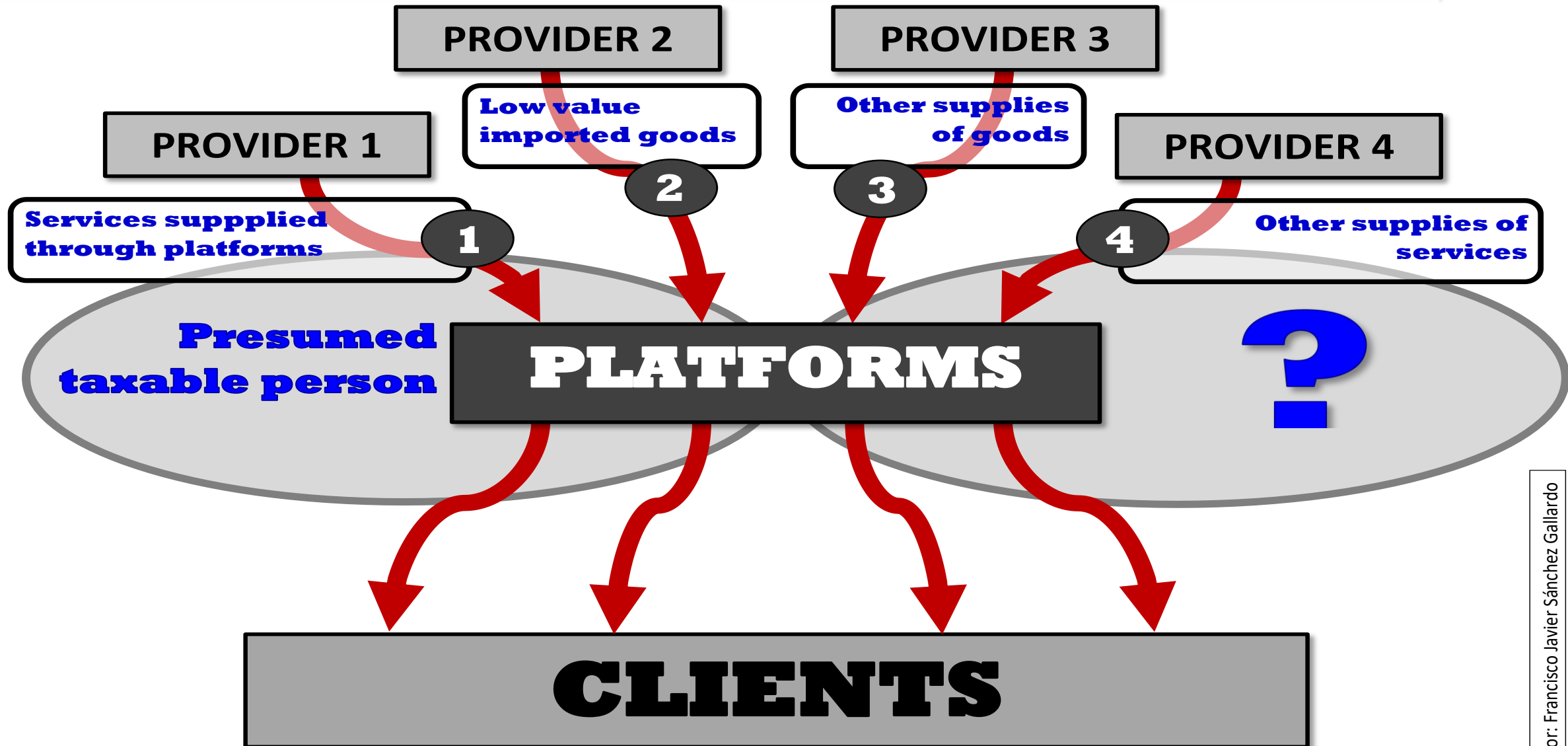


SUPPLIES OF GOODS AND SERVICES THROUGH DIGITAL PLATFORMS AND VAT



1. Services provided through platforms

- In this case, art. 9 a of the Implementing Regulation (EU) 282/11 establishes the **fiction** that the platform is the one that buys and sells the services in question, existing, thus, a **double sale**:
 - More specifically, what the Implementing regulation does is establishing the application of **art. 28 of the VAT Directive**, by providing that it will be presumed that the platform acts on its own name and on behalf of others in the provision of services.
 - This presumption will not apply when **the provider is explicitly indicated** as the supplier by the platform and that is reflected in the contractual arrangements between the parties (something which has to be shown on the issued invoices).
 - This presumption only applies to **provided electronically services** and to telephone services provided through the Internet.
 - The **ECJ** recent judgment of 28-2-2023, **case C-695/20, Fenix International**, establishes that there is no factor of such a kind as to affect the validity of the said art. 9 a(1) of the Implementing Regulation (EU) 282/2011. In this case, the suitability of an implementing regulation to establish a presumption such as the one described was questioned, something that has been accepted by the court.
 - The corresponding **place of supply rules** should be applied to the supplies of services that have been indicated.

2. Low value imported goods

- In this case, the **fiction** established in **art.14 a of the VAT Directive** will be applied:
 - According to this article, it is understood that it is the **platform** that **buys and sells** the goods in question, existing, again a **double sale**, even if it does not exist commercially.
 - The fiction applies to **distance sales of imported goods** whose intrinsic value does not exceed 150 euros, as well as to sales made within the Community to final consumers by taxpayers not placed in the EU.
 - The art. 5 b of Implementing Regulation 282/11 establishes the **requirements** to consider that a platform is involved in the sale that gives rise to the application of this fiction.
 - The corresponding **place of supply rules** should be applied to all deliveries of goods and provision of services that have been indicated.

3. Other supplies of goods

- The **fiction** that has been indicated in case 2 is **not applicable** in this situation.
- It will be necessary to analyze what **type of intervention** the platform carries out. It may intervene as an undisclosed agent or as a simple commission agent, on the name of and on behalf of another party of the supplier of the goods:
 - In the first case, there would be a **double sale**, as established in art. 14(2)(c) of the VAT Directive.
 - In the second one, it should be considered that the platform is providing a **mediation service** to the owner of the goods, who is the one who sells them. In this case, the person who would carry out a **supply of goods** and the liable to pay the tax corresponding to this sale would be the goods owner, not the platform.
 - The corresponding **place of supply rules** should be applied to all deliveries of goods and provision of services that have been indicated.

4. Other supplies of services

- The **fiction** that has been indicated in case 1 is **not applicable** in this situation.
- Once again, it is necessary to determine the **type of intervention** that the platform has, which can act in its own name or in the name and on behalf of others:
 - In the first case, and in accordance with art. 28 of the VAT Directive, it would be necessary to understand that the platform buys and sells the concerned service and, thus, there is a **double sale**.
 - In the second assumption, with the current wording of the VAT Directive (the VAT in the Digital Age proposal is only a proposal, for now) it would be necessary to consider that the platform provides electronically a **mediation service** and that the underlying service is provided by its provider, in In this case, the provider 4.
 - Said taxpayer, provider 4, will be providing the **underlying service** to which the mediation refers.
 - The corresponding **place of supply rules** should be applied to the supplies of services that have been indicated.

To be continued...