

Analysis

OECD's consultation on data sharing by platform operators

Speed read

The OECD is consulting on proposed legislation that would require online platforms to collect and automatically share data about their users and their transactions on the platform with tax authorities ('model rules'). This data could be used by tax authorities to identify untaxed transactions in the sharing economy.



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The OECD has been at the forefront of many initiatives in recent years to modernise the international tax system. Its base erosion and profit shifting framework includes actions that endeavour to ensure that the tax system operates effectively, fairly and sustainably in the digital world. Its proposals on taxation are currently being implemented by more than 135 countries.

One of the OECD's latest proposals (see bit.ly/3cP7nFb) is to require some online platforms to share data about their users with tax authorities. The plan targets online platforms that allow users to access the 'peer' or 'sharing' economy. This includes all forms of software that enable users to let real estate (be it holiday homes or car-parking spaces) or provide personal services. The model rules are expected to include exclusions for small start-up businesses and to ensure that platforms need not share data about platform sellers that are large hotels.

The proposal is currently at the consultation stage, but the OECD's proposals can bring legislative change quickly when they are embraced by G20 countries.

The UK regime

HMRC's data-collection powers were last overhauled almost ten years ago when they were modernised and consolidated into FA 2011 Sch 23. Further changes followed in FA 2016, which allowed HMRC to obtain data from 'business intermediaries'. This category applies to those who facilitate transactions between suppliers and their customers, including by providing an online market or other online facilities where suppliers and customers can interact (whether or not the data-holder handles money transfers).

Although current law permits HMRC to request key transactional information from a variety of data-holders, there are a few aspects that are limiting. The first is that the legislation targets only data that the business needs for its own purpose, which means that the data may not be readily digestible by HMRC. The second aspect is that the data is not easily accessible by HMRC if the data-holder is outside the UK. Finally, the provision of data is made only at HMRC's request; it is not automatic.

These hurdles would be lifted if the UK was to implement the model rules.

The OECD's draft model rules

The model rules target two types of online platforms. The first is platforms for real estate lettings, defined broadly enough to include any platform for connecting parties for the letting of residential or commercial real estate, including holiday homes. The second is platforms for personal services including both work that is carried out online (such as IT services and data entry) and offline work (such as physical labour and transport services). The term 'platform' is broad enough to encompass associated services such as the processing of payments.

The OECD proposes that all such platforms should collect prescribed data about the individuals and entities that engage in commerce through their services. The OECD stipulate specific due diligence procedures that platform operators should establish, including verification processes, and requires that data records be updated or confirmed at least once every 36 months. The data proposed to be collected includes platform sellers' addresses, tax identification numbers and jurisdiction(s) of tax residence – as well as the payments they receive and the number of transactions they enter into. In addition, in respect of users that let real estate, the platform provider should provide the tax authority with the addresses of the properties. All this information (and more) would be reported on an annual basis by the platform provider.

The OECD is concerned that tax authorities currently face challenges in collecting information about transactions concerning real estate in their jurisdictions, if the platform operator is resident elsewhere. The model rules would facilitate data collection by requiring platform operators resident, incorporated or managed in a jurisdiction that adopts the model rules to file a report. The data would not be limited to domestic transactions and would include reports on all platform sellers resident in, and real estate transactions concerning property located in, any jurisdiction worldwide that also implements the model rules. The main benefit of this proposal to platform operators is that if the model rules are widely implemented, there should be consistency in the rules across most jurisdictions, which is preferable to disparate regimes that necessitate cross-border reporting.

A platform provider would typically report to the tax authority in its own jurisdiction of residence, but it would be possible for one company to be nominated to make a single report on behalf of a group. This is particularly helpful because there may be multiple entities with duplicative reporting obligations in relation to the same platform. The tax authority that receives the global report would then share relevant information with other tax authorities through the information exchange mechanism.

What next?

The OECD's proposal remains open for consultation until 20 March 2020, and it is not yet clear if it will trigger legislative change. However, the report is timely in the UK, as both HMRC and the Office of Tax Simplification have consulted on the tax aspects of online platforms in recent years.

For platform providers, now would be a good time to review all contracts with users. It may soon be necessary to collect more data about users when they join the platform and so, where possible, onboarding processes should be future-proofed. In addition, contracts, policies and procedures should be reviewed to ensure that they permit the platform and its associates and group companies to share information with tax authorities worldwide. ■