THE EUROPEAN TRAVEL AGENTS' AND TOUR OPERATORS' ASSOCIATIONS

Ref: Tax-Platforms-Input ViDA platform rules 2023 04 04

Feedback on the ViDA Regulation proposal

ECTAA, representing travel agents and tour operators in Europe, welcomes the opportunity given by the European Commission to provide its views on the ViDA package adopted on 8 December 2022, and more specifically the proposed VAT rules for platforms supplying short-term accommodation (and/or transport services), where the underlying supplier does not charge VAT. In short, ECTAA opposes the introduction of the Deemed Supplier Regime (DRS) as it simplifies the VAT requirements of typically smaller 'untaxed' accommodation providers and tax collection by Member States, while pushing all the VAT burdens and costs onto platforms, many of whom are small and medium-sized companies. We also consider that the proposed platform rules could benefit from clarification in certain areas.

ECTAA is the European Travel Agents' and Tour Operators' Association, representing some 70.000 companies in Europe selling both leisure and business travel, either as disclosed or undisclosed agents. The ViDA packages, and more specifically the proposed VAT rules for platforms, has a direct impact on travel agents and tour operators who sell/mediate accommodation services. We will concentrate our comments on this part of the package.

ECTAA believes that the introduction of the deemed supplier regime (DSR) will impose disproportionate burdens and compliance costs for small and medium-sized travel agents supplying short-term accommodation rentals (STR). The study on VAT in the Digital Age[1] has calculated the cost of additional administrative burdens for the platforms based on the identification of 62 platforms active in the accommodation sector. This would presumably include the large accommodation platforms such as AirBnB, Booking, Expedia and Tripadvisor, but fails to recognize the multitude of smaller online travel agencies (OTAs) that mediate in the supply of holiday homes, villas and apartments. We do not know how many OTAs there are, but a quick search on the internet for 'holiday villas/apartments/rentals' provides a very long list of travel companies that either supply STRs on their own or in combination with other travel services. The DSR will impose disproportionate burdens and cost for these smaller companies. As highlighted in the ViDA study, the introduction of the DSR will require new or extended information obligations, increased invoicing costs and new VAT registration requirements, the impact of which can be significant, especially for smaller platforms who do not have the IT capacity to handle the accounting and VAT requirements.

Moreover, the **DSR is complex to apply, when the platform does not process the payment**, i.e. where the payment is made directly by the customer to the accommodation provider. In such case, the platform pays the VAT on the underlying service to the tax administration and must rely on the provider to pay both the platform fee and VAT collected from the customer to the platform. We consider this to be very problematic, because the platform will have to advance VAT that it has not yet collected from the provider. Moreover, there might be changes to the supply, of which the platform is

[1] Study on VAT in the Digital Age, Volume 2 – VAT treatment of the platform economy

not aware (part or full cancellation, modification, etc.) changing the VAT due (in some cases requiring platforms to recover excess VAT paid). This is putting a lot of risk and administrative burdens on the platforms.

ECTAA also believes that the introduction of the DSR will have unintended consequences to the detriment of accommodation providers, other suppliers and platforms.

First, we understand that the intention of the DSR is to level the playing field between the traditional (hotels and similar establishments) and platform-mediated accommodation providers, by bringing currently 'untaxed' providers (e.g. private individuals, Members of the Group of Four, non-EU established providers), who benefit from the network effect of the platform economy, into the scope of VAT. However, unless the accommodation providers register for VAT, they **will not be able to recover input VAT, which puts them at a competitive disadvantage compared to hotels and similar establishments.** This does not level the playing-field.

Secondly, platforms will be less competitive than other channels not covered by the DSR, such as offline travel agents, tour operators selling STRs in their own name as well as websites or search engines that refer customers to other places to make the sale, such as the accommodation provider's own website. A customer would be better off to buy the services from the accommodation provider directly or through one of the channels mentioned above, rather than going through a platform, which now will attract VAT. **There is no channel neutrality**.

Thirdly, we would also contend that many OTAs may not be able to deal with the additional complexity of the DSR and will either **force their accommodation suppliers to register for VAT** (which defeats the purpose of the DSR) or stop offering services of non-VAT registered accommodation providers. The latter would essentially **squeeze smaller platforms out of the market** and further increase the market position of the large platforms.

Fourthly, there is also the problem that an OTA selling tickets of a non-EU, non-VAT registered airline would be liable to be classified as deemed supplier for that transaction leading to more admin for the OTA even if the international flight would be VAT exempt. The same could apply in a 'Flixbus' scenario where the OTA works with small non-VAT registered bus companies and VAT would be due by the OTA as deemed supplier in all EU Member States according to the distance the bus provider traveled.

In addition, **ECTAA believes the proposed platform rules could benefit from some additional clarification**.

First, **it should be clarified who the deemed supplier is in a chain of transactions**. Take the example where an accommodation service is made available by a non-EU established bed bank and provided by a travel agent to the final customer. Is such a situation intended to fall within the DSR and, if yes, how does the travel agent know whether the accommodation provider is VAT registered or not and whether the bed bank acts in a disclosed or undisclosed capacity? Which of the two has the obligation to report a deemed supply, or is it both of them?

Secondly, it is stated that transaction for which a platform is the deemed supplier cannot be included in the special scheme for travel agents. There is some uncertainty about the effect of the word "notwithstanding" in the proposed Article 28a. We believe it would help with the understanding of the circumstances in which a taxable person is considered to be a facilitator, if "Nothwithstanding Article 28" is replaced with "In addition" and the new Article 28a is then transposed to become a second paragraph in Article 28. **We believe that this would help to clarify that where taxable persons do not *facilitate* an article 28a supply but instead *deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities*, then article 306 must apply**.

Thirdly, **there are several words in Article 28a that must be clarified**. The scope of Artible 28a seems very wide and only certain marketing services could avoid being covered.

- *Facilitate* – What does this entail? Is it just connecting a buyer and a seller or does the platform need to be more involved in the transaction?
- *Similar means* – This wording suggests that websites etc. are covered, which in practice would mean that everyone who uses the internet to make a transaction will be seen as using an electronic interface.
- *The person providing those services, points a, c, e, f* – Article 28a must be applied when the underlying transaction has not been taxed, for example due to it being provided by someone who is not VAT registered. However, it also applies to transactions provided by certain taxable persons.

  In the case of 28a(c), it would be difficult for the platform to find out or keep track of whether the underlying supplier belongs to the category. How should the platform know whether the taxable person has had the right to deduct VAT or not? The fact that this in turn will lead to the platform having to break out and report local VAT on the services will be very difficult to implement in practice for the platform.

Finally, **ECTAA would also like to point out the danger of double taxation**. If the place of supply rules related to fees that accommodation and passenger transport platforms charge would be due in the country of the underlying STR property/transport, this would lead to double taxation of the platform fees with over 60+ countries outside the EU (including countries such as UK, Switzerland, Norway – for a more complete list, see this link: Global VAT and GST on digital services – Avalara)

To conclude, ECTAA believes that the objective of the proposed platform VAT rules, i.e. simplification, low administration, and fair taxation, are not met. In ECTAA's view the suggested changes will complicate the VAT rules, add administrative burden and costs for companies and not tax similar transactions in an equal way.