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International tax laws and major players in the sharing economy

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Overview

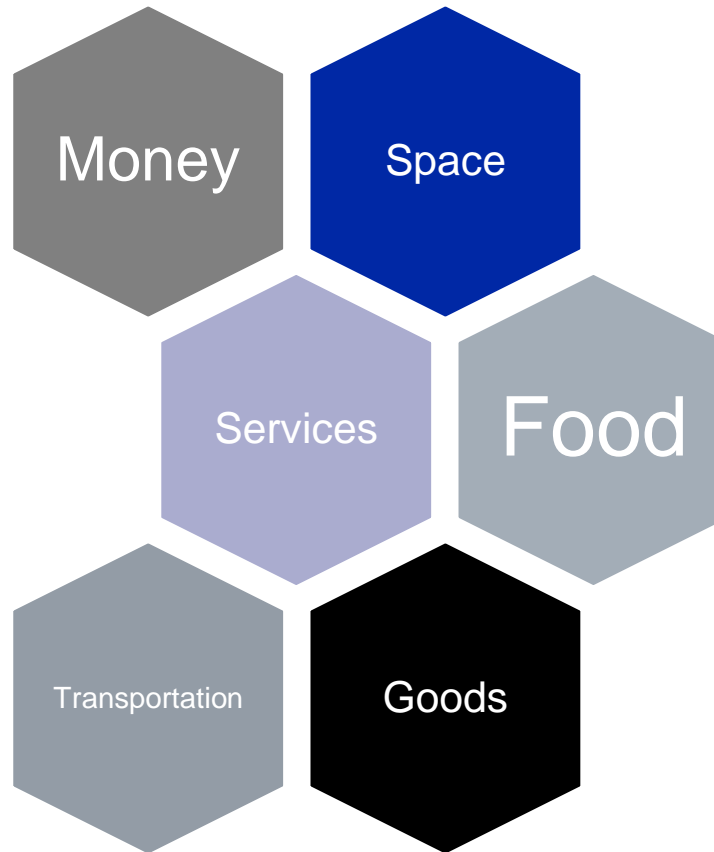
- Sharing economy – major areas and major players
- Direct taxes
 - Taxation of the provider
 - Taxation of the platform
- Special taxes
- Indirect taxes (see other presentations)



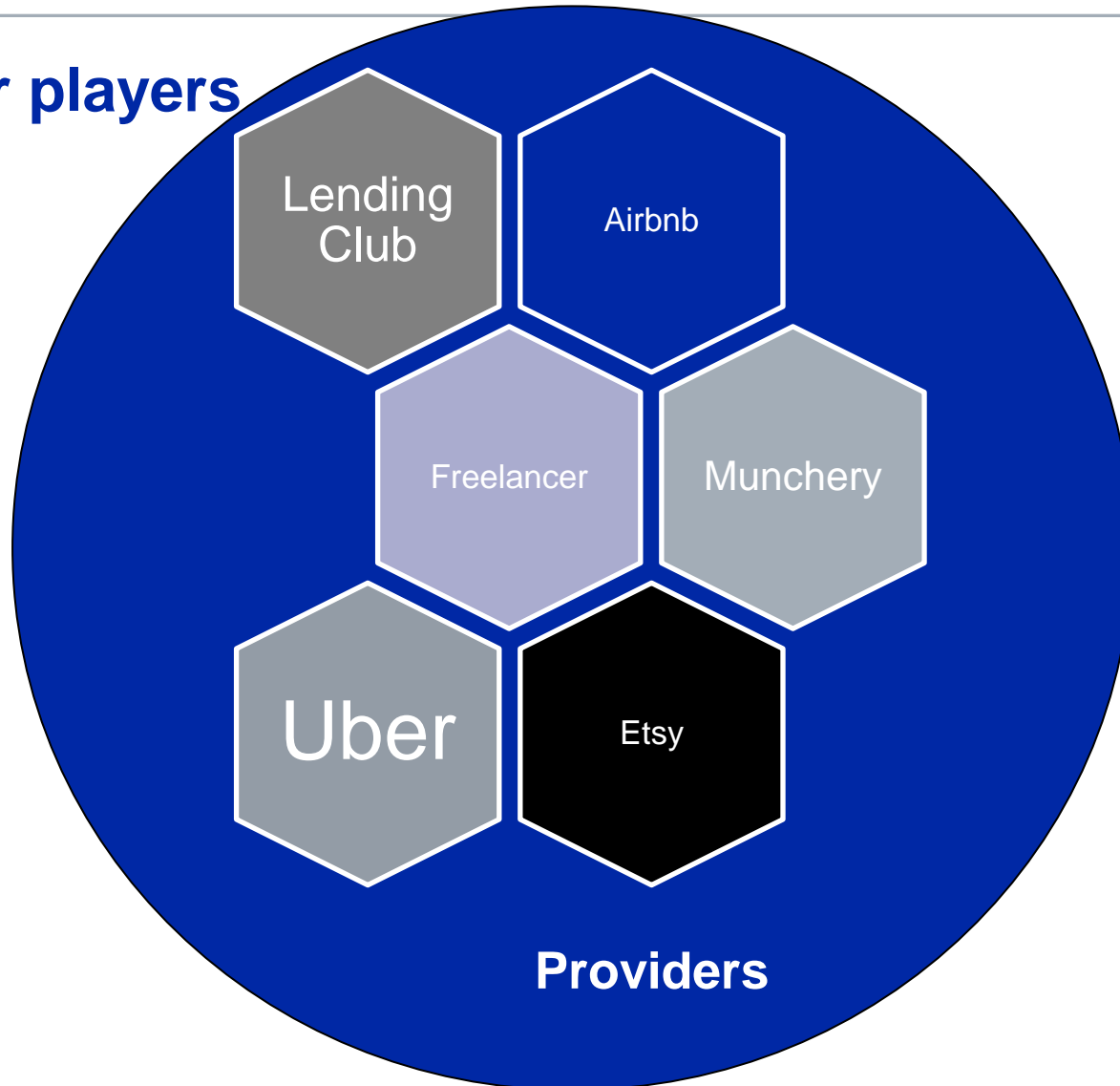
SHARING ECONOMY – MAJOR AREAS AND MAJOR PLAYERS



Major areas



Major players





TAXATION OF PROVIDERS



Taxation of providers

- Main elements to be considered
 - Countries apply different rules regarding the qualification of taxable income (schedular approach vs. tax and exempt approach)
 - Cash vs. barter transactions (exchange credits?)
 - Cost-sharing vs. gifts

Main tax question:

- **Tax free income vs. taxable income (political decision)**



Taxation of providers

- Compliance issues
 - How to enhance tax compliance?
 - Force platforms to provide information about transactions
 - Specific tax breaks for low earnings transactions/businesses
 - Specific (i.e. simplified) tax assessment for low earning businesses (e.g. gross taxation incl. social security contributions)



Taxation of providers

- Some intermediate conclusions
 - More micro-entrepreneurs
 - Simplified procedures required
 - Delimitation between taxable enterprises and non-taxable income streams could be revised
- **But: the sharing economy does not question the current tax system – no fundamental changes are necessary**



TAXATION OF PLATFORMS



Taxation of platforms - high-level approximation

- What are the revenues?
 - Transportation (20%?)
 - Goods (1-6%?)
 - Services (1-6%?)
 - Money (1-3%)
 - Space (3-10%)



Taxation of platforms - why source taxation?

- Benefits obtained in the source state
- Entitlement of the source state
- Fiscal self-determination
- Neutrality?



Taxation of platforms – obstacles

- Current obstacles to tax in the market states
 - Technical:
 - Physical PE threshold
 - Transfer pricing based on the supply side
 - Political:
 - No global solution (see BEPS Action 1)
 - Unilateral measures might have a detrimental impact



Taxation of platforms - options

- Virtual PE
- Withholding tax on digital service payments
- Equalization levy
- Diverted profits tax
- Other taxes (online advertising tax, data collection tax, etc.)

Taxation of platforms - virtual PE (Hongler-Pistone Proposal)

Elements of new PE concept for exercising taxing jurisdiction on business income:

- Digital presence – expressing the significant economic presence of a company in a country
- **Triple-threshold**
 - User threshold (1,000 per month) – key factor, more users being indicators of higher value creation (*)
 - Time threshold (12 months after user criterion is met) – stability
 - De minimis threshold – avoid excessive fragmentation and burden for SMEs
- The case studies show how these requirements could work in practice
- New article 5 (8) to be introduced in the OECD Model Convention
- (*) this threshold can be replaced by data or similar threshold related to benefits and value created in market jurisdiction



Taxation of platforms - virtual PE (Hongler-Pistone Proposal)

- “If an enterprise resident in one Contracting State provides access to (or offers) an electronic application, database, online market place or storage room or offers advertising services on a website or in an electronic application used by more than 1,000 individual users per month domiciled in the other Contracting State, such enterprise shall be deemed to have a permanent establishment in the other Contracting State if the total amount of revenue of the enterprise due to the aforementioned services in the other Contracting State exceeds XXX (EUR, USD, GBP, CNY, CHF, etc.) per annum”.



Taxation of platforms – intermediate conclusions

- Platforms of the sharing economy are part of the digital economy
- The current international tax system is outdated
- Fundamental change is required
- Global solution is preferable



SPECIAL TAXES



Special taxes – Example of Airbnb

- *“By May 1, 2017, we will have entered into agreements with over 275 jurisdictions and collected and remitted more than \$240 million in hotel and tourist taxes throughout the world.”*
- (<https://www.airbnbcitizen.com/airbnb-tax-facts/>)



Further material / literature (selection)

- Beretta Giorgio, The Taxation of the “Sharing Economy”, Bulletin for International Taxation (2016), No. 1
- Brauner Yariv & Baez Andrés, Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy, IBFD White Papers, Amsterdam
- OECD, Technology Tools to Tackle Tax Evasion and Tax Fraud, 31 March 2017
- OECD/G20, Addressing the Tax Challenges of the Digital Economy, Final Report Action 1, 5 October 2015
- Hongler Peter & Pistone Pasquale, Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy, IBFD White Papers, Amsterdam
- Olbert Marcel & Spengel Christoph, International Taxation in the Digital Economy: Challenge Accepted? World Tax Journal (2017), No. 1