Tax compliance at a crossroads

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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.