleviating meaningful and legitimate compliance and administrative concerns.** For example, whereas the provision of an exemption for *de minimis* amounts of income derived by platform workers from intermittent activities may be justified and appropriate. Conversely, exemptions that overtly or covertly amount to tax incentives should be avoided; or

   b) **Supporting the functioning of non-employee withholding arrangements for the prepayment of tax.** This could be achieved, for example, through the introduction of standard deductions that differentiate between labor- and capital-intensive income-generating activities, to be applied against gross income as a precursor to the collection of non-final tax through withholding.

6. **The OECD and EU Commission should promote Compliance by design and bring this concept to the forefront of strategies for addressing the income taxation of collaborative economy platform workers, and other hard to tax groups in the future.**

7. **Policymakers should attempt to involve intermediaries other than platform operators in the measures and strategies for addressing the income taxation of collaborative economy platform workers. Whereas platform operators are the most obvious repository of information and intermediary between workers and tax administrations, they are certainly not the only one.**

8. The OECD and EU Commission should actively and consistently encourage states, countries and jurisdictions to exchange experiences with the application of different measures and approaches for addressing the income taxation of collaborative economy platform workers. The exchange of experiences allows for a clear pragmatic identification of the shortcomings and benefits of different approaches for securing the effective taxation of platform workers. In turn, best practices identified should be replicated by other states, countries and jurisdictions in their efforts to secure the effective taxation of collaborative economy platform workers.

9. The collaborative economy is likely to only be a first expression of the changing labor market harbored by the digitalization of economies. For this reason, approaches currently contemplated for safeguarding the effective income taxation of collaborative economy platform workers should be scalable and lend themselves to a possible subsequent extension to other emerging hard to tax groups.

10. Effective income taxation does not presuppose full or perfect income tax compliance. Even in the context of Compliance by design arrangements, some measure of non-compliance may persist.

SUMMARY

The collaborative economy is a digitalized matchmaking environment that enables the peer-to-peer supply of services. Predicated on empowering individuals to exploit the idle capacity of personal assets with a view to generating income, the collaborative economy catalyzed the advent of a generation of para-entrepreneurship. Existing income tax compliance frameworks fail to accommodate the shifting paradigms of individual income-generating activity brought about by the collaborative economy. Consequently, income derived by individual service providers in the collaborative economy is routinely under-reported and ultimately under-taxed. This thesis studies the income tax compliance issues associated with collaborative economy individual service providers and reflects on possible approaches for safeguarding the effective taxation of income derived by these individuals. The collaborative economy was defined as a collection of labor markets where the supply and demand for services is connected through online intermediaries ('platform operators'). Individual service providers were referred to as 'workers' or 'platform workers'. The working definition of the collaborative economy applied in this research emphasized workers' use of personal assets in the performance of income-generating activities. This scope of this research was limited to the discussion of income tax compliance for workers performing ride-, homesharing and all-purpose freelance activities as part of the collaborative economy. The thesis is divided into four Parts.

Part I discusses the main income tax consequences of activities undertaken by workers in the ride-, homesharing and all-purpose freelance collaborative economy models. Part I focuses on the characterization of receipts derived from workers' activities, the deductibility of (dual-purpose) expenses and the treatment of losses flowing from workers' activities. This part describes the collaborative economy as a heterogenous environment, wherein income tax consequences depend casuistically on the nature of workers' underlying activity (contrasting labor- and capital-intensive activities), the conduct of workers in the performance of activities and the legal frameworks of states where the income may be taxable. Finally, Part I to this research addresses the usual status of collaborative economy platform workers as independent contractors rather than employees of the platform operators that coordinate their activities. In most states, employment is inferred by reference to a

relation of control and subordination between a worker and principal. In the three collaborative economy models here discussed, most platform operators merely act as digitalized marketplaces that enable the connection between workers (supply side) and end-users (demand side). As such, there often does not exist a relation of control and subordination between platform operators and workers. This research did identify and discuss specific examples of worker misclassification disputes in the ridesharing sector by reference to selected case law. However, this research concluded that courts in different states interpret and scrutinize the thresholds of the control and subordination tests with inconsistent degrees of intensity. As such, misclassification disputes in the ridesharing sector do not in all cases determine the conclusion that the workers should be regarded as employees rather than independent contractors.

Part II discusses factors that underline the under-taxation of income derived by collaborative economy platform workers. Because platform workers are normally treated as independent contractors for tax purposes, they are subject to compliance frameworks predicated on voluntary compliance. Voluntary compliance is especially fragile in regards to individuals that undertake income-generating activities independently and in a merely quasi-formal setting. Against this backdrop, Part II argues that collaborative economy platform workers are an emerging 'hard to tax group'. The activities of platform workers are difficult for tax administrations to oversee and police, and the relation between platform workers as taxpayers and tax administrations involves profound information asymmetries. For these reasons, platform workers enjoy considerable opportunities to misrepresent income, expenses and other circumstances relevant to their taxation. Additionally, income tax compliance for independent contractors notoriously entails considerable compliance costs. The disproportionality between tax compliance costs and the scale of taxpayers' income-generating activities further dents the incentive for voluntary compliance. Additionally, Part II discusses the relation between the incidence of tax non-compliance and taxpayer conduct. This research argues that the circumstances and environment of taxpayers may incentivize non-compliant conduct. Notably, the small scale and decentralized nature of platform workers' activities may encourage risk-taking behavior, weakening deterrence as a tool for encouraging voluntary compliance. However, non-compliant behavior may also be inadvertent and underlined by negligence and limited tax literacy.

By reference to these determinants of non-compliance, ***Part III*** analyzes possible approaches for safeguarding the effective income taxation of collaborative economy platform workers. Part III distinguishes between four types of measures: presumptive taxation techniques aimed at simplifying compliance requirements, taxpayer engagement and education initiatives driven by tax administrations, third party information reporting measures for enhancing the oversight and supervision capability of tax administrations and non-employee withholding arrangements. Part III discusses each type of measure by reference to an instrumental and normative benchmark. From an instrumental perspective, this research questions the extent to which these measures may overcome the identified determinants of non-compliance. From a normative perspective, this research discusses each measure against the principles of fiscal effectiveness, efficiency, neutrality, flexibility and ability to pay. Part III reflects on the advantages and disadvantages of each identified measure, ultimately concluding that the heterogeneity of the collaborative economy environment precludes the identification of a 'one-size-fits-all' solution.

Part IV addresses the respective roles of international governmental organizations, tax administrations and collaborative economy platform operators in supporting the effective taxation of workers. In Part IV, this research reflects on the leading roles taken on by the OECD and EU Commission in influencing the design of tax policies for addressing the under-taxation of platform workers. This is most notably apparent through the recent development of multilateral third party information reporting frameworks, discussed in detail across this thesis (i.e., the OECD *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* and the recently adopted DAC7 in the EU). This thesis argues that the OECD and EU Commission should also act as standard-setters, encouraging local policymakers to shift towards income tax compliance frameworks that are directly conducive to compliance, rather than merely strengthened oversight and enforcement. Finally, this research argues that the OECD and EU Commission should actively provide a forum for states to exchange experiences with the application of local measures for addressing the income taxation of collaborative economy platform workers, identify best practices and encourage the replication of these.

In discussing the role of tax administrations in supporting the effective taxation of collaborative economy platform workers, this research argues in favor of a robust

view. Conventionally, the role of tax administrations was framed through a binary lens, focused on the dichotomy between oversight and enforcement, on the one hand, and the encouragement of voluntary compliance, on the other hand. This research argues that the fast-paced and heterogenous environment of income-generating activity harbored by the collaborative economy renders this binary view outdated. Instead, this research argues that tax administrations should support the shift towards 'compliance-by-design' frameworks, wherein taxable events are linked in with their tax consequences in real time.

Finally, Part IV reflects on the relation between platform operators and workers and the extent to which platform operators could feasibly act as 'compliance intermediaries' for workers. Despite their proximity to workers, there are structural limitations to the extent to which collaborative economy platform operators may actually contribute to overcoming the under-taxation of workers' income. These limitations are linked with two realities of collaborative economy arrangements. Firstly, cross-border enforceability constraints to intermediary regulation arrangements occur where platform operators do not maintain a presence in jurisdictions applying such measures. Secondly, platform operators are not fully integrated and involved in workers' activities. This research contends that intermediary regulation arrangements are useful and valuable tools towards safeguarding the effective taxation of otherwise hard to tax groups. However, Part IV argues against broadly misguided notions that platform operators are appropriate intermediaries in all cases.

This thesis concludes with a number of proposals for safeguarding the effective taxation of collaborative economy platform workers, focused on scalable measures that could also accommodate other emerging hard to tax groups. Broadly, this research argues for a shift in paradigm, which emphasizes outcome-determinative tax rules measures and compliance frameworks that enable the real-time linking of taxable events with the tax consequences of these.

IMPACT PARAGRAPH

1. Societal value of the research

The broad-based digitalization of economies is reshaping pre-existing notions related to the supply and consumption of services. The collaborative economy is an emerging digitalized business model, which contributes to this ongoing trend. The collaborative economy fosters opportunities for individuals ('platform workers') to monetize the idle capacity of private assets. Prior to the emergence of the collaborative economy, peer-to-peer work was never deemed a sustainable path to generate personal income. In this respect, the formalization of peer-to-peer, quasi-professional work is a welcome development. However, income-generating activities undertaken by individuals in the collaborative economy remain opaque. Income derived by platform workers is routinely under-reported and therefore under-taxed.

This determines a number of social inequities. Firstly, the under-taxation of one segment of taxpayers compromises inter-individual fairness. This is notably relevant, since peer-to-peer services rendered by platform workers are in most cases economically interchangeable with services supplied outside the realm of the collaborative economy. Secondly, assuming the persistence of the existing trend in the under-taxation of platform workers, the continuing growth of collaborative economy labor markets implies a corresponding increase in the absolute scale of the tax gap. In turn, this increases the pressure on the mobilization of public revenues through the collection of tax in respect of other taxpayers, ultimately determining an obtuse, economically inefficient and inequitable incidence of tax burdens.

This research analyzes possible approaches for safeguarding the effective taxation of income derived by collaborative economy platform workers. I argue that the under-taxation of collaborative economy platform workers is rooted in a plurality of factors, related to circumstantial and behavioral considerations, on the one hand, and to weaknesses in existing income tax rules and purported compliance safeguards, on the other hand.

I question some common views related to the collaborative economy and the legal and regulatory challenges it poses, as far as these are ultimately linked with the income taxation of platform workers. In particular, I argue that policymakers should view the collaborative economy as a heterogeneous environment, rather than a unitary labor market. The nature of income-generating activities undertaken by platform workers in different segments of the collaborative economy determines different legal questions and potentially distinct opportunities for tax non-compliance. Additionally, I strive to contribute and add nuance to the wider debate about the misclassification of collaborative economy platform workers as independent contractors rather than employees. I do so by arguing against overly broad arguments related to the prevalence of worker misclassification issues in the collaborative economy.

I surmise as a key proposition that the under-taxation of collaborative economy platform workers should be addressed through frameworks predicated on the naturalization of income tax compliance processes, in a manner that seeks to alleviate the incidence of the factors that impede compliance on a structural level. These propositions strive to contribute to safeguarding equity, effectiveness and efficiency in individual income taxation.

2. Target audience

The arguments and findings developed in this research are especially relevant to domestic policymakers and international governmental organizations (such as the OECD and EU Commission). This research strives to convey that the capability of international governmental organizations to support policies for addressing the income taxation of collaborative economy platform workers would be enhanced if these entities crystalized their role in this wider debate with more clarity.

Furthermore, in existing discussions about the income taxation of collaborative economy platform workers, policymakers at domestic and international level place a marked emphasis on the role that platform operators should play as ‘compliance intermediaries’. This research proposes a candid and levelled approach to the delimitation of the extent to which platform operators may feasibly support the effective taxation of platform workers. Compliance intermediaries

provide an important support structure for effective income taxation. However, a disproportionate emphasis on platform operators as relevant intermediaries involves a reductionist view. The wider digitalization of economies steadily changes the makeup of labor markets. As such, the collaborative economy and the tax challenges posed by workers therein is arguably merely a first manifestation of a broader impeding shift. For this reason, it is imperative that policymakers already consider how solutions for addressing the income taxation of platform workers may be scaled in the future, to accommodate new hard to tax groups that are likely to emerge.

Additionally, this research may be especially relevant to tax administrations in states that grapple with the under-taxation of collaborative economy platform workers. As part of this research, I argue that tax administrations do and should play a key role in supporting effective taxation. To this end, I discuss in particular approaches pursuant to which tax administrations could contribute to the development of *Compliance by design* frameworks.

3. Innovative character

As part of this research, I discuss income tax compliance in a holistic and robust sense. I seek to ascertain the influence of taxpayers' environment of income-generating activity and of individual conduct on income tax compliance. The innovative character is twofold. Firstly, this research reflects on possible approaches for addressing the income taxation of collaborative economy platform workers by reference to both instrumental and normative considerations. I strive to discuss the instrumental capability of different soft law and blackletter law initiatives to overcome the key determinants of non-compliance at play in the collaborative economy. I combine this instrumental analysis with normative elements, focused on widely recognized principles of tax law. This approach sought to enable propositions that emphasize effective taxation with minimal trade-offs. Secondly, the approach to the discussion of the effective taxation of collaborative economy platform workers developed in this research seeks to emphasize scalable solutions. This research contends that the collaborative economy is likely to merely be an early manifestation of a broader impeding shift in individual income-generating activity. With this in mind, the propositions developed in this thesis are flexible, amendable

and capable of accommodating other hard to tax groups which are likely to emerge as a result of the digitalization of economies.

4. Outreach and dissemination of research results

The income (under-)taxation of collaborative economy platform workers is certain to remain a topic of interest, with profound implications for tax policy and administration. Beyond the dissemination of the present manuscript, I intend to publish this research as a monograph. I endeavor for this research to amount to a meaningful contribution to the ongoing academic and policy debate about fair and effective taxation in the digitalized world economy.

I intend to develop on the findings set out in this research by following emerging developments, in particular through researching measures implemented at domestic level and discussed by international governmental organizations for addressing the income taxation of collaborative economy platform workers and other emerging hard to tax groups. Additionally, I intend to follow and research further the work of the OECD on *Tax Administration 3.0*, with a focus on automation of income tax compliance processes.

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