

Tax Challenges In Defining Platforms And Marketplaces

Aleksandra Bal : 9-11 minutes : 2/1/2024



Conceptual banner of web technology.

getty

Many countries are implementing tax compliance obligations for intermediaries facilitating specific transactions through electronic means. These obligations range from collecting taxes on transactions occurring within the intermediary's platform to reporting essential information about businesses using the platform and their activities. While the types of transactions affected are generally clear, there may still be confusion about which companies are actually required to adhere to these tax compliance rules.

Countries often use terms like "platforms", "marketplaces" or "electronic interfaces" to describe businesses that are required to collect tax on transactions that they facilitate. However, these terms lack clear definitions, leading to important questions: is a platform the same as a marketplace, or are they different? What happens when multiple platforms or marketplaces are involved in a sale? How do we determine which one is responsible for collecting taxes? As a result, the platform and marketplace industry faces significant legal uncertainties.

Business definitions

According to [Gartner](#), a platform is a product designed to serve or facilitate other products or services. Platforms exist at many levels, ranging from high-level platforms that enable a platform business model, to low-level platforms that furnish a set of business or technological capabilities consumed by other products or services to enhance their own business functionalities.

High-level platforms generate value by facilitating direct interactions between distinct user groups, categorized into the demand side (buyers, viewers, guests) and the supply side (sellers, hotels, drivers, content creators). This contrasts with linear business models, where the business itself creates value for the demand side by selling products down the supply chain. Consequently, high-level platforms are synonymous with [marketplaces](#).

Low-level platforms are technology companies providing cloud solutions, such as SaaS, PaaS, or IaaS. While they have the option to adopt a platform business model, it's not a mandatory characteristic. For example, a company developing and hosting digital infrastructure for online shops using its own resources exemplifies a linear (non-platform) business model.

Tax law concepts

Tax laws commonly use terms like "marketplace facilitator", "digital platform" or "electronic interface" to identify intermediaries responsible for collecting taxes on transactions they facilitate. It's important to note that these terms are independent concepts

within tax law and are not contingent on the business classification dividing platforms into high-level (marketplaces) and low-level (SaaS businesses) ones.

Get the latest news on special offers, product updates and content suggestions from Forbes and its affiliates.

While tax compliance obligations for digital intermediaries are often crafted with high-level platforms or marketplaces in mind, the legal definitions are sometimes broadly formulated, referring to businesses facilitating transactions between different user groups by electronic means. This broad wording might inadvertently encompass low-level platforms, even if that wasn't the legislative intention. For example, a company providing sellers with digital infrastructure for their online shops might be seen as indirectly facilitating interactions between different user groups. Similar questions arise in a scenario where a marketplace relies on various low-level platforms for essential infrastructure, such as payment facilities, data hosting, or shopping cart functionality. Do tax collection obligations extend to more than one party when multiple platforms are involved in a transaction?

OECD guidance

In its 2019 report [The Role of Digital Platforms in the Collection of VAT/GST on Online Sales](#), the Organization for Economic Cooperation and Development (OECD) discusses digital platforms without attempting a fixed definition, recognizing the evolving nature of the concept. The OECD outlines certain characteristics of digital platforms, emphasizing their role in facilitating direct interactions between various participant groups, typically buyers and sellers, where each group is considered customers of the platform in a meaningful manner.

The report acknowledges the complexity arising when multiple digital platforms are involved in a supply chain and may be required to collect taxes. It suggests that tax authorities could employ hierarchy rules in such cases but does not provide detailed guidance on implementing these rules.

Australia

Australian [Goods and Services Tax \(GST\) law](#) uses the term "electronic distribution platform (EDP) operators" to identify businesses potentially required to collect taxes. A business becomes an EDP operator if it enables others to provide goods or services to end users through electronic means. However, an EDP operator isn't liable for GST on a sale through their platform if all the following criteria are met:

- The EDP operator doesn't authorize the charge to the recipient.
- The EDP operator doesn't authorize delivery of the product.
- The EDP operator doesn't establish any terms and conditions for the sale.
- The sale document identifies another entity, besides the EDP operator, as the seller.
- The seller and the EDP operator have a written agreement designating the seller as responsible for paying GST.

The Australian definition is broad, encompassing all intermediaries but excluding those meeting specific criteria. When multiple EDPs are involved, Australia implements special priority rules to designate only one as responsible for GST. EDP operators can agree in writing on this, or default rules apply. Under default rules, the operator first to receive or authorize charging consideration becomes responsible for GST. If none meet this criterion, the relevant operator is the first to authorize delivery.

Another positive aspect of Australian law is its clarification that a business isn't an EDP if it only builds or maintains the infrastructure for a service. For example, a company just providing a shopping cart functionality for online sellers isn't an EDP. However, online sellers using such services could qualify as EDPs if they rely on a platform business model. This clear distinction ensures that "low-level platforms" are excluded from entities responsible for tax collection.

European Union

The [EU Value Added Tax \(VAT\) law](#) imposes tax collection duties on intermediaries facilitating specific activities "through the use of an electronic interface, such as a marketplace, platform, portal, or similar means". The term "facilitates" is defined as the use of an electronic interface to enable a customer and a seller to connect, resulting in a sale of goods through that interface. The non-binding ["Explanatory Guidelines on VAT e-commerce rules"](#) provide further clarification, specifying that this encompasses scenarios where customers initiate the purchase process or make an offer, and sellers accept through the electronic interface. This commonly occurs in e-commerce transactions during the ordering and checkout process conducted by or with the assistance of the electronic interface.

Similar to Australia, the European Union encompasses all potential intermediaries in the broad definition of persons facilitating sales, excluding those meeting specific conditions:

- The intermediary does not establish, either directly or indirectly, terms and conditions for the sale.
- The intermediary is not involved, either directly or indirectly, in authorizing the customer's charge for the payment.
- The intermediary is not involved, either directly or indirectly, in the ordering or delivery of the products.

The non-binding "Explanatory Notes on VAT e-commerce rules" address the involvement of multiple electronic interfaces, clarifying that only one electronic interface is required to collect tax — the one where the order is taken and the sale is concluded. Other intermediaries in the supply chain typically provide services, either to the seller, the electronic interface required to collect tax, or potentially any other electronic interface. Nevertheless, it remains noteworthy that EU laws do not distinctly exempt "low-level platforms" from the entities accountable for tax collection.

Concluding remarks

The terminology used by countries to identify intermediaries required to collect tax lacks clear definitions, posing crucial questions about distinctions between platforms and marketplaces and the responsibilities of multiple platforms in a single sale.

Both EU and Australian laws employ a comparable definition to identify intermediaries obligated to collect taxes on facilitated transactions. These definitions are expansive, covering all digital intermediaries facilitating certain sales but exempting those meeting specific criteria. However, Australian law offers greater clarity by excluding low-level platforms from tax collection obligations and providing more guidance on situations involving multiple platforms.

The opinions expressed in this article are those of the author and do not necessarily reflect the views of any organizations with which the author is affiliated.