Microjobbing and German Tax Law

Freie wissenschaftliche Arbeit

zur Erlangung des akademischen Grades

“Bachelor of Laws (LL.B.)”

an der

Rechts- und Wirtschaftswissenschaftlichen Fakultät der
Friedrich-Alexander-Universität Erlangen-Nürnberg

Lehrstuhl für Steuerrecht und Öffentliches Recht

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List of Abbreviations

e.g. – exempli gratia

FCF - Federal Court of Finance (*BFH*)

GCC – German Civil Code (*BGB*)

GDPR – General Data Protection Regulation

GITA – German Income Tax Act (*EStG*)

GTC – General Terms and Conditions (*AGB*)

GTTC – German Trade Tax Code (*GewStG*)

i.e. – id est

lit. – littera

no. – Number

OECD - Organisation for Economic Co-operation and Development

Para. – Paragraph

Sec. – Section

Sent. – Sentence

VAT – Value Added Tax

A. Introduction

With the rising popularity of online work platforms, incentivized to employ micro-entrepreneurs instead of traditional employees, and the democratization of work in general, governments worldwide are faced with a whole plethora of questions in various legal domains. Tax law, as an omnipresent discipline, is, of course, consequential even for the simplest form of work online – micro jobbing. Due to the large number of platform workers even with the comparatively small tax revenue derived from a single debtor, the overall revenue loss is not inconsequential for the state.[1]

Tax law literature has not yet addressed micro jobbing as a topic per se. German courts and institutions have also not yet reached a conclusion regarding online platform work. Therefore this work takes an approach similar to a case study, where four micro jobbing examples are explored and compared to previous German Federal Court of Finance cases in order to determine the classification of micro jobbing income in Germany. However, international scholars are already discussing the issues and possible solutions for the gig economy or the sharing economy from a tax law perspective. Those discussions, with some nuances, apply to the subsegment of gig work – micro jobbing. In Europe, most notably, there have been articles published by Adams and Freedman, Beretta, and Kristoffersson. The American perspective is represented by Oei/Ring and by Thomas. The former of which even perform an empirical analysis exploring the taxation knowledge and misinformation of uber drivers online.

Based on this literature and my own argumentation, I argue that the current classification and taxation of individuals performing microwork and online platform work is not effective and needs reform. The authors above suggest various technical and policy-based solutions to the problem. For the interim, until one such solution is implemented, I propose a simple modification to the current classification of the income generated by online platform work which would alleviate the pressure on the tax offices and certain segments of micro workers.

The exploration of this new and gaining in popularity form of work begins with a comprehensive definition of the term micro jobbing (B.I.) and limits the scope of the work taking an approach similar to a case study of four examples in order to avoid getting bogged down in the limitless number of edge cases available (B.II.). The work continues with an overview of the contractual relationships at play and of the arguably more consequential and matured discussions regarding the classification of micro jobbers in the domain of employment law

[1] Thomas, UoPLR 2018, 1415 (1430).

and the implications for the taxation of those (B.III.). After an in-depth analysis of the tax law classification of the income from micro jobbing in Germany, touching upon dependent employment (C.I.), independent work (C.II.) and income from commercial operation (C.III.), the work discusses the practical implications of this classification (D.I.). Subsequently, the work argues the issues with this classification for the tax office and micro jobbers themselves, even touching upon some plausible political arguments (D.II.). Long-term solutions based on international policy and theoretical suggestions by tax scholars are portrayed and discussed, followed by a short-term suggestion based on German law (D.III). The work ends with a conclusion, shortly summarizing the resulting findings (E.).

B. Micro jobbing – Scope and background

When sifting through all the different forms of work and ways to earn money online, it can be challenging to form a consistent non-legal definition for this sliver of the online economy called micro jobbing. It is, however, of the utmost importance for this work to set clear boundaries for what a micro job is and what it is not. While defining micro jobbing, a separation between two general categories of micro jobbing will be demonstrated and later used for further legal categorization. In order to understand the range of variations, we will also consider a particular edge-case scenario – two examples of barter transactions.

I. Differentiating between the different forms of work online

Starting at the highest level of differentiation, micro job providers constitute as a *multi-sided platform*- i.e., a digital market with an online or web-based interface (an online platform)[2], which firstly enables direct interactions between two or more distinct sides[3] and secondly leads to an affiliation of each of those sides with the given platform.[4] By „direct interaction", the control of either side over the key terms of the interactions is meant.[5] This could theoretically significantly differ from one micro jobbing platform to the next but seems to be consistent among major providers in Germany as far as the setting of price, task conditions and terms by the employer, and the ability of direct communication between workers and employers.[6]

[2] OECD Intertim Report 2018, p. 30, para 56.
[3] Hagiu/Wright, IJoIO 2015, 162 (5).
[4] Hagiu/Wright, (fn 3), p. 5.
[5] Hagiu/Wright, (fn 3), p. 5.
[6] Fair Crowd Work, Streetspotr, http://faircrowd.work/platform/streetspotr/ ; Fair Crowd Work, Mechanical Turk, http://faircrowd.work/platform/amazon-mechanical-turk/.

Furthermore, internet platform marketplaces can be divided into three distinct categories – crowdworking, commerce, and sharing platforms.[7] Crowdworking, much like crowdsourcing, can be external and internal (i.e., used for distribution of tasks inside a firm)[8]. This work will, however, focus on the external side of crowdwork, since the vast majority of examples for micro jobbing found are external and follow a trilateral model (where the firm requesting work is separate from the provider of the platform service) as opposed to a bilateral one (where the firm requesting work is the platform operator).[9]

Crowdworking platforms can be further divided into seven subcategories based on the type of work done: micro-tasking-, design-, testing-, innovation-, content creation-, market-research- and marketplace-platforms.[10] This definition prominently excludes services like Uber and Airbnb, which are categorized under the sharing platform section. Micro jobbing (as a vernacular term) is, in large part, synonymous with micro-tasking, although overlap of the subcategories is possible (e.g., Streetspotr's tasks are in the field of market research, but are so granular, straightforward and require so little time to complete, that they are to be considered micro-tasks). In these regards, a more simple separation proposed by the world bank into two categories based on the complexity of the work done – microwork and online freelancing,[11] appears more practical for the purposes of this work.

In essence, the definition of a micro job is that it is a paid task, which is organized around an online crowdworking platform and is characterized by the brief time required to complete it („on the go") and the lack of requirements regarding specialist knowledge, qualification, preparation or investment (accessible to anyone with internet connection).[12]

II. Micro jobbing examples distributed into two practical categories

This work differentiates between two types of micro jobbing – mobile micro jobbing (requiring the worker to be at a specific location) and general or location-agnostic micro jobbing. Two examples for the latter, which this work will use, are Amazon Mechanical Turk and Clickworker.com. The tasks, generally performed by users of those platforms, include the restructuring of text, completion of surveys, audio transcriptions, categorization of images (à la Captcha), and other elementary cognitive tasks, which cannot yet be performed in their

[7] Mrass/Li/Peters, ECIS 2017, 2515 (2519).
[8] Waas, Crowdwork – a comparative law perspective, p. 14.
[9] Waas, (fn 8), p. 14.
[10] Mrass/Leimeister, Crowdworking-Plattformen als Enabler neuer Formen der Arbeitsorganisation, p. 142.
[11] Kuek, Global Opportunity of Online Outsourcing, pp. 7 et seq.
[12] Schwellnus, et al., Gig economy platforms: Boon or Bane?, p. 7.

entirety by a computer algorithm.[13] Thus the slogan tongue-in-cheek of Amazon Mechanical Turk – „artificial artificial intelligence".[14]

Two examples popular in Germany for mobile micro jobbing are Streetspotr and appJobber, which provide tasks, requiring workers to check the availability of a product in a physical store, photograph shelf arrangements, or even buy the product and rate their experience at the point of sale. This type of work and organizational structure are reminiscent of the pre-internet profession of independent mystery shoppers. Platforms demand a fee of 20-50% on top of the payment per task workers receive.[15] Also notable is the acknowledgment by platforms of their workers' tax liabilities, for which, however, they currently provide no information or support.[16]

While those examples are representative of the majority of microwork available, edge cases and exceptions are plentiful and worth investigating but shall remain outside the scope of this work. There are even cases, which are not only dismissed as micro jobbing by the public but are rarely considered work at all that would fall under the definition of microwork given above, especially considering the fact that the German Income Tax Act also considers barter transactions as a part of taxation (sec. 8 para. 1 sent. 1 alt. 2 GITA). Tapjoy is one such example. It is an American company, on the platform of which one can download/ buy applications and use them for a certain amount of time or fill out surveys in order to acquire virtual currency in computer or mobile games. A similar case is the better known Google Opinion Rewards (available in Germany as „Google Umfrage-App"), where one completes surveys for Google Play credits, which can be used for purchasing applications on Android and Chromebook devices (in a Storefront owned by Google).

While this definition and granularity are needed for the differentiation between and understanding of the various forms of work online, many points, especially the bigger-picture, structural arguments being made and quoted here, are to a varying extent applicable to crowdwork, gig work and even parts of the sharing economy as well. Differences and nuances where present will be clarified.

[13] Silberman/ Irani, CLL&PJ 2016, 505 (511).
[14] Silberman/ Irani, (fn 13) , 505 (509).
[15] Amazon Mechanical Turk, Pricing, https://www.mturk.com/pricing ; AppJobber, GTC, Sec. 4 para 6, https://www.appjobber.de/info/agb.
[16] Amazon Mechanical Turk, Help – Taxes https://www.mturk.com/worker/help#intl_tax_pay_taxes_on_earnings ; Tapjoy, User Terms of Service, https://www.tapjoy.com/legal/tapjoy-users/#terms.

III. Discussions regarding micro jobbing in other legal domains

Although definitions of independent work differ between labor and tax law[17], it is useful for the sake of completeness, to keep at least a general perspective of the discussions in the employment and social law domains while examining the tax issues arising from micro jobbing. Furthermore, employment law decisions and discussions have an indicatory effect on tax law. In international articles, there is also discussion if the definitions between employment and tax law definitions should not be more closely aligned. An understanding of the contractual structure involved will later be of use for defining the trilateral relationship between the parties.

1. Employment law – and implications to tax law

In Germany and also worldwide, there is a lot of controversy and opinions regarding the employment classification of crowdwork and the gig economy in general. According to German law, it is unlikely that the courts would classify micro jobbers as employees due to them arguably not being in a position of dependence[18] and the control exercised by the platform or by the crowdsourcer (especially in the case of micro jobbing due to the short-term nature of the tasks) being mostly superfluous.[19] Similar obstacles in tax law will be discussed later in greater detail. The possibility of the crowdsourcer and the platform to be considered joint employers is also outside the realm of likelihood since the jurisprudence has very narrow borders to such an atypical relationship – mostly restricting the cases of joint employers to spouses hiring a helper for the shared household.[20] In a historic first judgment, the State Labor Court of Munich ruled justly on the 4th of December 2019 that a crowdworker is not an employee.[21] The classification of the worker as an „employee-like person“ or as a homeworker was unfortunately not brought up.

German employment law acknowledges the existence of the so-called „employee-like person“, which appears more plausible when applied to crowdwork since it is based on an economic instead of a personal dependence of the worker.[22] This qualification, however, falls short on the grounds of crowdworkers usually working for multiple clients via one or multiple platforms and might be considered „employee-like people“ only if remuneration is

[17] BFH, 23.04.2009 - VI R 81/06, BStBl II 2012, 262.
[18] Waas, (fn 8), pp. 153 et seq.
[19] Waas, (fn 8), p. 152.
[20] Waas, (fn 8), pp. 157 et seq.
[21] LAG München, Press release to: Aktz. 8 Sa 146/19, 04.12.2019.
[22] Waas, (fn 8), pp. 160 et seq.

received directly from the platform.[23] This, as explicitly stated in the GTCs of the micro jobbing examples this work uses, is not the case.[24] If those GTCs are valid according to the GTC content control of sec. 305 et seqq of the GCC and if this is factually the case, remains outside the scope of this work but should be further examined by courts and scholars. Another possible classification of crowdworkers could be this of homeworkers according to the German Homeworking Act. This category is also based on economic dependence instead of a personal one and provides for a certain amount of anonymity of the worker, which is perfectly applicable to the nature of the internet.[25] The economic dependence, however, differs from the one previously discussed, so that it takes into account price limits, the danger of losing future assignments if a worker declines a current one, and is not limited to sec. 12a of the Collective Bargaining Agreement as opposed to the „employee-like" category.[26] The qualification as a homeworker would lead to a significant change in crowdwork – providing, among other rights, „working time protection", greater transparency as to the remuneration provided, and the possibility of collective bargaining agreements.[27] Bernd Waas holds the position that such qualification is sensible and appropriate. This being said, such a qualification might not be needed due to a recent EU directive calling for similar protection that the qualification of crowdworkers as homeworkers would bring.[28]

Internationally, there are voices in Employment law calling for a new, somewhat oxymoronic category – the independent worker, which should provide a compromise between worker protection and flexibility.[29] The authors even propose tax withholdings of the newly defined independent workers by the intermediary platforms.[30] Those withholdings are reminiscent of the German payroll tax (*Lohnsteuer),* where the employer pays the income obligations of the employee in advance. While, as the authors suggest, this would alleviate some of the misunderstandings, difficulty and transaction costs on the side of the worker and also improve tax compliance[31], it does not solve all issues with the taxation of short-term online work and especially exacerbates some others like the violation against one of the leading tax law principles – the principle of neutrality by disallowing them the opportunity to deduct their cost, effectively taxing them higher than other entrepreneurs.

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[23] Waas, (fn 8), p. 162.
[24] appJober, GTC, sec. 6 para. 4, https://www.appjobber.de/info/agb.
[25] Waas, (fn 8), pp. 164 et seq.
[26] Waas, (fn 8), pp. 166 et seqq.
[27] Waas, (fn 8), p. 167.
[28] European Parliament, Press release 20190410IPR37562, 16.04.2019.
[29] Harris/ Krueger, Independent Worker, pp. 15 et seqq.
[30] Harris/ Krueger, (fn 29), pp. 18 et seq.
[31] Harris/ Krueger, (fn 29), pp. 18 et seq.

In front of the backdrop of UK courts defining UBER-drivers as workers[32], Adams and Freedman take a stance opposite the one of Harris and Krueger, arguing, on the basis of the principle of neutrality and with the goal of avoiding further incentives to manipulate the categorization of one's workers, that instead of additional categories, the categories of work and income should remain separate and different between employment law and tax law.[33] They argue further that solving current issues in tax law can be achieved by aligning tax burdens between the categories and simplifying tax regulation.[34] While this is always a noble and worthy cause and would indeed, to a certain extent, counter attempts at manipulating categories for financial benefit, many issues with the taxation of crowdwork and the sharing economy remain unaddressed. The authors, however, make the valid argument that the legislature should not discourage traditional employment by incouraging those new work forms disproportionately – a delicate but needed balancing act.

2. Contract Law – a trilateral relationship

Due to the broad spectrum of crowdwork, all combinations of contracts are possible. Between the platform and the crowdworker or between the crowdsourcer and the crowdworker with the platform as an intermediary.[35] Due to the definition that this work sets and after examining the General Terms and Conditions of the above-mentioned examples of micro jobbing platforms, it appears that the former is usually the case.[36] Furthermore, a platform's position as a representative or an agent is desired neither by the crowdsourcer nor the platform.[37] In those cases either a contract of service (*Dienstvertrag*) – Sec. 611 et seqq GCC or a contract for work and services (*Werkvertrag*) – Sec. 631 et seqq GCC between the crowdworker and the platform come into existence with the possibility for the platform to enter into a brokerage agreement (*Maklervertrag)* with the crowdsourcer according to Sec. 652 et seqq GCC.[38] Considering the work done during most micro-tasks, a contract for work and services (*Werkvertrag*) seems to be more likely in the particular case of micro jobbing, since

[32] Uber BV v Aslam [2018] EWCA Civ 2748, Appeal No. UKEAT/0056/17/DA, www.gov.uk/employment-appeal-tribunal-decisions/uber-b-v-and-others-v-mr-y-aslam-and-others-ukeat-0056-17-da.
[33] Adams/ Freedman/ Prassl, Oxford Review of Economic Policy 2018, 475 (484 et seqq).
[34] Adams/ Freedman/ Prassl, (fn 33), p. 486.
[35] Waas, (fn 8), p. 143.
[36] Clickworker, GTC Sec. 2 sent. 3, https://workplace.clickworker.com/de/agreements/32?_ga=2.64670831.1361006955.1573827405-1587765219.1573827405 ; AppJobber, GTC, Sec. 5 para. 3 sent. 2, https://www.appjobber.de/info/agb ; Streetspotr, GTC, Sec. III. para. 3), https://app.streetspotr.com/de/terms_of_use.
[37] Waas, (fn 8), p. 144.
[38] Waas, (fn 8), p. 145.

the fulfillment of the contract is conditioned on the completion of the task and not on the action or work performed towards the fulfillment of this task.[39]

C. Classification of the income from micro jobbing according to the GITA

A micro jobber is a natural person – irrespective of his status as a „registered tradesman" under Sec. 1 of the German Commercial Code – and as such falls under the regulations of the German Income Tax Act (GITA) for income generated on the territory of Germany. Cases of limited income tax liability as per Sec. 1 para. 4 GITA are unrealistic in regard to micro jobbing.

The decisive question regarding income tax is as to what type of income, according to Sec. 2 para 1 sent. 1 GITA does micro jobbing qualify. From the beginning, we can exclude the income types of agriculture and forestry, capital investment, and rent and lease of property, due to the nature of the work being discussed. Platforms have embraced the classification of their workers as commercial operators or entrepreneurs.[40] This has not been confirmed by finance courts yet and the categorization is just speculation at this point. One might argue that this classification is purely due to the tax opportunism of the platform economy operators and should be reconsidered.[41] An assumption based on previous court decisions in Germany shall be analyzed below:

I. Micro jobbing as independent work

While income from independent professional services might intuitively sound appropriate in the case of micro jobbing, it is restrictively defined in Sec. 18 para. 1 GITA. One of the independent professions listed in Nr. 1 sent. 2 of the above-mentioned norm might require further investigation – the profession of the press photographer as compared to some of the tasks a mobile micro jobber might carry out. In general, for work to classify as press photography, the pictures need to represent current political, economic, social, or cultural occurrences[42] , and advertisement cannot be its primary function[43]. The combination of those restrictions makes the imagining of even an anecdotal example of such a mobile micro-task very hard to achieve.

[39] Musielak/Hau, Grundkurs BGB, para. 949.
[40] Oei/Ring, WULR 2016, 989 (1061).
[41] Oei/Ring, WULR 2016, 989 (1028 et seqq).
[42] Hutter, Sec. 18, in Blümich, EstG (144th edn. (current state: issue 148, July 2019)), para 151.
[43] BFH, 19.02.1998 - IV R 50/96, BStBl II 1998, 441.

The catalog norm also features the general term „similar professions“. For one to qualify as such, it should be comparable in its entirety with all of its features with one of the listed catalog professions.[44] The lack of any training or specialized skills, as per the definition of micro jobbing, is in stark contrast with the highly specialized professions listed in the norm.

It should be noted that the definition of independent work comes from times before the rise of the online economy in forms of freelancing and gig-work. This fact raises many contentions since the labor market is much more diverse and the separation between entrepreneurship and independent work is not as clear cut. The main point of differentiation between the two – capital expenditure versus labor force as the main driving force behind the types of income[45] is no longer applicable in a labor market where an independent doctor needs to invest potentially millions in specialized equipment to be in a competitive position, while a crowdworker occasionally performing simple tasks without any investment is considered an entrepreneur.

II. Micro jobbing as dependent work

Notwithstanding the heated discussion regarding the qualification of crowdworkers in the Employment law domain and the ethical questions accompanying it, tax law operates with separate definitions of dependence, employer, employee, and wage.[46] For income to be qualified as dependant work, an employment relationship defined in Sec. 1 para 2 of the German Implementation Provision of the Wage Tax (*LStDV*) is required.

For this to be the case, the overall image of the relationship needs to be assessed with the use of specific requirements and indices that need to be taken into consideration.[47]

1. Lack of entrepreneurial risk as an indicator of dependent work

Firstly, we would need to determine if the entrepreneurial risk is lacking.[48] Multiple factors speak for the presence of entrepreneurial risk (and in turn for the lack of dependency) in the case of the micro jobbing examples this work uses: The worker, of their own volition, is free to increase or decrease their workload and the respective overall compensation.[49] Unsatisfactory performance of the work, however, could lead to a denial of payment[50], which means

[44] BFH, 19.07.1985 - III R 175/80, BStBl II 1986, 15.
[45] Scheffler, Besteuerung von Unternehmen I, p. 67.
[46] Geserich, Sec. 19, in Blümich, (fn 42), paras 50 et seq.
[47] Scheffler, (fn 45), p. 68.
[48] Scheffler, (fn 45), p. 68.
[49] Geserich, Sec. 19, in Blümich, (fn 42), para 70.
[50] appJobber, GTC, sec. 5 para. 11, https://www.appjobber.de/info/agb.

that the workers carry the risk of not being compensated, and this is a further sign of entrepreneurial risk.

Furthermore, the Federal Court of Finance (*BFH*) has ruled in an earlier case that working for multiple employers on a case by case basis is a clear indication for the presence of entrepreneurial risk.[51]

2. Obligation to the employer to carry out work

Sec. 1 para 2 sent. 1 of the German Implementation Provision of the Wage Tax further requires that the employee *owes his labor* to the employer, as opposed to the simple fulfillment of an assignment.[52] In the case of micro jobbing, the employee is bound to a specific work result and not paid based on the work done. They can decide whether they accept the task or not and are free to cancel the task even after acceptance. In other platform work types, the worker receives a grade and a review by the client, of which negative consequences may follow in the case of refusal to fulfill a task. On the other hand, receiving negative consequences over the refusal of fulfillment is arguably the case with other typical entrepreneurial professions as well. With micro jobbing, the case is even more straightforward - the worker does not receive any form of grade by the client, so the previous argument does not apply. Those arguments, in their entirety, speak against an obligation of labor towards the employer per se.

3. Position of dependency – a point of contention

The norm further requires a position of dependency, realized by the requirement to observe instructions or by the incorporation of the employee into the business structure of the employer.[53] An argument for this would be the simplicity of the tasks, which according to the FCF, can be an indicator of dependent work in the case of simple mechanical tasks, where instructions can be extremely detailed.[54] The control and conditions of a micro-task (especially a mobile one) are strict, and if all requirements are not met, platforms reserve the right to withhold payments.[55] However, what differentiates micro jobbing from the case previously cited, is the fact that while instructions can be strict during a single task, the structure of the work a micro jobber exercises on a usual workday as a whole is not controlled by the platform and the worker does not receive directions regarding and is not limited to the time,

[51] BFH, 14.06.1985 – VI R 150/82, BStBl. II 1985, 661.
[52] Geserich, Sec. 19, in Blümich, (fn 42), para 65.
[53] Geserich, Sec. 19, in Blümich, (fn 42), para 66.
[54] BFH, 24.07.1992 - VI R 126/88, BStBl. II 1993, 155.
[55] appJobber, (fn 50).

place and character of tasks he accepts and practices. Neither is he bound to one particular platform. Some authors argue that the control a platform or a crowdsourcer exercise over the worker is especially superfluous regarding microtasks due to their simplicity and short time needed to perform.[56] Furthermore, the time limit set on a task is not comparable with the right of direction a typical employer has and is more akin to a legal framework of the task. This time limit tends to be between one and two hours, which is sufficient multiple times over for the fulfillment of any given micro-task. Lastly, the FCF, in a structurally similar case, has also taken under consideration particularly short-term relationships as an indication for the lack of the required employment relationship.[57] In this case (photo models), as well as in the hostesses case cited under fn 51, there are instructions during each of the work tasks a worker carries out. However, the work as a whole is not regulated by the agencies (or platforms in the micro jobbing case). Sec. 19 GITA speaks of „work" and not of an assignment, it is also, to my understanding, not the objective of the GITA to qualify each task but rather an activity as a whole. Just as any enterprise or undisputed employment relationship consists of different elements or tasks, so does the work of the micro jobber and it should be qualified as a whole and not as a collection of tasks.

As far as incorporation of the employee into the business structure goes, the facts that the employer provides neither the workspace[58] nor the work equipment[59] (smartphone or computer in the case of micro jobbing), are reliable indicators of the lack of any incorporation of the employee into the business structure. The last quoted judgment puts the homeworker discussion from the Employment law domain to rest as far as income tax law is concerned, by sorting them either as dependant employees or as independent workers, based on the conventional indications for either. The differentiation between homeworkers and home-entrepreneurs will be discussed later.

4. Decision based on the overall picture

An argument for the existence of a dependent relationship and a point of differentiation between micro jobbing and the model agency case cited above is the fact that the work done on micro jobbing platforms is a simple mechanical activity and is not characterized by any properties or abilities of the worker's personal nature.[60] This argument and the contentiousness regarding the requirement to observe instructions cannot be considered in a vacuum and

[56] Waas, (fn 8), pp. 152 et seq.
[57] BFH, 14.06.2007 – VI R 5/06, BStBl. II 2009, 931.
[58] BFH, 03.10.1961 – I 200/59 S, WKRS 1961, 10363.
[59] BFH, 24.11.1961 – VI 28/60, BeckRS 1961, 21008195.
[60] BFH, (fn 51).

do not interfere with the overall sentiment, which, in my view, points towards the lack of dependence both between the worker and the platform and between the worker and the client.

It is also worth mentioning that the discussion in labor- and social law regarding pseudo-self-employment, even if taken at face value, does not necessarily influence the argumentation and decision taken above.[61]

III. Micro jobbing as a commercial operation

The categorization of a micro jobber's income as income from a commercial operation as defined by Sec. 15 para. 1 sent. 1 no. 1 and para. 2 GITA requires the presence of four specific features (independence, continuity, the intention of making a profit, and participation in general economic transactions) [62] and the lack of three further features (so-called „negative features"): the income should neither be attributed to income from agriculture and forestry, nor income from independent activity, nor income from the restructuring and optimization of present wealth (personal wealth management).[63]

The three „negative features" are, as discussed earlier, not relevant to the work provided by micro jobbers. The intention of making a profit is also unproblematic since even if the subjective primary reason for performing a micro-task is different from making a profit (e.g., going out more, competitiveness due to the gamification of online work), the intention of making a profit even as a secondary purpose is sufficient[64]. The other three requirements for a commercial operation should be investigated in more detail.

1. Self-employment – entrepreneurial risk and initiative

The entrepreneurial risk, as discussed previously, lies with the micro jobber, who carries the risk of not being compensated.[65] The worker's activity should also be based on the entrepreneurial initiative of the micro jobber. This is the case if the worker is not bound to instructions[66] – my position, as argued previously, is in line with self-employment.

As it is to infer from sec. 15.1 para. 2 of the German Income Tax Directive (*EStR*), the jurisprudence acknowledges the idiosyncratic terms of „homeworker" and „home-entrepreneur" known from employment law and with one fatal swing of his proverbial regulatory

[61] BFH; 02.12.1998 - X R 83/96, BStBl II 1999, 534.
[62] Scheffler, (fn 45), p. 55.
[63] Scheffler, (fn 45), p. 56.
[64] Scheffler, (fn 45), p. 55.
[65] Scheffler, (fn 45), p. 55.
[66] Scheffler, (fn 45), p. 55.

axe, puts any discussions to rest and classifies the potentially problematic case of sec. 1 para. 2 lit. c) of the Homeworker Act (*HAG*) as a case of independent entrepreneurship for tax law.[67]

2. Participation in general economic transactions

In order to affirm this point, the micro jobber must have aimed his activity towards the exchange of goods and services.[68] This is the case when the person performs work for pay on a market and makes this extrinsically apparent.[69] Generally, those services should be made available to anyone who fulfills the requirements set by the worker. Restricting the market to a narrow base of customers is also accepted.[70] Hence, a micro jobber choosing to work for only one or two platforms does not pose a problem to his participation in general economic transactions. The pilot case cited in fn 70 also points towards the fact that the limited number of customers (platforms in the case of micro jobbing) due to technical reasons and hence the limited size of the market does not damage the fact that it is still an external market of labor where general economic transactions take place.

3. Continuity

Generally, the continuity of commercial activity is affirmed easily. It requires the intention to repeat an activity and also an objective set up for repetition.[71] If in doubt, however, the repetition of a similar action is already considered continuous.[72] This might be the case for online work even by the simple act of registering to a platform since the registration is already an active step towards economic activity.[73] There are, however, a few examples where the courts have allowed for some leeway in regards to the entrepreneurial classification. In later chapters, this work will argue, why the point of continuity might be a suitable opportunity to avoid some of the issues surrounding the taxation of micro jobbing and online work as a whole.

The analysis of the categorization of income from micro jobbing as one of commercial operation was also confirmed during correspondence with the Tax Office of Bayreuth. Unfortunately, they could not provide any further information or practical insights on the matter

[67] Bode, sec. 15, in Blümich, (fn 42), paras. 29 et seq.
[68] Bode, sec. 15, in Blümich, (fn 42), para. 51.
[69] Bode, sec. 15, in Blümich, (fn 42), para. 52.
[70] BFH,16.05.2002 - IV R 94/99, DStR 2002, 1389.
[71] Bode, sec. 15, in Blümich, (fn 42), para. 32 .
[72] Bode, sec. 15, in Blümich, (fn 42), para. 32 .
[73] Beretta, WTJ 2018, 381 (407).

of micro jobbing.[74] Inquiries to other tax offices remained unanswered, or an answer was refused due to the alleged confidentiality of the information.

D. The taxation of micro jobbing workers – issues and solutions

There are multiple theoretical problems with one such qualification. In practice, tax authorities seem to be currently solving those issues by ignoring thousands of unfulfilled obligations. This would be the case if the lack of any information given by tax offices during my correspondence with them is to be considered an indicator of their indifference. While the scale of the sector (especially if we only consider crowdwork)[75] is still small, rendering broad swathes of the population negligent tax evaders should be avoided.

I. The current taxation of income from commercial operation

The classification of a micro jobber as an entrepreneur brings different obligations from the ones a person without any entrepreneurial experienced is used to. Entrepreneurial income follows the net gains method and as such, the taxpayer cannot make use of the flat-rate tax alleviations that dependent employees and other groups can easily utilize. Instead, the entrepreneur needs to keep accounts on their operating revenues and expenses in order to calculate the total taxable profit. This is regulated in sec. 4 and sec. 5 of the GITA, generally done through a comparison of operating assets, requiring a bookkeeping obligation. The case where this obligation is not required is regulated in sec. 4 para. 3 GITA, enabling smaller operations to save on administrative costs by declaring their profits as a surplus of revenue over expenditures.

Whether or not the debtor is required to keep books is regulated in sec. 140 and sec. 141 of the German Fiscal Code (*AO*). The former serves as a catchall for bookkeeping duties outside tax law, mainly referring to the GCC.[76] But also, interestingly, for income from homeworking according to the sec. 6, sec. 8 and sec. 9 of the Homeworking Act, if courts were to classify online workers as homeworkers. However, without further discussion of the bookkeeping duty according to the GCC, which is generally broader than the one in sec. 141 of the German Fiscal Code. The latter requires a profit of over 60 thousand Euros per year, or revenue above 600 thousand, which is highly unlikely for most micro jobbers and other platform workers. Nevertheless, even with this simplified obligation, workers still need to keep

[74] Annex 1.
[75] Serfling, Crowdworking Monitor, pp. 16 et seq.
[76] Wied, sec. 4 in Blümich, (fn 42), para. 68.

track of their expenses without estimations and by storing receipts.[77] This can be especially difficult, not only due to the lack of knowledge on the side of the greenhorn entrepreneurs but also due to the difficult separation and evaluation of the personal versus commercial use of an asset. This is a major issue for participants in the sharing economy like Uber drivers, who need to keep accurate track of the distance driven in order to deduct their gas expenses and wear of their car.[78] Admittedly, this is not as major of a problem for micro jobbers. Travel expenses (bus tickets or gas) for mobile micro jobbers, part of the value of the phone or computer as work equirpment, or even the workroom according to sec. 4 para. 5 sent. 1 no. 6b GITA. might be considered.[79]

The classification of an entrepreneur, according to the GITA, also leads to VAT obligations according to sec. 2 of the German VAT Act. The small business regulation serves as a de minimis limit and a tax relief for small businesses and as such captures all but the heaviest users of the platform economy. Additionally, the German Trade Tax Code (GTTC) and the German Trade, Commerce, and Industry Regulation Act (*GewO*) require further registration with the relevant authority for entrepreneurs as defined by the GITA.[80] The GTTC also provides tax relief in the form of a 24500 Euro allowance according to sec. 11 para. 1 sent. 3 no. 1. Even in the cases where this allowance is exceeded, the GITA in sec. 35 allows for a reduction in income tax due to the trade tax previously paid. This compensation is, depending on the collection rate of the municipality and whether or not there is a solidarity surcharge, often lower than the actual trade tax paid.[81] This, if business expenses are low or not deductable (as discussed above), leads to higher taxation of entrepreneurs than of other workers. In conclusion, the direct taxation of the individuals according to the GITA seems to be a more significant problem than other taxes, the category of a commercial operator is however in no small extent applicable to all.

II. The taxation problems with the current classification

On the one hand, there are difficulties for many tax debtors to exercise their legal rights to deduct expenses, which leads to a gross rather than net taxation.[82] It can be further argued that there needs to be a differentiation between occasional or incidental platform workers and those that receive regular income from such work.[83] On the other hand, it is not cost-

[77] Wied, sec. 4 in Blümich, (fn 42), para. 72.
[78] Oei/Ring, WULR 2016, 989 (1009).
[79] Wied, sec. 4 in Blümich, (fn 42), paras. 566 et seq.
[80] Scheffler, (fn 45), pp. 274 et seq.
[81] Scheffler, (fn 45), pp. 171 et seq.
[82] Beretta, Intertax 2017, 2 (6).
[83] Beretta, Intertax 2017, 2 (6).

effective for the tax authorities to pursue workers on a case-by-case basis for such small amounts.[84]

1. Different groups of workers require different approaches

There seem to be three general groups of users of platform users. Firstly, there are the heavy users – people for whom platform work is the primary or only source of income. They are, for all intents and purposes of German tax law, entrepreneurs, and there is no urgent need for any modification of the current classification and legal obligations. The amounts of tax revenue are higher and the usual consequences to non-compliance should apply. Nevertheless, those workers are still small business operators, a category that has always historically had issues with compliance and underreporting.[85] The accurate separation of private and commercial use of their assets for the calculation of business expenses, for example, is still an issue for them.[86] Simplification, in this sense, regardless if it is technological or policy-based, would be rational.

Secondly, there are users that only occasionally supplement their income through work on online platforms. Considering this is a form of secondary income, occurring regularly or semi-regularly, this income should be taxed more effectively. Some modifications to the declaration requirements, loss calculation, or even the tax rate would be sensible. Those occasional crowdworkers rarely are experienced entrepreneurs and are not prepared for the administrative obligations they are exposed to. While pleading ignorance is no argument for tax evasion, when such becomes as widespread among a group of people as it is, the fault is likely not in the individuals but rather in the system. As shown by the forum analysis of Oei and Ring, lack of knowledge and misinformation is widespread among Uber-drivers online.[87]

Lastly, there are users (myself included during the research for this work), which register to platforms out of genuine interest and willingness to try out a new „gadget“. Due to the ignorance of their tax obligations or not understanding that even such small income has to be declared, they become at the very least negligent tax evaders, as described in sec. 378 of the German Fiscal Code (*AO*). Although considered under the same category, practically, it is evident that all those groups are different: they have different motivations, different outcomes, and different levels of involvement and incentive to inform themselves of their duties.

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[84] Beretta, Intertax 2017, 2 (6).
[85] Thomas, UoPLR 2018, 1415 (1430 et seq).
[86] Beretta, Intertax 2017, 2 (6).
[87] Oei/Ring, The Tax Lives of Uber Drivers, pp. 26 et seqq.

The obligations of an entrepreneur are much more complex than what those incidental entrepreneurs expect and often too complicated for the average platform user. Strict enforcement of those would be a form of discouragement to even try this form of work. And while regulations should not excessively encourage this type of work, as mentioned earlier, the opposite should not be the case either.

2. The unmet goals of tax authorities

A classification of a micro jobber as an entrepreneur also leads to issues on the side of the tax authorities in so far that they are unable to fulfill their primary duties:

a. Efficient tax collection

Reaching possibly millions of the platform workers with unpaid taxes in Germany would firstly require an audit of the platforms themselves (and this would only be possible if they have a German branch) according to sec. 193 et seqq of the German Fiscal Code. The second step – reaching out to those potentially millions of workers would require a disproportionate amount of time and investment in order to collect a meager amount of tax per person.[88] One could also argue that efficient tax collection is necessarily preceded by an efficient generation of taxable income, and it is neither in public nor in the interest of the tax authorities to stifle productivity, entrepreneurship, and the development of new forms of work. Exposing those trial-basis-entrepreneurs or people occasionally supplementing their incomes to the onerous filing and other administrative duties and compliance costs would significantly tip their cost-benefit analysis towards the decision of not working on an online platform.[89] Arguably, the current uncertainty and anticipation of such obligations might already have a chilling effect on people otherwise willing to try this form of work.

b. Avoidance of tax fraud

On account of the disproportionate costs connected with the collection of said taxes, tax offices seem to be contradictory to their purpose, avoiding any possible measures of collecting the unpaid taxes. On top of that, it is difficult for non-entrepreneurs to accurately estimate and set aside the tax burden they have and need to pay at the end of the year according to sec. 36 GITA or quarterly as per sec. 37 GITA. This exposes them further to the risk of tax evasion and the penalties this leads to.[90] Low compliance rates and the other issues

[88] Beretta, Intertax 2017, 2 (7).
[89] Thomas, UoPLR 2018, 1415 (1431).
[90] Thomas, UoPLR 2018, 1415 (1429).

discussed above are already present with traditional small business operators.[91] The growing number of entrepreneurs should therefore not only be viewed as a challenge but also as an opportunity for reform and simplification of small business compliance. There is, however, a major differentiating factor to consider. Platform work, as opposed to traditional entrepreneurship, has a handful of centralized third parties capable and willing to report the revenues of the workers, as is the case with independent work. This is missing with traditional entrepreneurs, the taxation of which relies on self-reporting. The former is logically much more effective.[92] Furthermore, the payments for online work are, in most cases, done electronically, which means easier to track and not privy to the main tax collection challenge with traditional sole proprietors – cash transactions.[93]

It can also be pointed out, that if we were to veer outside of the limitation of our four typical micro jobbing examples and consider the barter-based edge cases, which are somewhat widespread in the sharing economy as well, another challenge for tax authorities is unveiled – the difficult assessment of the economic value of those barter transaction for the tax office as well as for users of the platforms.[94] The issues of tax avoidance might be exacerbated by blockchain technologies and decentralized virtual currencies inevitably enter the sharing economy.[95] This is, admittedly, likely less of an issue for micro work, where the crowdsourcers (i.e. companies making the orders) are far more centralized and fewer than the users of sharing services.

3. Several political arguments

Firstly, at a later stage, there might be political interest in promoting the sharing economy due to its environmental benefits. Since it is likely that micro jobbing would also fall in the same category as the sharing economy, micro jobbers and similar workers would benefit from such a classification. Underenforcement of tax obligations has been known to happen and some might argue that due to the improved elasticity in participation by online platform workers who substitute leisure over labor, it is warranted, being economically efficient.[96] A further argument can be made that online platform workers are in a weak bargaining position as compared to traditional, highly qualified freelancers, in part due to the monopsony power of the platforms.[97] This leads to platforms fully exploiting their producer surplus and

[91] Thomas, UoPLR 2018, 1415 (1430 et seq).
[92] Thomas, UoPLR 2018, 1415 (1432).
[93] Thomas, UoPLR 2018, 1415 (1432 et seq).
[94] Kristoffersson, Taxing the Sharing Economy – A Swedish and EU Perspective, p. 226.
[95] Kristoffersson, Taxing the Sharing Economy – A Swedish and EU Perspective, p. 227.
[96] Oei/Ring, WULR 2016, 989 (1059).
[97] Adams/ Freedman/ Prassl, (fn 33), p. 486.

workers being left neither with the tax benefits of their entrepreneurial classification nor with the employment law protection.[98]

It is also worth pointing out that users especially incidental users (third category discussed above) are often children or students[99] who might consider micro work less work and more something of a game or a toy. This does not mean to say that they did not have the intention to draw profit, which would classify the work done as a hobby and outside the scope of taxation. It is hard to imagine that there is another incentive for micro jobbing other than the monetary one. However, due to the comparatively low profits and casualness of platform work, the income derived from it is often not taken seriously or considered at all by the workers. One might argue that the age of the workers is only a sentimental argument and is not relevant for tax law, where the need-for-protection principle is not as used as in employment, social, and civil law. However, in my view, taxation is a very political topic and when a decision needs to be made, such arguments will also be taken into consideration.

III. Proposed solutions to the problematic classification of micro jobbing

So far, German authorities have not responded to the issues discussed above, taking effectively a similar position to Australia‘s – the current tax categories are sufficient and online platform workers should fit in them while observing the legal obligations those imply.[100] This position may, however, change either voluntary due to the rise of platform workers or as a consequence of the recent interest of European institutions in platform work like the employment law regulations mentioned earlier or the digital services tax, aimed at the largest of platforms, taxing 3 percent of their gross income on a country's territory.[101]

1. De lege ferenda – solutions worldwide

There currently is neither a universal solution nor an EU-wide direction to the tax law problems the new forms of work entail. The solutions proposed by authors and measures suggested or implemented by countries worldwide range from more conservative and informatory in nature to pushing the boundaries of tax laws as we understand them. Those solutions shall be presented and discussed in the following subsections.

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[98] Adams/ Freedman/ Prassl, (fn 33), p. 486.
[99] Thomas, UoPLR 2018, 1415 (1429).
[100] Beretta, Intertax 2017, 2 (8).
[101] Kristoffersson, Taxing the Sharing Economy – A Swedish and EU Perspective, p. 221.

a. Technological and administrative suggestions

It is usually the more conservative position that tends to prefer technological and administrative solutions (if they consider any solutions at all needed), retaining the position that the tax classifications and the respective obligations are reasonable for online platform workers and should not be messed with.

One side of the argument is that the newly-minted entrepreneurs are unaware of or confused by their obligations and through better education, they would comply with those. It is argued that, especially due to the internet-based nature of the new work forms and tech-savviness of the workers, that this education would be very effective online.[102] While this is a valid argument and improved tax education is, in general, a handy tool for independent contractors and, in turn, for tax collection, it would not address the issue of intentional underreporting, which is already present among traditional entrepreneurs. Furthermore, while better information will lower compliance costs for the worker, it does not eliminate them, which only partially alleviates the issue of occasional or incidental workers being disproportionately affected by those costs.[103]

The United Kingdom, which leans towards a more conservative assessment of the situation, has planned to issue detailed guidance to help workers with their tax obligations and to simplify the process of reporting those as far as possible, even considering working with platform operators on online calculators and mobile apps that should help gig workers with their tax duties.[104] Youtube videos, webinars, and twitter communication are further parts of the UK's strategy.[105]

A somewhat more radical administrative solution is focused on the platforms themselves, calling for a reversed reporting obligation.[106] This is a very sensible approach for several reasons. Firstly, it eliminates the need for authorities to perform regular audits and instead leaves this duty in the hands of the platform operators. A duty that does not disadvantage platforms excessively since it does not raise the operational costs of those businesses by much due to their already technological nature, which allows them to gather and store data easily.[107] It is further likely that the businesses already possess this data due to their own reporting obligations and interest in deducting those costs for their own taxation. Belgium

[102] Oei/Ring, WULR 2016, 989 (1064).
[103] Thomas, UoPLR 2018, 1415 (1430).
[104] Beretta, Intertax 2017, 2 (8).
[105] Beretta, Intertax 2017, 2 (8).
[106] Kristoffersson, Taxing the Sharing Economy – A Swedish and EU Perspective, p. 232.
[107] Oei/Ring, WULR 2016, 989 (1062).

has already implemented such a reversal of reporting[108] (along with other measures like a reduced tax rate for lower-quantity-workers, which will be discussed in the next chapter). Estonia and Lithuania and France have also taken similar approaches.[109] The possible data protection complications connected with the GDPR that might arise from such an approach or other data-driven approaches remain outside the scope of this work.

b. Legislative suggestions

Non-Employee Withholding goes a step further than the reversed reporting obligation discussed previously and, as such, might be even more cost-effective and efficient than the reporting reversal is, since it would spare the tax offices‘ effort of contacting the pursuing individual entrepreneurs. The idea is that platforms collect their worker’s tax obligations on their behalf, who would still be able to file their tax returns for a refund[110], a system very similar in implementation to the already present payroll tax (*Lohnsteuer*) employers in Germany contribute on behalf of their employees. For the US, a tax rate between 6% and 16% was proposed.[111] While this would be a huge step up from the current situation due to online platforms being more densely concentrated even than traditional employers, it would be a major and a legislatively challenging change to implement nationwide.

Nevertheless, the high concentration of employers would mean that tax authorities would only have to directly deal with a handful of prepared and knowledgable debtors instead of millions of inexperienced entrepreneurs. If a Non-Employee Withholding were to be implemented on its own, it would have a discriminatory effect on online micro-entrepreneurs as compared to their traditional counterpart, since the former would not be able to deduct their business expenditures and would, therefore, be taxed much higher. Even allowing for refunds based on a voluntary tax declaration would not alleviate the problems with the complexity of recordkeeping and separation of business and personal use, making the cost and effort for this refund disproportionately high. Therefore some authors[112] and legislators consider a standardized business deduction for the most casual of users. A somewhat similar implementation of this idea in Italy taxes gross payments at a reduced rate of 21% instead of a standard deduction[113], which is practically the same as allowing for a standard deduction. This approach, however, runs the risk of unfairly, disproportionately, and imprecisely

[108] Beretta, Intertax 2017, 2 (9).
[109] Beretta, Intertax 2017, 2 (9).
[110] Thomas, UoPLR 2018, 1415 (1438).
[111] Thomas, UoPLR 2018, 1415 (1450).
[112] Thomas, UoPLR 2018, 1415 (1457 et seqq).
[113] OECD, The Sharing and Gig Economy: Effective Taxation of Platform Sellers, p. 27.

considering the expenses that workers incur and, since it cannot be applied to traditional small business operators, runs the risk of further splitting up tax categories, which should be avoided. Considering the interest of the average user, however, this solution would be probably the most sensible and in keeping with the „plug-and-play" nature of microwork. There is, apparently, already a precedent of withholdings on some payments to independent contractors in the OECD and Airbnb collecting local hotel and occupancy taxes in some cities.[114]

A number of countries have already implemented similar deductions and other tax-free allowances. An approach by the UK, somewhat divergent from its overall non-regulatory strategy, is the implementation of the „world's first tax breaks for the digital age", which allow for up to 2000 GBP of tax breaks for online workers and participants in the sharing economy.[115] Similarly, France is considering a fixed allowance of 5000 Euros, which is meant to allow some flexibility in the online economy.[116] Belgium has taken a different approach, taxing the first 5000 Euros of income at a reduced rate of 20% and allowing a standardized deduction of a fixed 50%, effectively taxing occasional online platform workers at 10%.[117] It is worth mentioning that this rebate in Belgium only applies to peer-to-peer sharing and as such, would exclude micro jobbing.

2. An attempted argument based on de lege lata in Germany

Any changes to the taxation or tax collection of online platform workers in Germany are unlikely at least in the short to medium term, due to the current lack of discussion or acknowledgment of the problems by authorities. The non-worthwhile pursuit by tax authorities of the vastly spread but low-amount tax revenue and uncertainty for workers are present. One could also argue that the comparatively low adoption of online work in Germany might, in part, be due to this uncertainty and passiveness by the authorities.

For the interim, before a tailor-made measure is taken for online platform work, I suggest a simple modification to the entrepreneurial classification for tax purposes. This modification would target the continuity characteristic of the commercial operation. As previously discussed, this characteristic is incredibly easily affirmed, taking into account both objective and subjective indicators and not considering the scale of the commercial operation. I argue

[114] Thomas, UoPLR 2018, 1415 (1442).
[115] Beretta, Intertax 2017, 2 (8).
[116] Beretta, Intertax 2017, 2 (8).
[117] Digital Belgium, Tax Rates for Sharing Economy, www.digitalbelgium.be/en/belgian-government-approves-simple-and-low-tax-rates-for-sharing-economy/.

that this scale should be considered since the barrier to entry for micro-entrepreneurs is practically non-existent, compared to the much higher capital costs and time investments of even the simplest of traditional entrepreneurial activities. Those low barriers to entry may lead to a worker carelessly stumbling into a wide array of obligations by mindlessly clicking on their phone during their 15-minute lunch break. It is objectively and subjectively evident for everyone except for the law that the worker had no intention of being an entrepreneur even if he had fulfilled a few online tasks during this period.

The German Federal Court of Finance has already shown its willingness to consider some objective limits to the entrepreneurial classification. In a court decision from 2012[118], the FCF decided that a married couple selling a „great number" (*Vielzahl*) of items on eBay is a commercial activity with continuity. The explicit mention of the word for „great number" already in the preamble and the fact that the case was considered at all, show that the FCF might be willing to discuss an objective limit to the continuity characteristic.

On the other hand, it seems that the plaintiffs were rather attempting to contest the wealth management characteristic or to classify their operation as a hobby (collection). Another objective limit targeting wealth management is the so-called „three-object-limit"[119], a concept developed by courts where a person selling more than three immovable properties in five years is refutably considered outside the scope of personal wealth management. This work does not attempt to argue that online work, as the restructuring and better utilization of free time (substitution of leisure for labor), should be considered the same as personal wealth management for legal purposes. Such an argument would be separated from reality. The argument I am making is that the FCF could, should, and already has allowed for some flexibility of categories if needed and I believe this work has argued well enough why this is needed in the case of online platform work. In my view, an income-based limit, instead of a count-based one (like the three-object-limit) would be more sensible for online work due to the varying sizes of the tasks.

Lastly, it is worth pointing out that this leeway to the entrepreneurial classification is already the case in other countries like Italy[120] and Sweden[121]. If this position were to be taken by the courts, income from micro jobbing would be classified as miscellaneous income according to sec. 22 Nr. 3 GITA and as such, would be eligible for a 256 Euro tax-free limit. This would be enough for workers to test the new work forms without the chilling effect of tax

[118] BFH, 26.04.2012 - V R 2/11, BB 2012, 1458.
[119] BFH, 23.10.1987 – III R 275/83, BStBl II 1988, 293.
[120] Beretta, Intertax 2017, 2 (4).
[121] Kristoffersson, Taxing the Sharing Economy – A Swedish and EU Perspective, p. 225.

obligations and would set a de minimis limit, alleviating the collection burden of the tax office. This would also equate micro jobbers to the digital equivalent of plastic bottle collecters[122], which, admittedly, is a very apt analogy.

E. Conclusion

While micro jobbing is a subsegment of a subsegment of online platform work, the majority of principles and issues of the gig and sharing economy apply. Additionally, if any solutions were to be brought forward by lawmakers, they would most likely be universal and as such, apply to all types of work online.

The future will show how courts and policymakers deal with the issues surrounding online platform work. If the recent employment court decision is any implication, a rather conservative approach is more likely in Germany. Abstaining from an employee classification and not addressing the homeworker category, the state employment court confirmed the entrepreneurial classification of micro jobbers. The tax law categorization of micro workers as entrepreneurs that this work concluded and tax offices reaffirmed, is likely not to be contested by courts.

With the entrepreneurial classification in mind, this work discussed a part of the onerous duties and obligations an entrepreneur needs to observe. This was followed up with the argumentation of why online platform workers require simplifications in this regard, on the one hand, from the perspective of the tax office and on the other, from the perspective of the workers themselves.

Multiple valuable suggestions were discussed. On the technical side, there is the possibility of reversed reporting or a platform that bundles all income of work online for a centralized reference by tax authorities. Also, improved education on tax obligations through online media and state-sponsored automated tax assistance are feasible. While those measures are interesting and perhaps less controversial and more straightforward to implement and also useful for other small business operators, the cost-effectiveness of such solutions is arguable. Those solutions do not, however, interfere with Adams‘ and Freedman’s call for simplification and unification of tax law categories instead of the creation of new ones.

Legislative solutions like non-employee withholding and a standard business deduction, while more effective and probably cheaper for the government, run the risk of being too broad or are incapable of addressing all the issues present with online work or even creating

[122] BFH, 06.06.1973 – I R 203/71, BStBl II 1973, 727.

issues of their own. In my view, a mix of multiple solutions (mostly from the technological/ administrative group) aimed at small business operators, in general, is not only sensible as to the simplification of the tax obligations of this new form of workers but also politically sound and conducive to the overall wellbeing of the economy.

Since such measures are unlikely to be taken in the short term, I proposed a way out of the conundrum tax authorities are currently faced with – ignoring vast amounts of tax revenue scattered among multitudes of workers while simultaneously rendering those debtors negligent tax evaders due to their widespread ignorance and misinformation. The suggestion made is to consider a limit to the continuity of the commercial activity since it is not only sensible for the workers and tax authorities but the FCF has already shown itself willing to set some boundaries to the entrepreneurial classification. This would lead to a reclassification of the income as a miscellaneous income according to sec. 22 no. 3 of the GITA, meaning many of the obligations an entrepreneur is required to observe will be suspended and a tax-free amount of 256 Euros will be provided, allowing workers to initially experiment with micro jobbing without fear of the compliance costs connected with the entrepreneurial classification and decide for themselves if they are interested in the work. This measure would also be sensible even at a later point in combination with others if the government is willing and decides to support the sharing economy and other forms of online work with it.

Annex

Betreff: AW: Steuerrechtliche Fragen bzgl. Mikrojobbing - Abschlussarbeit

Von: "\"HSL-EST 02 (Bayreuth)\"" <hsl-est.02@fa208.stv.bayern.de> Datum: 11/26/2019, 4:32 PM

An: <vasil.molaliyski@fau.de>

Sehr geehrter Herr Molaliyski,

in den überwiegenden Fällen dürften Mikrojobber einkommensteuerlich Einkünfte aus Gewerbebetrieb gem. § 15 EStG erzielen:

Eine selbständige nachhaltige Betätigung, die mit der Absicht, Gewinn zu erzielen, unternommen wird und sich als Beteiligung am allgemeinen wirtschaftlichen Verkehr darstellt, ist Gewerbebetrieb, wenn die Betätigung weder als Ausübung von Land- und Forstwirtschaft noch als Ausübung eines freien Berufs noch als eine andere selbständige Arbeit anzusehen ist. Ein Gewerbebetrieb liegt, wenn seine Voraussetzungen im Übrigen gegeben sind, auch dann vor, wenn die Gewinnerzielungsabsicht nur ein Nebenzweck ist.

Infolgedessen sind Mikrojobber verpflichtet Einkommensteuererklärungen abzugeben und ihre Einkünfte anzugeben. Das gilt auch für den Fall, dass nur geringfügige Einkünfte erzielt werden.
Umsatzsteuerlich sind Gewerbetreibende in der Regel als Unternehmer, mit der Pflicht zur Anmeldung und Abführung der Umsatzsteuer, anzusehen. Bei geringen Umsätzen greift ggf. die Kleinunternehmerregelung gem. § 19 UStG.

Ich bedaure, dass ich Ihnen zur Besteuerungsdurchführung keine weiteren Informationen mitteilen kann.

Mit freundlichen Grüßen

Mayer

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Eidesstattliche Erklärung

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