

## The 'Gig' economy – what does it mean for tax?<sup>1</sup>

### Introduction

The 'gig' economy (and its near-relative, the 'sharing' economy) is much in the news. The decision in the *Uber* case<sup>2</sup> and in *Pimlico Plumbers*,<sup>3</sup> on the rights of those working for the firm has raised the profile of the issue. Parliament's Business, Energy & Industrial Strategy Committee announced a project<sup>4</sup> as did the Department for Work and Pensions,<sup>5</sup> and the Prime Minister asked Matthew Taylor, Chief Executive of the RSA to carry out a study, which is eagerly awaited.<sup>6</sup>

Much of the attention to date has been on the employment status of the gig worker for employment law purposes. But the tax issues in the gig economy are also significant and varied. The starting point is the employment status of the gig worker for tax purposes but that rapidly leads into issues such as how the income is earned: physical work or online intangible delivery? From trade or is it from property? Is the technology platform an intermediary or is it simply providing a technology service? Should it have a greater role in collecting taxes as an employer would? Do new VAT considerations arise? These are the sorts of issues we raise in this paper.

### What is the gig economy...?

The gig economy is an environment in which temporary positions are common and organisations contract with independent workers for short-term or on-demand engagements.<sup>7</sup> A dictionary definition<sup>8</sup> is: 'A way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer.'

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<sup>1</sup> This paper updates the earlier OTS Focus Paper, published on 2 December 2016. It contains no recommendations but instead raises issues. As we hoped, we received some useful comments from interested parties and have revised the paper as a result and to add in additional aspects. Further comments or contributions will continue to be welcomed.

<sup>2</sup> See <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf> and articles such as <http://www.bbc.co.uk/news/business-37802386>

<sup>3</sup> *Pimlico Plumbers Ltd v. Smith* [2017] EWCA Civ 51 <https://www.judiciary.gov.uk/wp-content/uploads/2017/02/pimlico-plumbers-v-smith.pdf>

<sup>4</sup> 'Future world of work and rights of workers' enquiry: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/inquiries/parliament-2015/the-future-world-of-work-and-rights-of-workers-16-17/>

<sup>5</sup> 'Self-employment and the Gig Economy' - <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/self-employment-gig-economy-16-17/>

<sup>6</sup> Review of 'Employment practices in the modern economy': <https://www.thersa.org/about-us/media/2016/matthew-taylor-to-lead-independent-review-of-employment-practices-in-the-modern-economy>

<sup>7</sup> See for example <http://whatis.techtarget.com/definition/gig-economy>

<sup>8</sup> <http://dictionary.cambridge.org/dictionary/english/gig-economy>

An individual, instead of having a permanent or part-time job, might alternatively or additionally carry out stints of work or 'gigs'<sup>9</sup> by connecting to the public or other businesses through technology platforms. The dictionary definition noted above goes on to suggest: 'workers eke out a living in the gig economy, doing odd jobs whenever they can', but some comments suggest the gig economy can generate full incomes for those that want it.

### ...and the sharing economy?

The sharing economy has been defined as a system built around the sharing of human, physical and intellectual resources. It is also known as collaborative consumption; a business concept that highlights the ability (and perhaps the preference) for individuals to rent or borrow goods rather than buy or own them.<sup>10</sup> It includes the shared creation, production, distribution, trade and consumption of goods and services by different people and organisations.<sup>11</sup>

The point about a sharing economy is that it allows individuals to generate money from assets that they do not otherwise fully utilise.

For the moment it is worth bearing in mind three broad scenarios:

- self-employed people using the gig economy to secure work alongside traditional routes
- employees (part- or full-time) using the gig as a way of supplementing their income
- some people regarding the gig economy as their main or preferred source of income

### Multiple income streams

Recent research<sup>12</sup> shows that while the frequency of multiple employments is at a long-term low point, income from mixing employment and self-employment and multiple self-employments has grown over the past decade. The proportion of those mixing employment and self-employment has grown by 20% and multiple self-employments by 28%, though the report goes on to point out that the proportion of the workforce with multiple jobs in the broadest sense is still only around 4%. This growth is broadly in line with the rise in single job self-employment, which has risen by 24% since a low in 2001. The report states that there is "a strong case that the tax system must be made to better reflect this shift towards self-employment and mixing employment with self-employment."

One issue that may arise from multiple income streams, especially if an individual is both employed and self-employed is the overpayment of NICs through paying both Class 1 (employed) and Class 4 (self-employed). There is an annual maximum reconciliation but it can be complex and many people will be unfamiliar with it.

### The rise of the flexible workforce

In one sense the gig economy further facilitates a trend away from traditional patterns of work that has been developing for some years. For tax purpose, workers have traditionally been seen as either:

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<sup>9</sup> We received some comments about the origin of the term 'gig' following publication of the first edition of this paper. Most link it to the music industry – a gig being an engagement that a musician or singer carries out. Grove's Music Online describes it as "...a term commonly applied to a musical engagement of one night's duration only; to undertake such an engagement..." (<http://www.grovemusic.com>). Some say gig derives from 'engagement'; or from the Old French 'gigue' meaning dance (which also led to 'jig'). Then again a gig in the 18<sup>th</sup> century was a type of one-horse carriage. See for example <http://www.word-detective.com/2009/02/gig/>. Whatever the origins, the term now seems firmly applied to this wider style of working.

<sup>10</sup> <http://searchcio.techtarget.com/definition/sharing-economy>

<sup>11</sup> The People Who Share Blog <http://www.thepeoplewhoshare.com/blog/what-is-the-sharing-economy/>

<sup>12</sup> Resolution Foundation – *Double Take Workers with multiple jobs and reforms to National Insurance* - November 2016

- employees (traditionally full-time) paying PAYE and Class 1 NICs
- self-employed (traditionally tradespeople such as carpenters and plumbers, and some professionals such as barristers and accountants, and more recently some IT and systems experts) paying income tax and Class 2 & 4 NICs<sup>13</sup>

As the OTS has recorded in our Employment Status Review,<sup>14</sup> there has been significant growth in self-employment and this sector is continuing to grow.<sup>15</sup> An important factor is an expansion of the work force by those both in employment and self-employment. But perhaps the most important driver has been the emergence of a 'flexible' or 'on-demand' workforce of freelancers and contractors, sometimes regarded as a 'third way' of working.

It suits many businesses to have a large body of temporary or flexible workers, sometimes called contingent labour. These people are not taken on as employees; the organisation may regard them as self-employed, though tax factors start to influence exactly how these individuals are engaged.<sup>16</sup> One response to this has been that the individual provides their services through a Personal Service Company (PSC)<sup>17</sup> <sup>18</sup> or an umbrella company.

Another group of workers in this 'flexible' arena that should be noted is those who are engaged on zero-hours contracts. In most cases they are employees for employment rights and employees for tax, but they could also be classified as workers with only basic employment rights and self-employed for tax. It all depends on the wording of the contract and how they work in practice. Although technology may play a part in facilitating the hours they work, and this issue falls outside of the gig economy, it is another part of a future trend towards the on-demand rather than permanent workforce.

## Employment status and rights

Although there are only two status categories for tax purposes, there are three status categories for employment rights purposes:

- employed – entitled to full employment rights after 24 months
- 'worker' – broadly an individual with a contract who has basic employment rights.<sup>19</sup>
- self-employed – no entitlement (other than perhaps in discrimination law and health & safety)

In the gig economy, there can be a range of different contractual arrangements, but payments are usually made to the technology platform by the customer. The technology platform then pays the worker having deducted their fee, which is generally in percentage terms. The individual is usually contracted to the technology platform through a contract for services as a self-employed sole trader.

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<sup>13</sup> Although, Class 2 is soon to be abolished.

<sup>14</sup> Published in March 2015 - <https://www.gov.uk/government/publications/employment-status-review>

<sup>15</sup> In 1975, the self-employed workforce was 8.7%, in 2015 it has risen to 15% at nearly 5m.

<sup>16</sup> Traditionally the organisation was concerned about taking on someone who was self-employed in case the tax authority reclassified them as an employee with consequent exposure to PAYE and employer NICs.

<sup>17</sup> A Personal Service Company has no statutory definition but, it usually refers to a one-man limited company which provides the services of an individual, more often than not through an agency.

<sup>18</sup> See s.48 ITEPA 2003, the so called intermediaries legislation or IR35.

<sup>19</sup> This is more correctly defined as (see section 230(3) of the Employment Rights Act 1996):

- Limb (a) worker – an individual with a contract of employment; and
- Limb (b) worker – an individual with a contract other than a contract of employment who is entitled to basic employment rights including national minimum wage but not unfair dismissal

Much of the debate seems to revolve around 'Limb (b) workers'.

Those working in the gig economy have traditionally not been regarded as employees by the organisations who engage them, but as self-employed. This view has recently been challenged by those individuals providing the services to claim that they should be reclassified as 'workers'. The main purpose of the reclassification for the individual is to receive the national minimum wage and holiday and possibly sick pay although as a worker, rather than an employee, they would not have rights to unfair dismissal, for example.

Such a reclassification for employment rights purposes, however, does not provide an automatic determination for tax purposes. So, the individual may well be a worker for employment rights, but will still pay tax as self-employed.

The Uber case<sup>20</sup> gave a judgment that the individuals were workers but not under contracts of employment. It was widely reported, however, that Uber would have to operate PAYE, which is not currently the case. Uber have appealed and, in the formal Notice of Appeal, one of the reasons given is that the individuals treat themselves as self-employed for tax purposes.<sup>21</sup> In two more recent cases, those of *City Sprint*<sup>22</sup> and *Pimlico Plumbers*<sup>23</sup> in the Court of Appeal, the individuals were considered to be 'workers', but again this will not determine how they should be taxed.

A review<sup>24</sup> carried out for BIS<sup>25</sup> (as it was then) recommended that: "...the government should clarify the employment status of people who use online platforms to find freelance work."<sup>26</sup> Uncertainty, as always, is a problem for individuals in understanding their status and tax obligations as well as for business investment so it seems more clarification is needed.<sup>27</sup>

In February 2017, BEIS published their Employment Status Review (2015).<sup>28</sup> The review recognises that the framework in the labour market is long established and has developed slowly over many decades and warns that any attempt to change the framework substantially will be challenging, potentially resulting in a different set of issues being created. The review states that most people working in the UK are relatively clear about their rights but, acknowledges that for a small but growing section of the UK labour market, the lines between statuses are not clear.

The BEIS review concludes that employment status is a very complex issue and any reforms will be challenging. It continues "What is more, it will be necessary to ensure that in trying to correct perceived issues in the current framework, we do not simply create new ones in a different framework. It is not yet clear that fundamental reform is the answer and remains possible that the issues identified within the current system could be addressed through less radical reforms in order to preserve the high levels of flexibility in the current system. In order to assess the viability, benefits and impacts of any change in this area, a substantial amount of further work is required."

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<sup>20</sup> See Note 1

<sup>21</sup> Para 23 (6) Notice of Appeal – *Uber B.V. & Others v. Aslam & Farrar* [2016]

<sup>22</sup> *Dewhurst v. City Sprint Ltd* [2017] ET

<sup>23</sup> *Pimlico Plumbers Ltd v. Smith* [2017] EWCA Civ 51

<sup>24</sup> *Unlocking the Sharing Economy – An independent Review* by Debbie Wosskow, November 2014.

<sup>25</sup> Department for Business, Innovation and Science, now BEIS, Department for Business, Energy and Industrial Strategy.

<sup>26</sup> Recommendation 2.21

<sup>27</sup> As a result of the four tribunal claims for worker classification against it, Homejoy closed in the US in July 2015. The uncertainty over worker classification contributed to the reluctance of investors to fund a further round of funding.

<sup>28</sup> <https://www.gov.uk/government/publications/employment-status-review-2015>

## Tax issues

The gig economy accentuates a number of current tax issues for the parties:

- the individual worker who contracts for a gig
- the platform operator
- the individual or company hirer who is offering the gig
- HMRC
- the Exchequer

The starting point is that the tax system, as currently laid down, applies to those working in or with the gig economy just as it does to any other economic activity. One example is the Construction Industry Scheme<sup>29</sup> which, as it applies to many of those working in the construction industry, may bring some gig workers into its ambit.

However, it is clear that the way the gig (and wider platform) economy operates does create, highlight or exacerbate various tax issues.

## The individuals

Gig economy services may add new income streams to an individual's gross yearly earnings,<sup>30</sup> including income from on-line provision of services or sale of assets. An individual does not need to pay Income Tax on money received from occasionally selling personal possessions but may need to pay Capital Gains Tax. The problem is establishing when occasionally selling personal items changes from a hobby into a trade, at which point the individual should be paying tax on profit. It is yet another area that is fraught with complexity and governed by case law, as there is no statutory test to establish the "badges of trade".

For tax purposes there are essentially two types of platform based transactions, commercialising capital (where money is made by renting out an owned asset, for example) and labour (where money is made by working), with differing tax treatments. Both generate income and individuals may have multiple gig/sharing income streams.

Income from each stream could be small, but combined it will mean taxable income for those it takes into the income tax net. Of course, for those with existing activities who are in the tax net already it will, in principle, all be taxable.

Considering the labour-related activities, the first issue is whether the individual ranks as self-employed or is an employee for some or all their activities for tax purposes. The general assumption has been that they are not employees, given the usual arrangements of such work, but the issue is always going to be there. If they are employed, that brings Class 1 NICs and other factors such as auto-enrolment for pensions into consideration.

Most will regard their gig work as self-employment. The individual will either pay tax as a self-employed individual (namely income tax and Class 4 NICs as a tax on profits<sup>31</sup>); or may channel the income through a limited company. In the latter case, they may use a remuneration strategy such as paying a salary up to the personal allowance, with the remaining income being distributed as dividends, subject to the dividend tax. VAT registration may also become relevant. They will be dependent on their own contributions (NICs or private pension) for their pension

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<sup>29</sup> See <https://www.gov.uk/what-is-the-construction-industry-scheme>

<sup>30</sup> <https://www.gov.uk/income-from-selling-services-online>

<sup>31</sup> Class 2 soon to be abolished

and their entitlement to other benefits such as maternity pay and contributory jobseekers allowance will be limited.

However, this presupposes that the individual is declaring their gig income and indeed realises it is subject to tax. In Budget 2016, the Chancellor announced the introduction of two £1,000 'sharing allowances', one for property income (for example from AirBnb and similar room rental facilities) and a second to cover trading income.<sup>32 33</sup> Interest income may also be relevant for peer-to-peer lending sites (like Zopa): the first £1,000 of interest earned is tax free for basic rate taxpayers (£500 for higher rate taxpayers).<sup>34</sup>

For people sharing their main home, the Rent-a-Room Allowance<sup>35</sup> can apply and some activities may be entirely exempt, but calculating exactly how much tax is due is complex. And for people receiving benefits or tax credits, declaring additional income can result in losing these. As a result, it was recommended in 2014<sup>36</sup> that HMRC and HMT create a guide to tax in the sharing economy and an online calculator to help users of services easily work out how much tax they need to pay.

Renting out a driveway or garage, using services like JustPark, counts as income from land or property, rather than self-employment income. It counts as a separate income stream, so a separate entry may be needed in a tax return. For car sharing services like BlaBlaCar or Lyft, if the driver is only covering mileage costs and does not drive over 10,000 miles per annum, they make no taxable income.<sup>37</sup>

Many of those involved in the gig economy may not previously have engaged with the tax system, probably having been dealt with under PAYE. Recent research found that one of the biggest challenges for those operating in the sharing economy was managing their taxes.<sup>38</sup> Many will not have had to fill in a tax return before and where the amount earned in this way is low, they are unlikely to engage an accountant. So these individuals will navigate the complexities on their own, which may result in non-compliance or under-reporting.

Would simpler tax reporting help? If so, in what way? This could be an aspect of the Making Tax Digital reforms. Another option could be a private/public sector initiative to provide cloud based accounting and tax software; a third option is for low revenues earned in this way to be considered using a simpler process. In France, for example, the only requirement for rentals is to report to the tax authorities the gross revenue, provided it is under a certain amount.<sup>39</sup>

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<sup>32</sup> The announcement in para 1.170 of the Budget 2016 'Red Book' reads: "The rapid growth of the digital and sharing economy means it is becoming easier for more and more people to become 'micro-entrepreneurs'. However, for those making only small amounts of income from trading or property, the current tax rules can seem daunting or complex. To help make the tax position more certain and simple for these individuals, **from April 2017 the Budget introduces two new £1,000 allowances for property and trading income.** Individuals with property income or trading income below the level of allowance will no longer need to declare or pay tax on that income. Those with relevant incomes above £1,000 can benefit by simply deducting the allowance instead of calculating their exact expenses." This was confirmed in the November Autumn Statement: see para 4.14 of the AS document and then amplified in an HMRC Policy Paper issued on 5 December 2016: <https://www.gov.uk/government/publications/income-tax-new-tax-allowance-for-property-and-trading-income/income-tax-new-tax-allowance-for-property-and-trading-income>. In particular this explains that the trading allowance will apply to certain miscellaneous income.

<sup>33</sup> It is much debated whether this will cost the amount in the Red Book (£235m in 2018-19, its first full year of operation) or, as some argue, will actually raise money by prompting many to realise such income is taxable.

<sup>34</sup> S4 FA2016, inserting Ss12A-12B Income Tax Act 2007.

<sup>35</sup> Tax free allowance increased from £4,250 to £7,500 pa in April 2016

<sup>36</sup> Recommendation 1.24 *Unlocking the Sharing Economy – An Independent Review* by Debbie Wosskow, November 2014.

<sup>37</sup> This is based on the driver not receiving payments in excess of HMRC's Approved Mileage Payment Allowance, so no profit is made. When drivers do no more than covering running costs, and do not drive over 10,000 miles per annum, they make no taxable profits.

<sup>38</sup> By Intuit (Rich Preece, Vice President and MD of Intuit QuickBooks)

<sup>39</sup> In the UK the 'three line accounts' return is a simple route but one not available to all.

## The platform operators

These will be businesses with normal tax affairs, which would be expected to register for VAT and charge fees together with VAT where appropriate. The inherently international nature of the technology platform environment and the proliferation of cross border transactions mean that some will need to consider tax issues of the sort the BEPS project has addressed.

As far as their users are concerned, the platform operator will not expect there to be any tax consequences – certainly no PAYE/NICs obligations.

However, as highlighted above, there are issues for individuals and taxation which warrant further consideration. Could or should the platforms assist their users as far as tax is concerned? Do there need to be more accounting packages or cloud-based systems to help their users keep track of income and expenditure, perhaps designed with gig workers in mind? Any such involvement with their users, however, is likely to concern platform operators as it might act as a pointer towards employee status.

Another category of users are people buying goods or services through the platform. Could the platform operator assist them by helping to certify the bona fides of the seller or worker, for example by displaying a VAT registration number?

Somewhere in the background is the 'employment intermediaries' legislation.<sup>40</sup> This extends to legislation drafted for recruitment agencies to prevent false self-employment. The legislation is drafted widely so includes most tripartite agreements, where a third party supplies the services of an individual to a client or consumer and takes a profit. It is certainly not aimed at platform operators but could in some situations start to fall within its range in any way?<sup>41</sup>

Perhaps more interesting is whether a platform operator should have the obligation to identify its users to HMRC and so assist facilitating the fair payment of tax. The reporting requirements under the employment intermediaries legislation would mean that the platform operator would have to report to HMRC quarterly on all payments made to workers where PAYE was not operated.<sup>42</sup>

## The hirer

The hirer simply wants their task carrying out and is willing to pay a 'fee' for the work. They will believe that any tax implications are for the individual or organisation that undertakes the work, and would no doubt never consider or contemplate that the worker is an employee of the hirer.

Hirers will expect to pay that fee gross<sup>43</sup> and not to have to operate PAYE/NICs. Could that change? If not PAYE/NICs, could some hirers be required to make some form of tax withholding, along the lines of the construction industry scheme (CIS) – perhaps a 'CIS lite'?<sup>44</sup> One immediate problem with any such requirement would be that many hirers would not be involved in the tax system themselves and so have no easy mechanism for making returns and payments to HMRC.<sup>45</sup>

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<sup>40</sup> S.44 Income Tax (Earnings and Pensions) Act 2003 (ITEPA)

<sup>41</sup> In all of this the location of the platform operator may well be a factor: if they are not based in the UK, or have no locus in the UK, can any requirements be enforced?

<sup>42</sup> The Income Tax (Pay As You Earn)(Amendment No. 2) Regulations 2015

<sup>43</sup> Plus VAT if the supplier is registered, of course.

<sup>44</sup> See note 37

<sup>45</sup> The OTS Employment Status report mooted a 'CIS lite' method as a possible route to help with the problem of uncertain employment status; see Chapter 11, pages 111-120 in

There are no reporting requirements for the hirer. Would any be appropriate? The risk is that they would be burdensome – again, especially if the hirer is not otherwise involved with the tax system.

## HMRC

The tax authority is faced with a potentially significant compliance issue. The income of the gig worker is taxable: but how to collect it? Clearly the existing tax system has mechanisms to assess and collect tax on such income but they were not designed with burgeoning gig income in mind and may simply not be the simplest or most efficient routes today. Reference has been made above to the introduction of 'sharing allowances' into the tax system.

The first stage is that HMRC has a significant communications issue as a result of the gig economy: the need to inform the worker about their tax obligations and then help educate them in complying.

That leads to the second stage, potentially of more significance: the risk of non-compliance. It is possible that the gig economy contributes to an increase in the hidden economy. This underscores the comments made earlier in the paper about making paying the right taxes as simple as possible.

There is then a practical issue for HMRC. Rather than dealing with one employer who employed (say) 100 people, the gig economy may mean they now employ 5 people, with 95 operating as 'giggers'. HMRC had a single point of contact for the 100 individuals and their PAYE/NICs; they now have to deal with 95 individuals plus the rump organisation.

All of this suggests that HMRC is going to have to continue to review its information gathering powers and practices.<sup>46</sup> Could it start by requiring platform operators to check that all its worker users have a relationship with HMRC? Could the platform offer a service, at a reasonable charge, of making returns for those that engage with it? Could there be a requirement for those engaging workers through platforms to report activities? Or even require either of these to apply some form of withholding tax more widely?<sup>47</sup>

The more that gig and the use of platforms grow, the more there needs to be a well understood framework in which they operate and an easy means for workers to fulfil their tax obligations.

## The Exchequer

Finally, the growth of the gig economy has potentially significant implications for the Exchequer.<sup>48</sup> The replacement of a company with employees by a platform using the self-

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537432/OTS\\_Employment\\_Status\\_report\\_March\\_2016\\_u.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537432/OTS_Employment_Status_report_March_2016_u.pdf)

<sup>46</sup> HMRC already have broad compliance information powers, including further extending data gathering powers to online intermediaries, and the current Making Tax Digital consultations includes one on the use and sources of third party information:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/545691/Making\\_Tax\\_Digital-Transforming\\_the\\_tax\\_system\\_through\\_the\\_better\\_use\\_of\\_information-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545691/Making_Tax_Digital-Transforming_the_tax_system_through_the_better_use_of_information-consultation.pdf)

<sup>47</sup> The OTS suggested in its Employment Status Review that widening requirements for deduction at source – a sort of 'CIS writ large', but intended as a simpler flat rate withholding – could be a way of helping manage compliance in this area. We had in mind the key driver of providing certainty for hirers.

<sup>48</sup> See OBR estimates for the Autumn Statement 2016 which suggest the Gig economy will cost the Exchequer £3.5bn in 2020-21: <http://cdn.budgetresponsibility.org.uk/Nov2016EFO.pdf> and BBC article <http://www.bbc.co.uk/news/business-38082535>.

employed will result in much lower or even nil employers' national insurance. It also removes the company's role in collecting PAYE/NICs.

The OTS's second report on Closer Alignment of income tax and NICs considered at some length whether and how employers' NICs might be replaced by a payroll-based levy. We were not directly considering the implications for the gig economy, but it may be a factor in considerations of how such a levy might be developed.<sup>49</sup> But it must be stressed that there is no equivalent to employers' NICs for the self-employed.

As was highlighted in Budget 2017, the self-employed pay lower NICs than do employees. Various recent reports<sup>50</sup> have called for these NICs to be equalised, as there are only slight differences in benefit entitlement. The OTS's work on IT/NICs closer alignment included aligning the contributions of the employee and self-employed (Class 1 and Class 4), coupled with evening up their benefits entitlements, as one of seven stages to achieve closer alignment. According to the Institute for Fiscal Studies, changes in working patterns, including those related to the gig economy, make tackling current differences all the more important.<sup>51</sup> A TUC report<sup>52</sup> has looked at the implications of equalisation of NICs treatment of the self-employed and employed, suggesting that it would only close a small part of the fiscal gap arising from the recent rise in self-employment.

VAT is a significant issue. Many gig workers will not be registered for VAT and so will not charge it but the traditional way of providing their services might be through a larger operation that would have charged VAT. Uber, for example, does not charge VAT on its services because the services are provided by a "mosaic of small business" which are not registered for VAT. This may be seen as the organisation gaining a competitive advantage by charging 20% less on its fares than others and that HMRC should be collecting VAT as Uber are making a taxable supply. There is, however, currently a potential challenge being planned against Uber in the High Court<sup>53</sup> to argue this point.

This has also been argued to be a significant factor in the growth of operations such as Airbnb. If the comparison is with staying in a hotel; that would normally mean a full VAT charge, with the hotel also being liable to business rates. A private home owner who lets their home out a little via Airbnb would not charge VAT – and would also be outside the scope of business rates, paying council tax instead, which is lower.<sup>54</sup>

The risk of non-compliance among the gig workers has already been noted. However, VAT is increasingly seen as an issue in areas of the platform economy – the point being that the anonymous nature of sales platform can allow a user to conceal that they should indeed be in the VAT net.<sup>55</sup> There are suggestions that this is becoming a political issue<sup>56</sup> and HMRC are increasingly active.<sup>57</sup>

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<sup>49</sup> <https://www.gov.uk/government/publications/ots-publishes-further-report-on-the-closer-alignment-of-it-and-nics>

<sup>50</sup> RSA *The Entrepreneurial Audit* [Feb 2017]; Citizens Advice *How can job security exist in the modern world of work* [Feb 2017]; Institute of Fiscal Studies *The Green Budget Chapter 7 – Tax, legal form and the gig economy* [Feb 2017]

<sup>51</sup> Institute of Fiscal Studies *Tax, legal form and the gig economy 2017 Green Budget*  
<https://www.ifs.org.uk/publications/8872>

<sup>52</sup> TUC *The impact of increased self-employment and insecure work on the public finances* [Feb 2017]

<sup>53</sup> Tax barrister plans to take Uber to court over alleged £20m black hole -

<https://www.theguardian.com/technology/2017/feb/21/tax-barrister-uber-uk-high-court-alleged-20m-vat-black-hole>

<sup>54</sup> See for example 'Airbnb's edge on room prices depends on tax advantages': Financial Times 2 January 2017.

<sup>55</sup> See <http://www.vatfraud.org/>, set up by a group of retailers to highlight VAT abuse: their argument is that they operate VAT properly and are being undercut by traders who avoid VAT registration and so appear cheaper.

<sup>56</sup> <https://www.theguardian.com/business/2016/dec/21/mps-vat-fraud-amazon-ebay-public-accounts-committee>

<sup>57</sup> <https://www.gov.uk/government/news/hmrc-tackles-online-vat-fraud-in-time-for-christmas>

The platform itself may not be based in the UK and so not immediately in the UK tax net on its profits.

In the USA, the Internal Revenue Service (IRS) has launched the new Sharing Economy Resource Centre<sup>58</sup> on IRS.gov working in conjunction with the National Tax Advocate. The web page has been designed to help taxpayers involved in the sharing economy quickly locate the resources they need to help them meet their tax obligations.

## Conclusions & the role of the OTS

The aim of this paper is to promote discussion of some of the tax issues and implications arising from the gig economy and the sharing economy.

We hope this paper will stimulate others to look at the issues that we have identified and indeed to identify more. This paper is not a consultation document as such, so we have not posed specific questions for response. We would, though, welcome contributions and observations.

The OTS's role is to look at aspects of the tax system and develop recommendations for simplification. In the context of the gig economy, a key issue is how such workers interact with the tax system and how that interaction can be made as simple as possible.

Considerations have to include:

- individuals with multiple income streams from different 'gigs'
- facilitating – indeed encouraging – tax payments on gig incomes
- designing a system to help the taxpayer pay the correct tax
- the involvement of the engager
- whether 'employment taxes' are due
- the impact of VAT

Pensions will also be a big concern. These are cross government issues, impacting on employment status, tax status, pensions and welfare.

The OTS will have regard to the impact of the gig economy in our future projects and may carry out further work in the area. Comments received will inform any such work.

## The Office of Tax Simplification

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<sup>58</sup> <https://www.irs.gov/uac/irs-launches-new-sharing-economy-resource-center-on-irsgov>