

## eu travel tech position paper – VAT in the digital age

The short-term rental (STR) market is among the most dynamic aspects of Europe's tourism sector today. Over the past years, STRs have come to revolutionize the way many Europeans travel. Platforms engaged in the intermediation of STRs have played a significant role in the trend, providing consumer transparency and convenience to an otherwise opaque market. This has benefited both consumers and many STR hosts. eu travel tech recognizes the need to adjust and modernize EU tax legislation in light of these developments. A step in this direction was taken with the 7<sup>th</sup> revision of the Directive on Administrative Cooperation and the Central Electronic System of Payment Information. Our members fully support the objective of combating tax fraud and are committed to supporting authorities in the enforcement of VAT legislation wherever reasonable.

Nonetheless, **we are concerned about certain elements of the VAT in the digital age (ViDA)** package of proposals as presented by the European Commission, particularly the VAT deemed supplier regime and its possible application to platforms active in the STR market and passenger transport services. The proposed regime would introduce significant **compliance costs, negatively affect VAT and STR channel neutrality and disproportionately impact SMEs** and consumers engaged in the rental of short-term accommodation.

eu travel tech wishes to be a constructive partner to policymakers, facilitating the development of legislation which is proportionate and fit for purpose. This paper is thus split in two sections: firstly, we outline our general views on the concept and justification of the deemed supplier regime and second, we raise concrete issues we have identified in the proposals of the ViDA package that we believe would benefit from clarification and improvement. While this paper focuses on STR services, the views outlined below also apply in relation to passenger transport services.

### General views on the deemed supplier regime for STR and passenger transport

#### Substantiating justification for the proposals

eu travel tech has strong concerns over the premises and specific aspects of the underlying analyses conducted in the context of the ViDA initiative, particularly regarding the deemed supplier regime applicable to STR and passenger transport. We believe the proposed deemed supplier regime is not fit to satisfy the basic policy objectives set out for this package of measures<sup>1</sup>.

There is a **need for further transparency regarding the study conducted on the platform economy**<sup>2</sup>. In particular, regarding STR platforms, we are concerned that the study posits that only 62 accommodation platforms would be impacted<sup>3</sup> by the deemed supplier

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<sup>1</sup> Specific policy objectives of the ViDA package: 1. Improve reporting requirements to unlock the opportunities provided by digitalization, 2. Promote convergence and interoperability of IT systems, 3. Create a level-playing field for businesses, regardless of the business model, 4. Reduce burdens, regulatory fragmentation and associated costs, 5. Minimise the need for multiple VAT registrations in the EU; SWD(2022) 393 final, p. 34

<sup>2</sup> VAT in the Digital Age - Final Report – Volume 2: The VAT treatment of the platform economy, DG TAXUD, 2022

<sup>3</sup> VAT in the Digital Age – VAT treatment of the platform economy (Volume 2), p. 38

regime, while the sector itself believes the number is much higher. Indeed, the European Commission's own impact assessment posits a number of ca. **710 STR platforms active in the EU**.<sup>4</sup>

We are also concerned that the **study and impact assessment do not include an estimate of the number of underlying providers who are likely to attain a VAT ID**, as their output will become subject to VAT and accommodation platforms who are not able to cope with the additional burden of the regime will push their suppliers to attain such VAT IDs. This would lead to a significant additional burden on tax authorities across the EU, as the audit population would experience an inflow of additional taxpayers, who would be able to claim input VAT on certain costs<sup>5</sup>, thus hollowing out a potential significant proportion of envisaged additional revenue.

The **study further lacks an in-depth investigation into the reasons for STR's lower prices** when compared to traditional hotels, which may not be the result of VAT treatment but rather the dynamics of the STR sector (e.g. difference in services provided additional to accommodation, requiring little to no staff or additional facilities).

The introduction of an extended deemed supplier regime as proposed by the Commission raises questions as to its proportionality. The proposed extension of the deemed supplier regime and technical complications that it would entail are expected to trigger the need for major adjustments from platforms and underlying suppliers, disrupting business operations. It is **worth examining whether the alleged additional VAT income for tax authorities and the additional administrative and compliance burdens for businesses justify the switch** to a different system.

## Safeguarding Neutrality

The European Commission has set out the creation of “a **level-playing field for businesses, regardless of the business model**”<sup>6</sup> as a **key policy objective** for the ViDA initiative. eu travel tech is concerned that the proposed deemed supplier regime would not serve this objective.

The proposed STR **deemed supplier regime would have a significant distortive effect regarding STR services provided by small businesses or private persons** subject to SME VAT exemptions commonly set in many Member States. In these cases, the deemed supplier regime would effectively dismantle the SME exemption if the STR service is intermediated by a platform. However, such exemptions would continue to apply if the STR service is not intermediated, but offered directly through a website owned by the STR host or even an offline transaction. This is contrary to arguments that the proposal would address “*an unjustified distortion of competition between supplies performed through online platforms that escape VAT taxation, and supplies performed in the traditional*

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<sup>4</sup> SWD(2022) 350 final, p. 168; we also wonder whether the approx. 700 online travel agents that have been identified as part of (ongoing) the Travel & Tourism Study (mainly acting as disclosed intermediaries) have been considered.

<sup>5</sup> This issue has already been raised by the French authorities in their [response](#) to the open public consultation on the ViDA initiative

<sup>6</sup> Staff Working Document – Impact Assessment report (SWD (2022) 393 final), p. 35

*economy that are subject to VAT*<sup>7</sup>. In fact, the **deemed supplier regime would create just the reverse distortion between online platforms and the traditional economy, thereby eliminating the existing VAT level-playing field** between offers sold directly by STR hosts and those intermediated by platforms. As mentioned in OECD guidance: “there is no one-size-fits-all solution, taxing jurisdictions are encouraged to ensure an equal treatment of various distribution channels in a given market, be they traditional or digital”<sup>8</sup>.

The discrimination effect grows stronger when also considering that the services of the underlying suppliers (now captured by the proposed deemed supplier rules) would be subject to VAT but these same suppliers, who are predominantly micro- or small businesses, will not be able to deduct input VAT on the costs related to these services. In contrast, their bigger competitors, who are already liable to VAT, will continue to benefit from input VAT deductions, therefore compromising the principle of VAT neutrality while putting those SMEs at a disadvantage. Having in mind that the European Commission seeks to support and strengthen the position of micro-businesses and SMEs, it seems that the **ViDA proposal would have a perverse effect on the objective pursued. We believe that the principle of VAT neutrality should be safeguarded** and this element should be taken into careful consideration in policy-making discussions.

Furthermore, the deemed supplier regime would impact platforms of various sizes differently. Large accommodation platforms may have the required resources to overcome the related costs and comply with the requirements, while the plethora of smaller short-term rental platforms active in Europe may be unable to do so. This may result in the unintended outcome that **smaller platforms may be forced to oblige their VAT-exempt suppliers to attain a VAT registration (where possible) or to exclude suppliers without a VAT number from their platform**, thus rendering their intermediation service less attractive. The consequences of thousands of private STR hosts being forced to register for VAT to continue offering their (otherwise exempt) short-term rental offer via a smaller platform could also be far-reaching and put further burden on national tax authorities.

### **Existing national systems**

It is important to note that exemptions of STRs from VAT exist in several EU Member States, notably in the major tourism destinations of France, Spain and Greece. The **deemed supplier regime as proposed by the European Commission would necessitate national amendments of these schemes**, resulting in significant administrative complexity for both tax authorities and STR hosts and platforms to enact a reversal of the existing systems.

Such changes will also affect STR prices due to the cumulative effect of abolishing the VAT exemption on STRs and also removing the exemption for small businesses under local SME regimes (if STR is facilitated by a platform). Additionally, imposing VAT on the underlying supply without the possibility for the supplier to recover input VAT will have an **impact on prices, all the above making tourism in the EU more expensive and, thus, less competitive.**

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<sup>7</sup> Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age, Recital 22

<sup>8</sup> OECD, VAT Toolkit for Africa, p. 162

## **Our recommendation: re-evaluate the merits of deemed supplier regime**

In light of the package's goal to further level the playing field between STR offers and hotels, we underscore that any VAT fraud will be prevented through the implementation of the 7<sup>th</sup> revision of the Directive on Administrative Cooperation. In addition, **Member States are fully empowered to remove any existing national VAT exemptions or rate reductions applicable to STR** within the scope of the current EU VAT Directive. As such, the STR deemed supplier regime is an ineffective measure to address any level playing field issues, which would significantly harm the EU tourism and accommodation platform/hosting ecosystem. In this context, we highlight the fact that a study of the Danish STR market showed that a data sharing obligation led to a price increase of 11%.<sup>9</sup> In general, we believe policymakers should pay particular attention to the **cumulative burden of proposed and implementing EU regulatory obligations applicable to STR platforms** (Digital Services Act, DAC-7, CESOP, New Deal For Consumers).

Based on the concerns expressed above as to the justification and the effects of the Commission's proposal, we **call on legislators to take sufficient time and re-evaluate thoroughly and carefully the merits of a deemed supplier regime**. We believe it is worth taking the time to properly consider this proposal where appropriate while going forward with other parts of the ViDA package at a faster pace. Considering the deemed supplier provisions separately from other parts of the ViDA package is possible due to the limited interdependencies with provisions on real-time digital reporting and the single EU VAT registrations and it would also allow for the much needed deeper consideration of the relevance and impacts of a deemed supplier regime, in addition to a comprehensive assessment of the implementation and data sharing under DAC-7.

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<sup>9</sup> Data sharing and tax enforcement: Evidence from short-term rentals in Denmark; Marcel Garz, Andrea Schneider; 2023, p. 26

## Practical issues to address and recommendations

Should policymakers decide to proceed with the consideration of the deemed supplier regime as proposed by the European Commission, we strongly believe that it is necessary to make a **series of technical amendments to the legal texts in order to provide much needed legal certainty** to affected stakeholders. In the following, eu travel tech describes the shortcomings we have identified in the proposals regarding the deemed supplier regime and makes recommendations with a view to improve the text so that it is as practically enforceable, clear and balanced as possible.

### Definitions

- The **proposal does not provide sufficient clarity on what types of accommodation** (e.g. Aparthotels, Bed&Breakfasts) would be captured under the deemed supplier regime and how the EC plans to differentiate them.
- The **proposals fails to align its definition of STR** with the approach taken in the EC's proposal for a Regulation on STRs.
- The proposal should align with the definition of STR with the proposal for a Regulation on data collection and sharing relating to short-term accommodation rental services<sup>10</sup>, specifically Art. 3 (5).

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### Passenger transport

- The proposals refer to “passenger transport” in a broad sense, without clearly defining the term. Therefore, the **deemed supplier regime could become inadvertently applicable to transactions taking place outside of the context of the collaborative economy**, which the deemed supplier regime is mainly aimed at. In particular, the use of the term “passenger transport” may lead to inclusion of transport services of non-EU, non-VAT registered transport operators, which are distributed through platforms. This may mean concretely that an **online travel agency facilitating the sale of air tickets of a non-EU airline (typically exempt from VAT registering) would be classified as a deemed supplier**. Furthermore, an online travel agency could fall within the scope of the deemed supplier regime if it facilitates certain domestic passengers transport provided by potentially VAT-exempt operators, such as SME bus companies.
- While the services addressed above may be VAT-exempt (with equivalent effect for the deemed supply of the online travel agency), an application of the deemed supplier regime would nonetheless lead to additional administrative costs for the platforms concerned, without any additional revenue for tax authorities.
- We further highlight that many of our concerns regarding the application of the deemed supplier regime apply to its application to “passenger transport” as well.
- The reference to **“passenger transport” throughout the proposals should be reconsidered. A more precise reference to “ride-sharing or ride-hailing” services** would avoid unintended consequences.

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<sup>10</sup> COM (2022) 571 final

## Facilitation fees

- The proposal raises **potential double taxation of platforms' facilitation fee** (if such fees are indeed taxable), as many non-EU states have introduced VAT for electronically supplied services (ESS)<sup>11</sup> based on the place of establishment of the recipient of the service (i.e. customer or homeowner/provider), while VIDA proposal foresees that the facilitation fee is subject to VAT where the underlying services is supplied (i.e. where the accommodation is located), in accordance with Art. 46a of the proposal to revise Directive 2006/112/EC.
  - In the interest of **avoiding double taxation** of the facilitation services of STR platforms, the current place of supply rules should remain in place, meaning ESS should be subject to VAT at the place of establishment of the recipient of the service (i.e. customer or homeowner/provider), in line with OECD guidance.<sup>12</sup>
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## B2B supplies

- The proposal fails to properly consider the impact of STR deemed supplies to business travelers, which will entail the obligation on the platform to raise invoices on the deemed supplies, disrupting the billing systems of both platforms and STR suppliers. Additionally, unless the EU VAT One-Stop-Shop (OSS) is extended to deemed supplies in business-to-business (B2B) transactions, STR platforms would likely need to obtain a local VAT registration in all EU Member States in which they are active.
  - B2B transactions should be excluded from the scope of the deemed supplier regime, otherwise, the OSS should be extended to B2B accommodation and passenger transport supplies to avoid this issue.
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## Composite and ancillary supplies

- The proposal should clarify which party is responsible to remit the VAT on additional ancillary services offered by the underlying supplier e.g. breakfast, parking, vouchers, etc. and to determine the VAT rates in case of composite supplies.
- In line with the existing deemed supplier regime for goods, it will likely be the responsibility of the deemed supplier to determine VAT rates for composite supplies. As such, it will be crucial for the EC to set a clear framework for such determinations to take place, within (legally binding) secondary legislation, ideally within Regulation (EU) No 282/2011. Non-binding guidance will not provide sufficient legal clarity on this issue, as Member States may develop differing interpretations.
- Moreover, the proposal should clarify if ancillary services provided by the platform to the booker (e.g. cleaning) could be regarded as ancillary to the underlying deemed supply (e.g. accommodation). If so, it should be clarified if both services are disregarded for input VAT deduction purposes.

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<sup>11</sup> [Data](#) by Avalara puts the number of countries with VAT/GST on ESS at approximately 60

<sup>12</sup> OECD, International VAT/GST Guidelines, p. 68

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## Data reporting obligations

- The proposal may lead to an unnecessary duplication of tax reporting requirements through the obligations introduced in Art. 242a of the proposal to revise Directive 2006/112/EC. For accommodation listing and platforms, the information to be shared under DAC-7 is similar to and targeted at the same STR listing as the proposals of the ViDA package.
- Art. 242a should be aligned with the 7th revision of the Directive on Administrative Cooperation to avoid any duplication of data sharing requirements. Additional guidance by the EC would be welcome clarify that data shared under DAC-7 is not required to be shared under again Art. 242a.

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## Assigning the deemed supplier

- The **proposal underestimates the complexity involved in defining which platform/intermediary should be designated as the deemed supplier** for VAT purposes regarding STR. In a single intermediation process, a platform may contract with providers with known VAT status, a further platform may process the booking in their system, a platform may facilitate the booking with the traveler and a third-party payment provider may process the payment. In fact, the platform may not always be involved in collecting the payment from the booker. The deemed supplier regime should clearly indicate which involved party should be designated as the deemed supplier in such scenarios taking into account that the customer facing platform may not be the platform that has the agreement with the underlying provider (and hence will not have information about the VAT number/status of that provider).
- The proposal **does not provide a sufficiently clear definition of the concept of “electronic interface”**.
- Art. 9b (1) of Implementing Regulation 282/2011 should be amended to reflect that a **deemed supplier can only be a taxable person which facilitates the search, booking and payment of STR through an electronic interface**. The scope of the deemed supplier regime for STR is too broad and it would lead to tensions for platforms that act both as disclosed and undisclosed intermediaries for the sale of accommodation. There is a need for clarity on the notion of disclosed intermediary as only this type of electronic interface would fall within the scope of the deemed supplier regime contrary to undisclosed intermediaries that may have to apply the Tour Operator Margin Scheme for (short term rental) accommodation and passenger transport. The definition of electronic interface should be aligned with the definition of “Online Platform” of the Digital Services Act<sup>13</sup>, as defined in Article 3, point (i).

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## Burden of proof

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<sup>13</sup> Regulation (EU) 2022/2065

- The proposal **disproportionately reverses the burden of proof for STR platforms which have been supplied with erroneous information** by STR providers and have consequently failed to comply with their obligations under the deemed supplier regime.
  - It is also unclear what is understood by 'a valid VAT ID number' and whether the VAT ID number must be valid in the country where the underlying supply is subject to VAT, or it can be any valid One Stop Shop (EU) VAT ID number or even if a single (non-EU) VAT ID in case the underlying supplier compulsorily applies the Tour Operator Margin Scheme ('TOMS') for all underlying transactions taking place inside the EU.
  - It is unreasonable to demand that platforms prove a relevant absence of knowledge on their part. It should rather be for **tax authorities to prove that the respective STR platforms had the relevant information available** to them in case they fail to comply with the deemed supplier regime, based on the comprehensive data reporting requirements of Council Directive (EU) 2021/514 and Art. 242a of Directive 2006/112/EC. The liability exemption of Art. 9d of the Council Implementing Regulation should further not only apply if the platform is solely reliant on information provided by the STR provider. **The platform should not be obliged to investigate and arbitrate between contradicting data sources**, but should rather be able to rely on data provided by STR providers (where such data is available) to limit administrative and compliance costs.
  - The provision of any valid One Stop Shop (EU) VAT ID number or in some cases a single (non-EU) VAT ID in case TOMS is applied by the underlying supplier should limit any potential liability of the platform.
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### Reconciliation mechanism

- The proposal fails to account for a necessary reconciliation mechanism between the VAT collected and remitted by the platform acting as deemed supplier and the VAT declared by a (VAT registered) provider.
  - The proposal should clarify how the VAT position would be corrected if the STR provider should have charged VAT (i.e. the supplier has a VAT ID number that was not provided to the platform), and/or if both parties inadvertently charged VAT.
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### Invoices

- The obligation to issue e-invoices within two days for cross border supplies, the abolition of the summary invoices and the new invoice requirements (bank and payment information) would add another layer of complexity. This is expected to heavily impact platform businesses as these requirements lead to increased processing costs and a disproportionate administrative burden on platforms in light of the high number of transactions typically processed.
  - We believe that the current provisions around monthly summary invoices should be maintained.
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## **About eu travel tech**

eu travel tech represents the interests of travel technology companies. eu travel tech uses its position at the centre of the travel and tourism sector to promote a consumer-driven, innovative and competitive industry that is transparent and sustainable. Our membership spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

Our members include Amadeus, Booking.com, eDreams ODIGEO, Expedia Group, Travelport, and Skyscanner. Associate members include American Express GBT, etravelli, Trainline and Tripadvisor.