

Public consultation document

# Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy

19 February 2020 – 20 March 2020





Public consultation document

# **Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy**

# Table of contents

Introduction	5
Objectives and driving factors	7
Building blocks of the model rules	9
Model Rules for Reporting by Platform Operators with respect to Sellers in the sharing and gig economy	14
SECTION I: DEFINITIONS	14
Model Rules	14
Commentary	15
SECTION II: DUE DILIGENCE PROCEDURES	24
Model Rules	24
Commentary	26
SECTION III: REPORTING REQUIREMENTS	32
Model Rules	32
Commentary	33
SECTION IV: ADMINISTRATION AND ENFORCEMENT	36
Annex A. Extending the definition of Reporting Platform Operator	38
Annex B. Draft Code of Conduct	40

## Background

The market of online platforms facilitating a variety of transactions between users in the “sharing” and “gig” economies is growing rapidly. The emergence of these platforms is changing many business sectors in which platforms are active. As part of that change, tax administrations may wish to consider adapting their compliance strategies to reflect that an increasing number of taxpayers are earning taxable income through such platforms.

On the one hand, the growth of sharing and gig economy platforms presents significant opportunities for tax administrations, as it may bring activities previously carried out in the informal cash economy onto digital platforms, where transactions and related payments are recorded in electronic form. If leveraged in the right way, this can lead to greater transparency and minimise compliance burdens for both tax administrations and taxpayers.

At the same time, certain activities carried out through these platforms may not always be visible to tax administrations or self reported by taxpayers. This is because the development of the gig economy entails a shift from traditional work relations under employment contracts to the provision of services by individuals on an independent basis, which is not typically subject to third-party reporting. These developments present risks of distorting competition with traditional businesses and reducing declared taxable income.

Against that background, a number of jurisdictions have already introduced reporting measures requiring platform operators to communicate to the tax authorities revenues received by platform sellers, while others are planning to introduce similar measures in the near future.

Given, however, that the platforms are facilitating transactions in the sharing and gig economies on a global scale, there are inherent limitations to the effectiveness of domestic reporting rules. In particular, governments may face challenges in terms of the enforcement of domestic reporting requirements when the platform operator is not located in their jurisdiction. At the same time, platforms facilitating transactions in multiple jurisdictions may be confronted with a wide set of permutations of domestic reporting requirements, which may lead to increased costs and potentially harmful barriers to the further development of their businesses.

It is against this background that the OECD is taking forward work at the policy level on the development of model reporting rules that could be adopted by interested jurisdictions on a uniform basis to collect information on transactions and income realised by platform sellers, in order to contain the proliferation of different domestic reporting requirements and to facilitate the development of automatic exchange agreements for interested jurisdictions. As such, the overall policy framework consists of three building blocks:

- the model rules and commentary that can be transposed into domestic law by interested jurisdictions to collect information from their resident platform operators;
- a framework for the automatic exchange of the information collected under the model rules with interested jurisdictions that have taxation rights over the sellers’ income; and
- the development of technical solutions to support both the exchange of information, as well as the performance of the due diligence obligations by platform operators.

This document contains the current draft of the first building block, i.e. the model rules and commentary. Once the work on the model rules and commentary has been completed, the second and third building blocks will be further developed in due course.

In addition to the model rules, the OECD Forum on Tax Administration has developed a Code of Conduct on providing information and support to sellers on their tax obligations while minimising compliance burdens. This Code of Conduct is intended to supplement the Model Rules, in particular in instances where sellers are not subject to reporting under the model rules, for instance because the transactions are out of scope or the jurisdiction has not implemented the model rules.

### Public consultation document

The OECD invites input on the following key aspects of the draft model rules and commentary, and more specifically on the following issues:

- Scope of Platform Operators and delegation mechanism (Subparagraphs A(2) of Sections I and II and Paragraph C of Section III)
- Excluded Platform Operators (Subparagraph A(4) of Section I)
- Relevant Services (Subparagraph A(5) of Section I)
- Excluded Sellers (Subparagraph B(3) of Section I)
- Due diligence procedures (Section II)
- Reporting requirements (Section III)
- Secondary mechanism (Annex A)

Questions for the public consultation are listed on pages 11 to 13 of this document. Comments are also welcomed on the Code of Conduct contained in Annex B.

**The views and proposals included in this document do not represent the consensus views of the Committee on Fiscal Affairs (CFA) or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment.**

Interested parties are invited to send their comments no later than **Friday 20 March 2020, 18:00 (CET)** by email to [taxpublicconsultation@oecd.org](mailto:taxpublicconsultation@oecd.org) in Word format (in order to facilitate their distribution to government officials). All comments should be addressed to the International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration. Comments in excess of ten pages should attach an executive summary limited to two pages.

Please note that all comments on this public consultation document will be made publicly available, unless specified otherwise. Comments submitted in the name of a collective “grouping” or “coalition”, or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.

# Introduction

1. The market of online platforms facilitating a variety of transactions between users in the “sharing” and “gig” economies is growing rapidly. The emergence of these platforms is changing many business sectors in which platforms are active. As part of that change, tax administrations may wish to consider adapting their compliance strategies to reflect that an increasing number of taxpayers are earning taxable income through such platforms.

2. On the one hand, the growth of sharing and gig economy platforms presents significant opportunities for tax administrations, as it may bring activities previously carried out in the informal cash economy onto digital platforms, where transactions and related payments are recorded in electronic form. If leveraged in the right way, this can lead to greater transparency and minimise compliance burdens for both tax administrations and taxpayers.

3. At the same time, certain activities carried out through these platforms may not always be visible to tax administrations or self reported by taxpayers. This is because the development of the gig economy entails a shift from traditional work relations under employment contracts to the provision of services by individuals on an independent basis, which is not typically subject to third-party reporting. These developments present risks of distorting competition with traditional businesses and reducing declared taxable income.

4. Against that background, a number of jurisdictions have already introduced reporting measures requiring platform operators to communicate to the tax authorities revenues received by platform sellers, while others are planning to introduce similar measures in the near future.

5. Given, however, that the platforms are facilitating transactions in the sharing and gig economies on a global scale, there are inherent limitations to the effectiveness of domestic reporting rules. In particular, governments may face challenges in terms of the enforcement of domestic reporting requirements when the platform operator is not located in their jurisdiction. At the same time, platforms facilitating transactions in multiple jurisdictions may be confronted with a wide set of permutations of domestic reporting requirements, which may lead to increased costs and potentially harmful barriers to the further development of their businesses.

6. The 2019 report on *The Sharing and Gig Economy: Effective Taxation of Platform Sellers*, prepared by the OECD Forum on Tax Administration put forward a number of recommendations for further work in this area, including:

- The development of a legislative model for standardised reporting by sharing and gig economy platforms in relation to income received by platform sellers; and
- Joint work between tax administrations and platforms on providing information and support to platform sellers on their tax obligations while minimising compliance burdens through the development of a Code of Conduct.

7. In relation to the first recommendation, the OECD is taking forward work at the policy level on the development of model reporting rules that could be adopted by interested jurisdictions on a uniform basis to collect information on transactions and income realised by platform sellers, in order to contain the proliferation of different domestic reporting requirements and to facilitate the development of automatic

exchange agreements for interested jurisdictions. As such, the overall policy framework consists of three building blocks:

- the model rules and commentary that can be transposed into domestic law by interested jurisdictions to collect information from their resident platform operators;
- a framework for the automatic exchange of the information collected under the model rules with interested jurisdictions that have taxation rights over the sellers' income; and
- the development of technical solutions to support both the exchange of information, as well as the performance of the due diligence obligations by platform operators.

8. This document contains the current draft of the first building block, i.e. the model rules and commentary. Once the work on the model rules and commentary has been completed, the second and third building blocks will be further developed in due course.

9. In relation to second recommendation, the driving factor for the development of a Code of Conduct was the assessment that many participants in the sharing and gig economy were likely to be uncertain about their tax obligations, and that education and guidance were therefore important aspects of improving tax compliance. The draft Code of Conduct, which has been developed in consultation with a number of tax administrations and online platforms, is included in Annex B. The benefits foreseen from this Code of Conduct are twofold:

- first, the standardisation of “soft law” approaches to the provision of information and prompts by platform operators can reduce burdens on individual tax administrations from negotiating multiple similar arrangements with platforms operating in their jurisdiction and can make it easier for platform operators to develop solutions which are widely applicable in different jurisdictions; and
- second, a Code of Conduct can help to support compliance by platform sellers covered both by the Model Rules set out in this consultation document, where self-reporting may remain an important element, and by platform sellers not covered by the model rules or where a jurisdiction has yet to adopt the rules.

## Objectives and driving factors

10. The model rules contained in this document seek to:

- **ensure that taxpayers and tax administrations get timely access to high-quality information on the consideration earned by platform sellers**, in order to enhance compliance and minimise compliance burdens for tax administrations and taxpayers alike. As such, the rules are designed to help both individuals and entity sellers in preparing their tax return by providing them with an information statement of the amount of consideration they have earned through the platforms, as well as any fees, commissions and taxes paid or withheld by the platform operator. At the same time, the rules also aim to ensure that activities by such sellers do not remain undetected by tax administrations in instances where such sellers do not declare income earned through the platforms. To make sure that the reporting is delivered in a timely manner to tax administrations and sellers in order to allow the prefilling of tax returns for sellers or to allow sellers to timely compute their taxes and file their tax returns, the rules require annual reporting by 31 January of the year following the reportable period.
- **promote standardisation** of reporting rules between jurisdictions in order to help platforms comply with reporting obligations across different jurisdictions, by allowing them to follow largely similar processes for gathering and reporting information on the transactions and identity of the platform sellers. While one of the key objectives of the model rules is to avoid unnecessary compliance costs stemming from the further proliferation of differing reporting rules, this work does not seek to dictate to any jurisdiction whether it should introduce the model rules, but rather encourage that where it does so, its reporting rules are consistent with these model rules.
- **promote international co-operation** between tax administrations to ensure tax administrations get access to information on income earned by resident platform sellers, including from platforms that are located in other jurisdictions. To achieve this, the rules provide that each platform operator reports information to the tax authorities of the jurisdiction in which it is resident. The competent authorities of this jurisdiction would then exchange the information with other partner jurisdictions to the extent that it relates to transactions involving sellers that are resident in, or immovable property located in, such jurisdictions. This approach provides a legal basis for the reporting requirements, helps address data privacy concerns and makes it easier for each tax administration to ensure compliance by sellers. In addition, the document also contains optional language in Annex I to the Commentary that can be used by those jurisdictions that wish to incorporate a secondary mechanism when implementing the model rules for cases where the reporting of information cannot be ensured through the exchange of information under the above-mentioned primary mechanism.
- **provide a reporting regime that can also be used for other tax-related purposes**: While the primary focus of the model rules is on facilitating and enhancing compliance of platform sellers with their direct tax obligations, the information reported may also have relevance for other domains, such as indirect taxes, local taxes and social security contributions. The model rules are therefore designed in a manner that would allow a potential wider use of the information, including for VAT risk analysis and monitoring purposes.
- **promote the development of new technical solutions to support the performance of due diligence**: the model rules foresee the possibility to confirm the identity and tax residency of a platform seller through a so-called government verification service. This approach would permit the direct confirmation of the identity and residence of a taxpayer through an electronic process made available by a government. These new technology solutions are already in place in some jurisdictions, including for the purposes of identifying and reporting platform sellers. These solutions

can significantly enhance the quality of the information, while at the same time eliminating most of the compliance burdens for platform operators.

- **ensure that the scope is and remains adequate, efficient and targeted:** the current scope of the model rules includes the rental of immovable property and personal services, including the provision of transportation and delivery services. These are the sectors that pose certain tax compliance risks in light of their scale, the income they generate and the profile of the sellers involved. By ensuring that the rules capture only these types of services and that the information is made available to the jurisdiction(s) in which there is likely to be a tax impact, the rules seek to be adequate, efficient and targeted, therewith balancing the scope of the information reported with the needs of tax administrations and the burdens for platform operators. At the same time, it is acknowledged that digital markets are rapidly evolving, which may mean that other types of transactions become relevant on the basis of the above criteria in the future. The development of the market will therefore be closely monitored with a view to assess the need to incorporate further types of services such as the rental of moveable assets and peer-to-peer lending. In addition, a number of countries are interested in further developing the model rules to also include sales of goods. When including new transactions in the future, consideration on a multilateral basis will need to be given to the right scope of transactions and sellers subject to reporting under the model rules, as well as the accommodation of indirect tax considerations, in particular in the area of the sale of goods.

## Building blocks of the model rules

11. The overall architecture of the model rules is driven by three dimensions: (i) a targeted scope of transactions to be reported, as set out above; (ii) a broad scope of platform operators and relevant sellers, to ensure that as many relevant transactions as possible are being reported; and (iii) due diligence and reporting rules that ensure that relevant information gets reported without imposing overly burdensome procedures on platform operators.

12. Against that background, the model rules are structured as follows:

- Section I sets out the key definitions and is grouped around four themes:
  - The first part defines the scope of platform operators that are subject to the rules. In defining this scope, a broad and generic definition of the term platform has been chosen to cover all software products that are accessible by users and allow sellers to be connected to other users for the provision of relevant services. The term platform also includes associated services, such as payment processing services. Platform operators are defined as entities that contract with sellers to make available all or part of a platform to such sellers. They are in principle subject to the rules when they are resident, incorporated or managed in the jurisdiction adopting the rules, unless the platform operator is in its start-up phase and realises a limited amount of revenue;
  - The second part defines the services covered by the model rules and covers both the rental of immovable property, as well as the provision of personal services, including transportation and delivery services;
  - The third part defines the due diligence procedures and the reporting requirements. The scope of sellers covers both entities and individuals, although exclusions are foreseen for hotel businesses, publicly-traded entities and governmental entities; and
  - The fourth part contains a set of other definitions that are relevant for applying the model rules.
- Section II contains the due diligence procedures to be followed by platform operators to identify the sellers and determine the relevant tax jurisdictions for reporting purposes by means of the following steps:
  - The first part contains procedures for identifying those sellers that are not subject to the collection and verification requirements, either because they fall within one of the exclusions or because the responsibilities for identifying and reporting such sellers have been delegated to another platform operator;
  - The second and third parts set out the information items that platform operators are required to collect and, in certain instances, verify with respect to sellers. This includes in particular the name, address, TIN (including the jurisdiction of issuance) and, in the case of an individual seller, the seller's date of birth;
  - The fourth and fifth parts set out the rules for determining the tax residence of sellers for purposes of the rules, on the basis of the information items collected; and
  - The sixth part stipulates that the due diligence procedures need to be completed by the end of each year and that documentation be updated or confirmed once each 36 months. It also provides transitional relief for sellers that are registered on the platform prior to the platform operator becoming subject to the rules.
- Section III sets out the information to be reported about the platform, its operators, its sellers and their transactions by 31 January of each year, as well as the format for reporting; and

- Section IV contains the administration and enforcement hallmarks that jurisdictions are expected to consider when implementing the model rules.

13. As indicated above, the model rules and commentary are designed to be complemented by an international legal framework to support the annual automatic exchange of information by the residence jurisdiction of the platform operator with the jurisdictions of residence of the sellers (and, with respect to transactions involving the rental of immovable property, the jurisdictions in which such immovable property is located), as determined on the basis of the due diligence procedures. In addition, further work will be undertaken to develop a standardised IT-format for the information exchanges, as well as potential IT-solutions to support the identity verification of sellers by platform operators.

## Questions for public consultation

The OECD invites input on the following key aspects of the draft Model Rules and Commentary:

### **Scope of Platform Operators and delegation mechanism (Subparagraphs A(2) of Sections I and II and Paragraph C of Section III)**

The Model Rules foresee that an Entity is a Platform Operator with respect to a Platform if it contracts with Sellers to make all or part of the Platform available to Sellers. In practice, this means that multiple Entities can be a Platform Operator with respect to the same Platform. This would, for instance, be the case when one Entity contracts with Sellers for providing access to the software application, whereas another Entity contracts with the same Seller for the provision of payment collection services. In order to avoid duplicative reporting, the Model Rules include a delegation mechanism, which allows a Platform Operator to delegate its due diligence and reporting obligations with respect to a defined group of Sellers to another Platform Operator, to the extent that the other Platform Operator is resident in the same jurisdiction or in a Partner Jurisdiction that has included each jurisdiction of tax residence of such Sellers in its list as a Reportable Jurisdiction. This approach was chosen to include a sufficiently wide scope of Platform Operators in the Model Rules, while at the same time providing the possibility for Platform Operators to choose the Entity which is best placed to comply with the due diligence and reporting requirements of the Model Rules, and to ensure that Seller information is exchanged with the widest group of relevant jurisdictions.

1. Do you consider this the right approach for determining the Entity that will act as Reporting Platform Operator under the Model Rules? If not, what alternative approaches would you consider more efficient and which Entity should be the Reporting Platform Operator under such alternative approach?
2. Do you consider the conditions and mechanisms of the delegation mechanism workable? In particular, would it be burdensome to determine that the Partner Jurisdiction has included each jurisdiction of such Sellers in its list as a Reportable Jurisdiction? If so, what conditions and mechanisms should be applied instead?

### **Excluded Platform Operators (Subparagraph A(4) of Section I)**

The Model Rules include an exclusion in respect of Platform Operators that are start-ups, defined as Platform Operators incorporated or created less than 36 months before the first day of the Reportable Period and that realised revenue of less than EUR 100,000 during the most recent accounting period. The criteria for the exclusion have been chosen to accommodate concerns that these can be readily applied by Platform Operators and monitored by tax administrations, as well as to alleviate compliance burdens for start-ups in their early stages, while minimising a potential undue competitive advantage towards other Platform Operators. Excluded Platform Operators do not need to comply with the due diligence and reporting requirements of the Model Rules. Once the exclusion is no longer applicable, such Platform Operators have a 24-month period to bring the information and documentation on their Sellers in line with the due diligence requirements of the Model Rules (see Subparagraph F(3) of Section II).

3. Is it appropriate to have an exclusion for certain Platform Operators? If there is such an exclusion, should the exclusion be from both the due diligence procedures and the reporting requirements, or only from the reporting requirements, recognising that delaying due diligence will place a burden on Excluded Platform Operators once they are no longer eligible for the exclusion? Should Platform Operators have the possibility to opt out of the exclusion altogether?

4. Should an exclusion apply for start-ups only or for small business more generally? If for small businesses, how would you define this taking into account that any proposal should be clearly defined and readily determinable by both Platform Operators and tax administrations?

**Relevant Services (Subparagraph A(5) of Section I)**

The Model rules aim at ensuring reporting in respect of Sellers active in the gig and sharing economy. In this light, services provided by actors that rely on a significant infrastructure and staff to deliver, should not fall within the scope of the Model rules.

5. In light of this policy objective, do you consider that the Relevant Services are defined in a sufficiently clear manner? Would you need further guidance or examples to qualify a transaction as a Relevant Service? Please provide examples of the types of transactions where such examples or guidance would be needed, beyond what is already provided in the Commentary.

**Excluded Sellers (Subparagraph B(3) of Section I)**

One of the key purposes of the Excluded Sellers category is to carve out large commercial businesses which do not present the same concerns for tax administrations about identifying these sellers and/or their transactions from the scope of the Model Rules. To this end, the Excluded Sellers definition contains both a carve-out for Sellers that facilitated more than 2,000 immovable property rental transactions in respect of a Property Listing, in order to exclude large hotel operations, as well as an exclusion for regularly traded companies (and related Entities) and an exclusion for governmental entities.

6. With respect to the exclusion for immovable property rental, do you consider the criteria in the Model Rules appropriate, adequate and workable for efficiently excluding large hotel operations? If not, what other criteria should be applied in this respect?
7. With respect to the exclusion of large commercial businesses, do you see any criteria other than being publicly traded (or related to an Entity that is publicly traded) that are relevant and workable?

**Due diligence procedures (Section II)**

The Model Rules currently foresee that Reporting Platform Operators must collect and verify certain information items on their Sellers, to determine their jurisdiction of tax residence and allow tax administrations to match Sellers to their taxpayers.

8. Are the collection and verification requirements sufficiently clear and workable in practice?

The Model Rules currently do not envisage the sharing of financial account information (i.e. a bank account number or an equivalent number related to a financial payment instrument). However, many jurisdictions would find this information useful to help with both matching of records in their own database records and also for any associated compliance activity. We are considering an additional requirement to collect and/or report the financial account number of each Seller.

9. Do you see any concern with a requirement to collect and/or report financial account information with respect to Sellers?

Currently, the default procedure for determining the tax residence of Sellers under the Model Rules requires Reporting Platform Operators to rely on the Primary Address and TIN of the Seller (without verification of such address and TIN), as well as to determine whether and where Local Services have been provided by such Seller.

A possible alternative approach would be to instead require the verification of the Primary Address and the TIN of Sellers, in which case the Model Rules could link the Seller to a jurisdiction on the basis of such verified Primary Address and TIN only, thus no longer requiring the Local Services test.

10. Do you see any concern with a requirement to verify TIN and Primary Address information using reliable, independent-source documents, data or information for each Seller?

11. Would you prefer to apply the current approach or would you favour this alternative approach? Please include the key reasons for preferring one approach over the other.

It is still being considered whether an additional requirement to collect an explicit confirmation of the jurisdiction(s) of tax residence from each Seller should be introduced.

12. Do you see any obstacles in collecting a specific confirmation of the jurisdiction(s) of tax residence?

### **Reporting requirements (Section III)**

The Model Rules require the reporting of the Consideration and other amounts on a cash basis.

13. Do you see any obstacles to the requirement to report on a cash basis?

14. Do you see any obstacles to reporting the Consideration Sellers receive for the Relevant Services on either a gross or a net basis, and to separately identify an amount as a fee, commission or a tax?

The Model Rules require that the reporting by Reporting Platform Operators should take place by 31 January of the year following the Reportable Period.

15. Do you expect any difficulties in complying with this deadline? If so, what changes could be made to eliminate these difficulties?

The Model Rules foresee reporting of identifying information on the holder of the financial account to which the Consideration is paid or credited, where different from the Reportable Seller.

16. Where different from the Reportable Seller, what information do you have available with respect to the holder of the financial account to which Consideration is paid or credited?

### **Secondary mechanism (Annex A)**

To address the limited instances under the Model Rules where platform operators are resident in a jurisdiction that has not adopted these rules, Annex A foresees that jurisdictions adopting the Model Rules may consider creating a secondary mechanism that ensures local reporting in the jurisdiction in which Sellers are resident or where immovable property being rented is located.

17. Do you see any legal or practical difficulties in reporting information under the secondary mechanism? If so, what changes could be made to eliminate these difficulties?

### **Other aspects**

18. Comments are also welcomed on all other aspects of the Model Reporting Rules and the Commentary.

# Model Rules for Reporting by Platform Operators with respect to Sellers in the sharing and gig economy

## SECTION I: DEFINITIONS

### Model Rules

#### **A. Reporting Platform Operators**

1. A “**Platform**” means any software, including a website or a part thereof and applications, including mobile applications, accessible by users and allowing Sellers to be connected to other users for the provision of Relevant Services to such users. The term Platform also includes associated services, including the collection of Consideration.
2. A “**Platform Operator**” is an Entity that contracts with Sellers to make available all or part of a Platform to such Sellers.
3. A “**Reporting Platform Operator**” is any Platform Operator, other than an Excluded Platform Operator, that is resident for tax purposes in [jurisdiction] or, where a Platform Operator does not have a residence for tax purposes, either:
  - a) is incorporated under the laws of [jurisdiction]; or
  - b) has its place of management (including effective management) in [jurisdiction].
4. An “**Excluded Platform Operator**” is a Platform Operator that:
  - a) was incorporated or created less than 36 months before the first day of the Reportable Period; and
  - b) realised revenue of less than EUR 100,000 during the most recent financial accounting period preceding the first day of the Reportable Period.<sup>1</sup>
5. A “**Relevant Service**” is:
  - a) the rental of immovable property; or
  - b) a Personal Servicefor Consideration.
6. “**Consideration**” is compensation in any form that is paid or credited to a Seller in connection with Relevant Services, the amount of which is known or reasonably knowable by the Platform Operator.

---

<sup>1</sup> Implementing jurisdictions may replace EUR 100,000 with the equivalent amount of the currency of [jurisdiction].

7. A “**Personal Service**” is a service involving time or task based work performed by one or more individuals for the benefit of a user, unless such work is ancillary to the transaction.

### **B. Reportable Sellers**

1. A “**Seller**” is a Platform user that is registered at any moment during the Reportable Period on the Platform for the provision of Relevant Services.

2. A “**Reportable Seller**” is any Seller, other than an Excluded Seller, that provided Relevant Services during the Reportable Period and is tax resident in a Reportable Jurisdiction or provided Relevant Services for the rental of immovable property located in a Reportable Jurisdiction, as determined based on the due diligence procedures set out in Section II.

3. An “**Excluded Seller**” is any Seller:

- a) that is an Entity for which the Platform Operator facilitated more than 2,000 Relevant Services for the rental of immovable property in respect of a Property Listing during the Reportable Period;
- b) that is a governmental entity; or
- c) that is an Entity the stock of which is regularly traded on an established securities market or a related Entity of an Entity the stock of which is regularly traded on an established securities market.

### **C. Other definitions**

1. A “**Partner Jurisdiction**” is any jurisdiction which is identified in a published list as Partner Jurisdiction for the purposes of these rules.

2. A “**Reportable Jurisdiction**” is [jurisdiction] and any jurisdiction which is identified in a published list as a Reportable Jurisdiction for the purposes of these rules.

3. An “**Entity**” is a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation.

4. A “**Local Service**” is a Relevant Service that by its nature requires the presence of the Seller, or of the individual performing the Relevant Service on its behalf, in a location known to the Platform Operator.

5. A “**TIN**” is a Taxpayer Identification Number or functional equivalent in the absence of a Taxpayer Identification Number.

6. A “**Government Verification Service**” is an electronic process made available by a Reportable Jurisdiction to a Platform Operator for the purposes of ascertaining the identity and tax residence of a Seller.

7. A “**Primary Address**” is the address that is an individual Seller’s primary residence, as well as the address that is an Entity Seller’s registered office.

8. A “**Reportable Period**” is the calendar year in respect of which reporting is being completed pursuant to Section III.

9. A “**Property Listing**” includes all immovable property units located at the same street address and offered for rent on a Platform by the same Seller.

## **Commentary**

1. Section I contains the defined terms, grouped around three themes: A) Reporting Platform Operators; B) Reportable Sellers and C) Other Definitions.

## **Paragraph A – Reporting Platform Operators**

### *Platform*

2. The term “Platform” is defined in Subparagraph A(1) to mean any software, including a website or a part thereof and applications, including mobile applications, accessible by users and allowing Sellers to be connected to other users for the provision of Relevant Services to such users. The definition specifies that the term Platform also includes associated services, including the collection of Consideration.
3. A platform solely to offer its own services and without the ability for third-party sellers to provide Relevant Services for the benefit of other users, would not be considered a Platform.

### *Platform Operator*

4. Subparagraph A(2) defines the term “Platform Operator” as an Entity that contracts with the Sellers to make available all or part of a Platform to such Sellers.
5. Such contract will generally provide the Seller with access to the Platform for the purposes of offering Relevant Services to other users. It may also cover associated functions required to complete transactions via the Platform, including the collection of the Consideration.
6. The Platform Operator(s) should be well placed to ensure the completion of the due diligence procedures and reporting requirements under the model rules, as such Entities assume various legal obligations in respect of the Seller, including the provision of the Platform as well as keeping records of transactions. As a result, this Entity receives information required to establish the contract with the Seller and enable access to the Platform, including the Seller’s name and address and in many cases will also have access to transactional information. In addition, such Entities can contractually require Sellers to provide the information and documentation required to comply with the Model Rules.

### *Reporting Platform Operator*

7. Subparagraph A(3) defines the term “Reporting Platform Operator” as any Platform Operator, other than an Excluded Platform Operator, that is resident for tax purposes in [jurisdiction] or, where a Platform Operator does not have a residence for tax purposes, either:
  - a) is incorporated under the laws of [jurisdiction]; or
  - b) has its place of management (including effective management) in [jurisdiction].
8. Subparagraph A(3) is designed to capture any Platform Operator with a sufficient connection with [jurisdiction] for the authorities of [jurisdiction] to be able to require compliance with the Model Rules.

### *Excluded Platform Operator*

9. Subparagraph A(4) defines the term “Excluded Platform Operator” as a Platform Operator that was incorporated less than 36 months before the first day of the Reportable Period and that realised revenue of less than EUR 100,000 (or an equivalent amount in the currency of [jurisdiction]) during the most recent financial accounting period preceding the first day of the Reportable Period.
10. Its purpose is to exclude start-ups from the scope of the Model Rules, by treating them as Excluded Platform Operators.
11. For the purposes of Subparagraph A(4), “revenue” refers to the revenue of the Platform Operator calculated under the applicable domestic accounting standards.

### *Relevant Service*

12. Subparagraph A(5) defines a “Relevant Service” as:

- a) the rental of immovable property; or
- b) a Personal Service

for Consideration.

13. Under Subparagraph A(5)(a), immovable property includes both residential and commercial property, as well as parking spaces. Relevant Services include both short and long-term rentals of immovable property, irrespective of the nature of the rights (freehold, leasehold, rental, usufruct or other) held by the Seller over the rented immovable property. The Excluded Seller definition provides for an exclusion in respect of large commercial providers of hotel accommodation from the scope of reporting (see Subparagraph B(3) of Section I of the Commentary).

14. A Personal Service for purposes of Subparagraph A(5)(b) is defined in Subparagraph A(7) as a service involving time or task based work performed by one or more individuals for the benefit of a user, unless such work is ancillary to the transaction. This includes a wide scope of services, such as transportation and delivery services, manual labour, tutoring, copywriting, data manipulation as well as clerical tasks.

15. Personal Services usually fall into one of two categories. On the one hand there is work that can be carried out online and is thus capable of being delivered to other users anywhere in the world, including tutoring, IT services, data entry or copywriting. On the other hand there are services that, while facilitated via a Platform, are physically carried out offline, usually at a specific physical location, including transportation and delivery services, housekeeping, gardening or renovation work.

16. Time or task-based services performed by one or more individuals where the Seller is an Entity that has engaged the individual(s) to perform the services will also meet the definition of Personal Service. For example, an Entity Seller providing transportation services by relying on one or more individual drivers will be treated as providing Personal Services involving transportation.

17. A Personal Service does not include a service that requires a significant infrastructure supported by staff, such as a train or bus service operating under a public pre-determined timetable.

18. Furthermore, a service is not a Personal Service when the time or task based work is ancillary to the transaction. This would, for example, be the case where the Seller cleans its car before renting it. Similarly, the packaging of a sold good would not be a Personal Service.

19. To ensure that the rules remain future proof in light of the rapid pace of development within the sharing and gig economy and the emergence of new business models, jurisdictions may wish to include an expansion mechanism within the definition of Relevant Service, to the extent possible under domestic law, so that further categories of services may be added through secondary legislation if the need is agreed at the multilateral level. Such an expansion mechanism could be provided for through the addition of a third category of Relevant Service, namely “c) any other service, as determined in secondary legislation of [jurisdiction]”.

20. It is acknowledged that there may be transactions involving elements of both goods and services. In such cases, it may not be immediately apparent whether a transaction is for the provision of Relevant Services.

21. A Reporting Platform Operator should first determine whether a transaction is for the sale of goods or the provision of services and, if the latter, whether the provided service is a Relevant Service. In most cases, the classification of a transaction should be clear. For instance, a transfer of the right to dispose of tangible property without an element of time or task based work should be treated as a sale of goods.

22. If a transaction involves elements of both Relevant Services and components that are not subject to reporting, and both elements can be split or identified by the Reporting Platform Operator, the Reporting Platform Operator may report only in respect of the Relevant Service component. Where the elements cannot be split or identified, the entire transaction should be subject to reporting, unless the Relevant Service component is ancillary to the non-reportable element of the transaction.

23. Components of a transaction can generally be identified or split where the relevant parts of the transaction could be supplied independently. For example, where a Seller provides a tiling service and also supplies the installed tiles, a core component of the transaction is the sale of goods (i.e. the tiles) and this element of the transaction will therefore not qualify as a Relevant Service. Nonetheless, another key component is the installation of the tiles by the Seller, which meets the definition of a Personal Service as it involves the performance of time or task-based work by one or more individuals. In this case, to the extent that the Reporting Platform Operator is able to determine the part attributable to the installation service, that portion of the transaction should be reported upon as a Relevant Service for the purposes of the Model Rules.

### *Consideration*

24. Subparagraph A(6) defines “Consideration” as compensation in any form paid to a Seller in connection with Relevant Services, the amount of which is known, or reasonably knowable, by the Platform Operator.

25. For the purposes of Subparagraph A(6), Consideration can take any form including money, cryptocurrencies or payments in kind.

26. However, the amount of the Consideration must be known or be reasonably knowable by the Reporting Platform Operator. Consequently, amounts that cannot be reasonably knowable to the Reporting Platform Operator, in light of its business model or the type of Consideration, would not be treated as Consideration for the purposes of subparagraph A(6).

27. Compensation is considered to be paid or credited to a Seller if it is paid or credited to an account specified by the Seller, even if such account is not in the name of the Seller. As Consideration is defined as the compensation paid or credited to the Seller, the amount of the Consideration is the amount net of any fees, commissions or taxes withheld or charged by the Reporting Platform Operator.

28. Where Consideration in exchange for a Relevant Service is paid or credited to a Seller in any form other than fiat currency, it should be reported in the local currency of [jurisdiction], converted or valued in a manner that is consistently determined by the Reporting Platform Operator.

29. Depending on the business model of the Reporting Platform Operator in question, Consideration may flow directly between consumers and Sellers or may be subject to intermediation by the Reporting Platform Operator. This includes cases where the Reporting Platform Operator acts as a collecting agent on behalf of the Seller, i.e. collects Consideration in respect of Relevant Services on behalf of the Seller.

30. The “reasonably knowable” notion requires that the knowledge of any service providers is also considered when determining the Consideration in respect of Relevant Services facilitated by the Platform.

31. Circumstances where amounts paid to a Seller in connection with Relevant Services are reasonably knowable by a Reporting Platform Operator include those where the Reporting Platform Operator withholds or receives a fee, commission or taxes set in reference to the amounts paid by users in respect of Relevant Services.

## **Paragraph B – Reportable Sellers**

### *Seller*

32. Subparagraph B(1) defines a “Seller” as a Platform user that is registered at any moment during the Reportable Period with the Platform for the purposes of the provision of Relevant Services. In this light, Sellers can include both individuals and Entities.

33. For the purposes of Subparagraph B(1), “registered” is to be interpreted broadly and includes instances where a user has created a profile or account on the Platform as well as entered into a contractual relationship with the Platform Operator of the Platform.

### *Reportable Seller*

34. Subparagraph B(2) defines a “Reportable Seller” as any Seller other than an Excluded Seller that provided Relevant Services during the Reportable Period and is either tax resident in a Reportable Jurisdiction or provided Relevant Services for the rental of immovable property located in a Reportable Jurisdiction. A Seller is considered to have provided Relevant Services during a Reportable Period if such Services would give rise to reporting with respect to such Reportable Period under the Model Rules.

35. Under the Model Rules, a Seller becomes a Reportable Seller if the Seller has a link with a Reportable Jurisdiction pursuant to Paragraphs D or E of Section II. Such links can arise on the basis of the Seller being tax resident in a jurisdiction, or where a Seller rents immovable property located in a jurisdiction. A Seller that did not provide any Relevant Services during the Reportable Period is not a Reportable Seller in respect of such period.

### *Excluded Seller*

36. Subparagraph B(3) defines three categories of “Excluded Sellers” that represent a limited compliance risk and are therefore carved out from the scope of the rules.

37. The category of Excluded Sellers described under subparagraph B(3)(a) aims at excluding large providers of hotel accommodation that provide accommodation at a high frequency (i.e. at least 2,000 Relevant Services per year and Property Listing) that is unlikely to be replicated by a Seller in the gig and sharing economy. Such businesses should already be aware of their tax obligations and the tax administration should generally be in a position to verify compliance with the relevant tax filing obligations on the basis of other existing information sources.

38. A governmental entity described under subparagraph B(3)(b) includes the government of a jurisdiction, any political subdivision or a local authority of a jurisdiction and any wholly owned agency, controlled entity or instrumentality of a jurisdiction.

39. The category of subparagraph B(3)(c) excludes Entities the stock of which is regularly traded on an established securities market, as these Entities are generally subject to other forms of regulatory supervision and transparency, which promotes compliance by these Entities with their tax obligations. The exclusion also covers Entities related to the traded Entity. In this respect, an Entity is a related Entity of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

## **Paragraph C – Other Definitions**

### *Partner Jurisdiction*

40. Subparagraph C(1) defines a “Partner Jurisdiction” as any jurisdiction which is identified in a published list as a Partner Jurisdiction. This list would reflect jurisdictions that have adopted substantially similar reporting rules and that have an arrangement in place to exchange Reportable Seller information with the jurisdiction implementing the rules.

41. This term is relevant in the context of the mechanism to avoid duplicative reporting in case there are multiple Platform Operators for the same Platform, as reflected in paragraph A of Section II. Under this mechanism a Reporting Platform Operator may designate another Platform Operator to comply with the reporting obligations in respect of all or a category of Sellers to the extent the Platform Operator is resident in the same jurisdiction or in a Partner Jurisdiction that has included each jurisdiction of tax residence of such Sellers in its list as a Reportable Jurisdiction.

### *Reportable Jurisdiction*

42. Subparagraph C(2) defines a “Reportable Jurisdiction” as [jurisdiction] and any jurisdiction which is identified in a published list.

43. This term is relevant for the scope of Reportable Sellers subject to the reporting, as well as for the delegation mechanism under Subparagraph A(2) of Section II. Under the Model Rules, Reporting Platform Operators are required to report in their jurisdiction of tax residence and report in respect of Reportable Sellers resident in Reportable Jurisdictions, as well as immovable property located in Reportable Jurisdictions.

44. The Model Rules work on the basis that the jurisdiction implementing the rules will be interested in receiving information in respect of Sellers resident in their jurisdiction. Where this is not the case, or when such information is already received under other reporting arrangements, the jurisdiction may remove the term “[jurisdiction] and” from the definition of “Reportable Jurisdiction”.

45. The purpose of the published list is to reflect the exchange of information landscape so only information that will be subject to exchange is information that is collected. It is expected that a jurisdiction should be able to regularly revise its published list based on the applicable legal mechanisms, including secondary legislation.

46. It is expected that, by default, Reportable Jurisdictions would include any jurisdictions with whom information collected under the Model Rules can be exchanged in respect of a particular Reportable Period. However, to the extent that this is permissible under data protection and similar legislation, a jurisdiction can require reporting on all Sellers. In such cases, the jurisdiction could then exchange information in respect of such Sellers once the jurisdiction has put in place the relevant exchange instrument.

### *Entity*

47. Subparagraph C(3) defines an “Entity” as a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation. This term is intended to cover any person other than an individual (i.e. a natural person), in addition to any legal arrangement. For instance, a corporation, partnership, trust, foundation, company, co-operative, or association falls within the meaning of the term “Entity”.

### *Local Service*

48. Many Personal Services require the presence of a Seller or of the individual performing the service on the Seller's behalf in a particular physical location. This includes transportation and delivery services, as well as household and certain professional services where the service needs to be performed in a particular place. Typically, Local Services will be performed in the location where the consumer is located. Generally, the location of the individual performing the service can be identified by the Reporting Platform Operator in these cases.

49. In this light, subparagraph C(4) defines a "Local Service" as a Relevant Service that by its nature requires the presence of the Seller, or of the individual performing the Relevant Service on its behalf, in a location known to the Platform Operator.

50. For example, cleaning a house will require that the individual performing the service is present in a specific location (namely the consumer's property) in order to perform the cleaning service. At the same time, the Reporting Platform Operator will be aware of the location of the property to facilitate the performance of the cleaning service. On the other hand, tutoring, a Personal Service, would not meet the definition of a Local Service as the performance of the service is not restricted to any particular location, unless the Platform Operator has knowledge about the physical presence of the individual performing the service to provide the tutoring service.

51. In some cases involving Relevant Services that by their nature need to be performed in a particular place, a Reporting Platform Operator may not be aware of the precise address at which the service was provided. For the purposes of the "Local Service" definition, it is sufficient that the Reporting Platform Operator can link the performance of the Relevant Service to a specific jurisdiction.

52. The notion of Local Services is used when linking a Seller to a jurisdiction for the purposes of reporting under the model rules (Subparagraph D(1)(b) of Section II).

### *TIN*

53. A Tax Identification Number ("TIN") is a unique number (or combination of numbers and letters) issued by most jurisdictions to its tax residents for the purposes of identifying these individuals and entities as taxpayers in that jurisdiction. TIN specifications (i.e. structure, syntax, etc.) are set by each jurisdiction's tax administrations.

54. Jurisdictions that do not issue TINs often use some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for individuals, a social security/insurance number, citizen/personal identification/service code/number, and resident registration number; and for Entities, a business company/registration code/number.

55. In this light, subparagraph C(5) defines a "TIN" as a Taxpayer Identification Number or functional equivalent in the absence of a Taxpayer Identification Number.

56. For the purposes of the Model Rules, the TIN plays an important role in confirming the identity of Reportable Sellers (under Subparagraphs B(1)(c) and B(2)(c) of Section II), as well as linking Sellers to jurisdictions (under Subparagraph D(1)(a) of Section II) on the basis of the jurisdiction of issuance of the TIN.

### *Government Verification Service*

57. Subparagraph C(6) defines a "Government Verification Service" as an electronic process made available by a Reportable Jurisdiction to the Reporting Platform Operator for the purposes of ascertaining the identity and tax residence of a Seller. Under the Model Rules, the [jurisdiction] may determine the scope of Government Verification Services that it considers appropriate for these purposes.

58. Such services may include the use of Application Programming Interfaces (APIs) and any other government-authorised solutions that allow Reporting Platform Operators to confirm the identity and/or tax residence of a Seller.

59. Where a tax administration opts for identification of Sellers based on an API solution, it would normally make an API portal accessible to Reporting Platform Operators. Subsequently, if a Seller is identified as linked to that jurisdiction for tax purposes during the Platform on-boarding process, the Reporting Platform Operator can redirect the Seller to the API portal which would allow the jurisdiction to identify the Seller based on its domestic taxpayer identification requirements (for example a TIN or government ID/username). Upon successful identification of the Seller as a taxpayer of that jurisdiction, the jurisdiction, via the API portal, would provide the Reporting Platform Operator with a unique reference number or code allowing the jurisdiction to match the Seller to a taxpayer within its database. Where the Reporting Platform Operator subsequently reports information concerning that Seller, it would include the unique reference number or code to allow the jurisdiction receiving the information to enable matching of the Seller.

60. Pursuant to multilateral or bilateral discussions with its exchange partners, the details of accepted Government Verification Services should be clarified in the underlying (multilateral) competent authority agreement.

#### *Primary Address*

61. Subparagraph C(7) defines a “Primary Address” as the address that is an individual’s primary residence, as well as the address that is an Entity’s registered office. For individual Sellers, the purpose of collecting Primary Address information is to determine where the Seller lives, thereby allowing the Reporting Platform Operator to link the Seller to that jurisdiction for the purposes of Paragraph D(1)(a) of Section II and thus for reporting under the Model Rules. The same principle applies to Entity Sellers whereby the Reporting Platform Operator should treat the Entity’s registered office as the Primary Address and link the Entity Seller to the jurisdiction in which its registered office is located.

62. Where in the course of on-boarding sellers a Reporting Platform Operator collects “home” or “residential” address information with the intention of treating such information as the Primary Address, the Reporting Platform Operator should ensure that the Seller is made aware that the address sought is that at which the Seller lives and considers its primary residence.

63. While, in many cases, the Seller’s home address is likely to correspond to the Seller’s billing address, where these two information items differ, the home address should be treated as the Seller’s Primary Address.

#### *Reportable Period*

64. Subparagraph C(8) defines the “Reportable Period” as the calendar year in respect of which reporting is being completed pursuant to Sections II and III.

65. For example, reporting in respect of the Reportable Period ended 31 December 2020 should take place before 31 January 2021.

#### *Property Listing*

66. Under Subparagraph C(9), a “Property Listing” includes all immovable property units located at the same street address and offered for rent on a Platform by the same Seller.

67. For the purposes of the definition of Property Listing, an “immovable property unit” can include a hotel room, apartment, house, parking space or other form of immovable property rented via a Platform.

68. In this light, multiple hotel rooms rented by a Seller as part of a hotel with the same street address are treated as a single Property Listing. Similarly, separate apartment units rented in a building with a single street address by the same Seller are also treated as a Property Listing.

## **SECTION II: DUE DILIGENCE PROCEDURES**

### **Model Rules**

#### ***A. Sellers not subject to review***

1. For the purpose of determining whether an Entity Seller is an Excluded Seller described in subparagraph B(3)(b) or (c) of Section I, a Reporting Platform Operator may rely on publicly available information or a confirmation from the Entity Seller.
2. A Reporting Platform Operator is not required to carry out the due diligence procedures and reporting requirements set out in Sections II and III with respect to Sellers to the extent that another Platform Operator is carrying out the due diligence and reporting obligations pursuant to these rules or substantially similar rules in a Partner Jurisdiction that has included each jurisdiction of tax residence of such Sellers in its list as a Reportable Jurisdiction.

#### ***B. Collection of Seller information***

1. The Reporting Platform Operator must collect the following information for each individual Seller:
  - a) the first and last name;
  - b) the Primary Address;
  - c) any TIN issued to the Seller, including each jurisdiction of issuance; and
  - d) the date of birth.
2. The Reporting Platform Operator must collect the following information for each Seller that is an Entity:
  - a) the legal name;
  - b) the Primary Address;
  - c) any TIN issued to the Seller, including each jurisdiction of issuance; and
  - d) in absence of the TIN, the business registration number.
3. Notwithstanding subparagraphs B(1) and (2), the Reporting Platform Operator is not required to collect information pursuant to subparagraphs B(1)(b) through (d) and B(2)(b) through (d) in case it has relied on a Government Verification Service to ascertain the identity of the Seller.
4. Notwithstanding subparagraphs B(1)(c) and B(2)(c) and (d), the TIN or the business registration number, respectively, are not required to be collected if:
  - a) the jurisdiction of residence of the Seller does not issue a TIN or business registration number to the Seller; or
  - b) the jurisdiction of residence of the Seller does not require the collection of the TIN issued to such Seller.

### **C. Verification of Seller information**

The Reporting Platform Operator must verify the information collected pursuant to subparagraphs B(1)(a) and (d) and subparagraph B(2)(a) using reliable, independent-source documents, data or information.

### **D. Determination of jurisdiction(s) of tax residence of Seller**

1. A Reporting Platform Operator must consider a Seller tax resident:
  - a) in the jurisdiction of the Seller's Primary Address and, if different, in each jurisdiction of issuance of the Seller's TIN(s); and
  - b) in each jurisdiction in which the Seller provided substantially all Local Services, that are not purely incidental in nature, during any 183 day period in the course of the Reportable Period.
2. Notwithstanding subparagraph D(1), a Reporting Platform Operator must consider a Seller tax resident:
  - a) in each jurisdiction confirmed by a Government Verification Service, where relying on a Government Verification Service for determining the identity and jurisdiction of tax residence of the Seller pursuant to subparagraph B(3); and
  - b) in each jurisdiction positively affirmed by a Seller and confirmed based on a current certificate of tax residence or other equivalent documentation.

### **E. Collection of information on rented immovable property**

Where a Seller provides Relevant Services for the rental of immovable property, the Reporting Platform Operator must collect the address of each Property Listing and, where issued, the land registration number.

### **F. Timing of due diligence procedures**

1. A Reporting Platform Operator must ensure that the information and documentation collected on each Seller in order to comply with the collection and verification requirements set out in Paragraphs A(1), B and C is available by 31 December of the Reportable Period and has been collected or confirmed within the last 36 months. A Reporting Platform Operator must further ensure that the information pursuant to Paragraph E is available by 31 December of the Reportable Period.
2. Further, on the basis of information and documentation collected under Paragraphs B, C and D(2)(b) that is available as at 31 December of the Reportable Period, in view of the reporting requirements set out in Section III, a Reporting Platform Operator must annually determine the tax residence of Sellers on the basis of the procedures set out in Paragraph D.
3. Notwithstanding subparagraph F(1), for Sellers that were already registered on the Platform as of [date of entry into effect of rules] or as of the date on which a Platform Operator becomes a Reporting Platform Operator, the information items under subparagraphs B(1)(c) through (d) and B(2)(c) through (d) are only required to be collected and the verification requirements of Paragraph C are only required to be carried out by 31 December of the second Reportable Period after such date.

### **G. Standard of knowledge**

Where a Reporting Platform Operator has reason to know that the information or documentation collected pursuant to paragraphs A through E is not or no longer accurate, it must ensure that it has collected new information or documentation on the Seller that ensures that the Reporting Platform Operator complies

with the collection and verification requirements set out in Paragraphs A through E with respect to that Seller by 31 December of the Reportable Period.

## Commentary

1. The due diligence procedures are split into six paragraphs. Paragraph A sets out the rules for identifying Excluded Sellers and foresees the possibility for a Platform Operator to designate another Platform Operator for the purpose of ensuring the due diligence procedures reporting obligations with respect to a defined group of Sellers on its behalf. Paragraph B sets out the information items that Reporting Platform Operators have to collect in respect of Sellers, while paragraph C stipulates the items that need to be further verified. Paragraph D contains the rules for Reporting Platform Operators to determine the jurisdiction(s) of tax residence of Sellers. Paragraph E sets out the specific collection requirements in relation to Relevant Services for the rental of immovable property. Paragraph F sets the timing and frequency of the due diligence procedures. Finally, Paragraph G sets out the standard of knowledge applicable to Reporting Platform Operators in relation to the accuracy of information collected and/or verified under Paragraphs A through E.

### ***Paragraph A – Sellers not subject to review***

2. Subparagraph A(1) of Section II states that Reporting Platform Operators may rely on publicly available information or a confirmation from the Entity Seller to identify governmental Entities and publicly-traded Entities that are Excluded Sellers and therefore not subject to reporting under the rules.

3. Subparagraph A(2) of Section II foresees the possibility to designate a Platform Operator as the Entity responsible for complying with the due diligence and reporting obligations in respect of all or a group of Sellers, with a view to avoiding duplicative reporting.

4. In this respect, the definition of Platform Operator under Subparagraph A(2) of Section I takes into account that not all functionalities or services associated with a Platform are necessarily provided by a single Entity. In certain instances, these functionalities may be split among different Entities that could each be Platform Operators in respect of the Platform. For instance, one Platform Operator may provide Sellers access to the website to communicate and transact with other users and another Platform Operator (which may be located in a different jurisdiction) may collect the Consideration on behalf of Sellers. As a result there may be more than one Platform Operator in respect of the same Platform in [jurisdiction]. Equally, apart from the Platform Operator in [jurisdiction], there may be another Platform Operator in respect of the same Platform in another jurisdiction.

5. Therefore, where there is more than one Platform Operator in respect of the same Platform in [jurisdiction], under Subparagraph A(2), any of the Platform Operators may designate another Platform Operator that will perform the due diligence and reporting obligation in respect of all, or a defined group of Sellers (e.g. by business line, Platform, residence of Sellers or other clearly defined and delineated criteria).

6. Similarly, under Subparagraph A(2), where there is another Platform Operator in a Partner Jurisdiction that may be better-placed to discharge the due diligence and reporting obligation in respect of all or a defined group of Sellers, the Platform Operator in [jurisdiction] may designate the other Platform Operator to discharge the reporting obligation in respect of such Sellers, to the extent that the other Platform Operator is resident in a Partner Jurisdiction that has included each jurisdiction of tax residence of such Sellers in its list as a Reportable Jurisdiction.

7. In this respect, it is recommended that jurisdictions put in place an administrative mechanism to ensure that they have full visibility on the designations made and that the due diligence procedures and reporting requirements are being performed by the designated Platform Operator consistent with the Model Rules. This could, for instance, be achieved by requiring the designating Platform Operator to notify

[jurisdiction] that it has designated another Platform Operator in [jurisdiction] or a Partner Jurisdiction confirming that such Platform Operator has assumed all responsibilities for such Sellers under these rules or under substantially similar rules, respectively. Such a notification should include information on the Reportable Period(s) and category(s) of Sellers in respect of which the notification is being made, the legal names, TINs and registered office addresses of both Platform Operators, as well as the Platform(s) covered.

8. In case of a designation, the designating Platform Operator must, by 31 December of each Reportable Period, transfer or make available to the designated Platform Operator any information it holds or controls that could be used for the purposes of the due diligence procedures and reporting requirements in respect of such Sellers. An exception to this rule applies when such information is already available to the designated Platform Operator in respect of the Reportable Period. This mechanism is reflected in paragraph C of Section III.

9. It is for the concerned Platform Operators to determine which Platform Operator is best placed to ensure the reporting for each category of Sellers under the Model Rules. For example, where there is a Platform Operator contracting with the Sellers for the purposes of granting access to the Platform (Company A) and another Platform Operator contracting to facilitate payments (Company B) in respect of the same Sellers, both Entities would be treated as Platform Operators. To the extent that both Platform Operators are resident in the same jurisdiction (Jurisdiction C that has implemented the Model Rules), both would be treated as Reporting Platform Operators. However, the Platform Operators could together designate the Platform Operator that has the due diligence and reporting obligation in respect of such Sellers.

10. If Company A were resident in Jurisdiction C and Company B in Jurisdiction D (that has not implemented the Model Rules), Company A could not designate Company B to discharge the due diligence and reporting obligation, as Company B is not resident in a Partner Jurisdiction.

11. In an alternative scenario, where another Platform Operator (Company E) is resident in Jurisdiction E (a Partner Jurisdiction that has implemented the Model Rules), Company A could inform Jurisdiction A that Company E would discharge the reporting obligation in Jurisdiction E provided that all jurisdictions of tax residence of the Sellers are Reportable Jurisdictions under the rules of Jurisdiction E.

### ***Paragraph B – Collection of Seller information***

12. Paragraph B sets out the information that a Reporting Platform Operators should collect in respect of all Sellers, other than Excluded Sellers. For individual Sellers, this should consist of a first and last name (as well as a middle name where provided), the Primary Address, any TIN and its jurisdiction of issuance and the date of birth.

13. For Entity Sellers, the legal name, the Primary Address, any TIN and its jurisdiction of issuance and, in absence of the TIN, the business registration number must be collected.

14. The information to be collected reflects the importance of the different information items to ensure that tax administrations can efficiently identify the Sellers within their taxpayer database and can, as such, use the information effectively. In this regard, the Primary Address information is instrumental in both determining the tax residence of sellers, as well as for enabling successful taxpayer matching.

15. Similarly, the TIN is recognised as the single most useful information item for matching taxpayers and as such Reporting Platform Operators are required to collect a TIN from each Seller. In the same spirit, Reporting Platform Operators are further required to collect and verify the date of birth.

16. For Entity Sellers, if a TIN cannot be collected because the jurisdiction does not issue TINs or has not issued a TIN to that particular Entity Seller, Reporting Platform Operators are required to collect a

business registration number, which evidences the Entity's legal existence and is used by many jurisdictions as an equivalent level of identification to TINs.

17. While it is expected that most Reporting Platform Operators and/or jurisdictions, at least in the short-term, will rely on the default option under Subparagraphs B(1) and (2), Subparagraph B(3) foresees that a Reporting Platform Operator may rely on a Government Verification Service to ascertain the identity and tax residence of the Seller. The option to rely on a government-offered verification service (for example, through an API solution integrated in the Platform) aims to accommodate the use of new technology solutions that are already in place in some jurisdictions for purposes of identifying and reporting Sellers. It is expected that a list of the types of Government Verification Services that can be relied upon would be published by the jurisdiction implementing the Model Rules.

18. With respect to subparagraph B(4)(a), a TIN or business registration number is considered not to be issued by the jurisdiction of residence of the Seller, (i) where the jurisdiction does not issue TINs or business registration numbers or (ii) where the jurisdiction has not issued a TIN or business registration number to a particular Seller.

19. The exception described in subparagraph B(4)(b) focuses on the domestic law of the Seller's jurisdiction of residence. Where the jurisdiction of residence of a Seller has issued a TIN or business registration number to the Seller and the collection of such TIN or business registration number cannot be required under such jurisdiction's domestic law (e.g. because under such law the provision of the TIN by a taxpayer is on a voluntary basis), the Reporting Platform Operator is not required to collect and report the TIN or business registration number.

### ***Paragraph C – Verification of Seller information***

20. As a second step of the due diligence procedures, Paragraph C requires the Reporting Platform Operator to verify the accuracy of the first and last name and the date of birth of individual Sellers and the name of Entity Sellers that were obtained pursuant to Paragraph B.

21. The verification needs to be done by using reliable, independent-source documents, data or information. This relatively open notion aims at providing Reporting Platform Operators a degree of flexibility in terms of the procedures, information and/or documents they wish to use for verifying the information provided by the Seller. Such information may include documents that have been issued by government authorities and were provided by the Seller in the on-boarding process. For individual Sellers, this may include national identity cards or driving licenses. For Entity Sellers, the legal name can be verified, for example, using an incorporation or residence certificate or by conducting a search of the database of the local corporate registrar.

22. Further, a Reporting Platform Operator may rely on the name provided by a Seller where the Reporting Platform Operator has procedures in place to verify that the name provided by the Seller corresponds with the name associated with the bank account on which the Seller receives Consideration.

### ***Paragraph D – Determination of jurisdiction(s) of tax residence***

23. Paragraph D contains the due diligence procedures for purposes of determining the jurisdiction(s) of tax residence of a Seller in order to inform the reporting under Section III. The rules foresee that a Reporting Platform Operator would complete three sequential steps in this respect.

24. Under the first step described in Subparagraph D(1), the Platform Operator must consider the Seller a tax resident in (a) the jurisdiction of the Seller's Primary Address and, if different, in each jurisdiction of issuance of the Seller's TIN(s) and (b) in each jurisdiction in which the Seller provided substantially all Local Services, that are not purely incidental in nature, during any 183-day period in the

course of the Reportable Period. The Seller is to be considered tax resident for the purposes of the Model Rules in each jurisdiction that is identified on the basis of the above steps.

25. The Local Services notion is tested in relation to a 183-day period to ensure that a Seller can still be linked to a jurisdiction despite periods of seasonal activity abroad. Indeed, if the tested period was the entire Reportable Period and a Seller provided a significant number of Local Services abroad during the summer holidays, this could result in the Seller's activity in neither jurisdiction reaching the "substantially all" threshold required to create a link with a jurisdiction in relation to such Reportable Period.

26. Two steps must be completed before the link under Subparagraph D(1)(b) can be applied to determine the jurisdiction of tax residence. Firstly, the Reporting Platform Operator should identify all transactions involving Relevant Services provided by the Seller that are Local Services. Secondly, within that pool of transactions involving Local Services, the Reporting Platform Operator should identify the jurisdiction within which substantially all of these services were provided in any 183 day period. The "substantially all" threshold will be met when at least 80% of the total number of transactions involving Local Services were performed in a particular jurisdiction or when 80% of the Consideration for Local Services relates to Local Services performed in a particular jurisdiction. The Local Services rule may, however, not be applied where the Local Services are purely incidental in nature, making the link to the jurisdiction in which the Local Services are performed not sufficiently robust. In this respect, Local Services should be considered as purely incidental, when fewer than 20 transactions are performed in the jurisdiction over the Reportable Period.

27. Consequently, in cases where a Seller provided a similar volume of Local Services in two or more jurisdictions (for example 40% of the number of transactions in Country A and 60% in Country B) throughout a 183-day period, this link cannot be used to approximate the tax residence of a Seller. On the other hand, where a transportation services provider performed 80% of his 100 trips in a 183 day period within the Paris (France) metropolitan area and 20% involving trips to and from Brussels (Belgium), for example, the definition of substantially all would be met and the indicium would link the Seller to France.

28. Notwithstanding Subparagraph D(1), and given that Government Verification Services offer a high level of certainty about a Seller's tax identity and tax residence, under Subparagraph D(2)(a) the Seller must be linked to the jurisdiction whose Government Verification Service was applied. This step can only be applied when a Platform Operator has relied on the Seller identification procedures pursuant to Subparagraph B(3).

29. Pursuant to Subparagraph D(2)(b), where a Reporting Platform Operator receives a positive affirmation from a Seller concerning the Seller's jurisdiction of tax residence, supported by a current certificate of tax residence or other equivalent documentation, it must rely on such affirmation for the purpose of determining the Seller's jurisdiction of tax residence. Firstly, where a Seller disagrees with the identified jurisdiction(s) under Subparagraph D(1), a Reporting Platform Operator may wish to give Sellers the option to rectify this information and confirm their jurisdiction(s) of tax residence. Alternatively, with the view of ensuring accurate and targeted reporting, a Reporting Platform Operator may actively seek such confirmation from Sellers in cases where two or more jurisdictions of tax residence were identified under Subparagraph D(1). In both instances, the provision functions to minimise instances of inaccurate reporting. In all cases, in order to rely on a positive affirmation, the Reporting Platform Operator should receive from the Seller a certificate of tax residence or other equivalent documentation issued during the last 12 months by the jurisdiction the Seller is claiming residence in. Where a Reporting Platform Operator relies on a positive affirmation, the jurisdiction identified in such affirmation must be reported as the jurisdiction of tax residence under Sections III(B)(2)(c) and III(B)(3)(c).

### ***Paragraph E – Collection of information on rented immovable property***

30. Where the Seller provides Relevant Services for the rental of immovable property, Paragraph E requires Reporting Platform Operators to collect the address, including the jurisdiction of each Property Listing, as well as the land registration number of the Property Listing (or its functional equivalent, such as a cadastral number), provided such number is issued in respect of the Property Listing.

31. It is expected that Reporting Platform Operators active in facilitating Relevant Services for the rental of immovable property will usually be aware of the details of properties offered by Sellers in order to relay this information to users.

32. Where, based on the information available to it, a Reporting Platform Operator is not aware of the precise address of the Property Listing, it should put procedures in place to reliably collect the address and land registration number.

33. Each jurisdiction identified as a result will also receive the information on the Seller and the Relevant Services for the rental of immovable property located in each jurisdiction.

### ***Paragraph F – Timing of due diligence procedures***

34. Paragraph F prescribes the frequency with which the due diligence procedures must be completed.

35. Firstly, a Reporting Platform Operator must ensure that the information and documentation collected on each Seller in order to comply with the collection and verification requirements set out in Paragraphs A(1), B, C and D(2)(b) is available by 31 December of the Reportable Period and has been collected or verified within the last 36 months.

36. In addition, with respect to Sellers that have provided Relevant Services for the rental of immovable property, a Reporting Platform Operator must ensure that the information pursuant to Paragraph E is available by 31 December of the Reportable Period.

37. For most Reporting Platform Operators, these information and documentation items are likely to be collected during on-boarding and, pursuant to the 36-month rule, confirmed at regular intervals. However, where alternative approaches better aligned with the Reporting Platform Operators' business models exist, they may also be adopted for these purposes. One alternative approach could be the collection of information and documentation from Sellers during the course of the Reportable Period, to the extent that this can be completed in respect of all Sellers by 31 December of the Reportable Period.

38. For the purposes of the 36-month rule, the confirmation can include obtaining the Seller's explicit statement that the previously collected information items are still valid and does not necessarily require the collection of new information or documentation. For example, where a Reporting Platform Operator relies on a current certificate of tax residence or equivalent documentation to determine a Seller's Reportable Jurisdiction(s) under Subparagraph D(2)(b), it is sufficient for the Reporting Platform Operator to obtain a new affirmation from the Seller that the certificate of tax residence still reflects the correct jurisdiction of tax residence after a period of 36 months.

39. The rules afford flexibility as to the precise due diligence procedures adopted and the timing within which they are undertaken. However, because Reporting Platform Operators are expected to complete the due diligence procedures set out in Paragraph D based on the Seller information and documentation available as at 31 December, it is expected that these procedures would be completed during January of the year following the Reportable Period.

40. Finally, Subparagraph F(3) recognises that Entities that become Reporting Platform Operators for the first time, either because of the introduction of the Model Rules or because they are no longer Excluded Platform Operators may need time to fully operationalise the collection of information and documentation,

and verification processes with respect to their existing Sellers. In this light, Subparagraph F(3) grants transitional relief to such new Reporting Platform Operators. Therefore, the information items under subparagraphs B(1)(c) through (d) and B(2)(c) through (d) are only required to be collected and the verification requirements of Paragraph C are only required to be carried out by 31 December of the second Reportable Period after such date.

### ***Paragraph G – Standard of knowledge***

41. In addition to the above-mentioned collection and confirmation requirements, the Reporting Platform Operator is required to collect new information and documentation on the Seller in any instance where it has reason to know that the information and documentation previously collected or confirmed is no longer accurate.

42. For example, a Reporting Platform Operator would have a reason to know that the information with respect to a Seller is no longer accurate in case a Government Verification Service is no longer able to confirm the identity and/or tax residence of a Seller, or where the Reporting Platform Operator has information that the Seller has changed the address information as part of his bank account details.

43. Equally, where a Seller-provided identification document indicates a residential address in a jurisdiction that is different from that on file as the Seller's Primary Address, the Reporting Platform Operator should no longer treat the Seller's Primary Address as accurate. In such cases, the Reporting Platform Operator should request that the Seller updates their address information and documentation in order to be able to rely on it for the purposes of the procedures described in Paragraph B.

44. Similarly, where a Reporting Platform Operator is notified by the tax administration of [jurisdiction] that the TIN reported in respect of a Reportable Seller is inaccurate, the Reporting Platform Operator should request that the Reportable Seller updates their TIN information in order to be able to rely on it for the purposes of the due diligence procedures.

45. Also, where a Reporting Platform Operator receives confirmation from an Entity Seller that it is a governmental entity or publicly-traded Entity, it should request documentation supporting such statement where it has reason to know that the statement may be inaccurate. Documentation can include confirmation from a senior government official or an extract from stock exchange records.

46. For the purposes of applying the "reason to know" test in the context of Section II, the information available to the Reporting Platform Operator conducting the due diligence procedures, as well as any third-party service provider should be taken into account.

## SECTION III: REPORTING REQUIREMENTS

### Model Rules

#### **A. Time and manner of reporting**

1. A Reporting Platform Operator must report to [tax authorities in jurisdiction] the information set out in Paragraph B with respect to the Reportable Period, no later than 31 January of the year following the calendar year in which Consideration is paid or credited to a Reportable Seller for a Relevant Service.
2. A Reporting Platform Operator must also provide the information set out under Subparagraphs B(2) and B(3) to the Reportable Seller to which it relates, no later than 31 January of the following calendar year in which Consideration is paid or credited to a Reportable Seller for a Relevant Service.
3. *[provision to mandate the reporting format]*
4. The information with respect to the Consideration paid or credited in a fiat currency must be reported in the currency in which it was paid or credited. In case the Consideration was paid or credited in a form other than fiat currency, it should be reported in the local currency of [jurisdiction], converted or valued in a manner that is consistently determined by the Reporting Platform Operator.
5. The information with respect to the Consideration and other amounts must be reported in respect of the quarter in which the Consideration was paid or credited.

#### **B. Information to be reported**

Each Reporting Platform Operator must report the following information:

1. the name, registered office address and TIN of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting;
2. with respect to each Reportable Seller that provided Relevant Services, other than immovable property rental:
  - a) the information items collected pursuant to paragraph B of Section II;
  - b) where different from the name of the Reportable Seller, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other identifying information available to the Reporting Platform Operator with respect to that account holder;
  - c) each jurisdiction in which the Reportable Seller is tax resident on the basis of the procedures set out in paragraph D of Section II;
  - d) the total Consideration paid or credited during each quarter of the Reportable Period and the number of such Relevant Services in respect of which it was paid or credited;
  - e) any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period; and
  - f) the due diligence procedures under Paragraph D of Section II relied upon to determine each jurisdiction of tax residence.
3. with respect to each Reportable Seller that provided immovable property rental services:
  - a) the information items collected pursuant to paragraph B of Section II;

- b) where different from the name of the Reportable Seller, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other identifying information available to the Reporting Platform Operator with respect to the account holder;
- c) each jurisdiction in which the Reportable Seller is tax resident on the basis of the procedures set out in paragraph D of Section II;
- d) the address and land registration number of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II;
- e) the total Consideration paid or credited during each quarter of the Reportable Period and the number of such Relevant Services provided with respect to each Property Listing in respect of which it was paid or credited;
- f) any fees, commissions or taxes withheld or charged by the Reporting Platform Operator during each quarter of the Reportable Period;
- g) where available, the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing; and
- h) the due diligence procedures under Paragraph D of Section II relied upon to determine each jurisdiction of tax residence.

### ***C. Data transfer requirements in respect of Sellers not subject to review***

1. With respect to each Seller for which a Platform Operator has designated another Platform Operator pursuant to paragraph A of Section II, it must transfer any information the Platform Operator holds on the Seller and that is relevant for and not already available to the designated Platform Operator to comply with requirements in Sections II and III by 31 December of the Reportable Period.
2. A Platform Operator that ceases to perform the obligations of another Platform Operator pursuant to paragraph A of Section II with respect to a Seller must transfer or make available any information it holds on such Seller and that is relevant for and not already available to the other Platform Operator to comply with requirements in Sections II and III by 31 December of the Reportable Period.

## **Commentary**

### ***Paragraph A – Time and Manner of Reporting***

1. Subparagraph A(1) contains the rules governing the timing of the reporting requirement and states that information set out in Paragraph B must be reported no later than 31 January of the year following the Reportable Period. There may be circumstances in which part of all of the Consideration is refunded to the Seller after the reporting deadline, for instance in case of cancellations of transactions. In that respect, the XML Schema will foresee a correction mechanism to address these subsequent changes.
2. Subparagraph A(2) requires that the Reporting Platform Operator also provides the information to the Reportable Seller by the same deadline. This provision seeks to ensure that Reportable Sellers are aware of the information provided on their behalf to the tax administration and that it may be used by the Reportable Sellers when filing their annual tax return.
3. [Reporting format]
4. Subparagraph A(4) clarifies that the information with respect to the Consideration must be reported in the currency in which it was paid or credited. In case the Consideration was paid or credited in a form

other than fiat currency, it should be reported in the local currency of [jurisdiction], converted or valued in a manner that is consistently determined by the Reporting Platform Operator.

### **Paragraph B – Information to be Reported**

5. Pursuant to Paragraph B, each Reporting Platform Operator must report certain information items with respect to the Reporting Platform Operator (under Subparagraph B(1)), and on Reportable Sellers, both with respect to Relevant Service other than immovable property rental (Subparagraph B(2)), as well as in relation to the rental of immovable property (subparagraph B(3)).

6. Under Subparagraph B(1), the Reporting Platform Operator must report its name, registered office address, TIN, as well as the business name(s) of Platforms in respect of which the Reporting Platform Operator is reporting.

7. Under Subparagraphs B(2) and B(3) the Reporting Platform Operator must report specified information items needed to identify the Reportable Seller and the jurisdiction(s) to which that Reportable Seller is linked for reporting purposes. It also requires the Reporting Platform Operator to report specified information items in respect of the Consideration paid to the Reportable Seller in connection with Relevant Services.

8. For the purposes of the reporting on the identity of Sellers under Subparagraphs B(2)(a) and B(3)(a), Reporting Platform Operators should rely on information items available under Paragraph B of Section II.

9. Subparagraphs B(2)(b) and B(3)(b) provides that, where the Seller's name is different from the name of the holder of the financial account to which the Consideration for the Relevant Services is paid or credited, the Reporting Platform Operator must report the name of the person or Entity holding that financial account, if available to the Platform Operator, as well as any other identifying information available to the Reporting Platform Operator with respect to that account holder. This provision seeks to ensure that the relevant tax administration can identify the actual recipient of the Consideration in connection with Relevant Services.

10. Subparagraphs B(2)(c) and B(3)(c) require that all jurisdictions in which the Reportable Seller is tax resident on the basis of the procedures set out in paragraph D of Section II are identified. Given the particular tax consequences attached to the rental of immovable property, Subparagraph B(3)(d) requires that the address and land registration number of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II, are also reported.

11. Subparagraphs B(2)(d) and B(3)(e) require that Reporting Platform Operators report the total Consideration received by quarter.

12. Subparagraph B(2)(e) and B(3)(f) require that the Reporting Platform Operator reports any fees, commissions or taxes withheld or charged by the Reporting Platform Operator. Again, for rental of immovable property, these amounts are to be reported per Property Listing.

13. Further, Subparagraphs B(2)(f) and B(3)(h) requires that the Reporting Platform Operators reports the due diligence procedures under Paragraph D of Section II it has relied upon to determine each jurisdiction of tax residence of the Reportable Seller.

14. Finally, subparagraph B(3)(g) requires in the context of rental of immovable property services that the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing (e.g. hotel, apartment, parking space) are reported, provided such information is available to the Reporting Platform Operator.

15. A jurisdiction may require the filing of a nil return by a Reporting Platform Operator to indicate that it did not identify any Reportable Sellers during the Reportable Period.

***Paragraph C – Data transfer requirements in respect of Sellers not subject to review***

16. Paragraph A of Section II foresees a mechanism through which a Platform Operator can designate another Platform Operator to comply with the due diligence procedures and reporting requirements of Sections II and II with respect to all or part of its Sellers. In order to ensure that the designated Platform Operator has all relevant information that the designating Platform Operator has on the Sellers to which the designation relates, Subparagraph C(1) requires the transfer or availability of any information the Platform Operator holds on the Seller and that is relevant for and not already available to the other (designated) Platform Operator to comply with requirements in Sections II and III by 31 December of the Reportable Period.

17. Similarly, when a designation ends, it is important that the (previously) designated Platform Operator transfer or make available any relevant information it holds on the Sellers of the (previously) designating Platform Operator to ensure that the latter can comply with the requirements of Section II and III with respect to its Sellers. Subparagraph C(2) therefore foresees the transfer of any Seller information that is relevant for and not already available to the (previously designating) Platform Operator to allow it to comply with requirements in Sections II and III by 31 December of the Reportable Period.

18. For example, where a Platform Operator processing payments in respect of Relevant Services had previously designated the reporting obligation to a Platform Operator responsible for Seller onboarding, including the collection of Seller information items under Section II, upon the end of the designation, the latter Platform Operator would transfer any Seller information needed by the other Platform Operator to comply with the due diligence and reporting requirements.

## **SECTION IV: ADMINISTRATION AND ENFORCEMENT**

The aim of this Section is to provide implementing jurisdictions with guidance as to the measures they could take to ensure that the Model Rules are effectively implemented and are complied with by Reporting Platform Operators. The hallmarks for effective implementation set out in this Section could take the form of primary or secondary legislation supplemented by guidance.

### ***Rules requiring Reporting Platform Operators to close or freeze accounts of Sellers that do not provide the information required under Section II***

1. It is expected that jurisdictions put measures in place that require Reporting Platform Operators to enforce the collection and verification requirements of Section II of the Model Rules in relation to their Sellers. This could for instance include a requirement that Reporting Platform Operators must close or freeze the account of a Seller (and prevent the Seller from reregistering), in case the Seller does not provide the information required under Section II after three reminders or within 3 months. This is to ensure that the information that is used for the due diligence processes and for reporting the Seller is accurate and complete at the end of each Reportable Period.
2. There may be instances where a Reporting Platform Operator includes, in its contract(s) with Sellers, terms in relation to the closure or freezing of accounts in circumstances where the required information is not provided by the Seller. In such cases, jurisdictions may consider such Reporting Platform Operators subject to a safe harbour in relation to the requirements outlined in paragraph 1.

### ***Rules requiring Reporting Platform Operators to keep records of the steps undertaken and any information relied upon for the performance of the due diligence procedures and reporting requirements and adequate measures to obtain those records***

3. It is expected that jurisdictions will introduce rules requiring Reporting Platform Operators to keep records of the steps undertaken and any information relied upon for the performance of the due diligence procedures and reporting requirements set out in the Model Rules. Such records should be available for a sufficiently long period of time and in any event for a period of not less than 5 years following the end of the Reportable Period to which they relate.
4. A jurisdiction is also expected to introduce adequate measures to obtain these records. Most jurisdictions have rules in place to compel the taxpayer or a third party to provide documents that are necessary to apply their domestic tax legislation. These rules generally also apply to obtain information to respond to a request for information from an exchange partner under an exchange of information instrument. Some jurisdictions, especially those without an income tax, may have rules that specifically deal with the procedures to obtain information that is to be exchanged under an exchange of information instrument.

### ***Administrative procedures to verify Reporting Platform Operators' compliance with the due diligence procedures and reporting requirements***

5. It is expected that jurisdictions introduce administrative procedures to verify the compliance of Reporting Platform Operators with the due diligence procedures and reporting requirements.

### ***Administrative procedures to follow up with a Reporting Platform Operator where incomplete or inaccurate information is reported***

6. It is expected that jurisdictions develop procedures to follow up with a Reporting Platform Operator when incomplete or inaccurate Reportable Seller information is reported. Such a situation may arise when

a Reporting Platform Operator is unable to obtain the required Seller information items under Paragraphs A and B of Section II. This could either be the result of either inadequate procedures being implemented by a Reporting Platform Operator to obtain the necessary information, or the Seller's refusal to provide such information.

***Effective enforcement provisions to address non-compliance***

7. Finally, it is expected that jurisdictions introduce effective enforcement provisions to address non-compliance. For example, a jurisdiction may consider relying on existing rules that provide for the imposition of fines or other penalties where a person does not provide information requested by the tax authority.

8. Alternatively, jurisdictions could also consider achieving good compliance outcomes at the level of the Sellers by providing Sellers with a tax incentive, such as an increased deduction right, in case they rely on a Reporting Platform Operator that is compliant with the Model Rules.

## Annex A.

### Extending the definition of Reporting Platform Operator

1. While the objective of the Model Rules is to ensure that the required information can be reported by the Reportable Platform Operator to its jurisdiction of residence, which may exchange such information with its Partner Jurisdictions, there may be limited instances where Platform Operators are resident in a jurisdiction that has not implemented the Model Rules or is not an exchange partner of the jurisdiction implementing the rules.

2. Although the primary mechanism based on the residence of the Platform Operator remains the preferred approach under the model rules, jurisdictions adopting the model rules may, for the above-mentioned limited instances, also consider creating a secondary mechanism that ensures local reporting in the jurisdiction in which Sellers are resident or where immovable property being rented is located. Two changes to the model rules are required to achieve this outcome.

3. Firstly, the definition of “Reporting Platform Operator” under Subparagraph A(3) of Section I should read as follows:

*A Platform Operator is a “Reporting Platform Operator”, other than an Excluded Platform Operator, if:*

- i. it is resident for tax purposes in [jurisdiction] or, where a Platform Operator does not have a residence for tax purposes, either:
 
  - a) is incorporated under the laws of [jurisdiction]; or*
  - b) has its place of management (including effective management) in [jurisdiction]; or**
- ii. it is not resident or incorporated or managed in [jurisdiction] or a Partner Jurisdiction and facilitates the provision of Relevant Services by Sellers resident in [jurisdiction] or with respect to rental of immovable property located in [jurisdiction].*

4. Secondly, the definition of “Reportable Jurisdiction” under Subparagraph C(2) of Section I should read as follows:

*A “Reportable Jurisdiction” is*

- i. for a Reporting Platform Operator pursuant to Subparagraph A(3)(i) of Section I, [jurisdiction] and any jurisdiction which is identified in a published list as a Reportable Jurisdiction for the purposes of these rules; and*
- ii. for a Reporting Platform Operator pursuant to Subparagraph A(3)(ii) of Section I, [jurisdiction].*

5. Contrary to the mechanism based on the jurisdiction of residence of the Platform Operator, the extended scope presented above does not rely on the legal presence of a Platform Operator in the jurisdiction adopting the Model Rules. In this light, and where a Platform Operator does not maintain any physical presence in the jurisdiction, it may be challenging for the jurisdiction to enforce the Model Rules against such a Platform Operator. A number of complimentary measures to encourage or mandate reporting could be envisaged in such cases.

6. One enforcement option could be the introduction of joint and several liability of Platform Operators in respect of Reportable Sellers' personal income tax obligations, combined with a rule stating that such joint and several liability is removed where a Platform Operator complies with the Model Rules.

7. Another option would be to leverage local licensing requirements to help promote compliance with the reporting rules. Under this approach, Platform Operators that wish to obtain or renew an existing license could be required to evidence that they also comply with the Model Rules in that jurisdiction, or a Partner Jurisdiction.

8. Finally, good compliance outcomes at the level of the Sellers could be achieved by providing Sellers with a tax incentive, such as an increased deduction right, in case they rely on a Platform Operator that is compliant with the Model Rules.

9. In application of Paragraph A of Section II, also a Platform Operator that becomes a Reporting Platform Operator under the secondary mechanism can delegate the performance of the due diligence procedures and reporting requirements with respect to Sellers to another Platform Operator that is resident in the jurisdiction applying the secondary mechanism or a Partner Jurisdiction.

## Annex B.

# Draft Code of Conduct

### Introduction

This Code of Conduct sets out core elements of cooperation between tax administrations and platform operators, and is designed to support compliance in all situations. The benefits foreseen from this Code of Conduct are twofold:

- First, the standardisation of “soft law” approaches to the provision of information and prompts by platforms can reduce burdens on individual tax administrations from negotiating multiple similar arrangements with platforms operating in their jurisdiction and can make it easier for platforms to develop solutions which are widely applicable in different jurisdictions;
- Second, a Code of Conduct can sellers understand their obligations, to assist them in reporting taxable income and to facilitate the sharing of information with tax authorities.

The Code of Conduct only concerns actions which are not already required by law and which are compatible with other legal requirements. As such, this Code of Conduct is designed to also cover instances where sellers are not subject to reporting under the Model Rules, for instance because the transactions are out of scope or the jurisdiction has not implemented the Model Rules. Therefore, for purposes of this Code of Conduct, the term “platform operator” has a broader meaning than under the Model Rules and may include any operator of a sharing and gig economy platform which has agreed to apply this Code of Conduct irrespective of whether the transactions facilitated through the platform are Relevant Services as defined in the Model Rules. Where the Code of Conduct addresses issues that are also applicable in cases where the Model Rules ensure reporting, this is highlighted by an asterisk (\*).

### Code of Conduct

1. The platform operator and the tax administration in its jurisdiction of residence should maintain an open and transparent relationship in relation to measures to improve tax compliance and assist sellers in understanding their tax obligations.\*
2. The platform operator should have a documented strategy for setting out the core elements of cooperation with tax administrations to help sellers understand their tax obligations, to assist them in reporting taxable income and to facilitate reporting of information to the tax administration where required by law. They will share a copy of this strategy with the tax administration in their jurisdiction of residence.\*
3. Tax administrations, which wish platform operators to engage with sellers on their tax obligations, will provide information on their respective websites or other applications setting out the circumstances when sellers may be liable to tax in their jurisdiction. This may include information about appropriate thresholds and exemptions, reporting requirements, allowable expenses and record keeping obligations.\*
4. The platform operator will send each seller a general statement on the responsibility of each seller to meet its tax obligations when a seller first registers on the platform and in periodic emails, texts, pop-up

messages or alternative means of communication. The platform operator should also direct sellers to consult guidance issued by the tax administration in their jurisdiction(s) of tax residence<sup>2</sup>. In addition, where the transactions on the platform relate to immovable property, the platform operator should also direct sellers to consult guidance issued by the tax administration of the jurisdiction in which the immovable property is located.\*

5. A general statement will also be included in the platform operator's terms and conditions as to the responsibility of sellers to meet their tax obligations in their jurisdiction(s) of tax residence and, in case of transactions involving immovable property, in the jurisdiction(s) where the immovable property is located.\*

6. The platform operator will provide, at least annually, each seller a statement of payments received from transactions carried out through the platform along with any other appropriate information.

7. The platform operator will put in place arrangements, as far as is practical and proportionate, to report annually to the tax administration in its jurisdiction the aggregate numbers of sellers and the aggregate payments made to sellers on a country-by-country basis [where there are more than 1 000 sellers in a particular jurisdiction], excluding any information identifying sellers. This will be shared with relevant tax administrations through appropriate legal gateways and used to facilitate a high-level analysis of compliance by sellers.

8. The platform operator will report to the tax administration in its jurisdiction annually and in general terms on how it has met the elements of this Code of Conduct.

9. Where appropriate under this Code of Conduct, the platform operator will seek to cooperate with tax administrations to find solutions together, including at the technical level, which will be sustainable for both the platform operator and the tax administrations.

---

<sup>2</sup> For example, a general statement might say: "You may be liable for tax on the income that you receive. It is your responsibility to pay any taxes due and you may be liable for penalties if you do not. You should seek guidance from the tax administration in your jurisdiction(s) of tax residence (which may be available on the tax administration website). Where immovable property is concerned you should also seek guidance from the tax administration of the jurisdiction where the immovable property is located."