

To: EU Finance Ministers

cc: DG TAXUD, European Commission

Joint Stakeholder Letter – VAT in the Digital Age (ViDA) platform rules

In light of the WP on Tax Questions (Indirect Taxation - VAT) meeting on 25 March 2024, representatives of European homeowners, short-term accommodation, transportation platforms, and small travel and tourism operators, are calling upon Member States to stand against a potential Council agreement on the provisions for the deemed supplier regime (DSR) under ViDA until a thorough, data-driven analysis on the impact of DSR and DAC-7 to the national tax systems has been conducted. Alternatively, we are advocating for Member States to give them flexibility and, considering their national circumstances, make DSR optional (through opt-in which is our preference, or opt-out) for entire STAR and/or transportation services via Article 28a.

We are deeply concerned about the direction Council discussions are heading and the detrimental effects the latest compromise text may have on private operators, small businesses, legal certainty, and prices in the sectors concerned. The latest Presidency compromise text on platforms (15 March 2024) would allow Member States to exclude taxable persons availing themselves within their territory of the special scheme for small enterprises, which otherwise would be systematically caught under the 'deemed supplier' rule, from the scope of that rule. This approach will cause an extreme fragmentation across the EU.

Under this new compromise proposal, online platforms will not only have to understand Member States' consideration if there is a distortion of competition or not (Recital 24), national criteria, conditions, and limitations for short-term accommodation rental (STAR) services (Recital 25), but will also have to determine when taxable persons availing themselves of the special scheme for small enterprises will fall within the scope of DSR or be exempted. **Individuals providing STAR or transportation services only on an occasional basis (private people) might still be subject to DSR. We believe that this new text does not present an improvement, but rather the opposite.** It will introduce numerous layers of complexity that will potentially result in 27 different deemed supplier regimes:

For example:

- In one Member State, online platforms will have to ascertain whether the STAR host (a private person) provides services akin to a hotel, or if they list more than a certain number of properties on the platform (or on a number of platforms in parallel);
- In another Member State, online platforms may be required to develop an API to determine if the STAR or transportation provider is applying the special scheme for small enterprises;
- In a third Member State, online platforms may be mandated to do both;
- In a fourth Member State, online platforms will have to apply DSR in all instances without exception.

Without adequate safe harbour rules, it will be nearly impossible for online platforms (of any size and nature) to automate these tax determination processes. Moreover, the introduction of special and unique exemptions (such as excluding taxable persons availing themselves of the special scheme for small enterprises or benefiting from national VAT exemptions on STAR services) may foster fraudulent activities. Some providers could exploit these loopholes, creating complications for both online platforms and tax authorities in enforcing these rules.

In addition, online platforms need legal certainty that undisclosed agents (falling under Article 28) are excluded from the ViDA DSR (Recital 26 does not provide sufficient clarity).

A differentiated VAT treatment between traditional players and STAR and transportation services sold through online platforms stems from deliberate decisions made by Member States to introduce exemptions and VAT thresholds. We strongly believe that a fully optional DSR would be a simpler and significantly better solution, as it would allow Member States to choose whether they want to apply a DSR on STAR and transportation services. Otherwise, online platforms will still be required to implement excessively burdensome and costly-to-implement DSR rules for a very limited number of transactions (STAR or transportation providers without a VAT ID and exceeding the VAT registration thresholds for SMEs). All this can be effectively addressed with less detrimental to online platforms measures (such as Data Reporting).

In fact, recital 30 of the DAC-7 clarifies that information communicated between Member States based on this Directive may also be used for the assessment, administration and enforcement of VAT and other indirect taxes. For this reason, we call for Member States to analyse the DAC-7 data first before making a decision on platform economy.

All in all, in our view, the DSR is a solution in search of a bigger problem, and we question the proportionality of this proposal. It will unfairly disadvantage just one player of the tourism economy - STAR and transportation services sold through platforms, lead to unfair increase in prices and taxation for individuals providing STAR or transportation services only on an occasional basis (they will be subject to income tax and VAT), impel double taxation of platform facilitation fees, and make it impossible for SME platforms to comply with and implement. Furthermore, our assessment shows that STAR services provided by private people already generate a very high overall net tax revenue of 25-30% on turnover. Imposing mandatory DSR will elevate the final price of such services and drive private providers into the shadow economy or out of the market, thereby negatively impacting overall tax revenue for Member States. We are convinced that the DSR will ultimately evolve into another tax on tourism, with its negative effects on the European tourism ecosystem and economy as a whole.

We urge Member States to carefully consider the concerns raised in this letter in order to reach a balanced and implementable agreement. This agreement should be proportionate and address national circumstances across the EU, while benefiting all stakeholders - STAR and transportation providers, Member States, and consumers. We stand ready to continue the dialogue and provide further feedback on the proposal.

Signatories

The co-signatories of this statement represent European homeowners, short-term accommodation, and passenger transport platforms, as well as travel and tourism operators.



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