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VAT and the Sharing Economy: Call for Evidence

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT recommends that a Working Group be set up to include representatives from the relevant governmental departments and stakeholders from industry, practice and representative bodies, so there is regular engagement throughout the consultation process.
- 1.3 Where changes in the VAT rules are implemented for the protection of the revenue or diminished VAT receipts, the CIOT would like to see such changes measured and targeted for such a diverse sector, so that intended taxpayers are captured rather than creating unintended consequences that will impact existing compliant business models.
- 1.4 The CIOT would like this consultation to include a review of the agency and principal guidance published on gov.uk to increase certainty, simplicity and clarity for taxpayers. If there is any interaction with other taxes than VAT, this should also be highlighted.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most

effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

2.5 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

3 Introduction

3.1 The CIOT welcomes the opportunity to respond to [HM Treasury's call for evidence on VAT and the Sharing Economy](#) to provide feedback on the challenges to the VAT base. The CIOT has already met with representatives from HM Treasury and HM Revenue & Customs to discuss the questions in the call for evidence and other arising issues. Our volunteer representatives who attending that meeting are all VAT specialists working in industry or practice, with experience of working with the sharing economy and/or agent-principal arrangements.

3.2 The CIOT would be happy to meet with HMT/HMRC again on this subject during the ongoing consultation process, should this be of assistance.

3.3 In this paper, the CIOT uses the OECD's 'Working Party No.9 on Consumption Taxes' working definition of the 'sharing economy' in respect of VAT matters as stated in the call for evidence document at paragraph 1.7: *'The Sharing Economy is an accessibility-based socio economic model, typically enabled or facilitated via advanced technological solutions and trust-building tools, whereby human or physical resources and/or assets are accessible (for temporary use)/shared - to a large extent – among individuals for either monetary or non-monetary benefits or a combination of both.'* We also note that this call for evidence is solely focussed on the provision of services, not goods (para 1.8), and that sharing economy arrangements where neither the underlying supplier nor the digital platform receive any form of consideration are outside the scope of VAT and hence not for consideration in this consultation (para 1.11).

4 Call for evidence questions

4.1 *Question 1: What are your initial impressions of the Sharing Economy? Is the government right to be looking into it in the context of VAT?*

4.2 The sharing economy is a fast-growing sector; still currently a relatively small percentage of the overall economy though with the potential to grow. The CIOT supports a review of the VAT liability position for

transactions within a sharing economy business model, so that should changes occur in the VAT rules, taxpayers in the sector - and frontline HMRC officers - are clear on the obligations relating to the supplies.

- 4.3 The CIOT recommends that the review also considers the interaction of the supplies with other tax obligations. In the recent decision of the Employment Appeals Tribunal for the Uber case, the underlying suppliers now have limited employment rights, but are not employees; when considering agency and principal VAT rules, do contractual obligations for other taxes have any impact the VAT position?
- 4.4 We note that a sharing economy business may have a similar VAT position to supplies when they are made outside of a sharing economy business model, where the government may consider both business models to be producing a detrimental impact to VAT receipts. The VAT rules for the sharing economy should neither advantage nor disadvantage the sharing economy compared to equivalent non-sharing economy business models, where factors, other than the use of a digital platform, are the same.
- 4.5 Key considerations for VAT and digital platforms are:
- If the place of supply of the digital platforms' services are currently outside the scope of the UK, should the VAT rules be amended so that the place of supply becomes the UK and a local VAT registration is required?
 - In what circumstances are the supplies of the digital platforms classed as agency commissions (to the underlying suppliers) or gross income as principal?
- 4.6 A key consideration when reviewing the position for the underlying suppliers that are not registered for VAT who are delivering services via a digital platform in the sharing economy is the VAT registration threshold. An obvious step would be to reduce the VAT registration threshold for underlying suppliers that are operating in a sharing economy business model that is causing a reduction of VAT receipts compared to the non-sharing economy. The CIOT is cautious about introducing changes that remove tax simplification from small or micro businesses or introduces complex anti-avoidance regulations for these businesses (see 4.8) and recommends that this review fully consider the outcomes published in the reports on the VAT threshold in paragraphs 4.7 and 4.8 below.
- 4.7 In its 2017 [VAT: routes to simplification report](#), the Office of Tax Simplification recommended that the *'government should examine the current approach to the level and design of the VAT registration threshold, with a view to setting out a future direction of travel for the threshold, including consideration of the potential benefits of a smoothing mechanism'*.
- 4.8 In 2018, HMT published its [call for evidence on the VAT registration threshold](#) to which the CIOT and the ATT submitted a [joint response](#), including findings from a member survey, which we attach at Appendix A for reference (this was not published on our websites). The CIOT's and ATT's view was that the simplifications should remain available to small businesses, whether that be by retaining the high threshold or by the introduction of extensive simplification measures to significantly ease the burden of becoming VAT registered.
- 4.9 *Question 2: Are there any Sharing Economy business models which the definition and guidance we have set out do not cover but which we should be aware of?*
- 4.10 Other models could include:
- Car parking (the rental of domestic driveways/garages versus commercial operators)
 - Barter services, where 'time credits' rather than payment are traded

- Non-business C2C models where the services supplied were infrequent enough that their supply could not be considered to be supplied ‘in the furtherance of business’; is the perceived consideration gross or commission based?

Although this call for evidence is focused on the VAT treatment of the provision of services by underlying suppliers to UK customers and also the VAT treatment of the commissions charged by the facilitating digital platforms, we note that there are concepts, identification of problems and potential solutions discussed within the following European Commission VAT Expert Group papers on the platform economy and e-commerce, that could have some relevance and read across to the UK sharing economy consultation process:

- [VEG 90](#) and [VEG 095](#) – VAT treatment of the platform economy
- [Explanatory notes](#) on the e-commerce rules

4.11 *Question 3: Do you agree with the government’s assessment of the size and nature of the Sharing Economy in the UK? Have you or your organisation produced analysis not listed above on the size and nature of particular sectors of the Sharing Economy in the UK?*

We would be particularly interested in any material relating to the five largest sectors of the UK Sharing Economy referred to in chapter two:

- *short-term accommodation*
- *passenger transportation*
- *on-demand household services*
- *on-demand professional services*
- *collaborative finance*

4.12 The CIOT has not produced analysis on the size and nature of particular sectors of the sharing economy, but in principle would not dispute the research carried out on the assessment of the size and nature of the sharing economy.

4.13 *Question 4: If not covered in your response to the previous question, could you please provide us with any projections which you or your organisation have produced regarding the future growth of the Sharing Economy in the UK?*

This could be information covering a specific sector or the Sharing Economy as a whole, if, for example, you are responding on behalf of a trade body, professional institute or management consultancy. It could be information for a specific business if you are responding on behalf of a digital platform. Your response will be treated in the strictest confidence.

4.14 The CIOT has not produced any projections on the growth of the future of the sharing economy.

4.15 *Question 5: Do you consider the balance to be changing between VAT registered and non-VAT registered businesses in terms of relative contribution towards the UK’s economic output? That is to say, in favour of non-VAT registered businesses supplying an increasingly large proportion of services.*

4.16 The CIOT does not have access to such economic data held by digital platforms that demonstrates the rate of change from using VAT registered to non-registered underlying suppliers, and hence cannot comment on the perceived/actual decline in VAT receipts due to HMRC.

As a result of the UK leaving the European Union, the place of supply rules have changed for intellectual services (including many consultancy services) when an EU business sells services to a UK consumer. Before

EU exit, the EU supplier would have charged local VAT to the UK consumer for its services, but as it is now deemed a non-EU supplier, it does not have to charge local or UK VAT. The sharing economy may increase the access to UK consumers of obtaining VAT free services from EU suppliers, but the VAT position via the sharing economy would still be the same if purchased directly from the EU supplier; there is no VAT loss from the sharing economy in principle, but easier access to EU suppliers may change behaviour.

4.17 *Question 6: Have you or your organisation produced analysis of the revenues which underlying service providers generate on digital platforms; if so, please could you summarise the results for us? It would be helpful if you could categorise your response within the following turnover bands:*

(1) less than £10,000

(2) between £10,000 and £34,999

(3) between £35,000 and £69,999

(4) between £70,000 and £84,999

(5) greater than £85,000

Please state whether your analysis relates to a business, a sector or the sharing economy as a whole.

4.18 The CIOT has not produced analysis of the revenues which underlying service providers generate on digital platforms.

4.19 *Question 7: Should the government consider alternative VAT rules to the agent-principal rules in the context of the Sharing Economy? Should we consider solutions which, under certain circumstances, would require Sharing Economy digital platforms to account for VAT on the supplies that underlying service providers make to consumers?*

4.20 At this early stage of the consultation process, the CIOT supports that all potential solutions should be considered more fully and this could be something that is considered in detail by a stakeholder working group when considering specific case studies, and that would include reviewing circumstances where the digital platform accounts for the VAT on the gross consideration for the supply. However, the CIOT would be cautious about options that require small/micro businesses to have to register for VAT.

4.21 *If not already covered by your response to the previous question:*
Question 8: Does your view about the need for alternative VAT rules in the context of the Sharing Economy vary according to economic sector and business model, or does it apply across all sectors and business models? By way of example, would your answer be different in relation to passenger transportation than it would be for on-demand household services or the letting of short-term accommodation?

4.22 Where there are different rules for different sectors this increases complexity which the CIOT would be cautious in supporting a broad brush approach to sectorised VAT rules. That said, we note that it can be typical for local taxi agencies not in the sharing economy to be structured so that the drivers are the principals and not registered for VAT, so the sharing economy only replicates a typical local agency arrangement where both the agent or the digital platform are registered for VAT in the UK, though it is noted that these local arrangements are frequently challenged. For tour operators, prior to Brexit, many agents set up an establishment in a non-EU country so that the tour operators margin scheme did not impact the VAT position; if there are to be new rules for digital platforms, the VAT rules for other

comparative businesses must also be considered, otherwise businesses will simply restructure operations to effect the most VAT efficient position.

4.23 *Question 9: Should the government review the cross-border place of supply rules in this context; specifically, in light of that fact that these give an unfair VAT advantage to digital platforms based outside the UK? If so, how would you recommend we address this?*

4.24 There is a question of whether the digital platform is in direct competition with a more traditional agent-principal model and if so, is it gaining any tax advantage? For example, is the digital platform able to significantly undercut the usual market price due to an arising tax advantage (eg due to its location, due to access to a large number of unregistered underlying suppliers)?

If HMRC have recognised this as simply technological development, in principle, a technical fix seems non-contentious. Perhaps to fix the cross border VAT loss identified in chapter 4 of the consultation, it is possible that the use and enjoyment VAT rules could be adapted to collect the VAT from where intended. In the alternative, the redefining of digital services and ‘human intervention’ concepts could be considered, which may change the place of supply, though this should not necessarily mean that the digital platform automatically will have other tax reporting obligations.

4.25 *Question 10: What do you think about solutions that would require Sharing Economy digital platforms, wherever they are established, to register and account for UK VAT on the commission fees that they charge their underlying service providers? Please include details of your experiences of similar regimes in other jurisdictions.*

4.26 In principle, the local registration rule for digital platforms would be an effective strategy for capturing UK VAT on digital platform commission income. However, there should be exceptions applicable where the place of supply of the commissions would not create a taxable supply in the UK for business models not operating in the sharing economy. Further, if the business model is such that the underlying suppliers are registered for UK VAT, the VAT on commissions would be captured by the reverse charge rules, thereby preventing the need for the non-UK digital platform to register for VAT in the UK. The CIOT would prefer measures that prevent small businesses being unable to benefit from existing VAT simplifications.

4.27 *Question 11: Bearing in mind HMRC’s desire to develop compliance measures which can be enforced with equal effectiveness upon both UK and offshore businesses, what do you think would be a proportionate and effective set of obligations, sanctions and administrative easements that HMRC could use to encourage compliance among digital platforms and underlying service providers?*

4.28 The UK currently has VAT registration rules applicable to the sale of goods in the UK by non-established taxable persons in certain circumstances, as set out in Schedule 1 to the VAT Act 1994 and in guidance in VAT notice 700/1 – *should I be registered for VAT?* As these long established rules are understood by tax advisers, it would appear that adapting these rules to include such digital platforms where there is ‘VAT loss’ and/or the undercutting of business models outside of the sharing economy operating compliantly in the UK, would be a straightforward route to achieving effective compliance. These established rules also set out the penalty position for late registration and non-compliance.

4.29 There could be adaptations to the ‘use and enjoyment’ VAT rules whereby the supply of services by the non-established digital platform to a non-registered UK underlying supplier creates the obligation to register for UK VAT. This would also allow for the rules to be specifically targeted and therefore not impacting the VAT reporting position for taxpayers that would be otherwise unaffected. There could be

some mirroring of the VAT rules for online marketplaces. New rules need to provide clarity and simplicity, but provide enough detail to avoid the need to apply for a non-statutory clearance, which can be a time-intensive procedure for both HMRC and the taxpayer.

- 4.30 The agent versus principal guidance in [VAT manuals](#) can be complicated to understand, can allow an 'easy out', as well as being difficult to litigate. Perhaps a separate online platform definition that takes the ambiguity and measuring each fact/risk out of the equation, in the same manner of online marketplaces. The guidance must also set out the perceived consideration, ie is the gross payment or service fee/commission subject to VAT?
- 4.31 We have received feedback that in the USA, many US companies with this business model would not agree that they act as an agent, and typically do not define what they are, so capturing their revenue needs careful wording. For US sales tax, a taxpayer would define itself in order to not be something and avoid sales tax nexus (eg only consulting services are caught and 'we are not providing a consulting service'), without the need to define what you actually are supplying.
- 4.32 Where the non-established digital platform fails to register in the UK, we would be cautious about creating VAT burdens (eg joint & several liability) or unintended consequences for the unregistered UK underlying suppliers, who may not have the resources or experience to administer complex tax issues. Where 'simple tests' are introduced for the underlying supplier, such as the responsibility to obtain the UK VAT registration number of the digital platform before agreeing to the contract and/or the responsibility for reporting the digital platform to HMRC where this information is not forthcoming, past experience shows that it is difficult for HMRC to identify these taxpayers as they are not registered for VAT, and are less likely to have a tax/VAT adviser, which creates difficulties in reaching this population in publicising new tax rules. This makes the marketing of VAT information much more difficult for HMRC.

5 Acknowledgement of submission

- 5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

15 March 2021