



The remaining challenges of applying VAT to the sharing/gig economy

Erwan Loquet
6th May 2021

What is the sharing/gig economy ?

- European Commission (COM 2016)356 final: “European Agenda for the collaborative economy”

Sharing economy refers to “business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals.”

- Primarily involves 3 actors:
 - Online sharing platforms (allow providers to be connected, directly or indirectly, to users (“platforms”, “marketplaces”, “electronic interfaces”, “intermediaries”))
 - service providers (often an individual, who shares assets, resources, time and skills against a fee)
 - service recipients (B or C)
- Sharing/gig economy is projected to reach USD 455 billion by 2023
- Key sectors: accommodation, passenger transport, On-demand services sector (manual work/professional services) and collaborative finance (crowdfunding, lending and donations). 90% of the total sharing economy market value as of today. (OECD report, April 2021)

What is the sharing/gig economy ?

- Evolution driven by
 - advances in technology (digital platforms/scaling and accessibility access to large number of potential customers with minimum initial investment)/transaction_costs/ease of connectivity and payment), acceleration of digitalization (Covid19 impact)
 - desire to monetize the use of (otherwise underutilized) assets or competences,
 - changes in economic behavior (easier switch from consumer to provider role and vice-versa),
 - or environmental concerns.
- Increasingly difficult to draw a line between sharing economy and other activities in the broader and more traditional economy. Bring at the forefront sectors that were previously untaxed or “non-visible” under existing VAT rules (like the exploitation of an asset by a private individual)

From e-commerce to sharing economy Addressing the challenges for indirect taxation - OECD & EU Milestones

2002

2010

2015

2017

2018



VAT Directive: non-EU suppliers of B2C TBE services shall register & collect VAT where the customer is located- Effective as from 01.07.2003

VAT Directive: B2C TBE services rules also applicable to EU suppliers/MOSS regime- Effective as from 01.01.2015

OECD BEPS, Action 1 Final Report & VAT-GST Guidelines

Consolidated VAT/GST Guidelines

E-Commerce VAT Directive 2017/2455 and IR 2017/2459: (i) amendment to compliance rules for TBE B2C services - Effective as from 01.01.2019 & (ii) New VAT rules for distance sales of goods - Effective as from 01.7.2021

VAT Directive 2018/1713: reduced VAT rate for electronic publications-Effective as from 01.01.2019

2019

2020

2021



VAT Directive 2019/1995 & IR 2019/2026: amendments to the E-Commerce Package-Effective as from 01.7.2021

The role of digital platforms in the collection of VAT/GST on online sales

7th Feb. Amendment to VD
New Reporting obligation on cross border payments for PSP (**2024**)

DAC 7 adopted (March)
New Reporting obligation for digital platforms (**2023**)
Enhanced administrative cooperation between MS

The impact of the growth of the sharing and gig economy on VAT/GST Policy and administration (April 21)

Entry into force of the new VAT ecommerce package

Outline of the current EU VAT rules (services)

I. General EU rules regarding the place of supply

Art. 44 VAT Directive: B2B services taxed where the recipient is established.

Art. 45 VAT Directive: B2C services taxed where the supplier is established.

II. Specific rules (art. 58) for the place of supply of BtoC electronically supplied services (ESS)

Definition: ESS include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving *minimal human intervention* and impossible to ensure in the absence of information technology (art. 7(1) of the VAT Implementing Regulation 282/2011).

Minimal human intervention: rather automated services, no interaction between the supplier & the customer & no customization of the services to the customer's individual needs & requests.

Art. 58 (1)(c) VAT Directive: Since 2015, B2C ESS supplied by EU businesses are taxed where the recipient is located.

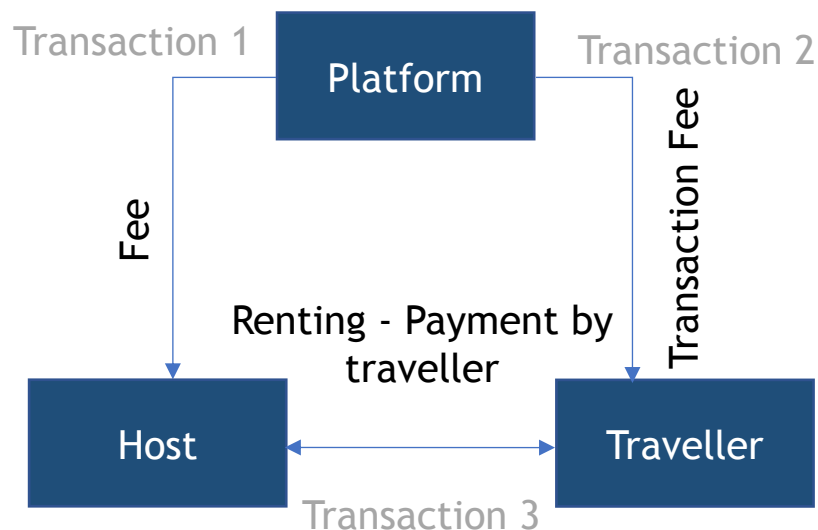
MOSS Regime: Suppliers can register and pay the VAT related to all their supplies of ESS made to EU customers through the MS of identification. Subsequently, the latter redistributes the revenue among the different MS of consumption.

Art. 46 VAT Directive: supplies by intermediaries, BtoC → place of the underlying transaction

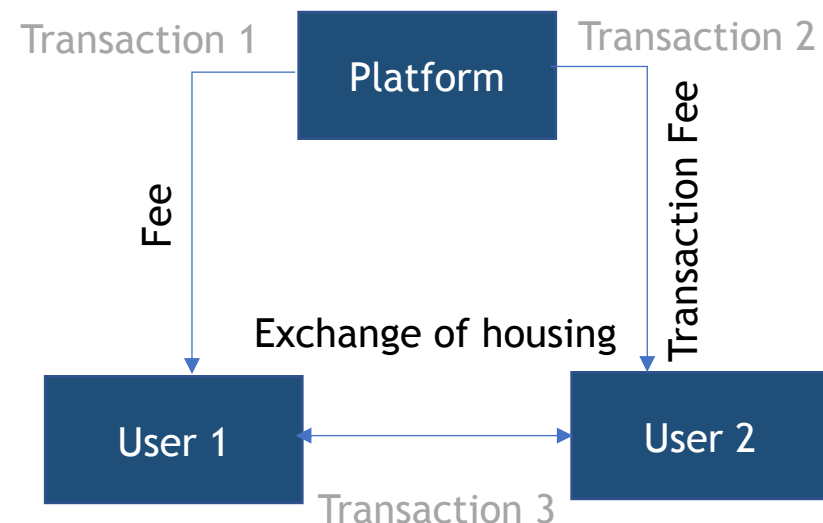
The VAT challenges for the sharing economy

The example of accommodation sector (VAT committee WP n°878 (2015) and VEG N°081 2019)

Scenario I - Consideration



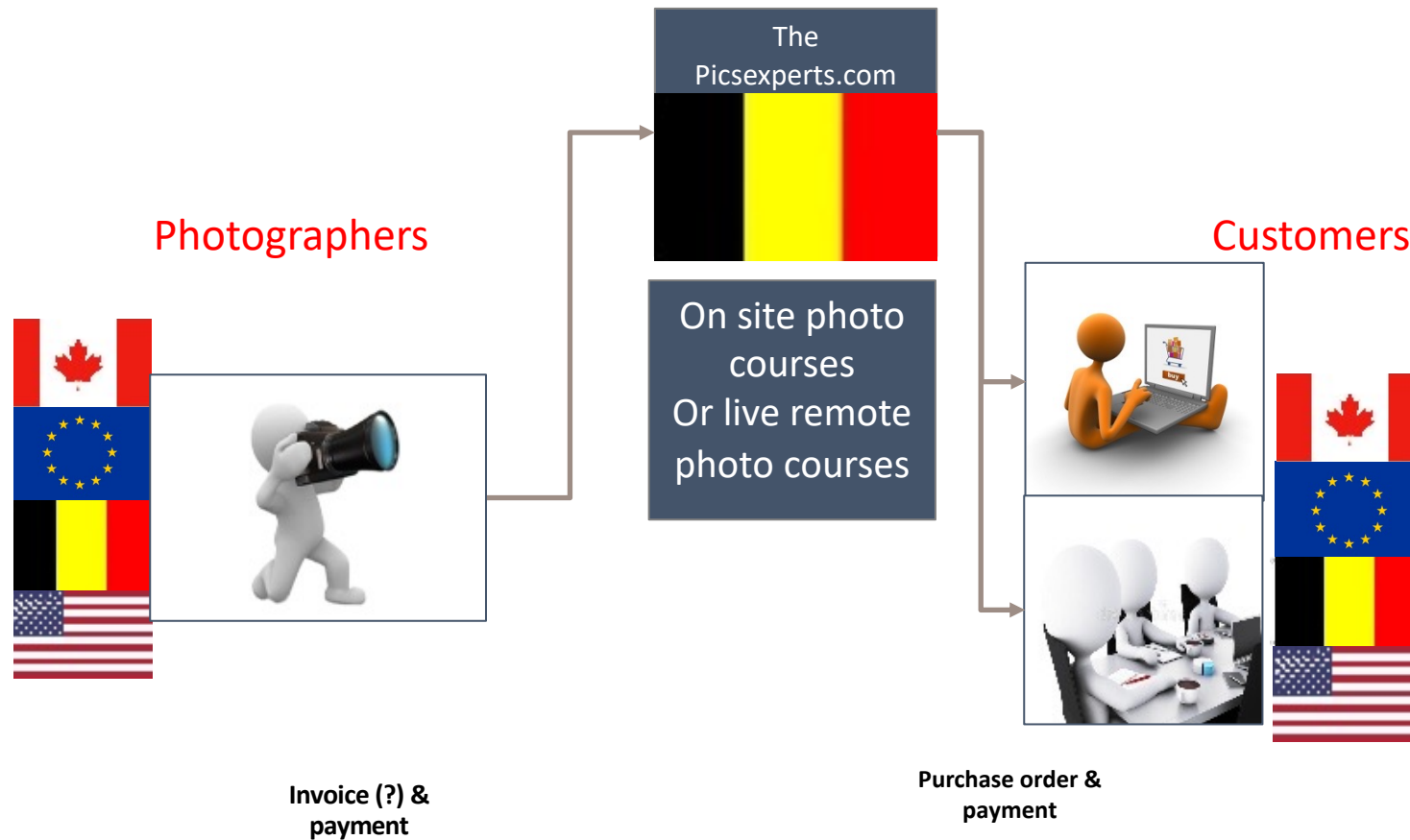
Scenario II - Exchange



A case study, thePicsexperts.com and Pictureum.com



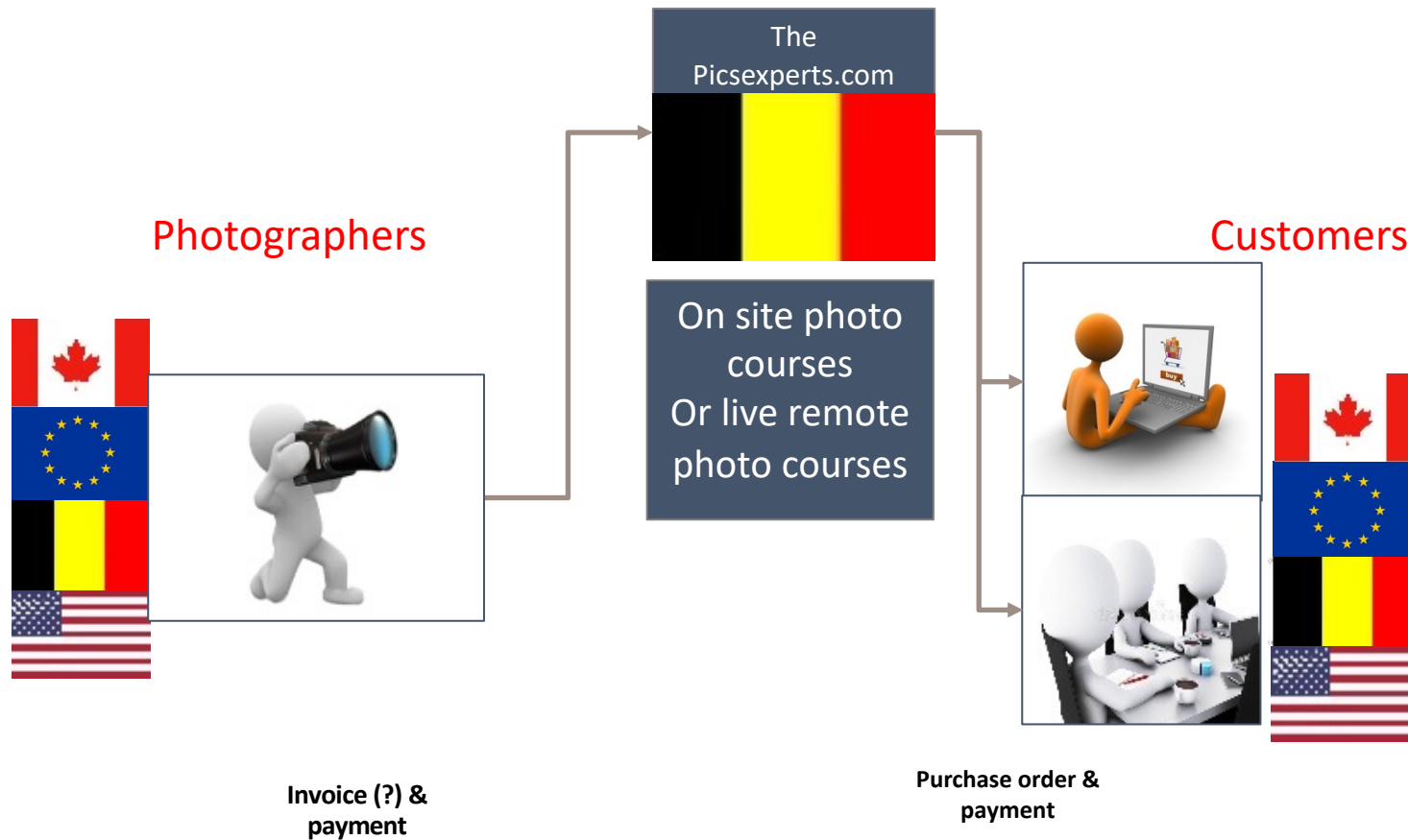
Business model and considerations



DESCRIPTION

- 1) The brand « The PicsExperts.com » (PE) corresponds to a business model of online sales of photography courses in several countries
- 2) The courses take place physically in different locations or are organised in live remote sessions.
- 3) Teachers are independent photographers, not employed by PE but paid for their courses by the TPE. Photographers reside in different countries (not necessarily where the courses take place) and are under different tax regimes (some are VAT registered, some not (SMEs or amateurs))
- 4) Customers are private individuals (BtoC), or VATtaxpayers (BtoB)
- 5) Customers might reside in the country where the courses (physically) take place or not
- 6) Payments are made via the platform, through a PSP (Stripe) that pays PE the amounts billed to the customers (less its payment commission). PE pays the photographers.

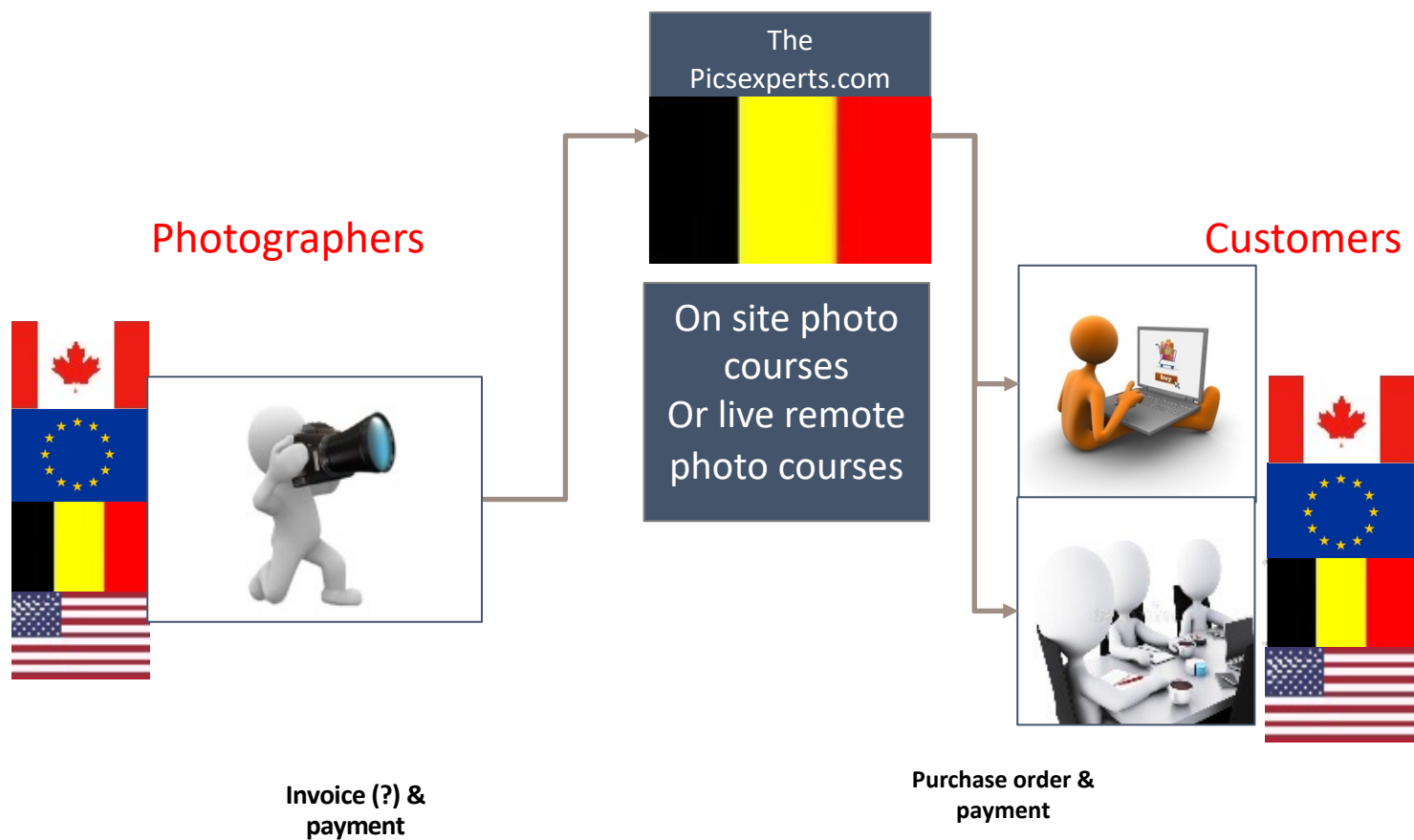
Typical issues



ISSUES

- 1) Is the « Platform » the supplier of the underlying services (photography courses?) Or just an intermediary between the photographers and the customers? And how to draw the line between those 2 possible situations? Need for a “deeming provision”?)
- 2) If the platform is the supplier, how to qualify its supplies? (same as the one of the underlying supplier? SME thresholds? VAT exemptions?)
- 3) If the platform is an intermediary, how to treat the supply to the Users (place of supply? VAT collection mechanism?)? How to treat the supply to the Photographers (BtoB/BtoC? How to differentiate?)
- 4) Should the photographers be subject to specific VAT rules for the mere reason they propose their services via the Platform (input VAT recovery? SME thresholds? Equipment purchased initially as a non-taxable person...) Fixed input VAT recovery percentage in the EU countries?)

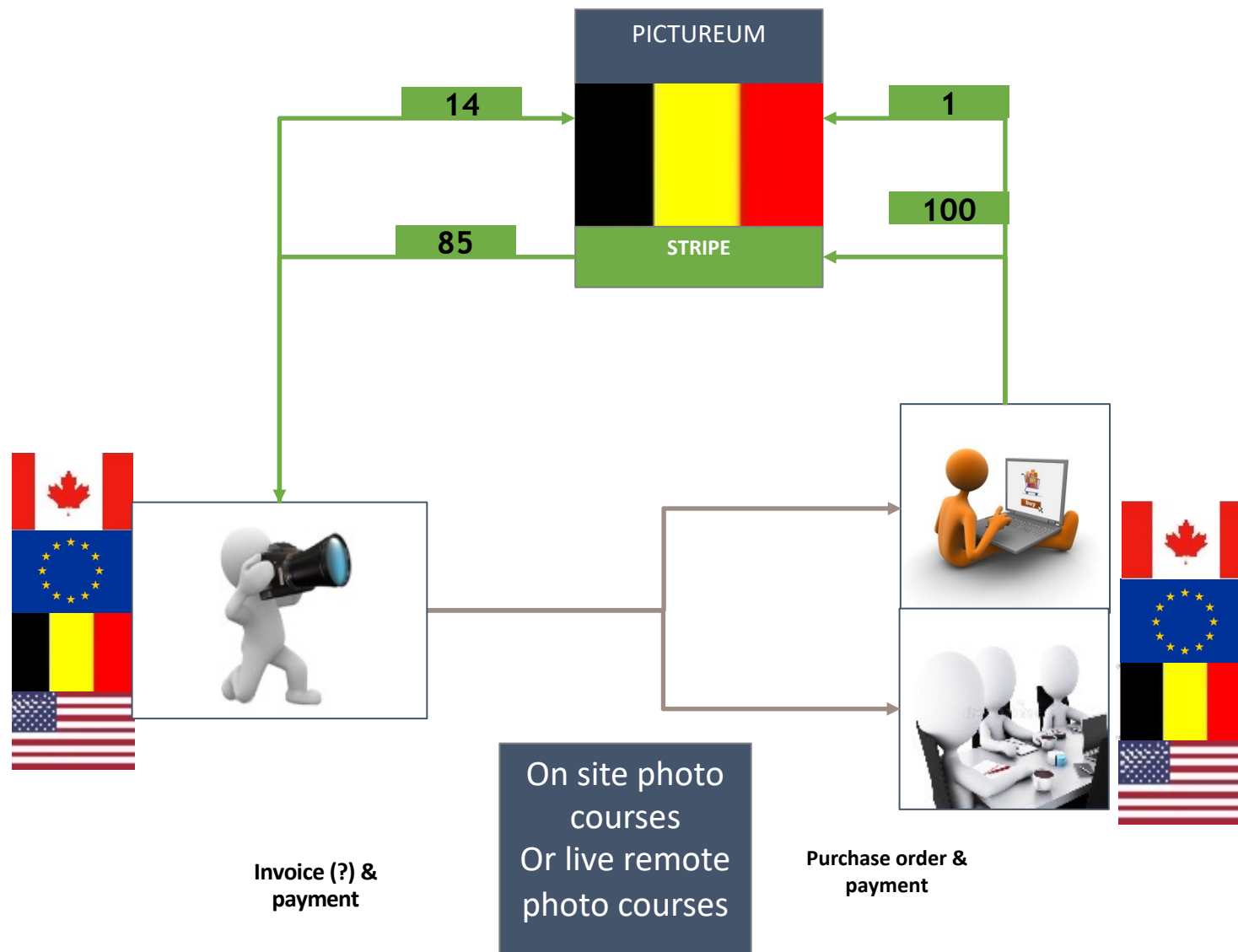
On site photo courses vs Live remote



ISSUES

1. If « Platform » = supplier (commissionaire/art 28VD)
Place of supply of onsite courses where physically held (53/54VD). VAT collection possible via OSS from 1st July 2021
 2. EU VAT rules aligned to sales tax systems in non EU jurisdictions (importance of OECD framework) ?
 3. Responsibility of the platform vis à vis the photographers and their own VAT position ? (VAT status ? Registration ? Place of supply ?)
 4. Qualification of live remote photo courses for VAT purposes ? Not TBE (predominant human intervention) / place of the supplier ? (Geelen case) Any other applicable rule ? (distortion of competition with non EU based suppliers)
 5. Live remote courses to non-Eu based customers (common framework for applying the VAT to such supplies in EU/non EU jurisdictions)
-

Pictureum, the marketplace



“You acknowledge that Pictureum does not provide photo courses or any educational services of that sort, and that all such services are provided by independent third party contractors who are not employed by Pictureum or any of its affiliates....No joint venture, partnership, employment or agency relationship exists between you and Pictureum or any Third Party provider as a result of the contract between you and Pictureum or use of the Services”.

No “deeming provision” in the field of services
Services of Photographers to Users
Services Platform to Photographers ESS or intermediary
 ?
 → BtoB → place of the recipient
 → BtoC → either place of the recipient(ESS) or place of the course (→ where held or where photographer established ?)
Services Platform to Users

Uncertainties / diverging interpretations among the MS

....

Outline of the VAT challenges for the sharing economy

- Difficult to identify whether the participants are VAT taxable persons and/or the type of the services. Central issue around the VAT status of the service providers and related consequences (massive VAT registrations in the MS ? Common SME threshold in the EU ? Input VAT recovery standardised approach ?)
- Potential double taxation or non-taxation - a unified approach on the qualification of such services is needed.
- Complex for sharing platforms to be compliant - A balance between the tax compliance and the increased administrative burden is required. Role of the platforms (deeming provision ? Additional reporting obligations ? Liability ?)
- Equal treatment between the suppliers providing goods or services via platforms & the other suppliers/Avoiding distortions of competition.

Thank you for your attention.



Erwan Loquet

Tax and Advisory Partner

1 rue Jean Piret | L- 2350 Luxembourg

Phone: +352 45123436

erwan.loquet@bdo.lu | <http://www.bdo.lu>