EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value Added Tax

Group on the Future of VAT
37th meeting – 09 February 2022

taxud.c.1(2022)669826

Brussels, 26 January 2022

GROUP ON THE FUTURE OF VAT

GFV NO 116

VAT in the Platform Economy – focus on specific issues – follow up

1. INTRODUCTION

Following from the work of the two Fiscalis Workshops, the Subgroup on the Platform Economy, and Volume 2 of the Study 'VAT in the Digital Age'[1], the Commission services consider that further analysis of certain aspects of the policy options is required, in order that all parties have an understanding of the mechanics and consequences of the options. In particular, thought should be given to the efficiency of the options in dealing with the problem areas identified in the study, the mechanics of how they could work in practice, and decisions which will be required to be made in their implementation.

The problem areas identified in the study are:

- Unclear and not harmonised VAT rules – relating specifically to 'taxable status of the provider'; 'nature of the services and the place of supply'; and 'reporting and record keeping obligations';
- Difficulties in enforcing VAT compliance in the platform economy;
- Lack of VAT equality and neutrality.

The policy options outlined in the study and preliminarily discussed with experts in the field range from retaining the status quo, to clarifying and refining various VAT rules, to applying a deemed supplier regime to platforms where the provider does not ordinarily account for VAT.

It should be borne in mind that the policy options are not mutually exclusive (other than maintaining the status quo), and an ideal option could be a combination of two or more of the identified options. Indeed, a deemed supplier regime alongside some clarification of the VAT rules would go some way in solving all three problem areas, in that certain rules could be harmonised and clarified, that VAT compliance would be made easier for businesses and Member States if platforms were to take a greater role in the collection of VAT (thereby reducing the uncertainties for platform providers), and that the current lack of tax neutrality which exists between the platform and the traditional economies would be alleviated if similar supplies had the same VAT treatment.

2. GENERAL POINTS

Whilst some elements for discussion are specific to the policy options identified in the study (see Annex I for details of the policy options), others are of a more general nature.

2.1. Definition of a platform

Whilst the VAT Directive[2] makes a reference to platforms in Articles 14a and 242a and, by extension, Article 54b of the VAT Implementing Regulation[3], no definition of a platform for

1 VAT in the Digital Age: Volume 2 The VAT Treatment of the Platform Economy, Economisti Associati

2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

VAT purposes exists, only the requirements of its record keeping obligations. Definitions of platforms can be found, for example, in DAC7[4] and the Digital Services Act proposal[5] and there is an OECD model definition[6]. Using these existing models the Commission could propose a definition of a platform for VAT purposes, in order to improve legal certainty and provide a more secure legal framework for those operating in the sector.

To that end, taking a holistic approach, such a definition could be worded as follows:

> *For the purposes of this Directive, 'platform' means any software, including a website or a part thereof, and applications, including mobile applications, accessible by users allowing providers to be connected to users for the purposes of carrying out supplies of goods or services, either directly or indirectly.*
>
> *'Platform' shall not include software that exclusively allows any of the following:*
>
> *i) The processing of payments;*
> *ii) Listing or advertising of products or services;*
> *iii) Redirecting users to a platform.*

Consideration should be given to the fact that the above definition, and indeed the definitions to be found elsewhere in EU legislation, relate to the software used for the platform, and not the actual entity which runs and owns the platform. However, in Article 242a of the VAT Directive, such an owner would be 'the person who facilitates the supply', and therefore such a wording could be used to further define the role of the person who runs the platform where necessary.

Further to the above it is important to ask the fundamental question of whether the definition of a platform is in fact necessary – the e-commerce rules appear to be working well without the need for further definitions – we start there with the taxable status of the owner of an electronic interface who becomes the deemed supplier when it facilitates a particular type of supply, and as yet there have been no calls from Member States or businesses to provide a clear definition of the platform. This would lead to the conclusion that, despite there being specific definitions of a platform in other legislative areas, there is no particular need, nor desire for, one in VAT legislation.

2.2. Defining the status of the taxable person making the supply

When looking at the taxable status of the provider it is clear that any approach will depend on the relevant policy options. For example, simply introducing a rebuttable presumption that the supplier is a taxable person when they provide a VAT number to the platform goes some way to assuring legal certainty to platforms and providers, but also leads to problems when faced with non-registered taxable persons (see section 3.2 below).

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3 Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

4 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

5 Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final

6 Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy

Therefore it is useful to look at the issue of defining the status of the taxable person in a broader sense and how it would relate to the platform economy, in particular to its impact on VAT neutrality and equality. In this respect, it is important to recall that one of the problem areas is the lack of VAT equality and neutrality, that is to treat similar supplies in the same way.

'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 results of that activity.'* The second subparagraph of Article 9(1) goes further to defining *'economic activity' as being 'any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions'*. Further, it clarifies *'the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity'*.

For the purposes of our exercise (specifically focussing on services) when considering the platform economy, with a number of natural persons selling services via platforms, one is faced with a fundamental question – should the very fact that an individual is selling a service on a platform lead to that person being regarded as a taxable person? Should such an activity be considered as an economic activity?

Where the Court of Justice of the European Union (hereinafter: CJEU) has deliberated on this to a certain extent, there is little to be found which has a direct relevance on the platform economy, largely because the platform economy is a relatively new phenomenon – the CJEU has primarily ruled in situations where a taxable person acts (or not) in their private capacity, not what happens when a natural person makes what may be a taxable supply (with the exception of C-219/12, *Finanzamt Freistadt Rohrbach Urfahr*, concerning the production of photovoltaic electricity). See Annex II for a brief analysis of the most relevant CJEU cases.

This has led to a number of differing interpretations across Member States, with some ruling that any providers within a particular sector should be regarded as taxable persons, whereas others only give a more general guidance. These different interpretations make it difficult for the platforms to establish with certainty the taxable status of the providers, and indeed makes it difficult for providers to have full awareness of their VAT status (and the obligations arising therefrom), particularly if they are providing a service in another Member State. Therefore, it would seem prudent to establish a common means of clarifying the status of the platform provider. The exact design of the rule and how it could operate in practice would depend on the framework of the policy option.

In this sense, when looking at the deemed supplier model whereby the taxable supply is deemed to be carried out by the platform, and not by the provider, the issue of defining the taxable status of the provider may become less important. By making the platform the deemed supplier, the provider can continue to remain outside the scope of the VAT system, unless and until they fulfil the obligations necessary to be regarded as a taxable person in accordance with the provisions of the relevant Member State. This mirrors to some extent in the e-commerce rules[7].

In addition, the concept of a taxable person 'acting independently' is given further clarity in Article 10 of the VAT Directive, in that employees are specifically excluded from being

[7] Article 14a(1) of the VAT Directive

taxable persons. This is of particular relevance when looking at the recent Commission proposal on improving working conditions in the platform economy[8]. One of the measures proposed by the Commission is to provide for a rebuttable presumption of an employer/employee relationship under certain conditions. In this respect, where such conditions exist, a natural person supplying labour services via a platform (for example, an Uber driver) would not be regarded as a taxable person but an employee. As such the supply would be carried out by the platform, and thus VAT would have to be charged by the platform on the supply. This has the potential of effectively dealing with the issue of taxable persons for a large section of platform providers in the transport/labour sectors. However, the discussions on this Proposal are still at an early stage and it is hard to gauge at this point the detail of what will be agreed and when.

Article 12 of the VAT Directive allows for Member States to regard anyone who carries out supplies on an occasional basis as taxable persons, but the use of this provision is fairly limited and restricted to supplies of land and buildings.

3. QUESTIONS ARISING FROM POLICY OPTIONS

These elements concern questions regarding the application of particular policy options. It is worth noting at this point that during the discussions with businesses and Member States at the Fiscalis Seminars and in the VAT Expert Group and the Group on the Future of VAT, the issue of proportionality was raised, that is that businesses were keen that any measure would not be disproportionate to the problem it is attempting to solve. They were in particular concerned about extra burdens imposed on the platforms. In this sense the Commission services would like to stress that any new legislative initiative will be accompanied by a full impact assessment which measures the potential impact on businesses.

3.1. Question of whether the platform service is electronically supplied or an intermediary service

This is a legislatively straightforward decision as to whether to amend Article 58 and/or Annex II of the VAT Directive to clarify that the facilitation services supplied by the platform itself (i.e. the percentage the platform takes from the supply) are electronically supplied services, or supplies of intermediary services.

If they are **electronically supplied services**, then the place of supply of that service will be the Member State in which the customer is established, regardless of whether they are a business or a consumer (Article 44 of the VAT Directive for B2B supplies, and Article 58 for B2C supplies). As a consequence, if the customer is established outside the Member State in which the platform is established, the platform would either account for the VAT using the reverse charge (for a business customer), or directly in the Member State of the customer or via the OSS (for final consumers). Therefore, in order to establish the place of supply of their service, the platform would only be required to ascertain the place of establishment of the customer, and not the place of the underlying supply.

8 Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762 final

As a consequence, the VAT will accrue in the Member State in which the customer is established, so, for example, for holiday rentals, the VAT will accrue not where the accommodation is situated, but where the customer is located.

If this is regarded as a supply of **intermediary services**, then the place of supply regarding supplies to business customers will continue to be the place where the customer is established, but the place of supply regarding supplies to non-taxable persons will be the place where the underlying transaction is supplied. As a consequence, the platform will be required to know the place of supply of the underlying service in order to correctly establish where to account for the VAT for B2C supplies. In cases where the underlying supply is that of accommodation, the VAT will accrue to the Member State in which the accommodation is situated.

During the Fiscalis Seminar platforms described the differing treatments in different Member States as causing difficulties, and generally expressed a preference for the treatment of the supply to be regarded as an electronically supplied service. According to the study, the majority of Member States treat such supplies as supplies of electronic services.

A change to the rules may cause a shift in revenues between Member States, but it should be remembered that this would **only apply to the place of supply of the service provided by the platform, not to the underlying supply**. According to the study:

'*In absolute terms, the revenue shifting is not large: EUR 209 million if the intermediary services approach is chosen and EUR 50 million under the ESS approach. This corresponds respectively to 2.9 and 0.7 percent of the VAT revenue from platform-based accommodation services.'*

Because of the prevalence of Member States already treating such services as electronically supplied, there would be a smaller overall impact if all Member States followed this approach.

In any sense, this policy option on its own **would not address** the three problem areas. However, it would be useful to clarify and it is important to consider that this would impact on other policy options (see, for example, section 3.2 below).

3.2. Rebutable presumption of the taxable person's status

This is outlined as a policy option in the study (Option B2) and is intended to help platforms by simplifying the process by which the platform ascertains the tax status of the provider. In short, where a VAT number is given, the provider is regarded as a taxable person, and where not, the provider is not, with the corresponding consequences to the VAT treatment of the supply of platform services, and of the underlying supply (i.e. whether VAT is due or not).

The problem arises where **the provider is a taxable person without a VAT number**, for example, where they are an SME without the obligation to obtain a VAT number (which is currently the case in 17 Member States according to the study). For such situations the study suggests that the taxable person without a VAT number provides a declaration that they are a taxable person without a VAT number and the supply is treated accordingly.

The Commission services see a number of issues with this approach.

Firstly, it may be the case that a number of taxable persons without a VAT number are unaware of the fact that they are taxable persons given the absence of a VAT number, depending on how such systems are developed in Member States. This would have the impact of providers not knowing how the rules operate, and in certain circumstances it may be the case that the provider is required to understand the rules of another Member State (for example, if they have property overseas which they are letting out).

Secondly, platforms may have information at their disposal that they have collected for other purposes (in relation to DAC7 for example), suggesting that the taxable person without a VAT number should in fact be a taxable person. Would the platform be required to check every provider to ensure that the declaration is consistent with information collected for other purposes? This would suggest a move away from an automated approach and requiring intervention, which could increase the administrative burden for platforms.

Finally, it must be asked what the purpose of this policy option is. Where a provider is a taxable person (with a VAT number), they would be incentivised to provide a VAT number to the platform because they would be able to reclaim the VAT charged by the platform as input tax. Similarly, if the place of a supply made to a business is in a different Member State than that of the platform, the reverse charge would apply.

Therefore the provision of a requirement for a declaration may appear to be inconsequential, in that if the provider does not provide a VAT number, the supply from the platform to the provider can be assumed, for the purposes of the relevant transaction, to be a B2C supply.

We have the following examples by way of illustration:

- An SME (non-registered) supplies a service via a platform. No VAT number is supplied, and no VAT is applied to the underlying service. The facilitation service from the platform to the supplier can be considered to be a B2C service. Where such a service is considered an electronically supplied service, the place of supply is the Member State of the customer (in this case the platform provider) and the platform would account for the VAT via the OSS or by registering in that Member State. Where the facilitation service is considered an intermediary supply, the place of supply is the place of the underlying supply, and the platform accounts for the VAT in that Member State also via the OSS or by registering in that Member State.
- An SME (registered) supplies a service via a platform and supplies a VAT number. The facilitation from the platform to the supplier is a B2B supply, and the platform accounts for the VAT via its VAT return, or via the reverse charge.

However, the requirement for a declaration may be useful for the Member States in detecting a misapplication of the VAT rules. Member States are, under the provisions of Article 242a of the VAT Directive, able to request sufficient information from the platform and a declaration may give an indication of the misuse of VAT numbers.

Further, it is important to note that this presumption (or something similar) may be required under the deemed supplier option, depending on the scope and design of the option.

3.3. Reporting obligations of platforms

Option B3 in the study outlines in brief an option of streamlining the record keeping obligations of platforms, in particular relating to information already provided under DAC7.

Specifically, the obligation to store and make available i) information relating to a description of the goods/services; and ii) information contained on the invoice other than the amount and value of the supply and consumer related information. Further the study envisages the introduction of an OSS for sharing relevant data on request from domestic tax authorities.

The Commission services have analysed in-depth the interrelation between the relevant provisions of DAC7 and the VAT legislation, and have concluded that whilst not impossible, it would be difficult to align the information requested in the two legislative regimes (see Annex III). This is because a) the data frequency is different (DAC7 data is collected on an annual basis, whereas VAT is a shorter timeframe); b) the data collected for DAC7 is global, whereas the data required to be retained for VAT purposes is more granular (transaction-based), and c) the data collected for DAC7 is transmitted to the tax authorities on an annual basis, whereas the data retained for VAT purposes needs to be made available 'on request'.

Specifically on the subject of the type of data stored, it would be difficult to see how a meaningful assessment of the correct VAT treatment can be carried out by the tax administrations if there is no description of the goods/services. Without such a description it would be hard to ascertain whether the correct VAT rate, for example, has been applied, or indeed where the correct place of supply is (if the service is connected with immovable property, for example). A similar argument can be made if the only information which is stored is the amount and value of the service and 'consumer related information' (this has been given as an example by platforms as the only information which they can easily provide).

There may be a possibility, in terms of the supply of services, to introduce a system of codes for services (e.g. CPA codes), similar to CN codes for goods, particularly under the option of a sectoral deemed supply. But this would need to be fully explored, and the political and practical difficulties of agreeing such a coding system would need to be considered. As to the technical feasibility of an OSS for such information, however, given the different requirements of indirect and direct taxation, there still remain difficulties in terms of frequency, access etc.

Whilst it is difficult to envisage any short-term streamlining of record keeping obligations, one would have to regard this element in the context of the work being carried out in parallel with the Digital Reporting Requirements. Under the deemed supplier regime, reporting obligations for platforms would play a specific role in the design of this option, both for supplies made under the regime and those supplied outside the regime.

NB: The final version of the study proposes no specific policy options in this area for the following reasons:

1) A full review of the record keeping obligations for platforms would extend beyond the VAT Directive and the VAT Implementing Regulation, which are the acts concerned by the envisaged intervention.
2) Any streamlining measure would need to take into account the recently introduced or forthcoming record keeping obligations, whose effects are yet too early to assess.
3) Any possible framework may become soon outdated, depending on whether an EU Digital Reporting Requirement is introduced, and on the feature of the reporting mechanism chosen

3.4. The deemed supplier model and its interaction with the Group of Four (in particular the SME scheme)

3.4.1. Introduction

The deemed supplier model is intended to ensure that all supplies via a platform falling within the scope of the model are taxed, as it is one of the identified problem areas that similar supplies are treated differently and that providers using a platform enjoy an unfair advantage over traditional businesses. In addition, it is a simplification measure, in that platform providers will not be required to familiarise themselves with the VAT rules in either their own or other Member States.

In this sense, as well as applying to natural persons, and persons not established and not registered in the EU, the deemed supplier model should also apply to the 'group of four'.

The 'group of four' are identified in the study as:

i) taxable persons carrying out supplies of goods and services in respect of which VAT is not deductible;

ii) taxable persons subject to the common flat-rate scheme for farmers;

iii) taxable persons subject to the SME scheme;

iv) non-taxable legal persons.

These are persons who, depending on the Member State, may not be registered for VAT, and in any sense, would not generally charge VAT on their supplies. To ensure equality of treatment, and to reduce the opportunity for abuse, it is important that this group is included in the deemed supplier model.

Regarding SMEs specifically, historically, SME schemes were introduced because of a) the burdens on small businesses of fulfilling their VAT obligations, and b) the difficulties for Member States in assuring compliance of a large number of small businesses. Under a traditional business model, this has never been problematic, but with the growth of the platform economy, traditional businesses models are under threat because of the *economies* of scale enjoyed by platforms, and the network effect of providers now able to provide services via a platform. Whereas in the past, a person would lease their holiday home (for example) to a small group of friends/family and acquaintances, now their services can be viewed and accessed by millions across the globe.

Therefore, the Commission services feel it is important that this disparity is rebalanced. The table in Annex IV gives an indication of the effect on competition of the platform economy in the current situation, and under the deemed supplier regime.

3.4.2. The right of deduction

The intention is to not allow the right of deduction for a non-VAT registered provider using a platform for making his supplies. There are a number of reasons for this. The first is that this allows for a balancing out of the situation with the traditional economy, thereby ensuring more neutrality. Whilst a non-VAT registered provider using a platform does not enjoy the right of deduction had by a traditional provider, it instead has the benefit of the network effect, i.e. it is seen by many more customers than via the traditional means. In addition, the

provider is not encumbered with the burdens of compliance, as the VAT is accounted for by the platform. It should also be remembered that the provider can always register for VAT, opt for the normal rules, and benefit from a right of deduction whilst declaring VAT on their outputs.

Moreover, there are more practical considerations. Firstly, as a large section of this economy consists of individuals making their private assets available, it would be difficult to identify how much VAT incurred on such an asset should be allocated to business use (proportion expected to be also quite variable in time). Secondly, there is the question of what mechanism the provider should use to reclaim this VAT – they generally have no VAT returns. A mechanism would need to be established whereby these non-registered providers could reclaim their VAT, often for small amounts, which would be overly onerous for the tax authorities to handle.

Further, in relation any VAT on the platform's facilitation fees, the functioning of the deemed supplier regime should be recalled, as outlined in the study. This is that there are three distinct supplies:

- Deemed supply No. 1 – from the supplier to the platform, which is outside the scope of VAT. The amount is for the underlying supply (i.e. EUR 100)
- Deemed supply No. 2 – from the platform to the customer. This is taxable, with the taxable amount consisting of the value of the underlying supply, which includes the facilitation fee. (i.e. EUR 100 + 20 VAT)
- Platform services supply – from the platform to the provider where the platform charges the facilitation fee – this is outside the scope of VAT (i.e. EUR 10).

Under this model, VAT has been accounted for on the total EUR 100, which includes the facilitation fee, therefore VAT is accounted for both on the underlying supply and the facilitation fee. For this model to work, the platform cannot charge VAT on the facilitation fee to the supplier, in which case a right of deduction for the supplier never arises.

3.4.3. The practical application of the deemed supplier model and the Group of Four

In a practical sense, the deemed supplier model, in its relation to the Group of Four, could follow a 2 stage verification process, without the necessity for the provider to understand technical details about the VAT regime. This would be similar to the solution proposed in the study, but would be simpler to understand for providers who may not be familiar with the VAT system.

Firstly, the platform asks the provider to supply a VAT number. Where no VAT number is provided, the deemed supplier regime applies.

Where a VAT number is provided, a second question is asked along the lines of 'Do you ordinarily charge VAT on this type of supply?' If the answer is yes, the deemed supplier regime is not applied, if the answer is no, the deemed supplier regime is applied.

In this way, it may be easier for those providers unfamiliar with the VAT regime to comply with their VAT obligations in the correct manner.

3.5. Scope of the deemed supplier regime

Options C and D of the study (see Annex I) provide for a more limited scope for the application of the deemed supplier regime, namely restricting it to the accommodation and transport sectors. Option C would be restricted to short-term rental of residential properties (thereby excluding commercial properties, such as hotels) and ride on demand and delivery services. This specifically targets most of the C2C service transactions which occurs in those sectors. Option D would be wider than Option C, in that it covers all supplies within the transport and accommodation sectors – however, given that most non-residential renting of accommodation would be from VAT registered commercial enterprises (hotels, bed and breakfasts etc.), the number of 'deemed supplies' is not expected to be significantly different from the one to the other.

During the Fiscalis seminar in October 2021, a number of participants expressed the opinion that, should a deemed supplier regime be introduced, it would be preferable to have a narrow application, at least initially, in order to come to a fuller understanding of how it works in practice, and its efficiency before a broader application is considered.

Platforms, however, were concerned that, with such a sectoral approach, it may be difficult to ascertain with any accuracy, the 'borders' between supplies which are within the scope of the deemed supply and those which are not.

Given that options C and D are so similar, it seems logical then, if the deemed supplier were to be pursued, to opt for the broader of the two, in this practical sense, that it remains a sectoral approach, but also alleviates any difficulties the platforms may have from having to distinguish between, say, residential or commercial rentals. This approach would also address the problem areas identified in the study about the lack of VAT neutrality.

However, during the development of any legislation, the issue of bundled supplies would need to be considered – an example being a 'meditation weekend' at a retreat. Is this a supply of accommodation with meditation services attached, or a supply of meditation services with accommodation attached?

3.6. The deemed supplier model and its interaction with the travel agents scheme

During the Fiscalis seminar in October 2021, some participants expressed concern as to how the deemed supplier model would interact with the special scheme for travel agents. In particular they were concerned that platforms could claim to have a similar nature to travel agents, and thus evade tax on the full amount of the supply. Indeed, as the travel agents scheme is not an optional measure, and Member States have different interpretations of how the scheme works, it may be that a platform would be obliged to use the travel agents scheme.

We begin by looking at how the travel agents scheme works in practice.

The scheme applies where a travel agent provides transactions to a customer in his own name and for that uses supplies of goods or services provided by other taxable persons, and not where the travel agent acts solely as an intermediary. These transactions shall be regarded as a single service supplied by the travel agent to the traveller, and taxed where the travel agent is established. The taxable amount is the difference between the total amount paid by the traveller, and the cost to the travel agent of the supplies of goods or services provided by other

taxable persons, resulting in taxation of the margin. The travel agent has no right of deduction on these costs.

The difficulty, and the possibility of abuse, is if the platform, when acting as the deemed supplier, claims that it acts as a travel agent and argues that it can therefore use the travel agents scheme for the supply of short term accommodation (for example). In this respect, the platform would only charge VAT to the customer on the margin, rather than on the full price of the supply.

Therefore, in order to protect against this type of abuse, a provision could be included in Chapter 3 of Title XII of the VAT Directive specifically excluding platforms acting as deemed suppliers from the special scheme for travel agents. This can refer to the definition of platforms (see above), but care should be taken that such a measure does not exclude legitimate travel agents from the scheme, who have a similar nature to platforms. Such a provision could be added to Article 306(1) of the VAT Directive.

3.7. Treatment of the right of deduction of platforms where the underlying supply is exempt

Under the deemed supplier model there may be situations in which the platform is the deemed supplier of an exempt supply (for example some accommodation services, medical services etc.). This would have consequences to the right of deduction of the platform, whereby they would become a partly exempt supplier by dint of what their providers are supplying.

There are a number of possible solutions to this. One being the exclusion of exempt supplies from the deemed supplier model – as there is no tax involved in an exempt supply, there is no need for the deemed supplier regime to be applied. However, this may cause issues in that there may be a mixture of exempt and taxed supplies, or the platform would be required to know what supply is exempt and what supply is taxed.

A further solution would be an extension of the use of Article 173(2)(a) of the VAT Directive, by which platforms would be required to keep separate accounts for their exempt and taxed supplies. This appears to be overly burdensome on platforms in having to introduce new accounting systems.

A further solution could be that a specific provision is included in the VAT Directive which stipulates that where a platform carries out exempt supplies in its role as a deemed supplier, there is no impact on the VAT paid on their inputs. This would appear to be the simplest solution to apply.

3.8. The deemed supplier model and thresholds

During the last Group on the Future of VAT, one delegate mentioned the use of thresholds for the deemed supplier regime. Relating to a threshold for the platform provider the Commission services consider that this would be difficult to apply form the following reasons:

- It could be prone to abuse as providers use various means to remain below the deemed supplier threshold (for example making suppliers via a family member/fictitious name, etc);
- Platforms may incur additional costs in monitoring whether providers have exceeded the limit;

- Platforms will not know if a provider has also provided services via another platform;
- This will reduce the effectiveness of the policy option in tackling the lack of VAT neutrality and equality in the current system;
- It will increase the complexity of the system.

The system in place in Canada does not apply if the platform does not exceed a certain revenue threshold (around 20,000 EUR per annum). Whilst this would reduce the administrative burden for small platform operators, it may also complicate the operation of the system, particularly for operators which tend to hover above and below this threshold and could be prone to abuse.

4. CONCLUSIONS

In light of the above, the Commission services have concluded the following:

- Whilst there are definitions of platforms in other areas of EU and international legislation, such a definition may not be necessary in VAT legislation.
- Simply defining the status of the taxable person can be problematic, and does not solve the problem areas.
- A decision is required as to whether the supply of the platform's service is electronically supplied or an intermediary service.
- Streamlining reporting obligations for platforms will be difficult in the short to medium term.
- A deemed supplier regime should include the Group of Four, and specifically SMEs, for which there would be no right of deduction granted to the provider.
- The scope of a deemed supplier regime should cover all transport and accommodation services initially.
- There should be a provision which specifically addresses the issue of the interaction between the deemed supplier model and the special scheme for travel agents. This may be one excluding the platforms concerned from using the special scheme, or it may be a more nuanced measure, which allows platforms in certain circumstances.
- A provision should be included which specifically deals with platforms making exempt supplies under the deemed supplier regime.

5. QUESTIONS TO THE DELEGATES

The delegates are invited to give their views on this analysis and share any other opinion.

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ANNEX I

Outline of Policy options

Option A – Status Quo

This would involve no legislative initiatives by the European Commission, with the possible result of more fragmentation as Member States introduce their own national legislation in respect of the platform economy. The Commission may adopt non-legislative measures, such as clarifications via VAT Committee guidelines or explanatory notes.

Option B – Clarification of VAT Rules for the platform economy

This involves legislative measures to clarify certain rules for the platform economy, without introducing a new regime. The study outlined three areas:

Option B1 - Clarification of the nature of the facilitation service provided by the platform and its place of supply

The Commission would propose a legislative amendment to the VAT Directive which would clarify that the facilitation service provided by the platform is either an **Electronically Supplied Service**, or an **Intermediary Service**. If the facilitation fee is an electronically supplied service, the consequence would be that the place of supply for both B2B and B2C supplies would be where the customer is established. If the fee is an intermediary service, the place of supply for B2B supplies would continue to be where the customer is established, but the place of supply for B2C supplies would be the place of the underlying supply.

Option B2 – Introduction of a rebuttable presumption on the status of platform providers

Whilst a taxable person is incentivised to provide their VAT number to the platform in order to receive a VAT invoice, this will not be the case for taxable persons without the right of deduction, for example, or private individuals. Indeed, private individuals may not even be aware that they may be taxable persons. This causes difficulties and may result in the misclassification of the VAT treatment of the underlying supply, and the platform's facilitation service.

As a result, Option B2 is the introduction of a rebuttable presumption that the provider is considered not to be a taxable person unless they provide a VAT number to the platform. However, as some taxable persons may not have a VAT number (for example, in 17 Member States SMEs are not allocated a VAT number), where a provider does not supply a VAT number, they would also be required to declare that they are not a taxable person. This could be accompanied by measures intended to facilitate compliance. Those being a) an on-line repository of cases where taxable persons are not allocated VAT numbers in the Member States; b) a longer term review of the rules regarding the allocation of VAT numbers (requiring all taxable persons to be allocated VAT numbers); and c) Member States cross checking of information via 242a of the VAT Directive and DAC7.

Option B3 - The streamlining of record keeping obligations

Based on Article 242a of the VAT Directive and Articles 54b and 54c of the VAT Implementing Regulation platforms are required to keep records of supplies of goods and services to non-taxable persons which they facilitate and make these available to Member States on request. In addition, platforms are required to keep certain information under the DAC7 regulation. Some of this information is difficult to retrieve, some is duplicated, and Member States often have different means by which the information is to be transmitted.

The option was explored of streamlining these record keeping obligations, however, no fully fledged policy option has been proposed in the study for the following reasons:

4) A full review of the recordkeeping obligations for platforms would extend beyond the VAT Directive and the Implementing Regulation, which are the acts concerned by the possible intervention.

5) Any streamlining measure would need to take into account of the recently introduced or forthcoming recordkeeping obligations, whose effects are yet too early to assess.

6) Any possible framework may become soon outdated, depending on whether an EU Digital Reporting Requirement is introduced, and on the feature of the reporting mechanism chosen.

Options C to E, the deemed supplier options

Under the deemed supplier regime, the platform will be deemed to be the supplier of the service for certain transactions for monetary consideration.

Option C will have a narrow scope, and only apply to certain accommodation and transport services (ride on demand, delivery services, and residence renting).

Option D will apply to all accommodation and transport services.

Option E will apply to all services

The role will apply when the supplier is:

- **a non-established person not identified for VAT purposes in the EU**; or
- when established in the EU is,
    - **a non-taxable person** (private individual) or
    - **a member of the 'Group of Four':** (i) taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible; (ii) taxable persons subject to the common flat-rate scheme for farmers; (iii) taxable persons subject to the SME scheme; and (iv) non-taxable legal persons.

Certain measures considered under Option B should be adopted or adapted under the deemed supplier regime, namely:

- A new rule for the place of supply of the platform's services, resulting from the analysis of the alternatives under sub-option B.1;
- A presumption determine the status of the provider, which in turn determines the scope of the application of the deemed supplier regime. This presumption needs to be different from the one described under sub-option B.

ANNEX II

ECJ cases – taxable person

Case number	Description	Main question (summary)	Judgment	Relevance to platform economy
C-180/10: Słaby and Others	Farmland converted to building land, which was subsequently sold in lots.	Question of the application of Article 12(1)	If the MS has opted for 12(1), the exploitation of tangible property is subject to VAT irrespective of whether occasional or not.	Possible relevance to short term rental – although the application of Article 12(1) is restricted to a few Member States and only related to the sale of land or buildings
C-263/11: Rēdlihs	Natural person sold timber after trees damaged by storm (force majeure)	Does the supply of timber to alleviate effects of storm (force majeure) constitute a taxable supply?	Yes, where those supplies are made in order to obtain income 'on a continuing basis'	Pertinence of 'on a continuing basis' (no definition given – left to national courts).
C-62/12: Kostov	Concerning the activities of a bailiff	If you are registered for VAT for one thing (bailiff) are you acting as a taxable person when you do something else on an occasional basis?	Yes you are, providing that activity falls within the second subparagraph of Article 9(1).	Has relevance for a taxable person having additional income from another source (a lawyer, for example, deriving additional income via Airbnb).
C-219/12: Finanzamt Freistadt Rohrbach Urfahr	The supply of photovoltaic electricity by a natural person	Is the electricity generated by photovoltaic installation on private dwelling and sold back to the network an economic activity?	Yes if it is supplied on a continuing basis to the electricity network	This seems to have low relevance as it revolves around the fact that there is a continuing supply of electricity (and not the occasional use of asset).
C-331/14: Trgovina Prizma	Plots of land which were allocated to personal assets, built on and subsequently sold	Whether to charge VAT on sale of land allocated to personal assets and sold as part of shopping centre.	Yes because he was a taxable person 'acting as such'	Of low relevance - in this situation the supplier was a taxable person allocating assets to his private account then selling them.
C-263/15 Lajvér	Not for profit company provides ancillary activities (operation and maintenance of agricultural engineering)	Does the provision of this ancillary service constitute an economic activity?	Yes it does, if provided on continuing basis	Of limited relevance – relates to ancillary service from non-profit company

C-340/15: Nigl and Others	Civil law partnerships in a winemaking family	Should independent civil partnerships be regarded as independent taxable persons?	Yes	Limited relevance to platforms
C-312/19: Valstybinė mokesčių inspekcija (Joint activity agreement)	A natural person forms a partnership when constructing/selling dwellings and represents that partnership to third parties	Is the natural person liable for the obligations of the partnership?	Yes – in this instance they acted either in their own name or in the role of a commissary.	Limited relevance
C-459/19 – Wellcome Trust	WTL – share transfers	Taxable person carrying out non-economic activity – receiving supplies as a taxable person acting as such?	Yes they are	Limited relevance to platforms

ANNEX III

Streamlining of record keeping obligations

1.1. Reporting obligations under DAC7

The automatic exchange of information between tax authorities is crucial in order to provide those administrations with the necessary information to enable them to assess income taxes and value added tax (VAT) due correctly.

The digitalisation of the economy has been growing quickly over recent years. This has led to a situation where the platform operators are well placed to collect and verify the necessary information on sellers performing supplies through the facilitation of such platforms. Since tax administrations frequently have insufficient information to correctly assess and control gross income earned in their country, it has been agreed that it is essential to impose a reporting obligation on platform operators.

DAC7 establishes reporting rules for platform operators, both considered as 'EU platforms' (tax resident, incorporated, managed or has a permanent establishment in the EU) and 'Foreign platforms' (not in any of the previous situations, but those that facilitate carrying out a relevant activity within the EU), ensuring a level playing field among all digital platforms and preventing unfair competition. Namely, DAC7 requires the submission of information concerning the provision of personal services, sale of goods, rental of immovable property, rental of any mode of transport and investment and lending in the context of crowdfunding.

The reportable information is linked to the revenue and/or income earned by Sellers supplying goods and services with the intermediation of digital platforms. This comprehensive information is of relevance to tax authorities for correctly assessing the income tax due. As from 22/03/2021, Article 16 (1) of DAC has been amended as follows:

"Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be ***used for the assessment, administration and enforcement*** *of the national law of Member States concerning the taxes referred to in Article 2* ***as well as VAT*** *and other indirect taxes"*

Therefore, DAC7 (in force as of 01/01/2023) will be an important source of information not only for income tax assessment but also for VAT purposes. However, its usefulness from the VAT perspective might be limited for several reasons:

- The information would be reported on an annual basis, which does not properly fit in with the submission of the VAT tax return (quarterly or monthly).
- The information might not be available to the Member State of consumption (except for immovable property).
- It contains certain thresholds which may prevent the Member States from having a proper picture of the whole chain of transactions.

1.2. Reporting obligations under Article 242a)[9] VAT Directive

Apart from the reporting obligations laid down in DAC7, Article 242a) of the VAT Directive imposes on electronic interfaces since 01/07/2021 an obligation to keep records on the supplies they facilitate.

According to the latter, platforms are obliged to keep sufficiently detailed records of the supplies facilitated by them to enable the tax authorities of the Member States where those supplies are taxable to verify that VAT has been accounted for correctly.

Article 54c) of the Implementing Regulation specifies what information should be kept by platforms in respect of the suppliers and their supplies:

a) the name, postal address and electronic address or website of the underlying supplier whose supplies are facilitated through the use of the electronic interface and if available[10]:

i) the VAT identification number or national tax number of the underlying supplier;

ii) the bank account number or number of virtual account of the underlying supplier;

b) a description of the goods, their value, the place where the dispatch or transport of the goods ends together with the time of supply and, if available, the order number or unique transaction number;

c) a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number.

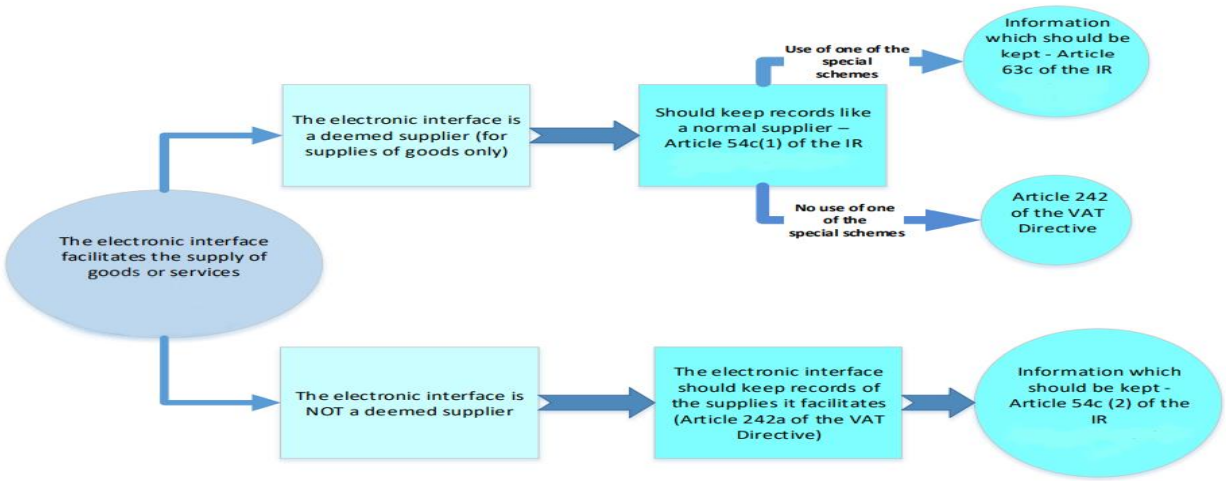
For transactions to which the deemed supplier provision applies, the electronic interface should keep VAT records like a normal supplier. The extent of information they should keep depends on whether or not special schemes are used[11] [12].

9 The mentions to Article 242a) also refers to Article 54c) of the Implementing Regulation.

10 The term if available should be interpreted as meaning that the information is collected within the usual course of business of the electronic interface.

11 Source of the figure: Explanatory Notes on VAT e-commerce.

12 According to Art.242 of the VAT Directive, each national legislation sets out what are the records to be kept by the taxable person and in which form they should be kept.



1.3. Possible overlapping between DAC7 and Article 242a)

These two mechanisms are separate, standalone tools that impose certain obligations on platforms and electronic interfaces. Despite the fact that both mechanisms share large similarities, some differences could be underlined:

VAT Directive (Article 242a) and VAT Implementing Regulation (Articles 54b and 54c)	**DAC7 (Article 8ac and Annex V)**	**Comments**
The objective of the reporting rules is to provide the tax authorities with information with respect to the income earned by Sellers.	The objective of Article 242a) is to enable tax authorities to request information with respect to a specific transaction and verify if VAT has been accounted for correctly.	Therefore, the record keeping provision (VAT Directive) targets VAT while reporting rules (DAC7) direct taxation.
Article 242a) of the VAT Directive lays down the obligation for the platform operators to keep records at transaction level.	DAC7 provides for a reporting obligation of aggregate data of the value of the revenue for each seller during a quarter. In addition, the Reporting Platform Operator shall determine whether the information collected is reliable using all information and documents available in its records.	The aggregate data exchanged under DAC7 is insufficient in case of an in-depth VAT audit. In such case, the records at transaction level are needed, and this data can be requested by the Member State under Article 242a).
Article 242a) requires the platforms to keep records of the supplies they have facilitated. These records must be made available electronically on request to the Member Stated concerned.	DAC7 provides for an automatic exchange of data by the platform to the tax authorities in which the platform is established. The MS that receives this information ensures an automatic exchange of information with the MS in which the seller is resident (or where the immovable property is located).	Article 242a) does not impose an automatic reporting obligation. On the contrary, DAC7 lays down an automatic exchange of data on a yearly basis.
Article 242a) refers to a taxable person facilitating the supply of goods or services through the use of an electronic interface such as a market place, platform, portal or similar means.	DAC7 only targets the sale of goods and other services that takes place through a platform.	An electronic interface covers a wider scope of electronic means and thus more situations through which the supply of goods and services take place.

Art.242a) does not cover certain sellers who are explicitly excluded from being reportable.	Platform operators are not required to report, among others, suppliers of goods with less than 30 sales without exceeding an annual consideration of 2.000 euros or rentals made by entities (e.g. hotels) that provide those services frequently (at least 2.000 rentals per year regarding a property listing).	DAC7 2.000 € threshold may be targeted to exclude those sporadic sellers who use second-hand sale platforms.

Having said that, the current reporting rules for platforms/electronic interfaces could be amended or integrated in order to:

- Avoid duplicated reporting requirements.
- Simplify the submission of the information required under the aforementioned regulations.
- Tackle data gaps, identifying which additional information would be useful to determine the proper VAT treatment of transactions intermediated by platforms.

In theory, having one instrument that streamlines reporting obligations imposed on platforms for VAT and direct tax purposes would be welcomed. However, concerns have raised with respect to merging these two tools:

- The specific relevant VAT data to be kept according to Article 242a) would need to be included in the information to be exchanged under DAC7. This would not be aligned with the purpose of DAC7, linked to direct taxation.
- This decision would potentially imply that the reporting of aggregate data as envisaged under DAC7 would need to become reported at transaction level.
- The obligation to make the records available on request provided for in Article 242a) would become an automatic reporting obligation on a transactional basis, and therefore go beyond the aim of Article 242a). It would also increase the compliance costs for platforms.
- The rules under DAC7 would need to be reviewed in order to ensure that the information is not only transmitted to the Member State of residence (for direct taxation purposes) but also to the Member State in which VAT is due (i.e. Member State of consumption).

If the merging option is not considered a viable solution and the status quo is discarded, the alternative might be to streamline these reporting obligations to avoid the issues derived from their co-existence. For this purpose, the following section will analyse the interaction between the content of Article 242a) and DAC7, examining possible options to alleviate the burden on platforms.

1.4. Comparison between the data required under Article 242a) and DAC7

The following table matches in the first two columns the specific set of data imposed on platforms, analyses their interaction in the third column and, finally, includes some comments regarding the possible streamlining of those obligations in the last one.

VAT Directive (Article 242a) Implementing Regulation (Articles 54b and 54c)	**DAC7 (Article 8ac and Annex V)**	**Interaction**	**Comments**
-	The name, registered office address, TIN and, where relevant, individual identification number allocated of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting.	Art.242a) of the VAT Directive does not include the obligation to keep this information.	This data does not seem useful for VAT purposes. For this reason, it is advisable not to include this information in the list of recordkeeping obligations.
The name of the underlying supplier whose supplies are facilitated through the use of the electronic interface.	The first and last name of the Reportable Seller who is an individual, and legal name of the Reportable Seller that is an Entity.	DAC7 and Art. 242a) VAT regulation cover the same specific data.	This data is also submitted under DAC7 but done on an annual basis, which seems non-compatible with the periodic submission of VAT returns. For this reason, eliminate this data from the VAT directive (waiting for the annual submission of that data) does not seem the best option.
The postal address and electronic address or website of the underlying supplier whose supplies are facilitated through the use of the electronic interface.	The Primary Address. Each Member State in which the Reportable Seller is resident. Where the Reportable Seller provides immovable property rental services, the address of each Property Listing and respective land registration number or its equivalent under the national law of the Member State where it is located, where available.	Both regulations set out the postal address of the seller but only VAT Directive requires the electronic address or website. The VAT directive does not mention data regarding the immovable property (rental services).	In some situations, the MS of residence of the seller does not correspond to the MS of consumption (e.g. accommodation services). Therefore, Article 242a) could add the location of those properties. Considering that DAC7 provides this data once a year, if its submission is not considered too late, art.242a) could erase this data. Currently, it is disputable if it is more important the physical address or the electronic one or website (DAC7 does not require it).
If available, the VAT identification number or national tax number of the underlying supplier.	The VAT identification number of the Reportable Seller, where available. Any TIN of the Reportable Seller, including each Member State of issuance, or, in the absence of a TIN, the place of birth of the Reportable Seller who is an individual. The business registration number of the Reportable Seller that is an Entity.	DAC7 and Art. 242a) of VAT Directive cover almost the same specific data, requiring DAC7 additional identification numbers of the seller.	As this data seems more relevant than the name of the seller for identification purposes, perhaps erase “if available” and make the requirement of this info compulsory.

If available, the bank account number or number of virtual account of the underlying supplier.	The Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reporting Seller is resident. Where different from the name of the Reportable Seller, in addition to the Financial Account Identifier, the name of the holder of the financial account to which the Consideration is paid or credited, as well as any other financial identification information available with respect to that account holder.	DAC7 and Art. 242a) of VAT Directive cover almost the same specific data. However, DAC7 does not specifically mention virtual accounts but includes references to the account where the payment is done if it differs from the seller's.	This information seems relevant to know where the earnings are, who the real owner of the assets is, etc. This data could be obtained via DAC7 (more thorough) and be removed from Article 242.a) of the VAT Directive. However, as virtual accounts may be more and more widespread, this information would be missed, as DAC7 does not require it.
The value of the goods or services.	The total Consideration paid or credited during each quarter of the Reportable Period and the number of Relevant Activities in respect of which it was paid or credited. Any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period. Where the Reportable Seller provides immovable property rental services, the total Consideration paid or credited during each quarter of the Reportable Period and number of Relevant Activities provided with respect to each Property Listing.	Concerning the value of the transaction, DAC7 and Art. 242a) of VAT Directive cover similar data. Still, DAC7 extend this requirement including charges by the platform and the breakdown for each immovable property.	VAT Directive lays down the obligation to keep records at transaction level while DAC7 provides for a reporting obligation of the value of transactions for each seller during a quarter (aggregate data). The different treatment by the regulations to the data (transactional basis vs aggregate) hinder the streamlining of this specific information. As Art. 242a) already covers the value of the supply via transaction by transaction there is no need for the breakdown by property (DAC7).
A description of the goods, the place where the dispatch or transport of the goods ends together with the time of supply and, if available, the order number or unique transaction number.	-	DAC7 does not include the obligation to submit this information as it is irrelevant for direct taxation purposes.	All of this information is specific for VAT purposes: a description of the goods or services (needed notably for the VAT rate), the place where the transport ends in case of goods or information in order to establish the place of supply in case of services (place of taxation for VAT). Apparently, the description of the goods or services seem the most difficult data to store and retrieve for platforms but its importance is undeniable for determining the proper VAT rate. Nevertheless, if the VAT rate is already included in the invoice and reported to the platform by the seller, the submission of that rate could substitute the description of the
A description of the services, information in order to establish the	-		

place of supply and time of supply and, if available, the order number or unique transaction number.			goods and services. Without the information about the place of supply or where the transport ends, the records would not allow to verify whether VAT is paid in the correct Member State. This information is crucial to determine the Member State of consumption and seems less problematic to store and gather. Regarding the time of supply, it is necessary to establish the chargeable event and cannot be eliminated.
-	The date of birth of the Reportable Seller who is an individual.	Art.242a) of the VAT Directive does not include the obligation to keep this information.	This data does not seem useful for VAT purposes. The objective is to streamline the data to keep, not to increase it unnecessarily.

1.5. Conclusions

Streamlining the record-keeping obligations under Article 242a) should be a possibility to explore considering its deep interaction with the reporting obligations derived from DAC7. Nevertheless, as it has been highlighted, the objectives of both mechanism are different and thus the set of data that platforms have to keep under Article 242a) or report under DAC7. For this reason, each subset of data must be individually assesses, analysing its concrete usefulness for VAT purposes as well the consequences of their removal from the VAT Directive and the Implementing Regulation. Coupled with this aspect, it should be noted that Article 54c) was conceived under the principle of proportionality, setting out a minimum set of information to record which, by definition, is a content already difficult to reduce or streamline.

Platforms also may do their share of work automating to the maximum extent the information sharing process, decision which definitely would reduce their compliance costs.

ANNEX IV

Comparison of competition table

Current Situation			
SME outside platform	**SME in platform**	**VAT Registered 'traditional'**	**VAT Registered platform**
No VAT	No VAT	VAT	VAT
No RTD	No RTD	RTD	RTD
Limited visibility	Network effect	Limited visibility	Network effect
Competition angle			
+ Benefits of not charging VAT - No right of deduction - Limited network	+Benefits of not charging VAT - No right of deduction + Network effect	- Charging VAT + Right of deduction - Limited network	- Charging VAT + Right of Deduction + Network effect
Score			
+ - -	+ - +	- + -	- + +
Deemed supplier			
SME outside platform	**SME in platform**	**VAT Registered 'traditional'**	**VAT Registered platform**
No VAT	VAT	VAT	VAT
No RTD	No RTD	RTD	RTD
Limited visibility	Network effect	Limited visibility	Network effect
Competition Angle			
+ Benefits of not charging VAT - No right of deduction - Limited network	- Charging VAT - No right of deduction + Network effect	- Charging VAT + Right of deduction - Limited Network	- Charging VAT + Right of deduction + Network effect
Score			
+ - -	- - +	- + -	- + +