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*in the name of the finance committee(1) on **taxation** and the **collaborative economy**: the need for a fair, simple and unified system.*

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SOMMAIRE

	<u>Pages</u>
FOREWORD.....	9
SUMMARY OF THE MAIN PROPOSALS.....	13
OVERVIEW:	
THE BLURRED LINES OF TAXATION AND SOCIAL CONTRIBUTIONS RULES GOVERNING ONLINE PLATFORM USERS	
I. AS REGARD TAXATION, ALL INCOME IS TAXABLE FROM THE FIRST EURO WITH VERY FEW EXCEPTIONS	20
A. INCOME RECEIVED VIA ONLINE PLATFORMS DOES NOT BENEFIT FROM ANY SPECIAL TREATMENT	21
B. THE EXEMPTION OF SECOND-HAND SALES: CLEAR RULES BUT DIFFICULT ENFORCEMENT AND MONITORING	26
C. THE EXEMPTION OF “COST-SHARING” BY THE TAX INSTRUCTION OF 30 AUGUST 2016: A WELCOME BUT TOO NARROW CLARIFICATION	27
II. AS REGARDS SOCIAL CONTRIBUTIONS, THE PROBLEM LIES IN THE DISTINCTION BETWEEN PRIVATE INDIVIDUALS AND PROFESSIONALS	30
A. AMONG PLATFORM USERS, MANY PROFESSIONALS ARE UNAWARE OF THEIR STATUS.....	31
1. <i>Online platforms professionals: self-employed workers and micro-entrepreneurs</i>	<i>31</i>
2. <i>The discouraging complexity of moving from non-professional to professional status low-stake online activities.....</i>	<i>32</i>
B. TWO THRESHOLDS FOR COMPULSORY AFFILIATION TO SOCIAL SECURITY CREATED IN 2017: A USEFUL YET INCOMPLETE STEP FORWARD.....	35
1. <i>Compulsory affiliation when income from rental of movable property exceeds EUR 7,846 and when income from rental of furnished accommodation exceeds EUR 23,000.....</i>	<i>35</i>
2. <i>A useful yet incomplete clarification, which does not cover sales or services</i>	<i>36</i>
C. CORPORATE LAND PROPERTY TAX, A TAX THAT APPLIES TO ALL PROFESSIONAL WORKERS.....	38
D. SOCIAL LEVIES, THE FORGOTTEN PART OF THE DEBATE?	39

III. REPORTING, CONTROL AND COLLECTION:	40
A. SELF-REGULATION: AN ENCOURAGING YET INHERENTLY LIMITED RESPONSE	40
1. <i>An effort by the platforms to identify professional users</i>	40
2. <i>The (sometimes) risky strategy of using "internal" criteria: the cases of Heetch and Blablacar</i>	42
a) <i>Blablacar: a rule based on the kilometric allowance scale, in accordance with the tax authorities' doctrine</i>	44
b) <i>Heetch: an maximum amount of EUR 6,000 per year, with no legal basis</i>	45
B. UNACHIEVABLE TAX CONTROL	46
1. <i>Insufficient efforts and unsuited tools for the digital economy</i>	46
2. <i>A non-nominative communication right but still not applicable to foreign platforms</i>	47
C. THE OBLIGATION OF USER INFORMATION: A FIRST STEP TOWARDS TAX COMPLIANCE	49
1. <i>Article 242 bis of the General Tax Code</i>	49
2. <i>The challenge of platform certification</i>	52
D. AUTOMATIC INCOME REPORTING: THE DECISIVE STEP?	54
1. <i>Automatic reporting to the social security beginning in 2018: a voluntary system, lacking a strong incentive</i>	54
2. <i>Automatic reporting to the tax authorities in 2019: a mandatory system whose implementation is still uncertain</i>	57

PROPOSALS:

EXEMPTING SMALL TRANSACTIONS BETWEEN PRIVATE INDIVIDUALS, ENSURING FAIR TAXATION OF PROFESSIONALS

I. A SINGLE THRESHOLD OF EUR 3,000 PER YEAR TO EXEMPT LOW, OCCASIONAL AND SIDELINE INCOME OF INDIVIDUALS	63
A. THE CHOICE OF A FIXED TAX ALLOWANCE	63
B. A SYSTEM THAT ENCOURAGES THE DEVELOPMENT OF THE SHARING ECONOMY, WITHOUT A THRESHOLD EFFECT OR A DISTORTION OF COMPETITION	66
1. <i>No threshold effect beyond EUR 3,000</i>	66
2. <i>No distortion of competition between professionals</i>	66
3. <i>Cost-sharing and second-hand sales would remain exempt, even above the EUR 3,000 threshold</i>	69
C. JUSTIFICATION OF THE AMOUNT OF EUR 3,000	70
D. OBSERVATIONS REGARDING PROPORTIONALITY AND OTHER CONSTITUTIONAL PRINCIPLES	73
1. <i>The principle of a single threshold is in line with the objective of accessibility and intelligibility of the law</i>	73
2. <i>The limitation of the advantage to income derived from platforms and reported automatically is in line with the objective of combating tax fraud and tax evasion</i>	75
3. <i>A measure general interest ground, with no alternative in the short term</i>	76

II. AN ALIGNMENT OF SOCIAL PROTECTION OBLIGATIONS	77
A. A SIMPLE AND UNIQUE CRITERION FOR DISTINGUISHING PRIVATE INDIVIDUALS FROM PROFESSIONALS.....	77
1. <i>Presumption of non-affiliation to Social security as a self-employed worker when income is less than EUR 3,000 per year</i>	<i>77</i>
2. <i>A criterion with no effect on the equality of treatment and the requirement of fair competition between professionals.....</i>	<i>81</i>
3. <i>Towards other “maximum social contribution thresholds”?</i>	<i>82</i>
4. <i>Towards a collaborative worker status – eventually?</i>	<i>83</i>
B. THE REMOVAL OF SECTOR-SPECIFIC OR GENERAL LIMITATIONS BELOW THE EUR 3,000 THRESHOLD	84
1. <i>A presumption of permission to undertake a second activity for civil servants</i>	<i>84</i>
2. <i>Regularisation of movable property rentals between private individuals covered by the micro-BIC system</i>	<i>84</i>
3. <i>Removing outdated constraints created for physical car boot sales</i>	<i>85</i>
III. AUTOMATIC INCOME REPORTING: SIMPLIFYING PROCEDURES AND SECURING TAX COLLECTION.....	86
A. A VIRTUOUS CIRCLE: VOLUNTARY REPORTING WITH AN INCENTIVE.....	86
B. DETAILS ABOUT THE AUTOMATIC REPORTING PROCEDURE.....	88
1. <i>The user's prior explicit agreement</i>	<i>88</i>
2. <i>Content of the report: only available, relevant and strictly necessary information.....</i>	<i>90</i>
3. <i>Unique identification number or tax identification number?</i>	<i>91</i>
4. <i>High level of data protection</i>	<i>93</i>
5. <i>Technical implementation: the requirement of simplicity</i>	<i>95</i>
6. <i>The particular case of income exempt by nature and the creation of an “online platform ruling”</i>	<i>95</i>
C. THE LEVY AT SOURCE OF INCOME TAX BY THE PLATFORMS: NOT A VIABLE SOLUTION AT THIS STAGE.....	97
1. <i>The reform providing for a levy at source of income tax has no effect on the proposed mechanism</i>	<i>97</i>
2. <i>Using platforms as collectors of tax instalments: not such a good idea</i>	<i>98</i>
3. <i>One exception: the payment in discharge of income tax by micro-entrepreneurs</i>	<i>99</i>
D. A PREREQUISITE: ENSURING PLATFORM CERTIFICATION AND PROPER USER INFORMATION	99
1. <i>Make platform certification a real “accreditation process”, guaranteeing tax compliance for users</i>	<i>99</i>
2. <i>Adapt the obligation to provide information to the diversity of the business models online platforms</i>	<i>101</i>
E. TAX CONTROL: NEW PRIORITIES AND UPGRADED TOOLS.....	102
1. <i>The particular case of platforms not involved in the transaction</i>	<i>102</i>
2. <i>Strengthening tax controls and targeting high stakes activities</i>	<i>105</i>

**INTERNATIONAL COMPARISONS:
SINGLE THRESHOLD AND AUTOMATIC REPORTING,
A CHOICE MADE BY SEVERAL COUNTRIES**

I. THE UNITED STATES: INCOME IS REPORTED TO THE FEDERAL AUTHORITIES AND SOMETIMES TO LOCAL AUTHORITIES	110
A. FORM 1099-K: QUASI-AUTOMATIC REPORTING, YET WEAKENED BY OVERLY-HIGH THRESHOLDS	110
1. <i>An obligation for online platforms and payment intermediaries</i>	110
2. <i>A system based on overly-high thresholds, and which could be improved</i>	112
B. AT THE LOCAL LEVEL: THE EXAMPLE OF THE PROACTIVE POLICY OF SAN FRANCISCO	113
1. <i>Hotel tax collection and automatic reporting</i>	114
2. <i>A proactive use of the communication right?</i>	115
II. ESTONIA: A DEAL WITH UBER FOR AUTOMATIC REPORTING OF DRIVERS' INCOME	116
A. "THE PLATFORM-STATE" AND THE PLATFORM: A SELF-EVIDENT, SUCCESSFUL PARTNERSHIP	116
B. A SUCCESS WHICH IS ATTRIBUTABLE TO THE SPECIFIC FEATURES OF THE ESTONIAN DIGITAL ADMINISTRATION	119
III. THE UNITED KINGDOM: A VERY ATTRACTIVE TAXATION REGIME, WITH NO DECLARATIVE OBLIGATIONS IN RETURN	120
A. A SHARED OBSERVATION: CURRENT RULES ARE UNADAPTED	120
B. £ 1,000, £ 1,000 AND £ 7,500: THREE CUMULATIVE ALLOWANCES WITH NO OBLIGATIONS IN RETURN	120
C. AN EXCESSIVELY FAVORABLE REGIME?	121
IV. BELGIUM: A VIRTUOUS MECHANISM, YET CURRENTLY LIMITED TO SOME INCOME CATEGORIES ONLY	122
A. AN INCENTIVISING SYSTEM: A 10% FLAT TAX ON INCOME UNDER EUR 5,100, IN RETURN FOR AUTOMATIC REPORTING	122
B. SO FAR, A NARROW SCOPE OF APPLICATION WHICH LIMITS ADOPTION OF THE MECHANISM BY MANY PLATFORMS	124
C. A "TEST" FOR THE WORKING GROUP'S PROPOSALS	126

V. ITALY: AN INCENTIVISING SYSTEM, WHICH REMAINS TO BE ADOPTED	126
A. A SPECIFIC BILL TO ADDRESS THE CHALLENGES POSED BY THE COLLABORATIVE ECONOMY.....	126
B. AN INCENTIVISING SYSTEM SIMILAR TO THE BELGIAN MODEL: 10% FLAT TAX FOR INCOME UNDER EUR 10,000	129
C. THE UNCERTAIN IMPLEMENTATION OF AUTOMATIC REPORTING.....	130
WORKING GROUP HEARINGS.....	131

FOREWORD

The collaborative economy is now part of everyday life for millions of people in France: they buy and sell on *Leboncoin*, travel with *Blablacar*, rent out their car on *Drivy*, their toddler's buggy on *Zilok* and their DIY skills on *Stootie*. Some are genuine professionals, like private hire (VTC) drivers or graphic designers on *Hopwork*.

This new economy, which provides numerous opportunities for exchanges between people and blurs existing lines, has always given the impression that it was developing outside any legal framework. However recent events such as UberPop being shut down, Heetch being interrupted or *Airbnb's* problems in Paris, have reminded us that this is not the case. More specifically, when it comes to taxation and social contributions, legal rules do exist - but they are mostly unsuited to the situation.

With regard to taxation, there is no such thing as a "grey area". Contrary to what many users tend to believe, all income is taxable from the first euro, whatever its origin or amount, and regardless of whether it is occasional or from a sideline activity. Moreover, although most situations fall under ordinary law, some categories of income are actually subject to specific taxation regimes - which are often complex and outdated, and of which people are generally unaware.

There are only two exceptions. First, second-hand sales are generally not subject to tax - but their definition is imprecise. Second, "cost-sharing" is exempted, but it is defined in a very restrictive way - for example, it applies to ridesharing, but not to a family who rents out their car occasionally to cover their expenses.

As regards social contributions, on the contrary, this is a "grey area", because there are no simple and objective criteria for distinguishing private individuals from professionals. There are no minimums in terms of income amount, time or frequency, meaning that a few hours of babysitting per month, or selling a few "hand-made" jewellery items online, may result in compulsory affiliation to the self-employed social security regime (*Régime social des indépendants - RSI*) - which comes together with the payment of social contributions and professional taxes, the obligation to attend a qualification course, to comply with health and safety standards, etc.

All these rules were designed for exchanges in a "physical" world, a world of week-end car boot sales, flea markets and minor services between neighbours. But in practice, no one actually questioned these rules... because they were not enforced. The amounts at stake were low, and the controls were sparse.

Now that trading between private individuals has become massive, standardized, and traceable, it is no longer possible “not to ask the question”. On the one hand, if existing rules were enforced, they would discourage many private individuals and would deal a heavy blow to the sharing economy and its ecosystem. On the other hand, because they are not enforced, they allow widespread abuse, with “fake” private individuals who avoid paying their taxes and social obligations and create both a distortion of competition and a loss of tax revenue.

On 29 March 2017, the Working Group of the Finance Committee of the French Senate on taxation of the digital economy, a non-partisan, collegial and informal subcommittee, presented a bill to establish a simple, unified and fair taxation regime for the collaborative economy¹. This regime, encompassing both taxation and social contributions, would be based on a single threshold of EUR 3,000 per year, known to all.

As regards taxation, it would allow an exemption of low, sideline and additional income received *via* online platforms. The advantage would then be regressive for higher income, ensuring that any person receiving significant income from online sources would be treated strictly equal to professionals in the “physical” world.

As regards social contributions, the threshold of EUR 3,000 would – at last – provide a criterion to distinguish between a private individual and a professional: under this threshold, it would never be compulsory to join the social security regime as a self-employed worker. Belgium and the United Kingdom also chose the simplicity of a threshold-based system.

In return for these benefits, the user would be required to accept that the platform automatically reports his income to the tax administration: this is not only a means of ensuring the fairness of treatment between all taxpayers, but it is also a service and a simplification of the procedures. This system exists in Estonia, where it has proved very successful.

In practice, the very large majority of users of collaborative economy platforms would actually be exempted from income tax thanks to the EUR 3,000 allowance – as everyone can see on the online simulator on the Senate website². Moreover, everything that is exempted today (second-hand sales, car sharing, etc.) would remain so in the future, even for amounts greater than EUR 3,000. The measure does not create any new tax.

¹ *This bill follows the initial proposals made in 2015. See, in this regard, Report No. 690 (2014-2015), “The collaborative economy: proposals for simply, fair and efficient taxation”, 17 September 2015, written by Michel Bouvard, Thierry Carcenac, Jacques Chiron, Philippe Dallier, Jacques Genest, Bernard Lalande and Albéric de Montgolfier.*

² http://www.senat.fr/espace_presse/actualites/201509/fiscalite_du_numerique_vers_un_prelevement_plus_efficace.html#c632042

The bill also aims to change a number of obsolete rules, such as the maximum limit of two car boot sales per year and per person, or the obligation for public servants to obtain a written agreement from their authority to undertake a secondary activity - two rules that seem totally unadapted to digital habits...

It appears that many of the actors consulted by the Working Group welcomed those proposals, and among them digital platforms but also traditional professions. In fact, all of them ask for the same thing: a set of fair and simple rules, that are actually enforced.

This is what this report and the resulting bill are about: herein lies an opportunity that must not be missed.

SUMMARY OF THE MAIN PROPOSALS

Proposal No. 1

Establish a fixed tax allowance of EUR 3,000 on all income received by individuals *via* online platforms and automatically reported by these platforms, so that occasional and sideline income can be exempted with a simple rule. For amounts above EUR 3,000 of gross income, the tax advantage would be regressive, and would become neutral when the income becomes significant.

Proposal No. 2

Establish a simple and unique criterion for distinguishing private individuals from professionals, with regard to social contributions, based on the same threshold of EUR 3,000 of gross income. If their income from online platforms is below this threshold, users would be presumed non-professional, and therefore not affiliated to the social security regime of self-employed workers, and not subject to social contributions.

Proposal No. 3

Establish a presumption of supervisor's agreement for public servants who carry out a sideline activity *via* an online platform, and who do not earn more than EUR 3,000 per year from this activity

Proposal No. 4

Allow the rental of movable property between individuals (cars, accessories, etc.), in particular *via* the Internet, to be taxed under the micro-BIC regime (for industrial and commercial profits). This practice is already tolerated by doctrine and case-law.

Proposal No. 5

Remove the formal constraints on second-hand sales between private individuals, in particular the maximum limit of two sales per year and the production of a sworn certificate, when these sales take place on a duly certified online platform.

Proposal No. 6

Publish a tax instruction to clarify and simplify the distinction between second-hand sales and commercial sales, on the model of the tax instruction of 30 August 2016 relating to “co-consumption activities”.

Proposal No. 7

Make automatic income reporting the *sine qua non* condition to benefit from the EUR 3,000 tax advantage. The system would then be voluntary, simple and reliable, and would work as an incentive.

Proposal No. 8

Allow online platforms to request from the tax administration, on a voluntary basis, an advance validation of their internal rules and procedures aimed at determining whether their users’ income is taxable or not (“online platform ruling”).

Proposal No. 9

For users under micro-entrepreneur status, and with their agreement, allow the platforms to collect not only social contributions, but also the flat tax discharging the payment of income tax.

Proposal No. 10

Make platform certification a real “label”, indicating to users that they comply with tax rules. For this purpose, the certificate should be displayed on the platform homepage in a visible position, and should mention its date of obtention and the reference of the certifying third party.

Proposal No. 11

Publish, by late 2017, “guidelines” for platform certification, in order to set high quality standards for both the content of the certificate and the certification process, and encourage the application of best practices by certifying third parties.

Proposal No. 12

Adapt the “obligation of user information” imposed on platforms to the diversity of their business models. When very frequent, similar micro-transactions are performed (click adverts, videos according to the number of views), platforms should be exempted from the obligation to provide information “*each time a transaction is concluded*”, and should only be required to send a monthly report to their users.

Proposal No. 13

Exempt online platforms offering activities which are non-taxable by nature (such as cost-sharing) from the obligation to send an annual summary of transactions to each of their users. To be exempted from this obligation, platforms would have to implement duly certified internal processes guaranteeing the non-taxable nature of the income generated by the activities.

Proposal No. 14

Strengthen tax audit capacities and give priority to audits of platforms and users who do not opt for automatic income declaration.

Proposal No. 15

Create a request for information regime at the European Union level, allowing tax authorities to send non-nominative requests to the platforms.

Proposal No. 16

Allow the tax administration to develop advanced skills in data analysis, in particular by offering remunerations attractive to high level profiles.

Proposal No. 17

Produce an annual study on the main figures of the online platform economy and their users' income. This study should be transmitted to the Parliament and should be supplied in particular with information collected from automatic income reporting.

Proposal No. 18

Promote a common approach at the European or international level for adapting taxation rules to the online platform economy, for example through the publication of "guidelines" by the European Commission or the OECD.

I

OVERVIEW: THE BLURRED LINES OF TAXATION AND SOCIAL CONTRIBUTIONS RULES GOVERNING ONLINE PLATFORM USERS

The Collaborative Economy, or Online Platform Economy, is not just a momentary fashion, but a long-term trend.

According to a study by PwC covering nine European countries, 275 platforms and five key business sectors¹, **in 2015 it accounted for around 28.1 billion euros of transactions in Europe**, an amount which almost doubled in just one year (15.9 billion euros in 2014), and which **could reach 572 billion euros by 2025, a twenty-fold increase.**

This same study estimates that on average, **85% of the value of transactions facilitated by the platforms is received by the user** - the remainder being split between the commission charged by the platform and insurance, etc.

What is an online platform?

Since the Act of 7 October 2016 for a Digital Republic², online platforms have a definition in domestic law, which is contained in Article L. 111-7 of the Consumer Code: *“An online platform operator is any natural or legal person offering, on a professional basis, for free or in return for payment, an online communication service to the public based on:*

“1. Classifying or referencing content, goods or services by means of computer algorithms offered or put online by third parties;

“2. Or facilitating the establishment of contacts between several parties for the purpose of the sale of a good, the provision of a service or the exchange or sharing of an item of content, a good or a service.”

“Collaborative platforms” are mainly in the second category, i.e. they are platforms for establishing contacts, organising a virtual marketplace where buyers and sellers meet.

¹ Source: Robert Vaughan et Raphael Daverio, PwC UK, “Assessing the size and presence of the collaborative economy in Europe”, a study for the European Commission, April 2016. NB: The scope of this study is different from that used in this report. The PwC study focuses on the five following sectors: accommodation, transport, professional services on demand, home services on demand, and crowdfunding. This report does not address crowdfunding, but includes sales of material goods between private individuals.

² Article 49 of Act No. 1321 of 7 October 2016 for a Digital Republic.

However, in this report, the term “online platforms” is generally preferred to that of “collaborative platforms”, which has no legal definition in French law.

However, by creating new opportunities for exchanges and services for millions of people, by blurring the boundaries between private individuals and professionals and between regular activities and occasional ones, **the collaborative economy challenges the very foundations of our tax and social contribution system.**

For platforms whose sellers or service providers are exclusively professionals, regardless of whether they are self-employed or employees¹, the existing law applies with no particular problem. The same is true for platforms offering exclusively non-profit activities, even if this condition is sometimes harder to establish (cf. below).

However, very often, platforms bring together both private individuals and professionals in “mixed” models, where distinguishing between the two is not always possible - it being understood, moreover, that the status displayed or requested on the platform does not imply that the income received is subject to tax and social contributions. Beyond the diversity of economic models, online platforms can be grouped into **five broad categories, all of them bringing together, although each time in different proportions, private individuals and professionals as well as paid and unpaid activities.**

Online platforms: a few examples

① **Service platforms.** Specialising in services to individuals (DIY, gardening, sports coaching, babysitting, home tutoring, etc.), *Stootie* has 800,000 users, ranging from private individuals looking to supplement their income to skilled craftsmen using it as one way of carrying out their business. Conversely, **the 42,000 self-employed workers registered on Hopwork are qualified professionals, who all have a verified status** (micro-entrepreneur, sole trader, etc.), and offer companies consultancy missions in marketing, communications, graphics and software development. 90% have chosen to be self-employed, in particular, for 31% of them, in order to earn more.

② **Rental platforms.** Cars are the items most frequently rented on collaborative platforms in Europe in particular on such French sites as *Drivy*, *Ouicar* and *Koolicar*. Apart from cars, *Zilok* has 350,000 objects of all types for rental between **individuals and professionals**, divided into 700 categories: tools, audio/video equipment, household appliances, suits, luxury accessories, holiday homes and musical instruments.

¹ The case of income earned by employees via online platforms, for example private hire drivers employed by a company which holds the licence, does not fall within the scope of this report. It does not pose any particular problem since it is not, by definition, occasional or sideline income, and even less cost-sharing.

③ **Hosting platforms.** Taking the *Airbnb* platform by itself, the platform carried 350,000 advertisements in France in 2016, against 7,000 advertisements in 2012. Paris, the leading world destination of *Airbnb*, carried 85,000 advertisements (60,000 of which within the city boundary). The adverts are placed both by individuals and professionals (agencies).

④ **Mobility platforms.** In France, 40% of 18-35-year-olds are signed up on *Blablacar*, a car sharing platform which, by definition, is targeted at individuals looking to share their expenses. At the other end of the spectrum, apps such as *Uber*, *LeCab* and *Private Driver* offer transport services carried out by professionals who hold a private hire driver or internal transport (LOTI) licence.

① **Goods sales platforms.** These marketplaces are used by both professional sellers and individuals, and do not always distinguish second-hand sales from sales of a commercial nature. They are not always payment service providers. On the main one, *Leboncoin*, 18.5 million people in France bought or sold a good in 2016, almost 100 million transactions and for a total amount of 21 billion euros. We can also mention the auction platform *eBay*, and specialised platforms, such as *Vide Dressing* for second-hand clothes and accessories and *A Little Market*, specialised in "hand-made" objects.

Source: Senate Finance Committee, according to the above-mentioned PwC study and information communicated or published by the various platforms

The annual income of the users of online platforms is often modest: 350 euros on *Stootie*, 700 euros on *Drivy* and *Ouicar* etc. Excluding real estate and vehicles, individual sellers earned an average of 396 euros on *Leboncoin* in 2016, an amount equal on average to 3.5% of their total income, and most people using this small ads site are private individuals. The amount of these earnings can however be quite significant: a mission on *Hopwork* brings in 2,000 euros on average, an amount which is more or less equal to the income of a "typical host" on *Airbnb*, with these average amounts hiding wide disparities.

This new economy has long given the impression of developing outside the law, in particular as regards taxation and social contributions. A succession of events however has changed things considerably - the closure of *UberPop*, the problems with *Airbnb* in Paris, the recent suspension of *Heetch*... but also the success of platforms such as *Blablacar* and *Drivy* - which now require a clarification of the rules.

Today, people are starting to become aware of the situation: rules do exist but they are very largely unsuited to the digital economy.

I. AS REGARD TAXATION, ALL INCOME IS TAXABLE FROM THE FIRST EURO WITH VERY FEW EXCEPTIONS

On 2 February 2017, the Ministry of Economy and Finance published¹ a document entitled *“Income derived from online platforms or self-employed activities: what must be declared? How?”* This document, which is annexed to this report, contains **five explanatory sheets**, regarding the tax and social contribution obligations applicable to income stemming respectively from car sharing, renting out furnished accommodation, the sale of goods, the rental of goods and paid services.

First of all, the publication of these explanatory sheets should be welcomed since they are the first attempt to make a general presentation of the tax and social contribution rules applicable to users of collaborative platforms.

However, in their attempt to “explain”, what these sheets have demonstrated above all is the very great complexity of the existing rules and how unworkable they are. Instead of *“answers in full, comforting for all, clear, intelligible and fair”* heralded in the editorial which precedes the sheets, any users who read them will instead only find confirmation that:

- on the one hand, there is no area of tolerance as far as taxation is concerned: all income must be declared and is subject to income tax, with the exception of second-hand sales, whose definition is unclear, and “co-consumption”, activities, a new category whose scope is much narrower than that of exchanges between individuals. In addition, many dispensatory arrangements may apply;

- on the other hand, there is uncertainty as to the distinction between private individuals and professionals with regard to social contributions, so that many “private individuals” are in fact “self-employed workers” who are unaware of this fact and who should join the self-employed workers system (RSI),, pay social contributions and comply with many sector-specific obligations as regards qualifications, certifications, health and safety regulations etc.

Devised for a “physical” world in which they remained mostly ignored as far as exchanges between individuals were concerned, these rules have now come face to face with the social and economic reality of the online platform economy.

In fact, the ministers, in the editorial that precedes the explanatory sheets say as much: *“We are aware that unlike professionals, those individuals who develop a sideline activity do not necessarily have the right reflexes in relation to regulatory, tax and social protection matters; these are complex subjects and it is*

¹ Within the context of the implementation of Article 242 bis of the General Tax Code, which provides that online platforms inform their users of their tax and social obligations, in particular by providing a link to the documentation published by the tax authorities (see below).

important to provide them with support". During the hearings conducted by the Working Group, it not only became apparent that very many users of platforms were, in good faith, unaware of all or some of these rules, but also that the authorities themselves had, only when drafting the explanatory sheets, realised just how complex the subject is.

In reality, the process of clarification undertaken in the past few months, while commendable in its intention, could only run into the problem of the **government's choice to "explain" the situation as it stands, to stick to existing rules, on the grounds that there is no reason to apply specific rules to one source of income compared to another just because it is received via online platforms** - this is the main thrust of the title of the document published on 2 February 2017, which mentions without differentiating them *"income derived from online platforms and from self-employed activities"*. This unwavering position has several times led the Government to turn down the proposals of the Working Group, in particular when discussing the Finance Bill for 2016, even though they had been adopted by a very large majority in the Senate.

Equally unwaveringly, the Working Group believes that there is good reason to change the rules applicable to income derived by private individuals from their sideline and occasional activities, or at the very least to those that they carry out *via* online platforms, because **these old and complex rules are not suited to exchanges between individuals on the Internet**, which have near to nothing in common with those of the "physical" world, in terms of volume, form and participants. Hence:

- **they are therefore not enforced**, which allows certain individuals to receive substantial income, while not meeting their tax and social contribution obligations, which leads to a situation of **unfair competition in respect of the other professionals**;

- **if they were strictly enforced**, which is not the case, on the contrary they would put **very many private individuals in an uncomfortable position**, in particular the unemployed with few prospects, persons on low income or simply amateurs or enthusiasts, and this **would simply threaten the economic model of many collaborative platforms**.

Before setting out in detail the proposals of the Working Group, the explanations below show the current rules - and why they are not applied.

A. INCOME RECEIVED VIA ONLINE PLATFORMS DOES NOT BENEFIT FROM ANY SPECIAL TREATMENT

Income received by private individuals for their activities carried out via online platforms is subject to the same taxation rules as their other categories of income. In particular, they are subject to income tax in accordance with Article 12 of the General Tax Code (*Code Général des Impôts* -

CGI), which provides that *“the tax is payable each year on the profits or income that the taxpayer makes or from which he benefits in the course of the same year.”*

“Occasional” or “sideline” income does not therefore benefit from any special treatment, whatever its origin and whatever the amount. Therefore, amounts received via online platforms are **in principle taxable from the first euro, and must be declared in line with the provisions of ordinary law.**

These categories are profits and capital gains from self-employed workers which generally fall in the category of **industrial and commercial profits (*Bénéfices Industriels et Commerciaux - BIC*)**, **non-commercial profits (*Bénéfices Non-Commerciaux - BNC*)** or **real estate income**, whether or not they derive from professional activities within the meaning of the Social Security Code (see below).

Self-employed workers' income

Industrial and commercial profits (BIC) are defined by Article 34 of the General Tax Code as *“profits made by natural persons derived from the exercise of a commercial, industrial or craft occupation”*. Article L. 110-1 of the Commercial Code¹ deems commercial transactions² to be the following activities, widespread on online platforms:

“1° Any purchase of movable property for resale, either in its original condition or after having transformed and used it;

[...]

“4° Any rental of movable property business;

“5° Any manufacturing, agency, land or water transport business;

[...]

“7° Any exchange, banking or brokerage transaction, issuance and management of electronic money and any payment service³.”

¹ The Council of State Decision No. 234133 of 29 April 2002 states that carrying out on a professional basis operations of the nature of commercial transactions within the meaning of Article L. 110-1 of the Commercial Code is a commercial activity within the meaning of Article 34 of the General Tax Code.

² “Industrial activities” and “craft activities” are equivalent activities. The only difference is the conditions under which they are carried out and how they are carried out. A craftsman, in particular, is a self-employed worker who performs a manual activity requiring a certain qualification, acquired after an apprenticeship and seeking, by so doing, to realise mainly the value of his work.

³ This last category covers platforms of the Fintechs sector more, providing payment services, account aggregation services, crowdfunding, crowdlending and virtual currencies such as Bitcoin. These services are not addressed in this report.

Non-commercial professional profits (BNC) are, under the terms of Article 92 of the General Tax Code, “*profits from liberal professions, from responsibilities and offices whose holders do not have trader status and from all occupations, lucrative operations and sources of profits distinct from another category of profits or income*”. Liberal professions are those in which the intellectual activity plays the main role and which comprise the personal practice of a science or an art – for example, with regard to platforms, school work or guitar tuition at home, but also the creation of a logo, a website or a translation.

People with this status carry out their business fully independently – which distinguishes them from employees – and their property and actions are, in principle, governed by civil law, which distinguishes them from traders.

Source: Finance Committee of the Senate

The beneficiaries of these categories of income have the choice between being taxed on the basis of their real income and charges or on the basis of the “micro-tax” system, often preferable because simpler and more suited to occasional activities. Subject to annual turnover not exceeding the VAT exemption thresholds provided for by Article 293 b of the General Tax Code, i.e. EUR 82,200 or EUR 32,900 depending on the activities, they can benefit from a **proportional tax-free allowance on their annual gross income, which takes into account, in a simplified way, expenses incurred for the activity**. These tax-free allowances are:

- 71% for micro-BIC sales of goods¹;
- 50% for micro-BIC services² in the case of a commercial or craft activity;
- 34 % for micro-BNC services³, if a science or an art is exercised;
- 30% for unfurnished rentals under the micro real estate system⁴.

With regard to the declarative procedures, taxpayers who are covered by the micro-tax system need only to state their gross proceeds on the supplementary declaration form No. 2042 C PRO (see below). The tax authority then applies the proportional “tax allowance” and calculates the amount of tax due according to the progressive tax rate under ordinary law conditions.

¹ Article 50-0 of the General Tax Code.

² Article 50-0 of the General Tax Code.

³ Article 102 ter of the General Tax Code.

⁴ Article 32 of the General Tax Code.

The micro-tax system: summary

Micro-tax system		Examples	Tax allowance	Maximum gross income
Micro BIC	Sales of goods	Purchase and then resale of comics, sale of "hand-made" jewellery...	71%	€82,200
	Services and furnished rentals	Passenger transport, rental of a furnished apartment, a car or a Finance Committee, DIY or gardening...	50%	€32,900
Micro BNC	Provision of services	Home tutoring, yoga or guitar tuition, etc.	34%	€32,900
Micro real estate	Unfurnished rental	Rental of a cellar, an attic, unfurnished premises, etc.	30%	€15,000

Source: Senate Finance Committee

Taxpayers coming under the micro-tax system can opt for the micro-entrepreneur system (formerly auto-entrepreneur), which in particular includes an option for a flat tax in discharge of income tax instead of progressive scale taxation after application of a tax allowance. The micro-enterprise status is discussed in the section of this report devoted to the tax system of online platform users.

Above these thresholds, the taxpayer is compulsorily subject to the ordinary income tax system, which allows the exact amount of all expenses to be deducted - this is more complex, but also more suited to professional activities. In addition, if the gross income exceeds the VAT exoneration thresholds, **the taxpayer is subject to VAT, that he must declare, collect and pay.** However, it should be stated that at these levels of turnover¹, **there is no doubt about the professional nature of the activity:** in these situations, current tax law poses no particular problem in being applied to the online platform economy and the question of occasional and sideline income, the subject of this report, does not arise.

Taxpayers eligible for the micro-tax system can also **opt for the income system,** if they believe that this is more advantageous to them. According to some platforms heard by the Working Group, it appears that this is the case in particular for **car rentals and, where application of the kilometre scale** is preferable, for the calculation of expenses, to a proportional tax-free allowance.

Besides these ordinary law systems, **users of online platforms may be taxable in accordance with a series of special, complex systems and probably largely unknown** to users seeking only a modest income

¹ The thresholds of the VAT exoneration are equal to gross monthly income of EUR 6,850 for the sales of goods and EUR 2,742 gross per month for services.

supplement, unconnected to their main activity: “artistic” and “non-artistic” photographers, capital gains on precious metals, fruit and vegetable sales, car boot sales, etc. **The rental sector, in particular, is characterised by a wide diversity of systems:**

- **the short-term rental of furnished property**, which falls under the ordinary law micro-BIC regime, the most common on platforms such as *Airbnb*;

- **unfurnished property rental**, which benefits from the *régime micro-foncier*, i.e. a proportional tax allowance of 30% within the limit of gross annual income of EUR 15,000. This system mainly concerns platforms for the rental of cellars, garages and storage between private individuals, such as *Costockage*, *Ouistock* and *Jestocke*;

- **“professional furnished property rental” (LMP) status**, which, under certain conditions, allows the person to benefit from the micro-BIC system¹;

- **the system applicable to bed & breakfast**;

- **the system applicable to listed monuments**, etc.

In conclusion, money received *via* online platforms is therefore in principle taxable under the conditions of ordinary law, i.e. from the first euro: Contrary to what is sometimes claimed, **there is no “grey area” as regards income tax, but only a poor application of inappropriate rules.**

There are however two particularly significant exceptions for the online platform economy which by their nature are exempt: second-hand sales and cost-sharing. However, the definition of the former is too confusing and that of the latter, too restrictive.

¹ Under the terms of Article 155 of the General Tax Code, the “professional furnished property lessor” (LMP) tax system requires **three cumulative conditions**:

(1) at least one member of the tax household is registered in the Commercial Register (RCS) in the capacity of professional lessor;

(2) the annual proceeds derived from this activity received by all the members of the tax household is greater than EUR 23,000;

(3) this income is the main income of the tax household and is therefore greater than all the other earnings combined (remuneration and salaries, BIC, farming profits, etc.).

At the tax level, the main advantage of the “LMP” system is to be taxed in the industrial and commercial profits (BIC) category, and therefore to be able to offset the losses of the rental activity against all the expenses of the tax household, without a cap on the amount (whereas the amount that can be offset is capped at EUR 10,700 for real estate income). **At the social contribution level**, the “LMP” system carries with it by definition affiliation to the self-employed workers’ social security system (RSI).

B. THE EXEMPTION OF SECOND-HAND SALES: CLEAR RULES BUT DIFFICULT ENFORCEMENT AND MONITORING

As regards taxation, second-hand sales are exempt from income tax. Under the terms of Article 150 UA of the General Tax Code, “Capital gains realised when selling movable goods or rights relating to these goods” are exempt **provided their sale price is not greater than EUR 5,000¹**. Household furnishings, household appliances and cars are exempt regardless of their sale price.

This exemption is implied by Article L.110-1 of the Commercial Code, which defines, in particular a commercial transaction as “*any purchase of movable property for resale, either in its original condition or after having transformed and used it*”: a second-hand sale is therefore where a private individual sells an item of property that he previously acquired or received for his own use, and not for the purpose of reselling it.

The distinction between second-hand and commercial sales is of **great importance given the many “fake private individuals” present on some online marketplaces**, and in particular on those that request little information from their sellers and/or who are not intermediaries in the transaction. In these situations, there are **significant losses of tax revenue, not only as regards income tax or corporation tax, but also in relation to VAT²**, as well as manifest distortions of competition.

However, for private individuals acting in good faith, it is not always obvious whether a sale is of a casual or professional nature. **Above the EUR 5,000 limit, and whenever the activity is carried on, on a regular basis**, the private individual is, indeed, subject to income tax, and must in principle affiliate himself to the self-employed workers’ social security system (RSI) as a trader, and, if applicable, as a micro-entrepreneur. **The question of determining the regular nature of the activity arises then with the same complexity** as for the other income (see above).

During the Working Group’s hearings, the tax authorities argued that the legal position was clear, and that it was unnecessary to change it: *whenever a sale is not a second-hand sale, it is taxable*. This is a self-evident truth: **The question does not concern the principle but the criteria for making the distinction** - and effective enforcement of these criteria, in a context where it is impossible to monitor whether taxpayers comply with their declarative obligations (see below).

In addition, sales between private individuals on online platforms such as Leboncoin, eBay and Vide-Dressing are subject to the provisions governing jumble and car boot sales, designed at a time when this type of

¹ Unless they are precious metals.

² See Report No. 691 (2014-2015), “E-commerce: proposals for VAT paid at source”, 17 September 2015, written by Michel Bouvard, Thierry Carcenac, Jacques Chiron, Philippe Dallier, Jacques Genest, Bernard Lalande and Albéric de Montgolfier, general rapporteur.

trading was occasional and exclusively physical. Article L. 310-2 of the Commercial Code thus provides that *“private individuals not registered in the commercial register are allowed to participate in jumble and car boot sales for the exclusive purpose of selling personal and used objects **at most twice a year**”*.

Article R. 3219 of the Criminal Code also specifies that the organiser – therefore in theory the online platform – must keep a register which includes the last name, first names, capacity and address of each participant, as well as the nature, number and date of issue of the identity document produced by the latter with an indication of the authority which issued it and, for non-professional participants, an indication of the deposit of a sworn statement of non-participation in two other events of the same kind during the calendar year.

In its report of May 2016 on collaborative platforms, employment and social protection (see below), the General Inspectorate of Social Affairs (IGAS) rightly considers that *“this formalism and the limitation to two sales per year no longer seem to match the situation of the practices of the digital society, the use of collaborative platforms now being very widespread by private individuals.”*

C. THE EXEMPTION OF “COST-SHARING” BY THE TAX INSTRUCTION OF 30 AUGUST 2016: A WELCOME BUT TOO NARROW CLARIFICATION

The only significant development as regards the taxation of income derived from online platforms is **the tax instruction of 30 August 2016, which has clarified the definition of “cost-sharing”** for so-called “co-consumption” activities. Long awaited by the platforms, this tax instruction has **the merit of bringing together the criteria that can allow an exemption for cost-sharing**, criteria that up to then were scattered, confused, and sector-specific rather than fiscal in nature.

Non-taxation of income received within the context of a “co-consumption” activity

Tax instruction of 30 August 2016 excerpts

In accordance with Article 12 of the General Tax Code, income realised by private individuals for their activities of any kind is in principle taxable, including income from services rendered to other individuals when the contact is facilitated in particular by collaborative platforms.

However, not taxing income derived from “co-consumption” activities which are cost-sharing is accepted provided that they comply with the following cumulative criteria related to the nature of the activity and to the amount of shared expenses.

Where these criteria are not met, the realised income is a profit taxable under the conditions of ordinary law [...].

1st condition: income received for “co-consumption” by private individuals

The income realised by a private individual for cost-sharing which can benefit from the exemption is that received for “co-consumption”, i.e. **the provision of a service which also benefits the private individual who offers it, and not only the persons with whom the costs are shared.**

Income received by legal persons or income received by natural persons for their business or directly linked to their work does not fall within the scope of “co-consumption” and therefore is not exempted.

Income derived by a taxpayer from the rental of an element of his personal assets such as, for example, the rental of his passenger vehicle or rental, seasonal or otherwise, of his main or secondary residence does not benefit from this exemption.

2nd condition: nature and amount of the expenses

The income realised by an individual for cost-sharing which may benefit from the exemption is **income, which does not exceed the amount of the direct costs incurred on the occasion of the service which is the subject of the cost-sharing, not including the taxpayer’s share.**

This condition relating to the amount received must be assessed strictly: **the amount received must cover only the expenses incurred upon providing the service, excluding all costs not directly attributable to the service in question, in particular the costs related to the acquisition, maintenance or the personal use of the property or tools used for the shared service.**

In addition, shared expenses must not include the share of the person who offers the service. Indeed, the concepts of cost-sharing and “co-consumption” assume that this person **personally bears his own share of the expenses and receives no form of direct or indirect remuneration**, for the service that he provides and from which he benefits at the same time. In other words, the taxpayer who offers a service for which he shares the expenses is counted as a person in calculating the shared expenses.

When the realised income exceeds the amount of the shared costs, it is taxable from the first euro.

Source: Bulletin officiel des finances publiques (BOFiP), BOI-IR-BASE-10-10-10-10-20160830

Among the activities that can benefit from the exemption, the tax instruction cites three examples: car sharing, sea excursions, and the organisation of shared meals (or “co-cooking”).

Sharing expenses: three examples

Car sharing has its own legislative basis: under the terms of Article L. 3132-1 of the Transport Code, car sharing is distinguished from taxi and private hire driver activities in that it consists of “*the joint use of a motor vehicle by a driver and one or more passengers, carried out on a non-financial basis, except for a sharing of the costs, for a journey that the driver makes for himself*”. The proposed price must therefore cover only the costs directly incurred because of the shared journey, i.e. the fuel and tolls, **but not, for example, a contribution to the car insurance.**

As a practical rule, the tax instruction specifies that **the taxpayer may use the kilometric allowance** to assess the total cost of his activity, rules established by *Blablacar* (see below).

With regard to sea excursions, offered for example by sites like *Boaterfly*, the law states that the requested participation must be *“only for the costs directly incurred for the excursion, i.e. the costs of fuel, food, mooring and remuneration of the staff on board during the said excursion”*.

By analogy, these rules are applied to “plane sharing” activities, offered for example by the *Wingly* platform. They are also set out very clearly on the website page dedicated to the plane sharing “etiquette”: *“exceeding the expenses-sharing pro-rata means not only breaching *Wingly’s* code of ethics but above all results in creating a risk. Indeed, any flight not subject to pro-rata cost-sharing then becomes a commercial flight. The pilot is then no longer protected by his insurance in the event of a plane problem. In order to ensure your safety and the long-term continuation of plane sharing, observation of this rule is essential”*. In its Decision of 22 August 2016¹ authorising plane sharing in France, the General Civil Aviation Directorate (DGAC) specifies that pilots are permitted to share their flights with passengers provided they do not make a profit and pay their own share of the flight.

Finally, with regard to “co-cooking”, offered for example by the *VizEat* website, the exemption applies to a private individual who organises *in his home* a meal for which he shares only the food and drink costs with the guests and for which he receives no other remuneration. Therefore, for example, **requesting participation for the purchase of kitchen equipment is excluded**. Similarly, take-away meals prepared by private individuals, as on the Belgian platform *MenuNextDoor*, are excluded.

Source: tax instruction of 30 August 2016 and Finance Committee of the Senate

Although the clarification made by the tax instruction of 30 August 2016 must be welcomed, its actual effect must not be overestimated - which is hardly surprising, with regard to a doctrinal text written without changing the law.

In fact, the definition of “cost-sharing” remains extremely narrow, and leaves aside a significant part of the collaborative economy, including when users do not make any profit and try simply to reduce their expenses. In particular, it does not cover the rental of housing or movable property - for example a car on *Ouicar* or a drill on *Zilok* - where their owners only try to cover the cost of their purchase. **In the course of its lifetime, a drill is on average only used for 12 minutes:** sharing such an unused good, although relevant economically and ecologically, **is not with regard to taxation considered as cost-sharing:** it is taxable from the first euro, and subject to social levies of 15.5% on income from assets.

This is also true for a private individual who hires out his car to cover his expenses (depreciation, insurance etc.), and **even though a car is**

¹ *Decision of 22 August 2016 regarding the operational instruction relating to plane sharing operations organised through an Internet platform or any other means of advertising and taken in application of Article 14 of Regulation (EC) No 216/2008.*

on average used for only 2.7% of the time, and when it is used, three out of four times it is by the driver alone in the vehicle.

Likewise, a private individual preparing meals in his home for other private individuals cannot benefit from the measure if they only collect the meals from his home, without eating them on the spot.

In addition, even for those activities meeting the two conditions needed to qualify for cost-sharing, **it is not always easy to define exactly what the participation of each person can or cannot cover**.

However, once it involves an activity that is carried out frequently or one that is relatively expensive, such as boat or plane sharing, the amount of money at stake becomes significant, the supporting documents requested are more precise, and the risks of being subject to a tax adjustment increase – including when the taxpayer acts in good faith.

In conclusion, it appears therefore that as regards taxation, the choice to preserve the framework of the existing law does not solve the problem posed by the growth of exchanges between private individuals on the Internet. The taxable nature or otherwise of income is determined on a case-by-case analysis, on the basis of complex doctrine and case-law designed for a world of “physical” occasional exchanges. While the digital transformation has greatly increased these exchanges and made most transactions traceable from the first euro, **this ambiguity is no longer possible: for the legal certainty of both the users and the platforms, a clear rule, if possible at the legislative level, is necessary.**

II. AS REGARDS SOCIAL CONTRIBUTIONS, THE PROBLEM LIES IN THE DISTINCTION BETWEEN PRIVATE INDIVIDUALS AND PROFESSIONALS

As regards social contributions, all income derived from professional activities is subject to social contributions and results in affiliation to a social security regime. However, a “professional income” as applied to income tax does not necessarily match with the definition of a professional activity” as regards social protection¹.

However, making the distinction between private individuals and professional workers is not easy. Indeed, although with regard to taxation, any income is in principle subject to income tax (see above), this is not the case as regards social contributions. **The affiliation to the social security as a self-employed worker entails, for online platform users, significant consequences:** the payment of social contributions of course, but also various procedures and obligations, including sector-specific areas.

¹ Moreover, as regards taxation, Declaration No. 2042 C PRO on which the taxpayer reports his income includes distinct sections: “professional BIC/BNC”, and “non-professional BIC/BNC”.

A. AMONG PLATFORM USERS, MANY PROFESSIONALS ARE UNAWARE OF THEIR STATUS

1. Online platforms professionals: self-employed workers and micro-entrepreneurs

The professional self-employed workers¹ of online platforms in principle contribute to the self-employed workers' social security regime (RSI), or otherwise the general social security regime².

Subject to their annual turnover not exceeding the thresholds of the micro-tax system and VAT exemption (see above), i.e. EUR 82,800 for sales of goods or 33,100 for services³, **these professional users can opt for the micro-entrepreneur system**, which simplifies the formalities for founding a company, the payment of social charges and contributions at a flat rate, and optionally the payment of income tax or a fixed rate basis paid at the same time as the social contributions.

The micro-entrepreneur system: summary

Activities		Examples of online platforms	Social contributions	
			Alone	With payment in discharge of income tax
Micro BIC	Sales of goods	Purchase/resale, of "handmade" objects...	13.10%	14.10% 1% income tax
	Services and furnished rentals	Transport, rentals, DIY or gardening at home, etc.	22.70%	24.40% 1.7% income tax
Micro BNC	Provision of services	Creation of a logo, webdesign, yoga or guitar tuition, etc.	22.70%	24.90% 2.2% income tax
	Liberal profession activities	Consultant, etc.	22.50%	14.10% 2.2% income tax

Source: URSSAF and Senate Finance Committee

During hearings held by the Working Group in different countries, it became clear that **the micro-entrepreneur system was a very clear advantage in France for developing the economy collaborative in its**

¹ The case of salaried workers using online platforms, who contribute to the general system, does not pose any particular problem. These are for example the drivers employed by licensed passenger transport companies (LOTI), home service company employees or employee sellers using marketplace platforms.

² Either because they are affiliated to the general regime through their main activity, or because the law expressly provides for this affiliation. This is the case in particular for single shareholder companies (SASU), a status, commonly used by drivers working through mobility platforms like Uber.

³ Thresholds applicable to income for 2017. These have been revised. The thresholds stated above for the application of the micro-tax system alone, i.e. EUR 82,200 and EUR 32,900, are the thresholds applicable to income earned in 2016 and reported in 2017.

professional part. In particular, this comment was often made during interviews conducted in Belgium (see below).

2. The discouraging complexity of moving from non-professional to professional status low-stake online activities

That said, the micro-entrepreneur system by definition relates to professionals: the issue is therefore knowing **when exactly a user of online platforms who considers himself to be a private individual becomes a professional**, and must accordingly join a social security system and comply with the declarative obligations and sector-specific rules.

However, currently, there is no criterion that is both simple and objective that can be used to distinguish professionals from non-professionals. Users therefore have no choice but to rely on complex criteria, criteria that are defined case by case and based on complex doctrine and case-law of which escape the vast majority of people.

In principle, any gainful activity carried out on a regular basis¹ by a private individual is a professional activity, and results in compulsory affiliation to a social security system. The concept of a “regular” activity does not imply any minimum in terms of income received, time spent or frequency of transactions or sales. Few but periodic actions may be a professional activity. Evidence of the activity’s professional nature may be provided by any means; it can include the use of a tool of a professional nature, or the organisation of a sales channel. Generally, the doctrine and the Court use **the highly subjective concept of the seller’s intentionality**.

In its report of May 2016 on collaborative platforms, employment and social protection, the General inspectorate of social affairs (IGAS) also emphasises the fact that *“no condition is linked to the duration of the work: affiliation and social contribution liability in principle apply to a casual job, a “helping hand”, that of an occasional job or of low importance such as a “gig job”. The sideline nature of an activity, predominant among collaborative workers, has no impact on the remuneration that is subject to social contributions”*.

It follows, of course, that a self-employed worker registered on a platform like *Hopwork* or *Upwork*, or a private hire driver using *Uber* or *LeCab*, must be affiliated to social security and pay contributions - which is perfectly normal. However, it also follows that **a person offering a few hours of DIY or looking after animals via a platform, or selling a few hats**

¹ In accordance with Article L. 121-1 of the Commercial Code, which stipulates that “traders are those who carry out acts of trade and make this their usual occupation”. It should be remembered here that Article L. 110-1 of the Commercial Code considers that a commercial act is, in particular, any purchase of movable property for the purpose of reselling it as well as “any movable property rental business”. Reference to the Commercial Code is also used with regard to taxation, but the assessment is different...

knitted at home, must in principle also be affiliated to the RSI (or where appropriate the general regime) in order to do so.

This obligation may apply even when the activity is purely amateur and just a sideline activity without any link to their main activity, and even if it produces only a few tens of euros of income per year or is a loss-making activity.

However, for someone whose activity on an online platform is only a sideline activity, **switching from “private individual” to “professional” status may well deter them – sometimes even to the point where they lose any desire to keep up the activity.**

Self-employed workers' obligations

As a self-employed worker, the user of an online platform is subject to ordinary law and must **pay social contributions, pay the Corporate land property tax (CFE) contributions to the Chamber of commerce and industry (CCI) or Chamber of Craft Trade (CMA) and the contribution to vocational training.**

Even more than the compulsory contributions, the administrative constraints, both general and sector-specific, may be the most dissuasive. A natural person carrying out a professional activity must indeed, among other things:

- report the existence of their company, complete the incorporation formalities with a business creation centre;
- register it in the Companies and Trade Register (RCS) or the Craft Trade directory (RM);
- take out professional insurance;
- open a bank account dedicated to the activity;
- follow a course before establishing the company, which for the creation of a craft activity must be paid for;
- obtain a qualification or professional experience for activities such as building, automotive, food, hairdressing and beauty parlors, all activities which, in certain forms, can be found on collaborative platforms;
- comply with the obligations laid down by consumer law, health and safety standards, etc.

Compliance with these obligations is controlled by the administrative authorities in their different fields: the Labour Inspectorate, the URSSAF¹, the DGCCRF² etc.

Source: Senate Finance Committee

In any event, the law does not lay down any income threshold above which an activity must be regarded as professional. Certain

¹ URSSAF – The organisation that collects social security and family contributions.

² DGCCRF – Directorate-general for competition, consumer affairs and fraud prevention.

“informal” thresholds are sometimes referred to¹, but they are impossible to verify and very fragile at the legal level. In the absence of simple and objective criteria, **it is therefore the responsibility of the users of the platforms themselves**, under the control of the inspection services and the courts, to determine on a case by case basis whether they actually carry out a professional activity.

However, the consequences are potentially very serious: reclassification as undeclared work would threaten the business model of many platforms, but conversely, the scarcity of controls allows activities to prosper under conditions of unfair competition.

In the “physical” world of jumble sales, car boot sales, amateur DIYers and services between neighbours, these rules were accepted for a simple reason: they were simply not applied, because they were not applicable. **But the question becomes critical in the context of the platform economy**, where these activities, until recently difficult to identify and control, have become massive, standardised and often traceable to the nearest euro.

However, as the IGAS rightly stresses, *“these activities generating small amounts of income cannot really develop with the same level of regulatory and social constraints as professional independent activities: the hidden administrative costs related to carrying out a professional activity [...] as well as the level of compulsory contributions are significant compared to the income generated occasionally and from sideline activities”*. In other words, although the current rules do not pose any problem for “real” self-employed workers carrying out their activity *via* online platforms, they are at the very least discouraging for private individuals only seeking a modest supplement to their income: **applying the rules would result in these new online activities losing their interest entirely**, despite being a welcome “boost” for many people, especially the long-term unemployed or those on low income, **and not applying them leads to a situation of legal uncertainty which is detrimental to everyone**. Obviously, it is this second situation which predominates and which needs resolving.

Therefore, the Working Group considers, like the IGAS, that the immediate challenge is to *“clarify the rules of affiliation to the social security of collaborative workers, taking their income into account under conditions of fair competition in relation to the traditional sectors”*.

¹ Thus, the activity would become “regular” starting at EUR 500, and “professional” above EUR 1,500 to EUR 2,000 per month. Source: *The collaborative economy caught up by the Labour Code*, *Le Figaro* (newspaper) of 12 July 2015.

B. TWO THRESHOLDS FOR COMPULSORY AFFILIATION TO SOCIAL SECURITY CREATED IN 2017: A USEFUL YET INCOMPLETE STEP FORWARD

1. Compulsory affiliation when income from rental of movable property exceeds EUR 7,846 and when income from rental of furnished accommodation exceeds EUR 23,000

Article 18 of the Social Security Financing Act for 2017¹ provided an initial response to this problem, by establishing two thresholds for compulsory affiliation to the social security, respectively for the rental of furnished accommodation for short periods and for the rental of movable property (cars, tools, etc.).

Since 1 January 2017, in principle, natural persons whose gross annual income exceeds the following thresholds are therefore compulsorily affiliated to the social security regime of self-employed workers (RSI), or if they so choose to the general system:

- **EUR 23,000** for the rental of short-term furnished accommodation, or more precisely “direct or indirect rental of furnished residential premises, [...] when these premises are rented to customers staying on a daily, weekly or monthly basis and not residing there.” Therefore rentals of accommodation by private individuals on platforms such as *Airbnb* or *Abritel* are covered by this measure. The EUR 23,000 threshold already exists for professional furnished accommodation provider (LMP), whose other conditions are however more restrictive (see above): in practice, the “LMP” system has therefore been expanded in relation to social contributions, but remains unchanged in relation to income tax;

- **EUR 7,846 (in 2017)** for the rental of movable property. The criterion laid down by the Act being that of proceeds greater than 20% of the annual “*plafond annuel de la Sécurité sociale (PASS)*”. This activity² is mainly aimed at car rental (for example via *Drivy* or *Ouicar*), but also applies to any other type of object, from prams to boats, taking in barbecues and cameras on the way (for example on *Zilok*).

When his income exceeds these thresholds, the person is subject to social security contributions on all his income, i.e. from the first euro.

Below these thresholds, the income is not considered to be income from a professional activity, but personal immovable or movable property

¹ Article 18 of Act No. 20161827 of 23 December 2016 on Social Security Financing for 2017. These provisions are codified in Article L. 6131 of the Social Security Code, which lists the persons compulsorily affiliated to the Sickness Insurance and Maternity Insurance System for Non-Agricultural Self-Employed Workers (RSI).

² Defined by reference to 4° of Article L. 1101 of the Commercial Code, which refers to “any movable property rental business” (see above).

income. It is therefore, in principle, subject to income tax and social levies of 15.5% on property income.

These thresholds apply to all activities and are not specific to the activities carried out *via* online platforms. They are “ceilings thresholds” beyond which affiliation is mandatory, but do not prevent affiliation at a lower level of annual proceeds.

2. A useful yet incomplete clarification, which does not cover sales or services

It is a useful clarification. Indeed, although it is important to allow the sharing economy to its “life” and not to hamper it with restrictive rules from the first euro earned from a sideline activity, **it is not acceptable that it can become a real “shadow economy”, with “fake private individuals”** entering into direct competition with professionals who do not pay social contributions... and ultimately not benefiting from any social protection either. In this regard, the establishment of a **threshold that clearly distinguishes income derived from the private ownership of property from that from professional rental is a step in the right direction.**

In particular, two changes that came about in the course of the parliamentary debates should be welcomed¹:

- the increase from 10% to 20% of the PASS for the threshold applicable to rentals of movable property: the level of EUR 3,923 gross per year originally proposed by the Government, i.e. EUR 327 per month, may appear to be very low, especially since it only applies to gross proceeds, which in no way implies that the private individual makes a significant net profit or even any profit at all. As Francis Delattre, the Finance Committee’s rapporteur opinion², *“an individual who occasionally rents his car, his motor home, his lawnmower or his drill, would have been considered to be a self-employed worker, and would have had to join the RSI, with all the constraints and obligations that this entails. Is this really what millions of French citizens engaged in the sharing economy want, and who often only derive sideline income from it?”*;

¹ And more precisely on the occasion of a second deliberation requested by the Government from the National Assembly, taking into account the reservations expressed about this article by parliamentarians of the majority and the opposition, in the National Assembly and in the Senate.

² Opinion No. 108 (2016-17) from Francis Delattre, made on behalf of the Finance Committee, about the Social Security Financing Act for 2017, lodged on 8 November 2016. For information, the general rapporteur of the Social Affairs Committee, Jean-Marie Vanlerenberghe, proposed a threshold of 40% of the PASS, namely EUR 15,691 for 2017, a level equivalent to the minimum wage.

- **the possibility to opt for an affiliation to the general regime**, which, in particular, allows **people who are already employees** not to have to join two different systems¹.

However, the rules laid down by the Social Security Financing Act for 2017 only settle a small part of the problem. The Secretary of State responsible for the budget, Christian Eckert, acknowledged this problem during the debates in the National Assembly: *“let us be clear on this: this article does not claim to solve everything”*.

First and foremost, this “clarification” is limited to the case of rentals of furnished accommodation and movable property, but **sets no minimum threshold for services on the one hand, and for sales of goods on the other hand, leaving out a considerable proportion of the collaborative economy.** Like those of the General directorate of public finance (DGFIP), the representatives of the Social security directorate (DSS) heard by the Working Group took the view that the existing law posed no problem, and that there was no reason to change it: a sale or provision of a service are a professional activity from the first euro of profit.

It follows that a student offering some mathematics tuition or one evening of babysitting per week *via* an online platform **should in principle join the RSI as soon as he receives his first euro.** The same is true for a pottery enthusiast who occasionally sells his own products in a Sunday market. However, although there is no doubt about the principle of affiliating to the social security when the activity is professional, **one can nevertheless doubt the social acceptability of affiliation from the first euro for occasional or sideline activities**, sometimes carried out as a *hobby* or by a simple enthusiast.

Moreover, it could well prove to be hard to distinguish those activities covered by the thresholds (rental of movable or immovable property) from those activities not targeted (sales and services). Thus, must the services linked to the rental of an apartment on *Airbnb*, not only handling-over the keys and the cleaning but also the advice given to tourists about the neighbourhood, be taken into account in calculating the thresholds? A series of unjustified and contentious affiliations can legitimately be feared, or on the contrary a multiplication of deadweight effects.

In addition, affiliation to the social security for the activities carried out *via* platforms and whose professional nature is not clear is problematic in several cases and in particular:

- **for people already affiliated to social security for another activity**, whether they are employed or self-employed. Indeed, and unlike taxation, social contributions are defined by the existence of rights in return

¹ *This measure therefore essentially satisfies a need for simplification, since social security contributions and the acquisition of rights are now largely aligned between the two systems.*

(sickness insurance, retirement pension, etc.): therefore, these people would have to pay additional contributions, without benefiting from a higher level of protection, which could be hard to understand. People with several different jobs or people who work and receive a retirement pension at the same time who pay solidarity retirement contributions, could find themselves in this case;

- **for civil servants**, who are required to get written authorisation for having a second activity from their superior, limited in time¹: **strict application of the law would make it illegal for any civil servant to be active on a services or sale platform** if they receive more than EUR 7,846 per year from a property rental platform or more than EUR 23,000 per year from an accommodation rental platform. **The same problem arises for professions subject to a strict ban on undertaking any form of commercial activity**, such as judges, police officers and certain regulated professions;

- **for the unemployed and the recipients of minimum social benefits (disability pension, RSA, AAH, etc.)**, who could lose part of their rights by renting their apartment or their car or by offering some DIY services in their neighbourhood, even though this may be essential extra income for them.

Moreover, this “social” clarification does not seem consistent with the “tax” clarification of the definition of “co-consumption” activities if they are by nature exempt as regards to tax, what is the justification that simply crossing gross proceed thresholds necessarily results in affiliation to the RSI, even when this is also “co-consumption”?

C. CORPORATE LAND PROPERTY TAX, A TAX THAT APPLIES TO ALL PROFESSIONAL WORKERS

According to the hearings organised by the Working Group, the “greatest astonishment” of online platform users redefined as self-employed workers relates to **the enterprises corporate land contribution (cotisation foncière des entreprises, CFE)**.

Under the terms of Article 1447 of the General Tax Code, the CFE is due each year by businesses - natural persons or legal entities, companies without a legal personality or trustees - who “*carry out a self-employed professional activity*”.

The CFE is therefore due, regardless of the legal status of the person liable (company, foundation, micro-entrepreneur, etc.) and the nature of his activity, including if he carries it out as a secondary activity and via an online platform.

¹ Article 25 septies of Act No. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants, as amended by Article 7 of Act No. 2016-483 of 20 April 2016 relating to the ethics, rights and obligations of public servants.

Taxpayers, if they do not have professional premises, are thus liable to pay the CFE on the base of their personal residence. In accordance with Article 1647 of the General Tax Code, they are subject to a minimum contribution if their turnover is less than or equal to EUR 10,000. The minimum basis of the CFE is between EUR 214 and EUR 510, depending on the levels voted by the local authorities in the commune in which they are based, which is equivalent to **a minimum contribution of EUR 55 to EUR 132**¹.

However, as for income tax and social security contributions, **the concept of a “regular” activity does not meet any clear and objective criteria**, but depends on complex case-law and doctrine - and differs from the one which applies to income tax. The *Bulletin Officiel des Finances Publiques*² (BOFiP) specifies only that this condition “*is deemed to be satisfied when the actions which characterise the activity are carried out repetitively*”.

The situation is further complicated by multiple exemptions from the CFE, which result from a vision of the economy that is out of phase with that of the digital platforms, but which may be applied. For example:

- **the exemption of independent craft workers**: 1° of Article 1452 of the General Tax Code provides that “*workers who work either as contractors for private individuals, either for themselves and with materials belonging to them, whether or not they have premises or a shop, when they use only the assistance of one or more apprentices aged twenty years or under at the start of the apprenticeship and who have an apprenticeship contract*” are exempt;

- **the exemption of some teachers**, 3° of Article 1460 of the General Tax Code distinguishing for example mathematics courses from kitchen or sewing courses.

D. SOCIAL LEVIES, THE FORGOTTEN PART OF THE DEBATE?

The social levies include the five following elements: the “*Contribution sociale généralisée*” (CSG), the “*Contribution pour le remboursement de la dette sociale*” (CRDS), the “*prélèvement social*”, the “*contribution additionnelle*” and the “*prélèvement de solidarité*”.

Unlike social contributions, due by professional affiliated to a Social security regime (see above), **social levies are considered universal taxes, which do not give an entitlement to any specific social benefit**³.

¹ With application of the average rate of CFE of the municipal sector, i.e. 25.95% in 2015. Source: Local finance observatory.

² BOI-IF-CFE-10-20-20-10-20150902.

³ Decision No. 90-285 DC of the Constitutional Council of 28 December 1990 on the Generalised social contribution.

Even when they are not considered to be self-employed workers and affiliated as such to the Social security, and even when they are not liable to pay income tax, users of online platforms are - as any taxpayer - subject to social levies on their income, at the rate of:

- 8% on income from activities: DIY, babysitting, cooking, etc.

- 15.5% on income from assets: this means that a private individual who occasionally rents his drill or his bike without exceeding the EUR 7,846 threshold could in principle be liable to pay social levies on these elements of his assets, from the first euro. Beyond EUR 7,846, he is regarded as a self-employed worker, and therefore affiliated as such to the Social security and liable to pay social contributions on income from activities.

III. REPORTING, CONTROL AND COLLECTION:

A. SELF-REGULATION: AN ENCOURAGING YET INHERENTLY LIMITED RESPONSE

1. An effort by the platforms to identify professional users

Due to their sector of activity, some online platforms are, by definition, reserved only for professional sellers or service providers. This is the case for example of some 22,000 private hire drivers and licensed passenger transport drivers, or the 42,000 qualified self-employed workers registered on *Hopwork*. All have a professional status (micro-entrepreneur, "Entreprise Unipersonnelle à Responsabilité Limitée" (EURL), "Société par Actions Simplifiée Unipersonnelle" (SASU) etc.), whose supporting official documents are requested by the platform.

Many platforms, however, attract both private individuals and professionals - and many users situated somewhere in between the two, without it necessarily meaning that a "professional" account on a platform implies a legal status of self-employed worker, or the reporting and payment of taxes. Similarly, asking a seller to provide his VAT or company registration number (SIRET) does not guarantee that he will actually declare it.

Of course, it must be recalled here that it is not, legally speaking, the platforms' responsibility to ultimately ensure compliance by the users with their tax obligations.

In most cases, the status of "professional" remains a simple declaration. Most platforms simply do not have the human or material resources to make the necessary checks. With regard to the detection of fake private individuals, the CEO of a small platform heard by the Working

Group summarised the situation like this: *"we often observe, we sometimes alert, but we do not remove them"* from the platform.

That said, identifying the vendors or providers of professional services is most often in the interest of the platforms themselves: professional accounts are often a paid-for service associated with visibility options - they are even together with advertising, the base of the business model of those websites that do not take a fee on transactions. There is also an important issue of reputation - for example, on *Leboncoin*, which is the leading real estate website in France, a seller pretending to be a private individual who later on informs the buyer that he must pay agency fees is very bad publicity for the site. Therefore, the priority of these websites is **not so much the fight against tax fraud as rooting out scams targeted at users**, and in this regard, the "professional" label is a significant guarantee for an economic model which above all is based on trust.

In terms of detecting "fake private individuals", the measures taken by the platforms can be broken down **into three unevenly implemented stages.**

The first stage is to inform users of their tax and social obligations (and also where appropriate obligations specific to their sector), which most platforms have done for a long time in dedicated sections. The two examples below are taken from the sections of two platforms, *A Little Market* and *Zilok*, offering respectively "hand-made" objects and objects for rent, and therefore at the heart of the problem of distinguishing private individuals from professionals.

The second stage consists of identifying the professionals and the "fake private individuals". For this purpose, most platforms have criteria, in most cases confidential and adopted to their economic model, used to identify these users: income or frequency thresholds of transactions, type of products or services offered, scores given by customers etc. On the main platforms, a team of moderators is entrusted with this task. Where applicable, reports by third parties (customers, competitors, etc.) are added to these.

Information sections: two examples

A Little Market

Although selling on the Internet as a private individual or a professional is allowed, each seller is under the obligation to report his sales to the tax authorities.

As a private individual, you must report your earnings from your sales on your income tax return in the supplementary form 2042 C in the

Zilok

The question is not whether you must report your income but how to report your Zilok income in France in your annual income tax return.

As a private individual, for the annual income tax return, we declare all our income.

<p><i>“BIC non professional” category. If you wish to obtain more information or help to complete your income tax return (...), call 08 or visit the General directorate of public finances website.</i></p> <p><i>As a professional, you simply need to report your sales when filling in your income tax return as for the rest of your commercial activity.</i></p> <p><i>If you are unsure of something or have a question, we advise you to contact your income tax office directly or the chamber of commerce in your region, or the Union des Auto-Entrepreneurs (auto-entrepreneurs association) if this is the status that you have chosen.</i></p>	<p><i>Zilok income is not an exemption to this logic, so you are also required to report all your Zilok income to the tax authorities.</i></p> <p><i>The tax authorities consider that movable property rentals are non-intellectual service.</i></p> <p><i>The movable property rental activity is covered by the BIC, “Industrial and Commercial Profits” tax system.</i></p>
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The third stage consists of obliging the user to switch to **professional status**, typically a service that has to be paid for or that is more expensive but that offers greater guarantees to the parties.

It is also possible to close or block the accounts of “fake private individuals” or users exceeding certain thresholds. However, with the exception of cases where the economic and legal viability of the platform depends on it, for example in the case of activities covered by strict “cost-sharing”, these measures are more rarely implemented.

Finally, it cannot be excluded that some platforms voluntarily demonstrate certain complacency with respect to “fake private individuals”, even to the point of making them implicitly part of their sales pitch. In fact, the hearings conducted by the Working Group show that the safeguards put in place are highly variable depending on the platform.

2. The (sometimes) risky strategy of using “internal” criteria: the cases of Heetch and Blablacar

The problem is that given the lack of simple and objective criteria to distinguish private individuals from professionals, or exempted income from taxable income, **it is sometimes left to the platforms themselves to mark out this limit** - and the consequences of this may be quite drastic.

This issue is of great concern to platforms that bring together sellers, renters and providers of services of different categories, and was repeatedly brought up during the hearings of the Working Group - by marketplaces such as *Vide Dressing*, *A Little Market* and *Da Wanda*, by service platforms such as *Stootie* and *Listminut*, and rental platforms such as *Drivy*, *Boaterfly* and *Airbnb*. In these different cases, however, a wrong classification does not in principle result in major consequences for the platform, beyond the legal uncertainty for its users.

The same cannot be said for passenger transport, where sector specific regulations can depend on –unclear- income criteria.

Indeed, like many European countries, and, with the notable exception of Estonia which has expressly legalised it (see below), **France has made it illegal for private individuals to offer transportation services for passengers in return for money; except for cost-sharing purposes.**

Passenger transport and car sharing

The “Thévenoud” Act of 1 October 2014¹ reserved this activity to taxis and private hire drivers only. Thus, under the terms of Article L. 3143-4 of the Transport Code², “organising contacts between passengers and persons who are neither public passenger road transport companies (...), nor taxi operators, private hire drivers [VTC] or motorised vehicles with two or three wheels is punishable by up to two years imprisonment and a EUR 300,000 fine”, for the purpose of providing an occasional passenger transport service³ or a passenger transport service in return for money⁴.

It was by implementing this provision that the *UberPop* service was suspended on 3 July 2015 and then stopped. It allowed private individuals to transport other private individuals in their personal vehicles. When it was suspended, *UberPop* had 10,000 registered drivers (including 4,000 active the previous week), and 500,000 regular users. The average income of *UberPop* drivers was EUR 8,200 per year, even though 87% of them had another job at the same time⁵.

Only the transportation of persons *not* in return for money, i.e. car sharing, is allowed, provided for in Article L. 3132-1 of the Transport Code and defined as “the joint use of a motor vehicle by a driver and one or more passengers, carried out on a non-financial basis, except for a sharing of the expenses, for a journey that the driver makes for himself”.

As the afore-mentioned tax instruction of 30 August 2016 confirmed (see above), the proposed price must therefore cover, only the expenses directly incurred because of the shared journey, i.e. fuel and tolls, but not, for example, a contribution to the car insurance.

Source: Senate Finance Committee

It is therefore the responsibility of transport platforms open to private individuals to lay down rules to ensure compliance with these provisions, i.e. the free-of-charge nature of the services performed by their users.

¹ Act No. 2014-1104 of 1 October 2014 relating to taxis and to cars with a driver.

² Originally codified in Article L. 3124-13 of the Transport Code, this provision has been moved to Article L. 3143-4 of the same code by the Article 1 of the Act No. 2016-1920 of 29 December 2016 relating to regulation, accountability and simplification in the public passenger sector of private individuals, the so-called “Grandguillaume” Act.

³ Article 3112-1 of the Transport Code.

⁴ Article 3120-1 of the Transport Code.

⁵ Interview with Thibaud Simphal, managing director of Uber France, *Le Monde*, 3 July 2015.

a) *Blablacar*: a rule based on the *kilometric allowance scale*, in accordance with the tax authorities' doctrine

Blablacar is a strict car sharing platform, i.e. transport between private individuals without remuneration, but covered by cost-sharing. In accordance with the provisions of Article L. 3132 of the Transport Code and of the tax instruction of 30 August 2016 (see above), the proposed activity must therefore meet two conditions:

- **firstly, the driver must benefit from the service that he provides ("co-consumption")**, a condition that is always met since the driver drives his car and makes the journey offered as a car sharing service for himself;

- **secondly, his income must not exceed the amount of the direct costs incurred** when providing the service subject to cost-sharing, and for which he pays his own share.

In order to ensure that this condition is respected, the site has established a **rule capping the contribution that the driver may request, based on the "kilometric scale"**: *"we have therefore taken the lowest of the tax scale (EUR 0.41 per km) that we have divided by 5 (i.e. a maximum of 4 passengers plus the driver) to reach a maximum contribution to the expenses per kilometre and per passenger. You cannot technically offer more than EUR 0.082 per km and per passenger and offer more than 4 seats¹".*

The kilometric scale (2017)

Power for tax purposes	Up to 5,000 km	from 5,001 to 20,000 km	more than 20,000 km
3 HP	$d \times 0.41$	$(d \times 0.245) + 824$	$d \times 0.286$
4 HP	$d \times 0.493$	$(d \times 0.277) + 1082$	$d \times 0.332$
5 HP	$d \times 0.543$	$(d \times 0.305) + 1188$	$d \times 0.364$
6 HP	$d \times 0.568$	$(d \times 0.32) + 1244$	$d \times 0.382$
7 HP and over	$d \times 0.595$	$(d \times 0.337) + 1288$	$d \times 0.401$

"d": distance travelled.

Employees who use a vehicle for professional purposes can deduct the expenses actually incurred for them if they are able to present the necessary supporting documents.

Under the terms of 3° of Article 83 of the General Tax Code, they can, more simply, use the kilometric scale set by decision of the minister responsible for the budget. They are codified in Article 6 B of Annex IV to the General Tax Code.

As a general rule, the kilometric scale can be used for vehicles of which the employee himself or, if applicable, one of the members of the tax household, is personally the owner.

Source: Senate Finance Committee, according to the Bulletin officiel des finances publiques (BOFiP)

¹ <https://www.blablacar.fr/blablalife/blabla-a-bord/astuces-covoiturage/calcul-prix-trajet-covoiturage>

The tax instruction explicitly mentions the possibility, for car sharing, to use the kilometric scale: on the basis of a clear and objective rule, and moreover by retaining the most conservative scenario, *Blablacar* is able to guarantee its users that the costs are strictly shared.

It is not necessarily the same, for example, for “plane sharing” or “boat sharing” or “co-cooking”, which do not benefit from such a clear objective scale, although the platforms take care to apply strict *pro rata* rules in the requested contributions.

With regard to road transportation, however, it appears that “alternative” rules to those based on the kilometric scale do not allow the activity to be considered cost-sharing.

b) *Heetch*: an maximum amount of EUR 6,000 per year, with no legal basis

***Heetch* is a French platform which allows private individual drivers to offer a transport service to other private individuals.** It presents itself as a night-time transport platform (the service works only between 10 pm and 6 am), directed at young people (80% of passengers are under 25) and makes up for a lack of commercial solutions (80% of journeys are in the suburbs).

***Heetch* claims that the activity offered is a non-remunerated transport service, i.e. car sharing,** which meets the definition of cost-sharing. Therefore, the drivers do not need to hold a taxi or private hire driver licence.

In order to ensure that the driver does not make a profit, *Heetch* limits to EUR 6,000 per year the maximum income per operator, an amount equal to the annual average cost for a private individual of a city car travelling 15,000 kilometres¹. For information, the average income of a *Heetch* driver was EUR 1,750 in 2016, or EUR 35 per week, and 30% of them earned less than EUR 500: It is a **sideline activity**.

On 2 March 2017, *Heetch* and its two co-founders however were found guilty of “*complicity with the illegal exercise of the taxi profession, a misleading commercial practice and the illegal organisation of a system of establishing contacts between customers and non-professional drivers*”, the court considering that the activity exercised by the drivers could not be characterised as non-commercial transport.

In particular, the court considered that cost-sharing must be assessed with respect to a single journey and not over a year²: “*the sharing of expenses may only legally be considered in a unitary way, journey by journey, and*

¹ Source: Agency of the environment and energy management (ADEME), “Private vehicles sold in France”, *Official Guide*, 2011 edition, page 26.

² Paradoxically, application of the kilometric scale, as in the case of *Blablacar*, means that under certain conditions the amount of EUR 6,000 per year can be exceeded.

not annually. It appears that the price paid by the passenger is not solely compensation of the costs incurred by the driver: the latter is paid for his service and Heetch collects a commission on the price of the journey which largely exceeds the actual cost of keeping and using the vehicle”.

This judgment shows the fragility of “internal” legal criteria used by the platforms to distinguish between private individuals and professionals, or between activities in return for a fee and those that are free-of-charge. In this case, of course, the consequences are particularly far-reaching because this characterisation results in a ban on the activity. But generally, these problems may arise for other actors of the collaborative economy.

In this regard, a legally-defined threshold for proceeds that can be used to assume the professional or non-professional nature of an activity, as proposed by the Working Group (see below), would confer much greater legal certainty on “internal” rules established by the platforms -however- this is not an assumption, with regard to *Heetch’s* activity that it would have, all things being equal, met the car sharing definition, since the EUR 6,000 upper limit was not the only element rejected by the judge¹.

B. UNACHIEVABLE TAX CONTROL

1. Insufficient efforts and unsuited tools for the digital economy

Given the new forms of exchanges made possible by online platforms, the tax authorities’ traditional tools appear to be inadequate.

Indeed its methods rely on retrospective tax control, which is appropriate in a situation where a small number of taxpayers with significant amounts at stake are targeted, but they **become much less effective in a situation where a great number of taxpayers need to be controlled, where individually only a small amount is at stake, but overall totalling a significant amount.** That said, as regards between private individuals on collaborative platforms, losses of tax income are probably not as great as in the case of small professional sellers present in virtual marketplaces, especially in third countries, which can easily avoid paying corporation tax and VAT². In addition, the very features of the digital

¹ *The court moreover took the view that the second condition laid down by Article L. 3132 of the Transport Code in order for an activity to be characterised as car sharing, i.e. that the driver must make the journey “for himself”, was not met. In fact, with Heetch, it was the passenger who decided his journey. In addition, Heetch argued that the amount paid by the passenger was not a price, since the price displayed by the application was only a “suggestion”.*

² *See, in this regard, Report No. 691 (2014-2015), “E-commerce: proposals for VAT paid at source”, 17 September 2015, written by Michel Bouvard, Thierry Carcenac, Jacques Chiron, Philippe Dallier, Jacques Genest, Bernard Lalande and Albéric de Montgolfier, general rapporteur.*

economy complicate the task: use of pseudonyms, change of email address, presence on multiple platforms etc.

The main tool of tax control, the communication right (droit de communication), provided for in Article L. 81 of the Book of Tax Procedures (LPF), allows tax inspectors to obtain the necessary information from third parties. Generally, demands are sent to employers, customers, suppliers, or banks holding accounts etc. In the collaborative economy, it can be exercised in respect of platforms and payment intermediaries. It suffers, however, from two major weaknesses:

- **firstly, it presupposes at least knowing in advance the identity of the person in question,** and if possible what question to ask, which is by definition difficult in the context of the digital economy;

- **secondly, it has no extraterritorial scope,** and is therefore open to a refusal from platforms located abroad.

Therefore, the only way of obtaining the information is through international administrative assistance - which involves lengthy procedures with partners whose zeal is highly variable, and which therefore can be justified only where the amounts in question are significant. This procedure is **ill-suited to the online platform economy and its many users,** and the hearings of the Working Group have confirmed that the authorities do not consider it to be a relevant solution.

Apart from the inherent weaknesses in the traditional tax control tools, **it appears more fundamentally that both the tax administration and the Government are taking a long time to get to grips with this subject,** as shown, in particular, by the debates on the Finance Bill for 2015, on the bill in favour of a Digital Republic, and on the Amending Finance Bill for 2016.

2. A non-nominative communication right but still not applicable to foreign platforms

Notable progress was however made by Article 21 of the Amending Finance Act No. 2014-1655 of 29 December 2014 for 2014, which established a communication right on *“information relating to not specifically designated persons”*, codified in the second paragraph of Article L. 81 of Book of Tax Procedures.

This “non-nominative” communication right allows the tax administration to request information from the actors of the Internet (platforms, third party payment, express freight operators, etc.) without first knowing the identity of the person or persons concerned. For example, an online platform is allowed to be asked for information about *“persons having sold an item of property X or rented an item of property Y during 2016 and having received more than EUR 3,000 for this purpose”*. The request for

information can therefore relate to their sales, their customers, their transactions or their suppliers, etc.

Decree No. 2015-1091 of 28 August 2015 specifies that the information requested must be specified by at least one of the following research criteria: geographical location; threshold expressed in quantity, number, frequency or financial amount; payment method. The request may relate to a maximum reference period of eighteen months, and this period can be split up.

During the discussion in public sitting, of the Amending Finance Bill for 2016, the Secretary of State responsible for the budget, Christian ECKERT, stated that *“the non-nominative communication right as it exists is very useful. Between 1 September 2015 and 1 September 2016, we have made use of this right 105 times with respect to the digital economy. The procedure covered 40 companies involved in managing rented furnished accommodation, 26 companies managing electronic platforms enabling customers to contact taxis and transport vehicles, in particular private hire drivers, 20 online marketplaces, 10 firms carrying out transport of goods and logistics services, 7 companies offering online payment services or the transfer of funds online, and 2 agencies collecting online advertising income for people making and publishing video content on the Internet. We are already using all this information. I will keep available to you - and to the General Rapporteur of the Finance Committee of the Senate, who asked me about this - the progress reports, which are changing all the time, of these operations”*.

The information conveyed to the General Rapporteur, a member of the Working Group, confirm these figures. However the hearings conducted subsequently by the Working Group showed that this non-nominative communication right has not yet resulted in the challenges posed by the online platform economy being met. At the very least, its implementation is still too recent to be able to assess its effect in terms of tax revenues.

In reality, the non-nominative communication right does not make up for the main weakness of the “classic” right of communication, i.e. its lack of extraterritorial scope. Although some of the main actors of the collaborative economy currently have subsidiaries in France, and therefore permanent establishments, the contracts themselves are still concluded with companies established outside France, particularly in Ireland, Luxembourg and the Netherlands, meaning that they do not consider themselves bound by the communication right¹.

¹ The only way to get round this obstacle is to carry out a “tax search”, in the professional premises, on the basis of Article L. 16 B of the Book of the Tax Procedures, which, in particular, can be used to obtain the data that can be accessed via the servers of the premises visited - but this is still a cumbersome procedure, subject to permission granted by a judge, and therefore unsuited to the dispersed nature of the collaborative economy.

In fact, most major foreign platforms, to date, have refused to respond to the requests of the tax authorities, even though their French competitors, often smaller, have complied with their reporting obligations.

With regard to social contributions, the URSSAFs can also assert a non-nominative communication right, provided for in the Social Security Financing Act No. 2014-1554 of 22 December 2014 and based on the same model as that of the DGFIP. **It is subject, however, to the same limitations as those of the tax authorities.**

According to the hearings conducted by the Working Group, it is envisaged to make use of this non-nominative communication right to check whether the two affiliation thresholds laid down by the Social Security Financing Act for 2017 have been crossed, i.e. EUR 7,846 for movable property rentals and EUR 23,000 for furnished accommodation rentals (see above). Given the foregoing remarks, it is reasonable to believe that automatic reporting would be more effective.

C. THE OBLIGATION OF USER INFORMATION: A FIRST STEP TOWARDS TAX COMPLIANCE

1. Article 242 *bis* of the General Tax Code

Article 87 of Finance Act No. 2015-1758 of 29 December 2015, for 2016 established **an obligation for platforms which facilitate contacts by electronic means to inform their users about taxation and social contributions**, codified in Article 242 *bis* of the General Tax Code.

It should first be emphasised that **this article, in its initial version, had been introduced by the Senate, at the initiative of Albéric de Montgolfier**, general rapporteur of the Finance Committee, in the form of a secured automatic reporting system, implemented by the platforms, of the income of their users (see below), as proposed by the Working Group in its report of September 15th, 2015. Adopted by a very large majority in the Senate, this article was then amended by the National Assembly, at the initiative of the Government, becoming a “simple” obligation of information.

Although the system adopted is less ambitious than was initially intended, Article 242 *bis* of the General Tax Code is nevertheless **an important first step towards tax compliance, and is behind** the public authorities’ awareness of the need to act, and awareness by the platforms of their responsibility in this area.

This article contains two obligations that are imposed on the operators of online platforms:

This procedure is however relevant with regard to the corporation tax of the platforms themselves, in order to characterise the existence of a permanent establishment. However it is a one-off tool, since the company has an interest in reorganising its legal structure following a search tax.

- firstly, in I, an obligation to *“provide, each time a transaction is concluded, fair, clear and transparent information about the tax and social contribution obligations”* of their users;

- secondly, in II, an obligation to communicate to their users **an annual summary of the gross amount of the transactions** they have received through their site, which is more or less a summary of their gross revenue.

These provisions are applicable to transactions carried out on or after 1 July 2016.

Article 242 bis of the General Tax Code

I. – Entities, regardless of their place of establishment, which put into contact remotely, by electronic means, persons for the purpose of the sale of property, the provision of a service or the exchange or sharing of property or a service **are required to provide, each time a transaction is concluded, fair, clear and transparent information about the tax and social contribution obligations of the persons who carry out commercial transactions through them.** They may use, for this purpose, the elements of information made available to them by the competent authorities of the State. They are also required to make available **an electronic link to the websites of the administrative authorities** allowing them to comply, where necessary, with these obligations.

II. – In addition; the entities referred to in I communicate to their users, in January of each year, **a document summarising the gross amount of all known transactions received through them in the previous year.**

III. – The obligations laid down in I and II apply to users residing in France or who make sales or provide services in France.

IV. – The entities referred to in I **are certified, every year, before 15 March, by an independent third party,** compliance, with regard to the previous year, with the obligations laid down in I and II.

V. – A decree of the Council of State lays down the conditions for the application of this article.

The implementing conditions of this Article were specified by Decree No. 2017-126 of 2 February 2017, which details, in particular, the list of tax and social contribution obligations about which the user must be informed, i.e. *“the information relating to the tax systems and the social regulations applicable to these amounts, the reporting and payment obligations which result from them to the tax authorities and the organisations which collect social security contributions as well as the penalties incurred in the event of a breach of these obligations”*. The platform must provide the user with links to access this information. In practice, these **lead to the five “explanatory sheets” published on the same day** (see above).

The annual summary sent to the user must state *“the number of transactions”* and *“the total amount of the amounts received on the occasion of the transactions carried out on a platform, about which the entities putting the parties into contact are aware, excluding the commissions received by the entities”*. **The elements of identification are relatively detailed:** the decree thus mentions

“the user's full name and email address and, if applicable, the postal address, as well as, if the user is a company, its VAT number” or, if it does not have one, its registration number in the Commercial Register (RCS) or, for non-resident businesses, their tax number issued in their country of origin. The platforms themselves must provide the same information.

Implementation of the provisions of Article 242 bis of the General Tax Code is currently in progress - this should be welcomed, because it was not a foregone conclusion a few months ago.

Several platforms already complied with all or part of these provisions, even before being legally obliged to, since they provide their users with a periodic summary of their gross proceeds, and inform them, if relevant, of their tax obligations. **A platform like Airbnb is a good example in this respect:** the platform sends its hosts a summary of their gross income at the start of each year and this information can be viewed at any time on their user account. Occasionally, the platform also sends e-mails to its users to inform them of recent legislative and regulatory changes¹, which are also available in the site's help sections. The help sections of *Amazon* also have a lot of information about taxation - but more about VAT than income tax or corporation tax. **This is the interest of the platforms themselves**, since sending a periodic summary of the amounts received is simply a service that is expected by the users.

Many other platforms are in the process of complying with the legislation, the slight delay observed in several cases being tolerated by the administrative authorities², due to the late publication of the implementing decree. **The hearings conducted by the Working Group, however, have revealed a number of questions and concerns**, about which it would be good if the tax authorities, or the legislature, were able to provide some answers. Among these, for example are:

- with regard to the obligation to provide information, the question of how to respond to the criterion *“each time a transaction is concluded”*: although it appears suitable for most economic models, it is however **difficult or even impossible to apply for models based on “pay per click” or pay per view”**, for example in the case of online advertising or online videos - for example, a *“Youtuber”* receives about EUR 1 for every 1,000 views³;

¹ For example, in February 2017, Airbnb hosts received an email with the recent measures: mandatory registration at the town hall (Act of 7 October 2016 in favour of a Digital Republic), the threshold for compulsory affiliation to the social security (Social Security Financing Act for 2017), secured automatic reporting with regard to taxation (Amending Finance Act for 2016). In some cities in France - Paris, Marseille, Nice, Strasbourg and Lyon - users receive a reminder of the legislation in force every quarter.

² Until 31 March 2017 for the annual summary, and until 15 May for the 2017 certification.

³ Source: <http://tempsreel.nouvelobs.com/rue89/rue89-internet/20150505.RUE8943/un-dollar-les-1-000-vues-le-detail-des-remunerations-sur-youtube.html>

- with regard to the annual summary, the question of its application to platforms which offer only activities that are exempted due to their nature, i.e. mainly **second-hand sales and car sharing** (and other activities involving cost-sharing). On the one hand, sending a summary, apart from the fact that it requires specific developments, **could create a certain amount of confusion among users**. On the other hand, allowing these platforms not to fulfil such an obligation on the basis of their own assessment of the nature of their activity would create an encouragement to make assumptions about the non-taxable nature of the activities, **opening the door to many deadweight effects**. In any event, the current wording of the law indicates the *gross* amount of the transactions, which does not allow cost-sharing or second-hand sales platforms to be exempted from the obligation.

The Working Group proposes these provisions should be adjusted to take account of the diversity of models of online platforms (see below).

2. The challenge of platform certification

Given these uncertainties and the novelty of this obligation, **the main considerations have focused on the conditions of platform certification**.

Indeed, Article 242 *bis* of the General Tax Code provides that the online platforms *“are certified, every year, before 15 March, by an independent third party, of compliance, for the previous year, with the obligations laid down in I and II”*, i.e. the information obligation each time a transaction is concluded and communication of the annual summary. This certificate must be sent by the platform to the tax authorities. Its non-presentation is penalised by a **fixed penalty of EUR 10,000**, laid down in Article 1731 of the General Tax Code.

Decree No. 2017-126 of 2 February 2017 specifies that this certificate *“is issued by a certified auditor, an audit firm or any other entity, natural or legal person, having its registered office within the territory of the European Union and complying with an auditing method providing an impartial and comprehensive review. The entity issuing the certificate must present guarantees of independence, integrity and of good repute and complete its mission, avoiding any conflict of interest. It must not be subject to the undertaking to which it delivers the certificate”*.

The hearings conducted by the Working Group have shown that a certification offering was being formed, since Article 242 *bis* created a new market for certifying third parties.

This certificate is, in fact, of great importance, most probably much greater than what was anticipated when the law was passed. Given the physical impossibility of the General Directorate of Public Finances (DGFIP),

due to the lack of technical and human resources, to directly check compliance, **the quality of the certification is critical to ensure the tax compliance of the users of the platforms, and consequently the platforms' reputation.** Should the certificate play a role in the automatic reporting, as the Working Group proposes (see below), its importance would be increased even more.

However, currently, in the absence of clarification by the administrative authorities and a truly structured market, **the exact scope of "certification" remains extremely vague, voicing the concern of many actors heard by the Working Group.** Three main questions arise:

- **firstly, the content and the conditions of the certification.** The audit should, in principle, cover not only the existence of the information provided to the user (general conditions of use, help sections, content of the annual summary, etc.), but also **the concrete procedures implemented to ensure effective application of the rules, which could involve a thorough review of the internal algorithms and mechanisms** (thresholds and criteria for detecting professional sellers, taking into account the recommendations, ratings and reports of other users, automatic capping systems of the proposed prices or income received as on *Heetch* and *Blablacar*, etc.). These elements, which should involve sampling, require **not only legal expertise but also relatively in-depth technical expertise;**

- **secondly, and consequently, the nature of the certifiers.** Although large audit firms are developing an offering for the platforms, based on their general expertise that is recognised in other areas, other, more modest, actors are adopting a niche strategy, emphasising specific expertise on the subject, such as *WeCertify*, which highlights "*in-depth knowledge of the economic models of the digital contact platforms and their legal issues*". **Currently, the law allows any "independent third party" to carry out this certification;**

- **thirdly, and therefore, the price of the certification.** During the hearings of the Working Group, some large platforms, whose activity offering is diverse, spoke of several tens of thousands of euros per year (the certificate must be renewed every year). In this regard, a much lower amount of a few thousand euros per year would, **for a young start-up, be a significant cost.**

For the platforms, a lot is at stake: **should the certification not be delivered, or if it were proved insufficient or lenient,** the legal and financial consequences and in terms of reputation could be significant.

The Working Group therefore makes a series of proposals regarding the certification of online platform operators (see below).

D. AUTOMATIC INCOME REPORTING: THE DECISIVE STEP?

Informing users of their tax obligations is an important first step, *reporting* their income is the next step

A decisive step was taken in late 2016, with the vote in favour of two automatic income reporting systems, to the Social Security and to the tax authorities, allowing France to join those countries having already implemented similar provisions for example the United States, the United Kingdom and Estonia, according to arrangements that vary widely (see below). **The proposals of the Working Group of the Finance Committee of the Senate have played an important role in this progress.**

1. Automatic reporting to the social security beginning in 2018: a voluntary system, lacking a strong incentive

Article 18 of the Social Security Financing Act for 2017¹, which established the two thresholds of compulsory affiliation of EUR 7,846 and EUR 23,000 (see above also included) the creation of a system for automatic affiliation to the RSI via platforms, and if applicable automatic reporting and collection of social contributions. **More specifically, this system, entirely voluntary, has two components:**

- **automatic affiliation is open to all self-employed workers** carrying out an activity via an online platform for the purpose of selling goods or providing services. They can authorise the platform, by mandate, to **carry out the reporting procedures for starting their activity on their behalf** with the competent business formalities' centre, i.e. in concrete terms, affiliation to the RSI;

- **automatic reporting to the "Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales" (URSSAF) and the levy at source of social contributions are for micro-entrepreneurs only**, and to users affected by the EUR 7,846 and EUR 23,000 thresholds, i.e. movable property and furnished accommodation renters. They can allow the platform to *"carry out reporting of the turnover or proceeds recorded for this activity (...) as well as the payment of social security contributions (...), to the URSSAF.*

The limitation to micro-entrepreneurs of this second component can be explained by the fact that the micro-social system, characterised by a **rate of contributions proportional to the gross turnover** (i.e. 13.1%, 22.5% or 22.7% depending on the activities², see above), is much easier to organise for a levy at source than for the actual income system and even more so since

¹ Article 18 of Act No. 2016-1827 of 23 December 2016 on Social Security Financing for 2017. These provisions are codified in the new article L. 133-6-7-3 of the Social Security Code.

² Excluding the payment in discharge of income tax which is open to micro-entrepreneurs. This is not referred to by Article L. 133-6-7-3 of the Social Security Code.

the platform has no information regarding the expenses incurred by the self-employed worker. Similarly, in accordance with the same Article 18 of the Act for Social Security Financing for 2017 (see above), the contributions due by **the renters of movable property and furnished accommodation** are based on the gross amount of their turnover, decreased by a proportional tax-free allowance of 60% or 87%.

These provisions will come into force on 1 January 2018.

They are a significant step forward, and even ambitious to the extent that, in addition to the reporting itself, these provisions could pave the way to **a collection at source of the compulsory levies which would apply**. The other most significant case is that of the collection of the visitors' tax by *Airbnb* in 51 cities in France (see below), and in several other cities around the world.

The Central agency for social security organisations (ACOSS) is responsible for the operational implementation of this mechanism, under the control of the Social security directorate (DSS). Looking ahead to its entry into force on 1 January 2018, the ACOSS is currently working on setting up **an "all inclusive" service offering, where all the affiliation and reporting procedures could be made directly via the platform, using the model of the universal employment-cheque service (CESU) - or at least by a simplified referral to lautoentrepreneur.fr (micro-entrepreneurs) or netentreprises.fr (other self-employed workers) portals. A Smartphone application is also envisaged.**

Given the crucial importance attached to the simplicity of the procedures and the quality of "user experience" in the world of collaborative platforms, this vision of how the law is implemented must not only be welcomed but also **receive strong support from public authorities.**

The fact remains that the "success" of this system, for the users and the platforms, currently remains uncertain. Adopted in the Social Security Financing Act for 2017 without prior consultation with the actors concerned or a detailed impact study, it raises **several technical and legal difficulties** that the hearings conducted by the Working Group have not, up to now, been able to clear up.

Thus, the technical characteristics of the system, the nature and degree of harmonisation of the information transmitted, the arrangements for exercising the option to join the general system, or arrangements for the interconnection between the information systems of the platforms with those of the social security organisations, are not currently known. A more serious obstacle is that it appears that **the platforms, as it stands, are unable to determine by themselves:**

- when the threshold for affiliation to the RSI is crossed, or the exit threshold for the micro-social system (EUR 82,800 or EUR 33,100 depending on the activities), given the possibility that an individual has to undertake an

activity on several platforms, *and* the possibility of undertaking activities subject to different affiliation thresholds (sales, services, movable and immovable property rentals);

- **the rate of social contributions to apply**, due to the issue of crossing the threshold, the difference in the rates applicable to the income categories, but also because of specific cases laid down by the micro-entrepreneur system. The most significant case is that of **beneficiaries of aid to an unemployed person creating or taking over a business (Accre)**, who benefit from a reduced rate of social contributions¹.

Since the platforms do not have the elements in question, and unless provision is made for them to collect more data - moreover subject to tax secrecy and/or professional secrecy -, the automatic levy of social contributions could therefore prove to be difficult. One solution would be to have **the information passed on in real time by a third*party aggregator which has the necessary information**, but Article L. 133-6-7-3 of the Social Security Code does not expressly provide for this possibility², which in any case is also complex.

It is for this reason that the mechanism adopted with regard to taxation (see below) is limited to simple reporting, which does not involve the platforms needing to have information about the taxable base or the rate to apply.

Therefore, given the voluntary nature of the proposed mechanism, its operational complexity, and in the absence of a financial incentive, its implementation initially could be fairly limited. For the platforms, offering this service in the short term could prove to be burdensome. For the users, the benefit of the proposed simplification could be limited, and would remain in any event, for those of them who are not scrupulously honest, lower than the "gain" of non-reporting, since the risk of being controlled is low. **The low level of tax revenue expected from the measure, i.e. 10 million euros per year according to the impact study, is perhaps an admission of these difficulties, or at the very least a sign of caution.**

For the Working Group, the "right" response would be as follows: an automatic reporting offer covering both the social sphere and the tax

¹ This rate is progressive and is equal to a fraction of the "normal" rate of the micro-social system: 25% up to the end of the 3rd calendar quarter following that in which the registration is made; 50% for the 4 following quarters; 75% for the 4 following quarters; subsequently 100%.

² The "power of attorney" procedure stated in the article refers to the highly general provisions of Article 1984 of the Civil Code, unchanged since the Act of 20 March 1804, "power of attorney or proxy is an act by which a person gives to another the power to do something for the principal and in his name. The contract is formed only by acceptance of the agent". Moreover, the use of a third-party aggregator raises additional questions in relation to the processing of personal data, subject to the provisions of the Data Protection Act No. 7817 of 6 January 1978.

sphere, combined with a tax advantage producing its effects for sideline and occasional income.

2. Automatic reporting to the tax authorities in 2019: a mandatory system whose implementation is still uncertain

Article 24 of the Amending Finance Act for 2016¹ established an obligation to automatically report the income of online platform users to the tax authorities. The data, sent once a year in a standardised format would be transferred to the pre-filled income tax return for taxpayers and it would then be the responsibility of the authorities to calculate the tax due, depending on the rules applicable to each income category.

This mechanism, directly resulting from the work of the Working Group of the Finance committee of the Senate (see insert), is codified in the new Article 1649 *quater A bis* of the General Tax Code. It will come into force on 1 January 2019.

The legislative history of automatic reporting as regards taxation

Adopted within the context of the Amending Finance Bill for 2016 at the initiative, in particular, of the MP, Pascal Cherki, **secured automatic reporting received widespread support from members of different political leanings.** Three identical amendments were tabled and adopted in open session².

During the discussions in the Finance Committee, Gilles Garrez, president, stated that it was becoming *“urgent to make reporting compulsory”*, backed up on this point by his colleague Charles de Courson. In open session, Pascal Cherki stated: *“I consider that it is important to have these discussions. And it was not surprising to see in the Commission that others had tabled the same amendment and that finally everyone was unanimous in voting for it! [...] I would like to bring to the attention of the minister the very strong desire of the members of the Finance Committee, who feel that this measure is fair and necessary”*.

Initially opposed to this mechanism, the Government finally supported it, after adopting a sub-amendment postponing its entry into force until 1 January 2019.

In reality, the mechanism adopted was that which had been proposed by the Working Group of the Finance Committee of the Senate in its September 2015 report, except that it provided for compulsory reporting without an associated tax advantage.

¹ Article 24 of the Amending Finances Act No. 2016-1918 for 2016 of 29 December 2016.

² These were presented respectively by Valérie Rabault, general rapporteur on behalf of the Finance Committee, which had adopted the amendment of Pascal Cherki (Socialist, ecologist and republican group), by Charles de Courson (Union of democrats and independents group) and by Jeanine Dubié (Radical, republican, democratic and progressive group).

More specifically, the amendment repeated, **almost word for word, in its text itself and in its explanatory statement, the amendment presented by Philippe Dallier, member of the Working Group, as Opinion rapporteur of the bill in favour of a Digital Republic**¹. This amendment had been adopted by a very large majority of the Senate, and finally deleted from the text during the joint Committee. It itself restated the amendment presented on behalf of the Finance Committee by Albéric de Montgolfier, General Rapporteur, also a member of the Working Group, for the Finance Bill for 2016, and also adopted by the Senate by a very large majority.

These initiatives were rejected by the Government, which only justified its opposition by citing its reservations on *the other* amendment of the Working Group, i.e. the fixed tax-free allowance of EUR 5,000 but not on automatic reporting in itself. Although it was still opposed to this mechanism during the discussions of the Amending Finance Bill for 2016, the Government proposed, at the same time, to establish its equivalent with regard to social contributions.

Source: Senate Finance Committee

Automatic reporting to the tax authorities of the income of online platform users, which **amounts to creating a new system of third-party reporting in addition to the existing systems** (companies, financial institutions, notaries, etc.), **is the only possible response, ultimately, to the challenge posed by the digital revolution** - both as regards the need to preserve tax revenue and therefore the quality of public services, and the imperative of fair competition between the different actors of each economic sector.

Although the Working Group can only support the principle of this measure, it emphasises however that it could, paradoxically, be weakened by its compulsory character, desired by the MPs instead of the voluntary and incentivising system proposed by the Working Group. Indeed, devoid of any penalty and any incentive, and applicable in law to **international platforms which already judge that they are not subject to the simple communication right on a case by case basis** (see above), it could remain nothing more than wishful thinking, or at least a position of principle more than an effective obligation.

The postponement to 2019 of the entry into force of the mechanism, although automatic reporting for taxation is scheduled for 2018, also reveals these risks.

Of course, some platforms could eventually implement automatic reporting, as is the case for the information obligation referred to in Article 242 *bis* of the General Tax Code, with **a concern for compliance and reputation**, and given the legal risk existing in the event of having certain activities classified as permanent establishment. **The fact remains that it is a**

¹ Opinion No. 524 (2015-2016) of Philippe Dallier, Draftsman for opinion on behalf of the Finance Committee, on the bill in favour of a Digital Republic, 5 April 2016.

much more burdensome obligation, and a much more sensitive subject for both the platforms and their users.

Moreover, the analyses carried out by the Working Group in the past few months have shown that **the list of information to be transmitted by the platforms** in accordance with the new Article 1649 *quarter A bis* of the General Tax Code, as adopted by the National Assembly, **were due to be slightly modified**¹. This information is as follows:

“1° For a natural person, the last name, first name and date of birth of the user;

“2° For a legal person, the corporate name, the address and the user’s registration number (SIREN);

“3° The user’s email address;

“4 The private individual or professional status characterising the user on the platform;

“5 The total amount of the gross income received by the user in the course of the calendar year for his activities on the online platform, or paid through it;

“6° The category to which the gross income received relates.”

This list contains information which the online platforms do not necessarily have, such as for example the user’s date of birth or a company’s registration number (if it has one), **and which the tax authorities do not need to ensure full reliability of the reporting** (provided it has a unique identification number, or the tax identification number, to carry out all the cross-checks). With regard to the other data, the platforms are already required to collect them pursuant to Article 242 *bis* of the General Tax Code.

The Working Group therefore proposes to improve the secured automatic reporting system, in order to make it fully applicable - which is not conceivable without a reform, at the same time, of the tax base rules which have never really been applied in the physical world (see above), and which are not suited to the reality of exchanges between private individuals in the digital age.

¹ In addition, the scope of application of the article should be clarified. Indeed, it covers all online platforms within the meaning of Article L. 111-7 of the Consumer Code, whereas only 2° of the I covers contact platforms (see above). For information, 1° of the I covers services based on “the ranking or referencing, by means of computer algorithms, of content, goods or services proposed or put online by third parties”, i.e. in particular search engines and other comparators.

The Working Group also proposes to bring forward the entry into force of automatic reporting to 2018: provided the latter is operational with regard to social contributions, even though it is a more complex mechanism which includes a possibility to pay at source and presupposes an interconnection with several information systems, there is no reason that it could not be implemented for taxation, in the form of a simple standardised document sent out once a year.

These proposals are set out in the third part of this report.

II

PROPOSALS: EXEMPTING SMALL TRANSACTIONS BETWEEN PRIVATE INDIVIDUALS, ENSURING FAIR TAXATION OF PROFESSIONALS

Before the mass development of the online platform economy, **the question of taxation of low additional income of individuals was not really posed, because of an implicit tolerance** which relied on the inherent limitations of the means of control and the small amounts at stake. **In short, the tax and social contribution rules were certainly complex... but they were simply not enforced, or very little, and on a case by case basis.**

Although trading between private individuals has today become massive, recurrent and standardised *via* the use of a few platforms, and furthermore traceable in real time and often to the nearest euro, **the long-avoided questions are inevitably being asked, and the answers given by existing law are inadequate.**

It is all the more urgent to give the collaborative economy a suitable framework since the platforms, just a few months from now, will have to report the income of their users to the URSSAF (Social Security Contributions collector) and to the tax authorities.

The Working Group of the Finance Committee of the Senate, on tax and tax collection in the digital economy therefore proposes **a general reform, based on a requirement of simplicity for users, consistency between the tax and social contribution rules, and fairness between taxpayers.**

This reform meets a twofold need:

- on the one hand, giving adequate space for trading between private individuals, by laying down a single threshold of EUR 3,000 allowing, as regards taxation, the exemption of low occasional and sideline income and as regards social contributions, drawing the border between private individuals and professionals;

- on the other hand, guaranteeing equality before taxation and the conditions for fair competition between professionals, by ensuring the reporting and fair taxation of significant income, without a distortion of competition or loss of tax and social contribution income.

By linking the benefit of the EUR 3,000 threshold to the acceptance of automatic income reporting, the Working Group is counting on a virtuous circle.

Finally, it is important to emphasise that the Working Group has, in its proposals, taken scrupulously care to comply with the three following rules:

- **no new tax**. On the contrary, the Working Group proposes a tax advantage, targeted at low additional occasional income, which currently, in principle, is taxed from the first euro;

- **no changes to the balances between the tax and social contribution systems**. The proposals relate exclusively to low additional occasional income. They do not in any way call into question the boundaries and parameters which exist between the social protection systems, and in particular between **the micro-enterprise system and the ordinary law self-employed workers' system**. Neither do they modify the various existing tax systems (for example, for rental income: short duration furnished rentals, professional furnished rentals, guest rooms, real estate income, etc.), but are limited to delaying the time when "the question arises". Above the EUR 3,000 threshold, these apply automatically and to all income, without exception;

- **no sector-specific new rules and obligations**. The Working Group proposes a tax and social contribution system applicable to the entire online platform economy, without distinction between income and activities, convinced that **only a general and general approach could provide the much-needed security of the actors concerned** - users, platforms, but also the "traditional" professions. Possible changes to sector-specific rules, for example as regards transport, accommodation, catering or crafts, goes beyond the remit of this report and in any event do not fall within the competence of the Working Group of the Finance Committee. This is also the case, for the rules applicable as regards labour law, consumption, competition, etc.

On all of these issues, the Working Group, relying on its pluralist composition and its collegial way of working, has taken care not to preempt the national debate or the necessary consultations.

All the members of the Working Group remain convinced that with clear, unified and fair rules, whose compliance is ensured, there is no reason to pit the "digital" economy against the "traditional" economy.

I. A SINGLE THRESHOLD OF EUR 3,000 PER YEAR TO EXEMPT LOW, OCCASIONAL AND SIDELINE INCOME OF INDIVIDUALS

A. THE CHOICE OF A FIXED TAX ALLOWANCE

Currently, all income derived from online platforms must be reported from the first euro and is subject to income tax, if some rare exceptions are excluded. These rules are often not complied with and, if they were, they would not really allow “the sharing economy” to develop.

In order to clarify things and give a legal basis to the non-taxation of low additional occasional and sideline income of private individuals, it is proposed to establish a **fixed tax-free allowance of EUR 3,000 on all income received via online platforms.**

More specifically, the proposed mechanism would mean that **the proportional tax-free allowances provided for by the micro-tax system cannot, cumulatively, be less than EUR 3,000** for income received through online platforms. For information, the proportional micro-tax tax-free allowances, which replace “real” charges, are 71% of gross income on sales of goods under the micro-BIC system, 50% for services under the micro-BIC system (which include passenger transport and the rental of furnished accommodation), 34% for services under the micro-BNC system, and 30% for non-furnished rentals under the micro-real estate system. The net taxable income would therefore *still be established by application to the gross income of the most advantageous solution for the taxpayer*, i.e. either the fixed tax-free allowance, or the proportional tax-free allowance.

Symmetrically, for taxpayers opting for the actual income and charges regime, it would be expected that the fees and charges deducted from the gross income derived from the platforms may not, in any case, be less than EUR 3,000.

Proposal No. 1

Establish a fixed tax allowance of EUR 3,000 on all income received by individuals *via* online platforms and automatically reported by these platforms, so that occasional and sideline income can be exempted with a simple rule. For amounts above EUR 3,000 of gross income, the tax advantage would be regressive, and would become neutral when the income becomes significant.

The main advantage of an alternative tax-free allowance to the proportional tax-free allowances is that this option allows for a gradual “exit” from the mechanism, and neutrality beyond a certain amount of income. As shown in the diagram below, three situations are thus distinguished:

① **“Exemption”**: if the gross income is between EUR 0 and EUR 3,000, it is totally exempt from income tax, since the fixed tax-free allowance of EUR 3,000 is greater than the gross income. A student offering a few hours of babysitting services per week or a young couple which rents out its unused pram would thus be exempt without any procedure to fulfil or evidence to present;

② **“Transition”**: if the gross income is greater than EUR 3,000, the taxpayer continues to benefit from a tax reduction for as long as the fixed tax-free allowance remains more favourable than the proportional tax-free allowance. The exit threshold from the mechanism is reached when the proportional tax-free allowance is equal to EUR 3,000, i.e. an “exit threshold” of EUR 4,225 for sales of goods, EUR 6,000 for services under the BIC system, EUR 8,824 for services under the BNC system and EUR 10,000 for real estate income ¹(see below);

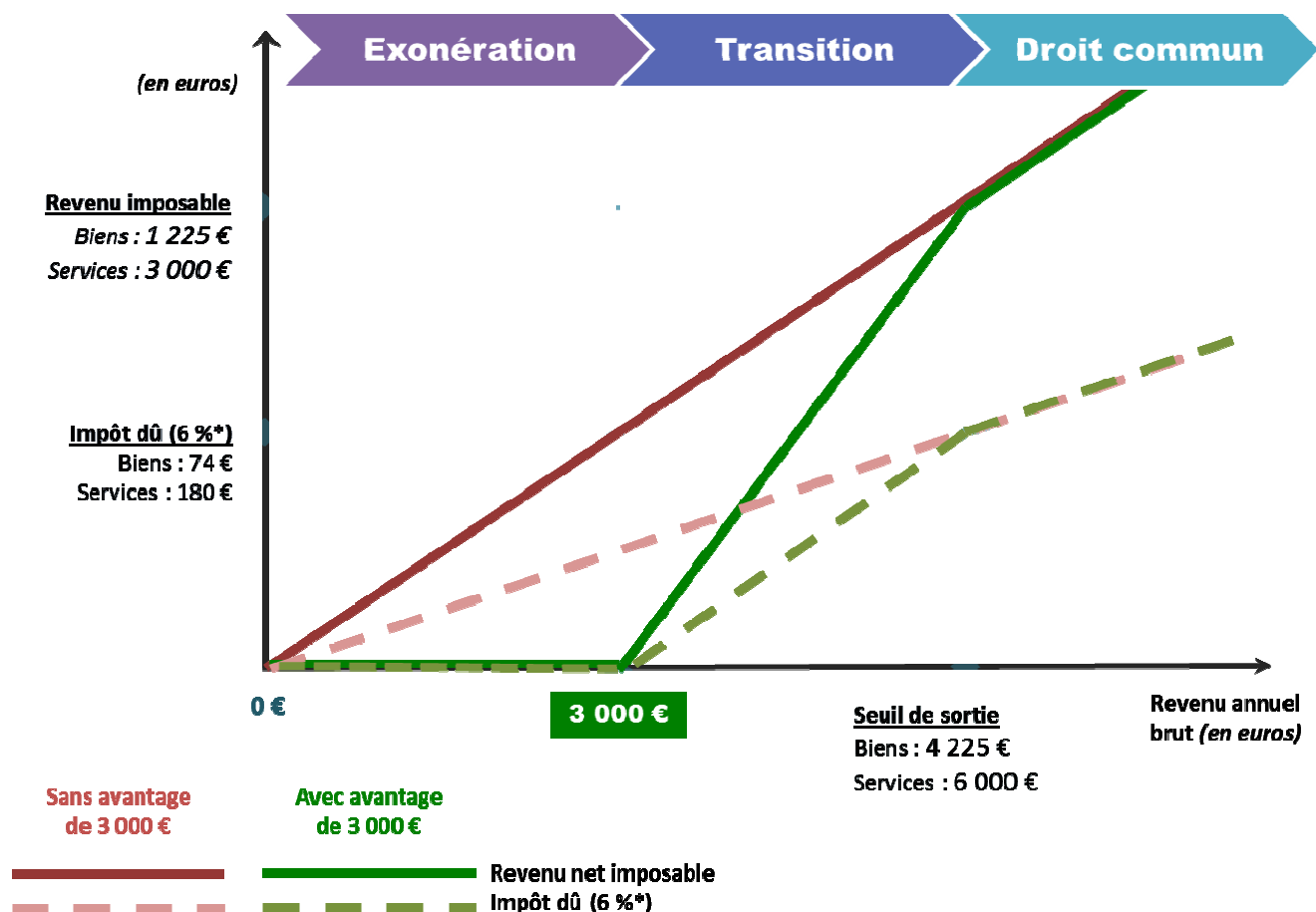
③ **“Ordinary law”**: when the gross income is greater than the exit thresholds of the mechanism, the effect of the measure is neutral, since the ordinary law tax-free allowances are greater than the proposed fixed tax-free allowance, and therefore more advantageous for the taxpayer.

¹ These thresholds are valid if the gross income received via platforms relates entirely to only one of the categories. In the case of mixed income, the actual exit threshold depends on the share of each category of income.

The fact that the exit threshold is higher for services (under the micro-BIC system and necessarily under the micro-BNC system) than for sales of material goods is explained simply by the fact that the proportional tax-free allowance applicable to sales of goods (71%) is significantly higher than that applicable to services (50% or 34%) or to the micro-real estate system (30%).

**The effect of the fixed tax allowance of EUR 3,000
 on the net taxable income and the tax due**

(An example of sales of goods and BIC services)



Where the micro-tax system is applied, the net taxable income would be calculated by applying a proportional tax-free allowance of 71% (sales of goods) or 50% (services BIC) to the gross income. This allowance is currently set at a minimum amount of EUR 305 (not shown here). The proposed tax advantage consists of raising the minimum amount of the tax-free allowance to EUR 3,000 for income reported by the platforms.

For as long as the gross income is less than the EUR 3,000 tax-free allowance, the taxpayer is exempt.

The "exemption threshold" (EUR 3,000) is the level where the EUR 3,000 tax-free allowance is equal to the gross annual income. For as long as the amount of EUR 3,000 is more favourable than the proportional tax-free allowance, the taxpayer will benefit from a tax reduction.

The "exit threshold" is the level of annual gross income starting at which the proportional tax-free allowance of the micro-tax system becomes more favourable than the fixed tax-free allowance of EUR 3,000. The above "exit thresholds" are valid if the gross income received through platforms relates entirely to only one of the categories. In the case of mixed income, the actual exit threshold depends on the share of each category of income.

* By convention, income is taxed at the rate of 6%, equivalent to the average rate of taxation of all payers of income tax (approximately 46% of all tax households). The actual tax rate depends on all the income and the composition of the tax household.

B. A SYSTEM THAT ENCOURAGES THE DEVELOPMENT OF THE SHARING ECONOMY, WITHOUT A THRESHOLD EFFECT OR A DISTORTION OF COMPETITION

As it is designed, the measure proposed by the Working Group will exempt totally or partially modest additional income, without however creating a threshold effect on “exit” from the mechanism, or inequality of treatment between taxpayers, whenever they derive significant income from their “online” or “offline” activities.

1. No threshold effect beyond EUR 3,000

The fixed tax-free allowance does not create any threshold effect: above annual gross income of EUR 3,000, the net taxable income and the tax due are gradually aligned with that of ordinary law, until they become identical at the exit threshold. Thanks to this smoothing, users who exceed the EUR 3,000 threshold in a year for their activities on collaborative platforms would not be suddenly taxed on the whole of their income.

The EUR 3,000 threshold therefore amounts to laying down in law, for the first time, a simple and unique criterion which characterises occasional or sideline income - and hence exempts it. This criterion, although imperfect due to its general nature, is needed to take account of the new reality created by the online platform economy: the millions of people who carry out multiple, recurrent, standardised and traceable activities in real time, **cannot be subject to complex rules that are often unknown, and imperfectly completed by tax doctrine and case-law** whose criteria are, moreover, variable, depending on the activities, the administrative authorities and the courts.

It should be noted that this threshold **would not necessarily mean that greater income would become automatically taxable:** can be seen as a “warning threshold”, below which “the question does not arise”, but above which some income may remain exempt (see below).

2. No distortion of competition between professionals

The alternative fixed tax-free allowance does not create any distortion of competition between professionals using the online platforms and others: as soon as the income becomes significant, it is the ordinary law, the entire ordinary law and nothing but the ordinary law that applies, in other words, the application of a proportional tax-free allowance under the micro-tax system, or the deduction of expenses under the actual income and charge system.

The “exit threshold” therefore amounts to introducing an implicit concept of “significant income”, variable according to the category to which the income relates, but simple, clear and objective.

Therefore, those people whose annual income is significant are actually taxed on the whole of their income, from the first euro, and under the conditions of ordinary law. **The part of their income below the exit threshold does not “keep” the benefit of the advantage.** A tax-free allowance, whether it is fixed or proportional, is in this respect **different from a gradual scale of income tax**, where a particular rate of taxation is applied to each bracket, even in the case of income that falls within a higher income bracket.

In other words, no private hire driver, no renter of tourist furnished accommodation, no self-employed creator of logos, hairdresser or home tutor will derive a financial advantage from the proposed measure whenever his activity provides him with a significant income - the threshold being set at a level considerably lower than that of an income on which a person could “live” (see below).

The proposed measure therefore automatically excludes income that may constitute unfair competition in respect of other professionals, whether they are self-employed workers (liberal professions, craftsmen, traders, etc.) or employees and whether they use an online platform or not. This risk is mitigated further by the fact that automatic reporting of income by the platforms ensures the reliability of the tax returns.

Symmetrically, the proposed measure does not create any deadweight effect for professionals: no self-employed worker in a “traditional” sector would obtain a tax advantage by using an online platform rather than “physical” means, once his total income exceeds the exit thresholds.

In short, the advantage does in fact exempt occasional private individuals but does not change anything for “real” professionals.

The table below presents the list of potential beneficiaries of the proposed measure, and of those who would not benefit from it.

**Scope of application of the fixed tax-free allowance
as regards income tax**

<u>Beneficiaries</u>	<u>Non-beneficiaries</u>
<ul style="list-style-type: none"> • Users whose gross annual income received <i>via</i> platforms is less than EUR 3,000 (<i>entirely exempt</i>). • Users whose gross annual income received <i>via</i> platforms is greater than €3,000 but does not exceed the exit threshold, between €4,225 and €8,824, depending on the activities (<i>partially exempt</i>). 	<ul style="list-style-type: none"> • Users who do not accept automatic reporting of their income. • Users of <i>platforms</i> which do not implement automatic reporting of income. • Users whose gross annual income collected <i>via</i> platforms is greater than the exit threshold, between €4,225 and €8,824, depending on the activities. • Micro-entrepreneurs, if they opt for the levy in discharge of income tax. • Companies and other legal persons not subject to income tax.

Source: Senate Finance Committee

This table prompts three observations.

Firstly, the proposed mechanism does not distinguish, in its income tax component, between “private individuals” and “professionals”, but covers all persons liable to pay income tax on income else than received as an employee (rental or real estate income, income from liberal profession, commercial, craft activities, etc.). **This distinction is not necessary**, since the advantage “cancels itself out” when the annual income reaches a significant amount. Apart from the fact that it would be superfluous, reserving the advantage to non-professional private individuals would in addition pose a problem with respect to the principle of equality before taxes, in that it would lead to treating income from the same category (BIC, BNC, etc.) differently.

Secondly, by definition, those persons whose annual net income from all sources, does not exceed EUR 9,710 per share of the family quotient, i.e. the limit of the first bracket of the income tax scale in 2016, are not taxable¹.

¹ The proposed advantage is nevertheless applicable to them, and they can benefit from it where the difference in the calculation of the net taxable income, due to the tax-free allowance of EUR 3,000 rather than the proportional tax-free “allowance” or the deduction of the actual charges, would allow them to remain in the non-taxable bracket instead of “moving” up into the tranche taxed at 14%. The same is true for moving up into the higher brackets.

Thirdly, micro-entrepreneurs cannot benefit from the mechanism, if they opt for the levy in discharge of income tax at the same time as the payment of social contributions (see above). Indeed, the levy in discharge by definition excludes the application of the proportional tax-free allowances of the micro-tax system, or the deduction of expenses of the actual income system, and consequently taking into account a minimum amount of EUR 3,000. This exclusion is no way problematic, for two reasons:

- with regard to the principle, affiliation to the micro-entrepreneur system presupposes that the taxpayer considers himself, through a voluntary approach, as undertaking an activity of a professional nature: there is therefore no reason to consider that the income that he derives from the platforms is additional sideline or occasional income;

- in practice, the levy in discharge of income tax, at a fixed rate of 1% for the sales of goods under the BIC system, 1.7% for services under the BIC system, and 2.2% for services under the BNC system (see above), most of the time is much more favourable than the standard progressive scale taxation, with or without the proposed advantage. It is true that in some cases, in particular for taxpayers who are not liable to income tax because their annual combined income is less than EUR 9,710, the choice of the micro-enterprise system with a levy in discharge of income tax is less advantageous - but this is a policy decision unconnected with the measure proposed by the Working Group.

3. Cost-sharing and second-hand sales would remain exempt, even above the EUR 3,000 threshold

The proposed tax advantage consists of applying a fixed tax-free allowance to income received *via* platforms and reported by them, which would allow complete exemption of income lower than EUR 3,000, and partial exemption of income between EUR 3,000 and the exit threshold. **For the fraction of the remaining income taxable after application of the tax advantage, ordinary law automatically applies, with no modification.**

This means in particular that income exempt due to its nature will in any case remain exempt, even above the threshold. This mainly concerns the following income sources, which account for a significant part of the online platform economy:

- income from cost-sharing, including car sharing, whose non-taxable nature was confirmed by the tax instruction of 30 August 2016 (see above). As explained above, determining the exact amount for cost-sharing is not always easy (for example in the case of "boat sharing" and "co-cooking"): the value of the proposed measure is to secure *in any event* the persons concerned as long as the threshold is not crossed, and to reserve to higher income the need for a detailed analysis;

- **income derived from second-hand sales**, exempt in accordance with Article L. 150 UA of the General Tax Code (see above). However, above the EUR 3,000 threshold, the distinction between second-hand sales and commercial sales remains confused and difficult to apply since no tax instruction has been published on the subject, unlike for cost-sharing activities. The Working Group is therefore in full agreement with the aforementioned Recommendation No. 25 of the IGAS report: *“clarify the doctrine applicable [...] to non-commercial second-hand sales and develop guidelines on the subject, accessible online”*.

In the proposed mechanism, automatically reported income is therefore not necessarily taxed income.

The EUR 3,000 threshold must thus be understood more as a *“warning threshold”*, above which *“the question of taxation is asked”*, rather than as a threshold that automatically triggers taxation. The primary objective of the proposed measure is **not to impose excessive constraints on private individuals and not to involve the services of the tax authorities in issues of little significance**, which moreover could often turn out to involve, at the end of a painstaking review, simple cost-sharing. The proposed threshold thus allows the tax authorities to **concentrate its resources on the truly important cases**.

From an operational point of view, however, **processing by the online platforms and the tax authorities of income exempt “by nature” implies a few adaptations**, but no complication for the users’ reporting procedures. These adaptations are presented in the part relating to secured automatic reporting (see below).

C. JUSTIFICATION OF THE AMOUNT OF EUR 3,000

The EUR 3,000 threshold must be regarded, in particular, in the light of the *“exit thresholds”* that follow it for each activity category.

**Possible exemption thresholds and exit thresholds
for taxpayers under the micro-tax system**

Abattement forfaitaire minimal	Seuil de sortie (en revenu brut annuel)			
	Biens (BIC) (abattement 71 %)	Services (BIC) (abattement 50 %)	Services (BNC) (abattement 34 %)	Revenus fonciers (abattement 30 %)
305 €	430 €	610 €	897 €	1 017 €
1 000 €	1 408 €	2 000 €	2 941 €	3 333 €
2 000 €	2 817 €	4 000 €	5 882 €	6 667 €
3 000 €	4 225 €	6 000 €	8 824 €	10 000 €
4 000 €	5 634 €	8 000 €	11 765 €	13 333 €
5 000 €	7 042 €	10 000 €	14 706 €	16 667 €
6 000 €	8 451 €	12 000 €	17 647 €	20 000 €
7 000 €	9 859 €	14 000 €	20 588 €	23 333 €
8 000 €	11 268 €	16 000 €	23 529 €	26 667 €
9 000 €	12 676 €	18 000 €	26 471 €	30 000 €
10 000 €	14 085 €	20 000 €	29 412 €	33 333 €

The “exemption threshold” is the level where the tax-free allowance is equal to the gross annual income. It is currently set at EUR 305, the minimum level of tax-free allowances of the micro-tax system.

The “exit threshold” is the level of annual gross income where the proportional tax-free allowance under ordinary law of the micro-tax system becomes more favourable than the minimum fixed tax-free allowance. These thresholds are valid if the gross income received via platforms relates entirely to only one of the categories. In the case of mixed income, the actual exit threshold depends on the share of each category of income.

Source: Senate Finance

The EUR 3,000 annual threshold is equal to EUR 250 of gross income per month, or a little less than EUR 60 of gross income per week.

Beyond the *principle* of a threshold, establishing its *level necessarily implies some uncertainty*, given the new nature of the proposed measure and the very patchy knowledge that the public authorities have of income derived from collaborative platforms. Given its general nature and its application to the *gross proceeds*, **this threshold also implies some simplification** that the Working Group assumes responsibility for and considers to be necessary.

This threshold must be a simple criterion, clear and generally applicable, whose level must be set so as to **exempt occasional and sideline income earned through collaborative economy platforms, while remaining neutral once the activity provides significant income** which may otherwise create a distortion of competition with regard to “classic” professionals. It must moreover be sufficiently incentivising to encourage automatic reporting.

In this respect, the EUR 3,000 level appears to meet these criteria:

- **it is equivalent to a sixth of the monthly gross SMIC (minimum salary) (EUR 1,480 in 2017¹), or to half of the RSA (Income supplement scheme) (EUR 353 in 2017):** much lower than the income that could be gained from an employed full-time or even part-time activity, it equates to a non-negligible complement of income for a person benefiting from low resources. In this regard, and in order to take account of the increase in the cost of living, it could be envisaged, eventually, to index the threshold in line with the consumer price index or to the SMIC itself, or the "*Plafond annuel de la Sécurité sociale*"² (PASS), by analogy with the affiliation thresholds discussed *above*;

- **from a sector-specific point of view, it is equal, for example, to half the average annual cost for a private individual of a city car clocking up 15,000 kilometres³;**

- **it seems to be able to benefit users of platforms typically offering income of an occasional nature.** For example, the average annual income of a private individual is EUR 350 on *Stootie*, EUR 700 on *Drivy* and *Ouicar*, EUR 400 on *Leboncoin* (excluding vehicles and real estate), etc.;

- **the simulations carried out by the Working Group** on the basis of precise figures communicated by the platforms confirm coverage of the *large majority of users* of most of the platforms, without however exempting the most active users and service providers;

- **finally, the level of EUR 3,000 appears to be in line with the choices made by other European countries (see insert).** In Belgium, in particular, the Minister of the Digital Agenda, Alexander De Croo, has estimated that approximately **90% of users of collaborative platforms in Belgium** received income lower than the EUR 5,100 threshold, and would therefore be taxed at the reduced rate of 10%, instead of 33% (see below).

Comparisons with other European initiatives

United Kingdom: the threshold of 2 x 1,000 pounds is slightly less advantageous, but it is an *additional* tax-free allowance and not accompanied by automatic reporting, which ultimately makes it more permissive.

Belgium: the EUR 5,100 threshold is higher, but lower income is subject to a set tax of 10%.

Italy: the proposed EUR 10,000 exemption threshold is higher, but lower income is subject to a set tax of 10%.

These initiatives are set out in detail in the third part of this report.

¹ On the basis of the legal working time i.e. 35 hours per week or 151.67 hours per month.

² The EUR 3,000 threshold is equal to approximately 13% of the PASS, set at EUR 39,228 in 2017.

³ Source: Agency of the environment and energy management (ADEME), "Private vehicles sold in France", *Official Guide*, 2011 edition, page 26.

The EUR 3,000 level, of course, may be changed depending on new elements. **At this stage, what is important is to set out the principle.**

D. OBSERVATIONS REGARDING PROPORTIONALITY AND OTHER CONSTITUTIONAL PRINCIPLES

The mechanism proposed by the Working Group is to grant, through a tax-free allowance of EUR 3,000, partial or total exemption of low side line additional occasional income received *via* online platforms, provided this income is automatically reported. It therefore concerns **both “legalising” an exemption of this income which, in the physical world, enjoyed *de facto* tolerance, and at the same time granting a “bonus” for voluntary tax appliance of platform users who accept automatic reporting.**

On several occasions, and in particular during the public discussion of the amendments resulting from the Working Group proposals¹, the Government argued that such a provision could raise a **problem in respect of the constitutional principle of equality before taxation, since it would lead to treating income of the same category in a different way** - for example, an apartment rented out on *Airbnb* would not be treated the same way as an apartment rented out *via* a traditional ad in a newspaper.

The analysis made by the Working Group of the Finance Committee is different. At the legal level, the Working Group believes that the proposed mechanism does not pose a problem of a constitutional order, since **it is the result of the combination of two objectives of constitutional value, namely the objective of accessibility and intelligibility of the law, and the objective of combating tax fraud and tax evasion.**

More specifically, the *principle* of the threshold stems from the objective of accessibility and intelligibility of the law, whereas *limiting* it to that income reported by the platforms stems from the objective of combating tax fraud and tax evasion. Finally, its *level* is set in consideration of the two objectives, in accordance with the principle of proportionality.

1. The principle of a single threshold is in line with the objective of accessibility and intelligibility of the law

The main objective of the proposed measure is to **lay down a simple and clear criterion to make the distinction** between, on the one hand, income derived from a modest occasional or sideline activity, and on the other hand, income derived from a regular activity or of a professional nature, liable to income tax.

¹ On the occasion of the review of the Finance Bill for 2016 and the Bill in favour of a Digital Republic (see above).

Compared to the existing law, it is indeed a simplification, since today a given income can receive a different qualification on a case by case basis, by the taxpayer himself, by the authorities or by the courts as taxable or non-taxable.

This simplification is embraced fully: whereas small trading and services between private individuals has taken on an unprecedented magnitude with the emergence of digital platforms and these are known about and will soon be reported to the nearest euro, **it is no longer tenable to base the tolerance from which low additional income benefited on the non-application of the law or on complex and barely known tax doctrine**, which places “genuine” private individuals of good faith in a delicate situation, enables “fake” private individuals to carry out a substantial activity under conditions of unfair competition, and in the long-term threatens the viability of the “sharing economy”, which constitutes an important proportion of the economy of online platforms. **In this respect, the measure is in line with the constitutional value of accessibility and intelligibility of the law.**

The proposed simplification is also in line with the principle of proportionality, since its scope would be limited, both as regards its financial impact on taxpayers and public revenue and its nature, exempting it from ordinary law. Indeed:

- the effect for taxpayers and therefore for public revenue would be neutral once the gross income becomes significant, since the proposed measure is cancelled out once the ordinary law tax-free allowances or deductible expenses become more advantageous. In other words, it is not an *additional tax-free allowance* from which the income and taxpayers concerned would benefit, but an *alternative* tax-free allowance limited to small scale online activities;

- for the same reasons, the effect on the conditions of competition between “online” and “offline” professionals would be extremely limited. It should be added that the income would be reported automatically by the platforms on behalf of their beneficiaries, while this guarantee still does not exist for other self-employed workers;

- the measure relates to all income derived from private individuals’ non-employed activities, i.e. BIC, BNC and real estate incomes¹, without discrimination;

- likewise, the proposed measure has no influence on the taxpayer’s ability to choose, if he so wishes, the actual income system instead of the micro-tax system. If his annual gross income is less than EUR 3,000, it is exempt under the same conditions. If it exceeds EUR 3,000,

¹ Farming profits are not addressed in this report, because they do not currently appear to apply to the activities offered by online platforms. Should this become the case, they could also be covered by the proposed mechanism.

the tax advantage consists of assuming that the deductible charges are at least equal to EUR 3,000.

2. The limitation of the advantage to income derived from platforms and reported automatically is in line with the objective of combating tax fraud and tax evasion

The proposed tax advantage is not linked to the *nature* of the income, since all income not earned as an employee are included without discrimination.

Instead, it is linked to the tax collection processes: in fact, automatic transmission by the accredited online platforms and tracing to the nearest euro, the *sine qua non* condition to benefit from the advantage, **ensures comprehensive reporting and, where appropriate, fair taxation of the income** - which is not always the case of the other self-employed workers, who carry out their reporting procedures by themselves, and is very far from being the case in the “physical” world of trading between private individuals (car boot sales, services at home, etc.).

By securing in a totally new way tax reporting, the proposed measure therefore meets **the objective of constitutional value of combating tax fraud and tax evasion**, recognised on several occasions by the Constitutional Council¹.

Linking the benefit of a tax advantage to the reliability of the tax returns is not an innovation: **it is precisely the justification of the exemption of the increase by 25% of the taxable profits of self-employed workers who turn to an accredited certification body to comply with their tax and accounting obligations (OGA)**. A non-increase of the taxable base is, from an economic point of view, the strict equivalent of a tax-free allowance - and that for OGAs is much more significant since it is proportional and is dependent on the income which constitutes the taxpayer’s main activity, whereas the EUR 3,000 tax-free allowance proposed by the Working Group is fixed and only produces its effect at the level of modest additional income.

Again, the exceptional nature of the proposed measure appears to be in line with the principle of proportionality, for three reasons:

- **first, the effect of the exemption is limited**, since it involves a fixed tax-free allowance, targeted at low income, an alternative to the ordinary law, and which in no way calls into question the application of the latter above the thresholds;

- **secondly, securing tax revenue is strong**, and offers a reliability of reporting that is incomparable with that which prevails in “physical” trading.

¹ For example, in its recent Decision No. 2016-591 QPC of 21 October 2016, regarding the creation of a public register of trusts.

- **thirdly, the scope of the data transmitted** as part of secured automatic reporting by the platforms (i.e. the identity, the gross income and its category, see below), is **very limited compared with the data required for other third-party reporting systems - starting with nominative social reporting (DSN)**, which covers all employees in France, or the data collected for the automatic exchange of tax information at the international level.

In any event, since the mechanism is voluntary, the taxpayer will always be able to have the ordinary law applied.

The Working Group however points out that establishing a simple and sole criterion for exempting occasional and sideline additional income is **in itself a good measure** without consideration of the reporting arrangements, satisfying an imperative of simplification, **and that this EUR 3,000 (or another) criterion could also eventually be applied to "off-platform" trading** - i.e., in a word, to jumble sales and minor services between neighbours. Although such a development could be envisaged, it appears premature, however, for three reasons:

- **firstly, it should be included in an overall revision of the taxation of the "low income" of natural persons**, which goes far beyond the remit of this report and could not be implemented without a national debate;

- **secondly, its potential impact in terms of tax revenue could be much greater**, which again requires a general approach;

- **thirdly, in the short term, not making the tax advantage conditional on reporting would *ipso facto* result in the removal of any incentive to civic-mindedness with regard to tax**, unscrupulous taxpayers then having a *twofold* interest in not reporting their income derived from online platforms, firstly, because the risk of a control would be minimal, and secondly because in the event of a tax adjustment, they could still benefit from the tax-free allowance.

3. A measure general interest ground, with no alternative in the short term

In conclusion, the measure proposed by the Working Group is of general interest. With regard to securing tax revenue and the clarification that it gives to taxpayers, the exemptions that it involves are of limited scope - especially as ultimately it consists of granting an advantage to income which currently is only very partially reported.

More fundamentally, at the conclusion of the hearings, analysis and travel undertaken by the Working Group it appears **that there is simply no technical alternative to the proposed solution, at least in the short term¹**: either this income is reported by the platforms, in exchange for a tax

¹ In particular, given the technical and legal obstacles to a levy at source on the Belgian model.

advantage that is also a desirable simplification, and this will then be taxed, **or nothing changes, and then this income will continue, for the most part, to evade taxation, which would also go against equality before taxation - probably of much greater importance.**

Establishing general thresholds for gross proceeds has not only been adopted by the legislature as regards social contributions, but **also by the United Kingdom and Belgium, and is being considered in Italy, and sometimes with exemptions of a much greater scope**, without this appearing to pose a problem with regard to the constitutional principles of these countries.

II. AN ALIGNMENT OF SOCIAL PROTECTION OBLIGATIONS

Establishing a simple and secure tax framework for private individuals using collaborative platforms **cannot be carried out without coordination with the existing rules on social contributions.**

The Working Group therefore proposes **a few adjustments in order to guarantee the legal certainty of these new activities, while preserving the income of the social security systems, and without calling into question the current framework of social protection rules** - for example, with regard to the rules applicable to micro-entrepreneurs as compared to self-employed workers, the amount of social contributions and extent of social rights and benefits, sector-specific obligations, etc.

Without making any assumptions about such developments, which largely exceed the remit of this report, require a national debate and do not fall within its competence, the Working Group believes that **it is possible, by only making minor adjustments, to offer users of platforms a coherent tax and social contributions framework that is secure and without a distortion of competition or losses of tax revenue.**

A. A SIMPLE AND UNIQUE CRITERION FOR DISTINGUISHING PRIVATE INDIVIDUALS FROM PROFESSIONALS

1. Presumption of non-affiliation to Social security as a self-employed worker when income is less than EUR 3,000 per year

To the extent that the proposed EUR 3,000 tax-free allowance as regards income tax aims to take account, in an inclusive and simplified way, the non-professional nature of the income received, **it appears logical that this same income is not considered, with regard to social contributions, in principle as deriving from a professional activity and requiring affiliation to the social security system for self-employed workers (RSI).**

With a concern for an alignment with the tax component, the Working Group therefore proposes to establish a **presumption of the non-professional nature of activities undertaken through online platforms that produce gross annual income not exceeding EUR 3,000 - EUR 250 gross per month, or EUR 60 per week.**

The choice of a “social threshold” aligned with the proposed taxation threshold is in line with Recommendation No. 24 of the IGAS report, i.e. *“clarify and move towards harmonisation of criteria defining what makes a person a professional among the different branches of the law”*. This proposal therefore also meets the principle of clarity and the objective of constitutional value of accessibility to and intelligibility of the law.

The approach by thresholds, although not currently very widespread, is also recommended by the European Commission in its communication of 2 June 2016 entitled *“A European agenda for the collaborative economy”*: *“For the purposes of regulating the activities in question, private individuals offering services via collaborative platforms on a peer-to-peer and occasional basis should not be automatically treated as professional service providers. Establishing (possibly sector-specific) thresholds under which an economic activity would be considered a non-professional peer-to-peer activity may be a suitable way forward.”*¹

Establishing a threshold for clarifying the distinction between private individuals and professionals would **not only be a step forward for the users of the platforms, but also:**

- for the platforms themselves, which would therefore be largely freed from the responsibility - and from the legal risk, as the example of Heetch shows (see above) - of establishing thresholds of their own initiative. This is a demand of the very large majority of the platforms interviewed by the Working Group. The subject is particularly important for virtual marketplaces where private individuals selling “handmade” objects like *A Little Market* or the German *Da Wanda*, or for platforms offering minor services or rentals of goods between private individuals;

- for the professionals of the “traditional” sectors: again, this demand was often expressed during hearings of the Working Group, each aware that a clear, objective and indeed respected criterion would be in the interest of the “physical” economy as well as the “digital” economy.

Establishing a single criterion of legislative value used to distinguish private individuals from professionals with regard to social contributions, but also with regard to taxation, **could if necessary be used as the basis of a series of sector-specific clarifications** - for example as regards consumer

¹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and to the Committee of the Regions, “A European agenda for the collaborative economy”, 2 June 2016.*

law, compliance with health standards etc. These questions however go beyond the remit of this report.

Proposal No. 2

Establish a simple and unique criterion for distinguishing private individuals from professionals, with regard to social contributions, based on the same threshold of EUR 3,000 of gross income. If their income from online platforms is below this threshold, users would be presumed non-professional, and therefore not affiliated to the social security regime of self-employed workers, and not subject to social contributions.

More specifically, the Working Group proposes the establishment of a “minimum affiliation threshold” to the self-employed workers’ social security system (RSI), guaranteeing private individuals earning less than EUR 3,000 per year *via* online platforms that they **will not be required to join the RSI and pay social contributions for this purpose - whereas today, the slightest service offered *via* a platform or the slightest object sold on the Internet may result in affiliation to the RSI from the first euro, the payment of social contributions, the corporate land property tax (CFE) and chamber of commerce fees, as well as being subject to various sector-specific obligations.**

It should be noted that such a “minimum threshold”:

- *would not prevent users from joining the social security even if they earn less than EUR 3,000 per year*, if they believe that their activity is of a professional nature, giving an entitlement to social benefits. The “minimum threshold” only amounts to “freeing” private individuals from having to deal with subtle questions of doctrine and administrative procedures that will always be too complex given the small amounts at stake;

- neither would it force a person to join the social security above EUR 3,000 gross per year: when this threshold is passed, ordinary law would apply, i.e. an assessment on a case by case basis by the user himself, if relevant under the control of the URSSAF and the court, of the professional nature or otherwise of the activity undertaken, in particular in relation to the net profit or other activities undertaken elsewhere, if this is the case. **It is a “minimum threshold”, and not a “maximum threshold”** - the latter having been set at EUR 7,846 for rentals of movable property or EUR 23,000 for furnished rentals by the Social Security Financing Act for 2017 (see above).

**The proposal of the Working Group: a “minimum threshold”
in addition to the “maximum thresholds” for affiliation to Social security**

<i>(Proposal)</i>	<i>(Law not modified)</i>	<i>(Law not modified)</i>
<p>>€0 per year to €3,000 per year</p> <p>Affiliation always optional</p> <p>Unless a voluntary decision to join the RSI is made, the user is not considered to be a self-employed worker.</p>	<p>>more than €3,000 per year</p> <p>Affiliation on a case by case basis</p> <p>When the activity is regarded as being of a professional nature, ordinary law applies.</p>	<p>> more than €7,846 per year Movable property rentals</p> <p>> more than €23,000 per year Furnished property rentals</p> <p>Compulsory affiliation</p> <p>NB: there is no “maximum threshold” for sales of goods and services.</p>

The thresholds are expressed in annual proceeds from all activities carried out via online platforms..

Source: Senate Finance Committee

The mechanism proposed by the Working Group takes into account **the particular case of users of online platforms who are already affiliated to the RSI as self-employed workers**. In this case, the income they derive from online platforms, if it remains below the EUR 3,000 gross threshold, would be **assumed to constitute non-professional income, unless it is derived from activities that are of the same nature as their “core” professional activity, directly connected to it, or undertaken using the same resources**. Two types of cases would then be distinguished:

- **activities unrelated to the main activity**: an artisan baker who rents *incidentally* his personal accommodation on an online platform when he goes on holiday would not have the income derived from this rental taken into account for the calculation of his social contributions;

- **activities related to the main activity**: by contrast, a seller of “hand-made” objects present *both* in a physical shop and in a virtual marketplace would have all his income taken into account for the calculation of his social contributions.

In this case, the Working Group considers that **it is not appropriate to limit the application of the “social” threshold only to those activities for which the income is automatically reported (as it is for the income tax threshold)**. It would be in the general interest that this is applied to all sideline activities carried out by private individuals *via* online platforms.

2. A criterion with no effect on the equality of treatment and the requirement of fair competition between professionals

The introduction of a threshold for joining the social security for users of online platforms would be a completely new measure, which raises some questions, particularly as regards the principle of equality. **Indeed, currently, a self-employed worker who realises a very low income, or who is even loss-making, is nonetheless required to join a social security system.**

In the light of the hearings and analyses carried out over the past few months, the Working Group considers, however, that **the solution proposed is the most relevant, for reasons of fact and of law.**

Firstly, there is no questioning of the principle according to which all self-employed workers are, by definition, affiliated to a social security system, whether or not they undertake their activity *via* an online platform. The proposed threshold is therefore in no case intended to “exempt” certain self-employed workers from this obligation, but to **establish a simple rule - moreover optional - to distinguish the self-employed worker, i.e. the professional, from the private individual** who is an amateur or undertaking a sideline activity.

Thus, the innovation has no bearing on the *principle* of changing from the status of private individual to that of professional, since this question has always been posed and is still posed, but on the *criteria* used to defined this change: instead of the complex, outdated and largely ignored criteria, **it is proposed to replace - or rather to add, in the form of an ultimate guarantee - a criterion that is simple and suited** to a world where exchange between private individuals on the Internet become massive, standardised, and traceable in real time, and where the users like the platforms and the authorities need legal certainty.

The affiliation thresholds of EUR 7,846 and EUR 23,000 established on 1 January 2017, which are mandatory, meet a similar need to simply demarcate the border between private individuals and professionals. In this regard the optional affiliation threshold proposed by the Working Group is more flexible and allows greater leeway for the user to assess his own situation.

Therefore, and as in the case of its “income tax” part, the proposed measure would not introduce any distortion of competition *between professionals*. Indeed, when they are affiliated to a social security system, because they have chosen to do so or compulsorily after crossing the “maximum” threshold, **the users of online platforms are subject to social security contributions on all of their income, i.e. from the first euro earned, and regarded as self-employed workers under ordinary law. The affiliation threshold - minimum or maximum - in no event involves an exemption of**

lower income, but is a “warning threshold” above which it is assumed that *all* income is professional income.

In other words, no craftsman, trader or service provider will ever benefit from a “bonus” by using an online platform rather than traditional means when he undertakes an activity as a professional and is affiliated as such to the social security.

3. Towards other “maximum social contribution thresholds”?

Although the Working Group proposes the establishment of a “minimum social threshold” aligned with the “tax threshold” of EUR 3,000, in order to ensure that income that is not subject to income tax could not result in compulsory affiliation to the RSI, this does not exclude thinking on **establishing other “maximum social contribution thresholds”**, in addition to those established out in the Social Security Financing Act for 2017 for rentals of furnished accommodation (EUR 23,000) and rentals of movable property (EUR 7,846).

However, at this stage, it does not seem appropriate to propose a new measure.

With regard to the two existing thresholds for the rental of movable and immovable property, they are justified in their principle because, in their absence, there is no criterion to clearly distinguish property income and activity income. **As to the level of these thresholds, it would be premature to state what they should be today**, and all more so to propose changing them, at a time when the online platforms’ ecosystem needs stability and legal simplicity. It will be recalled, moreover, that the EUR 23,000 threshold applicable to short-term rentals has the advantage of being aligned with an existing system.

With regard to the affiliation thresholds for the other activities, i.e. sales of goods and provision of services, it is not about distinguishing activity income from property income, **but between activity income providing evidence, or otherwise, of self-employed worker status (a “profession”)**.

In this regard, although establishing compulsory affiliation thresholds for these activities does not seem to pose a problem in principle, **the question of the “right” level for them is still currently open**. Indeed, the two existing thresholds are expressed in gross proceeds, but in reality, the commercial nature of the activity is better assessed with regard to net income. **However, deductible expenses can be extremely variable with regard to sales and services**. Therefore, two options, still in their early stages, could be explored:

- either the establishment of thresholds expressed in net proceeds, which would enable the professional nature of the activity to be “grasped”

with greater accuracy, but would make the mechanism less clear and would impose a greater accounting and administrative burden on users of collaborative platforms who only receive modest additional income;

- or the establishment of thresholds expressed in gross proceeds, which could be envisaged by analogy with the micro-tax system.

That said, such a development appears to be premature at this stage, especially as the “minimum” threshold of EUR 3,000 proposed above would in any event guaranteeing the non-professional nature of most sideline activities.

The Working Group therefore proposes, in an initial stage, to maintain the compulsory affiliation thresholds as they are as regards the rental of movable and immovable property set recently, and for the moment not to set compulsory affiliation thresholds for sales of goods and the provision of services.

4. Towards a collaborative worker status - eventually?

The IGAS mission advocates creating an “ultra-simplified collaborative micro-entrepreneur status” (Recommendation No. 26): subject to being reported to the RSI, any private individual could undertake an occasional or sideline activity below a **lower threshold of EUR 1,500 per year of collaborative income** received via online platforms. Like the micro-entrepreneur, he would then pay **a levy in discharge of income tax, social levies and social contributions**, which could either be for a flat rate or proportional. No other formality or affiliation would be required, beyond reporting to the RSI.

Although such an option is a matter for national debate which goes beyond the remit of this report, it may however be noted that **the IGAS also proposes to restrict the benefit of this status to activities undertaken via online platforms only, without this appearing to create a disproportionate infringement of the principle of equality**: *“The payment of a levy in discharge for occasional and sideline income under this collaborative micro-entrepreneur system, although this income often remains unreported in the physical economy, could be put forward as one of the general interest grounds justifying treating this type of income in a differentiated way in relation to taxation and social contributions”*.

Eventually, the presumption of the non-professional nature of unsalaried activities producing additional income lower than EUR 3,000 per year **could even have general scope, not limited to the activities on the online platforms**. But again, this would be a wide-sweeping reform, consisting of creating either a general exemption, or an “ultra-simplified” micro-entrepreneur status which could not be done without a national debate. This scenario is therefore not investigated in this report.

B. THE REMOVAL OF SECTOR-SPECIFIC OR GENERAL LIMITATIONS BELOW THE EUR 3,000 THRESHOLD

1. A presumption of permission to undertake a second activity for civil servants

As explained in the first part, civil servants who undertake an activity, even if very modest, on a collaborative platform are in principle required to seek written permission to undertake a secondary activity from their manager, limited in time¹.

Since this rule appears to be out of phase with the reality of current practices as regards trading on the Internet, the Working Group proposes to **establish a presumption of managerial agreement for public services who undertake a sideline activity via an online platform**, and who do not receive more than EUR 3,000 gross income per year from it. The situation of the large number of civil servants who use collaborative platforms would thus be regularised.

Above the EUR 3,000 gross annual income threshold, the obligation of permission from the manager would automatically apply.

Proposal No. 3

Establish a presumption of supervisor's agreement for public servants who carry out a sideline activity *via* an online platform, and who do not earn more than EUR 3,000 per year from this activity

2. Regularisation of movable property rentals between private individuals covered by the micro-BIC system

The *f* of 2 of Article 50-0 of the General Tax Code excludes from the benefit of the micro-BIC system "*rental operations of equipment or durable consumer goods*"², which amounts to prohibiting private individuals on rental sites like *Drivy*, *Ouicar* or *Zilok* from benefiting from this system. **A contradiction therefore appears to exist between this provision and Article 18 of the Social Security Financing Act for 2017**, which expressly

¹ Article 25 septies of Act No. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants, as amended by Article 7 of Act No. 2016-483 of 20 April 2016 relating to the ethics, rights and obligations of civil servants.

² Except when they "are of a secondary and ancillary nature for an industrial and commercial undertaking": this rule does nothing to simplify things.

opens the possibility of automatic reporting for renters of movable property benefiting from a “micro” system.

In practice, exclusion from the micro-BIC system is no longer applied and benefits from administrative tolerance. **The Working Group therefore proposes that the legislation should include** the possibility for rentals of movable property between individuals (cars, accessories, etc.), in particular via the Internet, to benefit from the micro-BIC (industrial and commercial profits) system.

Proposal No. 4

Allow the rental of movable property between individuals (cars, accessories, etc.), in particular *via* the Internet, to be taxed under the micro-BIC regime (for industrial and commercial profits). This practice is already tolerated by doctrine and case-law.

3. Removing outdated constraints created for physical car boot sales

As explained above, **sales between private individuals on online market places or second-hand sales are subject to the provisions governing jumble sales and car boot sales**, designed at a time when this type of trading was occasional and exclusively physical.

The Working Group therefore proposes to abolish these outdated provisions, provided these sales are made through a virtual marketplace informing its users of their tax obligations. Thus, among other things, the ban on taking part in more than two sales per year and the obligation to provide a sworn certificate, provided for by Article L. 3102 of the Commercial Code would be abolished. The platform would be released from the obligation - highly theoretical it is true - of keeping a register indicating the name, number of the identity card and the address of each participant.

Proposal No. 5

Remove the formal constraints on second-hand sales between private individuals, in particular the maximum limit of two sales per year and the production of a sworn certificate, when these sales take place on a duly certified online platform.

In addition, as explained above, **a clarification of the distinction between second-hand sales and commercial sales by means of a tax instruction** would be desirable, on the model of the tax instruction of 30 August 2016 relating to “co-consumer” activities.

Proposal No. 6

Publish a tax instruction to clarify and simplify the distinction between second-hand sales and commercial sales, on the model of the tax instruction of 30 August 2016 relating to “co-consumption activities”.

**III. AUTOMATIC INCOME REPORTING: SIMPLIFYING PROCEDURES
AND SECURING TAX COLLECTION**

A. A VIRTUOUS CIRCLE: VOLUNTARY REPORTING WITH AN INCENTIVE

The essential part of the Working Group’s proposal is to create a **virtuous circle, linking the benefit of the tax-free allowance of EUR 3,000 to automatic reporting of income.**

It should be recalled that, since the vote of the Amending Finance Act for 2016, **automatic reporting is already included in the Act, in Article 1649 *quater A bis* of the General Tax Code**, which will compulsorily apply to all online platforms from 1 January 2019. The Working Group’s proposal is therefore to amend this article, in order to improve its applicability, and to move from a mandatory mechanism whose application is uncertain to a voluntary but incentivising mechanism.

Automatic reporting to the tax authorities of the income of online platform users, which **amounts to creating a new system of third-party reporting in addition to the existing systems** (companies, financial institutions, notaries, etc.), **is the only possible response, ultimately, to the challenge posed by the digital revolution** - both as regards the need to preserve tax revenue and therefore the quality of the public service, and the imperative of fair competition between the various actors of the same economic sector.

Proposal No. 7

Make automatic income reporting the *sine qua non* condition to benefit from the EUR 3,000 tax advantage. The system would then be voluntary, simple and reliable, and would work as an incentive.

As proposed by the Working Group, automatic income reporting therefore has **four main characteristics**:

① **It is voluntary.** Users, on the one hand, will give their prior explicit agreement prior to the transmission of data about themselves. The platforms, on the other hand, will be able to choose to offer - or not - this service to their users, thereby enabling them to benefit from the tax advantage and from the reporting procedures being taken care of them on their behalf. Conversely, a compulsory system, devoid of any incentive would only be ignored by international platforms, while penalising young French start-ups, which would be required to implement a specific information system beginning on their first day of business;

② **It provides an incentive.** Only income reported automatically can benefit from the general fixed allowance of EUR 3,000, which allows private individuals *simultaneously* to have the guarantee of complying with tax law, and being little - or not at all - taxed on the related income. For the platforms, automatic reporting is an additional service offered to users, whether they are private individuals or professionals: a simplification of the administrative procedures, reliability of the reporting statements, etc. As such, it could even be a **competitive advantage** compared to “uncooperative” platforms;

③ **It is simple.** The only action required of the user is to give his agreement to reporting his income, and, if necessary, to provide his identification number (see below). All the rest of the procedure is carried out by the platform - i.e. the annual transmission of the data, which are the same data as those indicated in the annual summary sent to the user. The reported income will then be included on the pre-filled taxpayer’s tax return which he will of course be able to correct if need be;

④ **It is reliable.** Most platforms are aware in real time and to the nearest euro of the amount of income received by their users. This is the case of *all* platforms providing a third-party payment service and many platforms which simply put people into contact with each other. In any event, platforms implementing automatic reporting **will need to be certified under the conditions laid down in Article 242 bis of the General Tax Code**, which guarantees the reliability of the information transmitted.

What is the incentive for professionals?

Users whose income derived from platforms is significant, i.e. when it exceeds the “exit” thresholds which result from application of the fixed allowance (i.e. EUR 4,225, EUR 6,000 or EUR 8,824), **cannot benefit from the tax advantage**. They are therefore subject to income tax under conditions of ordinary law, which is perfectly justified with regard to the principle of equality before taxation.

That said, automatic reporting, as regards taxation as well as social contributions, still offers significant benefits to professionals:

- **it is a major simplification of administrative burdens**, which is not negligible given the criticisms made regularly of the self-employed workers’ social security system (RSI) in this respect¹;

- **it is a guarantee of tax compliance**.

Automatic reporting is comparable in this respect to the role of payment intermediaries that most contact platforms have: although from a strictly financial point of view, it is always more advantageous for the seller and the buyer to “bypass” the platform, and to arrange things between each other rather than to pay a fee on each transaction (on average 15%²), the fact that the payment *via* the platform gives an entitlement to a series of guarantees and benefits generally means that the decision is made to use this system.

With regard to self-employed workers, these benefits can be of great importance. For example, *Hopwork* offers its self-employed workers, customer relationship management and invoicing, pooled civil liability insurance and even a pooling of factoring to reduce payment times.

B. DETAILS ABOUT THE AUTOMATIC REPORTING PROCEDURE

1. The user's prior explicit agreement

The user would, on registering on a platform, give his agreement to the automatic reporting of his income, **by ticking a simple checkbox:**



I agree to my income being reported by [THE PLATFORM] to the tax authorities. I benefit in return from a tax advantage, in the form of a fixed allowance of EUR 3,000 on my gross income.

My income will not be taxed if it does not exceed €3,000 per year on online platforms, or if I am not liable to pay income tax, or if it is income that is exempt by its nature (second-hand sales, cost-sharing).

¹ Switching from the RSI to the general system is for example a demand expressed by 40% of self-employed workers registered on Hopwork. Source: Hopwork/Ouishare survey, February 2017.


² Source: PwC study 2016, average commission levied by the platforms in Europe, all sectors of the collaborative economy combined.

On this occasion, he would provide the identification number that the tax authorities can use to identify him. This number could either be the tax number, or a specific number (see below).

The gross income would be reported by the platforms to the General Directorate of Public Finance (DGFiP), in January of each year, in a standardised format, laid down in a decree. The tax authorities would then total the income of the same taxpayer derived from several platforms, to arrive at a gross overall annual income received *via online platforms*, and check whether the EUR 3,000 has been crossed.

The taxpayer would then find these amounts in his usual pre-filled tax return (No. 2042 C), indicated in the corresponding category (BIC, BNC, micro/actual income, etc.). The only difference compared to the example below is that a checkbox “gross income received and reported via online platforms” would be added, to emphasise that this gives an entitlement to the fixed allowance of EUR 3,000.

Tax Return Form No. 2042 C Pro Non-salaried professions (excerpts)

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Source: General directorate of public finances

As explained above, any reported income is not necessarily a taxed income. In particular, taxpayers not liable to income tax (whose annual net income, including income derived from platforms and after application of the tax-free allowance, does not exceed EUR 9,710 per share of family quotient), will of course not be taxed.

The fact that the income is pre-filled in the tax return **does not prevent the taxpayer from making, where appropriate, corrections or changes** when validating this return on impots.gouv.fr, under conditions of ordinary law. In particular, this may arise if the taxpayer opts for the real charged benefits income system (he must in this case report his charge), or if he considers that certain income relates to another category or if he benefits from an exemption in some way.

2. Content of the report: only available, relevant and strictly necessary information

In accordance with the requirements of proportionality and respect for privacy, and in order not to unnecessarily complicate the operational implementation of the system, the Working Group's proposal provides that **the platforms will transmit all the necessary data, but only the necessary data**, i.e. the four following items of information:

"1° The full name, email address and identification number of the user", so that the authorities can identify and total all of his income received *via* platforms without any mistakes, omissions or duplicates;

"2° The total amount of the gross income received or assumed to have been received by the user during the previous calendar year on the basis of his activities on the online platform, or paid through it": this broad formulation means that both platforms which act as payment intermediaries and those which, while not involved in the transaction itself, are aware of the amount since they have put the seller and buyer in contact with each other are covered. **It should be noted that the transmission refers to gross income**: in no case is the platform asked to calculate net income or determine whether the income or the user is taxable. **This is not, and is not intended to be, the responsibility of the online platform operators**;

"3° The number of transactions through which this gross income has been received": this information is also provided for in Article 242 *bis* of the General Tax Code and makes the reporting more reliable;

"4 The category to which the gross income is assumed to relate": for each reported income stream, the platform must specify to which of the following categories they relate: **sales of goods; services; rentals of movable property; rentals of immovable property**. They allow the tax authorities to enter the income in the corresponding box of the pre-filled tax return: BIC, BNC, real estate income, etc. These categories are *by definition known about*

by the platform, since they correspond to the activities offered. No additional reporting is therefore requested from the user.

With the exception of the “identification number” described in 1° (see below), **all this information is already known by the platforms, and must moreover be compulsorily collected under the provisions of Article 242 bis of the General Tax Code**, and is indicated on the annual summary sent to the user. These data are also in line with those which are sent to the *Internal Revenue Service* in the United States and to the *HM Revenue & Customs* in the United Kingdom (see above).

Implementation of A.I.R. therefore does not involve any further collection of additional data compared to the current situation: it only involves, so to speak, sending a copy of the “annual summary” to the authorities, with the user's agreement - nothing else.

By limiting the scope of automatic reporting to the necessary data only, the Working Group's proposal **reassures users and facilitates the adoption of the system and its implementation by the platforms**, without compromising in any way the ability of the authorities to determine, where appropriate, the right level of taxation¹.

3. Unique identification number or tax identification number?

In order to guarantee the reliability of the statements and as appropriate the taxation, **the authorities must be able to identify precisely which taxpayer has received the income reported by the platforms**, avoiding, for example, assigning to a person the income of a namesake, or a user using the same email address. **It is therefore proposed that each user of the online platform is associated with a unique identification number**, which would be indicated on the reporting statement.

Two solutions, fairly similar to each other, may be envisaged.

First, use the tax identification number (TIN), assigned to each French taxpayer liable to income tax, which makes it the most reliable number. This could be requested by the platform, when the user gives his agreement to automatic reporting.

¹ For a tax case that is complex to process requiring additional information, the tax authorities always have, where appropriate, the nominative communication right. It is unlikely that a certified platform offering its users automatic reporting of their income will refuse, moreover, to respond to the communication right.

Vos références

Pour accéder à votre espace Particulier

76999

Numéro fiscal :	
Éclairant 1 :	00 01 123 456
Éclairant 2 :	07 01 987 765
Numéro de télédéclarant :	voir votre déclaration
Revenu fiscal de référence :	41 898
Référence de l'avis :	14 76 012
Numéro FIP :	761 51 12 12345
Numéro de rôle :	011 A
Date d'établissement :	10/06/2014
Date de mise en recouvrement :	31/07/2014

Source: European Commission, DGFIP

The TIN is indicated on the pre-filled tax return for income tax and the income tax, housing tax and land tax notices.

Those liable to income tax must enter it on the impots.gouv.fr website to carry out their procedures.

In addition to its reliability, the TIN has **another great advantage: it has undergone some standardisation at the international level**, by the OECD and by the European Commission¹, as part of the implementation of **the automatic exchange of tax information (AEI)**. Thus, Article 1649 AC of the General Tax Code, the legal basis of exchange of information in domestic law, obliges financial institutions to collect *“the tax identification numbers of all the holders of accounts and of the people controlling them”*.

Standardisation of the TIN (*Tax Identification Number*) is an important argument in favour of the generalisation of automatic reporting. In particular, **it would mean that platforms would not have to develop an information system for each country**, and it could possibly mean that users becoming tax residents of another country would not have to change number. The fact that the definition of the TIN is the **same for the automatic exchange of information (AEI) with the United States**, governed by a specific text² is an additional argument, since most of the main international platforms are American.

The main limitation of the “TIN” solution is connected to its possible consequences on the “user experience” - or, to put it simply, to the fear expressed by some platforms that this option will create mistrust, if not reluctance, among users, leading them to turn to other platforms. **That said, this potential obstacle must not be overestimated**, given the sometimes more sensitive information that the platforms already request from their users (see below).

¹ The European Commission has moreover published an explanatory document describing, for each country, the structure and the specificities of national TINs, the documents on which they are indicated (tax notices, passport, driving licence, etc.), as well as the web sites and national contact points:

https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/tax-identification-numbers-tin_en

² The “FATCA” Act (“Foreign Account Tax Compliance Act”), or “law relating to compliance with tax obligations regarding foreign accounts”, was adopted by the United States on 18 March 2010.

The second solution consists of assigning each user a specific number as a user of collaborative platforms. Thus, when first registering on a platform offering automatic reporting, he would be redirected to a single official page where he would enter, for the first and last time, his tax identification number, **and would be assigned his “platforms’ number”.** **Subsequently, it would be the latter, and only the latter, that he would use** for later registrations on other platforms - this number could also be useful besides the reporting procedure as regards taxation. Only the tax authorities would be able to establish the link between the “platforms’ number” and the tax identification number.

After the initial registration stage, **this solution could appear less intrusive than using the TIN,** and therefore easier to adopt by the users and platforms. However, there is a risk that other countries would make a different choice, ultimately resulting in greater complexity.

In any case, one or other of these solutions should allow a high degree of reliability of the data transmitted by the platforms.

4. High level of data protection

Automatic income reporting implies, in a completely usual way, the processing of personal data. It is recalled that under the terms of Article 2 of the Data Protection Act No. 78-17 of 6 January 1978, *“personal data means any information relating to an identified natural person who can be identified, directly or indirectly, by reference to an identification number or to one or more elements that are particular to him”.*

Thus, the platforms which would ask their users for an identification number - but also simply their name, email address or their telephone number - would be subject to the provisions of Article 22 of the Act of 6 January 1978, under which *“the automated processing of personal data are subject to the National commission of data processing and freedoms (CNIL)”.* The CNIL, the French data protection authority system is the mainstream regime and must be distinguished from the declaration authorisation regime provided for in Articles 25, 26 and 27 of the Act, which regards more intrusive processing¹.

Two additional remarks can be made.

First, online platforms constantly process personal data regarding each of their users - this is central to their economic model. These data are often much more intrusive: the mobility platforms require a photo of the

¹ For example on biometric and judicial data of interest to state security, etc. It goes without saying, of course, that the information transmitted is **in no case sensitive data within the meaning of Article 8 of the Act**, i.e. *“personal data which reveal, directly or indirectly, a person’s racial or ethnic origins, political opinions, philosophical or religious beliefs or trade union membership, or which are related to his health or sexual life”.*

person's driving licence, vehicle registration and insurance certificates, as well as a copy of the criminal record, rental platforms require the address of the accommodation, marketplaces and platforms of professional services require a VAT number and a corporate registration certificate, etc. They retain geolocation data, pages visited, the persons contacted etc. These data can be resold to third parties. In principle, the platforms all specify in their general terms of use (GTU) that the data collected "*are subject to declaration to the CNIL regarding the collection and processing of personal information relating to users*". Indeed, this processing is as a minimum subject to declaration to the CNIL, or even to authorisation. The proposed mechanism is, in comparison, very modest.

Secondly, the data necessary for implementing automatic income reporting - i.e. a name, a number and a gross income - is extremely limited in comparison with the other third-party reporting systems provided for by French law. They are, for example, **very limited compared with the data needed for single social security declaration (DSN)** that all companies must fill about their employees, with the necessary data for the levy at source of income tax, with the data collected for the purpose of the **automatic exchange of tax information**, etc.

As a precaution, it would however be explicitly laid down in law that the operators of the online platform are permitted to collect their users' tax identification numbers, and that "*any processing of personal data is subject to the Data Protection Act No. 78-17 of 6 January 1978*", on the model of Article 1649 AC of the General Tax Code, the legal basis of the automatic exchange of information in domestic law.

**Article 1649 AC of the General Tax Code
(automatic exchange of tax information)**

The holders of accounts, insurance companies and equivalent and any other financial institution indicate, on a statement filed under the conditions and time limits laid down by decree, the information required for application of 3 bis of Article 8 of the Directive 2011/16/ EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/ EEC and the conventions concluded by France allowing for the automatic exchange of information for tax purposes. This information may, in particular, include any income from investments as well as the balances of accounts and the surrender value of bearer bonds or guaranteed investment contracts and investments of the same kind.

*In order to meet the obligations referred to in the first sub-paragraph, **they implement, including by processing personal data, the steps required** to identify accounts, payments and people. For this purpose, they collect information about the tax residences and tax identification numbers of all holders of accounts and of the persons controlling them.*

This possible processing is subject to the Data Protection Act No. 78-17 of 6 January 1978.

5. Technical implementation: the requirement of simplicity

It is imperative that automatic income reporting remains very simple for users.

Given the voluntary nature of the measure proposed by the Working Group, and given the crucial importance that is attached to **the “user experience” in the world of the collaborative economy**, where a detail in the usability of a platform can make the difference between winning or losing market shares, automatic income reporting will only be adopted - and offered by the platforms - provided it imposes as few formalities as possible on the user.

This also the main thing that has been learned from the success of the automatic reporting system implemented by Estonia, and more generally of this country’s success in putting its administrative procedures online (see below).

In this regard, the Central agency for social security organisations (ACOSS), responsible for the operational implementation of automatic reporting in the social field (see above), under the control of the Social security directorate (DSS), is currently working on establishing an **“all inclusive” service solution**, through which all the administrative procedures could be made directly *via* the platform, **on the model of the *chèque emploi service universel* (CESU). A *smartphone* application is also envisaged.**

These initiatives must be welcomed, and receive firm support from the public authorities.

It goes without saying that the tax component must meet the same requirement of simplicity, and that it must, of course, be combined with the social contributions’ portal.

Reporting to the URSSAF comes into force on 1 January 2018 and the Working Group proposes to set the entry into force of automatic reporting for taxation on the same date.

6. The particular case of income exempt by nature and the creation of an “online platform ruling”

The mechanism proposed by the Working Group applies in principle to all voluntary platforms. **However, some platforms offer activities which are exempt *by nature*** (car sharing, plane sharing, cost-sharing, second-hand sales, etc.), which should not be included in the automatic reporting nor included in the calculation of the tax-free allowance.

The Working Group therefore proposes that income which is exempt by nature, i.e. for the most part, second-hand sales and activities involving

cost-sharing between private individuals **are not included in the reporting statement sent to the tax authorities.**

Such a provision would mean that the platforms *exclusively* offering activities exempt by nature, and holders of the certificate provided for in Article 242 *bis* of the General Tax Code, would not need to implement the automatic income reporting.

By contrast, platforms offering “mixed” activities, for example second-hand sales and for-profit sales, or boat rentals and excursions out to sea with the owner, would in this case only transmit the taxable income, which would benefit, if applicable, from the EUR 3,000 tax advantage.

However, it does not appear appropriate to allow platforms to assess *by themselves* the fully non-taxable nature of income received by their users, because of the risk of abuse and deadweight effects. This voluntary provision is therefore accompanied by more stringent conditions:

- firstly, they should have duly certified rules and procedures pursuant to Article 242 *bis*, and indicated in the certificate, with the purpose of ensuring that all or part of the gross income received by their users is tax-exempt income due to its nature: in other terms, it would be the third-party certifier’s responsibility to assess the validity of the platform’s internal criteria for separating taxable from non-taxable income;

- secondly, they should, for the purpose of transmitting the data, have these same criteria validated by the tax authorities, using a flexible approval procedure.

In practice, this new procedure **could take the form of a specific tax ruling, tailored to the online platform economy**, consisting for them of validating in advance *not* their own tax options, but the rules that they implement to determine, as far as possible, the taxation applicable to the income paid to their users.

Proposal No. 8

Allow online platforms to request from the tax administration, on a voluntary basis, an advance validation of their internal rules and procedures aimed at determining whether their users’ income is taxable or not (“online platform ruling”).

This new “online platform ruling” procedure could also be **applied to all platforms for various subjects linked to their key role as intermediary**, and not only to the platforms concerned by the above provision (“mixed” platforms taking part in automatic reporting).

It would possibly require the tax authorities to develop technical expertise, or even IT expertise of the same level as that of the certifying third parties.

C. THE LEVY AT SOURCE OF INCOME TAX BY THE PLATFORMS: NOT A VIABLE SOLUTION AT THIS STAGE

1. The reform providing for a levy at source of income tax has no effect on the proposed mechanism

The levy at source of income tax, provided for by Article 60 of the 2017 Finance Act¹ and whose application is, under current law, scheduled to begin on 1 January 2018, is neutral for the proposed mechanism.

Indeed, unlike the income tax due on salaries, pensions and replacement income, **the tax due for self-employed activities or real estate income cannot be collected by third parties** and must, therefore, be paid according to specific procedures. The income tax for the current year **will therefore be paid in instalments, calculated by the authorities on the basis of the income of the previous year²**, and paid monthly or quarterly by direct debit on the taxpayer's bank account.

In this context, the income received through online platforms is no different - nor does it require any specific treatment - compared to other income from independent activities or real estate income. Once paid by the platform to the user's bank account, it would be directly debited, calculated on the basis of all the income from self-employed professions (after the application of the fixed tax-free allowance of EUR 3,000 on the part of this income derived via platforms).

The only particularity, of very limited scope, could be the greater variability of income derived from online platforms, if they are for **sideline or occasional activities** (rental of a car etc.). This could lead the taxpayer to requesting a change in the amount of his instalments more often³, provided for in the reform, but since it concerns sideline income, it is by no means certain that this would be necessary. With regard to the professionals present on online platforms, for example private hire drivers or self-employed workers present on platforms such as *Hopwork* or *Stootie*, the reform adopted last year would have no impact on them.

¹ Article 60 of the Amending Finances Act No. 2016-1917 for 2017 of 29 December 2016.

² More specifically, the amount of the instalment for year N will be calculated in September of year N-1, on the basis of the income of year N-2 reported in the spring of year N-1.

³ In the event of a change of situation leading to a significant foreseeable variation in the tax, the taxpayer may, if he wishes, request on impots.gouv.fr a change in the amount of the instalment in the course of the year.

2. Using platforms as collectors of tax instalments: not such a good idea

It is true that the use by a self-employed worker of an online platform introduces a specific situation: the presence of an intermediary between the seller and the buyer, which offers a contact service but very often, a payment service too.

Since the operator of the online platform offer knows, in real time and to the nearest euro, the amount of gross income paid to the user, that it must moreover send him of in the form of an annual summary (Article 242bis of the General Tax Code) and soon report to the tax authorities, it could be envisaged to entrust it, also, with the levy at source of income tax.

This solution, discussed several times during the Working Group's hearings, however, does not appear to be appropriate:

- **firstly**, were it the case that the platforms had to apply a tax rate, **they could not however determine whether the taxpayer has crossed the EUR 3,000 threshold**, and, when he has crossed it, given the possibility that an activity can be undertaken on several platforms. The amount of the tax depends however on the application of this tax-free allowance¹;

- **secondly, in the case of opting for the real charged benefits tax regime instead of the micro-tax regime**, this would amount to the platform deducting the amount of the expenses incurred by the taxpayer, which adds further complexity;

- **thirdly, the levy at source could result in many mistakes** due to the characteristics of the collaborative economy, for example the tax being levied on income in fact derived from a second-hand sale or cost-sharing;

- **fourthly, an in particular, automatic reporting already offers very high reliability: the risks of fraud are extremely low**, for a mechanism that is much less intrusive, costly and complex to implement.

For all these reasons, it would appear that automatic reporting of income is preferable to collecting income tax at source.

¹ *It should be noted that this problem would arise even if the Working Group's proposal were not adopted because there is already a fixed tax-free allowance of EUR 305 under the micro-tax system. Since the income from collaborative platforms is often of a modest amount, it would not be prudent to assume that this threshold is systematically crossed.*

3. One exception: the payment in discharge of income tax by micro-entrepreneurs

That said, the levy at source of income tax by the platforms would be **technically possible in one case: that of micro-entrepreneurs who have opted for the payment in discharge of income tax**, and have authorised the platform to levy at source the amount of social contributions, in accordance with the reporting system and automatic levy created by the Social Security Financing Act for 2017 (see above). Since income tax in this case is paid at the same time as social contributions, at a fixed rate of 1% (BIC goods), 1.7% (BIC services) or 2.2% (BNC services), this operation does not **technically pose any problem, and represents a service for the user**.

Conversely, the fact that the law does not currently include this possibility actually deprives micro-entrepreneurs present on online platforms from choosing both the automatic levy and the levy in discharge. **The Working Group's proposal therefore meets a simplification objective.**

Proposal No. 9

For users under micro-entrepreneur status, and with their agreement, allow the platforms to collect not only social contributions, but also the flat tax discharging the payment of income tax.

Should the income derived from the economy collaborative be subject to a fixed levy in discharge, collection at source by the platforms would become possible. That said, for the reasons set out above, linked to the constitutional principle of equality before taxation, the Working Group has ruled out this solution.

D. A PREREQUISITE: ENSURING PLATFORM CERTIFICATION AND PROPER USER INFORMATION

1. Make platform certification a real “accreditation process”, guaranteeing tax compliance for users

Annual certification of the platforms provided by Article 242 *bis* of the General Tax Code, which regards the obligation to provide users with information is **an important step towards improved regulation of the collaborative economy**, and a satisfactory compromise between pure self-regulation and strict control. Certification is a way of strengthening **the trust of both users and the public authorities**.

The automatic reporting proposed by the Working Group would be implemented only by certified platforms, which further increases the importance of this procedure.

It is therefore crucial that the approval is issued on the basis of reliable and high-quality certification, all the more so since currently the DGFIP does not have the resources needed to verify the conditions of this certification.

The Working Group therefore makes, at this stage, **two proposals:**

Firstly, strengthen the visibility of the certificate, by displaying it on the platform's home page: highly visible to users, this certificate could become a kind of "tax compliance accreditation" and thus **encourage the platforms, that care about their reputation, to seek the best certification - and therefore the best certifiers.**

Proposal No. 10

Make platform certification a real "label", indicating to users that they comply with tax rules. For this purpose, the certificate should be displayed on the platform homepage in a visible position, and should mention its date and the reference of the certifying third party.

Secondly, publish "guidelines" about the content and certification methods, prepared by the tax authorities or at least in close consultation with them, in order to ensure the high-quality standard of this new procedure. **These guidelines could be published in late 2017,** on the basis of the certificates sent out during the first year of application of Article 242 *bis* of the General Tax Code.

Proposal No. 11

Publish, by late 2017, "guidelines" for platform certification, in order to set high quality standards for both the content of the certificate and the certification process, and encourage the application of best practices by certifying third parties.

2. Adapt the obligation to provide information to the diversity of the business models online platforms

As explained in the first part of this report, implementation of the obligations laid down in Article 242 *bis* of the General Tax Code presents some problems which could decrease their effect.

The Working Group therefore proposes two adaptations, designed to take account of the specific characteristics of certain business models.

With regard to the obligation to provide information, if it must remain applicable by default "*each time a transaction is concluded*", it would however be **relaxed for very frequent micro-transactions**, where its strict implementation would not only be difficult, but would also be completely unreasonable. This would apply to advertisements paid "per click" or videos for which the author is paid according to the number of views in particular.

In such cases, the information obligation would be deemed to be fulfilled if the platform meets the following two conditions:

- the transactions are of **a regular nature** and are for **activities of the same kind**;
- the platform sends the user **a summary of his transactions at least every month** rather than annually.

Proposal No. 12

Adapt the "obligation of user information" imposed on platforms to the diversity of their business models. When very frequent, similar micro-transactions are performed (click adverts, videos according to the number of views), platforms should be exempted from the obligation to provide information "*each time a transaction is concluded*", and should only be required to send a monthly report to their users.

With regard to sending the annual summary of income received by the user, waive this obligation for **platforms which exclusively offer activities exempt from tax by nature**, and in particular "co-consumption" activities covered completely by cost-sharing. Sending this summary, apart from the fact that it requires costly developments by the platforms, could create some confusion among users as regards their tax obligations.

This provision would apply **provided the platforms have rules and procedures, duly certified by the independent third party**, which guarantee that the gross income received by their users are, in their entirety exempt from tax by nature. These rules and procedures must be expressly stated in the certificate of Article 242 *bis* of the General Tax Code.

Without prejudice, this provision could be applied to platforms such as *Blablacar* or *Wingly*, which have strict rules based respectively on the kilometric scale, and on the *pro rata* of the costs incurred by a plane sharing activity.

Proposal No. 13

Exempt online platforms offering activities which are non-taxable by nature (such as cost-sharing) from the obligation to send an annual summary of transactions to each of their users. To be exempted from this obligation, platforms would have to implement duly certified internal processes guaranteeing the non-taxable nature of the income generated by the activities.

However, the Working Group considered that it was **not appropriate to increase the penalty applicable in case of non-compliance with the obligations laid down in Article 242 bis of the General Tax Code**, although this point was raised on several occasions during the hearings.

Certainly, the fixed amount of EUR 10,000 provided for in Article 1731 of the same code, has a very weak deterrent effect for large international platforms should they want to ignore it - it must be recalled that most of them comply with it, and have sometimes done so moreover for several years without any legal obligation (see above). However, and given the restrictions laid down recently by the Constitutional Council with regard to proportional fines, an increase in the fixed amount of the fine, for example to EUR 30,000 or EUR 50,000, could have a very negative effect on small French start-ups that have just been launched, without necessarily affecting the large international actors, “protected” by the obstacle of extraterritoriality.

E. TAX CONTROL: NEW PRIORITIES AND UPGRADED TOOLS

1. The particular case of platforms not involved in the transaction

Unsurprisingly, platforms which do not know the amount of the transaction are also platforms where the distinction between private individuals and professionals, or between second-hand sales and commercial sales, is the hardest to make.

The most emblematic case is that of the small ads site *Leboncoin*, which has 25 million unique visitors per month (37% of the French population), and via which 18.5 million French people (i.e. 27% of the population) concluded at least one transaction in 2016. In all, nearly 100 million transactions were concluded in 2016, for a total amount of

EUR 21 billion: the economic stakes are therefore significant. *Leboncoin* is not involved in the transaction between the seller and the buyer, but is paid by advertising and a *freemium* offer, which allows sellers to buy visibility options.

Another example, is the platform *Zilok*, which enables private individuals and professionals to rent objects of all kinds (700 categories), and **does not take any fee on the transaction, but is paid only for putting the parties in contact with each other**, according to terms which depend on the lessor's status: **a fixed fee when booking** rentals offered by private individuals (levied from the lessee in the form of a deposit), a monthly subscription for professional rentals, a premium rate number of the 0899 type allowing the owner to be contacted to ask him questions about the object for rent etc. In all cases, **this economic model is based on non-intervention in the transaction**. The help section of the website thus states *"the payment methods of the balance of the rent are set out by the owner of an item of property, and stated very clearly in the description of the item of property. All types of payment are therefore possible, which could be a credit card, payment in cash on the spot, bank transfer or Paypal depending on the case. This payment of the balance does not however take place via the Zilok platform but offline"*.

Some actors, like the *Stootie* platform which offers services to private individuals, **use a hybrid model**: the users agree between each other on the terms of payment, i.e. in practice most often in cash, but may also choose to use the platform, which then becomes the payment intermediary.

The existence of platforms not involved in the transactions must not, however, be seen as weakening the whole reporting system proposed by the Working Group for three reasons.

Firstly, **the amounts at stake must not be overestimated**. Indeed, those platforms that are not involved in the payment are **the exception, rather than the majority**, payment services being the very foundation of the economic model of most collaborative platforms (see insert), because it allows to deny a fee on the transaction¹. Once the economic models involve significant transactions, going through the platform itself becomes a necessity, because of the safeguards that it provides.

Moreover, in the French environment, *Leboncoin* is the only case **where significant amounts are at stake** - moreover, one should not infer from this that the totality of the EUR 21 billion transactions are actually taxable, since **the bulk consists of second-hand sales**.

¹ However, alternative models exist: *Zilok*, for example, offers an insurance triggered by the payment not of the rent, but of the deposit collected when using the booking service.

The benefits of payment *via* the platform

Payment *via* the platform, when it is not simply compulsory in some economic models, is **often the condition that allows users to benefit from important services, starting with insurance** (of an apartment, a car, a service), but also, depending on the activities, “satisfied or refunded” guarantee, handling returns, invoice management and administrative procedures, payment in several instalments, compensation for delays, etc.

From the buyer’s point of view, the benefits are often significant. For an object sold on *Leboncoin*, at the average price of EUR 11, the risk is acceptable – the site is not in any case a payment intermediary. For an apartment rented on *Airbnb*, a personal car rented on *Drivy*, or a professional website creation service offered on *Hopwork*, the risks are often high enough to make payment of the fee a preferable option.

Secondly, most of these platforms, although not payment intermediaries, are aware of the amount of the transaction, since it is simply the price displayed for the service or the good offered for sale – or, in the case of eBay for example, the amount of the winning bid of the auction. Although it is true that nothing prevents the buyer and the seller from agreeing subsequently on a different amount, the existence of a contractual commitment to pay the price displayed could, where appropriate, be sufficient for the platform to fill in the automatic declaration.

It will be noted moreover that several platforms, which consider that they are unable to communicate the amount of the transactions pursuant to Article 242 *bis* of the General Tax Code, **may also cooperate in an exemplary manner with other services,** when it is about combating money laundering and financing of terrorism, fight against counterfeiting or against drug trafficking, etc.

Thirdly, the risk of users leaving platforms in preference for those not implementing automatic reporting is low. During the hearings, some platforms expressed the fear that their participation in automatic reporting would result in users moving to explicitly “non-cooperative” sites. **The Working Group considers that the risk is in fact low.** Firstly, with regard to the transactions for which a payment or service guarantee is essential, it should remain more advantageous to go through a third-party payment platform. Then, the reputation risk could be significant for non-participating platforms, especially if the main platforms implement the automatic declaration or at least the information obligation provided for in Article 242 *bis* of the General Tax Code. Finally, and most importantly, **tax control resources will be concentrated** on those platforms that do not implement automatic reporting.

Generally, if the automatic income reporting system proposed by the Working Group does not settle all the identified problems, it does cover the bulk of them and appears at this stage to be the best possible solution.

2. Strengthening tax controls and targeting high stakes activities

Automatic income reporting, particularly advantageous for private individuals only making modest income on online platforms, **should release the tax authorities from a task that it is neither possible nor desirable for them to carry out**, given the amount of resources needed for very modest results.

Therefore, the resources and priorities of tax control of private individuals as regards the digital economy need to be concentrated on those platforms that do not implement automatic reporting, as well as on individuals who do not give their agreement to the transmission of their personal data.

Proposal No. 14

Strengthen tax audit capacities and give priority to audits of platforms and users who do not opt for automatic income declaration.

In this regard, it could be proposed to extend the criteria of Decree No. 2015-1091 of 28 August 2015, which specifies the list of information¹ that can be requested as part of the non-nominative communication right, with the following criteria: "*persons not having given their agreement to the automatic transmission of their income*"; "*persons registered on a platform not implementing automatic reporting*" or "*not certified in accordance with the requirements of Article 242 bis of the General Tax Code*".

Certainly, this would not remove the obstacle of territoriality that hinders the effectiveness of the communication right, in particular the non-nominative communication right (see above). That said, better prioritisation of tax control and better knowledge of the amounts at stake (in particular through the analysis of data from automatic reporting) should allow **use of this procedure to be reserved to cases which really make it worthwhile**, and which therefore really justify, if necessary, the use of international administrative assistance.

Above all, establishing a non-nominative communication right at the European level could be envisaged: more specifically, the Member States could organise themselves to exchange relevant information on a regular basis, depending on the country of establishment of the platforms - it being understood that, although it is easy for an online platform to establish

¹ As a reminder, currently, the information requested must be specified by at least one of the following research criteria: geographical location; threshold expressed in quantity, number, frequency or financial amount; payment method. The request may not relate to a reference period of more than eighteen months and this period may possibly be split up.

itself in a Member State other than where it has its main market, it is clearly more difficult to establish itself in a third country, given the obligations related to the internal market.

In principle, the texts governing administrative cooperation for tax purposes within the European Union **already provide a legal basis for such a procedure¹, which would therefore above be a matter of domestic legislation of Member States²** and establishment of best practices.

This is moreover what Estonia proposes to do using data from its own automatic reporting system for *Uber* drivers set up in 2016, and which should soon be extended to all of the country's collaborative platforms (see below). According to the General Directorate of the Treasury³, the country *“proposes to make this income reporting platform developed by Estonia available to all non-professional drivers regardless of their country of residence, with Estonia then taking on the responsibility of passing on the information to each member State concerned”*.

The example of San Francisco, set out below, has also shown that it is possible to make proactive use of the communication right.

Proposal No. 15

Create a request for information regime at the European Union level, allowing tax authorities to send non-nominative requests to the platforms.

More generally, the tax authorities must, just like other administrative authorities of the State, **make better use of the data available to them** - and that could be available tomorrow with automatic reporting.

However, the methods for exploiting large amounts of data (datamining and data analysis) require hiring specific skills, particularly specialised and in high demand and therefore relatively costly. The current legal framework does not enable these “atypical profiles” to be offered attractive remuneration, particularly given what they could expect in the private sector - and in particular working for online platform operators. The

¹ The main instrument is Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation, amended in 2014 and in 2015. The latter establishes all the applicable procedures: exchange of information on demand; spontaneous exchange; automatic exchange; participation in administrative enquiries; simultaneous controls as well as notifications of tax rulings. It also sets out the necessary tools, such as a secure electronic system for the exchange of information.

² To exercise a non-nominative communication right at the request of another Member State, the “requested” State must itself have the possibility to do likewise pursuant to its domestic law. Some European countries do not have a non-nominative communication right.

³ Source: Directorate General of the Treasury, Tallinn economic unit.

remuneration of contract workers is subject to restrictive rules¹, laid down by the law and instructions, which leave little or no leeway for negotiations by the administrative authorities. Consequently, few statisticians and data analysts choose to join public service, despite feeling a real vocation.

Michel Bouvard and Thierry Carcenac, members of the Working Group, have discussed this subject in their special report on the finance bill for 2017², and the committee adopted an amendment to facilitate this type of recruitment. The question, a sensitive and important one for all the economic and finance ministries, has, with the economy of online platforms, a vivid illustration of the problem.

Proposal No. 16

Allow the tax administration to develop advanced skills in data analysis, in particular by offering remunerations attractive to high level profiles.

In addition, the Parliament and the administrative authorities **should be able to have more complete information about the main economic and tax trends of the collaborative economy**, which is not the case today. Indeed, the lack of data has been one of the main problems encountered by the Working Group, as it has for all public authorities in relation to this subject.

Proposal No. 17

Produce an annual study on the main figures of the online platform economy and their users' income. This study should be transmitted to the Parliament and should be supplied in particular with information collected from automatic income reporting.

¹ Possible exceptions rely on Article 4 of the Act No. 84-16 of 11 January 1984, which allows for the recruitment of contract workers when there is no body of civil servants able to carry out the corresponding functions, or for category A function, when the nature of the functions or the needs of the services demand it. Outside of this legislative reference, these hiring processes are standardised by instruction of the Directorate general of administration and public service (DGAFP) of 22 July 2013, and internal to the economic and finance ministries of 7 August 2013, which very strictly govern the terms of recruitment and in particular the administrative authorities to negotiate salaries.

² Report by Michel Bouvard and Thierry Carcenac on behalf of the Finance Committee on the "Management of public finance and human resources" mission, Annexe No. 16 to the report carried out by Albéric de Montgolfier, general rapporteur, on the finance bill for 2017.

Finally, the explanations that follow show that **several countries have taken measures to adapt their social contributions and tax system** to the economy of online platforms, regarding both taxation rules and tax collection procedures. **However, beyond the large range of options chosen to one side, a consensus seems to have emerged** in favour of the establishment of thresholds on the one hand, and a third-party reporting system, if not a third party collecting system, on the other hand.

Therefore, Member States should adopt a common approach on relevant solutions that should be implemented, in the form of non-binding “guidelines”. It is the very purpose of the communication published on 2 June 2016 by the European Commission¹, “*A European agenda for the collaborative economy*”, which in particular proposes to lay down thresholds and set up partnerships between administrative authorities and platforms to carry out income reporting, on the Estonia model (see below).

It must be emphasised that a certain degree of alignment of the taxation of individual users of collaborative platforms (for example on the principle or even the level of the thresholds) **is not in this case a question of tax competition**: it is unlikely that a user will change country for a different threshold. It is more a question of disseminating best practices and simplifying applicable rules.

The OECD could, similarly, make recommendations on the subject, as it does for the fight against *Base Erosion and Profit Shifting* (BEPS Project) as well as, to a lesser extent, for VAT.

Proposal No. 18

Promote a common approach at the European or international level for adapting taxation rules to the online platform economy, for example through the publication of “guidelines” by the European Commission or the OECD.

¹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and to the Committee of the Regions, “A European agenda for the collaborative economy”, 2 June 2016.*

III

INTERNATIONAL COMPARISONS: SINGLE THRESHOLD AND AUTOMATIC REPORTING, A CHOICE MADE BY SEVERAL COUNTRIES

The proposals of the Finance Committee Working Group on tax and tax collection in the digital economy are based on **a comparison with the initiatives taken or considered by several other countries**. To this end, members of the Working Group have visited several countries and some information has been provided by the economy department of the Directorate General of the Treasury.

Although few countries, for the moment, have changed their tax and social contributions rules in order to adapt them to the development of the online platform economy, **it seems that the same questions arise everywhere, and the same terms**.

With regard to the five countries studied by the Working Group, the United States, Estonia, the United Kingdom, Belgium and Italy - it appears that the solutions adopted or envisaged, besides their various arrangements and their own weaknesses, all opt for specific treatment of income derived from online platforms, and more particularly:

- **with regard to those countries taxation rules have *all* opted for the introduction of general thresholds**, in place of a theoretical principle of taxation from the first euro and assessment on a case-by-case basis, even if these thresholds are set at various levels with different tax advantages. In this regard, it should be noted that the introduction of general gross proceeds' thresholds has not been deemed contrary to the constitutional principles of the two countries concerned, i.e. the United Kingdom, Belgium;

- **with regard to reporting procedures, a consensus emerges to give the platform a third-party reporting or even collecting role**, at least in the medium or long term. Between thousands or millions of buyers on one side, and thousands or millions of sellers on the other, the platform is in fact the most "reliable" link in the chain, if not the only one.

I. THE UNITED STATES: INCOME IS REPORTED TO THE FEDERAL AUTHORITIES AND SOMETIMES TO LOCAL AUTHORITIES

A. FORM 1099-K: QUASI-AUTOMATIC REPORTING, YET WEAKENED BY OVERLY-HIGH THRESHOLDS

1. An obligation for online platforms and payment intermediaries

The United States has a mechanism for reporting all gross income received by a taxpayer *via* an online platform: Form 1099-K.

To understand this system, one must know that in the United States, private individuals fill their tax return, among other things, on the basis of forms that they receive from the people who have paid income to them. Employees receive a Form W-2 from their employers. Self-employed workers, receive a Form 1099-MISC for their various income¹. They can also receive Form 1099-K which is sent to them by payment intermediaries.

Form 1099-K must be completed by all payment intermediaries², a category that covers both the traditional operators of payment cards (*Visa, Mastercard* etc.), services like PayPal, and **intermediation platforms which act as a trusted third party in the transaction** - i.e. most platforms of the collaborative economy, whose model is based on levying a fee on the transaction. The form can be completed online.

However, for each beneficiary, Form 1099-K must be completed by the intermediary **only if the transactions exceed *both* the \$20,000 per year threshold *and* the threshold of 200 transactions per year³.**

¹ There are a series of "1099" forms: 1099-MISC for miscellaneous income, 1099-G for social aid, 1099-DIV for dividends, 1099-INT for interest, etc.

² Source: Internal Income Service (IRS), Instructions for Form 1099-K (2016), and other information from the www.irs.gov website. For the translations: Senate Finance Committee.

³ These minimum thresholds do not apply to card payments, which must be reported in their entirety.

for temporary work (1099-MISC or 1099-K) or for a classic employment contract (W-2)¹.

2. A system based on overly-high thresholds, and which could be improved

However, this system appears to be very far from working perfectly. Even though the income derived by private individuals from the sharing economy is, as in France, taxable under the conditions of ordinary law, it is often not reported and therefore not taxed.

Confirming the findings of the Working Group, a May 2016 study carried out by Caroline Bruckner, of the *American University* in Washington DC², notes that **61% of users who have received income via an online platform had not received Form 1099-K or 1099-MISC** from the platform, and that 69% of them had received no assistance or information on this subject from the platform. Moreover, **43% of them were unaware how much tax they could be liable for**, and they therefore had not put any money aside for this purpose. Nevertheless, the IRS states on its website, *“if you receive income from a sharing economy activity, it’s generally taxable even if you don’t receive a Form 1099-MISC, Form 1099-K or Form W-2 . This is true even if you do it as a side job or just as a part time business and even if you are paid in cash.”*

During her hearing by the *Small Business Committee* of the House of Representatives, on 24 May 2016, Caroline Bruckner stated: *“Notwithstanding the on-demand platform economy’s unprecedented growth and adoption by more than 86.5 million U.S. adults as consumers and service providers and sellers in just a few short years, the economic activity and growth of these small business owners has largely gone unacknowledged by most government measures for tracking small business activity. (...) In fact, many of these taxpayers don’t necessarily realize they are small business owners or what their tax filing obligations are until tax time or they receive an IRS notice ³ .”* The situation is therefore very similar to that in France.

Three factors appear to explain these failures:

- firstly, although large platforms such as Uber, Airbnb or Upwork “play by the rules”, this is not always the case of the very many small platforms which, taken together, represent a considerable proportion of the

¹ By default, it is the customer’s responsibility to determine the legal system applicable. In return for a paid option, determination of this system can be carried out by the platform, which then assumes the related legal risks.

² Caroline Bruckner, “The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy”, Kogod Tax Policy Center, American University in Washington DC, 23 May 2016. See also the article by Michael Cohn, “The Sharing Economy doesn’t Share Tax Information”, *Accounting Today*, 27 May 2016.

³ <https://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center> and https://smallbusiness.house.gov/uploadedfiles/5-24-16_bruckner_testimony_.pdf

activity. Thus, like in France (see above), *Airbnb* sends each of its “hosts” a summary of its annual income and makes a full page informing them of their tax obligations available to them - a policy that very many more modest actors do not implement;

- **secondly, the minimum thresholds adopted by U.S. tax law appear to be overly-high**, given the very dispersed nature of the collaborative economy, where each individual can be “his own business”, and the generally low amount of income from the “*gig economy*”. **Thus, a taxpayer earning \$19,000 per year, for 190 transactions, will not be subject to reporting to the IRS.** It is easy to imagine, moreover, the ease with which an unscrupulous taxpayer could “separate” his various income sources into several accounts, in order never to cross the thresholds;

- **thirdly, Form 1099-K is not a pre-filled tax return**, but a simple item of information for the taxpayer and the tax authorities, which the latter do not necessarily systematically use.

In the light of the American example, the Finance Committee Working Group of the Senate therefore developed its proposals on the basis of the following two observations:

- **firstly, a system that is *legally* an automatic income tax return**, and therefore reported on the taxpayer’s pre-filled tax return (without of course preventing him from correcting it), is preferable to a purely informative system in parallel;

- **secondly, reporting from the first euro is preferable** to reporting above certain thresholds, especially if they are high, and even if this means that the reported income **then benefits from a tax-free allowance or another tax advantage.**

B. AT THE LOCAL LEVEL: THE EXAMPLE OF THE PROACTIVE POLICY OF SAN FRANCISCO

The Federal System of the United States gives great importance to local authorities, particularly in the area of taxation - both in determining the tax base and the rate and with respect to tax procedures. Several U.S. cities therefore have a proactive policy regarding income tax on income derived from online platforms.

The initiatives of the City of San Francisco are the most significant, not only because of their magnitude but also because they originate in the very place where the companies concerned were founded.

1. Hotel tax collection and automatic reporting

In San Francisco, the equivalent of the tourist tax, the *hotel tax*, is **set at 14% of the price of each room**, whether it is a hotel room or a furnished tourist rental: it is therefore an important financial consideration for this city, which is also one of the top tourist destinations in the United States, and where the price of real estate is the highest¹.

The tax can be collected either by the renter, or through the transaction operator, which can be a traditional agency or an online platform: *"we are agnostic on this point, regardless of who collects the tax, provided it is paid"*, said the Tax Collector of the City and County of San Francisco², David Augustine.

The system, in principle, is voluntary for the renters. However, as a qualified company, *Airbnb* **collects the tax systematically, for all its hosts in San Francisco**: the system is automated and is not subject to choice on a case by case basis.

Most importantly, in San Francisco, collection of the hotel tax by intermediaries is accompanied by the **transmission of all relevant information: price per night, exact address of the accommodation, name of the owner, etc.**

Therefore, the City Hall services **know the income for each host**, while this is not the case for the IRS (see above). For the platforms that do not collect the tax themselves (for example *Craigslis*, the U.S. equivalent of *Leboncoin*), **the City Hall can use its communication right under ordinary law**³. Do the platforms respond? *"This information is covered by tax secrecy, but we use all the legal means at our disposal"*, according to David Augustine.

Overall, collection of the hotel tax by the platforms in San Francisco is a clear success. The revenue from the *hotel tax* total approximately \$300 million per year, a significant contribution to the budget of the city of San Francisco, which is \$8 billion⁴. **Of this \$300 million, Airbnb**

¹ In San Francisco, a highly-qualified employee may spend up to 75% of his income in rent, and Silicon Valley as a whole lost nearly 6,000 inhabitants last year due to the increase in the price of housing. Thus, in order to encourage social mixing, the municipality of Palo Alto has even considered granting housing benefit to households with an annual income of less than... 250,000 dollars per year.

² The Tax Collector is the senior official in charge of taxation in the City and County of San Francisco. He is placed under the direct and exclusive authority of the City Treasurer, José Cisneros (see below).

³ This communication right is similar to that available to the General Directorate of Public Finances (see above), and allows non-nominative requests to be made.

⁴ There is in addition, in particular, \$1.4 billion in property tax, at the rate of 1.1%, based on the value of the property... when it was acquired. Given the considerable increase in property prices in San Francisco, this rule leads to large inequalities. As in France, a "revision of leasehold values" is currently being debated ("proposal 13"), but will probably initially be limited to commercial premises.

collects approximately a million dollars per month, a figure covered by tax secrecy that the City Hall cannot confirm.

The City Hall of San Francisco believes that the success of this system is due to **the strict separation which exists between the collection of the tax and the other public policies**. David Augustine thus stated: *“My work, is to collect taxes and nothing else. We do not deal with other applicable regulations, housing registration, fire standards etc.”* The most significant reflection of this policy is that the data collected by the City tax department **are in no case shared with other departments of the City and County** and, in particular, to the *Planning Department*, responsible for the urban planning policy and therefore for the control of the upper limit of nights applicable to the rental of each housing unit. Neither are they sent to the *Internal Revenue Service*.

2. A proactive use of the communication right?

A lot can also be learned from the action of San Francisco City and County with respect to online mobility platforms.

In April 2016, the Treasurer of the city, José Cisneros, sent some 37,000 Uber and Lyft drivers of San Francisco a letter ordering them to obtain a professional licence to carry out their activity, and to pay taxes for which they are liable as self-employed workers. This licence costs 91 dollars per year for self-employed workers whose turnover is less than \$100,000 per year. The letter stated that drivers not complying with this obligation, which has existed for a long time, would be liable to penalties. The single procedure of registering 37,000 additional self-employed workers would constitute additional revenue of \$3.4 million for the municipality - even if an unknown number of drivers already have this licence. **In three weeks, 8,000 drivers responded to the City Hall’s¹ order.**

This policy forms part of the debate on the legal status of *Uber* and *Lyft* drivers, as noted by the *San Francisco Chronicle*: *“When faced with class-action lawsuits from drivers seeking status as employees, the companies have vigorously maintained that the drivers are independent contractors. Cisneros is in essence turning that argument back on them and saying: If that’s the case, the drivers have to register as independent contractors for a business license².”*

The City of San Francisco was unable to confirm the source of the list of the names and addresses of the drivers, covered by tax secrecy. However, it is likely that the list comes from the use of a **communication**

¹ Source: *San Francisco City Hall*, 6 June 2016.

² Source: *San Francisco Chronicle*, “San Francisco to require Lyft and Uber drivers to obtain a license”, 15 April 2016. <http://www.sfchronicle.com/bayarea/article/SF-to-require-Lyft-Uber-drivers-to-obtain-7250137.php>

right with regard to Uber and Lyft¹. As a reminder, in a report of 12 April 2016, *Uber* revealed that it had replied, over the previous six months, to more than 12 million requests for information from the administrative authorities (the federal authorities, but also, among others, California, New York and Chicago), regarding its drivers and its customers.

It should however be noted that this offensive use of the communication right is not without its detractors in the municipal administration of San Francisco: the registration of self-employed drivers is **an initiative of the City Treasurer, José Cisneros, an elected official who is totally independent from the Mayor².** The latter, Ed Lee, has moreover stated that he is *“neither for nor against”* this initiative.

II. ESTONIA: A DEAL WITH UBER FOR AUTOMATIC REPORTING OF DRIVERS' INCOME

A. *“THE PLATFORM-STATE” AND THE PLATFORM: A SELF-EVIDENT, SUCCESSFUL PARTNERSHIP*

In October 2015³, the Estonian Tax and Customs Board (ETCB) and *Uber* announced that they had concluded an agreement for setting up an **electronic system for the automated transmission of data relating to drivers' income, on a voluntary (opt-in) basis.**

This initiative must be understood in the context of **the legalisation, introduced in November 2015, of transport services of passengers by private individuals,** offered by platforms such as *Lyft*, *Uber* and *Taxify*. These services, if they are performed in return for a fee, were outlawed in France by the “Thévenoud” Act of 1 October 2014 (see above), as in other European countries.

¹ *Unlike the communication right exercised by the DGFIP, the communication right of the City Hall of San Francisco does not come up against the obstacle of territoriality: Uber and Lyft are established in the United States... just a few streets away from San Francisco City Hall.*

² *And the same applies to the sheriff and the district attorney, for example. These elected officials have their own administrative authority and are directly accountable to their constituents.*

³ <http://www.emta.ee/eng/etcb-and-uber-collaborate-seeking-solutions-development-sharing-economy>

The legalisation of transport services between private individuals in Estonia

A competitive market where actors already use mobile applications

Estonia, a country of 1.3 million inhabitants, currently has over 4,000 taxis 2,300 of which in Tallinn. Although there is approximately 1 taxi for every 1,158 inhabitants in France, this same ratio is 1 for every 325 in Estonia. Estonian taxi drivers must comply with the same obligations as their French and European counterparts (meter, safety standards). But unlike the French situation, there is no quantitative restriction on the number of taxis and the cost of the licences remains low.

Today, approximately 40% of customers in Estonia call a taxi by using a mobile application, the leading one being the Estonian, Chinese-owned, application Taxify. Created in 2013, in sixteen months this application has become market leader in Estonia. Now present in nine countries (Finland, Baltic countries, Belarus, Poland, Czech Republic, Netherlands, Serbia), it has more than 500,000 customers in Europe and a growth rate of 10% to 20% every month. More than 2.2 million bookings were made via this platform in Estonia in 2015.

Although 37% of taxi drivers are currently registered on the Taxify application alone, **the company explains that it can no longer operate without the contribution of the workforce made up of non-professional drivers.** At certain times of the day, in particular between 10 pm and 2 am, demand far outstrips supply. Taxify explains it has over 1,000 drivers who are private individuals in the three Baltic State, working an average of seven hours per week. Although these drivers do not have to comply with the same legal obligations as taxis, the platforms require them to respect a quality charter (no criminal record, proficiency in the Estonian language, a licence held for three years, training in providing the service, vehicle less than ten years old).

According to Taxify, the average score assigned by the customers to these non-professional drivers totals 4.88 out of 5. Thus, only 0.5% of these drivers have been blocked by the platform for non-compliance with the quality charter compared to 34% of professional taxis.

New legal status and online income tax return

The bill on transport services between private individuals aims to adapt the existing legal framework to the development of this new sector. As it stands, it gives drivers who do not carry out this activity as their main job "micro-enterprise" status. **In addition, it allows them to fill their income tax return online.** (...)

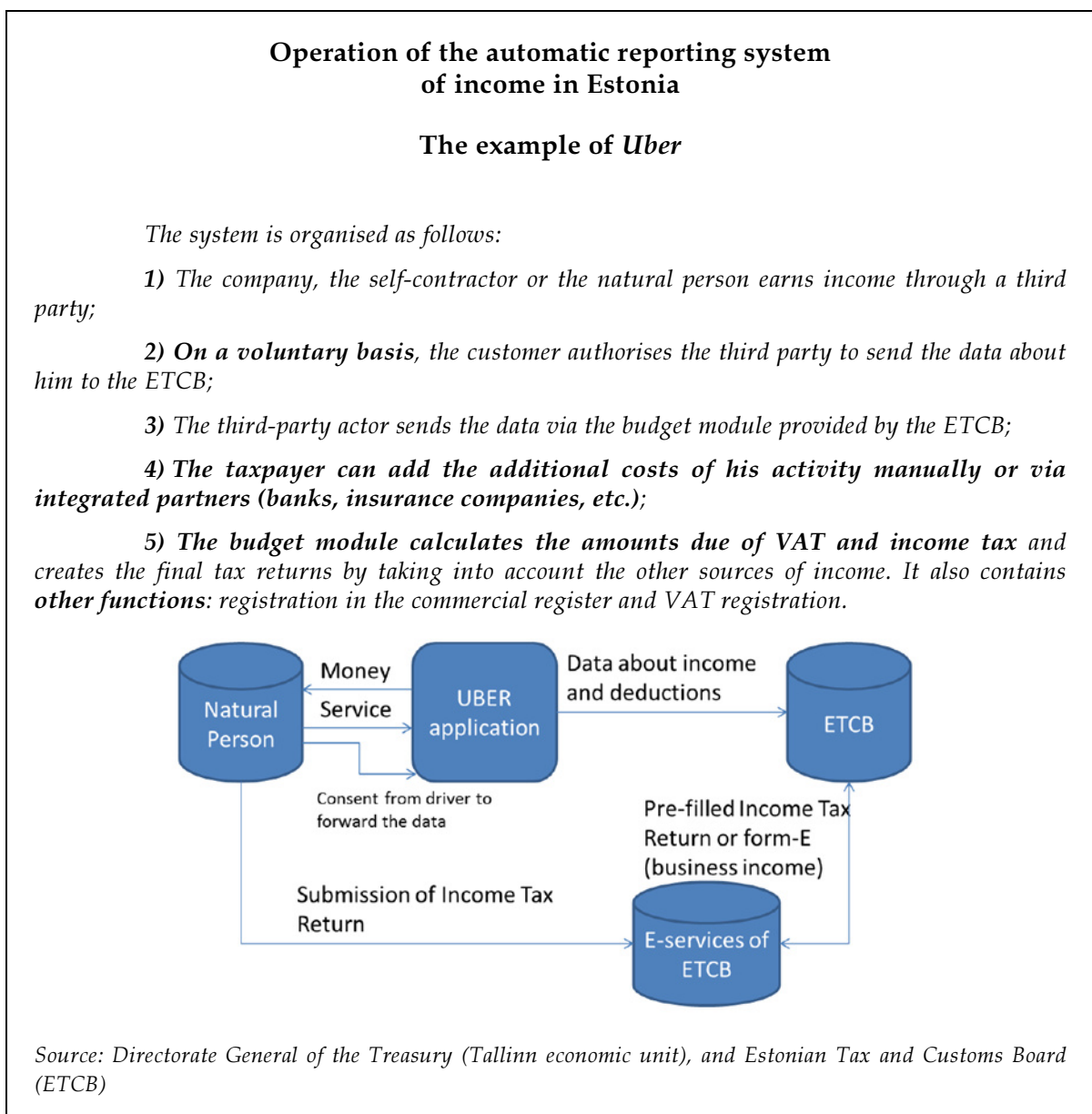
According to Mark Helm, Director of the ETCB, reporting this income will be done on a voluntary basis. Voluntary payment of taxes appears to him to be a key element in regulating these service activities offered by private individuals (more generally than in just the transport sector). In his opinion, Estonian citizens have demonstrated in the past their compliance with tax rules, which would limit the number of controls needed. He eventually proposes to make this income reporting platform developed by Estonia **available to all non-professional drivers regardless of their country of residence, with Estonia then taking on the responsibility of passing on the information to each State concerned.**

Source: Directorate General of the Treasury (Tallinn economic unit)

The first Member State of the European Union to have legalised fee-paying transport services between private individuals, Estonia is therefore, according to the Directorate General of the Treasury, "in the process of developing the **most efficient taxation system produced up to now in this field.** Thanks to its flexible legal and administrative environment, it has managed in just a few months to create an automatic data exchange system with Uber, which is used to include drivers' income in their tax returns".

The system is specifically designed for the business models of the collaborative economy: it allows the platforms, which are contact and payment intermediaries, to pass on the relevant data to the tax authorities, as the employers and banks already do, which are then included in the taxpayers' pre-filled tax return. Up to now, the system was unable to take into account - and therefore, to a certain extent, to tax - income from the activity of self-employed workers and private individuals.

The module presented below is therefore intended to be integrated into the national information system of levies and taxes.



Source: Directorate General of the Treasury (Tallinn economic unit), and Estonian Tax and Customs Board (ETCB)

After a few months' development, the first data transfer was successfully carried out in January 2016, and the Estonian tax authorities consider the results to be very encouraging.

In the light of this success, **Estonia plans to open up the system to all collaborative platforms, perhaps as soon as late 2017.** According to the information available to the Working Group, the ETCB has already initiated discussions with *Taxify* (main competitor of *Uber*), with *Postpal* (management of the delivery process for e-commerce) and with *Autolevi*, (car rental between private individuals, like *Drivy* and *Ouicar* in France).

B. A SUCCESS WHICH IS ATTRIBUTABLE TO THE SPECIFIC FEATURES OF THE ESTONIAN DIGITAL ADMINISTRATION

The Estonian system is very close to that proposed by the Working Group, in its provisions and in its voluntary nature.

The following observations need to be made about this success:

- **it is primarily a matter of political will:** with 1.3 million inhabitants, Estonia is not a key market for a multinational company like *Uber*. The country has also opted for **the contractual rather than legislative way**. This example suggests that, when the other conditions are met for simple implementation of the system, excellent results can be obtained;

- **the success of the system is attributable to a large extent to the excellence of Estonia in e-administration.** Ranked n°1 in the European Union's ranking in the Digital Economy and Society Index (DESI) in the online public services category¹, Estonia allows its citizens to complete nearly 90% of their administrative procedures *via* the Internet: voting, registering births, applying for identity documents, vehicle registration, registration in the commercial register, etc. Entirely online, the administrative authorities' information system is therefore particularly well suited to an interconnection with an online platform like *Uber*;

- **the system is presented as a service to users:** although it helps to ensure fair taxation of an economic sector which partly previously avoided it, it also offers taxpayer drivers the ability, in just a few minutes *via* the dedicated Internet portal, to deduct their expenses or their deductible VAT, or register themselves in the commercial register.

The Estonian example can be compared to that of the collection of the tourist tax in France: although permitted by a legislative provision, it is carried out on a voluntary basis by *Airbnb*, which currently implements it in nearly 50 French towns and cities. However, a general roll-out of this mechanism has experienced a lot of delay, which is attributable to **the absence, and then to the failings, of the public information system** in allowing the platform to have the information available to it needed for collection (i.e., the base and rate applicable in each municipality, as well as its bank details).

¹ <https://ec.europa.eu/digital-single-market/en/scoreboard/estonia>

Adequate preparation of the information systems therefore appears to be an essential prerequisite for implementing automatic reporting in France, with regard to taxation and social contributions.

III. THE UNITED KINGDOM: A VERY ATTRACTIVE TAXATION REGIME, WITH NO DECLARATIVE OBLIGATIONS IN RETURN

A. A SHARED OBSERVATION: CURRENT RULES ARE UNADAPTED

In recent years, the United Kingdom has adopted a specific tax system that is particularly favourable for income derived by private individuals from their activities on online platforms.

This change stems from a finding that applies both to the United Kingdom and to France: *"The rapid growth of the digital and sharing economy means it is becoming easier for more and more people to become 'micro-entrepreneurs'. However, for those making only small amounts of income from trading or property, the current tax rules can seem daunting or complex¹."*

B. £ 1,000, £ 1,000 AND £ 7,500: THREE CUMULATIVE ALLOWANCES WITH NO OBLIGATIONS IN RETURN

The UK Finance Act of March 2016 created **two allowances of £ 1,000 , cumulative, for income derived from online platforms (sharing economy²)**, from which all private individuals and self-employed workers can benefit. Income lower than these thresholds, fully exempt from income tax, no longer has to be declared. These allowances are as follows:

- £ 1,000 on income derived from sales of goods or services;

- £ 1,000 on rental income, such as the rental of an apartment on *Airbnb*, but also a secondary residence, a garage or storage space.

To these two general allowances is added **a specific allowance of £ 7,500 on income from the rental of a room or a bedroom in a main residence³**. This allowance was created in April 2014 and set at £ 4,250, and doubled the following year.

On presentation of the Finance Bill for 2016, the Chancellor of the Exchequer, George Osborne, stated that these measures were *"the first tax advantage for the collaborative economy in the world⁴"*.

¹ Source: HM Income & Customs, 16 March 2016. Exact source not found

² The term "sharing economy" is used in the United Kingdom in a very broad sense, and in practice covers the online platform economy.

³ For information, a "typical host" using *Airbnb* in London earns 3,250 pounds sterling per year.

⁴ Source: HM Income & Customs, 16 March 2016. Exact source not found

C. AN EXCESSIVELY FAVORABLE REGIME?

The creation of these allowances, which in their principle are analogous to the Working Group's proposal, are considered with **important reservations by the Working Group with respect to their highly favourable nature which lack any declarative obligations in return.**

It is a fully intentional stance: during the course of the interviews conducted by the Working Group, in particular with political leaders, it appeared that the British Government intended to **create a regulatory and tax environment that is highly favourable to the collaborative economy**, by reducing restrictions on the platforms and their users as much as possible. The association representing online platforms, the SEUK (*Sharing Economy UK*), also stated that these measures were "*a great victory for Great Britain*" - an opinion that, in particular, the representatives of the hotel sector did not share. **This initiative must be understood in the more general context of the consequences of the referendum of 23 June 2016** on the country leaving the European Union (Brexit), after which sharp cuts in corporation tax and deregulation measures have been announced.

More specifically, the highly favourable nature of the British system lies in a combination of two elements:

- **firstly, there are *additional* allowances**, and not, as in the Working Group's proposal, *alternative* allowances to those of ordinary law, which would cancel each other out for people whose income is significant (see above). In other words, **they amount to wholly exempting income of up to 9,500 pounds per year**, provided this money is received *via* a platform, moreover regardless of the taxpayer's annual income. **This measure, not targeted on occasional or sideline income**, could therefore constitute significant unfair competition to the detriment of traditional sectors, as well as a substantial loss of revenue for the Treasury;

- **also, these allowances are granted with no obligation of automatic reporting or even an obligation of information in return, which makes the system potentially very permissive.** Since the reporting formalities are the taxpayer's responsibility, he could thus be encouraged to declare only income lower than the cumulative amount of the allowances, thus benefiting from a tax exemption while reducing the magnitude of any adjustment. During the interviews conducted by the Working Group, it appeared that automatic reporting, though regarded by several officials of the tax authorities and tax lawyers as "*the most efficient way to collect the tax*" and an "*inevitable solution in the long term*", **at this stage elicited too many reservations from the platforms and taxpayers** to be envisaged.

These reasons led the Working Group to prefer a tax advantage focused on the small occasional and sideline income benefiting only those taxpayers who accept automatic reporting.

It should however be stressed that the British tax authorities **are on the other hand very ambitious in fighting VAT fraud on the e-commerce platforms**. The same UK Finance Act for 2016 has introduced a new **joint and several liability (JSL) system for platforms for payment of VAT** due by overseas businesses (outside the European Union), which sell goods to UK consumers.

**Joint and several liability of e-commerce platforms
with regard to VAT**

The planned procedure has three successive components:

1. Through the platforms, the authorities can request online sellers in third countries which appear to be professionals to **appoint a tax representative in the United Kingdom, responsible for payment of VAT** instead of the seller or severally with him (*joint and several liability*);

2. If the VAT is not paid within 30 days, or if the tax representative is not appointed, the authorities may **consider the platform as distinctly and jointly and severally liable to pay the VAT** instead of the seller or severally with him;

3. **The warehouses (*fulfilment centres*)** located in the United Kingdom which store goods sold by third country sellers, by 2018, will have the obligation to **implement “due diligence” measures to ensure payment of VAT**. The detailed instructions (*Fulfilment House Due Diligence Scheme*) were published in December 2016.

Source: Senate Finance Committee

IV. BELGIUM: A VIRTUOUS MECHANISM, YET CURRENTLY LIMITED TO SOME INCOME CATEGORIES ONLY

A. AN INCENTIVISING SYSTEM: A 10% FLAT TAX ON INCOME UNDER EUR 5,100, IN RETURN FOR AUTOMATIC REPORTING

In Belgium, income received by private individuals for service activities carried out by through online platforms is subject to ordinary law. It comes under **the category of “miscellaneous income”**, equivalent to that of the industrial and commercial (BIC) or non-commercial profits (BNC) in France. **It is taxed at the rate of 33%**.

In practice, this relatively deterrent tax rate results in this income being rarely reported, and therefore rarely taxed, especially as it is difficult for the administrative authorities to carry out checks on individually modest amounts that are difficult to trace (minor DIY services, gardening, babysitting, etc.).

At the initiative of the Deputy Prime Minister and Minister of the Digital Agenda, Alexander De Croo, the House of Representatives, in June 2016 adopted a **bill aimed at establishing specific taxation regime for private individuals' income derived from collaborative service platforms**, such as *Listminut* (see below) or *MenuNextDoor* (take-away food cooked by private individuals).

This specific system, **in force since 1 March 2017**, is based on a threshold of EUR 5,100¹ and a fixed tax rate of 10, in discharge of ordinary income tax:

- **income under EUR 5,100 gross per year is taxed at the flat rate of 10%²**, instead of 33%. The tax is calculated and collected at source by the platform, with the service provider receiving an amount net of tax. To this end, the Act authorises the platform to ask the user for his name and his **national register number**, the equivalent of the tax number;

- **income under EUR 5,100 gross per year is subject to income tax** under the conditions of ordinary law.

As regards social contributions, a user whose income exceeds the EUR 5,100 threshold is considered to be a self-employed worker and must be affiliated to social security. He then pays social contributions on all his income, which prevents, with regard to this aspect, a distortion of competition. Affiliation as a self-employed worker is not mandatory for users of online platforms whose income is under EUR 5,100. As in the proposal of the Senate Finance Committee Working Group, **a single threshold only is therefore used for taxation and social contributions**.

Implementation of the mechanism is optional, with Alexander De Croo giving three arguments: its incentivising rather than coercive nature, the difficulty of imposing such a measure on foreign platforms, and in particular the potential perverse effect of an obligation on the newest start-ups - where appropriate, it would be an improvement either to provide for a minimum threshold of transactions, or a waiting period (e.g. one year) before implementation.

In April 2016, the Government estimated that the measure could bring in EUR 20 million per year to the State. During his interview with the members of the Working Group, Alexander De Croo stated that **approximately 90% of private individuals received income below the EUR 5,100 threshold** for their service activities on collaborative platforms.

¹ In the initial bill, the threshold was set at EUR 5,000. It was raised to EUR 5,100 when the act came into force, to take account of inflation. It should be noted that the Government initially envisaged a EUR 8,000 threshold.

² Formally, the Act provides for a rate of 20%, applicable to gross income after a 50% tax-free allowance. It is a State tax, but part of the income is paid to the self-employed workers' social security system, without however giving the taxpayer any rights to it. This fraction is therefore comparable to the CSG in France, but not to the social contributions.

B. SO FAR, A NARROW SCOPE OF APPLICATION WHICH LIMITS ADOPTION OF THE MECHANISM BY MANY PLATFORMS

The law is based on the following compromise: a lower tax rate (10% instead of 33%), but collected more efficiently.

Well received by the actors of the collaborative economy in Belgium, the bill initially sparked strong reservations from taxi drivers, hoteliers and self-employed professions, who are fearful of unfair competition from “fake private individuals”. This opposition appears however to have calmed down since last year.

The first platform to have implemented the system is *Listminut*, which puts private individuals in contact with each other for services such as DIY, gardening, assistance for people, home tuition and babysitting. Founded in 2013, it is the equivalent of *Stootie* in France and *TaskRabbit* in the United States. During his interview with the members of the Working Group, its founder, Jonathan Schockaert, emphasised that a 10% rate would of course always be less advantageous than a continuation of the informal activity, but that **its relatively low level should all the same convince many individuals to regularise their activity**. In other words, users who already applied the tax rules obtain a **financial advantage** by going through a participating platform, and the others will obtain at least a **service** (simplification of procedures) and **the guarantee that they are complying with the law**.

Jonathan Schockaert also stated that one of the other great virtues of the system was that it **constituted a “springboard towards entrepreneurship”**, citing the example of a person wishing to “test out” his **capabilities** as regards DIY household services before turning professional. This is the case for several users of *Listminut*, of whom approximately 15% are now professionals¹.

The advantage of this mechanism, which also applies to that proposed by the Working Group, is **particularly relevant to the case of Belgium, where a micro-entrepreneur status does not exist**. Therefore there is a sudden switch from private individual status to that of full-blown self-employed worker, with all the obligations that such a status implies (in particular the payment of social contributions including in the case of a loss-making activity). This threshold effect, which can only encourage undeclared work with regard to small occasional services, is appreciably attenuated by the new measure. During the interviews conducted by the Working Group abroad, **micro-entrepreneur status was often cited as an important**

¹ *i.e. they have self-employed worker status and they indicate their VAT number.*

comparative advantage for France, which the study by PwC on the collaborative economy in Europe also notes¹.

However, beyond the technical questions not all of which appear to be resolved at this stage (frequency of payments to the Treasury, format of the data sent, check of when the threshold is crossed, etc.), **the new Belgian law has weaknesses that, for the moment, still restrict its scope.**

Thus, most large international platforms have not yet expressed their willingness to apply this measure² - which is voluntary.

The main obstacle seems to be **the relatively small area of income eligible for the tax advantage, i.e. "miscellaneous income" derived from service activities** carried out by private individuals.

The main "weak point" of the mechanism, as Belgian authorities admit, is the exclusion of real estate income, and in particular the income from rental platforms such as Airbnb - which therefore is not taking part in the system. More specifically, the administrative authorities have clarified the characterisation of income from platforms of the *Airbnb* type, applying the following fixed-amount allocation criteria: 48% for real estate income, 32% for movable property income (for furniture and household equipment), and **20% of miscellaneous income** (for services such as reception or the supply of bed linen). Only these last 20% could therefore benefit from the measure, **an advantage which appeared too small to warrant participation in the mechanism.**

In addition, the EUR 5,100 threshold, expressed in gross income, may seem to provide little inducement with regard to the rental of furnished accommodation, which can quickly produce higher proceeds³.

Also excluded from the "miscellaneous income" category, and therefore from the tax advantages in its current form is **income from movable property**, i.e. from the rental of a car or a drill between private individuals, as well as **income from the sale of goods** in a virtual marketplace, such as personal creations or movable goods.

¹ Source: Robert Vaughan et Raphael Daverio, PwC UK, « Assessing the size and presence of the collaborative economy in Europe », a study for the European Commission, April 2016.

² Some platforms, which offer services carried out exclusively by professionals, cannot by definition receive the advantage. This is particularly the case of Uber, on which all drivers have a professional status (the service UberPop also having been outlawed in Belgium).

³ Although the Working Group also proposes to apply the EUR 3,000 threshold to short-stay furnished accommodation rentals of the Airbnb type, it does not however wish to change the EUR 23,000 threshold applicable to social contributions for affiliation to the self-employed workers' social security system (RSI) or to the general system, for the same reasons.

C. A "TEST" FOR THE WORKING GROUP'S PROPOSALS

Despite these few limitations, which could be removed, **the Belgian system is a very encouraging initiative, producing far fewer deadweight effects than the British system and moving in the same direction as the Working Group's proposals.** This convergence is notable with regard to the following points:

- **it is based on the same virtuous circle:** a tax advantage in return for automatic reporting;

- **it is based on a single annual income threshold¹,** applicable to all income received *via* online platforms, and "transposed" as far as social contributions are concerned in the form of an assumption of the non-professional nature of the activity. **The slightly higher level of the threshold is offset by the existence of a levy in discharge below this amount.**

However, besides its principle which is perfectly in line with the propositions of the Working Group, **it should be remembered that the creation of a new income category,** subject to a specific fixed rate of 10% instead of the progressive scale, **could pose a problem in French law with respect to the principle of equality before taxation.**

Indeed, unlike the advantage proposed by the Working Group, whose effect is neutral when the income is significant (see above), the Belgian law *always grants preferential tax treatment to the first EUR 5,100 earned via platforms, without an "exit threshold"*. There is therefore a risk of creating, for the same activity, a "subsidy" for using a platform, which could be a distortion of competition in relation to "physical" professionals.

V. ITALY: AN INCENTIVISING SYSTEM, WHICH REMAINS TO BE ADOPTED

A. A SPECIFIC BILL TO ADDRESS THE CHALLENGES POSED BY THE COLLABORATIVE ECONOMY

It is estimated that in 2015 there were 186 collaborative platforms, a 35% increase in one year. Around 25% of the Italian population is reported to have already used them. The most important sectors are crowdfunding, transport, services for the exchange of goods and tourism, all together constituting a total of EUR 450 million of added value.

¹ The EUR 5,000 threshold was also proposed in the first report of the Working Group on the subject, published on 17 September 2015 (see above).

In Italy, as in France, income collected through collaborative platforms does not benefit from any specific treatment in relation to taxation or social contributions. It is subject to the ordinary law of income tax on natural persons (IRPEF), and therefore taxable from the first euro. Self-employed workers, in addition, must have a VAT number (*partita IVA*), which has an equivalent function to the French SIRET number.

Italy also has a micro-entrepreneur status similar to that of France, the “*minimi*” system, which is based on a tax rate of 10% after application of a proportional tax-free allowance to the gross income, equivalent to the French micro-tax allowance, and variable depending on the nature of the activity. This system is open to independent workers not exceeding certain thresholds, again depending on the nature of the activity. It is always possible to opt for the real charges and benefits income system.

The MPs of the *Partito Democratico* in January 2016 presented a bill regarding the discipline of digital platforms for sharing goods and services and provisions for promoting the collaborative economy¹. According to the explanatory statement, the purpose of the bill is to “*provide a framework for the development of the collaborative economy, by establishing the instruments to ensure fair competition in this market, transparency, tax fairness and consumer protection*”.

This bill shows an **awareness of the need to adapt existing law to the specific characteristics of the economy of online platforms, in particular in the area of taxation,** in order to foster the development of these new forms of trading without causing distortions of competition or compromising tax revenue.

Article 12 provides for a tax advantage associated with automatic reporting or users’ income.

¹ Proposta di legge C. 3564, “*Disciplina delle piattaforme digitali per la condivisione di beni e servizi e disposizioni per la promozione dell’economia della condivisione*”, 27 January 2016. <http://documenti.camera.it/Leg17/Dossier/Pdf/AP0065.pdf>

The 12 articles of Bill No. 3564

Article 1: Purposes of the Act.

Article 2: Definitions:

Collaborative economy: any activity generated by the optimised and shared allocation of spatial, temporal or material resources and services, via digital platforms; the managers of these platforms act as intermediaries between users and can offer value-added services; the goods that generate the value via the platform belong to the users, between the platform managers and the users no relationship of subordination exists; platforms which operate as intermediaries between professional operators registered in the commercial register are excluded;

Platform operators: public or private person who manages/operates the digital platform;

Operator user: a public or private person who, by means of the digital platform, offers a service or offers to share his own good;

Consumer user: public or private person who, by means of the digital platform, uses the service provided or the good shared by the operator user.

Article 3: powers of the national competition authority (new powers of the AGCM to regulate this sector).

Article 4: company policy document (obligation for companies of the sector to adopt a document, subject to the AGCM's approval, laying down all the provisions governing relations between the company and the users of the platform).

Article 5: tax provisions (see below).

Article 6: annual measures for the development of the collaborative economy (every year, in the annual law relating to the market and to competition, measures shall be provided aimed specifically at the collaborative economy sector, in particular to lift barriers to its development and adapt to the new challenges of a sector that is highly dynamic by nature).

Article 7: protection of the personal data of platform users

Article 8: guidelines for the local authorities (establishment of guidelines by the State for local authorities in order to promote best practices within the economy collaborative to the public administration sphere).

Article 9: monitoring of the sector (the National institute of statistics is responsible for producing statistics on the development of the sector).

Article 10: control and sanctions.

Article 11: transitional provisions.

Article 12: financial provisions.

Source: General directorate of the Treasury, Rome regional economic unit

B. AN INCENTIVISING SYSTEM SIMILAR TO THE BELGIAN MODEL: 10% FLAT TAX FOR INCOME UNDER EUR 10,000

The tax advantage consists of a reduced tax rate of 10% applicable to income under EUR 10,000, which would constitute a new income category.

The first sub-paragraph of Article 12 provides that *“income received by users via digital platforms, referred to as “income from non-professional activities of the collaborative economy”, is declared in a special section of the income tax return. For income up to EUR 10,000 from the digital platforms a tax equal to 10% applies. Income over EUR 10,000 are added to the income from work or earned as an employee or self-employed worker, to which the corresponding tax rate is applied”*.

Several observations need to be made about this provision:

- **it is based on a single annual income threshold**, applicable to all the income received *via* online platforms, like the proposal of the Working Group, and in line with the logic used by the United Kingdom and Belgium. According to the Directorate General of the Treasury, *“the EUR 10,000 threshold has been proposed as being the most appropriate to differentiate an occasional activity from a regular activity of the professional type”*;

- **the EUR 10,000 threshold is certainly higher** than that decided by the Working Group, but lower income is subject to a levy in discharge: in this aspect, the Italian proposal **is closer to the solution adopted by Belgium** than the British solution or the proposal of the Working Group, which consists of tax-free allowances;

- **the creation of a new income category**, which would be included in an *ad hoc* box of taxpayers' income tax returns (the equivalent of Declaration No. 2042 C in France, see above) and would be subject to a specific fixed rate of 10% instead of the progressive scale of the income tax, **therefore again raises a problem of equality before taxation**.

The observations made about the Belgian law therefore apply to the Italian bill - and perhaps even more so, given the fact that **the advantage applies to a base of EUR 10,000, which may constitute a non-negligible part of a self-employed worker's income**. Depending on the case, the proposed measure could therefore either harm “physical” self-employed workers, or on the contrary **create a strong deadweight effect, with the latter “switching” part of their proceeds to the platforms, in a more or less artificial way¹**.

¹ For example, a trader could, in his physical shop, offer his customers the ability to pay via a “platform”, which would simply be a smartphone application or even a payment terminal. Such a case could where appropriate be subject to an adjustment – provided it is detected, which the reporting of income by the platform alone cannot do.

C. THE UNCERTAIN IMPLEMENTATION OF AUTOMATIC REPORTING

Article 12 also provides for a compulsory mechanism for the automatic reporting of income by the platforms:

“The platform managers act, as regards the income generated by the digital platforms, as “reporting third parties” in respect of users. To this end, platform managers domiciled or residing abroad must have a permanent establishment in Italy.

“The platform operators shall communicate to the tax authorities the data relating to any transactions that have taken place via the digital platforms, even if users have received no activity income through these platforms”.

Formally, automatic reporting would therefore be compulsory, with online platforms becoming “reporting third parties” in the same way as companies are for their employees and as financial institutions for their customers. The system differs on this point from that decided by Belgium.

However, the effective scope of such an obligation is uncertain, since it is based on the obligation for the platforms to have a permanent establishment in Italy, which seems in principle contrary to the rules of the internal market relating to the freedom of establishment and the free provision of services. In the absence of this provision, the platforms established in another European country or even outside the European Union could decide not to implement automatic reporting - or moreover the other provisions of the bill.

In this regard, the incentivising component of the proposed measure, i.e. the application of a reduced rate of 10%, seems more likely to encourage the implementation of automatic reporting.

WORKING GROUP HEARINGS

1. Public Authorities

Direction générale des finances publiques (DGFIP)

- M. Laurent MARTEL, sous-directeur de la fiscalité des entreprises, direction de la législation fiscale (DLF)
- M. Audran LE BARON, chef du service de la gestion fiscale
- Mme Christelle PORTIER, bureau GF-1A
- M. Bastien LLORCA, chef du bureau CF-1, service du contrôle fiscal

Inspection générale des affaires sociales (IGAS)

- M. Louis-Charles VIOSSAT, inspecteur des affaires sociales
- M. Nicolas AMAR, inspecteur des affaires sociales

Agence centrale des organismes de sécurité sociale (ACOSS)

- M. Yann-Gaël AMGHAR, directeur général
- M. Denis LEBAYON, adjoint au directeur général

Direction de la sécurité sociale (DSS)

- M. Morgan DELAYE, sous-directeur du financement de la sécurité sociale
- Mme Virginie CHENAL, adjointe au chef du bureau chargé de la législation financière

2. Online Platforms and other private actors

Airbnb

- M. Emmanuel MARRIL, directeur France
- M. Franck AVIGNON, directeur juridique

A Little Market

- M. Nicolas COHEN, co-fondateur de *A Little Market*
- M. Nicolas d'AUDIFFRET, co-fondateur de *A Little Market*

Amazon

- M. Cédric FLORENTIN, directeur juridique
- M. Jean GONIÉ, directeur des affaires publiques
- M. Pietro BRIOCCHI, senior tax manager Europe
- Mme Céline ARRUBARRENA, senior tax analyst Europe

Blablacar

- M. Frédéric MAZZELLA, fondateur et président
- Mme Fabienne WEIBEL, directrice des affaires publiques

Drivy - Zilok - Ouicar

- M. Patrick FOSTER, CFO et COO de Drivy
- Mme Marion CARRETTE, présidente de Ouicar et de Zilok
- Mme Alexandra ESCRIBE, directrice générale de Zilok

eBay

- Mme Charlotte CHEYNARD, responsable affaires institutionnelles
- Mme Alix BÉDUÉ, APCO Worldwide

Heetch

- M. Teddy PELLERIN, co-fondateur de Heetch
- Mme Morgane RIBAUT, chargée des relations publiques
- Mme Agnès DUBOIS-COLINEAU, directrice générale d'Arcturus Group

Hopwork – Blablacar – France Digitale

- M. Jean-David CHAMBOREDON, président de France Digitale

Leboncoin

- M. Antoine JOUTEAU, directeur général
- M. David ROIZEN, directeur associé Havas Paris

Stootie

- M. Jean-Jacques ARNAL, fondateur et président
- M. Loïc JOURDAIN, directeur commercial

Association pour un hébergement et un tourisme professionnels (AHTOP)

- M. Jean-Bernard FALCO, président

Compagnie nationale des commissaires aux comptes (CNCC)

- M. Jean BOUQUOT, président
- M. François HUREL, délégué général
- M. Jean-Pierre LIEB, avocat associé, fiscalité des entreprises

Conseil national des professions de l'automobile (CNPA)

- M. Florent PORTMANN, responsable du pôle mobilités
- Mme Clémence ARTUR, responsable des affaires publiques

Blog « Droit du Partage »

- M. Arthur MILLERAND, avocat, co-fondateur de Droit du Partage
- M. Michel LECLERC, avocat, co-fondateur de Droit du Partage

Fédération des plateformes collaboratives (FPC)

Boaterfly, Wingly, Vide-Dressing

- M. Ronan KERVADEC, président de la FPC et de Boaterfly
- M. Charlélie MOUNIER, FPC
- M. Bertrand Joab CORNU, président de Wingly
- M. Gregory SALINGER, président de Vide-Dressing

France Fintech et Bankin'

- M. Alain CLOT, président de France Fintech
- M. Joan BURKOVIC, président et fondateur de Bankin'

Groupe Rousselet/G7

- M. Nicolas ROUSSELET, président du Groupe Rousselet, président de l'UNIT
- M. Yann BRILLAT-SAVARIN, directeur de cabinet

Union des métiers et des industries de l'hôtellerie (UMIH)

- M. Jacques BARRÉ, membre du directoire de l'UMIH
- Mme Gaëlle MISSONIER, directrice de la communication et des affaires institutionnelles

II. HEARINGS ABROAD

1. In Seattle

Amazon

- M. Éric BROUSSARD, VP international seller services
- M. Nate MICKLOS, Sr. global marketing manager
- M. Gilles BELIN, Sr. manager, QA & engineering service

Boeing

- M. Michael BANGUE-TANDET, sales director – Africa
- M. Julien ACIS, technical manager, business development North America at Daher
- M. Jean-Michel HILLION, corporate senior, vice president Boeing programs at Safran

ExeQuo Corporation

- M. Stéphane BONFILS, CEO
- M. Lief THOMPSON, production manager
- Mme Lisa THOMPSON, office manager

French-American Chamber of Commerce of the Pacific Northwest

- M. Jack COWAN, consul honoraire de France, président de la FACCPNW
- M. Sylvain FRAYER, Trade Attaché, FACCPNW

Intellectual Ventures - Global Good Fund

- M. Maurizio VECCHIONE, Executive Vice President, Global Good Fund
- Mme Valérie CARRICABURU, Global Good Fund

Mairie de Seattle

- M. Carlton VANN, international business development director, Office of Economic Development (OED), City of Seattle

Starbucks

- Mme Colleen CHAPMAN, VP of Global responsibility

Université de Washington

- M. Jonathan BROGAARD, assistant professor of finance
- M. Stuart ISON, partner and principal of international tax, KPMG
- Mme Nancy PERKS, director of international tax, Microsoft
- M. Scott SCHUMACHER, associate dean and professor of law, director of the graduate program in taxation

2. In San Francisco

Airbnb

- Mme Belinda JOHNSON, chief business affairs and legal officer
- Mme Juliette LANGLAIS, Government relations, Airbnb France

Apple

- Mme Lisa JACKSON, vice president, environmental initiatives
- M. Paul DENEVE, vice president, AppleWatch
- Mme Cherie FAZZELL, équipe ApplePay
- M. Nick AMMANN, Government operations
- Mme Catherine FOSTER, corporate Government affairs

Business France

- M. Arnaud LERETOUR, responsable de Business France pour l'Amérique du Nord
- M. Stéphane ALISSE, responsable de l'équipe technologie/services
- M. Jean-Pierre NOVAK, responsable du bureau Business France Invest

Coinbase

- M. Juan SUAREZ, Vice President, Head of Legal
- M. Adam WHITE, Vice President, Product Manager
- Mme Maïa Cybelle CARPENTER, Chief of Staff

Concord

- M. Matthieu LHOUMEAU, fondateur et président

Consulat général de France

- Mme Pauline CARMONA, consule générale à San Francisco
- M. Aurélien BOCQUET, conseiller économique

Facebook

- Mme Brenda TIERNEY, Global Public Policy

Google

- M. Fabien CURTO MILLET, Senior economist
- M. Clément WOLF, Public policy & Government relations
- M. Ludovic PERAN, affaires publiques Google France

Partech Venture

- M. Reza MALEKZADEH, general partner

Mairie de San Francisco

- M. Manish GOYAL, office of economic and workforce development
- M. David AUGUSTINE, tax collector for the city of San Francisco

StartX - Incubateur de Stanford

- M. Henry DESHAYS

Uber

- Mme Betsy MASIELLO, Communications and Public Policy

Upwork

- M. Stéphane KASRIEL, cofondateur et président

3. In London

Amazon UK

- M. Lesley SMITH, director public policy UK
- M. Jean GONIÉ, directeur affaires publiques France
- M. Pietro BRIOCCHI, senior VAT manager Europe

HM Revenue & Customs

- Mme Susanna HANKS, Senior Policy Advisor, Indirect Tax
- M. Andrew DONALDSON, JISTIC Team leader

House of Commons

- M. Richard FULLER, Member of Parliament
- Mme Josephine WILLOW, Senior BEIS Committee Specialist

Mazars London Office

- M. James HURST, VAT Partner
- M. David SAYERS, International Tax Partner

Office of Tax Simplification

- M. John WHITING, Tax director
- Mme Rebecca SEELEY HARRIS, Senior Policy Advisor
- Mme Jennifer ROWLAND, HMRC

4. In Brussels

Commission européenne - DG GROW

- M. Fabrice COMPTOUR, conseiller Mme Elisabeta BIENKOWSKA, commissaire européenne au marché intérieur, à l'industrie, à l'entrepreneuriat et aux PME
- Mme Claudia MARTINEZ FELIX, DG GROW

European Commission - DG TAXUD

- M. Pierre MOSCOVICI, commissaire européen aux affaires économiques et monétaires, à la fiscalité et à l'union douanière
- M. Donato RAPONI, chef de l'unité TVA, DG TAXUD
- Mme Ana-Maria CARAMAN, policy officer, VAT legislation
- Mme Milena MATHÉ, DG TAXUD

Listminut

- M. Jonathan SCHOCKAERT, co-fondateur et président de Listminut

Ministre de l'Agenda numérique

- M. Alexander DE CROO, vice-premier ministre belge, ministre de l'Agenda numérique
- M. Laurent HUBLET, conseiller Agenda numérique

5. In Berlin**Airbnb Allemagne**

- M. Tim KLAWS, directeur politiques publiques d'Airbnb Allemagne
- Mme Juliette LANGLAIS, directrice politiques publiques d'Airbnb France

Amazon

- M. Jean GONIÉ, directeur des affaires publiques Amazon France
- M. Gunnar BENDER, directeur des affaires publiques Amazon Allemagne
- M. Yiannis POULOPOULOS, directeur TVA Amazon Europe
- M. Pietro BRIOCCHI, senior manager TVA Europe

Land de Berlin

- Dr Matthias KOLLATZ-AHNEN, sénateur de Berlin, membre de la commission des finances du Bundesrat

Bundesrat - Land de Brandebourg

- Mme Daniela TROCHOWSKI, secrétaire d'État chargée des finances du Land de Brandebourg
- Mme Gabriele LIEHMANN
- Mme Anne-Marie BÜRSCH, chargée des relations parlementaires

DaWanda

- M. Niels NÜSSLER, cofondateur

Ministère des finances

- Dr Hans-Ulrich MISERA, sous-directeur IV A (politique fiscale)
- Mme Nadine DANEWITZ, adjointe de M. Misera
- Mme Gabriele HIMSEL, référente en charge des questions relatives à la TVA sur le commerce électronique