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If you are not paying, you are the product.

Personal data and the concept of consideration under EU VAT

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Preface

Dear siblings,

As the eldest, I have always felt a responsibility to guide and support you. There are three words I hope you will carry throughout your lives:

Think. Question. Learn.

Dear professors and teachers,

From you I have learned not only to seek knowledge, but to value it. You have taught me to think critically, awakened my curiosity and helped me understand that learning is one of life's greatest privileges. You also taught me that knowledge is not about perfection, but about understanding, about daring to think, to question, to make mistakes, and still continue. Thank you.

Dear friends and family,

What would I do without your support? Thank you for standing beside me throughout this journey.

Abstract

This thesis examines whether, and under what conditions a user’s personal data or permission to collect and use such data can constitute consideration for a supply of services under EU VAT law. This issue arises in the context of data-driven digital platform business models, where the user is often granted access to digital services without monetary payment, while the platform collects, processes and monetises personal data through for instance advertising and service improvement.

The thesis applies a legal dogmatic method and focuses on the interpretation of the VAT Directive, CJEU case law, VAT Committee materials and relevant legal literature. Particular attention is given to Article 2(1)(c) of the VAT Directive, and the requirement that a supply of services must be made “for consideration”. Since the consideration does not need to be monetary, the analysis examines whether personal data, permission to use personal data, or tolerance of data processing may constitute non-monetary consideration. The central criterion is the existence of a direct link between the service supplied by the platform and the user´s counter-performance.

The thesis concludes that personal data and the permission to use personal data may, in certain circumstances, constitute consideration.

Keywords: EU VAT, Digital Platforms, Consideration, Barter Transactions, Direct Link, Personal Data, AI Services.

Abbreviations

AG	Advocate General
art.	Article(s)
B2B	Business-to-Business
B2C	Buisness-to-Consumer
CJEU/The Court	Court of Justice of the European Union
e.g	for example
E-services	electronic services
EU	European Union
GDPR	General Data Protection Regulation (Regulation (EUO 2016/679)
IR	Implementing Regulation (Council Implementing Regulation (EU) NO 282/20
MS	Member State(s)
OECD	The Organisation for Economic Co-operation and Development.
p.	point.
para.	Paragraph
VAT	Value Added Tax-

1 Introduction

1.1 Background

The digital transformation of the modern economy has given rise to data-driven business models in which data has become a central source for value creation.[1]Data is, today, regarded as the most valuable resource in the world and is often described as the "oil" of the digital era.[2] When individuals interact on social media platforms, use mobile applications, browse online marketplaces, or engage with connected devices, they leave behind digital traces and information. These traces are systematically collected on a large scale, aggregated and analysed by businesses to improve decision making, to enhance efficiency and to develop new products and services.[3] However, the collected data can also be the product itself, as platforms monetise it by selling or licensing it to third parties such as advertisers and data brokers.[4]

This is particularly visible in the platform economy. Digital platforms such as Facebook, Instagram and TikTok offer services to users without requiring monetary consideration. However, the access to these services is typically conditional upon users accepting terms and conditions that allow the platform to collect and process the personal data.[5] Similarly, AI-powered platforms such as OpenAI's ChatGPT and Anthropic's Claude offer, to a certain degree, services free of charge but collect user data in order to develop and improve their services.[6] In recent years, some platforms have introduced alternative models in which users may pay a monetary fee in exchange for access to services with reduced advertising and reduced data processing.[7] These developments may suggest that the platforms themselves treat access to data and monetary payment as alternative forms of obtaining value from

[1] European Commission, *A European Strategy for Data*, COM (2020) 66 final (19 February 2020), page 2-3;

OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS*, (OECD publishing 2018) para 68; Josh Brownlow, Mohamed Zaki, Andy Neely, Florian Urmetzer, *Data and Analytics – Data-Driven Business Models: A Blueprint for Innovation*, Working paper, University of Cambridge, p. 1.

[2] "*The world´s most valuable resource.*" Economist, May 6th, 2017, p.9. The Economist Historical Archive, *link.gale.com/apps/doc/VSANNX137835654/ECON?u=lununi&sid=bookmark-ECON.*

[3] Aija Leiponen, "*What is Special about Digital Business Innovation*?" in Digital Innovation Strategy", Cambridge University Press, 2023, page 10–11; Annie Badman, "*What is big data?*", IBM Think.

[4] Paavo Ritala, Joona Keränen, Jessica Fishburn and Mika Rukonen, "Selling and monetizing data in B2B markets: Four data-driven value propositions" in Technovation, Vol. 130, 2024, p. 6.

[5] Vera Schmitt, Daniel Sivizaca Conde, Premtim Sahitaj, Sebastian Möller, "What is your Information Worth? Analysis of the Endowment Effect of Different Data Types" in Secure It Systems, pp.224-225; Gabor Janos Dudas, Andras Gyorgy Kovacs & Marton Schultz, 'Personal Data as Consideration' (2023) 9 Santander Art & Culture L Rev 215, p. 224.

[6] See eg ChatGPT, Europe Terms of Use: Our use of content, (Updated: 16 Jan 2026 available at: https://openai.com/policies/eu-terms-of-use/ . See also Claude, How Do You Use Personal Data in Model Training?, (2026), available at https://privacy.claude.com/en/articles/10023555-how-do-you-use-personal-data-in-model-training.

[7] Bureau Européen des Unions de Consommateurs (BEUC) Users still Stuck in the Mud: an analysis of Meta´s 2026 changes to its consent-for-ads mechanism against EU law, March 2026, pp. 5-6; See eg. Spotify, "Spotify Premium" available at https://www.spotify.com/se/premium/; Youtube, "Youtube Premium" available at https://www.youtube.com/premium; See eg. The Guardian available at https://www.theguardian.com/europe.

users, though the legal characterisation of such arrangements remains an open question.

Digital platforms´ reliance on personal data as a central element of their business models raises fundamental questions not only in areas such as data protection and consumer law, but also in the field of EU VAT.[8] The question that arises is whether value added tax (VAT) applies to transactions in which digital platforms provide digital services in return for personal data. Under the EU VAT Directive, a supply is taxable only where it is carried out for consideration by a taxable person acting as such.[9] In order for personal data to qualify as consideration, it must fulfil the requirements developed in the case law of the Court of Justice (CJEU), in particular the existence of a direct link between the supply and the consideration, as well as the presence of a reciprocal legal relationship.[10] However, the CJEU has recognised that consideration does not need to be monetary and that a supply of services may be taxable where it is carried out in return for another supply, so-called barter transaction.[11]

The question whether personal data can constitute consideration under EU VAT is not entirely new. In 2018, Sofia Ingman examined this and concluded that while platforms can qualify as taxable persons and their services can be classified as electronically supplied services, the treatment of personal data as consideration does not fit into the existing VAT system.[12] She argued that, since personal data flows constantly between users and platforms, regardless of whether the service is provided free of charge or for a monetary fee, the direct link between the data and a specific supply can hardly be established.[13] In the same year, the EU VAT Committee reached a similar conclusion, unanimously agreeing in its Guidelines 967 that free digital services provided in exchange for personal data do not constitute taxable supplies.[14]

However, the digital economy has changed considerably since then. The economic significance of personal data has increased, new forms of data-driven business models have emerged, and some platforms now require users to accept processing of personal data or to pay a monetary fee to access the services.[15] Additionally, the issue has attracted renewed attention at both the national and EU levels. For instance, Italy has applied the barter reasoning to data-driven models by characterizing the exchange of personal data for digital services as a taxable supply.[16] Moreover, the European Commission´s Working Paper of November 2025 has reopened the debate at the EU level by suggesting that, in certain circumstances, a direct link between the

[8] OECD (2019), *An Introduction to Online Platforms and Their Role in the Digital Transformation*, OECD Publishing, Paris, https://doi.org/10.1787/53e5f593-en p.4.

[9] See art. 2 of the VAT Directive.

[10] B.J.M Terra and J. Kajus, Introduction to European VAT, Global Topics IBFD (2026) pp. 186-187.

[11] See eg. Case C-283/12, Serbryannay Vek EOOD vs. Direktor Na Direktsia 'Obzhalvane i upravlenie na izpalnenieto'- Varna Pri Tsentralno upravlenie na Natsionalna agentsia za prihodite, ECLI:EU:C:2013:599, para 39.

[12] Sofia Ingman, *The "Free" Access to Online Platforms: Can personal data be treated as consideration from a VAT perspective,* Master thesis at Lund University, (2018), p.31.

[13] Ibid.

[14] Guidelines resulting from the 111th Meeting of 30 November 2018, Document B – Taxud.c.1(2019)

[15] See above.

[16] Whitehouse J.,Luther M., Baxter S., "Personal data as Consideration? The Evolving VAT Landscape for Digital Business Models in the EU"(Alvarez & Marsal, 31 July 2025) accessed 31 March 2026.

service supplied and the user's provision of personal data may be found.[17] The absence of a uniform answer may create legal uncertainty for both digital platforms and tax authorities across the European Union.[18]

It is against this background that the thesis seeks to examine under what conditions a user's personal data can constitute consideration for a supply of services under EU VAT and what is required for the direct link to be fulfilled.

1.2 Purpose and research questions

The purpose of this thesis is to examine whether, and to what extent, a user´s personal data can constitute consideration for a supply of services under EU VAT. In particular, the thesis will examine under what conditions the direct link between the supply and the data can be fulfilled and under what circumstances (based on the terms of the conditions) personal data can be considered as consideration. The thesis will also examine whether there are any limitations for treating personal data as consideration, in particular the requirement that the supplier must be a taxable person and the implications of the user´s control over their personal data.

The research question is:

- Under what conditions can a user´s personal data or the permission to collect and use it constitute consideration for a supply of services under EU VAT law in the context of digital platform business models?

1.3 Delimitations

For the purposes of this thesis, it is necessary to make some delimitations. Firstly, the thesis will not examine platforms that only offer services in exchange for monetary payment. Secondly, the thesis will not include an analysis of when a platform is facilitating a supply and whether it acts on behalf of another person or not. In other words, this thesis will not provide an extensive analysis of the so-called deeming provisions but will, however, where it is necessary, mention them. Third, the present thesis will not examine B2B relationship, where the user is a taxable person. However, the author recognises that the B2B relationship might affect the assessment.

1.4 Method and materials

This thesis applies a legal dogmatic method, which aims at examining and interpreting current legal sources in order to determine the content of applicable law.

[17] European Commission, Value Added Tax Committe, (article 398 of Directive 2006/112/EC) Working paper No 1118 (11 Nov 2025). https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/48dfbd2b-973e-427b-a578-d84f94146c2b/details

[18] Whitehouse J.,Luther M., Baxter S., "Personal data as Consideration? The Evolving VAT Landscape for Digital Business Models in the EU"(Alvarez & Marsal, 31 July 2025) accessed 31 March 2026.

The primary sources examined are the VAT Directive (2006/112/EC) and the Council Implementing Regulation (EU) No. 282/2011, since these provide the legal framework for EU VAT. To support the interpretation of the provisions of the VAT Directive and the implementing regulation and EU VAT concepts, case law from the Court of Justice (CJEU) will be used.

In addition, the thesis will use VAT Committee guidelines, Commission working papers, and communications. These sources are not legally binding but are useful for understanding how the VAT treatment of personal data and digital services has been discussed at EU level. These could, however, be regarded as "soft law".

Furthermore, the thesis will use Advocate General opinions and literature to explain and support the interpretation of the legal sources. These will also be used to provide different perspectives on the issue. Lastly, terms of service and privacy policies from digital platforms and AI operators will be examined to understand how the relationship between the platform and the user is structured in practice.

1.5 Outline

Following the introduction, Chapter 2 will describe certain fundamental concepts of EU VAT, such as taxable transactions and the concept of consideration. This chapter relies on case law and doctrine to support the analysis. In Chapter 3, the platform-user relationship will be examined, with particular consideration of what is exchanged between the parties and how that can be classified. Chapter 4 applies the legal framework to different platform models and analyses when the direct link may be fulfilled. Lastly, in Chapter 5 the conclusions of the thesis will be presented.

2 The Legal Framework

2.1 Taxable transactions

2.1.1 Introduction

The common system of VAT relies on the fact that goods and services are taxed with a “general tax on consumption” which is proportional to the price of the goods and services. It applies irrespective of how many transactions takes place in the production and distribution process before the stage at which the tax is charged.[19] In this regard, the Court of Justice has held that “the basic principle of VAT is designed to be borne only by the final consumer”.[20] To give effect to this principle, the VAT Directive identifies both the transactions that trigger taxation and the persons responsible for charging and accounting for the VAT.

Article 2(1) of the VAT Directive identifies four taxable events: the supply of goods for consideration, the supply of services for consideration, the intra-Community acquisition of goods for consideration, and the importation of goods. For any of these events to give rise to VAT, the transaction must be carried out by a *taxable person acting as such*, within the territory of a specific Member State.[21] The concept of a taxable person plays a central role, since it distinguishes persons carrying out economic activities, who may be entitled to deduct or recover input VAT, from final consumers who ultimately bear the burden of the tax. The concept of a taxable person is defined in Article 9(1) of the VAT Directive as “any person who, independently, carries out in any place any economic activity, whatever the purpose or the result of that activity”.[22]

Although the VAT Directive uses the term “transactions” in relation to all four taxable events, only supplies of goods and supplies of services may, in the strict sense, be considered as such.[23] The present analysis will focus only on supplies of goods and services, since they constitute the most important taxable events under EU VAT. While the conditions to be regarded as taxable transactions are the same for supplies of goods and supplies of services, it is necessary to distinguish between them. This is because the classification of a supply determines the applicable rules on the place of supply, the chargeable event and chargeability of VAT.

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[19] Article 1(2) VATD.

[20] Case C-291/03 MyTravel plc v Commissioners of Customs & Excise, ECLI:EU:C:2005:591, para. 30.
B.J.M Terra and J. Kajus, Introduction to European VAT, Global Topics IBFD (2026) p. 140.

[21] Article 2 of the VATD Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[22] Article 9(1) of the VAT

[23] Ad Van Doesum, et. al, p. 127.

2.1.2 Supplies of Goods and Supplies of Services

Under the VAT Directive, the distinction between a supply of goods and a supply of services is fundamental.[24] Article 14(1) defines the supply of goods as "the transfer of the right to dispose of tangible property as an owner". By contrast, the supply of services is defined negatively in Article 24(1) as "any transaction which does not constitute a supply of goods." In this regard, Article 25 provides for a few examples, such as "the assignment of intangible property" and "the obligation to refrain from an act, or to tolerate an act or situation." The two expressions "supply of goods" and "supply of services" are all-comprehensive, since they are intended to cover any foreseeable transaction carried out for consideration. The supply of services functions, however, as a catch it all provision, covering almost everything.[25]

However, there are also special classifications of supplies of services. The classification of the transaction is necessary in order to determine the applicable place of supply rule and affects the assessment of who is liable to pay VAT, the VAT rate, and where the VAT shall be collected.

2.2 Taxable amount and the term "for consideration"

For a transaction to be subject to VAT, it must be carried out for consideration by a taxable person acting as such. The term "for consideration" is not expressly defined in the VAT Directive. Instead, the concept of "for consideration" and it´s meaning has been developed primarily through the case law of the CJEU, which has progressively established certain requirements in order for this condition to be fulfilled. However, some guidance can be derived from Article 73 regarding the taxable amount. That provision indicates that consideration encompasses everything *obtained or to be obtained by the supplier* in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.[26]

The CJEU has held that the term "consideration" constitutes an autonomous concept of EU law that does not depend on the law of the Member States for determining its meaning and scope. The interpretation of this term, therefore, may not be left to the discretion of the Member States.[27] Instead, the CJEU has clarified that a "consideration" should be understood as meaning everything received in return for the supplies of goods or services, including non-monetary payment *capable of being expressed in monetary terms.*[28] In this respect, the Court has made it clear that consideration reflects a subjective value, since the basis of assessment is the consideration actually received and not the value established according to objective criteria.[29] This approach reflects the *principle of fiscal neutrality* and the nature of VAT as an indirect tax on consumption, which requires that the contribution should

[24] Ad Van Doesum, el al., Fundamentals of EU VAT Law, Kluwer, (2025), p. 127.

[25] Giorgio Beretta, the Sharing Economy, (2018) pp. 119-120.

[26] Article 73 of the VAT Directive.

[27] Case C-154/80, Staatssecretaris van Financiën v Association coope´rative 'Coöperatieve Aardappelenbewaarplaats GA, ECLI:EU:C:1981:38, para.9.

[28] Case C-154/80, Coöperative Aardappelenbewaarplaats, para 10.

[29] Case C-154/80, Coöperative Aardappelenbewaarplaats, para 13.; Case C-230/87, Naturally Yours Cosmetics Ltd v. Commissioners of Customs and Excise, ECLI:EU:C:1988:508, para 16.

be fixed according to the value actually "added" at the final stage of the economic process.[30] It follows from this subjective approach that the fact that the price paid is higher or lower than the cost price is irrelevant for the assessment of whether something constitutes consideration.[31]

There are exceptions to this general rule. In certain circumstances, other methods to calculate the taxable amount may be used, such as open market value, purchase or cost price, or the taxable person's full cost of providing the supply. For instance, under Article 80, Member States may, in order to prevent tax evasion or avoidance, take measures to ensure that the taxable amount in respect of certain transactions corresponds to the open-market value, rather than the consideration actually received.[32]

It follows from the *Hong Kong* case that where activities are provided free of charge *in all cases*, they fall outside of the scope of the VAT.[33] This is because there is no basis of assessment and the person providing the services must be regarded as the final consumer, being at the final stage of the production and distribution chain.[34] The Court confirmed this reasoning in *Commission v. Finland*, emphasizing that a taxable transaction within the VAT system "presupposes the existence of a transaction between the parties in which a price or consideration is stipulated."[35]

The absence of monetary payment does not, however, mean that the supply is made free of charge and not subject to VAT. Since the basis for the assessment of the taxable amount is the subjective value, consideration may take the form of another supply of goods or services, in which case the transaction is commonly referred to as a barter.[36] This, however, provided that there is a direct link and that the supply of goods or services in return can be expressed in monetary terms.[37]

On the other hand, even if a payment is present, it does not necessarily mean that it amounts to consideration. Article 73 of the VATD presupposes that the payment is received by the supplier *in return for the supply*. In *Société thermale d'Eugénie-les-Baines*, the CJEU held that deposits retained by a hotelier following a client's cancellation did not amount to consideration, as they constituted compensation for the loss suffered rather than remuneration for a supply.[38] Similarly, in *Coöperative Aardappelenbewaarplaats*, the uncertain reductions in shares held by persons in a cooperative could not be regarded as consideration, since a direct link could not be established.[39] By contrast, the CJEU found in *Astra Zeneca*, a specific deduction

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[30] Opinion of Advocate General Ruiz-Jarabo Colomer on Case C-412/03, Hotel Scandic Gåsabäck AB v. Riksskatteverket, ECLI:EU:C:2004:746 para 36.

[31] Case C-412/03, Hotel Scandic Gåsabäck AB v. Riksskatteverket, ECLI:EU:C:2005:47 para 36.

[32] See article 72 and 80 of the VAT Directive.

[33] Case C-89/81, Staatssecretaries Van Financiën v. Hong Kong Trade Development Council, ECLI:EU:C:1982:121 para 13.

[34] Case C-89/81, Hong Kong Trade, para 10.

[35] Case C-246/08, Commission of the European Communities v. Republic of Finland, ECLI:EU:C:2009:671, para 43.

[36] Case 154/80, para 10; Case C-283/12, Serebryannay vek, EOOD ,ECLI:EU:C:2013:599 para 38-39.

[37] Case C-33/93, Empire Stores v. Commissioners of customs and Excise, ECLI:EU:C:1994:225, para 12; Case C-230/87, Naturally Yours Cosmetics, para 11,12 and 16.

[38] Case C-277/05, Société thermale d'Eugénie-les-Baines v. Ministére de l´Économie, des Finances et de l´Industrie, ECLI:EU:C:2007:440 para 16-36.

[39] Case C-154/80, Coöperative Aardappelenbewaarplaats, para 12.

from employees' remuneration in exchange for vouchers constituted consideration.[40] This does not mean, however, that a payment must always be tied to a specific or individualised supply in order to qualify as consideration, as will be elaborated below.

Furthermore, as the wording of Article 73 makes clear, the VAT Directive does not require the consideration to be obtained from the person to whom the supply is made.[41] The Court confirmed this point in *Commission v. German*y, holding that the fact that a portion of the consideration is made available on behalf of the final consumer by a third party, that is not connected with the transaction, is immaterial for the purposes of determining the taxable amount.[42] This might seem to contradict the requirement of a direct link between the supply and the consideration, but as the Court held in Le Rayon d'Or, the involvement of a third-party payer does not as such break that link.[43]

While the source of the payment may be flexible, its allocation to a particular supply is not. As the Court held in *Marandi*, a payment made in respect of one transaction cannot also constitute the consideration for another, nor a payment on account in respect of a later supply.[44]

The preceding discussion shows that the concept of consideration is broad; it may be monetary or non-monetary, may come from the customer or a third party, and may be structured in different ways. However, for a supply to be regarded as effected for consideration, the decisive criterion is whether there is a *direct link* between the consideration and the supply.

2.2.1 The requirement of a Direct Link

For a supply to be regarded as a transaction "for consideration" within the meaning of Article 2 of the VAT Directive, the mere presence of a payment is not sufficient. There must also be a direct link between the supply made and the consideration actually received by the taxable person. Although this requirement of a direct link is not expressly mentioned in the VAT Directive, it has become a central criterion for identifying whether a transaction falls within the scope of VAT. It is therefore necessary to examine the case law through which the Court has developed the content and the limits of the requirement.

The requirement of a direct link was first mentioned by the Court of Justice in the *Coöperative Aardappelenbewaarplaats case,* stating that in order for a supply to be taxable, there must be a direct link between the service provided and the

[40] Case C-40/09, Astra Zeneca UK Ltd v. Commissioners for Her Majesty´s Revenue and Customs, para 29-31.

[41] See Joined Cases C-53/09 and C-55/09, Commissioners for Her Majesty´s Revenue and Customs v. Loyalty Management UK Ltd and Baxi Group Ltd, ECLI:EU:C:2010:590,para 59

[42] Case C-427/98 Commission of the European Communities v. Federal Republic of Germany, ECLI:EU:C:2002:581, para 46; Case C-398/99, Yorkshire Co-operatives Ltd v. Commissioners of Customs & Excise, ECLI:EU:C:2003:20, para 18.

[43] Case C-151/13, Le Rayon d'Or SARL v. Minisre de I´Économie et des Finances, ECLI:EU:C:2014:185, para. 35

[44] Case C-544/16, Marcandi Ltd, trading as Madbid v. Commissioners for Her Majesty´s Revenue and Customs, ECLI:EU:C:2018:540, para 52-54.

consideration received.[45] What the requirement meant in practice, however, was developed in subsequent case law.

In the *Apple and Pear Development Council case*, the CJEU found that the mandatory charges imposed on growers did not have the necessary direct link with the activities carried out by the Council. The court reasoned that those activities were carried out in the common interest of the growers as a whole, rather than as a specific service supplied to individual growers in return for the charges paid. Any benefit obtained by a particular grower was therefore only indirect, since it resulted from the general benefit conferred on the sector. [46] Consequently, no relationship could be established between the amount paid and the benefit received by any particular grower. The charges were imposed by law and were payable irrespective of whether the grower actually received any benefit or not.[47] The activities could therefore not be regarded as services effected for consideration. According to Ad Van Doesum and others, the case illustrates that the direct link is not fulfilled where the activities serve a general or collective interest, rather than the interest of an identifiable recipient or a group of recipients.[48]

The concept of a direct link was further developed in the Tolsma case, which concerned a musician who played music on the public highway and received voluntary donations from people who passed by.[49] In that case, the CJEU clarified that in order for a supply to be regarded as effected for consideration, there must be a legal relationship between the provider and the recipient under which there is a reciprocal performance, and that the remuneration received must constitute the value actually given in return for the services supplied.[50] Those requirements were not fulfilled. Although the musician played with a view to collect money and could expect to receive money, the passers-by were under no obligation to pay. The amount was determined freely by them, and there was no link between the musical performance and the payment received, since some paid without listening while others listened without paying.[51] The case illustrates the importance of an agreement involving a reciprocal performance, to provide remuneration in return for the service supplied. Where the payment remains voluntary, uncertain and practically impossible to determine, it cannot constitute consideration.[52]

The case law that followed Tolsma placed increasing weight on the existence of a legal relationship between the supplier and the recipient, in order for a supply to be provided “for consideration." However, what kind of quality such a legal relationship should have is not clear.

For instance, in the Town & County case, the CJEU clarified that the relationship does not need to be based on legally enforceable obligations. Even where the supplier

[45] Case C-154/80, *Coöperative Aardappelenbewaarplaats,* para 12.
[46] Case C-102/86, Apple and Pear Development Council v. Commissioners of Customs and Excise, ECLI:EU:C:1988:120 para 14.
[47] Deborah. Butler, The usefulness of the “direct link” test in determining consideration for VAT purposes, EC Tax Review 2004-4, p. 94.
[48] Ad Van Doesum el alt., Fundamental of EU VAT Law, Kluwer, (2025), p. 168.
[49] Case C-16/93, Tolsma v. Inspecteur Der Omzetbelasting, ECLI:EU:C:1994:80, para 16.
[50] Case C-16/93, Tolsma, para 14.
[51] Case C-16/93, Tolsma, para 16-19.
[52] Case C-16/93, Tolsma, para 16-19.

is bound to provide services only by "honour," such an agreement constitutes the very expression of a legal relationship.[53] This broad approach is also reflected in later case law, where a legal relationship may arise not only from a contract but also from statute or other legally regulated circumstances. In *the Apcoa Parking case*, the Court found that a legal relationship arose from the motorist's use of a parking space managed by Apcoa. That relationship was governed by the car park's general terms and conditions, under which Apcoa provided a parking space and the motorist was obliged to pay the parking fee, including any control fee for breach of the parking conditions.[54] Furthermore, *in the Fluvius case*, no conclusion of a contract was made, but a relationship existed due to a regulation.[55] Taken together, these cases indicate that the decisive question is whether the relationship creates a reciprocal obligation capable of linking a payment to a supply.

It does not follow from the cases above that a direct link can only be established where the consideration corresponds to each individual use of a supply. For instance, the CJEU held in Kennemer Golf, that the fact that an annual subscription fee, could not be related to each personal use of a golf course did not preclude the existence of a *reciprocal performance* between the members and the association.[56] According to the Court, the association´s supply consisted in making the sports facilities available to its members on a permanent basis, and not in a particular service provided at request. The Court found, therefore, that a direct link could be found between the service and the supply.[57] The approach was later confirmed in Le Rayon d´Or and Asparuhovo, where the Court accepted that fixed or lump-sum payments may be directly linked to a supply where the amount is determined in advance on the basis of well-established criteria.[58]

Where it is uncertain whether any payment will be made, it follows from the case law of the CJEU, that the uncertainty may break the direct link between the supply provided to the recipient and the payment received.[59] In the Baštova case, the CJEU was asked whether the supply of a horse by its owner to the organiser of a race could be regarded as a supply of services for consideration. Ms Bastova, a taxable person operating a racing stable, received prize money only when her horses achieved a certain placement in the race.[60] The CJEU first rejected the argument that the race organiser's service to let horses participate could in itself amount to consideration for the supply of the horse, because that service was already remunerated by the entrance and declaration fees paid by the owner.[61] Any further benefit from the participation, such as the value of the horse or the publicity gained, was too difficult to quantify and uncertain because it depended on the outcome of the race.[62] The

[53] Case C-498/99, Town & County Factors Ltd v. Commissioners of Customs and Excise, ECLI:EU:C:2002:494, para 21-24.
[54] Case C-90/20, Apcoa Parking Danmark A/S v. Skatteministeriet, ECLI:EU:C:2022:37, para 28-37.
[55] Case C-677/21, Fluvius Antwerpen v. MX, ECLI:EU:C:2023:348, para 32.
[56] C-174/00, Kennemer Golf, ECLI:EU:C:2002:200 para 39-40.
[57] Ibid.
[58] C-151/13, Le Rayon d´Or, ECLI:EU:C:2014:185, para 36-37.; C-463/14, Asparuhovo Lake Investment Company, ECLI:EU:C:2015:542 para 40.
[59] Case C-452/15, Baštová, para 29.
[60] Case C-452/15, Baštová, para 36.
[61] Case C-452/15, Baštová, para 32-35.
[62] Case C-452/15, Baštová, para 35.

CJEU then held that no direct link could be established between the supply of the horse and the prize money received, since the prize was not awarded in return for the supply as such but for the achievement of a particular result at the end of the race, and was therefore subject to a degree of uncertainty.[63] The position would only be different where the organizer pays a fee for the mere participation of the horse irrespective of its placement. In such cases that fee would constitute consideration and the transaction would fall within the scope of VAT.[64]

The court's reasoning in Baštová has been criticized criticised for resting too heavily on the uncertainty of the prize as the ground for the absence of a direct link. AG Kokott, in her opinion in Zlakov, argued that the uncertainty as to the consideration's specific amount is relevant mainly for the taxable amount, not whether a supply for consideration exists.[65] In her view, Baštová was correctly decided, but for a different reason. Winning a race is not itself a supply of services, since it is not a consumable benefit that the winner can provide to another person.[66]A similar reading has been done by Jeroen Bijl, where according to him, the main reason for the outcome of the case was that there was no reciprocal performance for that achievement.[67] However, one could argue that the owner of a horse actually provides a consumable benefit to the organizer. The race organizer depends on the participation of horses in order to stage the event and generate revenue. Furthermore, the better performance the horse makes, the more interested the public is in attending the event.[68]

The more recent Zlakov case further clarifies the role of uncertainty for the direct link analysis. That case concerned services provided free of charge to a client, where the law firm became entitled to a statutory fee from the losing party only if the client was successful.[69] The CJEU held that, although the payment of the lawyer's fees was subject to a risk depending on the outcome of the trial, those fees nonetheless represented effective consideration for the service consisting in the representation of the client in court.[70] The fact that the payment was made by a third party, that the payment was provided for by law, and that it was contingent on success did not preclude the existence of a direct link between the supply and the payment received.[71] According to the Court, the present case was not comparable to Bastova and Tolsma.[72] In this regard, the conclusion would be that the uncertainty as to whether or how much will be paid does not by itself imply that the transaction would fall outside the scope. Rather, the decisive issue is whether the underlying Tolsma requirements are satisfied.

In Stellantis, the CJEU, however, reaffirmed that a direct link requires the payment to be neither voluntary, uncertain nor difficult to quantify.[73] However, in this regard

[63] Case C-452/15, Baštová, para 35 and 37.
[64] Case C-452/15, Baštová, para 39.
[65] Opinion of Advocate General Kokott of 8 May 2025 on Case-744/23, Zlakov, para 49.
[66] Opinion of Advocate General Kokott of 8 May 2025 on Case-744/23, Zlakov, para 64.
[67] Jeroen Bijl, The EU VAT Treatment of Vouchers in the Context of Promotional Activities, Wolter Kluwer 2019, chapter 3.3.2 Legal relationship entailing reciprocal performance.
[68] This is also reflected in the Opinion of Advocate General Wahl in Baštová, C-432/15, para 36.
[69] C-744/23, Zlakov, ECLI:EU:C:2025:816, para 10-15, 23.
[70] C-744/23, Zlakov, ECLI:EU:C:2025:816, para 33.
[71] C-744/23, Zlakov, ECLI:EU:C:2025:816, para 27-28.
[72] C-744/23, Zlakov, ECLI:EU:C:2025:816, para 29.
[73] Case C-603/24, Stellantis Portugal SA v. Autoridade Tributária e Aduaneria, ECLI:EU:2026:404, para 42.

it could be argued that this statement should not be read as excluding consideration whenever valuation is difficult. In First National Bank of Chicago, the Court had already clarified that technical difficulties in determining the amount of consideration do not preclude the existence of consideration.[74]

To summarize, for a direct link to be fulfilled, three cumulative conditions must be fulfilled: a legal relationship between the supplier and the recipient, reciprocal performance pursuant to that relationship, and remuneration that constitutes the value actually given in return for the supply. The requirement further requires that the consideration be identifiably linked to a particular supply. Where the payment is voluntary, uncertain, or not attributable to a specific supply to an identifiable recipient, it may break the direct link.

2.3 Barter transactions

As described above, the concept of consideration under EU VAT law is not limited to monetary payment. Instead, consideration could also be provided *in kind*, in which case the transaction may be classified as a barter transaction. Indeed, these kinds of transactions may take many different forms. For instance, it can be used for different promotional services such as giving influencers a service or goods in return for online reviews. The common feature of these arrangements is that each party provides something of economic value in return for what it receives.

It follows from the principle of fiscal neutrality that comparable transactions should not be treated differently for VAT purposes merely because one is remunerated in money while the other is remunerated in kind.[75] This reasoning was confirmed in Orfey Balgaria, where the Court held that "*barter contracts, under which the consideration is by definition in kind, and transactions for which the consideration is in money are, economically and commercially speaking, two identical situations*."[76] The distinguishing feature of a barter transaction, in comparison with a transaction remunerated in money, is that it involves two supplies and two acquisitions. For VAT purposes, each supply must be assessed separately and must independently satisfy the requirements for being taxable. [77] In other words, it must fulfil the requirement of the direct link and being capable of being expressed in monetary terms.[78]

The latter requirement is particularly important for barter transactions because the absence of monetary payment means that the value of the counter-performance must be identified in other ways. Since the taxable amount is based on the consideration actually received by the supplier, it reflects a subjective value.[79] As Advocate General Fennelly explained in Argos Distribution, the term "subjective" should not

[74] Case C-172/96, Commissioners of Customs and Excise v. First national bank of Chicago, ECLI:EU:C:1998:354.
[75] Case C-549/11, Orfey Balgaria, ECLI:EU:C:2012:832, para 33-34, Case C-330/95, Goldsmiths, ECLI:EU:C:1997:339, para 23 and 25.
[76] Case C-549/11 , Orfey Balgaria, ECLI:EU:C:2012:832, para 35; Case C-330/95, Goldsmiths, ECLI:EU:C:1997:339, para 23 and 25.
[77] Giorgio Beretta, European VAT and the Sharing Economy, page. 131-132.
[78] Case C-410/17, A. ECLI:EU:C:2019:12, para 32 and 36.
[79] Case C-33/93, Empire Stores, para. 19.

be understood as a purely personal valuation, but "rather to describe the value placed by the parties on key elements in a transaction."[80] The purpose is to distinguish and exclude any supposed independent valuation which is different from what was adopted by the parties.[81] Beretta observes that this implies that the value of each reciprocal supply must be determined by reference to the value placed by each party on the supply received. However, it becomes difficult for the supplier to establish the value, when each supply has a different value or a value is not clear.[82]

The case law of the CJEU reveals that the valuation of consideration in kind may be approached in different ways, depending on the nature of the reciprocal exchange. In *Naturally Yours*, which concerned a sales promotion arrangement, the Court identified the value of the retailer service by reference to the difference between the reduced price actually paid for the goods and the normal wholesale price. The price reduction therefore indicated the monetary value which the parties had attributed to the retailer´s service.[83]

The Court took a different approach in *Empire stores*, which concerned a mail-order company that supplied goods without extra charge to persons who introduced themselves or others as potential customers.[84] The Court held that, where the value is not a sum of money agreed between the parties, in order for it to be subjective, it must be the value which the recipient of the service attributes to the service which he is seeking to obtain, and that value must correspond to the amount which he is prepared to spend for that purpose. When the transaction involves a supply of goods, the value can only be the price which the supplier has paid for the good which he is supplying without extra charge.[85]

A similar approach was taken in Bertelsmann, which concerned bonuses in kind supplied in return for the introduction of new customers. In this case, the CJEU elaborated the principle stated in Empire Stores, by stating that "all the expenses borne by the recipient to obtain the supply in question, including the costs of incidental services which are connected to the supply of the goods, make up the value of the supply of services."[86] That meant in Bertelsmann that the cost of delivery when paid by the supplier of the bonus, was also included in the taxable amount. To conclude, the two cases imply that when the parties has not attributed any monetary value to the consideration in kind, the CJEU may determine the taxable amount in reference to the cost incurred by the supplier in obtaining the counter-performance.

It follows from this chapter that the payment does not have to be monetary, provided that a direct link can be established between the payment and the supply, and that the consideration is capable of being expressed in monetary terms. Under what

[80] Opinion of Advocate General Fennelly In Agros Distributors, Case C-288/94, delivered 27 June 1996, ECLI:EU:C:1996:253, para 21.
[81] Ibid.
[82] Girogio Beretta, European VAT and the Sharing Economy, page. 132.
[83] Case C-230/87, Naturally Yours Cosmetics, para 11,12 and 16.
[84] Case C-33/93, Empire Stores v. Commissioners of customs and Excise, para 16-19.
[85] Case C-33/93, Empire Stores v. Commissioners of customs and Excise, para 19.
[86] Case C-380/99, Bertelsmann, ECLI:C:2001:372, para. 23-25.

conditions the user´s counter-performance can constitute consideration will be examined in Chapters 3 and 4.

3 The Platform-User relationship

3.1 Introduction

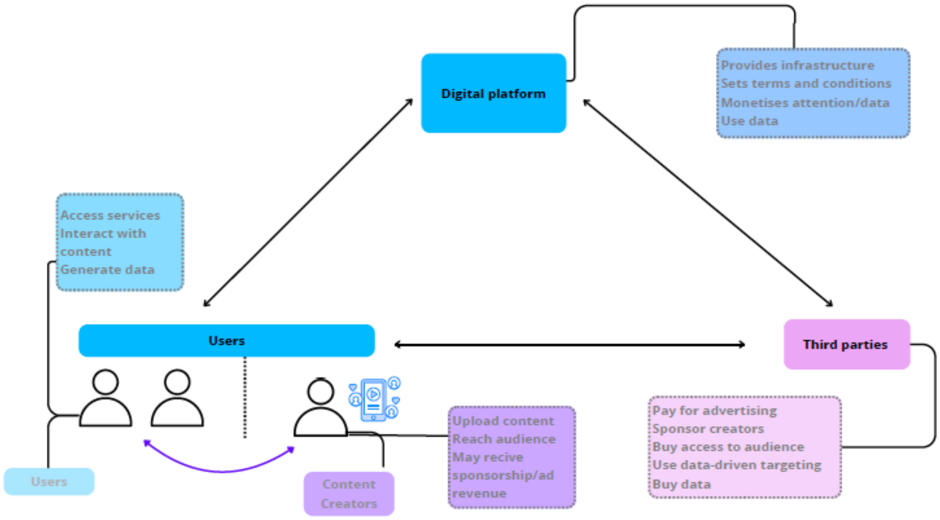
The previous chapter examined the conditions under which a supply of services may be regarded as effected for consideration under EU VAT and identified the requirement of a direct link as the central criterion. Whether those conditions can be satisfied where the supposed consideration consists of personal data, depends, however, on how the relationship between the user and the platform is structured in practice. However, it is necessary to have regard to the *economic reality* of that relationship. The starting point should be the objective character of the transaction as it is governed and presented through the contractual framework governing that relationship, such as terms of service and the privacy policy.[87] However, the contractual description is not necessarily decisive for VAT purposes. It follows from settled case-law that taking account of the economic reality constitutes a fundamental criterion for applying the common system of VAT.[88] Van Doesum and Nellen, explains that the economic reality concerns the economic relations between the parties, which may not only include the contractual arrangements, but all circumstances surrounding the transaction, such as the parties' intentions and common commercial practice.[89] In the context of digital platforms, this is relevant since the legal relationship is often framed as access to a service without monetary payment, while the platform depends on the user participation.

[87] Ad Van Doesum, Frank Nellen,"Economic Reality in EU VAT and the Reductionist Approach", (2025) EC TAX Review 222, page 225.

[88] See. Case C-544/16, Marcandi, para 45; Case C-295/17, MEO, ECLI:EU:C:2018:942, para 43

[89] Ad van Doesum, Frank Nellen," Economic Reality in EU VAT", EC Tax Review (2020), page. 2.

The platform-user relationship is often described as having a triangular structure, involving three parties: (1) the user, (2) the platform and (3) the third party.[90]



The relationship between the platform and the user should not be considered in isolation. It should be noted that the relationship forms part of a broader platform structure. Depending on the business-model, this structure may include various categories of actors, such as users, advertisers, business users, and any other participants, including the platform itself. [91] The platform´s role is central, since it provides for an electronic interface through which those actors can connect and interact with each other.[92]

The multi-sided characteristics of the digital platforms are also reflected in their revenue models. In some models, access is provided without any monetary payment from the user, while the platform derives value through collecting, processing and monetising the data from the user, for instance by selling advertising services to third parties.[93] In other models, the user may pay a subscription fee for access to the service, the enhanced functionality of the service, reduced advertising or limited data processing. [94] Between these two models, there are also hybrid arrangements in which the platform receives both monetary payment and data which it can monetise or use. Therefore, the exchange between the user and the platform may take different forms.

The economic reality is therefore not simply that the services the platform provides are either "free" or "paid", but what the platform obtains in return for granting access to the service. Where the user does not pay a monetary price or pays a reduced price while still accessing data processing, it might be argued that the platform receives a

[90] Theresa Sroka, Emilia Teresa Sroka, "Choosing the Right Tool: DST or VAT for Data-for-Access Transaction?", EC Tax Review, Volume 35, Issue I, (2026), page 17.
[91] OECD (2019), An Introduction to Online Platforms and Their Role in the Digital Transformation, OECD Publishing, Paris, https://doi.org/10.1787/53e5f593-en, page. 20.
[92] Ibid, page. 20
[93] Emilia Teresa Sroka, "Choosing the Right Tool: DST or VAT for Data-for-Access Transaction?", EC Tax Review, Volume 35, Issue I, (2026), page 17.
[94] Pawel Marcin Dudek, "Enduring Measurment as User Consideration on Social Media Platforms under EU VAT LAW", Intertax, Volume 53, Issues 8 & 9, (2025), page 596.

value in another form. However, for VAT purposes it is not enough that data generated or that it has economic value, but whether the counter-performance of the user can be directly linked to the supply provided by the platform and that it can be expressed in monetary terms.

3.2 The exchange between the platform and the user

In the context of digital platforms, the relationship between the user and the platform can be regarded as a barter transaction, giving rise to two supplies.[95] First, the platform´s supply of digital services to the user and second, the user´s provision of personal data or permission to use of personal data by the platform. However, it does not follow automatically that there are two taxable supplies for VAT purposes, each supply must be assessed separately.[96]

To begin with, in order for a transaction to fall within the scope of VAT it must be carried out by a *taxable person acting as such*.[97] In respect of digital platforms, it is undisputable that they qualify as taxable persons. Even though platforms such as Meta, Google and TikTok provide some services "free of charge", they generate income on a continuing basis from advertising, subscriptions and licensing. They therefore carry out an economic activity within the meaning of Article 9(1) of VAT Directive.[98] Furthermore, it follows that where a person has a taxable status regarding any of his activities, the taxable status extends to all his economic activities, provided that they do not fall within the sphere of his private activities.[99] However, if the platform provides all its services free of charge, the position would be different. In that situation, the transactions of the platform would fall outside the scope of VAT.[100] For the taxable person´s transactions to fall within the scope of VAT, they must nevertheless be provided for consideration within the meaning of Article 2(1)(c) of the VAT Directive.

This analysis is also relevant in relation to AI-powered platforms. Many digital services are now partly driven by artificial intelligence, for example through recommendation systems, personalised content and chatbots. However, under the current EU VAT law, the AI system is not regarded as a taxable person. It is instead a technical tool, or business asset used by the platform in carrying out its economic activity. Therefore, in such cases, the relevant person is still the platform and not the AI system.[101]

The position is different for the user. In Working Paper 958, later confirmed in Working Paper 1118, the VAT Committee and the Commission Services took the view that the granting of permission by the user to an IT provider does not, except

[95] See eg. Bart Custers, Giancladiuo Malgieri, Priceless Data: why the EU fundamental right to data protection is at odds with trade in personal data, Computer Law & Security Review, page 1-2.

[96] Giorgio Beretta, European VAT and the Sharing Economy, page. 131-132; Case C-283/12, Serebryannay Vek EOOD, para 38-40.

[97] See article 2(1) of the VAT Directive and Article 9 of the VAT Directive.

[98] Case C-246/08, Commission v. Finland, para. 37

[99] Case C-62/12, Kostov, ECLI:EU:C:2013:391, para. 31.

[100] Case C-89/81, Hong Kong Trade Development Council, para 10 och 13.

[101] Xavier Oberson, Taxing Artificial Intelligence, Elgar, 2024, page 111.

in certain circumstances, constitute an economic activity and is therefore not a taxable supply.[102] Rather the individual "*simply wants to access certain services and is willing to pay their price, which consist in granting the permission to use his personal data*". [103] However, it should be noted that in certain circumstances the user can in fact be regarded as a taxable person, when it uses human or material resources like those of a producer, trader or a person supplying service.[104] This does, however, presuppose an intention to organize and deploy those resources to participate in the production or distribution of goods and services. An individual that grants access to personal data to get access to an IT service, does not according to the Commission Services, deploy such resources or have such intention.[105] However, it could be argued that the user is not always a passive private individual who for instance only consumes content. The user might also be the content-creator, seller, advertiser, business user or any other participant in the platform.[106]

For the purposes of this thesis, the analysis is limited to ordinary C2B relationships. It follows that, in such cases, the user´s conduct should not be treated as a separate taxable supply. The user does not make personal data available as part of an organised economic activity, but as a condition for accessing the digital service. However, this does not mean that the exchange is irrelevant for VAT purposes. The relevant taxable transaction, if any, is the platform´s supply of digital services to the user. The next step is therefore to identify the nature of that supply, before examining what and if the users counter-performance could constitute non-monetary consideration.

3.3 What does the platform provide?

In the context of this thesis, the relevant transactions are in principle to be regarded as supplies of services rather than supplies of goods. Digital platforms such as social media and AI-powered applications generally provide users with access to digital functionalities, content or intermediation rather than with any form of tangible property. Therefore, their activities fall, as a matter of fact on the service side of the distinction. However, within the broader category of service, the more precise classification may vary depending on the business model of the platform.

EU VAT law recognises electronically supplied services as distinct category, subject to specific place of supply rules under Article 58 of the VAT Directive. The concept is further defined in Article 7 of the implementing regulation (IR) as services delivered over the internet or an electronic network, the supply of which is essentially automated and involves minimal human intervention and is impossible to ensure in the absence of information technology. While many digital platform services may fall within this classification, such as search engines, social networks

[102] European Commission, VAT Committee, Working Paper No 958, VAT treatment of services provided in exchange for personal data, taxud.c.1(2018)958, page 8.

[103] Ibid., page 4. Relying on case C-26/08, SPÖ

[104] Ibid., page 4, relying on Joined cases C-180/10 and C-181/10 Słaby and others, paras 50-51.

[105] Ibid., page 4.

[106] Teresa Sroka,"Choosing the Right Tool: DST or VAT for Data-for-Access Transaction?", page 28.

and media platforms[107], the position is less straightforward in relation to AI-powered services.[108]

In respect of AI powered services, the determining criterion is whether they involves minimal human intervention.[109] This does not mean that human activity is excluded but rather sets a limit when the supplier´s human activity becomes essential for the supply. In this regard, a distinction must be made between human activity that operates as the system overall, such as software development, model training, and system maintenance, and human activity that is directed at each individual supply made to the user.[110] The former does not disqualify a service from being classified as an electronically supplied service, since it forms part of the general operation of the system rather than the delivery of any specific transaction. What matter is whether, at the level of each individual transaction with the user, the output is generated and delivered automatically without the supplier needing to personally intervene, review or adapt the result before it reaches the user. [111] This should mean that even though the user provides for an individual input and receives personalised output in return, it does not disqualify it as an electronic service provided that the output is generated automatically with minimal human intervention on the supplier´s side.

The conclusion could therefore be made, that in regard to generative AI, which processes users input data in order to generate output, can be classified as electronically supplied service. Since the provider´s role is limited once the system is in place and does not intervene in the individual supply, it functions as automated downloads and algorithmic responses which are listed in art. 7(2) of the IR. [112]

In the platform economy, the transactions are many. This means that the platform does not necessarily provide one supply, but multiple. Most social media platforms have today integrated an AI function into their platform, for instance Meta AI within Facebook and Instagram, which raises questions as to whether that is a separate supply from the underlying access, or whether it forms part of a single composite supply. For the purposes of this thesis, it is not necessary to separate between the two. What is relevant is that the integration of AI services into social media platforms has changed the nature of the user´s interaction with the platform, by in certain circumstances shifting from a passive user to an active user. The significance of this distinction for the characterisation of the user´s counter-performance is examined in section 3.4.

[107] For a elaboration see Sofia Ingman, ch. 3.4.

[108] Giorgio Beretta,"The Treatment of AI-powered Services under European VAT", ITAXS – International tax Studies, Issue 3-2026, page 2.

[109] Ibid, page 12-13.

[110] Ibid. page 12-16, 20.

[111] Giorgio Beretta,"The Treatment of AI-powered Services under European VAT", ITAXS – International tax Studies, Issue 3-2026, page 20.

[112] Ibid. 20.

3.4 The user´s counter-performance

The research question for this thesis is to examine "under what conditions" personal data or the permission to use personal data can fulfil the direct link and constitute consideration for a supply of services. It is therefore necessary to classify what the user provides in return for the services. The classification of the user´s counter-performance is decisive, since the direct link must be established between an identifiable supply and the service supplied by the platform and the consideration allegedly received in return.

For the reasons set out in chapter 3.2.1, the user´s counter-performance does not constitute a separate taxable supply. The relevant taxable transaction, if any, is only the platform´s supply of digital services to the user. This section examines instead whether the user´s counter-performance can potentially constitute consideration.

The user´s counter-performance can be characterised in different ways. It may be understood as the provision of personal data itself, as the granting of access to use or commercially exploit such data[113], or as the user´s acceptance or tolerance of data collection and processing [114]. Although these characterisations are closely related, they emphasise different aspects of the platform-user relationship and may lead to different conclusions regarding the existence of consideration under EU VAT. However, in this regard it should be noted that counter-performance of a user can consist of monetary payment, such as subscription fees or other types of monetary payments, while personal data is also collected. This may also affect the direct link.

3.4.1 The "permission" as the counter-performance

Personal data is recognised as having economic value, at least for the digital platforms and the AI-operators. Factually speaking, the Commission services have described personal data as an *intangible asset* and a *raw material* for platforms, noting that it carries economic value precisely because it is used for commercial purposes, whether to improve the platform´s own services or to sell or license it to third parties such as advertisers.[115] In this regard, it has already been empasised that economic value does not in itself mean that it constitutes consideration for VAT purposes. The decisive question is whether that data, or the right to use it, is received *in return* for the platforms' services.[116]

It follows from the case law of the Court of Justice, that the consideration does not have to be monetary, provided that it is capable of being expressed in monetary terms and that it can be established a direct link between the "payment" and the supply.[117] For the counter-performance to be able to be regarded as consideration, it should be

[113] See e.g Sebastisan Pfeiffer, "VAT on "Free" Electronic Services? (2016) 27(3) International VAT Monitor 158, page 159-161.

[114] See e.g. Paweł Dudek, "Enduring Measurment as User Consideration on Social Media Platforms Under EU VAT Law", (2025), INTERTAX , Volume 53, Issues 8&9.

[115] European Commission, VAT Committee, Working Paper No 958, VAT treatment of services provided in exchange for personal data, taxud.c.1(2018)958, page 3 and 5.

[116] Case C-102/86, Apple and Pear Development Council, para 10.

[117] Case C-102/86, Apple and Pear Development Council, para 10; Case 154/80, para 10; Case C-283/12, Serebryannay vek, EOOD ,ECLI:EU:C:2013:599 para 38-39 Case C-33/93, Empire Stores v. Commissioners of customs and Excise, ECLI:EU:C:1994:225, para 12; Case C-230/87, Naturally Yours Cosmetics, para 11,12 and 16.

stipulated in advance, and the counter-performance should be determined with a sufficient degree of certainty.[118] Based on that, the alleged counter-performance must be capable of being identified as the value given in return for a specific supply. These characteristics is particularly important for the establishment of the direct link, which will be examined later in this section.

In this regard, the question to be asked is whether the counter-performance is capable of constituting consideration. This requires identifying what the user can be said to provide in return for access to the digital service. In this regard, two possible counter-performances can be identified. The counter-performance may either be understood as the provision of personal data itself, or as the user´s permission for the platform to collect, process and analyse that data. The latter characterisation has been advanced by some authors, who argue that the relevant counter-performance is not data as such, but the user´s grant of permission to use it.[119]

However, AI services may complicate this distinction. In that context, the user may provide data in a more concrete form, for example by uploading datasets, images, and other raw data, in order to receive a personalised output. This differs from many social media models, where the data is usually generated through ordinary use instead of submitted as a distinct input. The user´s input in AI services may therefore appear more discrete and transactional. This has consequences for how the alleged counter-performance is characterised, since data is not merely generated through the use of the platform, but may be actively submitted as part of the exchange.

If the counter-performance were data itself, difficulties arise in relation to both quantity and quality. The amount and value of data generated vary significantly between users, which would make the consideration differ depending on the users even where the platform provides an identical service to all of them.[120] Furthermore, some authors argue that the data provided by a single user has no significant value, but it is only valuable at a later stage when aggregated and analysed.[121] These difficulties do not arise where the counter-performance is characterised as the permission to collect and use data. As Pfeiffer has observed, in such cases “the actual content and value become irrelevant”.[122]

On that basis, it could be argued that the counter-performance is the grant of permission. This conclusion could be further supported by the fact that certain digital platforms require that the user pay a subscription fee where the consent is not provided.[123] Furthermore, there are platforms that explicitly condition the scope or

[118] Case C-246/08, Commission v. Republic of Finland, para 43; Case C-151/12 Le Rayon d´Or SARL 36-27; Case C-603/24, Stellanis, para 42.

[119] Sebastisan Pfeiffer, “VAT on “Free” Electronic Services? (2016) 27(3) International VAT Monitor 158, page 160.

[120] European Commission, VAT Committee, Working Paper No. 958, taxud.c.1(2018)6248826, page 7; European Commission, VAT Committe, Working Paper No. 1118, taxud.c.1(2025)11627393 (page)

[121] Chiara Tomasetti, Emmanuel Orlando, “Digital Zero-Price Market – VAT Consequences” (2023) 34(3) International VAT Monitor 114, page 116.

[122] Sebastisan Pfeiffer, “VAT on “Free” Electronic Services? (2016) 27(3) International VAT Monitor 158, page 160.

[123] See e.g. The Gurdian, https://www.theguardian.com/europe; See also e.g BEUC, “Users Still Stuck In the Mud – an analysis of Meta´s 2026 changes to its consent-for-ads mechanism against EU Law”, (2026).

the quality of their services on the degree of the data granted.[124] This might indicate that digital platforms treat money and personal data as alternative or complementary forms of value, and when the data is not provided, as a reason to restrict their service.

However, the counter-performance should be stipulated in advance, which may be satisfied where the permission to collect and use data forms part of the conditions for accessing the services. For a user to access the digital platform services or AI-services, it is required to provide the platform with personal data in the initial stage. This often occurs through a mandatory registration procedure, where the user is required to “sign up” or create a profile and submit personal information before access is granted.[125] Before the registration is completed, the user is required to read and accept the terms of service and the platform´s privacy policy.[126] The terms of service set out the conditions for accessing and using the platform (such as providing accurate information), while the privacy policy explains what and how the platform collects and use the personal data. The situation is similar when the user is accessing a webpage or news site, where they are required to consent to cookies or similar tracking technologies. Accordingly, it could be concluded that the counter-performance is stipulated in advance, by the contractual framework.

To summarize, the counter-performance is characterized as the user’s permission to collect and use personal data. This permission is granted at the point of accepting the Terms of Service and Privacy Policy and is thereby stipulated in advance. Whether this characterization is correct has, however, been challenged by an alternative characterization, which is examined in the following section.

3.4.2 Is the real counter-performance endurance?

Not all authors agree that the counter-performance is the granting of permission. According to Dudek, the relevant counter-performance is neither personal data as such nor the permission to use it, but the user´s obligation to endure continuous device-based measurement. On this view, the decisive element is not what the user actively transfers to the platform, but what the user tolerates for accessing and using the service.[127] In particular, this may be understood as a *pati* obligation, whereby the user allows the ongoing monitoring of their devices and behaviours as a condition of accessing and using the service.[128] This characterisation avoids the difficulties with treating the data itself as consideration, by appearing more uniform. Each user who accesses the platform accepts being placed within the platform´s tracking and profiling environment.[129]

Furthermore, the author also identifies a second type of user obligation, namely the performance of an action (*facere*). This refers to situations in which the user is

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[124] See e.g Meta´s current arrangement under which users who select a narrower permission scope recive less personalised advertising and may experience ad breaks that interrupt their browsing experience. See e.g Facebook, https://www.facebook.com/help/468797095528474/?helpref=uf_share .

[125] See e.g OpenAI, Europe Terms of Use, https://openai.com/policies/row-terms-of-use/; Facebook, Terms of Use, https://www.facebook.com/terms/.

[126] Some years ago, it was possible to ”accept” these terms of services and data policy, simply by using the service.

[127] Dudek, “Enduring Measurment as User Consideration on Social Media Platforms Under EU VAT Law”, page. 595.

[128] Dudek, page 600.

[129] Dudek, page 597-598.

required to provide personal data, such as names and birthplace. This also includes situations where the user, according to the terms of service, must provide a non-exclusive, royalty-free licence to any content the user uploads. Dudek, however, dismisses this second obligation since the users are not required to provide accurate personal data or upload any content at all.[130]

However, this argument should not be understood as entirely independent from the user´s permission to collect and use data. Dudek himself observes that the access to platforms such as Instagram and Facebook is conditional upon the user consenting to the collection of the personal data. If that consent is not provided, the user cannot create an account and access the service.[131]

Notably, Dudek´s argument is most convincing in relation to platforms whose business model depends on the continuous behavioural tracking, profiling and advertising. However, it is less straightforward where the user´s contribution is more active in discrete, such as where an AI system receives input data. Similarly, the position is less clear regarding users who upload content or participate in creators' programmes.[132] In such situations the user may receive a monetary payment from the platform where their content attracts a sufficient number if views or engagement from other users, whose behavioural data is gathered and then monetized.[133] This suggests that the pati and facere obligation do not operate as alternatives, but rather simultaneously. Without content, the platform would not attract users, which behaviours they could then not monetize.

Furthermore, the framework don´t seem to consider that the user has certain rights in relation to the platform. According to the General Data Protection Regulation (GDPR), the user has for instance the right to withdraw its consent[134], the right of access to personal data held by the platform[135], the right to be forgotten[136], the right to object to processing, including processing for direct marketing purposes.[137] When the user exercises these rights, the question becomes: *is the user really tolerating the situation?* At the same time, it could be argued that those rights also can also affect the possibility that the counter-performance as permission, can constitute consideration.

[130] Dudek, page 600.
[131] Dudek, page 597.
[132] See eg. Tiktok´s Creator Rewards-program https://www.tiktok.com/creator-academy/article/creator-rewards-program.
[133] Ibid.
[134] Art. 7 of the GDPR.
[135] Art 15 of the GDPR.
[136] Art. 17 of the GDPR.
[137] Art. 21 of the GDPR.

4 The analysis – under what conditions can the direct link be fulfilled?

4.1 Introduction

This chapter examines under what conditions a user´s personal data can constitute consideration for a supply of services under EU VAT. For this purpose, two models of the platform-user relationship are defined and used as the basis for the analysis. Each model represents a different configuration of how the platform provides its services depending on the personal data granted.

4.2 Non-monetary consideration: The direct link requirement and the capacity of being expressed in monetary terms

4.2.1 The direct link requirement

Regardless of which of these three characterisations is adopted, the counter-performance must satisfy two further cumulative requirements in order to constitute consideration under EU VAT law. First, a direct link must be established between the counter-performance and the platform´s supply of digital services. Second, the counter-performance must be capable of being expressed in monetary terms.[138]

As established in Chapter 2, for the direct link to be established, there must be a legal relationship between the platform and the user, pursuant to which there is reciprocal performance, and that the remuneration received constitutes the value actually given in return for the supply. This requirement therefore presupposes a relationship of interdependence between the supply and the counter-performance, in which that a supply would not be made unless consideration is paid, and that the consideration would not be paid if the supply were not made.[139]

To begin with, it should be noted that the CJEU has interpreted the concept of legal relationship broadly. It has been established that the relationship does not necessarily need to take the form of a contract, nor does it have to rest on legally enforceable obligations.[140] In the context of digital platforms, the legal relationship between the user and the platform arises from the terms of use and the privacy policy at the moment of the registration.[141] Similarly, such a relationship arises when the user accepts the cookies policy or other tracking conditions in order to access the website or digital services. The relationship may therefore be contractual in character, insofar

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[138] Case 16/93, Tolsma, para 13-14.

[139] Case C-94/19, San Domenico Vetraria SpA v. Agenzia delle Entrate, ECLI:EU:C:2020:193, para 26.

[140] Case C489/99, Town & County Factors, para 21-24.

[141] Przemysław Pałka, ”Terms of Service of Social Media Platforms”, page 2.

as access to the service is made conditional upon the user´s acceptance. At the same time, the relationship is also shaped by public-law regulations, in particular the GDPR and the Digital Services Act (DSA), which impose obligations on platforms and confer rights on users.[142] Specifically, the GDPR requires that the user has provided with its consent, in order for platforms to be allowed to process personal data on that legal basis.[143]

However, it is not enough that a legal relationship exists. The legal relationship must also involve reciprocal performance. That means that the two performances should be mutually conditional upon each other.[144] In the present context, this element is difficult to establish. It must be shown that the platform not merely collects and uses personal data, but that the platform grants access to its services *because* the user provides personal data or grants permission. If the platform provides the same service to all, irrespective of quantity, quality, accuracy or the commercial usefulness of the data obtained, the reciprocal character is weak.[145] By contrast, if the access is refused, restricted or replaced by a monetary alternative where the personal data or permission is not provided, the argument for the reciprocal character becomes stronger.[146]

Furthermore, the personal data or permission cannot be voluntary.[147] It must be provided as part of the exchange, not merely as an optional or incidental consequence of using the platform. If the user remains free to withhold the relevant data or permission, while still receiving the same service, the counter-performance resembles an optional contribution rather than consideration.

In addition, a further complication concerns the relationship between the user´s permission and the legal basis for processing under the GDPR. While the VAT concepts constitute autonomous concepts of EU law, the legal and economic structure of the relationship is nevertheless affected by public law.[148]

4.2.2 Capable of being expressed in monetary terms

In cases involving non-monetary counter-performance, the CJEU has required that the consideration must be capable of being expressed in monetary terms.[149] At first sight, the requirement may appear relatively unproblematic, since it could be argued that it is difficult to identify something with economic relevance that cannot, at least in principle, be assigned monetary value. However, the precise content of the requirement remains unclear. Although the requirement has developed primarily in the context of barter transactions, the Court has not provided for a general definition

[142] European Commission, User rights under the Digital Services Act, Last updated (22 may 2026), available at https://digital-strategy.ec.europa.eu/en/factpages/user-rights-under-digital-services-act.

[143] Article 6(1)(a) GDPR.

[144] Case C-94/19, San Domenico Vetraria SpA v. Agenzia delle Entrate, ECLI:EU:C:2020:193, para 26.

[145] European Commission, Vat Committee, Working paper No. 958, taxud.c.1(2018)6248826, p. 6.

[146] European Commission, Vat Committee, Working paper No. 1118, taxud.c.1(2025)11627393, p. 5.

[147] Case C-16/93, Tolsma, 16-19.

[148] See Tomassetti and Orlando, “Digital Zero-price Market – VAT Consequences” (2023) 34 International VAT Monitor. This tension is further elaborated by the authors in relation to the interaction between VAT analysis and data-protection constraints in digital zero-price markets.

[149] Case C-33/93, Empire Stores, para 12; Case C-230/87, Naturally Yours, para 11–12 and 16; Case C-380/99, Bertelsmann, para 17.

of what it means for the barter transactions to be capable of monetary expression. Nor does the existing case law appear to contain a clear example in which the Court has rejected the existence of consideration in kind solely because the counter-performance could not be converted into monetary terms. Therefore, it is not clear whether the counter-performance fulfils this requirement.

However, some guidance may nevertheless be derived from the case law on barter transactions regarding the taxable amount. The CJEU has consistently held that the taxable amount reflects a subjective value, which is the value actually received by the supplier.[150] Where no monetary payment is involved, that subjective value must be determined from the supplier´s perspective, by reference to what the supplier attributes to the non-monetary counter-performance received. That value must correspond to the amount which the supplier is prepared to spend for that purpose.[151] Applied to the counter-performance examined here, this means that it is irrelevant what the user attributes to its personal data, but only what the digital platform attributes to it.

4.3 Model A: A uniform free access model

Model A describes the situation in which a platform provides the same digital service to all users, irrespective of the scope of the user´s data-related permissions, or the quality or quantity of the data provided. In this model, the access to the service the is not conditioned upon the accuracy or the commercial usefulness of the user's personal data. This model corresponds to the situation examined in Working Paper No. 958, where the Commission service took the view that the necessary direct link between the IT service supplied and the data received could not be established. The reason was that the service was offered under the same conditions to all users regardless of the personal data provided individually.[152]

In this model, a direct link is difficult to establish because of two main reasons.[153] First, it is uncertain whether the platform-user relationship involves reciprocal performance. Second, even if the user´s data or data-related permission is treated as a possible counter-performance, it is difficult to show that it constitutes the value actually given in return for the platform´s supply. Although a legal relationship may be established through a registration where the user accepts terms of use, privacy policy, or consent to cookies, it is not clear whether that relationship imposes mutual obligations on the platform and the user.

In this regard, it should be noted that whether a direct link can be established or not, depends on the characterisation of counter-performance. Thus, it appears that there is disagreement in the literature on how the user's counter-performance should be characterised. As established in chapter 3, the counter-performance may be

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[150] Case 154/80, Coöperatieve Aardappelenbewaarplaats, para 13; Naturally Yours, para 16

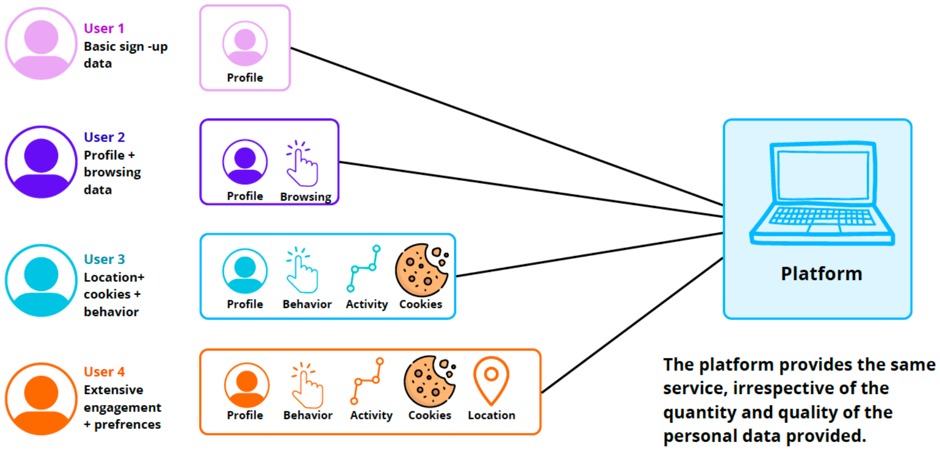
[151] Case C-33/93 Empire Stores, para 18-19; Case C-380/99, Bertelsmann , para 23-24.

[152] European Commission, Vat Committee, Working paper No. 958, taxud.c.1(2018)6248826, p. 6; see also Sroka, Choosing the Right Tool: DST or VAT for Data-forAccess Transactions? page 24.

[153] Sroka, Choosing the Right Tool: DST or VAT for Data-forAccess Transactions? page 24.

understood as the provision of data itself, the permission to collect and use such data, or as the user´s tolerance of measurement.[154]

If the counter-performance is the personal data itself, the establishment of the direct link becomes dependent on the quality and quantity of the data provided by each individual user. This creates difficulties in Model A. The users can also provide inaccurate information, use "disposable" email addresses for registration purposes and/or otherwise submit fake data. These circumstances may weaken the link where the platform nevertheless provides the same service irrespective of the quality or accuracy of the data obtained. In this regard, it could be argued that the fact that the users provide fake data, or use a disposable email, or restrict optional permissions, is not why the direct link fails. It is because the platform´s supply does not adjust according to the value of the data received. [155]



4.4 Model B: Differentiated service linked to privacy settings

Model B describes the situation in which a platform provides an electronically supplied service "free of charge", but where the level, quality or functionality of the service depends on the user´s data-related choices and adjustments. In the case that the user accepts broad data collection and processing, it receives full access to the platform's features. While when the user restricts those permissions, receives a reduced service in accordance with their settings. However, for that to be considered as consideration, there must be a link between the services supplied and the consideration received.[156] The relevant question for this model and for the present analysis is whether the platform provides a different version or level of the service because the user has accepted or refused certain data-related conditions.To specify, the question is whether that differentiation is sufficient to establish a direct link between the platform´s supply and the user´s counter-performance.

[154] Dudek, p. 595.
[155] European Commission, Vat Committee, Working paper No. 958, taxud.c.1(2018)6248826, p. 6.
[156] European Commission, Vat Committee, Working paper No. 1118, taxud.c.1(2025)11627393, p. 5-6.

Platforms that operate according to this model include, for example, Meta´s Facebook and Instagram, Google, Snapchat, TikTok, and Pinterest. However, this may also apply to digital platforms that provide a "free tier", such as freemium models such as Spotify, YouTube, Claude and ChatGPT.

To begin with, it has already been established that a legal relationship exists between the parties, and therefore it is not necessary to analyse it further. However, it must be examined whether that legal relationship between the platform and the user gives rise to reciprocal obligations at all. This requires a synallagmatic link between the supply and the counter-performance: one must be made on the condition that the other one is also made, and vice versa. If the reciprocal performance is absent, the direct link cannot be fulfilled.[157]

In Model A, the classification of the counter-performance could not be resolved, since the platform´s supply was indifferent to all three. However, in Model B, the differentiation of the service provides a basis for identifying the relevant counter-performance more precisely. The platform´s adjustment of services is not triggered by the data the user generates, since the user is not generally obliged to produce personal data. Neither is it triggered by the user´s general endurance of data processing, which is largely uniform across users of the same platform. Instead, the differentiation triggered by the scope of the permission the user grants when accepting or restricting specific settings. The user´s permission is therefore the element through which the exchange in Model B can be identified, and the following analysis proceeds on that basis. [158]

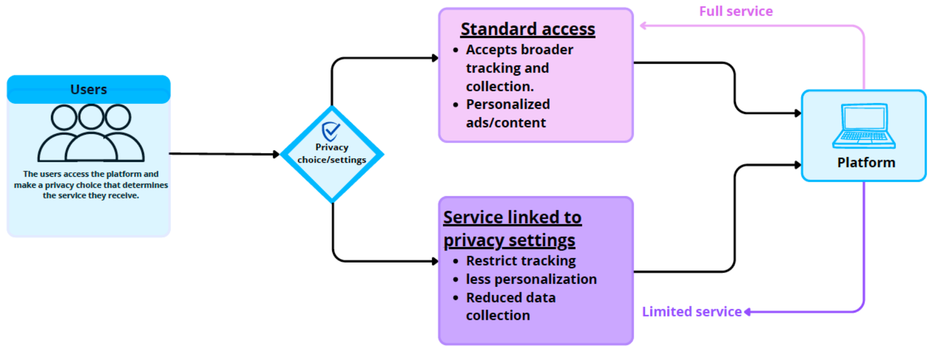
For a reciprocal performance to be established, the terms and conditions of the platform should link the permission to specific service features, in such a way that the user who accepts broader processing, receives full or broader functionality. Similarly, when the user restricts its permission, it gets a service corresponding to the reduction or restriction. The platform thereby commits, in its contractual agreement, to provide a particular level of service in return for a particular scope of permission.[159] However, in reality the terms and conditions are often not very clearly written.

This distinction can be illustrated by Meta´s current arrangement, under which users of Facebook and Instagram may choose between personalised and less personalised advertising within the free version of the service. Where the narrower permission is selected, the ads become less personalised, and the browsing may be interrupted by ads breaks[160]. However, the differences in the ad content itself may not amount to a clear reduction in the service from the user´s perspective, but the ads break represent a more tangible adjustment to the service the user receives.

However, it should be noted that the reduction of service does not necessarily mean that the platform values the permission at a lower level of consideration. It could also be so that certain data is necessary to provide certain functionalities. For instance,

[157] Case C-94/19, San Domenico Vetraria, para 26.
[158] Dudek, p.600; European Commission, Vat Committee, Working paper No. 1118, taxud.c.1(2025)11627393, p. 10-11; Pfeiffer, "VAT on "Free" Electronic Services?", page 160-161.
[159] European Commission, Vat Committee, Working paper No. 1118, taxud.c.1(2025)11627393, p. 5.
[160] Meta, About less-personalised ads, available at: https://www.facebook.com/business/help/825123042877166

not allowing camera setting, and therefore not be able to use a filter. This could arguably be the case when the user provides an AI system with input data, which is necessary so that the system can provide an output.[161]



5 Conclusion

The purpose of this thesis was to examine under what conditions personal data or the permission could constitute consideration for a supply of services.

The thesis argues that personal data should not automatically be treated as consideration merely because it has economic value. For VAT purposes, the decisive question is whether the user´s counter-performance can be identified as the value actually given in return for the platform´s service. This depends on the legal and economic structure of the platform-user relationship. The direct link is weak where the platform provides its services uniformly, irrespective of the data provided by the user. In differentiated service models, the link may be stronger where the level of functionality of the service depends on the user´s data-model choices. The strongest case arises in subscription-based or alternative access models, where the user may choose between monetary payment and broader data processing.

The thesis concludes that personal data or permission to use it may constitute consideration only where the platform´s supply is conditioned upon the user's counter-performance, and where it is capable of being expressed in monetary terms.

[161] European Commission, Vat Committee, Working paper No. 1118, taxud.c.1(2025)11627393, p. 5.

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